

On ‘The Horniman Walrus’

Abstract

This article considers the connections between a walrus displayed in The Horniman Museum in South East London and international environmental law. Drawing on my experience of reproducing this walrus in clay, it uses the walrus as a microcosm of international environmental law’s engagement with nature in the context of cultural and philosophical trends involving the artifactualisation, socialisation and humanisation of nature.

1. Introduction

This article presents a nineteenth century taxidermy walrus as a microcosm of international environmental law’s engagement with nature. The first two sections after this introduction (‘Tea and Philanthropy’ and ‘The Walrus’) consider the origins of the museum in which the walrus is displayed and the history of the walrus itself. The third section (‘Natural / Artifactual’) considers this particular walrus’ existence as something that is both natural and artifactual, whilst the fourth section (‘Subject / Object’) connects this natural / artifactual existence with the fundamentals of capitalist and anti-capitalist post-Enlightenment thought.

The fifth section (‘Language / Law’) links the natural / artifactual existence of the walrus, understood in the context of the preceding discussion (in the fourth section) of post-Enlightenment thought, with the vision of nature emerging out of the language of international environmental law, *via* Walter Benjamin’s work on the nature of language. The final section (‘Art / Nature / Simulacrum’) reflects on the apparent impossibility of returning to nature, drawing on my experience of making a clay model of the walrus.

The six substantive sections that follow this introduction can be seen as ‘fragments,’ individual pieces in the article’s overall ‘mosaic.’¹ My aim, in this article, is to collect these fragments together, to ‘show’ rather than ‘say,’² to ‘allow’ the fragments ‘to come into their own: by making use of them.’³ I will not, therefore, attempt to tell you, as reader, what you should take from this article or how its sections fit together. Instead, ‘I must ask you to join me in [what may, at first, seem like] the disorder’ of its mosaic,⁴ uncovering its meaning(s) in the process of reading.⁵

2. Tea and Philanthropy

The Horniman Museum is in Forest Hill, South East London. Its origins lie in the collecting habits of Frederick John Horniman (1835-1906), ‘a Victorian tea trader and philanthropist’. Horniman wanted to ‘bring the world to Forest Hill’, returning from his travels with objects that ‘seemed to him likely to interest and inform those who had not had the opportunity to visit distant lands’. Over time his collection grew to fill the family home, leading his wife to demand “either the collection goes or we do”. The family duly moved out and the house opened to the public as a free museum in 1890. The collection was initially ‘divided into two sections – Art and Nature’.⁶

The Horniman Tea Company – Frederick was chairman and managing director, succeeding his father – was the first to sell tea in packets rather than as loose-leaf.⁷ This prevented adulteration by the merchant and erected a barrier between the foreign origins of the tea and the domestic consumer, ‘sanitizing products that had come from the “dirty” empire’ by labelling them with the identity of an English dealer (‘Horniman’s Pure Tea’).⁸

3. The Walrus

The Horniman Walrus probably came from the Hudson Bay area of Canada. First shown at the Colonial and Indian Exhibition in South Kensington, London in 1886, it was subsequently purchased by Frederick Horniman. Perhaps its most distinctive feature is that it is ‘over-stuffed’. A walrus ‘in the wild’ has skin folds but the Horniman Walrus has none. The taxidermist appears to have unwittingly removed them in the process of (over-)stuffing.⁹

The over-stuffing would not have been apparent to a visitor in the late-nineteenth century – as the Horniman Museum website notes, ‘[o]ver one hundred years ago, only a few people had ever seen a live walrus, so it is hardly surprising that ours does not look true to life’¹⁰ – but it has, over time, become central to the walrus’ brand, the (metaphorical) packaging, distinguishing this animal exhibit from other animal exhibits. The over-stuffing makes the walrus part natural history exhibit, part artifact,¹¹ manifesting a “refus[al] to choose between knowledge and pleasure.”¹² The Walrus is, it seems, ‘so popular because it is not actually correct ... people just learned to love him for being funny looking.’¹³

'He' went on tour in 2013, visiting the Turner Contemporary Gallery in Margate, Kent, as part of the 'Curiosity: Art and the Pleasures of Knowing' exhibition.¹⁴ Promoting the brand, the Horniman Museum website refers to '[o]ur famously over-stuffed walrus', whilst Turner Contemporary invites visitors to 'see the absurdly over stuffed Horniman Museum walrus.'¹⁵ 'He' even has his own twitter account so that 'you can ... catch up with the walrus' own comments',¹⁶ and – perhaps inevitably – the soft toy version is available from the gift shop.¹⁷

4. Natural / Artifactual

In the preceding sections I have described the museum in which the walrus is housed and the walrus 'him'-self. I want, now, to highlight the connections between the packaging of the tea, which, of course, gave Frederick Horniman the resources to buy the walrus, and the more recent branding of the walrus, *via* museum and gallery websites and a twitter feed, as uniquely and entertainingly 'over-stuffed'.

The nineteenth-century packet containing the tea was, as noted above, the surface onto which the brand ('Horniman's Pure Tea') was printed. Through a process of 'brand recognition' the consumer develops an attachment to something more artifactual than natural.¹⁸ Branding – the process of stamping a name onto a packet and advertising its contents – stimulates an attachment not to the raw, natural form of the thing itself, but to the complete artifact, the unity of the packet and its contents, the product, so that the consumer is not buying mere tea but 'Horniman's Pure Tea' and, crucially derives pleasure from doing so.¹⁹

The branding, the packaging, appearance, outer surface or skin of the product, seems to be the most important element for the consumer. It makes the raw product into something more distinctive and pleasurable than it originally, naturally was, divorcing the artifactual product from the natural, raw material. We could merely 'know' what the natural original was – the dried leaves of a tea plant, the preserved body of a dead walrus – but the packaged, presented, re- / de-formed product can be enjoyed as a something distinctive, a source of 'pleasure'.²⁰

The natural is, then, packaged, re-presented, and given a social-cultural function – the culture of tea drinking in English society,²¹ the curiosity and amusement provoked by a de-formed walrus. Just as the

foreign-ness of tea was displaced, in the nineteenth century, by stamping an English dealer's name onto the packet,²² the natural-ness of the walrus is displaced by its over-stuffing. These things in their more pure forms would not, it seems, cause interest or pleasure. Tea does not just need to be pure, the word 'pure' needs to be stamped on the packet, so that you can take pleasure from the knowledge that you are buying something 'pure'. A dead walrus that was just a dead walrus would not merit attention – indeed, it would decay, smell and offend the senses – but, artificially preserved by taxidermy and 'placed' in distinctive, over-stuffed packaging, *via* a twitter account and an accessible socio-cultural history, it becomes a saleable product (including in the gift shop, in soft toy form), a collectable item.²³ 'Order' is imposed; an 'old world' is renewed.²⁴

5. Subject / Object

In their raw, natural forms tea and the walrus seem unfamiliar, unclean, foreign, 'outside', and perhaps threatening. Packaging, however, sanitizes and humanizes them, making them knowable, unique, enjoyable and valuable.²⁵ The physical processes of packaging and taxidermy have theoretical-philosophical equivalents – indeed, they are an expression of the humanisation and socialisation of the natural central to post-Enlightenment thought in its capitalist and anti-capitalist (or Marxian) forms.²⁶

Capitalism depends on a process of identification in which incommensurable, individual things or people (objects) are stripped of their individuality and identified with other things or people.²⁷ These things or people are then introduced into a collective system – a collection, a market – where they are bartered or exchanged on the basis of their identity, their equivalence.²⁸

A productive, economic system depends on modes of thinking (engaged in by subjects) which establish similarities between dissimilar things and people (objects) and, with the passage of time, this system comes to dominate thinking itself.²⁹ 'Economic and social forces take on the character of blind natural powers' as the socio-economic becomes second nature and occludes any more primal sense of the natural.³⁰ The subject – the thinker – becomes constrained, in her engagement with the object (the thing(s) she seeks to think about) by the system within which she thinks, because 'ideas, aspirations, and objectives that, by their content, transcend the established universe of discourse and action are ...

repelled ... reduced to terms of this universe ... [and] redefined by the rationality of the given system and of its quantitative extension'.³¹

In capitalist terms, then, nature can be thought of only from within the system, in socio-economic terms. Nature is 'mere material, mere stuff to be dominated, without any other purpose than that of this very domination.'³² The natural enters the socio-economic realm, the market, only as a labelled product or artifact. The tea plant growing in the fields of India or China becomes 'Horniman's Pure Tea' and a walrus, shot in Hudson Bay, Canada, and bought with the proceeds of selling that tea, becomes a 'famously over-stuffed walrus' in South East London. Dried tea and a dead walrus are, by means of the money passing through Frederick Horniman's hands, exchanged.

Marxian, anti-capitalist thought is equally rooted in a socialised concept of the natural in which the subject (the thinker) dominates the object (that which is thought about, nature). As Andrew Feenberg explains, Marx approached 'human consciousness [as] a moment in nature's self-development and not an external spectator on the latter' within a broader concept of 'subject-object identity.'³³ Summarising 'the Marxist view', Alfred Schmidt explains that '[t]he concept of nature cannot be separated, either in philosophy or in natural science, from the degree of power exercised by social practice over nature at any given time'.³⁴ Even at the most critical, nature-focused end of the Marxian perspective Max Horkheimer, writing on 'The Revolt of Nature', is clear that no 'return to nature' is possible: 'Whenever man [sic] deliberately makes nature his principle, he [sic] regresses to primitive urges ... we are the heirs, for better or worse, of the Enlightenment and of technological progress ... The sole way of assisting nature is to unshackle its seeming opposite, independent thought'.³⁵

Ultimately, therefore, neither capitalist nor anti-capitalist thought offers a way beyond the socialisation and humanisation of nature. The centrality of that socialisation-humanisation process to thought is reflected in the fundamentals of language itself, and in the language and structure of international environmental law.

6. Language / Law

Walter Benjamin 'On Language'

In his 1916 essay 'On Language as Such and on the Language of Man' Walter Benjamin reflects on the nature of language.³⁶ He does so 'on the basis of the first chapter of Genesis', not because he is interested in 'biblical interpretation' or because he sees the Bible as some source of 'revealed truth', but because of a conviction that language itself is 'an ultimate reality'.³⁷ The reality of language is ultimate because it expresses 'the linguistic being of things', something Benjamin illustrates by reference to a lamp that is, it seems, sitting on the desk at which he writes.³⁸

Benjamin explains that '[t]he language of this lamp ... communicates not the lamp (for the mental being of the lamp, insofar as it is *communicable*, is by no means the lamp itself) but the language-lamp, the lamp in communication, the lamp in expression.'³⁹ The point, it seems, is that no engagement with, communication concerning, or expression of 'this lamp' is possible outside language – 'mental being communicates itself *in* language and not *through* language'⁴⁰ – and, in that sense, the lamp exists within the 'ultimate reality' of language.

Out of Genesis, and with a particular focus on 'the Fall', Benjamin discerns and juxtaposes two types of language. The first, 'language as such', which existed before the Fall, was 'paradisiacal', a language of 'perfect knowledge'.⁴¹ Man, as created by God, was 'invested with the *gift* of language and ... elevated above nature.'⁴² God 'did not wish to subject him to language, but in man God set language, which had served him as the medium of creation, free', so that '[m]an is the knower in the same language' – 'language as such' – 'in which God is the creator'.⁴³

This 'paradisiacal', divine, 'fully cognizant' and natural language,⁴⁴ with a direct, 'immediate' connection to the creation and nature of all things, is lost in 'the Fall'.⁴⁵ The 'apples' of the 'Tree of Knowledge' in the Garden of Eden 'were supposed to impart knowledge of good and evil', but '[t]he knowledge to which the snake seduces ... is itself the only evil known to the paradisiacal [pre-Fall] state'.⁴⁶ 'Knowledge of good and evil ... is a knowledge from outside' and it is this outside-ness that marks 'the true Fall of the spirit of language'.⁴⁷ 'The word' becomes 'something externally

communicating... a parody ... of the expressly immediate creative word of God' that had been 'set' in man by God.⁴⁸

Even before the Fall nature is 'mute' because it had been subjected to man by God, and because, unlike man, it had not been invested with the capacity for language.⁴⁹ 'After the Fall,' however, nature's 'other muteness,' its "deep sadness," 'begins'.⁵⁰ 'To be named' – to be subjected to man – 'even when the namer is godlike ... blissful', invested with a divine, immediate, perfectly truthful language, 'remains an intimation of mourning', but that mourning is compounded when, after the Fall, nature is subjected to 'the hundred languages of man'.⁵¹

In summary, then, in its pre-Fall state nature was truly and perfectly communicated in language by man. This was not a form of socialisation or humanisation but the divine order of creation, *the truth*. After the Fall, however, language lost its divine connection with nature as it fragmented into 'the hundred languages of man.' This separation of human from divine lays the ground for the socialisation and humanisation of nature within 'prattl[ing]' languages that facilitate 'the enslavement of things' – of nature – 'in folly'.⁵²

My aim in offering this account of Benjamin's 1916 essay is not, consistent with Benjamin's stated aim,⁵³ to suggest that the story of the Fall is literally true. It is, rather, to endorse Benjamin's claim that language has become an 'ultimate reality', disconnected from nature through processes of socialisation and humanisation, allegorised in the taking of the apple from the Tree of Knowledge in the Garden of Eden,⁵⁴ which language – as 'ultimate reality' – enacts. That process is enacted through the language of international environmental law; an artifactual, socialised, humanised nature is 'enslaved' within, and by, the language of international environmental law,⁵⁵ just as the Horniman Walrus was packaged, socialised, and humanised in, and by, over-stuffing.

The Language of International Environmental Law

The usual story is that international environmental law began at some point in the early 1970s, the most commonly cited point of origin being the 1972 Stockholm Declaration.⁵⁶ Principle 1 of that Declaration manifests the 'enslavement' of nature within the concept of an 'environment' in relation to which 'Man'

has rights,⁵⁷ declaring ‘Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.’⁵⁸ This language of rights and entitlement is replicated in the 1992 Rio Declaration which, in its Principle 1, affirms that ‘[h]uman beings ... are entitled to a healthy and productive life in harmony with nature,’⁵⁹ and in Article 24 of the African Charter on Human and Peoples’ Rights, affirming the right of ‘[a]ll peoples ... to a general satisfactory environment favourable to their development.’⁶⁰

The United Nations Convention on the Law of the Sea divides oceans on which humans literally (rather than in the more legal-technical sense of not being entitled to make a claim) lack standing into various jurisdictional areas – territorial sea, exclusive economic zone, the continental shelf – for primarily economic reasons connected with trade, shipping and natural resource exploitation (fish, oil, gas).⁶¹ This artifactualisation, socialisation and humanisation of nature into a socio-economic system is also captured in the text of the Convention on the International Trade in Endangered Species of Wild Flora and Fauna (‘CITES’).⁶² Its preamble notes the ‘ever-growing value of wild fauna and flora from aesthetic, cultural, recreational and’ – perhaps most importantly – ‘economic points of view’, and affirms the ownership of ‘peoples and States’ over ‘their own wild fauna and flora’, noting that they are ‘the[ir] best protectors’. CITES does not question or challenge the basic process of socialisation, humanisation and artifactualisation – it is not a block on trade in endangered species *per se*.⁶³ This is reflected in the fact that even those species at greatest risk from extinction – to be listed in CITES Appendix I – are not exempt from trade altogether, but can be traded only ‘in exceptional circumstances’.⁶⁴ Despite CITES socio-economic logic – that is, its broadly pro-trade orientation – some commentators have argued that a more concerted effort to see flora and fauna as an economic resource is required.⁶⁵

The inscription of the English Lake District in the World Heritage List – that is, the list of World Heritage Sites, maintained by the World Heritage Committee, operating within the framework of the World Heritage Convention – in July 2017 highlights the blurred line between valuing human interaction with the natural and celebrating human destruction of the natural.⁶⁶ The Lake District is included in the

List as a ‘cultural landscape’, on the basis that it ‘exhibit[s] an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design’; is ‘an outstanding example of a type of ... landscape which illustrates (a) significant stage(s) in human history’; and is ‘directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance.’⁶⁷ The (draft) decision of the World Heritage Committee captures the sense in which the Lake District is an artifactualisation, socialisation and humanisation of the natural, explaining that ‘[t]he harmonious beauty of the English Lake District is rooted in the vital interaction between an agro-pastoral land use system and the spectacular natural landscape of mountains, valleys and lakes of glacial origin’, adding that ‘[t]his landscape is an unrivalled example of a northern European upland agro-pastoral system based on the rearing of cattle and native breeds of sheep’.⁶⁸ George Monbiot is less celebratory, describing the Lake District’s inclusion in the List as ‘a betrayal of the living world’ and noting that the Lake District’s ‘high fells’ have been ‘reduced by sheep to a treeless waste of cropped turf whose monotony is relieved only by gullies, exposed soil and bare rock’.⁶⁹

7. Art / Nature / Simulacrum

A significant and relatively recent literature suggests that, in a post-work, post-human future of automation and artificial intelligence human beings themselves risk conversion into artifacts by artifacts – robots, computer chips, and virtual reality machines – they have created.⁷⁰ Humans will be ‘upgraded’ and de-humanised as ‘[n]ew tools ... become parts of our bodies: we will have bionic hands, feet and eyes.’⁷¹ This de-humanisation of humanity would, in a sense, be the ultimate fulfilment of Benjamin’s story of the Fall. Humanity’s detachment from nature, its loss or lack of a ‘paradisiacal’ of ‘perfect knowledge’ would, *via* the artifactualisation of the natural, and in particular the use of silicon (which is, of course, a naturally occurring element) in the silicon chip, result in the loss of any vestige of the natural in the human.⁷²

Whilst we humans seem, then, to have developed the capacity to artifactualise ourselves, we apparently lack the capacity to connect with the natural-ness of the natural, something I became

particularly conscious of when attempting to make a clay model of the Horniman Walrus. I was asked to do this by the convenors of the 'Pop-Up Museum of Legal Objects' at the Socio-Legal Studies Association conference in Newcastle, in April 2017, and to take my model with me as an aid to the presentation of my paper – an early version of this article – at the conference.

At first I was sceptical about the value of making a model of 'my' object, and my ability to do it, but as I handled the modelling clay and tried to create an approximation of the photograph of the Horniman Walrus on the Horniman Museum's website I began to see parallels between what I was doing and what the walrus' taxidermist had done in the late-nineteenth century. On one view the fact that the taxidermist was working with skin and bone means that he was somehow closer to the walrus than I was, as I worked with clay. But maybe there is an argument that I was closer to the walrus, truer to its nature, and to nature, because I was using the walrus as an object to tell a story about the imbrication of international environmental law in the artifactualisation, socialisation and humanisation of the natural – a story perhaps in defence of the natural.

The difficulty, it seems, is that the 'real' walrus is not available for representation – as Jacques Lacan puts it, 'the real ... resists symbolisation absolutely'.⁷³ Putting the walrus on show, first at the Colonial and Indian Exhibition in 1886, then at the Horniman Museum, and latterly at Turner Contemporary, involves turning it / 'him' into an it / 'him' by killing it / 'him.' Any attempt to engage with the natural will involve a similarly violent process of artifactualisation, socialisation and humanisation,⁷⁴ for 'man rejoices and basks in his conquest by turning it into the definition of the conquered thing: what has happened to it must be presented, by the thing, as its "in itself",⁷⁵ or, in other words, the Horniman Walrus must be presented as 'a walrus' because we cannot exhibit any more accurate vision of a walrus. It seems we live, as Fredric Jameson argues, in the age of the simulacrum, 'the identical copy for which no original has ever existed.'⁷⁶

The only way forward seems to be an ever greater process of socialisation, humanisation and artifactualisation.⁷⁷ How, after all, could anyone human doubt the value of a never-ending effort to subject everything that is to ever greater levels of human control, ordering and possession? What

alternative is there? We are, it seems, all collectors, and ‘for a collector ... ownership is the most intimate relationship that one can have to things.’⁷⁸

But whilst there may be no ‘fit for purpose,’ marketable alternative – a system or model of life that does not artifactualise, socialise, collect(ivise), and humanise the natural – that does not mean that no work towards an alternative should be undertaken.⁷⁹ It is, rather, evidence that ‘if thinking is to be true – if it is to be true today, in any case – it must also be a thinking against itself’.⁸⁰ Whilst we might enjoy the walrus in the Horniman Museum, complete with twitter account and soft toy available from the gift shop, we might also try to imagine an alternative exhibit, with the walrus in the centre, a packet of ‘Horniman’s Pure Tea’ to the right, and a copy of the text of CITES on the left. And, if we can imagine this, we might ask ourselves how this re-imagined exhibit can prompt forms of ‘thinking against’.⁸¹ Would it be a natural history exhibit, a work of art, or some kind of legal object? Does it matter?

¹ Walter Benjamin, *The Origin of German Tragic Drama* (originally published 1963, written in 1925, Verso 1998) 29: ‘The value of fragments of thought is all the greater the less direct their relationship to the underlying idea, and the brilliance of the representation depends as much on this value as the brilliance of the mosaic does on the quality of the glass paste.’

² Walter Benjamin, *The Arcades Project* (Howard Eiland and Kevin McLaughlin tr., Belknap Press 2002) 460 (N1a,8): ‘Method of this project: literary montage. I needn’t say anything. Merely show.’

³ Ibid.

⁴ Walter Benjamin, ‘Unpacking My Library: A Talk About Collecting’ in Michael W. Jennings, Howard Eiland & Gary Smith (eds), *Walter Benjamin: Selected Writings, Volume 2, Part 2, 1931-1934* (Belknap Press 2005) 486, 486.

⁵ On this active conception of the process of reading see Walter Benjamin, ‘The Author as Producer’ in Michael W. Jennings, Howard Eiland & Gary Smith (eds), *Walter Benjamin: Selected Writings, Volume 2, Part 2, 1931-1934* (Belknap Press 2005) 768, in particular at 771 on ‘the newspaper’ and the ‘assimilation of readers,’ and at 772 on a ‘revis[ion in] the distinction between author and reader.’

⁶ All information and quotations in this paragraph concerning Frederick Horniman and the museum sourced from Horniman Museum and Gardens website, ‘History of the Museum’ <<http://www.horniman.ac.uk/about/museum-history>> .

⁷ See <http://www.gracesguide.co.uk/Hornimans_Tea>; Julie E. Fromer, *A Necessary Luxury: Tea in Victorian England* (Ohio UP 2008) 39.

⁸ Fromer (n 7) 39-40, drawing on Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (Routledge 1995) 210-11.

⁹ All information and quotations in this paragraph sourced from Horniman Museum and Gardens website, <<http://www.horniman.ac.uk/collections/browse-our-collections/object/190371>>

¹⁰ Ibid.

¹¹ Jules David Prown, ‘Mind in Matter: An Introduction to Material Cultural Theory and Method’ (1982) 17 *Winterthur Portfolio* 1, 2: ‘natural objects are occasionally encountered in a pattern that indicates human activity – a stone wall or a row of trees in an otherwise random forest ... In the broadest sense these natural materials are artifacts – objects modified by man – and are of cultural interest.’

¹² Turner Contemporary website, <<https://www.turnercontemporary.org/exhibitions/curiosity-art-and-the-pleasures-of-knowing>> (quoting Brian Dillon).

¹³ Horniman Museum and Gardens website, ‘Friends of the Walrus’ (12th May 2017), <http://www.horniman.ac.uk/get_involved/blog/category/horniman-walrus>

¹⁴ Horniman Museum and Gardens website, <http://www.horniman.ac.uk/get_involved/blog/ever-wondered-how-to-lift-a-one-ton-walrus>

¹⁵ Horniman Museum and Gardens website, <http://www.horniman.ac.uk/get_involved/blog/ever-wondered-how-to-lift-a-one-ton-walrus>; Turner Contemporary website, <<https://www.turnercontemporary.org/exhibitions/curiosity-art-and-the-pleasures-of-knowing>>

¹⁶ See <<https://twitter.com/HornimanWalrus>>; Horniman Museum and Gardens website, <http://www.horniman.ac.uk/get_involved/blog/ever-wondered-how-to-lift-a-one-ton-walrus>

¹⁷ Horniman Museum and Gardens website, <http://www.horniman.ac.uk/get_involved/news/the-horniman-calls-for-your-wandering-walrus-snaps>

¹⁸ Fromer (n 7) 39.

¹⁹ See André Gorz, *Critique of Economic Reason* (Verso 1989) 45: ‘In commercial advertising ... a private supplier selling, for example, cigarettes, alcohol or fast cars, offers us some private satisfaction pleasure which is strictly and immediately individual. The message of advertising tends to establish a sense of complicity between seller and potential buyer, by suggesting that both are exclusively pursuing their own private advantage and share an interest in ignoring any broader considerations: the seller’s only objective is to procure some form of pleasure for the potential buyer which will encourage the latter to make a purchase she or he is under no obligation to make, and the buyer’s only objective has to be that of obtaining the greatest possible pleasure.’

²⁰ See text at n 12 above.

²¹ See Fromer (n 7).

²² See text at n 8.

²³ See Benjamin, ‘Arcades’ (n 2) 206: ‘The true method of making things present is to represent them in our space (not to represent ourselves in their space). (The collector does just this ...) ... We don’t displace our being into theirs; they step into our life.’

²⁴ See Benjamin, ‘Unpacking’ (n 4) 487: ‘the life of the collector manifests a dialectical tension between the poles of disorder and order’; ‘To renew the old world – this is the collector’s deepest desire when he is driven to acquire new things.’

²⁵ See Theodor W. Adorno and Max Horkheimer, *Dialectic of Enlightenment* (originally published 1944, Verso 1997) 16: ‘Man imagines himself free from fear when there is no longer anything unknown. That determines the course of demythologization, of enlightenment ... Enlightenment is mythic fear turned radical. The pure immanence of positivism, its ultimate product, is no more than a so to speak universal taboo. Nothing at all may remain outside, because the mere idea of outsideness is the very source of fear.’

²⁶ On the centrality of European, Enlightenment thought to the development of international environmental law see Usha Natarajan and Kishan Khoday, ‘Locating Nature: Making and Unmaking International Law’ (2014) 27 *Leiden Journal of International Law* 573, 586.

²⁷ See Theodor W. Adorno, *Negative Dialectics* (Continuum 2007, originally published 1966) 146: ‘[I]t is through barter that non-identical individuals and performances become commensurable and identical. The spread of the barter principle imposes on the whole world an obligation to become identical’ (on this quotation, in the context of human identity and human rights, see Matthew Nicholson, ‘Majority Rule and human rights: identity and non-identity in *SAS v France*’ (2016) 67(2) *Northern Ireland Legal Quarterly* 115, 117).

²⁸ See quotations in n 27 and Erik Olin Wright, *Envisioning Real Utopias* (Verso 2010) 34: ‘Capitalism is a particular way of organizing the economic activity of a society ... Economic coordination in capitalism is accomplished primarily through mechanisms of decentralized voluntary exchange by private contracting parties – or what is generally called “free markets” – through which the prices and quantities of the goods and services are determined ... individuals and firms ... engage in bargaining and voluntary exchanges with other individuals and firms, and out of this uncoordinated set of micro-interactions comes an economic system that is more or less coordinated at the aggregate level.’

²⁹ See Max Horkheimer, *Eclipse of Reason* (Continuum 2004, originally published 1947) 15: ‘Reason has become completely harnessed to the social process. Its operational value, its role in the domination of men and nature, has been made the sole criterion. Concepts have been reduced to summaries of the characteristics that several specimens have in common. By denoting a similarity, concepts eliminate the both of enumerating qualities and thus serve better to organize the material of knowledge ... Concepts have become “streamlined,” rationalized, labor-saving devices. It is as if thinking itself had to be reduced to the level of industrial processes, subject to a close schedule – in short, made part and parcel of production.’

³⁰ *Ibid* 66. See also this passage from E. M. Forster, *The Machine Stops* (Penguin 2011, first published in 1909) 40: “‘Beware of first-hand ideas!’ exclaimed one of the most advanced of them. “First hand ideas do not really exist. They are but the physical impressions produced by love and fear, and on this gross foundation who could erect a philosophy? Let your ideas be second-hand, and if possible tenth-hand, for then they will be far removed from that disturbing element – direct observation.”

³¹ H Marcuse, *One-Dimensional Man* (2nd edn., Routledge 1991, originally published 1964) 14, and see my discussion of the themes addressed in this quotation in Matthew Nicholson, ‘Walter Benjamin and the Re-Imagination of International Law’ (2016) 27 *Law and Critique* 103, 118.

³² Horkheimer (n 29) 67.

³³ Andrew Feenberg, *The Philosophy of Praxis: Marx, Lukács and the Frankfurt School* (Verso 2014) 44.

³⁴ Alfred Schmidt, *The Concept of Nature in Marx* (Verso 2014, originally published 1962) 60.

- ³⁵ Horkheimer (n 29) 86.
- ³⁶ Walter Benjamin, 'On Language as Such and on the Language of Man', in Marcus Bullock and Michael W. Jennings (eds), *Walter Benjamin: Selected Writings, Volume 1, 1913-1926* (Belknap Press 2004) 62.
- ³⁷ Ibid 67.
- ³⁸ Ibid 63.
- ³⁹ Ibid.
- ⁴⁰ Ibid.
- ⁴¹ Ibid 71.
- ⁴² Ibid 68.
- ⁴³ Ibid.
- ⁴⁴ Ibid 71.
- ⁴⁵ Ibid 72: 'in the Fall, man abandoned immediacy in the communication of the concrete ... and fell into the abyss of the mediateness of all communication, of the word as means, of the empty word, into the abyss of prattle.'
- ⁴⁶ Ibid 71.
- ⁴⁷ Ibid.
- ⁴⁸ Ibid.
- ⁴⁹ Ibid 72-3.
- ⁵⁰ Ibid 72.
- ⁵¹ Ibid. 73.
- ⁵² Ibid 72.
- ⁵³ See text at n 37.
- ⁵⁴ See Benjamin, 'On Language' (n 36) 72.
- ⁵⁵ In similar terms see Natarajan and Khoday (n 26) 575: 'For the most part, international law explicitly or implicitly treats nature as a resource for wealth generation in order for societies to continually develop, and environmental degradation is dealt with as an economic externality to be managed by special regimes of technology and finance'; Stephen Humphreys and Yoriko Otomo, 'Theorizing International Environmental Law' in Anne Orford and Florian Hoffmann (eds.), *The Oxford Handbook of the Theory of International Law* (Oxford UP 2016) 797, 819: 'international environmental law ... is the locus for the recognition of the sacred in the non-human world, and the occasion for its profanation, in full view, as it were. International environmental law publicly enacts the profanation of the thing it has designated as sacred ... providing a framework for the ongoing (if occasionally attenuated) destruction and commodification of natural phenomena in a language of care and protection.'
- ⁵⁶ See, for example, the discussion in Jan Klabbers, *International Law* (Cambridge UP 2013) at 253. Note also Humphreys and Otomo (n 55) 805: 'environmental law textbooks, with some exceptions, habitually trace the origins of [international environmental law] to the 1960s and 1970s'; Natarajan and Khoday (n 26) 582: 'The conventional narrative begins in the 1960s and 1970s with the stirring of environmental consciousness in the West'.
- ⁵⁷ Humphreys and Otomo (n 55) 801 observe: 'Whereas "nature" presumably includes humankind, "environment" apparently does not. And whereas nature ... lends itself easily to contradictory doxa (both good and evil, creation and destruction, may be "natural"), "environment" is more muted, more technocratic.'
- ⁵⁸ Declaration of the United Nations Conference on the Human Environment, 16 June 1972, accessible via <<http://www.un-documents.net/unchedec.htm>>
- ⁵⁹ Rio Declaration on Environment and Development, 14 June 1992, accessible via <http://www.unesco.org/education/pdf/RIO_E.PDF>
- ⁶⁰ African Charter on Human and Peoples' Rights, 27 June 1981, 1520 UNTS 217.
- ⁶¹ United Nations Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 3.
- ⁶² Convention on the International Trade in Endangered Species of Wild Flora and Fauna ('CITES'), 3 March 1973, 993 UNTS 243
- ⁶³ See Phillippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (3rd edn, Cambridge UP 2012) 471: '[CITES] regulations are designed to protect endangered species of flora and fauna from over-exploitation by regulating or prohibiting their international trade.'
- ⁶⁴ See CITES (n 62), Article II.
- ⁶⁵ See K Brown, D Pearce, C Perrings and T Swanson, 'Economics and the Conservation of Global Biological Diversity', November 1993, accessible at <<http://documents.worldbank.org/curated/en/539651467997912719/pdf/multi-page.pdf>>, 37: 'The leading piece of legislation regarding endangered species is the Convention on the International Trade in Endangered Species of Flora and Fauna. Its policy is to focus on the identification of endangered species and the withdrawal of the demand for these species or their products, and the criminalization of their supply. Endangered species policies developing out of this convention therefore operate through a *system of bans* ... In fact, there is an argument to be made that the existing policies entirely misapprehend the core of the extinction problem – the creation of incentives for owner-states to invest in (rather than convert [i.e. use]) their remaining diverse resources. A system of bans, and the resulting reductions in the profitability of all diverse resources, is the antithesis of a constructive approach to the fundamental problem of extinction.'
- ⁶⁶ For the draft text of the decision on the inscription of the English Lake District in the World Heritage List (the final text is not yet available) see Draft Decision 41 COM 8B.29 accessible via <<http://whc.unesco.org/archive/2017/whc17-41com-8B->

en.pdf> at 33; Convention Concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972, 1037 UNTS 151.

⁶⁷ See World Heritage Committee, 'The Criteria for Selection' accessible via <<http://whc.unesco.org/en/criteria/>>; World Heritage Committee website, 'The English Lake District', <<http://whc.unesco.org/en/list/422>>; Draft Decision (n 66).

⁶⁸ Draft Decision (n 66) 33, 34.

⁶⁹ George Monbiot, 'The Lake District's world heritage site status is a betrayal of the living world', 11 July 2017, <<https://www.theguardian.com/commentisfree/2017/jul/11/lake-district-world-heritage-site-sheep>>

⁷⁰ See Peter Sloterdijk, *Critique of Cynical Reason* (University of Minnesota Press 1987) 457: 'Everything invented and built by human beings ... encounters humanity from the outside like a power of nature ... This philosophy of technology pretends to be heroically optimistic because it conceives of humanity as the ongoing creator of the cosmos ... Its deception ... lies in the concept of the subject ... The fighting subject made of heroism and steel has to be blind to its own destructiveness. The more it threatens to break under the massive suffering of the technical, dominated world, the more optimistically it stimulates the heroic pose. At the heart of this theory stands a subject who can no longer suffer because it has become wholly prosthesis.' See also, for a sense of this literature, Steven Shapin, 'The Superhuman Upgrade' (2017) 39(14) *London Review of Books* 29.

⁷¹ Shapin (n 70) 29.

⁷² The cultural and social topicality of this theme is reflected in the recent Channel 4 (UK) television programme, *Humans* (see <<http://www.channel4.com/programmes/humans>>).

⁷³ Jacques Lacan, *Discourse Analysis and Ego Analysis* in *The Seminar of Jacques Lacan: Book I, Freud's Papers of Techniques 1953-1954* (WW Norton 1988) 62, at 66.

⁷⁴ See Nicholson, 'Walter Benjamin' (n 31) 119: 'There is no escape from violence of practice just as there is no escape from practice; no way to do nothing and no way to something which is not violent' (footnote, referencing Walter Benjamin's 'Critique of Violence' in support of this point, omitted).

⁷⁵ Adorno (n 27) 148 (on this quotation, in the context of human identity and human rights, see Matthew Nicholson, 'Majority Rule and human rights: identity and non-identity in *SAS v France*' (2016) 67(2) *Northern Ireland Legal Quarterly* 115, 117).

⁷⁶ Fredric Jameson, *Postmodernism or, The Cultural Logic of Late Capitalism* (Verso 1991) 18, and see 170: 'Nature ... has systematically been eclipsed from the object world and the social relations of a society whose tendential domination over its Other (the nonhuman or the formerly natural) is more complete than at any other moment in human history.'

⁷⁷ Walter Benjamin, *Arcades* (n 2) 473 (N9a,1): 'The concept of progress must be grounded in the idea of catastrophe. That things are "status quo" is the catastrophe'

⁷⁸ Benjamin, 'Unpacking' (n 4) 492.

⁷⁹ See Fredric Jameson, *Archaeologies of the Future: The Desire Called Utopia and Other Science Fictions* (Verso 2007) 416: '[U]topia as a form is not the representation of radical alternatives; it is simply the imperative to imagine them.'

⁸⁰ Adorno (n 27) 365.

⁸¹ On 're-imagination' in international law see Nicholson, 'Walter Benjamin' (n 31).