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# *Beyond the Anthropocene:*

## *An Ecocentric and Rights of Nature Approach to Climate Justice*

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## Abstract

*The age of the Anthropocene has damaged the planet in unimaginable ways leading to the crisis of climate change, which poses an existential threat to all life on Earth. In reaction to this crisis there has been a call for climate justice. Climate justice is often viewed as a means to protect humans and consequently human rights. This paper explores the idea that there can be no protection of either without first protecting the Earths ecosystems. It argues that we forego the current anthropocentric model of climate justice in favor of one that is ecocentric. It addresses that this approach is best informed by the Rights of Nature as inspired by Indigenous cosmologies. The first chapters lay the groundwork for this argument by analyzing the Anthropocene, theories of climate justice, ecocentrism, and Earth Jurisprudence. In the subsequent chapters it shows how climate change is a threat to human rights and argues for an expansion of rights that encompasses an ecocentric approach. It then discusses the Rights of Nature movement and Indigenous cosmologies making the argument for more legal pluralism to be added to Western law. Further, it examines significant court cases and constitutions that acknowledge the Rights of Nature. Finally, it explores the potential of a crime of ecocide as a way to enact legally binding climate justice for all beings. Ultimately it concludes that an ecocentric and Rights of Nature approach to climate justice would be most effective if reinforced by an international law of ecocide and restorative justice.*

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# ***Introduction***

The current threat posed by Anthropogenic climate change cannot be understated, in May of 2022 the United Nations published its 2022 'Global Assessment Report on Disaster Risk Reduction' (GAR2022) in which it stated that "total societal collapse" was increasingly possible as we continue to breach the planetary boundaries (Global Assessment Report on Disaster Risk Reduction, 2022). If targets to combat the climate crisis are not met the report warns that a combination of escalating disasters, economic vulnerabilities and ecosystem failures put the Earth community at risk of a global collapse (Global Assessment Report on Disaster Risk Reduction, 2022). It is with this sense of urgency that this essay is undertaken. The current anthropocentric culture is destroying the planet and if we are to combat the climate crisis in a meaningful way, that not only mitigates its damage but provides justice to those it affects, then we will need to go beyond the anthropogenic systems that we have installed. Therefore, this paper proposes that the current legal system be adapted in accordance with an ecocentric framework that is capable of affording equitable climate justice to all beings. Such a framework would be informed by legal pluralism taking into consideration how climate justice can be achieved not only for humans but for all inhabitants of the Earth community. It would adhere to the ecocentric principles that all life is sacred, interconnected, and interdependent, and therefore we need a system of justice that reflects this. It examines how this process could be achieved with particular emphasis on the Rights of Nature movement and Indigenous cosmologies.

In the first chapter of this essay, it explores the current state of the climate crisis and the influence of the Anthropocene on the planet. It underscores the disproportional nature of climate change as it affects those who are most vulnerable and therefore in need of the greatest protections. Additionally, it discusses what the Anthropocene is and how it has become the prevailing view in

modern society. Lastly, it will highlight why there is a need for climate justice for all beings. In Chapter Two it moves on to a discussion regarding climate justice and analyzes its prevailing theories. Particular attention is paid to the theory of fundamental rights from which the case for the Rights of Nature is built. Additionally, restorative justice is discussed as a means to enforce an equitable form of climate justice.

The third chapter focuses on explaining the concepts of ecocentrism and draws a contrast to its antithesis, anthropocentrism. Further, its potential impact on how to approach the climate crisis is discussed including a brief analysis of how the idea of creating an ecosophy can contribute to reshaping individual cosmologies. Finally, this chapter concludes with an explanation of Earth Jurisprudence, its intersection with ecocentrism, and the potential it holds for enacting climate justice. Chapter Four begins with an analysis of how the climate crisis affects human rights and emphasizes how the rights of Indigenous peoples are threatened in particular. The next section focuses on the decolonization of international law, specifically in the case of Indigenous peoples. The point is made that there can be no expansion of international law until it has been decolonized. From analyzing the greening of human rights law, it is determined if this evolution of rights is in line with ecocentrism.

The fifth chapter focuses on the Rights of Nature movement and addresses the question of whether Indigenous and Western legal systems can be merged in a meaningful way to provide greater protection for Nature. It also looks at the arguments behind personhood and shows how the Rights of Nature movement has evolved in Western legal systems. Further, it discusses in detail the breakthrough cases that have acknowledged the Rights of Nature movement and how they pertain to climate justice. The final chapter takes a look at the potential for a crime of ecocide within the context of the Rome Statute and argues that it is the natural progression of the Rights

of Nature movement. It argues that adopting such a law is an option to enact meaningful climate justice for all beings.

Ultimately, this essay concludes that creating a legal system that is based on ecocentrism is possible, albeit difficult. While the tools for such a system are there, it will take international collaboration, and legal pluralism to achieve a form of climate justice that is truly equitable and serves human and non-human beings. Additionally, it offers that enacting a crime of ecocide that is reinforced by restorative justice is one of the most influential ways to ensure an ecocentric approach to climate justice.

# *Chapter 1* - Enter the Anthropocene

## 1.1 The Current State of Collapse

As the effects of the climate crisis are unfolding around the globe, it has become increasingly evident that society is not prepared physically or legally, for the consequences it will bring. The latest report from the Intergovernmental Panel on Climate Change (IPCC) states that the impact of climate change is thought to be far worse than previous estimates and happening at a much faster rate than previously anticipated (IPCC Climate Change Impacts, Adaptation, and Vulnerability, 2022). As it stands now, there has been an increase in the length of wildfire season, poorer air quality, and heatwaves that have endangered millions (IPCC Climate Change Impacts, Adaptation, and Vulnerability, 2022). Currently, half of the world's population is experiencing water shortages due to climate change-induced events such as droughts, which have become increasingly frequent and consequently affect food and agriculture growth (IPCC Climate Change Impacts, Adaptation, and Vulnerability, 2022). Earth has entered into its sixth mass extinction ushering in a new epoch in Earth's history. It is estimated that this change in climate is presently extinguishing upwards of tens of thousands of species per year, a rate that is only increasing with the rise of human activity (Berry et al., 2010). According to current studies by the IPCC a rise of 2 degrees Celsius by 2100 would put 18% of all land species at risk of extinction, and if global temperatures rise by 4 degrees Celsius, every other plant or animal species will be in danger (IPCC Climate Change Impacts, Adaptation, and Vulnerability, 2022). The change in climate is affecting every aspect of the planet and changing the very chemistry of the Earth that makes life possible. Not only is it a change in the biosystems of the planet, but it is a change in the geological structure of the planet. Following this line of thought biologist Paul Ehrlich has stated the industrial civilization is likely producing the conditions of a nuclear winter (Berry et al., 2010). Such dire

warnings show that this is not a crisis that can be ignored and requires a major societal shift. Climate scientists and activists warn that human society needs to develop major changes that encompass all aspects of life, including technology, economics, and their relationship with the environment. Ecology has evidenced that human beings are heavily reliant on the surrounding environment and the maintenance of Earth's rich biodiversity. Without a healthy ecosystem life on Earth will become unsustainable. The current model of living risks changing the planet forever and threatens the existence of future generations. The latest IPCC report makes it abundantly clear that there must be a change in the human relationship with the planet if there is to be any hope of avoiding a climate catastrophe. This is to say, if humans are to avoid collapse, they must develop a model of living that is more ecocentric and acknowledges human interconnectedness and interdependence with the surrounding environment. To do so will require an overhaul of many of the human systems including how justice is perceived for those most impacted by climate change.

The damage brought on by the climate crisis will not spare anyone, but some peoples and beings are more vulnerable to its coming devastation. Of those most vulnerable are Indigenous peoples and those who live in periphery countries. These groups are disproportionally affected by climate change due to their close cultural ties to the environment. Furthermore, their eco-centric lifestyle has had far less impact on the environment when compared to Western cultures making it less impactful on climate change. Despite this lifestyle, they will bear the greatest brunt of climate change and, for many of them, it has already begun. For this reason, it is critical that international law, specifically in the context of human rights, evolves in a way that can not only protect these communities but also afford them justice. Furthermore, the argument can be made that by affording Indigenous communities the protection of rights through legal recognition of their cultural heritage, steps can be taken toward minimizing climate disaster. In brief, this is due

to their unique relationship with the natural world and their deep respect for non-human beings. By codifying their worldview into international human rights law, particularly through the concept of the Rights of Nature, it is possible to create a new framework of international law that is more equitable in its protections. However, there have been some roadblocks. Since the concept of international human rights law has come into existence, it has evolved in an environment predominately controlled by a Western and Eurocentric perspective. This perspective has often served as a tool of colonialism whereby it has oppressed, dispossessed, and marginalized those it deemed, uncivilized or not, in line with Western European values (Gomez Isa, 2010). It has further created a separation of protection for human and non-human beings that favors humans over the surrounding environment. While such protections seem to benefit humanity, they are leading to its demise by destroying the environment that sustains it. Such a system has been created by an anthropocentric worldview that hinges on Western ideals and colonization. If the climate crisis is to be combatted, society must first understand the type of thinking that landed it in this dire situation.

## 1.2 Defining the Anthropocene

Currently, human society is dominated by the belief in anthropocentric sovereignty that is based on a utilitarian model of ethics that prioritizes human self-interest (Kopnina et al., 2018). This idea of human sovereignty is most commonly found in Western worldviews often supported by religious and capitalistic ideologies. This philosophical perspective formally known as anthropocentrism, places human beings at the center of life on Earth and the primary beings who hold moral standing. It implies that all other non-human beings are merely a means to an end, that end being the service to humanity (Kopnina et al., 2018). Anthropocentrism is not a new concept

in human philosophy; it reaches back thousands of years and has even been condoned and influenced by Western interpretations of the Biblical Old Testament. According to Christian theology and tradition, God gave dominion over the Earth and all beings within it to humankind, commanding them to use it for their purposes, to eat the herbs of the land and the meat of the animals (New International Version, 2021, Genesis 1:28). Historically, interpretations of this passage have reinforced anthropogenic norms placing humans at the top of the hierarchy of beings and all others below them. This idea promotes a worldview that allows for human beings to have total domination over the environment and its inhabitants in service to humanity's needs. This includes the use of animals for food, deforestation for agriculture, mining, and the practice of exploiting the environment for fossil fuels. Under the pretext of anthropocentric philosophy, all this can be done without guilt, since in the anthropocentric framework humans are not only above other beings but are regarded as the most important beings in existence. This creates a value system where human wellbeing is the core element and therefore anything that is done to preserve that well-being can be justified. Another element of Anthropocentrism is the idea of speciesism which states that all beings fall into a hierarchy of sentience with human beings being at the top and all other beings falling in line below them ranked by the human perspective of their sentience, relationship to humans, and their value (Singer, 2009). For example, in many Western cultures, it would be unthinkable to eat a dog as it is regarded as a companion of value and a highly sentient being. Moreover, most people would not think twice about cutting down a tree if it was considered to be obstructing the view in their yard. This ability to divide beings into categories is an essential aspect of anthropocentrism and a direct contributor to the current climate crisis as it has allowed humans to exploit the planet with impunity. Further still, it has played a role in justifying such exploitation as a means of preserving the human way of life.

This worldview has become the prevailing narrative throughout almost all modern cultures shaping economic and legal systems and the human relationship with the planet. Anthropocentrism has been so influential that it has entered the planet into a new epoch in history known as the Anthropocene. While it is still a matter of debate, most geological experts would agree that the planet has officially existed the previous epoch known as the Holocene, which began 11,700 years ago and entered into this new one. This new age is derived from Greek and means the recent age of man; it is defined as an unofficial interval of geologic time in Earth's history when human activity has had an impact on the ecosystem and planet's climate (Rafferty, 2009). When exactly this new epoch began is a matter of debate, but most scholars agree that it began with the Industrial Revolution and accelerated between 1946 and 1964 (Subramanian, 2019). This period known as the 'Great Acceleration' began with the increase in human population from less than 3 billion in 1950 to over 7 billion by 2020. As a result of this exceptional increase in population, there was also an increase in human activity and consumption as world-changing technology such as cars, planes, computers, etc. took hold, all of which had an impact on increasing the amounts of carbon, methane and other greenhouse gases that were pumped into the atmosphere (Subramanian, 2019). Earth scientists such as Max Berkelhammer state; "It's hard to say that what's been happening in the twentieth century is just another manifestation of what's been happening over the last few thousand years," he goes on, "The scale of change is so much larger. And it's difficult to imagine reversing course" (Subramanian, 2019, p.170). Scientists are in agreement that this is the largest transition in Earth's history since the end of the dinosaurs 65 million years ago, and as noted by Norman Myers it is, "bringing about the greatest reduction of the diversity and abundance of life on Earth since the first flickering of life on Earth some 4 billion years ago" (Berry et al., 2010, p. 42). All of this human-induced change has resulted in the current climate crisis outlined in the

previous section. To combat the current and oncoming damage to the ecosystems will require a shift away from the current anthropocentric model. Given how deeply imbedded anthropocentrism is in society, this shift will not be easy. However, its grip is beginning to loosen. As mentioned prior, one of the pillars of anthropocentrism have been religion, specifically Christianity. Under the direction of Pope Francis Christianity has begun to revise this interpretation of its scriptures, specifically those dealing with human and non-human relationships. As the leader of the Catholic Church Pope Francis has lived up to his namesake, taken from that of Saint Francis, who was known for his love and respect for Nature, seeing humans as part of a community within Nature and not in a hierarchical sense. In a Papal letter he referred to Saint Francis stating; "He communed with all creation, even preaching to the flowers, inviting them "to praise the Lord, just as if they were endowed with reason" (Laudato si' (24 May 2015) | Francis, 2021). Taking from this line of thought Pope Francis has argued that the so-called dominion over Nature has been taken out of context regarding it as sovereignty over the Earth rather than as its steward. He states; "The best way to restore men and women to their rightful place, putting an end to their claim to absolute dominion over the Earth, is to speak once more of the figure of a Father who creates and who alone owns the world. Otherwise, human beings will always try to impose their own laws and interests on reality" (Laudato si' (24 May 2015) | Francis, 2021). With this statement he contends that humanity is to treat the Earth as it would a garden, caring for it and not exploiting it. Such a perspective on the Christain tradition is not unusual, as many have believed that before the scriptures the natural world was the first revelation of God. It was not until the sixteenth century, with the invention of the printing press, that written scriptures took prevalence for God's revelation over the natural world (Berry et al., 2010). If Pope Francis is successful in his crusade for the environment, this could lead to the world's largest religion being an advocate for the planet

providing a major shift from the dominant view of anthropocentric Christianity that has been taught for thousands of years. Such a cultural shift within the Church would have colossal waves of impact throughout society (Chakrabarty, 2020).

Even with this shift in ideology anthropocentrism still holds a tight grip on human society that compounds the effects of climate change with every passing day. Along with religious influence, the Anthropocene is held up by other Western ideals such as capitalism, consumerism, and colonization, all of which have played a role in the forming of the Anthropocene and concurrently, the climate crisis. As previously stated, the true impact of this worldview was most greatly felt during the 20th century when the 'Great Acceleration' took place. Through a combination of human chauvinism and runaway, capitalism humanity managed to release enough carbon and greenhouse gas emissions into the atmosphere that would jeopardize the entirety of the planet's environment in a way that had not been felt for millions of years, putting it on a course that not only threatens the human way of life but the lives of every Earth being. Current projections from the IPCC state that there are only a few short years to curve the effects of climate change before they become irreversible. It is clear that an anthropocentric model is no longer viable to sustain life on Earth, and that continuing to live in such a way could doom the entire Earth Community. There is a need for a fundamental change in how humans relate to the environment as well as a plan to seek justice and accountability for the damage that has been wrought. This form of justice known as climate justice, has the potential to bring about lasting and equitable change in the face of the climate crisis. As this essay unfolds it will discuss the ideas and mechanisms that could help develop a system of justice for all beings; one that challenges the status quo of anthropocentrism and leads into a new understanding of human-Earth relationships and the rights of the beings that inhabit the planet.

# *Chapter 2* - Climate Justice

> "Climate justice requires that States look beyond their responsibility to their own people, to accept their responsibility to those living beyond their shores, who are particularly vulnerable to climate change. And also, to the generations to come."- Mary Robinson

## Introduction - Understanding Climate Justice

Before going further, it is imperative to understand what is meant by climate justice and where the discourse surrounding it currently stands. As previously stated, the current environmental crisis requires a new approach to justice, one that can address the multifaceted nature of climate change and provide accountability for those who have caused it as well as protection for those it affects. Such justice must not merely be a movement for change, but should also be legally enforceable at local and international levels to provide a full range of protections. In brief, climate justice is a form of justice that advocates for environmental justice specifically as it pertains to those who are considered to be the most vulnerable to the effects of climate change (Jafry et al., 2019). Like other forms of justice, climate justice is perceived as a social and political movement. It is multifaceted and envelops a variety of ideas, struggles, and solutions but at its core, it maintains the goal of achieving justice for those who are most vulnerable and disproportionally affected by climate change (Jafry et al., 2019). Further, it "recognizes humanity's responsibility for the impacts of greenhouse gas emissions on the poorest and most vulnerable people in society by critically addressing inequality and promoting transformative approaches to address the root causes of climate change" (Meikle et al., 2016, p. 497).

Therefore, climate justice is inherently intersectional encompassing race, gender, class, and sexual orientation. Climate justice has been described as a linking together of all the struggles that

reject neoliberal markets and intends to achieve a world that puts autonomous decision-making power into the hands of communities (Jafry et al., 2019). In this way, climate justice is anticapitalistic and recognizes that there is a fundamental shift needed in human society (Jafry et al., 2019). Often when discussing climate justice, it is primarily framed as an issue that affects human beings and human rights. However, as will be shown to be truly effective climate justice must go beyond human beings and apply to non-human beings as well. This essay will show that an anthropocentric approach to climate justice is not enough to combat the current crisis. If climate justice is to be achieved, there will need to be a reforming of justice that goes beyond the Anthropocene.

## 2.1 Theories of Climate Justice

To begin, the core approaches to climate justice must be identified and analyzed in terms of how effective they are at achieving climate justice. The first two arguments are known as disruptive and corrective justice. Distributive justice takes the stance that since climate change is a problem that has been dominantly created by developed countries, they should be the ones to pay the price. This argument hinges on the fact that these countries have the economic capacity to pay and therefore should do so due to their primary responsibility for the crisis (Jafry et al., 2019). In contrast, corrective justice argues from a historical responsibility principle which states that while all of humanity has contributed to the climate crisis, developed countries have caused far more damage, and therefore, they have a moral responsibility to do so. Both of these arguments have their failings when it comes to enacting climate justice. Firstly, critics point out that distributive justice puts the economic burden on the citizens of the state rather than the state itself, since it is the citizen's taxes that support the state. Similarly, the historical responsible argument for

corrective justice is hard to prove since global greenhouse gas emissions have been on a steady rise throughout time and therefore, it is hard to prove a direct causal link between the actions of an individual and the emissions (Jafry et al., 2019). While it is possible to pinpoint certain nation-states that bear the burden of responsibility critics argue that any sanction taken against them would ultimately put the burden on their citizens who may have not been historically responsible or direct contributors (Jafry et al., 2019). This is not to say that critics of these forms of justice are arguing for letting developed countries off the hook; rather, both of these arguments agree that climate justice must include an equitable allocation of responsibility that puts the burden on developed countries. Their only real disagreement is how to achieve it. Despite the validity of these arguments in relation to who shares the burden for climate change, they lack the capacity for achieving enforcement, especially through a legal framework as it would be nearly impossible to find or hold accountable the true duty-bearers. Therefore, if climate justice is to be enforceable, we must look to other theories.

## 2.2 Theory of Fundamental Rights

Operating from the principle of equality, the theory of fundamental rights takes a different approach based on human rights. Proponents of this idea argue that climate change threatens the core wellbeing of communities, particularly those most vulnerable to the effects of the climate crisis. These threats are at such a fundamental level that it can be said to threaten their human rights. Defenders of this theory, such as Hayward, make the distinction from the egalitarian approach that this is not an argument for the right to emissions but the right to not be affected by emissions (Jafry et al., 2019). Not only this, but such a perspective is anthropocentric as it perceives the atmosphere as an object to be commodified and distributed for human use. Another critique of

this theory is that a basic rights argument for climate justice only attends to the bare minimum of rights and does not fully encapsulate the larger threat of climate change and consequently does not achieve true climate justice (Jafry et al., 2019).

## 2.3 Restorative Justice

The last theory I would like to discuss is restorative justice. This form of justice is used both inside and outside of a criminal justice system making it particularly suited to climate justice which as of now does not enforce any criminal liability (Robinson & Carlson, 2021). It is understood as a "process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Gavrielides, 2007, p. 44). This process is uniquely fit to climate justice as it covers a wide scope that is intersectional, intergenerational and interspecies. Through a bottom-up approach to restore community restorative justice seeks to bring the offender and offended together for a collaborative solution, that ensures the victim active participation and that the offender is held responsible in a meaningful way. This is especially important for the victim as they can ensure the justice process satisfies all of their vulnerabilities and is in line with their interests (Robinson & Carlson, 2021). In light of climate change, an approach to justice that puts the victims needs at such a high level is critical to affording them justice. Additionally, it puts the focus on protecting those who are most vulnerable and seeks to protect them from future harm (Bruch, 2019). This is critical to combating climate change as it requires models of justice that are effective in preventing more damage to the environment. While Robinson and Carlson argue that restorative justice is effective without litigation, I would say that it is strengthened by litigation and vice versa. As will

be shown toward the end of this essay, there is an ongoing battle for adopting litigation that is effective in combating environmental damage to the Earth.

## Conclusion

Given these theories of climate justice, it is evident that restorative justice holds the most potential to meet the current crisis in an equitable way. To be effective climate justice must be justiciable and enforceable as well as legally binding. That said, it is argued that starting from a rights-based perspective provides a good path to achieving such justice. A human rights-based approach to climate justice is a good starting point but as will be shown, a framework is needed that goes further and provides protection for the Rights of Nature and all beings threatened by the climate crisis. Additionally, this essay will explain how protecting the most vulnerable peoples can help develop such standards and how they can be codified into law in a way that is enforceable and holds the main contributors to climate change legally accountable. Lastly, it is argued that for this to be effective the current anthropocentric model of life must be abandoned and replaced with one that is inherently ecocentric.

# *Chapter 3* – Ecocentrism and Earth Jurisprudence

## Introduction

This chapter will provide an analysis of ecocentrism that includes its opposition to anthropocentrism and discusses its core principles and modes of action required to enforce such principles. It will discuss how ecocentrism is related to climate justice and offers that an ecocentric perspective is superior when seeking to achieve climate justice. It also highlights the issues with the current anthropocentric legal system and discusses the potential of a new jurisprudence informed by an ecocentric view known as Earth Jurisprudence.

## 3.1 Ecocentrism vs Anthropocentrism

Diametrically opposed to anthropocentrism is ecocentrism, which at its core states that all of Nature has an intrinsic value that is not dependent on its value to humans. As pointed out earlier, anthropocentrism makes the claim that non–human life is valued within the context of its value to human wellbeing, interest, and profit (Washington et al., 2017). While anthropocentrism develops a hierarchy of beings with humans at the top ecocentrism acknowledges that all beings are interconnected and reliant on each other to sustain an Earth Community. It is not alone in its anti-anthropocentric approach; other concepts such as biocentrism (giving inherent value to all living things) and zoo-centrism (seeing value in all animals) also give value to non-human beings. However, it goes beyond biocentrism in that it includes the whole of environmental systems and their non-living parts, and beyond zoo-centrism in that it includes flora and the ecological contexts of organisms (Washington et al., 2017). Therefore, ecocentrism is an all-enveloping concept that includes and furthers these two ideas. As stated by Washington, ecocentrism is the only approach

that is non-utilitarian or humanity-first in its orientation and includes maintaining geodiversity and biodiversity (Washington et al., 2017). Scholars such as Gray contend that since life on Earth relies on geology and geomorphology 'geodiversity' also has intrinsic value (Gray, 2014). For these reasons, it is the best approach when discussing a system that goes beyond the Anthropocene. Although formally coined by Aldo Leopold in the 20th century, the concept of ecocentrism has been found in various forms for thousands of years within Indigenous cultures. The Indigenous influence on ecocentrism cannot be understated and will be discussed at length in the following sections. Drawing from the work of Leopold and his idea of the land ethic, a clear idea of the philosophy of ecocentrism can be seen;

> "The land ethic simply enlarges the boundaries of the community to include soils, waters, plants, and animals […] A land ethic of course cannot prevent the alteration, management, and use of these 'resources,' but it does affirm their right to continued existence, and, at least in spots, their continued existence in a natural state"
> (Austin & Leopold, 1967, p. 173-174).

## 3.2 Core Principles of Ecocentrism

In their work, Manifesto for Earth, scholars Rowe and Mosquin outline six core principles of an ecocentric framework. These principles consist of guidelines for how to view the planet, which they refer to as the Ecosphere, in an ecocentric perspective with the goal of changing the human relationship to Her. The first principle states that 'The Ecosphere is the Center of Value for Humanity', which is to say that the Ecosphere is the Life-Giving system and not just a means of support for life (Mosquin & Rowe, 2004). This is contrary to an anthropocentric perspective which views the Earth as a means to support human life rather than it being the primary source. This shifts the standard understanding of value to show that humans are just as reliant on the Ecosphere as any other being, if not more so. Therefore, the approach to the Ecosphere should be that it is the

source of life and not merely a means to an end. Philosophically, this changes the human view from being focused on their inner self and species selfishness to a broader view of outer beings that embraces their greater ecological being and reliance on the Ecosphere (Mosquin & Rowe, 2004). The second principle of an ecocentric framework is that the 'The Creativity and Productivity of Earth's Ecosystems Depends on their Integrity'. This integrity speaks to Nature's ability to be whole and function fully as its evolutionary code dictates, in a way that preserves Earth communities as interdependent beings (Mosquin & Rowe, 2004). Such interdependence refers to sustaining the food chains and energy flows as well as the cycles of life-sustaining materials including nitrogen, phosphorus, and potassium. Other essential elements that make up the ecosystems include water, air, and sediments, all of which play a vital role in the function and health of the environment. Thus, any disruption or pollution of these materials erodes the integrity of the Ecosphere and undermines the system that provides life. Principle three argues that 'The Earth-centered Worldview is Supported by Natural History' since the story of the natural world is intertwined with the human story through the start of evolution nearly four billion years ago (Mosquin & Rowe, 2004). This natural history shows that humans are relatives of all beings within the Earth's ecosystem and share not only a common ancestry, but also genetic material with them. Not only does this show an integral link between humans and the other beings but it gives a better context of human history, one that is reliant on mutualism, interconnectedness, and reciprocity with all life**.** Ecocentrism puts the human story in the context of one piece of the planetary system functioning as a dependent to the greater Earth Community. When the natural history of the planet and its relationship to the human story is understood, there is an awareness of the human place in Nature (Mosquin & Rowe, 2004). Principle four states, 'Ecocentric Ethics is Grounded in Awareness of the Human Place in Nature'. This principle proposes that the ecological worldview

provides human beings with an awareness of their place in the Ecosphere that causes wonder and awe such that an ethic for protecting the natural world will evolve (Mosquin & Rowe, 2004). Therefore, self-awareness as an ecological being is a key element to developing more ecocentric ethics. Such an ethic moves from caring solely about human beings and shifts values to a more diverse perspective. This leads to the fifth principle of ecocentrism which states that 'An Ecocentric Worldview Values Diversity of Ecosystems and Cultures'. The ecocentric viewpoint holds profound respect for diversity due to the various differences in climate, and landscape that is seen across the Earth (Mosquin & Rowe, 2004). The biodiversity of the planet is essential for its well-being and it is a major contributor to cultural diversity within the human species. Culture is the direct result of human interaction with their environment, as is demonstrated by the types of food people eat, their customs, language, and relationships with the natural environment. Examples of this can be seen throughout history as some peoples evolved to develop a closer relationship with the oceans, while others became more closely linked with the mountains or farming communities (Mosquin & Rowe, 2004). Thus, culture is a form of biodiversity, and as such an ecocentric worldview must be respectful of all cultures and hold the value of diversity in all forms, whether it is human or non-human organisms (Mosquin & Rowe, 2004). Under the anthropocentric worldview that is currently in place, such diversity, both at a biological and cultural level, is under threat. Not only are forests, plants, and animals endangered, but so are peoples, languages, and their cultural norms. This is primarily due to the proliferation of Western ideals fueled by globalization. An ecocentric ethic would challenge this and fight for the protection of all forms of diversity.

A lack of diversity leads to social inequalities and must be corrected. This is the principle which states that 'Ecocentric Ethics Support Social Justice'. This principle operates from the idea

that all beings are equal regardless of their diversity (Mosquin & Rowe, 2004). This ecological law is best summarized as ‘Diversity with Equality’ which has its basis in the idea that Nature’s functioning provides an ethical guideline for human society (Mosquin & Rowe, 2004). While social justice is critical of hierarchies that discriminate against the powerless, whether it is based on race, gender, or sexual orientation, it does not consider that all of these issues are compounded by the destruction of Earth’s ecosystems. In brief, as the ecosystem collapses there is a considerable increase in racial disparity, poverty, and overall inter-human relations (Mosquin & Rowe, 2004). This is due to pressures such as water scarcity, agriculture destruction, and desertification, to name a few. All of these crises are a direct result of not living according to an ecocentric ethic. Therefore, if social justice is to be truly supported, it starts by operating with environmental justice.

## 3.3 Action Principles of Ecocentrism

These core principles underscore the aspects of an ecocentric philosophy, but if there is to be real progress in promoting this worldview, there must be action. Mosquin and Rowe refer to these as action principles and outline them in four steps. The first action principle states that humans are to ‘Defend and Preserve Earth’s Creative Potential’ (Mosquin & Rowe, 2004). This part of the ecocentric philosophy seeks to not only protect but restore the natural ecosystem and the species that dwell within it in a way that allows for evolution to continue its creative process (Mosquin & Rowe, 2004). The primary threat the Earth's ecosystems face is the human influence which, apart from human disturbances, will thrive and evolve for millions of years. Such protections are vital as the extinction of any being affects the planet as a whole, reduces its beauty, and puts at risk the potential for evolution to produce future organisms (Mosquin & Rowe, 2004).

Aldo Leopold writes that the first rule of intelligent tinkering is to save all the parts (Austin & Leopold, 1967). Humans have done more than tinker with the environment and their way of life only promotes further destruction of the planet as it continues to perpetuate an unsustainable lifestyle fueled by war, industrial farming and fishing, deforestation, mining, and corporate greed. Thus, an ecocentric philosophy must take a hard stance against all of these destructive practices by taking concerted action to protect the environment. The next principle the authors propose is to Reduce Human Population Size, thus curbing the human population to a more sustainable level. As it stands now, the human population is approximately 7 billion and current estimates say that it is on track to hit nearly 10 billion by 2050 (UN Department of Economic and Social Affairs, 2019). Controversially, some ecocentrists believe that the human population should be reduced to preindustrial levels, which were approximately one billion people (Mosquin & Rowe, 2004). They argue that this should be regulated through policies or will be accomplished through famine, disease, or war. For many, this idea seems too radical and unrealistic given the current rate of human growth. While ecocentrists might argue for this is I would take disagreement with them on the fact that their goal of only one billion people is not only unrealistic but a moral catastrophe of supervillain proportions.

A less controversial action principle deals with the reduction of human overconsumption, which is seen as the primary threat to the Ecosphere. The anthropocentric view states that humans have the right to use the planet as they see fit, even to the point of exploitation. Ecocentrists find this idea morally reprehensible and species–selfish (Mosquin & Rowe, 2004). Although humans need to consume aspects of the ecosystem to sustain themselves the current rate of consumption is nothing short of exploitation that is entirely unsustainable and damaging to the rest of life within the Ecosphere threatening its diversity and stability. As evidenced by Indigenous practices

ecocentrists argue that there is a more sustainable way to consume the Earth's natural resources. It should be noted that the rise of Western dominance and the perpetuation of capitalism are some of the main contributors to the current consumerist society. With this in mind, it is evident that a primary ideal of ecocentric philosophy is anticapitalistic as a society and economy that are based on constant growth do not have any respect for the natural environment other than how it can be used to meet its own greedy ends. This action principle proposes that to dimmish such exploitive expansion is to end government subsidies for corporations' and industries that pollute the planet (Mosquin & Rowe, 2004). This would require a complete overhaul of the current system, in favor of environmental democracy or eco eco-governance. A main aspect of this is a shift in economic principles that are qualitative and not quantitative. The idea of eco-governance has enormous potential for the protection of the environment and is a core idea in ecocentric philosophy. Such a form of governance and law must be bottom-up and encompass all aspects of the environment with legal protections (Mosquin & Rowe, 2004). These arguments have already been proposed by legal scholars such as Christopher Stone, who has advocated for the Rights of Nature, an idea that many argue could help curtail the damage done by the Anthropocene and over time establish new laws and policies that are based on an ecocentric philosophy. While this is a slow process, legal philosophy is moving in this direction, as is evidenced by cases all over the world where the Rights of Nature are taken into consideration. These cases are explored in greater detail in a subsequent chapter. The last and perhaps most important action that can be taken to promote the ecocentric philosophy is to educate others about their reliance and place in the Ecosphere. This would create an increase in political will that is vital for the success of this philosophy (Mosquin & Rowe, 2004). Until this shift occurs in the minds of the majority of people, no significant progress towards a more sustainable and whole planet can be made.

Given this framework, it is evident that ecocentrism holds a key role when approaching the climate crisis, as it is the only philosophy that is broad enough to take on its complexity and recenters humans away from their hierarchical position in the Earth Community. This value shift is critical if climate justice is to be achieved. Opponents of ecocentrism argue that this restructuring of the value system will lead to an anti-human perspective that gives other beings equal rights to humans. However, as will be discussed in a later section ecocentrism does not advocate for all organisms to have equal value but rather seeks to protect their right to flourish in a way that is fitting to their evolutionary code. This is to say that ecocentrism is not anti-human; rather, it understands that the Ecosphere relies on all being's ability to function correctly and if one species is deemed more important than another this cannot be accomplished (Mosquin & Rowe, 2004). Ecocentrists acknowledge that inter-human justice is vital; moreover, they regard it as just as important as inter-species justice and eco-justice for non-humans and the natural world (Baxter, 2004).

## 3.4 Ecocentrism and the Climate Crisis

Ecocentrism applies to the climate crisis in various forms that include ethical, ecological, and evolutionary. From an ethical perspective, it expands the moral community and thus moral responsibility further than just the human level and argues that all beings are entitled to respect, care, and rights (Washington et al., 2017). From an ecological perspective, it reorientates the human place in the Universe and shows that all life is interconnected and interdependent on one another. In terms of the evolutionary timeline, human beings are latecomers to this planet, and as such should acknowledge that every other species and organism has also gone through the same struggle for existence (Washington et al., 2017). Acknowledging this is a humbling process that

should lead to empathy for the rest of the Earth Community rather than arrogance that humans have achieved something out of the ordinary. Studying ecology from an ecocentric perspective also shows that humans do not fully understand the complexities of Earth's ecosystems, and likely never will. This should lead to the conclusion that the Earth's ecosystem is a fragile being that is not only deserving of protection but that it is necessary to protect it to sustain life (Washington et al., 2017). The third way that ecocentrism is relevant as a solution to climate change is through evolution. This argument is similar to the one made in the prior section in that it states that because humans evolved alongside all other beings over the course of 3.5 billion years, there cannot be a determining point when certain life became of more intrinsic value than others. This biological kinship determines a moral responsibility towards all other beings, as humans are a part of Nature rather than separate from it (Washington et al., 2017).

## 3.5 Ecosophy and Ecocentrism

The philosophy of ecocentrism raises a variety of complex questions about the human relationship with the rest of the environment that require an all-inclusive term to answer them. This is best understood as a merging of philosophy and ecology, which has been described by Naess as an ecosophy. While the broad term for this is ecophilosophy Naess points out that when we use ecophilosophy to approach practical situations between humans and Nature, we aim to develop ecosophies (Næss et al., 1989). The term ecosophy means, wisdom within which we dwell (Devall, 1991). For human beings, it means ecological wisdom that promotes a harmonious relationship with the Earth community that allows for the flourishing of all beings (Devall, 1991). Thus, an ecosophy is best described as the practice of a philosophical worldview that is inspired by the conditions of life in the Ecosphere. This provides the groundwork for adhering to the

principles of ecocentrism specifically as it pertains to those outlined in ecocentrism. An ecosophy implies that one has made a conscious change in their perception and relationship to life in the Ecosphere that promotes a philosophical approach to essential life decisions (Næss et al., 1989). Of course, this is far easier said than done as making systematic change includes applying this philosophy to all areas of life, thought and action, including the social and political. Therefore, Naess determines that ecosophy requires a deep personal commitment to the preservation of the environment through identifying with Nature (Greenhalgh-Spencer, 2014). He argues that if an ecosophy is not developed it is not possible to establish the principles needed for action and there will be no motivation for political and individual efforts (Næss et al., 1989). The idea of ecosophy is political and requires the establishment of a new politics to carry out its vision. Under the current anthropocentric model, political power is dominated by multinational corporations' intent on boosting their profits rather than creating a more sustainable world. The current power structures are inherently at odds with any ecocentric worldview and to change this ecopolitics based on ecosophy is needed (Næss et al., 1989). Ecopolitics goes further than addressing ecological activity; rather, it applies an ecocentric perspective to all areas of political and social life. An ecocentric approach through ecosophy implies a radical change to human systems. By this I mean the literal meaning of the word radical, which is ‘root’, as human society needs an uprooting of the systems and practices to bring about the change needed to implement climate change solutions and climate justice. While there have been many environmental efforts to do so already, they simply have not gone far enough. These are known as shallow ecology and take the form of recycling without waste prevention. In this example they address the symptoms of a much larger problem. Contrary to this Naess refers to the sometimes-controversial term deep ecology which is the ontological extension of ecophilosophy (Næss et al., 1989). As a branch of ecocentrism, deep

ecology shares, many of the same elements that have been discussed such as human and non-human life having intrinsic value and the value of non-human life being independent of its human use. The primary difference between these two ideologies is that ecocentrism has the view that the interests of the ecosystem as a whole should be given more value than human interests since humans are reliant upon the rest of the ecosystem to survive. On the other hand, deep ecology gives humans, and the rest of the ecosphere equal value; this extends to individual entities. While the ecocentric approach values the collective system above that of individual beings or life forms. Despite these differences, both of these philosophies have a vital role to play in the fight for climate justice. Deep ecology is useful in that it is a reexamination of how humans perceive the world as it promotes a way of life that is best for all beings. The best way to understand this lifestyle is through the slogan of deep ecologists "Do as little harm as possible" (Devall, 1991). This ethic allows for damage to the environment for vital human needs but states that it should be as limited as possible. In terms of its applications in achieving climate justice, deep ecology is best used as a method to change how people think about their relationship with the planet as it provides a balance and harmony between individuals, communities, and the greater Earth community (Næss et al., 1989). These philosophies provide the groundwork for a new framework of jurisprudence known as Earth Jurisprudence.

## 3.6 The Current Anthropocentric Legal Philosophy

One of the main factors propping up anthropocentrism is the current interpretation of legal philosophies. Burdon states that the law is a direct reflection of the culture and society; so, if its laws are dominated by anthropocentric narratives, so too will human society (Burdon 2013). For this reason, if there is to be a cultural shift focused on enacting climate justice, it must start with

the redrafting of legal systems and philosophies. As it stands now, laws are primarily written and represented with a Western influence that is evident in how property rights are interpreted and, more importantly, how humans relate to the environment. Under the anthropocentric legal system, it is perfectly valid for humans to own Nature and use it as they see fit. By framing it this way, the law is implying that humans are separate from Nature and even regarded as above it. This hierarchal view is typical of the anthropocentric mindset and ignores the scientific evidence that they are a part of Nature. The core concept is that by framing legal philosophy in this way a wall is built between humans and the natural environment. Such a philosophy grants rights only to human beings. Thomas Berry highlights this point;

> "All rights have been bestowed on human beings. Other than human modes of being are seen as having no rights. They have reality and value only through their use by humans. In this context the other than human becomes totally vulnerable to exploitation by the human" (Berry, 2013, p. 72.)

This is to say that Nature and other beings only have worth if they are beneficial to humans. Burdon writes that one of the main consequences of this is that when environmental damage is done the law only compensates the owner of the land rather than acknowledging the actual damage done to the environment (Burdon, 2013). In this way, it ignores the inherent value of Nature's right to exist in favor of compensating humans. This speaks to the exact mindset that has caused the climate crisis, by allowing for the health of the environment to take a backseat to human ambitions not only has human existence been threatened but the existence of life on Earth. For this reason, a new legal framework is needed that encompasses and protects all life and dismantles the current anthropocentric legal philosophy. The proposed philosophy by scholar Thomas Berry and later expanded upon by scholars Burdon and Cullinan is known as Earth Jurisprudence.

## 3.7 Earth Jurisprudence and Ecocentrism

Building on the idea of ecocentrism Earth Jurisprudence is a legal philosophy of human governance that gives formal recognition to the reciprocal relationship between humans and the rest of Nature (Filgueira & Mason, 2011). It is best summarized as an ecological theory of law that indicates that the Universe is the primary lawgiver because it is where the activity takes place and therefore, human law is subject to the surrounding environment which has inherent rights (Burdon, 2014). At its core Earth Jurisprudence prescribes to the idea that all beings exist and participate in an Earth community. Such a community is ecocentric as it places humans as an interconnected part of the greater ecological community that includes non-human beings (Burdon, 2014). It also places the Earth as a subject of rights rather than a collection of objects that can be used for human exploitation (Berry, 2013). These rights originate in the same way that humans are granted their rights, merely by existing in the universe and therefore being inherently worthy of rights. Therefore, this is contrary to the way current legal systems function, where human beings have the ultimate power to grant other beings rights. This is to say that all members of the Earth community are automatically granted the right to be, the right to habitat, and the right to participate in the unfolding Universe story (Filgueira & Mason, 2011). Berry describes this in relation to how humans understand human rights; for example, the right to be is similar to the human right to life and would include freedom from disturbance during reproductive and migration cycles (Berry et al., 2010). Following this logic, the right to habitat would ensure basic rights to wellbeing including protection from pollution, deforestation, or other means of habitat destruction. Lastly, the right to fulfill its role on Earth means that a being has the right to contribute to the Earth community in a way that contributes to the lifecycle of the planet (Burdon, 2014). The rights for the non-human

world are perceived as role and species-specific and are limited as such. This is to say that rivers have river rights, birds have bird rights, and insects have insect rights (Berry et al., 2010). It is important to note that these rights are qualitative, meaning that the rights of a tree would not be of any value to the rights of an insect. To further understand this, Cullinan explains, acknowledging the rights of a river would be within the context of how a river operates therefore, by disrupting its flow or polluting it one would be violating its rights (Cullinan, 2011). Under Earth Jurisprudence human rights would not cancel out the rights of non-human beings to exist as they are intended to. This would not establish that non-human entities would have moral equivalence with humans but instead take the focus off of a hierarchal approach to rights in exchange for one that recognizes that all beings have value (Burdon, 2014). This idea undermines the thought that human property rights are absolute and replaces it with the principle that it is a relationship between the human owner of the property and the property itself that allows for both beings to fulfill their roles in the Earth Community (Berry et al., 2010). One way this can be explained is through how the relationship between humans and dogs has evolved. As they have coevolved together for thousands of years their relationship has transformed where now many people who own dogs see them as a member of their family and hold a level of respect for them that allows them to fulfill their rights as a dog. Another aspect of this approach to rights is that species are individuals and rights must refer to them as such, this includes the natural groupings of such individuals into herds, packs, or flocks and not merely in a general way to the species (Berry et al., 2010). In the end, all of these rights are based in relation to the elements of Earth and each other.

All beings are interdependent upon one another in that they are reliant on receiving nourishment from other beings. This includes predator-prey relationships which are vital for maintaining a healthy balance on the planet (Berry et al., 2010). Therefore, within Earth

Jurisprudence the rights of all beings must reflect this balance and thus all rights are limited but seek to preserve the harmony of the Earth community. By establishing such rights, this legal theory argues that human laws should be aimed at living in harmony with the rest of the Earth community, and these laws should be aligned with the rest of the Universe and its universal laws. Doing so would ensure a mutually enhanced relationship with humans and the rest of Nature. As discussed, human cultural and societal relationship and by default, legal relationship have been primarily Western and anthropocentric. Human legal systems have treated the Earth as a resource to be exploited rather than as an organism that is fundamental to sustaining life. In contrast to this Earth Jurisprudence advocates for laws that will govern in a way that sees the intrinsic value of the Earth community without having to rely on its value to humans. Furthermore, such laws would operate from the perspective of protecting the environment and maintaining ecosystems rather than allowing humans to change them in their favor. To achieve this, these laws would pull from an ecological basis that includes life cycles, diversity, and ecological limits. To put this into more scientific terms, Burdon relates it to the first principle of ecology, which states that everything is connected to everything else which places humans as a part of Nature rather than a separate entity (Burdon, 2014). This idea of interconnectedness, is not only a core principle of ecology but is consistent with the current direction of environmental law (Burdon, 2014). In this way, Earth Jurisprudence reflects the tenants of ecocentrism and establishes an approach to human ethics that takes the wellbeing of the entire Earth community into consideration.

## 3.8 Core concepts of Earth Jurisprudence

Earth Jurisprudence states that human beings are a part of the Earth community by establishing that all beings are reliant upon each other to sustain a viable ecosystem. This makes

human beings a part of the community rather than a separate entity that has dominion over it; therefore, the structure of Earth Jurisprudence should reflect this. This section will look at the core concepts of Earth Jurisprudence to better understand its functionality. It should be noted that entering into Earth Jurisprudence is something that humans would conform to of their own volition, and by entering into such a legal philosophy it would be taking a conscious step towards a more sustainable life on Earth (Burdon, 2013). Burdon argues that because it is done in this way, it is not open to critiques such as naturalistic fallacies (Burdon, 2013). This structure can be explained in two hierarchical parts, the first known as Great Law and the other known as Human Law. To better understand these concepts and the role they play it should be considered that for Berry what is meant by the Great Law is the recognition of Earth as the primary teacher and lawgiver. This is to say that human society should recognize the 'supremacy of the existing Earth governance of the planet as a single but differentiated community' (Berry et al., 2010, p. 15). This idea is derived from the concept of interconnectedness which as stated previously is a fundamental element of Earth-human relationships. Scholars such as Burdon state that Great Law includes the principles of Nature which are discoverable through science and are relevant to human-Earth relationships (Burdon, 2013). Burdon refers to the Great Law as the "interconnectedness between humans, Nature, and the ecological integrity of the Earth community" (Burdon, 2013, p. 827). Similarly, Cullinan expands on Berry's idea of the Great Law and describes it as "laws or principles that govern how the universe functions" (Cullinan 2003, p. 84). He contends that such laws are derived from the Universe, and as such they are "timeless and unified" (Cullinan 2003, p. 84). These laws are represented in the natural world in the form of the law of gravity or cycles of night and day (Cullinan 2003, p. 84).

The second feature to the structure of Earth Jurisprudence is Human Law. Thomas Aquinas defines Human Law as “an ordinance of reason for the common good, made by him who has care of the community, and promulgated” (Aquinas 1956, p. 10-11). In the context of Earth Jurisprudence, this definition needs some clarity. Firstly, Burdon says that the term ‘common good’ is to be interpreted as the wellbeing of the whole Earth community and is not exclusive to the wellbeing of humans alone (Burdon, 2013). Such a common good is not to be understood in utilitarian terms as the greatest good for the greatest number but that it should respect the entire Earth community’s right to health and future flourishing. Therefore, Earth Jurisprudence is more concerned with the flourishing of all beings and thus human liberties can be limited if they are not consistent with the wellbeing of the rest of the Ecosphere (Burdon, 2013). This is not to say that human flourishing in particular should be limited, but rather that a balance should be struck in relation to the rest of the Earth community. With this in mind Burdon offers that Human Law is “rules, supported by the Great Law, which are articulated by human authorities for the common good of the comprehensive whole” (Burdon, 2013, p. 829). This maintains humans as the primary law givers’ but requires that such Human Laws are in accordance with the overarching Great Law. Cullinan explains this best when he says that, "Great Law is understood as “design parameters within which those ... engaged in developing Earth Jurisprudence for the human species must operate” (Cullinan 2003, p. 84-85). Thus, when making laws, humans must ensure that they recognize that ecological integrity is the foundation and that human law can be limited to satisfy it (Burdon, 2013). This is to say that human laws must be linked with the common good of the Earth community, promoting harmony in a way that corresponds to universal laws. Within the concept of Earth Jurisprudence, these laws are best described as rules put in place by humans that are supported by the Great Law and meet the needs of the whole Earth community. Human laws

should then be designed with the aim of living in harmony with the Universe. These laws would create a basis for equally beneficial relationships between human beings and the rest of the Earth community. Furthermore, they lay the groundwork for laws that can protect human rights and the environment in a way that does not exclude the other. We say the groundwork because as Cullinan addresses, the ecological first principle of interconnectedness should be applied as a framework for developing Earth Jurisprudence and not literally, as a rule, thus acting as a guide for human beings and their laws (Cullinan, 2003).

## 3.9 Ecological Jurisprudence

Although Earth Jurisprudence builds on the principles of ecocentrism and gives formal recognition to the reciprocal relationship between humans and the rest of the Earth community when discussing these concepts in the context of the Rights of Nature, some argue it is better to use the term Ecological Jurisprudence. As pointed out by O'Donnell, it speaks to the idea of ecological sovereignty and incorporates Indigenous laws into its framework (O'Donnell, 2020). A jurisprudence based on ecological sovereignty promotes the inclusion of Indigenous laws and seeks to transcend anthropocentric boundaries in favor of ecocentrism by incorporating concepts such as ecological constitutionalism and advocates enacting a crime of ecocide into international law, something that is not explicitly covered by Earth Jurisprudence (O'Donnell, 2020).

Ecological Jurisprudence operates from the threshold of ecological sovereignty as a means to change the legal paradigm to one that is more holistic. It develops the law in a way that corresponds to and includes Indigenous cosmologies and moves the legal system towards an ecocentric legal paradigm. Additionally, it reflects more qualities of ecocentrism and the Rights of Nature as it promotes a worldview that draws from both modern science and Indigenous

cosmologies, which reinforces that the Earth community is a dynamic web of interrelated beings. Boulot et al argue that we can achieve Ecological Jurisprudence by learning lessons from the surrounding ecosystems and applying them in a way that creates new concepts and values that promote ecological literacy (Boulot & Sungaila, 2012). In this way, Ecological Jurisprudence builds upon the interconnected biosphere that modern science has revealed and that Indigenous peoples have lived in accordance with for generations. Implementing such a system means that laws would be informed by the ecology of the planet and thus organized in ways that promote ecological literacy. Such laws must reflect the interconnectedness and interdependence of the Earth community and create a system wherein humans understand that it is necessary to preserve this interdependent relationship through laws. This would codify their responsibility to preserve the environment for the wellbeing of all living entities, thus removing humanity from its anthropocentric legal framework, establishing one that operates within the principles of ecocentrism and strengthens legal pluralism. Such legal pluralism would also serve as a means to ensure that the law does not become static but is constantly informed by new ideas and ever-evolving circumstances or science. This would allow the legal system to operate in a way of self-renewal similar to the cyclical nature of an ecosystem and promote intergenerational and interspecies equity. A self-renewing legal system would consider the rights of all living beings to flourish in a sustainable way that is further supported by a non-anthropocentric approach to the law. However, this recognizes that all law is still anthropogenic in its enforcement.

## Conclusion

In the end, to achieve Earth Jurisprudence, or better yet, Ecological Jurisprudence, the legal system must shift to reflect the principles of interconnectedness and interdependence as outlined

in ecocentrism (Burdon, 2013). The adoption of these jurisprudences is one mechanism to accomplish this in light of the climate crisis. As will be explored in the following section, human rights are increasingly threatened by climate change. Therefore, it is vital that international law evolve in such a way that it reflects the universal rule that human existence is reliant on the protection of the greater Earth community.

# *Chapter 4* - Human Rights Law and Climate Change

> "Climate change, human-induced climate change, is obviously an assault on the ecosystem that we all share, but it also has the added feature of undercutting rights, important rights like the right to health, the right to food, to water and sanitation, to adequate housing, and, in a number of small island States and coastal communities, the very right to self-determination and existence."
> - Flavia Pansieri, United Nations Deputy High Commissioner for Human Rights

## Introduction

Former United Nations High Commissioner for Human Rights Mary Robinson has called the climate crisis "the greatest threat to human rights in the twenty first century" (Robinson, 2015). Despite this threat, global governments have continually failed to act in a meaningful way to curtail the effects of climate change. As discussed at the outset of this essay humanity may be approaching a point where curving the effects of the climate crisis is not possible. Therefore, it is imperative to focus the conversation on how to enact climate justice in a way that guarantees human rights and the rights of the of the Earth community at large are protected. One approach to this is to frame the climate crisis as a human rights issue. This form of justice may appear to be approaching it with an anthropocentric agenda that seeks to only protect humans but this essay intends to show how starting with this framework could further strengthen an ecocentric approach to climate justice.

## 4.1 The Threat of Climate Change to Human Rights

It can be established that climate change is a threat to human rights at an international level by analyzing which fundamental rights are being undermined by the impacts of the climate crisis. Due to the all-encompassing nature of climate change, it is evident that various human rights are

threatened. These include the right to life, the right to water and sanitation; the right to health, the right to self-determination, and the right to food, among others. This essay cannot discuss in detail how all of these rights are threatened by climate change; rather, it will use certain rights to show the correlation between human rights and climate change and then discuss how these rights play a larger role in establishing a more comprehensive approach to climate justice.

Schapper has theorized that the most heavily impacted rights are civil and political rights, as well as economic, social, and cultural rights. But some also believe that collective rights are in danger as well (Schapper, 2018). The first example of a right that would be violated is the right to life which is given under Article 6 of the International Covenant on Civil and Political Rights (ICCPR, 1966) as well as, the Article 3 of the Universal Declaration of Human Rights, which states "everyone has the right to life, liberty and security of person" (UDHR, 1948). The right to life would be most severely impacted by extreme weather circumstances such as floods, hurricanes, and heatwaves, which are expected to become more frequent; however, other factors include drought and an increase in diseases (Humphreys, 2009). The United Nations OHCHR finds that currently 400,000 deaths per year can be attributed to climate change (OHCHR, 2021). This number is only expected to rise in the coming decades and is anticipated to hit 700,000 deaths per year by 2030 (Bates-Anoma, 2015). It can be argued that the right to life is the most obvious human right threatened by climate change, but several others are impacted by the crisis. Already humanity is seeing that the right to food which is enshrined in Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is under severe threat with estimates that a two-degree Celsius increase in average global temperature will put "between 100 million and 400 million more people at risk of hunger" (World Bank Group, 2010). This year alone there has been severe

droughts in the Horn of Africa where the United Nations estimates that twenty million people are at risk of going hungry (UN News, 2022). This situation also speaks to the right to water which is not directly given by the ICESCR but is understood as a human right congruent with resolution 64/292 of the General Assembly, which stated "the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights." This right is also found in Article 1 of the UNCESCR, which states in General Comment No. 15; "States [sic] parties have to adopt effective measures to realize, without discrimination, the right to water" (Bates-Anoma, 2015). If IPCC estimates are correct climate change will impact 1 to 2 billion people, reducing their ability to access clean water and increasing water scarcity in urban and rural areas (Bates-Anoma, 2015). Additionally, the right to housing (Article 11 of ICESCR), is at risk as extreme weather destroys homes and displaces millions, also affecting their right to migrate with dignity (OHCHR, 2021). Another right that will be severely affected by climate change is the right to self-determination which is given under Article 1 of the United Nations Charter and Article 1 of the ICCPR and ICESCR all of which enshrines the right to self-determination and state "By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (Bates-Anoma, 2015). This means that a State must ensure that citizens have the resources necessary to live in a way congruent with this right. Climate change threatens this right in a variety of ways as it threatens the livelihoods of people on the frontlines of the crisis as well as their cultural ways of life (Bates-Anoma, 2015). This is especially true for Indigenous communities whose cultural practices are tied to their environment. Not only this, but some Peoples very existence are threatened by rising oceans that put their territories in danger of becoming uninhabitable. Such is the case for the people of Tuvalu, where their small island nation in the South Pacific is in danger of becoming the first populated

island to disappear from climate-induced sea-level rise. Its 11,000 inhabitants face one of the worst threats to their self-determination as they will have to completely relocate themselves if they are to have any hope of saving their community and culture (Duong, 2014). In reaction to this crisis, the government of Tuvalu has purchased 5,500 acres of land in Fiji to relocate their people and preserve their culture (Duong, 2014). As of today, rising sea levels are on the verge of swallowing two of Tuvalu's nine islands. Scientists have predicted that most of the islands will eventually be 'sinking' into waves of the Pacific Ocean in the coming decades (Duong, 2014). Unfortunately, they are only the first on a long list of Indigenous peoples whose self-determination and way of life is in danger. As has been discussed, Indigenous peoples and those who live in periphery countries face a disproportionate level of climate-induced catastrophe. Therefore, it is essential that human rights law evolves in a way that can protect these groups. In forthcoming sections, it will be shown that by ensuring the protection of the most vulnerable climate justice can be expanded in a way that is more equitable for all beings.

## 4.2 Expanding and Decolonizing International Law

Before any discussion of furthering protections can be done, the failings of international law must first be addressed, specifically as it pertains to human rights. As previously stated, the current legal system does not provide adequate protection for the coming crisis in a way that protects the most vulnerable. This is because the current model of international law specifically human rights law, is heavily influenced by Western and Eurocentric ideologies that promote an anthropocentric model of rights that excludes those who are most vulnerable to the impacts of climate change, and does not provide adequate protection to the planet as a whole. Therefore, a more comprehensive interpretation of rights is needed to fulfill these protections in a way that

provides climate justice for all beings. Addressing the elephant in the room, it must be considered that human rights law, specifically the United Nations Declaration on Human Rights (UDHR) was written in reaction to the events of World War II by the victors, all of which came from Western countries who were either former or current colonialist nations. While they intended to write a document that insured universal rights for all people, the very worldview from which they operated limited their ability to see that they were excluding groups who did not hold this same perspective. International law has always been tied to a Eurocentric worldview and used as an instrument of colonialism and imperialism. By failing to incorporate Indigenous perspectives into human rights law, these powers were perpetuating the same methods of exclusion that had been established for hundreds of years (Gomez, Isa, 2010). Further, this Eurocentric perspective has often served as a tool of colonialism whereby it has oppressed, dispossessed, and marginalized those it deemed uncivilized or not, in line with Western or European values (Gomez Isa, 2010). Historically, international law has been a vehicle for colonization, as can be evidenced by the rule of uti possidetis, as you possess; so, you hold, this doctrine ensures that the existing stakeholders retain the lands they possessed during colonization (Castellino, 2005). In brief it maintains "that new States will come to independence with the same boundaries they had when they were administrative units within the territory or territories of a colonial power" (Shawt, 1997). Consequently, this law deprived the Indigenous population of their territory in favor of establishing new states; thus, the new states had the same borders as the old colonies leaving the Indigenous community without any legal right to their territories (Gomez Isa, 2010). For Indigenous populations this was not a true form of decolonization; rather just another form of colonization and oppression. Without the restoration of their territories, Indigenous rights to self-determination and cultural life cannot be fulfilled and international law cannot be completely decolonized. Another

example of this is that they made human rights an obligation of the state; this idea excluded, or at the very least disenfranchised Indigenous peoples who were oppressed by the very States in charge of their rights. This is evidenced by the way the States exploit and extinguish Indigenous lands, territories, and even culture in favor of their own Westernized agenda. As long as Western and Eurocentric ideology is at the forefront of the international human rights movement, it can never be universal.

However, by recognizing the rights of Indigenous peoples and implementing non-Western views and values that are in line with the promotion and protection of other cultures human rights law can be truly universal. This first step can be seen as the decolonization of human rights law, and while it is an ongoing process, there has been some significant progress. This process was orchestrated throughout the Americas in the 1970s and 80s as Indigenous communities used the very discourse of international law, specifically human rights law, to advocate for their rights. Particularly they used Articles 1.3 and 1.2 of the United Nations Charter, which states, “promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, and establishes the rights of self-determination" (U.N. Charter, 1945, art. 1.3). This language became a powerful tool for Indigenous peoples as they advanced their demands on the international stage. This movement became known as the ‘Indigenous emergence’ as they made their presence known through highly politized social movements that caught the attention of the international community in a way that they could not ignore and eventually impacted international law (Guzman, 2019). To the credit of the United Nations, they were open to their claims and actively helped to further advance their cause of recognition and protection (Gomez Isa, 2010). Through this process, Indigenous peoples transformed themselves from victims of colonial-influenced international law to reformers of it as they successfully lead

the decolonization of international and human rights law. Furthermore, they moved from objects of protection to subjects of rights establishing legal personhood for themselves at an international level (Gomez Isa, 2010). The culmination of this movement came in 2007 with the adoption of the United Nations Declaration on Rights of Indigenous Peoples (UNDRIP). This declaration simultaneously holds the future aspirations that Indigenous peoples have for international and human rights law and attempts to reconcile the historical damage caused by them. The preamble of the UNDRIP specifically references the rights of self-determination and development that started the Indigenous movement for recognition and protection. It states; "Indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization, and dispossession of their lands, territories, and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests" (UNDRIP, 2007, p. 2). Recognizing the right to self-determination now meant that Indigenous peoples could operate with some autonomy and self-governance within their state of residence. This allows for the flourishing of their cultural identity, that is outside of colonial influence subjugation. In addition to the right to self-determination, the declaration recognized collective rights as an integral aspect of the Indigenous worldview and culture. The declaration reads; "Indigenous people possess collective rights which are indispensable for their existence, wellbeing and integral development as peoples" (UNDRIP, 2007, p. 4). Article 1 further states that "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms' (UNDRIP, 2007, art. 1 p. 4). The recognition of collective rights guaranteed the protection of Indigenous language, territory, natural resources, and culture, providing a legal link between their human rights and their cultural identity that was previously unrealized (Guzman, 2019). The declaration further cemented that the rights of Indigenous peoples can no longer be determined

without their active participation and consent (Gomez Isa, 2010). The creation of the UNDRIP is proof that international and human rights law is malleable and that traditionally marginalized communities have an active role to play in its evolution. The decolonization of these laws is an ongoing process, but it has shown that an expansion of the traditionally held legal system is necessary. To this end, it has laid the groundwork for a more comprehensive and inclusive system of justice that is guided by diverse perspectives and approaches that are outside of mainstream Western or anthropocentric models. As will be discussed, including the Indigenous cosmologies into international law could make it more attuned to the problem of climate change, expanding it in a way that is ecocentric and provides a pathway to climate justice for all beings.

## 4.3 Right to a Healthy Environment: Greening of Human Rights Law

In the face of climate change, experts who study the overlap of human rights and climate change have acknowledged the need to incorporate the right to a healthy environment. Such a right has been developing for years and major strides have been made in the past year to enshrine it as such. While there are many positive aspects to it, there are also gaps. This section will discuss how this potential right has been developed in the legal discourse and its implications for achieving climate justice. To begin, it should be acknowledged that there is no explicit right to a healthy environment in the original writing of the Universal Declaration of Human Rights, rather it creates the groundwork for such a right that can be found in Article 25 which states that "everyone has the right to a standard of living adequate for himself and his family, health, and well-being (United Nations, 1948, art. 25). Other documents that allude to the right to a healthy environment include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) both of which offer the implication of a right

to a healthy environment through the right to life. This argument is best understood through the idea that the right to life must not be interpreted in a restrictive matter and that to fulfill its protection the state must implement positive measures taking all possible actions to ensure that threats to the right to life are minimized. This view makes the case that the right to a healthy environment is implicit and goes beyond the law since without a healthy environment there can be no human life, thus it is not a result of social development but a matter of ecological fact (Borràs, 2016).

In 1972 the right to a healthy environment began to gain traction as it became formally recognized in the Declaration of the United Nations Conference on the Human Environment, otherwise known as the Stockholm Declaration. In principle one of this declaration, it was acknowledged that; “a person has the fundamental right to freedom, equality, and the enjoyment of satisfactory living conditions in an environment whose quality allows him to live with dignity and welfare” (UNEP, 1972, p. 2). This right also requires that persons have the obligation “to protect and improve the environment for present and future generations, thereby ensuring that there is a reciprocal aspect to the right that defends it from being one-sided" (UNEP, 1972, p. 2). Further, the idea of this right is also found in the declaration's preamble: “The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world..., and the duty of all governments” (UNEP, 1972, p. 1). With these statements, the Stockholm Declaration became the first international document to establish a link between human rights and the environment. While it was surely historic, it lacked implementation mechanisms and like other United Nations declarations, it was not legally binding (Borràs, 2016). However, it was still a major step forward and has since led to an extensive amount of progress in the legal discourse that has culminated with the United Nations Human Rights

Council adopting a resolution that a healthy and clean environment is a human right (Borràs, 2016). This progression did not occur overnight and it is important to highlight the journey of this right to better understand its influence on human rights law as well as its limitations. Following the Stockholm Declaration, other legal institutions began to recognize the need for the right to a healthy environment on a global scale. This is evidenced by proposals from the World Commission on Environment and Development which created the principle that "All human beings have the fundamental right to an environment adequate for their health and welfare" (Brundtland, 1987, p. 339). Additionally, the Draft Charter of Environmental Rights and Obligations of the Individual, Groups, and Organizations, adopted a proposal that stated; "All human beings have the basic right to an environment adequate for their health and well-being and the responsibility to protect the environment for the benefit of present and future generations" (Draft Charter of Environmental Rights and Obligations, 1990). Another key document was the Rio Declaration on Environment and Development, which linked human rights and the environment by stating that “all human beings are at the center of concerns for sustainable development and are entitled to a healthy and productive life in harmony with Nature” (Antrim, 2019, p.1). While this terminology is not as specific as that of the others it nevertheless provides an adequate link between human rights and the environment that would later play a crucial role in the recognition of the right to a healthy environment.

Such declarations were later used by former United Nations Special Rapporteur Fatma Zohra Ksentini, who conducted a report on the intersection between human rights and the environment. In brief, Rapporteur Ksentini found that the Stockholm Declaration pertains more to this intersection than does the Rio Declaration (Borras, 2016). She went on to write, that human rights and the environment were interconnected at a global level and not unique to industrialized

societies. She discussed that the degradation of the environment plays a direct role in the enjoyment of human rights and can lead to violations of said rights. In her conclusion, she recognized that while there has been a shift in environmental law that favors providing the right to a healthy environment, there was still an urgent need for this right to be codified in international human rights law to secure its protection (Borràs, 2016). She recommended that this begins with the Draft Declaration of Principles, which could set legal norms for the right to a satisfactory environment. Despite such recommendations, the UN General Assembly and other bodies such as the Human Rights Commission have yet to enact them (Borràs, 2016).

The most significant progress in the recognition of the human right to a healthy environment has come just in the past year, with the UN Human Rights Council adopting Resolutions 48/13 and 48/14 on October 8, 2021. The first resolution 48/13 took the first step of enacting the human right to a healthy and sustainable environment, while 48/14 put into place a Special Rapporteur dedicated specifically to the promotion and protection of human rights in the context of climate change. This position, which will be filled by Dr. Ian Fry, who is a member of the Indigenous community of Tuvalu and holds double nationality in Australia, is a historic move forward for the expansion of human rights and the incorporation of Indigenous perspectives into human rights law (ANU News, 2022). The process for Resolution 48/13 was a culmination of nearly fifty years of advocacy and debate. The desire to establish this right was accelerated in September 2020 when the states of Costa Rica, Morocco, Slovenia, Switzerland, and the Maldives began an informal discussion that became known as the Core Group of States on Human Rights and the Environment. This discussion proposed the official recognition of the right to a safe, clean, healthy, and sustainable environment. After months of discussion, sixty-nine, States endorsed this call for recognition, soon joined by over a thousand non-governmental organizations which

included major names such as Greenpeace and Amnesty International. Additionally, this movement was propelled by leaders in the human rights field, including UN Special Rapporteur on Human Rights and Environment, David Boyd and John Knox, his predecessor (Aguila, 2021). When the resolution finally made it to the Human Rights Council, it was approved by all 43 present member states notwithstanding the absence of the United States from the Council and the missing States of China, India, Japan, and Russia (Aguila, 2021). There is something to be said for the world's largest polluters being absent, and while that fact may provide obstacles in the future implementation of this resolution, it is nevertheless a historic moment. The details of the resolution include the first article which states "the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights" (Aguila, 2021). One feature of this right is that it is not an isolated right, but rather it is related to other rights within international law, specifically human rights law (Aguila, 2021). It goes on to advise states to build capacity that will bring about policies for the enjoyment of this right (Aguila, 2021). These aspects unequivocally unify the idea that was established by the Stockholm Declaration that human rights and the environment are interconnected. Through the definition given it protects the environment from human-caused damage but it should be noted that this is not done for the sake of the environment, but for the sake of human rights that are reliant on what the environment provides. While the phrasing of the right to a healthy and sustainable environment seems to imply that the whole of the ecosystem could be protected in a way that allows it to flourish, it leaves substantial room for this to be balanced in terms of human rights. In this sense, human rights would probably take precedent, leaving environmental rights in a limited capacity. The argument could be made that in order to truly protect human rights the ecosystem needs to flourish as it was intended, but this does not extend distinct rights to the environment. As the wording implies it is the human right

‘to’ the environment, and not a right ‘of’ the environment. To elaborate, it protects water from pollution, but only to the extent that human beings need clean drinking water. Therefore, it would stop short of protecting a river that did not serve the immediate needs of humans. It should be noted that since this right is new it has not been fully tested and we do not know how it will be enacted or what its limitations will be however, as shown it does not meet the same standard of an ecocentric framework. Nevertheless, it is an important expansion of the human rights legal structure. This resolution is a huge leap forward in establishing the link between human rights and climate change, but it should be noted that there are some substantial drawbacks.

Firstly, as it stands now, it is recognized by the international community only in soft law and at the regional level. This means that it has not received global approval and is designated as soft law and not legally binding. Without this critical enforcement mechanism, it would prove difficult to hold States accountable in any meaningful way (Aguila, 2021). Additionally, it is probable that it would face significant backlash from the world's biggest polluters, China and the United States, who have yet to recognize this right. It also faces obstacles at the national level where implementation mechanisms are needed to provide proper enforcement so that States are held to their duty to respect, protect, and fulfill the right to a healthy environment. Another obstacle is that the resolution still requires approval and adoption by the United Nations General Assembly. Without this, the right to a healthy environment cannot reach the status of an international covenant or receive global recognition in a meaningful way. It should be noted that at the time of writing the UN General Assembly is set to vote on this resolution in July of 2022. Thus, this is not the final phase of this resolution but rather a first step as it seeks further implementation. As alluded to earlier, the last, and, it could be argued, most significant drawback to this right is that despite its progress in the human rights' legal regime, it is still based on an anthropocentric model of human

rights. This is to say that it only grants Nature protection in regards to its usefulness to human beings and not for its inherent value. As has been discussed in the wake of the climate crisis, drastic action is needed that restructures the legal systems in a way that expands climate justice to protect the ecosystem as a whole.

The right to a healthy and sustainable environment is a step in the right direction and a major expansion of human rights law, but it falls short of the ecocentric model for justice. Further, it does not fully incorporate the Indigenous perspectives that have been mentioned earlier, particularly in terms of the Rights of Nature. A better example of this type of expansion of rights would be the landmark ruling in the case of the Lhaka Honhat Association v. Argentina, which went before the Inter-American Court of Human Rights in 2020. This case will be discussed in detail in a later section but for now it should be stated that it provides an example of how international law can evolve when Indigenous cosmologies meet Western legal systems.

## 4.4 Merging Indigenous Cosmologies and Western Legal Systems

The corrosiveness of the anthropocentric worldview is never more obvious than when the subject of rights is discussed. For centuries the idea of who or what could possess rights has led to a system of oppression, othering, and subjugation. In the past the language of rights or lack thereof, has been written in a way that has justified slavery, enforced colonization, or subjugated women. In its current state the language of rights is used to build a wall between humans and Nature. The foundation of this wall is built on the idea that humans are not only separate from the natural world but have dominance over it. This is most evident in the idea of property rights, which perpetuates the myth that humans have ownership over the planet and that it is subject to their will and desires. When addressing this matter, David Boyd wrote that the arrogance of the human species to exercise

dominance over millions of other species is astonishing (Boyd, 2017). To think that one species can lay claim to literally every square mile of the Earth and all the beings within it is truly unsettling. What is even more disturbing is that this idea is legally enforceable and the dominant view across nearly every legal system. Boyd points out that while the idea of property rights is well accepted there is little discussion of the idea of property responsibility. This lack of responsibility to the so-called ownership of the planet has been detrimental to the health of the Earth community, including the human species. As analyzed in the previous section the decolonization of international law is integral to the expansion of rights law and although there has been progress such as recognizing the human right to a healthy and sustainable environment a larger change is necessary to shift from the current Western and anthropocentric system especially in the face of the climate crisis. Fortunately, this decolonization has given rise to the influence of Indigenous and non-Western perspective on rights and over the course of the past few decades significant leaps forward have been made to enact these ideals the most influential of which is known as the Rights of Nature.

In terms of enforcing climate justice for all beings, the incorporation of Indigenous cosmologies into international law is critical to decolonizing and expanding the definitions of rights and to whom or what they apply. A core element of many Indigenous cultures is their relationship with Nature, which is far more holistic and ecocentric than the anthropocentric and Western-based worldview, thus allowing for a more inclusive form of rights that extends to Nature. Rather than viewing Nature as a commodity to be used or owned by humans' Indigenous peoples see themselves as a part of the natural world, thus challenging the legal practice of property rights. This idea is directly in line with that of ecocentrism, which promotes the interconnectedness of humans with the rest of the Earth community (Boyd, 2017). The core philosophies of the Rights of Nature are based in the Indigenous tradition that a healthy environment is essential to their

culture and lifestyle as they see themselves interdependent on the environment. This follows the ecocentric philosophy that views the ecosystem as interconnected with the survival of humans. The Rights of Nature would enable life in all of its forms to have the right to exist, persist, maintain, and regenerate as its evolutionary nature dictates (Borras, 2016). Exerting this right on Natures behalf would fall on human responsibility and legal authority (Borras, 2016). Such a connection between humans and the natural world implies a responsibility to protect and preserve the environment not only for the present but also for future generations, therefore in many Indigenous societies there has been a concerted effort to protect Nature in a legal capacity transforming it from an object of protection to a subject of rights (Borras, 2016). O'Donnell further addresses the Indigenous influence on the Rights of Nature movement and argues that it would be far less effective in achieving tangible outcomes had it not been for their leadership. And as Birrell states, their desire to resist colonial imposition, affirm spiritual and ancestral connections to land and waters, and express political agitation against neocolonial expansion and dispossession (O'Donnell, 2020). As discussed in an earlier chapter the Rights of Nature movement is just one element of the legal philosophy of Earth Jurisprudence but it is perhaps the most direct and legally effective mode of promoting it (O'Donnell, 2020). This has given rise to an increasing amount of case law that has accepted Christopher Stone's concept of recognizing Nature and its elements as legal entities. These specific cases will be discussed at length in the following section. But as a prelude to them, the complexity surrounding the concept of legal personhood must be understood.

In brief legal personality is a construct of law that creates the capacity to bear rights and duties within the law. This consists of three specific rights that include the right to enter into and enforce contracts; the right to own and deal with property; and the right to sue and be sued in court, also known as legal standing (O'Donnell & Talbot-Jones, 2018). The challenge for applying legal

personality to Nature is that the concept is primarily Western and anthropocentric and such an idea only makes sense to a human being who understands and operates within a framework of laws (O'Donnell et al., 2020). The natural world has never needed these rights to protect itself until the emergence of human activity began to harm it, forcing its participation in the human legal system to avoid extinction. While legal personhood would provide a major shift for Nature from the object of law to the subject of it, it also brings with it several challenges. One challenge in particular is that it now frames Nature as a competitor with humans, causing the balance of rights to tip in favor of humanity and further exuberating the idea of human dominance (O'Donnell, 2020). This will be shown in greater detail as we analyze the constitutions of Ecuador and Bolivia and the subsequent cases that arose from them. But in brief we know from the history of humanity that when challenged, humans tend to error in favor of preserving themselves. For this reason, when making the case for legal personhood, it is imperative to reflect on the first principle of ecology that everything is connected to everything else. And as highlighted in the previous section the interdependence between Nature and humans' underlines that there can be no protection of human rights without first protecting the surrounding ecosystems. Another challenge that should be discussed is the distinction between recognizing Nature as a living entity and a legal person. In some cases, natural elements such as rivers have been recognized as living entities, but this does not necessarily mean that they are entitled to any legal rights or duties. In such cases they are given legal protections, but that does not mean they are recognized at the same level as a being that is granted legal personhood. This means that they are not able to perform the specific rights mentioned prior; for instance, a river that is seen as a living entity could not sue for protections on its own behalf. However, this does elevate it to more than an object of the law even though it does

not obtain subject status (O'Donnell, 2020). This distinction will become more relevant as we dive deeper into specific cases.

When attempting to merge Indigenous perspectives with Western legal systems, it should be noted that there are differences that are difficult to reconcile. In the paragraph above, what is meant by a living entity within the context of Western law was addressed; however, many Indigenous peoples see the recognition of Nature as a living being in a way that creates obligations centered around Nature and not humans. This would mean that to have a truly ecocentric perspective of the Rights of Nature would require the balancing of rights to tip in favor of Nature and not humans. As pointed out, this is something Western legal systems would have great difficulty accepting. Despite this tension, there is a path to reconcile these worldviews in the form of Ecological Jurisprudence. As discussed earlier this is different than Earth Jurisprudence as it is 'jurisprudence based on ecological sovereignty' (Boulot & Sungaila, 2012). Since it promotes the inclusion of Indigenous laws and seeks to transcend anthropocentric boundaries in favor of ecocentrism it could be argued that this term is more correct than Earth Jurisprudence (O'Donnell, 2020). That said, challenges still remain. The first challenge that Ecological Jurisprudence faces is to give proper credit to Indigenous peoples who have brought the Rights of Nature movement into prominence while understanding that they are not a monolith and therefore do not all adhere to the Rights of Nature. The second challenge is acknowledging that Ecological Jurisprudence is influenced by Indigenous laws and must reflect the universality and intercultural nature of those laws, especially as it applies to the Rights of Nature. It must also impose strong forms of legal pluralism by recognizing that Indigenous peoples have the agency to reform Ecological Jurisprudence in a way that best reflects their concepts of the Rights of Nature. This is to say that it should take a more ecocentric approach as outlined by their worldview. Lastly, it faces the

challenge of repairing the disunity between Nature and humans that has been so prevalent under the anthropocentric culture, replacing it with one that values the interconnectedness between them (O'Donnell, 2020). In summary, these challenges all point to prioritizing Indigenous cosmology within the framework of Ecological Jurisprudence in a way that gives them deference in relation to preexisting Western legal systems. However, as noted by Pelizzon, this does not mean that Indigenous voices are the only ones that are of consequence; rather, he contends, to successfully administer Ecological Jurisprudence, there must be dialogue with all cultures in regard to how humans interact with the environment (Pelizzon, 2014). He cautions that due to overarching power relations, such a dialogue can be manipulated by the dominate cultures by including desirable traits of said culture and excluding others that it deems to not be relevant or consistent with its views, hence creating a form of environmental colonialism (Pelizzon, 2014). Thus, the incorporation of various cosmologies with an emphasis on those held by Indigenous peoples is the key to strengthening legal pluralism and the merging of Western and Indigenous laws. Ecological Jurisprudence is a key element for this as it establishes ecological sovereignty and places the Rights of Nature in an ecocentric framework.

In light of this it should be discussed that there are those that challenge the Rights of Nature approach stating that it cannot be truly ecocentric. They argue that in an ecocentric approach, if Nature were a subject of rights, it would be understood as a single ecological entity. However, in Western legal thought granting personhood generally means a more individualized approach to rights (Tănăsescu, 2020). Since in Indigenous practices Nature is seen as the universal principle that is the foundation of all life, it would be difficult to reconcile these two forms of rights, thus challenging that the Rights of Nature can be truly ecocentric (Tănăsescu, 2020). Further, it is argued that within the framework laid out in the Ecuadorian Constitution these rights are not truly

ecocentric as it relies on anthropocentric provisions for enforcement (Tănăsescu, 2020). Tănăsescu is therefore making the argument that by making Nature a subject of rights it would be putting constraints on it that are antithetical to an ecocentric perspective and could be interpreted as more biocentric. While this line of thought is reasonable, a case can be made that if the Rights of Nature were to be established in an international legal framework backed by a global commitment, then this would constitute an ecocentric system. This is to say that even if different types of rights were granted to different species as proposed by Singer, the fact that all beings were viewed with inherent value separate from their value to humans would be enough to constitute an ecocentric approach. As will be discussed further the Ecuadorian Constitution portrays Nature's right as inherent to all of Earth's ecosystems including those that go beyond its borders; this parallels international human rights law, which is considered to be universal. Therefore, it could be said that even if the legal personality of Nature is modeled to fit within the context of the Western legal system, perceiving the Rights of Nature as inherent would be an ecocentric view (Tănăsescu, 2020). Tănăsescu also argues that to be true to Indigenous philosophies it should be understood that as a sacred entity Nature possess its own rights separate from the human legal system and therefore, humans are part of its system rather than it being a part of theirs (Tănăsescu, 2020). On a philosophical level this essay is inclined to agree; however, in a practical sense it does not bring about any real change, especially when considering the problem of climate justice. While she argues that that using the Rights of Nature as a legal entity takes away from Indigenous cosmologies, it could be argued that the hybridization of Western and Indigenous worldviews makes protections for Indigenous peoples stronger as well as provides a framework for combating the threats from climate change. To this end, this essay proposes that a certain codification or merging of Western legal understanding and Indigenous philosophies is needed to enact

meaningful change. This is not intended to whitewash or romanticize Indigenous perspectives but rather allows them to be incorporated into Western legal systems so that there can be a truly universal form of climate justice that is equitable for all beings. Following this same line of thought, environmentalist Aldo Leopold wrote an essay titled "The Land Ethic, which would become known as the intellectual groundwork for the Western discourse surrounding the Rights of Nature (Boyd, 2017). In this work Leopold writes; "We abuse land because we see it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect." (Leopold, 1949, p. 6). This reflects the same principles of ecocentrism and respect for Nature that are found in Indigenous thought while also disavowing the idea of ownership and property rights that are held over Nature. Such thoughts would lead to radical reforms within the Western legal system signaling a merging of Indigenous and Western ideologies.

# *Chapter 5* - The Rights of Nature

## Introduction

One of the driving forces for the Rights of Nature movement has been the colonization of Indigenous territories which has had a destructive impact on the ecological environment of their communities as well as the people themselves (Thompson, 2020). By developing new laws, policies, and legal systems based on the Rights of Nature, they can better protect themselves from the bad actors who threaten their land and way of life (Thompson, 2020). Such a new legal system holds tremendous capacity for also protecting against the effects of the climate crisis. As will be shown a merging of Indigenous and Western thought has sparked a process of legal challenges and reforms in favor of the Rights of Nature that could hold the potential for accountability and protection in the wake of climate change.

## 5.1 Evolution of The Rights of Nature in Western Legal System

In 1972, the case of Sierra Club v. Morton had a major impact on the Rights of Nature movement. The details of this case are too lengthy for this essay, but in brief the case consisted of the following facts. The Disney Corporation wanted to build a ski resort in the mountains of Sierra California, known for its wild and ancient redwood forests (Boyd, 2017). After hearing about their plans, the environmentalist organization Sierra Club, which was founded by legendary conservationist John Muir, took action by filing a lawsuit against Disney. After failing to prove legal standing in the lower courts, the Sierra Club appealed to the US Supreme Court, where it was fated to meet with Justice William O. Douglas (Boyd, 2017). Unfortunately, despite his efforts, Justice Douglas was unable to persuade a majority of the Justices to side with his opinion. However, his dissenting opinion would be the foundation for legal precedent decades later. In his dissenting opinion he wrote:

> "The critical question of 'standing' would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. Contemporary public concern for protecting Nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation" (Sierra Club v. Morton, 1972 p. 742–3).

In essence, Justice Douglas was arguing for inanimate objects to have legal standing in court (Borras, 2016). He went on to argue that this was not an unprecedented act, as legal personality has been given to other objects such as ships in maritime law as well as corporations in common law. Therefore, it should not be a legal leap to grant the same to such natural entities such as trees, mountains, beaches, rivers, etc. who are in danger of the destructive forces of modern technology and society (Sierra Club v. Morton, 1972, p. 742–3). Simultaneously, author and law professor Christopher Stone was drawing similar conclusions about the possibility of Nature having legal rights. This would lead him to write the groundbreaking book "Should Trees Have Standing?", which would set the tone for the legal discourse around the Rights of Nature for the next fifty years (Boyd, 2017). The discourse surrounding the Rights of Nature began to expand over the coming years, finding its way into international charters that include, the World Charter for Nature, which was adopted by over one hundred United Nations Member States in 1982. One of the more noteworthy statements by the charter is; "humanity is a part of Nature" and "life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients" (World Charter, 1982). Additionally, it creates obligations for persons to ensure this objective, thus establishing a moral responsibility to human beings (Borras, 2016). The charter also acknowledges that all life is valuable regardless of its worth to humans. Therefore, this follows the same principles of intrinsic value and responsibility outlined in Indigenous traditions that were

mentioned in the previous section showing the adoption of Indigenous cosmology into Western thought.

Another example of this evolution is the Earth Charter, which "seeks to inspire in all peoples a sense of global interdependence and shared responsibility for the welfare of the human family, the greater community of life and future generations" (Earth Charter, 2000, in Borras, 2016, p. 131). From this phrasing, we can see that there is an established link between the preservation of the ecological community and that of future generations creating a precedent for an obligation to them. The Earth Charter also gave recognition to the role of Indigenous peoples' traditions, culture, and knowledge, as well as their right to self – determination. Over the years there were other documents written that contributed to the discourse on the Rights of Nature, but perhaps the most prominent, has been the 2010 Universal Declaration of Rights of Mother Earth, which came about after the debacle of the 2009 United Nations Climate Change Conference (COP15) in Copenhagen. In direct response to this Bolivian President Evo Morales announced that Bolivia would host a Peoples' World Conference on Climate Change and the Rights of Mother Earth (Cullinan, 2011). The purpose of the conference was to discuss a Universal Declaration on the Rights of Mother Earth as well as to establish a Tribunal on Climate Justice (Cullinan, 2011). The conference was enormously successful with 35,000 attendees including hundreds of leaders from the climate justice movement as well as a large presence of Indigenous representation. In contrast to the COP 15 months prior, this conference focused on the peoples' voices and not technical arguments by a small group of States that excluded those nations who were most vulnerable to climate change (Cullinan, 2011). This format allowed the working groups of the conference to produce a declaration that addressed the core issues of the climate justice movement in a coherent manner with direct language. The Universal Declaration on the Rights of Mother Earth

corroborates the essential doctrines of the Rights of Nature and ecocentrism, including Articles 1.2 "Mother Earth is a unique, indivisible, self-regulating community of interrelated beings that sustains, contains and reproduces all beings" and 1.6 "Just as human beings have human rights; all other beings also have rights which are specific to their species or kind and appropriate for their role and function within the communities within which they exist" (Universal Declaration on the Rights of Mother Earth, 2010, art. 1.2 & 1.6). It goes on to establish in Article 2.1 that Mother Earth and all beings of which she is composed have inherent rights which include the right to life and to exist, the right to be respected, and the right to continue its vital cycles and processes free from human disruptions; to name a few (Universal Declaration on the Rights of Mother Earth, 2010, art. 2.1). This declaration also creates human obligations to responsibility, respect, and participation in these rights. This is in contrast to the Universal Declaration of Human Rights as it establishes the human responsibility to other beings and the Earth Community as a whole rather than to human interests. In this way, this declaration expands on the contemporary idea of human rights by linking human interests with the Rights of Nature arguing that it is necessary to restore harmony with Nature by respecting and protecting the rights of Mother Earth to effectively guarantee human rights (Cullinan, 2003).

Despite the aforementioned documents containing revolutionary recognition and inclusion of the legal philosophy of the Rights of Nature, it must be noted that they are not legally binding, and their power comes more from the court of public opinion rather than actual legal courts. If there is to be real action on enacting the Rights of Nature in a legally binding structure, there needs to be concrete ruling and litigation on the matter. To better understand where this process is at, the next section will evaluate the past and the recent recognition of the Rights of Nature within legal instruments such as court cases and constitutional law.

## 5.2 Recognition of The RoN in the Constitutions of Ecuador and Bolivia

The first major recognition of the Rights of Nature came about in 2006 in Tamaqua Borough, Pennsylvania when the Tamaqua Borough Sewage Sludge Ordinance was passed (Tamaqua Borough Sewage Sludge Ordinance, 2006). This ordinance was put into place in reaction to corporations dumping sewage and sludge throughout the community of Tamaqua Borough, causing severe risks to the health of the people and the environment (Maloney & Burdon, 2014). With the guidance of The Community Environmental Legal Defense Fund (CEDLF), the members of the borough council moved to adopt an ordinance that would ban corporations from dumbing sludge. Understanding that there was a connection between the health of the environment and the health of the people in the community, they sought to protect both through the establishment of the Rights of Nature (Maloney & Burdon, 2014). They accomplished this by stating that natural environments and ecosystems were legal persons while also explicitly denying that corporations are entitled to personhood (Kauffman & Martin, 2018). This gave preference to the rights of the environment, and was a monumental step forward for the Rights of Nature, as it was the first practical application that also codified them into law (Maloney & Burdon, 2014). Following the adoption of this ordinance, the residents of Highland and Grant Township passed similar ordinances designed to take away the rights of corporations in favor of rights to the environment. The Highland Township ordinance stated that their citizens have the right to water, and clean air, while also recognizing the natural environment possesses “inalienable and fundamental rights to exist and flourish” (Moutrie, 2020, p. 14). Unfortunately, in the case of these townships, their ordinances had to be amended due to legal challenges. However, from this, it is

evident that these communities were the first to establish a law that followed an ecocentric model to preserve the rights of their community and the surrounding environment.

Outside of the United States, the Rights of Nature movement continued to grow and took another leap forward in 2008 when Ecuador added the Rights of Nature to their Constitution. Discussion around legalizing the Rights of Nature had been present in Ecuador since the 1990s, when Texaco, now Chevron, did incredible damage to the Northern Ecuadorian Amazon through an oil spill that ravaged the land. This prompted a lawsuit against the company that sentenced Chevron to pay 9.5 billion dollars to Ecuador, an amount that as of today has not been paid (López, 2019). This prompted NGOs including Acción Ecológica and Indigenous rights groups to begin a discussion that would codify the Indigenous cosmology of Nature in Western legal terms, thus granting it and themselves protections (Kauffman & Martin, 2018). The election of Rafael Correa presented the opportunity to achieve this due to the large Indigenous coalition that backed him and his commitment to form a new constitution (Kauffman & Martin, 2018). The result was a constitution that put Indigenous cosmologies at its core. Such cosmologies were enshrined in the concept of 'sumak kawsay' which can be translated as 'good living' or harmonious coexistence, which is a representation of the Indigenous belief system that humans and Nature are interconnected at a fundamental level (Berros, 2021). This idea stands in direct opposition to the subjugation and exploitation of Nature, and the corrosive influence of a capitalist society that puts economic growth above the well-being of the planet (Boyd, 2017). Such ideals are directly in line with the that of ecocentrism and provide a stepping stone to further the climate justice movement. Another element in the constitution that strongly reinforces the idea of the Rights of Nature is found in the Preamble, which defines Nature as Pachamama or Mother Earth and recognizes that humans are a part of Nature and Nature as vital to human existence (Kauffman & Martin, 2018).

To this end, Rights of Nature are seen as a tool to preserve the Earth by putting it in terms consistent with Western legal systems, namely legal personhood and the ability to be protected by the state. This moves Nature from an object of rights that can be used as a resource to a subject of rights that must be protected by the State. Further, it removes the hierarchical approach to rights that had set human rights above Nature rights and instead says that neither has rights that are superior to the other. I would like to pause and note that, as mentioned in Chapter Three, this does not mean that Nature and human rights are equal; rather, it puts Nature in a position that disallows its exploitation and requires these rights to be balanced in a way that is mutually beneficial. Moreover, the Ecuadorian Constitution makes it the obligation of the state to ensure that the rights of both these parties are respected. That is to say that people have the right to live in a clean and pollution-free environment and also have the obligation to "respect the Rights of Nature, preserve a healthy environment and use natural resources sustainably" (Ecuador: 2008 Constitution in English, 2022). This places the duty to preserve and protect Nature not only on the shoulders of the State but on its citizens as well (Boyd, 2017).

The details of this legal structure are found in Articles 71-74 of the Constitution and offer a better explanation for how the Rights of Nature are to be enforced. In Article 71 it is acknowledged that Pachamama has "the right to integral respect for its existence and the maintenance and regeneration of its life cycles, structures and functions, and evolutionary processes" (Ecuador: 2008 Constitution in English, 2022, art. 71). It goes on to enable any person, people, or nations to call upon the state to enforce these rights and holds that the state has the duty to incentivize persons and legal entities to protect Nature and to promote further respect for all elements that comprise the ecosystem (Ecuador: 2008 Constitution in English, 2022). This article allows for anyone to be a guardian or ombudsman of Nature, and therefore to bring a case before

the courts as a representative of it (Berros, 2021). This addresses the issue of representation of Nature that was presented in both Stone's book and the Sierra v Morton case, where it was the opinion of the Court that Nature lacked representation and therefore lacked standing (Sierra v. Morton, 1972). In this sense, the Article proved to be a successful merging of Indigenous philosophy and a Westernized legal system. The second article that outlines the legal rights and protection of Nature is Article 72, which states that; "Nature has the right to be restored" (Ecuador: 2008 Constitution in English, 2022, art. 72). This creates the obligation of the state to establish mechanisms that restore the ecosystem if it has been affected by severe or permanent environmental damage. Additionally, it creates a duty to mitigate such damages (Ecuador: 2008 Constitution in English, 2022). This article has incredible potential for not only protecting the ecosystem and those that depend on it, but can also be used as an argument for enacting ecocide laws, as will be discussed at a later point. The Constitution also grants the State the ability to take preventative action as outlined in Article 73 which enables it to prevent activities that would "lead to the extinction of species, the destruction of ecosystems, and the permanent alteration of natural cycles" (Ecuador: 2008 Constitution in English, 2022, art. 73). This would give the state the capacity to bar development that is harmful to the environment, such as mining, oil drilling, or deforestation, all of which put species and the ecosystem at risk of harm and even extinction. Further, in the second portion of this article, it states that the "introduction of organisms and organic and inorganic material that might definitively alter the nation's genetic assets is forbidden" (Ecuador: 2008 Constitution in English, 2022, art. 72). If enforced correctly, this would ban or severely limit the use of fossil fuels and other emitters of greenhouse gases that are known to alter the environment. Lastly, Article 74 balances these rights with those of human rights by granting persons, communities, and peoples the right to benefit from the environment but it is careful to

state that this is in line with the idea of ‘sumak kawsay’ and therefore it must be in accordance with harmonious living, and not exploitative of Nature (Ecuador: 2008 Constitution in English, 2022). From this, it is evident that the Ecuadorian Constitution was a major breakthrough in advancing the Rights of Nature movement and building a legal framework that is ecocentric. However, this raises the question of how effective it was in enforcing these rights.

## 5.3 Practical Challenges to the Rights of Nature in Ecuador

Although the Ecuadorian Constitution was revolutionary, it had gaps that could be exploited in a way that undermined the Rights of Nature. Boyd points out that while the constitution guarantees Nature’s rights, it leaves room for elements of the natural environment, such as water, biodiversity, and hydrocarbons, to be labeled as ‘strategic resources of the state’ (Boyd, 2017). This would allow the state to overrule bans on the extraction and use of such elements if it believed that these resources were better off serving its interests. (Boyd, 2017). Such was the case in Ecuador when in 2009 President Correa authorized open-pit mines that had previously been halted by decades of social protest. He claimed that there would be strict regulations on the mines to ensure the mitigation of environmental damage and that despite the new constitution, Ecuador needed to continue to modernize and that natural resource extraction was imperative to Ecuador's economy (Boyd, 2017). He also argued that in order to achieve the various human rights listed in the constitution (water, food, housing, etc.) that it was necessary to rely on extracting these elements (Maloney & Burdon, 2014). Here it is evident that in practice even constitutional provisions have some failings when the question of balancing human rights and Nature rights is broached. This is the dilemma that the Ecuadorian Constitution faces as it seeks to balance the philosophies of the Indigenous peoples with the Western idea of

modernization and development. Burdon and Maloney address this dichotomy best by discussing that it is not a problem of recognizing the Rights of Nature within a Western legal system but challenging how the idea of rights is interpreted to satisfy the rampant consumerism of capitalism that devalues living organisms to commodities (Maloney & Burdon, 2014). This underscores the idea of climate justice having to be anticapitalistic to truly accomplish its goals. Thus, the main obstacle to achieving climate justice for all beings is not the difficulty in codifying the Rights of Nature into Western legal systems, nor is it the adopting of Indigenous beliefs of an ecocentric worldview over an anthropocentric one. Rather, it is the undoing of a capitalist system that equates consumerism with human rights, thus valuing said consumerism over the protection of the greater Earth Community. This can be evidenced by the progress of the Rights of Nature in the legal sense, while simultaneously almost no progress has been made in the reworking of capitalist systems.

## 5.4 Bolivia's Constitution and the Rights of Nature

Following the example set by Ecuador, Bolivia also recognized the Rights of Nature in its constitution. Bolivia's constitution, drafted in 2010, heavily reflects that of Ecuador's but with some distinct differences. Bolivia's constitution defines Mother Earth as "a dynamic living system made up of an indivisible community of all living systems and living organisms that are interrelated, interdependent, and complementary, sharing a common destiny" (Berros, 2021, p. 195). Unlike Ecuador Bolivia does not embed the Rights of Nature in its constitution; rather, it recognizes that protecting Nature provides environmental rights that extend to individuals, collectives, future generations, and other non-human beings. This is not to say that Bolivia ignores

the recognition of the Rights of Nature, rather they created a separate legal instrument to address them (Berros, 2021).[1]

These laws arose in reaction to negotiations between the Bolivian government and the Unity Pact, which represented Indigenous organizations. The first instrument, The Law of the Rights of Mother Earth, was established in 2010; it was born out of the Constitution's requirement to integrate development with the idea of Vivir Bien (Maloney & Burdon, 2014). This is to say that any development must be designed to be in harmony with Nature (Villavicencio Calzadilla & Kotzé, 2018). This law is distinct from those offered by Ecuador in that it references Mother Earth and not only Nature. While this may seem like a small distinction, it is essential to show the relationship that this law has to Indigenous philosophies which see the Earth as the primary source of life. In contrast to Ecuador, Boliva's system identifies specific rights of Mother Earth that reflect how human rights are represented. While there is no time in this essay to analyze them all in detail, it is important to reference them. They include the right to life, to the diversity of life, to water, to clean air, to equilibrium, to restoration, and to pollution-free living. The establishment of these rights creates positive and negative obligations for them to be upheld not only by the State but also by all Bolivians (Villavicencio Calzadilla & Kotzé, 2018).

The Law of the Rights of Mother Earth also consists of sets of legally binding principles that are for the most part anti-anthropocentric, especially as they pertain to sustainable development. The first principle is focused on harmony between human activity and the cycles that are inherent to Mother Earth with an aim to achieve a balance among them. In contrast to this,

[1] At the time of writing Chile is set to vote on a new constitution on September 4, 2022 that includes the Rights of Nature and enshrines Indigenous sovereignty, self-determination and representation. While it has not been put into force, it should be noted as a relevant development. A link to the proposed constitution can be found here: https://drive.google.com/file/d/164mMOeJjMZASucSPVOMuM8WhvlUV74QO/view

the second principle states that human interests take priority over the acquired rights of Mother Earth. This is directly at odds with the first principle as well as the others. It appears this principle was intended to leave some leeway in the framework that, as will be shown, creates tensions and erodes its overall agenda. Like the Ecuadorian approach, the third principle creates duties for the respect for the rights of Mother Earth that are to be upheld by the state and the society. Such respect guarantees the protection of these rights for the well-being not only of current generations but of future generations as well (Villavicencio Calzadilla & Kotzé, 2018). Following this is the principle of 'no commercialism' which goes against the idea of commercializing living systems as private property. While this principle is good in theory, it lacks real structures of enforcement and is often overruled by the reliance of the Bolivian economy on mineral and gas exploitation (Villavicencio Calzadilla & Kotzé, 2018). Lastly, the principle of multiculturism highlights how these laws were influenced by Indigenous peoples and recognize that the rights of Mother Earth require the inclusion, respect, and protection of such voices in the dialogue if humans are to achieve a system that lives in harmony with Nature (Villavicencio Calzadilla & Kotzé, 2018). While it is not possible to get into all the details of The Law of the Rights of Mother Earth, it is important to discuss the enforcement mechanisms that it puts in place to uphold these rights. Firstly, as in the Ecuadorian model, the duty of these rights is entrusted to all Bolivians who are part of the community of beings that form Mother Earth (The Framework Law, 2012). This is to say that the Bolivian people are to see themselves as integral members of the community of Mother Earth and therefore should see Her interests as their own and enforce them accordingly. To this end, it makes accommodations for an Office of Mother Earth to act as an ombudsman on Her behalf (Youatt, 2017). This is in line with Ecuador's Constitution but as it stands now Bolivia has not created such an office.

The second law known as the Framework Law, was adopted two years later in 2012 by the Plurinational Legislative Assembly. The Framework Law does not have the backing of constitutional force, but it does serve as an umbrella wherein sectoral laws must operate. Further, it applies to laws that encompass natural resources and extraction within its provisions (Villavicencio Calzadilla & Kotzé, 2018). In Article 1 of the Framework Law, it states that its aim is to establish the vision, fundamentals, and objectives of integral development in harmony with Mother Earth for vivir bien, guaranteeing the continued capacity of Mother Earth to regenerate natural systems and recapture and strengthen ancestral knowledge and practices within a framework of rights and obligation (The Framework Law, 2012 Art.1). To achieve this The Framework Law outlines four goals:

> (i) to determine the principles guiding access to the components and living systems of Mother Earth; (ii) to establish the objectives of integral development; (iii) to guide specific legislation, policies, regulations, strategies, plans and programs to achieve vivir bien through integral development; and (iv) to define the institutional framework for promoting and implementing integral development (The Framework Law 2012, art. 3).

This is to say that the overall goal of the Framework is to achieve vivir bien and eliminate the hierarchy that has been so prevalent in the discourse of rights especially surrounding the rights of humans and the rights of the natural world, so that in the end "no right can be realized without the others, nor be placed above other rights, implying the interdependency and mutual support of [all] … rights" (The Framework Law, 2012, Art. 4.1). Specifically, it argues that a violation of the rights of Mother Earth is a violation of human rights, whether it be a collective or individual right, thus linking the Rights of Nature and human rights in a legal capacity. Following this line of thought to its necessary conclusion, the Framework discusses that such violations of the rights of Mother Earth should be subject to criminal liability. As will be discussed later, this seems to establish a legal premise for the crime of ecocide, even though the framework itself does not

provide a structure for how this should be applied. However, it does state that such violations do not have a statute of limitations leaving the door open for the prosecution of crimes that happened in the past if a crime of ecocide was adopted in a more concrete form (Villavicencio Calzadilla & Kotzé, 2018).

As pointed out, the idea of vivir bien is defined as a harmony between humans and non-human beings that offers an alternative form of development that is opposed to the idea of capitalism and consumerism and promotes integral development that is complementary to respecting the rights of both parties. The Framework Law states that this is not to be seen as the end goal of vivir bien, but the process by which it is achieved (Villavicencio Calzadilla & Kotzé, 2018). Crucially the Framework Law does not offer a specific structure for how this is to be achieved and has wording that undermines this idea in favor of human development as it legalizes mining and places obligations on the state to ensure growth (Villavicencio Calzadilla & Kotzé, 2018). Such ideas of human-centered growth are in direct opposition to the rights of Mother Earth and cannot be reconciled with the goal of vivir bien, which by definition puts harmony over hierarchy within its vision of rights. In this sense, there is the same problem found in the Ecuadorian Constitution where despite all the grandiose wording for protecting the natural world, when it comes to balancing the Rights of Nature and the human desire to development, priority is given to development (Villavicencio Calzadilla & Kotzé, 2018). This is most evident in how the Framework Law approaches the idea of development. Rather than creating a new definition of development that encompasses vivir bien, it solidifies development as a necessary aspect to achieve it, thus taking away its intended meaning of harmony with Nature and replacing it with the idea that development is integral to a good life. Such contradictions undermine the goal of the Framework Law and call into question its ecocentric agenda.

Following these laws, the Unity Pact and the Plurinational Legislative Assembly agreed to a more concrete draft law on the rights of Mother Earth. The Unity Pact Draft Law was borne from the proceedings of the World People's Conference on Climate Change and the Rights of Mother Earth, which had been held in Cochabamba Bolivia years prior (Villavicencio Calzadilla & Kotzé, 2018). This Unity Pact Draft Law took an ecocentric approach and focused on representing the interests of Indigenous organizations as well as the government but with the aim to defend and protect Mother Earth. Unlike the constitution, the Unity Pact Draft Law established that Mother Earth was a bearer of rights and thus went far beyond environmental protection (Villavicencio Calzadilla & Kotzé, 2018). This was to be achieved through guiding legislation at all levels of government as well as setting obligations to protect the rights of Mother Earth in both the state and society. It went on to establish principles that were in line with living in harmony with Mother Earth, such that they would even be extended to limiting economic agendas that were contrary to the protection of Mother Earth. Despite these advances, or perhaps due to them, the Unity Pact Draft Law was never adopted primarily due to its strict approach to development (Villavicencio Calzadilla & Kotzé, 2018).

From analyzing these legal documents, it is obvious that the reoccurring problem within each is the difficulty in balancing the Rights of Nature and the right to human development. This is especially difficult when applied to developing countries whose governments are committed to providing economic stability and welfare for their citizens. In the context of an economic system that is based on capitalism, where GDP is seen as the measure of growth, they can hardly be blamed. The trouble lies in the sense that they have written their constitutions in a way that seeks to appease the current anthropocentric model while simultaneously striving for one that is ecocentric. These ideas cannot be reconciled as one sees Nature as a commodity, and the other is attempting to give

it equitable standing. As inspirational as these constitutions are in practice, they fall short of enacting a system that meets the definition of ecocentrism that was established by the likes of Leopold, Berry, Naess, and Cullinan. In actuality, it is not reasonable to expect a constitution to be able to enforce a truly ecocentric system until humanity has dealt with the underlining factors propping up their anthropocentric lifestyle. That is to say, that to expect a constitution to change the systems would be like attempting to treat an infection with painkillers, in that you may appear to feel better but the infection is still coursing through your system. In both scenarios, the root cause has not been dealt with and if left untreated will end up destroying the rest of the organism. This is not to say that they have not put us on the right path to finding a cure. The examples that have been set by Ecuador and Bolivia have set into motion a process that challenges the ideas of neoliberal development, capitalism, and consumerism. While they are not perfect systems, they have inspired a global movement of actors that consists of politicians, the judiciary, and everyday people to see that there is another way forward. Despite the contradictions and failings within these documents, the scales of justice are tipping ever towards favoring the Rights of Nature and establishing a system that is consistent with Earth and or, Ecological Jurisprudence. This is most evident in how countries around the world have used the Rights of Nature to establish legally binding court opinions to further protect the environment. In the next section, these cases will be discussed and how they move the needle forward for climate justice.

## 5.5 Breakthrough Cases Pertaining to The Rights of Nature

Over the past decade countries around the world have looked to the case in Tamaqua Bourgh Pennsylvania, and the constitutions of Ecuador and Bolivia as the basis for the enacting of the Rights of Nature in their own legal systems. This has led to developing legislation that has

resulted in protective measures for Nature as well as legal accountability for those who have done Nature harm. This section will address a few of the major cases that have been successful in providing rights to Nature and discuss the potential and the limitations that they hold for furthering the climate justice movement. There are an ever-increasing number of these types of cases and unfortunately, it is impossible to discuss them all in great detail. Therefore, this essay has tried to choose the cases that meet the following criteria; establish precedence; highlight the potential and the limitations of the Rights of Nature; incorporate Indigenous thought, and best relate to climate justice.

Unsurprisingly, the first country to successfully apply the Rights of Nature in a judicial capacity was Ecuador in the 2011 case of the Rio Vilcabamba against the Provincial Government of Loja (Berros, 2017). This case was brought on behalf of the river to argue that the expansion Vilcabamba – Quinara road would cause environmental degradation. It should be noted that those who brought the case to the court were not Ecuadorian citizens showing the international capacity for guardians of Nature. The claim cited the Ecuadorian Constitution, particularly Article 71, which states that Nature, "has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes" (Ecuador: 2008 Constitution in English, 2022, art. 71). Some of the noteworthy violations the court referenced include; the protection action as the only suitable and effective way to protect the Rights of Nature, due to the existence of specific damage; the importance of Nature, as well as its protection against degradation processes, whose damages affect present and future generations (Huddle and Others vs. Provincial Government of Loja, 2011). This ruling was historic, as it was the first time that the Rights of Nature had been protected by a court and established that the river itself has the right to its own natural course (Berros, 2017). Further, by using the Ecuadorian Constitution as a reference

for this right, it acknowledged that the new constitution has a major role to play in establishing the legal philosophy of Earth Jurisprudence within the mainstream system. While this was certainly progress, the Court went on to say that the expansion of the road could continue as long as the Rights of Nature and environmental regulations were respected (Huddle and Others vs. Provincial Government of Loja, 2011). This shows that while the Rights of Nature were recognized the court found that they had to be balanced with the right to development and therefore did not completely stop the expansion of the road but simply protected the river from degradation. Unfortunately, even with this historic ruling, the decision of the Court was not complied with forcing a non-compliance action to be filed before the Ecuadorian Constitutional Court; as it stands now; the compliance has still not been met (Huddle and Others vs. Provincial Government of Loja, 2011). Nevertheless, this case was impactful and showed that the dominant anthropocentric model could be challenged in the courts. This influenced a global movement of cases over the next decade that would continue to carry the Rights of Nature movement forward and strive to make the legal system more ecocentric.

### 5.5.1 New Zealand Cases

This influence became evident the following year when in 2012 New Zealand took action to recognize the Rights of Nature fueled by their own Indigenous communities. This case was different from the Rio Vilcabamba as it sought to acknowledge the Te Urewera National Park as a legal entity rather than only acknowledge its rights. This was enshrined in the Te Urewera Act 2014, which stated the Te Urewera is a legal entity and has all the rights, powers, duties, and liabilities of a legal person (Te Urewera, 2014, Art. 11.1). By doing so, the Te Urewera National Park became the first instance in which an element of the environment would be recognized as a legal being (Knauß, 2018). The Te Urewera Act's purpose is "to establish and preserve in

perpetuity a legal identity and protected status for Te Urewera for its intrinsic worth, its distinctive natural and cultural values; the integrity of those values, and for its national importance" (Te Urewera Act, 2014). This set the tone for other legal statuses to be applied to Nature and helped to resolve a case of legal standing for the Whanganui River that had been fought for over 150 years.

In the case of the Whanganui River, the indigenous Māori people have been fighting for the river's protection ever since British colonizers came to New Zealand and seized control of their lands, using them as resources, which is contrary to the beliefs of the Māori people who view the river as a sacred. This idea of sacredness is tied to the Māori idea of Te Awa Tupua, which views the river as their ancestor and as a whole, an integrated entity from the mountains to the sea. This is to say that they view the river as a living being to which they as a people are intrinsically tied. This is best encapsulated in the phrase "Ko au te awa, Ko te awa ko-au – "I am the river and the river is me" (Hsiao, 2012). Therefore, in step with seeing the river as a member of their community, they sought to establish it as a legal person. In March 2017 this was finally accomplished as the national government of Aotearoa New Zealand, passed legislation establishing the Whanganui River as a legal person (O'Donnell, 2020). The enforcement mechanism for this is reflective of the ones set up in the Bolivian and Ecuadorian constitutions, in that it also appoints guardians of the river; however, it differs in that it refers to the whole of the river as being protected. To enforce this newfound standing, the court drew from Te Awa Tupua Act using the office Te Pou Tupua, which appoints two guardians for the river one from the New Zealand Government and the other from the Indigenous community (Kramm, 2020). In addition to these guardians, an advisory group, Te Karewao, and a strategy group, Te Ko Puka, were also created. Unfortunately, the Act does not provide a detailed framework for the guardians but only addresses legal and institutional questions that may arise. Therefore, the guardians are granted the power to speak, and take action on behalf

of the river in order to ensure its wellbeing, but it offers no practical criteria on how to do so (Kramm, 2020). This raises concerns about upholding the rights of the river, especially when considering that there are limitations to these rights. For instance, despite the fact that the Whanganui River is considered a legal person, it does not own the water within itself. In brief, the New Zealand common law forbids the ownership of water therefore the guardians of the river cannot enforce how the water is used. The second limitation that is found concerns the existing property rights that are held by companies whose business includes or runs parallel to the river. This includes tourism, hydroelectricity production, and fishing. Thus, when defending the rights of the river, the guardians must balance these rights against the property rights and interests of these businesses. This could limit the protection allowed for the river (Kramm, 2020). The questions that arise from this case are not unique to the Whanganui River; other rivers have faced similar obstacles when the Rights of Nature are applied to them. While it is not possible to cover them all in detail, it is relevant to elaborate on how this problem presents itself in the greater discussion and what it means for implementing climate justice. Doing so will provide a better grasp of the impact that the Rights of Nature have on climate justice.

### 5.5.2 Rivers and Their Water Rights

After the laws passed recognizing the Wanganui River as a legal person, other countries followed suit, namely in the cases of India, which recognized the rights of the Ganges and Yamuna Rivers in 2017, and Bangladesh in 2019, which granted rights to Turag and all other rivers. In both of these cases, the rivers were granted legal personhood. Prior to this, Colombia had established in 2016 that the Atrato River was an entity that was the subject of rights, including rights to ‘protection, conservation, maintenance and restoration’ (The Atrato River Case, 2016). It should be noted that these are not the only cases that discuss the Rights of Nature in the context of rivers.

For the purposes of this essay and for the sake of brevity, they will be the main focus. As alluded to in the previous section, all of these cases share the same dilemma in that when it comes to enforcing the protection of their rights, there is the limitation that the water itself is not included in the law. O'Donnell address this dilemma, "the new governance arrangements for the living rivers have all left the existing rights to use water from the river in place" (O'Donnell, 2020, p. 644). She points out that not including the water itself in the new law still allows for water extraction that favors human development and puts the health of the river at risk. Further, it limits or impedes the river's capacity to govern its own water flows and water quality. Even though they are legally recognized as persons without specific rights to enforce it, they cannot protect their very existence. As discussed earlier in this essay, and reinforced by the ideas of Thomas Berry, when establishing rights for an environment, they must be specific to the inherent nature of that being. If a river does not have the right to flow, then this compromises its very existence regardless of if it's considered a legal person. The survival of a river is dependent on the flowing of its water, and it cannot be adequately protected if this water is disrupted or if the management of it is in the interests of beings other than the river. To date, the management of water within the Western legal system has been interpreted as a resource to suit human needs. This idea has begun to shift as people have recognized that clean water requires a healthy ecosystem. This has led them to take a different approach to water management that protects these flows by placing constraints on water usage. However, the right to the water and its use is still determined by entities other than the river itself, even if the river is regarded as a legal person (O'Donnell, 2020). Hence, the new legal framing of the rivers may cause more difficulty when attempting to defend them from degradation (O'Donnell, 2020). This limitation is shown by looking into the aforementioned cases.

In the case of the Rio Atrato, it was granted the rights of "protection, conservation, maintenance, and restoration but this does not include the right to own property or the right to the water that flows within its riverbeds" (The Atrato River Case, 2016, p. 97). More explicitly, in legislation concerning the Whanganui River, it is stated that no rights to water are created (Rodgers, 2017). For the Ganga and Yamuna rivers, and the rivers of Bangladesh, the courts did not make specific reference to water extraction or the rights of the river to its water (O'Donnell, 2020). This omission does not imply that there is a right to water, but rather leaves it unaddressed and unresolved. However, it should be noted that in the case of Bangladesh any loss of river flow would have a detrimental impact on the surrounding ecosystems of Bangladesh (O'Donnell, 2020). From this, we can conclude whether a river is considered to be a living or legal being without the right to its own water, and the management of it; its existence is in peril. A legally recognized right to flow would grant the river persons this thereby protecting them from further degradation, especially in the face of climate change (O'Donnell, 2020).

The right of rivers to flow is an important step in advancing the climate justice movement, especially as water scarcity and extreme drought threaten the possibility of river extinction. O'Donnell highlights this threat by stating "recognizing rivers as holders of legal rights and/or living entities without also recognizing their rights to water not only fails to address the existential threats already facing rivers but creates the legal settings in which the threat of extinction is intensified" (O'Donnell, 2020, p.12). To this end, she argues that rather than protecting rivers, environmental law has made the problem worse by not going far enough and recognizing the rights to water that are required for a river to sustain itself (O'Donnell, 2020). She offers that although legal pluralism, specifically through the Indigenous worldview, has enabled humans to view Nature as living and legal beings, we have not truly fulfilled the obligations that come with this

perspective. By stopping short of granting water rights to the rivers we have failed to create a legal system that promotes the interdependence between humans and the environment. This is not to say that the Rights of Nature have failed, but rather that in these cases they have not incorporated a fully ecocentric view. Legal personhood creates the recognition of Nature but fails to address and include the relationship between humans and Nature. Using the Whanganui River case as an example, this means humans have still not viewed it in terms of Te Awa Tupua, as a whole and integrated entity from the mountain to sea (Kramm, 2020). If rivers are to be preserved in a way that meets their needs and is legally enforceable, legal pluralism must be applied that goes against the anthropocentric view of seeing water as a resource. By allowing rivers to have rights over their water, it will fulfill their right to flow, saving them from the risk of extinction. This not only affords them justice in the wake of climate change, but would also advance the climate justice movement towards a more ecocentric path and establish more influential Ecological Jurisprudence.

## 5.6 Expansion to the Right of a Healthy Environment

In Chapter Four, this essay discussed the progress that has been made in developing the human right to a healthy environment and addressed how this right fell short of incorporating Indigenous and ecocentric perspectives since it only establishes the right to a healthy environment in the context of its benefit to humans. It was therefore concluded that at its core this was still promoting an anthropocentric view that is inconsistent with the recognition of the Rights of Nature. Despite the failure of the United Nations Human Rights Council, other international courts have made significant strides in achieving the Rights of Nature that are in accordance with an ecocentric perspective. One of the most recent examples of this is the case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v Argentina, or as it will be referred to here Lhaka

Honhat v. Argentina. This case was decided by the Inter-American Court of Human Rights on February 6, 2020, and set a precedent for the acknowledgment of the Rights of Nature. The case was brought on behalf of Indigenous communities that belong to the Wichí (Mataco), Iyjwaja (Chorote), Komlek (Toba), Niwackle (Chulupí) and Tapy'y (Tapiete) peoples in relation to the ownership of Fiscal Lots 14 and 55, which had been historically Indigenous territories dating back to at least 1629. These lands, which covered 643,000 hectares, had been increasingly occupied by criollo settlers starting in the twentieth century, leading to an interference with the Indigenous community's way of life, and access to food and water (Lhaka v. Argentina, 2020). For the purposes of this essay, it is not possible nor necessary to discuss in detail how the case has developed over the 29 years since this claim was originally brought to the courts. However, it should be noted that the original case was to resolve ownership of the land and to establish if there had been violations of the rights given in the American Convention on Human Rights. Specifically, the rights granted in the following articles; Article 21, which recognizes the right to communal property, Article 8(1) and 25(1) which relate to the rights to judicial guarantees and protections, Article 2, which requires the obligation to adopt domestic legal provisions, the political rights as established in Article 23(1) and finally Article 26 which refers to the right of progressive development and ensuring its full realization in the economic, social, educational, scientific, and cultural standards (Lhaka v. Argentina, 2020). In its decision the Court found that Argentina had violated the rights pertaining to Article 21 in the right to communal property, as well as other rights related to this; Article 25 the right to judicial guarantees, in relation to a judicial action filed in this case and Article 26 the rights to a healthy environment, to adequate food, to water, and to take part in cultural life, in particular in relation to cultural identity (Lhaka v. Argentina, 2020).

While all of these are relevant to the case, this essay will focus on the Court's interpretation of Article 26, the right to a healthy environment. This ruling was especially relevant as it was the first time that a court examined the rights to a healthy environment, adequate food, water, and cultural identity autonomously, based on Article 26 of the American Convention. This interpretation was informed by the Advisory Opinion OC-23/17, given by the Inter- American Court of Human Rights, which stated that, "the right to a healthy environment is included among the economic, social and cultural rights protected by Article 26 of the American Convention" (Inter-American Court of Human Rights, Environment and Human Rights, Advisory Opinion OC-23/17, November 15, 2017, para. 57). This is because it protects the rights that are derived from the economic, social, educational, scientific and cultural provisions found within the OAS Charter, the American Declaration of the Rights, and Duties of Man (Inter-American Court of Human Rights, Environment and Human Rights, Advisory Opinion OC-23/17, November 15, 2017, para. 57). This resulted in an expanded interpretation of Article 26 that would lead to an inclusion of the Rights of Nature. The Court reached this conclusion by examining the factors that led to a violation of each right protected within Article 26. Thus, in the case of the rights to food and water, the Court determined that by installing fencing the criollo affected the right to the environment, which in turn impacted the traditional ways the indigenous community accessed food and water (Lhaka v. Argentina, 2020). In addition, environmental rights were further affected by the criollo raising cattle on the land, which compromised the flora and natural habitats of the wildlife, putting them in competition for access to water (Lhaka v. Argentina, 2020). They also found that in order to adequately fulfill the right to a healthy environment, the environment must be considered an interest unto itself. The Court ruled in accordance with Advisory Opinion 23/17 which found that the right to a healthy environment "constitutes a universal value"; it "is a fundamental right for the

existence of humankind" (Inter-American Court of Human Rights, Environment and Human Rights, Advisory Opinion OC-23/17, November 15, 2017, para. 59). The opinion recognized that the right to a healthy environment was both a collective and individual right. As a collective right it, "is owed to both present and future generations" (Inter-American Court of Human Rights, Environment and Human Rights, Advisory Opinion OC-23/17, November 15, 2017, para. 59). Additionally, as an individual right, "its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life" (Inter-American Court of Human Rights, Environment and Human Rights, Advisory Opinion OC-23/17, November 15, 2017, para. 59). It went on to say that it perceived the right to a healthy environment as an autonomous right that extended protections to elements of the environment including forests, seas, and rivers, even where there was no evidence of a risk to individuals thus allowing for recognition of the Rights of Nature (Inter-American Court of Human Rights, Environment and Human Rights, Advisory Opinion OC-23/17, November 15, 2017, para. 62). More explicitly, the Court recognized that the environment is essential for other living beings (Tigre, 2021). The opinion stated that "damage to the environment may affect all human rights, in the sense that the full enjoyment of all human rights depends on a suitable environment" (Inter-American Court of Human Rights, Environment and Human Rights, Advisory Opinion OC-23/17, November 15, 2017, para. 64). This is to say that they saw the environment as the life force by which all other organisms were sustained. It should be noted that this is different than saying that Nature should be protected because of its usefulness to other organisms; rather, this argument sees the value in the protection of Nature not because it is 'useful' or a resource for humans but because it is essential to maintain life on the planet (Tigre, 2021). Thus, its value is inherent. In other words,

it moves the natural world from an object of the law to a subject of it consequently moving away from the anthropocentric view of Nature to one that is ecocentric.

This ruling is significant for multiple reasons. As shown above, it moves the Rights of Nature further ahead, but it also has implications for indigenous rights, and the climate justice movement. As with the constitutions of Ecuador and Bolivia, the Lhaka v. Argentina case shows that when Indigenous cosmologies are incorporated into international law, the result is a more comprehensive approach to rights that is inclusive of all beings. In addition, this case recognized that Indigenous peoples' lives are intrinsically tied to their territories and therefore, by affording protections for the environment, their land, culture and way of life can be protected as well (Tigre, 2021). In this sense, the Rights of Nature have proven to be an effective tool to enforce justice for those who are most vulnerable to climate change. Following this same line of thought, it can be concluded that granting the Rights of Nature is a pathway to enacting climate justice as it has the potential to enforce climate litigation claims, at least within the realm of the Inter-American system (Tigre, 2021). As it stands now, such enforcement is only theoretical as it is restricted to environmental damage; that is, in relation to Indigenous communities and their territories (Tavares et al., 2020). Further, there must be a clear understanding of what is meant by the idea of 'territory' and how an independent view of the rights to a healthy environment, food, and water will play out in the legal system, and what obligations the state will have to them (Tigre, 2021). Despite these questions, the Lhaka case remains a pivotal point for the expansion of rights. Its recognition of an autonomous right to a healthy environment leaves room for protecting the environment from damage separate from its relationship to human beings. This holds the potential for application in cases that include pollution, environmental disasters, climate change, and climate refugees like the Tuvalu people (Tigre, 2021). In other words, the justiciable practice of Earth Jurisprudence or

better yet, Ecological Jurisprudence mentioned previously could be a reality as a means of enacting climate justice that is inclusive of all living organisms.

## 5.7 Further Expansion of the RoN in the Los Cedros Cloud Forest Case

The final and most recent case I would like to discuss concerns the Los Cedros Cloud Forest of Ecuador. This case was brought before the Constitutional Court of Ecuador in September 2020 through the filing of an amicus curiae (friend of the court) by Earth Law Center, Global Alliance for the Rights of Nature, and the Center for Biological Diversity (GARN, 2021). The claim was filed to prevent extractive mining in the forest that would be detrimental to its biodiversity. The Los Cedros Forest is home to over 500 species of trees within 1000 hectares, making it extremely biodiverse. Its ecosystem is also important to the surrounding communities who rely on it for sustainable agriculture and eco-tourism (Center for Biological Diversity, 2021). Therefore, the protection of the forest was seen as critical for preserving not only biodiversity and a healthy ecosystem but for the surrounding humans as well. This shows that the protection of the forest is beneficial to humans as well as the environment and that the two are interconnected.

On November 10, 2021, the Court ruled in favor of the forest, protecting it from mining concessions using the Rights of Nature laid out in Ecuador's Constitution. In their ruling the court declared that mining and other forms of extractive activity were a violation of the Rights of Nature as laid out in Article 73 of the Ecuadorian Constitution (Los Cedros Cloud Forest, 2021). Additionally, they found a violation of the right to water as established in Article 12, and denied water and environmental permits to the mining company. Lastly, in accordance with constitutional Article 14, they identified that the right to a healthy environment was violated and affected the surrounding communities as well as the Los Cedros Forest (Los Cedros Cloud Forest, 2021). In

this way, the Court recognized Los Cedros as a subject of rights which deserves protection (Los Cedros Cloud Forest, 2021, par. 70). However, it should be noted that the Court did not recognize that the ecosystems as a whole were protected, but specifically the forest in question (Prieto, 2021). Despite this, the ruling was unprecedented as it established a non-anthropocentric legal standard to the case by siding with the inherent rights of the forest over the human right to development. This demonstrates a more holistic interpretation of vivir bien that is in accordance with Indigenous philosophy and proves that there can be collaboration between Indigenous thought and Westernized legal systems to enforce the Rights of Nature. The Los Cedros case is the latest and perhaps one of the most influential developments for the Rights of Nature as it formally protects biodiversity and the natural world by recognizing their rights and creates important Earth Jurisprudence standards that will bring us closer to achieving climate justice for all beings (Center for Biological Diversity, 2021).

## Conclusion

From these cases it is evident that the Rights of Nature movement has made steady progress throughout the years in terms of legal recognition. Many of the cases and constitutions that have been written to further the Rights of Nature movement have not been able to fully break the chains of the anthropocentric legal system. But as more of these cases are won the system is gradually becoming greener and more ecocentric. If society is to continue in this way it is critical to include more legal pluralism into Western systems. By doing so we can challenge the anthropocentric worldview that dominates the culture. Indigenous communities are vital to informing an ecocentric perspective but we must be careful to adopt their ontologies in a way that does not undermine their own cosmologies (O'Donnell, 2020).

# *Chapter 6* – Ecocide Law & Climate Justice

## Introduction

In Chapter Three it was mentioned that Ecological Jurisprudence paves the way for an international crime of ecocide. While this essay does not have the capacity to cover the concept of ecocide in depth, its relevance for climate justice and the Rights of Nature is worth mentioning. As discussed, Earth Jurisprudence does not cover a crime of ecocide since it does not have a direct relationship with criminal law and would be inept to carry out any enforcement on the behalf of the environment (Burdon, 2013). However, Ecological Jurisprudence creates a legal system wherein the already established Rights of Nature movement can be further developed to enact an international crime of ecocide. Therefore, it is the best framework to develop a law of ecocide due to its close relationship with Indigenous law, openness to legal pluralism, and ecocentric approach. Establishing a crime of ecocide could provide a legally binding form of climate justice for all beings. Furthermore, it is the logical corollary and natural progression of the Rights of Nature movement and would ensure that those most vulnerable to the climate crisis would be protected.

## 6.1 Ecocide the 5th International Crime

The term ecocide, which originates from the Greek Oikos, meaning "home," and the Latin caedere, meaning "to demolish or kill" literally translates to "killing our home" (Wijdekop, 2022). Coined by Arthur Galston and later expanded upon by lawyer and environmental advocate, Polly Higgins who defined ecocide as the "extensive damage to, destruction of, or loss of ecosystem(s) of a given territory to such an extent that peaceful enjoyment by the inhabitants of that territory has been or will be severely diminished" (Higgins et al., 2013, p. 257). Higgins and other scholars have

proposed that ecocide be added to the Rome Statute as the fifth international crime. As established the current legal system is inadequate to meet the challenges of climate change and enact climate justice for all beings as it offers a legal system that is exclusive to humans and reinforces their dominance. Incorporating the crime of ecocide into international law would be a major step in decoupling this issue, providing a legally binding form of justice to the environment and all the beings that inhabit it. Additionally, it would embrace the ecocentric cosmology that was covered in Chapter Three by providing legal recognition for the interdependence and interconnectedness of ecosystems and humans. It would establish that non-human beings have intrinsic value and afford justice to them in a meaningful capacity. Codifying a crime of ecocide would underscore the importance of incorporating legal pluralism within international law, as was discussed in Chapter Four. Further, a law of ecocide holds the potential for greater protection of Indigenous territories and culture. As it pertains to the Rights of Nature, this essay contends that ecocide is the legal mechanism needed to ensure greater protection of the natural world. As was shown from the case analysis in Chapter Five, it was often difficult to reconcile a legal balance between the Rights of Nature and human rights that did not disproportionally benefit humans. An international crime of ecocide could remedy this by offering concrete and legally binding forms of justice that would guarantee the protection and restoration of the natural world. By meeting these criteria, it is evident that a crime of ecocide fits best within the framework of Ecological Jurisprudence as it offers a more holistic and pluralistic form of legal enforcement. It shares all the elements of ecocentrism, the Rights of Nature, and legal pluralism that have been discussed in this paper and brings them together in an effective and enforceable way. Additionally, it corresponds to Indigenous and ecocentric cosmologies and moves the legal system toward a more enforceable approach to the Rights of Nature.

As a criminal offense ecocide requires justice that is tangible and ultimately restorative (Mwanza, 2018). Higgins stated; “Restorative justice is built on an understanding of our relationship with Nature and the duty to remedy the harm caused” – addressing “the needs of the beleaguered party to restore that which has been harmed rather than simply fixating on the punishment of the perpetrator” (Higgins, 2016, p. 143). Firstly, the goal of restorative justice is to create a process of dialogue that identifies who, or in the case of ecocide crimes, what, has been harmed, what are their needs, who is responsible, and what can be done to repair the harm (Zehr, 1990). An aspect of restorative justice is that it meets the standard of an ecocentric approach to climate justice as it allows for all parties to have a stake in how the offense is resolved (Robinson & Carlson, 2021). For instance, when the Rights of Nature are violated or a crime of ecocide is committed, those parties will have an equal say in its resolution meeting the criteria of an ecocentric approach by putting their interests on par with human interests. Furthermore, restorative justice takes a bottom-up approach to restore community (Robinson & Carlson, 2021). When applied to the Earth community, it can be reasoned that a bottom-up mode of justice would start by affording justice to ecosystems based on the premise that all life is interdependent. In this way, restorative justice fulfills the criteria of an ecocentric form of justice. From this it can be argued that a restorative justice approach would satisfy a system of justice for all beings. Since this form of justice is consistent with ecocentrism and Indigenous cosmologies that have been explored in this essay, enforcing the crime of ecocide through restorative justice achieves climate justice for all beings in an equitable way. Moreover, it has the potential to restore historical injustices of Indigenous peoples, thus protecting those who are most vulnerable to climate change.

## Conclusion

For these reasons the crime of ecocide as the fifth international crime against peace is the natural progression in ensuring an ecocentric approach to climate justice for all beings. It should be noted that some of the potentials for the law of ecocide may be considered idealist and unrealistic, given the current state of society. To this, I would say, if humanity is to meet the challenge of the climate crisis, it is better to err on the side of the ideal and fall short than not take enough action, because it appears to be too daunting.

# ***Conclusion***

The rise of the Anthropocene has resulted in cataclysmic damage to the Earth and is compounding with the threat of the climate crisis. The whole of the Earth Community is at risk of severe damage and many beings face extinction. It is clear that the damage caused by climate change has a disproportional impact on those who have done the least to cause it, whether they be human or non-human life. While it remains to be seen if humans will act in time to avoid the worst of the damage, there can be no doubt that a need for climate justice is more urgent than ever. This essay has argued for a rights-based approach to justice that is informed by an ecocentric cosmology and applies the Rights of Nature. Such a mode of justice would be reinforced with restorative justice. To accomplish this, it is necessary to go beyond anthropocentric systems; specifically, legal systems. This essay has attempted to show the process for deconstructing and expanding the current legal system in favor of one that is more holistic and representative of an ecocentric framework. Such a legal system would be based on Ecological Jurisprudence. This system would be built on the principles of interconnectedness and interdependence outlined by scholars Berry, Cullinan, Naess as well as Indigenous cosmologies. In accordance with Naess, this would require humans to adopt an ecosophy that is informed by deep personal commitments for the preservation of the environment thus promoting a harmonious relationship with the rest of the Earth Community that allows for the flourishing of all beings. To achieve an ecocentric legal philosophy, there must be elements of legal pluralism that are only possible by decolonizing international law. In this essay we focused on the decolonization of such laws as they pertain to Indigenous peoples. It was argued that a merging of Indigenous and Western law could be the path to achieving a more holistic form of rights. As pointed out in Chapter Five, Indigenous laws reflect an ecocentric view of the world that moves Nature from an object of the law to the subject of it. This is particularly obvious

through the recognition of the Rights of Nature. By establishing legal personhood to the natural world, the idea that a healthy environment is essential to human wellbeing is reinforced. This goes beyond the human right to a healthy environment which is still an anthropocentric approach to rights as it only protects the environment in so far as it is necessary to help humans. For this reason, it was argued that the Rights of Nature movement is a better tactic to establish an ecocentric form of climate justice since it is more equitable and goes beyond anthropocentric norms of justice. By analyzing the constitutions of Ecuador and Bolivia as well as the subsequent cases they produced, it was found that this movement had some challenges in application. Such challenges were especially relevant when it came to balancing the Rights of Nature against human rights, as human rights more often than not were favored. That said, it would not be impossible to overcome these obstacles, and as discussed there are recent cases, namely Lhakoa vs Argentina and Los Cedros, that have made great strides in establishing protection for Nature and moved us closer to a greener and less anthropocentric legal system. While this progress is substantial, it is necessary for the international community to take further action to protect the Earth. As discussed, the next phase of evolution for the Rights of Nature movement is to codify a law of ecocide within the context of the Rome Statute, thus making it the fifth international crime. This would provide the legal enforcement necessary to protect non–human life in an adequate way. Furthermore, through the principle of restorative justice, it would not merely punish offenders but also provide restoration to Earth's ecosystems. In doing so it would achieve a goal of climate justice that is in line with an ecocentric mode of justice.

The process outlined throughout this essay is just that, a process, there is not one solution to achieving climate justice for all beings rather, it is a myriad of ideas, cultures, and legal philosophies that must work together. Climate change is a global problem and as such it requires

a global solution that is inclusive and reflective of all life on Earth. The best option for protecting the Earth and all that inhabit it is to not only understand the interdependence and interconnectedness of all beings, but to take action accordingly. The primary goal of this essay has been to show that human rights are intrinsically tied to the health of the environment and therefore cannot be adequately protected unless the rest of the Earth community is guaranteed the same protection. To achieve this, humanity must create a society that is built on the philosophy of ecocentrism and reinforced with legal pluralism that reflects Indigenous cosmologies. Such a system would need to be enforced by an international law of ecocide. Transforming society is no simple task, and in many ways an ecocentric world will not come to fruition. However, we have the tools to enact laws that will take us beyond the Anthropocene and into a society that is greener, more equitable, and provides climate justice to all beings and those who are most vulnerable.

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