
6. Planetary boundaries *intra muros*: cities and the Anthropocene

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1. INTRODUCTION

It is a bleak vision that is evoked by Brendan Gleeson in his rumination about the role of cities for the future of the world, after the – nota bene – exit from the Anthropocene.

Cities, the new human homelands, will carry our species through the ‘terminal crisis’ transition to what must succeed to an entangled, failing modernity. It may indeed mark our exit from the Anthropocene to a world less tolerant of human existence.¹

Whereas geological scholars might still debate the time at which the world will or did enter the Anthropocene, the concept itself has taken firm hold across the natural and social sciences.² Among the various contributions to the debate, a stream of literature has emerged about the appropriate scale to use in dealing with the challenges of the Anthropocene. The Anthropocene confronts us with the boundaries of planet Earth and with the fact that humanity’s ‘safe operating space’ is under threat.³

The question of scale has led to innovative research in Earth system law and governance, which recognises on the one hand the relevance and importance of the planetary scale, while on the other hand pointing to a clear need to reflect on what is called ‘downscaling’.⁴ Can planetary boundaries be translated to non-global scales of law and governance? Or, as some have suggested, can’t the city take up its share of responsibility and enrol as a decisive actor in the governance of planetary boundaries?

This turn to the city is as inevitable as it is puzzling. It is inevitable to the extent that the Anthropocene as an all-encompassing reality will have repercussions at every governance level; the same is true for the various planetary boundaries. Yet, there is a puzzle here, or some might even say a paradox: why turn to the city to address a phenomenon as macro-level as the Anthropocene? Should solutions not emanate from higher-level echelons of global governance? At first sight, the turn to the city as a promising level for governance in the face of the planetary boundaries that are triggered by the Anthropocene is counterintuitive. The Anthropocene, as explained elsewhere in this book,⁵ stands for a possible new geological epoch into which the world has entered. The transition from one geological epoch to the next is perceived to occur at an extraordinarily macro or global level. After all, the discourse on

¹ Brendan Gleeson, *The Urban Condition* (Routledge 2014) 100.

² Ayşem Mert, ‘Democracy in the Anthropocene’ in Agni Kalfagianni, Doris Fuchs and Anders Hayden (eds), *Routledge Handbook of Global Sustainability Governance* (Routledge 2019) 282, 282–83.

³ See Kim and Kotzé, Chapter 3 in this book.

⁴ Ibid.

⁵ See Blebly, Holley and Milligan, Chapter 2, and Kim and Kotzé, Chapter 3, in this book.

the Anthropocene is about the general impact that humanity has on Earth – not in the hitherto superficial assumed sense, but in a more fundamental one, leaving an imprint on the hard rocks of planet Earth and through various other geological and natural markers.⁶ If the combined effects of human behaviour push against planetary boundaries, as the other chapters in this book show, any governance-related responses would presumably need to take place at the planetary level itself.

In the following reflections, we will not be able to solve this paradox. Instead, this contribution sets forth a dual argument. First, we reveal that the primary contribution that can be made by the turn to the city in debates on law and governance in the face of planetary boundaries lies in unsettling established categories of law and governance which are tied up with the interstate system that has an important role to play in the current conditions of the Anthropocene. Second, however, the city itself is inextricably bound up with the same conditions of the current sovereignty-driven and capitalist-oriented governance system. This inescapable paradox calls for renewed attention to the planetary boundaries within the city, to be found literally ‘*intra muros*’: the city and its governance is not a level external to the planetary boundaries. Rather, it is deeply implicated in these planetary processes, and without the city’s involvement, it may be hard for humanity to stay within a safe operating space.

Our approach can be understood as a variation of what urban scholars have called ‘planetary urbanisation’. The social practice of urbanisation has reached a point at which there currently are no places that are *not* part of the planetary urban fabric. This scale contributes to cities’ geological agency. We build on the work of Henri Lefebvre, Neil Brenner and Christian Schmid, who, among others, have pointed to the various contingencies of the ‘urban age’ in which we are said to live.⁷ As Brenner observes, ‘the world’s oceans, alpine regions, the equatorial rainforests, major deserts, the arctic and polar zones, and even the earth’s atmosphere itself are increasingly interconnected with the metabolic circuitry and spatiotemporal rhythms of planetary urbanisation’.⁸ At the same time, there are limits to the theory of planetary urbanisation from a legal perspective: while this theory offers a conceptual lens through which to appraise the embeddedness of cities in bigger planetary conditions, it has limited traction in legal terms. This is because law as a discipline and field of practice depends on formal categories which identify actors, and which are bestowed with certain competences by public law. Public international law translates these competences and powers into the category of personality and subjecthood.⁹ Accordingly, if we think about cities as actors in a global setting *from a legal perspective*, we will to some extent remain bound by formal categories and distinctions which might be unsatisfactory from the perspective of an approach of planetary urbanisation. This sensitivity speaks to the necessity to ‘downscale’ governance approaches to the planetary boundaries.¹⁰ At the same time, the theory of planetary urbanisation points to the fact that

⁶ Jorge Viñuales, ‘The Organisation of the Anthropocene: In Our Hands?’ (2018) 1 *International Legal Theory and Practice* 1, 4.

⁷ See the contributions in Neil Brenner (ed), *Implosions/Explosions: Towards a Study of Planetary Urbanization* (Jovis 2014).

⁸ Neil Brenner, *New Urban Spaces: Urban Theory and the Scale Question* (Oxford University Press 2019) 306–307.

⁹ On the notion of legal personality in international law see eg Catherine Brölmann and Janne E Nijman, ‘Personality’ in Jean d’Aspremont and Sahib Singh (eds), *Concepts for International Law* (Edward Elgar 2019) 678.

¹⁰ See again Kim and Kotzé, Chapter 3 in this book.

cities occupy different scales simultaneously: they are local, yet their urbanisation patterns are deeply interwoven with the very processes which have pushed us towards the outer limits of the planetary boundaries.

Insights from the planetary urbanisation approach might then help us better understand the limits of what cities can do. And yet, when aiming to bring interdisciplinarity to fruition, the formal side of law may also have something to offer. Simply rehearsing the theory of planetary urbanisation from a legal perspective, by replacing the State with the city, might lead to offering just another variation of ‘law is politics’. In this perspective, the city is inevitably bound up in broader networks and conditions whose forces it cannot control. While this is undoubtedly correct to a certain point, we wish to interrogate also whether there is something positive and concrete that the formal perspective of the law can offer to questions of cities in the Anthropocene. Rather than merely pointing to the embeddedness of the city in these planetary considerations, we aspire to bring the planetary boundaries home, as it were, to show how they are connected with the conditions in the city – *intra muros* – and how this affects the promise that cities hold for dealing with the planetary boundaries in the context of the Anthropocene.

In order to substantiate our two claims, the contribution will first turn to the governance challenges behind a demand for the urban turn for the governance of the Anthropocene and its fast approaching planetary boundaries (Section 2). Building on this analysis, we will examine in some detail the solutions which are on offer and which make a claim for the potential of innovative planetary boundaries governance that lies with cities (Section 3). Because these promises are rather vague, however, we seek to reveal some of the limits of the urban turn, in particular the prevailing impact of ‘the private city’, as well as the many unsettled questions about democratic participation at the local level (Section 4). We conclude with the observation that the main benefit of an urban focus in dealing with the Anthropocene lies with a shift towards ‘seeing like a city’ rather than ‘seeing like a state’, and we offer suggestions for future research (Section 5).

2. CITIES AND THE ANTHROPOCENE – THE GOVERNANCE CHALLENGES

It is not without reason that cities have recently received significant attention as a seemingly more appropriate level of governance for dealing with the manifold planetary boundaries-related governance challenges that are triggered in the Anthropocene.¹¹ These reasons relate to the particular connection between the nation state and sovereignty and the role that this combination has played with respect to the emergence of the capitalist world system (see Section 2.1). It is also debatable whether the interstate system and the law it has brought about leads to methodological shortcomings which stand in the way of effective governance for the Anthropocene (Section 2.2).

¹¹ See Sybil P Seitzinger et al, ‘Planetary Stewardship in an Urbanizing World: Beyond City Limits’ (2012) 41 *Ambio* 787; Daniel Hoornweg et al, ‘An Urban Approach to Planetary Boundaries’ (2016) 45 *Ambio* 567.

2.1 State Sovereignty and the Capitalist System

The Anthropocene emerged from a particular combination of capitalism and the interstate system which became the dominant paradigm for world order from late modernity.¹² Capitalism and the current interstate system are deeply imbricated in that they form two sides of the same coin: the international legal order facilitates (unregulated) corporate-driven capitalism.¹³ Some go so far as to argue that the precarious situation of our planet can only be explained by the toxic combination of a capitalist mindset and the vicissitudes of sovereignty, a system based on (the consideration of) ‘privatising’ benefits and socialising costs.¹⁴ This combination of factors arguably has played (and continues to play) a major role in pushing us towards planetary boundaries, if only for the reason that the principle of state consent, as the most direct consequence of sovereignty, allows States to choose not to commit to effective regulation to push back against current unsustainable practices with respect to energy consumption, waste production, ocean acidification and other developments.

While the Earth system has existed for well over four billion years, human life has only been an integral part of this system for the past 200,000 years. With human life, human society and its processes, human practices and products came to interact with the Earth system. While humans relate to Earth differently in different cultures, the idea of humans having *dominium*, that is, ownership and sovereignty over nature – deeply rooted in haughty interpretations of the biblical book of Genesis – has been at the core of western thinking about law and governance ever since early modernity.¹⁵ Colonial and post-colonial capitalism has further contributed to a form of international law that has been complicit in exploiting Earth’s natural resources and producing global inequality.¹⁶

In *The History Manifesto*, Jo Guldi and David Armitage observe: ‘the West has been on a long path to environmental exhaustion, moving from one energy source to another, generation by generation, a process that helped to give rise to the modern nation-state, at the time a form of “international government” of unprecedented size and strength.’¹⁷ They further point out that ‘capitalism, the nation-state, and rule by landlords are directly related to the environmental destruction that characterises the last two hundred years of the Anthropocene’.¹⁸ History of the *longue durée* enables us to see these relations, to reveal more sharply the shortcomings of the old ‘modern’ governance models. It also helps us to realise that the intricate relation of the modern State and its international governance system with capitalism has

¹² See Adelman, Chapter 4 in this book.

¹³ See Kim and Kotzé, Chapter 3 in this book.

¹⁴ Viñuales (n 6) 10–11.

¹⁵ On the relationship between sovereignty and property see, for instance, Martti Koskenniemi, ‘Sovereignty, Property and Empire: Early Modern English Contexts’ (2017) 18 *Theoretical Inquiries in Law* 355. See on *dominium* as given with human nature, Janne E Nijman, Grotius’ *Imago Dei Anthropology: Grounding Ius Naturae et Gentium* in Martti Koskenniemi, Monica García-Salmones Rovira and Paolo Amoroso (eds), *International Law and Religion: Historical and Contemporary Perspectives* (Oxford University Press 2017) 87.

¹⁶ For a vivid account see Sundhya Pahuja, ‘Conserving the World’s Resources?’ in James Crawford and Martti Koskenniemi (eds), *The Cambridge Companion to International Law* (Cambridge University Press 2012) 398, especially at 401–09.

¹⁷ Jo Guldi and David Armitage, *The History Manifesto* (Cambridge University Press 2014) 66.

¹⁸ *Ibid* 70.

produced the multiple intertwined crises of climate change, global governance and inequality, which have exclusively been caused by humans.

If indeed the interstate system and its focus on sovereignty is the problem, why not then pursue cities as alternatives to States? This rather bold type of ‘downscaling’, turning the governance of planetary boundaries upside-down, may for example be found in the work of the late Benjamin Barber. He has built the main argument of his essay on the rising power of cities in today’s world around this central consideration: ‘let cities, the most networked and interconnected of our political associations, defined above all by collaboration and pragmatism, by creativity and multiculturalism, do what states cannot.’¹⁹ Barber has a clear view of general State failure: ‘The nation-state once did the job, but recently it has become too large to allow meaningful participation even as it remains too small to address centralised global power.’²⁰ Cities, in comparison, ‘lack an appetite for sovereignty and jurisdictional exclusivity’, which ‘enable[s] them as agents of cross-border collaboration’.²¹ In solving contemporary challenges of global governance, Barber hence sees basically no role for States: ‘Never before has sovereign power been used so effectively to impede and thwart collective action.’²²

This is certainly an interesting argument, and one with merit, if only through its invitation to rethink the international system from the bottom upwards. It is, however, an altogether different question whether this fascination with cities rests on a solid empirical basis. Can the proposition be generalised that cities are indeed the more effective and responsible citizens of planet Earth, as compared to States? What is their share in the creation of the current conditions in which we live? Which ideological, political and economic factors drive their policies, also when they partner and network in the name of sustainability? We will return to these questions below.

2.2 Methodological Implications: The Strictures of the Interstate System and Its Law

A second and less obvious reason for the greater attention received by cities in the Anthropocene discourse is that a turn to the city might also facilitate responses to the challenge of interdisciplinarity. The ongoing anthropogenic crisis does not question only the current international institutions of law and governance. Guldi and Armitage argue that long-term thinking has to be given prevalence over short-termism, and call on all disciplines, including historians, to zoom out again to study the big picture and turn to what they call ‘*the public future*’.²³ With the existential implications of the Anthropocene’s imagery gradually sinking in, all disciplines need to confront the urgent questions of the crises of climate change, global governance and inequality. This challenge to rethink global governance and its anchor-pin, the modern State, for an anthropogenic future that will be *urban* takes (international) lawyers out of their comfort zone.²⁴ As observed by Viñuales, the Anthropocene ‘calls upon all disciplines,

¹⁹ Benjamin R Barber, *If Mayors Ruled the World: Dysfunctional Nations, Rising Cities* (Yale University Press 2013) 4; this account of Barber’s work is adapted from Helmut Philipp Aust, ‘Shining Cities on the Hill: The Global City, Climate Change and International Law’ (2015) 26 *European Journal of International Law* 255, 265–66.

²⁰ Barber (n 19) 5.

²¹ *Ibid* 71.

²² *Ibid* 147.

²³ Guldi and Armitage (n 17) 13.

²⁴ See also Hey, Chapter 9 in this book.

the entire body of human knowledge about the world, to analyse what is happening and how to face it'.²⁵

While interdisciplinarity is not a strength typically associated with legal academics, this might not be equally true for urban law scholarship. The genre of urban law has developed in close connection with other disciplines, ranging from sociology, to urban geography, to political science. So maybe 'seeing like a city'²⁶ is in and of itself more prone to the complexities of the Anthropocene than 'seeing like a state',²⁷ where a focus on the positivist legal framework necessarily entails a reduction of the complexities of real life that makes such a positivist legal framework unsuitable for the Anthropocene.

In any case, 'seeing like a city' might help us to develop a different understanding of the Anthropocene and might hence also contribute to downscaling governance approaches to the planetary boundaries. It could help us move away from generalising macro considerations and help us build a more sensitive, context-based and indeed localised language to deal with the Anthropocene and the planetary boundaries we are facing.²⁸ As formulated by Dahlia Simangan in a related move towards a more regional approach: 'Regional investigations can unpack the universalizing discourse on the Anthropocene and expose the differentiated impact of global environmental concerns [...] A regional level of analysis can also assist in bridging global action and local capacity.'²⁹

Simangan is not pursuing a specific focus on cities and urban questions in her work. Yet, her plea against the universal perspective on the Anthropocene resonates with those scholars who wish to turn the focus instead on what cities and their institutions can do to accommodate the many governance challenges of the Anthropocene and its planetary boundaries. In particular, highlighting the universalizing traits of both the prevailing Anthropocene discourse and the literature on planetary boundaries³⁰ has the potential to show that 'western paradigms continue to dominate the discussions about the Anthropocene, while global South perspectives remain under-represented'.³¹ Simangan rightfully points to the fact that it 'remains difficult [...] for vulnerable populations to exercise their agency within the prevailing anthropocentric, western-based and modernist practices and institutions of governance'.³²

At the same time, a note of caution should be heard as the city might not be the ultimate, or even most appropriate, locus for solutions to the manifold challenges of the Anthropocene. Kate Driscoll Derickson has put it quite provocatively: 'The city emerges as the *deus ex machina* of the Anthropocene.'³³ A similar observation could be made with respect to urban governance responses to planetary boundaries. Indeed, many hopes and aspirations formulated

²⁵ Viñuales (n 6) 7.

²⁶ Proposed by Mariana Valverde, 'Seeing Like a City: The Dialectic of Modern and Premodern Ways of Seeing in Urban Governance' (2011) 45 *Law & Society Review* 277.

²⁷ As coined by James C Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press 1999).

²⁸ For a similar point see Kim and Kotzé, Chapter 3 in this book.

²⁹ Dahlia Simangan, 'Where Is the Anthropocene? IR in a New Geological Epoch' (2020) 96 *International Affairs* 211, 212.

³⁰ See the literature overview by Kim and Kotzé, Chapter 3 in this book.

³¹ Simangan (n 29) 212.

³² *Ibid* 222.

³³ Kate Driscoll Derickson, 'Urban Geography III: Anthropocene Urbanism' (2018) 42 *Progress in Human Geography* 425, 426.

by and for cities share the same underlying assumptions as the supposedly debunked nation state and the global economic order it has created. Helga Leitner and Eric Sheppard have pointed out in this regard what ‘mainstream global urbanism’ consists of: ‘a set of ideas and practices rooted in the belief that free markets and neoliberal “good” governance policies will enable mega-cities in the postcolony to transform themselves into global cities.’³⁴ This is a subtle reference to a fact that is difficult to ignore: cities are in and of themselves the most visible contributors to and expression of the Anthropocene,³⁵ while the planetary boundaries run right through them.

3. INNOVATIVE URBAN GOVERNANCE AS AN ANSWER?

If States and law’s State-centrism are part of the problem, and if urbanisation is one of the main drivers of the disruption of the inner balance of the Earth system, should cities and urban governance then take the lead in confronting the governance challenges of the Anthropocene? Surely, replacing mainstream interstate-based thinking with mainstream (neoliberal) global urbanism will not do much good in seeking to overcome the dark sides of the Anthropocene. Yet, for the urban promise to take hold, an innovative approach to urban governance is arguably worth examining. And this raises a key question: if current (neoliberal) international institutions are not the ones we *necessarily* have to work with, could a turn to the city then fit the needs of the human species in the Anthropocene? After all, as James Lovelock has stated recently: ‘Cities have been the most spectacular development of the Anthropocene.’³⁶ And if this is true, could cities play a role in facilitating alternative systems of law and governance to respond to the challenges posed by the Anthropocene’s planetary boundaries?

In this section, we will take a closer look at what the urban promise may hold for some of the governance challenges of the Anthropocene and its planetary boundaries. We do so by first exploring the context in which this call for innovative governance has been developed. This context relates to the transformation of a narrative of urban crisis into one of urban resurgence (Section 3.1). We will then focus on a contribution by one of the most prominent scholars working on the relationship between law and planetary boundaries, Louis Kotzé, who has recently examined the potential of a turn to the city in this context (see Section 3.2).

3.1 The Context: from Urban Crisis to Urban Resurgence?

The increased prominence of urban governance in the Anthropocene is situated in a broader narrative of how cities have managed to transform themselves and their perception from the strictures of ‘urban crisis’. Philippopoulos-Mihalopoulos has pointed to such an ‘urban crisis’ that exists in the spheres of ecology, housing, health, population, economy and climate change.³⁷ This diagnosis chimes with the widespread underfunding of cities and local govern-

³⁴ Helga Leitner and Eric Sheppard, ‘Provincializing Critical Urban Theory: Extending the Ecosystem of Possibilities’ (2015) 40 *International Journal of Urban and Regional Research* 228.

³⁵ Gleeson (n 1) 10, 27 goes so far as to hold that ‘the urban age defines ... the Anthropocene’.

³⁶ James Lovelock, *Novacene: The Coming Age of Hyperintelligence* (MIT Press 2019) 50.

³⁷ Andreas Philippopoulos-Mihalopoulos, ‘Introduction: In the Lawscape’ in Philippopoulos-Mihalopoulos (ed), *Law and the City* (Routledge 2007) 1, 2.

ments throughout the world. This lack of resources is exacerbated by a simultaneous trend of decentralisation which leads to an increasing number of obligations being devolved to the local level of government.³⁸ Cities are then approached as ‘a remedy to the regional and global crisis’, since they can ‘ac[t] as flexible and creative platforms that can develop responses in a pragmatic and efficient manner’.³⁹ They are ‘the engine-rooms of human development as a whole’.⁴⁰

The turn to international law and governance can also be read as an attempt to respond to that *global* ‘urban crisis’. The fact that the globe is speedily urbanising, with an estimated 60 per cent of the world population expected to live in urban areas by 2040, increases this sense of urgency.⁴¹ The planetary boundaries are manifest in cities. An international legal system that is responsive to the challenge of avoiding humanity crossing the planetary boundaries has to do justice to the city and urban attempts to push back against these symptoms of crisis. Sustainable Development Goal (SDG) 11, as adopted by the United Nations (UN) General Assembly in 2015, may be read as an instigation of urban response to this crash in slow motion. The SDGs and Agenda 2030 are global governance initiatives, but through SDG 11 and its incumbent New Urban Agenda (NUA) the international community specifically (re-)affirms the role of cities as governance actors in sustainable development, and emphasises that urban law and governance should make cities inclusive, safe, resilient and sustainable.⁴² SDG 11 and the NUA are currently the most visible expressions of a broader trend towards the globalisation of urban governance.⁴³

This normative call to interrelate global and urban governance has triggered a rich stream of literature.⁴⁴ Oomen and Baumgärtel examine the rising role of cities and local governments in the implementation of international (human rights) law and governance against what they argue to be a situation of ‘state failure’ and ‘political deadlock’ at the level of national government around the globe.⁴⁵ They argue that ‘th[e] entry [of local governments] onto the [international] stage ought to be welcomed from the perspective of the effectiveness and legitimacy of human rights’.⁴⁶ This is so because human rights law and governance could become more ‘multi-layered’ and less formal, and could more effectively challenge the classical understand-

³⁸ The World Bank, *Entering the Twenty-first Century, World Development Report 1999–2000* (Oxford University Press 2000). See also, the Advisory Group on Decentralisation of UN Habitat, ‘Guidelines on Decentralisation and the Strengthening of Local Authorities’, which has been approved by the UN Habitat Governing Council UN Doc. A/62/8, Resolution 21/3, 20 April 2007.

³⁹ UN Habitat 2012/13 *State of the World’s Cities Report: Prosperity of Cities* at xi.

⁴⁰ *Ibid* at v, x–xi.

⁴¹ See Philippopoulos-Mihalopoulos (n 37); Doug Saunders, *Arrival City* (Heinemann 2010); Janne E Nijman, ‘Renaissance of the City as a Global Actor’ in Andreas Fahrmeir, Gunther Hellmann and Milos Vec (eds), *The Transformation of Foreign Policy: Drawing and Managing Boundaries from Antiquity to the Present* (Oxford University Press 2016) 209, 216–21.

⁴² UN Doc. A/RES/71/256, ‘New Urban Agenda’, 2017, available at <http://habitat3.org/wp-content/uploads/NUA-English.pdf>.

⁴³ See the contributions in Helmut Philipp Aust and Anél du Plessis (eds), *The Globalisation of Urban Governance: Legal Perspectives on Sustainable Development Goal 11* (Routledge 2019).

⁴⁴ See also the contributions in Helmut Philipp Aust and Janne E Nijman (eds), *Research Handbook on International Law and Cities* (Edward Elgar, forthcoming).

⁴⁵ Barbara Oomen and Moritz Baumgärtel, ‘Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law’ (2018) 29 *European Journal of International Law* 607.

⁴⁶ *Ibid* 629.

ing of legal subjecthood.⁴⁷ Ileana Porras similarly points to the changing role of the city in and through the move from ‘government’ to ‘governance’ as captured in UN-HABITAT’s concept paper *The Global Campaign on Urban Governance*, and as propagated by international organisations such as the UN and the World Bank.⁴⁸ She believes ‘[i]t is beyond doubt that cities – with their economies of scale, relative concentration of wealth, people, businesses, and educational institutions – have much to contribute to the pursuit of sustainable development and to the response to climate change. Less clear is whether cities alone can deliver.’⁴⁹ Be this as it may, the city clearly holds out particular promise to deal with planetary boundaries.⁵⁰ This promise is reflected in cities’ own ambitions as articulated poignantly – and by now famously – by former New York City mayor Bloomberg at the launch of the C40 Cities Climate Leadership Group in 2012: ‘We’re the level of government closest to the majority of the world’s people. We’re directly responsible for their well-being and their futures. So, while nations talk, but too often drag their heels, cities act.’⁵¹

In more recent international legal scholarship, the initial high expectations of cities for planetary boundaries law and governance have sobered. Still there is a clear interest in harvesting the energy that mayors and local governments generate, for example, around fighting the climate crisis through initiatives that hope to play a significant role in the prevention of humanity’s crash into atmospheric CO₂ concentrations of 350ppm, and for confronting other planetary boundaries rapidly coming into sight.

The initiatives of local governments are manifold. They seek collaboration across borders and continents, broker networks and organise around questions of climate change, housing and the right to the city, mobility, smart tech in the urban space, health and jobs for urbanites. They have turned ‘international’, not least because urban problems often have global origins and impacts, and are (expected to be) some of the main drivers of the implementation of Agenda 2030 and its SDGs. The initiatives around climate vary from networks, to exchanges of best practices of climate action, such as the C40 Climate network or Local Governments for Sustainability (ICLEI), to Carbonn, a shared and unified system of reporting climate data. Local governments have assembled in organisations such as United Cities and Local Governments (UCLG), which then enables them to participate in international organisations, such as the UN, the World Bank or the European Union. In turn, they have become recognised by, for example, the UN Human Rights Council for their role in the promotion and protection of human rights. Other initiatives relate to the limits of consumptive freshwater use. We all remember Cape Town being the first global city to run out of drinking water, in 2018, but shortages characterise many of the world’s major cities. The European Environmental Agency runs a programme called ‘Water in the City’ and UCLG is active on the localisation of SDG 6. With respect to wetland conservation, cities have been accredited by the Conference of the Parties (COP) of the Ramsar Convention for particular activities in safeguarding urban

⁴⁷ Ibid 629–30.

⁴⁸ Ileana Porras, ‘The City and International Law: In Pursuit of Sustainable Development’ (2009) 36 *Fordham Urban Law Journal* 537, 540.

⁴⁹ Ibid 543.

⁵⁰ See further Aust (n 19).

⁵¹ Cited in Michele Acuto, ‘An Urban Affair: How Mayors Shape Cities for World Politics’ in Simon Curtis (ed), *The Power of Cities in International Relations* (Routledge 2014) 69, 77.

wetlands.⁵² While cities develop transnational governance initiatives to respond to the local manifestations of global challenges, and to confront the many governance challenges of the Anthropocene and its fast approaching planetary boundaries, we concur with Kotzé and Viñuales that the governance of the Anthropocene requires even more innovative governance, possibly also of cities.

3.2 A Proposal on Urban Governance in Focus

Rakhyun Kim and Louis Kotzé have conceptualised a new legal paradigm for the Anthropocene, called Earth system law (ESL).⁵³ Proceeding from this paradigm, Kotzé assigns a critical role to cities in confronting the Anthropocene's socio-ecological crises.⁵⁴ In an admittedly optimistic vein, Kotzé suggests cities could be 'sites of regulatory innovation' to experiment and reimagine how we govern our world.⁵⁵ His is among a growing number of voices that envisage cities to be 'laboratories'⁵⁶ for experimenting with innovative law and governance arrangements.

Kotzé's intriguing argument unfolds in the following manner. With their potential for regulatory innovation, cities should lead in shaping ESL to end the complicity of (international) law and governance in the anthropogenic crises and to move it beyond neoliberalism, anthropocentrism, neocolonialism and the sanctity of property rights. Law itself then should 'be oriented by and based on an Earth system approach'. Reimagining an international law and governance system that departs from the notion of a complex Earth system (articulated as this also is by the planetary boundaries),⁵⁷ Kotzé argues, has to account for the significant role of the city in destabilising the complex Earth system. It is in cities that the Anthropocene and its socio-ecological crises 'concretise, particularise and localise'. While the anthropogenic crises become tangible in the city, 'the city' in turn may offer a scale of governance that makes action to confront human exploitive domination of nature feasible.⁵⁸ The city then is not one universal actor, but rather a multitude of laboratories 'foregrounding a critical awareness of unevenness that is necessary in relation to how Anthropocene [human and non-human] vulnerability should be understood and responded to'.⁵⁹ Through cities, ESL would be 'sensitive to *differentiated* vulnerabilities'. This reimagination involves a decentring of the State and the national level of government and a recognition of the city and the local level of government as 'influential governance actors' in a polycentric governance system.⁶⁰ Judging from cities'

⁵² See <www.ramsar.org/news/18-cities-recognized-for-safeguarding-urban-wetlands> accessed 6 June 2020.

⁵³ Louis J Kotzé and Rakhyun E Kim, 'Earth System Law: The Juridical Dimensions of Earth System Governance' (2019) 1 *Earth System Governance* 100003.

⁵⁴ Louis J Kotzé, 'Cities, the Anthropocene and Earth System Law' in Helmut Philipp Aust and Janne E Nijman (eds), *Research Handbook on International Law and Cities* (Edward Elgar, forthcoming).

⁵⁵ Ibid.

⁵⁶ Shanna Singh, 'Brandeis's Happy Incident Revisited: Cities and the New Laboratories of International Law' (2005) 37 *George Washington International Law Review* 537.

⁵⁷ Kotzé (n 54).

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ On polycentricity see Victor Galaz et al, 'Polycentric Systems and Interacting Planetary Boundaries – Emerging Governance of Climate Change – Ocean Acidification – Marine Biodiversity' (2012) 81 *Ecological Economics* 21.

(transnational) initiatives to fight climate change, cities are increasingly expected to respond in a more receptive way to these vulnerabilities and to be able to formulate a kind of governance that embraces ‘notions of care such as resilience and vulnerability’. Innovative urban governance is thus understood to produce regulatory innovations drawing on values such as care, humility, integrity, context-sensitivity and inter-generational solidarity.⁶¹ Cities and local governments then bring a scale, focus and value-orientation to polycentric governance, and the innovative, more responsive norms it produces, that makes them potentially more effective and legitimate actors in the Anthropocene.⁶² Globalising these innovative urban initiatives would give them the clout necessary to prevent crossing the planetary boundaries. To this end, a polycentric model of governance system may assist in conceiving ways of meeting the complexity of Earth system challenges that enrol the city.

Like Barber, Kotzé and others turn to cities as ‘ideal laboratories’ out of a disappointment in the top-down, State sovereignty-based approaches currently in place. Cities then become the scale of governance to which to turn for those trying not to despair over the Earth system’s disintegration and the ‘dysfunctional’ State-centric international law and global governance institutions that fail to live up to the existential threat to the human species. In this sceptical approach to States and international law and governance, the emphasis is on how sovereignty and geopolitical power games undermine good governance in and of the Anthropocene. While this approach importantly helps to draw out the implications of the Anthropocene for an alternative perspective on (international) law and cities, ultimately one cannot help but think that rather than a turn to the city, the involvement of all levels of government is needed and the limits of the globalisation of urban governance need to be taken into account.

4. INHERENT LIMITATIONS OF CITY GOVERNANCE

As sympathetic as we are towards this city-oriented approach, we wonder whether ‘seeing like a city’ could indeed automatically bring an end to exploitative hierarchies in law and governance. Moreover, while writing this chapter in ‘intelligent lockdowns’ in Amsterdam and Berlin due to the COVID-19 pandemic, we think that a challenge like a global pandemic requires an intricate interplay between the global, European, national and urban levels of governance.

More specifically, however, we see two main limitations for the promise that cities can deliver. The first one pertains to the prevalence of what one of us has in previous work called ‘the private city’ (Section 4.1). This refers to the dominance that private actors often have in defining what modern cities stand for. Second, we see an inherent tension between parts of the lofty rhetoric on the urban promise, especially with respect to their supposedly superior democratic legitimacy, and the actual practices by which participation in decision-making processes is realised (Section 4.2).

⁶¹ Kotzé (n 54), beginning of section 4.1.

⁶² See also Jeroen van der Heijden, ‘City and Subnational Governance: High Ambitions, Innovative Instruments and Polycentric Collaborations’ in Andrew Jordan et al (eds), *Governing Climate Change: Polycentricity in Action?* (Cambridge University Press 2018) 81.

4.1 The Private City

While we value the growing optimism around the role of the cities in global governance, we hesitate to declare the city to be the new ‘foundation’ of global governance replacing the State in the system altogether,⁶³ or indeed localism, ‘as a philosophy and a way of doing things’, as a ‘revolutionary’ alternative to liberalism and conservatism.⁶⁴ There seems considerable merit in the view that ‘(w)e should not romanticize localism’.⁶⁵ Urban diversity and density may not by definition be productive of tolerant, inclusive and resilient cities. Yet, local government and local democracy may play a role in facing current crises, even though we have to acknowledge their limitations with regard to addressing and standing in for, or rectifying, failings on national government level. Cities and local government have a very important role to play in keeping diverse societies united and peaceful: harvesting the strength and clout that comes with just and inclusive cities may empower them to counter growing inequality and to act in the face of planetary boundaries.⁶⁶ Apart from examining the city’s claim to democratic legitimacy and thus legitimate representation at the global level, here we wish also to raise a few more critical points about the contribution of cities to global governance with respect to the social-economic dimension of planetary boundary challenges. Our central questions are varied but straightforward: can functional cities replace dysfunctional States? Is innovative urban governance of resilient cities an alternative for confronting the complex, global governance challenges of the Anthropocene as reflected by the complex and deeply intertwined planetary boundaries? If the socio-ecological crises of the Anthropocene are (in part) attributed to an intricate web of relations between the modern nation state and its ‘ungovernance’ of the global economy, can cities escape this and *faire face* at the financial and economic forces of brutish capitalism?

The eminent work of Saskia Sassen in the past 30 years has shown how important it is to analyse what lies behind the internationalisation of the city. With her seminal book ‘The Global City’, an important realisation began to penetrate broader consciousness; namely, that ‘the global city’ is a product of late-modern capitalism.⁶⁷ Global cities are by definition the nodes from which the global economy is controlled and commanded; these are cities defined by corporate actors, which play with their ‘multinationality’ – drawing fiscal and other legal and financial benefits from this – and with their powerful significance for the urban labour market and urban consumerism.⁶⁸ The ‘blood circulation’, as it were, of these cities is then to a significant extent determined by the beating heart of these corporate actors, which is in turn facilitated by States and their ‘ungovernance’ of the global economy. These corporate actors are often considered to be too big to fail in a city. With their influence on the job market and

⁶³ Barber (n 19) 78.

⁶⁴ David Brooks ‘The Localist Revolution’, *New York Times* (New York, 19 July 2018).

⁶⁵ As president and director-counsel of NAACP’s Legal Defense and Educational Fund, Sherrilyn Ifill, wrote in a tweet in response to David Brooks: ‘The Localist Revolution’, *New York Times* (New York, 19 July 2018).

⁶⁶ See further on some of these issues Francois Venter, ‘The Challenges of Cultural Diversity for Safe and Sustainable Cities’ in Aust and Du Plessis (n 43) 151.

⁶⁷ Saskia Sassen, *The Global City: New York, London, Tokyo* (2nd edn, Princeton University Press 2001).

⁶⁸ On some of the challenges involved here see Anna Grear, *Redirecting Human Rights: Facing the Challenge of Corporate Legal Humanity* (Palgrave Macmillan 2010).

the wealth in the city, they may exert an undue influence on the definition of urban needs and interests. Examples of mayors and local governors travelling the world on trade missions with a view to luring big corporations to their cities are by now legendary. Once the corporations' headquarters are in place, cities will go to extra lengths in servicing them in order to keep them in the city. Sassen's work has contributed to what is today a vast body of literature on the effects of being a node in the global economy for urban life and citizens.⁶⁹ The global city then is in fact the corporate or 'private city', in contrast to the global 'public city', that is, the city as local government and local *demos*, which begins to step up to confront global challenges and work internationally and transnationally to keep a position in relation to the global 'private city'.⁷⁰ If the state and state-centric international law and governance do not regulate the private or corporate actors in the hubs of the global economy – that is, the global city – then who will? This is again where the city as the scale of governance with potentially regulatory power emerges.

The global private city, then, is not merely one of the drivers of the Anthropocene. The global private city is not just the *site* of the global economy, but also potentially the level of governance that could remedy the global ungovernance of the global economy. Cities all over the world are warned by the International Monetary Fund – a not entirely uninvolved actor in this context of global neoliberalism – about how local real estate markets are falling prey to global investors.⁷¹ Housing is crucial to urban issues such as health, mobility, inclusiveness, greenhouse gas emissions, biodiversity, and is still one of the major challenges of planetary urbanisation. The homes people inhabit are, after all, related to planetary boundary issues such as biosphere integrity, the production of waste, the use of water and energy, the risks to health issues or more general wellbeing needed for urbanites to participate in the transition towards sustainable urban life. A global city defined by its corporate citizens may actually be less responsive and responsible to the commons, and challenge local authorities, as the 'public' face of the city, to unite globally to generate a regulatory force.

So, while there is an inextricable link between cities and urban agglomerations and the current economic world order, the question emerges whether, and if so how, innovative urban governance or 'the public city' could do what States do not do – namely, to break through the current laws of neoliberalism and regulate the global economy to halt humanity's encroachment on planetary boundaries.⁷² If cities are among the most visible signs of contemporary capitalism (or its 'visual imprint', so to speak), is it there that the Anthropocene's social-ecological crisis can be curbed effectively? And is there a role for international law to play in guiding and constraining local governments?

Frug and Barron, the early identifiers of this emerging field of 'international local government law' – that is, the set of international norms which speak to the level of local government

⁶⁹ See only the contributions assembled in Neil Brenner and Roger Keil (eds), *The Global Cities Reader* (Routledge 2006).

⁷⁰ Janne E Nijman, 'The Future of the City and the International Law of the Future' in Sam Muller (ed), *The Law of the Future and the Future of Law* (Opsahl 2011) 213, at 217 *et seq.*

⁷¹ International Monetary Fund, *Global Financial Stability Report: A Bumpy Road Ahead* (IMF 2018). The situation on the ground in many cities around the world has triggered a conjoint response by local governments to the neoliberal global economy: the Municipalist Declaration of Local Governments for the Right to Housing and the Right to the City.

⁷² See eg John Linarelli, Margot E Salomon and Muthucumaraswamy Sornarajah, *The Misery of International Law* (Oxford University Press 2018).

and to issues of urban governance – warned how cities are currently being understood and approached by international law and organisations.⁷³ They explained, at least in part, the emergence of cities and their transnational networks as international actors by developments in the global economy. In the early 2000s one finds managerial and technical-economic language to discuss urban development, for example, in an annual report by Cities Alliance. This includes the language of ‘efficiency’, private investment and, to illustrate this ‘private’ identity, the much-cited ‘cities and towns are essentially markets’.⁷⁴ This tendency in international law and governance to approach cities as sites of consumption and production may have negative implications for cities as agents involved in the governance of planetary boundaries.

Yishai Blank and Ileana Porras were among the first in international legal scholarship to ask critical questions about this approach. Blank points to the past and how cities in, for example, the Anglo-Saxon legal world were private corporations: ‘The privatized conception of localities views them first and foremost as financially self-sufficient entities, whose main goal is to advance private economic development, and efficiently manage local services to their residents.’⁷⁵ In other words, he underscores the private economic DNA of cities. So, while representative of the local *demos*, currently cities are constituted to a large extent by economic globalisation. In the neoliberal world, moreover, they are approached often as private corporations concerned about their branding and market value, that is, the local investment climate. This focus on local (short-term) economic interests is difficult to reconcile with urban governance that is enrolled in planetary stewardship.⁷⁶ The ‘public-oriented’ conception of local governments came under severe pressure in the past few decades when the city became entangled in international institutional relations and policies through organisations such as the World Bank and international financial institutions. They propagate, for example, ‘governance’ over ‘government’, therewith accommodating and engaging the private sector in governance.⁷⁷ These international organisations, often with a developmental mandate, approach the city mostly as an economic puzzle, as a space where public welfare is promoted by stimulating and accommodating the localisation of capitalism, with all its (unintended) consequences.⁷⁸

While authors such as Frug and Barron and Blank explicate the ‘private corporation’ origins of cities, Porras, points to how the internationalisation of the city is also to a large extent pushed by late-modern capitalism and the privatisation that comes with it, while explaining the problematic side of these trends.⁷⁹ In several of our own publications, we have expressed

⁷³ Gerald Frug and David J Barron, ‘International Local Government Law’ (2006) 38 *The Urban Lawyer* 1.

⁷⁴ Cities Alliance, Annual Report 2004 <www.citiesalliance.org/resources/knowledge/cities-alliance-knowledge/annual-report-2004> accessed 24 May 2020.

⁷⁵ Yishai Blank, ‘The City and the World’ (2006) 44 *Columbia Journal of Transnational Law* 868, 874 and 872: ‘a conception of local governments as private corporations whose main goal is to be financially viable and selfsupporting, provide good services to their consumer-residents, and “foster” democracy (rather than manifest it) is emerging, replacing the more public-oriented one.’

⁷⁶ Seitzinger et al (n 11). Planetary stewardship is defined ‘as the active shaping of trajectories of change on the planet, that integrates across scales from local to global, to enhance the combined sustainability of human well-being and the planet’s ecosystems and non-living resources’.

⁷⁷ See eg Helmut Philipp Aust, *Das Recht der globalen Stadt – Grenzüberschreitende Dimensionen kommunaler Selbstverwaltung* (Mohr Siebeck 2017) 56.

⁷⁸ See further Michael Riegner, ‘International Institutions and the City: Towards a Comparative Law of Global Governance’ in Aust and Du Plessis (n 43) 47–50.

⁷⁹ Porras (n 48) 563–66.

concerns about an uncritical understanding of the global city and the internationalisation of the city. We have taken the view that the global city by itself does not guarantee a concern for the urban *bonum commune*, and this may explain why the global (private) city has triggered the rise of the global public city.⁸⁰ That said, this public city, including local governments and their networks such as C40, is supported by private actors (such as the Ford Foundation) and international funding mechanisms such as World Bank programmes.⁸¹ Oomen and Baumgärtel also argue that cities are easy targets for big money and neoliberal policies giving way to the privatisation of urban public services and public goods.⁸² In our view, human rights and other open-textured norms such as ‘inclusivity’ or ‘sustainability’ do not automatically lead to improvements for urbanites as they provide space for politics; to the localisation of globalisation; and to a reproduction of pre-legal or pre-policy power dynamics and interests. If the private city is actually so much in charge of the governance of the city, how then may urban governance mitigate the urban impact of globalisation and neoliberal capitalism on the Earth system?

First, the ‘innovative urban governance’ discourse needs to pay attention to which version of the city is in the driver’s seat. It is like with any actor or field of law – power relations are crucial, and they illuminate the struggles between urban identities and between the private and the public city. In an attempt to confront the effects of today’s capitalism on their cities and housing markets, urban governments have united transnationally, and with their ‘Municipalist Declaration of Local Governments for the Right to Housing and the Right to the City’, called upon the UN for support in their attempts to resist global investors that try to remodel their cities into exclusive markets and commodities. However innovative this attempt is, and however well in tune with social movements such as ‘the right to the city’ alliance these may be,⁸³ they are not sufficient when aiming for a ‘just city’.⁸⁴

As Jorge Viñuales points out, to truly fight rising inequality globally, within and without cities, and planetary destruction, governance of the Anthropocene requires a fundamental reorganisation of our production and consumption processes.⁸⁵ And this is where international law and governance could play a critical role in tandem with cities to address the following questions: how can cities, especially global and mega-cities, play a more prominent role in the international – or multi-level – legal reorganisation of the aforementioned processes? Is it sufficient to conclude a bilateral memorandum of understanding at the level of cities, for example, between Chicago and Mexico City to counter negative effects of unsustainable trade, or is that effort merely the product of neoliberalism, which means that we would need more

⁸⁰ Nijman (n 70) 217–18.

⁸¹ Aust (n 19) 263.

⁸² Oomen and Baumgärtel (n 45) 613.

⁸³ See the website of the Right for the City alliance: <<https://righttothecity.org/>> as well as various takes from the literature: Barbara Oomen, Martha F David and Michele Grigolo (eds), *Global Urban Justice* (Cambridge University Press 2016); Barbara Oomen and Esther van den Berg, ‘Human Rights Cities: Urban Actors as Pragmatic Idealistic Human Rights Users’ (2014) 8 *Human Rights & International Legal Discourse* 160; Michele Grigolo, *The Human Rights City: New York, San Francisco, Barcelona* (Routledge 2019) 54–56.

⁸⁴ See further Heather Campbell and Susan S Fainstein, ‘Justice, Urban Politics, and Policy’ in Karen Mossberger, Susan E Clarke and Peter John (eds), *The Oxford Handbook of Urban Politics* (Oxford University Press 2012) 545; Margaret Kohn, *The Death and Life of the Urban Commonwealth* (Oxford University Press 2016) 6; Grigolo (n 83) 19–21.

⁸⁵ See, in general, Viñuales (n 6).

fundamental measures to redirect the processes that led us to the current anthropocenic crises in the first place?⁸⁶ If Viñuales is right when he says that ‘[w]e need to go beyond addressing externalities and concentrate on addressing the transactions themselves’, this means rethinking and changing our defining legal categories.⁸⁷ Second, and consequently, we tend to think that effective regulation of the Anthropocene to curb and prevent further degradation of the Earth system requires cities to step up, but only in the context of a mutually reinforcing relationship between cities and States. If cities are indeed drivers of the Anthropocene and thus have geological agency, are there ways to flip this into a constructive, more far-reaching role in Anthropocene governance? Is it possible to water down the role of sovereignty, by strengthening the role of city governments? The Paris Agreement and the negotiations leading to it may have been an attempt in this direction⁸⁸ – but one which has so far not proven to be successful, as the States have reasserted themselves as central actors in the global climate change regime.⁸⁹

Finally, we are also critical about decentralisation – indeed one of the trends relevant to the internationalisation of cities – exactly because it also allows for certain (power) dynamics to flourish. One of us has earlier expressed our concerns about the ongoing promotion of decentralisation. Often decentralisation promotes a particular vision of the city, with decentralisation and an emphasis on neoliberalism going seemingly hand in hand.⁹⁰ With the decentralisation of policies, we see a risk of privatisation of governmental tasks that are supported by smart tech. So-called ‘smart city’ solutions have to be critically considered as possible power grabs, instead of a reorganisation of production and consumption processes.

4.2 Local Democracy and Its Limits

As we have seen above, part of the fascination with the city in the Anthropocene discourse lies in the fact that it seemingly offers the promise to address the shortcomings of the nation state by embracing a different form of governance at the local level; a form of governance which is devoid of the nation state’s proverbial desire to protect State sovereignty and to put its own interests first. This governance is arguably experimentally driven and bottom-up; it values scientific expertise and pays close attention to the needs of the citizenry and the inhabitants of cities more generally. Yet, much of the innovative governance promise has the imprimatur of privatisation and is smitten with the technological fix, through a fixation on resilient and smart cities. Here lies an inherent tension for the urban promise in the Anthropocene: much of the fascination for what cities can offer to tackle pressing global problems lies in their alleged greater democratic legitimacy, their sensitivity to local needs and conditions – in other words,

⁸⁶ See for example the memorandum of understanding to establish the ‘Chicago – Mexico City Global Cities Economic Partnership’ to ‘[f]oster trade in goods and services in key sectors, as included in Annex A, compliant with the rules of NAFTA’: <www.brookings.edu/wp-content/uploads/2016/07/GCEP-CHI-MEX-MOU_FINAL.pdf> accessed 23 June 2020.

⁸⁷ Viñuales (n 6) 9.

⁸⁸ At some point prior to the final negotiations, the idea was ventilated that cities could self-report contributions to cut greenhouse gas emissions on a par with states: see further Helmut Philipp Aust, ‘The Shifting Role of Cities in the Global Climate Change Regime: From Paris to Pittsburgh and Back?’ (2019) 28 *Review of European, Comparative and International Environmental Law* 57, 62. See also Verschuuren, Chapter 13 in this book.

⁸⁹ *Ibid.*

⁹⁰ Nijman (n 41) 216–21.

their closeness to the proverbial grassroots. At the outset it should be noted that democracy can take many forms, also at the local level. It can comprise elements of representative as well as deliberative democracy, and may also include elements of the direct consultation/participation of citizens and non-citizens in decision-making processes.⁹¹ This relationship between cities and democracy is crucial for the governance discourse concerning planetary boundaries. As Kim and Kotzé argue in this book, it is not just an important imperative to downscale governance approaches to planetary boundaries, but also to democratise them.⁹² Their notion of democracy is ambitious insofar as it transcends established political categories like the people of a given State. In this respect, the urban level might indeed be a useful laboratory for experimenting with different forms of democratisation.

Arguably one benefit of the city level is indeed that it *can* be closer to people. Individuals might find it easier to relate to a city with a sense of belonging than to the abstract notion of a nation state. This, however, is not a given – the resurgent waves of nationalism and populism throughout the world can be understood as a counter-argument, pointing to the need for some parts of the population to express their sense of belonging not through allegiance to a (supposedly liberal and cosmopolitan) city and its governance, but rather to the level of politics which might be more attuned to practices of exclusion.⁹³

Here could indeed lie a certain promise with regard to urban approaches to the global governance challenges of the planetary boundaries. If the challenge is to rethink ‘political agency in a democratic Anthropocene’ by building on the ‘complex interconnectedness between human/non-human, self/other and nature/society’,⁹⁴ the scale of the city might prove to be more hopeful than the level of the nation state. This assumption can build on insights into democratic experimentation at the local level and there are already some examples of this happening across the globe. One example is the possibility for European Union (EU) citizens to vote at the local level also in EU member states whose citizenship they do not hold (Article 22 Treaty on the Functioning of the European Union (TFEU)). Another example of innovative inclusionary practices at the local level pertains to the concept of so-called participatory budgets, which are now used by several cities worldwide. Based on an initiative in the Brazilian city of Porto Alegre, this involves the administration of part of the public budget by the city’s inhabitants.⁹⁵ Also here, participation is not subject to the condition of citizenship. Porto Alegre has also made judicious use of this form of public administration to create an image of itself as a ‘global solidarity city’, for example by hosting the World Social Forum,

⁹¹ For a controversial proposal see David van Reybrouck, *Against Elections: The Case for Democracy* (Bodley Head 2016); on the relationship between citizenship, democracy and cities see also Maarten Prak, *Citizens without Nations: Urban Citizenship in Europe and the World c. 1000–1789* (Cambridge University Press 2018).

⁹² Kim and Kotzé, Chapter 3 in this book.

⁹³ From the burgeoning literature on populism see Jan-Werner Müller, *What Is Populism?* (Princeton University Press 2016); Janne E Nijman and Wouter Werner, ‘Populism and International Law: What Backlash and Which Rubicon?’ (2018) 48 *Netherlands Yearbook of International Law* 3; Heike Krieger, ‘Populist Governments and International Law’ (2019) 30 *European Journal of International Law* 971; Helmut Philipp Aust, ‘The Democratic Challenge to Foreign Relations Law in Transatlantic Perspective’ in Jacco Bomhoff, David Dyzenhaus and Thomas Poole (eds), *The Double-Facing Constitution* (Cambridge University Press 2020) 345, 347–52.

⁹⁴ Mert (n 2) 286.

⁹⁵ Monica Salomon, ‘Paradiplomacy in the Developing World’ in Mark Amen et al (eds), *Cities and Global Governance: New Sites for International Relations* (Ashgate 2011) 45, 53.

understood to be the counterpart to the (neoliberal and capitalist-oriented) World Economic Forum in Davos. These are examples of attempts to propagate the idea of participatory budgeting and for cities to assume the role of 'norm entrepreneur'.⁹⁶ Both examples also illustrate the potential for political participation among non-citizens at the local level. At the same time, the examples underline the transnational dimension of such forms of experimentation: in the case of voting rights for EU foreigners at local level, purely national notions of the legitimacy subject are partially dissolved. This leads to the formation of multi-layered loyalties, namely to more than just one nation state and to the community in which the EU citizens in question live. By contrast, participatory budgets are an example of a transnational idea originating at the municipal level before being disseminated through a specific understanding of alternative forms of politics. Thinking about democracy in the Anthropocene in city terms might present a chance to unlearn parts of what has come to be known as the 'state-level bias' of democracy.⁹⁷ This might arguably also help to think further about the necessary democratisation of governance approaches to planetary boundaries as advocated by Kim and Kotzé.⁹⁸

Obviously, these findings cannot and should not be easily generalised. Many cities around the globe are not primarily sites of experimentation for new forms of democratic governance. Exposed to severe financial constraints, persistent conditions of urban poverty and marginalisation of large parts of the population as they are, many cities struggle to provide basic services to their citizens while being confronted with a plethora of responsibilities decided upon at the higher level of the State apparatus. There is accordingly the lingering real risk of focusing too much on the exotic flowers of successful and fascinating urban experiments while overlooking the day-to-day conditions in which many cities, their local governments and citizens have to slog away. What is more, it is not self-evident that what is perceived first as progressive experimentation at the local level is necessarily beneficial to the greater good. Think of the current hype for the sustainable and green city – all these places cannot exist independently of their respective *Hinterland*, not to mention the bigger global supply chains in which they remain embedded even if they have successfully deindustrialised and reconverted wastelands into hipster-compatible urban waterfronts. There is a 'local trap' in city thinking about the Anthropocene: 'small is not always beautiful or intrinsically "good"; small-scale, or "bottom-up", direct democracy practices – often executed at a neighbourhood level – can bring about consequences that are negative at a larger scale, especially if decisions are inconsiderate toward other neighbouring communities.'⁹⁹

Eventually, the Anthropocene and its planetary boundaries evoke the big question: whether all these considerations will be moot anyway. Does the Anthropocene not eventually call for some kind of ecological state of necessity? Will the challenges for survival on planet Earth become of such magnitude that considerations of democratic legitimacy will ultimately become less important? The various global responses to the COVID-19 pandemic may have given us some first glimpses of that unwieldy future. Whereas there have been sound and scientifically valid reasons for the various forms of lockdown with which States and cities around the world have tried so far to get the spread of COVID-19 under control, there has been

⁹⁶ Salomon (n 95) 58.

⁹⁷ Mert (n 2) 288.

⁹⁸ Kim and Kotzé, Chapter 3 in this book.

⁹⁹ Ihnji Jon, 'Scales of Political Action in the Anthropocene: Gaia, Networks, and Cities as Frontiers of Doing Earthly Politics' (2020) 34 *Global Society* 163, 172.

a sense of inevitability: nothing else was imaginable, ‘there is no alternative’. The space for politics seems to have been considerably reduced, which is of course not the outcome of an apolitical process. For cities and their authorities, the order of the day seems to be no longer experimentation for a shiny future urban age, but simply ensuring the survival of their population. It is too early to tell, but it seems not entirely unrealistic that as a result, we might also see a re-emergence of the strong, prominent, centralised State.¹⁰⁰

This survivalist turn of urban governance can build on previous and much-hyped discourses on sustainable cities, resilient cities, smart cities and the like. It is particularly the ideal of the smart city which exposes the weak foundations of current hopes for rescuing democracy at the local level. Parts of the planetary boundaries literature seem to embrace a similar belief in the objective and indisputable nature of scientific research that animates smart city ideals. The approach is comparable to the extent that it assumes that there can be an easy way towards the ‘right’ solution, which just needs to be implemented.

The vision of a smart city promises interconnection through data networks of various infrastructure devices.¹⁰¹ If these devices interact directly, it is assumed, the provision of public services can be much more efficient. Interventions into the working of the system take place on a real time basis. Ultimately, the city would become a space in which the real world and the virtual world meet.¹⁰² Ecosystems of sensors would ‘collect information from urban space, and an array of network-enabled actuators can subsequently transform that space. Data-driven feedback loops turn the city into a reflexive test-bed and workshop for connected habitation in enmeshed digital and physical space.’¹⁰³ Consequently, what we would see would amount to a merger between social reality and digital technology.¹⁰⁴ This need not be the end: in future, digitally integrated transplants into humans could take this even further, thereby tearing down boundaries between human agency and machine-driven processes.¹⁰⁵

It is with respect to the ideal of the smart city that many of the themes of this chapter intersect: this ideal holds the promise of innovative governance which can be put to test in a local laboratory. Smart city technologies will arguably contribute to better management of resources, waste and emissions and might hence contribute to pushing back against crossing the planetary boundaries. On a superficial level, smart city solutions foster participation, as public preferences are supposedly generated by a form of collective (‘swarm’) intelligence, based on real-life preferences of individuals engaging with such systems. And smart city schemes are often implemented by corporate actors.

¹⁰⁰ Related to this concern is the question of how urban density will be regarded in a post-COVID-19 world. First reflections on this question can be found in Ian Klaus, ‘Pandemics Are Also an Urban Planning Problem’ (Bloomberg CityLab 6 March 2020) <www.citylab.com/design/2020/03/coronavirus-urban-planning-global-cities-infectious-disease/607603/> accessed 23 June 2020; and Michele Acuto, ‘Will Covid-19 Make Us Think Differently of Cities?’ (New Cities Blog 20 March 2020) <<https://newcities.org/the-big-picture-will-covid-19-make-us-think-cities-differently/>> accessed 23 June 2020.

¹⁰¹ This paragraph is adapted from Helmut Philipp Aust, ‘The System Only Dreams in Total Darkness: The Future of Human Rights Law in the Light of Algorithmic Authority’ (2017) 60 *German Yearbook of International Law* 71, 77.

¹⁰² Carlo Ratti and Matthew Claudel, *The City of Tomorrow: Sensors, Networks, Hackers, and the Future of Urban Life* (Yale University Press 2016) 20.

¹⁰³ *Ibid.* 23.

¹⁰⁴ Steffen Mau, *Das metrische Wir: Über die Quantifizierung des Sozialen* (Suhrkamp 2017) 41.

¹⁰⁵ Ratti and Claudel (n 102) 68; Lovelock (n 36).

The ideal of the smart city not only stands for a deeply ingrained belief in technocratic solutions; it also triggers important questions on the future of democratic legitimacy of urban governance in the Anthropocene. These concerns derive from the impetus to favour output over input legitimacy in the face of the magnitude of the crisis of the Anthropocene.¹⁰⁶ Whereas the two need not be diametrically opposed concepts relating to each other in a zero-sum manner, output legitimacy has a certain propensity to justify ends over means. If the survival of mankind as such is at stake, who can argue against the allegedly best technological fix? However, the smart city might usher in a ‘post-political’ phase of urban governance.¹⁰⁷

At the same time, the fixation on smart and resilient cities as innovative forms of urban governance suffers from the very same attachment to the technocratic fix that has characterised the conditions which have brought us closer to reaching the outer limits of the planetary boundaries, while exiting the safe operating space in doing so. As Ayşem Mert has argued, something different is needed: ‘The first step towards democratic governance in the Anthropocene is, then, to step back from quick fixes, which promise unrealistically easy and efficient solutions to difficult problems without deep alterations in contemporary socio-economic structures.’¹⁰⁸

5. CONCLUSION

It is hence with a good degree of ambivalence that we conclude this chapter. While we are sympathetic to the ‘urban promise’ for governing the Anthropocene, we also see many inherent limitations. In particular, powerful cities are emanations of the same interstate system which supposedly needs to be overcome in order not to cross the planetary boundaries. And urban governance is faced with manifold challenges itself, stretching from housing crises, to underfunding, to the new realities of the COVID-19 pandemic.

At the same time, we think that ‘seeing like a city’ is at least a useful heuristic paradigm change insofar as it unsettles established categories of the State and its law. It can have a useful and much-needed destabilising effect which also forces international lawyers out of their comfort zone. However, as Mariana Valverde has remarked, ‘[s]eeing like a city is not the polar opposite of “seeing like a state” [...] as cities in all parts of the world do indeed often see “like a state”’.¹⁰⁹ It is rather that ‘[t]he phrase is meant to indicate the pragmatic approach that uses both old and new gazes, premodern and modern knowledge formats, in a nonzero-sum manner and in unpredictable and shifting combinations’.¹¹⁰

If one of the findings of the present chapter is the need to unsettle established categories of law and governance and to start thinking of different categories that may serve the transition from our current unsustainable way of living to a future sustainable one, what are we thinking of? We see a vast array of open research questions for the future. A most important question, especially for the safeguarding of democratic legitimacy in the Anthropocene in a world which

¹⁰⁶ See, for instance, Benjamin Franklen Gussen, ‘On the Hypotactic Imperative for a Transition from the Anthropocene to the Sustainocene’ in Michelle Lim (ed), *Charting Environmental Law Futures in the Anthropocene* (Springer Nature 2019) 181, 184.

¹⁰⁷ Derickson (n 33) 431.

¹⁰⁸ Mert (n 2) 284–85.

¹⁰⁹ Valverde (n 26) 281.

¹¹⁰ *Ibid.*

is at once also fighting against crossing planetary boundaries, concerns the representation of both urbanites and people living in the proverbial *Hinterland*. What does the growing focus on an urbanising planet mean for the representation of the non-urban? In a way, the emergence of the modern State was an answer to that problem. It solved a power struggle between cities and their surrounding territories. If cities become more powerful again, this may not necessarily bring us back into a new Middle Age, but it may be another sign that at least a particular era of the nation state is coming to an end. We are not arguing that States will disappear any time soon, or that they will no longer be the most important actors at the international level. But with the growing realisation that the interstate system may fail us in the struggle to keep a safe distance from the planetary boundaries, the need to find alternative governance models is more acute than ever. Cities may offer some promise in this regard, in particular when powerful cities form coalitions and exert pressure on States, and the international (economic) law and governance they uphold, to get their act together.

But too often, we fear, there is not enough substance behind the façade of the current hype for all things urban. Preventing humanity crossing the planetary boundaries, and the potential contribution of cities in this respect, will hence require even more out-of-the-box thinking. It will require a reflection on the outgrowth of capitalism and the role that both States and cities play in this regard. Some might want to go even further, and this would be another research field for the future: namely, how to form a symbiosis between a growing role of cities for planetary governance and attempts at personification of the non-human. We are not sure ourselves whether the move towards granting legal personality to non-humans (such as a river or the biosphere) will make for palpable change in the real world.¹¹¹ But what we do know, given the inescapability of the planetary boundaries' limits, is that we need all the legal imagination and creativity we can get.

¹¹¹ Gunter Teubner, 'Rights of Non-Humans? Electronic Agents and Animals as New Actors in Law and Politics' (2006) 33 *Journal of Law and Society* 497, 515; Marina Brilman 'Environmental Rights and the Legal Personality of the Amazon Region' (2018) *EJIL Talk!* <<https://www.ejiltalk.org/environmental-rights-and-the-legal-personality-of-the-amazon-region/>> accessed 23 June 2020.