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Nature, Capital and Climate Justice:

Interconnected Crises, Rights-Based Approaches and the imperative for radical change

Author: Patrick Gergő Jefferson
Supervisor: Alexandra Aragão

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Abstract -

The need for climate justice has never been more apparent. Despite the universalising narratives of human behaviour that dominate much of climate related discourse and action, responsibilities for and vulnerabilities to climate change are not borne equally. This thesis seeks to comprehend how constructions of nature, shaped through power and capital, continue to mask and manifest these differentiated responsibilities and vulnerabilities. The thesis delineates the underlying constructions of nature and our ecological relationship to inform our actions towards climate justice. In doing so, the paradigms of the Capitalocene and Racial Capitalism are deployed. The existence of sacrifice zones and 'green sacrifice zones' are then placed in this context. The thesis critically analyses rights-based approaches to climate change. Specifically, it focuses on the rights of nature as expressed in Ecuador, Bolivia and Aotearoa-New Zealand. These examples are relevant as they are fundamental reorganisations of how nature is conceived and governed, and how people fit into this arrangement. Investigating their strengths and failures are therefore key insights into potential climate justice driven actions.

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Introduction

Humanity finds itself in the midst of an ecological crisis. Or alternatively, a number of interconnected and multidimensional crises. These can be compounded into one overarching climate emergency. [1] The climate emergency refers to the now undeniable reality of climate change, and the urgency of responding to it. Climate justice recognises that this emergency is not only an injustice in itself, but exacerbates the presence and potency of other injustices.[2] Our modern world is characterised by extreme inequalities and vulnerabilities to climate change. This has been described as 'climate apartheid'.[3] It is clear that we are at a turning point. A critical moment of reflection on the relationship between humans and nature is therefore crucial. Climate justice is multi-spatial, in that it is not limited by states or borders, and multi-temporal, in that it is not limited to only the past, present or future. It connects ecology with economic, social, political and ethical justice.[4] Climate justice necessitates equitable, peaceful and radical changes. The scope of these potential changes is limitless. There is no single path to justice. That said, the aim of this thesis is to illuminate the potential of some of these paths. To meet this aim, the thesis will critically analyse rights-based approaches to climate change, particularly focusing on the rights of nature and their expression in South America and Aotearoa-New Zealand.

In meeting this aim, it is necessary to explore how the dominant discourse on the 'Anthropocene' can obscure the differentiated responsibilities and vulnerabilities in the climate emergency. This is important due to the dominance of the Anthropocene narrative within climate thought, and its general

[1] Tuuli Hirvilammi, and others. Social policy in a climate emergency context: Towards an ecosocial research agenda. *Journal of Social Policy* 52.1 (2023)

[2] Zoi Aliozi. Climate Justice and Human Rights, in a World in Climate Emergency (2021)
[3] UN Human Rights Council, Climate Change and Poverty, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, June 25, 2019, UN Doc. A/HRC/41/39. at 14, para. 50.

[4] Zoi Aliozi. (2021)

tendency to reproduce totalising and universalist narratives.[5] The thesis will then deploy a critical lens, analysing how nature has been socially constructed and organised. Subsequently, it will assess how these constructions interact with our ecological and societal relations, and therefore, how these constructs can exacerbate and reinforce injustice. The theoretical paradigms of the 'Capitalocene' and Racial Capitalism will be deployed to assess how nature has been organised through relations of power and hierarchy. This serves to more fully explain inequalities and vulnerabilities related to climate change. The thesis then presents sacrifice zones as a concrete example of these inequalities, particularly as exemplifying how climate change can impact racialised groups. Green sacrifice zones show how even climate driven action can reproduce injustices where the same underlying constructions and logic persist. In the second chapter, the thesis assesses the potential and pitfalls of political-legal reforms in evolving beyond the sources of ecological destruction. It will do so by focusing on the emerging rights-based doctrines and their applications to ecology. It chooses to focus on rights-based doctrines for two reasons. Firstly, due to their recent proliferation in relation to climate change, and more broadly as part of the evolution of human rights.[6] Secondly, because rights are ways in which power and values are expressed. They are political arrangements as much as they are evolutions of the law. As such, the rights of nature in particular may represent a fundamental shift in the way both nature and power are organised and expressed. Therefore, they will take up the bulk of the second chapter.

The thesis will critically analyse the rights of nature as they are expressed in Ecuador, Bolivia and Aotearoa-New Zealand. These examples are among the most advanced manifestations of the rights of nature globally. To fully engage with these examples, they will be placed in their epistemic contexts, delineating how their intellectual genealogy has shaped each example. Fundamentally, these objectives require diving beyond solely positive law, necessitating structural and philosophical analysis. This is also key to ensuring that the underpinnings of our institutions are adequate to respond to the challenges of climate change. We must distinguish between reforms that entrench the system, producing the conditions for climate change and oppression, and genuine reforms that seek to destroy these

[5] Fikile Nxumalo. Situating Indigenous and Black childhoods in the Anthropocene. *Research handbook on childhood nature: Assemblages of childhood and nature research.* (2020) 538

[6] Sumudu Atapattu. Human rights approaches to climate change: challenges and opportunities. (2015)

conditions. Climate justice demands that we address the uneven, disproportionate and differentiated responsibilities and effects of climate change. We must recognise the intersection of ecology with all human behaviour. To fully understand how to respond to the climate emergency, we must critically reflect on its origins. This will shape and inform our responses and avoid reproducing injustice.

Methodology

The nature of the research focus requires an interdisciplinary approach. In order to fully understand the sources of ecological problems, and therefore the potential solutions, it is necessary to combine the ideas of various disciplines. Inevitably, some of these ideas are antagonistic. These antagonisms should be discussed rather than neglected so they can become fruitful tensions that contribute to our overall understanding.[7] The role of legal evolutions as responses to our changing ecological relationship is not well understood. This thesis seeks to contribute to understanding this relationship. Marxist ideas including dialectical materialism will provide a framework of analysis to understand the congruence of economic, political, sociological and philosophical ideas. Towards the end, there will be epistemological exploration, with significant influence from indigenous philosophies. The final sections will deploy a comparative approach to rights-based frameworks in response to ecology and nature.

[7] Tero Toivanen, and others. The many Anthropocenes: A transdisciplinary challenge for the Anthropocene research. *The Anthropocene Review* 4.3 (2017) 187

Chapter 1: Nature and Capitalism in the Anthropocene

Our ecological relationship has evolved to such an extent that many believe we find ourselves in a new geological epoch. Proponents of this idea claim we are in the human-dominated era of nature, the Anthropocene.[8] In this epoch, humans are no longer solely an occupant of the biosphere, but the architect of change that define, shape and create it. According to this view, it is humanity that will decide whether this epoch is one of disaster or of flourishment. Whilst the Anthropocene awaits formal recognition, for many it is already the new reality.[9] The word Anthropocene has its origins in Ancient Greek. The word *Anthropos* means human, with *cene* meaning new.[10] Its overall meaning is also relatively simple. Essentially, it can be understood as a proposed geological epoch in which humans are the dominant global geological force affecting nature. The deciding factor in dividing geological-scale time is change to Earth's status on a global scale. These changes are driven by causes such as meteor strikes, continental movements and sustained volcanic eruptions. In the Anthropocene, human activity is the primary cause of global environmental change.[11] This is unprecedented, thus constituting a new epoch. Academic research concerning the Anthropocene has hugely proliferated in recent years.[12] In the early 2000s, papers by Paul Crutzen and Eugene Stoermer suggested that the Holocene had ended, and humanity had entered the Anthropocene.[13] This marked the beginning of a rapid rise in interest into the Anthropocene. Although it has since become a consolidated concept within various areas of academia, it retains some controversy.[14]

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[8] Paul Crutzen. The "anthropocene". *Earth system science in the anthropocene*. Berlin, Heidelberg: Springer Berlin Heidelberg (2006)

[9] Carlos Santana. Waiting for the Anthropocene. *The British Journal for the Philosophy of Science*. (2019) 1076

[10] Romand Coles, Lia Haro. Building a Smart Political Energy Grid in Response to Planetary Ecological Crisis. *The Routledge Handbook of Law and the Anthropocene*. (2023) 268

[11] Simon L Lewis, Mark A Maslin. Defining the Anthropocene. *Nature*. (2015) 171

[12] *ibid*

[13] Paul J Crutzen, Eugene F Stoermer. The Anthropocene *IGBP Global Change Newsl 41*, (2000) and Paul J Crutzen. Geology of mankind *Nature 415, 23*. (2002)

[14] Angela Zottola, Claudio de Majo. The Anthropocene: genesis of a term and popularization in the press. *Text & Talk*, 42(4), (2022) 453-473

Whilst few scientists deny the influence of human activity on the global environment, some question whether it is enough to constitute a new epoch. Questions have been directed towards the types of evidence in making such a declaration.[15] In order for a new geological epoch to be declared, precise and formal criteria must be met.[16] Global ecological changes must be recorded in geological stratigraphic material such as glacial ice, marine sediments and rocks.[17] There is also significant disagreement as to when the Anthropocene began, with dates ranging from the last glaciation until the 1960s.[18] Any conclusion as to when it began will have effects outside of the environmental sciences. Earlier dates may normalise ecological change,[19] and influence perceptions of anthropogenic climate change. Later dates will inform allocations of historical responsibility,[20] thus potentially shaping global economic policy. By far the two most commonly supported theories for the start of the Anthropocene are the Industrial Revolution, and the Great Acceleration.[21] The first of these was originally proposed as a start date by Paul Crutzen.[22] Working from this idea, Will Steffen and others analysed human activity from the beginning of the Industrial Revolution in 1750 until 2000.[23] They analysed 12 key socio-economic indicators such as GDP growth and primary energy use. They then compared them with Earth System indicators such as atmospheric concentrations of carbon dioxide, nitrous oxide, and methane.[24] Unsurprisingly, the imprint of human activity sharply increased around the Industrial Revolution.[25] However, they did not expect to see a far clearer and more dramatic change from about 1950 onwards.[26] They described it as undoubtedly "the most rapid transformation of the human relationship with the natural world in the history of humankind".[27] This time period is known as 'the Great Acceleration', and has become a leading candidate to mark the Anthropocene's beginning.[28]

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[15] Whitney J Autin, John M Holbrook. Is the Anthropocene an issue of stratigraphy or pop culture? *GSA Today* 22. (2012) 60–61 and Philip L Gibbard, P. L. and Mike JC Walker. The term 'Anthropocene' in the context of formal geological classification. *Geol. Soc. Lond. Spec. Publ.* 395. (2014) 29–37
[16] Simon L Lewis, Mark A Maslin. (2015) 171
[17] *ibid*
[18] *ibid*
[19] *ibid*
[20] *ibid*
[21] Will Steffen and others. The Trajectory of the Anthropocene: The Great Acceleration. *The Anthropocene Review*. (2015) 1
[22] Paul J Crutzen, Eugene F Stoermer. (2000) 12
[23] Will Steffen and others. Global Change and the Earth System: A Planet Under Pressure. *The IGBP Book Series*. (2004)
[24] *ibid*
[25] Will Steffen and others. The Trajectory of the Anthropocene: The Great Acceleration. *The Anthropocene Review*. (2015) 2
[26] *ibid*
[27] Will Steffen and others. (2004) 131
[28] Will Steffen and others. (2015) 3

The Industrial Revolution is undeniably a key historical point in humanity's ecological relationship. It has left a clear and distinguishable impact on the Earth System. However, while it will remain traceable in geological records, stratigraphic evidence for large-scale shifts in the Earth System prior to 1950 remains weak.[29] From the perspective of Steffen and other Earth System scientists, only after the mid-20th-century is there clear stratigraphic evidence of fundamental changes in the state and functioning of the Earth System, which are beyond variability in the Holocene, and are evidently driven by human activity.[30] Overall, the Great Acceleration represents the unprecedented growth of a global socio-economic system, forming the human part of the wider Earth System. In barely more than two generations, 'humanity' has become a "planetary scale geological force".[31] If we are in the Anthropocene, the most convincing *geological* evidence lies in the Great Acceleration. However, this does little to delineate *how* humanity became a planetary force of this magnitude. Earth System Science's recognition of the limits of viewing 'humanity' as one universalised whole is a welcome one. However, it is still inevitably focused on geological evidence, which it traces back to human behaviour. When we incorporate the views and methods of other disciplines, we can get a clearer picture of the nature of this human behaviour and its relationship to ecological change.

Many Anthropocenes

As alluded to, a geologically deterministic approach can obscure important processes which more fully explain the Anthropocene's existence. Our modern world is shaped by human activity's impact on the global environment, including catastrophic environmental degradation.[32] It is also characterised by climate injustice.[33] Only a fraction of humanity is responsible for the overwhelming majority of climate

[29] *ibid* 13
[30] *ibid*
[31] *ibid* 14
[32] United Nations Environment Programme. World headed for climate catastrophe without urgent action: UN Secretary-General. (27 Oct 2022) Accessed: 9/07/2023. Available at: < https://www.unep.org/news-and-stories/story/world-headed-climate-catastrophe-without-urgent-action-un-secretary-general>
[33] UN Human Rights Council. Climate Change and Poverty. *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, June 25, 2019, UN Doc. A/HRC/41/39. at 14, para. 50

change.[34] A significant amount of the Anthropocene discourse has clouded this crucial point. Moreover, not only have the world's most affluent contributed disproportionately through both historical and ongoing emissions,[35] but those who are least accountable are often the most vulnerable.[36] This point, albeit diversely expressed, constitutes the most common retort by critics of the Anthropocene.[37] This criticism has been increasingly recognised even in the earth sciences. In Steffen et al's original 2004 study of socio-economic trends and its impact on earth system indicators, humanity was treated as a whole.[38] This approach garnered criticism, particularly from other academic disciplines.[39] Steffen et al's updated study reflects this criticism, which they call 'the equity issue'. They approached the same data, but separated wealthy countries in the 38-member Organisation for Economic Cooperation and Development from non-OECD countries. They found that the majority of population growth since 1950 has occurred in non-OECD countries. However, the majority of consumption remains in high-income OECD countries. This reflects the domination of the global economy by OECD countries, where purchasing power and overall GDP are reflected in consumption trends.[40] Today, developed countries remain the primary source of ecological breakdown, and are responsible for 74% of global excess material use.[41] Fundamentally, the Anthropocene may primarily be a geological idea, but it is inherently tied to social and biotical phenomena. Critical art historian TJ Demos argues that by focusing on the sum of human behaviour, it becomes a method of unfairly universalising responsibility. It obscures the fact that whilst we are indeed seeing the consequences of human behaviour, we are seeing the consequences of behaviour limited to certain states, societies and

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[34] Carmen G Gonzalez. Racial Capitalism and the Ecological Crises of the Anthropocene. *Perspectives on Global Development and Technology*, 21(5-6). (2023) 324

[35] Jason Hickel. Quantifying National Responsibility for Climate Breakdown: An Equality-Based Attribution Approach for Carbon Dioxide Emissions in Excess of the Planetary Boundary. *Lancet Planet Health* 4: e399–e404. (2020)
[36] UNDP (United Nations Development Programme). Human Development Report 2019: Beyond income, beyond averages, beyond today: Inequalities in human development in the 21st century (New York, 2019).

[37] Hasana Sharp. Not all humans: Radical criticism of the Anthropocene narrative. *Environmental Philosophy* 17.1 (2020) 2

[38] Will Steffen and others. (2015) 11
[39] Andreas Malm, Alf Hornborg. The geology of mankind? A critique of the Anthropocene narrative. *The Anthropocene Review* 1. (2014)
[40] Will Steffen and others. (2015) 11
[41] Jason Hickel, and others. National responsibility for ecological breakdown: a fair-shares assessment of resource use, 1970–2017 - The Lancet Planetary Health. Lancet Planet Health 6 (2022)

people.[42] As such, this universalisation removes the chance to fully understand the sources and types of this behaviour.

The requirements for the Anthropocene to be designated epoch status are stringent. Whilst the scientific basis has garnered wide support, it still requires ratification by various geological authorities.[43] The International Union of Geological Sciences is responsible for formalising geological epochs. One of their constituent bodies' working group on the Anthropocene officially voted to recommend formal recognition.[44] It is a significant first step, but requires ratification by several other geological bodies. As it stands, formal recognition is not a foregone conclusion. In light of gaining some clarity, some recent scholarship has approached the Anthropocene question from a different angle. This school of thought categorises the Anthropocene as a geological *event* rather than an epoch.[45] Unlike designation as an epoch, recognising the Anthropocene as an event would not require a formalisation process. This idea suggests that the Anthropocene is "the aggregated effects of human activities that are transforming the Earth system and altering biodiversity, producing a substantial record in sedimentary strata and in human-modified ground."[46] It is argued that this approach better reflects the diversity of human behaviour across time and space. It may therefore be a more useful definition to the variety of disciplines engaged in ecological interactions.[47] Designation as an event would place the Anthropocene among other human-induced changes to the earth system such as the discovery of fire, the beginnings of agriculture and colonialism. The events approach reflects that social phenomena are hugely significant, but occur at different temporal and spatial locations and are not indicative of universal human behaviour.[48] For example, rising global temperatures associated with the Great Acceleration are the result of multiple events and processes such as the use of fossil fuels, and new organisations of labour. That said, rising global temperatures are also the result of much earlier behaviour, such as deforestation manifesting from animal husbandry and irrigated agriculture.[49] Critics of the epoch idea

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[42] Thomas J Demos. Against the Anthropocene. *Visual Culture and Environment Today*. (2017) 132

[43] Carlos Santana. (2019) 1074

[44] *ibid* 1075

[45] Philip L Gibbard and others. A practical solution: the Anthropocene is a geological event, not a formal epoch. *Episodes Journal of International Geoscience* 45.4 (2022) 349-357.

[46] *ibid* 350

[47] *ibid*

[48] *ibid* 351

[49] *ibid* 353

argue that it inevitably obscures the vast array of human behaviour across time and space.[50] The event approach does not alleviate every issue raised by these critics. However, it is valuable in its explicit recognition of the often conflicting but necessarily interconnected human behaviour across time and space.

In many ways, we can speak of multiple Anthropocenes. Anthropocene discourse was born in the Earth System Sciences. Here the primary focus lies in stratigraphic evidence to locate and formalise a date for the Anthropocene.[51] This can be referred to as the 'Geological Anthropocene'.[52] Of course, when these understandings are translated into new disciplines and frameworks, they become more complex. Various approaches within various disciplines have different and often conflicting ideas. The 'Biological Anthropocene' focuses on long-term human-induced impacts on the biosphere. The 'Social Anthropocene' considers geological and biological changes as connected or rooted in socio-historical processes. The 'Cultural Anthropocene' focuses on cultural responses and representations of all of these.[53] These categorisations are to some extent simply analytical, yet the Anthropocene remains disciplinarily divided. The same question posed in one discipline may yield seemingly contradictory answers in another.[54] It is essential that these answers inform and shape each other, rather than contribute to the cacophonous state of Anthropocene discourses across scientific cultures. The question of characterising our modern world geologically is undeniably important. However, it obscures the processes and behaviour that produce our conditions. Approaches from other disciplines are far more valuable to demystify these processes and conditions. They offer fruitful paradigms for delineating the source of the climate emergency, and thus informing our reponses.

[50] Kathryn A Yusoff. A Billion Black Anthropocenes or None. University of Minnesota Press, Minneapolis, (2018) 130 and Christophe Bonneuil, Jean-Baptiste Fressoz. The Shock of the Anthropocene. Verson, London, (2017) 320

[51] Tero Toivanen and others. (2017) 184

[52] *ibid*

[53] *ibid* 187

[54] *ibid* 195

The 'Capitalocene'

Some scholars have suggested that the Anthropocene is more accurately the 'Capitalocene'. An epoch which is characterised by capitalism's domination of nature, rather than humanity's. The Capitalocene sees capitalism as the way in which nature has been organised.[55] Here, capitalism is not merely an economic system, but an ecological system.[56] In the Capitalocene school of thought, the trajectory towards extinction through ecological degradation is 'capitalogenic' rather than anthropogenic.[57] Jason Moore describes a 'consequentialist bias' in the dominant Anthropocene thought. This bias sees consequences as traced back to human behaviour, rather than a constant dialectic motion between humanity in nature and nature in humanity.[58] This latter approach is far more representative of the dynamics which produce many of our current crises. By moving from the consequences of 'environment-making' to its conditions and causes, we unmask the role of society in nature, and conversely how nature shapes society. It is here we see humanity's role in ecology, shaped by inequality, power, wealth and work.[59] Considering the impervious global climate injustice characterising our world, this approach offers more than a solely geologically determined understanding can.

The Capitalocene's primary criticism of Anthropocene discourse lies in what it calls the 'dualist' approach to nature and society. According to Moore, Anthropocene scholars see humans as one 'geophysical force'[60] that operates on nature.[61] Consequently, and rather contradictorily, society is seen as both within nature and separate from it. Humanity, a singular enterprise, acts upon and is subject to the forces of nature. Yet, humanity remains distinct. Although humans are recognised as a species

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[55] Jason W Moore. Anthropocene or capitalocene? Nature, history, and the crisis of capitalism. Pm Press. (2016)

[56] Jason W Moore. The rise of cheap nature. (2016) 85

[57] Jason W Moore. The Capitalocene, Part I: on the nature and origins of our ecological crisis, *The Journal of Peasant Studies*, 44:3. (2017) 597

[58] *ibid*

[59] Jason W Moore. The rise of cheap nature. (2016) 78

[60] *ibid*

[61] *ibid*

within the web of life, the biological is then abstracted rather than synthesised from human sociality. It fails to consider the mutually constitutive relationship between our constructed environmental regime, and nature itself. Essentially, this is rooted in 'dualist' thinking. 'Human constructions' and 'natural constructions' are separated, as opposed to being within each other. Nature and society remain distinct, becoming the 'whole' only when combined.[62] The dualist approach inevitably converts connections of humanity-*in*-nature into abstractions. These connect as consequences rather than constitutive relations of one system.[63]

This Cartesian dualism, which pervades mainstream approaches to climate change, is integral to capitalism's relationship with nature. The presupposition of nature as separate from society constructs it as something to be coded, quantified and rationalised to serve economic growth'.[64] For Moore, capitalism organises nature in such a way that for growth, it must constantly appropriate 'cheap nature'. This is analogous to the traditional Marxist 'cheap labour'.[65] With labour, capital seeks to constantly extract more commodity production, whilst simultaneously making this labour as cheap as possible. This is inherent in its need for profit and growth.[66] Moore extends this traditional Marxist approach to nature. Capital is endlessly striving for cheap nature in its pursuit of production and profit maximisation. Cheap nature consists of four categories: food, labour power, energy and raw materials.[67] These are essential to capitalism's insatiable appetite for growth and profit. Cheap raw-materials are needed for production, timber for shipbuilding, iron for tools, and so on. Cheap energy is required to process the raw materials. Cheap food is required to keep the price of labour-power down. Household expenditure largely dictates the cost of labour. The cheaper food remains, the cheaper labour will remain. Moreover, the more work can be offloaded to the household, the cheaper the cost of labour for capital. Huge amounts of unpaid work, mainly by the wives of workers, sustain the labourer and thus reduce costs and increase productivity.[68] Social reproduction theory, emerging through revolutionary feminist theories and modern Marxism, has shown that Marx and Engels did not

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[62] *ibid*
[63] *ibid* 598
[64] Jason W Moore. Capitalism in the Web of Life: Ecology and the Accumulation of Capital. Verso Books. (2015) 2
[65] Benjamin Kunkel. The Capitalocene. *London Review of Books* 39.5. (2017)
[66] *ibid*
[67] Jason W Moore. The rise of cheap nature. (2016) 92
[68] Jason W Moore. Capitalism in the Web of Life. (2015) 17

adequately assess the role of household work and reproductive labour in relation to capital.[69] Within classical political-economy, both nature and women's reproductive labour are treated as a 'free gift to capital'.[70] Despite their framing as external, nature and reproductive labour have been integral to capitalism's cost reduction and production maximisation. Capital's construction of nature, and of reproductive labour being separate from economic labour, is mutually reinforcing. Ideologically, women's role in in the household is justified as 'natural'.[71] The more that can be cast as natural, the more can be left outside of economic production, and is therefore costless. Fundamentally this depends on the dualist approach. The entirety of 'nature' is put to work as profitably as possible.[72]

Jason Moore argues that the Capitalocene can be traced to the emergence of early capitalism in 1450.[73] This was followed by the "greatest landscape revolution in human history".[74] For Moore, this is at least as significant as any other point in history regarding humanity's ecological role. Unlike the geological conception, it centres on human behaviour as producing environmental consequences, rather than the opposite. Moore's approach is a dialectic one, citing various examples of capitalism's constant search for cheap nature. Of course, nature's 'cheapness' is not constant. It is subject to scarcity and changing dynamics. Moore takes the example of 16th century grain production, which was suffering due to rising agricultural wages in Western Europe. Consequently, the pursuit of cheaper nature spread to new territories. Huge proportions of the Dutch labour force were then sustained by imports from Poland.[75] When dynamics shifted again, and production in Poland slumped, vast swathes of forest were cleared in the hunt for more arable land.[76] Years later, the same process can be observed on an incredible scale in the Baltics. The last quarter of the 16th century saw English potash imports demanding the clearance of 12,000 hectares of forest every year.[77] Potash was required for the bleaching of cloth, and constituted the most profitable export sector.[78] As yields reduced, frontiers increased in the ongoing pursuit of

[69] John Bellamy Foster, Brett Clark. Women, nature, and capital in the industrial revolution. *Monthly Review* 69.8. (2018) 1

[70] *ibid* 2
[71] *ibid* 15-16
[72] Jason W Moore. The rise of cheap nature. (2016) 102
[73] *ibid* 91
[74] *ibid*
[75] *ibid* 103
[76] *ibid*
[77] *ibid*
[78] Henryk Zins. *England and the Baltic in the Elizabethan Era*. Manchester University Press, 1972.

cheap land. Through the 1630s, Gdansk's potash exports required the annual clearing of 135,000 hectares.[79] This story of economic growth and natural destruction can be seen across history and geographies. The relationship of capital to nature is not of simple cause and consequence, but of constant dialectic motion. It is sustained and legitimised by the construction of nature as external from economic production. Yet, as we can see, nature is integral to the expansion of capital. Both are in constant dialogue, and this has produced huge ecological consequences.

The dualist approach is essential to the exploitation of nature as merely 'resources'. It is predicated on capital only paying for one set of costs, keeping everything else external and off the books.[80] Ultimately, nature is off the books. This mentality then reproduces itself in various forms, and is legitimated through human behaviour and institutions. One example is in accounting practices, which serve to legitimate and obscure the exploitation of people and nature. Bakre describes these techniques as a 'political technology' in colonial exploitation.[81] Techniques in accounting still legitimate exploitation, and are rooted in colonial practices.[82] Accounting practices have been shown to close off 'alternative understanding of the world'.[83] This is clear in the bauxite industry in Jamaica. Accounting techniques helped ensure that dried ore bauxite was exported for less than production cost.[84] According to Girvan, 67% of Jamaican bauxite until 1967 was exported as ore.[85] In the bauxite industry, huge profit is made through processing this ore. Accounting practices obscure this, and were key in legitimising Jamaica's role as a source of cheap nature. They remain a method of obscuring the relationship of humanity in nature, as it was during colonial exploitation, and in capitalist expansion. Ultimately, they reify the dualist construction of humanity and nature, falsely legitimising the unsustainability of the constant pursuit for cheap nature. Fundamentally, capital constantly seeks to

[79] Jason W Moore. The rise of cheap nature. (2016) 103
[80] *ibid*
[81] Owolabi M Bakre. Financial Reporting as Technology That Supports and Sustains Imperial Expansion, Maintenance and Control in the Colonial and Post-Colonial Globalisation: The Case of the Jamaican Economy. *Critical Perspectives on Accounting*, vol. 19, no. 4, 2008, 487–522.
[82] Patrick Gergő Jefferson. Historical inquiry as contemporary instruction: preventing global technological domination in the informational era (LLB, University of Edinburgh, 2021)
[83] Christine Cooper. Ideology, hegemony and accounting discourse: a case study of the National Union of Journalists. Critical Perspectives on Accounting (1995) 177
[84] Owolabi M Bakre. (2008), 512
[85] Norman Girvan. Foreign capital and economic underdevelopment in Jamaica. Kingston: ISER, University of the West Indies. (1971) 80

maximise what it can class as nature, therefore priming it for exploitation. This is also evident where people are concerned. Constructions of race, gender and other social stratifications are created and sustained for profit. Premised as the 'natural' order of things, 'nature', which can include people, becomes a flexible construction to organise labour as either economically productive or outside of the cash nexus. The capitalocene paradigm clarifies nature and ecology's intrinsic relationship to socio-economic processes. This relationship is one of constant feedback of humanity-in-nature, as opposed to two separate spheres of existence.

Racial Capitalism

The Capitalocene approach is also compatible with understandings of Racial Capitalism's role in our current crisis. Together, these paradigms help to delineate the processes of capitalism and their production of climate injustices, which disproportionately impact racialised peoples. The duality of human and nature, made profitable by capitalism, produces the historical and ongoing subjugation of those who are cast as inferior. This Humanity/Nature divide is flexible with regards to people. Historically, human beings were explicitly categorised as either partly or entirely unhuman. This divide was rigid only when it needed to be for capital.[86] The categorisation of various groups as not fully human was – and remains – integral to capitalism's profit maximisation. To place people such as women and indigenous groups in nature's realm meant placing their labour outside of the cash nexus.[87] Work inside the nexus has costs, work outside of this nexus, such as by enslaved persons or women in households, does not. Nonetheless, unpaid work is indispensable to expanding and maximising profit. The Nature/Society dichotomy is therefore used to appropriate unpaid labour, literally in the sense of slaves, and figuratively in the sense of land. The more than can be categorised as nature, the more capital can expand. Nature's exploitation is often linked with the exploitation of human beings.

"Lack of respect for growing, living things soon led to lack of respect for humans too."

[86] Jason W Moore. The rise of cheap nature. (2016) 87
[87] *ibid* 92

— Robert Bunge, an Indigenous Lakota Sioux scholar[88]

Carmen Gonzalez defines Racial Capitalism as "a form of racialized extraction that generates profits for a transnational capitalist class by commandeering the land, labor, and natural wealth of persons racialized as inferior as well as the uncompensated or undercompensated care work performed largely by women".[89] People are racialised based on skin colour, ethnicity, indigeneity, language, caste, religion, culture, and immigration status.[90] As with the Nature/Society dichotomy, racialisation is flexible. Many who are broadly categorised as white today were once deemed non-white.[91] This is 'racemaking', the process by which different races are constructed, lived, transformed and destroyed.[92] 'Races' are cast as inferior or superior variably throughout history and context. Race becomes an organisational tool to facilitate extraction and exploitation through its counterpart, 'profit-making'.[93] Profit-making is the regime of capitalism that seeks to capture and expand value, profit, power and wealth through exploitation, expropriation and expulsion.[94] These two processes, race-making and profit-making, are mutually constitutive. Profit-making processes produce and reinforce hierarchies. Race-making structures these hierarchies for the extraction of wealth and maximisation of profit. Together they help to explain the globalised exploitation of people and nature, including the roots of 'climate apartheid'. Exploitation is one key process in this relationship. In traditional Marxism, exploitation is forcing people to work for basic necessities, which have been commodified, and represents the heart of capitalism.[95] This system is premised upon paying workers a fraction of what their labour is worth. Constructed hierarchies such as race ensure that certain groups of society have little choice but to work dangerous and exploitative jobs. This can be seen across local and transnational contexts. For example, in oil-rich gulf states, racialised migrant workers work in

[88] Robert Bunge. Land Is a Feeling. *Institute of Indian Studies Report of Papers Presented at the Spring Conference*, April 19-21, 1979. Vermillion: University of South Dakota. (1979) 2
[89] Carmen G Gonzalez. Racial Capitalism and the Ecological Crises of the Anthropocene. *Perspectives on Global Development and Technology*, *21*(5-6). (2023) 2

[90] Ramón Grosfuguel. What is Racism? *Journal of World-Systems Research*. 22(1) (2016) 9-15
[91] Carmen G Gonzalez. (2023) 2
[92] Michael Omi, Howard Winant. Racial Formation in the United States. Third edition. Routledge. (2015) 109
[93] Carmen G Gonzalez, Athena Mutua. Mapping Racial Capitalism: Implications for Law. (2022) 128
[94] Carmen G Gonzalez. Racial Capitalism and the Ecological Crises. (2023) 3
[95] *ibid*

extremely dangerous conditions for little pay, and are often subject to violence.[96] Here we see the blurred lines between exploitation and expropriation.

Expropriation refers to the 'super-exploitation' of mostly racialised people and women.[97] Like Moore's theory of cheap nature in the Capitalocene, Racial Capitalism recognises the essential component of unpaid labour in capitalism's pursuit of growth. Expropriation targets people and their lands. It entails dispossessing humans and non-humans of their commodifiable value for profit.[98] This is often done by force, without paying, by underpaying, or without ensuring reproduction. They are 'appropriations without exchange'.[99] Perhaps the clearest historical example of this lies in the colonisation of the Americas. The Spanish and Portuguese constructed and imposed dominating hierarchical structures on indigenous people and their land to extract materials such as gold.[100] In later colonisations, the English prioritised settlement, imposing their own hierarchical relations. Not only of people, but through converting land to property in order to dispossess natives for their settler colonial project.[101] All of these invasions and subsequent colonisations decimated the indigenous populations. At the end of the 15th century, roughly 100 million indigenous people lived in the Americas. This became 10 million through the efforts of the invaders.[102] Land was turned into property, transferred to settlers and commercialised through slave labour. This was a key point in entrenching racial capitalism and its processes.[103] Colonisation and enslavement were imposed through violence and disease. However, they sourced their legitimacy from the racialised framework of the doctrine of discovery. This doctrine was initially found in papal bulls which allowed the Portuguese to build the slave trade in West Africa.[104] The later papal bull *inter caetera* (1493), and the Treaty of Tordesillas (1494), marked the Atlantic zones as available for Portugal and Spain to invade without hindrance from the other. Park sees the

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[96] Bina Fernandez. Racialised institutional humiliation through the Kafala. *Journal of Ethnic and Migration Studies* 47.19 (2021) 4344-4361

[97] Nancy Fraser, Jaeggi Rahel. *Capitalism*: A Conversation in Critical Theory. Cambridge, UK and Medford, USA: Polity Press. (2018)

[98] Carmen G Gonzalez, Athena Mutua. (2022) 144
[99] *ibid*
[100] *ibid* 134
[101] *ibid*
[102] *ibid* 135
[103] *ibid* 134
[104] K-Sue Park. Conquest and Slavery in the Property Law Course: Notes for Teachers. Georgetown Law Faculty Publications and Other Works, No. 2298. (2020) 9

discovery doctrine as relying on a clear racial distinction, thus priming the Americas for centuries of racially-premised exploitation.[105] European science, premised on the Nature/Science dichotomy, constructed nature as 'other'.[106] This other was to be dominated in the pursuit of extracting wealth and profit. Indigenous people were cast into this othered nature, 'along with the flora and fauna whose habitat they shared'.[107] Nature was feminised to justify this role.[108] The process of race-making was supported by European sciences of botany, biology and chemistry, which deemed specific groups as being 'naturally' inferior.[109] The mastery of nature was written into science as the legitimate distinction between civil and wild, superior and inferior. This 'mastery' was domination, expropriation and growth, rather than a mutual nourishment between people and nature. Groups who saw the land as the source of subsistence and spirituality did not 'improve' the land for commercial purposes. Consequently, they were racialised, subjugated, expropriated and displaced.[110]

In later periods of colonisation, the state maintained its role in racial capitalism. States promulgated laws based on the commodification of nature and the preservation of European hegemony in global trade.[111] John Westlake, a British scholar of international law, declared that "the white race cannot be stopped" from seeking land, commerce and profit. For this reason, he said, keeping white people from potential colonies was impossible. Accordingly, he argued "international law has to treat such natives as uncivilised".[112] The demarcation of land as inhabited by uncivilised people meant the land was freely available to those who could conquer it. As Gonzalez states, "the doctrine of sovereignty transformed living and interconnected ecosystems into linearly demarcated territories, infused with racial meaning and ripe for commodification".[113] Borders were drawn with rulers based on the location of natural resources for extraction. These borders remain today, fuelling resource conflicts in the

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[105] *ibid* 9
[106] Carmen G Gonzalez, Athena Mutua. (2022) 146
[107] Donald S Moore, Jake Kosek, and Anand Pandian. Race, nature, and the politics of difference. Duke University Press. (2003) 12

[108] Carmen G Gonzalez, Athena Mutua. (2022) 146
[109] Justin E. H. Smith. *Nature, Human Nature, and Human Difference: Race in Early Modern Philosophy.* Princeton University Press (2015) 33

[110] Carmen G Gonzalez, Athena Mutua. (2022) 147
[111] Ileana Porras. Appropriating Nature: Commerce, Property, and the Commodification of Nature in the Law of Nations. 27 *Leiden Journal of International Law*. (2014) 651
[112] John Westlake. *Chapters on the Principles of International Law.* Cambridge University Press. (1894) 142-143
[113] Carmen G Gonzalez, Athena Mutua. (2022) 147

Global South.[114] They have produced conflicts with devastating effects on nature and populations who are deemed expendable. The mutually-constitutive processes of race-making and profit-making are key to understanding the differentiated impacts of climate change. Despite their origins in early colonisations, they are still deeply influential in the global hegemonic order. Indeed, this system has become globally entrenched. Constructions of race remain "fundamental criterion for the distribution of the world population into ranks, places, and roles in the new society's structure of power".[115] To say the legacy of these practices remains would be too kind. Whilst the systemic legacy is undeniable, these same structures remain actively potent and produced. Various scholars recognise that expropriation did not end with colonialism or 'primitive accumulation'.[116] It remains as fundamental to the global hegemony as ever. Its contemporary forms are exemplified by human trafficking, modern slavery and wage theft, asset stripping through predatory landing, land grabbing and the social condemnation of women to unpaid labour.[117] Hierarchies such as caste and patriarchy are transformed to create new hierarchies in the demand for profit.[118] Despite being a technology of white supremacy, racial capitalism is also deployed by non-White and non-Western powers. This is currently ongoing in China, where the government has weaponised Han-nationalism and Islamophobia to legitimise the incarceration of the Uighur minority.[119] Their labour has been exploited, as well as their land.[120] In the current era of global capitalism, manufacturing has been outsourced to the Global South. This extractive outsourcing has accelerated the expropriation of nature and the production of waste in areas inhabited primarily by racialised peoples.[121] The richest 20% of the global population consumes roughly 80% of the planet's economic output,[122] and 90% of its waste.[123] Demaria coined the term 'accumulation by contamination' to describe the process of profit-making through the commodification of waste, and dumping it in racialised low-income communities.[124] We can describe these areas as

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[114] *ibid*
[115] Aníbal Quijano. Coloniality of Power, Eurocentrism, and Latin America. 1 *Nepantla: Views from South* (2000) 535

[116] Carmen G Gonzalez, Athena Mutua. (2022) 145
[117] *ibid*
[118] Cedric Robinson. Black Marxism: The Making of the Black Radical Tradition. Chapel Hill: University of North Carolina Press. (2000)
[119] Carmen G Gonzalez. Racial Capitalism and the Ecological Crises. (2023) 2
[120] Vincent Wong. Racial Capitalism with Chinese Characteristics: Analyzing the Political Economy of Racialized Dispossession and Exploitation in Xinjiang. *African Journal of International Economic Law*. 3 (2022)
[121] Carmen G Gonzalez, Athena Mutua. (2022) 149
[122] *ibid*
[123] David Naguib Pellow. Struggles for Environmental Justice in US Prisons and Jails. 53 *Antipode* 56 (2007) 8
[124] Federico DeMaria. Shipbreaking at Alang-Sosiya (India): An Ecological Distribution Conflict. 70 Ecological Economics 250. (2010)

‘sacrifice zones’.[125] Their existence is a clear example of the differentiated impacts and vulnerabilities to the ecological consequences of capitalism and its organisation of nature.

Sacrifice zones

Sacrifice zones describe abandoned contaminated locations where inhabitants are left to suffer. Nature in these areas is expropriated for capital, and when this is no longer profitable, capital abandons them in the pursuit of other cheap natures.[126] The US government coined this term in reference to catastrophically infected areas deemed unfit for human habitation. Generally, this was the result of mining and processing uranium for nuclear weapons.[127] Despite being rendered uninhabited or uninhabitable, many of these areas are populated by indigenous peoples and other racialised groups. The Navajo Nation, for example, suffer from brutal rates of cancer and birth defects directly resulting from radiation exposure. They have been unable to secure adequate compensation or remediation of their lands.[128] In the US, industries with high levels of pollution are disproportionately located in racialised communities.[129] A clear example of a sacrifice zone is in Flint, Michigan. Even before becoming a heavily politicised issue, Flint contained 227 environmentally noxious facilities.[130] As firms moved their facilities abroad, residents faced high levels of poverty and unemployment. This is compounded by the heavy pollution left behind. Wealthier mostly White residents left the city, leaving behind a majority Black population. The city was forced to borrow money in an attempt to save its crumbling infrastructure. It eventually faced insolvency and the state imposed austerity measures. Michigan’s Emergency Fiscal Manager took action including switching the water supply to the cheaper but highly polluted Flint River. Drinking water then became contaminated with lead. Officials consistently ignored complaints. Laura Pulido, leading scholar of environmental racism, argues that

[125] Carmen G Gonzalez, Athena Mutua. (2022) 170
[126] *ibid*
[127] *ibid*
[128] *ibid*
[129] *ibid*
[130] Emily L Dawson. Lessons Learned from Flint, Michigan: Managing Multiple Source Pollution in Urban Communities. 26 *William & Mary Environmental Law and Policy Review* (2001) 367

this is due to the racialisation of residents and their impoverishment. [131] They are 'incapable of contributing to accumulation' and thus ignored.[132] Consequently, Flint has become a sacrifice zone. It has been left to rot, with its people abandoned in the search for more profitable land.

The UN Special Rapporteur on the right to a safe, clean, healthy and sustainable environment recently condemned the increasing worldwide prevalence of sacrifice zones.[133] In the Global South, marginalised communities suffer the effects of mining, drilling and various other polluting and extractive processes. The poisoning from these activities tends to be slow and drawn out, brutally affecting generations of these communities.[134] Wealthy Global North businesses, involved in extractive and energy-intensive industries, exploit cheaper workforces, corruption and less stringent environmental standards in the Global South.[135] The majority of these industries are involved in production for export. They extract wealth from nature in the Global South, with little to no benefit for local consumption.[136] Particularly damaging are the oil and gas industries. Here, the process involves extraction, processing, transport, combustion and disposal of waste. In both poor and wealthy nations, this industry has had devastating impacts on racialised communities including "eviction from ancestral lands; desecration of sacred sites; poisoning of air, land, and water; fires, explosions, and industrial accidents; loss of subsistence fishing and hunting rights; and exposure to significant health hazards".[137] Resource rich nations in the Middle East not only suffer the 'slow violence'[138] of contamination from industries, but often the resource wars instigated by Northern powers. People in these states contend with oil spillages, landmines, rockets, chemical weapons and the destruction of their sources of subsistence, among countless other inflictions from powerful resource-hungry countries such as the

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[131] Laura Pulido. Flint, Environmental Racism, and Racial Capitalism. 27 *Capitalism, Nature, Socialism* 1. (2016) 2

[132] *ibid*

[133] UNHRC (United Nations Human Rights Council). *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment.* (2022) UN Doc. A/HRC/49/53

[134] Thomas Davies. Toxic Space and Time: Slow Violence, Necropolitics and Petrochemical Pollution. 108 *Annals of the American Association of Geographers* (2018) 1540

[135] Carmen G Gonzalez, Athena Mutua. (2022) 171

[136] *ibid*

[137] Carmen G Gonzalez. Climate Change, Race, and Migration. 1 *Journal of Law and Political Economy* (2020) 116

[138] Rob Nixon. Slow Violence and the Environmentalism of the Poor. Harvard University Press. (2013)

US.[139] Scholarship has highlighted the existence of a 'resource curse'.[140] This denotes the link between countries with abundant natural resources and stunted development. Corrigan finds that abundant natural resources directly correlate with negative GDP per capita, rule of law, and ineffective policy.[141] In a similar manner to much of the Anthropocene discourse, resource curse theory can be correctly critiqued for obscuring historical and ongoing relations of capital. It ignores the legacy of colonialism and the consequences of these extractive relationships to capital in many resource endowed countries.[142] African political scientist, Cyril Obi, asserts that abundant resources are not a curse, but resources become 'cursed' by the profit maximisation agendas of powerful transnational corporations, particularly in the energy sectors.[143] The system of extraction is supported by the hegemonic role of legal frameworks, information technologies, and financial arrangements created by Northern states.[144] Ultimately, the current global hegemonic system can be described as neo-colonial. Neo-colonialism was famously theorised by French philosopher Jean Paul Sartre.[145] It was subsequently developed by Ghanaian revolutionary Kwame Nkrumah, who applied to it the political-economic subjugation of Africa.[146] Further research into the relationship between neo-colonialism and ecological destruction is crucial. Understandings of Racial Capitalism can serve as an analytical framework for this research. Whilst transnational actors are attracted to resources, they are attracted within the context of these hegemonic relations. Their positions as transnational actors, protected by doctrines of limited liability and legal personality shelter them from responsibility for horrific human rights records and catastrophic ecological impacts.[147] Sacrifice zones are a clear example of capitalism's organisation of nature, and the consequences that are left to be borne by racialised and economically subjugated people. It is crucial to address the underlying logic of these processes. The pervasive constructions of the

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[139] Michael Hennessey Picard, Tina Beigi. Stains of Empire: Accumulation by Contamination in the Gulf. 3 *Journal of Energy History/Revue d'Histoire de l'Énergie* (2020) 3-4

[140] Dawda Adams and others. Globalisation, governance, accountability and the natural resource 'curse': Implications for socio-economic growth of oil-rich developing countries, *Resources Policy*, Volume 61. (2019)

[141] Caitlin C Corrigan, Breaking the resource curse: Transparency in the natural resource sector and the extractive industries transparency initiative, Resources Policy, Volume 40. (2014)

[142] Bernard Owusu. Doomed by the 'resource curse? Fish and oil conflicts in the Western Gulf of Guinea, Ghana. *Development* 61 (2018) 154

[143] Cyril Obi. Oil as the 'Curse' of Conflict in Africa: Peering Through the Smoke and Mirrors. *Review of African Political* Economy 37 (126). (2010)

[144] Carmen G Gonzalez, Athena Mutua. (2022) 169

[145] Jean-Paul Sartre. Colonialism and neocolonialism. Psychology Press. (2001)

[146] Lionel Tiger, Kwame Nkrumah. Neo-Colonialism. The Last Stage of Imperialism. *International Journa*l. 22 (1). (1966) 161

[147] Carmen G Gonzalez, Athena Mutua. (2022) 172

Nature/Society dichotomy, race-making processes, and the expropriation of nature for profit, manifest and sustain these injustices. Nature's construction as outside economic production, renders ecological consequences as mere afterthoughts. The importance of these underlying logics is made ever clearer by the existence of 'green sacrifice zones'.[148] In these cases, analogous injustices are reproduced in ostensibly 'just' and greener industries, which prove the pervasiveness and importance of these logics in humanity's ongoing ecological relationship.

Green Sacrifice Zones

Neo-colonial relations of foreign capital in Global South countries are more readily apparent examples of ecologically destructive processes. They are rooted in the logics of the Nature/Society dichotomy, cheap nature, and the construction of racialised peoples as expendable. However, these processes are not always immediately apparent. Projects associated with 'just transitions' and 'Green New Deals' are often rooted in the same constructions. Activists and scholars have raised concern for new points of discrimination in these transitions. They describe the potential for 'green colonialism'.[149] This involves the exploitation of less-powerful states, and the undermining of local and indigenous communities. The failure to take these concerns seriously will reproduce many of the injustices which produced the climate crisis. Concerns include increasing pressure on indigenous communities, on land, on social systems and on liberties, in the switch to greener industries.[150] Christos Zografos and Paul Robbins highlight the risk of creating green sacrifice zones or GSZs. These are "ecologies and spaces where the possibility that the political economy of green energy contains its own sacrifice zones physically manifests itself".[151] It extends the application of sacrifice zones to areas and populations affected by procuring, transporting, installing and operating low-carbon transitions, including the end-of-life treatment of material waste.[152]

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[148] Christos Zografos, Paul Robbins. Green sacrifice zones, or why a green new deal cannot ignore the cost shifts of just transitions. *One Earth* 3.5 (2020)
[149] *ibid* 543

[150] *ibid*
[151] *ibid*
[152] *ibid*

As with traditional sacrifice zones, often those who inhabit green sacrifice zones are racialised groups. This is evidenced in Sweden, where indigenous Sámi people are bearing the burden of the transition to green energy.[153] Sápmi, the transnational homeland of the Sámi, has long-suffered from encroachment and extractive activity by the state.[154] Historically, the Swedish government conditioned Sámi property rights to reindeer herding. This institutional framework allowed the massive dispossession of their land.[155] The dispossession of Sámi land in the Northern parts of Sweden and Norway was essential to the fostering of the Nordic welfare society. Again, highlighting the relationship between the expropriation of nature, indigenous groups, and the pursuit of wealth. Swedish society is hugely dependent on hydropower, which is currently the primary source of electricity in the country. Wind power is becoming increasingly important. Both these industries, as well as raw material harvesting from forests, and large mining projects, are primarily found in Sápmi. It is a clear legacy of the industrial colonialism that still hugely impacts Sámi people today. Aili Keskitalo, former president of the Sámi Parliament in Norway, has denounced this as a new wave of green colonialism.[156] Currently, 10 times more wind-power extraction is planned to be located in the north of Sweden compared to the south, despite needs being greater in the south.[157] Similar plans have already had concrete impact on Sámi land. Electricity plants and hydropower dams have impacted water elevations, permanently flooding Sámi homes, migration routes, and crucial grazing land for reindeer.[158] Although there has been some progress on Sámi rights in Sweden, Finland and Norway, the Sámi remain politically disenfranchised. Each country has established ongoing truth commissions concerning historical policies.[159] The Norwegian Supreme Court recently denounced two wind-power facilities as illegal violations of Sámi rights. However, these illegal facilities had already been completed. The Expert Mechanism on the Rights of Indigenous Peoples stresses not only the involvement of Indigenous peoples in decision-making, but the imperative on the state to obtain their Free, Prior and Informed Consent.[160] This is not simply a right to be involved, but the right to determine the outcome of these processes. In the move to greener industries, states increasingly encroach on indigenous lands, fail to

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[153] Åsa Össbo. Back to Square One. Green Sacrifice Zones in Sápmi and Swedish Policy Responses to Energy Emergencies. *Arctic Review on Law and Politics* 14 (2023)
[154] *ibid* 115
[155] *ibid*
[156] *ibid* 113
[157] *ibid* 114
[158] *ibid*
[159] *ibid* 116
[160] UNHRC. Free, prior and informed consent: a human rights based approach. Study of the Expert Mechanism on the Rights of Indigenous Peoples. Human Rights Council, Thirty-ninth session. (10-18 September 2018). A/HRC/39/62. at 18

obtain the consent of indigenous people, and leave with them an unequal share of the consequences. All of this begs the question of how much has actually been learnt from the historical exclusion of the Sámi.[161] More broadly, it highlights the clear risks associated with green transitions in relation to racialised groups.

Zografos and Robbins identify two key components of green sacrifice zones: cost shifts and coloniality. Both are clearly visible in the case of Sápmi. Cost shifting is the practice of passing the harmful and damaging consequences of economic production to third parties and communities. K.W Kapp, who coined the term, argues that this is the norm rather than an exception where profit-making is concerned.[162] Cost-shifting differs from externalities in that the latter are accidental and unintended effects. Cost-shifting is a systemic problem, and cannot be properly addressed by correcting or internalising externalities.[163] This process is also seen internationally, from the Global North to South. Transitioning to renewables will increase reliance on lithium and cobalt reserves. These metals are essential in the batteries for electric vehicles. Green New Deals such as in the US often envisage a 100% transition to these vehicles. Currently, even without such a deal, the world's stock of electric vehicles is estimated to grow to 130 million in 2030. The global demand is predicted to outweigh cobalt supplies by 64,000 metric tons in this same timeframe.[164] The Democratic Republic of the Congo (DRC) currently supplies around 70% of the world's cobalt.[165] Fifty-percent of global cobalt reserves are located in the country.[166] The Congolese cobalt mining region is one of the ten most polluted areas on earth.[167] The cobalt industry here involves extremely dangerous conditions, and extensive child labour. There are clear links between the cobalt industry and the civil war, which has claimed roughly 6 million lives.[168] Where lithium is concerned, 91% of reserves are located in developing countries, 68% if China is excluded.[169] South American production is expected to increase by 199% by 2025 to meet demand. These projections are without any Green New Deal in major economies. Scholarship from Argentina has highlighted the risk of green industries perpetuating a

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[161] Åsa Össbo. (2023) 116
[162] Christos Zografos, Paul Robbins. (2020) 543
[163] *ibid*
[164] *ibid*
[165] Raphael Deberdt. Land access rights in minerals' responsible sourcing. The case of cobalt in the Democratic Republic of the Congo. *Resources Policy* 75 (2022) 1
[166] Christos Zografos, Paul Robbins. (2020) 544
[167] *ibid*
[168] *ibid*
[169] *ibid* 545

dependence of periphery nations on those in the core.[170] They highlight that despite formal decolonisation, South American nations remain entangled in unequal exchanges, creating dependencies on the Global North.[171] Regarding 'net-zero' economies, there is increasing recognition of capitalism's internationalisation of waste and emissions, thus making them profitable.[172] Emissions from the Global North are increasingly compensated in Global South countries, who are expected to absorb emissions and deal with waste. The Global North's ecological debt is exonerated through unequal exchanges within the global hegemony.[173] Rather than ceasing extractive and polluting industries such as fossil fuels, this allows them to meet their targets without actually reducing emissions. Thus, both maintaining the profitability of fossil fuel industries, and cost-shifting the consequences of the green transition to the Global South. In this structure, the Global South becomes the North's source of cheap nature, and the sink for its waste.[174] Cobalt and lithium mining companies have expressed concern over their ability to maintain stable prices and meet demands. However, they justify the often-devastating consequences on local communities on the premise that their "products are essential to the transition to a low-carbon economy".[175] The adverse effects of their operations include endangering vital ecosystems and water supplies, notwithstanding the perpetuation of dependence from South to North. Ultimately, the effects of the transition on communities in places such as the DRC are huge. Féliz and Melón write that "behind the unequal exchange there is an unequal valuation of life".[176] They convincingly show the impervious nature of racial constructs in global capitalism, and their influence on the global distribution of benefits and burdens. However, as seen in Sápmi, it is not only in transnational relations that the green economy produces racially differentiated outcomes. In Morocco too, the state has willingly sold out nature and racialised communities. In order to build the world's largest solar power plant, the Moroccan government acquired 3,000 hectares of communal pastoral land that it characterised as 'marginal' and 'underutilised'. This has been described as a potential case of

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[170] Mariano Féliz, Daiana Elisa Melón. Beyond the Green New Deal? Dependency, racial capitalism and struggles for a radical ecological transition in Argentina and Latin America. *Geoforum* (2022) 3

[171] *ibid*
[172] *ibid*
[173] *ibid*
[174] James Rice. The transnational organization of production and uneven environmental degradation and change in the world economy. *International Journal of Comparative Sociology* 50.3-4 (2009)

[175] Christos Zografos, Paul Robbins. (2020) 545
[176] Mariano Féliz, Daiana Elisa Melón. (2022) 3

'green grabbing'.[177] In Morocco, the government relied on colonial property regulations to devalue communally-owned land belonging to a racialised minority.[178] Again, exemplifying the close connection between the pursuit of profit, the expansion of industry into new frontiers, and the consequences of this on racialised groups whose interests are deemed expendable. This Moroccan example also reveals the overlap between international hegemonies, and national hierarchies. In the government's goal to reduce dependency on international energy imports, they have shifted the negative consequences along to racialised communities.[179] Whilst this section chooses to focus on the energy sectors, it is worth bearing in mind the variety of industries that can produce green sacrifice zones. Indeed, wherever the logic of cheap nature and exploitation is reproduced, no matter the industry and its merits, there is the risk of injustice. Even in the digital realm, where there is no immediately obvious relationship to nature, nature is in fact integral. Despite being a novel form of wealth creation, digitally located, cryptocurrency has had brutal ecological consequences and depends on nature.[180] This industry has already significantly impacted vulnerable communities.[181]

Scholars highlight the role of coloniality in the green economy, which serves to create and justify green sacrifice zones.[182] Coloniality here describes the forms of knowledge and practice derived from the European colonial order. These are based on hierarchical structures rooted in constructions of 'whiteness'.[183] Green New Deals such as H. Res 109 in the US, and the European Green Deal in the EU, rationalise and justify their initiatives on basic colonial tropes. In them we can see the core colonial rhetoric of 'salvation by newness'.[184] As mentioned previously, the relationship of imperialism, capitalism, and nature has been mutually constitutive. In colonial projects, whiteness and salvation were key. The Spanish Empire, for example, offered salvation through Christianity for uncivilised

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[177] *ibid*
[178] Ryan Stock. Power for the Plantationocene: solar parks as the colonial form of an energy plantation. *The Journal of Peasant Studies* 50(1). (2023) 167
[179] Tristan Partridge. Energy from the Perspective of Environmental Justice. *Energy and Environmental Justice: Movements, Solidarities, and Critical Connections*. Cham: Springer International Publishing, 2022. 3

[180] Peter Howson, Alex de Vries. Preying on the poor? Opportunities and challenges for tackling the social and environmental threats of cryptocurrencies for vulnerable and low-income communities. *Energy research & social science* 84 (2022)

[181] *ibid*
[182] Christos Zografos, Paul Robbins. (2020) 545
[183] *ibid*
[184] *ibid*

natives. Post World War II, the perceived development of non-Europeans was measured against European ideals and standards. In early colonial projects, it was the 'mastery' of nature. In establishing the global hegemony, it was the integration of supposed Western values, culture, economic systems and norms. Today, this rhetoric of salvation must be avoided in the context of green transitions. Zografos and Robbins highlight how some of the language in the European Green Deal reproduces much of this logic of salvation. Namely, when it discusses the need to 'overcome' with a 'new' strategy that 'transforms'.[185] In this context, it is essential that transitions to greener industry avoid repeating past mistakes. Language and rhetoric is key in this. In Sápmi, the language of 'co-existence' remains in use to legitimise the impact of energy projects on Sámi groups.[186] Yet the idea remains the same: the future and modernity takes precedence over the rights of racialised minorities. In the US, H. Res. 109 describes the 'frontline and vulnerable communities' constituted by indigenous groups, migrant communities, ethnic minorities, low-income workers and women. It refers to them as 'left behind' by previous development efforts, and seeks to raise their living standards to that of affluent White communities via economic development, wealth-building and high-quality jobs.[187] Despite its vagueness, it is commendable in its recognition of previous failures and the imperative of addressing unequal vulnerability to climate change. However, it fails to recognise the dual position of these groups. Whilst they are generally the most vulnerable, they are also at the forefront of climate action. Including sustainable forestry based on indigenous knowledge, climate-resiliency policies, and frontline-community energy projects.[188] It is essential that these initiatives, approaches, and knowledges are appropriately scaled up. Much of the current rhetoric fails to acknowledge the success and value of local strategies, not only losing crucial opportunities for progress, but reproducing the very same logic that caused the crisis in the first place. Without an internal reflection as to the logic and construction of green transitions, there is real risk of creating new points of injustice, including green sacrifice zones. Here we can see an *aporia*.[189] The patterns of cost-shifting and salvation grant the green transitions political weight and legitimacy. However, they are equally the source of their potential failure. Their underlying sensibilities undermine the overall pursuit of justice. Particularly in their pursuit for an equality of benefits and participation. These contradictions need not be entirely destructive to the transition. However, it is essential to recognise their influence to minimise the

[185] *ibid*
[186] Åsa Össbo (2023) 115
[187] Christos Zografos, Paul Robbins. (2020) 545
[188] *ibid*
[189] *ibid*

potential for further injustices. For this to happen, the path towards green transitions must be internally critical, and not reproduce the underlying logics so influential in the production of climate injustices. Overall, the existence and potential proliferation of green sacrifice zones represent a clear indication as to the ongoing interplay between capital, colonialism and nature, even in ostensibly ecologically driven actions.

Summing up chapter 1

The designation of nature as a source of wealth extraction has produced countless crises including dangerous levels of carbon emissions, rising temperatures, melting glaciers, rising sea levels, water-pollution, mass extinctions, destruction of biodiversity, pathogenic migration, deadly viruses, catastrophic weather events, mega-droughts, locust swarms, wildfires, titanic flooding, uninhabitable land, poisoned ecosystems and unbreathable air.[190] These conditions are the result of capitalism's current ecological relationship. They exemplify its historical and ongoing role of destabilising the very nature on which it depends.[191] Wealth is extracted from nature, when this is no longer deemed economically viable, it is left to die. Little regard is shown for its reproduction or replenishment. Rather, more cheap nature is created through plunder and expropriation in the endless pursuit of profit. Humanity itself is variously cast into this exploitation of nature, premised upon imagined hierarchies that seek to legitimise expropriation in the name of growth and development. Here we see the mutually constitutive relationship between racialisation, capitalistic exploitation and climate change. These are not weaknesses of capitalism, nor side-effects. They have been integral to its expansion as the dominant global economic system. The global climate emergency represents a crisis of the status quo, however that is conceived. Whether we call this the Anthropocene, the Capitalocene or anything else, the time for radical solutions is now. These solutions must be dynamic and all-encompassing. This chapter has analysed some of the powerful logics, constructs and processes which are responsible for producing the climate emergency. It has argued that Anthropocene is limited in its assessment of humanity's

[190] Nancy Fraser. Climates of Capital: For a Trans-Environmental Eco-Socialism." 127 *New Left Review* 94. (2021) 101

[191] Carmen G Gonzalez, Athena Mutua. (2022) 148

ecological relationship and thus the source of our climate crisis. Ecological Marxism, with its dialectical approach, has delineated the influence of historical economic relations and constructions of nature on humanity's ongoing ecological relationship. Through the paradigm of Racial Capitalism, we have seen how the exploitation of nature synergises with the exploitation of human beings. This begins to explain the differentiated responsibilities and vulnerabilities borne by different groups multi-spatially and multi-temporally. The underlying sensibilities of these processes are crucial to understanding the reality of climate change. This includes the dualism of Nature/Society, cheap natures, and race-making to profit-making. The imperviousness of these constructs has been exemplified by the existence of green sacrifice zones, which show that simply 'greening' these norms cannot achieve climate justice. Ultimately, in a time of converging crises, the current structural and material conditions of our world are deeply unjustifiable. These patterns of injustice must be uprooted and destroyed. This necessitates action in every human endeavour. But justice will not simply be awarded. It must be demanded by the masses, born out of the struggle for human dignity and the realisation of our potential. The next chapter seeks to analyse some potentially fruitful paradigms for realising climate justice, working from the analysis in this chapter.

Chapter 2: Political-legal evolutions to combat climate change – the potential of rights-based approaches

It is clear that we are in a time of crisis. This crisis has not manifested from nothing. It is the compounded result of human behaviours across vast geographies and histories. However, any approach that universalises the responsibility for these behaviours is both inherently limited and unjust. This crisis is rooted in the hegemonic and exploitative manner by which nature and society have been organised. The previous chapter explored some crucial aspects of this evolutionary relationship of humanity-in-nature. Through the critical concepts of the Capitalocene and Racial Capitalism, we have delineated some of the processes that produce various injustices in relation to climate change. By doing so, we have seen the mutually constitutive relationship between constructions of nature, racial injustice, colonialism, and capitalism both historically and today. Not only does the historical legacy of this relationship persist, but it is being reproduced through ongoing hegemonic relations within and across states. This has been evidenced by the proliferation of sacrifice zones. Through green sacrifice zones

we reveal the deep-rooted philosophies that pervade humanity's role in ecology. They rely on constructions of racial hierarchy, of the preposition of nature as a resource, Cartesian dualism, and the unlimited potential for growth. Even in ostensibly green developments, the underlying framework remains the same. These ideas represent the organisation and understanding of nature which has produced our crises. The responses to these injustices, owing to the complexity of the processes that caused them, are extremely varied. Despite the relative maturity of environmental law, and some of commendable progress, its impact particularly at the structural/systemic level has been limited.[192] This chapter focuses on socio-juridical changes that can more effectively reflect the complex socio-ecological relationships discussed in the previous chapter.

We will work from the understanding that radical systemic changes are absolutely necessary. The systems of oppression and hierarchy described in the previous chapter must be fully uprooted and destroyed. However, that is not to say that all other action is useless. There is no single path to justice. This action should be coupled with 'non-reformist reforms'. Non-reformist reforms were originally theorised by Austrian-French jurist André Gorz.[193] They are structural reforms, and should be conceived of not as ends, but as means, as "dynamic phases in a process of struggle, not as resting stages".[194] Each reform must connect to some greater vision. This greater vision must always remain clear, and illuminate the path to full systemic changes. Gorz also recognises that not all reforms are equal, even where the result appears the same. Essentially, the struggle by which a reform is achieved is as important as the result. Any hard-fought reform must not be expropriated of its revolutionary significance.[195] Reforms are not silver bullets, rather they are modifications of hierarchies that serve to create better revolutionary conditions. They create weaknesses in the system, sharpening its contradictions and creating instabilities to further exploit.[196] There is, however, a clear risk with these reforms. There is the risk that the system will appropriate change as a sign of its own evolutionary capabilities. It is essential to distinguish between reforms that further entrench the system, and those

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[192] Louis J Kotzé, Rakhyun E Kim. Earth system law: The juridical dimensions of earth system governance. *Earth System Governance* 1 (2019) 4

[193] Mark Engler, Paul Engler. André Gorz's Non-Reformist Reforms Show How We Can Transform the World Today. *Jacobin, July* 22 (2021)

[194] André Gorz. Reform and revolution. *Socialist Register* 5 (1968) 118

[195] *ibid* 125

[196] Mark Engler, Paul Engler. (2021)

that seek to dismantle it.[197] In this backdrop, the following chapter will assess potentially fruitful areas for change. Reforms that are truly capable of material change, destabilising current relations of power, serving to improve the lives of vulnerable groups in the face of climate change, without entrenching the system that creates these vulnerabilities. Largely, the role of juridical evolutions to reflect climate injustices remains under-explored. In this sense, there is an 'Anthropocene Gap'.[198] In filling this gap, there has been a proliferation of 'rights-based approaches' to climate change.[199] Rights-based approaches are commendable for bridging the distance between ecology and human relationships. In 2022, the United Nations General Assembly declared access to a clean, healthy and sustainable environment as a universal human right.[200] Rights-based approaches are increasingly relevant across jurisdictions, internationally and transnationally. They include the rights of future generations, the right to a healthy environment, and the rights of nature. This chapter analyses the potential and pitfalls of these paradigms within the context of climate change, as it has been understood in the previous chapter.

Ecology and intergenerational justice

Intergenerational justice is integral to climate justice. Concern for intergenerational justice has hugely proliferated in recent decades. Traditionally, law was conceived of as excluding the protection of future generations, leaving future problems for future law.[201] This notion is now increasingly questioned. Two major contributions sparking this wave of ethical consideration for the future came from Hans Jonas,[202]

[197] Carmen G Gonzalez. Racial Capitalism and the Ecological Crises. (2023) 1

[198] Victor Galaz. *Global environmental governance, technology and politics: the Anthropocene gap*. Edward Elgar Publishing. (2014)

[199] Lavanya Rajamani. The increasing currency and relevance of rights-based perspectives in the international negotiations on climate change. *Journal of Environmental Law* 22.3 (2010)

[200] United Nations. UN General Assembly declares access to clean and healthy environment a universal human right. *UN News*. (28/07/22). Date Accessed: 11/07/23. Available at: < https://news.un.org/en/story/2022/07/1123482>

[201] Emilie Gaillard. Crimes against future generations. *e-Pública*2.2 (2015) 45

[202] Hans Jonas. The Imperative of Responsibility: In Search of Ethics for the Technological Age. University of Chicago Press. (1984) 255

and Edith Brown Weiss.[203] However, it was Weiss who tackled the issue of intergenerational climate justice and equity head on. She considered that "all generations are inherently linked to other generations, past and future, in using the common patrimony of Earth".[204] Weiss argued that all generations are equal, and no generation should take precedence over another.[205] Borrowing from John Rawls,[206] she was concerned with the intergenerational distribution of burdens and benefits. Weiss argued that each generation should leave the earth in no worse condition than they found it, and with equitable access to its benefits.[207] For Weiss, the earth is held in common patrimony with other species, people and generations.[208] Referring to the Anglo-Saxon juridical framework of trusts and trusteeships, Weiss sees the present generation as being both the trustees and beneficiaries of the earth. We are responsible for protecting the earth, and are able to benefit from it. Intergenerational environmental justice is shaped by two relationships, one with the natural system, and one with other generations.[209] The mutual dependence on the earth system forms the connection between generations. Despite this connection, there is of course the potential for conflict. It is precisely these potential conflicts that make intergenerational rights, and indeed all rights-based approaches, so complex. The present generation has the equally important obligation of equity among itself, as it does equity between generations. *Intra-generational* equity refers to the imperative of rectifying historical injustices, and their persistent effects. Including, but not limited to, meeting the rights of millions to food, drinking water and shelter.[210] Weiss argues that the necessary actions to meet these basic needs are often consistent, rather than in conflict with intergenerational equity.[211] Where they do conflict, the rights of future generations must be balanced with addressing the rights and needs of current generations.[212] Weiss' work can be

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[203] Edith Brown Weiss. In fairness to future generations: international law, common patrimony, and intergenerational equity. (1988)

[204] Edith Brown Weiss. Our Rights and Obligations to Future Generations for the Environment 84 American Journal of International Law. (1990) 199

[205] Isabelle Michallet. Equity and the interests of future generations. *Elgar Encyclopedia of Environmental Law*. Edward Elgar Publishing, 2018. 153

[206] John A Rawls. A Theory of Justice (Harvard University Press) (1971) 303

[207] Edith Brown Weiss. In Fairness to Future Generations and Sustainable Development. *American University International Law Review* 8.1 (1992): 21

[208] *ibid* 20

[209] *ibid*

[210] *ibid*

[211] *ibid* 22

[212] *ibid*

described as seminal. It triggered a crucial paradigm shift in ethical concerns for future generations. This paradigm shift has produced a plethora of approaches concerning intergenerational justice. Ultimately, the approach to these questions are shaped by their epistemic locations, cultural norms and juridical systems. Approaches include suggestions for an 'intergenerational tort',[213] others include political bodies tasked with advancing the rights of future generations.[214] One such example exists in the form of the Parliamentary Commissioner for Future Generations in Hungary.[215] There have also been ad hoc decisions from various jurisdictions that tackle intergenerational equity in some way.[216] More broadly, the rights of future generations were explicitly mentioned in the Rio Declaration on Environment and Development (1992),[217] and the following year in the Vienna Declaration.[218] Despite this long-established awareness, and various significant steps particularly on the national level, a significant legal lacuna remains.[219] There are several theoretical and practical issues in safeguarding these rights. Firstly, there is no universally accepted definition of what constitutes 'future generations'.[220] The UN broadly defines future generations as 'all people who will come after us'.[221] Political theorist and philosopher, Joerg Tremmel, defines it as a group "where none of its members are alive at the time the reference is made".[222] Both of these convey a common challenge in protecting the rights of future generations. How can people who do not exist possess rights, and how can we owe them obligations? This is a common argument against granting rights to future generations.[223] Arguments such as this must be worked through in order to operationalise the rights of future generations, and provide them with the conceptual strength they deserve and require.

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[213] Isabelle Michallet. Equity and the interests of future generations. *Elgar Encyclopedia of Environmental Law*. Edward Elgar Publishing. (2018) 155
[214] United Nations Secretary-General. *Intergenerational Solidarity and the Needs of Future Generations*; A/68/322; United Nations. (New York, NY, USA, 15 August 2013.)

[215] Isabelle Michallet. (2018) 156
[216] *ibid*
[217] United Nations Conference on Environment and Development, Rio Declaration on Environment and Development (Rio de Janeiro: United Nations, 1992).
[218] World Conference on Human Rights, Vienna Declaration and Programme of Action (Vienna: United Nations, 1993)
[219] Rachel Johnston. Lacking rights and justice in a burning world: The case for granting standing to future generations in climate change litigation. Tilburg Law Review 21.1 (2016) 32
[220] Joerg Chet Tremmel. A Theory of Intergenerational Justice. Earthscan. (2009) 19
[221] United Nations. Our Common Agenda Policy Brief 1: To Think and Act for Future Generations. (March 2023)

[222] Joerg Chet Tremmel (2009) 19
[223] Alex Gosseries. On Future Generations' Future Rights. 16 *Journal of Political Philosophy* (2008) 456

The possibility of the rights of future generations

A key point of contention is Parfit's 'non-identity problem'.[224] This argues that no action can be harmful to someone if that action forms part of a chain of events leading to someone's existence.[225] Essentially, as long as that person's life is worth living, previous events cannot have harmed them. This is because that person is the direct result of previous events happening how they happened. Scholars use various approaches to navigate this paradox, often relying on human rights to bridge the conceptual and temporal gap.[226] Sceptics argue that human rights can only attach to physically existing people, therefore precluding the rights of future generations.[227] The argument taken to be most persuasive is that whilst we may not know the individual identities of future generations, we know that they will exist, and therefore that they will have human rights.[228] Despite not knowing their identities, we know that the actions of present generations, and past, can materially impact the interests of future generations. As such, we are at least morally obligated to consider these interests, of which human rights are prime.[229] Even working from this position, there remain significant problems in translating these theoretically possible rights into justiciable rights.

The rights based approach as the key to intergenerational justice?

A human rights-based approach may be a useful paradigm in protecting future generations. Both the human rights framework in general, and its application to future generations, can be tools to prevent ecological destruction. By strengthening the rights of future generations, we can potentially pre-emptively challenge ecologically harmful actions. The human rights obligations of states operate on

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[224] Derek Parfit. Reasons and Persons. Clarendon. (1984) 351

[225] Ori J Herstein. The Identity and (Legal) Rights of Future Generations. 77 *Geo Wash L Rev* (2009) 1199

[226] Bridget Lewis. Human Rights Duties towards Future Generations and the Potential for Achieving Climate Justice. Netherlands Quarterly of Human Rights, 34(3) (2016) 206

[227] Alex Gosseries. (2008) 456

[228] Bridget Lewis. (2016) 214

[229] *ibid*

three levels, to respect, protect and fulfil.[230] The first is the negative duty to refrain from actions that negatively impact human rights. Second, the positive duty to protect human rights, which includes taking steps to prevent interference of other actors on human rights. Importantly, this entails regulating the behaviour of private entities such as corporations. Thirdly, the obligation to take positive steps in realising human rights.[231] These duties are owed to people within the jurisdiction of the state. However, this has been increasingly interpreted to include anyone under a state's control or who is affected by its laws.[232] From this, we can potentially further extend the extraterritorial application to future generations.[233] If justice can be multi-spatial, perhaps it can be multi-temporal. The idea that if harm occurs outside the territory of a state, it should be precluded from the need for mitigation and prevention, is not satisfactory. This is equally true of intergenerational harm. There appears to be no morally intuitive reason that harm in the future should not be prevented. Using the extraterritoriality idea would require interpreting the current doctrine in an evolutionary way, but it seems plausible. Doing so would extend the three levels of obligations to future generations. Regarding climate change, the state would have the obligation to refrain from acts that are likely to harm future generations. Most obviously this would apply to things like greenhouse gas emissions. When we understand that all human rights are dependent on a healthy environment, it is applicable to all actions by states. The respect of human rights, in the present and future, is therefore a minimum standard requiring no further harm of human rights by the state itself.[234] The duty to protect the rights of future generations would include not only preventative action, but mitigation and adaptation. Indeed, as efforts turn towards building the planetary future, rather than maintaining current conditions, the rights of future generations must be incorporated into every process.[235] That said, the rights of future generations are already relatively established as an idea. They are mentioned in several treaties,[236] and declarations,[237]

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[230] *ibid* 216
[231] *ibid*
[232] United Nations Human Rights Committee, 'General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant' (29 March 2004) UN Doc CCPR/C/21/Rev.1/ Add.13
[233] Bridget Lewis. (2016) 17
[234] United Nations Human Rights Council (24 March 2011) UN Doc A/HRC/RES/16/11.
[235] Rakhyun E Kim. Taming Gaia 2.0: Earth system law in the ruptured Anthropocene. *The Anthropocene Review* 9.3 (2022) 412

[236] International Convention for the Regulation of Whaling (Washington, 2 December 1946; entered into force 10 November 1948).

[237] Declaration of the United Nations Conference on the Human Environment, 16 June 1972, UN Doc. A/Conf.48/14/Rev.1, reprinted in 11 ILM 1416 (1972).

including loosely as the 'human family' in the Universal Declaration of Human Rights.[238] They are included in the constitutions of Bolivia, Ecuador, Brazil, Norway, Argentina and South Africa.[239] Despite these wide-ranging developments, their rights remain largely symbolic. It's clear that the rights of future generations need further evolution. One potential way to do this would be to grant legal standing to future generations.

Granting legal standing to future generations

Granting legal standing to future generations would be a step in making these largely symbolic rights justiciable. There are various instances of legal standing being granted to future generations across jurisdictions.[240] However, this remains on an ad-hoc basis. It is argued here that legal standing must be fully recognised and granted to future generations on the international, national and local levels.

To have standing, a party must meet two conditions. They must have a concrete interest in the matter, and there must be a genuine threat of these interests being harmed.[241] In *R v. Her Majesty's Inspectorate of Pollution, ex parte Greenpeace Ltd*,[242] it was ruled that a general interest in the environment was not sufficient. Rather, a 'special and long-standing interest in the matter' is required.[243] Other cases have established interest in a more pragmatic manner. In the *Philippines Children's Case*, the court recognised that the interests of future generations are not "abstract or unascertainable, but can be identified and advocated for by a legal representative".[244] A similar logic is found in the *Urgenda Decision*, where an NGO represented future generations due its concrete interests

[238] *Universal Declaration of Human Rights*, preamble. G.A. Res. 217, U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948).

[239] Isabelle Michallet. (2018) 152
[240] Rachel Johnston. (2016) 32

[241] *ibid* 37
[242] R v. Her Majesty's Inspectorate of Pollution, ex parte Greenpeace Ltd. [1994] 4 all E.R 329.
[243] *ibid* 351
[244] Ted Allen. The Philippine Children's case: Recognising Legal Standing for Future Generations 6 Geo. Int'l Envtl. L. Rev. (1993–1994) 741

in sustainable development.[245] Both these cases demonstrate the feasibility of fulfilling the interest requirement in standing.[246] Where proving harm is concerned, the task arguably becomes more complex. Complications arise in meeting the harm threshold, as although human activity undeniably contributes to climate change, the exact manifestations are difficult to prove.[247] This is true of all climate litigation. Climate change is characterised by the complexity of its causes and effects, the latter of which are often latent. Under the current international framework, this must then be further linked to the infringement of the rights of an individual or group.[248] Due to the evolution of attribution science, it is becoming easier to establish these causal links. Attribution science essentially refers to the scientific evaluation of the contributions of multiple causal factors to changes or events.[249] For example, the contribution of one actor compared to others in contributing to pollution, and this pollution's contribution to health problems. Rights-based climate change cases have increased in recent years, as well as their success-rates.[250] A variety of national level jurisprudence exists across diverse legal systems.[251] In *Massachusetts v EPA*, attribution science established a causal connection between the state's omission to protect the public from the effects of greenhouse gas emissions.[252] This case established that in the risk of catastrophic harm, even where remote, the defendants can be accountable where granting legal standing would reduce the risk of this harm.[253] Innovative legal evolutions such as this are clear examples of the feasibility of extending legal standing to future generations in climate litigation. Leaving this to the responsibility of judges to act pragmatically is far from an ideal scenario. Particularly due to the inherently global problem that climate change represents. Owing to this, it is essential to build on these examples, particularly on the international level.

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[245] *Urgenda Foundation v. The State of the Netherlands (Ministry of Infrastructure and the Environment)* [2005] C/09/456689/HA ZA 13–1396.

[246] Rachel Johnston. (2016) 38
[247] *ibid*
[248] Elena Cima. The right to a healthy environment: Reconceptualizing human rights in the face of climate change. *Review of European, Comparative & International Environmental Law* 31.1 (2022) 41
[249] Tobias Pfrommer and others. Establishing Causation in Climate Litigation: Admissibility and Reliability.152 Climate Change. (2019) 67–69 and 81
[250] Elena Cima. (2022) 38

[251] *ibid*
[252] Massachusetts and othersl, Petitioners v Environmental Protection Agency et al, 549 U.S. 497 (2007)
[253] Rachel Johnston. (2016) 38

Extending the jurisprudence: human right to a healthy environment?

The current international framework on environmental human rights claims is limited. Generally, negative environmental consequences are relevant insofar as they interfere with the enjoyment of rights.[254] An interference with nature or ecology, under the international human rights doctrine, is only a violation if it is proven to interfere with people's rights. That said, the right to a healthy environment has been increasingly present in environmental cases advancing a human rights approach. It may be a way to bypass heavy burdens of proof, and standing requirements.[255] The right to a healthy environment is constitutionally protected by 110 countries, and recognised in others forms by 150.[256] Internationally, it was finally recognised as a human right by a non-binding UN Human Rights Council resolution.[257] The now extensive jurisprudence of this right, nationally and regionally, provides it with a well-defined scope. It is both an individual and collective right, which is also applicable to future generations.[258] This collective dimension sees the right to a healthy environment as a common good, that all members of the human collective must benefit from. It must be collective both spatially and temporally. This approach would help to recognise the global reality of climate change, and its latent impact on future generations.[259] The human rights approach places remedies for violations at its centre. The granting of standing to future generations, in tandem with a strong right to a healthy environment, can reduce the predominantly retroactive perspective of ecological litigation. Incorporating both of these at the international level would be a step in not only operationalising intergenerational and extraterritorial justice, but in preventing ecologically destructive action before it occurs. This preventative element of climate change is essential. That said, an overly legally deterministic approach will be limited in its preventative capabilities. Intergenerational justice, premised on an absolute and universal right to the environment, would have to be incorporated into every process involving nature. Whilst the right to a healthy environment would be a positive step, it does not go far enough. The lack of binding status is one clear worry. When we remember the danger and historical significance of

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[254] Elena Cima. (2022) 45
[255] Pau Moragues de Vilchez, Annalisa Savaresi. The Right to a Healthy Environment and Climate Litigation: A Mutually Supportive Relation?. (2021)
[256] Brian J Preston. The right to a clean, healthy and sustainable environment: how to make it operational and effective. *Journal of Energy & Natural Resources Law* (2023) 1
[257] UNHRC. The human right to a clean, healthy and sustainable environment. A/HRC/RES/48/13
[258] Elena Cima. (2022) 44
[259] *ibid* 47

dualism, there are also conceptual worries. A right to a healthy environment risks reaffirming this dichotomy. It structures the environment as merely something to be possessed, that we have a right to. It inadequately captures the ecological reality of humanity-in-nature, obscuring this mutually constitutive relationship. This is not without acknowledging the significance of a universal right to the environment. It is merely to say that it can be improved and extended. This is true of much of International Environmental Law (IEL), which has been largely devoid of the radical and deep structural reforms that the ecological crisis requires. Despite IEL's impressive proliferation, its institutions and reforms are produced within the context of existing logics, rules and interests. Much of its positives are defeated by the lack of political will and internal reflection, driven by neoliberalism and the merger of state and corporate interests.[260] This is evident from much of its core terminology, such as 'environmental *resources*', 'ecosystem 'services', the 'green economy', and of course 'sustainable development'.[261] It is acknowledged that IEL cannot do it alone, and that law is both a reflection of wider conditions and a producer of these conditions. Still, IEL must evolve beyond these limitations to challenging the status quo, and develop a stronger core of values and mechanisms. A right to a healthy environment is positive, particularly in relation to protecting the rights of future generations, and further integrating the human rights approach to environmental regulation. Yet it still risks many of the same pitfalls, revolving around an extractive and dualistic approach to the 'environment'. It begs the question of what a less dualistic, more radical approach could offer.

[260] Louis Kotzé. A global environmental constitution for the Anthropocene?. *Transnational Environmental Law* 8.1 (2019) 17

[261] *ibid*

Rights of nature

One such approach may be the 'Rights of Nature'. This idea, in various forms, has gained significant traction. It is increasingly present in a diverse range of legal systems.[262] The rights of nature could well represent a less dualistic, more radical, and still strategic approach to nature. Acknowledging that the rights of nature are advocated by a wide array of movements, ideas, approaches and people. Unless otherwise specified, it is used here to refer broadly to the idea that nature should be granted rights in response to the ecological crisis. Essentially, it extends justiciable, legal rights to nature itself. This contrasts with the previously analysed approaches, which are primarily concerned with the enjoyment of human rights in relation to the environment. The rights of nature recognise the mutual relationship between humans and nature, but places the focus on nature, rather than humans. It is present in the constitutions of Ecuador and Bolivia, legislation in Uganda, New Zealand, and Spain, and court decisions in Colombia, India and Bangladesh.[263] Recognising the Rights of Nature (RoN) is proposed as a radical step against the burgeoning ecological crisis. Advocates argue that nature has fundamental rights independent of humanity's perception of it. It seeks to balance the rights of nature against human interests, particularly the most extractive and exploitative elements of human behaviour.[264] In that sense, much like the intergenerational balance of benefits and burdens, there is some recognition of competing interests. The standard understanding of the origins of RoN places it in the work of Christopher Stone, in his 1972 article 'Should Trees Have Standing? Towards Legal Rights for Natural Objects'.[265] His approach centred upon a legal case concerning the construction of a $35 million business development in a wilderness area of California. Those who opposed the development wanted to protect the integrity of the valley, rather than on any grounds related directly to their own interests. However, there was no means to sue on behalf of the environment, merely as an injured party. A dissenting judge relied on Stone's book when arguing that the protection of nature's ecological equilibrium should confer standing on natural objects such as the valley.[266] Stone's work provides

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[262] United Nations. Rights of Nature Law and Policy. *Harmony with Nature*. Accessed: 11/07/23. Available at: < http://www.harmonywithnatureun.org/rightsOfNature/>

[263] Jérémie Gilbert and others. The Rights of Nature as a Legal Response to the Global Environmental Crisis? A critical review of international law's 'greening' agenda. *Netherlands Yearbook of International Law 2021: A Greener International Law—International Legal Responses to the Global Environmental Crisis* (2023) 48

[264] *ibid*

[265] Mihnea Tânâsescu. *Understanding the rights of nature: A critical introduction*. (2022) 20

[266] *ibid* 21

much of the intellectual genealogy of the dominant rights of nature approach. In South America, although still influenced by Stone, there is a clear influence from the work of Chilean-German ecologist Godofredo Stutzin. Stone's approach was rooted in the idea that nature had moral standing, and therefore should have legal standing and personality. For him, this was feasible given the various legal fictions with personality such as corporations and ships.[267] Stutzin's approach rather focused on the need for moving beyond law's anthropocentric bias. He saw the rights of nature as the necessary ecocentric evolution in the law. Stutzin saw these rights as being recognised, rather than granted by humans. The law would merely translate what already exists, and this would solve the ecological imbalance.[268] Both of these approaches have had deep influence on the trajectory of the rights of nature. This intellectual genealogy is key to bear in mind and will be developed on later.

On the international level, the rights of nature been not achieved the same level of recognition as the right to a healthy environment. The notion of sovereignty, prime within international law has been a huge obstacle in this regard. Recalling the previous chapter, sovereignty is a product of the colonial period, premised upon the 'civilised' and 'uncivilised'. It remains a dominant notion in international law. The UN recognises the' 'inalienable right of all states to freely dispose of their natural wealth and resources in accordance with their national interests, and with respect for the economic independence of states'.[269] This notion of sovereignty and access to resources is present in Sustainable Development Goals, and has been reaffirmed by the International Court of Justice as customary international law.[270] It is present in over 80 instruments and resolutions of various UN bodies.[271] Within this context, of the deeply entrenched extractivist view of nature as a resource, it is clear how the concept of RoN has struggled to gain a foothold. The rights of nature are closely associated with perceptions of indigenous knowledges, and are posited as in opposition to the dominant Euro-centric and colonially inherited conceptions of nature.[272] How true this is, is another matter. There have been various attempts to integrate the rights of nature into the framework of international law. Including the Universal

[267] *ibid* 22
[268] *ibid* 25
[269] General Assembly Resolution 1803 (XVII) of 14 December 1962, Permanent sovereignty over natural resources, ST/HR/1/Rev.6 (vol 1, part 1) (2002) 81–83

[270] Jérémie Gilbert and others. (2023) 51
[271] *ibid* 52
[272] *ibid* 55

Declaration on the Rights of Mother Earth, a proposed Declaration for the Rights of the Moon, and a Declaration for the Rights of Antarctica.[273] There have also been discussions to adopt a regional Convention for the Rights of the Pacific Ocean, recognising the Pacific Ocean as being a legal entity with legal rights.[274] Another approach has been to implement the RoN into the international criminalisation of ecocide.[275] Overall, these ideas remain on the fringes of international law, but nonetheless are important examples of their increasing acknowledgement. On the transnational level, there are far more diverse and potent examples of the rights of nature, at various stages of implementation. From this perspective, the most prominent example of the rights of nature lie in Ecuador and Bolivia. Accordingly, they will be the focus of this section.

The constitutions of Ecuador and Bolivia represent two of the most radical constitutions globally. Both are plurinational states with rich indigenous histories and cultures. In 2008, Ecuador amended its constitution to recognise the legal rights of Pachamama (Mother Earth). The following year Bolivia followed suit. [276] In both contexts, indigenous leaders and activists played important roles, among various other social actors including feminists, ecological activists and left-wing political parties.[277] Multiple important indigenous concepts including *teko kavi* (good life), *suma qamaña* (living well), *ñandereko* (living harmoniously, and *sumak kawsay* (good living) were enshrined within both constitutions, and an array of legal instruments. These concepts were explicitly proposed as alternatives to global capitalism and neo-liberalism, and attempted to account for the diversity of worldviews among the indigenous Andean populations.[278] These amendments are cultural, economic, sociopolitical as well as ecological. The legal recognition of nature's rights is part of a broader need to live in harmony with nature, and to live well. In Bolivia's Framework Act on Mother Earth and Holistic Development to Live Well 2012, the components of living well are the ability to grow, eat well, dance, work, communicate, listen, think and dream.[279] These are seen as essential and complementary to the

[273] *ibid* 58-59
[274] *ibid* 60
[275] *ibid* 62
[276] María Valeria Berros. Challenges for the implementation of the rights of nature: Ecuador and Bolivia as the first instances of an expanding movement. *Latin American Perspectives* 48.3 (2021) 193

[277] *ibid*
[278] *ibid* 194
[279] *ibid* 195

rights of nature. The constitutional recognition of these rights is among the most radical political-ecological evolutions to date.

Ecuador

Ecuador achieved its revered constitutional amendment through establishing a constitutional assembly. This assembly was spearheaded by a pioneer in Ecuadorian environmental thought, Alberto Acosta. It is unclear whether Acosta directly takes influence from the work of Christopher Stone.[280] Conceptually though, there are clear parallels. He was certainly introduced to the CELDF, a community rights group that worked on municipal ordinances in the US. CELDF's work is the direct intellectual heritage of the Nature as a Subject movement shaped by Stone's work.[281] Along with more theologically rooted ideas like Stutzin's,[282] it has had profound influence on the implementation of the rights of nature in Ecuador.[283]

Article 71 of the Ecuadorian Constitution declares "nature or Pachamama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes". It then states that all individuals, communities and nations can demand the enforcement of these rights. Article 72 declares nature's right to be restored, and the state's obligation to do so. Article 73 covers biodiversity, and the state's obligations to protect it. Article 74 concerns the right of people to "benefit from the environment and the natural wealth enabling them to enjoy the good living".[284] It also places the 'production, delivery,

[280] Acosta himself claims not to: Alberto Acosta. Toward the universal declaration of rights of nature: thoughts for action. *AFESE journal*, 24(1). (2010). Whereas others claim he was aware through personal relationships: Craig M Kauffman, Pamela L Martin. Comparing Rights of Nature Laws in the US, Ecuador, and New Zealand: Evolving Strategies in the Battle Between Environmental Protection and "Development" *International Studies Association Annual Conference* (2017)

[281] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 54

[282] *ibid* 26

[283] Caelyn Radziunas. Missing the Mark: A Critical Analysis of the Rights of Nature as a Legal Framework for Protecting Indigenous Interests. *Tul. Env't LJ* 35 (2022) 123

[284] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 55

use and development' of 'environmental services' as regulated by the state.[285] Overall, the key provisions seem strong, representing a more ecocentric understanding of nature. That said, there is clear dominance of rights as *the* tools of nature's emancipation. Along with the correlative onus of the state to interpret and uphold these rights.[286] This is made evident by Article 85/2, which glosses over the potential conflict between nature's rights, and people's rights to nature, declaring that where conflict arises, it will be appropriately dealt with. This grants huge scope and breadth to the state in these areas. This state power is perhaps most clearly expressed in article 313, which grants the state absolute control over energy production, biodiversity and water. Indigenous peoples receive rights to territory, but without a veto over extractivist activity, essentially withholding any realisable power.[287] Overall, whilst Ecuador's constitution is a radical step forward, its expression remains fundamentally within the control of the state.

Bolivia

The Bolivian approach finds its fullest expression in the form of the Law of Mother Earth 2010, rather than it is constitution.[288] The act sees Mother Earth as the interconnection of all living beings and systems, inextricably linked and complementary. It sees this natural relationship as self-balancing.[289] Mother Earth is purported as the unproblematic translation of Pachamama, which is itself an amalgamation of many different indigenous Andean concepts.[290] Unlike the Ecuadorian constitution, Pachamama has no direct presence in law, and Mother Earth acts as its expression. Article 3 of Bolivia's Mother Earth Rights Act 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. Mother Earth is considered sacred in the worldviews

[285] *ibid* 55
[286] *ibid* 56
[287] *ibid*
[288] Rickard Lalander. Rights of nature and the indigenous peoples in Bolivia and Ecuador: A Straitjacket for Progressive Development Politics?. *Revista iberoamericana de estudios de desarrollo / Iberoamerican Journal of Development Studies*, 3(2) (2014) 159
[289] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 60

[290] *ibid* 66

of communities and peasant indigenous peoples."[291] Article 7 then recognises the rights of Mother Earth to life, diversity of life, clean air, restoration, balance, and freedom from pollution.[292] Like the Ecuadorian equivalents, these articles represent a more realistic view of ecological processes, and the relationship of humanity-in-nature, than what has been present in most ecological law. In 2012, the law was updated with the Framework Law of Mother Earth and Integral Development to Live Well 2012, highlighting its superior legal status.[293] The integral development component focuses on people's rights to economic development and nature, seeking to balance the rights of nature with the rights to nature. The Bolivian Constitution grants territorial rights to indigenous communities and other groups. In the same vein as Ecuador, though, the very same constitution leaves absolute power to the state to industrialise and sell natural resources.[294] Both the Ecuadorian and Bolivian examples move beyond a rigid dichotomy between nature and society. However, they both leave their actual application and translation of rights into practice as entirely within the state's domain. Both inadequately tackle the conflictual intersections of economic development through nature, the protection of nature, and indigenous rights to nature. This has provided the conditions for continued extractivist activities in both countries, despite these comparatively radical steps.

Ecuador and Bolivia: extractivism continues

In Ecuador and Bolivia, extractivist activities have increased since their radical constitutional evolutions. Both the Ecuadorian and Bolivian models of the implementation of the rights of nature have faced significant challenges. This is largely owing to their ambiguity over balancing competing rights. In both countries, governments have employed what has been described as 'progressive neo-extractivism'.[295] This refers to the stronger command of states in extractive industries, where their role is legitimised through the use of revenue for social programs. These social programs often benefit the

[291] María Valeria Berros. (2021) 195

[292] *ibid* 196
[293] Rickard Lalander. (2014) 159
[294] *ibid* 160
[295] Maristella Svampa. Neo-extractivism in Latin America: socio-environmental conflicts, the territorial turn, and new political narratives. Cambridge University Press. (2019)

communities most impacted by the extraction, notwithstanding the infringements on their territorial rights.[296]

A key example to be mentioned in the Ecuadorian context is the case of US corporation Chevron's activities. The case has been referred to as the 'Amazon Chernobyl'.[297] Ecuadorian lawyers have been engaged in this near 20-year-long battle for compensation and recognition as to the destruction caused by Chevron's activities, who at the time were operating as Texaco. Their activities caused the destruction of rainforest, devastating harm to indigenous groups, and high levels of water toxicity.[298] More than a dozen Ecuadorian judges have demanded that the company pay $9.5 billion in damages. Chevron has evaded accountability and dodged payment through manipulative litigation, and hiding behind the corporate veil.[299] This case predates the Constitutional amendments, and serves to illustrate the poignancy of ecological issues and extractive industries in Ecuador. The amendments signify a huge change in this regard. Not as the end of extractive industries in Ecuador, but as a move against Ecuador being a source of cheap nature for global corporations. The amendments place nature in Ecuador as firmly within the control of its government.

The framework in Ecuador found its first test in 2010 in the form of *Wheeler v Director de la Procurator General de Estado en Loja*.[300] The plaintiffs invoked the rights of nature to defend the Vilcabamba River. The river's path was altered due to the dumping of construction debris. The court found in the plaintiff's favour, upholding the Vilcabamba's right to exist and run in its natural form.[301] The court also declared its constitutional duty to protect the rights of nature, making it a landmark case. The case is undeniably important, exemplifying Ecuador's power to implement its constitution. It also reflects the inevitable limitation of leaving this implementation entirely within the remit of the state.

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[296] Rickard Lalander. (2014) 151
[297] Caelyn Radziunas. (2022) 125

[298] *ibid*
[299] Erin Brokovich. This lawyer should be world-famous for his battle with Chevron – but he's in jail. *The guardian* 8. (2022)

[300] Caelyn Radziunas. (2022) 124

[301] *ibid* 125

After the decision, Fundación Pachamama, an NGO that played a key role in the drafting of the constitution,[302] visited the river and condemned the local municapility for its 'superficial cleaning' and failure to fully comply with the decision.[303] It has been this trajectory that is emblematic of the constitution's implementation in Ecuador. This is best reflected by the Yasuní-ITT initiative. This initiation was launched in 2007 by Rafael Correa's government. Correa was also instrumental in the development of Ecuador's constitution. The Yasuní initiative was billed as an alternative to capitalist resource management in Yasuní, the home of several indigenous groups in the Ecuadorian Amazon. Indeed, much of the Ecuadorian framework is framed as in direct opposition to the capitalistic organisation of nature analysed in the previous chapter. Yasuní is one of the most biodiverse areas in the world, and a region of unexploited wealth in the form of oil.[304] In return for leaving the oil underground, Ecuador's government called on the international community to contribute 50% of the potential profit.[305] It argued that ecological responsibilities and interests are shared by everyone, and thus they should be compensated for this contribution.[306] It was a radical solution to address the uneven attribution of burdens and benefits, focusing on the ecological benefits of leaving nature alone. The initiative received worldwide acclaim, becoming an international symbol of the rejection of extractive capitalism, and enjoyed the support of the great majority of Ecuadorians.[307] In 2012, President Correa officially ended the initiative, announcing the beginning of the oil's extraction in Yasuní. The government expressed that despite the worldwide support, this translated into only 0.37% of the estimated contributions.[308] Correa defended the plans, arguing that only 0.1% of Yasuní land would be directly impacted. He highlighted the need to develop social reforms and infrastructure, and to combat poverty in the region.[309] It is a clear example of the balance between people's rights to development, and the rights of nature, which the constitution left in the sole hands of the government. The indigenous populations were divided over the end of the initiative. Many supported the drilling and many were

[302] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 53

[303] Caelyn Radziunas. (2022) 125

[304] Rickard Lalander. (2014) 163
[305] María Valeria Berros (2021) 196

[306] *ibid*
[307] Rickard Lalander. (2014) 163
[308] Rickard Lalander. (2014) 164
[309] *ibid*

vehemently against it.[310] Constitutionally speaking, all of them were left effectively powerless. As provided for by the constitution, the state was the ultimate arbiter.

In Bolivia, the story is largely the same. Extractivist activities have increased, with many of the legal protections for the rights of nature and indigenous groups being ambiguously implemented or entirely ignored. In 2018, the International Rights of Nature Tribunal condemned Bolivia for its violations of the rights of nature and the rights of indigenous populations. Also declaring the government responsible for an act of ecocide.[311] Evidently, the lack of effective implementation of otherwise seemingly quite radical and anti-extractivist legislation is not unique to Ecuador. Bolivia's framework produced an analogously ambiguous balancing act between people's rights to nature and the rights of nature. This has also left the Bolivian government in control over the rights of nature's actual expression. A clear case of this tension lies in the Isiboro Sécure National Park and Indigenous Territory. As with the Yusuní example, this is an area of huge biological diversity. The park was declared indigenous territory in 1990.[312] In 2011, the Bolivian government planned to construct a road to expand transport infrastructure. Many of the indigenous social actors were in favour of this project, particularly those living outside the park who saw it as an opportunity to expand their productions of coca. However, many who lived within the park, who would be most impacted, argued that they did not have informed consent. Informed consent is required by the constitution and by the International Labour Organisation's Convention 169, which Bolivia ratified in 1991.[313] Activists against the project led by the Confederation of Indigenous People of Bolivia mobilised and marched 600 kilometres to La Paz over two months. The government approved a special law of protection for the park, which has since faced multiple challenges declaring it unconstitutional. The debate over the construction of the road still continues.[314] The case is a clear example of the state's monopoly on the implementation of the rights of nature, relegating them to either symbolism or action as it pleases. Again, though, it highlights the conflicts that can arise between human rights to development, and the rights of nature. These rights

[310] *ibid* 165
[311] International Rights of Nature Tribunal. Chiquitanía, Chaco and Amazonía v The Plurinational State of Bolivia. Final Verdict. at 128
[312] María Valeria Berros (2021) 196
[313] *ibid*
[314] *ibid*

can produce contradictions and challenges that have not yet been sufficiently reflected in Ecuador, Bolivia or indeed elsewhere.

The concept of 'nature' in the rights of nature

As mentioned, understanding the intellectual genealogy of the Rights of Nature, as expressed in Ecuador, Bolivia and indeed anywhere else, is crucial to understanding how and why it failed to prevent extractivist industries. In Ecuador and Bolivia, indigenous communities had significant involvement in the demand for the rights of nature. This is extremely important to recognise. The rights of nature as an idea have come to be closely associated with the right of indigenous peoples. It is common to see the rights of nature as either directly emanating from indigenous beliefs, or at least mirroring them.[315] Upon inspection this idea lacks credibility. There are indeed numerous concepts inherited and translated from indigenous cultures into both frameworks. The problem is how these concepts were translated, or rather the fact that they were translated in the first place. Nature is far from an obvious or universal concept. Anthropology has clearly shown its cultural specificity and diversity of understanding.[316] Importantly, we can recall nature's construction as a colonial concept to designate people as civil or uncivilised. No concept of nature, whether used with good intentions or not, can be removed from its context. It is shaped by presuppositions, and these will derive from the beliefs of those who propose any specific definition. Therefore, any understanding of nature will always have some anthropocentric element.[317] That is not to say this is inherently bad, just that it needs to be recognised. The anthropocentric vs ecocentric binary is always one of degree, and although often a helpful conceptual tool, does not represent a simple good vs bad.[318]

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[315] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 42

[316] Philippe Descola. Beyond nature and culture. University of Chicago Press. (2013)

[317] Reiner Grundmann. The ecological challenge to Marxism. *New Left Review* 187.1 (1991) 115

[318] Jérémie Gilbert and others. (2023) 63

Potent within the rights of nature's origins is what Tânâsescu describes as the 'ecotheological' tradition.[319] It is composed mostly by the work of Stutzin, Thomas Berry and Cormac Cullinan.[320] Cullinan was highly involved in the work on the Universal Declaration on the Rights of Mother Earth, proposed in the World People's conference hosted by Bolivia.[321] The ecotheological tradition is deeply influential in much of the rights of nature discourse, and finds its way into the Ecuadorian and Bolivian frameworks. It sees Nature, as one totalised and universal entity. It relies on a concept of the ecosystem as naturally ordained and perfectly balanced. Owing to our unique position in God's eyes, humans are the guardians of this totalised Nature, which is analogous to the Universe.[322] The dominant understanding of nature is one of totality. Nature here is understood as the sum of everything, and obscures the relational processes in specific places.[323] Despite claims that recognising the rights of nature would move the law from an anthropocentric view to an ecocentric one, it does not rid itself of this binary. Rather, it simply moves the centre from humans to nature.[324] This totalising and universal concept of Nature, although presented as one and the same, is actually the opposite of many indigenous concepts of nature.[325] Indigenous groups tend to have intimate relationships with the nature in their specific place. Far from this totalising concept of Nature, indigenous philosophies are primarily relational.[326] Rather than recognising intrinsic values, generally they focus on the nature situated around them, it is these specific relationships that form their understandings of nature.[327] In Māori understanding, the universe is perceived 'as a process'.[328] This process is inherently local, and does not imply the constant 'harmony' that is falsely attributed to indigenous thought. Many Andean indigenous philosophies seek a harmony, but they recognise that periods of disharmony are as natural as periods of predictability.[329] The appropriation of this idea of harmony into Western thought promotes a false sense of constant balance, rather than a reciprocal and relational state with nature.[330] Despite its presentation as such, the totalising concept of nature as some necessarily harmonious and balanced reality that we

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[319] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 26

[320] *ibid*
[321] Jérémie Gilbert and others. (2023) 55
[322] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 28-29

[323] *ibid* 33
[324] *ibid* 31
[325] *ibid* 43
[326] *ibid* 57
[327] *ibid*
[328] Merata Kawharu. Environment as a marae locale. *Māori and the environment: Kaitiaki*. (2010) 225
[329] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 58
[330] *ibid* 57

must return to, is not a feature of indigeneity. When we think of nature, or any different cultural understandings of the world, we can think of these differences as one of degree or kind. The primary Western way of doing so has been the former. This says there are different views on the same world. The other is to see these differences as ones of *kind*. This notion is that rather than understanding the same world differently, we are seeing different worlds altogether. Many indigenous groups argue exactly this, that colonialists failed to see features of a world that was fundamentally not the same as theirs.[331] The translation of these radically different worlds into universalising concepts can be called equivocation.[332] In the context of Bolivia, Pachamama was equivocated into Mother Earth. Bolivian feminist scholarship has shown that this equivocation was shaped by the power of the state, and tied to issues of gender, nature and property.[333] Far from simply extending indigenous interpretations of nature into legal instruments, there is a kind of false equivocation of these ideas, which are themselves as diverse as nature itself. This can be best seen with the equivocation between Mother Earth and Pachamama, but can be applied variously. Bolivian feminist organisation Feminismo Comunitario argues that translating Pachamama as Mother Earth is "reductionist and sexist, as it refers to reproductive capacities only to keep women and the Pachamama under patriarchal power".[334] However, they do not entirely oppose the rights of Pachamama, nor its feminisation.[335] They argue against its conflation as Mother Earth on three points. Firstly, on the point of property. Arguing that "while people are part of Pachamama, the Pachamama does not belong to anyone", therefore it cannot be reduced to natural resources for appropriation, extraction and transformation into economic development.[336] Second, they problematise Pachamama/Mother Earth's position as a gifting female body, and by extension the confinement of women to reproduction and care.[337] Miriam Tola connects the state's extraction of a feminised Pachamama to the historical and ongoing control and oppression of women, their bodies, and their labour. This point is particularly poignant in a country where abortion remains illegal except in the most extreme cases.[338] Here we can also recall the feminisation of nature that was assessed in the previous chapter. Tola argues that the equivocation of Pachamama as Mother Earth fits

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[331] *ibid* 62
[332] Miriam Tola. Between Pachamama and mother earth: gender, political ontology and the rights of nature in contemporary Bolivia. *Feminist review* 118.1 (2018) 28

[333] *ibid* 27
[334] *ibid* 35
[335] *ibid*
[336] *ibid*
[337] *ibid* 35
[338] *ibid* 35

succinctly with the increase in extractivism observed in both countries.[339] Lastly, there is the translation of Pachamama within a heteronormative approach to *chachawarmi*, a non-binary gender concept within Aymaran cosmology.[340] An ambiguous concept within contemporary Bolivia,[341] its relationship with colonial gender norms still presents a significant challenge to fully comprehending it.[342] What is certain, is that it can only be understood through the Aymaran relationship between *uqtaña* and *qhamaña*.[343] This is to say that there are huge complexities, and it suffices here to say that this disagreement contributes to the difficulty of translating Pachamama into law. Aymara intellectual Fernando Huanacuni Mamani, Bolivian Foreign Minister at the time, refers to the cosmos as fatherly, and Pachamama as motherly. He argues that everything in existence emerges from this complementary pairing between Pachamama and the cosmos. He writes that "this implies going back to forming enduring relationships like our ancestors lived ... It is necessary to re-establish the man-woman relationship but as an enduring relationship".[344] Feminismo Comunitario claims this reference to the fatherly cosmos by government officials seeks to domesticate Pachamama, subordinating its powers to a masculine heterosexual authority.[345] What this divergence shows, is that in Bolivia as in Ecuador, the state's interpretation and translation into law of various indigenous concepts is radically different to what is envisioned by many feminist and indigenous groups.

To summarise here, despite the consistent appearance of various indigenous concepts, these appearances are largely symbolic in the case of Ecuador and Bolivia. The concept of nature that dominates both examples is firmly rooted in ineffective translations of hugely diverse and complex ideas. In fact, any attempt to universalise these different kinds of worldviews is arguably always doomed to fail. Precisely because they strive to universalise what are actually local relations in specific natures. Despite the commendable involvement and inclusion of various social groups, both cases reflect the structures of power that are dominated by the state.

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[339] *ibid* 35
[340] Daniela Michel Osorio, Brooke A Ackerly. Feminism and Decolonizing Decoloniality: Decolonizing the Coloniality of Power in Aymara Cosmology. *Millennium* (2023) 16

[341] Miriam Tola. (2018) 35
[342] Daniela Michel Osorio, Brooke A Ackerly. (2023) 16
[343] *ibid*
[344] Miriam Tola. (2018) 35
[345] *ibid*

The concept of 'rights in the rights of nature

The second point of interest within the rights of nature discourse, both generally and within the Ecuadorian and Bolivian examples, is the insistence on rights as the tools of nature's emancipation. By delineating what these rights are premised on, what they are, and what they are not, we can discover what they could be. We can present the flaws of much of the rights of nature discourse, whilst still appreciating its potential. It is precisely by appreciating this potential, that we recognise the need to work through its contradictions and flaws. To recognise the rights of nature does not necessarily entail expressing these rights in one specific way. Despite this, as was seen in Ecuador and Bolivia, the expression and content of what these rights mean in practice was entirely within the remit of the state. For many, this was not their objective. During the roundtable discussions for the drafting of Ecuador's constitution, views from social actors, NGOs, indigenous groups, youth organisations, women's organisations, campesinos, and labour unions among others were considered.[346] Their discussions stressed the strategic element of the rights of nature, recognising that these are not constitutional reforms of an ordinary kind, but evolutions in "the very way in which the new political practice will be possible", they described the proposals as redefining society-nature, economy-society and nature, environment and cultural interrelations, among others.[347] It sought to redefine the relationship of humanity-in-nature, seeking that the state and its citizens be in "equilibrium, without the economic imperatives like the ones that have dominated until now".[348] The rights of nature strategy was proposed as a wider rights-based approach to political emancipation, especially the rights of indigenous groups. The roundtable sought to guarantee a healthy and ecologically balanced environment, that went "hand in hand with cultural strengthening", "woven together with the right to life, health, to work, to dignity and identity".[349] These rights were seen to oblige the state and citizens to live in line with *sumak kawsay* (good living).[350] This eventually culminated in two viewpoints on how to realise this principle. The government proposed an obligation to consult communities that would be affected by resource exploitation, in pursuit of economic development to realise this wider array of rights. The indigenous

[346] Mihnea Tânâsescu. The Rights of Nature in Ecuador: The Making of an Idea *International Journal of Environmental Studies* 70.6. (2013) 849

[347] *ibid*
[348] *ibid* 850
[349] *ibid*
[350] *ibid*

groups, with some government members, were advocating for a right to *consent*.[351] As we saw, the government became the arbiter of resource exploitation, with no obligation to obtain anyone's consent. The state's will became the ultimate power through which nature's rights are expressed. The Ecuadorian government has been keen to stress the 'bottom up' source of its legislation, framing it as indigenous philosophies and resistance coming into power. As has been shown, though, the version of it that came into fruition was aligned to the interests of the state. The ascription of rights to nature is a reflection of the changing values of humanity in relation to nature. Overall, "the natural features we choose to protect are a reflection of what we, as humans, choose to give value to".[352] In Ecuador and Bolivia, the way in which these rights have been ascribed ensures that it is these values that will shape their enforcement. It has been the state that judges the value of extracting resources, against the value of nature, and the rights of indigenous people to their land. In a 2018 visit to Ecuador, the UN Special Rapporteur on the Rights of Indigenous Peoples described a regression in the respect, protection and enforcement of indigenous rights between 2006 and 2017, even with the constitutional changes.[353] Nandita Sharma shows the historical role of rights in subjugating indigenous populations during colonialism.[354] This went beyond withholding certain rights. Rights were used as tools to divide and conquer native populations. She shows how native people were cast into groups as either 'indigenous natives' or 'migrant natives'. These groups were codified, and allocated different political rights, land, and power based on these categories.[355] As mentioned, native populations were variously cast into being more of 'nature' than society. The differential allocation of rights was key to this. Native groups that were cast as non-migratory, became tied to the land. Native migrants, by way of having no specific place of attachment, became effectively without rights.[356] The creation of rights and their corollary mechanisms of representation are not without complexity. This is essential to bear in mind. The state's allocation of rights, particularly in relation to indigenous groups, is far from unproblematic. To present

[351] *ibid*
[352] Caelyn Radziunas. (2022) 134

[353] Report of the Human Rights Council: Forty-second session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Addendum 1, Communication dated October 12, 2018, from the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, addressed to the Human Rights Council. A/HRC/42/37/Add.1 at 9
[354] Nandita Sharma. Home rule: National sovereignty and the separation of natives and migrants. (2020)

[355] Nandita Sharma. (2020) 8
[356] *ibid*

the rights of nature as being some Western interpretation or extension that mirrors the rights of nature as understood by indigenous peoples is itself an injustice.

The rights of nature are not a single solution to the ecological crisis, and clearly have a far more complex relationship with indigenous rights and human rights more generally than many care to admit. They undeniably suffer from the constraints of political will and the pervasive logic of capital. Whilst they are concerned with nature, their primary function is the creation of a new structure through which ecological concerns can be expressed. The content of these concerns remains shaped by the underlying logic.[357] Fundamentally, the rights of nature grants a degree of political representation to nature, making it a political subject like any other. Its interests will be balanced within the values of the state. In terms of their legal status, Ecuador and Bolivia represent the most established examples of the rights of nature. They are also most representative of the general theory and practice, and exemplify the close association between the rights of indigenous people and the rights of nature. Not only in their largely false representation as being two leaves of the same tree, but in how these rights, and indeed many other human rights, can often conflict with the rights of nature. Despite this, the rights of nature are often framed as entirely complementary to the wider human rights framework, and where unlikely conflicts arise, the state simply steps in. These areas of conflict are crucial to recognise. These serious flaws do not expunge the rights of nature of any value, but they must be worked through.

Moving towards a 'relational approach' to the rights of nature

Until now, the rights of nature approach that has been analysed represents what Tânâsescu calls the 'rights of nature orthodoxy'.[358] There are, however, various other examples that diverge from this more orthodox approach. Specifically, there are examples of the rights of nature being expressed through a more local and relational framework. They are more relational in the sense that they depart from a

[357] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 17

[358] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 15

dichotomous view of either protected or exploited. It positions use and protection as two complementary sides of the same coin. It is through certain types of use that methods of protection are informed. A relational approach centres on the mutually constitutive relationship of humanity-in-nature. It recognises that humans have diverse understandings of nature, and of natural processes, which cannot be universalised or truly extrapolated from their local contexts. This is precisely because these relations are inherently locally produced.[359] Most commonly, these examples centre on rivers, owing to the importance of rivers in many cultures. There have been proposals to grant legal personality to the Atrato in Colombia, the Ganga and Yamuna in India, and all of Bangladesh's rivers.[360] Most famous, though, is the case of the Whanganui River in Aotearoa[361]-New Zealand. To fully understand the rights of nature as expressed in New Zealand, it is necessary to evaluate the case of the Whanganui's lesser known predecessor, Te Urewara, which was granted status as a legal entity in 2014.[362] Moreover, the origins of the rights of nature in New Zealand is one steeped in a brutal history of oppression of indigenous peoples, and cannot be understood fully without this context.

A brief historic backdrop: Te Urewara and the Treaty of Waitangi

Te Urewara, is a hilly forest ecosystem of more than 2,127 km^2 in the North Island of Aotearoa-New Zealand. It is the historical homeland of Maori tribe Ngāi Tūhoe. The forest is deeply sacred, and was the traditional source of life for the Tūhoe. The historical relationship between the Crown and the Tūhoe is important in understanding the modern status of Te Urewara. In 1769, the first significant contact between Europeans and Māori took place. Then came a stream of settlers, missionaries and colonists. In 1840, the British Crown signed the Treaty of Waitangi, along with roughly 500 Māori leaders.[363] It was then taken all over the islands for further signatures. The treaty is perhaps the most

[359] Jérémie Gilbert and others. (2023) 67
[360] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 69

[361] The contemporary Māori name for New Zealand
[362] Te Urewara Act 2014
[363] Craig M Kauffman. Managing people for the benefit of the land: Practicing earth jurisprudence in Te Urewera, New Zealand. *ISLE: Interdisciplinary Studies in Literature and Environment* 27.3 (2020) 7

important document in New Zealand's history.[364] The Tūhoe never signed, yet they were hugely impacted.[365] In less than 50 years, due to imported illnesses, deliberate starvation tactics by the colonisers, and a state of war, the Māori population dropped from 200,000 in 1840 to 40,000 in 1900.[366] An intense war in the area devastated Māori groups, through executions, starvation and land appropriation.[367] Te Urewara was the last bastion against the colonisers, and remained under Māori *tikanga*.[368] Many rebels took refuge in the area. Eventually, in the face of famine, the rebels were exchanged with the Crown for the Tūhoe internal autonomy.[369] The Urewera District Native Reserve Act 1896 provided self-government for Tūhoe over a 656,000-acre reserve. Decisions over the reserve were to be made by local custom, and the act declared that the land could not be sold without Tūhoe consent, and only to the Crown.[370] The Crown ignored its own laws, systematically acquiring and consolidating land, encroaching on Te Urewara and Tūhoe. By the 1930s, the Tūhoe lost all but 16% of their lands, the remainder of which was mostly unsuitable for farming.[371] Te Urewara was then declared as a national park, a deliberate move by the Crown to end this early example of plural sovereignty.[372] National park status has a long use as a means to subjugate and marginalise indigenous popuations.[373] The majority of Tūhoe left, and the some 5,000 that remain are socio-economically deprived.[374]

Returning now to the Treaty of Waitangi, there are two versions of the treaty, one in English and one in Māori. In reality, the differences go way beyond language, and this has been the source of long debate. The key point is the concept of *tino rangatiratanga*, this term varies from meaning self-government, full authority, to sovereignty.[375] The Waitangi Tribunal, the body tasked with investigating Māori claims of violations by the Crown with respect to the treaty, has stated that no single English concept

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[364] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 74

[365] *ibid*
[366] *ibid*
[367] Mihnea Tânâsescu. *Understanding the rights of nature* (2022)75

[368] *ibid. Tikanga* meaning law, custom or way
[369] Craig M Kauffman. (2020) 7
[370] Mihnea Tânâsescu. *Understanding the rights of nature* (2022)76

[371] Craig M Kauffman. (2020) 8
[372] Mihnea Tânâsescu. *Understanding the rights of nature* (2022)76

[373] *ibid* 77
[374] Craig M Kauffman. (2020) 8
[375] Carwyn Jones. New Treaty, new tradition: reconciling New Zealand and Māori law. UBC Press (2016) 54

can capture the meaning of *tino rangatiratanga*.[376] In the Māori version of the treaty, *tino rangatiratanga* is guaranteed to the Māori chiefs. Instead, they give up *kawanatanga*, which in the English version appears as sovereignty.[377] As in the case of Ecuador and Bolivia, there are clear problems with translating inherently local, spiritual concepts into a Western legal framework. In two legal documents, ostensibly mere translations of the other, two entirely different histories were written. The colonists increasingly behaved as if the treaty had granted complete sovereignty of New Zealand. Māori have been extremely consistent in their denial of this claim.[378] This brutal history of the pursuit of land by colonists, at the expense of racialised and subjugated indigenous people, is essential to understanding the rights of nature in Aotearoa-New Zealand.

In 1990s New Zealand, the narrative over the relations between the Crown and indigenous people began to change. This was largely initiated through the work of the Tribunal, established by the Treaty of Waitangi Act 1975.[379] In 1985, the Tribunal's jurisdiction was extended back to 1840, initiating a wave of negotiations between Māori and the Government, related to the treaty.[380] Despite never having signed the original treaty, the Tūhoe participated in the settlement processes, seeking justice and self-determination.[381] The roughly 30 clans developed three fundamental demands to reach an agreement: the return of Te Urewara, autonomy for Tūhoe management of Te Urewar, and the maximum amount of redress available.[382] Important to remember, is that whilst these negotiations allowed greater representation for Māori groups, they were still always within the context of state power, and the Crown imposed the framework for this access to justice.[383] The Tūhoe were steadfast in their demands, rejecting schemes that had been accepted in other cases. Negotiations were off the table altogether in 2010, when in the final moment Prime Minister John Key backtracked on the agreed transfer of title to a Tūhoe ancestor. He famously remarked that loss of the national park was a 'bridge too far'.[384] Finally, in 2011, the Crown realised that as they understood it, they wouldn't actually give up 'ownership'. The

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[376] *ibid*56
[377] Mihnea Tânâsescu. *Understanding the rights of nature* (2022 76
[378] *ibid*
[379] Treaty of Waitangi Act 1975
[380] Mihnea Tânâsescu. *Understanding the rights of nature* (2022 78
[381] Craig M Kauffman. (2020) 8
[382] *ibid*
[383] Mihnea Tânâsescu. *Understanding the rights of nature* (2022)79
[384] Craig M Kauffman. (2020) 9

Tūhoe demanded the return of the land, which they did not view as ownership. For them, nature could not be owned.[385] Kirsti Luke, one of the leading Tūhoe negotiators described that ownership blinds us to the impact on the land, and "feeds and nurtures self-interest".[386] Chief Crown negotiator John Wood was directly inspired by concepts of legal fictions, others were inspired by Christopher Stone, and they began to see legal personality status as the solution.[387] Crucially, it would nullify the ownership question, and the Tūhoe accepted that legal personality was a limited but useful approximation – within the framework imposed on them – of their views of Te Urewara as a living being.[388]

Te Urewara Act 2014

This long history of injustice and negotiations of power led to the Te Urewara Act 2014. The act gives the forest the status of a legal entity. The term legal entity is used throughout the text, yet seemingly interchangeably with legal personality.[389] For example, s. 11(1) of the Act declares "Te Urewara is a legal entity, and has all the rights, powers, duties and liabilities of a legal person".[390] The Act constructs the Te Urewara Board to represent the forest.[391] The purposes of which are 'to act on behalf of' and to 'provide governance',[392] in accordance with Tēhoe principles.[393] Tūhoe leaders have filled this space by subverting the governance requirement, in accordance with their principles. Their ontology sees Te Urewara, and other natural entities, as self-governing. It is therefore an innovative and novel political arrangement. Whilst there are many examples of co-management agreements in New Zealand, the legal entity status departs from this. It centres ownership and authority, owing to the specific injustices Tūhoe suffered, and allows their principles to be at the fore of practice.[394] This practice is to be implemented by the board. For the first three years of its existence (until 2017), the

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[385] ibid
[386] *ibid*
[387] *ibid* 10
[388] *ibid*
[389] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 80

[390] Te Urewara Act 2014 s. 11(1)
[391] *ibid* s. 11(2)
[392] *ibid* s. 17
[393] *ibid* s. 18(2) and s. 18(3)
[394] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 81

board was composed of four members appointed by the Tūhoe, and four by the Crown. As per the Act, this is now nine members, with six appointed by the Tūhoe and three by the Crown.[395] As mentioned, all board members, Crown appointed or Tūhoe appointed, must represent the interests of Te Urewara. Furthermore, unanimous or consensus decision making, depending on context, is obligatory.[396] Any non-consensus decisions require an 80% majority, including at least two Crown appointments.[397] Financially, and in relation to tax, Te Urewara and the Board are the same person.[398] As convincingly argued by Tânâsescu, when we look at these details, we see that the Te Urewara Act goes beyond legal innovation. We are really seeing a new kind of '*political arrangement.*'[399] The legal provisions create new spaces for governance. These spaces are filled by Tūhoe principles, by practice, and by constant dialogue. Crucially, this dialogue is not only between the Tūhoe and the Crown. They are rooted in the natural processes and dialogue between Te Urewara as a living being, and the Tūhoe.[400] As in the case of Ecuador and Bolivia, indigenous concepts appear most heavily in the symbolic parts of the text. However, the provisions on actual practice, mechanisms of realising these principles, largely through the board, is what subverts this state power.[401] Tūhoe directly expressed their doubts over a rights-based model, owing to the historical context of rights and their use as tools of suppression and subjugation in New Zealand.[402] Of course, there are various rights attached to this legal entity status, but primarily this arrangement is about power relations, and praxis through dialogue and process. The arguable ambiguity of 'legal entity is key here. It sets up legal mechanisms through which practice can define authority. The provisions set up the scaffolding through which governance can be built. This governance is defined by practice, because practice is necessarily what can define it. It rejects the totality model of a broad and universal Nature, rooting the framework in local and relational understandings of a specific nature.[403] If seen from the anthropocentric vs ecocentric dichotomy, this political legal framework is firmly the former. It is as much a story of indigenous rights and struggle against the state as it is a case of the rights of nature.[404] This is clearly expressed by Tāmati Kruger, the

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[395] Te Urewara Act 2014 s.21 (2)
[396] *ibid* s. 31
[397] *ibid* s. 33
[398] *ibid* s. 40
[399] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 82 (emphasis added)

[400] *ibid*
[401] *ibid*
[402] Craig M Kauffman. (2020) 1

[403] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 84

[404] Elizabeth Macpherson. Ecosystem rights and the Anthropocene in Australia and Aotearoa New Zealand, in Amirante and

current Board chairman, and key in negotiations for the act, who described the management plan (Te Kawa) as "about the management of people for the benefit of the land – it is not about land management".[405] What this management looks like will necessarily be shaped over time. The Tūhoe concept of management, *mana me mauri*, depends on the use of the land. It requires "the sensitive perception of spiritual and living force in a place".[406] Therefore, far from the idea that indigenous groups are inherently the harmonious guardians and conservators of nature, the land will be used. However, it will be used in a constantly evolving and mutually constitutive relationship, shaped by actual ecological and natural processes that see nature as more than 'resources to be managed and used'.[407] Moreover, the Tūhoe are one *iwi* of many, and within them are a wide group of individuals, values and ideas. There are internal politics, not to mention the involvement of the Crown. The Tūhoe also express their need to relearn ancestral knowledge, which colonialism has greatly and deliberately impacted. The case of Te Urewara is not some perfect idea, but it offers crucial insight into how the rights of nature can develop beyond some of frankly disappointing examples we have seen so far.

Te Awa Tupua: Whanganui River Act 2017

Aotearoa-New Zealand's more famous case, the Whanganui River Act, also deserves a brief exploration. Like Te Urewara, the Act also emerged out of the settlement claims relating to the Waitangi Treaty.[408] As provided for in the Te Awa Tupua[409] (Whanganui River Claims Settlement) Act 2017, the river has full legal standing and personality. The act recognises the river as "an indivisible and living whole"[410] with the full rights, duties, powers and liabilities that attach to a legal person.[411]

Bagni (eds), *Environmental Constitutionalism in the Anthropocene: Values, Principles, Actions*. London: Routledge. (2021)

[405] Mihnea Tânâsescu. *Understanding the rights of nature* (2022)84

[406] *ibid* 85

[407] Tāmati Kruger in Craig M Kauffman (2020). 14

[408] Christopher Rodgers. A new approach to protecting ecosystems: The te awa tupua (Whanganui River Claims Settlement) Act 2017. *Environmental Law Review* 19.4 (2017) 267

[409] The contemporary Māori name for the river

[410] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s. 12.

[411] Ibid, s. 14(1)

The act creates an office of Te Pou Tupua,[412] which is to be the 'human face' of the river.[413] The office has various functions, which are essentially analogous to a trustee.[414] The act requires two trustees, one elected by the iwi[415] with interests in the river, and one by the crown.[416] These provisions go way beyond anything in Ecuador and Bolivia in terms of actual implementation. Importantly, the Act recognises not only the physical properties of the river, but its metaphysical and spiritual characteristics which are extremely important for Māori people.[417] This distinction between metaphysical and physical, being a settler viewpoint, is one example of the convergence of worlds within the act.[418] It is this convergence of values that deserves particular focus here. Specifically, the Māori's rejection of the Western idea of 'guardianship', and how this was navigated. The Māori have been consistently against a notion that they are the 'guardians' of the river.[419] This is notable not least due to the persistent attempts throughout Western thought to attribute indigenous groups as guardians of land, tying them to it. Moreover, the idea of guardianship is central to the ecotheological strand of the rights of nature that found its way into the Ecuadorian and Bolivian context. In Māori thought, humans can never be the guardians of nature. Generally, Māori thought sees guardians as *taniwha*, local spirits that care for specific places. The Māori word most often translated to guardian is *kaitiaki*, and *kaitiakitanga* translate as guardianship.[420] Māori observe the *kaitiaki*, which reveal whether "all is well in the world or whether some action is needed".[421] Māori are therefore not guardians of any nature, rather they are observers of kaitiaki, and they can step in only to uphold the power of *kaitiaki*. What this means in practice is context-dependent. In the Whanganui River Act, Te Puo Tupua, the office that represents the 'human face' of the river Te Awa Tupua, and acts in its name, therefore avoids the Western concept of humans as guardians of nature. This idea of a human face is itself of course a compromise, but one that

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[412] *ibid* s. 18(1)
[413] *ibid* s. 18(2)
[414] Christopher Rodgers. (2017) 270

[415] iwi roughly means specific tribes of Māori. For example, in the case of Te Urewara it was the Tūhoe tribe, whose homeland is Te Urewara
[416] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 s. 20(2)
[417] *ibid* s. 13(a)
[418] Mihnea Tânâsescu. *Understanding the rights of nature* (2022)88

[419] *ibid* 89
[420] Government of New Zealand. Kaitiakitanga: Guardianship and Conservation. Te Ara - the Encyclopedia of New Zealand, Ministry for Culture and Heritage. (2 Mar. 2009) Available at: <teara.govt.nz/en/kaitiakitanga-guardianship-and-conservation> (accessed 08/07/23)

[421] Mihnea Tânâsescu. *Understanding the rights of nature* (2022)89

is a more accurate reflection of Māori thought than guardianship.[422] The Act's actual implementation is shaped and defined by Māori thought, rather than relying on them for some symbolic legitimacy. Although there is no explicit mention of it in the context of the river, this process of merging the Māori world with the Western legal world seems somewhat representative of *Waka-Taurua*. This is a contemporary Māori framework roughly meaning 'double-canoe'.[423] Each canoe represents a distinct knowledge system, and the canoes are then connected for a specific purpose. It understands the inherent differences and contradictions between two knowledge systems, or kinds of world, owing to the fact these worlds are not made to fit or complement each other.[424] It is embedded in *kaitiakitanga*, and has been used in other contexts in Aotearoa-New Zealand regarding marine systems.[425]

Overall, both Te Urewara in 2014 and Te Awa Tupua in 2017 have come under unique political arrangements. They are undeniably products of a deep history of injustice over indigenous rights and struggles in Aotearoa-New Zealand. What has emerged is potentially an entirely unique and novel form of organising people in the interests of land. Both cases have inaugurated a political arrangement of a kind not seen before. Practice will define the success of these new political arrangements from an environmental management perspective. In terms of material impact on climate change, neither Te Urewara nor Te Awa Tupua will have huge impact on global emissions, for example. What they show, is the diversity of practice in the rights of nature. They exemplify the potential of the rights of nature to be one of many sources of justice. They show that contrary to the cases of Ecuador and Bolivia, the rights of nature are neither inherently aligned nor at odds with the rights of indigenous peoples. The rights of nature need not posit the natural world as a universalised whole, abstracted from the ecological reality of relational processes of humanity-in-nature. It doesn't need to frame itself as the extension or translation of indigenous beliefs, which are ostensibly always in a falsified harmony with nature. This also does not mean that these examples should be universalised. They must not be framed as simple solutions to the more orthodox approach's flaws. This would only result in the same universalising and totalising forms that so evidently have not worked.[426] Te Urewara and Te Awa

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[422] *ibid* 90

[423] Andrea J Reid and others. "Two-Eyed Seeing": An Indigenous framework to transform fisheries research and management. *Fish and Fisheries* 22.2 (2021) 249

[424] *ibid*

[425] Kimberley H Maxwell and others. Navigating towards marine co-management with Indigenous communities on-board the Waka-Taurua. *Marine Policy* 111 (2020) 10,3722.

[426] Mihnea Tânâsescu. *Understanding the rights of nature* (2022) 87

Tupua do, however, show that the rights of nature still have huge potential as new political-legal-natural arrangements. These can be particularly fruitful when they are local, relational and dynamic. What makes these examples from New Zealand so distinct from others is that they go beyond a simple recognition of the rights of nature in rather abstract and obscure terms. They establish actual mechanisms of representing specific nature. They detail how this will be done, and by whom. Yet they leave significant room for practice to develop and inform the relationship of governance, rooting this within actual ecological processes of nature and its reciprocal dialogues with living beings. The New Zealand examples provide much needed clarity on moving past simply acknowledging that nature must be protected, and offers insight as to *how* this can be done. These innovative frameworks of ecological organisation can bypass the deep limitations of ideas such as the right to a healthy environment, and can readily accommodate intergenerational justice by focusing on the management of people for the benefit of nature.[427]

Conclusion

This thesis has sought to more deeply understand the processes and conditions that underlie our climate emergency. The climate emergency has been conceived of as an injustice in itself and a source of exacerbation for other injustices. Understanding this relationship between the climate emergency and other injustices is necessary to shape and inform our steps to climate justice. Whilst the Anthropocene narrative has been a dominant force in academic literature, and can be credited for initiating a wave of interactions across disciplines, it is fundamentally limited. Despite its increased willingness to incorporate more critical approaches, it fails to move beyond these inherent limitations. At no point in history has humanity acted as one universalised whole. Viewing human behaviour as such is flawed and dangerous. Humanity does not act on nature. Human behaviour is in constant dialectic motion *within* nature. We cannot fully extrapolate ourselves, nor our behaviour, from ecological processes. The Anthropocene narrative, shaped by its epistemic location within the earth sciences, focuses on consequences. These consequences are stratigraphic, they are scientific evidence of changes in the

[427] Lewis Williams. Indigenous intergenerational resilience: Confronting cultural and ecological crisis. Routledge. (2021)

earth's system. This is valuable and important knowledge. This focus on consequence, whilst beneficial, is also the source of its inherent limitations. The Anthropocene narrative has been crucial in removing any scientific doubt as to the very real phenomenon of climate change. Yet, it obscures and simplifies the sources of the climate emergency to abstractions. It blurs how climate change is differentially located in responsibility, impact and power. It therefore obscures our path to climate justice.

Through deploying other paradigms, such as the Capitalocene and Racial Capitalism, we begin to more fully understand the origins of climate change, and its role as a source of injustice. Through the paradigm of the Capitalocene, we moved beyond the Anthropocene's view of consequences, towards a view of the causes and conditions of humanity's ecological role. This paradigm delineates how constructions of nature have been shaped by capitalism and relations of power. Dualism – the Nature/Society dichotomy – forms a key underlying sensibility that pervades much of humanity's relationship within ecology. It frames nature as a subject of domination by humans, valuable solely for its contribution to profit. The concept of cheap nature reveals how nature has been organised through capitalism, and that this organisation produces the conditions for ecological destruction. It is evident that 'nature' is far from a rigid concept. It has been variously shaped, moulded and shifted by its organisation through capital. This organisation premises nature as expendable. The more that can be classed as nature, the more that can be classed as expendable and therefore costless. Throughout history, nature was shaped by power, ordaining systems of subjugation as the natural existence of life. These hierarchies could therefore relegate both nature, and humans who were cast into nature, as outside economic production and, thus, maximising profits from their use as resources. Whilst these relations were particularly evident historically, their legacy remains potent. In fact, it is unfair to paint these relations as only existing in legacy. They remain dominating tools of subjugation, entrenched within the global system of power and capital. This is made ever clearer by the existence of sacrifice zones, where racialised groups, deemed expendable, inferior, and incapable of contributing to wealth, are left to suffer. As we see in 'green sacrifice zones', these pervasive logics of capital and nature poison even climate conscious actions. Despite being framed as just and equitable, we are reproducing injustices in our attempts to combat climate change. It is not enough to simply 'green' our actions without changing the substance of them.

For all the talk of climate apartheid, urgent action, justice, and building the future, our actions are not radical enough. We have done little to address the potent relations of power, constructions of nature, and dynamic tools of subjugation that continue to shape our relationship within nature. Of course, there is no single tool or change that can rid ourselves of such pervasive and elaborate processes. This thesis never set out to solve these problems. It did not seek to redefine nature or indeed anything else. Not least because nature, and especially what is deemed 'natural', is an extremely complex and inherently subjective notion. We cannot abstract nature from the norms and constructions that shape our understandings of what nature is and isn't. The thesis sought to illuminate and explore the underlying logics of our ecological relationship, in order to better inform our responses. Some of these potential responses were analysed in the second chapter. They have been framed as non-reformist reforms, which are not single solutions but actions within a wider emancipatory struggle. This reflects the position that radical solutions must be all-encompassing, and justice must be demanded from below, never awarded from above. The thesis focused on rights-based approaches, due to both their proliferation, and their potential. After analysing the emergence of the rights of future generations, particularly in conjunction with a right to a clean, healthy and sustainable environment, it was argued that these are positive steps. However, they remain firmly within the status quo. They don't do enough to address the hierarchies of power that subjugate people and nature, and remain so poisonous within our world. That said, the evolution of intergenerational justice into a widely respected idea is very welcome. Its successes should be built upon and expanded, and the rights-based approach is one fruitful, but imperfect way of doing this. Unfortunately, though, these approaches have not sufficiently rid themselves of various flaws. Perhaps the most serious of these is the Nature/Society dichotomy, which is implicit in the right to a clean, healthy and sustainable environment.

Working from this conclusion, the rights of nature were analysed as political-legal evolutions in response to climate injustices. They have been presented by many as being both radical enough and strategic enough to address the flaws in our ecological relationship. In Ecuador and Bolivia, they were enshrined as the tools of nature's emancipation in two of the most radical constitutional evolutions to date. Despite this ostensibly major evolution in nature's organisation, capitalistic extraction increased in both contexts. Both cases were expressly framed as being in opposition to nature's suffering at the hands of capital and power. Ultimately, their expression has been disappointing. In both cases, their practical implementation was left entirely within the remit of the state. Thus, ensuring that their

emancipatory potential was inevitably burdened by the state's values. Where governments saw it fit, nature's rights were shunned for more valued concerns. Both frameworks saw the rights of people and the rights of nature as being compatible. They left any potential conflicts between the two for the state to arbitrate, therefore granting them immense power. It is also argued that unlike how they have been framed and perceived, indigenous understandings of nature are not intrinsically compatible with the rights of nature. Nor are they homogenous understandings that require constant balance and harmony. Indigenous concepts were indeed present in both Ecuador and Bolivia's rights of nature frameworks, however they occupied a largely symbolic role. How these contexts may evolve is not certain, but their expression thus far has been at odds with the desires of many indigenous groups. In terms of implementation, the frameworks left key points undefined. They framed a totalising, universal concept of nature as being the unproblematic translation of a diverse array of indigenous philosophies. Moreover, the translation of concepts such as Pachamama into a Western legal tradition, and a heteronormative framework, has enacted serious flaws. Perhaps the intentions of both cases were good, and perhaps their full potential has yet to have been realised, but both frameworks clearly require significant improvement as to their implementation.

Finally, two examples from Aotearoa-New Zealand were assessed as examples of what this implementation could look like. The cases of the Te Urewara forest and the Whanganui river went well beyond anything in the South American context when it comes to implementation. They represent a relational approach to the rights of nature. This relational approach is key as it situates the implementation of the frameworks in an evolutionary and local context. It is defined with practice, within local knowledges and understandings of nature that are tied to specific places. This is far superior to the universalised, totalising notion of nature that was seen in Ecuador and Bolivia. In any case, the exact expression of the rights of nature as an idea will be shaped by historical contexts, established relations of power, and cultural norms. This was clear in Ecuador, Bolivia and in Aotearoa-New Zealand. In fact, the latter case was as much about the battle for indigenous rights, and justice for historical wrongs, as it was about nature. This is clear in their manifestation. The cases of Te Urewara and the Whanganui River flip the idea of land management on its head. They seek to manage people for the benefit of nature. Unlike other frameworks, they recognised the potential for the rights of people, and the rights of nature, to conflict. Rather than leaving this to the state's intervention, probably owing to this case being in the context of indigenous-state power struggles, the frameworks tackled these

conflicts head on. They established mechanisms of governance, tools of representation and implementation that balance and shape the expression of competing rights and values. It is these mechanisms that make both cases so unique. They are novel arrangements of governance, allocations of power that shape ecological relations. The frameworks are rooted within specific natures, and thus are formed through ecological processes and human behaviours as they interact and evolve within their local contexts.

This is not to say that these examples should be universalised. This would fall victim to much of the same logic as the Anthropocene, and the universal totalising concepts that have been criticised, which inherently obscure the importance of relational processes of humanity in nature. However, we can still learn from these examples, which clearly display a kind of ecological arrangement not truly seen before. They represent the possibility for change. They prove that the way in which nature has been organised is not the only way. There are other possibilities, knowledges, and structures that can shape our ecological relations. This is especially important in the climate emergency we find ourselves in. The success of these examples will be seen over time. They are evolutionary arrangements, and will be shaped and informed with practice and dialogue. In their struggle against the state, Māori have opened up this new space for the governance of nature and people. These political-legal evolutions are neither the start nor the end of anything. They are a continuation of long-fought battles over sovereignty, power and ways of living.

The cases analysed in this thesis, in Ecuador, Bolivia and Aotearoa-New Zealand, all necessitate further research. This research must move beyond the restrictions imposed by the Anthropocene narrative, by Nature/Society dualism, and by many other limitations. Future research must ethically incorporate the kinds of worlds understood by different knowledge systems. Further research into the coloniality and embedded hierarchies of climate action is also crucial. This is especially true as actions move beyond preventing and limiting climate change, towards building adaptable and resilient ways of living within it. In our actions against climate change and within a world shaped by it, it is essential that we extend our lenses to capture the full array of actions and ideas available to us. The full realisation of climate justice cannot be achieved without all other forms of justice. The fight for climate justice does not end nor start in any one time or place. It represents one part of a vast history of struggle and strife for the

dignity of living beings. It is composed of the infinite number of battles to achieve our potential. The patterns of domination and oppression that oppose our realisation of justice must be comprehensively uprooted and destroyed. This will not be done by any single action, and it will not be gifted. It will be demanded and accomplished through resistance and struggle. This fight will be contested in all spheres of life, and must be unforgiving to the powers that seek its failure.

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