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From Pachamama to Policy?

Indigenous influence on the rights of nature in Bolivia and Ecuador

Bachelor's thesis
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Content

1. Introduction

Although there is a wide consensus on the issue of environmental degradation and the need for sustainable development, there have not been any breakthrough achievements improved the condition of the environment and fundamentally changed the way humans treat nature. No legally binding international agreements have been made and the underlying causes of the state of nature have not been targeted properly (Rühs & Jones, 2016). Even though the majority of national constitutions currently include some provisions pertaining to environmental protection, it is notable that these provisions are predominantly anthropocentric in nature. This means that despite the recognition of the relevance of protection, the use of nature to humans and human entitlement to natural resources stand at the forefront (Kotzé & Villavicencio Calzadilla, 2017). The term 'sustainable development' "has been accepted as a 'guiding principle', because of its flexibility so each stakeholder can apply it to their own unique situation" (Rühs & Jones, 2016, p. 174). In other words, the current environmental policies do not challenge the political and economic status quo, which would be necessary to achieve actual success in environmental protection. Gallegos (2015) sees the failure to question the mainstream concept of nature as the reason why environmental protection has not produced results yet. The sustainability approach does not "[...] entail a robust ethical view, one which reconfigures our relationship and sense of obligation to our environment" (Gallegos, 2015, p. 33). Moreover, Bosselmann argues that "[...] the law has been complicit in a sense of legitimizing and legalizing excessive growth and environmental destruction" (Bosselmann, 2013, p. 176). He finds that ignorance of environmental issues is caused by Western values translated into law, most importantly the categorization of nature as a mere object. Huanacuni Mamani (2016) argues that a green economy and sustainable development are still capitalistic and therefore continue to impact the environment significantly.

In this context, many authors refer to the concept of the 'Anthropocene', as a new geological era that is characterized by a geologically detectable change in the composition of the earth's crust due to human activities (Bauer & Ellis, 2018; Kotzé & Villavicencio Calzadilla, 2017; Rühs & Jones, 2016). Although the term is widely used in environmental literature, it is controversial, most importantly because it fails to take into account who caused environmental change and who did not due to social, economic, or cultural reasons. The concept implies that humanity as a whole has caused this phenomenon, when in reality only very few have done so, historically as well as socially. Nevertheless, the term seeks to emphasize the immense impacts (some of) humanity has had on the planet (Bauer & Ellis, 2018).

This is why many call for a paradigmatic shift away from an anthropocentric view of nature towards an ecocentric one. “Anthropocentrism considers humans to be the most important life form, and other forms of life to be important only to the extent that they affect humans or can be useful to humans” (Kortenkamp & Moore, 2001, p. 262). In contrast, ecocentrism considers nature intrinsically valuable, independently of its use for humans (Kortenkamp & Moore, 2001).

The change in paradigm includes calls for law that protects nature instead of providing for the exploitation of resources (Rühs & Jones, 2016). This is what a series of new ‘rights of nature’ has aimed to achieve in many parts of the world over the past two decades. Rights of nature grant nature its own rights, independently from human use of nature and its value to human economy (Rühs & Jones, 2016). For example, instead of claiming damages to nature as damages to someone’s property, nature can claim damages to itself. Essentially, nature becomes a bearer of rights. This may be an answer to those who see the core issue in the perception of nature as an object, as rights of nature make nature a subject of rights. A recurring theme in the rights of nature literature is the criticism of the anthropocentric and utilitarian way of thinking about nature, as well as the nature/culutre dichotomy. It is suggested that if nature has rights of its own, it could lead to greater respect for it (Rühs & Jones, 2016). The choice of rights as a mechanism for more effective environmental protection seems logical as “[r]ights provoke strong advocacy and inspire passionate struggle” and “[…] are seen to be an obligatory mechanism of emancipation” (Tănăsescu, 2022b, p. 9). Berry (1999) finds that modern concepts like sustainable development are missing the real issues and are only treating symptoms instead of tackling the root causes. As a result, rights of nature proponents have searched for alternatives to utilitarian and capitalist ways of thinking about nature. As an example of an alternative approach, Huanacuni Mamani (2016) suggests that Indigenous cultures have lived in a way that keeps the environment in balance and harmony and therefore promotes a structural change towards an Indigenous worldview and way of life.

Rights of nature have not been a popular or mainstream demand before their introduction into Bolivian and Ecuadorian law, and it is often claimed that they were the demand of grassroots movements and an Indigenous idea (Tănăsescu, 2013). This thesis addresses the question of how Indigenous groups have influenced the debate around rights of nature and their subsequent introduction into the constitution of Ecuador and the legal system of Bolivia. It questions if the Indigenous populations have been the driving force behind the rights of nature movement and how much Indigenous philosophy is included in the rights of nature in Ecuador and Bolivia. This includes the question whether the idea of rights can be in accordance with Andean Indigenous philosophy.

Firstly, a general overview of the rights of nature in the world will be provided. This will be followed by an introduction to relevant concepts around the rights of nature from a point of view of Earth Jurisprudence and decolonial theory. Following that, this thesis will investigate Ecuador and Bolivia as popular examples of states that have included rights of nature in their legislation. Using criteria derived from the theoretical framework, these cases will be analysed to answer the research question: How did Indigenous peoples in Ecuador and Bolivia influence the introduction of rights of nature and to what extend does the concept 'rights of nature' reflect their philosophies?

2. Background

The proposition of rights of nature was famously made by Christopher Stone in 1972 (Stone, 1972). He was inspired by the Sierra Club case that was lost due to a lack of standing. In this case, the Sierra Club, a US American environmental organization, tried to impede the establishment of a ski resort in the Sierra Nevada Mountains to protect nature. They were unsuccessful because they could not show an injury to their own rights and therefore did not have the right to litigate. Influenced by this case, Stone promoted the advantages of standing for nature. His idea was that through standing rights and complementary substantial rights, a court-appointed guardian could initiate legal action in the name of nature, similar to a legal guardian for a child or a lawyer for a corporation. This way, a legal injury to nature itself could be accounted for and the remedy would be awarded to nature. This would simplify legal steps against environmental damage and take care of cases where other injured parties may not have an interest in going to court. Stone argues in favour of rights for nature as a whole, not only parts of nature relevant to humans (Stone, 1972).

Since the beginning of the 21st century, rights of nature have emerged in practice as a new trend. More and more states have established rights of nature in some way or form. It is essential to understand that although different rights of nature might be inspired by others, they vary significantly in terms of design, content, jurisdiction, scope, and theoretical as well as philosophical justification (Tănăsescu, 2022b). Putzer et al. (Putzer, Lambooy, Jeurissen, & Kim, 2022) analysed and mapped all institutionalized rights of nature initiatives until 2021. They found that since 2006, the number of rights of nature initiatives has increased steadily and they can be "considered a suitable addition to mainstream environmental protection efforts" (Putzer et al., 2022, p. 89). Their definition of rights of nature initiatives included "[...] official legislation, court decisions, local ordinances, declaration, and policies from international organizations [...]" (Putzer et al., 2022, p. 89). They found great variation between the types of rights of nature initiatives. Most country-level initiatives were local regulations, while international

initiatives were mainly policy recommendations. In a few cases, e.g. in Colombia, court decisions were the most prevalent legal type of rights of nature. In most cases, the natural entity that gained rights through the rights of nature initiative was not defined, followed by rights for rivers and other bodies of water. Regarding the motives for the introduction, only about 20 % of rights of nature initiatives refer to Indigenous beliefs (Putzer et al., 2022, p. 92). Most initiatives claim “anti-corporate/capitalist” or “human right[s] to a healthy environment” as their motivation (Putzer et al., 2022, p. 90), which are rather anthropocentric reasons. Their ”main conclusion is that RoN [rights of nature, note of the author] represent a substantial, global, and lasting trend towards a non-anthropocentric human relationship with Nature” (Putzer et al., 2022, p. 93). Focussing on Ecuador and Bolivia, O’Donnell et al. find that “[…] Indigenous worldviews have enabled, shaped and defined the recent transnational emergence of an ecological jurisprudence in recent years” (O'Donnell, Poelina, Pelizzon, & Clark, 2020, p. 413). Similarly, O’Donnell et al. (O'Donnell et al., 2020) argue that the rights of nature have emerged in the context of the Indigenous right to self-determination. Therefore, one can assume that the indigenous populations in Ecuador and Bolivia have played an important role for rights of nature legislation.

Examining different categories of rights of nature, O’Donnell et al. point out two different dimensions of rights of nature: “existence rights” and the “recognition of legal entities as legal persons” (O'Donnell et al., 2020, p. 408). Existence rights include rights to exist, to have needs met, and to have space, while the recognition as a legal person gives nature the power to bear legal rights. Earth Jurisprudence, the theoretical framework this thesis will apply, mostly demands existence rights (O'Donnell et al., 2020), but also implies legal personality because nature would become a legal subject through its own rights. Both categories seem to be ecocentric in a way that they only involve nature’s interests and are independent of human motives. However, O’Donnell et al. argue that these rights “[…] are still inherently anthropocentric: Nature has no need of these particular rights unless it is participating within human legal systems” (2020, p. 409). They also critically note that the rights of nature will conflict with human rights and might not lead to a closer relationship with nature. However, despite these disadvantages, they believe that the spread of rights of nature may lead to an increased awareness of the dependency of humans on nature. Humphreys (2017) criticizes the rights of nature for their vagueness, lack of definition of nature, and lack of specific rights. In present rights of nature initiatives, it is often unclear who can make claims on behalf of nature, and how rights of nature and other rights, e.g. human rights and property law, relate.

Current literature seems to be divided on the issue of rights of nature. Some authors (Dolhare & Rojas Lizana, 2018; Knauß, 2018) celebrate the approach for its revolutionary character

especially regarding Indigenous inclusion, while others criticize it for being ineffective at best and culturally imprecise greenwashing at worst (Rivera Cusicanqui, 2018; Tănăsescu, Macpherson, Jefferson, & Torres Ventura, 2024; Villavicencio Calzadilla & Kotzé, 2018).

3. Theoretical Framework

As a theoretical framework, this thesis will draw on Earth Jurisprudence and decolonial theory. The theory of Earth Jurisprudence was chosen due to its wide use as a theoretical basis for rights of nature projects and its influence on the cases reviewed in this thesis (Tănăsescu, 2022b). Although not all cases of rights of nature originate from Earth Jurisprudence, the theory has been influential in the cases dealt with here. A decolonial perspective is necessary as an Indigenous origin of the concept of rights for nature is often at least implied. In the two cases considered in this thesis, Indigenous concepts are specifically named in the legal texts. Additionally, decolonial theory will also be used to critically evaluate the concept of Earth Jurisprudence in an Indigenous context. Although Earth Jurisprudence is an approach that is critical of mainstream environmental protection, it might not be easily combined with the Indigenous concepts referred to in the Ecuadorian and Bolivian legal texts due to their different origins and traditions. For example, granting rights appears to be a Western idea, and it is worth investigating if this corresponds to Indigenous culture in the way that is claimed. Decolonial legal theory demands to be mindful of the prevailing dominance of Western legal knowledge and rights language (Bönnemann & Pichl, 2020). To understand and critically analyse how Indigenous communities have influenced the development of rights of nature, and if Indigenous philosophy can be found in the rights of nature, a decolonial perspective is indispensable.

3.1. Earth Jurisprudence

Earth Jurisprudence is an ecological legal philosophy that centres around the proposal of an ecocentric instead of an anthropocentric worldview which is commonly present in Western theories of law, most importantly in natural law and legal positivism (Burdon, 2012). As opposed to Stone (1972), who mostly found it practical if nature had standing, Earth Jurisprudence seeks a paradigmatic shift. It "[…] may be seen as a set of moral rights on how humans relate to, interact with, and use the natural world" (Humphreys, 2017, p. 460). Earth Jurisprudence views humans as members of a larger system called Earth Community where other beings are equal (Burdon, 2011). Tănăsescu (2022b, p. 30) categorizes the philosophical approach around Earth Jurisprudence as "ecotheology", focussing on nature and the universe as a "totality", an all-encompassing creation. Burdon (2012) defines Earth Jurisprudence as a critical legal theory that opposes hierarchies like the superiority of humans above nature and the prioritisation of economic growth over the well-being of the environment. Accordingly, these

hierarchies and beliefs are reflected in the legal system and cause of injustice. Earth Jurisprudence specifically "[...] analyses the contribution of law in constructing, maintaining and perpetuating anthropocentrism and looks at ways in which this orientation can be undermined and ultimately eliminated" (Burdon, 2012, p. 30). Consequently, Earth Jurisprudence proposes that law should be designed in an ecocentric way to be an effective tool to protect the environment.

A popular proponent of Earth Jurisprudence philosophy is Thomas Berry, a US-American Catholic priest, cultural historian and eco-theologian (Berry & Tucker, 2006). According to Berry, the main principle of Earth Jurisprudence is 'Earth community'. Earth community includes all living and non-living beings on Earth who create a system in which everything is interrelated and in harmony. "The idea of 'mutual-enhancement' [emphasis in original] is fundamental to Earth Jurisprudence. As demonstrated in ecological science, human beings are deeply connected and dependent on nature" (Burdon, 2012, p. 31). The main issues Earth Jurisprudence seeks to address are the human-nature binary and the consequential disconnection of humans from nature, as well as humanity's current relationship with property and the omnipresence of economic thinking and prioritising (Burdon, 2012).

Additionally, Berry (2006) sees Western Christianity as a source of thought leading to the devastation of the Earth because it places scaredness in a God and not in the natural world, and places humans above nature. Furthermore, advances in technology may give humans a feeling of superiority because it allows to overcome biological boundaries (Berry & Tucker, 2006). He calls for a reorganisation of state institutions, religion, governance, and business in a way that allows humanity to reintegrate into Earth Community. Berry criticizes the US legal system for legitimizing and even subsidizing industrial exploitation rather than protecting nature (Berry & Tucker, 2006). This is also true for most other legal systems since they allow the management of property in a way that damages the environment: "Our law has been developed to facilitate a one-way exchange with the Earth and feed our ever-growing extractive industrial economy. Today, there is a great need to develop a jurisprudence that seeks to develop a mutually enhancing and beneficial human-earth relationship" (Burdon, 2011, p. 17).

To achieve changes in the attitude towards nature, Berry calls to "reconsider our legal system in its deepest foundations" (Berry & Tucker, 2006, p. 108). Human law should no longer stand above the needs of the Earth Community. This indicates a shift from human-centred law to earth-centred law. The primary aim of law should be the integrity, well-being and functioning of the earth system. Personal security and private property should be protected, but actions allowed by ownership should be limited to actions that are in accordance with the well-being of the property and community affected (Berry, 1999).

This affects, among other, property law significantly. Traditionally, property law provides that Earth can be owned in the sense that the owner can do (almost) anything with it. Instead, Berry (1999) argues that ownership should be exercised in a way that is beneficial for Earth Community as well as for the owner. Similarly, Graham (2011) suggests that while modern property law manages the relationships between humans around land use, a change should be made towards a property law that includes knowledge of and responsibility for the land. She finds that knowledge of the land and responsibility for it must come before any entitlements and rights to the resources of the property. However, Graham (2017) also argues that property law has different attributes in different cultures. In cultures that view nature as a source of resources separate from society, property law tends to reflect this by focusing on rights to these resources for the owners. In cultures where the environment has a cultural or metaphysical relevance besides providing resources, the idea of property is connected to obligations and responsibilities towards the property.

The theory of Earth Jurisprudence goes far beyond criticism of the legal system, making suggestions for political, religious, societal, and other changes. However, this thesis focusses on the legal aspects of the framework, as they are most relevant for its purpose. Namely, this is the demand for a legal system, that is earth-centred and prioritizes the well-being of all of Earth Community. Berry (2006) makes six proposals for principles to be included in national constitutions and law: independent rights for all beings, the rights to exist in a habitat and to live in a way that benefits Earth Community, specific rights for all species and non-living entities depending on their needs, legal equality for all members of Earth Community, individual rights for all parts of nature, recognition of interconnection and interdependence.

These proposals are also included in Burdon's concept of the Great Law. The "Great Law [...] represents the principles of Earth community and is measured with reference to the scientific concept of ecological integrity" (Burdon, 2012, p. 29). It is a higher law that stands above human law and is concerned with the well-being of the Earth Community as a whole. To be legally binding, human law must comply with it. The content of the Great Law must be found by scientists and human law makers through scientific research and debate in favour of the Earth Community. According to Burdon (2012), natural laws and scientific findings are often too general and abstract to base any laws on, therefore he uses ecological integrity as the measurement of compliance with the Great Law. If law supports ecological integrity or does not disturb it, it is in accordance with the Great Law. Considering this, there is no one objective rule applies to all situations and for all systems. Consequently, any outcome that ensures the well-being and integrity of nature is acceptable. In this regard, the Great Law shows similarities with natural law concepts, that are available through reflection and philosophical thinking and stand

above human law. However, the main difference is that the Great Law is identified through scientific evidence (Burdon, 2012). In contrast, in legal positivism, the main legal theory in the Western world, law is simply what the legislators decide, and it validates itself (Burdon, 2012).

Chilean lawyer Godofredo Stutzin started writing on the rights of nature just after Stone. His influence remained mostly in Latin America and shaped the discourse there (Tănăsescu, 2022b). Stutzin (1984) describes rights of nature as an 'ecological imperative' that leads to a shift from an anthropocentric to an ecocentric legal approach. According to Stutzin, "moral standing [...] demands legal standing" (Tănăsescu, 2022b, p. 25). For him, nature already is a personality morally, and it is the logical consequence to recognize it legally. Stutzin (1984) views nature as a whole of interrelated parts. He argues that humans must develop a relationship with nature that allows nature to thrive freely as well as to be independent from human influence and without human disturbance of the inherent balance of nature. Nature has intrinsic value, independently of human values (Stutzin, 1984). Tănăsescu (2022b) notes that Stutzin's interpretation of the rights of nature has influenced the debate in Ecuador.

The rights of nature in Ecuador and Bolivia are claimed to be inspired by Indigenous philosophy, as evident in the use of Indigenous terms and the Indigenous framing of the rights of nature laws. The choice of Earth Jurisprudence as a theoretical framework may therefore be counter intuitive it stems from a different ontological origin. However, rights of nature have been influenced by this theoretical framework (Tănăsescu, 2022a) and the analysis will show how it relates to Indigenous philosophy.

3.2. Concepts of nature

Surprisingly, although nature is the most essential element in the rights of nature debate, there is not much discussion in the literature about which concept of nature is applied. Most of the literature around the rights of nature does not seem concerned with defining nature or deciding on a conceptualisation of nature. It seems like it is supposed to be clear what nature is and what it is not. Additionally, the legal texts do not define nature sharply, either.

Although defining nature would be helpful for the implementation of the rights of nature, it is difficult to find a good definition. Defining nature as anything non-human or non-cultural supports the divide between humanity and nature, something eco-theologists and advocates of rights of nature oppose (Berry & Tucker, 2006). Defining everything as nature seems too broad. Tănăsescu (2022b) discusses two different concepts of nature: Nature with a capital 'N' as an eco-theologist concept based in Western modernist thought, and nature as a place.

The eco-theologist Nature is described as an all-encompassing entity, including humans and everything else. It is the entire universe or the creation in a religious sense. This "[...] concept

of nature [totality] has nothing Indigenous about it. In fact, Indigenous philosophies are routinely steeped within very particular environments that people relate to in genealogical ways" (Tănăsescu, 2020, p. 43). Nature as a totality including the whole universe is an abstract category that lacks specific characteristics.

As opposed to this broad conception, Tănăsescu (2022b) favours the definition of nature as a place, which he claims has parallels to Indigenous thought. The place-based concept of nature views nature as specific places within a context, focussing on relational and political aspects. It is the immediate environment that humans are part of. This is also expressed in rights of nature that define specific natural entities like rivers as legal personalities, e.g. in Colombia (Tănăsescu, 2022b).

From a psychological perspective, Beery and Wolf-Watz (2014) critique nature as an undefined abstract concept and promote that nature is experienced in a local and specific location. They propose that people connect better with a specific nature as they experience it, and thus are more likely to become environmentally aware. Gallegos (2015) supports a biocultural perspective that may help visualize and make issues more concrete. Since it is concerned with local nature and culture and their connection, it promotes a more emotional connection with nature. This would imply a place-based concept of nature and make environmental legislative decisions more relevant (Gallegos, 2015). Watts (2013) argues that in a relational conception of nature, nature has agency. Thought and land are deeply and specifically connected, and nature is perceived as an active member of society rather than a stage for humans. From a rights perspective, nature defined as an abstract concept that includes (almost) everything is problematic, since it is too vague and the application of the rights of nature may suffer.

This thesis' goal is not to settle on a conception of nature, but to ask whether the conceptions of nature in the specific legal texts are compatible with the Indigenous philosophies from which they claim to originate. Finally, it must be recognized that the definition of nature in the legal texts has political implications because it determines how flexible the rights of nature might be used and how easy it is to bend the interpretation of the law (Tănăsescu, 2022a). A vague definition gives political and economic actors more room to interpret nature in a way that suits their interests.

3.3 Decolonial considerations

A decolonial perspective on the rights of nature in Ecuador and Bolivia is important as these are states with colonial history that still impacts them today and is continuously reproduced. "Coloniality" describes "[a] term that alludes to situations of power, control and hegemony that arose during colonial times and continue to the present day" (Hirschfeld, Faria, & Fonseca,

2023, p. 307). Decolonial theory "[…] calls attention to ways in which coloniality is reproduced or perpetuated, or when it recovers and shares contributions from the periphery of the Eurocentric worldview as a way to challenge or provide alternatives to this worldview" (Gallegos, 2015, p. 37). The rights of nature and Earth Jurisprudence are counter-hegemonic ideas, as they criticize modern thought and the mainstream perception of nature. However, they originate in a Western context and use a Western legal logic. Environmental legislation based on Indigenous thought would be a step towards decolonization of politics and the legal system. Keeping in mind that rights of nature are not a mainstream idea within the Western system, and, in the cases of Ecuador and Bolivia, are claimed to be of Indigenous origin (e.g. by using Indigenous terms) there is a need to look closely at the way the rights reflect an alternative approach to environmentalism. Therefore, this thesis raises the question if colonial conceptions of nature and the human-nature relationship are reproduced in the context of rights of nature and asks how much and in what way they reflect the Indigenous concepts used in the legal texts.

During colonialism, European modernity and rationality became the dominant way of thinking. Other cultures, especially those with closer connections to nature, were seen as inferior. As a result, knowledge from non-European cultures was excluded (Quijano, 2007). Quijano (2007, p. 174) characterizes this system as "totality" that works on a self-referential basis and has a hegemonic position. It uses a worldview based on rationality as universal and sidelines other perspectives. Referring to rationality delegitimizes other cultures. 'Totality' is also used to describe the broad dominance of European knowledge that prevents an equal participation of other worldviews in the production of knowledge. It controls how society is understood at a global scale and constitutes a colonial power structure (Quijano, 2007, 2017).

Hirschfeld et al. (2023) summarize important concepts of decolonial theory especially relevant in ecology. This is by no means exhaustive as only those points most relevant to the scope of this thesis were chosen.

Firstly, the "Coloniality of knowledge" is "[a] form of domination of the subject, objects and methods of knowledge" (Hirschfeld et al., 2023, p. 307). This can entail defining who studies and who is studied, the importance of different studies, and the definition of what 'neutral' science means in contrast to the political. It is linked to "[a]cademic dominance", referring to a limitation of what is considered legitimate and official knowledge (Hirschfeld et al., 2023, p. 307). This knowledge is what is taught and learned, and its preferred use leads to an exclusion of other knowledges. Colonialism has privileged some knowledge over others and has influenced how and what information is processed and acknowledged. "Colonialism favoured

modern techno-scientific knowledge over folk knowledge, and privileged centralized and formalized ways of knowing nature over localized and informal ways" (Adams, 2003, p. 42).

Rivera Cusicanqui (2018) finds that there is an 'internal colonialism' within Bolivia's academic elite that dominates the subject of decolonial theory and defines what is standard, affecting even those who work in postcolonial studies. This academic elite is well-connected with scholars from the Global North and produces a form of decolonial theoretical knowledge that deprives the decolonial critique of its radicality. According to Rivera Cusicanqui (2018), these elites promote a multiculturalism that is based on a superficial understanding of Indigenous culture and hides neocolonial practices by applying a rhetoric that refers to Indigenous terms and ideas of decoloniality. However, she claims that to be truly decolonial, change must happen in practice. This is not the case when inclusion stays rhetorical and as a result, Indigenous knowledge is only used symbolically. The academic elite depicts the symbolic use of Indigenous terms as a success in the decolonial process. This knowledge is privileged because it is reproduced in the elite academic discourse and this way a watered-down version of decolonial thought becomes mainstream. This is similar to "Epistemic injustice ('epistemicide')" which is "[a] process of invisibility and concealment of cultural and social contributions that are not assimilated by Western knowledge" (Hirschfeld et al., 2023, p. 307). It also refers to the suppression of other cultures and their substitution with hegemonic ideas. Giving ideas a different meaning in a different, hegemonic context "[...] ultimately destroys ancestral knowledge and practices" (Grosfoguel, 2019, p. 214). A hegemonic idea of decolonialism makes marginalized critique invisible and may lead to them not being understood properly because the hegemonic idea is so dominant (Rivera Cusicanqui, 2018).

Secondly, the "Coloniality of nature" is "[a] conception of nature which conceives it as an object or thing that can be dominated, exploited or reconfigured according to the needs of the current regimes of accumulation, and which therefore has no rights." (Hirschfeld et al., 2023, p. 307). As Adams states, "[C]olonial ideas of nature repeatedly portrayed it as separated from human life and not engaged with it" (Adams, 2003, p. 42). This is in line with the human-nature divide and the distinction between nature and culture which allows the use of nature as a resource to be exploited. Similarly, Gallegos finds that "[...] nature comes to be understood as a realm that is radically separate from that of the human being" (Gallegos, 2015, p. 35). This lack of connection to specific nature, i.e. places or species, is the cause of the perceived separation between nature and human world (Gallegos, 2015). While on the one hand criticizing the human-nature binary, O'Donnell et al. (2020) note that on the other hand, an idea of nature as wilderness in opposition to human-occupied land risks an argumentation for protecting nature from all humans. This may lead to a disconnection and even eviction of Indigenous peoples

from their land. Grosfoguel argues that non-Western cultures do not support a human-nature dualism and "[...] instead contain a holistic notion of diversity within oneness" (Grosfoguel, 2019, p. 205). There is no concept of a separate entity in the sense of an environment one could disconnect from.

Gallegos (2015) finds that the debate around the environment is based on a capitalist economic – and therefore Western – logic. This is made possible through a conception of nature as a resource. Climate change and sustainability frameworks revolve around maintaining a modern lifestyle and system by managing resources in a way that supports capitalism. Gallegos argues that a decolonial approach to nature must acknowledge that the way humans impact nature raises ethical questions, not just economic. "[Decolonial] environmental philosophy does develop and draw from more expansive value systems than that of the colonial ethic" (Gallegos, 2015, p. 41). The focus on sustainability makes environmental protection more about the economy than about nature. Decolonial value systems could add to environmental protection by providing value to nature and excluded cultures.

Thirdly, "Epistemic extractivism" is "[a] process of appropriation of non-Western knowledge to gain symbolic capital" (Hirschfeld et al., 2023). Grosfoguel criticizes that "[...] the ideas of Indigenous peoples throughout the world are appropriated in order to colonialize them by assimilating them into Western knowledge" (Grosfoguel, 2019, p. 208). During this process, Indigenous ideas are toned down to fit into Western frameworks, be less political, and less critical. Even though recognizing Indigenous ideas may seem like an inclusive idea, the aim is "[...] to extract ideas to colonize them, subsuming them within Western cultural parameters and episteme" (Grosfoguel, 2019, p. 208). This is done to gain economic or symbolic advantages while disguising the true Indigenous origin (Grosfoguel, 2019). The appropriation of Indigenous scholars' knowledge whose theories have been used without citation is also an example of the coloniality of knowledge and academic dominance. As a result of the appropriation of knowledge, Southern ideas are presented as original to Northern scholars. This leads to Southern academics being systematically excluded (Grosfoguel, 2019). As an example, Grosfoguel (2019) and Rivera Cusicanqui (2018) criticize Aníbal Quijano (and other academics) for making Indigenous arguments and claims. Quijano (2017) argues that the persistent influence and dominance of Western capitalist values are the main issue, having caused present-day global problems like social inequality and environmental degradation. He discusses the community-centred approach of Good Living (or Sumak Kawsay) in the Ecuadorian constitution as an alternative to the Eurocentric development model and argues that a decolonial shift away from Eurocentrism is necessary to overcome inequality and the exploitation of nature. He finds that the concept of Good Living is an alternative since it is based on harmony and community

instead of economic growth, rejecting the exploitative capitalist model, focusing on inclusivity, cultural diversity and a harmonious relationship with nature (Quijano, 2017). However, he does not refer to any Indigenous sources.

O'Donnell et al. (2020) point out that there is a risk of forgetting that the Indigenous way of interacting with the environment has been practised for a long time. The idea of respect and coexistence with nature is not so novel as proponents of Earth Jurisprudence might see it. Failing to recognize this, "[...] environmental movements continue to exclude the contributions of non-western peoples" (O'Donnell et al., 2020, p. 411). Additionally, power asymmetries between modern states and Indigenous peoples, combined with assumptions about Indigenous worldviews, have "[...] the ontologically violent result of reducing Indigenous ideas about nature and human interactions with the non-human world to a globally familiar, yet extremely reductive, dominant paradigm" (O'Donnell et al., 2020, p. 412). This is relevant to this thesis, as the rights of nature in Ecuador and Bolivia are claimed to be based on Indigenous culture. A critical approach to the participation of Indigenous peoples must be aware of the possibility of reduction and faulty translation of Indigenous philosophy into the legal texts.

O'Donnell et al. (2020) identify two risks regarding coloniality: leaving (indigenous) peoples out of the concept of nature, and the incomplete incorporation of Indigenous ideas into traditional Western law, where it is adjusted to it as the 'other'. It is necessary to see if the concept fits the Indigenous philosophy, instead of simply making the Indigenous idea fit into a western framework, as "[...] western ontologies underpinning a dominant articulation of rights of Nature and earth jurisprudence have often obscured both Indigenous rights as well as Indigenous ontologies" (O'Donnell et al., 2020, p. 426). As a result of epistemic extractivism, assimilation and deradicalising Indigenous ideas, they lose their meaning and Indigenous culture is subsequentially destroyed. This is also referred to as 'epistemicide' (Grosfoguel, 2019; Hirschfeld et al., 2023).

Gallegos (2015) finds that although marginalized groups in Latin America deal with environmental issues, Latin American decolonial theory has not paid much attention to the connection between nature and coloniality. She points out that decolonial theory considers that damage to the environment may also indicate a loss of culture when it impacts those who live in close relationships with nature. Gallegos argues that "[t]o remain consistent with its commitment to those marginalized by coloniality, decolonial theory ought to remain engaged with and be theoretically inspired by the ecologically centered social movements that are at the forefront of challenging colonial forms of domination and exploitation" (Gallegos, 2015, p. 38). She proposes that including Andean Indigenous philosophy could add a valuable perspective for a new conception of nature and human-nature relations. However, Gallegos also points out that

Indigenous philosophy is more suitable for local projects as is it unclear how it could translate into a global concept (Gallegos, 2015).

4. Method

4.1 Objective of the Methodological Approach

This thesis uses the combination of a literature review and a case study as its methodological approach. This section aims to connect the theoretical framework with the analysis of the case studies. The goal of this chapter is also to describe the process of gathering, selecting, and analysing the data used in this thesis, aiming to make the process transparent and repeatable. The criteria for analysis are taken from the theoretical frameworks and will be explained and related to the case studies.

4.2 Literature Review Process

This work is literature-based, referring to the two academic databases Web of Science and Google Scholar. This allowed a comprehensive and systematic exploration of appropriate literature. An initial search was carried out with broad terms around the topic in both, Spanish and English. The terms 'rights of nature' (and 'derechos de la naturaleza'), 'rights of nature Ecuador' (and 'derechos de la naturaleza Ecuador'), and 'rights of nature Bolivia' (and 'derechos de la naturaleza Bolivia') were used to get an overview over general concepts, commonly used approaches, arguments, and debates around the rights of nature in general and in the specific cases of Ecuador and Bolivia. In a second step, key concepts that emerged in the initial search were searched for individually. These included general terms such as 'Earth Jurisprudence', 'decolonial theory ecology', names of frequently cited authors, as well as more specific terms like 'epistemic extractivism' and 'Pachamama' which were identified as relevant in later steps. Research was carried out in English and Spanish.

Selection criteria for literature were the relevance to the research question and the background of the authors. For the relevance, articles that referred to rights of nature in Ecuador and/or Bolivia were preferred over those that used examples of rights of nature in other states, although dealing with rights of nature in a more general way. This was important because rights of nature are a very broad category and are designed differently depending on the cultural context. Latin American authors were chosen whenever possible, although this was not always feasible due to a lack of availability. Additionally, sources that were cited frequently and that notably contributed to the debate were preferred. This has sometimes led to a trade-off between the prioritisation of Latin American authors and authors relevant to the main academic discussion. Whenever possible, articles from peer-reviewed journals were used. Additionally,

a snowball approach was employed, pulling potentially relevant sources from the bibliographies of the initial search results.

4.3 Case Study Approach and Selection

This thesis uses a case study for the analysis of the rights of nature in Ecuador and Bolivia. Case-studies are a common qualitative method to analyse developments in their unique circumstances (Flyvbjerg, 2011). This approach was chosen to be able to investigate the social, cultural, and historical context in which the rights of nature emerged, which is critical to the analysis of the Indigenous participation. The analysis depends on this context, and a case study is the most appropriate method to reach this goal. This makes it possible to draw informed conclusions about the role played by Indigenous groups. The case study method fits the research question well because it allows a detailed investigation of the emergence of the rights of nature.

Ecuador is included as an example because it is the first to introduce rights of nature and the only state to date that has included them in its constitution. There is also a growing body of cases referring to the rights of nature in Ecuador. Furthermore, Ecuador has a significant Indigenous population which is essential to the topic of this thesis. Bolivia was chosen as a second case because it has passed rights of nature by national law, therefore covering the whole state as well. This is in comparison to other forms of rights of nature, for example, local laws in Mexico or the United States, court decisions in Colombia, or rights for specific natural entities like in New Zealand (Tănăsescu, 2020). Bolivia was also chosen for its geographical and cultural proximity to Ecuador and the high percentage of Indigenous population of 71% (Humphreys, 2017, p. 466). Both case examples grant rights to an unspecified nature.

4.4. Development of Analytical Criteria

Analytical criteria have been derived from the research interest and the theoretical frameworks. These criteria are used to systematically analyse the cases and answer the research question.

4.4.1. Participation in the law-making process

This criterion is used to analyse how Indigenous representatives were involved in the law-making process, specifically in the constituent assembly in Ecuador and the legislative process in Bolivia. This includes decolonial considerations, e.g. if Indigenous groups were sidelined during the process. It also entails how they influenced the environmental discourse historically and to what extent their interests were heard. This will help to analyse how well Indigenous peoples were represented.

4.4.2. Legal philosophy

This principle will be used to examine which legal philosophy the rights of nature are close to. It includes considerations like the relationship between human rights and rights of nature, if there is a challenge to the persisting Western legal idea, and if nature is considered a legal subject.

4.4.3. Concept of nature

This criterion is used to investigate what concept of nature the rights of nature imply. Is it more eco-theological (totality, Earth Community, etc.) or more influenced by Indigenous philosophy (relational, place-based)? It will be analysed whether it supports the division between humans and nature, if 'coloniality of nature' is reproduced, and if a decolonized concept of nature is employed.

4.4.4. Role of Indigenous knowledge and culture

This measure is employed to find out how Indigenous concepts have been incorporated into the legal texts. It will be discussed whether they are included authentically or if their meaning has been altered by a Western point of view, and what role epistemic extractivism plays. It is used to gain insight about the Indigenous philosophical contributions to the rights of nature and the way that they can act as an alternative to Western hegemony.

4.5 Reflection on the methodology

The case study allows a good understanding of the unique rights of nature and permits focus on contexts like cultural and legal conditions as well as historical developments. This allows a detailed analysis of the connections between the legal and cultural aspects. The criteria obtained from the theoretical frameworks ensure a coherent and theory-based analysis.

This approach is limited as this thesis relies on secondary literature which might lack recent insights. Additionally, and more problematically, as mentioned in the section explaining the literature review process, as well as in the chapter on decolonial considerations, prominent academic discourses often exclude Indigenous scholars and perspectives from the Global South. Reviewing frequently cited sources and the main discourse is important to correctly portray the current academic debate. However, this bears the risk of excluding critical and marginalized sources. This was attempted to be remedied by deliberately preferring and including Indigenous or Latin American authors, as well as conducting research in Spanish, aiming to find more literature from Latin America.

Furthermore, the analytical criteria have been chosen subjectively after engaging with Earth Jurisprudence and decolonial theory. Although based on theory, they remain biased through

the author's interpretation and focus. A background as a white German, socialized in a Western culture, and educated in a Western system, inevitably shapes the perspective on this topic. Fully understanding Indigenous struggles and concepts is challenging because they are rooted within a different experience. Efforts have been made to address this by reflecting and relying on Indigenous or more culturally aware authors, especially when discussing Indigenous concepts.

5. Analysis

First, a background on the countries of Ecuador and Bolivia will be provided, including historical developments as well as social and economic circumstances that led to the adoption of the rights of nature. Afterwards, the analytical criteria will be applied.

5.1. Ecuador

Ecuador is the first country that has passed legally enforceable rights of nature in 2008. Akchurin (2015) finds that the addition of rights of nature in the newly drafted constitution of 2008 is a result of historical developments, favourable political conditions, and the work of environmental and Indigenous activist groups. Ecuador has a long history of economy based on extractivism. According to Grosfoguel, "[...] extractivism signifies removing natural resources, which are not processed (or are only minimally processed) for export and amounts to much more than simply extracting minerals or petroleum" (Grosfoguel, 2019, p. 204). The result is heavy financial reliance on fossil resources like petroleum. Petroleum has been the most important export good in Ecuador and exploitation has increased steadily since oil was discovered there in 1967 (Akchurin, 2015). Pollution of the land and deforestation that had begun in the colonial period have continued and caused internal migration. Revenue from petroleum export is essential to cover state expenses, e.g. to provide health care and social services to the population. Due to the continued degradation and politics that mainly served the political and economic elite, environmental activism and NGOs that had previously been supressed by the authoritarian leaders emerged in the late 1970s. The movement grew and thrived in the 1990s which led to the adoption of international commitments and provisions. Some environmental organizations cooperated with Indigenous organizations (Akchurin, 2015). Although there has been much environmental activism in Ecuador, demands for rights of nature have not played a role (Akchurin, 2015).

Politicized and organized Indigenous movements have become an important political power since 1986, when they formed the Indigenous umbrella organization 'Confederación de Nacionalidades Indígenas del Ecuador' (CONAIE) and the party 'Movimiento de Unidad

Plurinacional Pachakutik – Nuevo País' (Pachakutik) which is associated with CONAIE. CONAIE became a unified, well-organized movement, influential in the whole country (Akchurin, 2015; Tănăsescu, 2013). It consists of several local and regional groups and remained diverse due to different cultural backgrounds of the groups. Although the Indigenous communities differ in their cultures and philosophies, they refer to one general philosophy in their political communication. This general philosophy includes interconnectedness with nature and land as well as natural entities being of social and cultural value and an ethical approach to the human-nature relationship. However, this has typically not been their focus. Indigenous activists demanded plurinationality and protection of their land and autonomy. Plurinationality refers to "a form of multiculturalism that, along with demanding respect for Indigenous territories and ways of life, incorporates politicized versions of Indigenous beliefs about the environment" (Akchurin, 2015, p. 939). CONAIE criticised neoliberal development and the reliance on extractive industries, and non-indigenous leftist movements have "[...] viewed their political demands as a source of social critique and vision for alternatives" (Akchurin, 2015, p. 950). Thus, they adopted Indigenous claims into their agendas, tying the two movements together.

The political opening that allowed the rights of nature to be considered was created through decades of activism that pushed an environmental agenda and a politically favourable moment, the election of Rafael Correa as president (Akchurin, 2015). Before Rafael Correa's election in 2006, the political situation was unstable with many regime changes, instability, economic difficulties, and social struggles (Akchurin, 2015). Correa's election was possible through the support of social movements, and because he managed to appeal to both, populist and Indigenous movements (Humphreys, 2017). He promoted socialist and progressive politics and a shift away from neoliberalism towards an alternative approach to development. His coalition 'Alianza Patria Altiva y Soberana' (Alianza País) was supported by CONAIE and environmentalist organizations and suggested redefining the relationship with nature. They referred to the Indigenous concept of Sumak Kawsay (Buen Vivir/Good Living) in their program (Akchurin, 2015). Although Correa does not have an Indigenous background, he was politically open to the demands of the Indigenous political groups. His party was in opposition to traditional parties and the economic elites and criticized the neocolonial economic system. However, Correa was more populist than supportive of Indigenous demands and his relationship with the Indigenous movements was difficult. He later lost the support of CONAIE, being accused of having appropriated the demand for a new constitution and continued to allow and expand extractivism (Humphreys, 2017).

The rights of nature are located in the Articles 71 to 74 of Chapter 7 of the constitution of Ecuador (Constitution of the Republic of Ecuador, 2008, emphasis by author):

CHAPTER SEVEN

Rights of nature

Article 71. Nature, or **Pacha Mama**, **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.

All persons, communities, peoples and nations **can call upon public authorities to enforce** the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.

The **State shall give incentives** to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.

Article 72. Nature has the **right to be restored**. This restoration shall be apart from the obligation of the State and natural persons or legal entities **to compensate individuals and communities that depend on affected natural systems.**

In those cases of severe or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.

Article 73. The State shall **apply preventive and restrictive measures on activities** that might lead to the **extinction** of species, the **destruction** of ecosystems and the **permanent alteration** of natural cycles.

The introduction of organisms and organic and inorganic material that might definitively alter the nation's genetic assets is forbidden.

Article 74. Persons, communities, peoples, and nations **shall have the right to benefit from the environment** and **the natural wealth enabling them to enjoy the good way of living**.

Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State.

Article 71 provides that a case can be taken to court by anyone with no personal connection to the case necessary, so standing is very broad (Gutmann, 2021emphasis by author). Art. 74 includes rights of humans *to* nature which complement Art. 14 (the right to a healthy environment) and Art. 12 and 13 (rights to food and water) of the constitution (Tănăsescu, 2013). The Ecuadorian legislature did not specify any constitutional provisions. As a result, there is no definition of any Indigenous terms, no specification of the rights of nature, or any guidelines on how to apply the rights of nature (Tănăsescu et al., 2024).

5.1.1. Indigenous participation in the law-making process

After his election, Correa initiated an assembly to draft a new constitution in the spirit of the idea of a "citizens' revolution" (Tănăsescu, 2020, p. 434). Previously, this had been a demand

by CONAIE (Humphreys, 2017). Before the constituent assembly, citizens and organizations were able to participate by contacting assembly members and communicating their ideas. In preparation for the constitutional assembly, organizations and social leaders participated in the collection of ideas for the new constitution (Tănăsescu, 2013).

In the process of introducing rights of nature into the constitution, different approaches to environmental protection were discussed. At first, many assembly members were not convinced by the arguments for rights of nature. The concept of sustainable development seemed more popular as it was familiar (Akchurin, 2015). However, Alberto Acosta, president of the constitutional assembly, was supportive of the idea of rights of nature (Tănăsescu, 2013). During the constitutional drafting process, a group of rights of nature proponents formed, intending to persuade other assembly members to work on the inclusion of rights of nature. "The main proponents of the concept were a group of internationally connected environmentalist lawyers and activists who worked to develop and promote the rights of nature" (Akchurin, 2015, p. 939). This group consisted of a "transnational policy network and an Ecuadorian political elite" (Tănăsescu, 2020, p. 434) and was well-connected, educated on the rights of nature, and had access to the assembly. US lawyers from the 'Community Environmental Legal Defense Fund' (CELDF) who promote rights of nature initiatives in the US supported and advised assembly members in the task of specifying the rights of nature and formulating the legal texts (Akchurin, 2015). These groups did not have any connection to CONAIE or other Indigenous groups, but to environmental activist groups, supporting that the rights of nature were not an Indigenous idea or demand. Tănăsescu (2013) found that CELDF members were invited to speak to assembly members and convince them of the advantages of the rights of nature. Much of this strategic persuasion of assembly members happened informally. The drafting took place outside of the assembly, without much discussion of the articles with other members (Tănăsescu, 2013). Additionally, the US-based 'Pachamama Alliance' and its partner organisation 'Fundación Pachamama' were influential in promoting rights of nature (Humphreys, 2017).

Tănăsescu (2013) interviewed leaders who were directly involved in the constituent assembly, among others Alberto Acosta, president of the constituent assembly, Natalia Green from 'Fundación Pachamama', and Mónica Chuji, an Indigenous leader, to question them about participation and argumentation during the assembly. Tănăsescu found that at first, when rights of nature were discussed in the committee concerned with environmental matters, the idea faced strong opposition due to the fear that rights of nature might stall economic growth. Some members did not understand the concept or the need for rights of nature (Tănăsescu, 2013). Through lobbying, rights of nature proponents persuaded assembly members who did not have an affinity for nature and environmental protection. Common arguments during the assembly

discussions were that corporations can have rights and that corporations and the state are legal fictions, so the same can could be true for nature as a legal entity. They also argued for a new paradigmatic approach for dealing with development and environmental degradation as the neoliberal model had only protected nature in so far as it regulated its destruction (Akchurin, 2015). They argued that the rights of nature were a novel constitutional project, but that the idea was not new, referring to Stutzin's and Stone's publications. The rights of nature were framed as taking a new moral step, being progressive, and being able to be part of a political project that would catch attention worldwide, especially coming from a periphery country. They also argued that the rights of nature were a new mechanism against state action (Tănăsescu, 2013). This argumentation indicates that the inclusion of Indigenous culture was not the main motive for adding rights of nature. Through the interviews, Tănăsescu (2013) also found that many delegates did not understand the rights of nature and their implications. This may be because they were not discussed much in the assembly and some members did not care about them. The rights of nature were placed among an extensive amount of other rights when the articles were passed during the constituent assembly (Tănăsescu, 2013).

Tănăsescu (2013) suggests part of the success of the campaign was due to the framing of the rights of nature in an Indigenous context, although this was not necessarily supported by all Indigenous groups. This is problematic since argumentation during the drafting process did not align with the claim of proximity to Indigenous culture and it seems like a marketing strategy to make the rights of nature appear to be a decolonial project. Indigenous thought was used to promote a decidedly Western approach to environmental protection, a project pushed by a small elite (Tănăsescu, 2013).

Akchurin finds that the presence of Indigenous organizations "[...] provided an opening to develop the rights of nature" (Akchurin, 2015, p. 953). While arguing for plurinationality and collective rights, the Indigenous organizations created an opportunity for rights of nature philosophy due to a "schematic connection" (Akchurin, 2015, p. 954). Indigenous concepts were adopted in a way that could be translated into a legal text (Akchurin, 2015). An assembly report referred to "indigenous cosmology and belief systems as the legitimate sources of an alternative approach that will help lead the nation away from ecological crisis" (Akchurin, 2015, p. 959). However, Tănăsescu (2013) finds that, as noted above, Indigenous groups did not introduce the idea of rights of nature. In their proposal for the new constitution, CONAIE suggested the recognition of the state of Ecuador as plurinational and demanded land rights, rights to natural resources, access to public services like education and health care, and recognition of Indigenous governance and justice systems (Confederación de Nacionalidades Indígenas del Ecuador [CONAIE], 2007). CONAIE supported the rights of nature campaign but

did so in the context of much broader demands (Tănăsescu, 2020). Indigenous grassroots activists prioritized topics like water, collective and territorial rights, and protection of their land as they were confronted with resource exploitation and subsequent environmental degradation in their territories (Akchurin, 2015; Radziunas, 2022). Akchurin (2015) believes that Indigenous participation in the constitutional assembly and the debates inspired a new way of thinking about human-nature relationships among members of the assembly and that these ideas were combined with eco-centric Western ideas (Akchurin, 2015). However, it becomes clear that the idea of rights of nature was imposed upon the Indigenous participants of the assembly as something that seemed to superficially align with their culture. This is especially problematic because their real demands are a lot more radical than the rights of nature proposition (Akchurin, 2015). As a result, Indigenous demands are sidelined while at the same time the constitution is framed as a decolonial project.

5.1.2. Legal Philosophy

Tănăsescu (2022a) finds that Ecuador's rights are formulated in the legal-philosophical tradition of Stone and Berry. They reflect the idea of nature having intrinsic values as opposed to being of value to humans as they make nature a legal subject holding its own rights. The concept of Earth Community or an ecosystem can be traced in the constitutional conception of Pachamama, which is interpreted as one all-including, interrelated system. The idea of Ecocentrism as described in the theory of Earth Jurisprudence, is reflected in the Ecuadorian constitution, because rights are not in hierarchical order, and human rights do not stand above rights of nature. Additionally, the broad standing rules support that nature has rights independent of humans which makes them ecocentric.

However, although the idea of rights of nature based on an Earth Jurisprudence perspective is envisioned as ecocentric, Radziunas (2022) argues that protecting nature legally, giving legal rights to certain natural entities, and assigning value to nature is a reflection of human values and therefore bound to human interests. Integrating Indigenous tradition and philosophy also reflects human political interests and political motives. Additionally, rights of nature only make sense in a system of human dominance, as the rights of nature are supposed to serve to protect nature from humans. This goes against the concept of an interrelated system of equal individuals that Earth Community claims to be and recreates a colonial perception of nature.

The anthropocentric characteristics of the rights of nature also become clear in practice. As constitutional rights, the rights of nature cannot be breached without justification, but the constitution does not provide any requirements for justification. Therefore, rights of nature and other (human) rights will be weighed against each other equally when they come in conflict

with other constitutional rights. The application in case of conflict with other rights remains unclear and the constitution leaves much room for interpretation , allowing a flexible application of rights of nature (Pain & Pepper, 2021). The balancing of rights and interests does not seem to fit the idea of ecocentrism, because it puts humans in a more dominant position compared to non-humans, as the whole natural world is summarized as Pachamama, whereas humans have their own rights separately. Weighing human rights against nature rights also reproduces the separation between humans and nature, which align with neither, Earth Jurisprudence nor Indigenous philosophy, but rather Western constitutional logic. A main contradiction is Indigenous relational thinking and Western individual rights tradition. In an interrelated system, individual rights do not make sense, as they create conflict where the goal is harmony. Rights emphasize the limitation of freedom through others, while interrelation emphasizes reciprocal relationships and interdependency. To truly include Indigenous thinking in rights of nature, the legal system and thinking must be changed in a way that focuses on reaching harmony and balance, instead of confronting differences. This requires a consistent pursuit of improving relationships (Gutmann, 2021).

Additionally, rights of nature are only enforced reluctantly. Despite the entirety of nature having rights independently from human interests, human interests still hinder the enforcement. Especially when it comes to foreign extraction companies, the government has not acted towards the protection of the environment and the enforcement of the rights of nature. Radziunas claims that this because the government tends "(...) to apply it to fit certain prioritized human values" (Radziunas, 2022, p. 136). This reproduces the colonial concept of nature that mainly sees nature as a resource and below human interests. The first rights of nature case to go to court was the Vilcabamba River Case which is an example for the persisting anthropocentrism despite the claim of ecocentric rights. Private litigants (US citizens Richard Wheeler and Eleanor Huddle) claimed that the rights of the Vilcabamba River had been injured by dumping waste of a road construction project into it. The first court judgment denied rights of the river, but the appeal was successful for the plaintiffs, although the measures ordered for the restoration of the river have not been completed to satisfaction. The argumentation in the judgment referred (in addition to the rights of the river) to the plaintiffs' legal injuries since they owned land next to the river and were affected by the waste dumping. Rights of nature were applied, but still in an anthropocentric context and by using human rights to property alongside.

Tănăsescu (2020) claims that the fundamental rights to exist, to habitat, and to regeneration have similarities to human rights (right to live, etc.). This seems logical, as the rights of nature are embedded in a modern constitution and work within a legal system that is based on a

Western concept of law. Within this system, a truly decolonial, ecocentric construct could not be held up effectively because it would always be dominated and restricted by its logic. Therefore, the Western concept of law is not radically challenged, and the human-nature relationship remains unchanged. Although Akchurin finds that the Ecuadorian constitution combines "radical Western ecological perspectives, politicized Indigenous beliefs, and legal rights discourse to construct a hybrid concept" (Akchurin, 2015, p. 961), the radicality of the Indigenous beliefs and also the counter-hegemonic character of Earth Jurisprudence appear to be reduced to fit into the modernist system.

5.1.3. Concept of nature

The definition of nature "where life is reproduced and occurs" in Art. 71 (Constitution of the Republic of Ecuador, 2008) is very vague and wide. It basically covers everything. This might be problematic for the application of rights, but it also does not exclude anything that has been influenced by humans before. This avoids the risks of defining nature too narrowly, so that nature might be interpreted as wilderness, excluding humans (Tănăsescu et al., 2024). This means that land used by humans is also subject to environmental protection, which is important for farmlands. Nevertheless, the vague definition may be used to include or exclude parts of nature depending on the motives of actors in the legal process and the state (Tănăsescu, 2013). The broad definition of nature fits a perception of nature as 'totality' as envisioned by Earth Jurisprudence proponents, featuring the entire universe as a unity that consists of interrelated members (Tănăsescu, 2020). This abstract and distanced view of nature in Earth Jurisprudence theory does not suit the place-based concept of nature as common in Indigenous cultures (Tănăsescu, 2020). A place-based approach to nature focuses on life in a specific location, includes all actors and is politically relevant (Tănăsescu, 2020). Using the Indigenous term Pachamama, an Indigenous definition is implied. However, the description of nature in the constitution is not aligned with that.

In practice, the constitutional court's conception of nature is "[…] defined in systemic terms […] with vital cycles and flows seen as the moving parts" which are important for the function of the system" (Tănăsescu et al., 2024, p. 9). It emphasizes "[…] an explicitly teleological conception of nature that borders on a wider moral stance resembling doctrines of natural law: the natural order is the good one" (Tănăsescu et al., 2024, p. 10). Tănăsescu finds that the court has "a universalist concept of nature" (Tănăsescu et al., 2024, p. 16) and that "[t]he intellectual genealogy of granting nature rights in the Ecuadorian case can be traced back to the work of Stone, and particularly to its reinterpretation in the works of Berry and Cullinan, as well as the practical legal advocacy of the Community Environmental Legal Defence Fund (CELDF)." (Tănăsescu, 2020, p. 435). Tănăsescu (2020) also sees similarities between the language and

conceptions of the works of these authors and the Ecuadorian constitution. This positions it in proximity to an Earth Jurisprudence and eco-theological concept of nature and further away from Indigenous philosophy, contrary to what is implied through the use of Indigenous terms.

5.1.4. Role of Indigenous knowledge and culture

The Ecuadorian constitution refers to Indigenous philosophy by employing the concepts of Pachamama and Good Living (Buen Vivir, Sumak Kawsay). The term Sumak Kawsay originates from similar concepts of the Indigenous Kichwa, Achuar and Shuar communities in Ecuador. Through reflection of their similar concepts (Sumak Kawsay, Shiir Waras and Penker Pujustin) the leading Kichwa community of Sarayaku developed a common version of Sumak Kawsay as an alternative proposal to modern development that could also be communicated politically (Cubillo Guevara & Hidalgo Capitán, 2015). Cubillo Guevara and Hidalgo Capitán argue that before its inclusion in the Ecuadorian constitution, it was not a well-known concept among the Indigenous population and describe it as a social phenomenon that was created from the politicized Indigenous term. The Indigenous original referred to decolonial goals as well as peace and harmony, while the version in the constitution is leaning towards an interpretation that supports development (Cubillo Guevara & Hidalgo Capitán, 2015). In the Ecuadorian constitution, the concept of Buen Vivir "[...] is conceived as a cluster of rights including the rights to water, food, a healthy environment, culture, and education." (Humphreys, 2017, p. 471).

Furthermore, Pachamama s used as a synonym for nature or translated as Mother Earth. This conceals the complex understanding Pachamama entails and does not deliver the meaning the word has in the respective Indigenous languages. It also hides the different understandings of Pachamama between Indigenous communities (Gutmann, 2021). Gutmann believes that only if the true understanding of Pachamama is taken into account, Indigenous philosophy may help solve inherent issues of rights of nature and rights-centred legal systems in general (Gutmann, 2021). The translation of Pachamama into a legal document and granting rights to it necessarily promotes a limited understanding of the concept and causes problems because legal personhood and Pachamama stem from different cultures. Between the two cultures, the dominant Western culture prescribes the way the Indigenous term may be understood.

Tănăsescu (2020) emphasizes that the rights of nature in Ecuador have been inspired by Indigenous philosophy and show similarities but are not genealogically Indigenous. This argument is supported by the context of the emergence of rights of nature discussed above. Tănăsescu finds that Indigenous philosophy does not translate well into the concept of legal personality. Instead, it bears risks for other Indigenous demands. It is often assumed, that rights of nature and Indigenous philosophy are linked in their ecocentrism and that therefore, rights of nature

are in alignment with Indigenous thought. However, Tănăsescu argues "that the rights of nature are neither ecocentric nor of Indigenous origin" (Tănăsescu, 2020, p. 432). Akchurin finds that "(...) the case also underscores the extent to which cultural assumptions influence legal institutions and shows the challenges of incorporating diverse beliefs about human relationships with the natural environment into law" (Akchurin, 2015, p. 939). It is assumed that rights of nature are ecocentric, work in favour of environmental protection and that the Indigenous population gains empowerment from their introduction (O'Donnell et al., 2020). However, unspecified rights of nature within a Western-influenced system do little to achieve this (Tănăsescu, 2020). Tănăsescu further argues that ecocentrism does not necessarily describe the way Indigenous philosophy conceptualizes nature, instead "[...] Indigenous philosophies are not about centrism at all, but rather about a deep relationality that is context-specific" (Tănăsescu, 2020, p. 452). In contrast, he argues that rights of nature are based on universalist and centrist thinking which is inherently Western (Tănăsescu, 2020). He also finds that Indigenous ways of personification of nature are not equal to the idea of nature as a legal person: "[...] the legal person conceives of natural entities according to human criteria, whereas personifications of nature in Indigenous thought naturalize the human person, bringing her into genealogical relations with particular lands" (Tănăsescu, 2020, p. 453). This again shows that the Indigenous terms were included with only superficial understanding, reducing their meaning and assimilating them to fit a Western approach in an epistemic extractivist way.

Finally, to some Indigenous groups, the idea of rights of nature seemed foreign because they "interpreted ecological problems as fundamentally intertwined with the livelihoods of people, many of whom were already economically and politically marginalized" (Akchurin, 2015, p. 955). Granting rights to nature independently of humans did not reflect their reality. Support came not without caution as they feared that their rights to use the land's resources might be compromised (Akchurin, 2015). Additionally, it is important to note that the choice of Indigenous concepts prefers some Andean Indigenous communities over others, as Pachamama and Sumak Kawsay are concepts originating in the dominant Indigenous communities in Ecuador (Tănăsescu, 2020).

5.2. Bolivia

Bolivia has, like Ecuador, a history of neoliberal restructuring efforts starting in the 1980s. This was supported and demanded by the World Bank (Abatangelo & Peláez, 2023). The context of the new constitution and the recognition of the rights of nature were dissatisfaction with the political situation in the population and unrest, which culminated in the Water War in 2000 and the October War in 2003 (Humphreys, 2017). In Cochabamba in the late 1990s, the privatization of water increased the cost of water significantly and favoured big monopolistic

companies. In 2000, the subsequent series of massive protests called the 'Water War', followed an ongoing struggle for water rights since the 1970s. The protests were violently repressed by the police as well as the army. They were successful, and the law these changes were based on was taken back. Three years later, in 2003, the 'Gas War' in El Alto started "the transformation of Bolivia" (Risør, 2021, p. 116). The 'Gas War' escalated when three peasants died due to the suppression of protests by the army. Previously, there was a general state of dissatisfaction due to an increase in taxes, the general politics of the government, and a plan of President Sanchez de Lozada to export gas to the United States. During the violent oppression of the protests, many people were killed, but the protests did not stop. Subsequently, this led to demands for a new president and, eventually, Sanchez de Lozada left the country (Risør, 2021).

After that, Indigenous groups and peasants along with other social groups demanded a restructuring of the state, rejecting the neoliberal politics and development strategies of that time (Humphreys, 2017). In 2004, the 'Pacto de Unidad' (Unity Pact) was formed when different peasant and Indigenous organizations joined forces with the goal to participate in the state reform (Mayorga, 2011).

In 2006, Evo Morales was elected president. His party 'Movimiento al Socialismo' (MAS) promoted ethno-populist policies similar to Correa's Alianza Pais. However, he was much more focused on Indigenous demands than Correa. Morales himself is Indigenous and had an Indigenous upbringing. Like Correa, he criticized privatisation and neoliberal economic politics (Humphreys, 2017). After Morales' election, a constituent assembly was established in 2006 to draft a new constitution. In the constituent assembly, the Indigenous population was represented and Indigenous members participated in the drafting process. The constitution includes extensive provisions for human rights, Indigenous rights, and for environmental protection. In its preamble, the constitution explicitly describes Bolivia as a plurinational state and refers to its colonial past (Constitution of the Plurinational State of Bolivia, 2009):

> "We, the Bolivian people, of plural composition, from the depths of history, inspired by the struggles of the past, by the anti-colonial indigenous uprising, and in independence, by the popular struggles of liberation, by the indigenous, social and labor marches, by the water and October wars, by the struggles for land and territory, construct a new State in memory of our martyrs."

The constitution also includes the Indigenous concepts Pachamama and Vivir Bien. "Vivir Bien signifies a radical opposition to the neoliberal consumerist, growth-without-limits paradigm [...]" (Villavicencio Calzadilla & Kotzé, 2018, p. 403) and "[...] serves as an underlying ethical

principle" (Humphreys, 2017, p. 471). It is interpreted as an alternative system to capitalism. In 2009, the new constitution was implemented and it "[...] redefines Bolivia as a plurinational state, recognising Indigenous peoples as nations" (Humphreys, 2017, p. 470). However, although the importance of environmental protection is recognized, the constitution only contains a human right to a healthy environment in Art. 33, as opposed to binding and independent rights of nature. The Bolivian development strategies are reliant on extractive industries and use of natural resources (Villavicencio Calzadilla & Kotzé, 2018).

The rights of nature were introduced through legislation in the Law 071 of the Rights of Mother Earth of 2010 (Law of the Rights of Mother Earth) and the corresponding Framework Law 300 of Mother Earth and Integral Development for Living Well of 2012 (Framework Law) (Humphreys, 2017).

The Law of the Rights of Mother Earth does not establish legal personhood explicitly, but it grants rights to nature intending to end the dominance of human interests (Pain & Pepper, 2021). Article 2 provides general principles for the relationship with nature: harmony, collective good, regeneration, respect, no commercialization of nature, and interculturality.

Article 7 of the Law of the Rights of Mother Earth introduces more specific rights (Law of the Rights of Mother Earth (Law No. 071), 2010, emphasis by author):

> Article 7. (Rights of Mother Earth)
>
> 1. To **life**: The right to maintain the **integrity of life systems and the natural processes** that sustain them, as well as the conditions and capacity for their renewal.
>
> 2. To the **diversity of life**: The right to preserve the **differentiation and variety of the beings** that comprise Mother Earth without being genetically altered or artificially modified in their structure in ways that would threaten their existence, functioning, and future potential.
>
> 3. To **water**: The right to preserve the **quality and composition of the water cycle** in order to sustain life systems and protect them from pollution for the renewal of the life of Mother Earth and all its components.
>
> 4. To **clean air**: The right to preserve the **quality and composition of the air** in order to sustain life systems and protect them from pollution for the renewal of the life of Mother Earth and all its components.
>
> 5. To **equilibrium**: The right to maintain or restore the **interrelationship, interdependence, complementarity, and functionality** of the components of Mother Earth in a balanced manner for the continuation of its cycles and the renewal of its vital processes.

6. To **restoration**: The right to the **timely and effective** restoration of life systems affected directly or indirectly by human activities.

7. To live **free from contamination**: The right to preserve Mother Earth from the contamination of any of its components by toxic and radioactive waste generated by human activities.

These rights set a high standard for environmental integrity. Art. 6 also establishes that rights of nature limit the exercise of human interests. In the Law of the rights of Mother Earth, rights are specific to each component of nature, e.g. a forest has other rights than a bird, depending on their needs. The standing rights are broad: all Bolivians are allowed to make claims in the name of nature. The law also provides for the establishment of the 'Office of Mother Earth' which would act in the interests of nature, however, it has not yet been created (Pain & Pepper, 2021). The 'Office of Mother Earth' as well as the 'Plurinational Council for Living Well in Harmony and Balance with Mother Earth' provided for legally should have acted as supervising and enforcing bodies, however, they have not been created, either. So, currently, only state authorities and those directly affected can make claims based on the Framework Law. This clearly contradicts the constitutional duty of all Bolivians to respect and protect nature (Villavicencio Calzadilla & Kotzé, 2018) and the broad standing right in the Law of the Rights of Mother Nature. The Law of the Rights of Mother Nature also creates duties for state, such as to make policies for better forms of consumption and against exploitation of nature by foreign corporations, and to advance the switch to green energy.

The corresponding Framework Law of 2012 refers to Living Well as a condition to be achieved through integral development. It describes the rights of nature as a matter of public interest and emphasizes the connection to Indigenous collective rights and civil, political, economic and cultural human rights. Besides social and environmental justice, the Framework Law also requires regeneration and restoration of nature (Framework Law of Mother Earth and Integral Development for Living Well (Law No. 300), 2012). However, although stressing harmony, balance, and an alternative approach to modern development, the Framework law also refers to sustainable development and allows the exploitation of natural resources in Article 5. It also emphasises the redistribution of natural wealth derived from the exploitation of resources. The concept of sustainability is linked to a Western worldview, clashing with the emphasis on Indigenous culture and the rejection of modern ideas like capitalism. Both laws, the Rights of Mother Earth law and the Framework, are in parts ecocentric and refer to Mother Earth instead of nature (Villavicencio Calzadilla & Kotzé, 2018).

Villavicencio Calzadilla and Kotzé (2018) suspect that the Morales government passed the law of the rights of Mother Earth to improve Bolivia's reputation and make it appear more in line

with ecology and Indigenous rights, influencing the international environmental debate and becoming a pioneer in environmental matters instead of a polluter. They argue that Bolivia's rights of nature have influenced the international debate about rights of nature and environmental protection, but barely had an impact on the relationship of the state with nature as extractive projects and environmental pollution are ongoing.

5.2.1. Indigenous participation in the law-making process

The Unity Pact and the Bolivian government negotiated a legal document for the introduction of the rights of nature that also included far-reaching rights for Indigenous autonomy. This law may be considered very ecocentric and would have restricted extractive industries immensely. It included a set of guiding principles for all new laws that would be passed in a legal restructuring process of the state (Villavicencio Calzadilla & Kotzé, 2018). These compulsory guidelines mandated a "harmonious relationship with Mother Earth", a prohibition of the "commercialization of living systems or their processes", and an "in dubio pro natura principle" (Villavicencio Calzadilla & Kotzé, 2018, p. 406). It required respect for planetary boundaries and the transition to renewable energy. The law "[...] would have prevented the approval of the many future extractive projects planned by the Bolivian government" (Villavicencio Calzadilla & Kotzé, 2018, p. 406). However, this law was not passed. Instead, the Bolivian legislature introduced the Law of the Rights of Mother Earth 2010 and the Framework Law as an operationalization of the Rights of Mother Earth Law. These laws are based on the draft of the law created in cooperation with the Unity Pact, but they are considerably less transformative. Although they are not part of the Bolivian constitution, they are meant to serve as guidelines to use when applying other environmental laws (Villavicencio Calzadilla & Kotzé, 2018).

The Unity Pact opposed the Framework Law because its contents are less radical than the previously negotiated law. Emphasizing the complementarity of human rights and rights of nature, as well as defining solidarity as solidarity with the poor, instead of solidarity with all beings, it is more anthropocentric. Additionally, many members of the Unity Pact were excluded from the participation in the drafting process, and as a result, the plurinational state was not as well represented as before (Villavicencio Calzadilla & Kotzé, 2018). The Indigenous participation has therefore been reduced and was limited to Indigenous members of the legislative and some Indigenous representatives that left the Unity Pact (Villavicencio Calzadilla & Kotzé, 2018). Consequently, the legal text became much less critical of modern ideas. The sidelining of Indigenous communities led to the exclusion of Indigenous interests and critique. The Unity Pact criticised the Law of the Rights of Mother Nature for only serving representative and advertising purposes and to improve the Morales government's reputation in the context of 2010 Climate Change Conference in Mexico (Villavicencio Calzadilla & Kotzé, 2018). The Law of the

Rights of Mother Nature as well as the Framework Law "[b]oth include an ecocentric counter-narrative, while the Framework Law at the same time reflects the neoliberal extractivist agenda of Morales' government" (Villavicencio Calzadilla & Kotzé, 2018, p. 419).

5.2.2. Legal philosophy

The Law of the Rights of Mother Nature and the Framework Law are aimed at creating an ecocentric legal order and recognize several rights of nature that go beyond traditional environmental protection. Harmony and balance are repeatedly stated principles in the legal texts. This challenges the mainstream concept of sustainable development insofar as it requires more than an economic approach to nature. In the legal philosophy employed in the two laws, inherent value is placed on the state of nature, recognizing it as a living system, rather than an accumulation of resources. This indicates a similarity to Earth Jurisprudence legal philosophy.

The rights of nature are intertwined with different human rights and Living Well for humans. There is a certain hierarchy between human rights and rights of nature in the legal texts, established by Article 6 of the Law of the Rights of Mother Nature, stating that if rights of nature and human rights come into conflict, it must be solved in a way that does not permanently damage the environment. This implies that human rights must be interpreted in a way that does not impact rights of nature. In a way, they provide a higher standard that other law must comply with, as the Framework Law is supposed to be used as a guideline when making and interpreting other environmental law to make them more environmentally aware and protect nature. This bears similarities to the idea of a Great Law in Earth Jurisprudence. However, this has not been translated into action. For example, the 2014 Law on Mining and Metallurgy allows mining projects in areas that are protected and permits the uncontrolled use of water and in 2015, oil drilling projects in protected areas were permitted and justified referring to development interests. This obviously contradicts the idea of the Law of the Rights of Mother Earth and ecocentric rights of nature (Villavicencio Calzadilla & Kotzé, 2018).

The laws also emphasize that nature and humanity are supposed to live in harmony and balance in a mutually supportive system. These are clear parallels to Earth Jurisprudence. However, in practice these ideas are not applied, which becomes obvious regarding the thriving extractive industry and projects like the TIPNIS case, where a highway is constructed through protected Indigenous territory with abundant plant and animal life (Villavicencio Calzadilla & Kotzé, 2018). The Framework Law also does not specify how exactly the life in harmony and balance should be translated into (legal) practice.

The laws also include human interests as main principles which leads to conflicts within the law and poses difficulties for implementation. The relevance of human interests in this law

shows that it is not entirely ecocentric (Villavicencio Calzadilla & Kotzé, 2018). The idea of rights of nature being ecocentric has insofar not been proven right in Bolivia.

"The Framework Law also places an obligation on the state to create conditions to ensure growth, which legitimizes and even promotes extractivist activities such as mining" (Villavicencio Calzadilla & Kotzé, 2018, p. 414). It requires the state to support investment, distribute the land's resources equally, and prioritizes development. Villavicencio Calzadilla and Kotzé find that "[c]ounter-intuitively, then, the Framework Law may actually strengthen the paradigm of neoliberal development [...]"(Villavicencio Calzadilla & Kotzé, 2018, p. 415). In this context, Vivir Bien is interpreted as a justification for economic development to help eliminate poverty while relying on extractive industries. "The contradictions are evident between the Indigenous peoples' vision of a protected Mother Earth and the philosophy of Vivir Bien on the one hand, and the neoliberal logic of development on the other" (Villavicencio Calzadilla & Kotzé, 2018, p. 416). The justification of development and sustainability show that modernist ideas are not challenged by these laws, as they are not critical of capitalist ideas, like Earth Jurisprudence would be. Kotzé & Villavicencio Calzadilla call the Framework Law "a wolf in sheep's clothing" as it supports "the prevailing neoliberal anthropocentric development model followed by Morales' government" (Kotzé & Villavicencio Calzadilla, 2017, p. 417).

5.2.3. Concept of nature

Art. 3 of the Law of the Rights of Mother Earth defines Mother Earth as "[...] a living, dynamic system formed by the indivisible community of all life systems and living beings, which are interrelated, interdependent, and complementary, sharing a common destiny" (Law of the Rights of Mother Earth (Law No. 071), 2010). Art 5 (1) Framework Law adds that "[...] Mother Earth is considered sacred; it feeds and is the home that contains, sustains and reproduces all living beings, ecosystems, biodiversity, organic societies and the individuals that compose it." (Framework Law of Mother Earth and Integral Development for Living Well (Law No. 300), 2012, translation by author). Both laws define nature as an interrelated system with all its components sharing a common destiny, aiming to overcome the human-nature dualism by emphasizing interrelatedness. However, this idea it is undermined by the combination with distinctly human rights and the prioritization of development (Villavicencio Calzadilla & Kotzé, 2018).

The notion of ecological integrity in the Law of the Rights of Mother Earth and the description of the natural world as a system (Villavicencio Calzadilla & Kotzé, 2018) relates to the concept of an ecosystem also immanent in Earth Jurisprudence (Tănăsescu, 2020). Tănăsescu (2020) notes that the idea of harmony and balance in the natural system are not realistic ecological expectations, as there are always disruptions in nature, even without human interference. This

assumption of an inherent balance is an eco-theological presumption. It is therefore questionable whether this description of nature fits an Indigenous concept of nature.

Huanacuni Mamani (2016) criticizes the idea of 'caring for Mother Earth' because it does not fit the Indigenous idea of Mother Nature. It somewhat puts humans above nature, by making it an object to be cared for. According to Huanacuni Mamani, Mother Nature is in a sense bigger than humans, eternal and not dependent on them. Nature could exist without humans, but humans could not survive without nature.

Additionally, the use of the term 'Mother Earth' instead of nature builds on the stereotype of a caring female figure (Villavicencio Calzadilla & Kotzé, 2018). This implies that nature is caring and giving, providing for humans. The constitution implies that this is an Indigenous idea. Whether or not this is an accurate depiction of Indigenous beliefs is not the scope of this analysis, especially since there are many different Indigenous cultures present in Bolivia, some of which may or may not feature nature as a mother figure. However, in this context, Tănăsescu argues that "'Mother Earth' does not describe a reality, whether ecological or cultural, but repeats unconscious modern tropes in a way that is ultimately unthreatening to wider power relations that are still predicated on overcoming natural limitations to life" (Tănăsescu, 2020, pp. 65–66). Consequently, this portrayal of an Indigenous concept of nature must be questioned critically, especially regarding the abundance of different Indigenous cultures in Bolivia and the stereotypical association of Indigenous communities with the belief in nature as a motherly figure in Western culture.

5.2.4. Role of Indigenous knowledge and culture

The framework law promotes Vivir Bien as a basis, to be achieved by "integral development" (Villavicencio Calzadilla & Kotzé, 2018, p. 414). Vivir Bien/Living Well (or Sumaj Kamaña, Sumaj Kausay, or Yaiko Kavi Päve) is described in the Framework Law as an "alternative cultural developmental vision to capitalism and modernity that emerges from the worldviews of Indigenous, native, and peasant nations" (Villavicencio Calzadilla & Kotzé, 2018, p. 413). The use of the concept of Living Well in the Bolivian law raises just like in the Ecuadorian constitution the question of how this concept is understood. Hildalgo Capitán and Cubillo Guevara (2014) identify three different strands of interpretation: a socialist interpretation as used by the governments of Correa and Morales that focuses on social equity, and that is criticized for its lack of consideration of environmental issues and Indigenous demands, as well as extractivist tendencies. The second interpretation is ecological, negotiated by diverse groups including among others Indigenous, feminist, and theological contributions. This strand is very critical of the Morales and Correa governments. A third Indigenist strand is focused on the original

meaning of the concept of Sumaj Kamaña and demands for autonomy of the Indigenous communities. This strand is mainly promoted by Indigenous leaders who are critical of the other interpretations than the ancestral Indigenous meaning (Hidalgo Capitán & Cubillo Guevara, 2014). The notion of rights of nature in the Bolivian rights of nature context seems to align with the socialist interpretation of Living well as they are an expression of Morales' politics and feature references to development.

Dolhare and Rojas Lizana (2018) find that the inclusion of the Indigenous concept of Vivir Bien is proof that the Bolivian constitution is a decolonial project that recognises Indigenous philosophy as equal and relies on sources of thought that are not of Western origin. They suggest that through the incorporation of Indigenous concepts, the interests of Indigenous people are promoted. They believe that by aiming to create a state structure that is consistent with Vivir Bien, colonialism could be overcome, since it contradicts the harmony inherent in the concept. Vivir Bien calls for an ecocentric worldview and intercultural communication, including communication with Mother Earth itself. They find that the accomplishment of Vivir Bien is "an Indigenous social and cultural project" (Dolhare & Rojas Lizana, 2018, p. 27). According to them, the constitution is decolonial because it specifically names the colonial history and its prevailing influence today (Dolhare & Rojas Lizana, 2018).

However, this point of view does not question the meaning of the terms used and the context of their inclusion as well as their implementation beyond the inclusion in the legal texts. According to Villavicencio Calzadilla and Kotzé (2018), Lving Well is interpreted as an alternative to capitalism and neoliberalism. The rights of nature laws depict Living Well as an Indigenous worldview featuring interculturality, complementarity, and supportive community. However, the constitution also refers to sustainable development and legalizes the exploitation of natural resources. In fact, Macas (2014) finds that Sumak Kawsay is often claimed to equal well-being in a sense of development and economic growth and is even used to justify extractive industries and the exploitation of nature. The logic behind this is that oil and other natural resources are claimed to be provided by Mother Earth and must be used to improve the standard of living. While improving living conditions and fighting poverty are legitimate goals, the use of Vivir Bien in this way is a bold interpretation. Sustainable development, and much less extractivist industries, have nothing in common with the Indigenous concept of Living Well. It is not possible to use it as a synonym for a developed state. Living Well rather stands for a way of life in the community, striving for balance and harmony. It entails a life of fullness and justice in the community. This is opposed to the capitalist idea of economic well-being and growth, as it divides humans and nature and commodifies natural resources. The effects of capitalism and economic growth, such as individualism and competition, are the opposite of the

harmoniously balanced and interrelated idea of Living Well (Macas, 2014). Macas (2014) claims that proposing a Vivir Bien way of life means resisting capitalism, which opposes the capitalistic idea of sustainable development.

Therefore, the use of Indigenous terms in the Bolivian laws seems symbolical as it does not challenge the dominant idea of development but instead supports and legitimizes it by putting it in an Indigenous context. Indigenous terms are used to give a multicultural character to the rights of nature and its modern capitalist character.

5.3. Discussion: Indigenous participation and compatibility of Indigenous philosophy and the concept 'rights of nature'

The goal of this thesis has been to identify how Indigenous groups have influenced the legislative process and the content of the rights of nature. This analysis shows that Indigenous communities did participate in the process of law-making and their presence had an impact insofar as their culture was represented at least formally using Indigenous concepts and emphasizing the relevance of the Indigenous population. The constitutions of Ecuador and Bolivia as well as the rights of nature laws in Bolivia include far-reaching Indigenous rights. Indigenous representatives were directly involved in the Ecuadorian constituent assembly as well as the drafting process of the first version Law of the Rights of Mother Earth with the Unity Pact in Bolivia. However, the analysis has also shown that the introduction of rights of nature in Ecuador was, although supported by some Indigenous groups, primarily elite-driven. In Bolivia, the political elite made the final decision over the scope of the rights of nature, although they were at first negotiated with the Unity Pact. In both states, Indigenous demands were not fulfilled, and their inclusion remained symbolic. Importantly, the Indigenous framing of the rights of nature hides the fact that other demands of Indigenous groups were not met. These demands were much more significant for the Indigenous population than rights of nature, which were not an Indigenous idea. Additionally, regarding the scope and content of the rights of nature, Tănăsescu argues that the Indigenous relationship with nature is deeper and more radical than the rights of nature, and limiting Indigenous demands and the recognition of Indigenous philosophies to what fits into the rights of nature does not do them justice (Tănăsescu, 2020). As a result, Indigenous interests are undermined using a superficial recognition of their culture but ignoring the real issues.

Regarding the content and philosophical origin of the rights of nature, the analysis has shown that the Indigenous concepts of Living Well/Good living and Pachamama have been included in the laws of nature. Gutmann (2021) questions the use of these Indigenous concepts in the Ecuadorian constitution because of the difficulties of using the terms with their authentic

meaning in a constitutional context. Gutmann argues that "[...] indigenous thinking must be taken into consideration when interpreting the CRE [Ecuadorian Constitution, note by author]. In particular, the RoN [rights of nature, note by author] cannot be understood properly without taking these philosophies into account" (Gutmann, 2021, p. 37). This would also be true for the rights of nature in Bolivia.

However, instead of being put into a genuinely Indigenous context, the rights of nature laws in Ecuador and Bolivia use a concept of nature similar to the idea of nature in Earth Jurisprudence theory. Like in Earth Jurisprudence theory, the rights of nature have an ecocentric character and are revolutionary in the sense that they are an alternative approach to environmental protection, criticizing neoliberalism. They recognize the inherent value of nature beyond its economic use. However, this does not prove a reflection of Indigenous philosophy. Tănăsescu et al. find that "[...] to understand Indigenous philosophies as leading towards ecocentric law [...] misstates the issue. Many Indigenous philosophies are not about centrism at all, but rather about a deep relationality that is context-specific. Ecocentrism risks sidestepping the notion of reciprocity, arguably a central issue for many Indigenous philosophies, in favour of the issue of recognition, a western onto-normative construct that is steeped in universalist and centrist thinking" (Tănăsescu et al., 2024, p. 452). In this regard, the philosophical source of the concept of nature is the critical Western theory, not Indigenous philosophy, implying that Indigenous participation was not crucial for the development of the rights of nature regarding the concept of nature. Additionally, Grosfoguel notes that „[i]n other cosmogonies, the word "nature," [emphasis in original] for example, does not feature and effectively does not exist, since so-called "nature" [emphasis in original] is not an object, but a subject and a part of life in all its (human and non-human) forms. Thus, the notion of nature is, in itself, Eurocentric, Western-centric, and anthropocentric" (Grosfoguel, 2019, p. 205). This means that when nature is discussed in this context, one needs to be aware that it is a Western way to think about humans' relationship with their environment. This is especially true for the rights of nature, which only make sense in a divided human-nature context.

Beyond the different concepts of nature, Earth Jurisprudence theory and Indigenous philosophies come from radically different ways of thinking. Western philosophy is based on rationality and the idea of a universal truth which excludes other options. Latin American Indigenous philosophies tend to be based in complementarity thinking instead of opposition, including other possibilities. Relationships are thought of in terms of reciprocity instead of domination (Añaños Bedriñana, Hernández Umaña, & Rodríguez Martín, 2020). For this reason, the translation of Indigenous philosophy into Western legal tradition may be similar on a superficial level. However, the Indigenous concepts may not only be misunderstood, but they come from

an ontologically different world than Western legal thought. It may not be possible at all to fully understand each other at all. An example is the personification of Mother Earth as Pachamama, treated as a legal person. Legal personhood personifies natural entities in a way that gives them rights like humans, but Indigenous philosophies seem to personify nature in a way that expresses kinship with humans, naturalizing humans (Tănăsescu, 2020). Another example is the superficial similarity between the Earth Jurisprudence concept of Earth community, which is inclusive of all beings on earth, and Indigenous reciprocity and interrelationality. However, these concepts cannot be interpreted as equal without reducing Indigenous philosophy. Earth Jurisprudence seeks laws of nature through (Western) scientific knowledge and insights based on the concept of an ecosystem. This is preferred over Indigenous experience and local knowledge. The use of Indigenous terms can be understood as epistemic extractivism, because Indigenous cultural elements are assimilated into a Western idea – the rights of nature. Through this, the concept of rights of nature gains an appearance of cultural awareness, inclusion and progressiveness, which is a symbolic advantage (Grosfoguel, 2019).

The analysis also shows that Indigenous philosophy is reduced by summarizing several concepts from different Andean Indigenous cultures as Vivir Bien/Buen Vivir': "[t]he approach is multicultural, and Vivir Bien is referred to the aymara concept of suma qamaña, but also to the guaraní ideas of the harmonious living (ñandereko), good life (teko kavi), the land without evil (ivi maraei) and the path to the noble life (qhapaj nan)" (Gudynas, 2011, pp. 442–443), in addition to the Ecuadorian kichwa term Sumak Kawsay. These terms, although they may appear similar to strangers to the concepts, come from different cultural traditions and cannot be used as synonyms. In this regard, the use of the term Buen Vivir/Vivir Bien oversimplifies Indigenous cultures. This could lead to a hegemonic understanding of these Indigenous concepts that could ultimately cause the loss of the initial meaning (epistemicide).

However, there is also a different point of view and approach to Buen Vivir. Gudynas describes the meaning of the concept of Buen Vivir/Vivir Bien as "quality of life" and "well-being [that] is only possible within a community" (Gudynas, 2011, p. 441), including nature. But instead of claiming a literal use of these Indigenous ideas, Gudynas considers the concept "[...] a platform where critical views of development are shared" (Gudynas, 2011, p. 445). This platform does not only include Indigenous groups, but other groups that have been disadvantaged by modern development practices, environmentalists, and feminist critics of the neoliberal development model. In this plural group, Buen Vivir is considered a social project and an alternative to the Western idea of development which is designed together. "The term Buen Vivir is best understood as an umbrella for a set of different positions" (Gudynas, 2011, p. 444). Instead of trying to understand the meaning of the many different Indigenous conceptions, Buen

Vivir is understood as evolving: “It is not a static concept, but an idea that is continually being created” (Gudynas, 2011, p. 443). It could be used as a working concept for negotiating an alternative concept for modern development and a vision for a better society. However, given the analysis, although the idea seems genuine and is certainly a reasonable approach, the use of Indigenous language in this way remains unfortunate.

Finally, while the similarity of the rights of nature to Earth Jurisprudence theory may not have been intentional, they might be seen as a consequence of the influence of Western thinking, for example through CDELF. Furthermore, while Earth Jurisprudence is a critical theory, it is still based on Western legal thought. For this reason, a Western influence on the rights of nature and therefore a dominance over Indigenous philosophy can be presumed.

6. Conclusion

This thesis has demonstrated the challenges of implementing an Indigenous-inspired concept into legal systems that are predominantly based on Western legal logic. While the rights of nature are celebrated as a paradigmatic shift toward an ecocentric worldview, the analysis shows significant tensions between the Indigenous philosophies and their legal incorporation.

In both Ecuador and Bolivia, Indigenous movements played a role in creating a political climate that put environmental protection on the political agenda and ultimately led to the adoption of rights of nature. However, Indigenous philosophies were often reduced to symbolic elements.

Moreover, the research highlights that despite their innovative nature, the rights of nature are incorporated into Western legal and economic frameworks. As a result, they are often interpreted in anthropocentric ways, especially when they conflict with economic interests. The influence of Indigenous philosophy is not only diminished but risks being assimilated into Western narratives which undermine the decolonial ambitions of the rights of nature. Furthermore, the governments in Bolivia and Ecuador reproduce colonial values and hierarchies by relying on the development narrative (Grosfoguel, 2019).

To improve environmental protection and Indigenous inclusion, future developments must address these challenges and use the rights of nature to realize a harmonic relationship between humans and nature. However, this depends on political and societal commitment. Tănăsescu (2022a) emphasizes that rights of nature are always political: their adoption and their implementation show political will and their goal is a modification of power relations. A different relationship with nature would most likely require significant economic sacrifices.

As a method of environmental protection, it has to be noted that rights of nature do not address the root cause but only attempt to treat problems. Although proponents of Earth Jurisprudence hope to change the human relationship with nature by granting rights, nature equipped with its own rights will not diminish capitalism extractivism. In this regard, political and societal will are key. Without this commitment rights of nature cannot successfully protect nature because they can always be bent in a way that suits other interests.

Regarding the inspiration other countries might gain from the examples Ecuador and Bolivia have set, it must be noted that although the values seem transferable and understandable in different contexts, they are embedded in particular cultural contexts. Gudynas (2011) argues that they are heavily influenced by local and Indigenous culture and must be thought of in this context. Other regions must find their own alternatives to the development and economic growth paradigm.

Reflecting the different standpoints on rights of nature in the literature, and the fact that literature may be biased due do colonial power asymmetries, there is a need for more critical investigation in the discussion around rights of nature. Most importantly, Indigenous scholars must be included, cited, and taken seriously if any connection between rights of nature and Indigenous philosophy is claimed.

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