Chapter III: From Theory to Practice[1]

Whereas the idea of giving nature rights started being systematically developed in the second part of the 20th century, its practice only really began in the 21st. So far, right provisions have appeared in different jurisdictions and at different legal levels, from municipal ordinances all the way to state constitutions themselves (arguably, the highest level of law). Currently, there are many different proposals being considered in yet more jurisdictions and at varying legal levels,[2] so I cannot hope to be exhaustive. Rather, I want to look at a representative sample of diverse rights for nature, such that we can begin to appreciate the diversity of practice and see how it makes new directions possible.

Municipal Ordinances

It may come as no surprise that the first deployment of rights of nature theory in practice occurred in the United States, a very impor-

1 Some parts of this chapter draw on a previously published article: Rights of Nature, Legal Personality, and Indigenous Philosophies, *Transnational Environmental Law*.

2 For a continuously updated list of cases, see https://www.therightsofnature.org/map-of-rights-of-nature. However, it is important to keep in mind that not all cases are the same, nor are they all unproblematically part of a "rights of nature movement". For a selective list of books on the rights of nature, see https://www.therightsofnature.org/related-books/. It is worth noting that these kinds of lists are not exhaustive, but largely focus on reinforcing the ecotheological strain of rights that is becoming orthodoxy.

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tant node within their history. In 2006, Tamaqua Borough, Pennsylvania, adopted a municipal ordinance that granted rights to nature, understood as the area of the municipality. Sections 7.6, 7.7, and 12.2 of this ordinance bear obvious connections with the work of Christopher Stone, as they foreground the issue of standing as vitally important. But equally important is the background that led to this historic ordinance, which would repeat itself in dozens of other municipalities across the US.

The Tamaqua ordinance number 612 was specifically designed to oppose particular actions by corporations within the municipal area. The general area of the state of Pennsylvania where Tamaqua is located has for a long time been connected with resource exploitation, mostly mining. However, around the turn of this century, Tamaqua was facing a new threat in the form of the disposal of toxic sludge. Inasmuch as corporate actors would file all of the right paperwork, the disposal of the sludge could not be stopped. The argument that environmental regulation (in the US specifically, but not only) simply tells corporate actors how to best pollute had been a foundational one for the creation of the Community Legal Environmental Defense Fund (CELDF), a legal advocacy organization based in Pennsylvania that has advised on all similar municipal ordinances in the US so far, including the Tamaqua one.

CELDF has very consciously formed the rights of nature on the basis of the theory of Christopher Stone (resulting in a focus on legal standing), as well as the ecotheology of Berry and Cullinan (resulting in the idea of Nature as community). They have also been instrumental in presenting these rights as fundamentally countering the power of corporations, even though the instrument that they are trying to use – legal personality – is precisely the same instrument that corporations are using to wield their own legal power[3]

3 See Ciepley (2013) for more on the particularities of corporate personhood. CELDF are explicit in positioning the rights of nature as instruments against corporate personhood (also see Margil 2014 for an elaboration of their position). However, the basic instrument that corporations use – legal personality – is exactly the same in the case of rights for nature. This also means that, in some cases (see Chapters 4 and 6), the corporate person is the clos-

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(see Chapter 5). It is important to recognize the outsized influence of CELDF on these particular municipal cases, as well as the way in which rights for nature are framed as evidently opposed to corporate power.

The Tamaqua ordinance originates in this ethos, so the relevant section (7.6) begins by specifically making it unlawful for "any corporation or its directors, officers, owners, or managers to interfere with the existence and flourishing of natural communities and ecosystems". The ordinance then goes on to repeatedly establish standing for both the municipal area (in itself), as well as for any resident of the borough to act as representative of the area's rights. This is summed up in declaring that "Borough residents, natural communities, and ecosystems shall be considered to be 'persons' for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems".

The link between legal personality, rights, and standing is fully visible here. Lastly, the ordinance also grants all residents of the Borough "a fundamental and inalienable right to a healthy environment". This kind of third generation human right very often accompanies rights of nature, the assumption being that they are mutually reinforcing: where nature has rights, people's right to a good environment (however that may be defined) stands a better chance of being respected. However, rights of nature and *to* nature can also be in tension, especially inasmuch as it remains unclear just what rights nature may have in any given case, and which human groups have the power to determine the content of nature's rights as well as the content of human rights to nature. This first practical appearance of rights for nature raises more questions than it answers, but through the advocacy of CELDF it became a very important blueprint for later ordinances, and indeed for the first constitutional rights of nature in history (see next section).

Among the many questions raised by this formulation of rights for nature there are two that I find particularly important. First,

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est analogy to the personhood of nature. Whether this works with or against corporate power is an open question and certainly not decided by the instrument of rights (or legal personality) as such.

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the ordinance clearly wants to establish a kind of nature's right to restoration, which in principle is understandable and laudable. However, this kind of right starts to show the limitations of the underlying concept of nature as an eco*system*, that is to say a *community* that is naturally in *balance*. This idea of Nature, which we started to explore in the previous chapter, forces restoration to be done according to a baseline, that is to say to a standard that is fixed by human observation of an environment at a particular time. In the case of the ordinance under discussion here, the municipal law states that restoration should be done for the benefit of the "natural community" by reverting said community to a pre-disturbance state.

Two fundamental issues complicate the idea of baseline restoration considerably. In the context of climate change, reverting to a baseline may prove impossible. This, in a more general way, has always been the case, because natural processes are by definition dynamic; they therefore change all the time. With the added dynamism injected into natural processes by a hefty amount of extra atmospheric CO2, baseline restoration becomes not much more than a wish. In addition, there is no clear way of choosing a baseline. Given that this concept is fundamentally historical (that is, it requires going back in time to choose a preferred state), there are no pre-determined criteria for choosing one particular moment in history over another. Imagine, then, that an old coal pit, abandoned many decades ago, has become an oasis for local birds. Would this particular place, if affected by the actions of a corporate actor presently, have to be reverted to being an abandoned coal pit, or to some other pre-mining state? If the latter, then which state? Before or after the colonial enclosure of land that created the current Borough 'locals'?

The second question raised by this ordinance is that of the relationship between local people and local nature. There seems to be an operating assumption of locals being friendly to the natural environment, which is the only way of accounting for the granting of standing to residents. But what if a shareholder of a corporation invested in toxic sludge becomes a resident of the Borough? According to the law, there would be nothing to stop her from acting on

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behalf of nature, and arguing, for example, that a certain amount of sewage sludge, on account of its chemical composition, is to the benefit of the natural community. The corporation itself, as a legal person, could become resident of the Borough, in which case the situation would become even more complicated.

I point these issues out to give an idea of the complexities that are raised when the conceptual apparatus that we saw in the last chapter is simply applied to a case, as if said case had a duty to conform to the theory. As things stand, corporate actors have not had to become local residents in order to dismantle these kinds of laws from within. The level of the law – municipal – has made these but unenforceable. Macpherson (2021a) shows how these laws have been consistently opposed, and sometimes struck down, in court. Courts have taken the view that these kinds of municipal ordinances are unconstitutional, on various grounds. Some scholars (Fitz-Henry 2018) argue that the whole point of these municipal ordinances is to contest the terrain of legal personality, by showing that if corporations can be legal persons, so can nature. That may be so, but that doesn't solve the moral/legal conundrums we have already started to explore, nor the problem with the vague formulations, at municipal level, that seem to not be able to pass into higher levels of the law. Neither does it offer a convincing case for how the rights of nature could be environmentally beneficial.

The recipe first developed in Tamaqua was applied by CELDF in dozens of different communities across the US.[4] The basic conceptual apparatus remains largely unchanged throughout them. Chapters 5 and 6 will interrogate this apparatus much closer, especially paying attention to the concept of nature and the kinds of rights that it is assigned. This way of thinking rights of nature has become very influential, particularly in cases that focus on *rights*, and in particular on what could be called existence rights (Macpherson 2021), namely the claim that an ecosystem has to continue in a particular form. The most ambitious, and so far influential, of these cases

4 See https://celdf.org/community-rights/ for updated cases of community ordinances in the United States.

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has been the 2008 constitution of Ecuador, the first in the world to recognize such rights.

Constitutional Rights for Nature in Ecuador

In the context of a leftist and populist government, spearheaded by Rafael Correa, Ecuador rewrote its constitution (for the 20th time in its history) and adopted a new founding text in 2008. The writing of the new constitution was accomplished through the establishment of a Constitutional Assembly, tasked with drafting the document through a series of remarkably participative consultations. The seat of the Assembly was in the city of Montecristi, and for most of its work it was led by Ecuadorian academic, economist, and politician Alberto Acosta.

I detailed the precise working of the rights of nature through the Constitutional Assembly in Tănăsescu (2013, 2016). There is no need to recall all of the details here. Instead, I want to pick out, as before, the constitutive elements of the constitutional rights of nature in this case. But in order to do so, it is important to establish the particular intellectual genealogy that led to including them in the constitution in the first place. After all, this is the first time it has ever happened, and it is therefore important to try to understand why they appeared in this form at this particular historical conjunction.

One of the keys to understanding this historical moment is to grasp the role of the Assembly president, Alberto Acosta.[5] Throughout his career, Acosta went from more or less mainstream economist to a pioneer of environmental thinking in Ecuador. Since the Assembly was called into existence, Acosta has published influential pieces on the necessity to grant rights to nature in order to achieve true environmental protection. In this, he collaborated closely with Eduardo Gudynas, a Uruguayan prolific proponent of

5 Acosta started his term as Assembly president, but did not finish it. He resigned in protest as what he saw as political interference, but this was after the passage of the rights of nature was assured.

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'biocentrism', and Esperanza Martinez, the leader of one of the most influential Ecuadorian environmental NGOs, Acción Ecologica. Together, they have also been instrumental in proposing and supporting campaigns for ending oil exploitation in the Amazon region of Ecuador (for example Acosta et al 2009), as well as instituting a new regime of development around the concept of Sumak Kawsay, or "good living".[6] His role as a power broker in the Constitutional Assembly is crucial for understanding the genesis of rights for nature in Ecuador.

Through the figure of Acosta, several histories we have seen in the previous chapter coalesced and mixed with new, specifically Ecuadorian, elements in order to create a version of rights of nature that has become, arguably, the most influential to date. Though Acosta himself (Acosta 2010) has claimed that he was not familiar with previous work on rights of nature, other sources (Kauffman and Martin 2017a,b) claim that, through personal relationships he was acquainted with the work of Stone as well as that of Jörg Leimbacher. Leimbacher was a Swiss jurist that wrote a 1988 book on rights for nature, *Die Rechte der Natur*, a decidedly early contribution to the field.

However that kind of personal influence may have developed, two things are certain. First, in strictly conceptual terms Acosta's idea of rights of nature closely grafts unto some of the influential predecessors discussed in the previous chapter, particularly those of the ecotheological strand. Second, whatever he might have been familiar with before the Assembly, it is certain that through presiding over the Assembly and afterwards, he came into close contact with several influential activists for rights that were steeped in the same ecotheological tradition. The most important of these was CELDF.

This organization, together with Fundación Pachamama (whose co-founder, Bill Twist, introduced Acosta to CELDF), played a very

6 Also codified in the 2008 Constitution, which recognizes the Quechua principle of Sumak Kawsay, translated in Spanish as buen vivir (living well). This principle is supposed to give a framework to the whole constitution and is based on a model of well-being that is not driven by economic indicators only. See Kowii (2009), Acosta (2013).

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important role in drafting the constitutional articles dealing with rights of nature. Farith Simon (2019) went as far as claiming that CELDF themselves drafted the constitutional provisions. Certainly, there are obvious congruences between the organization's work with municipal ordinances and the articles enshrining rights for nature in Ecuador's constitution. The similarities between the Ecuadorian provisions and the US municipal ordinances do not stem from an underlying unity that these kinds of rights have, but rather from the direct influence of the same people and the same intellectual sources in all of these cases. Ecuador, no less than the municipal ordinances, is a direct inheritor of the strand of rights that heavily draws on the ecotheology of Nature as a Subject to be recognized by law. Here are the Ecuadorian constitutional provisions:

> **Art. 71.** Nature, or Pachamama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.
> All persons, communities, peoples and nations can demand public authorities 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.
>
> **Art. 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.
>
> **Art. 73.** The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the de-

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> struction 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.
>
> **Art. 74.** Persons, communities, peoples, and nationalities shall have the right to benefit from the environment and the natural wealth enabling them to enjoy the good living.
> Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State.

Exactly as in the case of Tamaqua Borough, much care is taken to codify rights in terms of Berry's fundamental right to existence, as well as to specifically address the issue of standing that was so central to Cristopher Stone. Whereas in the case of Tamaqua being specific about standing was made necessary by the level of the law, in a constitutional formulation this is not the case. Given that the constitution is the highest law of the land, standing is automatically given to whatever legal personality the document inaugurates. So, focusing explicitly on standing is strictly speaking redundant, but it shows very well the particular intellectual genealogy that plays out in practice. As in the case of the municipal ordinances, standing is codified in the largest possible sense. Whereas in the municipal case standing applied to any resident, here it applies to any person whatsoever, even regardless of nationality.[7] Besides this issue, the duality of rights *for* (Art. 72) and *to* (Art. 74) nature is also present. Finally, the issue of restoration appears as a fundamental right, though none of the problems explored in the earlier section are resolved.

The dominance of rights as *the* tools of emancipation is undeniable in the Ecuadorian constitution writ large. The radically participatory process that the Constitutional Assembly had set up for

7 In Tănăsescu (2016) I developed at much greater length the discussion of the universality of standing, as well as documenting in detail the political process within the Constitutional Assembly. The reader interested in the Ecuadorian case specifically should also consult that work.

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drafting the new document was somehow corralled into rights language at every turn. There are, importantly, many indigenous rights to their own territories and traditions. The panoply of rights (including, among others, to "healthy, sufficient and nutritious food; preferably produced locally and in accord with various identities and cultural traditions"; art.12, 13) cannot but reinforce the power of the state, which is ultimately tasked with upholding them. The Constitution seems to think that there can be no conflict between different kinds of rights, and simply states that if such conflicts arise, they will be dealt with appropriately (art. 85/2). Exactly how this may be done remains an open question, but that the state will be the primary mover in resolving such conflicts is very likely, to say the least.

The power of the state, and the role that rights play in safeguarding it, is nowhere clearer than in the relegation of mineral rights to the state itself (as well as the right to control energy production, water and biodiversity; art. 313). This apparently post-extractivist document allocates the rights that can make a difference to the project of modern development and its inherent depredations to a state deeply committed to resource extraction. Indigenous Nationalities, which otherwise receive rights to their territories, have no veto power over extractive activities in their own lands, and therefore have no effective property rights at all (arguably the paradigmatic rights of the liberal order). On a smaller scale, the tension between different kinds of rights and their role in unequal power distributions is also visible in the rights of nature provisions themselves, where these rights are presented as inherently compatible with people's rights to nature. There are many cases one can imagine where there is no such compatibility, but the point is that treating these rights as inherently friendly towards each other allows state power to become the ultimate arbiter, and therefore to use the rights of nature selectively.

As I and others have already argued (for example Rawson and Mansfield 2018), the rights of nature in Ecuador were forged through a particular power constellation that reunited elite actors from the governmental and NGO worlds. Though many of these actors have consistently claimed that the rights of nature are part of a global movement, the case of Ecuador seems rather an elite-

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driven project that, for contingent historical reasons, was successful. That being said, the Ecuadorian case and its particular power constellation also contributed to developing the rights of nature in ways that were previously absent. In particular, the participation of the organized Indigenous movements (especially CONAIE, the largest Indigenous organization in the country) within the Assembly, as key partners in Correa's government, left a deep mark on the constitution, as well as on the now-orthodox interpretation of rights of nature as of indigenous inspiration.

Despite the well-documented Indigenous involvement in the Constitutional Assembly, the power brokers behind the rights of nature provisions remained white settler elites. It is this group that interpreted Pachamama as a kind of Gaia, as the community that Berry and Stutzin assumed the natural world to be. For particular Indigenous People, it is often territories, *with particular names*, that feature as abodes, friends, relatives, kin in the struggle and joy that is life. As I have argued elsewhere (Tănăsescu 2020, but also see Macpherson 2021), indigenous philosophies are primarily *relational*, that is to say that they do not recognize intrinsic values as such, but rather focus on the development of situated relationships with natural beings that are always in flux. This is also why indigenous philosophies are not, by and large, ecocentric: they do not posit a nature that is prior to its relationships, nor do they see the inherent value of nature as opposed to the use humans may make of it.

Much of what gives purchase to the idea of the rights of nature being indigenous in some sense is the notion of harmony, in a double sense: on the one hand, harmony as obtaining between Indigenous People and nature (a colonial conceptual inheritance), and harmony as inhering in nature itself (an inheritance from the early days of ecology and its uptake into ecotheology). On both of these counts, the idea of harmony is misleading. First, it is not the case that Indigenous People are inherently in harmony with nature. This of course does not mean that they are inherently destructive of nature, but it does mean that they have diverse histories which do not, definitionally, exclude a variety of relationships with the natural world. To substantiate this point, it suffices to recall that, according to the overwhelming evidence that we currently have, the great

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megafauna extinction at the end of the last ice age occurred when all human groups, from the vantage of contemporary modernity, were 'indigenous'.

Second, the idea of nature as inherently balanced is not obviously of indigenous origins. It is true that many Indigenous People refer to their environment as in balance, but this claim is open to diverse interpretations. One can interpret it as meaning that these groups share an Odum-like idea of ecosystems as striving towards balance. But it can also be interpreted in culturally specific ways as indicating a particular kind of relationship with the land, where the idea of balance is a heuristic for making sense of human and natural actions alike. The idea of balance interpreted thus refers to the reciprocity of relationships between natural and human actors. What is in balance is *the economy of exchange*, not the *form* of the environment itself (which is how western philosophy and science interprets balance). The form of the environment is forever changing, and this is reflected in much indigenous mythology quite explicitly: the world is that which has transformed many times over and continues to transform. The idea of balance is a way of indicating how humans are to participate in the perpetual transformations *that they do not lead*, in such a way as to secure their continued subsistence.

Though in much rights of nature literature harmony and balance are treated as synonymous, there is yet another way of thinking about harmony that may indeed resonate with some indigenous conceptions. Harmony, in its musical sense, is the idea that sounds can fit together in ways that are pleasant to listen to, that seem to cohere as if they belonged in that particular formation. Similarly, Andean indigenous philosophies, for example, do employ the idea that humans can be in harmony with their surroundings, in the sense of fitting well, or belonging to each other. But this sense of harmony is as dynamic as the natural world itself, and periods of disharmony are as natural as periods of coherence, inasmuch as human groups must continuously adapt to an often temperamental and forever dynamic nature. In the Western appropriation of harmony, the dynamism of the indigenous world is often lost and replaced by the ecological idea of balance, or by the colonial inheritance of an inherently benign population.

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The idea of balance does not sit well within the baseline-driven restoration that rights of nature in this form propose because it is not about the outlines (for example, species composition) of a territory and its precise makeup, but rather about the endurance and perpetuation of particular kinds of exchanges and relationships across kinds of beings.[8] An indigenous-inspired restoration would therefore aim at restoring the kinds of generative and reciprocal relationships that are the basis of many indigenous cultures, rather than the form of a particular environment (this is exactly what Tāmati Kruger, Tūhoe leader, advocates for in the case of Te Urewera; see next Chapter). It remains an open question what the precise legal formulation of this ethos may be, but it is far from obvious that giving rights to nature is it. In fact, the ecotheological version of nature's rights doesn't quite seem up to the task of facilitating Indigenous legal autonomy. Instead, we may be better served by thinking about how to allow those already existing legal traditions to gain more power and to introduce ideas that may have nothing to do with personhood, or rights, at all.

As it may have become clear, despite the claims of many rights advocates, these laws cannot be primarily about 'nature', but rather about who has power over what and in what form (see Chapters 6 and 7). Now, I want to continue painting the picture of the most important cases of rights of nature so far, such that we may move away from the dominance of ecotheology and towards new possibilities.

The Law of Mother Earth, Bolivia

Not long after the Ecuadorian case, Bolivia followed suit by adopting a national law granting rights to nature, the 2010 Law of Mother Earth (Ley de Derechos de la Madre Tierra). As in the case of Ecuador before, the Bolivian law draws heavily on the dominant history already explored, as well as bringing new elements to the table. In particular, the Bolivian law takes the splicing of rights for nature

8 I discuss this at large in *Ecocene Politics* (2022). This idea is also given purchase by De Castro's concept of multinaturalism (2019, 2014b).

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and indigeneity a step further and is therefore a very good one to analyze in order to attempt to parse out the very complicated relationship between Indigenous groups and state law in general, as well as rights in particular.

The Bolivian law, adopted in December 2010, starts with a long preamble that establishes its general context and the definition of Mother Earth as an interconnected whole comprising all living systems and beings, understood as inextricably linked and complementary. In terms of the analytical tools already developed, this is clearly a capital letter concept of Nature, at the highest level of abstraction. It also clearly reflects the idea that Nature is in balance, here expressed through the concept of complementarity. I want to stress again that this is *not* an ecological concept of nature. In ecology, extinctions and what are called 'disturbances' are commonplace (see Chapter 2). In fact, the vast majority of everything that has ever lived has already gone extinct. This doesn't let people off the hook for their share of responsibility, but it does suggest that Nature is not the only concept available. Instead, when we see this concept we have to ask what it is *doing*, instead of assuming that it is an accurate description of a 'deeper' way of understanding the world.

The Bolivian law, which goes on to grant the same right to restoration that we saw earlier, is distinctive in two ways. First, it refers to Mother Earth, clearly introducing the issue of gender within rights of nature in a way that is merely implied elsewhere. Second, it connects indigenous thinking to the figure of Mother Earth. These two issues need to be tackled together.

Unlike rights of nature in Ecuador that did not enjoy the support of then president, Rafael Correa, the rights in Bolivia were widely and loudly promoted by then president, Evo Morales, himself a member of the Aymara Indigenous community. His own identity as Indigenous leader, besides national president, already did much to cement a close identification of Bolivian rights of nature with indigenous views. In speeches, Morales routinely referred to Mother Earth and Pachamama, the Andean deity, as synonymous and drew explicit parallels between the two, as if the idea of Mother Earth was the unproblematic translation of Pachamama.

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When taking a closer look at the law itself, the first thing to notice is that the term Pachamama does not appear at all. This is very different from Ecuador, where Pachamama appears as a clear synonym of Nature in the constitutional text. But in the Bolivian case, the law only speaks about Mother Earth, and simply mentions, once, that this figure is sacred in the 'cosmovision' of Indigenous People. If looked at in its context, the law can be – and has been – interpreted to have given rights to Pachamama, just like in Ecuador. But this is not supported by the legal text itself.

Why does this matter? Because paying attention to *how* indigenous thought is used in rights of nature laws is important in understanding *why* it is used, and how that may affect Indigenous communities themselves, as well as various environments. It matters, in other words, because close attention can demystify claims that may end up working against Indigenous self-determination, as well as against various environments. In the case of Bolivia in particular, the figure of Pachamama is presented as a mother figure, and therefore first and foremost a stereotypically nurturing female (see Tola 2018 for a critique). The association between Pachamama and motherhood was further supported by the proposal submitted by Morales to the UN to pass a Universal Declaration of the Rights of Mother Earth, modeled on the Universal Declaration of Human Rights. This proposal had behind it many of the same power brokers we saw in Ecuador.

It may be that the identification of an Andean deity with a gendered concept of Nature is supported by indigenous philosophies themselves. Or it may be that this particular association is strategic for all involved, whether for Indigenous organizations themselves or for NGOs or other actors in the transnational network of rights of nature. In order to be able to ascertain this, I need to take a closer look at the concept of Pachamama, as well as how the concept of Nature attempts to translate a vision that sits very uncomfortably within the dominant laws of the state.

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Pachamama as Female Nature

There are two ways of accounting for differences between culturally specific ways of understanding the world. The first sees these differences as ones of degree, that is to say that there are different *views* on the *same* world. This is the dominant, Western way of understanding cultural differences, and one that informed colonialism deeply, from the practice of religious conversion to the imposition of legal orders that had nothing to do with indigenous concepts. The other way of understanding difference is as difference of *kind*, that is to say that there are fundamentally different *worlds* that are being perceived, and not just views on the same world. Incidentally, this is the view that most Indigenous communities have themselves supported through centuries of colonialism, insisting that Western men failed to *see* certain features of a world that is fundamentally different from the Western one.

What does it mean for there to be multiple worlds? First of all, it means that the beings that populate worlds are fundamentally different. In the Western understanding of world, this is only populated by beings whose sentience is decided upon through scientific methods of controlled observation. In the Andean world, there are many kinds of beings that, through the scientific method, people could not even begin to detect. Marisol de la Cadena speaks, for example, of Earth Beings, entities that to westerners look like 'landscape features' but that, to Indigenous locals, are active and sentient in their own right.

The point is not to decide which view is right, but to recognize that we are really speaking about qualitatively different worlds. In the same breath, it becomes important to recognize that the cultural underpinning of colonialism is precisely the project of replacing one world for another, so that the claim of a single world accepting of different views can finally prevail (multiculturalism replacing multinaturalism). As Moana Jackson (1992) argues, "the history of colonization […] is a story of the imposition of philosophical construct as much as it is a tale of economic and military oppression" (2).

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One of the theorists that has done most to make the case for the existence of qualitatively different worlds is Brazilian anthropologist Eduardo Viveiros de Castro. However, much of the anthropological corpus can be read precisely as a record of misunderstanding the nature of the ontological difference between different groups of people. De Castro speaks about *equivocation*, which de la Cadena (2015) understands as "not […] a simple failure to understand. Rather it is 'a failure to understand that understandings are *necessarily* not the same, and that they *are not related* to imaginary ways of 'seeing the world' *but to the real worlds that are being seen*'." This is exactly what I referred to above as a difference of kind. She continues: "as a mode of communication, equivocations emerge when different perspectival positions – views *from* different worlds, rather than perspectives about the same world – use the same word to refer to things that are not the same" (110).

The supposed equivalence between Nature and Pachamama can be seen exactly as this kind of equivocation, a supposed equivalence of perspective about a fundamentally similar world, when in fact they convey radically different worlds. Nature, as I have explored throughout, is quintessentially modernist and, surely despite the best intentions of many advocates, cannot help but perpetuate colonial relations aimed at cultural erasure. It is ironic that many rights of nature advocates contrast Nature with the idea of resource, as if the first recognizes something special while the latter does nothing but flatten the world. In fact, these two notions share exactly the same structure, as they work at the same level of abstraction. There is no such thing as Nature in itself, just as there is no such thing as 'a resource'. There are many different things that are flattened and smashed together by the dominant idea of 'resource' (there are always infinite variations in woods, coal, oil, gas, kinds of foods, whatever may be the case). The idea of Nature is a radical oversimplification of worlds (just like resource is a radical oversimplification of affordances), which are always so complex and fundamentally mysterious as to resist – for careful cultures – being simplified within

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one single concept.[9] And there are many different worlds that are flattened and smashed together by the idea of Nature.

This is because Nature is a concept that can only arise out of cultures seeking universality, and hence justifications for their right to rule over everything. This kind of colonial thrust cannot be undone by using the same conceptual apparatus that is fundamental in propelling it! Nature is a globalist, universalist, totalizing concept that has nothing to do with any particular place. It has no features as such, which is why it can only be associated with vague and stereotypical features that unfailingly reproduce state power. It is in this sense that the supposed femininity of Nature arises. There is nothing obviously 'female' about 'Nature', and many indigenous cultures – Andean ones included – have a much more nuanced view of gendered pairings, as some places are perceived as female while other as male,[10] while others still as both. But Nature as One unifying concept has to choose, and it chooses for whatever helps state power most.

The figure of Mother Earth feeds on, and into, the stereotypical portrayal of femininity as nurturing and caring. Whether or not this conforms to the character of the natural world is a moot point, but the issue of caring deserves some discussion. The natural world is and has always been (to the vast majority of cultures everywhere) a capricious one. Even if it was conceived as feminine in some sense, and in some cases, it was a feminine that could kill as well as bring forth life. The capriciousness of nature is seen in the destructive events that, from the point of view of creatures, seem to come from nowhere and interrupt life as it had previously existed. This is why Isabelle Stengers (2015) calls the current era of concern with natural processes an "intrusion", that is to say something that invades with no regard for anyone's will. But she does not speak about the intrusion of Nature, but rather of Gaia, a mythical figure that, precisely because of its divinity, could do whatever it pleases with human life.

9 If we want a theological argument for this, we can look at Wendell Berry's work.

10 In Māori mythology, for example, Ranginui is the sky *father*. See Salmond (2017).

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Nature in this sense is not caring, but rather powerful enough to be indifferent. Human matters are none of its concern, which is precisely why it has to be appeased, because of its tremendous power and the arbitrariness with which it wields it. Natural processes intrude, and this is a truth that us moderns have afforded, temporarily, to forget. The whole project of modernity can be seen as an absurd plan to escape natural constraints, which for a while seemed to work. It at least worked to such an extent that it allowed moderns to disregard the capriciousness of the surrounding world, an awesome force that they shut out through different kinds of insurance: abundance, control, inventiveness of technique. But Gaia, sooner or later, intrudes, and the current era is precisely that time when moderns can no longer afford their illusions.

This is why some may think of nature as revengeful, which at least has the benefit of recognising natural violence and avoiding motherly abstractions. Revenge itself may not be, in the final analysis, a better way of conceiving the enveloping world, largely because indifference manages to account for more of its facets. It is hard to believe that whole species would be wiped out because of nature taking revenge, particularly because the image of the revengeful goddess seems to be accompanied by an idealisation of animal life: the goddess takes revenge on humans for having fallen from animal grace. Perhaps it is because of the successful erasure of cultural memory that moderns have started entertaining the idea that nature can be imagined as Mother Earth.

Is nature nurturing? In a sense, yes; it is the precondition of life. But this is banal, tautological: Nature (the interrelated processes of life) is the basis of life. Inasmuch as there is no life outside of 'nature', this version of nurturing is not very helpful. Instead, it may seem nurturing in that it offers things that many life forms find useful. But its capriciousness interrupts the gift, which can be withheld at any moment: going from abundance to scarcity, favourable to unfavourable conditions, life to death. This is but the condition of life as such.

'Mother Earth' does not describe a reality, whether ecological or cultural, but repeats unconscious modern tropes in a way that is ul-

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timately unthreatening to wider power relations that are still predicated on overcoming natural limitations to life.

As Tola (2018) shows carefully, the idea that nature is female works well with the idea of resource exploitation, because resources are exactly what the femininity of nature produces. And these resources then stand to be appropriated by the state as 'gifts of nature'. This is very ironic, especially if we consider that all of the legal documents surveyed in this chapter frame the rights of nature as intrinsically opposed to resource exploitation. The intentions of many activists involved in these legal texts are of course anti-extractivist! But the conceptual apparatus that they rely on, with roots explored in the previous chapter, hampers their efforts. This is not merely a theoretical argument. It remains the case, empirically, that both Ecuador and Bolivia have expanded their extractive industries considerably since passing rights of nature laws (see Chapter 6).The law itself, especially formulated in the way that we have seen so far, is mostly impotent in the face of state power. Rights for nature are first and foremost politics, and the concepts they use are key in understanding how they inscribe themselves in already existing power struggles.

The idea of Pachamama is a kind of touristification of Andean thinking. It is important to recognize that there are many Andean worlds and that the choice of indigenous terms already favors certain dominant communities (like the Aymara and the Quechua) over others. But even in its generalized form (that is, the form specifically crafted to resemble the universality of Nature), Pachamama is not a deity in the Christian sense, nor is it equivalent (another *view*) to Nature. Instead, Pachamama reunites many different terms (in different Andean languages) that more or less refer to the spirit that animates life, the suchness of being that is indescribable yet crucial for there to be anything at all. Many communities that live in intricately close relationships with their places recognize the basic fact that humans are not responsible for life processes, but rather are beneficiaries of these. Life processes themselves transcend human powers and make humans subordinate and, in a very real sense, dependent on their gifts. But the expression of the spirit of life, as it were, is apprehended through local things and situations.

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Indigenous conceptions tend to reflect the observable phenomenon that life communities differ greatly according to location. To suppose that they all express the same 'life spirit' is precisely to assimilate these views to a universalist Nature that a-modern societies do not tend to recognize. The life spirit that animates the beings of Māori, Sami, or Aymara only looks the same from the perspective of a modernist mind that already presupposes the existence of underlying sameness (*one* world).

De la Cadena (2015), in discussing Aymara thought in modern Peru, does not speak of Pachamama, but rather of *pukara*, which she characterizes (taking care to note that it is still an epistemic translation, and not her personal practice) as "a source of life, a condition for the relational entanglement that is the world of ayllu" (108). The concept of *ayllu*, a crucial one for the communities she worked with, designates the ensemble of beings that makes a place and through which pukara can be expressed. This concept, though crucial for Andean thought, is completely absent from rights of nature, because it is fundamentally local. You cannot have a universal declaration of the rights of ayllu, though it is through the recognition of ayllu authority that radically different legal and political orders may become possible.

De la Cadena is very careful to show the crucial misalignment between the expansion of the modern state (in this case, in Peru) and ayllu. Even when leftist politicians, like in the case of the agrarian reforms in the mid-20th century in Peru, adopt the concept, they mean something else, precisely because of their ontological universalism. Nobody is more acutely aware of these misalignments, and of their immediate consequences, than Indigenous People themselves. The question then arises: why have Indigenous organizations in both Ecuador and Bolivia supported the idea of granting rights to nature?

The most important thing to keep in mind in answering this question is that Indigenous communities are not timeless, changeless groupings. This is how they have been imagined throughout colonial history. We have seen that Sharma (2020) argues that the idea that Indigenous People naturally belong to certain places was instrumental in the development of the nation state and in extend-

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ing the state's power and control over all national territories (Indigenous reservations included). Not incidentally, rights discourses were important in the spread of national power from the beginning. Already in the 19th century, Western advocates for indigenous rights argued that Indigenous People needed to be protected by the state by being given rights to their particular places, from which they could not deviate. This was a mechanism of enclosure much more than a mechanism of granting meaningful recognition of the special, place-based relationships that often obtained between Indigenous People and places.

Historically, Indigenous People have moved about, like all human populations have, for millennia. The progress of colonialism and modernity has fixed the survivors in place, while making it almost impossible to realize the wealth of a-modern experiences and conceptions that have completely disappeared. In other words, Indigenous People today have been in the direct firing line of state power for centuries and are therefore very well versed in dealing with this power that always threatens their survival and that has routinely relegated them to what the state perceived as marginal lands. From an indigenous perspective, this is the background on which nature's rights appear. It is not as if in 2006 with the passage of the Tamaqua Borough ordinance, something was born in the world that finally gave Indigenous People tools to fight the state. Instead, the rights of nature are one of the latest expansions of state power into indigenous worlds, one that is much better in many ways than other alternatives, but one that does nothing to fundamentally challenge the power of the state (the one, in the final analysis, responsible for upholding rights).

With the exception of isolated tribes in the Amazon rainforest that have *chosen* not to engage with the modern world, all other Indigenous communities have been tasked for centuries with mastering a fine dance with the state, a dance that their survival depends on. From a modernist perspective, rights of nature seen as indigenous tradition made state law have accomplished a historic task. From an indigenous perspective, these rights are the next episode in a long series of nation-state capture of indigenous practice and thought. The Indigenous leaders involved in this capture under-

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stand that their apparent acquiescence to the terms of the state merely prepares the ground for the next round of conflict, for new demands that are made possible by the laying of another layer to the fundamentally conflictual history of Indigenous-state relations.

From Nature to Places, from Rights to Representation

If the point of the rights of nature is to move beyond modernist law, then the concept of nature might be an even bigger problem than the concept of rights. But the rights of nature are not limited to the history and practice so far explored. This modernist, universalist strand of rights has been quite successful so far, but it is not alone. There are other cases that have started to show radically new possibilities, not least because they are anchored in specific places as opposed to relying on the concept of Nature. Though on the face of it municipal ordinances in the US are of this kind, this is not so. Tamaqua Borough is simply a stand-in for Nature, but because the law is a municipal ordinance, it had to be 'reduced' to the area of the municipality. The municipality has no features at all, it is modernist flat space defined in an administrative way ('the municipality') and in relation to another administrative unit ('the resident').

Instead, there are a growing number of cases of rights for nature given to beings with their own names and specific features. Key among these have been a series of rivers, which is not surprising given how sentient they have appeared to many different cultures throughout history. Whanganui river in Aotearoa New Zealand is perhaps the most famous of these, but legal personality arrangements have also been proposed in relation to Ganga and Yamuna rivers in India, Atrato river in Colombia, and all rivers in Bangladesh. Besides these, Lake Eerie in the United State has had a short stint as a legal person,[11] while discussions are ongoing for legal personality arrangements for a Lagoon in Spain, a wetland in

11 The rights of Lake Eerie were quickly struck down by higher courts (Macpherson 2021a).

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Florida, and aquatic ecosystems as such in Europe, to name but the latest ones.

As I have shown in the case of Tamaqua, it is not enough to specify the name of a place in order to propose legal alternatives that make a decisive break with modernist conceptions. In other words, it is very much possible to have ecotheological rights for nature applied to particular places. What makes the situation analytically difficult is that a staggering number of conceptual combinations are theoretically and practically possible. As I will show later, when discussing the case of the Indian and Colombian rivers, many elements encountered so far are applied to those places as well. There we can witness a combination of apparently contradictory movements: totality thinking applied to particular places. The key to understanding this apparent contradiction is to see legal personality arrangements and rights of nature as always political moves that apportion power in different ways.

Besides the way in which nature is understood and legally codified, equally important is who has the power to represent it, and why. This issue is at the heart of all rights of nature; it is where the theoretical rubber hits the very practical road. In Tănăsescu (2016), I developed this aspect of rights of nature as being about who has the right to represent a nature with rights, and I still think it is a fruitful way of thinking about these rights as mechanisms of representation for newly created legal and political entities. The issue of representation is crucial precisely because of the conceptual tangles that I have so far tried to make clear: Who has the right to speak on behalf of Ecuador's nature has everything to do with the kinds of things that can be accomplished.

Similarly, granting rights to a specific entity (as opposed to nature as such) may continue reproducing power inequities inasmuch as the law remains vague as to who has the power to represent the newly created legal entity. In some cases, the representatives are specified, but the reasons for choosing them, as opposed to others, are opaque. If the rights of nature are always about who has the power to speak, then we must always ask for the reasons a certain group may be preferred over another (also see Tănăsescu 2021). It also matters how the law allows for a change in representatives if

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certain goals are not achieved. Finally, the issue of representation is the most promising one for accommodating legal pluralism, namely the meeting, on equal terms, of indigenous and western legal conceptions.

The ecotheological strand of rights unites the totality of Nature with that of Rights. Practice has started to show that these can be separated by applying rights to distinct places. But the most interesting and promising alternative is a complete divorce from totalities as such by focusing on legal status and representative arrangements instead of rights and general nature. There are several cases that exemplify most successfully the way in which a territory is related to its inhabitants, and the potential of thinking locally together with groups that are privileged in representing new legal entities. This is the case of Te Urewera, the home of Tūhoe in Aotearoa New Zealand and the first case of rights for nature in that country. Let us examine it in detail.

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