CONTENTS

Foreword, *by Upendra Baxi* ..... xi
Acknowledgments ..... xv

Introduction ..... 1

Chapter One Globalization and World Governance: A Preliminary Discussion ..... 7

Introduction: Understanding the Impact of Globalization ..... 7
A Preliminary Discussion of the Possibility of a World State ..... 9
Some Difficulties with "World State Institutions" ..... 15
Teleology and Causal Explanations: The Better Alternative ..... 17
From Biological to Social Systems? ..... 19
Complex Systems and the Problem of Surprises ..... 20
European Citizenship: A Blueprint for Cosmopolitanism? Identity and Democracy ..... 22
A World State Reconsidered ..... 28

Chapter Two Globalization as "Plunder", "Exploitation" and "Ecoviolence": A Causal Analysis ..... 31

Introduction ..... 31
Chimni on a Marxist Course for International Law ..... 34
The "Right to Development"? ..... 36
Introduction to the History of Development and International Law ..... 40
Chimni on Sen, Development and International Law ..... 44
"Exploitation": A Marxist Category? ..... 46
"Plunder" and Covert Illegality ..... 48
From Economics to Biological Integrity: The Case for Ecoviolence ..... 51
State Responsibility for Environmental Harms and its Difficulties ..... 53
Ecoviolence and the Responsibility to Protect ..... 60
Sovereignty as Responsibility: The Report of the International Commission on Intervention and State Sovereignty ..... 64

Chapter Three Hazards, Ecoviolence and the Need for World Law ... 67

Introduction to the Possibility of New Organizations for Protection from Collective Hazards ... 67
A World Environment Organization: A Better Approach to the Protection of Collective Human Rights? ... 70
Some Preliminary Considerations ... 73
UNEO: Another Proposal for Global Environmental Governance ... 76
"Employing Public Health for Global Justice"? ... 79
Globalization and Public Health: The Disappearance of State Responsibility in International Law ... 81
A "Lawless World" and Global Warming: Environmental Harms and Domestic Law ... 84
Water as Danger and the Negative Consequences of Climate Change ... 86
The Kivalina Complaint and "Civil Conspiracy Allegations" ... 88
Connecticut et al. v. American Electric Power Company et al.: New Hope in Old Doctrines ... 92
The *Parens Patriae* Doctrine: An Old Principle and a Novel Application ... 93
The Public Trust Doctrine: A Discussion ... 98

Chapter Four Cosmopolitanism and Neoliberal Democracy in Conflict ... 103

Introduction: Adopt World Governance or Modify Existing Institutions? ... 103
State Sovereignty Revisited ... 105
Plan Colombia and the Indigenous Peoples of the Colombia–Ecuador Border Region ... 108
A Brief Overview of the Constitutional Protection Available for the Environment in Colombia and Ecuador ... 111
The State and Neoliberal Globalization: Democracy v. Principles and *Jus Cogens* Norms ... 113
The Limits of Legal Positivism for World Governance ... 115
The Content and Limits of *Jus Cogens* ... 119
Attacks on the Human Person ... 121
Ecocrimes as Forms of Genocide: A Possible Way to Link Environmental Crimes and *Jus Cogens* ... 124



*Jus Cogens* and *Erga Omnes* Obligations in Defence of the Collective ... 129
Current Use of *Jus Cogens*: Advisory Opinion on Genocide and Bosnia-Herzegovina v. Yugoslavia ... 131
The Reality of International Law v. Cosmopolitanism ... 133

Chapter Five The Right to Water: Israel v. Palestine (A Case Study) ... 137

Introduction ... 137
Self-Determination, State-Making and Collective Rights: Israel and Palestine ... 138
The Role of the United Nations and Collective Human Rights ... 140
The Influence of the Early History of the United Nations ... 141
National Protection and Religious Beliefs: Israeli Policies and the Palestinians ... 143
"National Protection" and the Case of Operation Cast Lead ... 149
"Water is a Human Right": International Law v. Policies of Denial ... 152
International Law in Palestine and the Implications of the Right to Water ... 159
The Politics of "Plunder" ... 161
Genocide or Crimes Against Humanity? ... 164
Ratner's Approach: Comparing "Evils" ... 165
Crimes Against Humanity Reconsidered ... 167
Conclusion ... 168

Chapter Six The United Nations and International Law: Is World Governance the Way Forward? ... 173

Introduction: Globalization and Legal Violence—A Review of Some Problems ... 173
Neoliberal Democracies and Human Rights: Neglected Customary Law Requirements ... 178
The Current Responsibility of States for Human Rights ... 180
"In Larger Freedom: Towards Development, Security and Human Rights for All" ... 185
Aggression and Terrorism in International Law: Violence Beyond Plunder ... 190
From 1972 to 2005: Working on an Impossible Definition ... 191

The Issues: Terrorism and Collective Rights ..... 193
Global Governance and the Imposition of "External Constitutions" on States ..... 197
Global Governance for Collective Security ..... 199
Fairness in Institutions and the Role of the Security Council ..... 200
A World State? The Possibility of Global Change in Governance ..... 202
The European Union: A Model for a World State? ..... 204
Cosmopolitanism and Global Change: The Need for "Dual Democracy"? ..... 208

Appendix I List of Cases ..... 211

Appendix II List of Documents ..... 215

References ..... 219

Index ..... 233