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PERFORMANCE AND PEDAGOGY IN THE WILD LAW JUDGMENT PROJECT

NICOLE ROGERS*

I INTRODUCTION

In 2014, the wild law judgment project was launched at a workshop in Sydney. The project was inspired by an assemblage of judgment rewriting projects, most significantly the feminist judgment writing projects, which have involved feminist rewritings of judgments from all areas of law.¹ There have been antecedents to the feminist judgment writing projects² and the wild law judgment project is not the only recent by-product or extension of these projects; for instance, in a 2016 Australian publication³ authors have experimented with the rewriting of the same Australian constitutional law judgment⁴

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¹ These feminist rewriting projects include the Women's Court of Canada, the United Kingdom Feminist Judgment project, Australian Feminist Judgment project, the United States Feminist Judgments project, the Northern/Irish Feminist Judgments project, the Feminist Judgments project Aotearoa and a Feminist International Judgments project. Rewritten feminist judgments can be found in the special edition (volume 18, 2006) of the *Canadian Journal of Women and the Law*; Rosemary Hunter, Clare McGlynn and Erika Rackley (eds), *Feminist Judgments: From Theory to Practice* (Hart Publishing, 2010); Heather Douglas et al (eds), *Australian Feminist Judgments: Righting and Rewriting Law* (Hart Publishing, 2014); Kathryn M Stanchi, Linda L Berger and Bridget J Crawford (eds), *Feminist Judgments: Rewritten Opinions of the United States Supreme Court* (Cambridge University Press, 2016); Mairead Enright, Julie McCandless and Aoife O'Donoghue (eds), *Northern/Irish Feminist Judgments: Judges' Troubles and the Gendered Politics of Identity* (Hart Publishing, 2017); Elisabeth McDonald et al (eds), *Feminist Judgments of Aotearoa New Zealand – Te Rino: A Two-Stranded Rope* (Hart Publishing, 2017 (forthcoming)).

² Erika Rackley, 'Why Feminist Legal Scholars Should Write Judgments: Reflections on the Feminist Judgments Project in England and Wales' (2012) 24 *Canadian Journal of Women and Law* 389, 391.

³ Gabrielle Appleby and Rosalind Dixon (eds), *The Critical Judgments Project: Re-reading Monis v The Queen* (Federation Press, 2016). Other by-products and extensions of the feminist judgments projects include the collection of redrafted judgments of the ECHR with an emphasis on diversity in Eva Brems (ed), *Diversity and European Human Rights: Rewriting Judgments of the ECHR* (Cambridge University Press, 2012); the collection of rewritten judgments on medical and health issues with an emphasis on ethical theory in Stephen W Smith et al (eds), *Ethical Judgments: Re-Writing Medical Law* (Hart Publishing, 2017); and the collection of rewritten judgments with a focus on children's rights in Helen Stalford, Kathryn Hollingsworth and Stephen Gilmore (eds), *Rewriting Children's Rights Judgments: From Academic Vision to New Practice* (Hart Publishing, 2017 (forthcoming)).

⁴ *Monis v The Queen* (2013) 249 CLR 92.

from a number of different theoretical perspectives, including but not restricted to feminist perspectives.

The key difference and defining characteristic of the wild law judgment project is that all contributors⁵ have brought a ‘wild law’⁶ or Earth-centred perspective to bear in rewriting existing judgments or, in some instances, in constructing hypothetical and even futuristic judgments. This is arguably a more challenging proposition than a feminist rewriting, given that the feminist judge (assuming that she is a woman) can at least to some extent extrapolate from her ‘own gendered experience’⁷ but wild judges cannot extrapolate from anything except a human experience in seeking to critique the prevailing anthropocentric focus of all laws. How do we interpret or deconstruct our existing law/laws wildly, such that humanity is not necessarily the primary focus? How do we disregard our own self-interest, our ingrained assumptions and presuppositions as part of the human species, and indeed as part of a particular subset of the human species, to prioritise or at least recognise and respect Earth and its many communities and lifeforms in the process of wildly rewriting law?

It is important to point out that although white inhabitants of the Global North may struggle with this shift in perspective and find it challenging, this is not necessarily so for First Nations people whose laws, as Irene Watson has pointed out in her chapter in the wild law judgment collection, ‘have encoded our obligation to keep our natural worlds living’ and for whom ‘law is what cares for country’.⁸ She writes that it is essential ‘to the survival of all species ... to progress a

⁵ Feminism includes eco-feminism and there are areas of overlap between the feminist judgment projects and the wild law judgment project. For instance, Lee Godden in the Australian Feminist Judgment project, and Felicity Deane and Katie Woolaston in the Wild Law Judgment project, rewrote the same environmental law judgment with a similar emphasis on the need to care for the environment: Lee Godden, ‘*Wildlife Preservation Society of Queensland and Proserpine/Whitsunday Branch Inc v Minister for the Environment and Heritage* [2006] FCA 736’ in Heather Douglas et al (eds), *Australian Feminist Judgments: Righting and Rewriting Law* (Hart Publishing, 2014) 138; Felicity Deane and Katie Woolaston, ‘Coal Mines and Wild Law: A Judgment for the Climate’ in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 125.

⁶ The term ‘wild law’ was coined by South African lawyer Cormac Cullinan in his 2002 book *Wild Law* (Siber Ink, 2002). He defined (at 10) wild laws as ‘laws that regulate humans in a manner that creates the freedom for all the members of the Earth Community to play a role in the continuing co-evolution of the planet’. Wild law has developed from principles found in Thomas Berry’s philosophy of Earth Jurisprudence: see Thomas Berry, *The Great Work: Our Way into the Future* (Bell Tower, 1999).

⁷ See Rosemary Hunter, ‘Can Feminist Judges Make a Difference?’ (2008) 15 *International Journal of the Legal Profession* 7, 11

⁸ Irene Watson, ‘Aboriginal Laws of the Land: Surviving Fracking, Golf Courses and Drains Among Other Extractive Industries’ in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 209, 212.

horizontal dialogue between colonialist interests and First Nations-centred epistemologies'.⁹

In this paper, drawing upon the judgments from the wild law judgment publication,¹⁰ I shall consider some of the performative and pedagogical dimensions to judging wildly.

II THE ART OF JUDGING WILDLY: THE WILD LAW JUDGMENT PROJECT

One of the cases which influenced the development of the wild law judgment project is the constitutional law decision of *Cole v Whitfield* (1988) 165 CLR 360.¹¹ In this case, after decades of contentious litigation, the High Court unanimously accepted a revolutionary 'new' interpretation of section 92.¹² As both a lecturer in Constitutional Law and an environmental activist, I find it interesting to reflect on when I stopped thinking about freedom of trade in relation to this decision and started to think about crayfish. It was, after all, the respondents' possession of undersized crayfish which led to criminal charges and eventually to High Court litigation. Significantly, this shift in my thinking did not occur until I had taught Constitutional Law for a number of years although, once you look for it, the barbaric treatment of the crayfish which precipitated this landmark decision is clearly set out in the judgment, in the statement of three agreed facts from the magistrate's court:

- (a) The crayfish in question were brought to Tasmania chilled but still alive in packages. They were put into saltwater ponds to revive them.
- (b) Those sufficiently revived were chilled in brine to minus five degrees centigrade and shipped in bags to the United States of America.
- (c) Those that did not revive sufficiently were held by the Respondents pending final determination as to their disposal.¹³

The Tasmanian Regulation which prohibited the possession of undersized crayfish and arguably contravened section 92 was not

⁹ Ibid 213.

¹⁰ Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017).

¹¹ My wild law interpretation of this case can be found in Nicole Rogers, 'Who's Afraid of the Founding Fathers? Retelling Constitutional Law Wildly' in Michelle Maloney and Peter Burdon (eds), *Wild Law – In Practice* (Routledge, 2014) 113, 124-6.

¹² See for instance this description of the significance of the case by Sir Maurice Byers, formerly Commonwealth Solicitor-General: 'A unanimous Court in *Cole v Whitfield* put a stop to the headlong and destructive career of previous decisions on s 92 of the Australian Constitution. Decisions both mischievous and longstanding were quietly disposed of, and a rational rule, consonant with history, and with a strong, yet balanced and cohesive role for the section was declared.' Sir Maurice Byers, 'Vote of Thanks' in Cheryl Saunders (ed), *Courts of Final Jurisdiction: The Mason Court in Australia* (Federation Press, 1996) 108, 108.

¹³ *Cole v Whitfield* (1988) 165 CLR 360, 381.

made to prevent or control practices of animal exploitation and cruelty but rather designed to protect and conserve ‘an important and valuable natural resource’.¹⁴ It is clear that the paramount concern of the legislature was the commercial value of crayfish as a commodity, rather than their intrinsic value as a sentient life form. By the time the case arrived in the High Court, the salient legal and constitutional issues were well-defined; the Court’s role was to resolve these issues within the parameters of constitutional law. It is unsurprising, therefore, that in its unanimous judgment the Court also paid scant regard, if any, to the rights and wellbeing of the crayfish in question. There is no precedent for factoring the sufferings of non-human species into constitutional case law. Even the sufferings of human beings tend not to be addressed in the highly abstract reasoning which distinguishes constitutional law. While the failure to address human suffering has been critiqued,¹⁵ the failure to acknowledge the suffering of other species remains thus far unacknowledged in constitutional law commentary.

This generates, from a wild law perspective, a significant lacuna in the legal proceedings in *Cole v Whitfield* and in the judgment. As with the feminist judgment projects, a wild law perspective necessitates consideration of context and ‘alternative fact-readings’¹⁶ and here the sufferings of the crayfish were part of this context. What I find remarkable now is not so much this lacuna, this disregard of context, but the period of time which lapsed before I acknowledged and recognised it. As a legal academic, I am an insider when it comes to the law but I am also an insider trained to and in fact permitted to engage in critical thinking. If it took me many years, as critically disposed insider and committed environmental activist, before I considered the case from the perspective of the crayfish, how then does a judge, steeped in and constrained by the tradition of law, part of that tradition, see through the eyes of the crayfish? Surely the overwhelming majority of judges would find this an absurdity. However such a reversal in perspective can be an edifying experience. Derrida has written that ‘as with every bottomless gaze, as with the eyes of the other, the gaze called animal offers to my sight the abyssal limit of the human’.¹⁷ Equally, the ‘gaze called animal’ exposes the abyssal limit of human-made law.

Contributors to the wild law judgment project met the challenge of rewriting judgments from an Earth-centred and/or species-orientated

¹⁴ Ibid 409.

¹⁵ Professor Margaret Thornton has criticised the process of ‘constitutionalisation’ which ‘typically involves the treatment of issues at a very high level of abstraction so that distinctive private or subjective features are sloughed off’: Margaret Thornton, ‘Towards Embodied Justice: Wrestling with Legal Ethics in the Age of the “New Corporatism”’ (1999) 23 *Melbourne University Law Review* 749, 754.

¹⁶ See Anna Grear, ‘Learning Legal Reasoning While Rejecting the Oxymoronic Status of Feminist Judicial Rationalities: A View from the Law Classroom’ (2012) 46 *Law Teacher* 239, 244.

¹⁷ Jacques Derrida, ‘The Animal That Therefore I Am (More to Follow)’ (2002) 28 *Critical Inquiry* 369, 381.

perspective in diverse ways. While contributors to the feminist judgment projects worked, for the most part, with existing legal principles and within existing legal frameworks, the wild law authors were not similarly constrained. The emphasis was on writing judgments wildly and as such, contributors were invited to abandon existing laws if they deemed it necessary or ‘to mould [them] to fit the earth’s demands’.¹⁸ The decision to adopt this more expansive approach to wild rewriting was made at the first workshop in 2014. In part, this was because, as Justice Brian Preston explains in his introductory essay, ‘one of the principal objects of the exercise’ was ‘to highlight how the inadequate law leads to non-earth-centred outcomes’.¹⁹ In discarding existing laws, participants were free to explore wild legislative possibilities in addition to common law possibilities and thus could make creative suggestions for statutory reform. However the decision was also seen as consistent with the idea of ‘wild’ rewriting, in the sense that wild can mean undisciplined and unruly.²⁰ Cormac Cullinan, founder of the wild law movement, has pointed out that “‘wild’ ... is synonymous with unkempt, barbarous, unrefined, uncivilised, unrestrained, wayward, disorderly, irregular, out of control, unconventional, undisciplined, passionate, violent, uncultivated and riotous’.²¹ Freedom to break existing rules, or at least ignore them, seems to be an essential part of writing wildly.

This did not preclude contributors from working creatively with existing legal principles and existing legislation and a number of us chose to do so. Others were prepared to rewrite and re-interrogate laws and legal doctrines in some fascinating and ultimately subversive thought experiments. For instance, it might well be only a practising Buddhist, such as Bee Chen Goh, who could turn the famous torts decision of *Donoghue v Stevenson*²² on its head and substitute Buddhist principles for the now well-established principles of negligence. In her rewriting, Goh finds for the snail,²³ the desiccated remains of which proved to have such unfortunate consequences for the Scottish widow who consumed them in a bottle of ginger beer.

Goh was not the only contributor to adopt a species-oriented approach; others rewrote existing decisions and constructed futuristic ones using such an approach. Justice Preston considers the application (and extension) of the doctrine of nuisance to a group of green sea turtles.²⁴ Lungfish are the focus of Benedict Coyne’s futuristic

¹⁸ Brian Preston, ‘Writing Judgments Wildly’ in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 19, 24.

¹⁹ *Ibid.*

²⁰ *Ibid.* 19.

²¹ Cullinan, above n 6, 8.

²² [1932] AC 562.

²³ Bee Chen Goh and Tom Round, ‘Wild Negligence: *Donoghue v Stevenson*’ in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 91, 106.

²⁴ Brian Preston, ‘Green Sea Turtles by the Representative, *Meryl Streef v The State of Queensland and the Commonwealth of Australia*’ in Nicole Rogers and Michelle

revision of *Wide Bay Conservation Council Inc v Burnett Water Pty Ltd (No 8)*²⁵ and in his rewriting have standing to bring an action in trespass and to also seek an injunction.²⁶ Hope Johnson, Bridget Lewis and Rowena Maguire have amended the *International Convention for the Regulation of Whaling*,²⁷ such that there is provision for a Special Representative for Whales and the exemption for scientific whaling is removed, and rewritten the *Whaling in the Antarctic* case accordingly.²⁸ Tom Round has provided a wild law interpretation of democracy in revisiting *Attorney-General (Cth) ex rel McKinlay v Commonwealth*,²⁹ such that governments represent all living things.³⁰ Edward Mussawir has sought to provide more clarity on the 'juridical erasure' of a wild bear which escaped captivity, in his rewriting of an 1890 Canadian judgment concerning the responsibilities of its 'owners' and related parties.³¹ In the rewriting of this Canadian decision, and in two rewritings of international law cases, the wild law judgment project extended beyond Australian case law: another key difference between the project and the feminist judgment projects which have developed within specific jurisdictions.

A number of contributors focus on cases involving prospective coalmines and mining rights.³² Felicity Deane and Katie Woolaston give the precautionary principle a very broad application in considering a 2006 Federal Court decision concerning a Queensland

Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 31.

²⁵ [2011] FCA 175.

²⁶ Benedict Coyne, 'The Fraught and Fishy Tale of *Lungfish v The State of Queensland*' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 56.

²⁷ Opened for signature 2 December 1946, 161 UNTS 72 (entered into force 10 November 1948).

²⁸ Hope Johnson, Bridget Lewis and Rowena Maguire, 'Whaling in the Antarctic (*Australia v Japan: New Zealand intervening*)' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 257.

²⁹ (1975) 135 CLR 1.

³⁰ Tom Round, 'Attorney-General (Cth); *Ex Rel McKinlay v The Commonwealth*' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 71.

³¹ Edward Mussawir, '*Shaw v McCreary*' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 107.

³² Deane and Woolaston, above n 5; Julia Dehm, 'Quantifying the Environmental Impact of Coal Mines: Lessons from the Wandoan Case, *Xstrata Coal Queensland Pty Ltd v Friends of the Earth Brisbane Co-Op*' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 143; Kate Galloway, '*Coast and Country Association of Queensland Inc v Minister for Environment and Heritage Protection*' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 161; Aidan Ricketts, 'Exploring Fundamental Legal Change Through Adjacent Possibilities: The *Newcrest Mining Case*' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 178.

coalmine.³³ Julia Dehm factors in Scope 3 emissions and the global carbon budget in revisiting a later coalmine decision which contained similar reasoning.³⁴ Kate Galloway and Aidan Ricketts both make creative use of statutory interpretation principles in their respective rewritings. Cristy Clark's focus is on the relationship between local communities and their environment in reassessing the reasoning in an administrative review of a decision relating to coal seam gas mining.³⁵

The alternative perspectives on *Mabo v Queensland (No 2)*³⁶ provided by Stephen Summerhayes,³⁷ and by Greta Bird and Jo Bird,³⁸ generate a number of creative and subversive possibilities in native title law as, for example, Greta and Jo Bird demonstrate in their judgment on a proposed nuclear waste dump contested by the traditional owners. Afshin Akhtar-Khavari reconsiders the international law principle of transboundary harm in rewriting the *San Juan River* case.³⁹ Intellectual property rights are reconfigured in Robert Cunningham's futuristic judgment in which he looks at biological data and a prospective information commons.⁴⁰

Finally, the intersection of environmental activism and the criminal law is the focus of three contributions:⁴¹ Matthew Rimmer's discussion of the sentencing of activist Jono Moylan, Susan Bird's rewriting of a magistrate's decision in relation to anti-corporate graffitist Kyle Magee, and my own rewriting of a constitutional law decision in relation to the activities of animal rights activist Laurence Levy.

³³ *Wildlife Preservation Society of Queensland and Proserpine/Whitsunday Branch Inc v Minister for the Environment and Heritage* (2006) 232 ALR 510.

³⁴ *Xstrata Coal Queensland Pty Ltd v Friends of the Earth - Brisbane Co-Op Ltd and Department of Environment and Resource Management* [2012] QLC 013.

³⁵ Cristy Clark, 'Metgasco Limited v Minister for Resources and Energy' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 193.

³⁶ (1992) 175 CLR 1.

³⁷ Stephen Summerhayes, 'Reimagining Aboriginal Land Rights: Crown, Country and Custodians. *Mabo v Queensland (No 2)*' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 219.

³⁸ Greta Bird and Jo Bird, 'Nuclear Waste Dump: Sovereignty and the Muckaty Mob' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 237.

³⁹ Afshin Akhtar-Khavari, 'Restoring the Transboundary Harm Principle in International Environmental Law: Rewriting the Judgment in the *San Juan River* Case' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 276.

⁴⁰ Robert Cunningham, 'Information Environmentalism and Biological Data: A Thought Experiment' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 355.

⁴¹ Nicole Rogers, 'Duck Rescuers and the Freedom to Protest: *Levy v Victoria*' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 339; Susan Bird, 'Magee v Wallace' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 324; Matthew Rimmer, 'Stand with Jono: Culture-Jamming, Civil Disobedience and Corporate Regulation in an Age of Climate Change' in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 293.

III PERFORMANCE AND WILD JUDGING

There is a certain audacity involved in rewriting judgments: are the participants in such projects destabilising the role of the judiciary by stripping away the mask without which, according to Sir Alan Moses, a judge cannot speak with authority?⁴² The rewriting projects may well signal the final demise of the fairy tale to which Lord Reid referred in his famous statement on judicial mystique:

Those with a taste for fairy tales seem to have thought that in some Aladdin's cave there is hidden the Common Law in all its splendour and that on a judge's appointment, there descends on him, knowledge of the magic words Open Sesame . . .⁴³

If there is such an Aladdin's cave, it is now seemingly open to all. Anyone, it appears, can 'dress up' as a judge⁴⁴ and speak the magic words. The performance of the common law is no longer, if it ever was, confined to the courtroom.

The wild law judgment project represents a different mechanism for critical thinking and deconstruction of the common law to the customary modes of academic writing and academic critique which fit within the wild law/earth jurisprudence framework, and this is largely because it constitutes an alternative mode of *performing* the common law. Therefore, before I address the pedagogical possibilities in utilising the collection of wild law judgments as a teaching tool, I shall firstly explore the performative⁴⁵ significance of the project and other judgment rewriting projects. What is the outcome for both participants and readers when we articulate an outsider perspective while impersonating judicial insiders? In this section, I shall explore the implications of the wild law judgment project and other judicial rewriting projects as alternative extra-legal and/or pseudo-legal forms of performance to the ongoing judicial authoritative performances which make up the body of common law. The wild law judgment project attempts to answer this specific question: how can legal scholars, as both insiders and outsiders, perform law differently to

⁴² Sir Alan Moses, 'The Mask and the Judge' (2008) 12 *Southern Cross University Law Review* 1, 23.

⁴³ Lord Reid, 'The Judge as Law Maker' (1972) 12 *Journal of the Society of Public Teachers of Law* 22, 22.

⁴⁴ Rosemary Hunter, Clare McGlynn and Erika Rackley describe the participants in the United Kingdom Feminist Judgment project as 'feminist academics dressed up as judges' in Hunter, McGlynn and Rackley, above n 1, 3, 8; Margaret Davies discusses dressing up as judges in Margaret Davies, 'The Law Becomes Us: Rediscovering Judgment' (2012) 20 *Feminist Legal Studies* 167, 171-3. Kate Fitz-Gibbon and JaneMaree Maher use the metaphor of donning (uncomfortable) judicial robes in analysing their own experience as participants in the Australian judgment project, in Kate Fitz-Gibbon and JaneMaree Maher, 'Feminist Challenges to the Constraints of Law: Donning Uncomfortable Robes?' (2015) 23 *Feminist Legal Studies* 253.

⁴⁵ For the purposes of this article, I am using the term 'performative' descriptively, to suggest that something has performance-like qualities. This is distinct from the use of the term by J L Austin, who famously used 'performative' as a noun to describe a word or sentence which accomplishes something once uttered.

achieve wild Earth-centred outcomes? In exploring such performative possibilities, the project stimulates new and potent forms of critical Earth-centred thinking in participants and readers, including student writers and readers.

Judgment rewriting could well be viewed as a subversive challenge to judicial authority. It is also arguable that the process of judgment rewriting constitutes a tacit acknowledgment of the authority of judging or at least an endorsement of supposedly rational judicial reasoning. Judgment rewriting highlights the malleability of the common law and its capacity to generate just or at least alternative outcomes. There is, however, an inherent conservatism in this process. Judgment rewriting is undoubtedly a form of critical scholarship⁴⁶ but a form which is shaped by particular legal conventions. Margaret Davies has observed that feminist judges must, 'like all drag artists, be faithful to pre-existing normative ideas'.⁴⁷ In fact, in relation to the United Kingdom project, 'the legal forms [the contributors] appropriate[d] remain[ed] largely unquestioned'.⁴⁸ As Anna Grear has pointed out, this generated a 'fundamental theoretical challenge', as participants attempted to reconcile their philosophical perspective as critical outsiders with the 'insider' traditions and structures of avowedly neutral judicial reasoning.⁴⁹

In the Australian Feminist Judgments project, not all contributors were prepared to work within these traditions and structures. Irene Watson wrote that 'the rewriting needs to be done from "another place", outside the jurisdiction of the Australian common law and the sovereignty of the Australian state'.⁵⁰ For this reason, in both the feminist judgment project and the subsequent wild law judgment project, she declined to provide a judgment. In the wild law judgment project she has, instead, provided 'a talking back to colonialism, and a singing up of the decolonial'.⁵¹ In so doing, she makes it clear that First Nations participants in judgment rewriting projects define and perform law quite differently.

In the wild law judgment project, although most of the other participants sought to construct legally defensible arguments and reproduce patterns of existing judicial reasoning, they could if they wished disregard existing parameters and structures; as previously discussed, our focus was on judging wildly. We, or at least those of us who contributed judgments, were still engaged in the value-laden process of judging: constructing rational and convincing arguments to

⁴⁶ See for instance Rackley, above n 2, 397-402.

⁴⁷ Davies, above n 44, 173.

⁴⁸ Rosemary Hunter, 'The Power of Feminist Judgments?' (2012) 20 *Feminist Legal Studies* 135, 137.

⁴⁹ Grear, above n 16, 243.

⁵⁰ Irene Watson, 'First Nations Stories, Grandmother's Law: Too Many Stories to Tell' in Heather Douglas et al (eds), *Australian Feminist Judgments: Righting and Rewriting Law* (Hart Publishing, 2014) 46, 53.

⁵¹ Watson, 'Aboriginal Laws of the Land: Surviving Fracking, Golf Courses and Drains Among Other Extractive Industries', above n 8, 209.

support particular outcomes. There is, as Anna Gear writes, ‘plenty of room for alternative rationalities in the context of judging’.⁵²

All judgment rewritings have thus far taken the form of written text. Participants in the seminal virtual Canadian Women’s Court were aware of the possibilities in satirical or dramatic presentations for performing such texts as ‘a catchy way of getting more people involved in this re-imagination of these legal scenarios’.⁵³ Irrespective of any such ensuing developments, the editors of the collection of English feminist judgments have described the very activity of judgment rewriting as ‘parodic – and hence subversive – performance’.⁵⁴ Margaret Davies has elaborated upon this description, arguing that the ‘judges’ in the project ‘are dressed up in the law but, having taken it on, it is their law to perform, not a system from which they are simply alienated’.⁵⁵ She argues that law is performance and that the performance of law is not confined to ‘real’ judges.⁵⁶

My argument here is that the subversive quality of judgment rewriting exercises as critique might well reside in their performative implications. As performance studies theorists have made clear, there is an immediacy and impact to performance which is lacking in theory or in text alone. Dwight Conquergood explains that ‘performance studies struggles to open the space between analysis and action, and to pull the pin on the binary opposition between theory and practice’.⁵⁷ Later he describes this ‘binary opposition’ as ‘an apartheid of knowledges, that plays out inside the academy as the difference between thinking and doing, interpreting and making, conceptualizing and creating’.⁵⁸ Judging rewriting requires active engagement with the activity of judging. As rewriters, we are imitating or mimicking the real process of judging but also, importantly and subversively, departing from the original authoritative text. This process makes apparent the subjectivity of the performance of law. It both demystifies and democratizes judging.

It is, nevertheless, important to keep in mind the differences between ‘real’ and rewritten judgments in assessing their respective performative impacts. Commentators have acknowledged the

⁵² Gear, above n 16, 252.

⁵³ ‘Women’s Court of Canada: Future Directions’ (Paper presented at the Rewriting Equality Conference, University of Toronto, 7 March 2008) 5 <https://www.law.utoronto.ca/documents/conferences/rewritingequality08_future.pdf>.

⁵⁴ Hunter, McGlynn and Rackley, above n 1, 8.

⁵⁵ Davies, above n 44, 174-5. Leslie Moran has emphasised the ‘importance of the textual performance to legitimate judicial authority’ in the English feminist judgment collection and commented that ‘if there is an offence of textually imitating a senior judge then various authors that pass so convincingly as Baronesses and Lady Justices in this collection come very close to it’: Leslie J Moran, ‘Review: *Rosemary Hunter, Claire McGlynn and Erica Rackley (eds), Feminist Judgments: From Theory to Practice*, Oxford: Hart Publishing, 2010, 504 pp’ (2012) 75 *Modern Law Review* 287, 288, 289.

⁵⁶ Davies, above n 44, 174-5.

⁵⁷ Dwight Conquergood, ‘Performance Studies: Intervention and Radical Research’ (2002) 46(2) *TDR: The Drama Review* 145, 145.

⁵⁸ *Ibid* 153.

limitations of judgment rewriting, whether written or dramatic.⁵⁹ ‘Real’ judgments are not only written; they are also delivered in the intimidating setting of a courtroom, by speakers imbued with authority and power. In fact, it is arguable that the delivery of the judgment overshadows the text. Sandra Berns writes that:

The giving of judgment is immediate and urgent, an oral act. Only mediately (and without urgent necessity) does it yield (give birth to?) a written text, a set of reasons for judgment.⁶⁰

At the point at which a judgment is handed down or delivered, it is transformed into something far more than text; it becomes law and carries the ‘force of law’. Its authority is derived from violence, from the violent foundations of each legal system or law making violence and from the ongoing violence with which law is applied and enforced: law-preserving violence.⁶¹ A ‘real’ judgment alters the relationship between people and/or between corporations and people. More pertinently from a wild law perspective, it can also affect and even irrevocably change the relationship between objects and people, between animals and people, and between the environment and people or the environment and corporations.

Thus ‘real’ judgments clearly transcend the written page; as Sandra Berns puts it, ‘to speak as a judge is to speak in and through the law, to speak with the knowledge that the word will and must be made flesh and simultaneously law’.⁶² By way of contrast, as Erika Rackley has observed, ‘however skilled the academic judgment writer is, however effectively they mimic the form and style of the real thing, an academic judgment lacks the authority and power to “do violence”’.⁶³

Academic judgment writers, in light of our status as judicial impersonators,⁶⁴ find the performative impact of our rewritten judgments somewhat curtailed. Notable exceptions in the wild law judgment collection are the judgments written by Cormac Cullinan, founder of the wild law movement, and Justice Brian Preston. Cullinan’s judgment, *Great Barrier Reef v Australian Federal and*

⁵⁹ Rackley, above n 2, 407.

⁶⁰ Sandra S Berns and Paula Baron, ‘Bloody Bones: A Legal Ghost Story and Entertainment in Two Voices to Speak as a Judge’ (1994) 2 *Australian Feminist Law Journal* 125, 130.

⁶¹ See Jacques Derrida, ‘Force of Law: The “Mystical Foundation of Authority”’ (Mary Quaintance trans) (1990) 11 *Cardozo Law Review* 920 [trans of: ‘Force De Loi: Le “Fondement Mystique De L’Autorite”’].

⁶² Berns and Baron, above n 60, 127.

⁶³ Rackley, above n 2, 407-8.

⁶⁴ Matthew Rimmer uses the term ‘judicial impersonation’ in his chapter in the collection, in which he decided not to assume the mantle of judge. In analysing the ‘wild’ prank perpetuated by climate change activist Jonathon Moylan in 2013 and the ensuing judicial and other responses, he felt that ‘as a matter of style and substance, it seemed to be inappropriate to engage in judicial impersonation in respect of a case of impersonation’: Rimmer, above n 41, 294.

State governments and others,⁶⁵ formed part of an ongoing performative event called the International Rights of Nature Tribunal and was ‘delivered’ by the Tribunal in 2014 in Lima, Peru at the conclusion of a number of pseudo-legal hearings in which Dr Michelle Maloney represented the Great Barrier Reef.⁶⁶ Justice Preston’s judgment determines a claim in public nuisance brought against both the Commonwealth and Queensland governments by a group of green sea turtles. It was delivered at a mock trial organised and run by the Victorian Environment Defenders Office in Melbourne in 2012 and is a futuristic judgment set in 2032. For the purpose of writing and delivering this judgment, Justice Preston can be viewed as a judge impersonating a judge and the delivery of his judgment in 2012 can be seen as a (mock legal) performance about a (legal) performance. This duplication conjures up what anthropologist Victor Turner has described, in the context of performance and meta performance, as ‘a hall of mirrors’.⁶⁷

Both Cullinan’s judgment and Justice Preston’s judgment have thus already entered the world of dramatic performance and in fact were performed before they were included in our collection. Such extra-legal performances have their own dramatic and didactic significance and arguably even an alternative form of legitimacy,⁶⁸ although they lack the authority (and violence) of law. Here we are in the realm of distinguishing the performance of law from other forms of cultural performance: the conundrum of law as a *sui generis* form of cultural performance grounded in violence.⁶⁹ Extra-legal performances, such as those which take place in moots, mock trials and People’s Tribunals, and pseudo-legal performances, such as judgment rewriting exercises, are important partly because they

⁶⁵ Cormac Cullinan, ‘*Great Barrier Reef v Australian Federal and State governments and others*’ in Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017) 39.

⁶⁶ See her account of this in Michelle Maloney, ‘Finally Being Heard: The Great Barrier Reef and the International Rights of Nature Tribunal’ (2015) 3 *Griffith Journal of Law and Human Dignity* 40; she writes (at 49) that she concluded her statement to the tribunal with the following words: ‘So in conclusion, how might the Reef feel? I would imagine the Reef feels the same way that people who love and care about the Reef feel. We are frightened. We are frightened that something precious and irreplaceable and ancient will die.’

⁶⁷ Victor Turner, *From Ritual to Theatre: The Human Seriousness of Play* (Performing Arts Journal Publications, 1982) 104.

⁶⁸ See, for instance, the claim of the self-styled World Tribunal on Iraq, which held twenty hearings in different cities between 2003 and 2005, that its legitimacy was ‘located in the collective conscience of humanity’: TNI, *World Tribunal on Iraq: Statements of the Jury* <<https://www.tni.org/en/archives/act/3955>>.

⁶⁹ Nicole Rogers, *The Play(fulness) of Law* (PhD Thesis, Southern Cross University, 2008) <<http://epubs.scu.edu.au/theses/65>>; see in particular (at 231): it is ‘the performance of law, rather than the text of law, [that] has immediate significance for the human bodies caught up in the remorseless dispensation of legalised violence. The distinction between the dramatic performances of law, and those of theatre, is thus clear. As a real time performance, law has real time violent consequences.’ See also Nicole Rogers, ‘The Play of Law: Comparing Performance in Law and Theatre’ (2008) 8 *Queensland University of Technology Law and Justice Journal* 429.

require us to consider law itself as performance and contemplate the differences between legal performances, extra-legal performances and pseudo-legal performances. Unlike legal performances, extra-legal performances and pseudo-legal performances are not anchored in violence and are not recognised by the State.

In this section, I have reflected upon the performative significance of judgment rewriting, with particular reference to the wild law judgment project. As I suggested at the outset, the performative qualities of the project are integral to the role of the project in stimulating critical thinking in participants and readers. In the next section, I shall explain the pedagogical possibilities in using the project as a teaching tool. In reading rewritten judgments and in rewriting judgments themselves, students can actively engage with the performance of the common law and thus experience first-hand the potential for Earth-centred interpretations. Given the expanded approach of wild rewriting, which can encompass reinventing laws and rules, students can also explore different forms of legal rules to those which develop within the dominant anthropocentric paradigm. Importantly, they can do this across all categories of law.

IV THE WILD LAW JUDGMENT PROJECT AS OUTSIDER PEDAGOGY

As with the feminist judgment writing projects, the wild law judgment project covered judgments from many diverse categories of law. Although a number of contributors chose to revisit environmental law decisions, with a particular focus on mining cases,⁷⁰ other areas of law were also represented with cases drawn from administrative law,⁷¹ international law,⁷² constitutional law,⁷³ criminal law,⁷⁴ corporations law,⁷⁵ native title law⁷⁶ and intellectual property law.⁷⁷ The possible pedagogical impact of the project therefore extends well beyond the parameters of environmental law. This is important because environmental law has significant limitations as a system of law supposedly designed to protect the environment.

As Mary Cristina Wood has so eloquently put it, environmental law resembles a 'procedural spinning wheel'.⁷⁸ Her metaphor highlights the deficiencies of the environmental statutory frameworks

⁷⁰ See Deane and Woolaston, above n 5; Dehm, above n 32; Galloway, above n 32; Clark, above n 35.

⁷¹ Clark, above n 35.

⁷² Johnson, Lewis and Maguire, above n 28; Akhtar-Khavari, above n 39.

⁷³ Ricketts, above n 32; Rogers, 'Duck Rescuers and the Freedom to Protest: *Levy v Victoria*', above n 41; Round, above n 30.

⁷⁴ Bird, above n 41; Rimmer, above n 41.

⁷⁵ Rimmer, above n 41.

⁷⁶ Watson, 'Aboriginal Laws of the Land: Surviving Fracking, Golf Courses and Drains Among Other Extractive Industries', above n 8; Bird and Bird, above n 38; Summerhayes, above n 37.

⁷⁷ Cunningham, above n 40.

⁷⁸ Mary Cristina Wood, *Nature's Trust: Environmental Law for a New Ecological Age* (Cambridge University Press, 2014) 110.

which are replete with discretionary licensing provisions and permissions rather than prohibitions. In practice, these statutory regimes compound the phenomenon described as ‘death by a thousand cuts’.⁷⁹ Exploring the manifold possibilities for reading and rewriting *all* areas of law wildly offers both lecturers and students viable options for bypassing the ‘procedural spinning wheel’ of existing environmental law in order to pursue Earth-centred outcomes.

A number of legal scholars have shared their experience in using the rewritten feminist judgments as a teaching tool,⁸⁰ a process which constitutes part of the phenomenon known as ‘outsider pedagogy’.⁸¹ Rosemary Hunter argues that the judgments provide an excellent teaching resource in that they demonstrate how feminist theoretical ideas can be achieved in practice,⁸² expose the contingency of judicial decisions,⁸³ and stimulate critical thinking about existing decisions.⁸⁴ The insights of teachers who have used the feminist judgments as teaching resources are invaluable in any consideration of the pedagogical possibilities of the wild law judgments.

Firstly, rewritten judgments can be discussed and analysed in the course of teaching the original or ‘real’ judgment in a number of different legal subjects.⁸⁵ This process enables students to understand the ‘partiality of the original judgment’ and facilitates student engagement with theory.⁸⁶ For instance, to draw on two examples from the collection already discussed, Bee Chen Goh’s rewriting of *Donoghue v Stevenson* might encourage torts students to reflect on the neglected perspective of not just the long deceased snail but all non-human species in considering the ambit of the duty of care in

⁷⁹ See John Bradsen, ‘Biodiversity Legislation: Species, Vegetation, Habitat’ (1992) 9 *Environmental and Planning Law Journal* 175, 179.

⁸⁰ See Jennifer Koshan et al, ‘Rewriting Equality: The Pedagogical Use of Women’s Court of Canada Judgments’ (2010) 4 *Canadian Legal Education Annual Review* 121; Grear, above n 16; Rosemary Auchmuty, ‘Using Feminist Judgments in the Property Law Classroom’ (2012) 46 *Law Teacher* 227. In the United Kingdom, two participants in the United Kingdom Feminist Judgment project were awarded funding to develop teaching materials from the collection: see Rosemary Hunter, ‘Introduction: Feminist Judgments as Teaching Resources’ (2012) 46 *Law Teacher* 214, 221-5; Helen Carr and Nick Dearden, ‘Research-Led Teaching, Vehicular Ideas and the Feminist Judgments Project’ (2012) 46 *Law Teacher* 268, 279. Teaching resources are available on the United Kingdom Feminist Judgment project website, at Feminist Judgments Project, *Teaching with the Feminist Judgments Project* <<https://www.kent.ac.uk/law/fjp/resources/teaching.html>>, and on the Australian Feminist Judgment project website, at University of Queensland, *Legal Education* <<https://law.uq.edu.au/research/australian-feminist-judgments-project/legal-education>>.

⁸¹ Koshan et al, above n 80, 123.

⁸² Hunter, ‘Introduction: Feminist Judgments as Teaching Resources’, above n 80, 219.

⁸³ *Ibid* 220.

⁸⁴ *Ibid*.

⁸⁵ Erika Rackley explains her own use of this approach, and the positive response of the students to this approach, in a unit called Law, Gender and Society: Rackley, above n 2, 404-7. See also the discussion of this approach by various authors in Koshan et al, above n 80.

⁸⁶ Rackley, above n 2, 403.

negligence. Students can consider the intersection of Buddhist theory with wild law and with the law of torts. Greta and Jo Bird's departure from the *Mabo* case in their hypothetical judgment highlights for students looking at native title law or at the foundations of the Australian legal system the unresolved issues of sovereignty in the original decision, and the extent to which the High Court judges' reasoning was flawed as a consequence.

A second more challenging but possibly more rewarding approach is to ask students to rewrite judgments themselves: also part of the teaching methodology associated with feminist rewritings.⁸⁷ In evaluating the effectiveness of this as a possible teaching strategy, I can extrapolate from my own teaching experience as well as drawing on the experiences of lecturers who have experimented with this approach in the context of the feminist judgment projects. Asking students to rewrite judgments is a teaching method which I have trialled and used in Constitutional Law for many years with fascinating results.

In a 2004 conference paper, later published in 2005, I described the assessment task which incorporated this methodology.

Every year I set my constitutional law students an (optional) task. I ask them to select a constitutional law case and to re-tell the story in a different voice. I ask them to reflect on the nature of High Court reasoning, and on whether it is possible, or even likely, that similar conclusions would be reached if a legal narrative were re-told in a different voice.⁸⁸

As I go on to explain in this article, most students have engaged with this task creatively and imaginatively, with a considerable degree of empathy, and the response to this optional judgment rewriting task has always been positive. Anna Grear, who used the feminist judgments as a resource in teaching a course in critical and legal reasoning and asked students to undertake an exercise in judgment rewriting themselves, has commented on the resulting 'sense of intellectual and emotional empowerment in the students'.⁸⁹

The experience of one Canadian student, required to participate in a feminist judgment rewriting exercise, is also instructive. She has written:

I almost gave up on numerous occasions. I persevered because, although I couldn't put my finger on it at the time, I knew that I was on the verge of something important ... I came away with a new and revitalized way of thinking about law. I no longer read a case in precisely the same way I did before.⁹⁰

⁸⁷ See, for instance, Denise Reaume's account in Koshan et al, above n 80, 138; Auchmuty, above n 80, 233-7; Grear, above n 16, 252.

⁸⁸ Nicole Rogers, 'The Playfulness of Constitutional Law' (2005) 9 *Southern Cross University Law Review* 183, 196.

⁸⁹ Grear, above n 16, 248.

⁹⁰ Megan Evans Maxwell, 'A Student Perspective' in Koshan et al, above n 80, 142-3.

Generally, imaginative and performative retellings and rewritings demonstrate not only possibilities for opening up the privileged space of judicial reasoning to different theoretical and critical perspectives but also make clear to students that reported judgments constitute only one of many possible ways of telling a narrative and, once delivered, only one of many possible forms of performance. As I wrote in 2005, in relation to one student's multi-layered and highly creative narrative in which she constructed 'a case within a play within a play reading within a play', the exercise exposes the 'circularity and layers of story-telling and performance, in which the High Court judgments comprise simply one more layer, and the courtroom itself simply another performance space'.⁹¹

The importance of *wild* judgment rewriting as a pedagogical tool transcends the narrative and performative significance of critical judgment rewriting generally. Earth and its diverse lifeforms are facing a dire existential crisis, exacerbated by the looming threat of climate change. Nicole Graham has pointed out that law's taxonomy is one of the significant barriers to environmental sustainability⁹² and that, as law educators in law schools, we reinforce this taxonomy by teaching within existing legal categories, failing to draw connections between these categories and failing to integrate law and non-law.⁹³ She points out that introducing new material on sustainability will not solve this problem; 'rather it is important to revise (by making explicit) the anthropocentric paradigm of law as it is structured into existing subjects, especially the core subjects.'⁹⁴

In light of this, there is a solid argument for ensuring that the 'outsider pedagogy' of teaching from a wild law or Earth-centred perspective is effectively and rigorously incorporated into the mainstream curriculum in law schools, through a thematic approach which includes providing students with a wild law reinterpretation of one key case in each core unit. This could be combined with a mandatory wild judgment rewriting exercise in one of the later units. In reading wild reinterpretations of key cases from each core unit, students are exposed to a different performative mode of critique which highlights the subjectivity of judging and the possibilities for seeking wild outcomes in all legal categories. A rewriting exercise permits students themselves to 'dress up' as wild judges and explore wild outcomes. It requires them to interrogate the established principles and modes of thinking which reflect the anthropocentric paradigm.

This curriculum initiative needs to be distinguished from attempts to prioritise environmental law as a category of law in the law school curriculum. In 1993, when the LLB degree was introduced, our law school was the first to make environmental law a core LLB unit. Over

⁹¹ Rogers, 'The Playfulness of Constitutional Law', above n 88, 198.

⁹² Nicole Graham, 'This is Not a Thing: Land, Sustainability and Legal Education' (2014) 26 *Journal of Environmental Law* 395, 409.

⁹³ *Ibid* 409-10.

⁹⁴ *Ibid* 418.

the years, in response to this mainstreaming of environmental law, I have received a considerable amount of student feedback which incorporates the widespread neoliberal perception that the environment is an externality and hence a superfluous consideration in any legal studies. This particular cohort of students has therefore viewed environmental law as a 'soft' law unit which should remain marginalised. Feedback of this sort has diminished over time but there will always, no doubt, be some level of student resistance to the incorporation of environmental concerns and environmental law as a mandatory component of the LLB curriculum.

Certainly some students have provided reflective feedback which suggests that our mainstreaming experiment with Environmental Law has fundamentally changed their perceptions. For instance, one student, who claimed that he/she had been dreading the unit as she is 'not a tree-hugger', commented that it was one of the 'most enjoyable and educational units I've taken so far' and that he/she now realised that environmental law had a far broader application than 'tree-hugging'.

However students have also recognised the limitations of environmental statutory regimes as outlined above and expressed resignation, disappointment and even despair; one of my students began to cry during a tutorial as she tried to articulate her sense of frustration and her concern for the future. Existing environmental law does not offer much by way of solutions; piecemeal or even wholesale legislative changes generally replace one permissive statutory regime with another. Within the confines of environmental law, judges are frequently stymied in their efforts to generate positive environmental outcomes. Often, they are confined to 'policing the procedural parameters of decisions',⁹⁵ or as Mary Cristina Wood puts it, 'navigating the exceedingly narrow statutory gullies of environmental law'.⁹⁶ Disappointing environmental outcomes frequently ensue even when judges are in a position to decide a case on its merits, as governments subsequently intervene through legislation or planning instruments to facilitate blocked developments. Once the deficiencies of environmental law become clear to students, it is difficult for them to see law as a mechanism to create positive environmental changes.

Furthermore, even when environmental law is a core unit, it remains subordinate as a category to the categories of law which concern private rights and private interests.⁹⁷ Its connection to other core units 'is currently neglected in the syllabi of the core subjects themselves'.⁹⁸ The inclusion of wild judging as a mandatory component of all core units changes this, and ensures that students learn to look beyond environmental law and its manifold deficiencies

⁹⁵ David Farrier, 'The Limits of Judicial Review: Anvil Hill in the Land and Environment Court' in Tim Bonyhady and Peter Christoff (eds), *Climate Law in Australia* (Federation Press, 2007) 189, 204.

⁹⁶ Wood, above n 78, 110.

⁹⁷ Graham, above n 92, 403.

⁹⁸ Ibid 413.

in devising legal solutions to environmental problems.⁹⁹ This approach develops the capacity of students to think creatively in the context of sustainability and also highlights for students the ethical responsibilities of judges in this context.

Wild law judgment rewritings emphasise the manifold possibilities in *all* areas of law for wild outcomes. The potential for Earth-centred outcomes to be achieved through common law rather than statutory law was highlighted by the successful victory of the Urgenda Foundation in the Dutch court system in 2015; in the historic Urgenda decision,¹⁰⁰ the District Court in the Hague found that the Netherlands government had failed to meet its duty of care to the plaintiffs in relation to reducing its greenhouse gas emissions. Roger Cox, Urgenda's lawyer, has argued that judicial intervention 'is the last option still available to us within the framework of our Western democratic model to take targeted and effective action to mitigate the consequences of climate change and oil decline'.¹⁰¹

Wild judgment rewriting stimulates student thinking about possible forms of Earth-centred judicial intervention and the transformative capacity of the common law in this regard. As contributors to the wild law judgment project have demonstrated, we can thus shift the focus of judging from private rights to the protection of other species such as whales, green sea turtles, lungfish, and snails, communal rights including information common rights, ecological integrity and care for Country.

V CONCLUSION

In this paper, I have highlighted some of the manifold performative and pedagogical dimensions of the wild law judgment project, an exciting recent collaborative exercise in judgment rewriting from the critical (and marginalised) perspective of wild law. As with other judgment rewriting projects, it constitutes a fascinating experiment in bridging the gap between theory and practice. The methodology of the rewriting project provokes reflection on the nature and role of judicial reasoning, and suggests ways in which the avowed neutrality and human-centredness of such reasoning can be effectively contested. The project has also provided insights into, and practical experience in, the subversive terrain of judicial impersonation or 'dressing up' as wild judges.

⁹⁹ Rosemary Auchmuty, in arguing that feminist judgments should be taught in core law subjects such as property law, has stated: 'Many law teachers will have sympathy for students who think we should concentrate on teaching the substantive rules, while others may be nervous about the critical fall-out that might accompany explicit attention to feminism in a substantive law module. *My view is that we still ought to do it.*' Auchmuty, above n 80, 228.

¹⁰⁰ *Urgenda v The Netherlands* (The Hague District Court, 24 June 2015) ECLI:NL:RBDHA:2015:7196.

¹⁰¹ Roger H J Cox, *Revolution Justified: Why Only the Law Can Save Us Now* (Planet Prosperity Foundation, 2012) 243.

The published collection of wild law judgments constitutes an invaluable teaching resource. The collection is replete with possibilities and suggestions for utilising insider strategies of rationality and legal reasoning or even outsider strategies to achieve wild Earth-centred outcomes. Judgments from the collection can be incorporated into the mainstream teaching curriculum in law schools to unsettle anthropocentric assumptions and expectations in law and in the student body and stimulate critical thinking about wild law.

Importantly, in the socio-legal context in which Earth is a secondary rather than primary concern, the wild law judgment project instils hope rather than despair. We can rewrite law wildly and teach our students to rewrite law wildly and, in doing so, we can write our future.