access to justice see also distributive justice
indigenous peoples 322–3
jurisdictional variations 35, 38
justice as recognition 23–4, 38–40
procedural justice 37–8
UNEP Guidelines 37
Adger, N. 310
adventitious presence (AP)
Bablock v. Freistaat Bayern 276–7
challenges 272–3, 287
Codex Alimentarius Task Force
275–7
compensation 286–7
economic influences of 281
FAO Technical Consultation 276
international regulation 273–5
low level presence (LLP) 272–7,
280–81
Marsh v. Baxter 283, 288
short food safety assessments
275–6
strict liability, and 282–5
thresholds 276–7, 280–81
Triffid flax case 274–5
AF (Kiribati) case 228–9
Agenda 21 56
Amazon basin
forest property rights 149
American Declaration on the Rights of Indigenous Peoples (proposed)
323
Anaya, James 315, 318, 320
Anthropocene see also rule of law
biodiversity, implications for 66–7
cultural perspectives for 335–9
definition 4, 44, 46, 335
developmental stages 46–7, 54
ecological integrity, and 55–7
goals 45, 54–5
influences on 54
moral developments and challenges 46–9
need for change 47–8
planetary boundaries, recognition of 48
sustainability, and 48–9, 53–7
Arctic
Arctic Council, function of 244–5
Athabaskan human rights petition 247–9
black carbon
influences on 241, 244
policy challenges 245
policy development 245–9
atmosphere
emissions, legality of 7
private property rights over 7,
112–15
Australia
biodiversity offsetting
like for like 74–5
native vegetation management
73–5
policy development 72
biotechnology regulation
adventitious presence (AP) 272,
279–88
Australia New Zealand Food Standard Code 278
challenges 271
coe-existence policies 272, 280
definitions 277
fair trading regulation, and 284
Gene Technology Act (2000) 271,
277–80
Gene Technology Agreement
(2001) 277
Gene Technology Regulations
(2001) 271, 277
institutions 278
intellectual property, and 286–7
The search for environmental justice

labelling 278, 282
low level presence (LLP) 272, 280–81
Marsh v. Baxter 283, 288
non-coherence policies 279–80
purpose 277
risk assessments 278
strict liability, and 282–5
colonial influences
indigenous peoples, attitudes to 336–7
resource management policies, and 335–8, 340
Environment Protection and Biodiversity Act (1999) 72
Planning and Environment Act (1987) 74
urbanisation trends 333–4
water management 33
Awas Tingni Mayagna (Sumo) Indigenous Community v Nicaragua 321–2
Bablok v. Freistaat Bayern 276–7
Bali Action Plan 324
Battiste, M. 343–5
Baxter, B. 30, 37
Beckessey, S. 76
biodiversity
climate change, and adaptation measures 66–7
distributional impacts 66–7
offsetting 62–3, 65, 68–73, 75–7
policy needs 67, 78
preservation vs. restoration 67
projected impacts 66–7
resilience building 68, 78
species viability 65
as policy signifier 64–5
biodiversity justice, generally challenges 65
concept 68, 78
biotechnology regulation
adventitious presence (AP)
Bablok v. Freistaat Bayern 276–7
challenges 272–3, 287
Codex Alimentarius Task Force 275–7
compensation 286–7
economic influences of 281
FAO Technical Consultation 276
international law treatment 273–5
low level presence (LLP) 272–7, 280–81
short food safety assessments 275–6
thresholds 276–7, 280–81
Triffid flax case 274–5
in Australia
adventitious presence (AP) 272, 279–88
Australia New Zealand Food Standard Code 278
challenges 271
co-existence policies 280
definitions 277
fair trading regulation, and 284
Gene Technology Regulations (2001) 271, 277
institutions 278
intellectual property, and 286–7
labelling 278, 282
low level presence (LLP) 272, 280–81
Marsh v. Baxter 283, 288
non-coherence policies 279–80
purpose 277
risk assessments 278
strict liability, and 282–5
genetically modified material
labelling 278, 282
StarLink gene 281
zero tolerance policies 272, 276–7
black carbon
action on, reasons for 241–2
cooling vs. warming aerosol effects 241
identification 241
international regime
common but differentiated responsibilities 243
influences 11–12, 239
limitations 242–4
reform proposals 243
national policies
Index

advantages of 242–4
air quality standards 251–2
Arctic Athabaskan human rights petition 247–9
Arctic States 244–9
Canada 247–9
carbon intensive industries 249–50
China 249–53
diesel regulation 241, 244–8, 250–54
EU 246–7
India 249–53
indigenous peoples, and 247–9
limitations 247–8
precautionary measures 248–9, 251
public interest litigation role 247–8, 253
Russia 247
transportation sector reforms 250–52
US 245–7
reduction
action trends 242–3
implementation 253–4
targets 239
transboundary impacts 253–4
Brand, Ronald 259
Burke Robertson, Cassandra 259
Burma
Unocal pipeline liability claims 266–7
Canada
black carbon reduction policies 247–9
genetically modified material 285–6
carbon reduction schemes see also emissions trading
focus on, benefits of 240–42
implementation challenges 239–40
new approach, need for 239–40
targets 239
Charles-Newton, E. 318
Chevron, environmental harm claims against 266
China
black carbon reduction policies 249–53
forest property rights 147
climate change adaptation
biodiversity, and 66–7
data non-stationarity, and 67
indigenous peoples, and
Bali Action Plan 324
coping strategies 313
economic and welfare impacts 335
impacts on 310–13, 327
legal rules, development 316–17
loss of cultural resources 335
policy flexibility, need for 328
REDD+ policies, and 324–7
role and value 309, 313, 335–6, 352
self-determination, and 318
social justice, and 326–7
trans-disciplinary approaches to 348–9
uneven burden of 310–11, 327
UNFCCC and Kyoto Protocol policies, and 323–4, 327
participation rights 311
right to development, and 310–11
climate change, generally
biodiversity, and
distributional impacts 66–7
inter-temporal/generational protections 62–3, 76–7
offsetting 62–3, 65, 68–73, 75–7
policy needs 67, 78
preservation vs. restoration 67
projected impacts 66–7
resilience building 68, 78
species viability 65
environmental displacement, and
human rights, and 95–6
mitigation policy progress 65
impacts
data non-stationality 67
on indigenous peoples 310–13
predictions 62, 312–13
uneven burden of 310–13
Club of Rome Report (1972) 54–5
coop-existence policies
biotechnology regulation 272, 280, 286–7
Codex Alimentarius Task Force 275–7
colonialism
indigenous peoples, and
The search for environmental justice

Cultural and attitudinal changes

Environmental harm, burden of impacts, interpretation of justice and law, differing attitudes to language National Resource Management policies, influences on

Community of justice

distributive justice, and 23–5 law, impacts on 25 membership limitations 27 non-human nature, and 27–8 status injury model 39

Consensus federalism

in New Zealand 186–8, 194–7 consuming users
distributive justice, and 25–6 environmental law bias 25–6

Convention for the Protection of the natural resources and the Environment in the South Pacific (1986, Noumea) 205–7, 209


Convention on Biological Diversity (1992) 78 definitions 64–5 Pacific Island Countries, and 213–14

Convention on Long-range Transboundary Air Pollution, (CLRTAP)(1979) 243

Convention on Status of Stateless Persons (1954) 224


Convention on the Reduction of Statelessness (1961) 224

Convention on the Status of Refugees (1951) 224, 233

<table>
<thead>
<tr>
<th>Term</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>definition 3, 23–4</td>
<td>361</td>
</tr>
<tr>
<td>distribution criteria 23–4, 29</td>
<td></td>
</tr>
<tr>
<td>duty-based distribution 30–31, 33–4</td>
<td></td>
</tr>
<tr>
<td>environmental law distribution</td>
<td></td>
</tr>
<tr>
<td>future generations, equity for 27, 30</td>
<td></td>
</tr>
<tr>
<td>goal-based distribution 29–32</td>
<td></td>
</tr>
<tr>
<td>importance of 3, 24</td>
<td></td>
</tr>
<tr>
<td>injustice, causes of 24</td>
<td></td>
</tr>
<tr>
<td>legal enablement of 24</td>
<td></td>
</tr>
<tr>
<td>non-human nature, and 27–9, 33</td>
<td></td>
</tr>
<tr>
<td>polluter-pays principle 30</td>
<td></td>
</tr>
<tr>
<td>promotion of 23</td>
<td></td>
</tr>
<tr>
<td>purpose of 31</td>
<td></td>
</tr>
<tr>
<td>regulatory limitations 32–3</td>
<td></td>
</tr>
<tr>
<td>rights-based distribution 29–30, 33</td>
<td></td>
</tr>
<tr>
<td>statutory approval for non-distribution</td>
<td></td>
</tr>
<tr>
<td>Dryzek, J. 36</td>
<td></td>
</tr>
<tr>
<td>Dworkin, R. 30</td>
<td></td>
</tr>
<tr>
<td>Earth Charter</td>
<td></td>
</tr>
<tr>
<td>ecological integrity principle 56–7</td>
<td></td>
</tr>
<tr>
<td>Preamble 47</td>
<td></td>
</tr>
<tr>
<td>Eckersley, R. 37</td>
<td></td>
</tr>
<tr>
<td>ecological integrity 55–7</td>
<td></td>
</tr>
<tr>
<td>Ecuador</td>
<td></td>
</tr>
<tr>
<td>environmental harm claims cases 266</td>
<td></td>
</tr>
<tr>
<td>rights of nature, legal basis for 120,</td>
<td></td>
</tr>
<tr>
<td>124–7</td>
<td></td>
</tr>
<tr>
<td><em>Vilcambamba River case</em> 120, 127–33</td>
<td></td>
</tr>
<tr>
<td>emissions trading see also REDD+</td>
<td></td>
</tr>
<tr>
<td>challenges of 107–8</td>
<td></td>
</tr>
<tr>
<td>in New Zealand</td>
<td></td>
</tr>
<tr>
<td>background 108</td>
<td></td>
</tr>
<tr>
<td>challenges 115</td>
<td></td>
</tr>
<tr>
<td>emission holder liabilities 111–14</td>
<td></td>
</tr>
<tr>
<td>emissions units, characterisation of 111–14</td>
<td></td>
</tr>
<tr>
<td>exclusivity 111–14</td>
<td></td>
</tr>
<tr>
<td>property rights, and 105, 109, 111–17</td>
<td></td>
</tr>
<tr>
<td>rights to pollute, and 114–15</td>
<td></td>
</tr>
<tr>
<td>sanctions 108</td>
<td></td>
</tr>
<tr>
<td>structure and principles 105–6, 108–9,</td>
<td></td>
</tr>
<tr>
<td>111–12, 114–15</td>
<td></td>
</tr>
<tr>
<td>property rights, and 107–8</td>
<td></td>
</tr>
<tr>
<td>right to pollute, and 107–8</td>
<td></td>
</tr>
<tr>
<td>environmental information access to,</td>
<td></td>
</tr>
<tr>
<td>jurisdictional variations 35</td>
<td></td>
</tr>
<tr>
<td>UNEP Guidelines 34–6</td>
<td></td>
</tr>
<tr>
<td>environmental justice, generally see</td>
<td></td>
</tr>
<tr>
<td>also distributive justice; justice as</td>
<td></td>
</tr>
<tr>
<td>recognition; procedural justice</td>
<td></td>
</tr>
<tr>
<td>concept development 337–8</td>
<td></td>
</tr>
<tr>
<td>definition 1–3, 23</td>
<td></td>
</tr>
<tr>
<td>environmental law, generally</td>
<td></td>
</tr>
<tr>
<td>access to information, jurisdictional</td>
<td></td>
</tr>
<tr>
<td>variations 35</td>
<td></td>
</tr>
<tr>
<td>burden of proof 25</td>
<td></td>
</tr>
<tr>
<td>challenges 52–3</td>
<td></td>
</tr>
<tr>
<td>competing or cumulative impacts</td>
<td></td>
</tr>
<tr>
<td>26–9</td>
<td></td>
</tr>
<tr>
<td>conditional and discretionary rules</td>
<td></td>
</tr>
<tr>
<td>32–3</td>
<td></td>
</tr>
<tr>
<td>consuming use bias 25–6, 28–9</td>
<td></td>
</tr>
<tr>
<td>cost-benefit approach 25–6</td>
<td></td>
</tr>
<tr>
<td>distribution criteria limitations 31–2</td>
<td></td>
</tr>
<tr>
<td>duty-based distribution 30–31, 33–4</td>
<td></td>
</tr>
<tr>
<td>Environmental Law Methodology 52</td>
<td></td>
</tr>
<tr>
<td>future generations, equity for 27, 30</td>
<td></td>
</tr>
<tr>
<td>goal-based distribution 29–32</td>
<td></td>
</tr>
<tr>
<td><em>grundnorm</em>, definition 53–4</td>
<td></td>
</tr>
<tr>
<td>internalisation and externalisation 27</td>
<td></td>
</tr>
<tr>
<td>international law omission, implications</td>
<td></td>
</tr>
<tr>
<td>of 53</td>
<td></td>
</tr>
<tr>
<td>objects clauses 32</td>
<td></td>
</tr>
<tr>
<td>reductionist decision-making 26–7</td>
<td></td>
</tr>
<tr>
<td>restrictive/prohibitory emphasis 25</td>
<td></td>
</tr>
<tr>
<td>rights-based distribution 29–30, 33</td>
<td></td>
</tr>
<tr>
<td>structural limitations 26–7</td>
<td></td>
</tr>
<tr>
<td>sustainable development, and 6–7</td>
<td></td>
</tr>
<tr>
<td>Environmental Law Methodology 52</td>
<td></td>
</tr>
<tr>
<td>environmentally displaced persons</td>
<td></td>
</tr>
<tr>
<td>human rights 95–6</td>
<td></td>
</tr>
<tr>
<td>international conventions 224–5</td>
<td></td>
</tr>
<tr>
<td>New Zealand policy framework 226</td>
<td></td>
</tr>
<tr>
<td>background and development 229–32</td>
<td></td>
</tr>
<tr>
<td>refugee status 227–9</td>
<td></td>
</tr>
<tr>
<td>Pacific Islands</td>
<td></td>
</tr>
<tr>
<td>migration trends and predictions 221–4,</td>
<td></td>
</tr>
<tr>
<td>229–30, 235</td>
<td></td>
</tr>
<tr>
<td>Niue Declaration 225–6</td>
<td></td>
</tr>
<tr>
<td>regional instruments 225–6</td>
<td></td>
</tr>
<tr>
<td>ethnocentrism vs. nature-centrism 344–5</td>
<td></td>
</tr>
<tr>
<td>European Union</td>
<td></td>
</tr>
<tr>
<td>black carbon reduction policies 246–7</td>
<td></td>
</tr>
</tbody>
</table>
The search for environmental justice

genetically modified material 280–81, 284

Falk, R. 316
Feinberg, Joel 121–3
food supply see also genetically modified material biotechnology, and 288 short food safety assessment 275–6 sustainability challenges 271
Forest Carbon Partnership Facility 325–6 forum non conveniens

Gaběíkovo- Nagymaros (Hungary v. Slovakia) 89, 311

<table>
<thead>
<tr>
<th>Term</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>environmentally displaced persons, and 95–6 of future generations 94–5</td>
<td>363</td>
</tr>
<tr>
<td>to healthy environment 120–21</td>
<td></td>
</tr>
<tr>
<td>human health, and 94, 120–21</td>
<td></td>
</tr>
<tr>
<td>indigenous peoples, and 94–5, 302–6, 318–20</td>
<td></td>
</tr>
<tr>
<td>participation rights, and 86, 92, 99, 311</td>
<td></td>
</tr>
<tr>
<td>right to development 310–11</td>
<td></td>
</tr>
<tr>
<td>sustainable development rights, and 99–100, 310–11</td>
<td></td>
</tr>
<tr>
<td>UN 'Protect, Respect and Remedy' Framework 91</td>
<td></td>
</tr>
<tr>
<td>to water 302–6</td>
<td></td>
</tr>
</tbody>
</table>

India
- black carbon reduction policies 249–53
- Union Carbide Bhopal catastrophe 259–60, 266
- indigenous peoples
  - access to justice 322–3
- Arctic Athabaskan human rights petition 247–9
- black carbon reduction policies, and 247–9
- characterisation 305, 314–15, 320
- climate change adaptation
  - Bali Action Plan 324
  - coping strategies 313
  - economic and welfare impacts 335
  - legal rules, development 316–17
  - loss of cultural resources 335
  - policy flexibility, need for 328
  - REDD+ policies, and 324–7
  - role and value 309, 313, 335–6, 352
  - self-determination, and 318
  - trans-disciplinary approaches to 348–9
  - uneven burden of 310–11, 327
- UNFCCC and Kyoto Protocol policies, and 323–4, 327
- climate change justice, and 314–15
- climate change vulnerability 96–7, 312–14
- collaborative/inclusive governance challenges 337–8, 341
- Community in Action Research approach 343
- cultural safety, and 349–51
- disadvantages 342–4
- environmental law model, proposed 353
- interpretation, need for 343–4
- justice and law, attitudes to 345–8
- participatory approaches 342–4
- colonial settlements, and
  - cultural and attitudinal changes 336–7
- environmental harm, burden of 351
- impacts, interpretation of 336
- justice and law, differing attitudes to 345–8
- language 344–5
- National Resource Management policies, influences on 336–40
- cultural beliefs and cultural capital
  - compatibility challenges 341
  - cultural safety, and 349–51
- future generations, protection for 94–5
- indigenous knowledge 335–7, 341–2, 352
- justice and law, attitudes to 345–8
- language 344–5
- nature-centrism 344–5, 349–51
- oral traditions, and 294–5, 345
- rights of nature 122–3
- rituals, role of 345
- subtleties, challenges of 344–5
- tribal diplomacy 345–7
- Western interpretations of 341, 348–9
- customary law
  - collective decision-making 95
  - native title 300
- water governance in Kenya 294–306
- environmental displacement 96–7
- environmental racism, and 314–15
- Inuit Conference Petition to the Inter-American Human Rights Commission 313
- knowledge
  - collaborative governance, and 342
  - inadvertent marginalisation 342
role and benefits of 335–7, 352
shared, challenges of 341
legal challenges
disproportionate representation 16–17
dominance and subservience 17–18
formal governance, rigidity of 345–9
sovereignty restrictions 318–19
rights of
approach trends 320
basis for 315–16
collective rights 95
communal property 322
cultural property, and 317–18
customary law, and 294–306, 321–2
development 94–5, 302–3, 305–6
equal rights of due process 322–3
evolution of, principles for 316
forest property rights 146–7, 159,
161–2, 165, 172–3, 175–7
human rights-based 94–5, 302–6, 318–20
ILO legal rules on 316–17
international law development 315–20
judicial interpretations 320–23
native title 300
prior-informed consent 317
as second-order rights 300
self-determination 302–3, 317–18, 327
UN Declaration on 94–5, 302–3, 305–6, 317–18, 327
water rights 294–306
sustainable development, and 335–6
Indonesia
REDD+ implementation in
actions and prerequisites 171–2
challenges 159–60, 179–80
criminal offences and liabilities 173–4
customary forests, interpretation 175–7
enforcement challenges 178–9
forest property rights 160, 173–5
funding instruments (FREDDI) 166–9
GHG emissions reductions policies 160–62
governance challenges 160
indigenous peoples, rights of 159, 161–2, 165, 172–3, 175–7
institutions 162–7, 171–3
law reform programme 172–5
legal basis 160–62
Licensing Information System 177–8
Masyarakat Hukum Adat (MHA) case 175–7
measurement, reporting and verification mechanisms 169–70
Multi-Door Guidelines 178–9
phases 164–5
Prevention and Eradication of Forest Destruction Law (2013) 173–4
principles 163
progress of 179–80
purpose 158–9, 165
social justice impacts 160
stakeholder management 166–7, 170
Innuit Conference Petition to the Inter-American Human Rights Commission 313
Inter-American Court of Human Rights
on rights of indigenous peoples 320–23
interest groups
mal- or mis-recognition 38–40
stigmatisation 39
International Convention on Civil and Political Rights (1966) 224
International Covenant on Environment and Development (Draft)(2010) 56–7
International Labour Organisation 316–17
International Maritime Organization 243
Index

Jablonski, Scott 259
Jampijinpa, W. 348
Johannsdottir, Adelheidur 53

Justice as recognition

community of justice 24
definition 23, 38
mal-recognition 40
mis-recognition 38–40
policy approaches to 39–40
strategic litigation against public participation (SLAPP) 40

kaitiakitanga concept (guardianship)

7

Kant, I. 30, 53
Kelsen, H. 53
Kemmis, S. 342–3

Kenya, water governance

customary law
allocation rules 297–8
development 293–4, 297–8
enforcement and sanctions 297–8
human rights-based approach
301–6
indigenous peoples, and 293–4, 305–6
integration of water with other norms 296–7
legal framework, and 295–6, 298–300
oral tradition 294–5
recognition of 295–6, 300, 305–6
system features 296
water ownership rights 296
legal framework
community involvement
challenges 301
constitutional basis 298–9, 302–3
customary law, and 295–6, 298–300
development 298–9
human rights influences 302–3
institutional framework 300–301
stakeholder participation 300–301
water ownership rights 299–300

Kiobel v. Royal Dutch Petroleum Co.
257, 262–5, 267–8
Knudtson, P. 349
Kronk, E. 318

kuruvwarri 348

Leopold, A. 30, 106–7
Lindenmayer, D. 69, 72

linguistic-relativity 344–5
low level presence (LLP)
Codex Alimentarius Task Force
275–7
definition 272–3
International Statement on 273–4
thresholds 280–81
Trifid flax case 274–5

Luther Standing Bear 341
Lyster, . 325

Macchi, M. 312
McTaggart, R. 342–3

Madagascar
forestry loss and regeneration, influences on 146

mal-recognition see recognition

Marakwet Escarpment see Kenya

Marine Environment Protection Committee 243

market instruments see emissions trading

Marsh v. Baxter 283, 288
Martinez, Esperanza 123
May and Carrie Dann v United States 322–3

Maya Indigenous Communities 322
methane emissions
reduction policies 240–41
mis-recognition see recognition
Monsanto Canada v. Hoffman 285–6

nachhaltigkeit 54

Native Americans see indigenous peoples

nature, generally
definition 124
nature, rights of see also non-human nature

balance, need for 131–3
burden of proof 125–6, 128–9
conflicts, priority in 126, 129, 131–3
constitutional basis for 120
difficulties with 121–3, 131
in Ecuador’s Constitution 120, 124–7
enforcement rights and duties 124
future generations, and 128–9
harm, certainty vs. probability of 127–8
independent values, and 122–3
indigenous beliefs 122–3
interests requirement 121–3, 129
judicial interpretation 120, 127–33
preventative and restrictive duties 125
rational action, and 121
right to restoration 125
rights-holders, criteria for 121–2
strict liabilities 125–6
*Vilcabamba River* case 120, 127–33
vs. rights of humans 131–3
vs. rights to nature 4, 7–8
nature, rights to see also indigenous peoples
constitutional human rights, as 7–8
future generations, interests of 62–3, 76–7
vs. rights of nature 4, 7–8
Nepal
forest property rights 146–7, 150
New Zealand
Australia New Zealand Food Standard Code 278
Climate Change Response Act (2002) 113
Emissions Trading Scheme
background 108
challenges 115
emission holder liabilities 111–14
emissions units, characterisation of 111–14
exclusivity 111–14
property rights, and 105, 109, 111–17
rights to pollute, and 114–15
sanctions 108
structure and principles 105–6, 108–9, 111–12, 114–15
environmental displacement and migration 226
*AF (Kiribati)* case 228–9
*Nansen Initiative* 222, 234–5
policy background and development 223–4, 229–32
policy options and opportunities 232–5
policy reforms 230–32
refugee status interpretations 227–9
regional solution proposals 234–5
targeted immigration schemes 226, 229
trends and predictions 221–4, 229–30, 235
environmental law framework 183–90
compared with US regime 184, 193–4
consensus federalism in 186–8, 194–7
cooperative federalism 185–7, 196
enforcement 188, 190
implementation 186–7, 190
limitations 185, 187–8
purpose 184
reforms 186–90, 193–4
regional powers and duties 184–5
transitional application policies 187, 189
genetically modified material
Hazardous Substances and New Organisms Act (1996) 284
Pacific Island Countries
climate change related migration initiatives 223–4, 227–32
relationship with 221–2
water governance
consensus management 186–8, 194–7
diffuse discharge controls 193–4
Land and Water Forum Reports 186–9
management challenges 183
national minimum standards 189–90, 193
National Objectives Framework proposal 189–90
National Policy Statement on Freshwater Management 185–90
pollution causes 183
regulatory mechanisms 52, 184–5
non-human nature
capabilities approach, and 31
community of justice, and 27–8
disrespect, methods of 39
distributive justice, and 27–9, 33
environmental burdens on 28–9
environmental resource allocation
to 28
interests requirement 121–3
non-verbal communication 36–7
offsetting vs. loss of environmental
resources, 28–9, 64
procedural justice, and 36–7
representation by proxy 37
as rights-holders 121–3
status injury model 39
North America see also United States
Canada
black carbon reduction policies
247–9
genetically modified material
285–6
colonial influences
indigenous peoples, attitudes to
336–7
national resource management
policies 335–7, 339
urbanisation trends 333–4
Nussbaum, M. 31

offsetting see also emissions trading
assumptions 69–70
biodiversity, and
adaptive management, and 72–3
assumptions 69
challenges 62, 70–71, 75–6
integrity 62
limitations 75–7
species viability 65
definitions 63–4
effectiveness 75–7
equivalence 69–71
flexibility, need for 72–3
governance 71–3
implementation 72–3
inter-temporal injustice, and 62–3,
76–7
native vegetative management, in
Australia 73–5
necessary criteria 62–3
philosophy of 63–4
policy mix, role in 72–3
policy trends 68–9

principles of 69–71
private sector role 69
as standard development condition
63–4, 77
vs. loss of environmental resources,
28–9, 64
Wetland Mitigation Banking, in US
70–71

Pacari, Nina 123
Pacific Island Countries
collective decision-making practices
95
environmental displacement
international conventions 224–5
_Nansen Initiative_ 222, 234–5
New Zealand migration policy
226–32
Niue Declaration 225–6
trends and predictions 221–4,
229–30, 235
environmental fragility 209–12
geographical scale and scope 201–2
international environmental
governance
climate change instruments
210–13
_Convention of Biological_ Diversity 204, 211, 213–14
economic club theory, and
215–16
financial and technical advantages
from 210–11
funding delivery mechanisms
216–17
issues with direct impact 210
issues with minor or indirect
impact 211
limitations and challenges
200–201, 213–18
participation in 209–14, 217–18
sub-regional management benefits
215–16
nation states and international links
201–2
New Zealand, relationship with
221–2
regional cooperation 200, 202,
215–16
regional environmental governance
advantages and disadvantages 206–7
Apia Convention (1976) 204–5, 209
Canberra Agreement (1947) 203
coop eration advantages 215–16
Council of Regional Organisations of the Pacific (CROP) 202
hazardous and radioactive waste, import controls 207
Noumea Convention (1986) 205–7, 209
Pacific Islands Forum 202
policy development 203–9
Protocol on Combating Pollution Emergencies 205
Protocol on Prevention of Pollution by Dumping 205
South Pacific Forum 202–3
South Pacific Regional Environment Programme (SREP) 202, 208–9
Waigani Convention (1995) 207
socio-cultural diversity 201–2
participation see public participation
Piper Aircraft Co. v. Reyno 260
polluter-pays principle 30
Presbyterian Church of Sudan v. Talisman Energy, Inc. 265
property rights
balance, need for 116–17
clear specification, need for 109–10
exclusivity 110
to forest resources 145–51, 159, 161–2, 165, 172–3, 175–7
free market, benefits of 109–10
for indigenous peoples 146–7, 299–300
in New Zealand Emissions Trading Scheme 105, 111–17
over atmosphere 112–15
over water, customary vs. statutory law conflicts 299–300
principles of 109
purpose of 115–16
right to quality environment, and 93
rights to pollute, and 105, 107–8
role in environmental justice 117–18, 146–7
rule of law, and 47–8, 53
social justice, and 146–7
tragedy of the commons, and 106–8, 115
public health
right to healthy environment, and 120–21
right to quality environment, and 94
public participation
consensus federalism in New Zealand 186–8, 194–7
cooperative federalism in United States 190–93, 195
environmental decision-making 36
as human right 86, 92, 99, 311
indigenous peoples, and 312, 342–4
power relations challenges 311
procedural justice, and 34–6
quality environment, right to 86, 92, 99
strategic litigation against public participation (SLAPP) 40
quality environment, right to
arguments against 87–92
arguments for 92–4
balance, need for 97
compatibility with existing rights framework 89–90
ease of fit within existing rights framework 90–91
future generations, and 94–5, 98–9
indigenous peoples and minorities 93–5, 98
individual vs. collective rights 91, 98
legal difficulties with 86–7
limitations 86–7
participation rights, and 86, 92, 99
property right conflicts, and 93
proposed scope of 97–100
public health, and 94
recognition of right, impact on environment 87–9
remedies 100
right to development, and 86
rights categorisation difficulties 90
rights holder identity, and 90
rights vs. responsibilities 91, 97–8
specific rights, benefits of 92–3
substantive rights 86
sustainable development rights, and 99–100
vulnerable persons, protection of 93, 98

Rawls, J. 30
recognition

cultural bias 38–9
of customary law 295–6, 300, 305–6
indigenous peoples and minorities 38–40
of interest groups 38–40
justice as recognition
community of justice 24
definition 23, 38
policy approaches to 39–40
strategic litigation against public participation (SLAPP) 40
mal-recognition 40
mis-recognition 38–9
of planetary boundaries 48
of right to quality environment 87–9
of rule of law 50–52
stigmatisation, and 39
REDD+ see also Indonesia; Thailand
funding initiatives 325–6
indigenous peoples
climate change adaptation policy developments 324–5

forest property rights 146–7
social justice, and 146–7, 326–7
principles, generally 137, 153
strategy focus 325
refugee, definition 96
Rex Lex 49
Reynolds, William 259
right to pollute 105, 107–8
rights see human rights; nature, rights of; nature, rights to
Rio Declaration on Environment and Development (1992) 34, 36–7, 56
Romero v. Drummond Co. Inc. 265
Rossi, A. 341
Roundup Ready Canola 284
Royal Dutch Petroleum Co.
US judicial interpretation of liability 257, 262–3, 267–8
Ruhl, J. 69
rule of law
basis for 49
challenges 44
in civil law jurisdictions 51–2
collective self-restraint, and 44–5, 47
in common law jurisdictions 52
definition 49–50
in ecological context 51–4
Environmental Law Methodology 52
global aims 45
importance of 57–8
international law role in 44–5
international recognition of 50–52
property rights, and 47–8, 53
in Romano-Germanic tradition 51
Scandinavian scholarship on 52–4
status of 44–5
sustainability, and 48–9, 53–4
Russia
black carbon reduction policies 247

Salzman, J. 69
Sapir, E. 344–5
Scandinavia
black carbon reduction policies 246–7
Schlosberg, S. 36–7, 39
Sen, A. 31
Slade, Tuiloma 209–10
Smith, D. 343
Smith, Tuhiwai 341, 343
social justice
forest property rights, and 146–7
legal challenges 8
Solid Waste Agency of Northern Cook
County vs. US Corps of Engineers 71
South Pacific see Pacific Island
Countries
Stern Review, Economics of Climate
Change (2007) 312
Stone, C. 2
strategic litigation against public
participation (SLAPP) 40
Sub-Committee on Pollution
Prevention and Response (IMO)
243
sustainability principle
concept background 54
environmental law, and 6–7, 55
sustainable development
ecological integrity, and 55–6
indigenous peoples, and 335–6
national resource management
policies, and 335–7
policy progress 335
principles of 54–5, 311
right to development, and 310–11
Suzuki, D. 349
Swainson, B. 72
Talisman Energy case 267
Thailand
REDD+ implementation in
challenges 153
Community Forest Bill 142
coordination difficulties 142–4
corruption, and 150
forest management principles
139–40
forest property rights 145–8,
150–51
governance challenges 150–51
incentives 139–40, 148–9
legal basis 138
non-timber forest products 149
political conflicts 140–41
public participation 139–40, 151
reform mechanisms 144–5, 151–3
safeguards, importance of 149–51
stakeholder conflicts 140–43
structural deficiencies 144
traditional knowledge, role of
148–9
‘The Future We Want’ (UNGA
Resolution, 2012) 56
Tietenberg, T. 113
tragedy of the commons 47
right to pollute, and 106–8, 115
transnational environmental harm
alternate claim mechanisms 263–4
corporate ethics codes 264
leveraging litigation 265–8
targeting corporate officers under
Alien Tort Statute 264–5,
267
claims restrictions
compensation challenges 265–6
forum non conveniens 257, 260–63
US judicial approach 257–62,
268–9
corporate liability 257
corporate ethics codes 264
Royal Dutch Petroleum Co. 257,
262–3, 267–8
Talisman Energy case 267
Union Carbide Corporation
259–62
Unocal case 266–7
Yahoo case 267–8
Triffid flax case 274–5
tropospheric ozone
reduction policies 240–41
Tsosie, R. 314
UNEP Guidelines on Access to
Information, Public Participation
and Access to Justice 34–7
Union Carbide Corporation
Bhopal catastrophe 259–60, 266
US judicial interpretation of liability
259–62
United States
Alien Tort Statute 257, 262–5, 267
Black Carbon Emissions Reduction
Act (proposal) 246
black carbon reduction policies
245–7
colonial influences
indigenous peoples, attitudes to
336–7
Index

national resource management policies 335–7
cooperative federalism 190–93, 195
government emissions standards 245–6
foreign tort actions
  judicial approach 258–9
  *Kiobel v. Royal Dutch Petroleum Co.* 257, 262–5, 267–8
  leveraging litigation 265–8
targeting corporate officers under
  *Alien Tort Act* 264–5
  *Union Carbide Corporation* 259–62
Super Pollutant Emissions
  Reduction Act (2013) 246
water governance
  background 190–91
  *Clean Water Act* 70, 190–93
  compared with New Zealand regime 193–4
diffuse discharges, and 193–4
  environmental federalisation 190–93, 195
  national minimum standards 191–3
  National Pollutant Discharge Elimination System (NPDES) 191
  *Wetland Mitigation Banking* 70–71
  *Unocal case* 266–7

*Vilcambamba River case* 120, 127–33
von Carlowitz, Hans 54

Walker, S. 75
water governance see also Kenya; New Zealand; United States
  in Australia 33
customary law in
  generally 293–4
  human rights-based approach 301–2, 303–6
water, right to
  customary law, and 303–6
  enforcement 304
  as human right 302–3
  indigenous peoples, and 303–6
  right of access, and 303–4
Weintraub, Russell 258
Wellman, Carl 121, 123
Westerluns, S. 52
Whytock, Christopher 266
Woodman, J. 349
World Justice Project (ABA) 50–51
World Summit on Sustainable Development (2002) 56

*Yahoo case* 267–8