Chapter VII: Conclusions
The Problem of Good Intentions

An introductory book cannot help but gloss over many details that more thorough scholarly engagement would be sensitive to. But if it succeeds, it manages to focus on strains and connections that may not be visible when looking too closely at individual cases. An introduction should straddle the perilous border between generality and particularity and show the many ways in which they connect. Indeed, it should show how abstraction is the infrastructure of practice, and practice the fodder of abstraction.

I set the rights of nature within the context of the inseparability of liberal rights expansion on the one hand and growth-fueled development on the other. I argued that the glue that holds these apparently divergent movements together is the power of the (often colonial or neo-colonial) nation state. Because of this, one of the most significant contributions of the rights of nature so far has been the opening up of spaces that subjugated people can use in order to inject radically different legal and philosophical traditions into the Western mainstream. On the other hand, the insistence on rights risks propagating liberal orthodoxy further, unwittingly accelerating the Great Acceleration.

Erin O'Donnell and colleagues (2020), in an article analyzing indigenous involvement in nature's rights, very helpfully separate the cases seen so far into two different kinds: cases focused on Nature and on versions of the right to life (broadly, what I have called ecotheology); and cases focused on particular places and on legal personality only. As the authors explain, legal personality as such gives rise to three different rights, namely the right to hold property

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(Te Urewera owns itself), the right to enter and enforce contracts (as a separate legal entity), and the right to sue and be sued (legal standing). The cases of Ecuador and Bolivia have become the emblematic ones for ecotheological rights, while the cases of Aotearoa New Zealand are paradigmatic of the focus on legal personality itself.

O'Donnell and her co-authors also point out, as I have, that the first kind of rights are also moral rights, whereas legal personality is morally agnostic. In the first case, advocates have stressed the opposition between being a thing and being a person. The argument is that those two kinds of beings are incompatible: if nature is a thing (a resource), it cannot be a person, and vice versa. The second kind of rights for nature show this to be a false premise in practice (it had already been shown to be false in theory; see Chapter 2): Te Urewera is both a legal entity and a thing that is owned by the legal entity. These kinds of constructions are familiar to Western law, which routinely aggregates interests into fictitious 'persons' that have different roles in different circumstances.

The minimal grant of legal entity status can, in theory, accomplish a much more focused application of the law to places and allow for representative arrangements that integrate and give practical power to a-modern ontologies. This is incredibly important, as it opens up spaces of innovation. I have argued that there is still a long way to go before a truly consistent indigenous leadership is allowed within the centers of Western legal and political power, but what O'Donnell et al refer to as 'ecological jurisprudence (also see Bosselmann 2012) leaves much more room for this to happen than does the ecotheological Earth jurisprudence that I have analyzed. Though this is not currently the case, ecological law shows promise in potentially side-stepping the issue of rights and its liberal expansionism in favor of allowing radically different ontologies to propose alternative arrangements.

This split within rights of nature theory and practice is thankfully becoming more widely recognized, which should help practice tremendously. What still needs due recognition is the outsized influence that ecotheology still has, particularly in the diffusion of ideas. On the one hand, this can be seen (see Chapter 4) by the

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almost universal adoption of the term 'guardianship' to characterize the political arrangements inaugurated by Te Urewera and Whanganui. I have myself used this term without realizing that, in doing so, I was unwittingly brushing over the radical novelty that Māori involvement in these cases had proposed (Tănăsescu 2016). A "human face" is not a guardian, but something more like a representative, and once we ask *what kind* of representative that is, a door is opened towards a world in which Māori can lead, explaining what that may mean and showing it in practice.

Similarly, the influence of the Aotearoa cases on the Colombian and Indian ones has been widely recognized. But, because of the capture of the New Zealand cases by ecotheology (through, among other tropes, the one of guardianship), judges in Colombia and India only superficially travelled the path opened by Māori ontologies. Instead, they ended up passing laws that are much closer to Earth jurisprudence and only superficially tied to indigenous ontologies. This is why the dominance of ecotheology in the diffusion of rights for nature globally is so important to challenge; it homogenizes possibilities into a globalist blend of moralist rights that are highly vulnerable.

The movement for rights of nature, inasmuch as there is one single movement at all, has to start taking the real variety of cases and theoretical orientations into account. It may be that, in doing so, the very idea of *rights* needs to be rethought. It may also be that the *purpose* of these rights needs to be much more actively interrogated (see Tănăsescu 2021b). The Indian and Colombian cases seemed to think that rights are for environmental protection, a claim that I have shown to come out of the moral/legal confusion propagated by ecotheology. On the other hand, the Aotearoa cases show clearly political purposes, with no primary concern for environmental protection as such, in part because they are not predicated on a separation of humans and environments.

I don't mean to imply that in New Zealand a perfect 'inclusion' of Māori thinking has been achieved. I have presented a much more nuanced view of this in Tănăsescu (2020a). Instead, I do want to suggest that those cases cut a new path, one that has much greater potential for much greater inclusion. In Australia

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the Martuwarra/Fitzroy river is currently being considered as a candidate for legal entity status, and crucially this is being done in open dialogue between First Law and settler law. The idea of legal entity status still needs refining, and I have also argued that we may be better served by abandoning the idea of person or personality altogether, focusing on entities instead. This can allow a more important role for a-modern philosophies and legal practices, as 'entity' is completely neutral in moral terms. It can therefore defend itself against the liberal rights expansionism that the state is so comfortable with.

Cases of rights of nature are proliferating at an expanding rate. In Bangladesh, the supreme court declared Turag river, as well as all other rivers in the country, to be legal persons (Islam and O'Donnell 2020). Lake Eerie, in the United States, was briefly granted rights before the decision was struck down in higher courts. The Universal Declaration of the Rights of Mother Earth may well one day be adopted, and its example has already emboldened the creation of an International Rights of Nature Tribunal. Increasingly, international media report on new and exciting cases: a lagoon in Spain, a wetland in Florida, all aquatic ecosystems in Europe. This proliferation makes the work of critical assessment ever more urgent, such that orthodoxy does not set in and rights expansionism is not unreflectively given an unexpected boost, just when a world of Total Production seems to be imminent.

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The rights of nature are too often presented as achieving environmental protection and moral enlightenment. I have argued against this kind of totality thinking throughout. If we abandon it and instead focus on the multiplicity of struggles, and on the possibility of wide and regenerative cohabitation outside Western moral frameworks, then we start seeing all sorts of allies that were not visible before.

For example, by focusing on representation as a very salient aspect of including environments in political (and legal) processes, Bruno Latour has famously proposed the idea of a parliament of

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things.[1] Following up on this idea, a diverse group of people in the Netherlands have put together an Embassy of the North Sea, which is supposed to understand whether there is something like the North Sea that can speak in politically intelligible speech (also see Lambooy et al 2019, who make the case of legal personality for the Wadden sea). Tellingly, their exercise starts with listening, and incorporates art as a fundamental part of both listening and speaking processes (after all, the concept of representation cannot be properly thought without dialogue with art; see Tănăsescu 2014). In other words, this initiative recuperates the need to pay close attention that has been all but obliterated by the homogenous spaces of modern development.

Similarly, the practice and theory of commoning can be an excellent ally, and one that can put into dialogue a-modern traditions that do not have to respect the colonial center-periphery, mainstream-exotic dichotomies. But if the rights of nature continue to be dominated by the call to awaken to the moral personality of Mother Earth, all of these other tendencies cannot really be seen as allies. The parliament of 'things' doesn't fail to see the personhood of nature, but rather tries to imagine worlds governed beyond modernist dichotomies. Similarly, commoners have, and have always had, a wide variety of ontologically derived practices. What matters is that these be regenerative of socio-ecological practices, as opposed to inherently consumptive and destructive.

The expression *rights of nature* is catchy and concise and therefore very amenable to travelling far and wide. But it also risks hiding orientations that are not centered around rights, yet use these selectively, like the cases granting minimal entity status and focusing on representative arrangements. I am not sure that the burgeoning Rights of Nature international trademark can take a step back from rights and recognize their inherent problems. As Douzinas argues, "a society where individual rights with their adversarial culture have become the main moral source can survive only with the help of criminal law, the police force and extensive surveillance"

1 For the use of this idea in an interpretation of the Colombian case, see Cagüeñas et al (2020).

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(Gearty and Douzinas 2012, 64). A society where everything starts having rights will inevitably have to weigh them against each other, and it will generally be the most powerful that prevail. The police and extensive surveillance seem inevitable.

Equally problematic is the reliance on the totalizing figure of Nature. In practice, this risks focusing rights on exceptional environments or on a new kind of conservation agenda that can continue to exclude local communities from using their environment. The urban environment is almost absent from the rights of nature; this is a mistake that will need to be corrected. In order to do so, the right to restoration needs to be thoroughly rethought, in ways that empower local communities to develop regenerative relations outside of the problems that baselines impose. It also needs to be insulated against the capacity of the state to use it selectively for extractive purposes.

The label "ecological jurisprudence" may offer a good way out of the conundrums that enshrining rights and Nature into the very name of the growing movement throws up. It can also help move away from the nation state as the focus of environmental governance. Bosselmann (2015) argues that "as long as innovative ideas are exclusively derived from what states are willing to support, no genuine progress will be made" (268). He shows that legal innovation needs to focus much more on tools that can be used against the state, not on ones that the most powerful actors are already comfortable with. In other words, we need as much political as legal innovation, and the two have to work together in order to make a substantive difference. In the New Zealand cases, for example, the settler state was more comfortable giving rights to nature than to the Indigenous populations (like full property rights over their lands and waters). The idea of self-ownership for Te Urewera, though incredibly useful in many ways, was nonetheless a way to *not* vest ownership in Tūhoe.

The question of the purpose (what do we want to achieve, and who is this we?) of rights and/or legal personality should be actively and critically asked. It is not enough to assume that rights of nature are for environmental protection. Inasmuch as environmental protection is the goal, an active engagement with the colonial history of

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conservation should be pursued. If local community empowerment is the goal, then care should be taken to provide for the appropriate political infrastructure. If both of these goals are pursued simultaneously, then the question of how to do so remains an open one and each case will probably have a different answer.

But thinking that rights are a protection per se and that ecocentrism vs anthropocentrism is *the* way to think about legal and political pluralism shackles the imagination and risks being damaging. Instead, the opening that the explosion of rights of nature cases has created can be used to free the political and legal imagination to think critically beyond rights and beyond well-trodden binaries. For example, it may be worth considering how the law can help scale back the monopoly that state power has over setting economic and social goals. The movement for degrowth (D'Alisa et al 2014, Demaria and Kothari 2017) is yet to be allied with legal innovation, but it may hold exciting promises by writing degrowth goals into legal personality arrangements and by providing the appropriate infrastructure. Similarly, the infrastructure for alternatives to development needs to be thought out in detail, as it is not enough to proclaim grand goals that can be easily accommodated to progressive neo-extractivism.

In the Cambridge Companion to Human Rights Law, Costas Douzinas opens his chapter on rights jurisprudence with the following cautionary tale: "when, in 1983, I ran the first-ever human rights course in my Law School only four brave and idealistic students registered, making me almost abandon the exercise. I told these pioneers that human rights are the conscience of law, practiced by a few idealistic lawyers and invoked by dissidents and rebels. How different things look today. If only thirty years ago rights were the repressed conscience of the profession, they have now become its dominant rhetoric. [...] The dissident pioneers have become the established majority, the repressed idealism dominant consciousness, the protest ruling ideology" (Gearty and Douzinas 2012, 57). It would be a momentous loss of opportunity if, thirty years from now, the rights of nature have become the new mainstream, the domain of "the established majority". Defending against this possibility goes

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through political as much as legal innovation. Refusing orthodoxy in favor of new and unprecedented alliances is the moral task ahead.

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