**BAUDL Open Pack**

River Rights – Aff

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# 1AC

### 1AC---Sustainability

#### The advantage is sustainability:

#### Current environmental law is focused only on the needs of humans because it views the environment as the property of humanity

David R. Boyd 17, associate professor of law, policy, and sustainability at the University of British Columbia, 2017, The Rights of Nature: A Legal Revolution That Could Save the World, unpaginated ebook edition

Humans today have a deeply troubled relationship with other animals and species, and with the ecosystems upon which all life on Earth depends. We purport to love animals but regularly inflict pain and suffering upon them. Every year, according to the UN’s Food and Agriculture Organization, humans kill over 100 billion animals—fish, chickens, ducks, pigs, rabbits, turkeys, geese, sheep, goats, cattle, dogs, whales, wolves, elephants, lions, dolphins, and more. Scientists are in agreement that human actions are causing the sixth mass extinction in the 4.5-billion-year history of the planet. Species are being declared extinct every year, and we are pushing thousands more to the brink of oblivion. Humans are damaging, destroying, or eliminating entire ecosystems, including native forests, grasslands, coral reefs, and wetlands. Ancient, complex, and vital planetary systems—the climate, water, and nitrogen cycles—are being disrupted by our actions.

Homo sapiens emerged from Africa less than 200,000 years ago. Thanks to their fertility, adaptability, and ability to use technology, our ancestors colonized the entire Earth around 12,000 years ago, including the continents we now call Europe, Asia, Australia, North America, and South America. Over the course of the past two centuries, our population has exploded, growing from one billion in 1800 to 7.5 billion today. While birth rates are falling the world over, the latest UN estimates indicate that increased longevity and improved health are pushing us toward a population of ten billion people by 2050.

To meet the needs and desires of this booming population, the global economy has also exploded, from a worldwide GDP of about one trillion dollars a century ago to more than 100 trillion dollars today. Much of this economic growth has been driven by ever-increasing human appropriation of land, forests, water, wildlife, and other “natural resources.”

Our environmental impact has grown exponentially because of population and economic growth. Humanity’s collective ecological footprint is estimated to be 1.6 Earths, meaning we are using natural goods and services 1.6 times faster than they are being replenished. This is largely the result of high levels of consumption in wealthy nations. Geologists, a group hardly known for hyperbole, have named this geological era the Anthropocene because of the scope and scale of human impacts on the Earth.

Our ongoing use and misuse of other animals, species, and nature is rooted in three entrenched and related ideas. The first is anthropocentrism— the widespread human belief that we are separate from, and superior to, the rest of the natural world. Through this superiority complex, humans see ourselves as the pinnacle of evolution. The second is that everything in nature, animate and inanimate, constitutes our property, which we have the right to use as we see fit. The third idea is that we can and should pursue limitless economic growth as the paramount objective of modern society. Anthropocentrism and property “rights” provide the foundations of contemporary industrial society, underpinning everything from law and economics to education and religion. Economic growth is the principal objective for governments and businesses, and it consistently trumps concerns about the environment.

These ideas have a long history. The ancient Greek philosopher Aristotle believed that animals lacked souls and reason and therefore, as inferior creatures, were appropriately used as resources by man. As he wrote in Politics, “Plants exist for the sake of animals, and animals for the sake of man—domestic animals for his use and food, wild ones for food and other accessories of life, such as clothing and various tools. Since nature makes nothing purposeless or in vain, it is undeniably true that she has made all animals for the sake of man.” Aristotle also worked with Plato to develop the concept of a hierarchical ladder of existence that ranked animals and plants. Later Christian philosophers built upon this, devising the Great Chain of Being that placed humans near the top of the ladder, just below God and the angels. Non-human animals languished below us, while snakes, insects, and creatures incapable of movement occupied even lower rungs. The chain imposed a strict hierarchy on all life forms.

Genesis, the Christian creation story, states that God made humans in his image and granted us “dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.” Humans were given clear instructions: “Be fruitful, and multiply, and replenish the earth, and subdue it.” Not all Christians viewed the rest of creation as subject to human dominion. St. Francis of Assisi advocated for the equality of all creatures, referring to the sun, the Earth, the water, and the wind as his brothers and sisters. St. Francis, however, was an outlier.

During the seventeenth and eighteenth centuries, some of history’s most influential thinkers reinforced the anthropocentric perspective, and the place of animals in human society took a turn for the worse. Non-human animals were deemed unable to speak, reason, or even feel. French philosopher René Descartes forcefully expressed the idea that “animals are mere machines” and wrote, “The reason animals do not speak as we do is not that they lack the organs, but that they have no thoughts.” Descartes concluded, “Man stands alone.” Similarly, German philosopher Immanuel Kant wrote, “Animals are not self-conscious and are merely a means to an end. That end is man . . . our duties toward animals are merely indirect duties toward humanity.”

A contrary and more progressive attitude toward animals was suggested by nineteenth-century British philosopher Jeremy Bentham. He concluded that the critical moral question for how we should treat animals “is not Can they reason? nor, Can they talk? but, Can they suffer?” In his view, some animals could indeed feel pain, and therefore had the right not to be harmed. Bentham’s ideas did not prevail in his own time, but they eventually influenced Peter Singer, author of the 1975 best-seller Animal Liberation that kickstarted the modern animal rights movement.

Anthropocentric ideas are still in vogue today. In his 2004 book, Putting Humans First: Why We Are Nature’s Favorite, libertarian philosopher Tibor R. Machan wrote, “Humans are more important, even better, than other animals, and we deserve the benefits that exploiting animals can provide.” Because humans are the most important species, Machan continued, “it is right to exploit nature to promote our own lives and happiness.”

The notion of human superiority is even entrenched in landmark international environmental agreements. The first global eco-summit, held in Sweden in 1972, produced the Declaration of the United Nations Conference on the Human Environment (more commonly known as the Stockholm Declaration). It proclaimed, “Of all things in the world, people are the most precious.” The 1992 Earth Summit in Brazil resulted in the Rio Declaration on Environment and Development, which stated, “Human beings are at the centre of concerns for sustainable development.”

The notion that humans are distinct from, and superior to, other animals permeates Western legal systems, producing outcomes that are at odds with reality. For example, any biologist will tell you that humans are animals. But the law disagrees. Black’s Law Dictionary, the most widely used law dictionary in Canada and the United States, still defines an animal as “any animate being which is endowed with the power of voluntary motion. In the language of the law the term includes all living creatures not human” (emphasis added). Other legal definitions of “animal” are even more absurd. In the U.S., the Animal Welfare Act includes a definition of animal that explicitly excludes rats, mice, reptiles, amphibians, fish, and farm animals. Why? To ensure that even the limited protections offered by that law are not available to animals used in agriculture or research or caught in fisheries.

Property

The idea that nature is merely a collection of things intended for human use is one of the most universal and unquestioned concepts in contemporary society. Hundreds of years ago, influential legal scholar William Blackstone, author of the authoritative Commentaries on the Law of England, wrote, “The Earth, and all things herein, are the general property of mankind, exclusive of other beings, from the immediate gift of the creator.”

It is remarkable to reflect on the fact that although there are millions of species on Earth, a single species of hyperintelligent primates—Homo sapiens—has laid claim, through the assertion of legal ownership, to almost every square metre of the 148 million square kilometres of land on the planet. There is virtually no more terra nullius, or “nobody’s land,” as the famous explorers described land uninhabited by their kind of people. In today’s world, land is either private property or state-owned property.

Private or public, it’s all owned by humans.

Among the planet’s few exceptions to the universal assertion of human ownership are a pair of places, linked by their remoteness and utter inhospitality to humans. One is a desolate and uninhabited area of the Antarctic known as Marie Byrd Land. It’s protected from future human ownership claims through an international treaty. Another chunk of land where until recently humans did not claim ownership is Bir Tawil, an 2,072square-kilometre stretch of mountains, sand, and rock in the desert between Egypt and the Sudan. A longstanding boundary dispute between the two African nations resulted in both asserting jurisdiction over a larger parcel of productive land, known as Hala’ib, and renouncing their ownership of Bir Tawil. In 2014, American Jeremiah Heaton journeyed to Bir Tawil and staked an ownership claim. Heaton had promised to make his daughter, Emily, a real princess and was seeking to keep his word. He made up a flag for what he calls the Kingdom of North Sudan and planted it in Bir Tawil on Emily’s seventh birthday. As the self-proclaimed king, Heaton was able to fulfill his promise. He even claims to have opened a European embassy in Copenhagen. Unbeknownst to Heaton, British journalist Jack Shenker had made the same journey four years earlier, planting his flag and asserting sovereignty over and ownership of Bir Tawil.

The high seas—the open ocean beyond any country’s jurisdiction—are another refuge from humanity’s sweeping assertion of ownership. Yet, while not “owned,” the high seas are treated as a global commons for human exploitation, a shared resource where massive factory fishing trawler nets vacuum up life from the seas and renegade whaling nations still hunt whales under the guise of scientific harvests. Deep-sea mining, previously unthinkable, is now becoming a reality.

In addition to owning all the land, humans claim ownership of the species that live upon that land: Animals are regarded as property, things, or objects, no different in the eyes of the law than shoes, tables, or trinkets. This includes both domestic and wild animals. From a legal perspective, ownership of an animal includes the rights to possess, use, transfer, dispose of, and exclude others from taking it. Wildlife, even on privately owned land, is owned by state and provincial governments. For example, under New York’s Environmental Conservation Law, “The State of New York owns all fish, game, wildlife, shellfish, and protected insects in the state.” Legislation in Oregon is more concise: “Wildlife is the property of the state.” Courts have reinforced these rules of ownership. In a prosecution of a man for illegally hunting deer, a court held that poachers “have no respect whatsoever for the State of Mississippi’s sovereign ownership of such magnificent God-given creatures of the wild, entrusted to mankind for his consumption and/or enjoyment.” Animals that are sold are considered “goods” under the U.S. Uniform Commercial Code, just like televisions, trucks, or toys.

In Canada, the law is the same. Wildlife and fish belong to the government until they are lawfully captured or killed, at which point they become private property. Section 2 of the BC Wildlife Act is called Property in Wildlife and states, “Ownership in all wildlife in British Columbia is vested in the government. . . . A person who lawfully kills wildlife and complies with all applicable provisions of this Act and the regulations acquires the right of property in that wildlife.” Manitoba’s Fisheries Act states, “The property in all wild fish, including wild fish that have been unlawfully caught, is vested in the Crown, and no person may acquire any right or property in such fish other than in accordance with this Act.” The Supreme Court of Canada has confirmed that “the fisheries resource includes the animals that inhabit the seas.” No matter where wildlife lives, it belongs to humans.

When you stop to think about it, our arrogance is breathtaking. We’ve divided the diversity of life on Earth into two categories—people and things. Us and them. We’re the only species with rights to the land, water, wildlife, and ecosystems of the planet. Old-growth forests, rainforests, cloud forests, rivers, lakes, soil—these natural wonders are all considered natural resources, and thus property owned by humans. To say we share this planet with millions of other species is ecologically incontrovertible, but legally incorrect. If we are the only species with rights, we are the only species that really matters.

While property rights are deeply rooted in Western legal systems, the concept of property responsibilities is largely absent. In one-third of a second, Google produced 31,700,000 hits for the phrase “property rights,” but only 19,000 hits for “property responsibilities.” Similarly, Google found 154,000,000 results for “human rights,” but only 41,000 for “human responsibilities.”

Indigenous Worldviews

There are exceptions to the widespread beliefs of human superiority, property rights, and the primacy of economic growth. A contrasting perspective asserting that non-human entities have rights, and that humans have corresponding responsibilities, has deep roots in cultures around the world. More than 1,000 years ago, a Sufi scholar wrote a book called The Animals’ Lawsuit Against Humanity, in which all members of the animal kingdom—domestic and wild, from bees and mules to frogs and lions— asserted that their rights were being systematically violated by humans. Adherents of Jainism, Hinduism, and Buddhism endorse, to varying degrees, the doctrine of ahimsa, which advocates reverence for all life and non-injury to all living things.

Indigenous cultures across the world cultivate complex understandings of human responsibilities toward the natural world. Despite centuries of Western colonial thought, many still perceive human beings as interdependent—part of, rather than separate from and superior to the rest of the natural world. A key element of the legal systems of many Indigenous cultures is a set of reciprocal rights and responsibilities between humans and other species, as well as between humans and non-living elements of the environment. Luther Standing Bear described the beliefs of his people, the Lakota: “The animals had rights—the right of a man’s protection, the right to live, the right to multiply, the right to freedom, and the right of man’s indebtedness—and in recognition of these rights the Lakota never enslaved the animal, and spared all life that was not needed for food and clothing.” In an essay called “The Right of Animal Nations to Survive,” Haudenosaunee scholar John Mohawk wrote, “The Indian cultures accept the legitimacy of the animals, celebrate their presence, propose that they are ‘peoples’ in the sense that they have an equal share in this planet and, like peoples, have the right to a continued existence. Animals have the right to live as animals. If all of the above are true, humans have no right to destroy animal habitat, or hunt or fish them to extinction.” Dr. Gregory Cajete of the University of New Mexico, a Tewa Indian, wrote, “Among Native people animals have always had rights, and were equal to human beings in terms of their right to their lives and to the perpetuation of their species.”

New wrongs can and do emerge as our perceptions of what constitutes ethical behaviour evolve. There was a time when slavery and the ownership of other human beings was not seen as wrong by the majority of people. But beginning with a handful of individuals, a movement emerged denouncing slavery as a brutal and barbaric practice. Defenders of the status quo argued that slaves were less than human, and therefore not worthy of moral consideration. As pressure mounted, defenders of slavery offered to improve standards of treatment. Abolitionists were not impressed. Eventually, the beliefs of the majority shifted from acceptance of slavery to abhorrence. Today, the right not to be enslaved is a basic human right. Rights are symbolically and politically powerful, as the history of the civil rights, women’s rights, Indigenous rights, and gay rights movements demonstrates. They are not a magic wand that can be waved to solve problems instantly, but they are a proven means of securing progress in the way society embraces previously mistreated communities.

Changing Values, Changing Cultures, Changing Laws

Evolution—of ideas, law, technology, even life itself—is not a smooth or gradual process. Instead it happens in fits and starts, in what scientists call punctuated equilibrium. Think of a geological fault line, where two of the Earth’s tectonic plates overlap. The plates are in constant motion, as they have been since all the continents were united in one large land mass. The plates move slowly, just a few centimetres every year. They would move faster or further but cannot because other plates are in the way. Pressure builds over decades, centuries, or even millennia. Then the pressure reaches a breaking point, the plates slide, and the earth quakes.

That same process happens with science, culture, and laws. Ideas push against the status quo. Activists ramp up the pressure, using every lawful means and sometimes even breaking the law. They are chastised, ridiculed, imprisoned, and killed. But eventually, opinions, values, and paradigms shift.

Our beliefs and values about other animals, other species, and the Earth are undergoing a sea change. Most people today are horrified by stories of cruelty to individual animals or the extinction of endangered species. We’ve all seen the images of Earth from outer space, a tiny blue dot in an immense universe of stars, planets, black holes, and dark matter. There is a growing sense that something is amiss in our relationship with the unique planet that we call home. Yet our laws and our actions have not yet changed to keep pace with the evolution of our values.

Protecting the environment is impossible if we continue to assert human superiority and universal ownership of all land and wildlife to pursue endless economic growth. Today’s dominant culture and the legal system that supports it are self-destructive. We need a new approach rooted in ecology and ethics. Humans are but one species among millions, as biologically dependent as any other on the ecosystems that produce water, air, food, and a stable climate. We are part of nature: not independent, but interdependent. As conservationist and writer Aldo Leopold wrote, “Conservation is getting nowhere because it is incompatible with our Abrahamic concept of land. We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect.” Similarly, American philosopher Thomas Berry wrote about an “Earth community,” referring to all life forms, human and “other than human.” From the radical perspective of Leopold and Berry, other species and ecosystems are not merely for our enjoyment and exploitation.

The legal revolution described in this book has the potential to achieve three vital outcomes:

reducing the harm suffered by sentient animals, stopping human-caused species extinction, and protecting the planet’s life-support systems.

To achieve these objectives, we urgently need to establish and enforce a new set of rights and responsibilities. The rights belong to non-human animals, other species, and ecosystems. The responsibilities rest with humans. Science and values have evolved—now our laws, institutions, cultures, economies, and behaviours need to do the same.

#### That structurally tilts environmental law toward human interests which guarantees destruction of water resources and the broader environment---only conferring rights directly to river ecosystems can systemically prioritize protection over unsustainable growth

Linda Sheehan 19, Advisor, Global Alliance for the Rights of Nature; Linda Sheehan Consulting, 2019, “IMPLEMENTING NATURE’S RIGHTS THROUGH REGULATORY STANDARDS,” Vermont Journal of Environmental Law, http://files.harmonywithnatureun.org/uploads/upload926.pdf

The stated purpose of many current environmental laws and their implementing regulations is to achieve “healthy” systems.17 For example, the Marine Mammal Protection Act (MMPA) states that the primary objective of marine mammal management “should be to maintain the health and stability of the marine ecosystem.” 18 Similarly, the National Environmental Policy Act (NEPA) “recognizes that each person should enjoy a healthful environment” 19 and “encourage[s] productive and enjoyable harmony” with the environment. 20 It further encourages each person to exercise their “responsibility to contribute to the preservation and enhancement of the environment.”21 Similar language is found at the state level.22 For example, the California Coastal Act states that “[u]ses of the marine environment shall…maintain healthy populations of all species of marine organisms.”23

The desired “healthy” environment, however, has failed to materialize because, as written, the laws cannot structurally achieve these goals. 24 Environmental laws have addressed some acute issues, such as large sewage and industrial pollution releases, but have failed to prevent longterm, devastating harm, such as climate change and species extinctions.25 Lack of funding, political backtracking, understaffing, weak enforcement, and other challenges certainly have created obstacles for success.26 A lack of understanding of systems science when the laws were adopted exacerbates such struggles. 27 Our single-stressor laws simply did not envision systemic shifts such as pollution-caused, runaway climate change.

However, fully implementing existing environmental laws and associated regulations would still fail to ensure a thriving planet because the laws themselves are fundamentally flawed. 28 Rather than recognize that nature and humans are interconnected, these laws assume that we can isolate and control elements of the natural world as we choose. Most federal U.S. environmental laws were developed over 45 years ago as reactions to human-caused tragedies such as long-term DDT contamination, dead Great Lakes, and regular river fires.29 The shared intent of these laws was to set goals that would sustainably protect ecosystems and species and hold users of the environment to those goals. 30 Despite this benevolent intent, however, the structure of these laws reflects a societal perspective that the natural world is in essence a resource to be manipulated for profit and other human desires. The ideology behind these laws, in other words, is not far detached from the ideology that generated the environmental harm the laws were designed to prevent.

Consistent with a frame of nature as economic resource, our environmental laws legalize and externalize the impacts of pollution, rather than more generally apply bans. 31 The laws further place the burden of proof on those impacted to show pollution is harmful, rather than on pollution dischargers to show it is not.32 They fail to include provisions to pay back our collective debt to nature through affirmative, sweeping restoration activities or broad establishment of habitat reserves. 33 An economic system that treats nature as capital pushes back on such approaches, which are inconsistent with natural systems’ perceived role as primarily an economic good.

Our system of law is nested within a larger context of societal attitudes and assumptions that impact both the law’s development and implementation.48 There is a critical ideological bias with regard to natural systems, which “treat[s] the human will and its wants as the center around which” implementation of environmental laws must revolve.49 Faced with this bias, the environment will lose—and, since we are connected, so will we.

Because our societal and economic framework treats the natural world as a resource for humans first and foremost, our environmental laws and the regulations implementing them fall short of achieving the “healthy” result they state they seek. 50 In practice, they pursue at best an environmental status of “not too degraded,” and at worst, not irreversibly so.51

What, then, would science-based environmental laws and regulations that implement the inherent rights of nature look like? How would we define an end result that respects nature’s rights? And how do we engage scientists in defining “healthy ecosystems and species,” towards protecting nature’s own right to flourish?

Science has already guided the development of regulatory standards under current environmental laws. 52 These standards helped clean up serious pollution and rescue near-extinct species. 53 Lessons learned from the development of these standards can guide the development of a new system of regulatory standards that recognizes nature’s inherent rights to exist, thrive, and evolve.

The first element of CWA water quality standards is the “designated uses” of the protected waterways. 58 A waterbody’s “designated uses” include a laundry list of extractive and discharge activities, including industrial, municipal, and agricultural uses. 59 The list also includes protection of the waterway for fish and other species. 60 The list itself generally fails to prioritize certain uses over others, though some states do prioritize designated uses by statute. 61 Importantly, these lists legalize continued contamination and extraction of the waters of the United States and exempt key sources of pollution,62 despite mounting harm from exempt sources63 and the CWA’s lofty goals.64 By failing to eliminate the discharge of pollutants 25 years past the original deadline, the CWA prioritizes existing human waterway uses over the well-being of waterways and nature’s needs.65 Human pressure will increasingly marginalize waterways’ needs.

By contrast, a nature’s rights-based approach to regulation would recognize that we must protect the well-being of waterways, both from a moral and a utilitarian perspective. The “moral test of government, and the measure of its strength, is how it treats its most vulnerable members—particularly with respect to meeting their most basic needs.” 66 From a utilitarian perspective as well, sound waterways are critical not only to human health, but to life itself.67

Rather than formulating a laundry list of individual designated uses that focus on human extraction, a rights-based regulatory approach would prioritize protection of natural water systems systemically and for basic needs first, through strategies such as significantly enhanced pollution controls, mandatory groundwater use regulations, flow assurances, and restoration projects. Prioritization of a rights-based approach for waterways’ basic needs extends as well to protection of the human right to water for basic needs, such as drinking, personal sanitation, and cooking – again, above the use of water simply for profit. 68 Only by ensuring the integrity of water systems for fundamental environmental and human needs can we ensure that human use beyond such needs is healthy.

New research has deconstructed “natural systems” into measurable elements. 98 Each of these elements, both individually and combined, are important indicators of ecosystem health. 99 For example, new studies propose that a healthy ecosystem is one that maintains its structure (organization)100 and function (vigor) 101 over time, in the face of external stress (resilience). 102 Such scientific advancements are critical for U.S. environmental regulatory standards to transition and reflect nature’s right to health.

Finally, a successful regulatory system includes not only substance but also procedure. That is, waterways themselves should have a voice in policy deliberations. For example, a nation or state could appoint independent expert “guardians” to speak for the natural systems and represent their interests during the regulatory process and public comment. 103 This would improve regulations to meet natural systems’ needs, despite prevailing economic biases and forces.104

CONCLUSION

Ethical considerations always underlie law and policy decisions. 105 Ignoring the role of ethics and values does not necessarily make policymaking objective, scientifically or otherwise. 106 On the contrary, decision-making which ignores ethical considerations simply reflects dominant ethics and values, whether held consciously or unconsciously.107

Careful examination of values and goals creates clear policy messages that foster the science needed to achieve desired results, such as healthy ecosystems and species populations. Today, the dominant–often unexamined–societal goal is infinite economic growth, fueled in large part by consuming nature as an economic “resource.”108 Given that the earth is finite, this economic goal will continue to degrade natural systems, which is simply “not sustainable.” 109 However, current environmental laws implicitly accept this goal, 110 and so at best can only slow degradation, rather than achieve healthy ecosystems.111

Implementing the ethics and values of “nature as a rights-holder,” rather than “nature as property,” will yield new results. For example, a water allocation system that recognizes both inherent human and nature rights will first allocate water to sustain the fundamental needs of ecological and human populations, and only then serve privatization and profit with the remainder.

Realizing “nature as a rights-holder” in law and policy requires a new narrative, one that seeks for us a goal of becoming a “mutually-enhancing human presence” that gives back more than we take. 112 Faced with decisions, we can ask whether an “action enhances the integrity, health, and functioning of the whole Earth Community.”113 When we critically examine our choices in this way and continually act to improve, we and the earth benefit.

#### The anthropocentric ‘property’ view of nature is an inherent logic that must be challenged directly---the plan allows a managed way out of the infinite growth mindset

Mark Hawkins 21, MSc in Environment, Politics and Development from the University of London, January 2021, “Imagining a Post-Development Future: What can the Degrowth and Rights of Nature Debates Offer Each Other,” https://www.researchgate.net/publication/348785651\_Imagining\_a\_Post-Development\_Future\_What\_can\_the\_Degrowth\_and\_Rights\_of\_Nature\_Debates\_Offer\_Each\_Other

Sustainable Development as a guiding ideology has proven to be unsustainable. The recently published Global Biodiversity Outlook 5 analysing the progress made on the 2010 targets agreed upon in Aichi, Japan, rather optimistically details key successes thus far in reaching targets for the prevention of biodiversity loss. However, the authors cannot help but note that of 60 specific elements set out only 7 have been achieved, with 38 showing some progress (largely in terms of establishing systems for data gathering and other such preliminary activities) and 13 show no progress, or show a drift away from targets (SCBD 2020). More soberly the 2020 Living Planet Report (LPR) notes a 68 per cent decline in monitored global vertebrate populations since 1970, with a high of 94 per cent in South America and the Caribbean and a low of 24 per cent in Europe and Central Asia (WWF 2020). The Mauna Loa Observatory notes parts per million of CO2 for September 2020 are at 412 up from 408 last year, and from the early 300s in the 1950s (co2.earth [online]), while artic sea ice is melting at far higher rates than predicted (Jansen 2020). This is, of course, only the tip of the iceberg. It is becoming increasingly apparent that paying lip service to environmental topics while continuing with the same economic growth centred, globalised socio-environmental system is not enough.

In this context this essay has two interrelated aims, to be achieved by using a comparative approach. A number of more radical strategies to deal more robustly with the rapidly accelerating crisis have been put forward and this essay seeks to analyse two of them together in an effort to move towards creating an “ontological plurality” of separate yet supporting ways of addressing the contradictions that are moving us so quickly towards a precipice (Nightingale et al. 2020 p.345). Secondly, I seek to reiterate the importance of moving beyond current paradigms towards a “great transformation” (Beling et al. 2018 p.304).

To do this I first set out the key concepts to be addressed. Firstly, by looking at the key concepts I will be using, then by looking at degrowth and the rights of nature (RoN) movements, their origins and how they are linked to ideas of hegemony and the frontiers of economic extraction. I then go on to look at some key weaknesses of the two movements. For degrowth this is largely theoretical as it has not been adopted to any meaningful degree anywhere, despite gaining traction among environmental groups, academics and increasingly appearing in news sources. For the RoN, I will focus on some key examples of its adoption, with a particular focus on Bolivia and Ecuador where these rights have been adopted as integral parts of the new constitutions of those countries.

I find that degrowth is particularly weak when it comes to analysing the frontiers of extraction, tending to focus on productive activities and modes of organization in industrial core countries, especially Europe. This is despite the fact that, in terms of social justice, the worst effects of growth can be seen at these frontiers, where accumulation by dispossession is rampant and dispossessed groups, especially Indigenous peoples, bear the brunt of resource extractions negative externalities, while benefits are accrued elsewhere. This resource extraction represents the bedrock of global economic growth. Degrowths lack of adoption is a further weakness of the movement and speaks to the difficulty of challenging the hegemonic character of growth, with its ubiquitous nature in modern imaginings of progress and development, and its fundamental usefulness to a wide array of actors. In this context the RoN's connection to Indigenous worldviews and its wide and relatively rapid spread means it merits a place in the degrowth playbook.

For the RoN I find, through an analysis of Bolivian and Ecuador, that despite some moderate success in specific cases, the lofty goal of achieving a more holistic, less anthropocentric national outlook in the context of a long history of extraction-caused devastation through their adoption has faced a major road block in the form of growth. Growth, in this context, takes the form of a neo-extractivist economics whereby increasing material flow out of the country forms the primary strategy for development and poverty alleviation. The end result of the revolutionary Morales and Correa administrations has been further encroachment on Indigenous land and increasing threats to the last bastions of biodiversity in these two nations, indicating a general failure in terms of the RoNs goals. Here degrowth could serve both as a counterhegemonic discursive tool as well as a source of policies through which to achieve the good life without environmental destruction or the dispossession of Indigenous groups.

Finally, I look at these two collective theories in the context of modernity itself, looked at as a set of inherent logics. By ‘inherent logic’ I mean those values that exist, often below the surface of the collective conscious, that mould and limit the scope of action and thought. These logics exist partly in human minds, and more completely in public discourse, policy construction, governance arrangements and so on. I find that these two movements are mutually supporting in that they target two of the greatest logics at the centre of modernity and the current crisis, the need to grow economic activity and material throughput in order to prosper and anthropocentrism founded on the concept of the human-nature duality. Degrowth offers space to imagine a way to organise society to achieve prosperity without constantly increasing economic activity and material throughput. The RoN, both through laws inherent connection to culture and due to the ideas regarding natures inherent value beyond the human at the core of this movement, challenges anthropocentrism as a central logic withing society. Challenging such core tenants of modernity will likely be necessary should we wish to build a better world in the ruins of modernity.

#### Rivers are key---they’re the lifeblood of the earth and river rights set a strong foundation for broad recognition of nature’s rights

Monti Aguirre 20, Latin America coordinator of International Rivers; and Grant Wilson, executive director of the Earth Law Center, 11/11/20, “Opinion: Time to recognise and respect rivers’ legal rights,” https://www.thethirdpole.net/en/climate/opinion-time-to-recognise-and-respect-rivers-legal-rights/

Our new report, produced in collaboration with the Cyrus R. Vance Center for International Justice, finds that courts, legislatures and indigenous authorities are increasingly recognising such natural rights, with a growing emphasis on rivers. Important judicial and legislative developments took place in 2019 and 2020 in Bangladesh, Colombia, Uganda, Brazil and the United States, among other jurisdictions. In September, environmental groups called on Ecuador’s highest court to enforce constitutional rights of nature to protect an incredibly biodiverse freshwater ecosystem from mining. In the United States, several indigenous groups have recognised the rights of rivers, including the Yurok with respect to the Klamath river and the Nez Perce general council on the Snake river.

In South Asia, earlier this year Bangladesh’s highest court affirmed that all rivers in the country are “living entities” and appointed a government agency to act as their guardian. In India, in March 2020, the Punjab and Haryana High Court passed an order declaring Sukhna lake in Chandigarh city a living entity, with similar rights as a person. These decisions followed a remarkable ruling in 2017 by the Uttarakhand High Court in India recognising the legal personhood of the Ganga and Yamuna rivers; a ruling later stayed by the Supreme Court of India.

Our legal systems are failing

Released on the heels of a United Nations summit focused on the alarming loss of global biodiversity, our report offers insight into how emerging legal precedent on the rights of nature can offer significant remedy. And that remedy can’t come soon enough.

Rivers are the lifeblood of the planet. We rely on them for drinking water, fishing, agriculture and recreation. Many rivers are also considered sacred. Rivers flow not only with water but with life, nurturing a magnificent array of fish, birds and other species, from the headwaters to the ocean. As the Uttarakhand High Court declared in its 2017 ruling, rivers “are breathing, living, and sustaining the communities from mountain to sea”.

But we are killing our rivers. Pollution, dams and the climate crisis have left waterways in a perilous state. According to the World Wildlife Fund, two out of every three people experience a freshwater shortage for at least one month every year, and populations of freshwater animals have declined by more than 80% since 1970. Clearly, our existing legal frameworks to protect rivers are failing.

Unfortunately, the precipitous decline of rivers is entirely predictable. Most legal systems treat rivers as mere human property, with no rights of their own. Our current economic system in many respects incentivises the wanton exploitation of rivers – including their water, species and ecosystem functions – in order to maximise profits. Environmental laws offer some protections, but they fail to challenge this paradigm or address the root causes.

Treat rivers and forests as ‘legal persons’

Instead of seeing water and rivers as commodities to be owned and exploited, a rights of nature framework acknowledges that nature has its own interests which must be respected by humans. Importantly, it allows legal actions to be brought directly on behalf of rivers themselves, not merely as entities owned by human beings. By recognising rights of nature, courts and legislatures can help preserve natural ecosystems for future generations and for everyone who relies on them.

Although they may seem novel, the rights of nature fit comfortably in modern legal systems. The law has always recognised the existence of non-human legal “persons”. If corporations and ships can be legal persons, there is no reason why a river or forest cannot. We can also create new categories of rights-holders altogether.

Like corporations, ships or children, rivers can have designated guardians to represent their interests. As far back as 1972, William Douglas, a United States Supreme Court justice, suggested that “those people who have a meaningful relation to that body of water — whether it be a fisherman, a canoeist, a zoologist, or a logger” could be recognised as representatives of a river.

Today, that suggestion has become a reality. Courts and legislatures around the world have recognised or created bodies that can speak on a river’s behalf. Te Awa Tupua is represented by a group of guardians appointed by the government and local Māori. In Colombia, the Constitutional Court has created a comprehensive governance structure for the Atrato river, which is charged with conservation, maintenance and restoration. And in Bhutan, the Royal Court of Justice recently devised new rules allowing environmental cases to be brought by individuals acting as “trustees of nature”. Our research shows that all over the world, rights of nature are not just an idea: they are a concrete reality.

The rights of nature movement is being led by a vibrant coalition of lawyers, activists and scientists. Indigenous groups and concepts have been crucial to its development. Te Awa Tupua was created as part of a treaty settlement negotiated by Māori people, and the Atrato river case was driven by the indigenous and Afro-descendant communities that have relied on the river for hundreds of years. Western legal systems could learn much from indigenous legal systems. Concepts such as Māori kaitiakitanga (stewardship) and Andean sumak kawsay (living well) reflect a worldview in which humans owe obligations to their natural environment. By enshrining these principles in formal and customary law, indigenous systems have long recognised our shared dependence on nature. Rights of nature offer an opportunity for other legal systems to learn from this insight.

As rights of nature laws and policies proliferate, a coalition of leading environmental organisations, scientists, politicians, indigenous leaders and others are advancing a Universal Declaration of the Rights of Rivers, which describes the basic rights all rivers should be entitled to. It will serve as a legislative starting point for governments that wish to pursue legal recognition of the rights of rivers. Already, Jorge Octavio Villacaña Jiménez, a politician in Oaxaca, Mexico, is proposing state-wide rights of rivers legislation inspired by the declaration, and many are soon to follow.

Rights of nature are no panacea. Restoring our long-neglected rivers will require extensive and immediate measures by governments, courts, companies and civil society. But rights of nature provide a framework for radical action. They translate our ethical and spiritual obligations into legal systems and establish far-reaching enforceable rights and duties. Recognising nature’s legal personality is something we owe to future generations and to the environment.

#### An economic system that prioritizes corporate rights over rights of nature guarantees unsustainable growth and collapse---techno-fixes can’t solve, only re-drawing the boundaries of the economy within biophysical limits can stave off extinction

Shannon Biggs 17, co-founder and Executive Director of Movement Rights and co-founder of the Global Alliance for the Rights of Nature, et al., November 2017, “Rights of Nature & Mother Earth: Rights-Based Law for Systemic Change,” <https://www.ienearth.org/wp-content/uploads/2017/11/RONME-RightsBasedLaw-final-1.pdf>

As humanity fast-tracks towards the collapse of our planetary systems, we sought to articulate a shared vision toward a new economy based on living in balance with natural systems; where the rights of humans do not extend to the domination of nature. We questioned the viability of a global economy whose jurisprudence places property rights above all; recognizes corporate rights as the most sacred of property rights; subordinates human rights and the collective rights of Indigenous Peoples to corporate rights; and where Nature is not recognized as having any intrinsic rights at all.

We discussed the power and possibility of an emerging body of law—recognizing legal rights for ecosystems to exist, flourish and regenerate their vital cycles—as a necessary part of placing our human laws in alignment with Nature’s laws, and our human actions and economy in an appropriate relationship with the natural order of which we are part. Major points of discussion included the following:

• Living within the carrying capacity of the planet we call home requires that we adhere to the natural laws governing all life and does not extend human authority over them.

• In these respects, we recognize that ancient and living Indigenous cultures that live in connection with land, and have knowledge of its care, have much to teach us about this world.

• Indigenous traditions tell us that all economic activity must be rooted in an understanding and respect of our sacred relationships with Mother Earth, and that our continued wellbeing depends upon it.

• Science and common sense tell us that endless growth and the plundering of a finite planet is an impossibility, and an absurdity.

• We must avoid techno-utopianism, the illusionary idea that technological innovation will provide a “fix” to the inherent limits of a finite Earth. All technology must be subject to full life-cycle analyses, from sources to wastes to interactive stimulations to development.

• The subordination of the web of life to the chains of the markets and growth of the corporate led system erodes the primary means of existence on this planet, which is rooted in the diversity of life itself

• The current dominant economy fails to sustain and regenerate life because it is built on flawed foundations including:

» The endless industrial extraction and pollution of natural systems and functions;

» The privatization, commodification and legalized enslavement of nature as human and corporate property, which places a price on nature and creates new derivative markets that increase inequality and expedite the destruction of ecosystems;

» A prevailing world-view that places humans above nature, and with dominion over nature (anthropocentrism);

» A worldview and economic system that demands expansion, consumption, profit and economic growth above all other values, without recognition of carrying capacities of the planet and its ecosystems.

» Legal systems that ennoble private property at the expense of community, ecology and equity, and that directly serve the concentration of extreme wealth in few hands.

» Militarism and endless war as a primary means of acquisition of governance over peoples and land, and a primary expression of corporate growth models.

Changing the dominant legal and economic paradigms will require more than individual commitments to conservation and “greener” shopping. It will require fundamental changes in law, especially the rules of the global economy. Law is how we use power to make real the dominant values in a society. Over time most societies have cultivated the notion that nature is a “thing” separate and apart from humans, and that understanding has been codified in law. The ownership of ecosystems and other aspects of the natural world is promoted and protected by current law, upholding the control and dominance of humans over nature.

Current law “sees” nature as human owned property. Prevailing law and world-views express and confirm human authority over all of nature and do not provide the natural world with any legal standing in a court of law. From the tar sands of Alberta to mountaintop removal for coal extraction, to fracking and deep ocean oil drilling, to the destruction of vast tropical rainforests, to the massive continuing privatization of whole ecosystems, we have witnessed the horrifying damage that has been done with the full blessing of the law. This cannot be sustained.

We seek a world where all human activity takes place in balance with the Earth’s offerings, and with reciprocity, dignity and respect for nature.

If we are to succeed as a species, we will need to redefine “wealth” away from financial accumulation towards “sufficiency” and wellbeing. This will require a new body of human law to codify and enforce these values. We therefore declare an imperative for the development and adoption of economic frameworks rooted in the inherent legal Rights of Nature.

The Change to Come: Rights of Nature

The terms Rights of Nature or Rights of Mother Earth are interchangeable, though Indigenous preference for the use of Mother Earth better describes our connection and relationship. Rights of Nature or Rights of Mother Earth seek to define equal legal rights for ecosystems to “exist, flourish, and regenerate their natural capacities.” Recognizing these rights places obligations on humans to live within, not above, the natural world, of which we are only one part, and to protect and replenish the ecosystems upon which our mutual wellbeing depends. In essence, it is necessary to transform our human relationship with nature from property-based to a legal rights-bearing entity.

We are pointing to the need for a wholly different framework that recognizes that Earth’s living systems are not the enslaved property of humans. Just as it is wrong for men to consider women property or one race to consider another race as property, it is wrong for humans to see nature as property over which we have dominion. All rights, including humans’, depend on the health and vitality of Earth’s living systems. All other rights are derivative of these rights. This requires an essential paradigm shift from a jurisprudence and legal system designed to secure and consolidate the power of a ruling oligarchy and a ruling species, and to substitute a jurisprudence and legal system designed to serve all of the living Earth community.

In 2008, Ecuador became the first country to recognize Rights of Nature in their constitution. Bolivia has also passed national laws recognizing the inherent rights of ecosystems. Nepal, and India and other countries are also putting forward similar national laws. Dozens of communities across the US and around the world have taken similar action to place the rights of natural communities (including humans) above corporate interests. The natural world is of a higher order of good that we dare not undercut. In that sense, it is sacred.

Call to Action

All must speak out for the needs of nature and our Mother Earth as a whole. It is our responsibility to live within the natural order that is sacred to all life on earth. We must redraw the boundaries of the economy to bring them into line with ecological limits and the common sense science of planetary boundaries. Nature’s needs are also our own and must be elevated and protected by legal rights, and maintained through life-sustaining systems of exchange and reciprocity.

We therefore must initiate a process of re-educating societies, dispelling the dominant anthropocentric belief that the earth belongs to humans. This will require fundamentally aligning global, regional, and local economic and legal structures to exist within natural systems. Social movements must create the space for the shift that is necessary to protect against the tide of corporate-led globalization.

The Rights of Nature demand regenerative, mature, and dynamic economic relations in which:

• The interdependence of humans and nature is primary; the laws of nature supersede rights to property; and vital natural cycles of life must be protected for the good of all. Recognize that there is no separation between how we treat nature and how we treat ourselves;

• Nature is seen as the foundation of life itself; it is not seen as an inventory of goods and services for human beings, a dumping ground for pollution and waste, or as capital;

• The rejection of all market-based mechanisms that allow the quantification and commodification of Earth’s natural processes, rebranded as ‘ecosystem services’;

• Indigenous Peoples are empowered by legal and cultural norms as partners or caretakers of the lands and territories in which they live;

• All communities must become true caretakers of the places in which they live, including writing new laws that recognize the rights of local ecosystems to maintain their vital cycles and eliminate harmful projects in their midst;

• Whether one is Indigenous or not, we all must live in a responsible and natural way.

#### Ecosystem survival is a prerequisite to human survival and every other impact---any framework that evaluates nature through human needs guarantees destruction

Stacy Jane Schaefer 18, Associate Director of Land Conservation at the Maryland Department of Natural Resources, 4/18/18, “The Standing of Nature: The Delineated Natural Ecosystem Proxy,” https://gwjeel.com/2018/04/18/the-standing-of-nature-the-delineated-natural-ecosystem-proxy/

The fact that human health depends very much on the health of nature cannot justify the subjugation of nature. Again putting aside the moral considerations with respect to our relationship with nature, under even the strictest utilitarian view we must recognize that in order to protect human health and survival, humans must be willing to put nature–in its natural functioning state–first to evaluate human impact on nature. This requires us to accept that while humans are part of nature, humans do not define it.[119] In the process of recognizing a DNE as a “legal person,” we cannot define or measure the DNE entity in terms of human needs or actions. The simple reason is that even catastrophic harm to an ecosystem has been justified when cast in terms of short-term economic needs.

For example, approval of an unsustainable timber harvest in a National Forest can be–and has been–rationalized by the recognition that:

The Forest Service does not manage ecosystems just for the sake of managing them or for some notion on intrinsic ecosystem values . . . For the Forest Service, ecosystem management means to produce desired resource values, uses, products or services in ways that also sustain the diversity and productivity of ecosystems.[120]

Notably, nature comes last in that analysis.[121] Likewise, under the Endangered Species Act, the U.S. Fish and Wildlife Service (“USFWS”) does not designate “critical habitat” for an Endangered Species until it takes “into consideration the probable economic and other impacts of the designation.”[122] In fact, according to USFWS, “an area may be excluded from critical habitat designation based on any of the following: economic impact, impact on national security,” or “any other relevant impact, if the Service determine[s] that the benefits of excluding it outweigh the benefits of including it, unless failure to designate the area a critical habitat may lead to extinction of the species.”[123]

The destructive practice of mining coal by clearing Appalachian forests, blasting off ancient mountain tops containing globally significant levels of biodiversity and filling in the mountain valley streams is economically justifiable even when human mortality and morbidity is linked to these practices.[124] Another current example is the death of the Great Barrier Reef. In human terms, advocates in favor of protection of the Reef might argue that if the Reef dies, $6 billion in tourist revenue and the ability of future generations to enjoy the Reef would be lost.[125] However, as André Dao points out, “such arguments invite the rebuttals that have in fact been used: the value of the coal that is to be transported through the reef, the need to provide power to countries around the world and, above all, the importance of unending economic growth.” [126]

If we see nature as valuable only through the lens of its “usefulness” to humanity, the cost of nature’s destruction will almost always be justifiable.[127]

#### Independently, strong rights of nature spill over internationally to bolster global water cooperation, preventing water conflicts

Mariana Chilton 20, Professor in the Dornsife School of Public Health at Drexel University; and Sonya Jones, Associate Professor and Director, Center for Research in Nutrition and Health Disparities, University of South Carolina, April 2020, “The Rights of Nature and the Future of Public Health,” American Journal of Public Health, Vol. 110, No. 4, p. 459-460

We are in the midst of a worldwide public health emergency. In October 2019, 11,000 scientists from more than 150 countries declared that human consumption and corporate overreach were degrading ecosystems and driving more than a million species to extinction, including humans.1 The collective impact of dysregulated climate; disruption of the water, phosphorous, and nitrogen cycles; and the collapse of food chains causes widespread trauma, which fosters social and ecological violence. The World Health Organization estimates that avoidable environmental risk factors cause 12.6 million deaths each year around the globe.2 Our current crisis is undoing 50 years of gains in public health.3 Such ecological devastation is associated with increased suicide, depression, isolation, and addiction.4 Those who suffer most from these ecological threats are least responsible: indigenous peoples, people who are poor, and communities of color.

Public health is faced with a choice at this critical moment. Do we continue with business as usual, addressing the diseases of modernity, such as heart disease, without questioning the values underlying modernity? Or do we do what we in public health are best suited to do: transform the paradigm of health to be more inclusive and better encompass our current challenges?

Through growing attention to social determinants of health, we now recognize that the zip code is a stronger determinant of health than our genetic code.5 But we need to keep pushing. In every zip code, a type of soil matrix based on a previously rich ecosystem of forests, savannahs, and waterways exists. In every zip code, there are animals and plants that are endangered. In every zip code, there is a water cycle dependent on seas, lakes, and forests that is threatened. In short, we humans are embedded in endangered ecosystems whether or not we are aware of it. In the privileged global north, many of us experience our embeddedness as an economic exchange: buying food, paying for water, and putting filters on indoor air systems. A simple walk in the woods, inhaling the cancer-protective, immune-boosting, and aromatic chemicals that trees exhale, reminds us that a richer relationship with our ecosystem is possible. What if we characterized human health as a process of being in healthy relationship with our ecosystems?

RIGHTS OF NATURE

Human rights are those freedoms meant to ensure that all people can live a life of security, dignity, and well-being. Human rights are primarily between individuals, communities, and states, without regard to ecosystems and the biosphere. Conversely, rights of nature laws focus on the rights of ecosystems to exist, persist, and regenerate without consideration of human benefit or corporate profit.6 Nature is defined broadly as ecosystems, rivers, streams, lakes, oceans, mountains, and even individual trees. Many governments treat nature’s systems as private property and allow owners to set terms of their relationships with their land and water. As private property, 95% of old growth forest in the United States has been logged, soils are running off into oceans, and water and air are filled with byproducts of industrial production. The dangers of such exploitation can be catastrophic to human health and well-being.

Without rights-based laws, communities such as those in Appalachia trying to protect their mountains and streams and the Oceti Sakowin (the Dakota, Nakota, and Lakota nations) who sought to resist the Dakota Access Pipeline while trying to protect their water and sovereignty have only weak legal tools of public comment periods to assess business permits and regulations based on “maximum acceptable harms.” A rights of nature framework helps to move our attention from anthropocentrism to biocentrism, which more fully encompasses the processes by which we can ensure healthy conditions for people and the environment.

RIGHTS OF NATURE ORDINANCES

The rights of nature framework creates new avenues for widespread public health protections. The expansiveness of nature’s interconnected species, waterways, and weather patterns can promote international cooperation. For instance, the Guaraní Aquifer is the second largest freshwater aquifer in the world. It transcends political boundaries as it spans underneath Paraguay, Uruguay, Argentina, and Brazil. The United Nations predicts that there will be a 40% shortfall in water availability by 2030, creating even greater urgency to solidify international cooperation to protect this water source. Rights of nature laws may help prevent future political disputes.

Supplying 20% of the earth’s oxygen, the Amazon rainforest is under threat as a result of fires set by multinational corporations supported by the Brazilian government. The plight of indigenous peoples of the Amazon is intricately tied to this ecological devastation, yet they have little political recourse or human rights protections. Indigenous communities have sought to defend their rights to land, water, and air from colonial and corporate encroachment for hundreds of years. Aside from the United Nations International Convention on the Rights of Indigenous Peoples, the rights of nature have become another avenue for protection. Ecuador and Bolivia have enshrined rights of nature in their constitutions. In New Zealand, the Te Urewera forest and the Whanganui River now have personhood, and members of the White Earth Band of Ojibwe in the United States passed a law formally recognizing the rights of Manoomin, their wild rice, to provide a legal basis to protect their rice and fresh water resources for future generations.

Rights of nature can be used to protect all people in many types of environments. After the deaths of two boys (11 and 17 years of age) from staph infections caused by exposure to toxic sludge, the people of Tamaqua Borough in Pennsylvania used the rights of nature to protect their lands from sludge dumping. Since then, more than 20 communities around the United States have espoused rights of nature to protect water, soil, mountains, and streams. Lake Erie was recently granted rights after a three-day shutdown of the entire city of Toledo in summer 2014 due to contaminated drinking water. These ordinances allow humans to use legal avenues to protect the natural world around them.

#### Water conflicts wreck global stability and go nuclear

Dahr Jamail 19, Truthout contributing writer, Board of Advisers member and former staff reporter, has won the Izzy Award and the Martha Gellhorn Award for Investigative Journalism, 2/11/19, “The World Is on the Brink of Widespread Water Wars,” https://truthout.org/articles/the-world-is-on-the-brink-of-widespread-water-wars/

The most recent United Nations Intergovernmental Panel on Climate Change report warned of increasingly intense droughts and mass water shortages around large swaths of the globe.

But even more conservative organizations have been sounding the alarm. “Water insecurity could multiply the risk of conflict,” warns one of the World Bank’s reports on the issue. “Food price spikes caused by droughts can inflame latent conflicts and drive migration. Where economic growth is impacted by rainfall, episodes of droughts and floods have generated waves of migration and spikes in violence within countries.”

Meanwhile, a study published in the journal Global Environmental Change, looked at how “hydro-political issues” — including tensions and potential conflicts — could play out in countries expected to experience water shortages coupled with high populations and pre-existing geopolitical tensions.

The study warned that these factors could combine to increase the likelihood of water-related tensions — potentially escalating into armed conflict in cross-boundary river basins in places around the world by 74.9 to 95 percent. This means that in some places conflict is practically guaranteed.

These areas include regions situated around primary rivers in Asia and North Africa. Noted rivers include the Tigris and Euphrates, the Indus, the Nile, and the Ganges-Brahmaputra.

Consider the fact that 11 countries share the Nile River basin: Egypt, Burundi, Kenya, Eritrea, Ethiopia, Uganda, Rwanda, Sudan, South Sudan, Tanzania and the Democratic Republic of Congo. All told, more than 300 million people already live in these countries, — a number that is projected to double in the coming decades, while the amount of available water will continue to shrink due to climate change.

For those in the US thinking these potential conflicts will only occur in distant lands — think again. The study also warned of a very high chance of these “hydro-political interactions” in portions of the southwestern US and northern Mexico, around the Colorado River.

India and Pakistan

Potential tensions are particularly worrisome in India and Pakistan, which are already rivals when it comes to water resources. For now, these two countries have an agreement, albeit a strained one, over the Indus River and the sharing of its water, by way of the 1960 Indus Water Treaty.

However, water claims have been central to their ongoing, burning dispute over the Kashmir region, a flashpoint area there for more than 60 years and counting.

The aforementioned treaty is now more strained than ever, as Pakistan accuses India of limiting its water supply and violating the treaty by placing dams over various rivers that flow from Kashmir into Pakistan.

In fact, a 2018 report from the International Monetary Fund ranked Pakistan third among countries facing severe water shortages, This is largely due to the rapid melting of glaciers in the Himalaya that are the source of much of the water for the Indus.

To provide an idea of how quickly water resources are diminishing in both countries, statistics from Pakistan’s Islamabad Chamber of Commerce and Industry from 2018 show that water availability (per capita in cubic meters per year) shrank from 5,260 in 1951, to 940 in 2015, and are projected to shrink to 860 by just 2025.

In India, the crisis is hardly better. According to that country’s Ministry of Statistics (2016) and the Indian Ministry of Water Resources (2010), the per capita available water in cubic meters per year was 5,177 in 1951, and 1,474 in 2015, and is projected to shrink to 1,341 in 2025.

Both of these countries are nuclear powers. Given the dire projections of water availability as climate change progresses, nightmare scenarios of water wars that could spark nuclear exchanges are now becoming possible.

As if to underscore all of this, even the US military recently warned that climate change is a worldwide threat. The military’s Worldwide Threat Assessment report warned that climate change and other types of environmental degradation threatened global stability because they are “likely to fuel competition for resources, economic distress, and social discontent through 2019 and beyond.”

#### Strong rights for nature revolutionize international law toward ecocentrism---that resolves systemic slow violence against marginalized populations and sets a cap on global conflict that precludes nuclear war

Sara De Vido 20, Associate Professor in the Department of Economics, Università Ca' Foscari Venezia, Italy, 11/11/20, “A Quest for an Eco-centric Approach to International Law: the COVID-19 Pandemic as Game Changer,” Jus Cogens, doi:10.1007/s42439-020-00031-0

The pandemic that spread around the world in 2020 has affected human rights and raised human security issues. It represents, above all, a major environmental issue. International law, as all fields of law, is facing enormous challenges. How relevant is international environmental law in the debate? Are states, along with international organizations, capable of providing appropriate answers? This Reflection does not aim to suggest possible ways of surviving (legally speaking) this global pandemic or to determine the responsibility for the spread of the coronavirus. It rather starts from the pandemic as unprecedented occasio1 to reflect on the approach to international law, which—it is contended—is anthropocentric, and its inadequacy to respond to current challenges. In the first part, the Reflection argues that there is, more than ever, an undeferrable need for a change of approach to international law toward ecocentrism, which puts the environment at the center and conceives the environment as “us,” including humans, non-human beings, and natural objects. If eco-centric moves have been encouraged in environmental law, scholarship has not taken a step further to include eco-centric considerations in all fields of international law. To encourage the incorporation of ecocentrism in the entire discipline, the Reflection will rely on some insight of ecofeminism, whose potential has not been fully investigated in international legal scholarship. The aim is not to illustrate or to critically discuss ecofeminist theories but to use some of their pivotal arguments to unravel the anthropocentric nature of international law.

In a second part, the Reflection illustrates what an eco-centric international law would mean, imagining three possible applications: first, what I have called “environmental global health,”2 which is connected to the current pandemic and puts into question the proposals dealing with global health that completely miss the theorization of the environment as a whole; second, how actors of international law would change according to an eco-centric perspective; and, third, how the rules prohibiting the use of force might be reconceptualized. The analysis contained in these pages cannot itself exhaust all the possible nuances of the legal reasoning, but it is aimed at being a provocative starting point for a change in the mindset and approach of international legal scholarship. It is an argument in process to provoke a debate in legal scholarship and identify possible areas of future research.

Ecocentrism and International Environmental Law

Ecocentrism is not new to international law. Over the past decades, there have been some eco-centric moves in international environmental law, which disrupted its initial anthropocentric biases based on the idea of protecting the environment “not for its own sake, but because of its value to humans – its importance for human health, economics, recreation, and so forth.”3 Starting from the World Charter on Nature of 1982, the UN GA has adopted a series of Harmony with Nature resolutions, stressing the coexistence of humankind in harmony with nature.4 A quite peculiar treaty, also in terms of the subjects that negotiated and signed it, is represented by the 2017 Whanganui Agreement in New Zealand, which has included the perspective of the river as a holistic system.5 This eco-centric move contributes to disrupting patterns of oppression within human beings and in the relationship of humanity with nature because it grants participation to the indigenous communities and is guided by the rights—and not by the human property interests that lay upon—of this natural object. Moving to the regional level, the Inter-American Court of Human Rights, in a landmark advisory opinion of 2017 and the contentious case decided in February 2020, derived an autonomous right to a healthy environment from Article 26 of the American Convention of Human Rights.6 In the court’s view, the human right to a healthy environment protects nature, even absent evidence of possible risks for human beings, because of its importance for the rest of living beings.7 This constitutes an unprecedented move in regional jurisprudence: appreciating how the right to a healthy environment clearly serves the humans, in an anthropocentric way, but it also goes beyond that to conceive the environment as the balanced relationship among natural objects and the humans.8 Another eco-centric development is represented by the advent of the rights of nature, incorporated in the so-called environmental constitutionalism, represented by countries such as Ecuador which inserted a chapter on Pachamama as part of the 2008 constitutional revision.9 These developments should not be underestimated, because they have emphasized the centrality of nature in the legal reasoning. They challenged laws that have been created to protect the environment for the benefit of human beings without considering two key aspects: first, that human beings are themselves part of the nature, and second, that the existence of nature per se, independently from human beings, matters. However, nature is neglected in other fields of international law.

What if we consider international law in its entirety as anthropocentric and blind to the dynamics of powers and domination that are present in the international community, within human communities and between the humans and the environment? Patterns of discrimination and oppression characterized by both intra-species and inter-species hierarchies are entrenched in international law and can be appreciated by developing some ecofeminist concerns and arguments.

Patterns of Domination and Oppression in International Law: an Ecofeminist Perspective

International feminist legal scholarship has already pointed out the patriarchal structure of international law as we know it today, characterized by the marginalization of women in the international legal system. As Chinkin and Charlesworth wrote in The Boundaries of International Law, the exclusion of women is “an integral part of the structure of the international legal order, a critical element of its stability,” and the silences of the discipline are “as important as its positive rules and rhetorical structures.”10 International legal discourse has been informed by dichotomies, including the culture/nature one.11 Dianne Otto, using a queer feminist analysis, has stressed the limits of human rights law, which has not questioned the understanding of sex/gender as dualistic (m/f),12 and “the gendered, raced, imperial, heteronormative, privileged, autonomous and ableist assumptions implicit in this ‘universal’ subject – the human who is able to fully enjoy human rights and fundamental freedoms.”13

Patterns of oppression and domination are however not only intra-species but also inter-species, in the relation between humans and the nature. The human/nature dichotomy has been used to determine patterns of oppression and discrimination beyond humans, including non-human animals and “natural objects.”14 The law, as the earth Jurisprudence has pointed out,15 has been theorized in a specific association human/nature, where the former dominates the latter.16 Ecological disasters and pandemics are the tip of the iceberg of a long process of destruction. This process has been called “slow violence,” meaning “a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all.”17 What we experience now has been the product of decades of environmental exploitation and domination of human beings, the “privileged” one,18 on the natural environment. The concepts we use in international law inevitably incorporate “traces of power and domination,”19 and this acknowledgement allows us to reflect on possible non-dominant changes. As argued by the Special Rapporteur on the right to a healthy environment, David Boyd, “today’s dominant culture and the legal system that supports it are self-destructive. We need a new approach rooted in ecology and ethics […] We are part of nature: not independent, but interdependent.”20

The current framework of global health law, mainly based on World Health Organization (WHO) law, seems inadequate to respond to current challenges, because it does not appreciate the importance of taking into consideration the environment as “us.”38 The environment has always been at the margin of legal reasoning in health issues, either not considered (as in the WHO International Health Regulations) or diminished to the role of determinant of the right to health. The alternative proposed in these pages is the concept of “environmental global health,”39 defined as the system of actors, including non-human animals and natural objects, and legal instruments, measures, and policies, aimed at the prevention, protection, and response to transboundary health and environmental issues, taking into consideration social and economic disparities, and going beyond the humans to address imbalances of natural ecosystems.40 An eco-centric approach appreciates the connections between global health, the human right to health, and the environment.41 More than a human right to a healthy environment, what is needed is the recognition of every human, non-human being, and ecosystem’s right to be part of a healthy environment, where prevention is fundamental, and where all actions are taken in light of their impact on the environment.

It is also the main argument of this paragraph that when authorizing the use of force, the UN Security Council should include the respect for the environment, especially due to air and soil contamination caused by military strikes that affects the ecosystems and the human beings as part of them. It would be even possible to say, evoking the call for disarmament and peace of the International Congress of Women of 1915, that if we consider the environment as a whole, the quest for peace manifests itself as expression of ecocentrism.

The second direction concerns the use of weapons. In this sector, the eco-centric approach to international law can be appreciated at its best, suggesting an eco-centric, inspired by ecofeminism, rewriting of the highly criticized Advisory Opinion on the legality of the threat or use of nuclear weapons of 1996.63 It is well-known that in a split 7-7 decision, with the President casting the final vote, the court on one hand recognized that the threat or use of nuclear weapons “would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law” and, on the other hand, could not conclude definitively “whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense.” The environment was mentioned by the court in a key paragraph, in which it pointed out that “the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment” and that “the environment […] the living space, the quality of life and the very health of human beings.” The environment is however more than the living space of human beings; it is the place of all the elements conceived as a whole. A partial rewriting of the opinion in an eco-centric perspective will consider the applicable rules on the environment as combined with international human rights law, arguing that the use of nuclear weapons—potentially all weapons—have an impact on the right to a healthy environment, which is no longer a simple “human” right, but it is the right of all the species and ecosystems that live in it. Arguing that the use or threat of the use of nuclear weapons had to be judged illegal under all circumstances, Judge Weeramantry in his dissenting opinion came close to an eco-centric view, pointing out that these weapons not only contradicts human dignity but also “endangers the human environment in a manner which threatens the entirety of life on the planet.”64

Concluding Remarks

We did not need the pandemic to highlight the weaknesses of the global health governance and international law more generally as we conceive them today. New ways of framing international law have been advocated for a long time. The pandemic represents however the game changer, which unveils existing problems and pushes for a change. The interconnection between global health and the environment must be appreciated in all ideas of reform of the WHO system as a starting point, but this does not seem enough. There is an urgent need of new creative approaches to international law to grasp the complexity of the environment, which includes human beings as part of a holistic whole. This argument does not only lead to the adoption of new rules of international law but also to apply and interpret existing ones in an eco-centric way. This Reflection has provided a few examples of existing practice in the described direction. Its invitation to endorse an eco-centric approach to international law, which is critical of existing patterns of discrimination and oppression, is not devoid of risks, including the resistance states could show to new rules informed by eco-centric concerns. Nonetheless, as international lawyers, we should respond to the crisis and demonstrate that international law, starting from its basic concepts, can evolve and embrace the environment, which is, in the end, nothing less than a pivotal issue to work on in all the fields of the discipline.

### 1AC---Plan

#### The United States federal government should designate rivers as legal persons, implemented through a comanagement framework.

### 1AC---Solvency

#### Congress should establish legal personhood for rivers, with a framework allowing federal, state and tribal representation for rivers’ interests---that’s key to sustainability and only possible through federal action

Meredith N. Healy 19, J.D. Candidate, University of Colorado Law School, 2019, “Fluid Standing: Incorporating the Indigenous Rights of Nature Concept into Collaborative Management of the Colorado River Ecosystem,” Colorado Natural Resources, Energy & Environmental Law Review, <https://www.colorado.edu/law/sites/default/files/attached-files/healy_web_edition_pdf.pdf>

Across the globe, what was once unthinkable is now coming into practice: national governments have acquiesced to their indigenous peoples’ beliefs that natural resources such as trees and rivers deserve the same rights generally reserved for humans. These governments are starting to recognize the rights of nature by bestowing legal personhood. Black’s Law Dictionary defines a legal person as “a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being.” The rights that flow from legal personhood form a basis for judicial activism by conferring certain rights and recognition normally reserved for humans and legal fictions such as corporations.

In the United States, individuals who would like to represent natural resources such as rivers may only sue on a case-by-case basis as next friends because the judicial system affords no specific legal guardianship for natural resources. These next friends operate as third parties advocating on behalf of an injured party. In general, there is no way for these third parties to represent the interests of a river absent an injury to the third party. For example, both states and tribes are currently limited to claims for economic injuries rather than direct environmental injuries to rivers. This lack of recourse is written into the National Environmental Policy Act (“NEPA”), which requires preparation of an Environmental Impact Statement (“EIS”) whenever a proposed major federal action will significantly affect the quality of the human environment.8 Notably, NEPA only requires an EIS when the human environment might be significantly affected, not only when the particular ecosystem itself.

If the United States were to recognize the rights of nature, such rights might grant an entity recognition for purposes of the Due Process and Equal Protection Clauses. This would remove the need to ask courts to stretch their imagination to consider roots and rivulets citizens for purposes of the Privileges and Immunities Clauses in Article IV Section 2 and the Fourteenth Amendment of the United States Constitution. Recognizing the legal rights of nature might provide a more direct way for environmental advocates to represent the interests of rivers and other natural resources without having to claim third-party injury.

This Note will begin with an introduction to the recent global development of the rights of nature. From South America to Oceania, national judiciaries and legislatures have reached back to their indigenous roots to recognize how the rights of nature can be used to protect natural resources from wanton degradation. In Part II, this Note will review how the United States has developed environmental policies apart from any recognition of the rights of nature aside from the human environment, and how Justices Douglas’ and Blackmun’s dissenting views in the landmark environmental standing case, Sierra Club v. Morton, lay dormant until recent years when grassroot movements revived independent protection for natural resources through legislative and judicial advocacy. Part III will discuss local government attempts to recognize the rights of nature in the face of corporate resistance, and the ill-fated recent attempt to obtain judicial recognition of the rights of nature in The Colorado River Ecosystem, et al. v. State of Colorado. Part IV will explore a comanagement framework that would allow a currently resistant American culture to blend our own indigenous knowledge with the existing environmental advocacy mechanisms in the case of the Colorado River Ecosystem. This Note recommends that Congress consider establishing a strategic Colorado River Ecosystem guardianship group that incorporates federal, state, and tribal representation, as well as a non-governmental, appointed citizen representative for the Colorado River Ecosystem. This approach could ensure sustainability of multiple interests in the river and the river itself without rocking the boat.

#### Rights for rivers spill over to protections for other ecosystems, and get modeled internationally

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Last year, four rivers were granted legal rights: the Whanganui in New Zealand, Rio Atrato in Colombia, and the Ganga and Yamuna rivers in India. These four cases present powerful examples of the increasing relevance of rights-centered environmental protection. Like corporations, which have legal rights in many jurisdictions, these rivers are rights-bearing entities whose rights can be enforced by local communities and individuals in court. But unlike corporations, these rights are not yet recognized in international treaties. Which raises the question: what are the implications of rights for nature for international environmental law?

Granting Rights to a River: Enhancing a Right-Based Approach

In international law, legal standing is principally employed to distinguish between those entities that are relevant to the international legal system and those excluded from it. Current international law conventions do not give legal standing to water resources. Instead, international conventions — such as the Convention on the Law of Non-Navigational Uses of International Watercourses — mainly address water management from the perspective of the participating states. Similarly, European legislation on freshwater resources, such as the Water Framework Directive, recognizes the importance of protecting water resources, but views them entirely as natural resources belonging to states.

In contrast to international law, some countries have granted rights to the nature, and specifically to rivers, in their national laws. In 2008, Ecuador recognized the constitutional right of Mother Earth and, in 2010, Bolivia adopted the Laws on the Rights of Mother Earth, which gives legal standing to nature and establishes an ombudsman for the protection of its rights. And in May 2017, Colombia’s Constitutional Court recognized the Atrato River as a legal person.

More recently, the Parliament of New Zealand granted the country’s third-longest river, the Whanganui, the legal rights of a person, after a 140-year campaign by the Whanganui Iwi tribe. In addition to compensating the Whanganui Iwi for grievances, the move seeks to preserve the river for future generations of Whanganui Iwi and all New Zealanders. As such, the river gains its legal personality not from an abstract legal entity, but from the people that are connected with the river.

India’s Ganges River and one of its main tributaries, the Yamuna River were granted these same rights. The high court in the northern state of Uttarakhand — not the national government, as in New Zealand, Ecuador, and Bolivia—issued the order, citing the case of the Whanganui in establishing that that the Ganges and the Yamuna should be accorded the status of living human entities.

These rivers now have the right to representation in the form of “guardians” or “allies” in legal proceedings against threats to their wellbeing, such as degradation. Like a charitable trust or society, these rivers can have “trustees” looking out for their best interests. Like people, these rivers have the right to sue others, seeking to force communities to take better care of the river, or face penalties.

Critics argue that these rulings could set precedents for granting rights to other natural entities such as forests, mountains, and deserts, inviting lawsuits to protect resources from degradation. Some critics have even pointed to extreme spin-offs in which stones and pebbles could eventually sue people for stepping on them. Defenders reject this view, and say the point is to protect the ecosystems human life depends on.

The practical implications of these legal innovations are not clear yet, but the stage is being set for an interesting comparative study: How does legal representation for rivers play out in different social, ecological, and economic contexts?

The Whanganui River is a relatively pristine ecosystem — especially in contrast to the heavily polluted Yamuna and Ganges rivers. Each day, 1.5 billion liters of untreated sewage enters the Ganges River, and many attempts to clean up the river have failed over the years. Will the river’s legal status improve this situation?

The governance challenge in India is significant: the limitations of a state court’s control over an environmental resource — which is by its very nature inter-jurisdictional — become clear. Furthermore, there are no financial resources to support the implementation. In New Zealand, however, financial redress of NZ$80 million was included in the settlement, as well as an additional NZ$1 million contribution towards establishing the river’s legal framework.

Are Transboundary Rivers People, Too?

The international treaties that govern transboundary rivers focus on the participating countries’ rights and entitlements, to ensure that one riparian country’s use or management of the river does not negatively affect the rights of another riparian. These international agreements rarely grant rights to individuals and local communities—and if they do, they usually only address access to information, public participation in decision-making processes, and access to justice.

In the transboundary context, the concept of trusteeship might be useful. According to the public trust doctrine, a nation has a legal duty to protect its natural resources for the public interest and for the common benefit of present and future generations. International rivers could come under the protection of the public trust, and local communities would be both owners and beneficiaries of the trust’s interests. In 1998, for example, Melanne Andromecca Civic proposed that the United Nations Trusteeship Council should be charged with the management of the Jordan River.

It is not clear whether these are the first steps towards a new international norm in the coming years. It is however clear that an anthropocentric view of the environment is, in some circumstances, being replaced by an eco-centric perspective — at least in some countries.

#### Rivers are a key starting point for ecosystem legal personhood---they’re distinct enough to be defined, and vital enough to shift the law toward ecocentrism overall

Cristy Clark 18, Lecturer in Law, School of Law & Justice, Southern Cross University, Australia, et al., 2018, “ARTICLE: Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance,” Ecology Law Quarterly, 45 Ecology L.Q. 787

A nuanced analysis of this emerging jurisprudence is necessary to avoid the risk of "occupy[ing an] indeterminate terrain, … one already inscribed by humanist precepts of what "rights' and "nature' might consist of." 25 More importantly for the present Article, it is also readily apparent that, in the words of Christopher Stone, Nature makes for a "shifty client," 26 or, paraphrasing Kate Soper, a "promiscuous subject." 27 Nature, the environment, or even single complex ecosystems are seldom easily quantifiable as bounded entities with geographically clear borders. Within the complex spectrum of establishing where a legal subject ends and another begins, however, rivers are somewhat more easily identifiable, their very being premised on historicized boundaries that measure their watery ambit from riverbed to riverbank. And yet, rivers still elude a final, clearly defined, and uncontroversial description. As a result, rivers inhabit a liminal space, one that is at the same time somewhat geographically bounded and yet metaphorically transcendent, physically shifting, and culturally porous.

It is thus deeply emblematic that rivers constitute a particularly promising medium for the ontological shift mentioned above. Rivers and life share a profound bond, one that Justice Douglas already articulated in 1972: [\*792]

The river, … is the living symbol of all the life it sustains or nourishes - fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water - whether it be a fisherman, a canoeist, a zoologist, or a logger - must be able to speak for the values which the river represents and which are threatened with destruction. 28

Fast-forward again forty-five years, and the sentiment remains identical, albeit the scale of destruction has intensified. "Rivers are the arteries of the earth, and lifelines for humanity and millions of other animals and plants. It's no wonder they have been venerated, considered as ancestors or mothers, and held up as sacred symbols." 29 Paradoxically, and tragically, "we have also desecrated them in every conceivable way." 30

This Article thus focuses on rivers - in South and North America, India, and the Antipodean South - to tell a story of rights of Nature, of the emergence (or not) of legal personhood, and of the paradigmatic change that re-orients the law away from anthropocentrism to something else. Our river case stories are told in a relatively diachronic order. We start in Part I with the Vilcabamba River in Ecuador, a relatively short, although internationally well-known judgment that interprets the extent of the early constitutional guarantees afforded Nature, centering on an environmentally degraded river system. In Part II, the focus shifts to the intimately contextual and cultural narrative of the Whanganui River in New Zealand, a river song heard with astonishing clarity by that country's Parliament - with its passage of a statute that sings the soaring rhetoric of ontological change yet prescribes the necessary nitty-gritty detail of governance. Part III returns to South America, and the more voluminous, ontologically sophisticated judgment of the Atrato River. 31 In this case, the Colombian Constitution was successfully interpreted by the Colombian Constitutional Court to vindicate the Atrato's standing as a subject of legal rights. Part IV explores the yet-to-be-enforced decisions of the High Court of the Indian State of Uttarakhand, which sought to protect two of India's most iconic and sacred rivers - the Ganges and the Yamuna - from the ongoing onslaught of pollution and degradation. These two judgments underline that judicial ambition needs to be matched by a commensurate political willingness to enact paradigmatic change. In Part V, the unsuccessful attempt to protect the Colorado River through [\*793] a "first-in-the-nation" 32 rights of Nature lawsuit sings the sad song of an iconic yet diminished U.S. river - now more an "industrial project" 33 than a natural waterway, a river long stripped of its wildness and freedom. Part VI ends our river case studies with the Yarra River/Birrarung in the Australian state of Victoria. In an Australian first, the Victorian state government legislated an Act that gives voice to the river as "one living and integrated natural entity," 34 yet curiously denies it its legal standing. Part VII concludes with a discursive review of these many river cases - and their legal, social, and cultural implications.

As implied by the above structure, this Article employs a comparative methodology. Contrary to Henry Lawson's famous assertion that comparative law is "bound to be superficial," 35 this paper will instead follow Pierre Legrand's recognition that law is profoundly and inextricably inscribed in culture, 36 aware that "it is never possible to carry out a wholly "meaningful' transplant of law from one culture to another, because law is never limited to rules," as Gary Watt writes in articulating Legrand's position. 37 Although we do not share Legrand's somewhat pessimistic view in relation to the almost titanic complexity of contextualizing different legal formants 38 within distinct cultural milieus, 39 we also, at the same time, wish to resist the uncontrolled urge toward harmonization and transnational convergence of rules through apparent, and inevitably superficial, similarities. As Watt suggests:

our understanding of law will remain superficial so long as we fail to appreciate that law is neither a doctrinal science that will produce predictable outcomes as laboratory experiments might, nor merely an empirically quantifiable sociological fact or an economic construct, but that it comprises arts of imaginative reading, persuasive speech, creative writing and practical performance engaged in as living arts by living people. 40

The effort to navigate the difficult waters of a legal comparison of seemingly similar and yet culturally unique river cases is guided by the use of a specific metaphor, that of the song of each river. We are inspired, in doing so, by Peter Goodrich's insightful suggestion that "the comparative takes hold in the [\*794] precise moment of the dissipation of the juridical, in the instance of non-law," 41 and thus the analysis of both statutory provisions and judicial decisions will be balanced against a host of cultural expressions, narratives, and apparently non-legal imagery. Of course, to focus on rivers is to highlight what these geographically and culturally distinct watery bodies share in common. However, in doing so, we need also to be mindful of difference, that each and every river sings its own unique song. We should not ignore the grounded facts, the nuanced and not so nuanced contexts - geographic, cultural, social, historical, and legal - that shape each river's course. What we ultimately explore in this Article are the multiple songs of many rivers - some share converging melodies, others perhaps are discordant. This attention to the cultural context will emphasize the focus on both the ontic and epistemic dimensions of the cases analyzed. This approach is taken in order to properly inscribe their comparative appraisal within the shift toward an Ecological Jurisprudence introduced above.

#### Scaling up rights of nature at the federal level is key to reorient environmental regulation away from prioritizing corporate interests

Kai Huschke 20, the Northwest and Hawaii Organizer for the Community Environmental Legal Defense Fund; and Simon Davis-Cohen, research and communications associate for the Community Environmental Legal Defense Fund, 4/16/20, “The EPA Has Abandoned Its Duty To Protect the Environment. ‘Rights of Nature’ Laws Can Fill the Void,” <https://inthesetimes.com/article/trump-epa-covid-19-environmental-law-rights-of-nature-air-water-pollution>

Authoritarian governments often prepare laws they wish to pass and have them ​“ready to go” when opportunity strikes. That’s what Fionnuala Ni Aolain, a United Nations Special Rapporteur on Counterterrorism and Human Rights, recently told the New York Times.

“They draft laws in advance and wait ​‘for the opportunity of the crisis to be presented,’” Ni Aolain explained.

It’s clear to us that greed-fueled bad actors are taking this pandemic as just such an opportunity. Corporate lobbies have quietly pushed through laws criminalizing fossil fuel protests. Congress approved an unprecedented and unnecessary handout to corporate America. Pipeline companies want to classify new pipelines as ​“essential,” including TC Energy, which got the green light and began constructing the infamous Keystone XL pipeline. The federal government appears to be mulling a bailout for the fossil fuel industry. And, last but not least, the Trump administration ordered the Environmental Protection Agency to stop enforcing anti-pollution laws in some cases, removing what anemic oversight the EPA once held over corporate polluters, effectively suspending the agency while taking action to roll back some environmental protections permanently.

The EPA’s response to the Covid-19 pandemic ― effectively ceasing enforcement of federal environmental laws ― will, regardless of the motivations for this unprecedented decision, negatively impact peoples’ lives. This means that many communities, and the life-giving ecosystems they depend upon, are on their own.

In this moment, many people are in shock, and for good reason. For others, however, this pandemic has not caused system failure but merely exposed it. Innumerable communities across the U.S. know from first-hand experience that federal and state ​“regulations” do not safeguard water, public health, and the ecosystems they rely on. Critically, they also understand the system of pollution ​“permits” are a tool for the repression of democracy.

State and federal environmental laws have failed to avoid mass species die offs, cancers, public health catastrophes, pervasive pollution, and the climate emergency.

Legalized Harm

Under this system of law, communities are forced to accept activities that are ​“permitted” by ​“environmental” law. The democratic powers of such communities to govern corporations are superseded by federal and state regulations and judge-made laws, like corporate ​“personhood,” that function to both legalize things that harm people and the environment and prevent communities from protecting themselves.

Native nations, as well, have been assaulted by ​“environmental” laws that ​“permit” and ​“regulate” pipelines through sacred land. For decades, such permits have always superseded the self-determining authority of these nations, often enshrined in treaties, to say ​“no.”

Part of the problem is that old environmental laws treat ecosystems as property and function to legalize the status quo. They offer polluters a shield of legal protection through the ​“permit” process.

Rights of Nature

For years, many communities who have experienced this system firsthand have felt abandoned by their federal and state ​“environmental” regulators. Many have taken their destiny into their own hands and stepped outside the modern paradigm of environmental law. We must follow their lead.

In the past decade, multiple Native nations and dozens of United States municipalities have passed enforceable Rights of Nature laws. Arguably, 2019 was the movement’s biggest year in United States history. Here’s a rundown of what happened this past year:

The residents of Toledo, Ohio adopted the Lake Erie Bill of Rights, the first law in the U.S. to secure legal rights for a specific ecosystem.

Residents of Exeter and Nottingham, New Hampshire enacted laws elevating the rights of ecosystems above the rights of corporate polluters.

The Yurok tribe in the U.S. recognized legal rights of the Klamath River.

The High Court in Bangladesh recognized legal rights of rivers.

The National Lawyers Guild amended its constitution to include the rights of ecosystems.

A New York assemblyman proposed a law to recognize the rights of Lake Erie.

The Youth Climate Strike included Rights of Nature (and respect for indigenous sovereignty) in their list of demands.

Rights of Nature bills were introduced in Australia and the Philippines.

In Colombia, the Plata River was recognized as a ​“subject of rights.”

Quietly, 2020 is shaping up to be another historic year.

Just ahead of the EPA announcement, for the first time in U.S. history, a community successfully pressured a state to enforce a local Rights of Nature law.

After seven years of community activism, the Pennsylvania Department of Environmental Protection (DEP) revoked a permit for a frack waste injection well in Grant Township, Pennsylvania. DEP officials cited Grant Township’s Home Rule Charter, which banned injection wells as a violation of the Rights of Nature, as grounds for their reversal.

“Grant Township’s Home Rule Charter bans the injection of oil and gas waste fluids,” the DEP wrote. ​“Therefore, the operation of the [waste injection] well as an oil and gas waste fluid injection well would violate that applicable law.”

Our colleague Chad Nicholson worked with Grant residents on the measure.

“This decision,” he said in a statement, ​“does not validate the actions of the DEP, but rather vindicates the resistance that communities like Grant have engaged in to force governmental agencies into doing the right thing.”

Time to Scale Up

We live in a moment when multiple and radically different futures are possible. Some believe the pandemic is a once-in-a-generation opportunity to remake society and build a more just and sustainable future. Meanwhile, authoritarians and corporations are taking advantage of the moment to concentrate power and secure their future profits.

In conjunction with new enforceable human rights to water, Rights of Nature is a ​“ready to go” peoples’ paradigm shift. It is time to scale it up — crucially — such that those rights nullify the property rights of corporations when there is a conflict.

We are talking about a course correction whereby the authority of human communities to govern the purpose and behavior of corporations is recognized and enforced. It means changing the very purpose of the law that binds us together. It means thinking about what is really ​“essential,” and driving that life-centered ethic into the law.

Communities across the country have already begun to rethink how human law treats the ecosystems our societies depend on. This new paradigm is long overdue.

# Sustainability Advantage

## Internal Link

### IL---AT: U.S. Not Key to Global Action (Houck 17)

#### Houck concludes current global action’s precarious and reversible---makes the aff key

Oliver A. Houck 17, Professor of Law, Tulane University, Winter 2017, “ARTICLE: Noah's Second Voyage: The Rights of Nature As Law,” Tulane Environmental Law Journal, 31 Tul. Envtl. L.J. 1

All of this progress noted, one would be remiss not to recognize that the situation today is precarious. No country on earth has done a more dramatic turnabout on environmental protection than the United States, whose relevant agencies are now both led and staffed by individuals who have spent their professional lives opposing them, 137even their right to [\*25] exist. 138Protective regulations are falling like ten-pins, and this is only the beginning. 139Nowhere in the world can one be confident that nature as we know it today, even in its diminished state, can endure. All of which has fostered proposals to recognize nature's own rights more directly and raised legal questions in turn that we can no longer ignore.

### IL---Degrowth---Global Spillover/Modeling

#### Strong rights of nature get modeled globally due to judicial borrowing---that’s key to overcome growth economics worldwide

Mark Hawkins 21, MSc in Environment, Politics and Development from the University of London, January 2021, “Imagining a Post-Development Future: What can the Degrowth and Rights of Nature Debates Offer Each Other,” https://www.researchgate.net/publication/348785651\_Imagining\_a\_Post-Development\_Future\_What\_can\_the\_Degrowth\_and\_Rights\_of\_Nature\_Debates\_Offer\_Each\_Other

The RoN, unlike degrowth, have real world examples of its implementation, most notably in the constitutions of Ecuador and Bolivia. Its greatest strength is that it addresses a key weakness in modern environmental law: it is difficult to show one's rights have been damaged by the destruction or spoiling of a natural biome. One of the first mentions of the RoN was put forward in the 1972 Supreme Court case on the issue of legal standing, in which the court rejected the Sierra Club, an environmental organization, seeking to block the development of a ski resort in the Sierra Nevada mountains. Justice William O. Douglas, in a dissenting opinion, advised that environmental objects should be granted legal personhood to make them legible before the law (Ogden 2018). In this vein in Article 71 of the Ecuadorian constitution and Article 34 of the Bolivian constitution it is stipulated that any member of the public may bring RoN cases before the courts, thus theoretically making it possible for anyone to intervene on the side of the natural environment (Ecuador 7.71, Bolivia V.I.34.). Another strength of the RoN is its connection to Indigenous thought. Kauffman & Martin (2018) argue in the case of the Wanganui river in New Zealand that RoN represents a compromise between the modern state and Indigenous worldviews. This gives RoN great promise, representing a way to move beyond the man nature duality, one of the pillars of modernity which is often absent from Indigenous thought (Gudynas 2010). Furthermore, legal concepts are particularly mobile in the modern hyperconnected world thanks to judicial borrowing. Affolder (2019) calls this “contagious law-making”, thus capturing both the spread of ideas from host to host and the mutating of these ideas as they spread around the globe. The contagious nature of legal innovations, especially in the case of environmental law, gives legal principles a malleability and manoeuvrability quite above regular policy proposals. Yet law is often underrepresented in post-developmental arguments, in the case of degrowth this is particularly true.

And so, we can see the context of these two schools of thought from the forefront of the post-development, where anthropocentric development-through-growth has come against biophysical limits and an increasingly organised and broad coalition of critics. The core of this idea, with its utility to continued accumulation, is the framing of continued growth as a ‘tide to raise all boats’, paid for by a nature imagined as external, distant and limitless. Having introduced the key concepts, we will now look at some blind spots in the two movements.

### IL---Degrowth---Broad/General

#### Rights of nature are vital to put hard limits on growth that mandate sustainability---that prompts a shift from focusing on GDP towards net positive impact as the metric for growth

Linda Sheehan 17, Executive Director, Planet Pledge, 4/21/17, “The Role of Nature’s Rights in Achieving the Sustainable Development Goals,” http://files.harmonywithnatureun.org/uploads/upload651.pdf

First, how does nature’s rights help us understand what “sustainable” behavior looks like? “Sustainability” as a concept should guide us to improve the health of the biosphere and our relationship with it, rather than prop up current, harmful consumption and production practices. The Expert Report on Earth Jurisprudence submitted to you describes “sustainable” behavior as being “reconnect[ed] … with Nature’s processes.” The Report emphasizes that nature can no longer be treated as a commodity – it is our relation, and we must evolve law and policy to reflect that fact.

The concept of rights helps us understand this point more clearly. The 2030 SDG Agenda seeks to “realize the human rights of all,” and adds that the SDGs are “grounded in” the Universal Declaration of Human Rights. This is important, but we also must ground the SDGs in nature’s rights if we are to protect human rights in practice.

For example, the U.N. has acknowledged that the human right to water is “a prerequisite for the realization of other human rights.”1 But how can we say we have a right to something, like a waterway, if it does not itself have a right to exist and thrive? The Earth Jurisprudence Report recommends that we fix this gap by recognizing nature’s rights in law and practice, just as we recognize human rights and the rights of indigenous peoples.

Governments around the world are already taking up this charge. Just in the last few weeks, we have seen legislation passed at the national level in New Zealand and two court decisions in India, which have recognized the legal personhood and rights of ecosystems and species. In addition, the IUCN’s World Commission on Environmental Law recently concluded that recognition of nature’s inherent right to “exist, thrive, and evolve” is essential to ensure ecologically sustainable development.

Just as law and policy grounded in human rights sets a higher standard for action, so too does law and policy grounded in nature’s rights better protect the well‐being of ecosystems and species. Defining “sustainability” in terms of nature’s right to thrive is significantly different from what we do now. We treat nature as a commodity for our economic system first, with only limited safeguards to slow nature’s degradation. This approach is failing, as species and habitats rapidly disappear and the global temperature continues to warm.

We must set our sights higher. The 2030 Agenda makes room for nature’s rights, calling for a “healthy environment” and declaring a vision of a world “where all life can thrive.” The structure of our laws, policies, and scientific inquiry must support this core vision of sustainability. This brings us to the second question: how does nature’s rights inform the meaning of “sustainable development,” and how do we achieve such development in practice? Putting profit before people and nature is unsustainable development. We must redefine what we expect sustainable business and finance to look like, and move away from a primary profit objective and toward expanding benefits for Earth society, which includes all life.

What does this mean in practice? One conclusion is that we need to replace gross domestic product as a desirable measure of sustainable progress. The Earth Jurisprudence Report observes that “blind adherence to economic growth as a measure of well–being has resulted in increasing harm to the planet and to all of us.” GDP growth does not translate to sustainable development; it includes all development, both good and tragic. Earlier this year, the World Economic Forum itself criticized such economic growth as failing to address the needs of the political economy.

Sustainable development calls on us to choose our actions in light of their broader impacts, rather than continue to focus on short‐term profit. Fortunately, this economic evolution is already beginning. More businesses are measuring success not just by profits and economic growth, but also by the measureable social and ecological benefits they generate. More investors are demanding investment products that offer both financial returns and strong social and ecological returns. This expanded focus allows for improved consideration and management of risk, and so can result in better financial performances over time than conventional instruments.

One such example is the increasing number of investments related to mitigating climate change, to help the world stay below the 2oC threshold. The social and ecological impacts of climate change are potentially catastrophic and irreversible. Financial investments that recognize and mitigate such risks, such as investments in the low carbon economy, will ensure sustainability far more effectively than those that merely increase GDP. It is with climate change in mind that the World Economic Forum also identified an “urgent” need for “long‐term thinking” in our economic system. To be sustainable in fact, development must be conceived and implemented in light of the magnitude of the long‐term risks of climate change and other global stressors.

Our sustainable development objective, however, is not merely occasional success. We must create instead a self‐perpetuating system, designed to generate development and investment behavior that regularly advances net positive impacts for human and ecological communities. We need to think beyond current investment and economic practices to do this. For instance, we should consistently place higher costs on economic behaviors that cause injury, such as fossil fuels, and reward with higher returns those economic choices that measurably benefit people and planet. Tying our economic, business, and finance priorities to progress in safeguarding nature’s rights and human rights will help us measure our success and keep us on track.

We also must evolve our characterization of nature as an economic commodity. Our relationship with nature is fundamentally familial and local. As the Earth Jurisprudence Report recommend, development must reconnect with and respect nature’s processes, rather than destroy those processes in the name of profit.

This brings us to our third question: how do we adjust our actions to best achieve our core sustainable development goal as soon as possible? We have little time to course‐correct before the impacts of climate change, species extinctions, and habitat destruction create tipping points that irreversibly injure all life.

The key is to focus on the 2030 Agenda’s core goal: “a world…where all life can thrive.” This includes the natural world, as we are inseparable from it.

Our core goal for 2030 is not sustainable development. Our goal instead is a thriving world; sustainable development is just a tool. Nature’s rights provides a necessary foundation from which our governance systems can build truly sustainable development practices that will help us achieve our goal, including finance and business systems designed to seek out and maximize ecological and social gains.

The distinguished members of this Assembly can take action now in this direction, by advancing nature’s rights laws locally, as numerous communities and nations have done already, and by supporting a Declaration on the Rights of Nature.

#### Nature rights are vital to put boundaries on growth that make it sustainable

David R. Boyd 17, associate professor of law, policy, and sustainability at the University of British Columbia, 2017, The Rights of Nature: A Legal Revolution That Could Save the World, unpaginated ebook edition

Rights for nature impose responsibilities on humans to modify our behaviour in ways that will re-establish a mutually beneficial relationship. Recognizing and respecting nature’s rights does not put an end to all human activities, but requires eliminating or modifying those which inflict suffering on animals, threaten the survival of species, or undermine the ecological systems that all life depends on. The precise meaning and effects of recognizing the rights of nature will be worked out through community conversations, scholarly dialogue, public and political debates, negotiation, and, where necessary, litigation, just as all novel legal concepts evolve.

It should be obvious that nature’s rights cannot be reconciled with endless economic growth, consumerism, unconstrained globalization, or laissez-faire capitalism. We cannot continue to prioritize property rights and corporate rights, burn fossil fuels at current rates, or perpetuate today’s linear economy that treats nature as a commodity rather than a community. Actions needed to respect, protect, and fulfill nature’s rights include treating all animals (human and non-human) with greater empathy and respect; rapidly shifting to 100 percent renewable energy; protecting vital natural cycles of life, such as water, carbon, and nitrogen; focusing on local production and consumption; and redesigning the economy to acknowledge ecological limits and emulate nature’s circular approach. In a circular economy, all inputs, outputs, and byproducts must be non-toxic, reusable, recyclable, or compostable. By redesigning products, processes, and supply chains, we could create a restorative economy that benefits both people and the planet.

Perhaps the most critical missing piece of the puzzle is an informed public willing and able to close the gap between their actions and their professed love of animals, endangered species, and nature. We need to place ecological literacy on par with reading, writing, and arithmetic as foundational learning in our education systems. People need to speak out about the rights of nature and elect politicians who are willing to do the same. People need to rethink their own priorities so as to leave a lighter footprint on the Earth and cause less suffering to animals, using renewable energy, eating less meat and dairy (and shifting to ethical sources), reducing consumption, and shifting purchases toward services and cradle-to-cradle products.

Many questions remain regarding the impact of recognizing nature’s rights. Yet there is a widespread and growing sense that treating nature as a mere warehouse of resources for our use, and a repository for our pollution and garbage, is fundamentally wrong. Cormac Cullinan believes that “the day will come when the failure of our laws to recognize the right of a river to flow, to prohibit acts that destabilize Earth’s climate, or to impose a duty to respect the intrinsic value and right to exist of all life will be as reprehensible as allowing people to be bought and sold.” Propelled by the global environmental crisis, the rights of nature movement has the potential to create a world where people live in genuine harmony with nature. It forces us to reflect upon the fact that we live on the only planet in the universe known to support life. Our evolution, and the evolution of the millions of other species both different from and similar to humans, have combined to form an interdependent fabric that makes this planet a natural miracle, a one-in-a-billion long shot.

### IL---Degrowth---Extractive Industries

#### Rights of nature are the core of a material degrowth agenda---they directly limit the extractive industries that fuel endless consumption and marginalize Indigenous populations

Mark Hawkins 21, MSc in Environment, Politics and Development from the University of London, January 2021, “Imagining a Post-Development Future: What can the Degrowth and Rights of Nature Debates Offer Each Other,” https://www.researchgate.net/publication/348785651\_Imagining\_a\_Post-Development\_Future\_What\_can\_the\_Degrowth\_and\_Rights\_of\_Nature\_Debates\_Offer\_Each\_Other

In terms of degrowth the RoN offer a vanguard policy. Firstly, they are contagious, and have the ability to spread beyond sluggish governments all too often in the thrall of powerful economic interests. Secondly the RoN are of particular relevance to Indigenous people both directly in that they offer another tool in Indigenous groups and their allies arsenals in resisting extraction and dispossession and indirectly in that they contribute to moving towards pluralistic legal systems more responsive to Indigenous customs and world views. Indigenous groups that are currently not adequately defended in degrowth, especially given they are historically and currently the greatest victims of growth and accumulation. Thirdly as we have seen in the Columbia case, and will see in the cases of Ecuador and Bolivia below it is extractive industries that are the targets of RoN laws, and it is in response to these industries that such laws often surface. It is these sights of extraction that growth originates, by the creation of the conditions that allow for the cheap natural resources to be obtained to fuel industry and consumption; materials obtained from the land of the marginalised.

### IL---Degrowth---Transition

#### Transition would work---balancing growth policies during the transition and practical lifestyle changes will gain public support

Claudio Cattaneo 17, researcher at the Barcelona Institute of Regional and Metropolitan Studies of Autonomous University (IERMB-UAB) on energy and landscape analysis, Ph.D. in Ecological Economics from Universitat Autònoma de Barcelona, July 2017, “Degrowth – Taking Stock and Reviewing an Emerging Academic Paradigm,” Ecological Economics, Vol. 137, p. 8

Moreover, growth policies may not necessarily be abandoned on a finite planet earth. Instead, such policies may allow making maximum use of available resources (be it through expanded resource extraction, technological innovation, or increased commodification of society) in the short term, while in parallel enabling the development of means to cope with environmental limits in the long term. Drought in California arguably forced residential water consumption to decrease in 2014 by some 30% (Reese, 2015) without causing major social disruptions. Such a decrease may not have been achievable by appealing to voluntary frugality nor may have water-saving policies obtained sufficient public support by pointing out unsustainable water consumption. The observed water savings might be temporary but show the capacity of humans to adapt in face of acute resource shortage. The case also points to the importance of technology as a catalyst for factor substitution in production and consumption in response to environmental constraints.

 To be successful, degrowth has to identify a concrete and inclusive development perspective (see Schwartzman, 2012) for the affluent and powerful elites and the marginalized poor. Direct benefits of degrowth might be experienced by consumers in areas where further growth has obviously become undesirable, such as in the health care industry as illustrated by Missoni (2015), in the food, nutrition and the agricultural sector, or in urban transportation. Degrowth could address psychological stress related to over consumption, long working hours, and the commodification of social relations and highlight the benefits of a simplified life style away from positional competition and towards more collaborative community development. Addressing life quality around resonant human interactions (Rosa, 2015) in face of increasing competition and individuation may be a viable angle to highlight the benefits of degrowth. Decreasing working time can mitigate environmental degradation (Knight et al., 2013, Fitzgerald et al., 2015) and provide a leverage point for virtually all other degrowth proposals. In fact, we would regard a decrease in working time as the single silver bullet through which degrowth can yield personal welfare gains, increase environmental sustainability, enhance democracy, and thus obtain the support of larger parts of the population. Yet, to be a fulfilling choice, reduced working time, and degrowth in more general, may hinge on a wider cultural recognition (see, e.g., Skidelsky and Skidelsky, 2012) that still appears to be hampered under the present societal conditions.

 Kallis (2013) argues that societies have the capacity to steer social processes towards degrowth, thereby opposing the view of Sorman and Giampietro (2013) who consider that societies are destined to grow, crash, and adapt. We see a larger and more differentiated space of development to which the degrowth discourse contributes visions for both social and economic adaptation and the mitigation of environmental impacts. In a resource-constraint world, degrowth may occur as a gradual and locally-specific transition (Buch-Hansen, 2014). We argue with Ott (2012) in favor of political prudence through addressing specific problems with specific policies and against the pursuit of grand new utopias that often come with unintended consequences.

## Impact---Degrowth

### Impact---Degrowth---AT: Turns---Top

#### Environmental destruction makes economic growth terminally unsustainable---river rights are vital to avert catastrophic collapse

Brandon Rosenbach 19, Earth Law Center, 2/12/19, “Earth Law Makes Economic Sense,” <https://www.earthlawcenter.org/blog-entries/2019/2/earth-law-makes-economic-sense>

The Guardian puts it most succinctly:

Natural capital is everything nature provides us for free. It is what our economy is built upon. We add man-made capital in the shape of houses, factories, offices and physical infrastructure, and human capital with our skills, ideas and science.

Natural capital should, therefore, be at the heart of economics and economic policy – but it isn’t. As a consequence we abuse nature, drive species to extinction, and destroy ecosystems and habitats without much thought to the consequences. The damage won’t go away; as we wipe out perhaps half the species on the planet this century and induce significant climate change, the economic growth we take for granted will be seriously impaired. Put simply, our disregard for natural capital is unsustainable – it will not be sustained.

Since the creation of the Environmental Protection Agency (EPA) in 1970, politicians and citizens alike have expected increased environmental protection to result in a decrease in economic efficiency. One of the most common arguments against increased environmental regulations claims that small businesses, the energy sector, and job growth will be stifled by increased protections.

Logically, people assume that more protection will means businesses will need to spend more money to comply with new laws, but is it necessarily true that strengthening environmental laws stifles business and the economy? No, in fact, many of the EPA’s policies—such as acts promoting clean air and water—have resulted in a net economic benefit for the United States and countless local communities.

Earth Law Center is one organization that works towards the same end – ensuring the long-term health of natural ecosystems and fellow species. Earth Law Center helps local partners enact laws to protect coral reefs, rivers, and oceans across the US and around the world, areas that could also provide economic benefits to local communities.

THE EPA AND THE CLEAN AIR ACT

To combat a rising trend of air quality issues resulting in both illness and death of human citizens, the EPA passed the Clean Air Act in 1970. This required the EPA to set National Ambient Air Quality Standards (NAAQS), effectively defining pollution standards for industrial and automobile businesses. Predictably, companies and politicians argued the new laws would hinder business and the economy; opponents across auto, steel and electrical utility industries combined forces to unsuccessfully delay the implementation timetable. In fact, opposition to strict clean air standards has continued despite data, from 1970 until now, indicating significant improvements in air quality along with new growth sectors.

From 1972 to 2014, the six major pollutants outlined by the Clean Air Act have been reduced by 69%. There are no longer rampant smog alerts, and it is uncommon in most cities for particulate emissions to obscure skylines. The health benefits resulting from the legislation have been astounding, as cleaner air means fewer respiratory issues—including acute bronchitis, emphysema, and asthma—and a reduction in heart attacks. The increased health of the general public in the United States equates to overall economic savings. In 2010 alone, an avoidance of 160,000 premature deaths from respiratory illness and 130,000 heart attacks can be attributed to cleaner air standards. These health benefits, which have resulted in 13 million lost work days avoided, have brought about $22 trillion in cost savings compared to only $.5 trillion in costs related to the bill. In the same time period, from 1972–2014, coal production, oil refineries, and the overall economy have all increased in production and efficiency.

The Clean Energy Sector is a prime example of a new growth sector spurred by regulation changes. This year, the renewable energy surged to 18% of the U.S. power mix, signifying the success of the growing industry. At the same time, both greenhouse gas emissions from power generation and consumer spending have declined. The wind and solar projects, which make up 62% of new power construction, are creating jobs faster than the rest of the economy. Pioneers in the clean energy field are continuously developing new technologies improving our ability to harness and save energy. The sector’s unprecedented growth stems from diverse support from local and state governments , corporations, and organizations dedicated to a cleaner future, and with continued government support, the renewable energy sector will continue growing.

BUSINESSES NEED THE ENVIRONMENT TO SURVIVE

The Guardian notes that…the survival of society needs a supportive natural environment, not one ravaged by climate change. But neither will happen unless we manage scarce resources at our disposal more successfully in both financial and environmental terms.

Businesses are "sawing off the branch on which they stand" by failing to account for the natural capital impacts of their operations, a senior member of WWF-UK has said. The charity's director of advocacy Trevor Hutchings, who is speaking about natural capital at this week’s Sustainability Leaders Forum in London, believes businesses that treat natural resources such as water, forests, and metals as 'infinite' are guilty of “extreme short-termism”.

Progressive business thinkers have already started to change their behavior. Hundreds of investors from around the world, who manage $24 trillion in assets, supported the UN climate deal in Paris 2015. The board of the Rockefeller Brothers Fund, the heirs to the world’s first great oil fortune, divested from fossil fuels in their portfolio several years ago.

A ground-breaking new study, co-authored by almost 50 scientists, including Rainforest Alliance Chief Program Officer Nigel Sizer, charts an ambitious yet achievable plan to halt mass extinction through a strategy of protecting half the Earth by 2050. The plan, linked to a policy initiative called the Global Deal for Nature (GDN), is being proposed as a companion pact to the Paris Climate Agreement.

SAVING THE REMAINING HALF OF THE WORLD’S CORAL REEFS

Earth Law Center has joined with partners to save half of the coral reefs we still have left. With half of the world’s coral reefs already destroyed, we have a unique opportunity to act now. Nonetheless, reefs face the problem that so many environmental resources face, the tragedy of the commons. Individuals use the resource how it best suits themselves, without thinking about the consequences of everyone using the resource just as they are. Reefs, being very close to shore, are particularly susceptible to damage from human activity. In some instances, locals near reefs have banded together to protect reefs and establish new rules and regulations. In some circumstances, environmental rules and regulations have failed because local people whose livelihoods are connected to the reefs will not accept lessening their use of a reef in the present to ensure it can still support life in the future.

Globally, coral reefs and their ecosystems have an estimated value of $2.7 trillion dollars per year, providing economic goods and services worth $375 billion each year. Reefs provide significant food sources for people around the world. A large problem in protecting coral reefs is overfishing, and fishermen, who rely on reefs to survive, resist new regulations. Reefs also help protect coastlines by acting as natural breakwaters, minimizing the impact of waves, flooding, and coastline erosion. The global net benefit of reefs acting as natural breakwaters is $9 billion per year. It is estimated that 63 million people live less than 33 feet above sea level and less than two miles from a coral reef. If waves enter these areas without being blocked by reefs, they could cause loss of life or property.

Reefs, which provide habitat for a quarter of known marine species, are a key driver of tourism. In southeast Florida alone, reefs support 70,400 full and part-time jobs, related to fishing, scuba diving, and snorkeling tourism. Reefs are the backbone of many local economies around the world, and many local governments have begun to protect these resources that cannot be replaced.

Belize is home to one of the most spectacular and biodiverse reefs on the globe, but in 2009, the reef was put on UNESCO’s “danger” list. In response, the Belizean government has enacted new laws and procedures to restore the reef, which is the country’s most popular tourist attraction. The Belize Government became the first country in the world to put a temporary ban on all offshore drilling and exploration. The government has also banned single-use styrofoam cups and tripled the size of “no-take” zones to ensure ocean development. Economics help drive reef protection in Belize. 200,000 Belizeans rely on the reef’s survival, and 15% of the country’s GDP comes from the reef. The reef also provides coastline protection worth $350 million per year. Without the reef, many of the local businesses and people would struggle. The Belizean government’s dedication towards protecting the reef has resulted in measurable benefits to ocean biodiversity, and it is imperative to the local economy that the government continues in its efforts. Reefs, which account for 2.2% of all global ecosystem service values per year, are not only an important environmental resource but a valuable economic resource as well.

Manta ray tourism is worth an estimated USD15 million in Indonesia. Raja Ampat, in the Papua region of Indonesia, has become a shining example of marine eco-tourism, with manta rays serving as a conservation icon for this regency. Although their populations have been severely depleted elsewhere in the region, manta rays are still abundant in the waters of Raja Ampat, largely due to progressive conservation measures enacted by the local government. In November 2010, the head regent of Raja Ampat made a historic declaration, designating the entire 46,000 square kilometers (17,760 square miles) of Raja Ampat a sanctuary for sharks, manta rays, mobula rays, dugongs and turtles.

LET’S RESTORE AND PROTECT THE WORLD’S RIVERS

Earth Law Center drafted the Universal Declaration of Rights of Rivers and with partners, is seeking legal rights for rivers around the globe. Rivers face threats from pollution, reduced flows, dam construction, energy production, and more. Some 80% of the world’s wastewater is dumped—largely untreated—back into the environment, polluting rivers, lakes, and oceans. Once a river is polluted, it is both expensive and difficult to restore clean ecosystems. Akin to maintaining air free of pollutants, clean rivers are vital to healthy populations in our country and across the world.

The economic value of rivers cannot be taken for granted. The Colorado River, which runs through seven states, supports over 16 million jobs, accounts for $1.4 trillion in yearly economic activity, and plays a crucial role in the economy of the southwest United States. A study commissioned by Arizona State University states that 87% of Nevada’s Gross State Product relies on Colorado River water. The river is currently facing droughts and dropping water flow, and despite aggressive conservation efforts, there is a chance the river will never again return to its previous healthy state.

The Ganges River, which runs through India and Bangladesh, is a holy body of water for Hindus who view it as a purification tool. Burying ashes in the river ensures a break from the cycle of rebirth, and many Indians travel to the river to ceremonially spread the ashes of their loved ones. The river’s holy status means people constantly use it to bath, swim and drink, resulting in an extremely polluted body of water. In 1985, the Indian government raised $250 million to restore the river with limited efforts. Recently, government officials raised $3 billion dollars to clean the holy river, but the initiative is struggling and behind schedule despite support from the prime minister.

When a local a river is polluted, countless local businesses are negatively affected. Roger Zalneraitis, executive director of La Plata County Economic Development alliance, stressed the range of economic impacts a waste spill in the Animas River has had in surrounding areas. Businesses directly associated with the river, such as rafting and fishing operations, were forced to temporarily closed. Other business—like farms, nurseries, real estate agents, and photographers—have lost revenues from the river pollution.

HOW EARTH LAW CAN HELP

Earth Law Center is building an international movement from the ground up, one that gives better grounding to the idea that humans have a responsibility for how we impact the world around us. The belief that nature - the species and ecosystems that comprise our world - has inherent rights has proven to be a galvanizing idea, and we work with local communities to help them organize around the rights of nature to protect their environment from the threats that they see. The heart of the ELC approach is to seek legal personhood for ecosystems and species, a designation similar to that given to corporations in U.S. law, and one that if done well will imply both rights for the entities so designated and responsibilities on the part of human beings and societies to respect those rights.

Empowering nature empowers communities: when advocates see themselves as rights defenders rather than responsible stewards of nature for human ends, the stakes are raised, and the relationships between people and the environment is transformed. Part of this transformation involves rethinking how we determine value, as well as what we value.

EVERYONE BENEFITS FROM HEALTHY NATURE, THE ECONOMY INCLUDED

Despite the common opinion and rhetoric that environmental protection results in economic loss, many areas of environmental protection will help rather than hurt the economy. Since the inception of the EPA, politicians have tried to undermine environmental protection claiming to be pro-business.

Environmental resources, however, play a key role in maintaining human health, and in areas around the world, people and local economies rely on these resources for their livelihoods.

When assessing the impact of new regulations and stricter laws, it is imperative to look beyond immediate business procedures that may need to change to find the true net benefit of protecting a natural resource.

#### Bio-d loss causes extinction and ruins economies

Jeremey Hance 18, wildlife blogger for the Guardian and a journalist with Mongabay focusing on forests, indigenous people, and climate change, 6/28/18, “Biodiversity is the 'infrastructure that supports all life',” https://www.theguardian.com/environment/radical-conservation/2018/jun/28/biodiversity-is-the-infrastructure-that-supports-all-life

In my view, we need to ensure that the entire planet is used sustainably. That is, 100% of the Earth, the “Whole Earth”, has to be managed in a way that will allow continuous healthy functioning of the ecological systems that support life on Earth, including human life.

 We can think of biological diversity as the “infrastructure” that supports all life on the planet. When we lose species through extinction the web of life is destroyed and this in turn affects the resilience of the ecosystems and nature’s capacity to provide the services that humans benefit from – ensuring our food, the air we breath, the water we drink, or the moments of peace and serenity we enjoy in nature.

 Conservation and protection of nature, ecosystems, and species is one essential pillar of any strategy to ensure fully functional natural systems in the long term. Ecological restoration of degraded lands through natural means should be another key component. Ultimately, the paradigm shift that perhaps is necessary is the wide-understanding that the Earth is one system of interconnected elements, and that humans’ social and economic systems are embedded in the larger nature’s system, and not the other way around.

 A transformation of the way we produce, consume, and generally, interact with nature should therefore be another pillar of a long-term sustainable approach to ensure nature’s health, which is an essential condition for our survival and well-being on the planet. Ambitious, science-based targets are needed to guide the way in conserving and restoring the Earth.

### 2AC---Econ Defense

#### Recessions don’t make war more likely, but they do make them smaller

Jianan Liao 19, Shenzhen Nanshan Foreign Language School, February 2019, “Business Cycle and War: A Literature and Evaluation,” https://dx.doi.org/10.2991/ssmi-18.2019.37

Through the comparison of the two views, it can be found that both sides are too vague in the description of the concept of business cycle. According to economists such as Joseph Schumpeter, the business cycle is divided into four phases: expansion, crisis, recession, recovery. [12] Although there are discords in the division and naming of business cycle, it is certain that they are not simply divided into two stages of rise and recession. However, as mentioned above, scholars who discussed the relationship between business cycle and war often failed to divide the business cycle into four stages in detail to analyze the relationship.

First, war can occur at any stage of expansion, crisis, recession, recovery, so it is unrealistic to assume that wars occur at any particular stage of the business cycle. On the one hand, although the domestic economic problems in the crisis/recession/depression period break out and become prominent in a short time, in fact, such challenge exists at all stages of the business cycle. When countries cannot manage to solve these problems through conventional approaches, including fiscal and monetary policies, they may resort to military expansion to achieve their goals, a theory known as Lateral Pressure. [13] Under such circumstances, even countries in the period of economic expansion are facing downward pressure on the economy and may try to solve the problem through expansion. On the other hand, although the resources required for foreign wars are huge for countries in economic depression, the decision to wage wars depends largely on the consideration of the gain and loss of wars. Even during depression, governments can raise funding for war by issuing bonds. Argentina, for example, was mired in economic stagflation before the war on the Malvinas islands (also known as the Falkland islands in the UK). In fact, many governments would dramatically increase their expenditure to stimulate the economy during the recession, and economically war is the same as these policies, so the claim that a depressed economy cannot support a war is unfounded. In addition, during the crisis period of the business cycle, which is the early stage of the economic downturn, despite the economic crisis and potential depression, the country still retains the ability to start wars based on its economic and military power. Based on the above understanding, war has the conditions and reasons for its outbreak in all stages of the business cycle.

Second, the economic origin for the outbreak of war is downward pressure on the economy rather than optimism or competition for monopoly capital, which may exist during economic recession or economic prosperity. This is due to a fact that during economic prosperity, people are also worried about a potential economic recession. Blainey pointed out that wars often occur in the economic upturn, which is caused by the optimism in people's mind [14], that is, the confidence to prevail. This interpretation linking optimism and war ignores the strength contrast between the warring parties. Not all wars are equally comprehensive, and there have always been wars of unequal strength. In such a war, one of the parties tends to have an absolute advantage, so the expectation of the outcome of the war is not directly related to the economic situation of the country. Optimism is not a major factor leading to war, but may somewhat serve as stimulation. In addition, Lenin attributed the war to competition between monopoly capital. This theory may seem plausible, but its scope of application is obviously too narrow. Lenin's theory of imperialism is only applicable to developed capitalist countries in the late stage of the development capitalism, but in reality, many wars take place among developing countries whose economies are still at their beginning stages. Therefore, the theory centered on competition among monopoly capital cannot explain most foreign wars. Moreover, even wars that occur during periods of economic expansion are likely to result from the potential expectation of economic recession, the "limits of growth" [15] faced during prosperity -- a potential deficiency of market demand. So the downward pressure on the economy is the cause of war.

Third, the business cycle may be related with the intensity, instead of the outbreak, of the war. Scholars who supported the first two views did not pay attention to the underlying relationship between business cycle and the intensity of war. Some scholars, such as Nikolai Kondratieff and Joshua Goldstein, believes that the business cycle is not directly related to the outbreak of war, but the outbreak of war during the economic upswing appears to be more intense and persistent. In their analysis of the business cycle and war, Kondratieff and Goldstein discovered that the most dramatic and deadly wars occurred during periods of economic upswing. This finding may provide some clues on the relationship between war and the business cycle. Although the relationship between the outbreak of war and the business cycle is unclear, the scale of the war is likely to be influenced by the exact phase of the business cycle in which the belligerents are engaged. Such a phenomenon might make sense, since countries in economic upturn have better fiscal capacity, making them more likely to wage large-scale wars. Moreover, such relationship may also stem from the optimism pointed out by Blainey. While optimism may not directly lead to wars, it may have an impact on the choice of rivals. This is because optimism about national strength and the outcome of the war may drive countries to choose stronger rivals. The resulting war is likely to be far more massive and bloody. Nevertheless, more research is needed to specifically reveal this relationship.

### 1AR---Econ Defense

#### Recessions don’t make war more likely---conflict can start at any point in the business cycle---their claims rest of theoretical support that is unproven by empirics---the largest wars happen in periods of growth because leaders are more confident and pick larger rivals---that’s Liao.

#### Economic downturn doesn’t cause war

Diversionary and ‘military Keynesianism’ theories are both wrong---no country in the world today would act on either

Stephen M. Walt 20, the Robert and Renée Belfer professor of international relations at Harvard University, 5/13/20, “Will a Global Depression Trigger Another World War?,” <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/>

For these reasons, the pandemic itself may be conducive to peace. But what about the relationship between broader economic conditions and the likelihood of war? Might a few leaders still convince themselves that provoking a crisis and going to war could still advance either long-term national interests or their own political fortunes? Are the other paths by which a deep and sustained economic downturn might make serious global conflict more likely?

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose.

This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too.

Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure.

I doubt it. It takes a really big war to generate a significant stimulus, and it is hard to imagine any country launching a large-scale war—with all its attendant risks—at a moment when debt levels are already soaring. More importantly, there are lots of easier and more direct ways to stimulate the economy—infrastructure spending, unemployment insurance, even “helicopter payments”—and launching a war has to be one of the least efficient methods available. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do.

Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely.

Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible.

#### Even massive, long-term econ decline has minimal effects on the probability of war

Stephen M. Walt 20, the Robert and Renée Belfer professor of international relations at Harvard University, 5/13/20, “Will a Global Depression Trigger Another World War?,” <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/>

If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished.

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

### 2AC---Primacy Defense

#### Primacy’s not key to peace

Christopher Preble 16, vice president for defense and foreign policy studies at the Cato Institute, 8/31/16, “NO MORE OF THE SAME: THE PROBLEM WITH PRIMACY,” <https://warontherocks.com/2016/08/no-more-of-the-same-the-problem-with-primacy/>

Such expenditures might still be justified if they were instrumental in keeping Americans safe. But, in fact, primacy is based on a number of faulty premises, including: (a) that the United States is subjected to more urgent and prevalent threats than ever before; (b) that U.S. security guarantees reassure nervous allies and thus contribute to global peace and stability; and (c) that a large and active U.S. military is essential to the health of the international economy.

Primacists hold that the United States cannot adopt a wait-and-see attitude with respect to distant trouble spots. They believe that the security of all states are bound together and that threats to others are actually threats to the United States. Primacists believe that instability and crises abroad will adversely affect American interests if they are allowed to fester. “The alternative to Pax Americana—the only alternative—is global disorder,” writes the Wall Street Journal’s Bret Stephens, with emphasis. Because any problem, in any part of the world, could eventually threaten U.S. security or U.S. interests, primacy aims to stop all problems before they occur.

This assumption is based on a very selective reading of world history, grossly exaggerates the United States’ ability to control outcomes, and underplays its costs. It also miscasts the nature of the threats that are facing us.

Technology has not evaporated the seas, allowing large land armies to march across the ocean floor. Meanwhile, potential challengers like China face more urgent problems that will diminish their desire and ability to project power outside of their neighborhood. They can cause trouble in the South China Sea, but that does not mean they can or will in the South Pacific or the Caribbean. China’s economic troubles and rising popular unrest, for example, could constrain Chinese military spending increases and focus Beijing’s attention at home. Causing problems abroad would threaten critical trading relations that are essential to the health of the Chinese economy.

Primacists argue that we cannot rely on oceans to halt nuclear missiles that fly over them or cyberattacks in the virtual realm. And terrorists could infiltrate by land, sea, or air, or they could be grown right here at home. But our own nuclear weapons provide a powerful deterrent against state actors with return addresses, and a massive, forward-deployed military is not the best tool for dealing with terrorists and hackers. The hard part is finding them and stopping them before they act. That is a job for the intelligence and law enforcement communities, respectively. And small-footprint military units like special operations forces can help as needed.

There have always been dangers in the world, and there always will be. To the extent that we can identify myriad threats that our ancestors could not fathom, primacy compounds the problem. By calling on the United States to deal with so many threats, to so many people, in so many places, primacy ensures that even distant problems become our own.

Primacy’s other key problem is that, contrary to the claims of its advocates, it inadvertently increases the risk of conflict. Allies are more willing to confront powerful rivals because they are confident that the United States will rescue them if the confrontation turns ugly, a classic case of moral hazard, or what MIT’s Barry Posen calls “reckless driving.”

Restraining our impulse to intervene militarily or diplomatically when our safety and vital national interests are not threatened would reduce the likelihood that our friends and allies will engage in such reckless behavior in the first place. Plus, a more restrained foreign policy would encourage others to assume the burden of defending themselves.

Such a move on the part of our allies could prove essential, given that primacy has not stopped our rivals from challenging U.S. power. Russia and China, for example, have resisted the U.S. government’s efforts to expand its influence in Europe and Asia. Indeed, by provoking security fears, primacy exacerbates the very sorts of problems that it claims to prevent, including nuclear proliferation. U.S. efforts at regime change and talk of an “axis of evil” that needed to be eliminated certainly provided additional incentives for states to develop nuclear weapons to deter U.S. actions (e.g., North Korea).

Meanwhile, efforts intended to smother security competition or hostile ideologies have destabilized vast regions, undermined our counterterrorism efforts, and even harmed those we were ostensibly trying to help. After U.S. forces deposed the tyrant Saddam Hussein in 2003, Iraq descended into chaos and has never recovered. The civil war in Syria, and the problem of the Islamic State in particular, is inextricable from the U.S.-led invasion and occupation of Iraq. The situation in Libya is not much better — the United States helped overthrow Muammar al-Qaddafi in 2011, but violence still rages. The Islamic State, which originated in Iraq, has now established a presence in Libya as well, provoking still more U.S. military action there. It is clear that those interventions were counterproductive and have failed to make America safer and more secure, yet primacists call for more of the same.

Lastly, primacists contend that U.S. military power is essential to the functioning of the global economy. “U.S. security commitments,” explain leading primacists Stephen G. Brooks, G. John Ikenberry, and William C. Wohlforth, “help maintain an open world economy and give Washington leverage in economic negotiations.” The United States sets the rules of the game and punishes those who disobey them. If the United States were less inclined to intervene in other people’s disputes, the primacists say, the risk of war would grow, roiling skittish markets. But such claims exaggerate the role that U.S. ground forces play in facilitating global trade, especially given the resiliency and flexibility of global markets in the face of regional instability. Moreover, primacists ignore the extent to which past U.S. military activism has actually undermined market stability and upset vital regions. Smart alternatives to primacy feature a significant role for the U.S. Navy and Air Force in providing security in the global commons while avoiding the downsides of onshore activism.

In conclusion, America’s default foreign policy is unnecessarily costly and unnecessarily risky. Its defenders misconstrue the extent to which U.S. military power has contributed to a relatively peaceful international system, and they overestimate our ability to sustain an active global military posture indefinitely.

The United States needs an alternative foreign policy, one that focuses on preserving America’s strength and advancing its security, and that expects other countries to take primary responsibility for protecting their security and preserving their interests. America’s leaders should restrain their impulse to use the U.S. military when our vital interests are not directly threatened while avoiding being drawn into distant conflicts that sap our strength and undermine our safety and values.

### 2AC---AT: Degrowth Bad/Innovation

#### Err neg---planetary boundaries are *already* being crossed and decoupling is impossible

Riccardo Mastini 18, PhD student in ecological economics and political ecology in the Institute of Environmental Science and Technology at the Autonomous University of Barcelona, 6/1/18, “Work in a World Without Growth,” https://www.greeneuropeanjournal.eu/work-in-a-world-without-growth/

A fixation with growth in economics has seen GDP increase in proportion to environmental damage. As planetary limits draw ever closer and are even being surpassed, such a model cannot be sustained. Riccardo Mastini explains how a job guarantee could open up the way to a sustainable economic model.

 Since the dawn of capitalism, market economies have placed a high emphasis on labour productivity. Continuous improvements in technology geared towards productivity increases lead to more output being produced for a given amount of labour. But crucially these advances also mean that fewer people are needed to produce the same amount of goods and services each year. As long as the economy expands fast enough to offset increases in labour productivity there is no problem. But if the economy does not grow, people lose their jobs.

 Economic growth has been necessary within this system just to prevent mass unemployment. Communities and the politicians that represent them celebrate the construction of a new factory not so much for the increase in supply of some needed product, but because of the jobs it creates. In advanced economies, the shortage of employment has become more pressing than the shortage of products. Basically, we produce goods and services mostly to keep people employed rather than to cater for their needs.

 But what if economic growth were to slow down and, eventually, come to a halt in the near future? More than half a century of ‘growth propaganda’ supporting the dogma that pursuing never-ending growth is plausible and desirable may make this new prospect shocking for some. However, there is now overwhelming evidence that decoupling GDP growth from increases in natural resource and energy use is impossible. And our plundering of Earth’s bounty has already reached unsustainable levels with the overshot of several planetary boundaries.

 It is, therefore, time for a bold public debate about whether it is desirable to continue our relentless pursuit of economic growth, with the associated dire consequences for the health of the planet, simply to keep people employed. Adopting an economic policy proposal known as the job guarantee could ensure full employment while our society transitions towards an economy that no longer grows. All this, without sacrificing the goods and services needed for just and sustainable prosperity.

 The need for planned economic degrowth

 The idea of ‘degrowth’ takes aim at the irreconcilable contradiction between the growth imperative of capitalism and sustainability on a finite planet. Degrowth is defined as an equitable downscaling of production and consumption that will reduce society’s extraction of energy and raw materials and generation of waste. More broadly, degrowth means the abolition of economic growth as a social objective. Instead, degrowth implies a new direction for society, one in which we live and work differently from today by giving priority to a sustainable level of wellbeing for all citizens rather than to maximising wealth.

#### Transition now is better---diminishing tech returns mean society has already entered “involuntary degrowth”

Mauro Bonaiuti 18, professor of ecological economics at the University of Turin, October 2018, “Are we entering the age of involuntary degrowth? Promethean technologies and declining returns of innovation,” Journal of Cleaner production, Volume 197, Part 2, p. 1807-1808

In the last few years the economic slowdown has been noted even by standard economists who have started to speak openly of “secular stagnation”20. The basic idea is that, after the financial crisis, despite years of zero interest rate there are no signs of a satisfying recovery of the global economy. Recognising, as did Larry Summers, 2014, Summers, 2015 and Paul Krugman (2014), that what we are experiencing is something quite different from an ordinary crisis, it is an important step that in some way legitimize the debate on post-growth society. However, the discussion on secular stagnation is rooted in standard macroeconomic theory. Even if from different perspectives, all these authors21 advocate economic interventions aimed at stimulating a return to growth. Above all these analyses do not offer any indication of the length or magnitude of future cycles of innovation. As Georgescu-Roegen has already pointed out (Georgescu-Roegen, 1971, Georgescu-Roegen, 2011) standard economics lacks an evolutionary theory and, consequently does not even take into consideration the possible irreversible changes in the system (as degrowth supporters do). From this perspective the bioeconomic approach seems more promising: it does not only ascertain the slowing down of innovation processes, but offers an explanation of it, making it part of a more general hypothesis on the evolutionary trend of the system (the Great Wave), open to various possible future scenarios.

 7. Conclusions

 The concept of Promethean Technologies is one of Georgescu-Roegen’s fundamental contributions to bioeconomic theory. It reveals how the process of innovation is not only the outcome of small incremental variations but is also the result of discontinuous, epoch-making innovation. Since greater complexity requires more accessible energy, Promethean technologies are the only ones capable of producing a leap in the scale of complexity of human societies.

 Tainter’s principle of Diminishing Marginal Returns, on the other hand, offers a basic understanding of societal dynamics as a consequence of increasing complexity. Increasing complexity leads, in fact, to diminishing returns. By integrating G-R’s bio-economic view with Tainter’s principle of diminishing returns, the author has formulated the hypothesis that, after the Promethean/Industrial Revolution returns on investment in complexity follow a “Great Wave” trend.

 The second part of the paper offers an initial enquiry into the Great Wave hypothesis, using Total Factor Productivity as an indicator of returns on innovation. The analysis of data shows that the period after the Industrial Revolution can be divided into three large cycles (IR1, IR2, IR3), and that each cycle presents a S-shaped trend, albeit of a different magnitude and duration.

 In the US the application of coal/steam-engine/telegraph technology stimulated a rapid increase in productivity, reaching a peak between 1869 and 1892 (at almost 2%). Yet it was to be the great innovations of the second industrial revolution (the electric engine and the internal combustion engine) with their momentous potential both for manufacturing and domestic consumption (electric light, indoor plumbing) that took TFP values to their peak (2.78%) and, more than that, kept them high (at around 2%) for at least another 25 years, thanks in particular to innovations in the transport system. However, after the peak in the 1930s productivity decreased until it reached a modest 0.34% in the period 1973–95. Although the use of computers and ICT has led to a significant revival of productivity, both the empirical evidence and theoretical reasons lead one to conclude that the innovations introduced by IR3 are not powerful enough to compensate for the declining returns of IR2.

 This of course does not exclude the possibility that a new expansive cycle may follow the decline of IR3. What the Great Wave hypothesis suggests, however, is that - without the intervention of a new Promethean technology - it is likely to be less influential, and briefer, than the previous one: a conclusion that it would be impossible to draw by applying the instruments of standard macroeconomic theory (Summers, 2014, Summers, 2015, Krugman, 2014; but also Gordon, 2015). This is the reason for emphasis having been placed here on a few bio-economic concepts and on complex system theory.

 In short, an analysis of TFP data for the three cycles after the Industrial Revolution seems to be consistent with the hypothesis of a Great Wave. This means that the U.S. economy seems to have reached its first threshold of mutation - and hence entered a phase of diminishing returns on innovation -in the thirties. This conclusion, moreover, thus appears to be consistent with evidence from research in other fields, i.e. energy (Hall et al., 2008), mineral resources (Bardi, 2014), agriculture (Coelli and Prasada Rao, 2005), health, education and scientific research, (Tainter, 2006, Strumsky et al., 2010), demonstrating that advanced capitalist societies (the U.S., Europe and Japan) have entered a phase of declining marginal returns or involuntary degrowth in many key sectors (Bonaiuti, 2014), with possible major detrimental effects on the system’s capacity to maintain its present institutional framework.

#### Even if growth solves some crises, innovation creates new ones---better to transition

Giorgos Kallis 17, ICREA Research Professor at Universitat Autònoma de Barcelona, environmental scientist working on ecological economics and political ecology, formerly Marie Curie International Fellow at the Energy and Resources Group of the University of California at Berkeley, PhD in Environmental Policy and Planning from the University of the Aegean in Greece, 4/10/17, “Economics Without Growth,” in Another Economy is Possible: Culture and Economy in a Time of Crisis, no page #

The economy is material (Georgescu-Roegen 1971)

 Economic activity – production, exchange, or consumption – does not take place in a vacuum. It extracts and transforms inputs – energy and raw materials – and it produces undesirable outputs, such as waste or air emissions. Each society, like each organism, has a “metabolism,” a pattern of material and energy throughput (Fischer-Kowalski 1997; Giampietro 2003). There is nothing immaterial in information services, such as a social networking site like Facebook. These embed vast quantities of materials and energy [what Odum (2002) called “emergy,” embodied energy]: raw materials used for computers; energy used to power servers; or food, materials, and energy used to raise, educate, and move around the Silicon Valley entrepreneurs. The “immaterial” economy embodies a very material economy.

 The economic process increases entropy as it converts high order matter and energy into low order energy (Georgescu-Roegen 1971). For Georgescu-Roegen, the entropic death of life on the planet is the ultimate physical limit; a transition from exhaustive fossil fuels, which once used are turned into high-entropy energy irreversibly, to “renewable” solar power, which will slow down the pace toward this entropic end. However, the presence or not of ultimate entropic limits has been disputed; and even if there are such limits, they probably operate in time horizons of millions of years, making them irrelevant for current generations. Nonetheless, specific stocks, such as oil or phosphorus upon which modern industry or agriculture depend, may be exhausted. This is a matter of specific, not ultimate limits.

 A preferable conceptualization of the relationship between society and resources is that of co-evolution. Resources such as fossil fuels, or ecosystems such as the atmosphere, condition what societies can or cannot do in any given moment. Societies refashion such “limits”; industrialized agriculture overcame the limits of land productivity and oil substituted coal. In the process new limits and conditions were produced, such as soil pollution, erosion, exhaustion of phosphorus for fertilizers, or climate change. The “responses” to such limits, such as the development of nuclear power, tar sands, or GMOs, may increase the wellbeing of some (typically a few) at the expense of many others. It is more apt to think of the economy and social activity not as ultimately limited in an absolute sense by a surrounding planetary ecosystem (Daly 1997), but in a constant co-evolutionary relationship, whereby societies transform ecosystems, for better or for worse, and then have to adapt to their own transformations (Benton 1992; Kallis and Norgaard 2010).

 Georgescu-Roegen’s insight remains important insofar as the economic process creates negentropic order in some places, by increasing entropy elsewhere. Climate change is the result of the entropic shift of carbon emissions to the atmosphere. Increasing carbon emissions and concentrations in the atmosphere destabilize the climate with disastrous consequences, which will strongly determine future co-evolution. If all currently available fossil fuels were to be extracted, temperature on the planet would increase by 15 °C. To stay within what scientists claim as the safe operating zone of 2 ° C change, by 2050 the global economy would have to become 130 times more efficient in its use of carbon if it were to grow at the same pace; in comparison from 1980 to 2007, efficiency improved by a mere 23 percent (Jackson 2011). Rich countries should start cutting their emissions by 8– 10 percent per year (Anderson and Bows-Larkin 2013), when the best they have achieved are 1 percent reductions, and this during recessions. A reduction of economic activity, in Georgescu-Roegen’s terms a slowing down of the entropic economic process, seems unavoidable, either voluntarily by planned degrowth or involuntarily by a disastrous change of the climate.

 Another important insight of the material, or metabolic view, is that the production of energy and resources uses energy and resources itself. To drill oil, one spends energy; to extract uranium and silicon, and build and operate nuclear or solar power plants, also. The period of high growth has been associated with high energy productivity (or high energy surpluses) from oil and coal. It is not clear how cleaner renewable energies, with lower energy return on energy investment, will sustain high growth rates or an economy of the present scale. While a short-term Keynesian perspective can suggest that public investment in green infrastructures and renewable energy can be expansionary, in the long term this is unlikely to be the case, since one in effect is substituting energy sources of high productivity for sources with low productivity. Labor can substitute energy, but this is the inverse of the growth process. In conclusion, it is unlikely to have a “green growth.”

### 2AC---Sustainabilty/AT: Renewables

#### Degrowth is key---only way to avoid total societal collapse

Federico Demaria 18, Ph.D. in Environmental Science and Technology from Autonomous University of Barcelona, researcher in ecological economics at the Autonomous University of Barcelona, 2/22/18, “Why economic growth is not compatible with environmental sustainability,” https://theecologist.org/2018/feb/22/why-economic-growth-not-compatible-environmental-sustainability

'Growth for the sake of growth' remains the credo of all governments and international institutions, including the European Commission.

 Economic growth is presented as the panacea that can solve any of the world's problems: poverty, inequality, sustainability, you name it. Left-wing and right-wing policies only differ on how to achieve it.

 However, there is an uncomfortable scientific truth that has to be faced: economic growth is environmentally unsustainable. Moreover, beyond a certain threshold already surpassed by EU countries, socially it isn't necessary. The central question then becomes: how can we manage an economy without growth?

 Enough is enough

 Kenneth Boulding, the economist, famously said that: “Anyone who believes that exponential growth can go on forever in a finite world is either a madman or an economist”.

 Ecological economists argue that the economy is physical, while mainstream economists seem to believe it is metaphysical.

 Social metabolism is the study of material and energy flows within the economy. On the input side of the economy, key material resources are limited, and many are peaking including oil and phosphorus. On the output side, humanity is trespassing planetary boundaries.

 Climate change is the evidence of the limited assimilative capacity of ecosystems. It is the planet saying: 'Enough is enough!'.

 Mainstream economists - finally convinced by the existence of biophysical limits - have started to argue that economic growth can be decoupled from the consumption of energy and materials.

 Trade off

 Historical data series demonstrates that this - up to now - has not happened. At most, there is relative decoupling - a decrease in resource use per unit of GDP. But, there is no absolute decoupling which is what matters for sustainability: an absolute decrease of environmental resources consumption.

 The only periods of absolute dematerialisation coincide with economic recession. Trade should also be taken into account, to avoid externalisation of pollution intensive activities outside the EU.

 The current economy cannot be circular. The main reason being that energy cannot be recycled, and materials only up to a point. The global economy recycles less than 10 percent of materials; about 50 percent of processed materials are used to provide energy and are thus not available for recycling. It is simple: economic growth is not compatible with environmental sustainability.

 The list of nice oxymorons is long - from sustainable development to its reincarnations like green economy or green growth - but wishful thinking does not solve real problems. Increase in GDP leads to increase in material and energy use, and therefore to environmental unsustainability.

 No magic bullet

 Technology and market based solutions are not magic bullets. Faith in technology has become religious: scientific evidence shows that, based on past trends in technological improvement, these are coming way too slowly to avoid irreversible climate change.

 For instance, efficiency improvements lead to rebound effects, in the context of economic growth (the more efficient you are, the more you consume; e.g. cars and consumption of gasoline). Renewable energy produces less net energy, because it has a lower EROI (Energy Return on Investement) than fossil fuels. For this, and other reasons, it cannot satisfy current levels of energy consumption, which therefore needs to be reduced.

 Most of the world’s fossil fuel reserves must be left in the ground, unburned, to keep a global temperature rise to no more than 2°C. In fact, fossil fuels should be called unburnable fuels.

 Science sometimes brings bad news. An article recently published in Nature Sustainability argues that: “No country in the world meets the basic needs of its citizens at a globally sustainable level of resource use.” The question then is: How can the conditions for a good life for all within planetary boundaries be generated?

 The uncomfortable truth to be faced by policy makers is the following: Economic growth is ecologically unsustainable. The total consumption of materials and energy needs to be reduced, starting with developed countries.

 De-growth strategy

 Economic growth might also not be socially desirable. Inequalities are on the rise, poverty has not been eliminated and life satisfaction is stagnant.

 Economic growth is fueled by debt, which corresponds to a colonization of the future. This debt cannot be paid, and the financial system is prone to instability.

 For instance, scientifically it is not clear how the European Union will achieve a low-carbon economy in the context of economic growth, since it implies a reduction of greenhouse gas emissions to 80% below 1990 levels by 2050.

 In fact, climatologists Kevin Anderson and Alice Bows have argued convincingly that: “[F]or a reasonable probability of avoiding the 2°C characterization of dangerous climate change, the wealthier nations need, temporarily, to adopt a de-growth strategy.”

 Obviously, a transition from a growth society to a degrowth one poses several challenges. However, the emerging field of ecological macroeconomics is starting to address them convincingly.

 Happiness factor

 Happiness and economics literature shows that GDP growth is not needed for well-being, because there are other important determinants. High life expectancy is compatible with low carbon emissions, but high incomes are not. Moreover, lack of growth may increase inequalities unless there is redistribution.

 In any case, the issue is not whether we shall abandon economic growth. The question is how. Scientific debates around it are on the rise, but I am afraid policy making is behind.

 There are good signs: critiques of GDP as an indicator of well-being are common, there are policy proposals and degrowth is entering into the parliaments. This is not new. For example, in 1972 Sicco Mansholt, a Dutch social-democrat who was then EU Commissioner for agriculture, wrote a letter to the President of the EU Commission Franco Maria Malfatti, urging him to seriously take into account limits to growth in EU economic policy.

 Mansholt himself became President of the European Commission after only two months, but for too short a term to push a zero growth agenda.

 The time is ripe not only for a scientific degrowth research agenda, but also for a political one. As ecological economists Tim Jackson and Peter Victor argued in The New York Times: “Imagining a world without growth is among the most vital and urgent tasks for society to engage in.”

### AT: Resources Infinite

<All the sustainability cards answer this>

#### Returns on investment are declining across industries---that causes irreversible shortages in fuels, ores, ammonia, steel, and more

Samuel Alexander 18, Melbourne Sustainable Society Institute, Melbourne School of Design, University of Melbourne, “A Critique of the Australian National Outlook Decoupling Strategy: A ‘Limits to Growth’ Perspective,” *Ecological Economics*, Volume 145, 2018, pp. 10-17

There are several reasons why efficiency gains, in the real world, are likely to be far less than the factor-five literature suggests. First, optimistic claims tend to overlook the implications of ongoing depletion of non-renewable resources. As the most easily accessible resource deposits are produced first, later deposits tend to require increasing time, energy and money to discover and extract. With respect to fossil fuels, this trend is reflected in the declining energy return on energy invested (EROI). Between 1995 and 2006 the global average EROI for oil and gas declined from an estimated 30:1 to 18:1 (Hall et al., 2014), with average EROI of US oil production falling to 11:1 (Murphy, 2013). Further decline in EROI is expected in coming decades, given the increasing reliance of the global economy on non-conventional, lower EROI, sources of oil and gas supply (Hall et al., 2014).12 The impact of depletion is also evident in the mining sector with declining mineral ore grades and increasing mining waste rock and tailings evident, both in Australia and globally, resulting in higher energy, water and emission costs for mining and ore separation (Mudd, 2009; Diederen, 2009).13 This means that even if there are efficiency gains in, say, manufacturing processes, to some extent they will be counteracted by efficiency declines in resource extraction. This situation evokes the challenge faced by the Red Queen in Lewis Carroll's Through the Looking Glass, who has to run faster and faster simply to stay in the same place (Likvern, 2012).

Second, enthusiastic efficiency claims about technology often attend only to the gross reductions, not the net reductions, which are often far less. Von Weizsacker et al. (2009) cite a case study claiming factor-five reductions in the ecological footprint of an Australian house, but it is not clear that embodied energy in both building and heating and cooling materials has been adequately accounted for. A recent Australian study using hybrid life cycle assessment for estimating embodied energy found that the additional materials required for heating and cooling often ‘require more embodied energy than the operational costs they save’ (Crawford et al., 2016: 449). Another example pertinent to Stretch is CCS technology which has potentially very large fuel and capital costs making it a potentially large source of future inefficiency (Supekar and Skerlos, 2015).

Third, optimistic efficiency projections sometimes fail to factor in the likelihood of diminishing returns over time. Ayres and Warr (2009) note that for many decades there have been plateaus for the production efficiency of electricity and fuels, electric motors, ammonia, iron and steel. While large increases are no doubt possible in certain areas, this does not imply that rapid, large and continuous technical gains can easily be made across all sectors of the economy.

#### Consumption increases and resource depletions are occurring across the globe---true for all economies and all materials

Giorgos Kallis 17, ICREA Professor, ICTA, Autonomous University of Barcelona, “Radical dematerialization and degrowth,” *Philosophical Transactions of the Royal Society A*, Volume 375, Issue 2095, June 13, 2017, 20160383

Some authors see signs of a forthcoming dematerialization. Recent data show stagnation of material consumption in some Western economies such as the UK [28]. Could this be a point of ‘peak stuff’, a natural peaking of material consumption as economies reach a mature stage, after which material use declines? ([29], see also [30]). If that were the case, growth and dematerialization would be compatible, at least in the long-run after developing countries had developed sufficiently to reach their ‘peak-stuff’.

As Gutowski et al. [30], however note, data on domestic material consumption does not account for the material embedded in imported consumer goods. The true material use of a national economy does not include only the raw materials that it extracts, imports or consumes within its borders. It includes also the materials embedded in the finished goods or services that it imports. The material footprint of developed nations, that is the total amount of materials used to produce the goods and services that they consume, increases hand in hand with the size of their economies (figure 2). There is no sign of peak-stuff if one looks at material footprint instead of domestic material consumption (the actual materials consumed, plus imports minis exports). Despite substantial deindustrialization and de-agrarianization, the material demands of the so-called ‘service economies’ continue to grow.

Take California: the information sector accounts for 8% of the total state product, 21% together with business and professional services that include computer systems and design [31]. Agriculture's share of the economy is down to 2%. Yet, the state's water footprint grew almost 40% from 1992 to 2010 [21].

Research on individual metals confirms a similar story to that of aggregated material flows. The Jevons' paradox is confirmed for 57 different materials for all of which there is no evidence of dematerialization. Increases in consumption and production outpace savings from technological improvements [32]. And at the sites where metals are extracted, conflicts intensify because of the negative environmental and social consequences of extraction [33].

The separation in the trends of domestic material consumption and material footprint in high-income economies is not evidence that they are doing something better. It is a by-product of the globalization of the economy. Industrializing economies produce the consumer goods of service economies [30]. (The idea that one day all economies could graduate to be service economies with saturated material consumption raises the question who would produce then their industrial goods?) This is a systemic pattern, revealed at the global scale, the only appropriate scale to study a globalized economy with a global division of labour. At this scale, the prediction of EE is confirmed: material extraction and consumption grow as the economy grows.

Cross-country comparisons confirm the same picture. A GDP growth (degrowth) of 1% leads to a 0.6% growth (degrowth) of material footprint [22]. Same for carbon: a 1% increase (decrease) in GDP leads to about 0.5–0.7% increase (decrease) in carbon emissions [34]. These are strong, statistically significant effects, as significant as one can hope to find in econometrics. One may well claim that the causal relationship between GDP and resource use will finally change in the future with structural changes in the economy, or the advent of new materials and technologies. But on this basis, no econometric study could ever be a basis for policy since we can always hope that with sufficient will we can change established causal relations.

### AT: Tech---Renewables

#### Renewables can’t replace fossil fuels and consumption will always outstrip them

Harold Wilhite 16, Research Director at the University of Oslo’s Centre for Development and Environment and Academic Director of a program entitled Environmental Change and Sustainable Energy, *The Political Economy of Low Carbon Transformation: Breaking the habits of capitalism*, 2016, no page numbers

'Green energy' programmes in the rich and 'emerging' countries of the world conform largely to the principles of green economy and ecological modernization. They base themselves on a two-pronged strategy for reducing energy consumption and decarbonizing energy production: 1) a transformation of production from fossil fuel-based to renewable-based energy sources and 2) a reduction in the energy intensity of the economy through increased economic and technical efficiency. More weight has been given to the development of renewable energies in part because a change in energy production can be seamlessly incorporated into an economic growth strategy. This has been understood very well by China. It has made massive investments in developing, producing and marketing both solar energy and wind energy (Knutsen and Ou 2015). However, early predictions about falling prices for solar energy production have proven overly optimistic (see Guardian 2015), and high costs as well as other issues such as the pollution associated with battery and solar cell production, as well as difficulties with energy storage and producing electricity at scale are slowing the transition to solar. Recent reports of the International Energy Agency (IEA, an arm of the OECD) have predicted a slow integration of renewable energies into production portfolios over the next century and that renewable substitution will not make a significant difference to the aggregate global carbon emissions over the next half century. As I write in Wilhite (2012: 85), another major hindrance to the development of renewable energies is 'competition with coal-based energy production: coal production technologies are mature, coal reserves are plentiful and production is cheap compared to the alternatives'. Furthermore, the coal industry is provided with heavy government subsidies. According to Mason (2015), USD 544 billion are spent each year on fossil fuel subsidies. Referring to the IEA (2013) report on the progress towards reducing C02 emissions, Geels (2014: 36) writes that 'Despite climate change debates and policies, coal's relative contribution to electricity generation expanded from 39 per cent in 2000 to 42 per cent in 2010. Renewable electricity sources have so far been mainly additional (original emphasis) to fossil fuels with no (or limited) substitution effects'. Adding reserves of oil and gas to those of coal, it is estimated that there are 2.8 trillion tons of carbon reserves globally and both exploration for new reserves and production of oil from tar sands, fracking and deep sea oil deposits continues at a high tempo. In 2011, global investments in fossil fuel exploration and development was USD 674 billion (Mason 2015). If one accounts for the slow transition to renewable energy production over the next century, as well as the post-Fukushima scepticism to nuclear energy, the implication is that a rapid reduction in carbon emissions will not happen without an absolute reduction in energy consumption in all sectors of the economy, including the residential sector, which continues to be the fastest growing energy-using sector globally. This is where the theories that inform green policy are at their weakest, ignoring the high energy habits that have formed in transport, heating, cooling, cleaning, food and other household practices. The policy emphasis remains rigidly tied to reducing energy use through the promotion of technical and economic efficiency. The theory that efficiency alone can reduce energy in a growth economy is, in the words of Wilhite and Norgard (2004) a 'delusion' in energy policy, or as formulated by Bluhdorn (2007: 80), an exercise in 'energy metaphysics'. Energy use is the product of intensity (the inverse of efficiency) and volume, but the latter is ignored in green energy policy. The delusion is evident in the historical record of efforts to reduce (or conserve) energy in the OECD countries. Over the 40 years from the birth of energy conservation, economic growth has outstripped energy efficiency, the result being small decreases in energy use for the OECD as a whole from very high starting points relative to the remainder of the world.

### AT: CCS---General

#### CCS can’t be scaled up and exaggerates warming

Samuel Alexander 18, Melbourne Sustainable Society Institute, Melbourne School of Design, University of Melbourne, “A Critique of the Australian National Outlook Decoupling Strategy: A ‘Limits to Growth’ Perspective,” *Ecological Economics*, Volume 145, 2018, pp. 10-17

The ANO Report also places great faith in carbon capture and storage technology (CCS) as a means of extensively reducing carbon emissions. The technology is obviously attractive, in theory, because it holds out the hope of prolonging the consumption of coal and gas in power stations – while capturing most of the emissions – and therefore delaying the need for a transition to 100% renewable energy. There is, however, no discussion of the many unresolved problems with the technology. And even if it proves technically feasible at scale, future CCS costs are subject to such great uncertainty that it is impossible, at this stage, to assess economic feasibility in any definitive way.

The report does acknowledge that despite two decades of research and pilot projects, CCS has ‘not yet been demonstrated at commercial scale’11 (Hatfield-Dodds et al., 2015b: 50). This is not just with respect to the capturing of carbon from power plants, but also transportation via pipelines and storage in permanently safe geological sites (Scott et al., 2015; Hamilton, 2016). To date, most storage pilot projects have been abandoned because they ran into technical problems and cost blowouts (Hamilton, 2016). And yet, despite the lack of progress to date, the Stretch scenario assumes CCS compatible coal and gas provides 50% of both Australian and global electricity by 2050. At the global level this requires about 2500 GW of CCS electricity generation, which seems highly optimistic (Hatfield-Dodds et al., 2015b: 54). By comparison, the IEA's's (2008) most ambitious CCS implementation target, known as the BLUE map scenario, assumes about 1500 GW of CCS compatible power generation by 2050 (IEA, 2008: 69).

In addition, heavy reliance on CCS could still result in a significant release of C02 emissions, exacerbating global warming. Lenzen (2011) reviews estimates of life-cycle carbon emissions for CCS applied to coal and gas power plants and finds a realistic capture rate of 80% emissions across all CCS applications (i.e. capture, transport, injection etc.). He points out that these estimates have typically not factored in the possible contribution of carbon leakage from geological storage sites. He shows that to safely capture 1500 GtCO2 – which is close to the estimated global storage capacity – requires a CO2 leakage rate no higher than 0.01% per year. Such a low leakage rate, however, is far from certain. He notes (Lenzen, 2011: 2171) that several studies (i.e. Pehnt and Henkel, 2009) have ‘emphasised the lack of knowledge and experience of underground storage and have concluded that there is no guarantee for the low leakage rate.’ If the rate of leakage turns out to be significantly higher – i.e. between 0.1% and 1% per annum – the additional long-term warming effect from CCS alone would be between 0.15 °C and 0.5 °C.

#### Sequestering carbon fails---can’t be scaled up fast enough

Dr Colin Pritchard 14, Senior Research Fellow in the School of Engineering at the University of Edinburgh, Dr Aidong Yang, Associate Professor in the Department of Engineering Science at Oxford, P. Holmes, M. Wilkinson, 25 June 2014, “Thermodynamics, economics and systems thinking: What role for air capture of CO2?” Process Safety and Environmental Protection, ScienceDirect

As a means of reducing absolute atmospheric CO2 levels, each 1 ppm reduction requires the removal of ca. 7 Gt CO2 (neglecting any continuing accumulation of emissions). At 400 ppm concentration, this requires processing at the very least 12,000 Gt of air. Fugitive CO2 emissions equate to about 55% of total emissions or about 18 Gt/year. Of this, about 4 Gt/year is from transport ( IEA, 2012). Targeting transport emissions alone via DAC requires processing almost 6500 Gt/year of air. Capture of these emissions would have to be done continuously and would require an infrastructure which is likely to be 300 times larger than that to treat current global annual point source emissions, if the size of the infrastructure is proportional to the volume of the processed air/gas.

 In practice the required scales of operation may need to be much higher, because the later we start, the higher will be the peak and the more CO2 will have to be removed to stabilise at a particular target atmospheric concentration (discounting climate tipping points which may have been reached in the meantime). At projected rates of growth in emissions, reductions of 20–30 Gt/year have been forecast to be necessary beyond 2030, and these are far above the capacity which could be conceived as practical for air capture. This timescale for development and deployment also appears to be unrealistically short: comparable to the most optimistic estimates for deployment of point source CCS – a mature technology – at scale.

 In a wide-ranging discussion of NETs, McGlashan et al. (2012) point out that “The scale of development for these (emissions-reduction) technologies required for them to have material impacts on atmospheric levels of CO2 to be significant would, in many cases, result in the need for the development of supply chains in less than 20 years from an extremely low level or from scratch, to the scale of many of the largest industries in existence today which have developed over centuries. This strongly implies that mitigation must still remain the main near-term effort in terms of addressing climate change. Negative emissions technologies can be seen as an economically rational tool to augment mitigation efforts and prevent emissions trajectories overshoot within a portfolio of emissions measures, but they should not be used as an excuse for delaying effective global mitigation efforts.” (italics ours).

#### Even if capturing carbon can reverse CO2 increases it can’t reverse temperature-based tipping points---and it trades off with emission reduction---accelerates warming

Dr Colin Pritchard 14, Senior Research Fellow in the School of Engineering at the University of Edinburgh, Dr Aidong Yang, Associate Professor in the Department of Engineering Science at Oxford, P. Holmes, M. Wilkinson, 25 June 2014, “Thermodynamics, economics and systems thinking: What role for air capture of CO2?” Process Safety and Environmental Protection, ScienceDirect

Following the air capture path will lead to higher peak (and gross) CO2 emissions than taking more immediate measures. Keith et al. (2005) acknowledge that “The expectation that air capture or similar technologies can be achieved reduces the incentive to invest in mitigation. Yet, while air capture removes irreversibility in the increases in atmospheric CO2 concentration, it does not protect against irreversibilities in the climate system's response to forcing.” They also demonstrate that “It is optimal to pollute more when it is possible to cleanup afterward than when it is not.”

 The suggestion that low emission countries be involved in mitigation assumes that, with a world-wide carbon trading system in place, countries could earn credits by absorbing other countries’ carbon emissions via air capture. This would only make economic sense if all of the cheaper methods for carbon capture had already been deployed in the emitting countries!

 The idea that DAC can provide an excuse for delaying more direct mitigation efforts is particularly corrosive; and this paper finds no evidence to justify such a stance, which could further lead to an irrecoverable situation as we approach “irreversibilities in the climate system's response to forcing”.

 From a public perspective, there is a danger that championing of air capture (if conducted without informing the public of the techno-economic issues such as those outlined in this paper), may lead to a perception that “the climate problem is sorted“, and thereby diminish the incentive to take (much) more realistic measures such as energy efficiency/conservation, and CCS, and bioenergy with CCS (BECCS), and decarbonisation of electricity supply, and even the decarbonisation of transport. This is of course a danger faced by all technological approaches to CO2 reduction.

#### CCS tech takes so much energy that it offsets its own climate benefits

Jennie C. Stephens 14, is the Blittersdorf Professor of Sustainability Science and Policy at the University of Vermont's Rubenstein School of Environment. March 2014, “Time to stop investing in carbon capture and storage and reduce government subsidies of fossil-fuels” <http://onlinelibrary.wiley.com/doi/10.1002/wcc.266/pdf>

The amount of energy required to capture and store CO2 is often not adequately recognized in optimistic perceptions of the potential of CCS. This so-called energy penalty has been estimated to be about 30% with a range from 11 to 40%.20 This means roughly that for every three coal-fired power plants utilizing CCS an additional power plant would be required simply to supply the energy needed to capture and store the CO2. The magnitude of this energy penalty (including even the lower estimates) is so high that it is difficult to imagine a future scenario in which consuming this much additional energy to enable CCS would actually make sense.

#### Storage is not economically feasible

Kevin Bullis 13, Senior Editor for Energy @ MIT Technology Review, June 17 2013, “What Carbon Capture Can’t Do,” http://www.technologyreview.com/view/516166/what-carbon-capture-cant-do/

I’ve recently reported on a handful of ways that researchers are trying to lower the cost of capturing carbon dioxide, with the view to storing it underground or using it for something useful (see “Cheaper Ways to Capture Carbon Dioxide,” “Grasping for Ways to Capture Carbon Dioxide on the Cheap,” and “Fuel Cells Could Offer Cheap Carbon Dioxide Storage”).

 All of these improvements shouldn’t obscure the fact that the potential of carbon capture is limited. Carbon capture and storage will never be able to accommodate all of the carbon dioxide we emit now. And quite frankly, carbon capture would have trouble just keeping up with the increase in coal consumption (see “The Enduring Technology of Coal”).

 Capturing and storing carbon dioxide will always make electricity more expensive. It will always be cheaper just to let the carbon dioxide escape into the atmosphere.

 Even if costs are made far lower than they are today, the impact of carbon capture will be limited by the sheer scale of infrastructure needed to store carbon dioxide. During combustion, each carbon atom from coal combines with two atoms of oxygen from the air, and this creates a huge amount of stuff. Even once the gas has been compressed into a liquid that can be piped to storage sites, the volume is immense.

 Vaclav Smil, a professor at University of Manitoba and master of sobering energy-related numbers, calculates that if we were to bury just one-fifth of the global carbon dioxide emissions, we would need to build an industry capable of handling twice the volume of stuff as the entire oil industry, an industry that took 100 years to develop, driven by a large and mostly expanding market.

## Impact---Environment/Biodiversity

### IL---CBD Update Conference

#### River rights are key to catalyze global action on environmental protection at the Convention on Biodiversity update conference

Alessandra Korap Munduruku 21, a Munduruku Indigenous woman leader, won the Robert F. Kennedy Human Rights Award for her work defending the culture, livelihoods and rights of Indigenous peoples in Brazil; Darryl Knudsen, the executive director of International Rivers; and Irikefe V. Dafe, lead organizer of the First National Dialogue on Rights of Nature in Nigeria, founder and CEO of River Ethiope Trust Foundation and an expert member of the UN Harmony with Nature Initiative, 5/21/21, “Rivers Are Key to Restoring the World’s Biodiversity,” https://independentmediainstitute.org/rivers-are-key-to-restoring-the-worlds-biodiversity/

In October 2021, the Convention on Biological Diversity (CBD) will meet in China to adopt a new post-2020 global biodiversity framework to reverse biodiversity loss and its impacts on ecosystems, species and people. The conference is being held during a moment of great urgency: According to a report by the Intergovernmental Panel on Climate Change, we now have less than 10 years to halve our greenhouse gas emissions to stave off catastrophic climate change. At the same time, climate change is exacerbating the accelerating biodiversity crisis. Half of the planet’s species may face extinction by the end of this century.

And tragically, according to a UN report, “the world has failed to meet a single target to stem the destruction of wildlife and life-sustaining ecosystems in the last decade.”

It’s time to end that legacy of failure and seize the opportunities before us to correct the past mistakes, manage the present challenges and meet the future challenges that the environment is likely to face. But if we’re going to protect biodiversity and simultaneously tackle the climate crisis, we must protect rivers and freshwater ecosystems. And we must defend the rights of communities whose livelihoods depend on them, and who serve as their stewards and defenders. By doing so, we will improve food security for the hundreds of millions of people who rely on freshwater ecosystems for sustenance and livelihoods—and give the world’s estimated 140,000 freshwater species a fighting chance at survival.

Rivers Are Heroes of Biodiversity

At the upcoming CBD, countries are expected to reach an agreement to protect 30 percent of the world’s oceans and land by 2030. But which land is protected, as part of this agreement, matters immensely. We cannot protect just any swath of land and consider our work done. Member countries must prioritize protecting regions where biodiversity is highest, or where restoration will bring the greatest net benefits. Rivers, which support an extraordinary number of species, must be a priority zone for protection and restoration.

Rivers are unsung heroes of biodiversity: Though freshwater covers less than 1 percent of all the water on the planet’s surface, it provides habitats for an astonishing number of species. Rivers are vital for conserving and sustaining wetlands, which house or provide breeding grounds for around 40 percent of Earth’s species. That is a staggering amount of life in a very small geographic area—and those figures don’t account for all the adjacent forests and other ecosystems, as well as people’s livelihoods that rely on rivers.

Reversing the Decline of Rivers and Freshwater Ecosystems

Freshwater ecosystems have suffered from some of the most rapid declines in the last four decades. A global study conducted by the World Wildlife Fund, “Living Planet Report 2020,” states that populations of global freshwater species have declined by 84 percent, “equivalent to 4 percent per year since 1970.”

That is, by any measure, a catastrophe. Yet mainstream development models, water management policies and conservation and protected area policies continue to ignore the integrity of freshwater ecosystems and the livelihoods of communities that depend on them.

As a result of these misguided policies, fisheries that sustain millions of people are collapsing. Freshwater is increasingly becoming degraded, and riverbank farming is suffering as a result of this. Additionally, we’re seeing Indigenous peoples, who have long been careful and successful stewards of their lands and waters, face increasing threats to their autonomy and well-being. The loss of biodiversity, and the attendant degradation of precious freshwater, directly impacts food and water security and livelihoods.

But this catastrophe also suggests that by prioritizing river protection as part of that 30 percent goal, the global community could slow down and begin to reverse some of the most egregious losses of biodiversity. We have an incredible opportunity to swiftly reverse significant environmental degradation and support the rebound of myriad species while bolstering food security for millions of people. But to do that successfully, COP countries must prioritize rivers and river communities.

Here are a few things countries can do immediately to halt the destruction of biodiversity:

1. Immediately Halt Dam-Building in Protected Areas

Dams remain one of the great threats to a river’s health, and particularly to protected areas. More than 500 dams are currently being planned in protected areas around the globe, states Yale Environment 360, while referring to a study published in Conservation Letters. In one of the most egregious examples, Tanzania is moving ahead with plans to construct the Stiegler’s Gorge dam in the Selous Game Reserve—which has been a UNESCO World Heritage site since 1982 and an iconic refuge for wildlife. In terms of protecting biodiversity, canceling dams like these is low-hanging fruit if the idea of a “protected area” is to have any meaning at all.

2. Create Development ‘No-Go’ Zones on the World’s Most Biodiverse Rivers

Freshwater ecosystems face myriad threats from extractive industries like mining and petroleum as well as agribusiness and cattle ranching, overfishing, industrialization of waterways and urban industrial pollution. Investors, financiers, governments and CBD signatories must put an immediate halt to destructive development in biodiversity hotspots, legally protect the most biodiverse rivers from development, and decommission the planet’s most lethal dams.

3. Pass Strong Water Protection Policies

Most policymakers and decision-makers—and even some conservation organizations—don’t fully understand how freshwater ecosystems and the hydrological cycle function, and how intimately tied they are to the health of the terrestrial ecosystems they want to protect. Rivers and freshwater ecosystems urgently need robust protections, including policies that permanently protect freshwater and the rights of communities that depend on them. In some places, this may go as far as granting rivers the rights of personhood. A growing global Rights of Nature and Rights of Rivers movement is beginning to tackle just this.

4. Respect the Rights of Indigenous Peoples and Other Traditional Communities

Indigenous peoples protect “about 80 percent of the global biodiversity,” according to an article by National Geographic, even though they make up just 5 percent of the world’s population. These are the world’s frontline defenders of water and biodiversity; we owe them an enormous debt. More importantly, they deserve protection. It’s imperative governments respect Indigenous people’s territorial rights, as well as their right to self-determination and free, prior and informed consent regarding projects that affect their waters and livelihoods.

Many Indigenous communities like the Munduruku in the Amazon are fighting to defend their territories, rivers and culture. Threats to fishing and livelihoods from destructive dams, gold mining pollution and industrial facilities can be constant in the Tapajós River Basin in the Amazon and many other Indigenous territories.

5. Elevate Women Leaders

In many cultures, women are traditionally the stewards of freshwater, but they are excluded from the decision-making processes. In response, they have become leaders in movements to protect rivers and freshwater ecosystems around the globe. From the Teesta River in India to the Brazilian Amazon, women are leading a burgeoning river rights movement. A demand to include women’s voices in policy, governments and localities will ensure better decisions in governing shared waters.

The pursuit of perpetual unchecked economic growth with little regard for human rights or ecosystem health has led our planet to a state of crisis. Floods, wildfires, climate refugees and biodiversity collapse are no longer hallmarks of a distant future: They are here. In this new era, we must abandon rampant economic growth as a metric of success and instead prioritize equity and well-being.

Free-flowing rivers are a critical safety net that supports our existence. To reverse the biodiversity crisis, we must follow the lead of Indigenous groups, elevate women’s leadership, grant rights to rivers, radically reduce dam-building and address other key threats to freshwater. What we agree to do over the next decade will determine our and the next generations’ fate. We are the natural world. Its destruction is our destruction. The power to halt this destruction lies in our hands; we only have to use it.

#### Successful CBD update’s key to global climate momentum and environmental protection broadly

Tiffany Challe 21, Communications Associate at the Sabin Center for Climate Change Law, Columbia Law School; MA in Sustainability Science and Education from the Graduate Center at CUNY, 4/22/21, “THE RIGHTS OF NATURE — CAN AN ECOSYSTEM BEAR LEGAL RIGHTS?,” http://blogs.law.columbia.edu/climatechange/2021/04/22/the-rights-of-nature-can-an-ecosystem-bear-legal-rights/

The “Rights of Nature” movement is fundamentally rethinking humanity’s relationship with nature, and it is gaining momentum. It is led by activists advocating for ecosystems such as rivers, lakes, and mountains to bear legal rights in the same, or at least a similar, manner as human beings. This movement is striving for a paradigm shift in which nature is placed at the center and humans are connected to it in an interdependent way, rather than a dominant one. How would such a legal system work, and could giving rights to nature help in the legal battle against climate change? A few case studies offer some insight.

What are the “Rights of Nature”?

According to the “Rights of Nature” doctrine, an ecosystem is entitled to legal personhood status and as such, has the right to defend itself in a court of law against harms, including environmental degradation caused by a specific development project or even by climate change. The Rights of Nature law recognizes that an ecosystem has the right to exist, flourish, regenerate its vital cycles, and naturally evolve without human-caused disruption. Furthermore, when an ecosystem is declared a “subject of rights,” it has the right to legal representation by a guardian — much like a charitable trust designates a trustee — who will act on their behalf and in their best interest. This guardian is typically an individual or a group of individuals well versed in the care and management of said ecosystem.

The goal of conferring rights to nature is to secure the highest level of environmental protection under which an ecosystem can thrive and whose rights are not violated. These nature rights are very often associated with human rights, especially the right to a clean and healthy environment.

What countries have declared rights of nature?

Over the last decade, courts, legislatures and various bodies of government in countries around the world have sought and won ecosystem protection through nature rights.

In 2008, Ecuador became the first country in the world to formally recognize and implement the Rights of Nature, which Ecuadorians refer to as the Rights of Pachamama (Mother Earth). The constitutional provisions regarding the Rights of Pachamama state: “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 call upon public authorities to enforce the Rights of Nature.”

In 2011, the first lawsuit using the Rights of Nature provision was filed by the Global Alliance for Rights of Nature (GARN) and others against a construction company for building a road across Ecuador’s Vilcabamba River and dumping rubble into the river. The Provincial Justice Court of Loja ruled in favor of the river. However, the construction company did not comply with the ruling and the GARN reportedly could not afford to bring a second suit.

In 2017, four rivers sought and in some instances won legal rights: the Whanganui River in New Zealand, the Rio Altrato in Colombia, and the Ganga and Yamuna rivers in India. The New Zealand case is fundamentally unique because the Parliament finalized The Te Awa Tupua Act, appointing two guardians of the river: one representative of the Maori Indigenous people and one representative of the government — the Crown — arguably reconciling two different worldviews.

In the United States, several cities have asked for an ecosystem to bear legal rights. In 2010, the City Council of Pittsburgh, Pennsylvania unanimously passed an ordinance recognizing the Rights of Nature as part of a ban on shale gas drilling and fracking. In 2019, the city of Toledo, Ohio adopted the Lake Erie Bill of Rights, a municipal law that gave the lake rights of its own. A farmer represented by Drewes Farms Partnership filed a federal lawsuit claiming the ordinance made his farm vulnerable to “massive liability” when fertilizing its fields “because it can never guarantee that all runoff will be prevented from entering the Lake Erie watershed.” Soon after, the state of Ohio joined the lawsuit, arguing it (and not the residents) had the legal responsibility for environmental regulatory programs. In 2020, a federal judge ruled that the Lake Erie Bill of Rights is “invalid in its entirety” based on the premise that the law itself was “unconstitutionally vague” and exceeded municipal powers. The plaintiffs are currently trying to keep the Lake Erie Bill of Rights alive in state court.

Most recently, in February 2021, the Innu Council of Ekuanitshit and the Minganie Regional County Municipality recognized the Canadian Magpie River’s legal rights of personhood through the adoption of twin resolutions — one resolution by the Innu and another resolution by the municipality. The river bears nine rights and can be legally represented by guardians responsible for ensuring that these rights are respected.

Climate litigation using the rights of nature

Only a few rights of nature cases explicitly relate to climate change, according to the Global Climate Litigation Report: 2020 Status Review by the United Nations Environment Programme with support from Columbia University’s Sabin Center for Climate Change Law. Here are five climate lawsuits from around the world that do implicate the rights of nature and that can be found in the climate change litigation databases maintained by the Sabin Center and the law firm Arnold Porter Kaye Scholer LLP. The latest case in Pakistan was decided a few days ago, on April 15.

United States: Colorado River Ecosystem v. State of Colorado. In 2017, an environmental organization filed a lawsuit against the State of Colorado as “next friends” for and guardians of the Colorado River Ecosystem, seeking declaration that the river is a “person” possessing “rights to exist, flourish, regenerate, be restored, and naturally evolve,” and that actions of the State of Colorado violated those rights. The complaint refers to the landmark environmental case, Sierra Club v. Morton (1972), in which a dissenting opinion argued that “environmental objects” should have standing to sue. The complaint also alleges that climate change is one of the threats faced by the river. The federal district court for the District of Colorado dismissed the case.

Colombia: Future Generations v. Ministry of the Environment. In 2018, a group of young plaintiffs filed a special constitutional claim called tutela alleging that their fundamental rights to a healthy environment, life, health, food, and water were threatened by climate change and the government’s failure to reduce deforestation in the Amazon. The Supreme Court of Colombia recognized that “fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem,” and ordered the government to develop and implement action plans to halt deforestation. It also recognized the Colombian Amazon as a “subject of rights” in the same manner that the Constitutional Court recognized the Atrato River in Choco, Colombia. The Supreme Court declared that the Colombia Amazon accordingly was entitled to protection, conservation, maintenance and restoration. The court ordered the government to develop and implement action plans to address deforestation.

Argentina: Asociación Civil por la Justicia Ambiental v. Province of Entre Ríos, et al. In 2020, the groups Asociación Civil por la Justicia Ambiental and Foto Ecologista de Paraná, and a class of children, filed a class action suit in the Argentinian Supreme Court against the governments of the Province of Entre Ríos and the Municipality of Victoria City for their alleged failure to protect environmentally sensitive wetlands. The plaintiffs asked the court to declare the Paraná Delta a “subject of rights” and an essential ecosystem for mitigating and adapting to climate change, and to designate a “guardian” of the rights of the Paraná Delta who will be responsible for controlling the conservation and sustainable use of the wetlands. The complaint references nature rights laws passed in other countries, including Bolivia, New Zealand, Colombia, Ecuador and India. The case is pending a decision.

Peru: Alvarez et al v. Peru. In 2019, a group of Peruvian youths filed a suit against Peru, alleging that the government has not taken sufficient action to address climate change. The complaint seeks to order the president, Ministry of Environment, the Ministry of Agriculture and Irrigation, the Ministry of Finance, and regional governments to develop action plans to reduce net deforestation in the Peruvian Amazon to zero by 2025. The complaint also seeks the recognition of the Peruvian Amazon as an entity subject to the rights of protection, conservation, maintenance and restoration, referencing other nature rights cases in Ecuador, Colombia and New Zealand; and a declaration that the situation of environmental degradation in the Peruvian Amazon is unconstitutional. The case is pending a decision.

Pakistan: G. Khan Cement Company v. Government of Pakistan. On April 15, 2021, the Supreme Court of Pakistan upheld a decision by the Provincial Government of Punjab that barred the construction of new or expanded cement plants in environmentally fragile zones. The Supreme Court recognized that these cement plants could cause further depletion of groundwater, among other harmful environmental impacts. As part of its consideration, the court emphasized the need for the government to uphold the precautionary principle of protecting the rights to life, sustainability, and dignity of communities surrounding the project areas. In addition, the court recognized the need to protect the rights of nature stating that “the environment needs to be protected in its own right” and that “[m]an and his environment each need to compromise for the better of both and this peaceful co-existence requires that the law treats environmental objects as holders of legal rights.”

How successful are these rights of nature lawsuits?

Granting nature legal standing might arm it against injury under the law, but how does that translate into reality? Legal personhood attributed to ecosystems has so far been mostly symbolic and it remains unclear how successful these lawsuits can be in gaining adequate, long-term protection of ecosystems. Outcomes can vary based on how a case is framed and on what the interests of the claimants are. Questions surrounding these potential outcomes continually arise: What exactly is the party seeking on behalf of the injured entity? Does the party seek to compel an authority figure to pay for damages incurred? How are these damages measured? Who can be held responsible for these damages? Could the appointed guardian be held responsible if a river floods and causes damages? Who has a say over a trans-boundary river, such as is the case in India where the Ganges and Yamuna rivers extend beyond the border of Uttarakhand? If a complaint alleges that climate change is a threat, how much liability does a specific industry’s activities bear in that respect? (This topic draws on the field of attribution science — see the Climate Attribution Database, a joint project between the Sabin Center and Lamont Doherty Earth Observatory.)

However, a growing number of lawsuits involving the rights of nature might set a precedent for national and local governments to act on biodiversity conservation by opposing extractive projects that might prove destructive to a particular ecosystem. The lawsuits also draw attention to environmental justice issues faced by marginalized communities, particularly Indigenous communities, who are stewards of these vital natural ecosystems and whose livelihoods and cultural and spiritual practices depend on them.

How do the rights of nature fit in the climate crisis?

Within the context of the climate crisis, the “Rights of Nature” represents one legal theory that can help elevate the urgency of protecting biodiversity in the fight against climate change.

This year, countries are set to negotiate a global agreement to protect nature under the United Nations Convention on Biological Diversity in Kunming, China. A coalition of more than 50 countries, known as the High Ambition Coalition for Nature and for People, has committed to protecting 30% of the Earth’s land and waters by 2030 in order to curb biodiversity loss and greenhouse gas emissions — the 30 X 30 target. Can we reach this goal? That remains to be seen. What is clear is that it’s going to take an array of tools to tackle climate change, and that most certainly includes conserving our planet’s most biodiverse ecosystems.

### Impact---Water---Global Sustainability

#### Water’s key to all environmental and social resilience---breakdown risks extinction

Johan Rockström 14, professor in environmental science at the Stockholm Resilience Centre, Stockholm University, et al., October 2014, “The unfolding water drama in the Anthropocene: towards a resilience-based perspective on water for global sustainability,” Ecohydrology, Vol. 7, No. 5, p. 1249-1261

Now that Earth has entered the Anthropocene era (Crutzen, 2002; Steffen et al., 2007), in which humanity constitutes a force of change at the planetary scale, the world faces a new, global level of water concern (Vörösmarty et al., 2013). The empirical evidence is the exponential growth in global environmental impacts since the mid-1950s, referred to as the great acceleration (Steffen et al., 2004). We risk pushing the Earth System away from the stable environmental conditions, which have characterized the Earth during the Holocene period, the interglacial epoch of the past 10 000 years (Oppenheimer, 2004). This epoch is, as far as we know, the only stable state of the planet that can support the modern world (Steffen et al., 2011b). The Anthropocene era includes the challenge of providing freshwater for human development (health, food, energy, etc.) to the more than nine billion people anticipated to be living on the planet in less than 40 years (UN, 2013). Managing this new situation, in which abrupt, large-scale changes in the biophysical system can no longer be excluded, requires a strong focus on water for resilience to shocks and increasing stresses, and on the role of water in the functioning and stability of biophysical, social and economic systems. Resilience refers to the capacity to persist with changing conditions, to have the ability to continue to develop in the face of change (Folke et al., 2010)

Water is critical to the resilience of landscapes and communities. It is connected to fundamental aspects of the future survival and prosperity of humankind. All living organisms in the biosphere and the ability of landscapes to provide ecosystem services depend on the freshwater, both in terms of ‘green’ evapotranspiration water for plant growth and ‘blue’ environmental water flows to sustain ecological habitats. In recent years, the realization that water is the bloodstream of the biosphere has been an important eye-opener (Ripl, 2003). Water is a prerequisite for human health, food production and the generation of all other ecosystem services, from biodiversity to temperature regulation.

In response to the deepening understanding of water's fundamental roles in the life-support systems of our planet, water resource thinking has stepwise broadened in the last few decades (Figure 1) from blue (liquid) water only to green water (infiltrated rain) and finally to a much broader focus on land–water ecosystem and cross-scale interactions. We argue that the evidence of rising water-related shocks and interactions in the Anthropocene requires the emergence of a deeper social-ecological resilience-based approach to integrated land and water-resource management, if we are truly to confront the water challenges facing humanity (Figure 1).

Ecosystem processes modify the hydrological cycle and alterations to the hydrological cycle affect ecosystem processes. These interactions affect the ability of the biosphere to deliver human wellbeing as well as its capacity to buffer stress and shocks. Interacting changes can cause rapid shifts between alternative ecosystem regimes, through which many of the ecosystem services generated can unintentionally be lost. Once a threshold to a new stable state is crossed, it is difficult, if not impossible, to restore the original system functions (Scheffer et al., 2001).

It is now crucial to develop a better understanding, especially of the role played by water in sustaining the resilience of the biosphere in support of human development. The need for a new focus on hydrological systems as a changing interface between environment and society has recently been recognized by the hydrological science community (Montanari et al., 2013). This implies a deeper insight into the fundamental role played by water in sustaining the resilience of the biosphere and the socio-economic and human systems that form an integral part of it. This paper brings together a set of unsettled ecohydrological and water governance challenges in the Anthropocene.

#### We’re on the brink of global water tipping points that risk catastrophic impacts

Johan Rockström 14, professor in environmental science at the Stockholm Resilience Centre, Stockholm University, et al., October 2014, “The unfolding water drama in the Anthropocene: towards a resilience-based perspective on water for global sustainability,” Ecohydrology, Vol. 7, No. 5, p. 1249-1261

Indications show that humanity may be pushing exploitation of finite natural resources and the use of the living biosphere too far, putting at risk the future stability of the Earth system (Steffen et al., 2011a, 2011b), which is tightly coupled to the regional and global use of freshwater (Meybeck, 2003; Vörösmarty et al., 2004). This may trigger water-related tipping points with potentially disastrous and long-term implications for human civilization.

To address the new human predicament in the Anthropocene (Steffen et al., 2011a), science has advanced the planetary boundary framework, which aims at defining the dynamic boundaries for critical Earth System processes beyond which humanity is at high risk of crossing major tipping points, or fundamentally changing the environmental preconditions for social and economic development (Rockström et al., 2009c; Rockström et al., 2009b). This provides humanity with a ‘safe operating space’ within which the risk of large-scale abrupt changes is deemed very low. Water use has been identified as one of the nine planetary boundaries. The Freshwater Boundary is defined as the maximum additional consumptive blue water use in the world beyond the preindustrial situation, and set at 4000–6000 km3 year−1. Global consumptive use of blue water has been estimated at 2600 km3 year−1 (Shiklomanov and Rodda, 2003). Several regions already suffer from the widespread impacts of the overuse of blue water, and global projections indicate an increase in blue water use to a level approaching the global boundary by 2050 (Liu et al., 2009; Rockström et al., 2009a; Gerten et al., 2011).

The global water boundary is defined on the basis of the evidence of the role water plays in providing resilience through wetness of landscapes, providing water for ecological functions and services, and preventing water scarcity (Rockström et al., 2014). For example, evidence shows that river basins, with withdrawals exceeding more than 40–60% of available water resources, experience severe water scarcity (Oki and Kanae, 2006; Grafton et al., 2012). Ongoing research aims at downscaling the global planetary boundary for water to the local and regional scale, e.g. river basins and watersheds, by applying an environmental water flow approach (Pastor et al., 2013), where thresholds are defined on the basis of the amount of freshwater that needs to be maintained in rivers in order to maintain their stability and capacity to deliver key ecological functions. Applying this ‘bottom-up’ approach to estimate a global water boundary based on local environmental water flow requirements results in a boundary estimate of an average maximum allowed blue water withdrawal of 2800 km3 year−1, with a large uncertainty range of 1100–4500 km3 year−1 (Gerten et al., 2013).

#### Water key to global sustainability

Johan Rockström 14, professor in environmental science at the Stockholm Resilience Centre, Stockholm University, et al., October 2014, “The unfolding water drama in the Anthropocene: towards a resilience-based perspective on water for global sustainability,” Ecohydrology, Vol. 7, No. 5, p. 1249-1261

Water is at the heart of transition to global sustainability

This paper brings to the fore the increasing scientific evidence for a rapidly changing global water resources agenda, shifting from a general focus on water-resource efficiency under assumptions of stability and predictability, to a focus on water resilience in a world of instability and surprise (Rockström et al., 2014). In the increasingly turbulent world of the Anthropocene, water is not only a victim of social-ecological change. It is a key regulator of stable landscapes, biomes and Earth system (what we define as water resilience). Furthermore, even though the great acceleration of anthropogenic global change started already in the mid 1950s, we may only now be at the beginning of truly rapid and large changes. The reason? Because it is only now that ‘two giants are colliding’. The first is the risk that increasing human pressures on the Earth's life-support systems may result in abrupt, irreversible and large-scale changes, undermining the ability of the biosphere to support human development. Water plays a central role in this context. The second is the increasing social momentum in a world that has only recently started to ‘move to scale’ in terms of human demands for natural capital, including water, as the number of poor rapidly reduces and the proportion of ‘middle class citizens’ rises from a few billion to the majority of a world's projected nine billion population by 2050. If left unmanaged, the potential implications for global freshwater resources are staggering. Even without the former, i.e. assuming a totally stable planet with no changes to the global hydrological cycle, we face a period until 2050 of massively increasing pressure on water supply. Add to this the global environmental changes confronting humanity, and the world faces a new social-ecological complexity and challenges of unprecedented proportions.

These new features of a rapidly emerging water agenda in the Anthropocene challenge old ways of steady state thinking and incremental change, and call for a shift to strategies that can deal with complexity, uncertainty and surprise (Scheffer et al., 2009). The new water dynamics facing the world will require sea changes in governance in order to sustain and develop human wellbeing within scientifically defined global sustainability criteria such as the planetary boundaries framework. Water is at the heart of such a transition to global sustainability as it constitutes the bloodstream of the biosphere.

Securing a sustainable life-support system

### Impact---Water---Turns Food Security

#### Water sustainability’s key to global food security

Johan Rockström 14, professor in environmental science at the Stockholm Resilience Centre, Stockholm University, et al., October 2014, “The unfolding water drama in the Anthropocene: towards a resilience-based perspective on water for global sustainability,” Ecohydrology, Vol. 7, No. 5, p. 1249-1261

To meet growing food demand to satisfy the needs of an extra two billion people by 2050 as well as meet changes in consumption patterns, food production may need to increase by 50–70% (McIntyre et al., 2009). Figure 3 shows the water scarcity-induced food–water security dilemma by 2050, based on green water availability on current croplands and accessibility of blue water. There will be an estimated global fresh water deficit of approximately 2400 km3 year−1 that will need to be compensated for by trade in food or other mechanism (Falkenmark and Lannerstad, 2010; Rockström et al., 2011). Improved water productivity would reduce the water required for an adequate diet from 1300 to 1000 m3 capita−1 year−1. More countries would therefore be able to meet their national food needs, although large regional differences would remain (Rockström et al., 2011; Gerten, 2013). With two thirds of the world population for food security depending on food import to compensate the effect of country water deficit, a fair and efficient system of global trade will be crucial for reducing inequalities in the capacity to sustain local and regional food self-sufficiency (Costanza et al., 1995; Fader et al., 2013).

Worldwide, there are, however, considerable losses in the food supply chain between the field and final consumption (Kummu et al., 2012). This means placing an enormous load on the environment for zero benefit. An estimated one billion people could be fed by halving these losses. The key to resolving the water–food dilemma is a focus on having more nutritional value per drop of water consumed in agriculture. Inevitably, this will involve shrinking dietary water footprints at the wealthier end so that those at the lower end can sustainably reach healthier levels.

### Impact---Environment---Turns Geopolitics

#### Environmental decline accesses every geopolitical impact

Giulio Boccaletti 17, Chief Strategy Officer & Global Managing Director, Water, The Nature Conservancy, March 2017, “The Geopolitics of Environmental Challenges,” <https://global.nature.org/content/the-geopolitics-of-environmental-challenges>

Much of the world seems to be on edge. The West’s relationship with Russia, the future of NATO, the Syrian civil war and refugees, rising right-wing populism, the impact of automation, and the United Kingdom’s impending departure from the European Union: all of these topics— and more—have roiled public debate worldwide. But one issue—one might say the most significant of them all—is being ignored or pushed aside: the environment.

That was the case at this year’s annual meeting of the World Economic Forum at Davos, Switzerland. Beyond a mention of the Paris climate agreement by Chinese President Xi Jinping, topics like climate change and sustainable development didn’t even make it to the main stage. Instead, they were relegated to side meetings that rarely seemed to intersect with current political and economic events.

Allowing environmental issues to fall by the wayside at this time of geopolitical and social instability is a mistake, and not just because this happens to be a critical moment in the fight to manage climate change. Environmental degradation and natural-resource insecurity are undermining our ability to tackle some of the biggest global issues we face.

Environmental insecurity is a major, though often underestimated, contributor to global instability. The UN High Commission on Refugees reports that natural disasters have displaced more than 26 million people per year since 2008—almost a third of the total number of forcibly displaced people in this time period.

Even the current refugee crisis has an environmental element. In the years leading up to the war, Syria experienced its most extreme drought in recorded history. That drought, together with unsustainable agricultural practices and poor resource management, contributed to the internal displacement of 1.5 million Syrians and catalyzed political unrest ahead of the 2011 uprising.

The link between environmental and agricultural pressures extends far beyond Syria. Over-reliance on specific geographies for agriculture means that food production can exacerbate environmental problems, or even create new ones. This can pit global consumer interests against local citizen interests, as it has along the Mississippi River, where fertilizer runoff from one of the world’s breadbaskets is contributing to concerns about water quality.

The connection goes both ways, with environmental conditions also shaping agricultural production—and, in turn, the prices of agricultural commodities, which represent about 10% of traded goods worldwide. For example, rising temperatures and altered precipitation patterns are already driving up the price of coffee. With the global land area suitable for growing coffee set to contract by up to half by 2050, price pressures will only intensify.

A sudden shift toward trade protectionism could drive up agricultural commodity prices further. Such an increase would affect farm-level household income, favoring some farmers while harming others. End consumers, particularly the poor and vulnerable, would also suffer.

Another reason why the environment should be at the center of economic debates is its role as the world’s single largest employer. Almost a billion people, just under 20% of the world’s labor force, are formally employed in agriculture. Another billion or so are engaged in subsistence farming, and therefore don’t register in formal wage statistics.

Any initiatives to support economic development must support this population’s transition toward higher-productivity activities. This is particularly important at a time when increasingly sophisticated and integrated technology threatens to leapfrog an entire generation of workers in some countries. Efforts to benefit this huge population must focus not only on training and education, but also on new models that allow countries to capitalize on their natural capital—the landscapes, watersheds and seascapes—without depleting it.

Just as natural-resource insecurity can cause displacement and vulnerability, effective natural-resource management can support conflict resolution and sustainable economic development. On this front, efforts to achieve environmental remediation, to boost the resilience of rural communities, to advance sustainable agricultural production, and to support community-based environmental stewardship have all shown promising results.

Consider the Northern Rangelands Trust, an organization focused on creating community conservancies to enable sustainable and equitable land use in Kenya. NRT has helped pastoralist communities establish effective governance mechanisms for the environment on which they depend, reducing conflict over grazing rights, especially in times of drought.

For many communities, members’ relationship with the landscape in which they live is an integral part of their identity. With effective governance and planning, open dialogue, resource-sharing frameworks and sufficient investment, including in skills training, these communities can translate this relationship into effective environmental stewardship—and build healthier and more secure societies.

The crises engulfing the modern world are complex. But one thing is clear: the environment is connected to all of them. Solutions will mean little without a healthy world in which to implement them.

### Solvency---Public Trust Spillover

#### Granting personhood to rivers spills over broadly to strengthen the environmental public trust doctrine---spurs adoption of follow-on laws that bolster environmental protection broadly

Jim Olson 20, Founder, President, and Legal Advisor at For Love of Water, 8/31/20, “The Marriage of the Rights of Nature and the Public Trust Doctrine,” https://forloveofwater.org/the-marriage-of-the-rights-of-nature-and-the-public-trust-doctrine/

Like the movement to shift our perception that in the 1970s resulted in the rights of citizens to bring lawsuits to protect the air, water, and environment, Ruffalo’s film dramatizes the declaration of the rights of nature itself, concluding that nature, its rivers, lakes, and biotic systems must be protected by government as living beings. Indeed, if government fails to fulfill its duty to protect nature as it would any person, then, in the same way people can bring lawsuits to protect themselves and the environment, natural living ecosystems, such as Lake Erie, under some type of guardianship can, too.

The recognition of rights of nature or a body of water attracts more and more support worldwide because it is something ordinary people and communities facing serious threats to water from climate change and government indifference can understand and support. It establishes a scaffolding for humans to shift the way we see nature in the first place—a shift from a “property” or physical orientation to one that embraces relationship to a tree, lake, or a river. This is not new for many indigenous people around the world who see nature as not apart, but beings in relation to themselves. But it is new to those more accustomed to seeing everything autonomously, each object bouncing back and forth as separate, unrelated pith balls in a Newtonian world.

Yet while a change like the Lake Erie Bill of Rights calls for more humility and fundamental respect toward nature, from a purely legal or legal policy standpoint, it doesn’t change the basic reality that if government fails to protect nature as a “person” or “natural object,” a person has to step in as an appointed guardian to speak for this new “person.” In most countries, and all of the states or provinces in North America, the only way to do this is for people to march to the state or provincial capitol or file lawsuits on behalf of nature in the courts.

In the 1970s, the states and federal government passed laws giving citizens the legal “standing” to file lawsuits to protect their use and dependence on the environment. The rights of nature movement, if enacted as in New Zealand and attempted for Lake Erie, whether by constitutional amendment or a new law, would grant legal “standing” to the lake, river, forest, or watershed itself. But if this happens, and it should, does it change the fact that citizens, that is human beings, must still insist on that protection by filing lawsuits based on legal standing as they have done since the 1970s?

Toledo’s Lake Erie Bill of Rights clearly created the right, or standing, for citizens to go after the state, but it didn’t establish a remedy. The court ruled the city didn’t have the power to pass a law to protect Lake Erie because it is the state that holds Lake Erie for the benefit of citizens, and only it could pass laws to protect it. Clearly, then, legal standing is not enough.

I suppose a state can pass a new law that grants legal rights to a lake or river, and that because of this, a person could file a lawsuit, perhaps as appointed guardian, in the name of a natural living feature like Lake Erie. And, I suppose, too, that a court would be compelled to grant standing to the lake or river that has been or is threatened with harm, and protect the water and ecosystem that is part of this “person,” as authorized by the new law. Is this different from what people do now? People have been filing lawsuits to protect nature for the last 50 years. But here we are in 2020, facing the cataclysmic demise of the earth and its water—the fading blue planet we’ve seen from outer space during this same 50 years—despite being armed with laws and the right to sue when government and corporations pollute, impair, or destroy anatural systems.

However, this does not mean from a cultural, educational, and advocacy viewpoint, the rights of nature are not important. I think they are. Here’s why.

The Importance of the Rights of Nature and Its Link to the Public Trust Doctrine

First, with the recognition of rights of nature, as noted above, people experience a relationship between themselves and nature, both connected and worthy of protection as “beings” or a life form. When this happens, people are more likely to protect that relationship when it is harmed or threatened with harm, and expect the law to recognize it as the status quo of a viable and sustainable being. Courts or legislatures are more likely to be receptive and understand this, too, and therefore articulate new laws or pass constitutional provisions that declare rights, protection, and enforcement of the violation of the duty to protect or sustain these rights of nature. Perhaps equally important, if not more so, people will become more likely to see nature, ontologically speaking, as beingness. In this way, people can bring civil actions to insist that those new “rights of nature” by a local initiative or law are protected, and the burden is shifted to those who threaten or or alter these rights of nature or being to prove that there is no likely harm to water and nature..

Second, as people search our existing laws, particularly the common law associated with common property of a special character like oceans, rivers, lakes, streams, and their tributary groundwater, they will discover there already exists a legal protection of our relationship to nature as if nature is a being. It’s called the public trust doctrine. The doctrine applies to watersheds and the waters that flow through and define them. Under the public trust doctrine, government has a high, solemn, and perpetual duty to protect these special commons and the public’s use of them from impairment, subordination, or alienation for private control. This trust establishes a legal relationship, just like a trust created with a bank as trustee, among the trustee, beneficiaries, and the commons in nature like water, which establishes a three-way relationship. If the government breaches or fails its duty as trustee to protect the rights or beingness of nature, citizens as legal beneficiaries have a legal right, standing, and claim or civil action against government as trustee to protect both the commons, the natural beingness, and the people and species who depend on it.

Like “rights of nature,” the public trust doctrine calls for respect of the beingness or personhood of nature, and at the same time protects a citizen’s right to bring an action to protect this personhood and the essential protected use of water or ecosystems, such as fishing, drinking water, sustenance, and health.

Citizens have successfully protected water and other special natural commons through numerous public trust cases for more than 100 years. The most visible examples are the beachwalking cases, e.g. National Audubon v Los Angeles Superior Court (“Mono Lake” case), Illinois Central Railroad v Illinois (the Great Lakes are held in public trust), and Glass v Goeckle in Michigan or the Gunderson v Indiana cases (the right of the public to beach access to navigable waters). The children’s trust and other public trust cases, like Juliana v U.S., also seek to address the systemic effects of human behavior, like the diversion of a river, the conversion of a lake to a private industrial complex, or the ruin of a rainforest, and the massive, myriad irreparable harms and disease caused by climate change to the public trust in our waters and the ecosystems, watersheds, and people who depend on them.

Michigan a Forerunner with the MEPA

In Michigan, for example, the Legislature in 1970 established the right of citizens to bring claims against those who pollute, impair, or destroy the air, water, and natural resources or the public trust in those resources. (To trace Michigan’s related history, see The MEPA Turns 50). So, there is the right, standing, and the claim by statute, and as described above, under the common law of public trust. Because these claims already exist, the declaration of the rights of Lake Erie or nature are an inspiration and aspiration, the public trust doctrine or statutes like the Michigan Environmental Protection Act (“MEPA”) provide the standing, claim, and remedy for damages or court orders to stop the conduct causing or contributing to the harm. The Environmental Law and Policy Center filed suit under the Clean Water Act and forced the U.S. EPA and State of Ohio to declare the open waters and shore waters of Lake Erie “impaired.” As a complement to an often long process to establish enforceable phosphorus limits, known as total maximum daily loads (TMDLs), the public trust doctrine and the MEPA provide immediate claim for impairment of Lake Erie based on these findings that Lake Erie is impaired.

If the connection between the rights and respect toward nature and the public trust in water underlying nature is recognized, and if they are married to each other, viewed as inseparable, then the rights of nature and the public trust doctrine become the umbrella, the backstop, the overarching framework to protect nature and humans as persons or beingness, as a whole. Under public trust law, people and natural beings don’t have to wait for a state or nation to enact a constitutional amendment or new law declaring “rights of nature,” people and nature’s commons don’t have to wait another 4 or 5 years for governments to adopt a phosphorous standard to end the destruction of western Lake Erie. They can bring a lawsuit, and ask the court to protect Lake Erie as a being or body of the trust, and the rights that they enjoy and depend on for drinking water, fish, economy, and sustenance of life.

In short, the rights of nature or rights of Lake Erie are the flags to rally around, and the public trust doctrine is the legal framework and set of principles to halt the undisputed impairment from toxic algal blooms of Lake Erie to protect the rights of nature. People and nature don’t have to suffer the continuing destruction of Lake Erie, they, as persons, have a right and remedy that saves Lake Erie:

### Solvency---Water Resources Management

#### River rights set legal precedents for a revolution in water resources management that stops degradation

Erin L. O’Donnell 18, Senior Fellow at Melbourne Law School; and Julia Talbot-Jones, Visiting Fellow at the Australian National University, 2018, “Creating legal rights for rivers: lessons from Australia, New Zealand, and India,” Ecology and Society, Vol. 23, No. 1

New sets of environmental pressures, unprecedented in their complexity, are confronting people around the world (OECD 2012, World Economic Forum 2015). The emerging problems involve interconnected ecological and social systems, and include ecological degradation, the under representation of indigenous peoples in decision making, declining resource availability, and climate change (Millennium Ecosystem Assessment 2005, Steffen et al. 2007, Haines-Young and Potschin 2010). The management of freshwater resources to maintain ecosystem health and well-being, as well as supporting local communities (see Bignall et al. 2016), is a particularly pressing and difficult problem (Arthington 2012, Hall et al. 2014, Horne et al. 2017a).

These problems require the development of innovative institutional arrangements that incentivize a change in the behavior of organizations and individuals (Head and Alford 2013). One such recent development has been the granting of legal personhood to nature. This involves recognizing nature—either as a whole, or a specific part, such as a river—as a legal person. In law, this means that nature has a basic set of legal rights that grants it certain rights, duties, and responsibilities (Naffine 2003). Although referred to as a legal “person,” these legal rights are not the same as human rights, which include civil and political rights. Instead legal rights comprise three elements: legal standing (the right to sue and be sued in court), the right to enter and enforce legal contracts, and the right to own property (Naffine 2009, O’Donnell and Talbot-Jones 2017).The concept of granting legal rights to nonhuman entities is not new (Salmond 1947, Stone 1972), but it has only recently begun to be implemented for nature. In 2008, Ecuador granted legal rights to nature in its constitution (Constitution of the Republic of Ecuador 2008, articles 71–74), explicitly recognizing the rights of nature, and empowering “all persons, communities, peoples and nations [to] call upon public agencies to enforce the rights of nature” (art 71). Similarly, in 2010, Bolivia created broad legal rights for nature when it passed “Ley de Derechos de la Madre Tierra” (the “Law of Mother Earth”). At the other end of the social scale, there are a growing number of local laws that create and protect the rights of nature. In the USA, local grassroots movements have worked to embed rights for nature within local constitutions, including the right for nature to exist and flourish (Burdon 2010, Troutman 2014).More recently, the approach has been applied to specific natural features, namely rivers. In March 2017, three rivers, the Whanganui River in New Zealand, and the Ganges and Yamuna rivers in India, were given the legal status of persons, while in 2011 a hybrid form of the legal rights for nature concept was used to protect the rivers of the state of Victoria, Australia. These river ecosystems provide a range of services to human users, including basic water supply, hydropower, irrigation, navigation, and pollution control (Ross and Connell 2016). They are also of great significance to indigenous peoples and local communities (Alley 2010, Department of Environment, Land, Water and Planning 2016, Sachdeva 2016).

These cases offer the first examples of legal rights being applied to a specific, identifiable, bounded natural feature (a river and its catchment). The development has the potential to create new legal precedent in environmental law, and opens a fresh pathway for water resources management. In doing so it also presents a series of complex challenges for both law and management. For instance, a river’s legal rights are only likely to be effective if they can be given force and effect. To possess a right implies that someone else has a commensurate duty to observe this right, in both law, and practice (Schlager and Ostrom 1992). In the context of water resources management, the efficacy of legal rights for rivers depends on both the river, and the other users of the resource, recognizing their joint rights, duties, and responsibilities.

### Solvency---Tragedy of the Commons

#### Only legal personhood protects water resources from destruction through the tragedy of the commons

Emilie Blake 17, research assistant to the Center for Water Law and Policy, J.D. Candidate, Texas Tech University School of Law, September 2017, “NOTE: Are Water Body Personhood Rights the Future of Water Management in the United States?,” Texas Environmental Law Journal, 47 Tex. Envtl. L.J. 197

The tragedy of the commons simply means that a resource has been overused to the point of destruction. 109 If a water body has a right to personhood, then the guardian may sue to protect against total destruction, and thus preserve the water body for the long [\*209] haul. 110 As more and more people gain access to water systems, the lakes, rivers, streams, and aquifers succumb to overuse. 111

The tragedy of the commons finds root in equilibrium. 112 Similarly, personhood rights could evaluate injury from a stability standpoint. 113 Theoretically, guardians could calculate what the rate of recharge is and the rate of water use to determine the threshold for injury. 114 In this way, water bodies, under the correct supervision of a guardian, will be protected from the tragedy of the commons. 115 Strong rights in personhood will protect rivers, streams, lakes, and aquifers from immediate overuse and obliteration. 116

### Solvency---Rights Balancing

#### Rights are key to balance nature’s interests against exploitive human activities

Guillaume Chapron 19, et al., 1Department of Ecology, Swedish University of Agricultural Sciences, 3/29/19, “A rights revolution for nature,” Science, Vol. 363, No. 6434, DOI: 10.1126/science.aav5601

Another central issue will be how conflicts between rights of nature and corporate or human rights and interests will be adjudicated. This weighing will determine whether rights of nature will be effective. Although rights of nature do not aim to halt all human activities, they do aim to render the most environmentally destructive human activities illegitimate. For example, if koala populations have rights to their habitat, courts could hold the massive bulldozing of koala habitat to be illegal even if not explicitly prohibited by existing environmental laws.

Adjudicating conflicts between rights of nature and human activities will be controversial, but no more so than conflicts between, for example, human rights to free expression and nondiscrimination. Conflicts between nature and human activities happen on a massive and systematic scale. When people and corporations have rights and nature does not, nature frequently loses, as evidenced by the continuing deterioration of the environment. Rights of nature may help to prevent this one-sided outcome.

### AT: Property Rights Args

#### Property rights can be accommodated---the aff’s about balancing property rights with ecosystems

Oliver A. Houck 17, Professor of Law, Tulane University, Winter 2017, “ARTICLE: Noah's Second Voyage: The Rights of Nature As Law,” Tulane Environmental Law Journal, 31 Tul. Envtl. L.J. 1

Vocal opposition comes as well from those who see a threat to private property and freedom itself, one advocate declaring that "there would be nothing left of human society if we treated animals not as [our] property but independent holders of rights." 192Granting the utility of property rights - and overlooking the fact that the same was said of rights for blacks and women - nothing in the rights of nature demands that private ownership be abridged any more than it is by zoning regulations, pollution controls, and other measures that we accept routinely for the common weal. Indeed, in many settings these measures tend to enhance [\*35] the values of private property, as does the protection of nature itself, a local park, a stand of trees. Property interests, can be accommodated through such time-tested devices as development credits, impact fees, tax relief, land swaps, and mitigation banks that allow activities to go forward while maintaining the base. Rights in nature do not end property as we know it. They simply ask it to meet the rest of the world half-way.

# Solvency

## Mechanics/Agents

### Solvency---Congress

#### Legislatively creating rights for rivers sets up a strong, flexible framework for water governance that addresses economic and environmental stressors on water resources

Erin L. O’Donnell 18, Senior Fellow at Melbourne Law School; and Julia Talbot-Jones, Visiting Fellow at the Australian National University, 2018, “Creating legal rights for rivers: lessons from Australia, New Zealand, and India,” Ecology and Society, Vol. 23, No. 1

In analyzing the case studies from Australia, New Zealand, and India we have reached three key conclusions about the granting of legal rights to rivers. First, legal rights for nature can be created within a range of legal and institutional settings to address a number of complex socio-environmental and economic problems. One of the most unexpected findings from this analysis was that the legal rights for rivers approach can be used to address problems motivated by economic, cultural, or environmental factors as in the case of Australia, New Zealand, and India, respectively. In addition, it can be used to complement legislative frameworks ranging from state ownership models through to water markets, highlighting the broad potential applicability of the approach.

Second, it is possible to create legal rights through both judicial and legislative channels. This makes legal rights a flexible water governance tool with its own set of opportunities and limitations. Achieving change through legislative channels, as occurred in Australia and New Zealand, can be slow, but effective. In contrast, the Indian case showed that legal rights for rivers can be granted rapidly through the judicial process, but can be equally rapidly undermined by further rulings. Although the High Court of Uttarakhand created some very broad legal rights for the Ganges and Yamuna rivers, the rulings lack the institutional depth of the legislated examples in Australia and New Zealand. In India, the absence of broader government engagement raises questions about the Ganges and Yamuna rivers’ guardians’ likely ability to act, given the absence of financial support, institutional capacity, and statutory independence. The recent appeal to the Supreme Court of India is demonstrative of the type of uncertainty that could be created by granting legal rights to rivers through the judicial system.

Third, this analysis suggests that granting rights to nature no longer sits on the fringes of environmental law. These three cases represent a development in environmental law and demonstrate a new way in which nature can be granted legal standing. Where nature has been given legal rights previously, namely in Ecuador and Bolivia, a distinct limitation of the approach has been the inability to give the rights force and effect. This analysis shows that the approaches taken in Australia and New Zealand could overcome some of the challenges experienced in the earlier cases and deliver outcomes to the benefit of the environment and society.

The cases evaluated here shine light on how legal rights for rivers can be used to address a range of issues commonly observed in water resources management. As pressures on freshwater systems continue to increase, understanding the opportunities and limitations provided by this new legal approach will allow decision makers to make more informed choices when considering ways of addressing their context-specific socio-environmental and economic pressures.

### Solvency---Federal/Standing

#### Federal law shapes state and tribal enforcement authority, and fails without conferring standing directly to rivers

Meredith N. Healy 19, J.D. Candidate, University of Colorado Law School, 2019, “Fluid Standing: Incorporating the Indigenous Rights of Nature Concept into Collaborative Management of the Colorado River Ecosystem,” Colorado Natural Resources, Energy & Environmental Law Review, <https://www.colorado.edu/law/sites/default/files/attached-files/healy_web_edition_pdf.pdf>

The 1970s could be considered the heyday of American Environmental Law. At the beginning of the decade, the National Environmental Policy Act (“NEPA”) heralded a new era in which the federal government was first required to consider the environmental effects of their proposed actions prior to making decisions on agency actions such as resource extraction permit applications, adopting federal land management actions, and constructing publicly-owned facilities. The Act was conceived as a broad national framework for protecting the environment, with the specific goal of encouraging “productive and enjoyable harmony between man and his environment,” “promot[ing] efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man” and “enrich[ing] the understanding of the ecological systems and natural resources important to the Nation.”46 Over time, however, NEPA was reduced to a procedural safeguard rather than substantive protection of the environment.

Just two years later, Congress amended the Water Pollution Control Act of 1948, renamed and now commonly known as the Clean Water Act, to give the Environmental Protection Agency (“EPA”) the authority to regulate pollutant discharge in the waters of the United States as well as maintain existing requirements to set water quality standards. The Clean Water Act (“CWA”) was subsequently modified to streamline the municipal construction grants process, build EPA-state partnerships to address water quality needs and funding, and reduce toxic pollutants. While the CWA does provide for financial assistance to states to establish and administer programs for the prevention, reduction, and elimination of water pollution, that help only extends to tribes if they are federally recognized, have a governing body carrying out substantial governmental duties and powers, have legal authority and jurisdiction over tribal lands, and have the capacity to comply with the CWA. Despite funding tribes, as well as providing for states to implement enforcement of the CWA, the EPA itself acknowledges widespread violations and uneven enforcement.

In 1973, Congress enacted the Endangered Species Act (“ESA”) to provide a way to protect ecosystems that host endangered and threatened species. Administered by the United States Fish and Wildlife Service (“USFWS”) and the National Marine Fisheries Service (“NMFS”), the ESA prohibits the taking—defined as harassing, harming, pursuing, shooting, wounding, killing, trapping, capturing, collecting, or attempting to engage in any such conduct—of endangered and threatened species.53 Designation of habitat critical to the survival of such species to “the maximum extent prudent and determinable,” is tempered with broad carve-outs for economic considerations, national security and “other relevant impact[s].” Because the ESA only provides protection for potentially narrow slices of ecosystems that host specific, listed species, it is not substantively sufficient to completely protect entire river ecosystems.

B. Sierra Club v. Morton

During the same decade that Congress passed NEPA, the CWA, and the ESA, the Supreme Court handed down the long-lasting opinion that would limit environmental advocacy to claims of injury to humans. As a result of Sierra Club v. Morton, successful environmental litigation now depends on a duly-injured advocate with access to the courts—often termed “next friend”—claiming injurious impact on a human.

Sierra Club v. Morton is the closest that the United States federal government has come to granting personhood to natural resources.57 In that case, a conservation group brought suit for declaratory judgment and an injunction to prevent the United States Forest Service from approving a ski development proposed by Walt Disney Productions near the Sequoia National Forest. The Sierra Club alleged no personal injury to any specific member, but argued that the ski development would adversely affect the forest. Justice Stewart held that although the Sierra Club amply demonstrated their affinity for the forest and environmental expertise, absent concrete “injury in fact” to Sierra Club’s members, the club had no standing to sue on behalf of the forest. Because the Sierra Club’s members did not allege facts showing that they would be personally adversely affected by the ski development, the Court determined that the club did not “have a direct stake in the outcome,” and it would undermine the goal of the Administrative Procedure Act to “authorize judicial review at the behest of organization or individuals who seek to do no more than vindicate their own value preferences through the judicial process.”61

C. The Douglas Dissent

In his famous dissent, Justice Douglas asserted that perhaps injury to the forest itself would be concern enough for the Court to consider. Douglas opined that environmental issues might be better litigated in the name of the natural resource that would potentially be injured.63

The Court at the time already considered inanimate objects such as ships and corporations as parties in litigation, and Douglas offered an extension of that consideration. Douglas reasoned that rivers have even more at stake in litigation because they are an entire ecological unit that is not only living but supports and sustains both other wildlife and human life. He highlighted the irony of judicial protection of fictional entities at the expense of protection for actual, natural entities:

The corporation sole—a creature of ecclesiastical law—is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a ‘person’ for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes. So, it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves or trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes—fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it.

Douglas suggested that “contemporary public concern for protecting nature’s ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation.” He urged citizens to speak on behalf of the natural resources that form “the very core of America’s beauty.”68 Instead of relying on federal agencies notorious for aligning with private interests that are at odds with such beliefs, or transferring the responsibility to environmental groups who may be swayed by Zeitgeist, Douglas recommended that the “people who have so frequented the place as to know its values and wonders . . . speak for the entire ecological community. ”69 Douglas concluded with Aldo Leopold’s land ethic, which urges an understanding of community to include “soils, waters, plants, and animals, or collectively: the land.”

D. The Blackmun Dissent

Justice Douglas was not alone in his concern about the danger of narrowing environmental advocacy to redress for human injury. His colleague, Justice Blackmun, warned that Sierra Club v. Morton “poses— if only we choose to acknowledge and reach them—significant aspects of a wide, growing, and disturbing problem, that is, the Nation’s and the world’s deteriorating environment with its resulting ecological disturbances.” Justice Blackmun’s concern foreshadowed the danger of a judicial system tied to the legal fictions it creates when he asked, “Must our law be so rigid and our procedural concepts so inflexible that we render ourselves helpless when the existing methods and the traditional concepts do not quite fit and do not prove to be entirely adequate for new issues?” While the majority set a new standard for bringing cases on behalf of natural resources, Justice Blackmun, seconded by Justice Brennan, urged the court to consider the dangers of limiting judicial review to human injuries.

#### Standing plus a framework of stakeholder representatives advocating for the interests of rivers is a seismic change in water resource protection

Doesn’t link to federalism because incorporates state interests

Meredith N. Healy 19, J.D. Candidate, University of Colorado Law School, 2019, “Fluid Standing: Incorporating the Indigenous Rights of Nature Concept into Collaborative Management of the Colorado River Ecosystem,” Colorado Natural Resources, Energy & Environmental Law Review, <https://www.colorado.edu/law/sites/default/files/attached-files/healy_web_edition_pdf.pdf>

Federal recognition of the rights of nature would (1) ameliorate standing doctrine without requiring wholesale overhaul of the environmental advocacy scheme, (2) provide a moral victory for tribes that already recognize the legal rights of nature, (3) set a necessary framework for protecting natural resources within the U.S. legal system, and (4) allow for an implementation of a system of guardians for major natural resources. This proposed recognition comes at a time when it is becoming more apparent that the federal government might not reasonably be relied upon to advocate successfully for natural resources’ best interests. As renowned Western water legal scholar Charles Wilkinson remarked, “the water laws that . . . arose for good reason in a particular historical and societal context, the westward expansion of the nineteenth century . . . simply do not square with the economic trends, knowledge, and social values of the modern West.”

A. Acknowledging the Rights of Nature Would Further

American Environmental Goals

While federal laws such as NEPA, the ESA, the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the American Indian Religious Freedom Act mandate that federal land management agencies consider certain indigenous cultural resources on and near the lands they manage, natural resource conservation goals may be more effectively met if land managers consider traditional ethnic knowledge to complement Western views. Rather than a blanket application of federal laws aimed at an amalgam of initiatives, local incorporation of the indigenous rights of nature tailored specifically to the resource to be managed would fill the gaps between the variety of procedural and substantive environmental laws.

B. Indigenous Background

While recognition of the rights of nature may seem to be a foreign concept in the United States, it has roots in some indigenous American cultures. In his exploration of the sharp division between American federal government and American Indian views of nature, American Indian scholar Walter Echo-hawk stated that “tribal religions cannot be considered in a vacuum, but must be understood within the context of the primal world, for tribes in their aboriginal places are embedded in their indigenous habitats so solidly that the line between nature and the tribe is not easy to establish.” In describing tribal views of nature, Echo-hawk quoted Black Elk (Lakota), “[T]he Great Spirit . . . is within all things; the trees, the grasses, the rivers, the mountains, and the four-legged animals, and the winged peoples.” Incorporating such indigenous viewpoints in the United States federal courts has been inconsistent to date.

Inconsistent federal recognition of such views may reflect the differing values of the more than 500 federally-recognized tribes within United States borders .146 Some tribes have introduced indigenous viewpoints of natural resources into federal litigation, but judicial responses have not appeared consistent. In 2001, a federal district court recognized the Klamath and Yurok tribes’ culture and tradition when weighing tribal and non-tribal reliance on the Bureau of Reclamation’s regulation of the Klamath River during a severe drought. The Klamath River ecosystem hosted three fish species listed as “endangered” or “threatened” under the ESA. Indirectly supporting indigenous views, the court ruled for the tribes based on the plain language of the ESA, stating that the Bureau of Reclamation had a responsibility under the ESA that overrode the rights of non-tribal irrigators.

In 2016, the Blackfeet Nation in Montana succeeded in protecting sacred lands from oil development. The United States Department of the Interior cited deference to sacred tribal lands when it cancelled drilling leases in the Badger-Two Medicine area. However, that success was short-lived. In September 2018, the District Court for the District of Columbia held that the decision to cancel one of the oil and gas leases was arbitrary and capricious. Judge Richard J. Leon’s decision made no reference to sacred tribal lands.

Perhaps one of the strongest federal recognitions of indigenous views came via the permanent protection of the Taos Pueblo Nation’s “most sacred shrine:” the Blue Lake in northern New Mexico. The Taos Pueblo Nation believed that the lake was a living entity, and that if the lake ceased to exist, the tribe itself would cease to exist. Even though the Taos Pueblo Nation persuaded the federal government to protect the Pueblo Nation’s sacred waters from recreational overuse, this victory— and that of the temporary reprieve at Badger-Two Medicine—remains rare. In Idaho v. Coeur d’Alene Tribe of Idaho, the Court affirmed state control of waterbeds seemingly without concern for location or import to native tribes. The federal courts’ reasoning did not appear to rely on indigenous peoples’ views of natural resources, even in those cases the tribes won. However, non-indigenous environmental groups continue to challenge the Western utilitarian view that natural resources are to be used and not heard.

C. Proposed Guardianship Framework

The United States is likely not yet ready to incorporate indigenous beliefs into of the rights of nature, but if the government assigned nongovernmental coalitions of guardians—a kind of guardian ad litem for natural resources—to major rivers, environmental advocates would be permitted to: (1) proffer a guardian who can focus exclusively on the longterm representation of one river; and then (2) delegate funding to protect other resources adequately. Further financial support from federal or state governmental agencies could be considered as well, but the reduction in plaintiffs bringing suits on behalf of the river would perhaps balance the costs of permanent guardianship.

This framework would ensure legal representation of the natural resource’s long-term interests. For example, legally-appointed river guardians might advise federal and state agencies on permit applications for multiple nearby mining operations. The guardians would have a stronger, more sustained case for the river because their advocacy would not be limited to case-by-case scenarios. Because the Colorado River Ecosystem would have permanently appointed guardianship, advocacy for the ecosystem would be broader than just ad hoc participation in notice and comment rulemaking every time there was a perceived threat to the ecosystem. In litigation, the Ecosystem would be a named party rather than property, developing reliance for opposing parties whose interests in the river may be currently subject to litigation by multiple adversaries. In that way, guardians for the Ecosystem could develop a co-management plan that focused on long-term health of the river.

Additionally, appropriating water rights would be considered not only by seniority but with consideration of the effects of the appropriator’s use on the river. This seismic shift in water law would effectively establish the most senior water right as that of the river itself. Although this would upend Colorado’s water doctrine of prior appropriation, challenges to the “first in time, first in right” doctrine are not without precedent.

An exception to the prior appropriation doctrine in Colorado was realized in 2009 when the Colorado legislature recognized the acequia water management system. The acequia water management system does not appropriate water in order of seniority but instead recognizes a pre-American system that apportions the water equally among property owners along a communal ditch.161 Because Colorado recognizes one exception to the prior appropriation doctrine, it is feasible that the state might also consider excepting river-ecosystem guardianship.

Like the legislative establishment of guardians for the Whanganui River, Congress could be the instrument for creating guardianship of the Colorado River Ecosystem. By establishing the guardianship through the legislature and not the judiciary, the State’s constitutional claims would be countered by providing a private right of action. Additionally, rather than two guardians as seen in New Zealand, or one special master as recommended by Deep Green Resistance, a strategy group of parties from federal and state governments, private environmental non-profits, and tribal representation would best represent the diversified needs of those citizens who value and depend on the Colorado River Ecosystem. This legislatively established panel could balance the divergent needs of each entity in relation to the river.

1. Federal Representation

The guardianship of the Colorado River Ecosystem would include a federal representative. Obvious choices would include a nominee from an agency already entrusted with representing administration’s principles, such as the EPA, NMFS, or USFWS. This would capitalize on expert knowledge at the federal level and acknowledge federal interests in protecting natural resources. As administrations change and their policies on natural resources fluctuate, this federal representation might be tempered by the viewpoints of the other members of the strategy group. Even though some federal agencies like those listed above were conceived as guardians for public lands, the Colorado River Ecosystem would also need representation outside of the government because the river flows past—and is appropriated by owners of—private and locally-held lands. Additionally, federal agencies may have directives for natural resource use that conflict with those of the proposed strategy group.

The challenge with a federal representative is how and whether to appoint or elect the representative. If the federal representative were appointed by the executive branch, the Colorado River Ecosystem might fall prey to political whims. Further, if this representative’s term was tied to who is in office, continuity would be a concern. One solution would be to internally elect or appoint a career staffer from within the executive branch, perhaps from the Department of the Interior, and establish five- to ten-year terms that may exceed a single administration.

2. Non-government Citizen Representation

Just as with the Whanganui, the Colorado River Ecosystem should include representation by individuals not specifically directed by the federal government, state government, or tribal interests. Appointing a non-governmental citizen as guardian for the Colorado River Ecosystem would relieve environmental groups of the burden of showing human injury for every case. These groups could still advocate for the river but would need only show injury to the river and not to themselves. Several water-resources groups are already in place and could nominate an advocate to speak for private environmental interests.

 The challenge with selecting a non-government citizen representative is twofold. First, the interested parties could run the gamut from non-profit environmentalists to corporate natural-resource extractors. Second, a mechanism for electing or appointing this guardian would need to be created. An election might empower the local citizenry, but lobbying could result in representation by the wealthiest entity rather than the one most committed to the river ecosystem’s health and integrity. Alternatively, appointment by any state party to existing river management agreements could either result in representation by an individual committed to the river ecosystem’s health and integrity or a political favor by whichever political party is in power at the time.

3. Tribal Representation

The Colorado River Ecosystem is fortunate to already have a coalition of tribal and state representatives that share ideas and perspectives about the use and management of the river. The Ten Tribes Partnership has navigated “the Law of the River”—the intricate network of state and federal statutes, regulations and judicial decrees, interstate compacts, and treaties that affect water management decisions in the Colorado River Ecosystem—for more than two decades. Such longterm, large scale tribal coordination to protect natural resources reflects a trend of increased tribal collaboration in the West. Recently, the Bears Ears Inter-Tribal Coalition brought together the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Pueblo of Zuni, and Ute Indian Tribe with the goal of restoring the Bears Ears National Monument in southern Utah. These intertribal coalitions show promise for future intertribal coordination and collaboration with external governments and agencies aligned to protect natural resources.

Native American tribes in the Colorado River Ecosystem recognized water as a centerpiece of life well before our current legal system placed restrictions on its use. Redress for injury to a tribe’s water rights has generally been limited to interference with court-defined beneficial uses rather than intrinsic value or sacred use.

Tribal co-management could turn the tide on litigation based on protecting for rivers for their sacred value. In 2016, the Navajo Nation sued the EPA in response to the Animas River spill.171 Following the release of nearly three million gallons of toxins into the Animas River, the Navajo Nation sued the EPA for economic injuries to the Nation and its people, noting that the EPA “incredibly did not inform the [Navajo] Nation that a toxic plume was advancing toward their sacred [San Juan] River for nearly two days.”172 The Nation claimed that the river held sacred importance to their people, embodying their principle of “hozho,” or beauty, order, and harmony in the Navajo universe.173 Disrupting hozho would disrupt the entire Navajo way of life.174

The district court first consolidated the Navajo Nation’s case with that of the State of New Mexico.175 Because the State of Utah and plaintiffs with property interests adjacent to the river also brought suit for damages to the Animas River in other jurisdictions, the court consulted a Multidistrict Litigation Panel.176 The Tenth Circuit, sua sponte, consolidated Navajo Nation v. EPA with New Mexico v. EPA.177 This case has now been in litigation for over two years without ever getting to the opening brief stage because plaintiffs cross multiple jurisdictions. The case is now pending further consolidation with non-tribal interests, potentially diluting the impact of tribal views.

In the Whanganui River Report, the New Zealand Crown Government recognized the importance of tribal authority and ownership of the Whanganui River aside from the common law conception of river ownership.178 In this way indigenous peoples along the Colorado River, like the Maori indigenous people, might be able to reclaim management of lands lost in settlement. Ironically, it was the civil rights movement in the United States that led the Maori to begin their fight for recognition of tribal authority and ownership of the Whanganui; it is only fitting that the Maori now lead indigenous peoples on the other side of the globe in their quest for repatriation of natural resource control.

The counterargument to tribal representation on the Colorado River Ecosystem is that, unlike the one Whanganui iwi tribe, multiple tribes hold an interest in the Colorado River. Electing just one tribal guardian might be efficient but surely not representative of all tribal interests.

4. State Representation

Because of the competing interests of state and federal governments, state representatives would be needed to address state concerns as the Colorado River passes through their territories. This could lead to multiple state appointees because the Colorado River crosses state boundaries. Multiple state representatives would allow for competing upstream and downstream interests to have equal voices. Because of the number of state representatives interested in ensuring the health and use of the river within their boundaries, bureaucratic bloat could be a concern.

Framework for interstate collaboration is already in place. In December 2017, the Bureau of Reclamation asked representatives from the seven Colorado River Basin States—Colorado, Wyoming, Arizona, New Mexico, Nevada, California, and Utah—to draft Drought Contingency Plans. These plans mark the most recent cooperative effort in a long history of multistate cooperation resulting from the binding and obligatory compact signed by those states in 1922. While states may resist ceding control over what was traditionally well within their sphere of influence, states’ histories of considering economic development over other public interests makes it necessary to have a heterogeneous strategy group.

CONCLUSION

Co-management guardianship of the Colorado River Ecosystem could provide the meaningful protection necessary for the long-term survival of the River and the communities that depend on it. Because legal personhood based on the inherent rights of nature may still be a long way off, this guardianship framework could provide a model for the protection of other river ecosystems across the United States.

To ensure that these limited rights of nature are protected effectively in the case of the Colorado River Ecosystem, a guardianship council like the one used to represent the interests of the Whanganui River could be appointed, perhaps as a result of negotiations localized to the river ecosystem. To provide for a variety of viewpoints on the best representation of the natural resource, this council should include federal, state, local non-governmental, and tribal representatives as necessary. While formation of this council may initially appear unwieldly or politically charged, over time this type of guardianship may mature into a legally-recognized device capable of replication across the United States. Weaving natural resources guardianship into the federal government’s current interpretation of Article III standing might invite traditional ethnic knowledge into American federal jurisprudence so that moral rights of nature, now absent among American legal fictions, once “made visible can no longer be denied.”

### Solvency---Agent Options

#### Any branch of the federal government could do the aff independently

Linda Sheehan 19, Advisor, Global Alliance for the Rights of Nature; Linda Sheehan Consulting, 2019, “IMPLEMENTING NATURE’S RIGHTS THROUGH REGULATORY STANDARDS,” Vermont Journal of Environmental Law, http://files.harmonywithnatureun.org/uploads/upload926.pdf

Enforcing nature’s rights laws through court action is one strategy to engender specific, meaningful change. Court action can help recognize nature’s rights, define the parameters of a nature’s rights law, and provide specific guidance to decision makers and stakeholders. Among other approaches, judicial education can advance judicial action. The International Union for Conservation of Nature’s [IUCN] World Commission on Environmental Law has prioritized judicial education.3 The IUCN further has recognized nature’s inherent right to exist, thrive, and evolve in its Declaration on an Environmental Rule of Law. 4 Through education, judges worldwide are becoming more aware of rights of nature and broader environmental justice concepts.5 Academic discussions, such as the VLS Symposium and materials following, contribute to this global legal scholarship and may assume a noteworthy role in court decisions.6

A second strategy to impact meaningful change is to adopt follow-up laws that advance specific elements of broader, rights-based legislation. One example of this strategy recently occurred in Santa Monica, California. In 2013, the Santa Monica City Council adopted the Santa Monica Sustainability Rights Ordinance. 7 This ordinance recognizes the “fundamental and inalienable rights” of “natural communities and ecosystems” in the City to “exist and flourish.”8 The Sustainability Rights Ordinance specifically defines “natural communities and ecosystems” to include “groundwater aquifers, atmospheric systems, marine waters, and native species.” 9 As with rights of nature laws generally, 10 the Sustainability Rights Ordinance’s impact is proceeding relatively slowly as local decision makers consider how to best translate the Sustainability Rights Ordinance’s language into practice.

The Santa Monica City Council had its first implementation success in August 2018, when it adopted the Santa Monica Sustainable Groundwater Management Ordinance. This Ordinance addresses the local aquifer–the source of most of the City’s water supply–and its inherent rights. 11 The Ordinance bans construction of new, private water wells and expansion of existing wells, citing the city aquifer’s inherent right to flourish. 12 This Ordinance is significantly more protective than existing California groundwater management law. 13 Santa Monica is currently developing a Groundwater Sustainability Plan that may allow private wells in the future, but only if the private wells do not disturb the aquifer’s right to flourish.14 A variety of factors will help shape the Groundwater Sustainability Plan and will include, among other things: studies assessing different models of projected aquifer use; scientific and rights-grounded policies supportive of a “flourishing” system over a degraded one; and subsequent controls regulating aquifer usage.15

A third strategy to implement rights of nature law is through administrative law. This strategy involves developing and adopting regulations that recognize nature’s rights. Regulations help resolve legal gaps, imprecision, and inconsistencies. 16 By developing rights-based regulations, society further defines nature’s rights.

#### Either Congress or the Courts could establish river rights

Oliver A. Houck 17, Professor of Law, Tulane University, Winter 2017, “ARTICLE: Noah's Second Voyage: The Rights of Nature As Law,” Tulane Environmental Law Journal, 31 Tul. Envtl. L.J. 1

A more technical objection contends that nothing in U.S. law permits nature standing, and this is currently true. Nothing supporting it is found in the Constitution nor the Administrative Procedure Act, which restricts rights to sue to "persons" adversely affected. 161On the other hand, nothing in the Constitution precludes it either, and the limitation of federal jurisdiction to "cases and controversies" simply requires that [\*29] there be a genuine contest here, not a hypothetical. 162No one can deny that the Mineral King litigation involved real and competing interests. As courts have pointed out, while denying standing (reluctantly) for primates and whales, nothing prevents Congress (or even the courts, when one considers what they have done to enfranchise corporations) from allowing nature, like Disney, to seek redress for its own injuries, in its own name. 163We are bounded more by our perceptions than by law.

### Solvency---DNE Mechanism

#### Rights of nature can be established using the delineated natural ecosystem designation for legal persons---key to avoid extinction from global environmental degradation

Stacy Jane Schaefer 18, Associate Director of Land Conservation at the Maryland Department of Natural Resources, 4/18/18, “The Standing of Nature: The Delineated Natural Ecosystem Proxy,” https://gwjeel.com/2018/04/18/the-standing-of-nature-the-delineated-natural-ecosystem-proxy/

Rachel Carson made this observation more than fifty years ago, and the intervening decades have borne out her conclusion. Our attitude toward nature, and the refusal of the legal system to acknowledge nature’s legal standing, have resulted in legally authorized environmental destruction that has accumulated and accelerated to such an extent that it presents an existential threat to nature and therefore humanity.

Our laws support corporate rights to exist and thrive economically. That seems logical in capitalist societies, as large fortunes can ride on corporate well-being. Corporations, however, are not connected to the natural world in the way humans are. Humans breathe air, drink water and need food to survive. In the face of modern society’s attempt to use science to detach itself from nature, science has repeatedly shown that we are inextricably connected to the environment just like any other living thing.[2]

United States jurisprudence does not yet reflect this connection; there is no legal analog to corporate rights that establishes nature’s right to exist, thrive and defend itself from harm. A lawyer cannot directly represent nature to protect it. Although the Supreme Court’s standing doctrine recognizes a corporation as a “juristic person,” [3] it does not recognize nature in the same way. In fact, injury to the environment is not relevant in determining whether a person seeking to protect the environment has standing in an environmental protection case.[4]

“Why shouldn’t nature have the same legal standing as the companies seeking to exploit it?”[5]

This question is not new.[6] The concept of nature having rights has its roots in indigenous cultures[7] and has gained traction in some legal systems.[8] There remains a perception however, that recognizing nature as a “juristic person” is bridge too far in the context of the U.S. legal system.[9]

This Article submits that such recognition is entirely manageable and offers a mechanism through which recognition of nature’s legal personhood can conform to established legal doctrines without offending notions of judicial economy or the political question doctrine. [10] Identification and delineation of a natural ecosystem facing harm–a Delineated Natural Ecosystem (“DNE”)–offers a scientifically-based distinct and definable “juristic person” proxy for nature that is comparable to the juristic person construct of a corporation. Of course, a natural ecosystem exists in nature and not the courtroom. But the construct of a DNE–scientists and attorneys using verifiable scientific methodologies and modern technology to establish the DNE by virtue of the location and the effects of the underlying allegations of injury–is fit for the courtroom.

A corporation achieves “legal personhood” via legal forms and registration fees.[11] Nature, on a case-by-case basis, can achieve “legal personhood” via the identification of the DNE plaintiff using science-based methods and data. This same science can identify the injury or threatened injury and the proximate cause of such injury. As such, the DNE proxy is a construct that creates a juristic person with functional structure that is both scientifically verifiable and judicially manageable.[12] The DNE proxy will be created and exist, like a corporation, “in contemplation of the law.”[13]

Use of a DNE proxy for nature will align jurisprudence with modern science and provide a mechanism to bring balance to the adversarial judicial process. The DNE tool is tailored to the Supreme Court’s standing doctrine because it allows the party with a “direct stake in the outcome”[14] to stand before the court and defend itself from those who seek to harm it. From a broader perspective, this mechanism may enable realization of “productive and enjoyable harmony between man and his environment.”[15]

Although using the DNE mechanism to recognize nature’s “legal personhood” requires only a short analytical step, it also requires a willingness to acknowledge our fundamental connection to and responsibility for our natural world. Put another way, it will require us–as Rachel Carson recognized over 50 years ago–to “prove our maturity and our mastery, not of nature, but of ourselves.”[16]

#### Rivers should be given legal personhood as delineated natural ecosystems---it’s the best way to create distinct legal persons to represent natural systems

Stacy Jane Schaefer 18, Associate Director of Land Conservation at the Maryland Department of Natural Resources, 4/18/18, “The Standing of Nature: The Delineated Natural Ecosystem Proxy,” https://gwjeel.com/2018/04/18/the-standing-of-nature-the-delineated-natural-ecosystem-proxy/

This is a moving passage that, at the time, could not offer a workable mechanism to identify a proxy for nature’s legal personhood. As Professor Jonathan Cannon observes in his book, Environment in the Balance, there could be many issues associated with recognizing nature’s ability to have standing in its own right: “Which things in nature would be represented? Why the River [as in Justice Douglas’ dissent in Sierra Club] and not the watershed or the ecosystem of which the river is a part? And is the River the exclusive voice of the ‘ecological unit of life’ that is a part of it, or does each unit have potential standing in its own right?” [60] And as Professor Hope Babcock points out, “nature lacks any functional structure remotely similar to a corporation.”[61]

This Article’s proposal of the DNE proxy offers a mechanism to produce a nameable and distinct legal entity with “functional structure” comparable to a corporation. Nature’s DNE proxy in each case is established by virtue of the location and the effects of the underlying injury; use of science-based classification systems and “operational” ecosystem definitions enable us to name, delineate and describe a DNE proxy and the injury it faces or has sustained. Geographic Information System (GIS) technology can then demonstrate, on a single map, a polygon of a DNE proxy with different layers of information collected from a variety of sources, including remote sensing imagery, cartographic data, as well as data collected from previous research and surveys, on site assessments, drones, and photographs.[62]

A natural ecosystem is an organization that includes living organisms in a geographic area as well as the physical environment–all functioning together as a unit. [63] Use of the DNE proxy therefore provides a site-specific “umbrella” to cover the physical environment, interconnected biodiversity, natural habitats and natural processes such as water filtration, air purification and soil retention. As such, the DNE proxy inherently represents nature’s interest in existing, persisting, and maintaining and regenerating its vital cycles in a threatened or injured geographic area. It is an entity in nature that–through science-based human delineation–becomes nature’s legal person proxy that fits within the Court’s standing doctrine framework.

### Solvency---DNE Mechanism---Feasibility

#### The DNE proxy mechanism would work just like any other case where lawyers represent the interests of nonhuman legal constructions

Stacy Jane Schaefer 18, Associate Director of Land Conservation at the Maryland Department of Natural Resources, 4/18/18, “The Standing of Nature: The Delineated Natural Ecosystem Proxy,” https://gwjeel.com/2018/04/18/the-standing-of-nature-the-delineated-natural-ecosystem-proxy/

But who files the suit and how will this work in an actual case?

Just as litigation attorneys regularly are hired to represent other juristic persons such as corporations, litigation attorneys would be hired to represent the DNE proxy. The attorneys need not be scientists themselves because, as in other litigation contexts, the lawyers can work with one or more qualified expert witnesses. [102] For instance, an attorney representing an injured person in a medical malpractice case works with one or more qualified medical expert witnesses to conduct the necessary physical examinations, submit reports to the court, and testify when necessary.[103] Similarly, the attorney retained to challenge the permits issued to convert a natural forest ecosystem to a ski resort and highway, as in Sierra Club v. Morton, would work with qualified expert witnesses, such as biologists and ecologists, to identify and delineate the DNE proxy/proxies and to describe the concrete and particularized injury facing the DNE(s) that would be proximately caused by the permitted recreational “development” of the DNE(s)’ forests.[104]

In Daubert v. Merrell Dow Pharmaceuticals, Inc.,[105] the Supreme Court established a non-exclusive checklist for trial courts to use in assessing the reliability of scientific expert testimony. The key factors include the following:

whether the expert’s technique or theory can be or has been tested—that is, whether the expert’s theory can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability;

whether the technique or theory has been subject to peer review and publication; the known or potential rate of error of the technique or theory when applied; the existence and maintenance of standards and controls; and

whether the technique or theory has been generally accepted in the scientific community.[106]

The use of a DNE proxy to establish nature’s legal personhood and right to exist and defend itself would be novel. The underlying information, methods, technology, standards and frameworks, however, are not;–this work is the subject of objective, verifiable peer-reviewed publications, and studies and projects that adhere to rigorous standards and controls.[107] The “novelty” is limited to the context in which this work now could be applied.[108]

Thus, a DNE proxy, seeking to protect itself from direct and imminent injury, could oppose the agency that issued the permit, as well as the company or companies seeking to build the resort and highway. This action “preserves the vitality of the adversarial process by assuring both that the parties before the court have an actual, as opposed to professed, stake in the outcome, and that the legal questions presented . . . will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action.”[109] In this instance, Nature’s DNE proxy is fighting for its continued existence against the permitting government agency and the development company that seek to end the DNE’s existence.

### Solvency---Broad Feasibility

#### Rights for nature are feasible---they require avoiding harm and remedying prior damage---it’s a filter for all agency decisionmaking on resource use---the full framework’s key to avoid extinction from environmental decline

Oliver A. Houck 17, Professor of Law, Tulane University, Winter 2017, “ARTICLE: Noah's Second Voyage: The Rights of Nature As Law,” Tulane Environmental Law Journal, 31 Tul. Envtl. L.J. 1

A final concern is perhaps the most obvious, and seemingly the most challenging to answer even for those most open-minded to nature's claim. How, in practice, would legal rights in nature be articulated, and what would they entail? 201We might sensibly start by examining what has already taken place. While some see nature rights as Mission Impossible, others have been making it happen.

The first stab at the architecture of legal rights came in 1984 with the U.N. World Charter for Nature, earlier mentioned. 202A process of legislation that spanned nine years, three drafts, and the comments of over fifty countries produced a final document announcing bold principles (number one: "nature shall be respected and its essential processes shall not be impaired"), followed by over thirty "functions" and steps for implementation. 203Perhaps the most relevant of these were that (1) actions causing "irreversible" damage be avoided; (2) those posing "significant risk" not proceed until impacts were "fully [\*37] understood"; (3) that damaged areas be "restored"; and (4) that nonrenewable resources (e.g., minerals, the principal source of conflict) be developed compatibly with "the functioning of natural systems" … a nature bottom line. 204

To be sure, as a Declaration none of this language was enforceable, but its level of detail, its use of the word "shall," and the supporting statements of its drafters indicates the expectation that at least some of the signing members would, as with the U.N. Declaration on Human Rights, convert these principles into law. Twenty-five years later, two of them did.

Ecuador rising largely from Andean roots led the way. The impacts of mining and oil exploration had brought massive protests, some of them violent, from indigenous communities across the region. 205Nature rights were inextricably entwined with their daily lives, a symbiosis captured in the word "Pachamama," not simply a belief but a way of relating to everything else around them. 206Upon his election in 2007, President Correa - a Ph.D. economist (University of Illinois) and former Minister of the Economy - made two overtures that startled the world. 207

The first was an offer to forego oil development in Yasuni National Park, a World Heritage Site and one of the most biologically important environments on earth, at the sacrifice of billions of dollars in revenues … if nations of the world reimburse 50% of these losses in compensation. 208Supervised by an international trust, much of the monies would be used to protect and improve the lot of indigenous peoples in the region. Although Ecuador itself, minerals-dependent and by no means a wealthy country, would be absorbing 50% of the hit, the world turned him down. No U.S. official even acknowledged it. In 2013 [\*38] Correa announced defeat and opened a small area of the Yasuni Park to oil exploration. 209Saving Pachamama in one large coup was not going to work.

The other initiative moved from the ground up. Also in 2007, Correa called a constitutional convention, which the following year produced three new articles conferring rights on nature itself. 210Promoted strongly by a coalition of indigenous groups called the Pachamama Alliance (in turn supported by scientists, state legislatures, and several international NGOs), 211the articles were at first blush breathtaking, even unimaginable … and they remain so in some quarters today.

Article: 71 announced the "right of Pachamama to be respected," including "the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes," and the right of standing for every "individual, community, people, or nationality" to demand that public authorities comply. 212Article: 72 added a right to restoration, over and above indemnification for damages under other laws. 213Article: 73 [\*39] provided special protections for endangered species and ecosystems. 214As written, these obligations are absolute. 215They were yet reinforced by a later amendment inverting the burden of proof in cases of real or potential damage to nature. 216Until recently only one exception to them, for the Yasuni exploration, had been made. 217

In 2017, nine years after enactment, Ecuador's articles were reexamined in a legislative process leading to a rights of nature code. The first draft of the code contained little language on them and met considerable opposition. 218After debate, a second draft reinserted the rights of nature, but with few specifics. 219After more debate, a final bill went to the President with each of the above articles restored, and some yet strengthened. 220At last count, fourteen judicial decisions have cited these rights with approval. 221

Pausing to reflect on the Ecuador experience, three aspects are particularly instructive. The first is that they include each element of the ethical framework: existence, perpetuation, and restoration. The second is their orientation, which, aside from safeguards for endangered species, is explicitly ecosystem-focused. To be sure, wildlife and other species are protected within ecosystem function, but as with the U.N. Declaration earlier, Ecuador kept its eye on the larger prize. The third is that Ecuador was not alone.

 [\*40] Bolivia followed closely and went on to up the ante. In 2015, driven by the same impulses as its neighbor (it is also part of the Andean universe) and after elections, it came under the direction of Latin America's first indigenous President, Evo Morales. 222In April 2010, on the heels of a failed climate change convention in Copenhagen, Bolivia hosted a World People's Conference on Climate Change and the Rights of Mother Earth, which, with more than 32,000 participants from fifty-four countries, produced a Declaration of its own, presented to the G-7 nations and the U.N. Secretary General later that year. 223Importantly, it was also presented to the national legislature, which then adopted ten principles, the most relevant of which were the right of nature to its own existence, to its diversity in a natural state, and to restoration. 224Environmental ethics anno dominium 2000 made law.

In 2012, Bolivia enacted a more detailed version, Framework Law of the Mother Earth and Integral Development for Living Well, which affirmed the legal rights of Pachamama and rejected material production and consumption as national goals. 225In addition to specific prescriptions for, inter alia, renewable energy, organic agriculture, and corporate conduct, 226the legislature created a new Ministry of Mother Earth and an ombudsman to receive and respond to citizen complaints. 227Citizens and organizations were, as in Ecuador, given standing to defend nature's rights wherever they might arise. 228On paper, at least, Bolivia too was going to make it happen.

From these roots, legal principles of nature rights emerge: (1) to avoid disruption of basic ecosystem functions; (2) to avoid harm to all natural areas where alternatives are available; (3) to avoid critical areas [\*41] altogether; (4) to mitigate prospective damage fully and in kind; and (5) to restore damage already incurred. None of these principles are rocket-science; several are found in existing (if limited in scope) national programs. More detailed prescriptions are contained in the earlier referenced Draft European Directive, 229with structures for implementation and enforcement (including criminal law, a daunting provision). 230A similar structure was presented to the Ecuadorian Assembly in 2008, complete with decision-making matrix and flow chart, but has not yet been adopted. 231With which, thirty-five years after its adoption, the U.N. Declaration of 1982 has born its first offspring, more mature, more considered, and ready for take-off. What remains is to let it go forward and evolve. 232

This evolution will demand respect for existing environmental programs that have their own, often more-targeted missions and some significant accomplishments to their name. They also have significant handicaps, however, some shackled by their authorizing statutes, 233more still by the lack of budget and personnel (nowhere abundant), and nearly all by political challenges that may leave them vulnerable, where functioning at all. Which is where rights of nature, properly perceived, kick in.

Properly viewed, rights of nature need not be a separate regulatory system, raising obvious difficulties with redundancy and conflicts. It [\*42] need not be a system at all, but rather a pulse-check in the nature of due process that ensures decisions from line agencies also meet standards fundamental to the earth as a whole. This has been the approach of several U.S. states and many courts abroad in the interpretation of similarly broad mandates. 234Most resource development does not put species of ecosystems at serious risk, but for those that do, nature rights can be a significant partner to existing programs, reinforcing them against the same pressures that led to their creation in the first place. Their next best friend.

There are some of course who would argue that nature rights cannot, and should not, play so fundamental a role. We have met several arguments earlier in this Article: . 235Taking them singly or in concert, it is hard not to conclude that, whatever science and ethics tell us about humans and the natural world, these people simply do not want them to be fundamental. According to a recent contributor to the National Review:

I keep writing about [nature rights] because - like cancer, early detection and eradication surgery is the key to stopping this madness… . [A] malevolently malignant attack on human thriving that, if allowed to take hold, presents an existential threat to human exceptionalism and the moral values of Western civilization. 236

 [\*43] Whether humanity can loosen the shackles of this view sufficiently to appreciate, and accept, the exceptionalism of other life may be the ultimate question of this field.

There are some who have done just this, including the former Chief Justice of the Supreme Court of the Philippines, Hilario Davide. 237In a case of first impression invalidating large sales of virgin timber previously authorized by the government, Davide wrote:

As a matter of fact these basic rights [preserving the rhythm and harmony of nature] need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned … it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology are mandated … the day would not be too far when all else would be lost not only for the present generation but for also for those to come - generations which stand to inherit nothing but parched earth incapable of sustaining life. 238

### Solvency---Legal Personhood Feasibility

#### Legal personhood for nature’s totally feasible---corporate rights prove the law can easily accommodate the interests of non-human entities

Erin L. O’Donnell 18, Senior Fellow at Melbourne Law School; and Julia Talbot-Jones, Visiting Fellow at the Australian National University, 2018, “Creating legal rights for rivers: lessons from Australia, New Zealand, and India,” Ecology and Society, Vol. 23, No. 1

Protecting the environment through judicial process is one of the lasting legacies of the rapid expansion of environmental law that occurred through the 1960s and 1970s (Plater 1994, Gunningham 2009). Over this period, environmental law emerged as a distinct discipline and a range of legal tools were established to protect the environment from the impact of human activities (Sax 1971, Grinlinton 1990, Preston 2007, Fisher 2010). Since then, most environmental law has focused on either protecting particular special or iconic features, or by placing sustainable limits on development and use of resources (Doremus 2002, Stallworthy 2008, Fisher 2010, Godden and Peel 2010). However, these approaches have often obscured the particular interests of “nature” behind the effects of environmental degradation on human interests (Carlson 1998, Bertagna 2006, Sands 2012). For example, the public trust doctrine (Sax 1970) places emphasis on the public use of natural resources (Preston 2005) rather than the protection of nature itself. Addressing this obscurity has become one of the core challenges in environmental law.

The key question has become how to best represent the environment in court, and how to frame the legal challenges to deliver “judicial protection of nature for the sake of nature itself” (Daly 2012:63). Stone (1972) proposed a method to recognize the rights of nature in his seminal paper Should Trees Have Standing?, which showed how nature could be personified in law, so that it could seek legal redress on its own behalf. Stone combined a philosophical argument with key practical steps to enable the environment to become a legal subject. He identified three legal criteria that “go toward making a thing count jurally”: (1) “that the thing can institute legal actions at its behest”; (2) “that in determining the granting of legal relief, the court must take injury to it into account”; and (3) “that relief must run to the benefit” of it (Stone 1972:458 [emphasis in the original]). The essence of these legal criteria is to create the possibility for nature to take action in court to protect its own interests: to give nature itself legal standing.

Although Stone’s proposal has remained on the fringes of mainstream environmental law (Naffine 2012, Warnock 2012), it is premised on a concept widely accepted in law: that legal rights can be conferred on nonhuman entities. The creation of “legal fictions” is a long-standing mechanism to create legal personality for a range of nonhuman entities, including, most notably, for-profit corporations (Micklethwait and Wooldridge 2003, Truitt 2006, Farrar 2007). The advantage of this legal approach is that it creates a new, identifiable, legal entity (the legal person), which includes all the necessary legal rights (standing, contract, and property) for granting the nonhuman entity its own personality. Although there are limited examples of using the legal person in the environmental context, it has been used for many purposes throughout history, including businesses, not-for-profit charities, and religious organizations (Micklethwait and Wooldridge 2003), as well as Hindu deities.[1]

#### Rights of nature are legally feasible---the law’s evolved to recognize rights of non-human legal entities and expanded to grant rights to previously-excluded classes of people---environment’s no different

Oliver A. Houck 17, Professor of Law, Tulane University, Winter 2017, “ARTICLE: Noah's Second Voyage: The Rights of Nature As Law,” Tulane Environmental Law Journal, 31 Tul. Envtl. L.J. 1

Stone's treatise, unsurpassed in the grace of its expression, rested on three legs. He noted, first, that standing and other personal rights had been accorded to corporations, trusts, marine vessels, and a great range of institutions, none of them even biologically alive. 149He went on to point out that law had evolved to recognize rights in slaves, Jews, women, Native Americans, and others hitherto regarded legally as "objects," if regarded at all, each one over fierce resistance entrenched in the past. 150He added, last, that the alternative to recognizing these rights placed environmental interests in a conceptual hole, 151having to defend natural areas like Mineral King against highly lucrative developments because a lone hiker some weekend would dislike seeing it on the horizon. Not a very compelling posture. Perceived as a conflict between two (often-imbalanced) human interests, the most fundamental interest is missing.

Time has solidified Stone's thesis. The range of rights accorded to U.S. corporations and similar business interests now include, inter alia, speech, religion, freedom from government searches, and unlimited [\*27] campaign contributions as "persons" under the law. 152Indeed, the very characterization of these artificial entities as "persons" paves the way for the privileges. At the same time, however, rights-holding has been extended in U.S. law to the mentally disabled, immigrants, and lesbian, gay, and transgender individuals 153who, in recent centuries, were persecuted for these same proclivities and remain so in many countries today. "The arc of the moral universe is long," Martin Luther King once famously predicted, "but it bends towards justice." 154Assuming this to be true, or at least that we want it to be true, and given our increased understanding of the interconnection of all life on earth, it would not seem difficult to allow this life, too, its day in court. The threshold barrier is its standing, and it elicits a chorus of criticism that, in the interest of fairness, deserves its moment in the sun.

### Solvency---Representation/Speaking for Nature

#### Lawyers represent the interests of nonhuman entities all the time

Oliver A. Houck 17, Professor of Law, Tulane University, Winter 2017, “ARTICLE: Noah's Second Voyage: The Rights of Nature As Law,” Tulane Environmental Law Journal, 31 Tul. Envtl. L.J. 1

**Mineral King is the name of the mountain valley that was threatened by development in the Sierra Club v Morton case**

Perhaps the most primitive reaction is that trees cannot talk, they can't even be brought to court, so they will need a human after all, which leads us back to homocentric litigation. Actually, it leads us instead to the conflation of lawyer and client. Lawyers represent ships, estates, and other non-people every day. As they could, just as easily, Mineral King. For these purposes trees don't need tongues, or an IQ of one, for that matter.

#### Guardianship would be implemented through organizational standing, where qualified organizations represent natural systems in court

Oliver A. Houck 17, Professor of Law, Tulane University, Winter 2017, “ARTICLE: Noah's Second Voyage: The Rights of Nature As Law,” Tulane Environmental Law Journal, 31 Tul. Envtl. L.J. 1

Which brings us to a final question: if nature has standing, then who may speak for it and will carry its case in court? Perhaps the best answer is to leave this decision to the countries involved. Whoever has standing in an environmental case of any kind, be it the government or a private party, would be eligible to represent nature as well. U.S. litigants would [\*30] have to meet at least the "adversely affected" standard. Stone and Douglas both suggested instead the appointment of guardians with a demonstrated track record in the subject, in effect the "organizational" standing rejected by the Sierra v. Morton majority. The notion makes sense: one would want an entity capable of representing native's interests in full, and seeing it through. 167Italy follows this model, with eligible organizations certified by longevity, expertise, and geography. 168England does the same on a more ad hoc basis, 169and even China is moving to recognize environmental litigation by at least a few state-approved NGOs. 170Brazil and other countries have independent prosecutors who already undertake environmental litigation against government actions and could assume this portfolio as well. 171At the far end of the spectrum are those nations that have abandoned standing requirements altogether. 172Here is a matter in which diversity can be the laboratory for evolution. It seems clear, however, that the "who represents" question is no more an insuperable obstacle than the others. It can be done.

#### That avoids the downsides of court-appointed guardians

Hope M. Babcock 16, Professor of Law, Georgetown University Law Center, 2016, “A Brook with Legal Rights: The Rights of Nature in Court,” Ecology Law Quarterly, Vol. 43, https://lawcat.berkeley.edu/record/1127508?ln=en

Beyond the theoretical, nature's appearance in court raises practical concerns as well, some of which Stone anticipated. For example, since nature is speechless, it needs someone to speak on its behalf. Stone's solution was to have a court appoint a guardian - an environmental organization or a government agency - to represent nature. 306 While this Article agrees with Stone that humans must at some level be interlocutors for nature to give it a voice in court, it moves away from his reliance on court-appointed guardians to represent nature in court, as that will take time and impose administrative costs on the plaintiff. Instead, the Article suggests that having nature represented by a properly qualified lawyer with sufficient expertise, resources, and commitment to make arguments on nature's behalf or with a special connection to the resource under threat is all the representation nature needs in court. Qualified lawyers could be from nationally or regionally recognized environmental organizations or even from local ones who can make the necessary showings noted above if challenged. 307 While this approach has roots in Stone's proposal, it eliminates the need for a court to appoint a guardian and the reliance on a human plaintiff to complain about nature's injuries. 308 Similarly, figuring out what is in nature's best interest, given nature's silence, is not difficult. As Stone says "natural objects can communicate their wants (needs) to us, and in ways that are not terribly ambiguous" 309 like the disappearance of a species from an area because of a lack of suitable habitat. Indeed, Stone says nature can do this more clearly than a director of a corporation can declare that the corporation wants dividends declared, noting that the interests of "others" like corporations "are far less verifiable, and even more metaphysical in conception, than the wants of rivers, trees, and land." 310

Stone acknowledged that one of the problems with his guardianship proposal arises from the fact that, frequently, the injuries and interests of discrete segments of the environment are different and sometimes conflict. For example, a community's focus on the injury to a small segment of a larger watershed might lead it to ignore the health of the larger watershed (or vice versa), while the protection of a small section of forest because of its importance to a local community might undermine management measures important to the larger system (again, the reverse might be true). In these [\*50] situations, Stone might ask, should divisible segments of natural systems have individual rights? If the representatives of those divisible systems cannot agree on a holistic solution then the answer is probably yes; an answer that is no different than when an individual member of a larger group seeks separate relief from what the group wants so long as the individual can meet the requisite standing showings.

### Solvency---AT: Current Law Sufficient

#### Rights of nature provide an advance requirement to consider environmental impact before development decisions---that’s key to avoid extinction

Oliver A. Houck 17, Professor of Law, Tulane University, Winter 2017, “ARTICLE: Noah's Second Voyage: The Rights of Nature As Law,” Tulane Environmental Law Journal, 31 Tul. Envtl. L.J. 1

Skeptics also pose what they believe to be a clinching question: given that nearly every nation on earth has environmental laws by now, what difference would rights of nature make? Implying, of course, no difference. The record to date is otherwise. For one, they reinforce and expand the interpretation of those same laws, adding restoration requirements to some, enforcement to others. 193They also provide a safety net where existing programs have been overwhelmed by other interests, or because they fail to address the injury at all. 194More proactively, they provide a seat at the table, in advance of development decisions, for nature rights to appear through the lens of its own needs and not simply the cacophony of competing human interests. 195As proactively, they provide a vantage point to demand restoration for past injury and to insist on compensation going forward. 196Lastly, and perhaps most enduringly, they catalyze a new awareness of our relationship with the natural world, which, in turn, could play a larger role in human survival than many now admit. 197Whether these advantages are realized is still conjectural, we are in the early stages of the game. Their potential, however, seems well worth the try. 198

#### Existing mechanisms for lawsuits consign nature to second-class status---only rights recognition creates durable mindset change

Oliver A. Houck 17, Professor of Law, Tulane University, Winter 2017, “ARTICLE: Noah's Second Voyage: The Rights of Nature As Law,” Tulane Environmental Law Journal, 31 Tul. Envtl. L.J. 1

A second objection is that trees do not need standing either, at least after Sierra v. Morton. How difficult, one might ask, can it be to find a person "adversely affected" by an assault on nature who is eligible to sue? It turns out that on occasion it can be quite difficult, 155and these occasions can be consequential. The Supreme Court split almost evenly on standing in the seminal climate change case of Massachusetts v. EPA, largely over how "affected" the plaintiff must be, how "imminent" the impact must be, and whether the judgment can "redress" the harm. 156These mini-wars are waged almost daily, in U.S. courtrooms, and lead to inherently subjective judgments; the judges who reject environmentalist [\*28] standing are almost invariably the ones who reject their cases on the merits as well. 157While it must be acknowledged that, with careful pleading and (often) hard argument nature usually does get in the door, but as the ward of a group that has managed to dig up a member sufficiently "affected." Second-class all the way.

This leads to a related argument that Mineral King-as-plaintiff doesn't add anything. In practice, of course, such a right would provide this ecosystem automatic standing to challenge activities degrading it, bypassing the obstacles just discussed. But it matters for another reason as well. Sierra v. Morton was about the very existence of a high mountain valley that even the majority characterized as "pristine." 158What legal recognition also adds is honesty. Yes, weekend hikers may be offended, but this is the real injured party - long after the hikers have gone - this special place and its many interlocking components. Much litigation of this type is driven at bottom by the desire to protect a resource for its own sake, its own right to be. When the Sierra Club brought two later suits on behalf of the Palila and the Northern Spotted Owl (two endangered birds), it placed them first on the plaintiff list and brought stuffed specimens to counsel table, every day. 159Coincidently, it won both cases. With recognition, minds begin to change. 160

#### Lack of standing for nature means other legal and legislative avenues fail

Hope M. Babcock 16, Professor of Law, Georgetown University Law Center, 2016, “A Brook with Legal Rights: The Rights of Nature in Court,” Ecology Law Quarterly, Vol. 43, https://lawcat.berkeley.edu/record/1127508?ln=en

Reflecting on the intervention petition of Little Mahoning Creek, the time seems ripe to revisit Stone‘s proposal.7 If there was a moral and practical imperative to giving nature an independent voice in court in 1972, it is even truer today. The current trend in the Supreme Court is to increase the barriers facing surrogate litigants who seek to protect some feature of the environment from harm, particularly the barrier presented by Article III standing. Why these cases increasingly fail—despite the ingenuity of the lawyers—is the attenuated, almost fictive connection between the interested or injured party and the threatened resource. The lack of success in prosecuting these cases forces the resolution of natural resource conflicts into the political branches, which evince no capacity to act. But, if the natural resource could appear in its own right to complain of threats to its continued existence, the injury prong of Article III standing should cease to be a problem.8

# States Counterplan Answers

### 2AC---States CP

#### Solvency deficits:

#### a) Preemption---state-level rights of nature get struck down and preempted by federal courts---at most states can grant human rights *to* nature which fail---impact’s extinction

Devon Alexandra Berman 19, Joint J.D. Candidate, American University Washington College of Law and University of Ottawa, Common Law Section, Fall 2019, “COMPARATIVE INTERNATIONAL APPROACHES TO ENVIRONMENTAL CHALLENGE: LAKE ERIE BILL OF RIGHTS GETS THE AX: IS LEGAL PERSONHOOD FOR NATURE DEAD IN THE WATER?,” Sustainable Development Law & Policy, 20 Sustainable Dev. L. & Pol'y 15

On February 26, 2019, the citizens of Toledo voted to amend the city's charter to grant the Lake Erie ecosystem the legally enforceable "right to exist, flourish and naturally evolve," establishing the Lake Erie Bill of Rights (LEBOR). 2 Seeking to protect the watershed from further degradation, the LEBOR gave citizens standing to sue polluters on its behalf. 3 The LEBOR deemed invalid any existing or future permit issued to a corporation by any federal or state entity that would violate Lake Erie's rights. 4 The LEBOR is just one example of the developing trend of communities taking a rights-based approach to protect local resources. 5

Less than twenty-four hours after the citizens of Toledo voted to adopt LEBOR, a local farm partnership filed a complaint in the North District Court of Ohio claiming that LEBOR's enactment exceeded the city's authority and was preempted by state and federal law. 6 The case was ultimately rendered moot in July 2019, when Governor Mike DeWine delivered a fatal blow to LEBOR by signing into law a provision stating that an ecosystem does not have standing in Ohio court. 7

The legislature's swift preemption of LEBOR illustrates the inherent shortcomings of a municipal approach. 8 This Article surveys the legal barriers to extending personhood to nature in the United States and concludes that they are likely insurmountable. The Supreme Court's narrow interpretation of constitutional standing requirements precludes citizens from bringing an action alleging direct injury to an ecosystem itself, irrespective of citizen suit language like that contained in LEBOR and other environmental legislation. 9 These institutional barriers support arguments for a state-level approach to environmental protection.

BACKGROUND: GRANTING RIGHTS TO NATURE HAS INTERNATIONAL PRECEDENT

There is a growing trend of countries adopting rights of nature legislation. 10 In 2008, Ecuador became the first country to pass a constitutional amendment enabling any "natural or legal person" to bring an action seeking for the government to comply with its duty to "respect and actualize" nature's right to "legal restoration." 11 When the provincial government widened a road without conducting an impact study, resulting in flooding, two landowners successfully invoked constitutional rights of nature and sued on behalf of the river, and the government was ordered to "restore the riparian ecosystems." 12 In 2015, the Constitutional Court of Columbia upheld standing for plaintiffs opposing mining operations in their communities on the grounds that "standing existed in terms of legitimate representation," and that the right to a healthy environment permeated all other constitutional rights. 13

LEGAL STANDING FOR NATURE IN THE U.S. IS FRUSTRATED BY CONSTITUTIONAL STANDING REQUIREMENTS

Article III, § 2 of the Constitution provides that "[t]he judicial Power" of the federal courts of the United States only extends to specified "cases" and "controversies." 14 The Article III standing doctrine limits the category of litigants empowered to sue in federal court to seek redress for a legal wrong. The Supreme Court has held the "irreducible constitutional minimum of standing" requires the plaintiff to "allege personal injury fairly traceable to defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." 15 In environmental enforcement actions, general grievances based on harm to the environment do not meet standing requirements unless the plaintiff can establish a concrete, personal injury that will likely be redressed by a court remedy. 16 For example, environmental groups in Lujan v. Defenders of Wildlife claimed that the government's funding of overseas projects threatened the plaintiffs' ability to observe endangered species. The court rejected the "ecosystem nexus" argument, precluding generalized adverse environmental effects as a basis for standing to challenge the activity. 17 As a result, citizen suit provisions of environmental statutes empower people to seek enforcement of environmental laws, but they cannot be used to circumvent Article III requirements. Based on the narrow interpretation of standing requirements, it is unlikely that the Supreme Court will recognize standing for injuries alleged on nature's behalf. 18

SECURING A CONSTITUTIONAL RIGHT TO A HEALTHY ENVIRONMENT AT THE STATE LEVEL

Several states are taking a rights-based approach to preventing environmental degradation by amending their constitutions to include a right to a healthy environment. 19 By framing environmental degradation as a violation of citizens' rights, these amendments require governments to prioritize environmental protection when regulating industrial activity. In [\*16] 1972, Pennsylvanians voted to amend the state constitution and became the first state to enshrine environmental rights to clean air and water through the Environmental Rights Amendment (ERA). 20 The amendment states that the Commonwealth is the trustee of the state's natural resources, "common property of all people, including generations yet to come." 21 In 2013, the ERA was successfully invoked to defeat key provisions of a bill that would have afforded the fracking industry broad powers and exemptions. 22 The Court held that the provisions violated the ERA by preempting local regulation of oil and gas activities and precluding local governments from fulfilling their trustee obligations. 23

This landmark Pennsylvania Supreme Court ruling demonstrated the legal potency of enshrining citizens' right to a healthy environment in state constitutions. In 2017, a landmark case was brought under the ERA against the legislature for allegedly misappropriating environmental protection funds for other uses. 24 In ruling against the legislature, the Court expanded its interpretation of the ERA and held that laws are unconstitutional if they "unreasonably impair" a citizen's ability to exercise their constitutional rights to "clean air, pure water and environmental preservation." 25 The Court reaffirmed that the ERA commits the government to two duties: (1) to prohibit state or private action that results in the depletion of public natural resources; and (2) to take affirmative legislative action towards environmental concerns. 26

Drawing on Pennsylvania's experience, a constitutional amendment to the Ohio Constitution that secures its citizens' right to clean water is a more practical approach for protecting Lake Erie than attempting to confer legal standing through municipal legislation that has limited enforceability. 27

CONCLUSION

Extreme environmental degradation presents an unprecedented threat to human existence. 28 Environmental policy rollbacks under the Trump Administration have decreased environmental regulation and stripped clean water protections. 29 The Supreme Court of Pennsylvania's interpretation of the ERA compels the state government to take positive legislative to prioritize environmental protection. In the meantime, it is becoming increasingly clear that society needs to undergo a radical shift in values in order to effectively mitigate the human impact on the environment.

#### b) Federal lands---they’re key to the overall environment and only protected by federal standing for nature

Michael Shank 21, the communications director at the Carbon Neutral Cities Alliance and adjunct faculty at New York University’s Center for Global Affairs, 3/19/21, “Protecting federal lands should be a no-brainer,” <https://thehill.com/opinion/energy-environment/544049-protecting-federal-lands-should-be-a-no-brainer>

Undoing former President Donald Trump’s legacy of environmental damage and degradation — and his administration’s many regulatory rollbacks — has been high on President Joe Biden’s 100 days to-do list. The impressive lineup of environmental leaders appointed across energy, transportation, environment and interior departments and agencies indicates the seriousness of Biden’s green agenda. Many in the environmental movement are, rightly, hopeful.

There’s one area in particular, however, where the Biden administration could go further and maximize its environmental impact across agencies; it builds on Biden’s executive order to halt fossil fuel leasing on public lands and water. It sits within the Department of Interior (DOI), now headed by the historic confirmation of America’s first Native American secretary, Deb Haaland. It would start with federal lands and set an important legal rights-based precedent for how we approach and utilize these taxpayer-owned lands.

Here’s the proposal. Federal lands — also referred to as public lands — should be safe for the public and should not threaten or undermine public safety. That seems like a no-brainer. Further, anyone that compromises the public's safety — and the public's “right to be let alone,” which U.S. Supreme Court Justice Louis Brandeis noted were “the most comprehensive of rights" in his dissent in Olmstead v. United States — should be held accountable under the law.

This also seems like a no-brainer. Public lands should, indeed, be safe for the public. And yet they’re not. Public lands are some of the most exploited, extracted and unsafe lands in America — a reality made worse by the Trump administration. But it’s a legacy of heavy extraction that started long before Trump. A recent Government Accountability Office (GAO) report shows that many of the nearly 900 mining operations on federal lands aren’t subject to royalties — meaning that companies are not paying taxpayers for the benefits of drilling on public lands — nor are they required to produce data for the government to review.

This lack of transparency and accountability allows these mining operators — again, on public lands — to pollute and discharge excessive damaging effluents into “12,000 miles of American rivers and streams and 180,000 acres of lakes and reservoirs, destroying drinking-water supplies and crucial wildlife habitat.”

These private companies are operating freely within mining laws that haven’t been updated since the 1870s and extracting public resources on taxpayer-owned land. Not only are they not paying royalties for access to public resources, but they’re also polluting these public resources without paying cleanup costs.

For all these reasons and more, a lawsuit was recently filed in the U.S. District Court for the District of Oregon — and it’s currently being appealed to the U.S. Court of Appeals for the Ninth Circuit — that aims to establish legal protections for Americans when using publicly owned land, whether they're doing scientific research, recreating socially or observing nature and its inhabitants.

It’s long past time that we update the old laws from the 1800s. This lawsuit, which aims to do that and set a new benchmark for treatment of public lands, was brought against the Trump administration’s DOI, the U.S. Department of Agriculture (DOA), the U.S. Department of Defense (DOD), the U.S. Environmental Protection Agency (EPA) and their secretaries.

It will now carry forward and apply to Biden’s administration. Filed by the Animal Legal Defense Fund and others, the lawsuit applies a rights-based framing and reaffirms what rightly should be perceived as citizens' rights — and, by extension, the rights of nature and its inhabitants.

This latest effort to protect public lands isn’t new. President Theodore Roosevelt, an ardent protector of public lands, tried to set a standard for the right use of public lands, encouraging the preservation and right use of forests and the right use of waters. Roosevelt would be horrified with the exploitation, extraction and exhaustion of our public lands and with Trump’s last-minute selling off of oil drilling rights in the Arctic National Wildlife Refuge, just one example of how easily public lands can be exploited for private profit.

That’s why the lawsuit is so important and why Biden’s administration has an opportunity to lead here and return the rights of federally owned lands to the public. Biden put a freeze on new leases on public lands, but what about the old leases? What would it look like in practice if the lawsuit moves forward and successfully secures the right to be “let-alone” on public lands?

It would give Americans freedom from harm on those lands — including the harm from air pollution, water pollution, mining pollution, drilling pollution and more — and the right to clean air and clean water. Again, this seems like a no-brainer. And we have a history of rights-based advocacy on which this lawsuit builds: the right to vote, the right to bear arms, the right to marriage, the right to choose and the right to own property.

The freedoms won in the last century were pitched, packaged and positioned as rights owed to deserving and/or underserved communities. It's an effective proposition, as Americans are fond of the Founders and their rights-based framing. The history of rights-based wins in court is arguably the most compelling story of progress in America.

Now it's time to add to those rights: The right for humans to be let alone and the right of nature — and its inhabitants — to be let alone, too. That is why the ALDF v. U.S. lawsuit is so important. Now, more than ever, we need legal protections — and rights — to ensure that nature is left alone. Until we have a stronger legal foundation for the protection of the public and the natural environment, both will continue to be put in harm's way.

It’s time for the Biden administration to strengthen the right to be let alone, in order to lock in environmental protection. This one move might be Biden’s most effective environmental play this term. We've made much progress in the past century. Now it's time to make more.

#### c) Enforcement---only federal legal personhood makes it broad and strong---key to the whole aff

Hailey A. Walley 19, BA in Philosophy, Anthropology and Environmental Studies, University of Mississippi, May 2019, “TWO ARGUMENTS FOR EXTENDING LEGAL PERSONHOOD TO NATURE,” http://thesis.honors.olemiss.edu/1565/3/Walley%20Thesis.pdf

Following the establishment of the Global Alliance for the Rights of Nature (GARN) in 2010, Pittsburgh, PA became the first major U.S. city to recognize the Rights of Nature and ban shale gas drilling and fracking as a way to “elevate the rights of people, the community and nature over corporate rights.” 35 Following this momentum, one of the founders of GARN began working with Santa Monica, CA to establish a Sustainability Rights Ordinance. Unlike the Tamaqua Borough ordinance, Santa Monica’s was not in response to an immediate threat to the community, but was rather an extension to a Santa Monica Sustainable City Plan that was established in 1994. In this sense, the Santa Monica case is unique in that it takes a proactive approach in ensuring future sustainable development rather than acting retroactively. But this just shows that extending rights to nature as a tactic for allowing people to protect their rights has some precedent.

Finally, in 2013 and 2014, the Highland and Grant townships of Pennsylvania passed Community Bill of Rights ordinances. Highland Township was the first to do so, and it was spearheaded by Highland’s Water Authority with the help of CELDF in response to the growing concern that fracking would contaminate the region’s water supply.36 It expanded community rights, granted ecosystems in the county the right to exist and flourish, and banned all activities of natural gas and fossil fuel extraction and waste water injection. A year later, Grant Township followed suit in instating a Community Bill of Rights ordinance in response to Pennsylvania Gas and Electric’s filing for a permit to inject waste water into one of the unused wells in the township.37 Considering this township relies entirely on private wells and springs for their drinking water, the residents became concerned that the injected water waste would leak into their drinking-water sources. Thus, they established their own Community Bill of Rights ordinance that prohibited depositing oil and gas waste materials in the township.

In all of these cases, Kauffman and Martin found that they conceptualize Nature on the ecosystem level, rather than individual flora or fauna, and the ecosystems are sets of “natural communities” whose welfare is necessary for the wellbeing of human communities. He found that most of these cases were retroactive approaches to immediate threats, but showed how Santa Monica’s ordinance functions as a precautionary principle to prevent damage in the future. The main issue he found was in their legal standing, considering they are merely community ordinances, which are superseded by State and Federal laws. In fact, the Grant and Highland Townships’ ordinances were contested in court by energy companies, and the court ruled in favor of the corporation by saying that the municipality was overstepping its authority. In response, the residents in both townships developed a new legal structure, the Home Rule Charter, in hopes of enforcing the Rights of Nature in the U.S. federal system. In summary, Kauffman and Martin concluded that, in the U.S., “Rights of Nature is linked to the concept of community rights and is seen as a tool for communities to protect themselves against the vagaries of corporate property rights.”38

IV.5 Applying Kauffman and Martin’s Argument to the Autonomy Argument

I believe that these cases of U.S. counties and cities establishing Rights of Nature provide a great deal of support for my claim that granting such rights can and will act as a tool for protecting individuals from exploitation by corporations and a tyrannical government. The point for which I’m arguing isn’t just a theoretical suggestion: as Kauffman and Martin show, it is building on actual examples that have already been tried in the United States. My own argument, however, extends beyond these examples in two ways. First, I think these examples show that Rights of Nature need to be implemented on a state, and eventually federal, level if they are to be truly enforceable. The fact that these ordinances were contested in court, and the communities ultimately lost, only exemplifies the nature of our government to put the interest of corporations and economic concerns over the well-being of its citizens, which is why it will be important for us promote the extension of legal personhood to Nature on a broader level where it will have to be enforced.

Second, I believe these existing laws could be strengthened by emphasizing how extending rights to Nature protects autonomy. Were the Rights of Nature laws to be based on this concept of personal autonomy, it would help ensure that the individual’s protection and wishes were considered on an equal basis to the economic considerations. The issue now is that corporations are worth much more than nearly any damage they can cause. This makes it difficult for any individual citizen to successfully contest a corporation in court, which is why it is imperative we alter the argument to place focus on the encroachment of an individual’s autonomy rights. Thus, by extending legal personhood to Nature under the caveat of securing personal autonomy rights, it would grant citizens an alternate and broader route to legally contest the exploitative actions by corporations and the government.

### 2AC – Perm do Both – Coop Federalism

#### The perm invigorates a model of cooperative federalism which solves best

Roger Hanshaw '17 [Roger Hanshaw; ; xx-xx-2016; "State courts vs. federal courts: jurisdictional battles over state water quality standards"; American Bar Association; https://go-gale-com.proxy.library.georgetown.edu/ps/i.do?p=LT&amp;u=gtown\_law&amp;id=GALE|A497178465&amp;v=2.1&amp;it=r; accessed 7-13-2021 (nBrown)]

Since Congress adopted the Federal Water Pollution Control Act (Clean Water Act or CWA) in 1972 (33 U.S.C. [section] 1251-1387 (2012)), state and federal enforcement actions, along with citizen suits by private parties brought under the CWA, have done much to improve the quality of the nation's waters. A key feature of the CWA is the system of cooperative federalism whereby states may voluntarily assume responsibility for enforcement of water pollution control laws under federally approved state programs. In order to exercise the primary jurisdiction for enforcement of [water quality](https://go-gale-com.proxy.library.georgetown.edu/ps/i.do?p=LT&u=gtown_law&id=GALE|A497178465&v=2.1&it=r) laws within its boundaries, a state must adopt a water quality permitting program and submit that program to the U.S. Environmental Protection Agency (EPA) for approval. After federal approval, the state environmental permitting and enforcement agency administers the federally approved program within the state's borders with oversight from EPA. In order to gain federal approval, a state water quality program must have standards that are at least as stringent as those required by the federal government, but, importantly, a state may adopt a water quality program that is more stringent than required by federal law. When states choose to voluntarily demand greater protection for their waters than required by federal law, does the CWA still apply? And if it does, how far does the CWA authorize [federal courts](https://go-gale-com.proxy.library.georgetown.edu/ps/i.do?p=LT&u=gtown_law&id=GALE|A497178465&v=2.1&it=r) to go with respect to enforcing state-level standards?

Over 20 states have elected to develop their own state water quality programs and enforce the CWA at the state level. In these states, state water quality standards, and not the otherwise-applicable federal standards, are the typical basis for enforcement of the CWA. Enforcement actions undertaken by a state environmental regulatory agency or the EPA can be contentious, but they rarely give rise to a jurisdictional contest. Citizen suits, however, can create interesting questions of law with respect to the jurisdiction of the federal courts over suits to enforce state water quality standards when a state has enacted standards that exceed federal minimums. The CWA provides for citizen suit enforcement under 33 U.S.C. [section] 1365, which states, in part:

### 2AC – AT: Decentralization Good

#### Federal level action is important for innovation it can also be a laboratory for democracy

**Owen and Wiseman 2018** (Dave, Professor of Law, University of California — Hastings College of Law, J.D, Hannah J, University of California, Berkeley School of Law, B.A., Amherst College, “Federal Laboratories of Democracy” December 2018, UC Davis Law Review, Volume 52, No. 2, https://lawreview.law.ucdavis.edu/issues/52/2/Articles/52-2\_Wiseman\_Owen.pdf // JK ☺)

An oft-cited justification for federalism is that it induces creative policy experimentation at the state level.1 According to the standard arguments, limiting federal power and protecting state sovereignty allow states to function as "laboratories of democracy," places where governmental innovations can begin and spread. 2 For courts and federalism scholars, this alleged virtue has remained alluring for decades, and celebrations of state policy laboratories remain a central theme in the discourse of federalism.3 Similarly, much of the literature on policy experimentation tends to assume, if it confronts questions of federalism at all, that states (and sometimes local government) will be the experimenters.4 Yet there are many reasons to be skeptical of these accounts. While no one disputes that state and local governments sometimes do innovate, a variety of characteristics of state and local governments make it unlikely that they will experiment nearly as often as traditional federalism theory would assume.5 Even when they do experiment, other state and local government characteristics may hinder good policies' paths to wider adoption. 6 Consequently, if we value policy laboratories, then it is important to consider how other elements of our federalist system can enable policy experimentation or something closer to that ideal. This endeavor is particularly valuable in an era of political upheaval and growing calls for massive reduction in federal governmental "interference." 7 If states are not the optimal experimenters, then broad-based shrinkage of federal involvement could reverse critical policy experimentation, thus undermining a virtue often used to justify state power.8 This Article responds to the challenge of constructing useful policy laboratories and the inadequacies of traditional theories through closer attention to the intersections of experimentation and federalism. We craft a conceptual framework to fuse key attributes of policy experimentation with the United States' federalist system. We then flesh out this framework and demonstrate its analytical capacity by discussing several real-world policy initiatives. The governance structures for the policy initiatives we describe are all quite different from the stereotypical "laborator[ies] of the states." They also are directly at odds with the popular myth that "the central government can examine only one policy at a time and so will slowly uncover superior new policy choices." 9 Instead, these experiments involve the federal government in both designing and implementing experiments, sometimes without much help from the states, and sometimes relying on state and local entities to cooperate in experiments facilitated by the federal government.10 Our core thesis is that these governance structures for experimentation are not anomalous. In a federalist system of hierarchical and decentralized governance, a key driver of experimentation often will, and should, be the federal government." Furthermore, federal initiatives sometimes incorporate attributes that make policy experimentation surprisingly rigorouS 12 - far more rigorous than the haphazard patchwork of state policies that arise from the decentralized experimentation envisioned by most federalism proponents. Our primary case study, which has attracted scant attention in the legal literature, explores ambitious experiments in U.S. agricultural policy that evolved over nearly a century. The experiments began with a federally-designed and federally-implemented approach. The federal government used congressionally-approved funding to employ a true boots-on-the-ground system for modifying crop management practices that contributed to massive dust storms and loss of valuable topsoil. The United States Department of Agriculture sent federal agents to farflung rural locations to build experimental research stations that tested and demonstrated improved soil conservation techniques to farmers.13

### 1AR---States CP---Preemption Deficit

#### Corporations will lobby and win because their rights are ensured by Supreme Court precedent

David R. Boyd 17, associate professor of law, policy, and sustainability at the University of British Columbia, 2017, The Rights of Nature: A Legal Revolution That Could Save the World, unpaginated ebook edition

As communities across the U.S. assert that the rights of people, communities, and nature ought to take priority over corporate and property rights, they are provoking a massive legal response from big business. In addition to the cases already highlighted, there are similar lawsuits underway in California, Ohio, Colorado, and New York. When the California city of Compton enacted an ordinance banning fracking within city limits, the Western States Petroleum Association sued. Faced with the might of the oil and gas industry, Compton withdrew its ban. An attempt to put forward a ballot initiative in the state of Washington that would have recognized the rights of the Spokane River was struck down by the Washington Supreme Court on the grounds that water rights are governed by existing state law and can’t be overridden by local governments.

Industry lawsuits against community bills of rights in Broadview Heights, Ohio, and Blaine Township, Pennsylvania, have been successful. Judge Michael K. Astrab said state law gives the Ohio Department of Natural Resources “sole and exclusive authority” to regulate oil and gas wells, overturning Broadview Heights’ voter-approved ban on future wells. Judge Donetta W. Ambrose wiped out large parts of Blaine Township’s ordinances, finding that Blaine “does not have the legal authority to annul constitutional rights conferred upon corporations by the United States Supreme Court.” She also ruled that the township’s drilling restrictions ran afoul of the Pennsylvania Oil and Gas Act.

Courts are striking down community rights of nature ordinances because they are inconsistent with state and/or federal law. To Thomas Linzey, this reinforces his most fundamental point: today’s laws and institutions are antithetical to the rights of natural ecosystems and local communities. Linzey concluded in a CELDF press release, “Communities are recognizing the rights of nature in law as part of a growing understanding that a fundamental change in the relationship between humankind and nature is necessary.” Gus Speth, co-founder of the Natural Resources Defense Council and the former dean of the Yale School of Forestry, agrees, and said to Earth Island Journal, “I am very excited about the move to a rights-based environmentalism. Lord knows we need some new and stronger approaches. And endowing the natural world with rights is a big part of that.”

### 1AR---States CP---Preemption Deficit

#### Federal courts will strike down the CP for violating the supremacy clause

Meredith N. Healy 19, J.D. Candidate, University of Colorado Law School, 2019, “Fluid Standing: Incorporating the Indigenous Rights of Nature Concept into Collaborative Management of the Colorado River Ecosystem,” Colorado Natural Resources, Energy & Environmental Law Review, <https://www.colorado.edu/law/sites/default/files/attached-files/healy_web_edition_pdf.pdf>

Following Sierra Club v. Morton, environmental advocacy was limited to a duly-injured advocate with access to the courts claiming injurious impact on a human. Over the past decade, however, American legal and social scholars have begun to question whether this third-party advocacy is the best way to advocate for the environment.74

A. Grassroots Rights of Nature Legislative Campaigns Take on Well-Funded Oil and Gas Industry

From their Mid-Atlantic base, the Community Environmental Legal Defense Fund (“CELDF”) has promoted the rights of nature by providing legislative language to communities around the country.75 In 1995, CELDF began a dual mission to promote local self-government and the rights of nature.76 Since then, over 200 communities have adopted CELDF-drafted local legislation.77

In New Mexico in 2013, the Mora County Board of Commissioners passed a CELDF-drafted ordinance “protecting the rights of human communities, nature, and natural water.”78 The main thrust of the ordinance was the county’s desire that “corporations may not drill, extract, or contract for any oil and gas development.”79 An energy exploration firm filed suit against both the county and its board of commissioners, seeking an injunction to prohibit the defendants from enforcing the ordinance proscribing extractive uses within the county.80 In a 138-page opinion, the United States District Court for the District of New Mexico struck down the ordinance, holding, as pertinent here, that the ordinance violated the Supremacy Clause and was impermissibly overbroad, in violation of the First Amendment.81 Nevertheless, local extractive use industry publications warned that “[w]hile industry, the media and the public might ignore all the commotion created about the hydraulic fracturing discussion, this issue is the beginning of a social movement that is greater than just the oil and gas industry, it is a potential game changer for all of corporate America.”82

In that same year, sixty percent of voters in the town of Lafayette, Colorado, approved the CELDF-drafted “Lafayette Community Rights Act.” Supported by the League of Women Voters and a local grassroots group, East Boulder County United, this measure targeted the hydraulic fracturing oil extraction technique (“fracking”) and proposed “certain rights for city residents and ecosystems as part of the city charter such as clean water, air and freedom from certain chemicals and oil and gas industry by-products.” Less than a year later, the Boulder District Court ruled in favor of the ballot measure’s opponent, the Colorado Oil and Gas Association. Finding the regulation of oil and gas to be a matter of mixed state and local concern, Boulder County District Judge D. D. Mallard held that Lafayette did not have the authority to prohibit practices authorized and permitted by the state.

Similar legislative and judicial attempts by CELDF to codify the rights of nature continue to meet resistance in federal court. In perhaps the organization’s most publicized anti-fracking and rights of nature case, CELDF’s opponent, Pennsylvania General Energy, filed a Motion for Sanctions for $52,000 in attorneys’ fees following the utility’s successful yet prolonged litigation in district and circuit courts. The court reluctantly fined CELDF’s lawyers the full $52,000 for the “continued pursuit of frivolous claims and defenses.”

# Federalism DA Answers

### 2AC – AT: Link – Jurisdiction

#### Large waterways, navigation, and commerce are federal jurisdiction and don’t trigger federalism concerns.

Craig 13 — Robin Craig, Professor of Water, Energy, and Climate Change at the University of Southern California School of Law, PhD in Science from the University of California, Santa Barbara, J.D. from the Lewis & Clark School of Law, 2013 (“Adapting Water Federalism to Climate Change Impacts: Energy Policy, Food Security, and the Allocation of Water Resources,” *Environment & Energy Law & Policy Journal*, Volume 5, June 8th, Available Online at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1555944&download=yes>, Accessed on 07-12-2021, Jackson Hightower)

Large waterways in the United States have long been important to navigation and commerce, and protection of these uses has equally long been deemed the province of the federal government.17 Thus, navigation regulation represents an instance of supremacy federalism in water federalism: an area of water-related law where the federal government’s interests are deemed so superior that there is very little room for state action.18

This supremacy federalism is perhaps most obvious in the federal navigation servitude. The federal navigation servitude describes the federal government’s long-recognized paramount interest in maintaining the navigability of navigable waters.19 This power derives from the federal government’s constitutional authority over commerce,20 and it limits both the states’21 and private rights22 in navigable waters.

In addition, the interstate commerce aspects of navigation have been incorporated into several statutory regulatory regimes that solidify the federal government’s supremacy in this arena. For example, relying on the federal government’s interstate commerce authority,23 the U.S. Supreme Court lodged final authority over navigation upon the navigable-in-fact waters in Congress.24 Congress exercises this authority primarily through the various Rivers and Harbors Acts, culminating in the Rivers and Harbors Act of 1899 (“RHA”).25

The RHA prohibits the construction of actual obstructions in the navigable waters without Congress’s explicit consent.26 The building of lesser structures in the navigable waters requires a permit from the U.S. Army Corps of Engineers,27 as does excavation in and filling of these waters.28 Finally, the RHA also prohibits the disposal of refuse in the navigable waters and their tributaries.29

The federal government’s supremacy over navigation and interstate commerce in water is quite broad and occasionally reaches out to override areas of water regulation deemed to be the states’. For example, the federal paramount interest in navigation may, in extreme cases, limit the ability of water appropriators—and the state agencies assigning water rights—to destroy downstream navigability, even if the waters being appropriated are not navigable at the point of diversion. Thus, when the U.S. Supreme Court addressed the propriety of the complete diversion of the Rio Grande River in New Mexico, where it is not navigable, it concluded that such upstream diversions could not interfere with the federal government’s downstream interest in maintaining navigability.30 According to the Court, “the jurisdiction of the general [federal] government over interstate commerce and its natural highways vests in that government the right to take all needed measures to preserve the navigability of the navigable water courses of the country, even against any state action.”31 The Court has reaffirmed these potential limitations on state regulation of water in subsequent cases.32

The federal navigation servitude also telegraphs the absolute national import of aquatic navigability by exempting the federal government from the normal operations of the Fifth Amendment’s “takings” clause33: federal actions to maintain navigation do not require the government to compensate private persons and entities for injuries to their (state-based) private property rights.34 For example, as early as 1829 the U.S. Supreme Court noted:

Laws in relation to roads, bridges, rivers and other public highways, which do not take away private rights to property, may be passed at the discretion of the legislature, however much they may affect common rights; even private rights, if they are not those of property, may be taken away, if it be deemed necessary consequence of their construction, without making compensation.35 The Court has affirmed this aspect of the navigation servitude on several occasions.36

Thus, the federal government’s supremacy in the realm of navigation is pervasive, raising the issue of why: Why is it that, with respect to navigation, nearly absolute federal control and dominance was early established and remains the norm? Benjamin Sovacool has created a typology of environmental federalism that suggests some answers. With respect to supremacy (or centralized) federalism, Sovacool notes that:

Those in favor of centralizing environmental decision making note that federal intervention brings with it a number of important benefits: (i) it is the most efficient way to address spillovers or transboundary pollution; (ii) it provides a degree of uniformity for manufacturers and investors; (iii) it produces economies of scale; and (iv) it promotes distributive justice and a minimum standard of environmental quality, thus preventing a race to the bottom among the states.37

### 2AC – AT: Link – Fed Involvement Fine

#### Federal involvement in water occurs without broader federalism disruptions.

Gerlak 06 — Andrea Gerlak, Professor in the School of Geography, Development and Environment at the University of Arizona, co-editor for the Journal of Environmental Policy and Planning, PhD in political science from the University of Arizona, 2006 (“Federalism and U.S. Water Policy: Lessons for the Twenty-First Century,” *Publius,* Spring, Volume 36, Available Online at <https://www.jstor.org/stable/4624743?seq=2#metadata_info_tab_contents>, Accessed on 07-15-2021, Jackson Hightower)

Federalism and Streams of U.S. Water Policy

Federal-state relations have evolved dramatically over U.S. history. There has been a movement from a layered cake to marble cake to a spider web.3 Notable federalism scholars such as Elazar and Kincaid have well described the eras and patterns of federalism in the United States.4 Today, there is a broad recognition that the late twentieth century became increasingly intergovernmental.5 It also became increasingly ambiguous. The 1990s have been described as a period of incoherence and ambiguity on questions of federalism.6 David Walker argues today's federalism is "overloaded, unbalanced, ambivalent, and conflicted."7 Some question whether the modern federal system is beginning to exact too high a price for state and localities.

Many environmental policy scholars have traced the development of environmental policy in the United States, describing different epochs or eras in policy history.9 Rosenbaum has documented the rising discontent with regulatory federalism that has come to characterize environmental and natural resource policy and the "uneasy collaboration" occurring today between levels of government.10 McKinney and Harmon well describe the conflict over natural resources today, with particular attention to western resources and collaborative efforts to resolve such conflicts." Others tell of the new pragmatic, third-way approach to environmental governance:

A sometimes inchoate, always evolving, and decidedly pragmatic "third way" approach to environmental governance, one that focuses on building a results- based (or outcomes-based) sense of common purpose as an antidote to the shortcomings of conventional bureaucratic, command-and-control, procedure- based, and adversarial approaches to ENR [environmental and natural resources] protection.

Scheberle calls particular attention to policy implementation and intergovernmental relationships in the environmental policy arena.

The analysis provided here builds on the work of both federalism and environmental policy scholars in an attempt to better understand the development of U.S. water policy. It traces federal-state relations and finds that intergovernmental relations related to water policy have evolved into a pragmatic federalism. It argues that streams of water policy closely follow eras of federalism: from state-based federalism to centralized federalism to cooperative federalism to pragmatic federalism. Glendening and Reeves's (1984) pragmatic federalism is our launching point. They point to "a constantly evolving, problem-solving attempt to work out solutions to major problems on an issue-by-issue basis, resulting in modifications of the federal and intergovernmental systems.

No one event or piece of legislation captures the pragmatic federalism of today's water policy. It does not have an overarching framework or philosophical bent. It is not a one-size-fits-all approach. Rather, it is place based, collaborative, and experimental. Process, as opposed to division of authority, reigns supreme. Relying on a diverse set of approaches and tools, it strives to be more accessible with improved processes and greater coordination. Today's water policy is highlighted by pragmatic federalism that (1) emphasizes collaborative partnerships, (2) relies on adaptable management strategies, and (3) is problem and process oriented.

Given the perceived crisis in water management and the general lack of a national policy today, it is important to examine intergovernmental relations pertaining to water policy. Such an exploration will contribute to our understanding of water policy and may serve to inform future water resources decision making. The history of the federal government's relationship to the individual states with regard to water policy can be divided into five streams. The first stream, which encompasses the birth of the United States in 1776 to Theodore Roosevelt's presidency in the early twentieth century, is characterized by state-based federalism, where the issues of the day, mainly canal building and flood control, were dealt with by the states with the federal government playing a minor role. The Reclamation Act of 1902 begins the second stream. During this era of centralized federalism, the federal government increased its role in water management. The third stream occurred between 1960 and 1980. During this time cooperative federalism, or shared federal-state authority, characterized water policy in the United States. The new federalism of the Reagan era ushered in the fourth stream, which is characterized by an emphasis on increasing state responsibilities, such as cost sharing in water projects, and which marked a reduction in federal funding. This devolution, with an increased focus on collaboration and restoration, continued through the Clinton years, with a greater emphasis on restoration and collaboration, and has evolved into the more pragmatic federalism of today.

### 2AC – AT: Link – Procedural favoritism

#### Procedural favoritism is normal means – shields the link.

Fischman 5 [Robert L. Fischman; 2005; Distinguished Professor of Law at the University of Indiana-Bloomington, Adjunct professor at the Indiana University School of Public and Environmental Affairs; "Cooperative Federalism and Natural Resources Law," New York University Environmental Law Journal, Vol. 14, No. 1, p. 200] |Trip|

Another approach found in a broad conception of cooperative federalism is state favoritism in the federal process ("procedural favoritism"), which is well entrenched in natural resources law. This coordinating tool reserves a special role for states in the process by which the federal government makes environmental decisions. Though it does not guarantee that the state view will prevail, 83 federal agency decision-makers have a responsibility at least to document their consideration of the state's view and to explain why it did not prevail. The state's direct avenue to assert its interests often is not open to other stakeholders in the federal decision.

### 2AC – AT: Link – General

#### The plan is soundly constitutional

Baumgartner 5 [Matthew B Baumgartner, MA, JD University of Michigan. Law Clerk for the United States District Court for the Eastern District of Texas. SWANCC's Clear Statement: A Delimitation of Congress's Commerce Clause Authority to Regulate Water Pollution. Michigan Law Review , Aug., 2005, Vol. 103, No. 8, 2005. https://www.jstor.org/stable/pdf/30044491.pdf?refreqid=excelsior%3A21d3c13c307a8554d50077eadc29bad0]

Although some may prefer no federal regulation over isolated wetlands as a matter of policy, the Constitution is more permissive, especially in light of the lack of a competing traditional state function.' Water pollution control has developed into an important national concern, and it will only become more critical to the nation's welfare as time passes and water resources become ever scarcer. A federal water protection regime can, on a sound constitutional basis, seek to protect the nation's waters from commercial pollution.

### 2AC – AT: Link – Proper Authority

#### Federal water pollution regulation is proper use of Commerce Clause authority and distinct from land use federalism issues

Baumgartner 5 [Matthew B Baumgartner, MA, JD University of Michigan. Law Clerk for the United States District Court for the Eastern District of Texas. SWANCC's Clear Statement: A Delimitation of Congress's Commerce Clause Authority to Regulate Water Pollution. Michigan Law Review , Aug., 2005, Vol. 103, No. 8, 2005. https://www.jstor.org/stable/pdf/30044491.pdf?refreqid=excelsior%3A21d3c13c307a8554d50077eadc29bad0]

Two considerations are paramount to the structural federalism analysis. First, the most prevalent concern in the modern jurisprudence is that some areas of regulation must be left solely up to the states to regulate.' The second consideration is whether water pollution is an aspect of interstate commerce that states cannot effectively manage without federal policy. Section III.A argues that water pollution regulations are an essential part of national environmental policy, which the Supreme Court has deemed distinct from the traditional state power over land use. Section III.B argues that states cannot regulate pollution of navigable waters without disturbing the policies of neighboring states, thus making it a proper use of Congress's Commerce Clause authority to impose national water pollution control standards.

### 2AC – AT: Link – First Principles

#### Limiting federal authority to only navigable waters undermines the first principles of the Commerce Clause

Baumgartner 5 [Matthew B Baumgartner, MA, JD University of Michigan. Law Clerk for the United States District Court for the Eastern District of Texas. SWANCC's Clear Statement: A Delimitation of Congress's Commerce Clause Authority to Regulate Water Pollution. Michigan Law Review , Aug., 2005, Vol. 103, No. 8, 2005. https://www.jstor.org/stable/pdf/30044491.pdf?refreqid=excelsior%3A21d3c13c307a8554d50077eadc29bad0]

Limiting federal authority to navigable-in-fact waters and their directly adjacent wetlands would undermine the rationale behind the Interstate Commerce Clause itself. The "first principles" of federal regulation of interstate commerce endorse the notion that federal control should extend to areas where the states may interfere with each other's efforts.' Indeed, Lopez cited language in Gibbons indicating that only internal commerce which "does not extend to or affect other States" is beyond the reach of federal powers over commerce.' The long standing rationale for federal water pollution control is based on this very principle of "subsidiarity," which dictates that federal control is necessary where the states cannot effectively regulate themselves.' In fact, the transboundary nature of water pollution poses the identical problem that gave rise to the need for an exclusive federal power over interstate commerce in the first place. Water pollution can be transferred from one state to another, because states often share the same river, lake or other hydrological connection with other states' waters.' Thus, even states with strong water pollution control standards would suffer from water pollution because of weak standards in neighboring states.

### 2AC – AT: IL – Federalism Fails

#### Federalism fails -it’s too rigid and limiting leads to disputes and a lack of adaption

**Babie et al 2020** (Paul T, Personal Chair of Law in the Adelaide Law School of The University of Adelaide,”, 29 Apr 2020. ENVTL. LAW AND LITIGATION, Vol. 35, Issue , https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3587149 // JK ☺)

As a result of the federal division of powers over water, the potential for “any unilateral legislative action” by the federal government is “necessarily . . . partial.”136 Therefore, “[o]ver the years, a high degree of cooperation has evolved between various agencies of the federal government and the states in the formulation and administration of water plans.”137 This is a fundamental, indeed, necessary adjunct of federalism, which is “consistent with any degree of common or cooperative or parallel action between the unit governments, provided it is in a substantial degree voluntary.”138 Cooperation is not limited to water resources; instead, it happens, and happens frequently in many spheres of intergovernmental activity in the American and Australian federal systems. In Australia, for instance, “the increase in such [cooperative] activities . . . since 1928 has been as marked as the increase in direct Commonwealth power.”139 A “Byzantine complexity”140 characterizes the nature of the cooperative, flexible, or marble cake federalism with respect to water law in California and South Australia—and, indeed, in the water law of the whole of Australia and the southwestern United States. It is not our objective here to assess the whole of this law.141 Rather, we want, first, to provide an overview of a representative example of the nature of cooperative federalism drawn from each jurisdiction concerning their major water supply rivers—the Colorado and the Murray Rivers (watercourses not contained entirely within the relevant state’s boundaries). As we will see in the next two sections, a unique body of law in each jurisdiction seeks to achieve cooperative federalism for the provision of water supply. Having presented these representative examples, Part III provides an example of the sort of dispute to which this cooperative federalism can give rise—in the case of California, over the U.S.-California Central Valley Agreement, and in South Australia, over the National Water Initiative 2004 and the Water Act 2007 (Cth). We argue that both the California and the South Australian efforts at cooperative federalism fail, not through a lack of will to cooperate, but because they are doomed from the start. Both efforts are founded upon federalism, which, no matter the extent of cooperation engendered, cannot ever allow for the effective, comprehensive management of the entirety of the integrated whole of the water resource. We turn, then, to the attempts at cooperative federalism found in California and South Australia. The “Law of the River” represents a primary example of the Byzantine complexity that characterizes the cooperative water law flowing from federalism in the southwestern United States.142 It comprises the prior-appropriation doctrine143 and [t]he treaties, compacts, decrees, statutes, regulations, contracts and other legal documents and agreements applicable to the allocation, appropriation, development, exportation and management of the waters of the Colorado River Basin . . . . There is no single, universally agreed upon definition of the Law of the River, but it is useful as a shorthand reference to describe this longstanding and complex body of legal agreements governing the Colorado River.144 David Owen provides a more colorful account: Grady Gammage, Jr., a lawyer . . . once told an interviewer that, when he first became involved in water issues, he felt that every time he made a comment about the Colorado another lawyer would inform him that whatever he had just suggested was “prohibited by the Law of the River.” Gammage had been in practice for some time, but didn’t recognize the reference. “So I go to the Arizona Revised Statutes book and pull it down, and I look up ‘River, comma, Law of,’ and it’s not there.” He did the same with the United States Code, also without success. “It turns out that the Law of the River is kind of like the British Constitution,” he continued. “It’s whatever the people who have really been hanging around it a long time think it is.” Invoking it, furthermore, is a privilege reserved for those who have undergone what Gammage called “the Water Buffalo ceremonial admittance rites.” Water Buffaloes are old-school western-water experts: managers, engineers, diverters, legislators, and lawyers, almost all of them men, whose long immersion in riverrelated discussion, arguments, negotiations, and lawsuits has made them deeply suspicious of non-Water Buffaloes and has convinced them that wet water [actual flow of the Colorado River] is, in many ways, less significant than paper water [theoretical rights to the Colorado River’s flow].145 This account demonstrates the difficulties involved in managing a resource that is an integrated whole when those attempting to do so each enjoy a fragmented portion of the necessary power—in other words, the difficulty of applying federalism to water resources. For our purposes, then, we outline the Law of the River only as it applies to California’s water supply. That is enough to demonstrate the difficulties created by federalism. The principle components of that story involve Los Angeles’ thirst for more water, the Colorado River Compact of 1922, and the subsequent Arizona v. California litigation in the United States Supreme Court For as long as First Nations peoples gathered to live in the area around Los Angeles, the arroyo that came to be known as the Los Angeles River supplied the communities’ water needs. The small populations there attracted the first European colonizers from Spain in 1769, who established a pueblo and imposed Spanish water law. Europeans were followed by Americans—the California Republic was formed in 1848 and entered the Union in 1850—especially those moving west to find their fortunes in gold. The Los Angeles River, as erratic as the course of its flow was, continued to water the growing community, although flash floods would periodically wipe out parts of the settlement. The government of the city of Los Angeles, as the settlement was called, took increasingly interventionist measures to control the location and flow of the watercourse, with the U.S. Army Corps of Engineers ultimately lining the entire length of the channel with concrete. It became apparent by the turn of the 19th century, though, that the Los Angeles River, even in a good year, would never be enough to supply the water demands of the growing city. The town fathers, led by William Mulholland, looked north, to the Owens Valley.146 The Owens River, northeast of Los Angeles, seemed to be the answer to Los Angeles’s water supply problems. Led by Mulholland, the city of Los Angeles began to buy up the existing water rights of landholders in the Owens Valley. Between 1908 and 1913, the Los Angeles Aqueduct was constructed, hoisting Owens water over the Sierra Nevada, bringing it south to Los Angeles. But demand soon outstripped this supply, too. And so, the city cast its eyes further afield. But where? California, and especially Southern California, largely semiarid and arid, had little additional supply.147 But further east, a seemingly wild and untamed river carried with it an entirely untapped flow—perhaps this would be the answer to Los Angeles’s water prayers. The river? The Colorado.148 The Colorado River Basin takes in two nations—Mexico and the United States—and seven states—Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.149 Putting the international dimension to one side, given the federal structure of the United States, it goes without saying that no one unit of government, federal or state, is capable of dealing with the entirety of the Colorado River. Unsurprisingly, this fragmentation of power over the river among so many competing demands and priorities has rendered this “iconic yet diminished . . . river . . . more an ‘industrial project’ than a natural waterway, a river long stripped of its wildness and freedom.” How, then, given the overlapping and conflicting jurisdictions of two nations and nine different governmental units, could the flow of the Colorado River be harnessed in slaking Los Angeles’s thirst? The convergence of the interstate compacts power of the United States Congress, coupled with the equitable apportionment original jurisdiction of the United States Supreme Court, gave birth to the Colorado River Compact of 1922 (the 1922 Compact)151 and the ongoing Arizona v. California litigation152 which, to date, has resulted in nine Supreme Court orders apportioning the flow of the Colorado River among the seven party states.153 The 1922 Compact seemed the answer to Los Angeles’s water needs.The 1922 Compact, a treaty among the United States (through the U.S. Department of the Interior, Federal Bureau of Reclamation) (Reclamation)154 and the seven states that fall within the Colorado Basin [d]ivide[d] the available water [of the Colorado] between an “Upper” and “Lower” Basin with the geographic division at Lee Ferry in northern Arizona. This agreement . . . allocates 15 million acre-feet (“maf”) of annual “exclusive beneficial consumptive use,” 7.5 maf each to the Upper and Lower Basins, with an additional maf to the Lower Basin. The [1922] Compact also anticipated additional water being committed to Mexico and future allocation to the two Basins of “surplus” water.155 The cooperation embodied in the 1922 Compact—to which Arizona would not accede until 1944—was an attempt to provide a share of the Colorado River water to each of the seven signatory states for “agricultural, residential, and industrial use and to compete for the hydroelectric power” produced at the largest dam then known to human history: the Hoover.156 It also contained provisions to meet the federal government’s obligations to the “Indian tribes.”157 Soon, though, two things became apparent: first, that 1922 had been a particularly wet year, which meant that allocations based on what seemed an abundance of water could in fact never be satisfied in those years that were nowhere near as wet as 1922. There was scarcely enough water to meet the state obligations, let alone provide for any surplus.158 Second, with respect to an already scarce supply of water, “Los Angeles emerged as the leading force in the West to bring the [Hoover Dam] project to fruition and obtain much of the water and resulting hydroelectricity for itself.”159 The 1922 Compact is the first of thirteen primary elements that together constitute the Law of the River.160 As we noted above, we do not propose an exhaustive review of each of those elements. Instead, we provide here a brief overview of eleven of the elements other than the 1922 Compact, as well as the twelfth, the Arizona v. California litigation.161 The other eleven elements of the Law of the River are as follows: 1. Boulder Canyon Project Act of 1928—ratified the 1922 Compact, authorized the construction of the Hoover Dam, and apportioned flow among the lower basin states of Arizona, California, and Nevada.162 2. California Seven Party Agreement of 1931—helped settle a dispute among seven intra-California municipal and agricultural interests over California’s share of Colorado River water.163 3. Mexican Water Treaty of 1944—committed 1.5 maf of the Colorado River’s annual flow to Mexico. 164 Upper Colorado River Basin Compact of 1948—created the Upper Colorado River Commission and apportioned the Upper Basin’s flow among Colorado, New Mexico, Utah, and Wyoming, as well as the part of Arizona that lies within the Upper Basin.165 5. Colorado River Storage Project of 1956—provided a comprehensive Upper Basin-wide water resource development plan and authorized the construction of a number of dams for river regulation and power production.166 6. Colorado River Basin Project Act of 1968—authorized a number of projects in both the Upper and Lower Basins, including the Central Arizona Project (CAP). Most significantly, it made the CAP water supply subordinate to California’s apportionment in times of shortage.167 7. Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs of 1970—coordinated the operation of reservoirs in the Upper and Lower Basins.168 8. Minute 242 of the U.S.-Mexico International Boundary and Water Commission of 1973—required the United States to take actions to reduce the salinity of water being delivered to Mexico.169 9. Colorado River Basin Salinity Control Act of 1974—authorized desalting and salinity control projects to improve Colorado River quality.170 10. Endangered Species Act of 1973—provided for the conservation of endangered and threatened species of fish, wildlife, and plants throughout the United States.171 11. Native American Water Claim Settlements—involved litigated and negotiated “settlements . . . between tribes, the federal government, states, water districts, and private water users” and which, “[a]fter being negotiated, approv[ed] and implement[ed] . . . require federal action.”172 In the case of the Colorado River, this federal action is authorized by article VII of the 1922 Compact.173 With this background to the Law of the River effected through the interstate compacts power in place, we turn now to an assessment of the role played in the development of that law through the Supreme Court’s original jurisdiction contained in the equitable apportionment power. 2. Equitable Apportionment: Arizona v. California The entirety of the Law of the River requires adjudication of disputes relating to the allocation of flow effected by the 1922 Compact. As we saw in Part I, the Supreme Court may exercise its original jurisdiction pursuant to the equitable apportionment power under the Constitution as an adjunct to Congress’ interstate compacts power to allocate water supply of rivers under federal jurisdiction among states subject to an interstate compact. This has allowed the Supreme Court to become involved in the allocation of Colorado River water in one of the longest-running litigations in the history of the republic. The dispute, Arizona v. California, is still ongoing and has to date produced ten orders adjusting the allocation of Colorado River water pursuant to the 1922 Compact in each of the following years: 1931, 1934, 1936, 1963, 1964, 1966, 1979, 1983, 1984, and 2000.174 The first order specified the amount of water to which Arizona was entitled under the 1922 Compact. Each subsequent order was the outcome of new claims made by Arizona that California was using more than its share of water pursuant to the 1922 Compact and its application by the Court in the earlier orders.175 The Supreme Court issued the most significant orders affecting the Law of the River in 1963, 1964, and 1979.176 In 1963, the Court sought to resolve what was then a twenty-five-year-old dispute between Arizona and California stemming from Arizona’s desire to build the Central Arizona Project, which would allow Arizona to use its full water apportionment.177 California objected on the basis that Arizona’s use of water from a Colorado tributary constituted use of its Colorado River apportionment and that California had over time acquired a right to some of Arizona’s apportionment through the doctrine of prior appropriation.178 The Court found that lower basin states have a right to appropriate and use Colorado tributary flows and that the doctrine of prior appropriation did not apply to apportionments in the lower basin.179 In 1964, the Court enjoined the U.S. Secretary of the Interior from delivering water outside the framework of apportionments defined by the law and mandated the preparation of annual reports documenting water use in the lower basin states. 180 And in 1979, the Court interpreted the meaning of “present perfected rights” pursuant to article VIII of the 1922 Compact, which, it held, took priority over later contract entitlements established under state law.181

### 2AC – AT: IL – No Spillover

#### No spillover – Courts inevitably apply Lopez doctrine to restrain federal water authority

Sutton 21 (Victoria, MPA, PhD, JD is the Paul Whitfield Horn Professor, Texas Tech University School of Law. 4-19-21 “Unintended Consequences of Water Policy and Law” Texas Tech University School of Law <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3830042> pp. 12-14 JO)

Congress had another opportunity to clarify the wetlands issue and scope of the “navigable waters” term. Instead, in 1977, Congress referred to wetlands and navigable waters as separate items in a series in a Senate Report. They wrote, “there should be a degree of discipline over the extent to which these activities destroy wetlands or pollute navigable waters.”31In another part of the Report, the Congressional language reads, “It may be that the States will be reluctant to develop the control measures and management practices which protect upland wetlands and navigable waters.”32From this language it appears Congress did not intend to include wetlands in the definition of navigable waters because the Report repeatedly refers to wetlands and navigable waters separately rather than under the single term navigable waters. The 1977 Report specifically states that “The committee amendment does not redefine navigable waters. Instead, the committee amendment intends to assure continued protection of all the nations waters ....”33Further, the Senate Committee wrote they would refrain from redefining the term navigable waters until the controversy between the House and Senate over the extent of USACE’s jurisdiction ended. Eventually, the Senate proposed exemptions for farming and forestry, and Congress agreed that the USACE should have jurisdiction over traditional navigable waters of the United States as well as adjacent wetlands.34Then the USACE sought to extend its jurisdiction to non-adjacent wetlands, or isolated wetlands and they were sued. The court in that case, Avoyelles Sportsmen’s League v. Alexander35held that Congress’s intent was clear that they intended to protect isolated wetlands, thus they were within the reach of § 404 of the Clean Water Act. It was not until 1995, that the U.S. Supreme Court agreed to hear a case that would consider at what point could Commerce Clause power could be limited. After decades of jurisprudence that demonstrated a broad and unconstrained federal power based on the Commerce Clause, this case proved to be a landmark in Commerce Clause jurisprudence, the court holding a federal law to regulate possession of guns near schools, and a school district clearly went too far, and into an area of state regulation, the regulation of schools. So in United States v. Lopez36, the U.S. Supreme Court struck down the Gun-Free School Zones Act of 1990 because Congress exceeded their power under the Constitution. The test for such power was that the activity had to be economic in nature, as well as the test that the activity “substantially affect interstate commerce.”37After this landmark opinion, many believed that federal environmental statutes might now be challenged and struck down, since the argument could be made that environmental protection may not meet the “economic”38criteria. Wetlands was the first environmental law case to challenge a statute based on the landmark, United States v. Lopez opinion, and it went right to the definition of the term “navigable waters.” In 2001, Solid Waste Agency of Northern Cook County (SWANCC),39a case involving wetlands that were isolated from navigable waters, was heard by the U.S. Supreme Court. Here, the U.S. Supreme Court held that “non navigable, isolated, intrastate waters ---which , unlike the wetlands at issue in Riverside Bayview, was not “actually. . .on a navigable water” and so not included as “waters of the United States.” A startling decision for environmentalists who had hoped that sound scientific logic would prevail over constitutional jurisdictional parsing. But the court did not allow federal jurisdiction to extend to “isolated wetlands” through the application of the Section 404 of the Clean Water Act. In 2006, another case was back before the highest court in the land, about wetlands but this time it was a criminal conviction of an individual filling an “isolated” wetlands. In Rapanos v. United States,40the U.S. Supreme Court’s divided opinion 5-4, with a plurality opinion written by Justice Scalia, confirms the conundrum of meeting the goal of the Clean Water Act within Constitutional federalism constraints. Justice Scalia was the Associate Justice most known for first, asking the plain meaning of a term in a statute for interpretation. However, here, he opined, “navigable waters is not completely devoid of meaning”, but a hydrological connection is too vague.

#### Federalism issues are too complex to be disrupted by one policy.

Beech and Rivas 19 — Jason Beech, Professor at the University of San Andres, and Axel Rivas, Professor in Social Sciences at the University of San Andres, 2019 (“Multiple federalisms,” *University of San Andres,* Available Online at <http://www.aareconference.com.au/public/assets/e5c7aaf7f9/Session-book-with-full-abstracts-v6.pdf>, Accessed on 07-15-2021, Jackson Hightower)

In the case of federal systems, extra layers of complexity are added to the challenge of examining education policies and power relations in education. Federal systems challenge the use of the nation state as the taken for granted unit of analysis, since sub-national units can reinterpret national and global mandates differently, and can even produce their own initiatives independently from the federal level. Moreover, empirical evidence shows that federalism cannot simply be opposed to unitary systems. There are diverse institutional designs of federal systems that require detailed analyses of the effects that federalism might have on processes of educational governance. Thus, we argue that there are multiple federalisms, and that there is much work to be done in terms of mapping, interpreting and comparing the different ways in which federations govern education.

### 2AC – UQ – Overreach Now

#### EPA overreach is non-unique – multiple instances

Bosworth ’20 (Matthew, professor of political science at Winona State University, “The EPA and Federalism: A Pracademic Perspective” 7-2020, Political Science and Politics Vol 53 Issue 3, https://www.cambridge.org/core/journals/ps-political-science-and-politics/article/epa-and-federalism-a-pracademic-perspective/70FB3C144763A0652CE60DFCC6F7AB12//AF)

In the relationship between state/local governments and the EPA, both sides need to maintain trust. I saw some challenges to this. Regarding Section 401 of the Clean Water Act discussed above, under the administration’s proposal, states’ permitting authority would be effectively reduced, and the agency could override a state if necessary. In the public proposal on Regulations.gov (Docket EPA-HQOW-2019-0405-0025), though, the Agency claimed that the proposal “may not have federalism implications.” The agency pointed to a pre-proposal, in-person consultation that it had done with Big Ten groups, and a later webinar, as signs that state and local interests were not being ignored—but the EPA was claiming in principle that the consultation was not required. This reading might change in the final rule; if it stands, though, most states would interpret it as belying reality and demonstrating bad faith. A much larger challenge to federalism consultation arose in September 2019, when acting administrator Andrew Wheeler, apparently with presidential approval, revoked California’s waiver under the Clean Air Act that allowed the state to set higher auto emissions standards to combat climate change (Davenport 2019). Thirteen states had followed California’s lead in the stricter emissions limits. This decision was effectively preemptive of those states. There was no prior federalism consultation, as EO 13132 would seem to require, certainly in spirit if not in form, blindsiding states. A telling reaction came from the ECOS, the organization of state environmental agency officials. ECOS wrote Wheeler a letter stating in part “[We are] seriously concerned about a number of unilateral actions by US EPA that run counter to the spirit of cooperative federalism and to the appropriate relationship between the federal government and the states...” ECOS “respectfully demanded” a meeting with Wheeler to discuss its concerns—strong language from a group representing a wide range of states (Lee 2019). Seifter (2014b) says that states generally are effective in representing their interests as states per se, and ECOS was doing its part. The administrator, though, declined the requested meeting, stating that EPA officials were already consulting with ECOS on multiple issues; an additional meeting was not necessary. The dispute over California auto emissions might have long-lasting impacts on EPA federalism consultation. States in particular, along with intergovernmental association representatives, will likely have long memories about EPA’s ignorance of consultation on a very significant policy issue. From interacting with association representatives, I gathered that many had been in Washington for 20 or 30 years. Perhaps emblematic of the challenge to the consultation was a message from Wheeler containing updates to the agency’s Strategic Plan for 2018–2022 (EPA Press Release 9/9/2019). Strategic Goal 2 had been: “Cooperative Federalism: Rebalance the power between Washington and the states to create tangible environmental results for the American people.” The updated language was: “More Effective Partnerships: Provide certainty to states, localities, tribal nations, and the regulated community in carrying out shared responsibilities and communicating results to all Americans.” So “cooperative federalism” was being downplayed in favor of “certainty.” Immediately related to the California conflicts, but with wider implications, one of my EPA colleagues referred to “vindictive federalism.”

### 2AC – UQ – COVID

#### COVID thumps — federalism is already broken.

Kettl 20 — Donald F. Kettl, Sid Richardson Professor at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin, nonresident senior fellow at the Volcker Alliance, the Brookings Institution and the Partnership for Public Service, former dean in the School of Public Policy at the University of Maryland, recipient of the American Political Science Association’s John Gaus Award, the Warner W. Stockberger Achievement Award of the International Public Management Association for Human Resources, and the Donald C. Stone Award of the American Society for Public Administration, holds a Ph.D., M.Phil., and M.A. in Political Science from Yale University, 2020 (“States Divided: The Implications of American Federalism for Covid-19,” University of Texas at Austin, No Date, Available Online at <https://onlinelibrary.wiley.com/doi/pdf/10.1111/puar.13243>, Accessed 07-15-2021, Jackson Hightower)

The COVID-19 outbreak was, by any measure, one of the most challenging public policy problems in American history—and indeed one of the most complex that modern governments anywhere have faced. But amid the global challenges, the United States stands apart because of the highly devolved nature of its response. Although COVID-19 became a clearly national problem, the country did not meet it with a national response. Indeed, the Washington Post’s editorial board argued that creating a robust national testing system was “a uniquely federal responsibility,” a strategy that should have been “a Manhattan Project for the pandemic age.” Instead, President Trump “left the job to governors, and the nation is staggering under the consequences” (Washington Post 2020). For the success that the governors did have, the president took credit. He tweeted, “Remember this, every Governor who has sky high approval on their handling of the Coronavirus, and I am happy for them all, could in no way have gotten those numbers, or had that success, without me and the Federal Governments help. From Ventilators to Testing, we made it happen!” (Trump 2020b).

The nation’s strategy was built on a wobbly foundation, riven by great tensions of federal versus state power, and then with the states pulling in different directions. The state reactions, in turn, matched the different policy strategies of the states in many other policy areas as well. It is one thing to rely on “laboratories of democracy” to experiment with policy initiatives and determine which ones deserve wider adoption. But it is quite another for the nation’s response to a truly national problem to vary so greatly. The American response to COVID-19 underlines a growing truth about American public policy: The United States is a country with states moving in different directions, and these different directions have grave consequences for the wellbeing of Americans. The nation faced fundamental choices at the start of the pandemic: first, whether the federal government would lead on issues that were truly national in scope, but instead it pushed responsibility to the states; and then whether the states would seize the punctuation of the equilibrium to create a new governance regime, but instead they slid back into long-established and increasingly disparate patterns. At the core, this is the price of American federalism. The virus frames the question of whether that price is simply too high to pay when faced with the biggest policy challenges of the 21st century.

Is this price the inevitable result of James Madison’s strategy in 1787 to balance federal and state power, to nudge the Constitution toward ratification? The long history of American democracy is, in fact, one where the original compromise has fed division as well as experimentation in the laboratories of democracy. But in COVID-19, that grand compromise exacted a big price, with a federal government unwilling to act to frame a genuine national policy, with states going down different roads, and where the entire creaky system was too slow to act on a problem that paid no attention to state boundaries and that moved faster than government’s ability to keep up. Alexander Hamilton had framed an alternative vision, of a robust federal government powerful enough to push forward national policies to attack national problems. That, indeed, was the approach advanced with great success in the first weeks by Germany’s Angela Merkel, who took on her own state governments (Kupferschmidt and Vogel 2020). Even in Germany, tensions between the central government and the states began rising, although the national government was not shy about forcefully crafting a robust national policy, calling out the states for reopening too quickly, and for protecting the strong results that the country won in the important early weeks of the very long campaign against the virus.

The insidious complexity of the virus quickly demonstrated that the first decisions made by government officials were only the initial salvos in a far longer war that was to test the systems of government around the world. But it is impossible to escape the conclusion that the United States faced the virus with a system of governance that was not up to the job, in part because the initial outcomes were less positive than in other federal systems and because the treatment of citizens varied so greatly across the country. And the widely—sometimes wildly— varying responses of its governance meant that citizens suffered more than they needed to—and that they suffered more in some places than others.

Decisions about COVID-19 followed the broader strategies already in place: for the federal government to pass the buck to the states, and for the states to go their own ways, often in different directions. The result was a system of states divided, with deep and enduring implications for Americans and the pursuit of “equal protection of the laws,” as the Fourteenth Amendment to the Constitution so elegantly puts it.

#### At best, federalism is already weakening — COVID proves

Hodge 20 — James G. Hodge, Jr., Peter Kiewit Foundation Professor of Law, Director of the nationally-ranked Center for Public Health Law and Policy at the Sandra Day O’Connor College of Law, Arizona State University, Director, Western Region Office, Network for Public Health Law, recipient of the 2006 Henrik L. Blum Award for Excellence in Health Policy from the American Public Health Association, 2020 (“Federal vs. State Powers in Rush to Reopen Amid Coronavirus Pandemic,” *Just Security*, April 27th, Available Online at <https://www.justsecurity.org/69880/federal-vs-state-powers-in-rush-to-reopen-amid-coronavirus-pandemic/>, Accessed 07-15-2021, Jackson Hightower)

Even less defined are the legal ramifications behind the political grandstanding about reopening or maintaining stay home and other mitigation orders. National and state responses to COVID-19 are severely testing constitutional structural principles of federalism at the heart of public health responses.

Following multiple federal missteps early in the pandemic around testing, coordination, and messaging, substantial constitutional challenges have surfaced. On April 13, the president claimed all-inclusive federal power to require state action, specifically to open up the economy and override New York and other states’ mitigation efforts. Two days later he pushed responsibilities back to the states to follow forthcoming White House reopening guidelines. When some states balked, Attorney General William Barr threatened to sue states and localities whose infection control measures counter federal objectives. After Georgia laid out aggressive reopening measures, Trump criticized a political ally, Kemp, for proceeding too quickly (after initially supporting the governor).

Americans are left wondering, “which level of government is actually in charge here?” In the face of a pandemic like COVID-19, the answer under principles of federalism is increasingly clear: neither. Constitutional federalism is designed to assure political accountability at each level of government not so much through clear demarcations of power, but rather through incentives to engage in collaborative responses.

Assessing State and Federal Powers

The 10th Amendment reserves police powers, including inherent sovereign powers to protect the health, safety, and general welfare, to the states. This suggests states are primarily responsible to quell substantial threats like COVID-19. States like California, Illinois, New York, and Washington are calling their own shots, invoking strong emergency public health powers coupled with local government support. They and more than a dozen other states have banded together in regional alliances to generate their own roadmap to reopening. Their successes are winning political points for their governors among many, but not all, residents.

Trump has his own constitutional levers to pull. By declaring or endorsing multiple national states of emergency authorized by Congress, the president unleashed a bevy of emergency options, many of which have been used. Federal agencies like the Department of Health and Human Services, Centers for Medicare and Medicaid Services, and Centers for Disease Control and Prevention have issued influential guidance. Specific federal statutes or regulations have been temporarily waived. Liability protections for health care workers and others have been extended to insulate them from negligence claims related to their pandemic response efforts. Manufacturers have been cajoled into ventilator and PPE production via the invocation of the Defense Production Act.

None of these efforts require states to follow federal leads, but additional powers are even stronger. Exclusive federal authority to regulate interstate commerce is expansive. The attorney general’s threat of litigation against states is purportedly staked on grounds that social distancing has gone too far, inhibiting national commerce powers statutorily entrusted to federal agencies.

Under 42 U.S.C. 246, for example, the U.S. Surgeon General and Health and Human Services are authorized to take actions “necessary to prevent the introduction, transmission, or spread of communicable diseases … from one State or possession into any other State or possession.” State actions deemed in conflict with federal regulatory authorities may be preempted given the supremacy of federal laws. The Department of Justice may also raise additional arguments pertaining to blatant infringements of constitutional rights, including rights to travel, privacy, and due process, from overly-aggressive state actions. The Department has already intervened on behalf of a Mississippi church in a suit raising First Amendment objections to a municipal restriction on public gatherings.

In addition, federal spending powers allow Congress and the president to tie infusions of state assistance or relief funds to specific conditions, such as rescission of state business closures. While the federal government has not been so brazen yet to set such conditions, few states can afford to give up access to deep pools of resources.

In his invocation of the Defense Production Act, Trump has already intimated that COVID-19 implicates national security. Taken a step further, he could more formally classify the pandemic as a national security threat, providing even greater impetus for the exercise of existing federal powers to the possible exclusion of states. If tested in court, exclusive federal interests in protecting national security may prevail.

Federalism’s Bottom Line

The driving premise of federalism is that the division of powers across the federal-state divide enhances political accountability and assures American freedoms. Many see profound weaknesses in this constitutional infrastructure. Divergent responses among neighboring states and feckless federal interventions are sure to lead to disarray and litigation.

### 2AC – UQ – Trump

#### Trump proves

Cooper 19 — Ryan Cooper, National Correspondent at The Week, 2020 (“America's fake federalism,” *The Week,* April 19th, Available Online at <https://theweek.com/articles/909388/americas-fake-federalism>, Accessed on 07-15-2021, Jackson Hightower)

But in fact, the U.S. version of federalism is largely disintegrating or fake. On the one hand, President Trump's abject failure to coordinate a national response to the novel coronavirus pandemic has forced states to jury-rig new federal structures themselves. On the other, the rump federal government is not actually constructed according to federalist principles — it is a minoritarian system which grants certain states enormous leverage over national policy.

To begin, the Trump administration has refused to set up a rational system to allocate medical supplies like protective gear and ventilators across the country. The Defense Production Act allows the president to nationalize factories during an emergency, or instruct them to produce important materials, which any sane person would have done months ago. Trump still refuses to do this on a systematic basis, so states have been desperately bidding against each other and the federal government and foreign governments for supplies. Indeed, Trump's FEMA has routinely been seizing shipments of protective equipment en route to hospitals or state governments, for unclear reasons or purposes. Meanwhile, even after he stopped relentlessly downplaying the threat of the virus, Trump has continually undermined Democratic governors by blaming them for equipment shortages and testing delays.

Now Trump and the right-wing agitprop machine are beginning to demand that the economy be reopened long before the virus is under control. He recently falsely claimed that he has "total" power to decide when states should reopen, and while he characteristically backed off that statement later, on Friday he recklessly encouraged the tiny groups of right-wing nuts who have been protesting state-level restrictions (after watching Fox News, of course).

All this is why three groups of states have created ad-hoc coalitions to manage their fight against the epidemic. At time of writing, California, Oregon, and Washington have created a Western States Pact; Minnesota, Wisconsin, Michigan, Illinois, Ohio, and Kentucky have created another pact in the Midwest; and New York, New Jersey, Connecticut, Massachusetts, Pennsylvania, Rhode Island, and Delaware have created a third in the Northeast. More states are likely to join, or create their own pacts.

The basic point is to rationally deploy medical supplies and hospital capacity, coordinate relief efforts to the hardest-hit communities, and carefully manage the easing of lockdown measures across states to prevent new infection surges from crossing state borders. In other words, they are doing what Trump should have done this entire time — except incompletely, and without nearly the resources available to the federal government.

A federal system has some advantages, but the lesson is that individual regions simply cannot go it alone when faced with a nationwide emergency. There must be an overarching authority to manage the overall response — because if there isn't, states will be forced to create one on the fly. What we're seeing today is precisely why the Articles of Confederation was abandoned as an unworkable mess.

That brings me to the anti-federalism of the American Constitution. If we had a true federal system then Donald Trump would not be president today. Again, the point of federalism is local control over local politics. But our goofy, anachronistic Electoral College gives small states enormously greater weight over national politics — in 2016, a vote in Wyoming counted 3.5 times as much as one in Florida, while one in Vermont counted 2.9 times as much as one in North Carolina. It is theoretically possible to win the Electoral College while losing the popular vote 4-1 — and while that is an unlikely scenario, Trump indeed won in 2016 despite receiving fewer votes. Moreover, because Electoral College votes are allocated on a winner-take-all basis, in practice only those states which randomly happen to have a close partisan balance get any campaign attention. Fully 96 percent of all presidential campaign events in 2016 happened in the 12 swing states; both the largest and smallest ones were almost totally ignored.

The Senate is even more unfair. All states get two senators regardless of population — meaning Wyoming (population 579,000) and California (population 39,500,000) get the same number of seats. More people live in the largest three states (California, Texas, and Florida) than do in the 32 smallest ones. States representing just 16 percent of the national population can assemble a Senate majority, and ones representing just 10 percent can mount a filibuster — yet another ridiculous anti-democratic anachronism.

This is not federalism, it is tyranny of the minority. It is a system in which smaller states and randomly evolving swing states get to dominate the national community — and while some red states like Texas are disenfranchised as a result, as we see today the overall result is heavily biased towards conservatives. If the Constitution ever does collapse as the Articles of Confederation did, what replaces it should begin with the principle of one person, one vote.

Our broken Constitution has given America the most inept and corrupt president of all time. If we could instead pick a president by whoever gets the most votes, we might reduce the chance that the next one will horrifically bungle any crisis that strikes.

### 2AC – AT: DA Solves Case

#### Federalism fails as an approach to improve water quality

**Secchi and McDonald 19** [(Silvia Secchi, Associate Professor in the Department of Geographical and Sustainability Sciences at the University of Iowa, holds Ph.D. in Economics from Iowa State University. Moira McDonald, director of the Environment Program at the Walton Family Foundation, undergraduate degree in environmental science from Brown University, master’s and Ph.D. in geography from the University of Minnesota.)”The state of water quality strategies in the Mississippi River Basin: Is cooperative federalism working?”, Science of the Total Environment, V. 677, pg. 241-249, 8/10/19, https://www.sciencedirect.com/science/article/pii/S0048969719319266] NY

**In this study we assess for the first time the effectiveness of the policies used to address nutrient pollution in the Mississippi Atchafalaya River Basin (MARB) with a NPS focus. These polices are based on cooperative federalism and thus give large autonomy and power to the states. This analysis provides a case study relevant to the management of water pollution in agriculturally-dominated watersheds worldwide**. In most OECD countries, which are comparable to the US in terms of technology and institutional development, a mix of regulatory requirements and subsidies are used to reduce NPS pollution (Parris, 2011). Australia is the exception in that it uses mostly regulatory requirements. The US is at the other end of the spectrum, heavily depending on subsidies to reduce NPS pollution (OECD, 2015). The results presented here are particularly relevant to places such as the European Union, since its policies are based on the subsidiarity principle, and its member states rely in part on voluntary financial incentive programs (OECD, 2015). **This analysis can also inform broader discussions on the effectiveness of decentralized approaches to water quality management.**

**At the federal level, there are two main source of funding broadly related to improving NPS pollution: 319 funds from the Clean Water Act (****U.S. Environmental Protection Agency, 2016a), and funding from the conservation title of the Farm bill. These funds are supplemented by local and State efforts, which have different temporal and spatial scales. There is no consistency in the reporting approaches, and this drastically reduces the capacity to observe whether there has been an alignment of funding with NRS priorities across the watershed. Only half the states provide in one way or another information on funding levels, sources and uses. Among these six states, there are substantial differences on the degree of granularity and on what is included in the reporting** (Fig. 3. See Supplementary Material 3 for details).

The lack of consistency creates further problems because all states included in the analysis, with the exception of Louisiana, do not report additional funding to address the NRS in priority watersheds, but include all funding for the whole state. This is problematic from an additionality standpoint, as counting funding from predating programs likely causes the inclusion of activities that have different priorities than water quality, or of preexisting programs which are not targeting the specific problems and watersheds delineated in the NRS. Most importantly, these programs' activities and their impacts on water quality are already implicitly included in the baseline from which the reductions need to take place. This is the case for the Conservation Reserve Program and the Wetland Reserve Program (now subsumed into the Agricultural Conservation Easement Program), which have long-term contracts. Iowa and Indiana both report CRP rental payments, but many of these payments are for fields that were enrolled in the programs well before the NRS process, and so their benefits are already included in the baseline.

Broadly speaking, the lackluster progress of the NRS-state led approach outlined here, and the loose oversight that EPA is exercising in meeting the Stoner memo criteria are significant indicators of the lack of ex post program evaluation in environmental policy (Harrington et al., 2004), which today seems to be largely left to the courts. **Further, the lack of coordination in initiatives across the watershed** (with the exception of the MRBI) **shows the continued abandonment of a holistic watershed approach** (Cooter, 2004).

**Overall, due to lack of targeting and scientific basis for the watershed prioritization, omission of CAFOs in the strategies, lack of understanding of the spatio-temporal patterns of benefits, poor implementation, and insufficient additional resources, it is apparent that the current crop of strategies is not being effective at improving water quality in the watershed** and in the [Gulf of Mexico](https://www.sciencedirect.com/topics/earth-and-planetary-sciences/gulf-of-mexico). In **some states** such as Minnesota, the strategies and the process preceding their development have created or added impetus to state-level activities to address NPS pollution, but in others, **such as Kentucky, they have not spurred any meaningful efforts. Thus, for the basin as a whole, the current approach is not working. A recent development illustrates how the states are largely stalling, and ignoring science in the process.** In early 2019, the Iowa Environmental Protection Commission (EPC) denied the petition brought forth by environmental organizations to implement Numeric Nutrient Criteria for recreational lakes, on the basis that the proposed criteria lack a scientific rationale, though the criteria were based on a 2008 recommendation from a well-known and respected group of experts from all state universities and the Department of Natural Resources. If NNCs have become so contentious they are being ignored, more fundamental reconsideration of the current approach may be necessary.

# Water Colonialism K Answers

### Counter-K---Ecological Indian

#### Romanticizing Natives as ecologically pure is a settler trick used to extend MAGA settlerism and denigrate indigenous peoples

Gilio-Whitaker 17, Policy Director and Senior Research Associate at the Center for World Indigenous Studies, (Dina, “The Problem With The Ecological Indian Stereotype,” *KCET*, <https://www.kcet.org/shows/tending-the-wild/the-problem-with-the-ecological-indian-stereotype>)//BB

We’ve all heard it a million times: Native Americans are the original environmentalists. Not that it’s not flattering. In a country whose history is built and maintained on the erasure of the “inferior” indigenous population, as a Native person I can say it’s nice to get credit for something once in awhile. Nor is it entirely a falsehood. It’s true that indigenous peoples in the U.S. (and around the world) tend to have relationships with the land and the environment that are qualitatively different than populations built on imperialism and heavy industrialization. But to apply to them the blanket statement that they are “original environmentalists” is to overlook the meaning of the concept of environmentalism on the one hand, and on the other to mischaracterize Native peoples’ actual relationship to land. It creates an impossibly high standard to live up to, exposing Native peoples to dangerous policy objectives when they fail to meet those standards. Euphemistically called the “ecological Indian” stereotype,[1] it has its roots in the earliest portrayals of Indians by European settlers. Back then, though, they were not the celebratory representations they are today. They hark back to a time when Native peoples were generally understood as so inferior that they were not even fully human. Consider the words of George Washington: “Indians and wolves are both beasts of prey, tho’ they differ in shape.” To Washington, Indians were clearly no different than animals, indistinguishable from any other form of wildlife. They lurked about in the wilds of the “untamed” landscape, attacking without cause. Naturally, this informed Washington’s policies toward them (which were largely war and displacement), earning him the Iroquois moniker “Town Destroyer.” In the settler imagination Native people had to be constructed as less than human in order to justify settlers’ relentless and often illegal incursions into Indian lands. Now safely disappearing, the noble savage could be enshrined into America’s romanticized narratives in which settlers as the rightful inheritors of the land were destined to replace the primitive indigenes. The ecological Indian is thus a mixed bag of beguiling messages. He is part of a larger phenomenon in the American cultural landscape, one that is a reflection of the country’s ambivalent relationship with indigenous peoples. By the 1960s, when disaffected American youth began waking up to their spiritually and morally bankrupt society, they looked to indigenous peoples for answers. The counterculture movement was born, and back to the land the hippies went, bedecked in beads, feathers, and buckskins. There they lived in pseudo tribal communities (which invariably involved tipis), and flocked to Indian reservations to learn Native wisdom. They learned that Indians had a different, more harmonious relationship to the land. The intensely romanticized savage Indian was redeemed. But he became the symbol of renewed hope for America, the possibility to return to a simpler and more honorable past. At its core, however, the trope of the ecological Indian symbolizes an idealized — and largely fictitious — appeal to a perceived lost purity, and in the words of Noel Sturgeon, is “the founding moment of conservationist or preservationist environmentalism.”[2] Preservation and conservation was the language of the earliest environmentalists, beginning in the early twentieth century with the creation of the National Parks Service. Both imagined a “pure” environment, either free of human interference, or in need of a highly regulated human presence. Either way, the environment was seen for its utilitarian value relative to humans. In other words, humans were viewed as as separate from, and even a threat to, a pristine natural environment. Yet indigenous peoples hadn’t just lived sustainably in virtually all of the landscapes on the continent for thousands of years; many Native nations are also known to have had complex land management practices. That these facts were and are systematically ignored was part of larger patterns of erasure, genocide, and dispossession.

### Counter-K---Ecological Indian

#### Native ecology is epiphenomenal, not intentional. Statements to the contrary rely on violent essentialism that violate indigenous humanity.

Rodrigue-Allouche 15, MA Uppsala, Dept of Archaeology and Ancient History, (Sarah, “Conservation and Indigenous Peoples The adoption of the ecological noble savage discourse and its political consequences, Proquest Theses)//BB

As shown above through colonisation, indigenous peoples have been conceived as biologically inferior to White people, in an ethnical hierarchy and justified by so-called science. In the late 20th century, as scientific racism was discredited, another cultural stereotype started to emerge; the idea that culturally, Indigenous peoples are closer to Nature. But this idea might only be another display of essentialism.

1. Indigenous peoples and their environment: intentional or epiphenomenal conservation?

The idea that indigenous peoples respect their environment probably stem from the fact that most environmental degradation was caused by state societies whereas hunter-gatherer tribes certainly had less impact (see Borgerhoff Mulder and Coppolillo 2005). Besides, comparative studies have shown a correlation between the presence of indigenous peoples and high biodiversity whereas the presence of non-indigenous is correlated to low biodiversity (Redford and Robinson 1987). However, it is unavoidable to ask whether this is intentional or simply a consequence of a certain lifestyle correlated to a low population density and a low access to technology. Indeed, anthropologist Eugene S. Hunn was the first scholar to emphasise the intentionality factor in conservation; in a 1982 article he distinguished epiphenomenal (or side-effect) conservation from intentional conservation. In 2000, anthropologist Eric Alden Smith and forester Mark Wishnie followed Hunn’s lead and defined the term ‘conservation’ as actions preventing or mitigating biodiversity loss and designed to do so. Smith and Wishnie (2000: 493) in a review of existing research concluded that intentional conservation amongst indigenous peoples or what they called ‘voluntary conservation’ is rare. Below, I will review the debate around epiphenomenal conservation according to Hunn’s definition. In 1987, Redford and Robinson, compared hunting yields of sixteen native groups in the Amazon to six Peruvian and Brazilian backwoodsmen. Their study demonstrated that colonists had hunted a more limited number of species and had a more negative impact on the game populations because of factors such as a greater population density, catering to extra local demand, and a more efficient technology. On the other hand, because Native Amazonians took a wider variety of game, they had a less significant impact on game populations than colonists. It is very hard to assess whether this case is one of intentional or epiphenomenal conservation. In effect, it is ethically problematic to decide for other peoples if their practices constitute conscious choices or are simply necessary. I wish to advocate to keep in mind when reading such data that Indigenous communities are constituted of many individuals who each have different preferences and understandings of the world; and not to deny individuality to those who belong to Indigenous tribes. The debate on epiphenomenal vs intentional conservation intensified among the scholarly community when American anthropologist Shepard Krech III published a book aiming at debunking the idea of ecological-friendliness among Indigenous peoples. He postulated that Native Americans did not follow conservation practices before contact with Whites and overused resources during the contact period. Krech concluded that although Native Americans understood complex environmental interactions, they made no systematic efforts to conserve game species. Researchers in anthropology, biology and archaeology have since been debating about indigenous peoples and conservationist practices. In 1994, Allyn MacLean Stearman declared that the idea of ecological nobility was due to a few ethnographic cases that had been indiscriminately generalized to all indigenous peoples (Stearman 1994: 2). I agree with Stearman that generalisations do not form the basis of sound conclusions. Indeed, anthropologist Michael S. Alvard researching the evolution of human behaviour demonstrated that conservation most likely occurs under restricted circumstances. Using foraging theory in order to determine the hunting preferences of the Piro hunters in the Amazonian Peru, Alvard stated that Piro hunters make decisions consistent with foraging theory predictions 25 and do not hesitate to kill game identified as vulnerable to over-hunting (1993). Alvard (idem.) stresses that although indigenous peoples have an intimate knowledge of their environment, there is not enough empirical evidence to state that they use this knowledge in order to maintain equilibrium within the ecosystems surrounding them or to sustain their resources. In 2002, the University of Wyoming hosted a conference entitled Re-figuring the ecological Indian which led to the publication of a volume edited by Harkin and Lewis (2007). Many supported Krech’s claim that Native American practices were not aimed at conservation of resources. American social anthropologist Ernest S. Burch who had been doing research on the historic social organization of the Eskimo peoples in the Artic, notably demonstrated that Native Alaskan hunters drove a number of species to local extinction (Burch 2007). Burch concluded that nearly all groups harvested sustainably until the arrival of Europeans, but sustainability was un-intended. The introduction of breech loading rifles and the high trade value placed on local hides and furs led to cases of over-harvesting. Hence, Burch (idem.) supports the hypothesis of epiphenomenal conservation. But is indigenous technological efficiency really limited? If epiphenomenal conservation is a consequence of limited technology, it is essential to assess the efficiency of indigenous weapons. In 1978, anthropological Eric Ross fostered a controversy when he advanced that traditional indigenous hunting technology can be more efficient than modern western technology and that shotguns have reduced the efficiency with which certain important animals can be killed (quoted in Yost and Kelley 1983). If Ross’s statement is correct it supports the view that Indigenous peoples are intentional conservationists because they do possess the technology to overkill. Many anthropologists have since published data to counteract Ross and assert that indigenous technology is less efficient and does not allow hunters to kill the same species of animals that a shotgun would11 . For instance, Hames responded with extensive data indicating again that the shotgun is a far more efficient weapon than the bow (quoted in Yost and Kelley 1983). However, despite the controversy it can be established that the efficiency of indigenous weapons’ efficiency is undoubtable. In 1979, Chagnon and Hames demonstrated that the bow and arrow are quite adequate to provide population with sufficient levels of protein (idem.). In the same vein, Yost and Kelley (1983) were the first anthropologists to advance data supporting the efficiency of the blowgun and spear as I will develop in the next part. The fact that many indigenous societies rely on common-property regimes could also strengthen the hypothesis of epiphenomenal conservation is also strengthened. Indeed, common-property regimes might encourage a wise utilisation of resources. For instance, anthropologist Flora Lu conducted fieldwork among the Huaorani of Ecuador who function on a common property regime in which people are free to choose any available location to clear a plot of land for a garden (Lu 2001: 433), and concluded that when people live in small sub-populations of closely related kin, they are much more accountable to each other (Lu Holt 2001: 439) – a situation which probably encourages the preservation of resources and thus indirectly fosters conservationist practices. Common-property regimes could thus result in epiphenomenal conservation; although in 1968, American economist Garrett Hardin asserted that in a situation of open-access resources, depletion would soon occur (Olstrom 1990, 2005; Berkes et al. 2000; Berkes 2004; Olsson et al 2004; Barthell et al 2013b; Ruiz-Mallén and Corbera 2013). Although indigenous conservationist practices may seem to be cases of epiphenomenal conservation, a few famous case-studies of indigenous resource management attest that indigenous communities can be deliberate conservationists. One of them was published by American anthropologist and ethnobiologist Eugene Hunn and colleagues (Hunn et al. 2007) and relates the traditional gull-eggs harvests in Glacier Bay National Park and Preserve in Alaska, indicating that the 11 Beckermann, Good, Nietschmann and Vickers all reacted promptly in Current Anthropology (Volume 19, 1978) to contradict his contention that traditional technology was more effective than the shotgun 26 Huna Tlingit peoples possess an extensive knowledge and understanding of the glaucous-winged gull nesting biology and behaviour. Traditional gull-eggs harvests seem to represent a case of intentional conservation. Another case-study of intentional conservation is Harvey A. Feit’s presentation of conservationist hunting practices of the Waswanipi Cree peoples. An essential component of Waswanipi’s cosmology is the north wind spirit, the chuetenshu, who provides men with enough to eat as long as they respect other species. Here, the link between Waswanipi’s cosmology and the sustainable use of resources is obvious, as Feit emphasises that the hunter must act responsibly towards the game and the north wind spirit (Feit 1973: 76). Waswanipi hunting seems well to be a case of deliberate conservation because hunters possess the skill and technology to kill many animals but it is part of their responsibilities to abstain from killing more than necessary, and not to kill for enjoyment or prestige (idem.). Overall it is important to bear in mind that conservation can only occur when people are aware of resource scarcity, which is far from being the rule. Indeed, anthropologist Natalie Smith conducted interviews among the Machiguenga people in the Peruvian Amazon to understand their management patterns. When asked why the amount of game had decreased around the village, Machiguenga men interviewed replied that animals had been scared or that they were hiding. Many people declared that the amount of animals had remained the same or increased, simply they were further away from the village (Smith 2001: 435). Moreover, although the fallow time had significantly decreased these past decades, when asked about the decreasing yields, informants asserted that poor seeds or spiritual contamination were responsible for poor yields and not soil problems. Smith also interviewed the men hunters to find out if they avoided killing pregnant and younger animals, but the informants replied they could not make any distinction (idem., p. 446). Smith makes it clear that the Machiguenga are not conservationists; it is no criticism but simply a fact that the Machiguenga lack the social structure and information necessary that would enable them to carry out informed conservation. This is common to many indigenous societies which lack awareness of resource scarcity and thus where conservation cannot exist. Indeed, Lu Holt (2001: 432), in connection to her fieldwork with the Huaorani of Ecuador, wrote that she was repeatedly told by the community that no resources were rare or scarce. On the basis of the review I gave above, I contend that it is impossible to generalise over the question of intentional or epiphenomenal conservation. It seems that each indigenous society constitutes a unique case. Though indigenous communities have institutions in place to manage resources sustainably, it is unclear to what degree this can be called intentional conservation or not; these practices also rely on very distinctive cosmologies and social negotiations. Thus, conservation does bring a foreign concept in indigenous cosmologies, as I will develop further later. But before going into this I want to stress that indigenous peoples are not conservationists but merely humans.

2. Indigenous peoples, merely humans

A broad scholarship has demonstrated cases of environmental destruction among indigenous peoples. In 1985, American anthropologist A. Terry Rambo claimed that the Semang, a nonindustrial small-scale society of Peninsular Malaysia, affected their environment in some ways as much as or even more than industrial societies. Other scholars have raised case-studies to demonstrate that environmental destruction is a common feature among human societies, whether indigenous or not., world-famous American cultural geographer Jared Diamond presented well-documented examples of environmental indifference or destruction by tribal peoples in his book Collapse (2005). In the contemporary controversy around indigenous peoples and ecological nobility, two sides emerged: some people use data demonstrating that indigenous peoples have wreaked havoc on their environments in order to dispossess them of their rights, whom Diamond qualifies of ‘rac- 27 ists’, while others reject such scholarship because it threatens Indigenous peoples’ status of ecological angels (Diamond 2005: 8-9). Diamond acknowledges that indigenous peoples do not like to be told that their ancestors caused damage to the ecosystems because it seems that this assertion prejudices their rights to land ownership (idem.). However, although it has become politically incorrect to assert that indigenous populations wrecked damage on their environment, this fact simply points out our common humanity. The interest of Diamond’s work lies in its clear emphasis that all human societies share the same human traits, that very different societies located in different times and spaces have had negative impacts on their environments, and oftentimes were powerless over their own impacts. Indigenous peoples do not fundamentally differ from modern First World peoples; indeed, managing environmental resources has always been a challenge since mankind developed inventiveness and hunting skills around 50 000 years ago and wherever humans settled, large animals which had evolved without fear of the human species underwent destruction (Diamond 2005: 9). It is paramount to understand what being human entails, no matter where one originates from. By emphasising our common humanity, researchers’ work can help tearing apart essentialism.

#### Ecologically noble savage myth undermines self-determination

Rodrigue-Allouche 15, MA Uppsala, Dept of Archaeology and Ancient History, (Sarah, “Conservation and Indigenous Peoples The adoption of the ecological noble savage discourse and its political consequences, Proquest Theses)//BB

In this thesis, I have argued that the claim of indigenous ecological nobility fosters an unethical kind of environmentalism relying on power dynamics between white environmentalists and complex, heterogeneous and changing indigenous peoples. The ecological noble savage idea is based on epistemological racism which has been subtle within environmental movements’ discourse since the 19th century. Dichotomies between nature and men led to essentialism regarding Indigenous societies. If the most archaic form of essentialism, which described Indigenous peoples as barbaric and inferior, gradually disappeared after the Second World War, the most positive form of essentialism ascribing them the role of ecological noble savages has resisted up to today. Indeed, it is much harder to dismantle positive stereotypes than negative ones. Attachment to place and traditional ecological knowledge of a certain region are undeniable but, as I have argued here, the belief that indigenous peoples are intrinsically conservation stewards is a myth, in which we should not buy if we want to adopt an ethical approach to protecting our world free from power dynamics. If we do not want to fall into the trap of racism, hegemony, neo-colonialism and domination, it is essential to rethink environmentalist attitudes towards Indigenous Peoples. The ecological crisis we currently face calls for a common response and a common concern. It is every nation’s responsibility, as well as every individual’s duty to protect our threatened Earth. I suggest that it is time to reconsider a more inclusive way to conceive environmentalism, not based on differences but based on our common destiny as humans. Indeed, in this thesis I have tried demonstrating that stereotypes - even positive - towards Indigenous peoples have been a source of misunderstandings and confusion within the conservation movement. It seems that the main task lies in finding the right balance between human species and non-human species. The quest for ecological protection might be the quest for the balance between species. Alliances between environmentalists and indigenous peoples should be questioned because of their history of ambivalence and failures and contentious confrontations. As I have tried to highlight, land rights relying on conservation aptitudes are doomed to failure and those two concepts should not be mixed and misused. Comparing land rights struggles for indigenous peoples in Amazonia and Australia triggers a reflection about ethical land rights policy in the 21st century. Land stewardship has been used as a political tool, appealing to various stakeholders, to policymakers in global environmental governance, to scientists working for conservation programmes as well as to Indigenous peoples themselves. However, ecological nobility has presented many dangers and shortcomings when used as a political tool. Traditional ecological knowledge and community-based conservation have sometimes been disregarded or abused by policy-makers. Locked in a role of ecological noble savages, indigenous peoples have not benefited from selfdetermination as much as they could have expected given the United Nations declarations

#### The K relies on racist essentialism that feeds neo-colonial power structures

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But if biological racism has weakened, cultural racism that stems from ethnocentrism (see LéviStrauss 1952) is still very strong. In the case of racism towards indigenous peoples, the cultural stereotype that indigenous peoples are closer to Nature has not faded as I am arguing here. As has been argued here the ecological noble savage myth conceals a form of essentialism. Hence, the myth of ecological nobility carries two ethical and academic issues: first creating and oversimplifying an ʻotherʼ as a subject and defining her/him within a static essence and judging another culture according to one’s values. First of all, to define indigenous peoples as noble savages is undoubtedly essentialist. Essentialism can be defined as “the practice of regarding something (as a presumed human trait) as having innate existence or universal validity rather than as being a social, ideological, or intellectual construct”13. Essentialism is thus correlated to racism, whether it is negative or positive. In his book The Nature of Prejudice, the American psychologist Gordon Willard Allport defined racism as an antipathy based upon generalisation that can be directed toward a group as a whole, or toward an individual member of that group (Allport 1954: 4). But racism, is not restricted to negative generalisations. It is also expressed in any kind of generalisation towards other ethnic groups. Thus negative racism and positive racism have more in common than could be assumed. Indeed, Broome classifies the noble savage myth as a variant within the narrative of savagery. As previously developed, I patently agree with Broome that noble savagery is solely a variant from the savagery myth. The romantic idea of the noble savage quenched the need of exoticism among intellectual Europeans and also influenced Pacific explorers in search of exoticism (Broome 2010: 19), in sum these explorations were part and parcel of the need to identify oneself in opposition to an ‘other’. In the case of the Australian colonisation, the view of ecological noble savagery coexisted with that of ignobility and wildness. Among the social elite, namely the British admiral and first governor of New South Wales Arthur Phillip and his officers, the idea of noble savagery predominated; but to the vast majority of the settlers, the convicts, Aboriginal people were plain savages. As Broome argues both views were social constructions: The idea of savagery predominated because it suited the context of land-conflict and the idea of nobility soon faded with the reality of contact (Broome 2010: 19). Both views were undoubtedly two sides of the same coin. As Bal (1996: 4-5) emphasises, whether it is a positive or negative form of essentialism, the narratives of the discourse are closely related; both forms of essentialism rely on the same dichotomies, simplifications and categorisations. Neither idea was a sound basis for practical relations with the Eora for, as Broome says, the Eora were neither noble nor savage, but rather human and different (Broome 2010: 19). On this point, I strongly agree with Broome; for the Eora, just like any other Indigenous people, held a unique worldview and it is merely simplistic and ethnocentric to classify them under a savagery label. The Eora were civilised in their own way, as Broome advances, they were guided by their own moral code and their own law. Conversely, the newcomers on the Australian continent among whom many were convicts, could have appeared as savages. The problem is that the myth of the noble savage informs other myths of primitivism. The combination of opposites, the binary thinking between barbarism and civilisation position such myths to be taken as granted as apparent truths (Bal 1996: 4-5). Although essentialism is harmful, stereotypes are very hard to uproot, because they help us making sense of the world. In his book Public Opinion (1922), American journalist Walter Lippmann defined stereotype as a simplification guiding our perception of others and our integration of information (Poata-Smith 2015). Perhaps it is impossible to be free of stereotypes; as Allport (1954) contended. Language itself can never be fully neutral: Stereotypes are embedded in our thinking, they foster subtle racism in our thinking because they bolster differences between groups and assume homogeneity in other groups. One major issue is that stereotypes actually tend to mainly be directed to and disadvantage minorities (Devine and Elliot 1995). Simplifications provide general expectations about social groups and simplify the demand of perceiving and evaluating group members as individual (idem.). Following Allport’s lead, Devine and Elliot underline that simplifying groups identities often makes it easier for outsiders to perceive these entities, the same way as it was easier for colonisers to homogenise indigenous or aboriginal groups (Mc Gloin 2015). However, these simplifications do not respect the differences and particular identities of indigenous peoples. To the question “what is Indigeneity today?”, the noble savage stereotype responds by a static immobile definition that denies Indigenous peoples the right to self-determination and the fundamental human right of acknowledging their culture as dynamic and changing. For all those reasons, the concept of ecological nobility when applied to Indigenous peoples is an example of essentialism. As previously stated in the introduction, Australian Indigenous scholar Michael Dodson emphasised the importance of self-definition for Indigenous people worldwide and stated that indigenous peoples should be free to evolve according to each generations’ aspirations and to live outside the cage built by other people’s images and projections (Dodson 1993, 2003: 31). The perception of Indigenous peoples as ecological angels has been denounced as racist in the non-European world as well. From October 14th to 19th 2013, Uppsala University hosted a symposium “Re-Claimings - Empowerings - Inspirings”, to encourage research for and with indigenous peoples, minorities and local communities. Kaori Arai, a PhD student at Rikkyo University in Japan, related the controversy that occurred between researchers and the Ainu people in the post-war context. The Ainu peoples were the indigenous peoples of Hokkaido, slowly subjugated by the Waijin who thought it their duty to civilise them. Robertson (2009) recounts that the scientific study of Ainu people constituted a fierce tragedy for their skulls, as remains were examined by the Waijins in the 1980s without any approval from the families. First seen as barbaric, ugly and inferior, they were then turned into the complete opposite. Philosopher Umehara Takeshi embraced a narrative of harmony with nature when he published with the controverted anthropologist Hanihara Kazuro in 1982 the dubious Are the Ainu the original Japanese?. In 1985, Fujimura Hisakazu praised Ainu oral traditions and their harmony with nature in the book Ainu, the people who live with the Gods. No longer were they seen as ethnically inferior but simply perceived as closer to nature. According to Kaori Arai though, quoting the Japanese historian Takeshi Higashimura, the narrative of harmony with nature may simply be a reappearance of race theory under an ecological disguise. Indeed, essentialism and prejudices do not stop at the door of the academic world. Oversimplifications that cultural stereotypes embody have been and continue to be part of the academic world. James R. Martin from the University of Sydney, discusses how racism infiltrates scholarly discourse analyses and states that racialised relationships between the researcher and the researched should be thoroughly examined (quoted in Poata-Smith 2015). Similarly, Scheurich and Young (1997) stated that epistemological racism occurs when the research epistemologies arise out of the dominant culture and history while excluding other cultures’ epistemologies. Because the ecological noble Indian myth arose out of European social history and culture while excluding Indigenous cultures, it is reasonable to advance that the myth reveals epistemological racism, as has been discussed above several times. Although positive in appearance, the noble savage myth reflects the worst racism, the invisible one, the one we participate in without consciously knowing or intending it (see discussion in Scheurich and Young 1997: 12). The epistemological racism expressed towards indigenous peoples through the stereotypes of the Noble Savage during the colonial era is related to the stereotype of the ecologically Noble Savage expressed by environmentalists. Indeed, just as Enlightenment philosophers projected their 31 values on colonised peoples, environmentalists projected their worldviews on the populations they encountered. American anthropologist Paul Nadasdy (2005: 298) argues that the ecological noble savage myth began with the late 19th century conservationists George Bird Grinnell and Gifford Pinchot who were interested in Native American tribes and claimed that Native Americans were original conservationists. The approval of indigenous peoples, were granted on the condition that they embrace certain lifestyles and practices appealing to white environmentalists. This as Nadasdy (idem.) points out, poses a real threat to human rights recognition and implicitly means that indigenous peoples have value solely if they do certain things and believe in certain concepts. Interpreting another people’s worldview through the lens of one’s own paradigm, as well as praising certain beliefs because they fit within the white man’s belief system seem to be a manifestation of power dynamics at play. This stereotype reflects one way western pracitioners and researchers have been making sense of distant cultures they could relate to only from the outside. Ellingson (2001) argues that Western value system still pervades every assumption we make about distant romanticised characters. Used by environmental NGOs to praise Indigenous supposedly ecological societies, the myth serves as a tool to accuse Western modes of production; capitalism and individualism.

#### Ecological stereotypes cause political disenfranchisement in every non-environmental matter

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The ‘Noble Savage’ stereotype of the North American indigenous is a different type of creature than, say, stereotypical portrayals of Arabs or Africans, who are supposedly savage savages. The ‘Noble Savage’ in North America has a profound connection to nature. His primeval relationship with the land, water, and wildlife illustrates his innocence and reveals an authenticity of sorts. His desire for a clean environment is pure. His existence is not infiltrated by commerce, industry, learning, or any other complex machination of modern life. When he speaks of the environment, or, rather, when he sheds a tear for the environment, we should listen intently. In the Canadian context, these stereotypes are being used advantageously by some First Nation activists against both the Gateway Pipeline and the Alberta oil sands, even though they have a much broader agenda. Their strategy is to seek the support of other nations to exert pressure on Canada so that their otherwise ignored concerns, are heard. By exploiting the ‘Ecological Indian’ or ‘Noble Savage’ stereotype, they tap into the special fascination many European and other countries have for North American indigenous populations, seeing them as objects of reverence and fascination. In pursuit of this objective is the tireless Dene Elder Francois Paulette, whose battles with Ottawa a generation ago, launched the era of modern land claims. Paulette, who easily fits Twain’s physical description of the “noble red man,” has travelled around the world taking full advantage of orientalist attitudes in gaining access to leaders who, to put it colloquially, are far above his pay grade. This photo of Elder Paulette paddling British Royalty in his canoe on Blatchford Lake in the N.W.T. speaks eloquently to the stereotype. When the G20 was held in Toronto for example, Paulette showed up to make his case for the cancer affected aboriginal residents downstream from various oil sands projects. Resplendent in braids, beads and a fringed buckskin vest, he was followed by television cameras wherever he went. Before the end of the proceedings, he miraculously gained access to several European heads of state when he was invited to dine with them. This was especially interesting, as our own Prime Minister did not have the time of day for Mr. Paulette and no other NGO or scientists received such attention. The meeting may have been shrugged off by the Canadian politicians as a publicity stunt, but, a year later, as the European Union contemplated introducing trade restrictions on the import of Canadian Oil Sands oil, suddenly Prime Minister Harper was on full alert, attempting to counter the claims made by Paulette and his aboriginal and non-aboriginal supporters. Paulette’s speech to the UN climate change conference in Durban is another example, where he evoked the stereotypical images of the ‘Ecological Indian’ very effectively (see YouTube video clip from 5:29 to 9:07). Although these interventions gain exposure to the environmental issues, they are also potentially problematic. If aboriginal peoples are reduced to caricatures, two kinds of effects are generated. On one hand, when First Nations groups protest on environmental issues their concerns are taken seriously, as Mr. Paulette’s reception internationally attests. After all, being at one with nature is the most important aspect of a native person’s existence, is it not? The stereotype gives positive credibility to the speaker, but while his words get the attention the issue requires, the one dimensional characterisation can carry a potentially large price tag. If Aboriginal advocacy on the environment gets attention only because of the racist view that indigenous people are inherently limited this narrow area of expertise, then virtually any other issue is relegated to secondary status, for example, their advocacy for other critical issues such as improved health care, resource revenue sharing, economic development, education or self government. Even within the environmental sphere, an infantilized conception of environmental protection can be generated by the ‘Noble Savage’ or ‘Ecological Indian’ stereotype, one that denies that indigenous people are sufficiently able to contemplate the social, political, and economic complexities that engage any real discussion of environment. After all, the implication is, what do these naturalists know about industry? The pipeline will generate hundreds of millions of dollars and creates thousands of jobs. Their protest is ignorant of such weighty concerns, or so it is said. Surely, no rational person could value a few caribou, swamps and trees over the massive economic wealth these projects would create for our country. It is these childlike simplifications promoted by the media and the oil companies that make serious advocacy difficult for indigenous groups in Canada. Their demands are taken seriously in one specific sphere, but are rendered insignificant in others that are vitally connected to it.

#### Claims of ecological friendly indigenous peoples are inaccurate and victimizing – turns their impact

**Krech 99** - Professor: Anthropology and Environmental Studies

(The Ecological Indian: Myth and History, conducts research on the intersections of humans and the natural world; anthropology and history, and material culture and the development of museums. Current projects are on time in indigenous cultures, bird-human interactions, and environmental knowledge. All research and writing is informed by ethnography in and a general geographical focus on native North America. Interests Born in New York City, educated at Yale (B.A.), Oxford (B.Litt.) and Harvard (Ph.D.), Shepard Krech III is professor of anthropology and environmental studies, and director of the Haffenreffer Museum of Anthropology, at Brown University. He has received major fellowships and grants from the National Humanities Center (twice), Woodrow Wilson International Center, NEH, Canadian Embassy, and Wenner-Gren Foundation. He has written over 150 essays and reviews, lectured widely, and is the author or editor of 11 books and monographs, including Praise the Bridge That Carries You Over; Indians, Animals and the Fur Trade; A Victorian Earl in the Arctic; The Subarctic Fur Trade; Collecting Native America, 1870-1960; The Ecological Indian (1999); Encyclopedia of World Environmental History (ed. with J. R. McNeill and C. Merchant, 2004), Spirits of the Air (2009); and Indigenous Environments (MS ed. with David Gordon). The Ecological Indian: Myth and History (W. W. Norton, 1999) was discussed on radio coast-to-coast and reviewed or featured in over 100 publications in more than one dozen languages, including The New Yorker, New York Times, Wall Street Journal, Washington Post, The New Republic, New York Review of Books, Times Literary Supplement [TLS], Chronicle of Higher Education, Times Higher Education Supplement, Der Spiegel, NRC Handelsblad, and others. Reviewers remark that the book "teaches us everything we have wanted to know about American Indians and the environment" (New York Times), is "ground-breaking and myth-busting" (Wisconsin Public Radio), and "is what good science should be" (Detroit News). The book was the subject of a session at the annual meeting of the Modern Language Association, a conference in Laramie, Wyoming, and the edited collection, Native Americans and the Environment (eds. M. Harkin and D. R. Lewis [U. Nebraska Press]). Critics refer to the three-volume Encyclopedia of World Environmental History (Routledge, 2004) as edited with "great insight and skill" (James G. Speth) and "the most ambitious effort yet to offer a comprehensive overview of the long-term history of human interactions with the natural world on a truly planetary scale" (William Cronon). Early comments from anthropology and environmental history on Spirits of the Air (University of Georgia Press, 2009) include "superbly researched and splendidly illustrated" (Raymond Fogelson), "insightful" (Carolyn Merchant), and "exhaustive" (Charles Hudson); and from ornithology and the professional birding world a "landmark work" (Kenn Kaufman) and "thought-provoking." (Donald and Lillian Stokes). Shepard Krech III is past-president (2004-05) of the American Society for Ethnohistory and a trustee of the National Humanities Center. A lifelong birder and environmentalist, he lives in Washington, D.C. and Sedgwick, Maine)

Uranium mining simultaneously affected the Navajo with active tailings, one large spill, ground and animal contamination, and irradiated workers. For years these huge projects have roiled Navajo and Hopi politics, exacerbating splits between antidevelopment traditionalists (to whom environmentalist outsiders have been drawn) and prodevelopment progressives; they also led to demands for indigenous control over—if not a halt to—the extraction of resources.10 But what should be made of the differences of opinion among the Navajo? Of Hopi Indians who favor strip-mining, arguing that the most important part of their guiding philosophy and prophecy is to know "how to use the gifts of Mother Earth"? Of Miccosukee Indians, who proposed building sixty-five houses in Everglades National Park against the objections of the Park Service and environmentalists whispering that they are poor stewards of the land and therefore undeserving of special rights as Indians? Of the Alaskan Inupiat, who killed hundreds of caribou in the 1970s, used only part of the kill, left bloated carcasses behind, and were accused by white hunters (who had acted in virtually identical fashion themselves) of placing the herds in jeopardy? Of the Wisconsin Chippewa, who reportedly let thousands of fish spoil in warm weather? Of Rosebud Sioux activists, who wanted to stop use of the reservation for off-reservation trash out of concern—as the tribal chairman remarked facetiously—for Mother Earth, yet had never protested Rosebud's existing open dumps? Of Crow Indians and Indians from Wind River, the joint ShoshoneArapahoe reservation in Wyoming, who, in separate incidents, killed many elk and, to the horror of big-game hunters and biologists, reputedly took only choice cuts for themselves, or only meat or antlers for sale, leaving many animals to rot? Or of the Ute who want a dam and reservoir—over strong objections from the Sierra Club Legal Defense Fund—probably to transport low-sulfur coal through a coal slurry pipeline to power plants at some future time?11 For the sake of a simple narrative, critics who excoriate the larger society as they absolve Indians of all blame sacrifice evidence that in recent years, Indian people have had a mixed relationship to the environment. They victimize Indians when they strip them of all agency in their lives except when their actions fit the image of the Ecological Indian. Frozen in this image, native people should take only what they need and use all that they take, and if they must participate in larger markets, far better it be to profit from hydroponic vegetables, fish, or other "traditional" products than from oil, coal, trash, and like commodities. As one journalist remarked, "native people are supposed to be keepers of the earth, not protectors of its poisons."12 The connections between Indians and nature have been so tightly drawn over five hundred years, and especially in the last quarter of the twentieth century, that many non-Indians expect indigenous people to walk softly in their moccasins as conservationists and even (in Muir's sense) preservationists. When they have not, they have at times eagerly been condemned, accused of not acting as Indians should, and held to standards that they and their accusers have seldom met.

### Perm / No Link

#### Colonial water infrastructures can be repurposed for decolonial pathways. Complete escape is impossible because coloniality is pervasively entangled with indigenous life.

Curley 19, PhD, Professor of Geography @ U Arizona (Andrew, ““Our Winters’ Rights”: Challenging Colonial Water Laws,” *Global Environmental Politics*, 19.3)//BB

Much of the scholarship on Indigenous water rights in the United States focuses on legal and political rights awarded or denied in water settlements. This article highlights the voice of settlement opponents within Diné communities over the proposed Little Colorado River Settlement in 2012 between the Navajo Nation and Arizona. Using interviews with key actors, observations of water hearings, and a mini focus group with settlement opponents, my research finds that the proposed water settlement produced contradictory logics, practices, and frameworks that combined two “traditions of Indigenous resistance,” one rooted in the language of self-determination and sovereignty and the other in emerging notions of decolonization. This hybridity of seeking increased water recognition within colonial law, while advocating for decolonial waterscapes, speaks to the complicated and fundamentally entangled political landscapes of Indigenous peoples. Ultimately, in opposing the water settlement, Diné opponents and community members demonstrate that they seek to rectify the injustice of ongoing settler colonialism and realize their collective capabilities as nations, not “Indians,” “tribes,” or “minorities” within and against the authorities of the colonial state. On April 5, 2012, US senators Jon Kyl and John McCain from Arizona met with Navajo Nation Council delegates in the western Diné community of Tuba City. Their intent was to persuade lawmakers to settle Navajo claims to the Little Colorado River, a dry and shallow waterway that originates high in the mountains of central Arizona and concludes at the confluence of the main Colorado River, just north of the Grand Canyon. The settlement established the terms by which the Navajo Nation would forever “resolve” its collective claims to the river in exchange for small water infrastructure and remaining waters after upstream diversions are taken into account. Although the tribal government was initially in favor of the agreement, much of the Diné community rejected it and mobilized outside of the meeting to express their collective frustration and discontent.1 They criticized governing officials and reminded them that “water is life.” Much of the narrative of water rights and Indian water settlements in the United States focuses on the legal-political “rights” to water that tribes maintain within western water laws (Burton 1991; Colby et al. 2005; Curley 2019b; McCool 2006; Perramond 2018; Thorson et al. 2006). These are important studies because they document the structuring of water use in practice. But the emergent perspectives of water and law among community actors is sometimes missing from these narratives, that is, the grounded understandings and decolonial strategies that both use and negate colonial laws. Recently, Yazzie and Baldy (2018) emphasized the “decolonization” of waterscapes as a pathway to radical Indigenous knowledge and practices around water. For Yazzie and Baldy, decolonization is not simply a metaphor, as Tuck and Yang (2012) put it, or a practice of “awareness raising” (Smith 2013); it is material struggle. My research finds that this struggle produces contradictory logics, practices, and frameworks that combine traditions of Indigenous resistance with a dominating discourse of rights to water. In highlighting the dialog, debate, and discourse over the future of the Little Colorado River, this article seeks to document ongoing, expanding, and changing notions of water governance for Indigenous peoples today, notions that speak to both rights and decolonization. The central point is that Diné water governance transcends the colonial limitations of western water law through use of both pragmatic and decolonial practices. Diné advocates work to maximize water quantification while supporting the idea of traditional water uses for sustainable lifeways. This hybridity of seeking increased water recognition within colonial law, while advocating for decolonial waterscapes, speaks to the complicated and fundamentally entangled political landscape of Indigenous communities that our critical politics sometimes ignores, misses, or downplays. This article highlights the voices of the Diné people who resisted what appeared to be the inevitability and finality of a water settlement. Their critiques provide an important understanding for how we might interpret water settlements and decolonization between Indigenous peoples and colonizing states. Schlosberg and Carruthers (2010), for example, find that questions of justice for Indigenous peoples are not concerned simply with distribution of resources but also with the “capability” of the resources to fulfill the well-being of a people at the level of the collective. They emphasize that justice for Indigenous peoples is community based and capabilities centered. Like Ciplet et al. (2013), they build on Sen’s (2009) notion of justice related to achieving the fulfillment of people’s capabilities. However, this approach misses the historic critique of unrectified settler colonial theft that is repeated in Indian water settlements. Indian water rights were designed to fulfill the colonial purpose of reservations. They were not meant to resolve senses of injustice or wrongful dispossession inherent within the structure of U.S. colonial governance. Although Diné critics speak in the language of law and legalism when they exclaim “our winters’ rights,” referencing an important Supreme Court decision that I will discuss later, they are also speaking beyond the law and to these broader notions of justice that cannot be resolved in a water settlement. It is not the particulars of the settlement that mobilize Diné resistance but the inherent sense of injustice that water settlements reproduce. In the presentation of this argument, I follow Diné thinking and planning philosophies.2 Diné opposition to the Little Colorado River Settlement was not simply a shared understanding among actors; it was an intellectual process. First, there was thinking and planning—highlighted in the section titled nitsáhákees dóó nahat’á. In this section, I show how opposition to the water settlement was built on two ideological trends and frameworks in Indigenous activism, nation building, and decolonization. These trends framed the argument against the proposed water settlement and addressed the larger notion of injustice in the colonization of Indigenous water sources. Afterward, I highlight how Diné people acted and lived out this thinking and planning in action—collective opposition to the settlement. Action was called iina, which also refers to “life,” toh éí ííńá or “water is life.” Finally, siihasin calls on us to reflect on what was learned and derive some preliminary conclusions. I conclude that the struggle was an effort to reclaim and revitalize Diné lifeways. My research suggests that Indigenous opponents to water settlements built their frameworks on a sense of rights and recognition that is rooted in ideas of traditional knowledge and historic practices on the land. Proponents understood these practices as better suited for sustainable living than existing quantification schemes provide. Their frameworks blended statist and aboriginal conceptualizations of water into a bundle of complicated and contradictory ideas of inherent Indigenous water rights. Both nation building and decolonial notions of Indigenous water governance undermined the legitimacy of colonial water laws while positing a sense of inherent rights to the water in the interest of increasing the amount of water the Navajo Nation was owed. The de- in decolonial did not completely negate colonial institutions as a site of struggle and advocacy. Rather, opponents reworked and repurposed colonial infrastructures toward Indigenous lifeways and decolonial nation building.

#### Tribes can leverage colonial frameworks for material gain without sacrificing self-determination

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Still, given the hostile political environments many tribes are operating within, tribes are gaining some advantages from leveraging pre-existing colonial governance frameworks, particularly around regulatory capacity and conflict resolution among sovereigns. Instead of creating an entirely new set of legal orders, TAS tribes work within dominant regulatory systems that are both federally recognized and federally funded. Because tribal water quality standards are based on the EPA’s highly developed procedural regulations, TAS tribes benefit from existing EPA enforcement and conflict resolution mechanisms. Due to the judicial deference afforded to federal agencies in US courts, asserting tribal WQSs within EPA structures can convey some legal protections for tribes. For example, litigation to date on TAS has targeted EPA policy implementation, as opposed to challenging tribes directly. Finally, the EPA has developed an extensive regulatory and policy framework supporting TAS, which explicitly maintains federal trust responsibility, precludes state authority over tribal waters, and embraces tribal self-determination as a central goal.

#### Working within systems of power is key to integrating indigenous water perspectives into meaningful change

Nursey-Bray 9, PhD, Professor @ U Adelaide (Melissa and Phillip Rist, “Co-management and protected area management: Achieving effective management of a contested site, lessons from the Great Barrier Reef World Heritage Area (GBRWHA),” *Marine Policy*, 33.1)//BB

Another key lesson for co-management is the utility for indigenous peoples of building networks within formal policy domains. Through proactively seeking partnership and collaboration, Girringun became part of the network of policy communities in the region and built important bridges between indigenous peoples and management agencies in ways that facilitated trust [52] and collaboration. A policy community has been defined as ‘a diverse network of public and private organizations generally associated with the formation and implementations of policy in a given resource area …. Policy communities are interactive networks of alliances around common interests’ [53]. These policy communities not only occur at multiple levels, i.e., federal, state, local, but across the community within a number of sectors. Thus, the work Girringun did to progress its aspirations has necessitated working within hierarchical structures of power, and across networks of influence, thus by default encouraging a polycentric approach to management in this region [23]. Social learning was encouraged and adaptive capacity built into the management realm [50]. What remains is for this process to continue and be consciously adopted by both parties in order to achieve a cross-cultural management relationship yielding dividends for both conservation management interests and indigenous peoples. Finally, a fundamental aspect of genuine power sharing is the sharing of resources and building capacity. This process may necessitate developing cross-culturally appropriate ways of building capacity and adopting culturally different modes of decision-making. Within the co-management processes described here, power sharing might have meant one party lending the weight of its resources to the other, e.g., management agencies providing resources for enforcement. Importantly, this process, as all of the processes suggested here need to be two-way, in that they necessitate both indigenous people and management agencies to appropriately recognise differences and their collaborative strengths between them. Finally, the Girringun experience highlights the importance of understanding all forms of co-management as a continuous process. Many experiments in developing and implementing co-management within MPAs falter when they encounter the ‘red lights’ endemic in any political landscape, including public opinion, lack of funding, and the inability to share power and decision-making forums. Management domains then become contested sites, with competing values and expectations causing conflict and at times permanent breakdown in communications and future activities [54]. Many participants to these processes feel that hopes are dashed because their expectations have not been met; largely because the gains achieved are often disproportionately overshadowed by the fact many objectives remain unfulfilled. For example, in this case study, funding might be granted for one ranger part—time rather than full time, when community aspirations are for two full time rangers. Members of a group such as Girringun also often find themselves in an inherently unequal position in relation to agencies such as GBRMPA. For management agencies, constructing a co-management initiative within a protected area as a continuous process has been equally important. Studies on co-management highlight its usefulness as enabling a ‘continuous problem solving process’ [17], [21]. In this sense, power sharing can be conceived as the result, not the starting point of the co-management process, and co-management as a means of governance. 5. Summary In this case study, a defining characteristic of Girringun's approach has been a persistent positiveness and a commitment to work within an understanding of co-management as a continuous process, rather than a program punctuated by a series of products or outcomes. This has enabled members of Girringun to continue to advance their aspirations at the highest level, while accepting and achieving the smaller gains along the way. Strong relationships have been built, discrete funding opportunities have been taken advantage of, and small but important steps taken towards achieving parity and real recognition within decision-making processes for that area. However, at the point of implementation, neither Girringun nor the management agencies have completely met their management goals. The clash between cultures and between the paradigms of co-management versus protected area management means that management remains a contested area. Traditional owners will still prioritise their right to participate in and benefit economically from involvement in management, while maintaining ongoing access to and traditional use of the area. Management agencies will always prioritise conservation, the rights of the third party and maintenance of the world heritage status of the GBRWHA through biodiversity protection. Nonetheless, the flexibility and reflection embedded within the processes established to date have made it possible for both Girringun and Management agencies to ‘see’ each other; and reveal the commonalities between their management aspirations despite the fact they operate from within different cultural and management paradigms. Although there is still a long way to go for both parties, in the context of the contesting value systems they each represent, the future implementation of co-management deliberations within the GBRWHA may enable the parties to further shift their positions leading to an ongoing, working and mutually agreed to co-management process. As Jones and Burgess [21] note, it is rare to have the opportunity to systematically study the early stages in design and implementation of new governance arrangements for the achievement of conservation objectives. The opportunity provided here makes it easy to be critically reflective but also learn from mistakes and progress forward. This paper demonstrates the development of partnership capacity, and highlights that a diversity of arrangements for sharing power can be trialled and achieved. Initiatives such as those embarked upon by Girringun can begin to provide the template for how environmental managers and communities worldwide, whether indigenous or not, can work together to develop management processes that are not only environmentally sustainable but economically viable. In ensuring these conditions, environmental management will also be politically feasible, resulting in socially just conservation outcomes for all.

#### Strategic use of policy is necessary to achieve adoption of indigenous water alternatives

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Indigenous nations are reshaping land and resource politics across the Global South and North, with significant implications for global political economies. By influencing energy and resource extraction, fisheries and food production, and water governance and access, Indigenous approaches to reclaiming sovereignty from settler states are challenging the economic foundations of nation-states and their domestic and international exchange relationships. Within the settler states of the Global North—where reparations and restitution for Indigenous nations remain nominal—these changes are being forced through strategic legal channels, creative negotiation tactics, powerful resistance efforts, and layered local and transnational campaigns. Through modern treaty relations, Indigenous nations are revising authority over lands and waters, embedding self-governance, co-governance, and other models of layered decision-making into state practice. Some of these shifts echo the rewriting of property relations in postcolonial countries of the Global South, including complex arrangements of customary and statutory land rights in many African countries (Lund and Boone 2013), while others reflect the specific constitutional arrangements of settler states and the contemporary contexts of urban populations, land development, international and trade relations, and other state-specific dynamics.

### Consequentialism

#### The goal of policy-making should be to maximize benefit and minimize costs---that requires analysis of consequences, not adherence to moral aboslutes

Fettweis 13, Professor of IR @ Tulane (Chris, “The Pathologies of Power,” p. 242-243)//BB

Classical realists have long considered prudence, in Hans Morgenthau's words, "the supreme virtue in politics."47 Their conception of the term, and how it has traditionally been used in U.S. foreign policy, is similar to the dictionary definition: wisdom, caution, circumspection, and "provident care in the management of resources."48 Simply put, a prudent foreign policy would aim above all to minimize cost and maximize benefits.49 It would strive to be rational, careful, and restrained, and it would not waste national resources pursuing low-priority goals or addressing minor threats. Prudence is essentially the ability to weigh potential consequences of alternative political actions. It demands that the main criteria for any decision be a cost-benefit analysis, or an honest attempt to assess the implications for the national interest. Although such calculations are by necessity uncertain in a world where rationality is bounded and values unquantifiable, if policy makers were to value prudence above all other virtues they would by force of habit explain and justify their decisions using a rational framework, with reference to reason and evidence rather than emotion. Were prudence the defining virtue in policy debates, the ideal for which policy makers strive, it would quickly silence the voices of fear, honor, glory, and hubris. The process of evaluation can never be foolproof, but by insisting that it be at the center of decision making at the very least prudence can make assumptions clear and offer a basis for evaluation absent in those decisions driven by pathology. The evaluation of policy cannot be done without recognition of cost. Simply achieving a goal - or winning - does not justify action. To be considered rational, the other side of the ledger must be considered as well. This may sound obvious, but a surprising number of scholars and analysts judge foreign policies based solely on whether or not objectives are fulfilled.50 Neoconservatives in particular tend to ignore costs, assuming that the United States is capable of paying virtually any price in the fight against evil. The war in Iraq, that exemplar of imprudence, was not preceded by extensive projections of the likely price tag. When pressed, Bush administration officials repeatedly deferred such discussions by denying such estimates were possible.5' At best, they were of secondary relevance. In the war's aftermath, the same officials stress how much better the world is without Saddam rather than how much worse it is without those who gave their lives in removing him.∂ Like realism itself, prudence is hardly amoral. It merely demands a focus on the morality of outcomes, not intentions. Actions that produce bad results are imprudent, no matter how good the intent. On this, Morgenthau quotes Lincoln:∂ I do the very best I know, the very best I can, and I mean to keep doing so until the end. If the end brings me out all right, what is said against me won't amount to anything. If the end brings me out wrong, ten angels swearing I was right would make no difference.2∂ Although the central criteria for prudent cost-benefit analyses must be the national interest, no abnegation of national ideals or international responsibility need follow. Foreign humanitarian assistance is cheap, relatively speaking, and often carries benefits for donor and recipient alike. The entire operation in Somalia, during which as many as a quarter million lives were saved, cost U.S. taxpayers less than two billion dollars.53 More was spent every week at the height of the Iraq war. Qaddafi was removed for half that. A focus on the outcome makes it clear that the Iraq war was a blunder of the first order. Even if the intentions of the Bush administration were indeed good, it is hard to see how the outcome can be said to be worth the cost. Thomas Ricks quotes a senior intelligence official in Iraq as saying that the long-term American goal after the surge is "a stable Iraq that is unified, at peace with its neighbors, and is able to police its inter-nal affairs, so it isn't a sanctuary for Al Qaeda. Preferably a friend to us, but it doesn't have to be."54 Presumably one could add the absence of weapons of mass destruction to this rather scaled-back list of goals, and perhaps the continuation of the uninterrupted flow of oil from the Gulf. In other words, if all goes well over the course of the next few years -and there is obviously no guarantee it will - Iraq might look quite a bit like it did in 2003, only with a marginally more friendly dictator in charge. The cost of this restoration of the virtual status quo ante will be at least forty-five hundred American dead and some thirty thousand wounded, at least a hundred thousand Iraqis killed and millions more displaced, and up to as many as three trillion U.S. taxpayer dollars spent.55 The war inspired many young Arabs, such as Ibrahim Hassan al-Asiri, to join the∂ ranks ofjihadi terrorists, swelling the ranks of America's true enemies. Al-Asiri is currently the main bomb maker for "Al Qaeda in the Arabian Peninsula," the group that operates out of Yemen and continues to try to take down Western airliners, and he is considered the "most dangerous man in the world" according to many people who maintain such rankings.56 The decision to invade Iraq may well turn out to be the most imprudent action this country has ever taken.∂ Another operation from the same year might serve as a counterexample to Iraq, a prudent foreign policy adventure where the benefits outweighed the costs. The July 2003 intervention in Liberia may be little remembered, but that is partially because it was such a success. The United States deployed around two thousand Marines to Monrovia and ended a siege during a particularly brutal civil war. Security returned to the capital and an unknowable number of lives were saved. Unlike in Somalia, die mission did not creep into nation building, proving that intervention need not be tainted by hubris. By October the civil war had effectively ended and the Marines withdrew, having suffered no casualties and incurring little cost to the U.S. taxpayer. In the years since, Charles Taylor, the paragon of the West African kleptocradc despot, was put on trial at The Hague and the security situation in Liberia has improved markedly. The Marines have not returned.∂ No assessment of costs and benefits can guarantee good decisions, of course. But by making assumptions clear, by inculcating and rewarding a systematic evaluation of alternatives, expectations can be assessed more rationally and decisions rescued from emotion. If leaders work actively to minimize pathologies and replace them with rational, fact-based beliefs, the odds of arriving at rational conclusions rise. If prudence is the goal, therefore, the following should form the core of the foreign policy conventional wisdom:∂ • The world is more peaceful than ever before.∂ • While no country is ever completely safe, the United States has few - if any - serious security threats.

#### Frameworks that only rely on the neg pointing out imperfections are intellectually useless

Sikkink 8, Professor of political science at the University of Minnesota (Kathryn, “The Role of Consequences, Comparison, and Counterfactuals in Constructivist Ethical Thought,” [http://www.polisci.umn.edu/centers/theory/pdf/sikkink.pdf)---ability](http://www.polisci.umn.edu/centers/theory/pdf/sikkink.pdf%29---ability) edited //BB

Ethical arguments of these different types are ubiquitous and necessary. But because they are also slippery and open to manipulation and misuse, we also need to be very careful and precise about how we go about using them. I would recommend that first we distinguish very carefully between the comparison to ideals and historical empirical comparison. I believe that many critical constructivist accounts rely on the comparison to the ideal or to the conditions of possibility counterfactual argument. In almost every critical constructivist work there is an implicit ideal ethical argument. This argument is implicit because it is rarely clearly stated, but it is found in the nature of the 36 critique. So, for example, in her discussion of U.S. human rights policy, Roxanne Doty critiques a human rights policy carried out by actors who sometimes use it for their own self aggrandizement and to denigrate others. 42 The implicit ideal this presents is a human rights policy that is not used for denigration or surveillance or othering those it criticizes or conversely, of elevating those who advocate it. What would be examples of such a policy? The book does not provide examples. We do not know if examples exist in the world. So the implicit comparison is a comparison to an ideal – a never fully stated ideal, but one present in the critique of what is wrong with the policies discussed. Nicolas Guilhot makes a similar argument in his recent book. The promotion of democracy and human rights, he argues, are increasingly used in order to extend the power they were meant to limit. “The promotion of democracy and human rights defines new forms of administration on a global scale and generates a new political science.” He historically examines how progressive movements for democracy and human rights have become hegemonic because they “systematically managed to integrate emancipatory and progressive forces in the construction of imperial policies.” But once again, the book offers no alternative political scenario. In the final sentence of the book, the author clarifies that “this book has no other ambition than to contribute to the democratic critique of democracy.” 43 In the introduction, he clarifies, “This book does not provide answers to these dilemmas. At most, its only ambition is to highlight them, in the hope that a proper understanding constitutes a first step toward the invention of new courses of action.”44 Ethically, I believe this is a cop-out. Politically and intellectually, I find it too comfortable and too easy. This critique has a crucial role to play in pointing to hypocrisy (as Price highlights in the introduction). It could also serve as a catalyst for policy change in the direction of policy that would include less surveillance or less cooptation of human rights discourse. But it is unlikely to serve as a catalyst for new action or policy change unless it ventures something more than pure critique, unless it risks a political or ethical proposal. Without that, it has the impact of delegitimizing any human rights policy without suggesting any alternative. Any policy to promote human rights of democracy policy is shown to be deeply flawed or even pernicious. It is portrayed as part of the problem, certainly not as offering any kind of solution. Human rights policy appears to make the situation worse, not better. The critique has the effect of telling us clearly what we do not want, what we can not support—human rights policies by imperfect and hypocritical actors like the U.S. In its historical comparisons, it also lumps human rights policy together with colonialism and does not provide any elements to distinguish between one policy of surveillance and other. All are equally flawed. The ethical effect is to remove normative support from existing policies without producing any alternatives. This is similar to what Price means when he says that “critical accounts which do not in fact offer constructive normative theorizing to follow critique ironically lend themselves to being complicit with the conservative agenda opposing erstwhile progressive change in world politics.” Neither Doty nor Guilhot, for example, contrast two human rights policies to give examples of policies that are more of less hypocritical or where there has been more or 44 Guilhot, p. 14. 38 less surveillance. They don’t contrast human rights policies or democracy promotion policies to previous policies that were also hypocritical and self aggrandizing, but more pernicious – e.g. national security ideology and support for authoritarian regimes in the third world. By presenting no contrasts, the critique would appear to say that there is no ethical or political difference between a policy that supports coups and funds repressive military regimes and a policy that critiques coups and cuts military aid to repressive regimes. These policies would appear to be ethically indistinguishable. Indeed, by these standards, a realist policy (a la Kissinger) might be preferable. Kissinger didn’t denigrate his authoritarianism allies. He took regimes as they were. He treated them as valuable allies. He didn’t lecture them on how they should change. He also, in doing so, encouraged, in some cases, coups and mass murder. But at least he didn’t “Other”. Doty and Guilhot give me no ethical criteria to distinguish between the policies of the Kissinger administration, the Carter administration, and current Bush administration policy. Because the comparison is an implicit ideal, never an empirical real world example, the critique is very telling and can delegitimize the critiqued policy. But nothing is put in its place. So, it demobilizes any support we might have for any human rights policy. It puts the analyst in an ethically comfortable position, but by not proposing any explicit comparison, it [mollifies] demobilizes the reader. We learn what to oppose, to critique, but we don’t learn explicitly what to support in its stead. The result can be political [inaction]. One finds it difficult to act.

### LT---Generic

#### Indigenous movements support water protection

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“Water is life.” This slogan is heard at protests and gatherings around the world, in art and in song, to resist the disruption of water resources, whether through their contamination, their consumption or rerouting for energy infrastructure, or their removal from common access through privatization. The phrase is central to movements that oppose industrial development projects and exclusionary enclosures. It also requires listeners to think through water as more than a commodity in a capitalist system. While water is implicated within extraction and production processes across sectors, from energy to agriculture and beyond, it is as—if not more—deeply embedded in social practices and spiritual traditions across cultures and regions. In North America, “Water is life”— or “Mni wiconi” in the Lakota language—became a rallying cry during the highly publicized resistance at Standing Rock, North Dakota, mounted by the Oceti Sakowin (and their allies) against the construction of the Dakota Access Pipeline over a ten-month period in 2016. The phrase marks the deep ontological roots of Indigenous peoples’ critiques of environmental injustices relating to land and water. “For the Oceti Sakowin,” writes Lakota historian Nick Estes (2019, 21), “Mni Wiconi, or ‘water is life,’ relates to Wotakuye, or ‘being a good relative.’”

### AT “Discourse” Links

#### Changing water discourse is insufficient. Path dependence pre-empts rhetorical shifts

Williams 20, PhD, PostDoc research fellow @ Hong Kong (Jessica, “Discourse inertia and the governance of transboundary rivers in Asia,” *Earth System Governance*, 3)//BB

Institutionalisation and the creation of path dependencies reinforce discourse inertia. Large scale infrastructure, such as hydropower constructions, often have long life spans and once water is apportioned, it is politically difficult to redistribute. Decisions concerning institutions, policy, planning and resources allocation are made on the basis of these projects, which simply reinforces the approach. However, variations and unpredictability in water supplies can undermine and impair institutional and physical structures, which challenge the hydraulic mission. Further, in the case of the Mekong the shift in discourse from the MC to the MRC demonstrates that the institutionalisation of a discourse is not necessarily accompanied by a change in the overall sanctioned discourse. Instead, institutions in South and Southeast Asia appear to be largely state instruments. Therefore, they are mediums for supporting state discourses and objectives. As well as the MRC, this appears to be demonstrated in situations such as the Indus and the LMC. This implies that challenges to the sanctioned discourse need to occur on more than just the institutional level to disrupt discourse inertia. The conceptualisation of layers of narratives and how they operate supports this finding. It suggests that privileged narratives and the actors that support them need to be targeted when looking to effect genuine discourse change. When a sanctioned discourse is institutionalised, it is likely to be successful and perpetuated. The introduction of new institutions upholding an alternative discourse while the old one is still active may not bring reform. This implies that the international communities’ tactic of promoting environmental and climate change approaches via institutions they have created is unlikely to affect the intended policy results. Analysis of the three river basins suggests areas where discourse inertia is being challenged, particularly with regard to environmental and climate change discourses. However, these narratives are susceptible to co-option and only appear to be genuinely considered when they represent a visible threat. This implies that discourse change and state actions have so far been reactive rather than proactive. Discourse inertia may aid further understanding of conflict/cooperation dynamics in international relations. This supports recent work in this area (For example: Mirumachi, 2015; Zeitoun and Mirumachi, 2008) as it demonstrates that even when a situation appears open and dynamic, it may actually be restricted and dominated by an elite group. Sensitivity to the role of ideational and discursive power is, therefore, vital when considering cooperative endeavours. If the sanctioned management approach is maintained, tensions could increase and overall stability decrease in the region. Discourse inertia within these river basins needs to be disrupted to open up the discursive-institutional spiral, and thus the political agenda. This will allow alternative approaches to the hydraulic mission to be genuinely considered. There is the potential that increasing natural disasters could open-up a window of opportunity for policy change. Actors outside the hydrocracy have made some headway in challenging the sanctioned discourse. This is as environmental and climate change concerns have become legitimate topics of political discussion. As a note, discourse inertia as a concept is subject to the same potential limitations as discourse theory and discursive institutional theory. This includes issues of privileging agency over institutions, which underplays the constraining and enabling effect that institutions can exert over actors (Bell, 2011). Further, as with discursive institutionalism, discourse inertia's explanatory utility is limited as events outside people's control can occur and that agents' actions can have unforeseen and unintended consequences (Schmidt, 2010). However, discourse inertia does allow for the analytical duality of institutions and discourse as well as the interactive role between the two. Similarly, it allows for the nuanced understanding of co-existing cooperation and conflict. Discourse inertia builds on neo-institutionalism in providing an alternative to traditionally orthodoxies of institutionalism. Therefore, it goes beyond the almost free floating ideas, concepts and communication of discourse theory through re-focusing on their materialisation and effect. It introduces new dynamics and discursive understanding in institutional theory (Arts and Buizer, 2009). Discourse inertia allows for the role of power to be considered within interactions between agents and institutions as well as between groups of agents. As a result, the dynamics behind seemingly static or path dependent situations can be captured. The concept of discourse inertia needs to be examined in greater depth as, while it is demonstrated here in terms of transboundary water, it may also be present across public policy. While it is likely that reallocating power away from certain groups can cause a change in discourse, the transboundary water cases demonstrate the difficulties with shifting power, particularly when the group has the backing of the state. Therefore, further work in how to end situations of discourse inertia would be beneficial to prevent the perpetration of unsustainable or ineffective situations.

#### Discursive analysis doesn’t come first ⁠--- their method overstates the importance of rhetoric and forfeits changing institutional structures

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The ‘practice turn’ in International Relations theory, among other things, urges discourse analysts to be wary of neglecting how discourses affect social action.171 In other words, we should pay attention to not only what people say, but also to what they do. Similarly, a change in how people talk and write should not invariably and straightforwardly be expected to lead to a change in how they act. A number of accounts of China’s new assertiveness arguably commit this ‘discursive fallacy’ and mistake changes in Chinese non-official discourses for a change in foreign policy.172 Attention to the (re)formation of China’s national identity is of course indispensable to our understanding of its foreign policy, not least when it comes to predicting its likely future development. Nevertheless, the level of influence of public discourse and identity construction on official policy is an empirical question and should not be treated as a fact prior to analysis. Needless to say, discursive changes in the broader society need to be mediated by changes in political priorities and the institutional set-up in order to have any long-lasting impact on policy.173 Moreover, the study of China’s foreign policy might have been especially receptive to discursive determinism, particularly in recent years. First, due to the non-transparent nature of China’s policymaking processes, ‘Pekingological’ analyses of subtle nuances in news media outputs have long been indispensable to the study of its foreign policy. Discourse-centred approaches have a long and impressive pedigree in the field. The downside of this is that analysis sometimes tilts too heavily towards discourse and away from policy. Second, China’s current debate over foreign policy includes more voices and viewpoints than it used to.174 Not surprisingly, many have expected this noteworthy discursive change to bring with it a corresponding policy change. The assertiveness narrative thus confirmed a development that many had expected.

### AT “Resource” Link

#### Economizing water and tech advances are both key to sustainability

Matheson 16, CEO, Oasys Water (Jim, “Should We Put a Price on Water?,” *Yale Insights*, [https://insights.som.yale.edu/insights/should-we-put-price-on-water)//BB](https://insights.som.yale.edu/insights/should-we-put-price-on-water%29//BB)

Water is critical to sustaining life, but markets aren’t pricing it accordingly. “Water is a priceless asset in the sense that it is invaluable—you can’t live without it,” said Jim Matheson, president & CEO of Oasys Water, Inc. “But it is also without price in that we haven’t figured out how to price water relative to the value of the water.” That may, necessarily, change as the limits of global freshwater sources become increasingly clear. A NASA study of new satellite imagery shows 21 of the 37 largest aquifers on the planet are being depleted at unsustainable rates, according to the Washington Post. “The situation is quite critical,” said Jay Famiglietti, NASA’s principal investigator on the project. “There’s not an infinite supply of water.” Freshwater scarcity is only expected to get worse as climate change, energy, food, and water interact in complex and potentially destabilizing ways. The World Economic Forum has assembled a scary list of water worries. Roughly 2.7 billion people—36% of the world’s population—currently face water shortages of at least a month every year. By 2050 some 4 billion people may be living in water scarce areas. At the same time, growing population and rising demand for meat are only expected to increase the water needs of agricultural production. The current trajectory has water demand exceeding sustainable supply by 40% in 2030. The World Economic Forum’s annual risk report for 2016 highlights the interconnection of possible impacts including large-scale involuntary migration driven by climate change and water scarcity. Today, less than 1% of the world’s water is fresh and accessible, so new technologies that expand usable freshwater sources could be transformative. In a Q & A with the trade magazine Water Technology, Snehal Desai, global business director for Dow Water & Process Solutions, pointed to efficiency, recycling, reuse, and desalination as important currently existing options. “Since we don’t have a replacement for water, we have to focus on the scarcity side of the picture,” he said. The long-term solution is to build a “circular” water economy, in which water, a non-renewable resource, returns to the system to be used again and again. Yale Insights talked with Jim Matheson, whose company creates desalination technology for industrial use, about the challenges of changing how societies handle their water. One barrier to new technologies, he noted, is a tangle of regulation. “The water sector, generally, is a regulatory-driven sector,” Matheson said. In the U.S., he pointed out, there are 45,000 regulatory bodies, including federal, state, county, and municipal authorities. Because of those “kinetics,” Matheson explained, “it is an area where innovation, new ideas are slow to bloom.” But imminent scarcity is starting to prompt a sense of urgency. “The water industry and the water question is in transition. Folks are thinking deeply about water and its relationship not only to the resource scarcity or abundance but also water’s relationship to societal stability,” Matheson said. “This connection is being focused on appropriately and significantly.” Putting the cost of water at levels that consider long-term stability can have a real impact, he said. “If you start to create a little bit more of a strong drive on the demand side through price, you start to create a slightly less tortured path from innovation out into the marketplace.”

### AT “IR” Link

#### The assumption of Eurocentric IR as fundamentally incompatible with the alternative paradoxically re-asserts its power --- the perm is preferable because it denies an ontological division between the ‘West’ and ‘The Rest’

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Ontologies of Otherness: Liberal–local relations, ‘hybridity’, ‘resistance’ and the ‘everyday’

Sensitive to the problem of such occlusion, a major strand of recent literature has emphasized the need to rethink the relations between the ‘liberal’ and the ‘local’ in intervention settings (Mac Ginty, 2011; Richmond, 2009, 2010, 2011), in what has been labelled a ‘fourth generation’ approach (Richmond, 2011). This writing has taken a much more proactive approach to research with and about the peoples targeted by intervention, aiming to correct the impression of smooth liberal transformation and the ‘romanticization’ of the local (Mac Ginty, 2011: 2–4). Yet, the paths it has taken have, quite unwillingly, reinforced a Eurocentric understanding of intervention, through the use of an ontology of ‘Otherness’ to frame the issues. Prominent among these accounts is Richmond’s (2009, 2010, 2011) recent work on ‘post-liberal peace’, which frames the key problems of intervention through an ontological distinction between the ‘liberal’ and the ‘local’. In earlier writing, the liberal peace is elaborated as genealogically endogenous to Western traditions of thought, reflecting Enlightenment, modern and post-Christian values (Richmond, 2005). In post-conflict settings, however, it is critiqued for exercising forms of hegemony that suppress pluralism, depoliticize peace, undermine the liberal social contract and exercise a colonial gaze in its treatment of local ‘recipients’ of the liberal peace. In view of these various aspects of failure, the liberal peace is characterized as ‘ethically bankrupt’ (Richmond, 2009: 558) and requiring re-evaluation. The ‘local’, on the other hand, is a space characterized by ‘context, custom, tradition and difference in its everyday setting’ (Richmond, 2010: 669), which is suppressed by liberal peace interventions. The very conception of the ‘post-liberal peace’ is thus about the ways in which two ontologically distinct elements – the ‘liberal’ and the ‘local’ – are ‘rescued and reunited’ via forms of hybridity and empathy, in which ‘everyday local agencies, rights, needs, custom and kinship are recognized as discursive “webs of meaning”’ (Richmond, 2010: 668). Mitchell (2011: 1628) has recently argued that Richmond’s conception of the ‘local’ is not ‘a reference to parochial, spatially, culturally or politically bounded places’ but ‘the potentialities of local agents to contest, reshape or resist within a local “space”’. Richmond (2011: 13–14) himself has also been concerned not to be understood as ‘essentializing’ the ‘local’, emphasizing that it contains a diversity of forms of political society. Indeed, in this more recent work, a more complex conception of the ‘everyday’ as a space of action, thought and potential resistance is elaborated. Despite these qualifications, however, there is much conflation, interchangeability and slippage between these conceptions of the ‘local’. Accordingly, the ontology of Otherness, understood as cultural distinctiveness and alterity, continuously surfaces throughout the narratives of liberal and post-liberal peace. Not only is the liberal peace closely linked to the intellectual trajectory of the ‘West’, but a conception of the ‘local’ as non-modern and non-Western often re-appears: This requires that local academies and policymakers beyond the already liberal international community are enabled to develop theoretical approaches to understanding their own predicaments and situations, without these being tainted by Western, liberal, and developed world orthodoxies and interests. In other words, to gain an understanding of the ‘indigenous’ and everyday factors for the overall project of building peace, liberal or otherwise, a via media needs to be developed between emergent local knowledge and the orthodoxy of international prescriptions and assumptions about peace. (Richmond, 2009: 571, emphasis added) There is a clear emphasis here on the need to engage with the ‘indigenous’ or ‘authentic’ traditions of non-Western life, which seems to reflect an underlying assumption of cultural difference as the primary division between these two parties. This reproduces the division between the liberal, rational, modern West and a culturally distinct space of the ‘local’. Indeed, the call for a post-liberal peace is often a call for peacebuilding to reflect a more ‘culturally appropriate form of politics’ (Richmond, 2011: 102) that is more empathetic and emancipatory. This emphasis on tradition and cultural norms as constitutive of the ‘local’ is carried through in recent research on interventions in Timor Leste and the Solomon Islands. These focus largely on the reinvigoration of ‘customary’ houses and institutions as a form of ‘critical agency’ in distinction to liberal institutions and the state (Richmond, 2011: 159–182). The point here is not simply that there is an account of alterity or cultural difference within the politics of intervention, but that the liberal/local distinction appears to be the central ontological fulcrum upon which the rest of the political and ethical problems sit (see also Chandler, 2010b: 153). Therefore, ‘local’ or ‘everyday’ ‘agency’ is seen to be best expressed to the extent that it reclaims ‘the customary’ and is not ‘co-opted’ by the internationals. It is understood as enhanced where codes of ‘customary law’ become part of the new constitutional settlement. A similar division can be seen in Mac Ginty’s (2011) framework, which sees the hybridities in peacebuilding as emerging at the intersection of the ‘international’ and ‘local’ agents and institutions. Again, this framework is built on an ontological distinction between the two that repeatedly splits the ‘Western’/‘international’ from the ‘non-Western’/‘local’. Even though this is well qualified, overall Mac Ginty (2011: 94) defends this distinction, arguing that if one were to abandon such potentially problematic labels then this would lead to an abandonment of research altogether. This can quite straightforwardly be read as a defence of the basic ontology of the project, which is an ontology of the distinction between the West and its Others, which meet through various forms of hybridization. While Mac Ginty does not pursue the ethics of the post-liberal peace in the same way as Richmond, the underlying intellectual framework also uses this distinction as the analytic pivot of the research. We earlier defined Eurocentrism as the belief in Western distinctiveness, and I have argued that this is philosophically fundamental to this strand of the critical literature that grapples with the relationship between the ‘liberal’ and the ‘local’. This strand has put substantial analytic weight on fundamental cultural differences between these two entities, even while disavowing any essentialism and making some substantive conceptual efforts to move away from this. Such difficulties are indicative of the deep hold that this particular avatar of Eurocentrism has on the critical imaginary. By contrast, the point made by a wide variety of other ‘postcolonial’ writers has precisely been against such an ontology of the international, pointing instead to the historically blurred, intertwined and mutually constituted character of global historical space and ‘culture’ (Bhabha, 2004; Bhambra, 2010).

#### Non-western IR essentializes cultural tropes of non-US peoples---turns the K, reifies imperialism and undermines any intellectual gains in their framework

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During the last decade, the field of International Relations (IR) has witnessed the emergence of ‘non-Western IR theory’. Acharya and Buzan’s seminal work titled Non-Western International Relations Theory: Perspectives on and Beyond Asia (2009) marked a watershed for the discipline. Acharya and Buzan’s book contributed to a disciplinary self-reflection, which resulted in a wide range of academic publications aimed at turning the field of IR into a more pluralistic discipline that respects the subaltern voices that have been silenced by the imperial origins of IR. For this reason, the celebration of ‘cultural diversity’ as an ontological source has become the central focus of new theoretical endeavours. Both the projects of ‘Global IR’ (Acharya, 2016; Yong-Soo, 2019) led by the prestigious scholar Amitav Acharya and the various ‘national schools of International Relations’ (Cho, 2013; Qin, 2018; Shahi, 2019; Shih et al., 2019; Yan, 2019; Zhao, 2019) are prime examples of this new phenomena. Despite the welcoming efforts of promoting ‘cultural diversity’ (Acharya, 2016; Reus-Smit, 2018; Tickner and Blaney, 2012) to produce theoretical projects that seek to transcend both the ‘Western’ and ‘imperial’ origins of the discipline, the field of IR has fallen into a dangerous dynamic that stems from the very imperial origins of discipline: the reification of culture as an essentialist construction. In this sense, essentialism is ‘the view that cultures have fundamental or “essential” properties, among them their values and beliefs’ (Goodhart 2003, p.940). In the late 19th century, Western imperialism had to imagine essentialist cultural forms beyond the domains of the ‘West’ to rationalise its ‘civilising mission’ (Said, 2014). In a historical and disciplinary twist, both the celebration of ‘cultural diversity’ and the promotion of pluralism have allowed and legitimised the arrival of ‘essentialist’ theoretical projects by a disciplinary ‘back door’. Put it differently, in an act of disciplinary redemption, the field of IR has accepted forms of theorising that would have been disqualified some years ago due to their essentialist tendency. For instance, the celebrated ‘Chinese school of IR’ solely reactivates Confucianism as an ontological source, dismissing thus other political traditions that exist or have existed in China such as 1930’s revolutionary Chinese thought, Mao Zedong’s thought, Buddhism or even a ‘sinicised’ Islam. In this way, only Confucianism is equated with Chineseness. Regarding the project of ‘Global IR’, Hurrel (2016, p.150), wisely warned us about the dangers of Global IR as it ‘can also lead to a cultural and regional inwardness that may work to reproduce the very ethnocentricities that are being challenged’. This is perhaps one of the main paradoxes that exist in IR given the massive and recent disciplinary efforts to evade such ‘essentialist’ constructions. This is what I call the ‘trap of diversity’ in IR. It is worth mentioning that the production of ‘non-Western IR theory’ has manifested several degrees of ‘essentialism’. Although, there are some great contributions (Hurrel, 2016) that seek to transcend these dynamics. Nonetheless, I contend that such essentialism that informs the production of ‘non-Western IR theory’ is a result of the impact of the ‘dual legacy’ (Chibber, 2018) of Edward Said’s Orientalism in the discipline of IR. As Chibber (2018, p.37) argues ‘[Said’s] legacy is therefore a dual one – propelling the critique of imperialism into the very heart of the mainstream on the one hand, but also giving strength to intellectual fashions that have undermined the possibility of that very critique’. Specifically, in the field of ‘non-Western IR theory’, these academic trends have been crystallised in (neo)-Weberian and postmodern approaches and a problematic scholarly tendency to understand the production of international theory as an independent intellectual process that is completely disjointed from a specific form of political economy or material reality. In this light, the main challenge that the IR discipline has to address is the legacy of ‘Western cultural imperialism’, in an idealist fashion, rather than the specific social and geo-economic structure that both enabled and shaped the form in which ‘Western IR’ has been materialised since 1919. As a result of this idealist critique, it is widely recognised that ‘cultural representation’ (Acharya, 2014) is indeed the deep structural problem of the IR discipline rather than the material historical pillars and infrastructure that enabled its emergence. The logical consequence of this has been the mainstream approach that understands ‘non-Western IR thought’ as the theory produced in non-western societies, which are in opposition to the conventional geography of an eternal ‘West’. Hence the apparent importance of Confucianism, Hinduism or political Islam as ‘non-Western’ ontological sources in the new theoretical formulations. The activation of such cultural imaginaries as ontological foundations from ‘non-Western’ societies in the context of the production of ‘non-Western IR theory’ is conceived as the logical step towards a more pluralistic and ‘cultural’ egalitarian discipline. It is worth clarifying that I am not arguing against cultural diversity. Cultural diversity is the very foundation of humanity. On the contrary, I argue that it is important to critically engage with the very enterprise of ‘non-Western IR theory’ in its current disciplinary form. Despite the respectable efforts to turn the IR discipline into a more pluralistic field, critical scholars have taken for granted the essentialist notion of ‘non-Western IR theory’, uncritically assuming that such theory is only produced in non-Western societies in a binary contrast to that of conventional IR. This not only reifies ‘the West’ as an eternal and fixed entity but also orientalises the ‘non-West’. For this reason, this article seeks to answer the following question: what constitutes ‘non-Western IR theory’.

This article has argued that the uncritical engagement with ‘cultural diversity’ in the discipline of IR, which has been epitomised by the development of ‘non-Western IR theory’, has not succeeded in transcending the ‘imperial’ or ‘Western’ origins of the discipline. On the contrary, the interpretation of the production of non-Western International thought as the knowledge produced by societies beyond the territories of the West has reinforced new forms of essentialism. This is what I have described as ‘the trap of diversity’ in IR. For this reason, the form in which ‘non-Western IR theory’ has materialised should be understood as a form of disciplinary ‘identity politics’, a struggle for the representation of abstract and reified cultural entities, rather than as a real theoretical challenge to question its imperial foundations and the material infrastructure that enabled that specific production of knowledge. In other words, I maintain that these approaches are a disciplinary ‘dead-end’.

### AT “Nuc War” Link

#### Discussion of war does not displace focus on structural violence—it allows an injection of complexity that is not hierarchical

Barkawi 12—Professor Politics at the New School for Social Research (Tarak, “Of Camps and Critiques: A Reply to ‘Security, War, Violence’” Millennium - Journal of International Studies, Vol 41 No 1, p 124-130, SagePub)

A final totalising move in ‘Security, War, Violence’ is the idea that the study of war should be subsumed under the category of ‘violence’. The reasons offered for this are: violence does not entail a hierarchy in which war is privileged; a focus on violence encourages us to see war in relational terms and makes visible other kinds of violence besides that of war; and that the analysis of violence somehow enables the disentangling of politics from war and a proper critique of liberal violence.22 I have no particular objection to the study of violence, and I certainly think there should be more of it in the social sciences. However, why and how this obviates or subsumes the study of war is obscure to me. Is war not historically significant enough to justify inquiry into it? War is a more specific category relative to violence in general, referring to reciprocal organised violence between political entities. I make no claims that the study of war should be privileged over that of other forms of violence. Both the violence of war, and that of, say, patriarchy, demand scholarly attention, but they are also distinct if related topics requiring different forms of theorisation and inquiry. As for relationality, the category of war is already inherently relational; one does not need the concept of violence in general to see this. What precisely distinguishes war from many other kinds of violence, such as genocide or massacre, is that war is a relational form of violence in which the other side shoots back. This is ultimately the source of war’s generative social powers, for it is amidst the clash of arms that the truths which define social and political orders are brought into question. A broader focus on violence in general risks losing this central, distinctive character of the violence of war. Is it really more theoretically or politically adequate to start referring to the Second World War as an instance of ‘violence’? Equally, while I am all for the analysis of liberal violence, another broad category which would include issues of ‘structural violence’, I also think we have far from exhausted the subject of liberalism and war, an important area of inquiry now dominated by the mostly self-serving nostrums of the liberal peace debates. What perhaps is most interesting about Aradau’s remarks on violence is that she assumes we know what war is. So, for example, she suggests that we attend to a continuum of violence in which war is considered alongside ‘insurrections, revolts, revolutions, insurgencies, rebellions, seditions, disobediences, riots and uprisings’.23 Apparently, on her understanding, these other things are not war, even though most of them typically involve reciprocal, organised violence. This is precisely to take as given the IR disciplinary view of ‘real interstate war’ that underlies Correlates of War and other mainstream work. This is the definition of war that I sought to critique in ‘From War to Security’, a critique Aradau has overlooked. I was posing new questions and possibilities for the study of war, not proffering definitive answers about what war is and what it is not, or about where and when it starts and ends. It is, I would suggest, Aradau who is most concerned about hierarchy and privilege, particularly in respect of perceived slights to Critical Security Studies and her demand that any study of war be in dialogue with Critical Security Studies. In this, she overlooks the fact that, conceived another way, with a more holistic vision of the community of relevant scholars, my article was already an engagement with critical inquiry into security relations. Perhaps it was the opening rhetoric of my article that inspired Aradau’s ire, my reference to partygoers from Copenhagen and Aberystwyth dancing on graves, or my suggestion that contemporary ‘wider agenda’ security scholars know rather less about the composition of carrier battle groups than did their traditional predecessors.24 But does anyone seriously doubt that ‘wider agenda’ scholars are less familiar with histories and sociologies of wars and militaries than were the traditional predecessors, who even so still managed to overlook their significance? These passages were meant to serve a very specific purpose, to denaturalise our images of the new and old security studies, and to open up the reader to the possibility that, with respect to the study of war, these fields of study share more in common than is conceivable within the current terms of debate. Neither traditional nor ‘wider agenda’ security studies are centrally interested in war. Given the significance of war in the human past and present, and the dire state of the study of war in the Anglo-American academy, this seems to me a serious problem for critical thought.

#### Kato is about nuclear testing

Kato, their author, 93, (Masahide Kato, 1993, “Nuclear Globalism: Traversing Rockets, Satellites, and Nuclear War via the Strategic Gaze," Alternatives 18.3 (1993), pages 339-360)

Let us recall our earlier discussion about the critical historical conjecture where the notion of "strategy" changed its nature and became deregulated/dispersed beyond the boundaries set by the interimperial rivalry. Herein, the perception of the ultimate means of destruction can be historically contextualized. The only instances of real nuclear catastrophe perceived and thus given due recognition by the First World community are the explosions at Hiroshima and Nagasaki, which occurred at this conjecture. Beyond this historical threshold, whose meaning is relevant only to the interimperial rivalry, the nuclear catastrophe is confined to the realm of fantasy, for instance, apocalyptic imagery. And yet how can one deny the crude fact that nuclear war has been taking place on this earth in the name of "nuclear testing" since the first nuclear explosion at Alamogordo in 1945? As of 1991, 1,924 nuclear explosions have occurred on Earth. The major perpetrators of nuclear warfare are the United States (936) times, the former Soviet Union (715 times), France (192 times), the United Kingdom (44 times), and China (36 times). The primary targets of warfare ("test site" to use Nuke Speak terminology) have been invariably the sovereign nations of Fourth World and Indigenous Peoples. Thus history has already witnessed the nuclear wars against the Marshall Islands (66 times), French Polynesia (175 times), Austrailian Aborigines (9 times), Newe Sogobia (the Western Shoshone Nation) (814 times), the Christmas Islands (24 times), Hawaii (Kalama Island, also known as Johnston Island) (12 times), the Republic of Kazakhstan (467 times), and Uighur (Xianjian Provine, China) (36 tims). Moreover, although I focus primarily on "nuclear tests" in this article, if we are to expand the notion of nuclear warfare to include any kind of violence accrued from the nuclear fuel cycle (particularly uranium mining and disposition of nuclear wastes), we must enlist Japan and the European nations as perpetrators and add the Navaho, Havasupai and other Indigenous Nations to the list of targets. Viewed as a whole, nuclear war, albeit undeclared, has been waged against the Fourth World, and Indigenous Nations. The dismal consequences of "intensive exploitation," "low intensity intervention," or the "nullification of the sovereignty" in the Third World produced by the First World have take a form of nuclear extermination in the Fourth World and Indigenous Nations.

#### But that’s ended ⁠— it proves that there is a distinction between nuclear annihilation absent the plan and the status quo; Public pressure, international negotiations, and Congressional cooperation ended nuclear testing ⁠— the alt’s withdrawal from institutions fails

von Hippel 19, Professor and Co-Director of Program on Science and Global Security at Princeton University and Woodrow Wilson School of Public and International Affairs, American physicist (Frank N. von Hippel, December 2019, "The Decision to End U.S. Nuclear Testing," No Publication, https://www.armscontrol.org/act/2019-12/features/decision-end-us-nuclear-testing)

Today, for the first time since the beginning of the nuclear age, none of the world’s nuclear-armed states is conducting nuclear test explosions. After more than 2,000 detonations, the world’s nuclear test sites are dormant. The journey that brought us to this point has been long, and there have been some key turning points and some particularly important decision-makers who have steered us away from nuclear testing and the arms racing and environmental contamination it produces. When U.S. President Bill Clinton took office in January 1993, one of the first issues he confronted was the future of U.S. nuclear testing. At the time, Congress was firmly in Democratic control, and the Democrats had been pressing the resistant Reagan and Bush administrations to agree to end U.S. nuclear testing if other countries, especially Russia, did as well. Soviet leader Mikhail Gorbachev had declared a nuclear test moratorium starting on August 6, 1985.1 Despite a lack of reciprocation from the Reagan administration, the Soviet moratorium had a substantial impact on Western public opinion, and Gorbachev extended it through 1986 before pressure from the Soviet military forced him to allow resumed testing. Public pressure against nuclear testing in Kazakhtan, however, where the Soviets conducted the majority of their nuclear tests, was growing. After an underground test vented at the Semipalitinsk test site in Kazakhstan in February 1989, public outrage grew further, forcing the shutdown of the site.2 Soviet nuclear testing shifted to the Arctic site on the island of Novaya Zemlya, but in the face of international protests, only one more test, on October 24, 1990, was conducted there. A year later, in October 1991, just before the disintegration of the Soviet Union, Gorbachev announced another year-long testing moratorium.3 His successor, President Boris Yeltsin, confirmed the extension of the moratorium and called again for the United States to reciprocate.4 In response, Democratic and Republican members of Congress introduced legislation to halt U.S. nuclear testing for one year, which gained momentum and, with some modifications, was approved in October 1992 and very reluctantly signed into law by President George H.W. Bush.

The Hatfield-Exon-Mitchell Amendment

The test moratorium law resulted from the Hatfield-Exon-Mitchell amendment to the fiscal year 1993 energy appropriations bill. The amendment was sponsored by Senator Mark Hatfield (R-Ore.), a liberal who had, as a Navy lieutenant, visited Hiroshima a month after the nuclear bombing on August 6, 1945; Senator James Exon (D-Neb.), a moderate serving on the Senate Armed Services Committee; and Senate Majority Leader George Mitchell (D-Maine). The law suspended U.S. nuclear testing for nine months and required a complete halt of U.S. nuclear testing by September 30, 1996, if other countries had stopped testing by then. Clinton adopted that as a goal, and after more than two years of intensive multilateral negotiations at the Conference on Disarmament (CD) in Geneva, the Comprehensive Test Ban Treaty (CTBT) was opened for signature on September 24, 1996, with Clinton and 65 other national leaders signing on the first day.5 Since that time, only three nations have tested: India and Pakistan in May 1998 and North Korea (six tests between 2006 and 2017). The road to the signing ceremony was a bumpy one. One of the most important issues in the U.S. internal policymaking process was how the safety and reliability of U.S. nuclear warheads would be maintained in the absence of testing. The Hatfield-Exon-Mitchell amendment recognized that problem and allowed up to 15 tests before September 30, 1996, for fixes of specific safety and reliability problems. It also allowed up to three of these tests to be conducted with the United Kingdom, which had no test site of its own, if the UK had a problem with an existing warhead type that needed fixing.6 The “physics packages” of all U.S. nuclear warheads have been designed by two Department of Energy laboratories, the Los Alamos and Lawrence Livermore national laboratories, located in New Mexico and California, respectively. The associated electronic controls for the warheads are designed and procured by the Sandia National Laboratories, which has sites near both of the weapons physics labs. These three weapons laboratories therefore had to recommend whether any tests were required before the United States ended testing and, if so, bring them for approval to the secretary of energy.

### AT FW vs Settlers

#### Tying decolonization to a settler W is a double-turn

Bazinet 16, MA in Globalization and Internationa Development @ U of Ottawa (Trycia, “White, Settler-Colonialism, International Development Education, and the Question of Futurity: A Content Analysis of the University of Ottawa Master’s Program Mandatory Syllabi in Globalization and International Development,” Proquest Theses)//BB

The comfort of settlers just cannot be an additional burden that Indigenous peoples have to carry (Yerxa, as cited in Battell Lowman & Barker, 2015, p. 22). Decolonization is not about the future of settlers, and to imagine decolonization as addressing settlers’ anxieties means that it has already failed, including in education and curricula (Gaztambide-Fernandez, 2013, p. 85-86). Settlers must be willing to be refused and direct their work to imagine relational ways of being that are not dependent on dispossession (Flowers, 2015, p. 34). Even when settlers do engage in unsettling settler-colonialism, it cannot be for their own instrumental ends (De Leeuw, 2013, p. 391). Settlers’ engagement with the process of creating spaces for decolonization cannot happen if it has a pre-determined goal to attain or an assumed reconciliation to be reached in the end. Under rematriation, not only are white settlers not at the center of decolonization, but they are also refused what they always felt entitled to, or from accessing knowledges they do not deserve (Tuck & Yang, 2014, as cited in Zahara, 2016). There is no praise to be received from taking so-called decolonizing initiatives, as they are already about 500 years late. Their good intentions are simply not enough, expected to be harmful, and therefore will not be engaged with.

### AT Alternative---Environment DA

#### The alternative destroys the environment

Redford 91, PhD @ Harvard, principal at Archipelago Consulting, established in 2011 and based in Portland, Maine. He was most recently Director of the WCS Institute and Vice President, Conservation Strategies at the Wildlife Conservation Society in New York. (Kent, “Romanticizing the Stone Age,” *Cultural Survival Quarterly*, https://www.culturalsurvival.org/publications/cultural-survival-quarterly/ecologically-noble-savage)//BB

It is the latter idea, that Indians lived in conformity with nature, that inspired this century's reincarnation of the noble savage. Writings of several scientists and indigenous rights advocates echo the early chroniclers' assumption that indigenous people lived in "balance" with their environment. Prominent conservationists have stated that in the past, indigenous people "lived in close harmony with their local environment." The rhetoric of Indian spokespersons is even stronger: "In the world of today there are two systems, two different irreconcilable `ways of life.' The Indian world - collective, communal, human respectful of nature, and wise - and the western world - greedy, destructive, individualist, and enemy of nature" (from a report to the International NGO Conference on Indigenous Peoples and the Land, 1981). The idealized figure of centuries past had been reborn, as the ecologically noble savage. The recently accumulated evidence, however, refutes this concept of ecological nobility. Precontact Indians were not "ecosystem men"; they were not just another species of animal, largely incapable of altering the environment, who therefore lived within the "ecological limitations of their home area." Paleobiologists, archaeologists, and botanists are coming to believe that most tropical forests have been severely altered by human activities before European contact. Evidence of vast fires in the northern Amazonian forests and of the apparently anthropogenic origins of large areas of forest in eastern Amazonial suggests that before 1500, humans had tremendously affected the virgin forest, with ensuing impacts on plant and animal species. These people behaved as humans do now : they did whatever they had to to feed themselves and their families. "Whatever they had to" is the key phrase in understanding the problem of the noble savage myth in its contemporary version. Countless examples make it clear that indigenous people can be either forced, seduced, or tempted into accepting new methods, new crops, and new technologies. No better example exists than the near-universal adoption of firearms for hunting by Indians in the Neotropics. Shotguns or rifles, often combined with the use of flashlights and outboard motors, change completely the interaction between human hunters and their prey. There is no cultural barrier to the Indians' adoption of means to "improve" their lives (i.e., make them more like Western lives), even if the long-term sustainability of the resource base is threatened. These means can include the sale of timber and mining rights to indigenous lands, commercial exploitation of flora and fauna, and invitations to tourists to observe "traditional lifestyles." Indians should not be blamed for engaging in these activities. They can hardly be faulted for failing to live up to Western expectations of the noble savage. They have the same capacities, desires, and, perhaps, needs to overexploit their environment as did out European ancestors. Why shouldn't Indians have the same right to dispose of the timber on their land as the international timber companies have to sell theirs? An indigenous group responded to the siren call of the market economy in just this spirit in Brazil in 1989, when Guajajara Indians took prisoners in order to force the government Indian agency, FUNAI, to grant them permission to sell lumber from their lands. "Inherent Superiority"? Such observed behavior contrasts sharply with the claims made about Indian use of natural resources in the modern world. Despite evidence to the contrary, indigenous people continue to be credited with natural respect for ecology and a commitment to sustainable methods of resource sue under all circumstances. Some Indian groups, reading of the qualities attributed to them by Europeans, have begun to give themselves the same credit. In some cases, Indian spokespersons promise that adoption of "Indian ways" will solve many of the problems created by the ignorant ways of the non-Indians. In the highly publicized Chimane Forest Reserve in Amazonian Bolivia, for example, where indigenous people are protesting lumbering activities by commercial firms, a spokesperson for the Moxo Indians lays claim to some of the land stating: "We have learned to take care and maintain the ecology because we know that it guarantees our existence." The assertion that as Indians these people will be ecologically noble stewards, though unproven, is a trump card in the current world of conservation sensitivities. The currency of the myth of ecological nobility was demonstrated again in Colombia, when the Colombian government granted Indians rights to more than half of national rain forest territory, arguing that the Indians are the people most likely to protect the biological diversity of the tropical forest. The Indians will administer the territory because, supposedly, as Indians, they will sustainably use and therefore preserve the plant and animal diversity. (Any "serious" exploitation will presumably be turned over to non-Indians, more experienced in nonsustainable resource use. The government has kept the rights to minerals and to commercial extraction of natural resources.) The belief in the inherent superiority of indigenous resource use systems has reached its twentieth-century apogee in the argument that such systems are ideal models for development. Books, conferences, and learned editorials push the relevance of indigenous knowledge to contmporary development in the tropics. A recent World Wildlife Fund study on indigenous methods of resource use was titled "The Once and Future Resource Managers."

#### Indigenous methods can’t sustain the current population

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To be sure, several scientists have demonstrated that there are methods used by indigenous peoples that are definitely superior to those used by non-indigenous peoples living in the same habitat. These methods include polycropping, techniques to enhance soil fertility, and sustainable harvesting of forest plants. Other scientists have shown that indigenous groups possess culturally encoded mores that result in preservation of the resource base. But these documented patterns are sustainable only under conditions of low population density, abundant land, and limited involvement with a market economy. How relevant are such methods and customs to situations where these three conditions no longer exist, as in most place in the Neotropics today? Techniques developed to satisfy subsistence needs are unlikely to work when surpluses are needed for cash. As an example, the Irapa-Yukpa Indians of western Venezuela, who traditionally moved over an extensive area in search of game and plant food, are now stationary. They raise coffee and work as seasonal laborers. The Indian hunters, who for the most part -use shotguns, have eliminated most large animals from near their villages and use much of the cash earned growing coffee or working for wages to purchase canned meat or fresh fish. As the anthropologists studying this group note, "Traditional ideology, language, and economic pursuits are rapidly being replaced by the customs and behavioral characteristics of the imposing Venezuelan rural culture." These researchers go on to suggest that what is happening to the Yukpa will soon happed to most other relatively unacculturated tribes. To believe that when confronted with market pressures, higher population densities, and increased sedentism most indigenous peoples will maintain the integrity of their traditional methods is not only to argue against the available evidence, but worse, to fall into the ideological trap that produced the ecologically noble savage.

### AT Alternative---Reductionism DA

#### The alt is reductive, shuts down solutions, and reifies authoritative gatekeeping

Nakata et al. 12, Director of Nura Gili at the University of New South Wales; first Torres Strair Islander to receive a PhD in Australia, their mother is an Indigenous person from the Torres Strait Islands (Martin Nakata, Victoria Nakata, Sarah Keech, Rueben Bolt, 2012, “Decolonial goals and pedagogies for Indigenous studies,” Vol. 1, No. 1, pp. 120-140)

Decoloniality, critical theory and the cultural interface

Decolonial theorists from Latin America now inform an international field of ‘decolonising thought’ and share “a view of coloniality as a fundamental problem” (Maldonado-Torres, 2011, p. 2). Across the globe Indigenous peoples, in common with other colonised populations, also assert a “definitive rejection of ‘being told’...what we are, what our ranking is in relation to the ideal of humanitas and what we have to do to be recognised as such” (Mignolo, 2009, p. 161). Imbo (1998), for instance, as a critic of such understandings and responses as practised in parts of Africa, suggests this is at risk of being no more than a “rush toward that inviting community called ‘humanity’ [which] turns out to be no less than a succumbing to a world defined by Europe” (p. 131). Thus, while the decolonial turn holds emancipatory and identity goals central to its project, decolonial inquiry engages the question of knowledge and epistemology critical to understanding the presence of others’ worldviews and the limits these impose on Western philosophy (Maldonado-Torres, 2011). Mignolo (2009), for example, makes the argument for ‘epistemic disobedience’ as a way to ‘delink’ from the Western epistemological assumption that there is a “detached and neutral point of observation” (p. 160) through which to interpret and know the world. For Mignolo, it is both the geo- and bio-politics of knowledge that necessitates disobedience. By these he means the universalising of European thought and reason as the ideal and global human system of thought and the contemporary positioning of colonised peoples who now act “knowing [they] have been described as less than human” (2009, p. 174). Mignolo’s call for epistemic disobedience is evident in the work of Australian Indigenous scholars whose critical analysis is constructed in strident opposition to positivist traditions embedded in colonialisms. This is despite the recruitment of embedded positivist traditions in many Indigenous theoretical propositions for going forward (e.g., Rigney, 1999; 2001). However, this aside, in this oppositional analysis, the role of the disciplines in constructing a corpus ‘about’ the Indigenous, which continues to shape and re-shape understandings and knowledge production ‘about’ and ‘by’ the Indigenous in the present, is revealed for critique. Indigenous critique of the universalising Western standpoint announces that there are other epistemologies and other standpoints from which Indigenous people come to know the world and from which we understand and analyse our more recent encirclement by Western knowledge over the last few centuries and its legacies. In Australia, this critique underpins Indigenous political resistance and principles of self-determination within the nation-state, as well as relations of solidarity with other Indigenous peoples internationally. However, critique of the Western is not sufficient for the defence of Indigenous systems of thought or the re-building of Indigenous lives and communities. And so an imperative of decoloniality and a central task of Indigenous people, including scholars in this field, is ‘decolonial knowledge-making’ that reasserts and draws in concepts and meanings from Indigenous knowledge and systems of thought and experience of the colonial. This makes for a complex knowledge interface in Indigenous knowledge production, and here the challenge for Indigenous Studies in the Academy becomes a little clearer. In the Academy, Indigenous Studies is ‘discipline-like’ in the way it contests and seeks to transform ‘Indigenous’ relations to ‘the Western’ academy. There is, in much Indigenous inquiry, an embracing of Critical Theory with its emphasis on emancipation or liberation, and on its arguments for participatory knowledge-making and actions that empower and transform Indigenous individuals and collectives (e.g., Freire, 1972; Horkheimer, 1993). Critical Theory’s great attraction lies in its promise of overcoming ‘dominant’ power relations and delivering ‘empowerment’ to Indigenous people on the ground in the form of practical action in Indigenous interests. An assumption is that this knowledge production is transparent and Indigenous participants are self-knowing, apolitical agents of knowledge when producing knowledge in their own contexts and on Indigenous terms. The ‘knowledge in action’ approach (following Habermas, 1984-1987) also ~~marries~~ [pairs] well with Indigenous approaches to re-utilise the coloniallyusurped traditional knowledge of Indigenous collectives. Critical theory, particularly as it came to apply in teaching and learning areas (e.g., Murphy & Fleming, 2009), is also drawn into the production of ideological and oppositional analysis via ‘grassroots’ knowledge production in Indigenous communities in a way that animates political resistance to dominating Western theory and intellectualism. However, various interpretations of Critical Theory’s conception of power and loyalty to early beginnings in Structuralism and Western philosophy appear not to pose concerns for Indigenous theorists. On the surface at least, Indigenous decolonising knowledge production appears to be controlled by Indigenous knowers ‘on the ground’ supported by Indigenous scholars from within the Academy who understand and have subjected to critical analysis the practices of Western knowledge production and practice (Rigney, 1999, 2001; Bishop, 2003; Martin, 2008). Here Indigenous knowledge traditions are made available for re-working on the contemporary ground to give shape to new knowledge production for Indigenous social practices, such as health, education, and governance, that are continuous with older or coloniallydisplaced Indigenous social meanings. And here a sense of practical knowledge production for Indigenous life-worlds is prioritised ahead of disciplinary or academic concerns for theory and method. By contrast, other Indigenous scholars, along with other critical pedagogues (e.g., Hountondji, 1983; Deloria & Wildcat, 2001; Smith, 2011), do more than simply contest a destructive and imposed Western framework. These scholars acknowledge that Indigenous people have more complicated, embodied histories of observing colonial impacts, ignoring or refusing colonial demands, conforming to colonial demands (albeit ambivalently or contradictorily), and appropriating Western understanding for Indigenous purposes and interests (Nakata, 1993). This view of more engaged histories evidences Indigenous agency and both continuity and discontinuity with Indigenous social meanings, as well as the assimilation of ‘new’ meanings and, much more unevenly across different local contexts, some internalisation of colonial meanings. Nakata (2007b), for instance, emphasises the role of Indigenous agency in everyday standpoints and argues that Indigenous agency is premised on forms of analysis that are historically-layered, responsive to changing social conditions, often traditionally-grounded, and often forward-looking. These reflect a practice of intelligent, self-interested, and pragmatic sense-making based on a distanced observation of the external colonial order being imposed, via the logic and reasoning of traditional modes of analysis, and against the oppressive and often seemingly absurd logic of colonial reasoning applied in local and everyday contexts. In this form of practised analysis are myriad refusals, non-engagements, and ambivalent or conditional deferrals of and to colonial meaning. As well, historically, in places, Indigenous forms of analysis enabled domestication of Western meanings and practices into traditional meaning systems in ways that served some practical, self-interested purpose. Domestication practices worked to uphold continuity of social practices but often misunderstood the logic and reasoning of the Western order in which meaning was embedded. . For this, a clearer understanding of the politics of knowledge production and the effects of knowledge positioning is required all round. The politics of Indigenous Studies in the academy In Indigenous Studies, simplistic critique of the Western has had a tendency toward reductive ideological critique in the effort to demonstrate political resistance as the path to Indigenous ‘liberation’ and re-affirmation of traditional identities2 . By simplistic critique, we mean that which represents the Western in singular terms and antithetical to the Indigenous. This reflects, in part, the activism of the struggle for freedom, recognition, and self-determination. When coupled with the determination to affirm dynamically adapting cultural practices or to re-instate conceptual thought from Indigenous knowledge systems or ‘traditions’, Smith’s (1999) decolonising priority to re-claim, re-name, re-write and re-right is upheld. This approach is ideologically powerful in terms of the Indigenous sense of autonomy and distinctiveness. However, it runs the danger of reifying the colonial binaries, even though ‘deconstruction’ of them re-turns the negative binary into a positive force mobilised by re-generated Indigenous meanings. More importantly, political resistance that demands the routine dismissal of the Western, as colonial and as the singular originary source of Indigenous struggles, when coupled with the quick re-claiming and re-naming of the Indigenous, inhibits fuller, more measured examination of the complex layers of meaning that now circumscribe what it means to be Indigenous and how Indigenous contemporary social conditions and concerns can be understood (see, for example, Sutton, 2009). Further to this, in the decolonising effort, attention to ‘epistemic concerns’ likewise engage in simplistic oppositional analysis between Indigenous and Western knowledge epistemologies as the antithesis of each other, when the epistemological conditions of each demand much more measured and complex analysis (see, for example, Edwards & Hewitson, 2008 in contrast to Agrawal, 1995; Christie, 2006; Verran, 2005). As well, Indigenous knowledge, meanings, and practices are often re-constructed and applied without sufficient mechanisms for critical examination of them. The invocation of the ‘traditional’ or ‘community’ realm brings a regime of knowledge authorisation tied to the assertion of ancestral, spiritual, authentic, and distinct Indigenous identities grounded in claims to time-tested, collectively agreed-upon forms of truth-making. These are assumed as evidence of emancipation from Western inscriptions and practices but do not provide methods for critical examination of such assumptions or their limits in the contemporary space, which remains circumscribed by ongoing intrusions of Western meaning and logic (e.g., Wilson, 2008). In the teaching and learning literature, for example, are descriptions of some attempts to instate Indigenous knowledge practices in Indigenous Studies in the Academy that trivialise, distort, misunderstand, misuse and romanticise Indigenous knowledge and systems of thought. In these instances, academics both claim and, at the same time forgo, the specificities of the lived contexts of these forms of knowledge through which Indigenous people continuously interpreted and managed in the world and from which particular forms of social organisation were operationalised (see, for example, Sheehan, 2003). As well, in the context of the international field of Indigenous Studies scholarship, the borrowing of concepts and meanings across groups (for example, sharing and talking circles from North America to Australia) also generalises from the specific inter-relations between traditional knowledge practice, colonial experience, and contemporary concerns and goals that exist in local spaces. This need not be a problem if brought to awareness in analytical accounts; knowledge re-working routinely involves utilising other ideas. It is a problem if this knowledge production is not transparent and mystifies its sources by a practice of homogenising or universalising the Indigenous. A familiar risk re-presents: that of misrepresentation of Indigenous people via generalisation, misunderstanding, or distortion of knowledge, social meanings and the social functions of knowledge organisation. All these practices evidence a ‘determined’ but arguably too hurried movement from colonial critique to the instatement of alternative Indigenous knowledge positions. Decolonial theorist, Maldonado-Torres, speaks of the problems of pre-occupation with claims for emancipation and identity above epistemic concerns: The problem emerges when liberation is translated as a claim for immediate political action, a kind of political immediatism that becomes antipathetic to theoretical reflection...When the two combine, that is, the worst aspects of the claim for identity and those of the search for liberation, then we have a form of what Lewis Gordon calls epistemological closure. (2011, p. 4) Epistemic concerns, however, are arguably heightened rather than overcome when Indigenous epistemologies are re-presented as the antithesis of Western epistemology and argued as the basis to serve Indigenous contemporary needs, interests and practices. The major weakness of opposing positivism as the singular Western epistemology, while recruiting other ‘Western’ epistemologies emanating from critiques of positivism and in wide use for social and human inquiry, means that epistemic distinctions become much harder to sustain but are nevertheless often assumed and asserted. These assumptions sometimes support false propositions, a primary one being the split between theoretical (Western and colonial) and practical (Indigenous and emancipatory) forms of knowledge-making. The privileging of action as Indigenous practice, at the expense of theoretical inquiry, implies, to use Mignolo’s words, Indigenous people cannot “function as...theoretically-minded [people]” (2012, p. 160), or that to do so would be to devalue Indigenous ways of knowing or even to cease being Indigenous (Deloria, 2004). Indeed, in Indigenous Studies sometimes discussions about theoretical questions are excluded by arguments that position intellectualism as the tool of ‘cognitive imperialism’ or as the antithesis of Indigenous knowledge as lived action or received wisdom (e.g., Rigney, 2001; Martin, 2003). The cause for concern here is neither the methodologies utilised nor the questioning of the place of theoretical inquiry. Rather, the concern is how the claims to truth that attach to accounts generated from ‘the ground’, or from within Indigenous knowledge traditions, establish themselves as unquestionably ‘authentic’ forms of decolonial knowledge production, when it is not at all clear that they are. Under these conditions and in the absence of critical examination of contemporary innovations of Indigenous knowledge practice within Indigenous academia, the risks entailed in moving from ‘epistemic disobedience’ of the Western to ‘epistemic obedience’ of the regenerated Indigenous are less examined. In these practices, Indigenous academia exemplifies a determination by some to eclipse the influence of the Western by moving too quickly to instate modes of knowledge authority that valorise markers of authenticity based in tradition (see, for example, Anderson and Hokowhitu, 2009). As these authors have argued, in the challenging decolonial spaces where the presence of both Western and Indigenous knowledge traditions produce fields of difficult comprehensibility or total incomprehensibility, it is the ‘easily translatable’ that becomes ‘knowable’ to the Academy, including the Indigenous Academy (2007, p. 45). It is also the ‘easily translatable’ from academic theory that becomes ‘knowable’ to Indigenous communities. In all of this movement, what is accorded the most legitimacy from recognised Indigenous community authorities is arguably ‘recognised’ more broadly by higher education institutions and the Academy, albeit often in the form of inclusive patronisation or tolerance. The growing frustration with the difficulty of questioning traditional/cultural/community forms and sources of Indigenous authority pivots around the Indigenous political and scholarly allegiance to conceptualisations of Indigenous worldview as a counter-narrative to the Western. This is concerning because the production of counter-narratives is the work of decoloniality. However, if Indigenous cosmology and epistemologies are positioned as the unquestionable basis of renewed Indigenous resistance, knowledge and authority, then what is not brought into question in this decolonial analysis in the Indigenous academy are notions of Indigenous authority. Here Indigenous Studies, even when under the control of Indigenous scholars, operates in a ‘discipline-like’ way. Indigenous people, including Indigenous academia, construct and defend Indigenous grounds for good reason and justifiably in the Indigenous epistemic sense. But for many, these Indigenous conditions of knowledge-making are no more transparent than, and just as mystifying as, Western disciplines, in terms of how they disguise the politics of their production in contemporary collective spaces. For instance, emancipatory agendas propositioned on the basis of some cultural beginning along the road between primitiveness and modernity, can lead to the de-identification of Indigenous people (e.g., Driskill, Finley, Gilley & Morgensen, 2011). Here, decolonial theory provides some critical questions to turn back onto the assumptions of decolonial knowledge-making practices. Should Indigenous academia and the Indigenous ‘grassroots’ community be more concerned about the positioning effected through all conceptual frames when, as Vallega (n.d.) reminds us, “conceptual knowledge in its articulations of senses of beings is always a source of power, and the configuration of practices and institutions that will sustain specific ideas are clearly instruments of power” (p. 6)? Might Indigenous Studies scholars also heed Mignolo’s discussion of the function of knowledgemaking for social organisation and his argument that “institutions are created that accomplish two functions: training of new (epistemic obedient) members and control of who enters and what knowledge-making is allowed, disavowed, devalued or celebrated” (2009, p. 176)? Should we be more open to the question of what Indigenous oppressions are unable to be interrogated when Indigenous ‘decolonial knowledge-making’ assumes an epistemic [unawareness] ~~blind-eye~~ to its own practices? These questions are not to make an argument for constant deferral of Indigenous meaning or authority but for more open inquiry in the difficult and intricate tasks that go toward the decolonial project as envisioned by its theorists. As Deloria suggests in relation to the North American context, “Indians must examine some of the same phenomena as Western thinkers and must demonstrate that their perspectives and conclusions make sense” (p. 6). Here also, the Caribbean scholar, Lewis Gordon, in his discussion of ‘disciplinary decadence’ offers cautionary food for thought for the ‘discipline-like’ field of Indigenous Studies: Instead of being open-ended pursuits of knowledge, many disciplines have become self-circumscribed in their aims and methods in ways that appear ontological. By this I mean that many disciplines lose ~~sight~~ of themselves as efforts to understand the world and have collapsed into the hubris of asserting themselves as the world. (2006, p. 8) While Gordon might have the disciplines in his sight and be contributing to decolonial discourse, he constructs an argument that should apply to all quests to know and understand the world, including the contemporary Indigenous world. It may seem unfair to apply this to a field of inquiry emerging from within a contested philosophical, epistemological, theoretical, and methodological intersection where scholars are currently preoccupied with attempts to render visible all that has been submerged, excluded or overwritten. However, where claims to know are authorised via asserting Indigenous epistemologies and ‘traditions’, to oppose and invalidate colonial/Western constructions, the less examined entanglements - where the Western and Indigenous converge and constitute each other - deserve more thought and more analysis, especially in terms of how we understand the everyday of contemporary Indigenous life. Problematic Indigenous efforts to decolonise knowledge and methodologies while carving out ownership of the field of Indigenous Studies within higher education institutions can be understood as early incursions into a challenging and contested knowledge space. Nakata’s conceptualisation of the Cultural Interface is useful here to militate against hurried ‘claims to know’ the Indigenous on Indigenous terms at this very complex knowledge interface. Nakata’s conceptualisation (2006) supports the idea of Indigenous scholarship as a space for developing dispositions for not yet contemplated ways of thinking by bringing more attention to the conditions of knowledge, both ‘Western’ and ‘Indigenous’. This implies the need for engagement with the world of Western theory as well as Indigenous analysis forged from lived experience of everyday historical and contemporary spaces. Defence of the Indigenous does not necessarily depend on authenticating or separating the Indigenous (e.g., Grande, 2011) by appeals to notions of ‘intellectual sovereignty’ and resistance of the Western (e.g., Rigney, 2001), for example, but rests on understanding the positioning effect of knowledge or claims to know, as well as the practices that order, privilege, and operationalise some claims to know by excluding or silencing others. The will may be to overcome the Western but to pretend its presence disappears when the Indigenous re-asserts its epistemic conditions is a dangerous delusion. At the complex Indigenous-Western knowledge interface, “forms of scepticisms and epistemic attitudes” (Maldonado-Torres, 2011, p. 1) are necessary to consider the delimitations and dispositions of both Western and Indigenous theorising for understanding Indigenous contemporary social realities in this space and possibilities for the future. As Maldonado-Torres contends, for “a consistent decolonization of human reality.... [o]ne must build new concepts and be willing to revise critically all received theories and ideas” (2011, p.4). In this space, Wiredu’s (1995) appeal to ‘epistemic awakening’ and “not a return to anything” (see Mignolo, 2012, p. 169) offers more than the call to ‘epistemic disobedience’ as a means to counter the demand for ‘epistemic obedience’ of the disciplines. However, those Indigenous scholars in higher education areas who construct and/or teach Indigenous Studies programs and who are interested in these complex knowledge entanglements are often caught in battle with both ongoing coloniality (from the institution and the Academy) and simplistic Indigenous analysis that positions them as traitors or wayward spirits (from the Indigenous commonsense) merely because they dissent from or question popular and comforting Indigenous positions (see, for example, Anderson and Hokowhitu, 2007).

### AT Alternative---State Key

#### Challenging environmental injustice through state engagement is key

NoiseCat 16, enrolled member of the Canim Lake Band Tsq'escen in British Columbia where he was nominated to run for Chief in 2014 AND a graduate of Columbia University and the University of Oxford (Julian Brave, “The Indigenous Revolution,” *Jacobin*, [https://www.jacobinmag.com/2016/11/standing-rock-dakota-access-pipeline-obama/)//BB](https://www.jacobinmag.com/2016/11/standing-rock-dakota-access-pipeline-obama/%29//BB)

Movements working to reshape infrastructure, environmental policy, financial systems, policing, and work will be of particular importance to indigenous people. Fossil fuel divestment and the “Keep It in the Ground” movement can weaken and even undermine companies seeking to exploit fossil fuels on indigenous lands. Regulations that dismantle financial instruments and policies that profit from natural resource speculation could divert and damage returns on capital flows. The abolition of mass incarceration would loosen the death grip of prisons and police on indigenous communities. Unions can turn individual workers into collective forces of resistance, helping drive up costs for developers and protect laborers from unsafe working conditions. Long-term efforts to reimagine work through full automation and a universal basic income could prevent laborers from having to seek such dangerous work in the first place. As Standing Rock has shown, indigenous nations that use their unique standing to advocate for viable alternatives to unjust systems will gain supporters. Our traditional territories encompass the rivers, mountains, and forests that capital exploits with abandon. Our resistance — to the pipelines, bulldozers, and mines that cut through our lands and communities — has greater potential than yet realized. Ours is a powerful voice envisioning a more harmonious and sustainable relationship with the natural world rooted in the resurgence of indigenous sovereignty. As long as indigenous people continue to make this argument, we are positioned to win policies, court decisions, and international agreements that protect and enlarge our sovereignty and jurisdiction. As our jurisdiction and sovereignty grow, we will have more power to stop, reroute, and transform carbon-based, capitalist, and colonial infrastructure. When the Justice Department halted construction of DAPL in October, they also said they would begin looking into Free Prior Informed Consent legislation. This is a minimal first step, and we must hold them to it. Longstanding alliances with progressive parties and politicians are key to our success. In the United States, Native people have worked with Democratic elected officials like Bernie Sanders and Raúl Grijalva to advance bills like the Save Oak Flat Act, which aimed to stop an international mining conglomerate from exploiting an Apache sacred site in Arizona. In Canada, First Nations have supported the New Democratic Party. In New Zealand, the Maori Rātana religious and political movement has an alliance with the Labour Party that stretches back to the 1930s. Some indigenous leaders, such as outspoken Aboriginal Australian leader Pat Dodson, a Labour senator for Western Australia, have won prominent positions in these parties. This does not mean, of course, that we should pay deference to elected officials. In 2014, Obama became one of the first sitting presidents to visit an Indian reservation when he travelled to Standing Rock. His visit was historically symbolic and emotionally important, but if Obama fails to stop DAPL, indigenous people should renounce him. Politicians are helpful when they change policies and outcomes. We cannot and should not settle for symbolic victories. If there is to be an enduring indigenous-left coalition, the Left must support indigenous demands for land, jurisdiction, and sovereignty. At their core, these demands undermine the imperial cut-and-paste model of the nation-state, stretching from Hobbes to the present, which insists that there is room for just one sovereign entity in the state apparatus. Thomas Piketty’s call for a global wealth tax implies an international governance structure to levy such a tax. He pushes us to think beyond the state. Similarly, indigenous demands for lands, jurisdiction, and sovereignty imply that we must think beneath it. As the Fourth World continues to push states to recognize our inherent, constitutional, and treaty rights as sovereign nations, the Left cannot remain neutral. To remain neutral is to perpetuate a long history of colonization. To remain neutral is to lose a valuable, organized, and powerful ally.

### AT Alternative---Decol-Speciific

#### Academic calls for decolonization are a settler move to innocence

Tuck 12, PhD Assistant Professor of Educational Foundations at the State University of New York at New Paltz (Eve, Decolonization is not a metaphor, *Decolonization: Indigeneity, Education & Society*, 1.1)

Fanon told us in 1963 that decolonizing the mind is the first step, not the only step toward overthrowing colonial regimes. Yet we wonder whether another settler move to innocence is to focus on decolonizing the mind, or the cultivation of critical consciousness, as if it were the sole activity of decolonization; to allow conscientization to stand in for the more uncomfortable task of relinquishing stolen land. We agree that curricula, literature, and pedagogy can be crafted to aid people in learning to see settler colonialism, to articulate critiques of settler epistemology, and set aside settler histories and values in search of ethics that reject domination and exploitation; this is not unimportant work. However, the front-loading of critical consciousness building can waylay decolonization, even though the experience of teaching and learning to be critical of settler colonialism can be so powerful it can feel like it is indeed making change. Until stolen land is relinquished, critical consciousness does not translate into action that disrupts settler colonialism. So, we respectfully disagree with George Clinton and Funkadelic (1970) and En Vogue (1992) when they assert that if you “free your mind, the rest (your ass) will follow.” Paulo Freire, eminent education philosopher, popular educator, and liberation theologian, wrote his celebrated book, Pedagogy of the Oppressed, in no small part as a response to Fanon’s Wretched of the Earth. Its influence upon critical pedagogy and on the practices of educators committed to social justice cannot be overstated. Therefore, it is important to point out significant differences between Freire and Fanon, especially with regard to de/colonization. Freire situates the work of liberation in the minds of the oppressed, an abstract category of dehumanized worker vis-a-vis a similarly abstract category of oppressor. This is a sharp right turn away from Fanon’s work, which always positioned the work of liberation in the particularities of colonization, in the specific structural and interpersonal categories of Native and settler. Under Freire’s paradigm, it is unclear who the oppressed are, even more ambiguous who the oppressors are, and it is inferred throughout that an innocent third category of enlightened human exists: “those who suffer with [the oppressed] and fight at their side” (Freire, 2000, p. 42). These words, taken from the opening dedication of Pedagogy of the Oppressed, invoke the same settler fantasy of mutuality based on sympathy and suffering. Fanon positions decolonization as chaotic, an unclean break from a colonial condition that is already over determined by the violence of the colonizer and unresolved in its possible futures. By contrast, Freire positions liberation as redemption, a freeing of both oppressor and oppressed through their humanity. Humans become ‘subjects’ who then proceed to work on the ‘objects’ of the world (animals, earth, water), and indeed read the word (critical consciousness) in order to write the world (exploit nature). For Freire, there are no Natives, no Settlers, and indeed no history, and the future is simply a rupture from the timeless present. Settler colonialism is absent from his discussion, implying either that it is an unimportant analytic or that it is an already completed project of the past (a past oppression perhaps). Freire’s theories of liberation resoundingly echo the allegory of Plato’s Cave, a continental philosophy of mental emancipation, whereby the thinking man individualistically emerges from the dark cave of ignorance into the light of critical consciousness. By contrast, black feminist thought roots freedom in the darkness of the cave, in that well of feeling and wisdom from which all knowledge is recreated. These places of possibility within ourselves are dark because they are ancient and hidden; they have survived and grown strong through darkness. Within these deep places, each one of us holds an incredible reserve of creativity and power, of unexamined and unrecorded emotion and feeling. The woman's place of power within each of us is neither white nor surface; it is dark, it is ancient, and it is deep. (Lorde, 1984, pp. 36-37) Audre Lorde’s words provide a sharp contrast to Plato’s sight-centric image of liberation: “The white fathers told us, I think therefore I am; and the black mothers in each of us - the poet - whispers in our dreams, I feel therefore I can be free” (p. 38). For Lorde, writing is not action upon the world. Rather, poetry is giving a name to the nameless, “first made into language, then into idea, then into more tangible action” (p. 37). Importantly, freedom is a possibility that is not just mentally generated; it is particular and felt. Freire’s philosophies have encouraged educators to use “colonization” as a metaphor for oppression. In such a paradigm, “internal colonization” reduces to “mental colonization”, logically leading to the solution of decolonizing one’s mind and the rest will follow. Such philosophy conveniently sidesteps the most unsettling of questions: The essential thing is to see clearly, to think clearly - that is, dangerously and to answer clearly the innocent first question: what, fundamentally, is colonization? (Cesaire, 2000, p. 32) Because colonialism is comprised of global and historical relations, Cesaire’s question must be considered globally and historically. However, it cannot be reduced to a global answer, nor a historical answer. To do so is to use colonization metaphorically. “What is colonization?” must be answered specifically, with attention to the colonial apparatus that is assembled to order the relationships between particular peoples, lands, the ‘natural world’, and ‘civilization’. Colonialism is marked by its specializations. In North America and other settings, settler sovereignty imposes sexuality, legality, raciality, language, religion and property in specific ways. Decolonization likewise must be thought through in these particularities. To agree on what [decolonization] is not: neither evangelization, nor a philanthropic enterprise, nor a desire to push back the frontiers of ignorance, disease, and tyranny... (Cesaire, 2000, p. 32) We deliberately extend Cesaire’s words above to assert what decolonization is not. It is not converting Indigenous politics to a Western doctrine of liberation; it is not a philanthropic process of ‘helping’ the at-risk and alleviating suffering; it is not a generic term for struggle against oppressive conditions and outcomes. The broad umbrella of social justice may have room underneath for all of these efforts. By contrast, decolonization specifically requires the repatriation of Indigenous land and life. Decolonization is not a metonym for social justice. We don’t intend to discourage those who have dedicated careers and lives to teaching themselves and others to be critically conscious of racism, sexism, homophobia, classism, xenophobia, and settler colonialism. We are asking them/you to consider how the pursuit of critical consciousness, the pursuit of social justice through a critical enlightenment, can also be settler moves to innocence - diversions, distractions, which relieve the settler of feelings of guilt or responsibility, and conceal the need to give up land or power or privilege. Anna Jacobs’ 2009 Master’s thesis explores the possibilities for what she calls white harm reduction models. Harm reduction models attempt to reduce the harm or risk of specific practices. Jacobs identifies white supremacy as a public health issue that is at the root of most other public health issues. The goal of white harm reduction models, Jacobs says, is to reduce the harm that white supremacy has had on white people, and the deep harm it has caused non-white people over generations. Learning from Jacobs’ analysis, we understand the curricular pedagogical project of critical consciousness as settler harm reduction, crucial in the resuscitation of practices and intellectual life outside of settler ontologies. (Settler) harm reduction is intended only as a stopgap. As the environmental crisis escalates and peoples around the globe are exposed to greater concentrations of violence and poverty, the need for settler harm reduction is acute, profoundly so. At the same time we remember that, by definition, settler harm reduction, like conscientization, is not the same as decolonization and does not inherently offer any pathways that lead to decolonization.

#### Decolonization is too vague; their “structural claims” make it impossible

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For all its attached redemptive prospects and radical possibilities, it is important to emphasise that the meanings of decolonisation as both a concept and political project are not just broad, but also multifaceted and highly contested. What it means to ‘undo’ colonialism is deeply contextual (Jansen and Osterhammel, 2017). While colonialism can be defined broadly as a relationship of domination in which a people or territory is politically and economically subjugated to a foreign power, actual colonial situations vary quite widely from each other, depending on, among others, the particular political systems instituted to maintain control, types of exploitation and expropriation (resources, labour, plantations), relationship between the metropole and colony and patterns of migration they compel (slavery, settlement). Projects of decolonisation accordingly take different forms even if they are united by the common concern of ending or overturning structures of domination instituted by colonialism, which has historically taken place mostly through the withdrawal of colonial powers and achievement of independence for the colonised (Buchanan, 2010). Decolonisation speaks to the aspiration of self-rule and its concomitant critique of colonialism as the ‘systematic denial of freedom’ (Kohn and McBride, 2011: 6) and is therefore entangled with a variety of concerns, namely, self-determination, justice, equality, freedom and solidarity against colonialism and imperialism. As Todd Shepherd (2006: 3–4) writes, decolonisation is ‘a much wider concept than the mere “winning of Independence” or “transfer of power”… It entails the exploration of dreams, the analysis of struggles, compromises, pledges and achievements, and the rethinking of fundamentals’. Traditional literature on decolonisation approached it in terms of the historical process that began in the immediate aftermath of World War Two in which countries previously under (typically European) foreign rule transitioned to constitutional independence (Buchanan, 2010). Decolonisation was one of the most significant developments of the twentieth century, radically changing the face of the globe from one in which a small number of empires had dominion over some 80% of the earth’s surface to an international order based on the principle of self-determination and made up of ostensibly independent states (Hopkins, 2008). Scholars in this tradition have done much to illuminate the widereaching structural transformations that accompanied decolonisation, including the emergence of anti-colonial and national liberation struggles at the turn of the century, shifts in world economy that made the maintenance of traditional forms of Empire increasingly difficult, the development of a ‘Third World’ political project and the institutionalisation of human and civic rights principles that rendered systems based on ideas of racial and ethnic superiority less viable (Hopkins, 2008: 216). Yet, the focus on transition has been critiqued for its narrowness insofar as it seems to take for granted the meanings of selfdetermination and temporally restricts decolonisation to the moment of national liberation. Postcolonial scholars, among others, have been at the forefront of this charge, arguing that decolonisation did not produce a postcolonial world per se, but rather one that continues to be shaped in significant ways by the legacies of European colonialism (e.g. Spivak, 1999). As Ella Shohat (1992) has argued, there is no way of turning back from the world colonialism set in play nor did colonial modes of domination end with the formal period of decolonisation. From this broadened perspective, decolonisation is the difficult task of tracing the economic, political, social, cultural, relational and linguistic consequences of colonialism and is therefore also an ongoing imaginative project seeking ‘a new form of consciousness and way of life’ (Pieterse and Parekh, 1995: 3) beyond the coloniality of modern modes of culture, identity and knowledge more generally. While the transitional focus of conventional scholarship is quite illuminating in the contexts of Africa and Asia, for example, it furthermore excludes a great many decolonisation efforts that have taken place and continue to take place in other regions. This includes countries that remained dependent or only achieved semi-independence as dominions, decolonising projects carried out in territories never formally under colonial rule (the Iranian Revolution, for instance) and – as is particularly important to our discussion here – settler colonies that only partially decolonised, whether by way of loosening ties with the Motherland or achieving independence, but which continue to dominate substantial indigenous populations (Hopkins, 2008). There is a significant lacuna in the decolonisation literature when it comes to settler colonialism, which has increasingly been recognised as a distinct form of colonial practice – and one that is particularly resistant to decolonisation (Veracini, 2007). As the transfer of an exogenous population to a territory they intend to claim as their permanent home, settler colonialism establishes quite a different structural relationship to ‘traditional’ forms of colonialism, especially when settler colonial projects succeed in creating a state (Bateman and Pilkington, 2011). Rather than governing native peoples in order to extract resources for economic gain, settler colonisers instead aim to ‘seize their land and push them beyond an ever-expanding frontier of settlement’ (Elkin and Pedersen, 2005: 2). For Patrick Wolfe (2006), what distinguishes settler colonialism is thus that it is guided by a logic of elimination as opposed to a logic of exploitation, wherein the eradication of indigenous presence is essential to the success of settler colonial projects. The primacy of national liberation in the literature makes it especially difficult to imagine, let alone theorise, decolonisation in many settler colonial contexts. Whereas some settler colonial projects like Algeria and Kenya saw decolonisation by way of a mass settler exodus, paving the way for the establishment of independent states, the more successful ones established permanent settler communities (e.g. Northern Ireland) or their own states (e.g. Australia, Canada, the United States) which preclude a simple transition from foreign rule to sovereign status (Veracini, 2007). This is of course not to say that self-determination of the type aspired to by anti-colonial national movements was an easy or even necessarily achievable task. As Kohn and McBride (2011) suggest, in pursuing the dream of self-rule, anti-colonial thinkers had to reckon with the difficulties of articulating alternative political foundations that would make for a genuinely self-determining polity, an enormous task which demands decolonising of minds as much institutions and territory (see Fanon, 2001[1963]). Decolonisation must pursue a convincing ‘break’ between a colonial past and a postcolonial future ‘through decisive action in the present’; it must also ‘seek to reinterpret the past in such a way that it may help in the present and future struggle for self-rule’ (Kohn and McBride, 2011: 19). While these pursuits are invariably contingent, partial and commonly symbolic, national liberation struggles very often provide the fodder for a reinterpreted past that is robustly positive and the establishment of an independent state serves as that aspired for ‘break’. Settler colonial contexts, especially those where indigenous peoples live as minorities in settler states, make these types of symbolic transitions challenging, as they do the imagining of postcolonial alternatives. If the narrative structure of colonialism is circular (leave, stay, return), making that symbolic break possible, settler colonial narratives are linear insofar as the settler comes to stay and the line continues on unbroken (Veracini, 2007). As Ann Curthoys (1999: 288) writes, settler colonial spaces are simultaneously colonial and postcolonial, colonising and decolonising, which makes decolonisation temporally ambivalent at best. Lorenzo Veracini (2007) suggests that there are only two alternatives to settler evacuation for decolonising settler colonial forms and it is dubious whether one of these counts as decolonisation at all: the decolonisation of relationships through ‘the promotion of various processes of Indigenous reconciliation’ or the maintenance of the status quo ‘with the explicit rejection of the possibility of reforming the settler body politic’. Again, what the former might mean[s] is often vague, and historically it is the decolonisation of relationships that is hardest to come by considering the psychological consequences of colonialism for coloniser and colonised alike (Memmi, 1965). Like traditional forms of colonialism, settler colonialism was legitimated by a belief in the colonised’s racial and cultural inferiority. However, the specific settler colonial pursuit of land seizure compels additional stereotypes of native peoples or unique applications of existing colonial ones, wherein their supposed inferiority makes them ill-equipped to develop that land (premodern, nomadic, barbaric) or, alternatively, voids any claims to ownership (terra nullius). In other words, settler colonialism is as much premised on the denial of indigenous peoples as a political constituency with rights to land as it is their purported inferiority, which is typically enshrined in their status as second-class citizens with all the economic, cultural and social disadvantage this entails (Bateman and Pilkington, 2011: 3). Given that settler societies are marked by ‘pervasive inequalities, usually codified in law, between native and settler populations’ which preserve political and economic privileges for the latter (Elkin and Pedersen, 2005: 4), decolonising relationships demands structural changes that often encounter significant resistance from settler constituencies. Likewise, it requires a reckoning with historical injustice – specifically violence and conflict at the colonial frontier – that is challenging for settler states and populations because it opens questions of settler identity, privileges, legitimacy and reparations and expressly seeks to scrutinise disavowed and long suppressed histories. Settler colonial decolonisation is thus complicated by a multitude of hurdles, which bring the postcolonial caution of the impossibility of a ‘break’ into stark relief. Kohn and McBride (2011) suggest that decisive action in the present is essential to decolonisation, but in settler colonial contexts this is hindered by power discrepancies between settler and native constituencies, a general lack of settler political will to enter into difficult processes of historical introspection as well as the constraining of Indigenous claims within the settler state. Indeed, even a commitment to a postcolonial polity as expressed through processes of historical reconciliation often encounters strong resistance when it comes to judicial, constitutional or legislative change genuinely decolonised relationships would demand. Nevertheless, even if it remains difficult to comprehensively imagine the decolonisation of ‘settler societies vis-à-vis Indigenous constituencies’ (Veracini, 2007), the central question must be how to construct political foundations which simultaneously acknowledge ‘the practices of racism, violence and subordination’ (Kohn and McBride, 2011: 18) that preceded them while also paving the way for a postcolonial future in which natives and settlers are equal parties and share the right to narrate the polity. Equality, freedom and justice may come from legally enshrining Indigenous rights to self-determination or, alternatively, doing away with the categories of ‘settler’ and ‘native’ altogether (Mamdani, 2001). What shape such efforts are likely to take depends, among others, on the ‘size and tenacity’ of Indigenous populations as well as the power of the settler constituency (Elkin and Pedersen, 2005: 3, 6). But we would suggest that the measure to which they may be thought of as decolonising rests on the robustness of the relationship they envision and the space they carve for equal membership in and to a postcolonial polity.

### AT Alternative---Movements

#### Extra-legal activism fails

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Both the practical failures and the fallacy of rigid boundaries generated by extralegal activism rhetoric permit us to broaden our inquiry to the underlying assumptions of current proposals regarding transformative politics — that is, attempts to produce meaningful changes in the political and socioeconomic landscapes. The suggested alternatives produce a new image of social and political action. This vision rejects a shared theory of social reform, rejects formal programmatic agendas, and embraces a multiplicity of forms and practices. Thus, it is described in such terms as a plan of no plan,211 “a project of projects,”212 “anti-theory theory,”213 politics rather than goals,214 presence rather than power,215 “practice over theory,”216 and chaos and openness over order and formality. As a result, the contemporary message rarely includes a comprehensive vision of common social claims, but rather engages in the description of fragmented efforts. As Professor Joel Handler argues, the commonality of struggle and social vision that existed during the civil rights movement has disappeared.217 There is no unifying discourse or set of values, but rather an aversion to any metanarrative and a resignation from theory. Professor Handler warns that this move away from grand narratives is self-defeating precisely because only certain parts of the political spectrum have accepted this new stance: “[T]he opposition is not playing that game . . . . [E]veryone else is operating as if there were Grand Narratives . . . .”218 Intertwined with the resignation from law and policy, the new bromide of “neither left nor right” has become axiomatic only for some.219 The contemporary critical legal consciousness informs the scholarship of those who are interested in progressive social activism, but less so that of those who are interested, for example, in a more competitive securities market. Indeed, an interesting recent development has been the rise of “conservative public interest lawyer[ing].”220 Although “public interest law” was originally associated exclusively with liberal projects, in the past three decades conservative advocacy groups have rapidly grown both in number and in their vigorous use of traditional legal strategies to promote their causes.221 This growth in conservative advocacy is particularly salient in juxtaposition to the decline of traditional progressive advocacy. Most recently, some thinkers have even suggested that there may be “something inherent in the left’s conception of social change — focused as it is on participation and empowerment — that produces a unique distrust of legal expertise.”222 Once again, this conclusion reveals flaws parallel to the original disenchantment with legal reform. Although the new extralegal frames present themselves as apt alternatives to legal reform models and as capable of producing significant changes to the social map, in practice they generate very limited improvement in existing social arrangements. Most strikingly, the cooptation effect here can be explained in terms of the most profound risk of the typology — that of legitimation. The common pattern of extralegal scholarship is to describe an inherent instability in dominant structures by pointing, for example, to grassroots strategies,223 and then to assume that specific instances of counterhegemonic activities translate into a more complete transformation. This celebration of multiple micro-resistances seems to rely on an aggregate approach — an idea that the multiplication of practices will evolve into something substantial. In fact, the myth of engagement obscures the actual lack of change being produced, while the broader pattern of equating extralegal activism with social reform produces a false belief in the potential of change. There are few instances of meaningful reordering of social and economic arrangements and macro-redistribution. Scholars write about decoding what is really happening, as though the scholarly narrative has the power to unpack more than the actual conventional experience will admit.224 Unrelated efforts become related and part of a whole through mere reframing. At the same time, the elephant in the room — the rising level of economic inequality — is left unaddressed and comes to be understood as natural and inevitable.225 This is precisely the problematic process that critical theorists decry as losers’ self-mystification, through which marginalized groups come to see systemic losses as the product of their own actions and thereby begin to focus on minor achievements as representing the boundaries of their willed reality. The explorations of micro-instances of activism are often fundamentally performative, obscuring the distance between the descriptive and the prescriptive. The manifestations of extralegal activism — the law and organizing model; the proliferation of informal, soft norms and norm-generating actors; and the celebrated, separate nongovernmental sphere of action — all produce a fantasy that change can be brought about through small-scale, decentralized transformation. The emphasis is local, but the locality is described as a microcosm of the whole and the audience is national and global. In the context of the humanities, Professor Carol Greenhouse poses a comparable challenge to ethnographic studies from the 1990s, which utilized the genres of narrative and community studies, the latter including works on American cities and neighborhoods in trouble.226 The aspiration of these genres was that each individual story could translate into a “time of the nation” body of knowledge and motivation.227 In contemporary legal thought, a corresponding gap opens between the local scale and the larger, translocal one. In reality, although there has been a recent proliferation of associations and grassroots groups, few new local-statenational federations have emerged in the United States since the 1960s and 1970s, and many of the existing voluntary federations that flourished in the mid-twentieth century are in decline.228 There is, therefore, an absence of links between the local and the national, an absent intermediate public sphere, which has been termed “the missing middle” by Professor Theda Skocpol.229 New social movements have for the most part failed in sustaining coalitions or producing significant institutional change through grassroots activism. Professor Handler concludes that this failure is due in part to the ideas of contingency, pluralism, and localism that are so embedded in current activism.230 Is the focus on small-scale dynamics simply an evasion of the need to engage in broader substantive debate? It is important for next-generation progressive legal scholars, while maintaining a critical legal consciousness, to recognize that not all extralegal associational life is transformative. We must differentiate, for example, between inward-looking groups, which tend to be self-regarding and depoliticized, and social movements that participate in political activities, engage the public debate, and aim to challenge and reform existing realities.231 We must differentiate between professional associations and more inclusive forms of institutions that act as trustees for larger segments of the community.232 As described above, extralegal activism tends to operate on a more divided and hence a smaller scale than earlier social movements, which had national reform agendas. Consequently, within critical discourse there is a need to recognize the limited capacity of small-scale action. We should question the narrative that imagines consciousness-raising as directly translating into action and action as directly translating into change. Certainly not every cultural description is political. Indeed, it is questionable whether forms of activism that are opposed to programmatic reconstruction of a social agenda should even be understood as social movements. In fact, when groups are situated in opposition to any form of institutionalized power, they may be simply mirroring what they are fighting against and merely producing moot activism that settles for what seems possible within the narrow space that is left in a rising convergence of ideologies. The original vision is consequently coopted, and contemporary discontent is legitimated through a process of self-mystification.

### AT Alternative---Local Control

#### Socially situated knowledge is not unquestionably valid

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The conflation of epistemology with the sociology of knowledge often leads to a reduction ad absurdum, namely, the validity and veracity of a given idea, or body of thought turns **entirely** on the social origins or sources of knowledge. This reduction is no more than the expression of a genetic fallacy. This fallacy is pervasive among those, in AAAS, who desire to affirm that which is African/Black and negate that which is European/white on the basis of their respective points of social origin or "social situatedness." In fact, being a member of a "subjugated group" **does not** mean that you will interpret reality differently from that of the hegemonic dominant ruling class. The so-called Reagan Democrats refers to traditionally Democratic voters, particularly white working-class Northerners, who defected from the Democratic Party and, in turn, supported Republican presidential can- didates in 1980, 1984, and 1988 elections in the United States. The turn to the right by "Reagan Democrats" was greatly influenced by bourgeois ide010U in the form of Nixon's concept of the "Silent Majority," television shows such as All in the Family and the overall structural crisis Of capitalism in the late 1970s. '01 It is important to highlight that, in any class-divided society, the ruling ideology is the ideology of the ruling class. Proletarian consent to the rul- ing ideas is in substance the subordination of objective proletarian inter- ests to bourgeois ideology This contradiction in objective conditions as reflected in subjective consciousness is directly manifested as proletarian false consciousness. 102 So, given the influence of white supremacist ideol- ogy, all white workers are not inherently racist in the sense of being active and organized proponents of racist ideology. If all knowledge claims are partisan and partial, then it logically follows that all knowledge claims are equally valid. The obvious problem for Collins's relativism is the following: if all viewpoints or "situated knowledges" are equally valid, then there seems to be no reason why hegemonic perspectives (by white racist and sexist males) should be thrown out of the intellectual marketplace. Collins provides us with the view that reality is always subject to different descriptions or interpretations. There are as many valid "true" descriptions of the world as there are "language-games," "forms of life," or "cultural communities" in existence. Ultimately, our standpoint or "social situatedness" becomes the final arbitrator in all conflicts or disagreements, whether epistemological, political, social, economic, or aesthetic. We should take note of the following commentary by Andrew Sayer: To note that a particular kind of knowledge comes from a particular culture or is associated with a particular subject position, **does not entail that it is valid** for or applies only to those who belong to the same originating social group. Acupuncture is Chinese in origin but it can also work on non-Chinese people, just as Western medicine can work on non-Western people. Similarly, French social theory cannot be discounted as only applicable within France! To be sure, there is no view from nowhere—all knowledge is social, situated, and contextual. But it **does not follow** from this that truth claims can **only** be applicable to the particular group who propose them. 108 From the standpoint of Collins's Afrocentric feminist epistemology, both race and gender take on the power of epistemology and, consequently, make the rules for valid arguments. The problem with "malestream" social science is not merely that it is a masculine or Eurocentric view. Rather, the heart of the problem is that it does not offer a true, approximate reflection of the way the world is.