Translating Indigenous Worldviews into Rights of Nature: Possibilities For and Limitations To Decolonization of Human-Nature Relationships.

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We are not defending nature –

we are nature defending itself.



Figure 1 Source: The Ecologist, https://theecologist.org/2015/nov/28/cop21-actions-go-ahead-we-are-not-defending-nature-we-are-nature-defending-itself

Abstract

The prospect of increasing global temperatures, rising sea levels, and growing environmental pollution requires urgent solutions. One of these solutions is offered by the rights of Nature movement, which aims to grant legal rights to natural entities. Rights of Nature activists, lawyers, and scientists claim that rights of Nature can change the ways humans in the Western world relate to nature because rights of Nature are based on Indigenous worldviews that present a more sustainable alternative to the Western human-nature relations. In theory, therefore, in the process of creating rights of Nature based on Indigenous worldviews, Western colonial conceptions on the relation between humans and nature are unsettled.

This thesis aims to move beyond this positive rhetoric and to look closely at what happens during the process of translation, in theory as well as in practice. For this analysis, I draw on two case studies: rights of Nature in the constitution of Ecuador and the Te Awa Tupua Act in New Zealand. I will look at who was involved in the process of creation, how a compromise was reached, and what the practical implications of the rights of Nature legislation have been, in order to assess whether colonial human-nature relations are decolonized or rather reinforced in this process.

I will conclude that, although both cases studies show potential for the decolonization of human-nature relationships, the connection between Indigenous worldviews and rights of Nature is less self-evident than rights of Nature discourse implies. Including rights of Nature into legal systems will not under all circumstances lead to decolonization. The process of translation is a political process in which various influences come together to create different potentialities. By comparing the case studies of Ecuador and New Zealand, I will draw some conclusions about the circumstances under which decolonization is most likely to happen. Most importantly, the rights of Nature movement should open up more space for discussions about the potential to decolonize human-nature relations beyond assumptions and stereotypes.

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Introduction

I must confess that I do not feel like much of a nature person. Surely, I occasionally love the beauty of a sunset or the warmth of the sun during a walk in the park, but most of the time I live my life without feeling connected to nature. I prefer the comfort of the indoors over the unpredictability of the elements outside. I replaced my plants with plastic versions when I failed to take good care of them. Although the prospect of global warming frightens me, I cannot move myself to care for the insects in my garden. Given the current state of the world's ecosystems, the declining levels of biodiversity, and the increasing amount of CO2 in the atmosphere, I believe I am not the only one who feels this way. I live in a society that has restricted nature to specifically allocated places where it is carefully managed to not become too wild. We want nature confined to parks and forests where we can go for our entertainment, but nature should be easily accessible by car, and it should definitely not bother us in the comfort of our daily lives. Meanwhile, the moments of connection to nature seem to become increasingly rare.

Despite this very limited feeling of connection with nature, my concern for the consequences of global warming and climate change moved me to dive into the topic of environmentalism. In this process, I learned about a movement that confronted me with my attitudes towards nature and introduced me to alternative realities. A growing number of academics, lawyers, and activists proposes to introduce 'rights of Nature' as a legal solution to the climate crisis. Rights of Nature advocates call for the incorporation of ecosystems into the legal systems by granting nature legal rights. Which rights should be granted to nature is a topic of discussion and every rights of Nature case takes its own approach, but the common factor is that nature becomes a legal subject with the ability to hold rights and have those rights enforced in court. This is not merely a theoretical fantasy. Since 2006, rights of nature have been introduced in several countries, including but not limited to Ecuador, Colombia, New Zealand, the United States, and India.[1]

According to rights of Nature advocates, the radical potential of rights of Nature lies in its potential to challenge the dominant Western attitudes towards nature, among which I include my own assumptions. These Western attitudes will be explored in Chapter 1.4, where it will be argued that in the Western world it is common to make a sharp distinction between humans and nature.[2] This is reflected in geography (we make spaces for nature and the rest of the space is for culture), in language (when we talk about nature we do not mean to include the human animal), in economics ('natural resources' to sustain human society), and even in environmental protection ('humans should save nature from destruction'). Ecofeminist Val Plumwood says that this distinction, which makes nature inferior to humans, allows for the management, exploitation, and destruction of nature.[3] These attitudes towards nature are currently reflected in environmental law.[4] Under the law, nature is an object that is owned as property by a person. In cases of environmental damage, one would have to prove that

[1] Erin O'Donnell, Anne Poelina, Alessandro Pelizzon, and Cristy Clark, "Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature," *Transnational Environmental Law* 9, no. 3 (2020): 403–27, doi:10.1017/S2047102520000242.

[2] Neil Kessler, "Ecofeminist Dualisms," in *Ontology and Closeness in Human-Nature Relationships* (Cham: Springer Nature, 2019), 23.

[3] Val Plumwood, "Decolonizing Relationships with Nature," *Philosophy, Activism, Nature,* no. 2 (2002): 7-30, https://doi.org/10.4225/03/57D8A62177281.

[4] Susana Borràs, "New Transitions from Human Rights to the Environment to Rights of Nature," *Transnational Environmental Law* 5, no.1 (2016): 113-143.

property rights or human rights are violated, which makes it difficult to protect nature through law. When rights of Nature laws are implemented, however, nature becomes a rights-bearing living subject, whose rights can be enforced in court. Human interests cease to be automatically more important than nature's interests. In this sense, recognizing that nature has legal rights represents a paradigm shift in the envisioned relations between humans and nature. This is not to say that rights of Nature introduce a completely new paradigm, as Indigenous peoples all over the world have recognized that Nature is more than a resource for humans to use.[5] Indigenous nations have been a big influence on the ecocentric rights of Nature movement, as argued by scholars and Indigenous leaders themselves.[6] In many cases where rights of Nature are established Indigenous nations are involved, and their ontologies are shine through in the language that is used in legal documents.[7]

Reading about this connection between Indigenous activists and environmental scholars and lawyers I felt positive that this was a promising collaboration with mutual benefits. Lawyers can use the knowledge of Indigenous peoples to create laws that would shift our thinking about the relation between humans and nature, and, at the same time, Indigenous peoples benefit from the amplification of their voice in political questions about the environment. This collaboration would protect the environment while empowering Indigenous communities and decolonizing environmental law. My positivity was fuelled by rights of Nature advocates who often emphasize this fruitful cooperation. Stephen KnauB, professor in environmental philosophy, claims that rights of Nature can lead us to "transcend European Modernity"[8]. Lawyer Juan José Guzmán argues that nature's rights are an "example of the inclusion of indigenous narratives in human rights"[9] because, as said by T.J. Demos, rights of Nature have "deep roots in Indigenous cultural and religious traditions"[10].

I was inclined to go along with this positive and easy conclusion, but unfortunately, as could be expected, the situation gets more complex when diving deeper into specific rights of Nature cases. In practice, there are power dynamics at play that change the potential of rights of Nature to unsettle Western frameworks that are rooted in and spread over the world through colonialism. Rights of Nature may be used in ways that do not contribute to promoting the relation between humans and Nature that Indigenous peoples envision. The idea of giving rights to Nature means fitting Indigenous worldviews into a framework that in itself is still Western and colonial. Can Rights of Nature bring about a paradigm shift if it has to work in a system with colonial counterpowers?

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[5] Lidia Cano Pecharroman, "Rights of Nature: Rivers That Can Stand in Court," *Resources* 7, no. 1 (2018): 13, doi:10.3390/resources7010013.

[6] Mihnea Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," *Transnational Environmental Law* 9, no. 3 (2020): 431, 10.1017/S2047102520000217.

[7] For example, the legal subject that bears rights in the constitution of Ecuador is *Pacha Mama*, referring to the concept of Mother Earth in the Quichua and Aymara language of Indigenous peoples living in the Andes area. See María Valeria Berros, "The Constitution of the Republic of Ecuador: Pachamama Has Rights," *Arcadia* no. 11 (2015), https://doi.org/10.5282/rcc/7131.

[8] Stefan Knauβ, "Conceptualizing Human Stewardship in the Anthropocene: The Rights of Nature in Ecuador, New Zealand and India," *Journal of Agricultural and Environmental Ethics* 31 (2018): 703, https://doi.org/10.1007/s10806-018-9731-x.

[9] Juan José Guzmán, "Decolonizing Law and Expanding Human Rights: Indigenous Conceptions and the Rights of Nature in Ecuador," *Deusto Journal of Human Rights* no. 4 (2019): 60, https://doi.org/10.18543/djhr-4-2019pp59-86.

[10] T. J. Demos, *Decolonizing Nature: Contemporary Art and the Politics of Ecology* (Berlin: Sternberg Press, 2016), as quoted in Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," 5.

What complicated the issue even more for me was reading the work of Shepard Krech about the stereotype of the 'Ecological Indian'.[11] Krech discusses the myth that Native Americans lived in complete harmony with the natural world. Using historical and anthropological sources, he argues that Native Americans also rearranged and intervened in nature, which sometimes led to exploitation of the environment.[12] Whereas Indigenous worldviews often express a deep connection between humans and nature, this does not mean that Indigenous people are 'ecological saints' or somehow naturally closer to nature than non-Indigenous peoples. His book served as the starting point of discussion and Krech was subject to a lot of criticism, but nevertheless, it was interesting to apply this myth to the rights of Nature movement and my own preconceptions. It exposed a stereotype about Indigenous relations to Nature that had settled in my mind while reading about rights of Nature. When rights of Nature activists enthusiastically speak about what there is to learn from Indigenous peoples, they might unintentionally oversimplify the complexity that constitutes reality for many Indigenous people. The myth of the Ecological Indian sustains a romanticized view on how Indigenous peoples relate to nature, whereas it is much more useful to look at the environmental reality of Indigenous peoples in order to learn from them. This sparked curiosity to research exactly what attitudes certain Indigenous peoples hold towards nature and how they can contribute to challenging Western colonial attitudes.

In sum, this research is inspired by curiosity about the complexity of the interaction between the rights of Nature movement and Indigenous communities. On the one hand, the movement seems to have the potential to generate a paradigm shift in how we relate to nature. Several Indigenous peoples are aligning themselves with the goals of the movement, and personally, I noticed that working on this research challenged my views on how I relate to my environment. However, rather than only staying on an abstract theoretical level I want to examine how this interaction works out in practice in the cases of Ecuador and New Zealand and what this says about the limitations of the transformative power of Indigenous influences in the rights of Nature movement. In the creation of rights of Nature, who had a seat at the table, and how were Indigenous concepts understood? What potentialities do the laws create, and what consequences have they had in practice?

Research Question and Methodology

As discussed above, the rights of Nature movement uses knowledge from Indigenous peoples to create laws that are supposed to reflect how Indigenous peoples relate to the natural world. This Indigenous knowledge involves more than information gathered in the scientific world. Indigenous relations to nature also operate in the context of culture, spirituality, and history. It is about how Indigenous peoples experience and relate to the world around them. The word that best approximates this meaning is 'worldview', in which 'world' does not only refer to the material earth but also to the Indigenous understandings of the metaphysical aspects of the cosmos. The word 'worldview' is often used in the relevant literature and encapsulates the broad perspective necessary to understand Indigenous relations to nature, which is why it will be used in this thesis.

Rights of Nature scholars and activists as well as Indigenous leaders participate in a process of translation, in which concepts from Indigenous culture are removed from this context and incorporated in the environmental law framework with its own discourse, assumptions, and structures. In this process of translation, Indigenous worldviews about how humans relate to

[11] Shepard Krech, *The Ecological Indian: Myth and History* (New York: W.W. Norton & Company, 1999).
[12] Kimberly TallBear, "Shepard Krech's The Ecological Indian: One Indian's Perspective," review of *The Ecological Indian,* by Shepard Krech, IIIRM Publications, September 2000.

nature interact with Western or colonial views about the environment. This thesis examines how in this interaction colonial conceptions might be unsettled or reinforced. Thus, the research question that will be answered is: *in the process of translating Indigenous worldviews into legal rights of Nature, how are colonial conceptions of the relations between humans and nature unsettled or reinforced?*

In the context of the current climate crisis, it is important to re-evaluate Western values that oftentimes result in unsustainable behaviour. The Western world can learn from the worldviews and practices of Indigenous peoples who generally have lived in more sustainable ways. Rights of Nature may be a means to incorporate these Indigenous worldviews, which makes it a relevant topic to study. Within academic studies of the movement, the perspective of decolonization has received relatively little attention. It is commonly assumed that the involvement of Indigenous peoples in the movement will be beneficial to all parties, but this assumption is rarely critically evaluated. This thesis aims to present an overview of the conversation around rights of Nature and Indigenous worldviews and to identify points of discussion and questions that can stimulate such a critical evaluation of decolonization through rights of Nature.

To answer the research question, I will analyse the discourse and practices around rights of Nature in two countries: Ecuador and New Zealand. Both Ecuador and New Zealand were early adopters of the idea of rights of Nature, but both did this in different manners and different contexts which leads to differences in how they have to potential to unsettle or reinforce colonial frameworks about relations between humans and nature. Because the rights of Nature initiatives in Ecuador and New Zealand have inspired cases in other countries and are still ever-present in rights of Nature discourse, using these countries as case studies gives a good overview of the foundations of the movement in terms of their potential to decolonize human-nature relations. To analyse these cases I will use mainly use academic literature, supplemented by court cases, policy documents, and news reports about rights of Nature. These case studies will be connected to the theoretical framework that I establish in Chapter 1, which will discuss the colonial origins of Western relations to nature and environmental law and the potential benefits and limitations of rights of Nature in bringing about a paradigm shift in human-nature relations.

Position of the Researcher

This thesis is concerned with questions of decolonization and possible (unintentional) reproduction of colonial frameworks. Having grown up in and being educated in a Western country, I must be aware of my own preconceptions and the way I am situated in this field. It is my duty to critically examine the arguments presented in the debate around rights of Nature and the ways I relate to those arguments. I want to be open about my position as a researcher, the choices that I made, and the limitations that these bring.

In this thesis, I am analysing rights of Nature cases in Ecuador and New Zealand, but I am based in Tilburg, the Netherlands. Prior to this research, I had no knowledge about Indigenous cultures and worldviews. This research is based on written sources that are available on the internet: policy documents, court cases, and academic literature. The academic field of rights of Nature is still dominated by American and European scholars, which means that it is necessary to reflect on the potential biases of the literature that I have to rely on.

It is also important to note that I do not speak an Indigenous language, nor do I speak Spanish which is the language of Ecuador's court cases and policy documents. This is an important limitation of my research. It means that there is a step in the process of translating Indigenous

worldviews into legal rights that I cannot investigate: the translation of concepts from the Indigenous language into English. The words in English might not always be suited to capture the full meaning of an Indigenous concept. I will use translation software to retrieve information from a number of Spanish documents, but besides that, I will rely on what other researchers have written about this topic in English.

Use of Language

Careful reflection on language is crucial to the topic of this thesis. In the process of translation, language becomes the medium for decolonization. Different attitudes towards nature show first and foremost through a different set of words being used in public discourse, and, in this case, in environmental law. Creating rights of Nature laws means finding different words to express how humans can relate to nature. Detailed attention to language is particularly important because concepts are translated from Indigenous languages into other languages and from cultural spheres into legal spheres, which might change the meaning and implications of words. It is necessary to assess whether words that are spoken are merely symbolic and non-performative, or if they are reflected in practices. Finally, careful analysis of language can expose stereotypes and preconceptions, such as the romanticized view on the ecological Indigenous person.

As much as this makes language important to reflect on, it can also be a struggle to find the right words to express certain ideas. For instance, this thesis examines how 'humans' and 'nature' relate, but by using these words I am reinforcing the idea that humans and nature are distinct, whereas humans as a type of animal are also part of nature. The English language is not always capable to reflect these Indigenous worldviews, which supports the idea that decolonization means finding new language.

One way in which the rights of Nature movement tries to use language to reflect different relations to nature is the use of the capital N in 'Nature'. The capitalization of Nature in the rights of Nature movement is often used to express the idea that Nature can be a subject rather than merely a collection of objects or resources.[13] I will use the upper-case N in situations when this is also done by rights of Nature advocates or Indigenous peoples with the intention to reflect this perspective on nature. In other situations, the word nature will not be capitalized. Throughout this thesis, I will also use the upper-case version of 'Indigenous' when referring to Indigenous nations or communities with their own history, identity, and culture. This is in line with the *Elements of Indigenous Style* guide.[14]

Chapter Outline

Chapter 1 will establish the theoretical framework about rights of Nature and decolonization which will be the foundation for the case studies in Chapter 2 and 3. It provides an overview of the history of rights of Nature as a movement and summarizes the Western and Indigenous views on nature. It will be argued that the Western perspective on human-nature relations is historically rooted in colonialism. Finally, Chapter 1 will define the concepts of translation and decolonization in relation to rights of Nature. Having established the theoretical framework, Chapter 2 will analyse the emergence of rights of Nature in Ecuador. I will take a historical

[13] Erin O'Donnell, Anne Poelina, Alessandro Pelizzon, and Cristy Clark, "Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature," *Transnational Environmental Law* 9, no. 3 (2020): 403–427, doi:10.1017/S2047102520000242.

[14] Gregory Younging, *Elements of Indigenous Style: A Guide for Writing By and About Indigenous Peoples* (Edmonton, Alberta: Brush Education, 2018).

perspective on the creation of these rights, perform a close reading on the rights of Nature articles in the constitution, and assess the implications of the rights through examination of court cases and their reception. Chapter 3 follows a similar structure to discuss rights of Nature in New Zealand, in particular the legal personhood of the Whanganui River. In Chapter 4, the cases of Ecuador and New Zealand are compared to draw conclusions about the potential of rights of Nature to unsettle colonial frameworks about human-nature relations. It is suggested that the approach of New Zealand is more likely to be successful in its efforts to decolonize than Ecuador. The chapter ends with the formulation of several questions and points of discussion for future conversations about rights of Nature and decolonization.

Chapter 1: Theoretical Framework

The research question of this thesis concerns several concepts that have to be properly explained and defined before analysing the case studies of Ecuador and New Zealand. The first section of this chapter presents a brief overview of the history of rights of Nature as a movement. Thereafter, sections 2 and 3 will discuss the Western and Indigenous relations to nature, respectively. It will be explained how the current Western relations to nature are connected to colonialism by taking the perspective of environmental philosophy, ecofeminism in particular. Indigenous worldviews can differ per tribe or nation, but their relations to nature have several ideas in common, which are described in section 3. Finally, section 4 defines the concepts of translation and decolonization and summarizes the main points of discussion about the potential of rights of Nature to decolonize.

1.1 Rights of Nature as a Movement

Most accounts trace the Rights of Nature movement back to the 1970s when Professor Christopher Stone published his essay: "Should Trees Have Standing? Toward Legal Rights for Natural Objects"[15], although similar ideas have been part of Indigenous cultures for many generations. Stone's essay was a response to the *Sierra Club v Morton* judgement, in which an environmental foundation tried to sue a U.S. Secretary to contest the governmental decision to let Walt Disney build a ski resort in a mountain valley.[16] The court ruled that Sierra Club itself did not experience damage from the construction so it did not have standing, the right to file a lawsuit. Stone wanted to prevent cases like this where neither environmental advocate groups nor nature itself could take this issue to court which makes it nearly impossible to protect nature through the law.[17]

Stone describes that throughout history there has been a development in law in the recognition of rights for different groups, including prisoners, children, women, and Black people.[18] This development goes beyond humans, as entities such as nation-states and corporations also received rights.[19] All of these developments were once unthinkable, but we have become accustomed to them. Stone argues that the same will happen to rights of Nature. This has become an important argument in the discussion about rights of Nature.

Stone's arguments remained a topic of occasional discussion for several decades, but this did not yet lead to rights of Nature being incorporated into official law. Around 2000, the discussion was revived by several lawyers and activists. In 2001, Thomas Berry proposed the legal philosophy of Earth Jurisprudence.[20] Earth Jurisprudence distinguishes two types of law, similar to the natural law tradition.[21] The most important law is the Great Law, which represents the rules and principles of nature, including the principles that guide the interaction between humans and nature. The second type is the Human Law, the laws created by humans. This Human Law should represent the principles of the Great Law. As Berry is critical of the anthropocentric paradigm and a proponent of Earth Community, recognizing rights of Nature would be a way to bring the Human Law in line with the Great Law.[22] Two years later, another

[15] Christopher Stone, "Should Trees Have Standing? Toward Legal Rights for Natural Objects," *Southern California Law Review* 45 (1972): 450-501.
[16] Cano Pecharroman, "Rights of Nature: Rivers That Can Stand in Court," 1.
[17] Ibid, 1-2.
[18] Stone, "Should Trees Have Standing?" 451.
[19] Stone, "Should Trees Have Standing?" 452.
[20] Peter Burdon, "The Great Jurisprudence," *Southern Cross University Law Review* 14 (2011): 2.
[21] Ibid.
[22] Peter Burdon, "The Great Jurisprudence," 7.

prominent advocate in the rights of Nature movement, Cormac Cullinan, continued the discussion on Earth Jurisprudence and published a book called *Wild Law: A Manifesto for Earth Justice*.[23] Cullinan and Berry in their contributions added a stronger moral and spiritual aspect to the legal and historical arguments that were presented in the 1970s.[24]

Science also contributed to the increasing acceptance of the rights of Nature movement. Around the same time that Stone wrote his famous essay, earth scientist James Lovelock developed his Gaia Hypothesis.[25] This hypothesis says that Earth is a complex and self-regulating system. Every part of the system, including living organisms such as humans, shapes this system through feedback loops. In order to understand an aspect of nature, one has to look at the context of the natural phenomenon.[26] This hypothesis, which is now widely accepted by scientists, suggests that the strict human-nature division is outdated. Human beings cannot study the 'mechanisms of nature' from a distance; it is a much more complex system of which humans are part.

What stands out in the description of the movement up until the early 2000s is that the conversation is dominated by scholars from the Anglo-Saxon world, with the exception of Cormac Cullinan who is based in South Africa. Potentially, this points to a bias in sources about rights of Nature because it is possible that non-Western people who have written or spoken about rights of Nature are not receiving recognition and credit for their work. Although this might be part of the reason, I think it is also the reality that rights of Nature started as an academic thought experiment in the Anglo-Saxon world. However, when rights of Nature started to become incorporated into the law in several countries, local communities, including Indigenous peoples, became a more important influence.

In 2006, the rights of Nature movement experienced its first success through a collaboration of a grassroots local citizens group and the Community Environmental Legal Defence Fund (CELDF).[27] Rights of Nature were recognized in an ordinance in Tamaqua Borough in Pennsylvania, United States. This ordinance said that dumping toxic sewage sledge in the environment would violate the 'right to a healthy, protected, and balanced environment', which was not just a right granted to individuals or communities, but also to 'other living things'.[28] This initial success was followed by the constitutionalization of rights of Nature in the constitution of Ecuador in 2008, being the first country to recognize rights of Nature in a constitution. This ground-breaking initiative will be analysed in Chapter 2. From this moment onwards, the movement rapidly developed and new rights of Nature initiatives were established in several countries. Noteworthy is the World Peoples' Conference on Climate Change and the Rights of Mother Earth, which was held in Cochabamba, Bolivia, in 2010. At this conference, the Universal Declaration of the Rights of Mother Earth was drafted and adopted by the attendees.[29] The Declaration has been presented to the United Nations General Assembly. It has not been signed by U.N. member states but several of the Declaration's ideas made their

[23] Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Cape Town: Siber Ink, 2002).
[24] "Timeline," Global Alliance for the Rights of Nature, accessed April 21, 2021, https://www.therightsofnature.org/timeline/.
[25] Cormac Cullinan, "If Nature Had Rights?" *Orion Magazine* (January/February 2008), https://therightsofnature.org/wp-content/uploads/pdfs/If-Nature-Had-Rights.pdf.
[26] Ibid.
[27] "Tamaqua Borough, Pennsylvania," *Community Environmental Legal Defense Fund*, August 31, 2015, https://celdf.org/2015/08/tamaqua-borough/.
[28] Cano Pecharroman, "Rights of Nature: Rivers That Can Stand in Court," 4.
[29] Christina Espinosa, "The Advocacy of the Previously Inconceivable: A Discourse Analysis of the Universal Declaration of the Rights of Mother Earth at Rio+20," *Journal of Environment & Development* 23, no.4 (2014): 391-416, 10.1177/1070496514536049.

way into the United Nations Harmony with Nature program.[30] The rights of Nature initiatives that were created around this time in the U.S., Ecuador, and Bolivia, as well as the Universal Declaration, represent the first out of two branches within the rights of Nature movement. This branch grants 'existence rights' to Nature, which means that nature as a whole is awarded specific rights, such as the right to exist or the right to function.[31]

The initial successes of these 'existence rights' were tempered when it turned out that enforcing these rights of Nature laws was difficult. In Ecuador, the costs of returning to court for an enforcement ruling were too high, and rights of Nature laws in the U.S. were deemed incompatible with other types of laws.[32] Attention for rights of Nature decreased until in 2017 in New Zealand the Whanganui river was recognized as a legal person, which shortly after was followed by similar cases in India and Colombia. This is the second branch within the rights of Nature movement which gives specific natural entities the capacity to bear rights and duties by making them a legal person.[33] This new branch of legal personality revived the conversation around rights of Nature, and ever since rights of Nature have increasingly become part of the discourse around environmental law.[34]

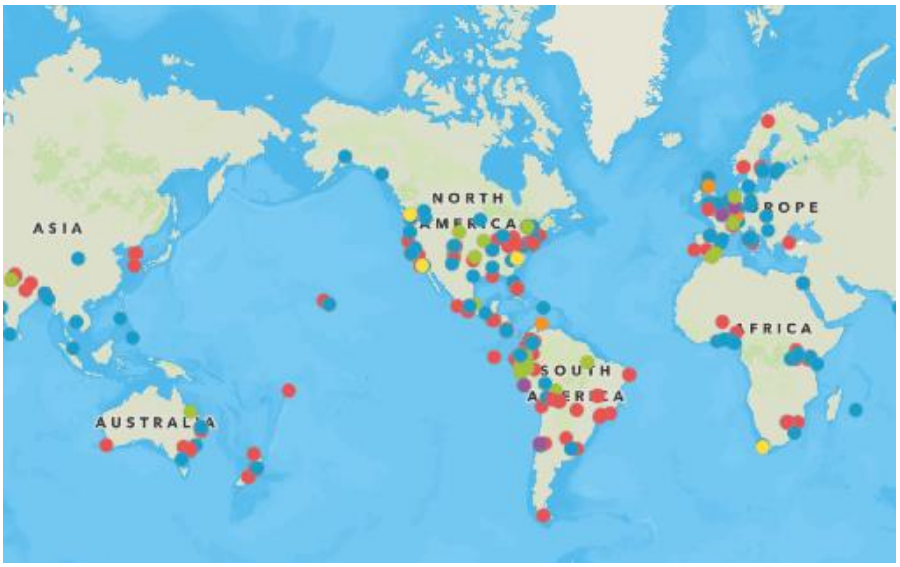


Figure 2: Map of rights of Nature actions (red), member organizations (blue), cases (green , tribunals (purple), and political parties (orange). Source: Global Alliance for the Rights of Nature, https://www.therightsofnature.org/map-of-rights-of-nature/ , retrieved on April 21, 2021.

1.2 Colonial Conceptions of the Relation between Humans and Nature

The legacy of colonialism is felt in many different aspects of life. In this section, I argue that colonialism has also influenced how humans relate to nature. These colonial conceptions are often underlying decision-making about the environment in the Western world, but that does not mean that every individual in the West in every instance will behave according to these colonial ideas. Similarly, the non-Western world can also hold the same colonial set of ideas. The word 'colonial' thus points to the colonial history of certain ideas about nature that can

[30] See http://www.harmonywithnatureun.org/.
[31] O'Donell et al., "Stop burying the lede," 6.
[32] Ibid, 2.
[33] Ibid, 6.
[34] Ibid, 3.

manifest themselves in different ways and with different people, and the same will apply to the label 'Indigenous'.

Analysing the dominant ideas about human-nature relationships is a topic that in itself can fill books. To limit the discussion to the elements relevant to rights of Nature, I will base my analysis of the colonial conceptions on ecofeminist literature. Ecofeminism is a helpful framework because it places discussions about the environment in the context of historical oppressions, among them oppressions of colonialism. It argues that the relationship between humans and the 'more-than-human' world is a relationship of colonization.[35] In similar ways that BIPOC people have been, and in different ways still are, colonized by white people, and women oppressed by men, humans have been colonizing nature.

Ecofeminist scholars have argued that current dominant views about nature are characterized by human/nature dualisms. In ecofeminism, dualism is defined as to describe "how two things which may or may not be ontologically distinct are *post hoc* conceptualized to be so in such a way that one half of the dualized pair is positioned as inferior to the other"[36]. In the Western world, people tend to see humans and nature as fundamentally distinct, even though this distinction might not be so sharp ontologically speaking because humans are a type of animal that is part of ecosystems. Val Plumwood argues that we can speak of a denied dependency; although humans are dependent on nature to survive, nature is made the inferior and subordinate 'other'.[37] Nature is ascribed characteristics such as passivity, materiality, and possessing instrumental value only. Plumwood argues that these dualisms are not innocent distinctions, because these distinctions are intricately connected to domination and accumulation.[38] Dualisms can serve as cultural justifications for exploitation, which also happens when Western thinking opposes humans to nature. Nature is seen as passive and dead, so humans, who are active and possess reason, are allowed to exploit nature for human gain. The distinction that is made in this thesis when discussing relations between *humans* and *nature* reinforces this colonial dualism, which shows that these colonial ideas are deeply rooted in language up to a point where it becomes impossible to avoid this distinction.

These human/nature dualisms are the product of historical developments. It is impossible to pinpoint exactly when these conceptions about humans and nature arose, but I will argue that their origins can be found in the historical developments of Christianity, the scientific revolution, and colonialism. Environmental lawyer Joseph Kowalski suggests we can find the origins of these ideas already at the end of the Roman empire with the rise of Christianity as the main religion. Kowalski explains that before Christianity radically transformed Western worldviews, many pagan cultures included ideas about nature that closely resemble the worldviews of Indigenous peoples today.[39] These pagans practiced nature worship, often representing nature through several spirits and goddesses, and experienced reverence for the land they were living on.[40] When Roman Emperor Constantine declared Christianity the official religion, these pagan cultures, including their practices of nature worship, were forbidden and replaced by a Biblical view on nature.[41] The following passage from Genesis illustrates this Biblical view:

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[35] See for example Val Plumwood, "Decolonizing Relationships with Nature," *Philosophy, Activism, Nature,* no. 2 (2002): 7-30, https://doi.org/10.4225/03/57D8A62177281.

[36] Neil Kessler, "Ecofeminist Dualisms," in *Ontology and Closeness in Human-Nature Relationships* (Cham: Springer Nature, 2019), 23.

[37] Kessler, "Ecofeminist Dualisms," 23.

[38] Val Plumwood, *Feminism and the Mastery of Nature* (Abingdon: Routledge, 1993), 42.

[39] Joseph Kowalski, "Environmentalism Isn't New: Lessons From Indigenous Law," *Buffalo Environmental Law Journal* 26 (2018-2019): 17.

[40] Ibid, 29.

[41] Ibid, 31.

> Then God said, 'Let us make man in our image, after our likeness. And let them have dominion over the fish of the sea and over the birds of the heavens and over the livestock and over all the earth and over every creeping thing that creeps on the earth'.[42]

According to this passage from Genesis, God has given humans the power to dominate over and control nature to use it to their advantage.[43] It introduces a strict separation of humans and nature, which God made in different ways and for different purposes, of which nature is inferior. Thus, it could be argued that Genesis started the human/nature dualism that ecofeminists have described.[44]

The time period starting around 1500 is characterized by several developments that contribute to the development of human/nature dualisms on a large scale, while at the same time these ideas were used to justify the start of the exploitation of nature that over the years has led to the current climate crisis. First of all, this was the time of the scientific revolution. Scientists discovered that they could formulate laws of physics to explain natural phenomena. Rather than having to resort to supernatural powers to explain weather conditions or practicing awe for the complexity of nature, the idea arose that nature is something inert, dead, and mechanistic.[45] This discovery of passivity and lifelessness took away moral reasons of why interfering in earth systems would be wrong and therefore worked to justify domination.[46]

Furthermore, Mauro Scalercio writes that these discoveries in science led to the idea that human dominion over nature would improve the living conditions of humanity.[47] Based on scientific knowledge, humans were supposed to shape their environments to create fruitful circumstances for development. Francis Bacon, an important figure in the scientific revolution, wrote that the natural sciences could restore man's dominion over the earth that was once bestowed upon Adam by God but lost in the Fall, which illustrates the importance of Christianity in developing these worldviews.[48] Bacon believed that nature could be made predictable, which meant that humans did not have to depend on natural circumstances anymore and could live in better conditions. This idea of human dominion over nature is what Mauro Scalercio called 'imperiality', and he argues that this is connected to colonialism. Francis Bacon justified colonialism by arguing that it would bring civilization to the 'backward' peoples in the colonies, and dominion over nature was said to be part of the civilization process.[49] The conviction that dominating nature would bring civilization and progress was used to intervene in nature in the colonies; for example, forests were cut down to make room for livestock imported from Europe to graze upon.[50] Climate determinism, the belief that the climate influences the human capacity to use reason, justified interventions in nature that were supposed to make the climate in the colonies more like the climate in Western Europe, which was understood to be the optimal

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[42] Gen 1:26

[43] Kowalski, "Environmentalism Isn't New," 32.

[44] Some people have argued that this dominion that God has attributed to Adam means that humans have been given the responsibility to care for the earth and are held accountable by God: see Susana Borràs, "New Transitions from Human Rights to the Environment to Rights of Nature," *Transnational Environmental Law* 5, no.1 (2016): footnote 2. This guardianship argument has been used to advocate for rights of Nature. Still, this argument remains the logic of dualism and denied dependency intact.

[45] Karen J. Warren, "Feminist Environmental Philosophy," *The Stanford Encyclopedia of Philosophy* (Summer 2015), https://plato.stanford.edu/archives/sum2015/entries/feminism-environmental/.

[46] Ibid.

[47] Mauro Scalercio, "Dominating nature and colonialism. Francis Bacon's view of Europe and the New World," *History of European Ideas* 44, no. 8 (2018): 1.

[48] Ibid, 5.

[49] Scalerio, "Dominating nature and colonialism," 1.

[50] Kowalski, "Environmentalism Isn't New," 34.

climate for civilization.[51] Deforestation and the drainage of swamps in North America, for instance, were meant to tame the wild nature in this area and make it more suitable for civilization.[52] Besides, colonists used the progress argument to take land from Indigenous peoples, who supposedly were not using the land properly.[53] The destruction of ecosystems by the colonists remained among the causes of war and dispute between Indigenous peoples and colonists for many years.[54]

To summarize, colonial conceptions about the relation between humans and nature are characterized by human/nature dualisms, which suggest that humans possess reason and are therefore capable of improving their living conditions by dominating over nature, which is seen as a dead instrument for humans. Important to note is that ecofeminists are careful when using the word 'human' in human/nature dualisms because the concept of 'humanity' obscures the social and political inequalities among humans.[55] The forces responsible for the destruction were and still are predominantly white, predominantly male, members of the global elite.[56] Despite the multiple dualisms intersecting, the human/nature dualism is a useful theory for understanding the dominant attitudes towards nature in the Western world which have led humankind into the current ecological crisis.

Colonial Conceptions in Environmental Law

The colonial understandings of the relationship between humans and nature have made their mark on environmental law. To assess whether rights of Nature might unravel some of the problematic parts of colonial environmental law, I need to briefly outline in what ways colonial conceptions about nature have entered environmental law.

Following the human/nature dualism that was presented above, environmental law makes a distinction between humans and nature and focuses on the interests of humans. Most environmental protection cases are based either on property rights or on the human right to a healthy environment, in both cases centring human interests.[57] Thus, legal complaints about environmental degradation need to be based on damage done to a human being. This was the problem environmental advocacy group Sierra Club faced in the case *Sierra Club v Morton*, which was the reason for Christopher Stone to write the essay 'Should Trees Have Standing?' that started the rights of Nature movement in academia.[58] Sierra Club did not have standing because they did not own the mountain valley that was damaged by Walt Disney, nor did Walt Disney directly harm any human right to a healthy environment. In the cases where the law does protect the environment, this is for the benefit of humans and not for the sake of nature itself.[59] In a system that sees nature as the inert lifeless 'other' and that prioritizes human interests, natural entities are reduced to objects that are owned by human beings. Legal systems have regarded nature as property, so the laws that have been created are intended

[51] Martin Mahony and Georgina Endfield, "Climate and Colonialism," *WIREs Climate Change* 9, no.2 (2018): 2 and 9.
[52] Ibid, 9.
[53] Kowalski, "Environmentalism Isn't New," 34-35.
[54] Ibid, 34.
[55] Plumwood, *Feminism and the Mastery of Nature,* 11-12.
[56] Ibid, 12.
[57] Susana Borràs, "New Transitions from Human Rights to the Environment to Rights of Nature," *Transnational Environmental Law* 5, no.1 (2016): 115.
[58] Cano Pecharroman, "Rights of Nature: Rivers That Can Stand in Court," 1.
[59] Louis Kotzé and Paola Villavicencio Calzadilla, "Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador," *Transnational Environmental Law* 6 no. 3 (2017): 403.

to protect the property rights of individuals, corporations, or other legal entities.[60] Nature is being reduced to merely its economic or instrumental value. This view of nature as property under the law, environmental lawyer Susana Borràs argues, allows for continuing environmental damage in current times of ecological crisis.[61]

1.3 Indigenous Conceptions of Humans and Nature

Although the colonial views on nature are dominant in many contemporary societies, there are other perspectives on nature possible. For possible alternative worldviews, it is helpful to look at the ideas of Indigenous peoples, which is what the rights of Nature movement has been doing. Before diving into the Indigenous worldviews, I would like to make some remarks about who we are speaking about when referring to Indigenous peoples. 'Indigenous' is a label that can reflect a colonial perspective. The United Nations defined Indigenous peoples in a document from the 'Forum on Indigenous Issues' as being "pre-invasion and pre-colonial societies that developed on their territories"[62]. Calling Indigenous communities 'pre-colonial' implies that these peoples have not developed since colonial times; it contains the assumption that Indigenous people are 'pre-modern'. On the contrary, Indigenous nations developed alongside and in interaction with colonialism, which means that they do not per definition live completely disconnected from contemporary modern society. Besides, the word 'Indigenous' is commonly used by communities to define themselves towards the world, but the word originates from colonial powers identifying the cultures they encountered during their travels.[63] The United Nations adds to their definition an aspect of cultural identity that is more useful in defining Indigenous communities: they are "determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity (…), in accordance with their own cultural patterns, social institutions and legal system."[64]. Indigenous communities oftentimes can be defined by their cultural identities.

Contrary to what talking about Indigenous worldviews might suggest, there is no one single worldview shared by all Indigenous peoples of the world. In fact, there are thousands of Indigenous peoples living in the world who all have their own culture. The danger of talking about 'the Indigenous' is that we brush over these differences.[65] Nevertheless, there are some general understandings about the natural world that the vast majority of Indigenous communities share.[66] This makes it possible to talk about 'Indigenous worldviews' in the context of rights of Nature. While this chapter will discuss Indigenous worldviews in general, Chapter 2 and 3 will shine a light on the worldviews of the Quechua people in Ecuador and the Māori in New Zealand to avoid reduction of the differences in worldviews.

One final remark is that Indigeneity might not in all cases the appropriate lens through which to look at rights of Nature initiatives. For example, in the cases of India and Bangladesh, the local population might not necessarily identify as Indigenous, but they still relate to nature on

[60] Borràs, "New Transitions from Human Rights to the Environment to the Rights of Nature," 113-114.
[61] Ibid, 114.
[62] United Nations Secretariat of the Permanent Forum on Indigenous Issues, *The Concept of Indigenous Peoples,* U.N. Doc. PFII/2004/WS.1/3 (January 19-21, 2004).
[63] Michael Peters and Carl Mika, "Aborigine, Indian, indigenous or first nations?" *Environmental Philosophy and Theory* 49, no. 13 (2017): 1229-1234, https://doi.org/10.1080/00131857.2017.1279879.
[64] United Nations Secretariat of the Permanent Forum on Indigenous Issues, *The Concept of Indigenous Peoples,* U.N. Doc. PFII/2004/WS.1/3 (January 19-21, 2004).
[65] Mihnea Tănăsescu, "Nature Advocacy and the Indigenous Symbol," *Environmental Values* 24 (2015): 1-24, doi: 10.3197/096327115X14183182353863.
[66] Kowalski, "Environmentalism Isn't New," 20.

the basis of interdependency, reciprocity, and guardianship.[67] This thesis will use the term 'Indigenous' because this is used in the rights of Nature discourse and because it applies well to the cases of Ecuador and New Zealand.

In the previous section, I explained that writing about humans and nature in the English language will end up reinforcing colonial human/nature dualisms. Therefore, it is difficult to find accurate words to describe the Indigenous perspective on human-nature relations. Many, if not most, Indigenous cultures do not use this nature-culture divide and do not even have a word for nature as a whole.[68] These words by Corbin Harney, a Shoshone spiritual leader, describe the interconnectedness of humans and nature:

> Native people are not separate from the environment. We *are* the environment! With every bite of food we eat, every drop of water we drink, every breath of air we inhale, we are on the fluid edge of "inside" and "outside," "me" and the "environment," the person and the planet, and the individual and humanity.[69]

This perception of interconnectedness leads to feelings of care towards the environment. "Land is very close to the Aboriginal heart, and we can actually feel sorry for the land, like you would feel sorry for someone who has been hurt."[70] The land is seen as a living entity, a subject, rather than something inert or dead.[71] This feeling of connection and care is not limited to the land but also extends to animals and other creatures on earth. For example, the Yolngu people have a close relationship with crocodiles: "The relationship between the crocodile and myself and all my clansmen is a very special relationship. I see a crocodile as an animal that is part of me and I belong to him, he belongs to me."[72] These worldviews can be summarized by the phrase 'All our relations' which is used in ceremonies to request health and well-being both addressed to and on behalf of non-human entities.[73]

Knowledge about how to relate to the environment, sometimes referred to as the 'Law of Relationship', is often passed down from generation to generation.[74] Kowalski writes that no matter where on the planet you go, Indigenous peoples will refer to some kind of 'Original Instructions' or 'First Teachings' to describe ancestral knowledge. This knowledge often, but not exclusively, takes the form of origin stories or oral traditions.[75] For example, as will be illustrated in the case study of New Zealand, the Māori of the Whanganui River believe the river was formed when three mountain entities were fighting and one ran away, carving out the river bed as he went.[76] Furthermore, understanding of the laws of nature can be gained through experiencing, observing, and listening to ecosystems.[77] Thus, knowledge about the environment and how humans relate to it is based on being in the land itself, and Indigenous

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[67] O'Donnell et al., "Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature", 10.
[68] Ibid, 3.
[69] C.F. Black, *The Land is the Source of the Law: A Dialogic Encounter with Indigenous Jurisprudence* (Abingdon: Routledge, 2011), 25, as quoted in Kowalski, "Environmentalism Isn't New," 23.
[70] G. Yunupingu, "Concepts of land and spirituality," in *Aboriginal Spirituality, Past, Present, Future,* edited by A. Pettel-Gray (Melbourne: HarperCollins, 1997), as quoted in Kowalski, "Environmentalism Isn't New," 24.
[71] Kowalski, "Environmentalism Isn't New," 24.
[72] Laurelyn Whitt, *Science, Colonialism, and Indigenous Peoples* (Cambridge University Press, Cambridge, 2009), as quoted in Kowalski, "Environmentalism Isn't New," 25.
[73] Graham Harvey, "Environmentalism in the Construction of Indigeneity," *Ecotheology* 8 no.2 (2003): 206.
[74] Kowalski, "Environmentalism Isn't New," 25.
[75] Kowalski, "Environmentalism Isn't New," 25.
[76] David Young, "Whanganui Tribes," *Te Ara – The Encyclopedia of New Zealand,* accessed May 26, 2021, https://teara.govt.nz/en/whanganui-tribes.
[77] Kowalski, "Environmentalism Isn't New," 23.

peoples know themselves in relation to a particular place.[78] Joseph Kowalski describes that Indigenous peoples internalize these understandings of nature and therefore they will act in accordance with these principles and care for their environment.[79] Although these ideals are not always reflected in reality, for the most part it results in sustainable practices.[80]

Kowalski also describes that Indigenous peoples do not see themselves as owners of the land, but as users.[81] Humans are born out of the land and can use it for survival until it is passed onto future generations. This might be an oversimplification, because, as will be discussed in Chapter 3, Indigenous peoples also make claims of ownership over their territories, but this ownership is a more collective notion compared to the conception of nature as individual property that dominates Western thinking. Moreover, the fact that Indigenous people might be users rather than owners does not mean that Indigenous peoples do not intervene in nature. As illustrated by Shepard Krech in his book 'The Ecological Indian', Indigenous peoples throughout history have performed actions that sometimes impacted nature negatively, although the colonists were a more destructive force.[82] This behaviour had several reasons, some following from spiritual worldviews such as the belief in the reincarnation of killed animals.[83] Nevertheless, Indigenous peoples are romanticized for being traditional environmentalists by nature. One reason why this can be harmful is that it ascribes historical passivity to Indigenous peoples, thereby reducing their agency.[84] Besides, Indigenous peoples will be held to the standards of the Western idea of environmentalism. Indigenous environmental practices that are different from Western understanding will be ignored, which reduces the opportunities to learn from Indigenous practices, or even looked down upon with negative consequences for the Indigenous population.[85] Lastly, in contemporary societies, some Indigenous people are threatened in their existence and might be forced to find a job in large-scale agriculture or the oil industry.[86] Their inability to live up to the Western stereotype of the Ecological Indian can by some be interpreted as a failure of their Indigenous identities. For these reasons, we have to be careful with describing Indigenous peoples as ecological saints. We can learn from Indigenous worldviews that offer alternative ways in which humans can relate to nature, but it is important to avoid romanticization or judgement about Indigenous practices based on Western standards.

1.4 Translation and Decolonization

The colonial and Indigenous worldviews described above interact in the conversation around rights of Nature. This thesis is concerned with the possibility of decolonization in the process of translating these Indigenous worldviews into legal rights of Nature. The process of translation is twofold. The first step is translation in the literal sense of translating concepts from Indigenous languages into another language. Second, translation in this context also means that concepts are 'deterritorialized' and 'reterritorialized', they are taken out of their

[78] Harvey, "Environmentalism in the Construction of Indigeneity," 209.
[79] Kowalski, "Environmentalism Isn't New," 23.
[80] Ibid, 23.
[81] Ibid, 27.
[82] Kimberly TallBear, "Shepard Krech's The Ecological Indian: One Indian's Perspective," review of The Ecological Indian, by Shepard Krech, IIIRM Publications, September 2000.
[83] Ibid.
[84] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 17.
[85] Ibid.
[86] Ibid, 6.

situatedness in a specific context and incorporated into another context.[87] Indigenous relations to nature mainly operate in a cultural sphere and are incorporated into a legal context when rights of Nature are created. In this process of translation, the meaning and understandings of concepts inevitably will be changed a little, because the meaning of a concept is partly determined by its context and the legal sphere has different norms, values, rules, and language compared to the cultural sphere. These small transformations do not have to be a problem. For communication to be possible, concepts have to be used in different contexts. In order to be able to decolonize how humans relate to nature, Western countries have to listen to Indigenous peoples and learn from their ideas, even though the perspectives from which they are looking at the ideas are different from Indigenous perspectives. Therefore, translation of Indigenous concepts regarding nature into the legal sphere can be greatly beneficial because it might lead to the decolonization of environmental law. However, in the process of translation there are many influences, power relations, and histories coming together that might bring about opposite results to decolonization. Depending on the people involved in the process of translation, their envisioned goals, and possible ulterior motives, among other factors, translation of the concepts can also result in a complete distortion of meaning or a merely symbolic representation. Therefore, this thesis will focus on the process of translation. For two case studies, it will be analysed who was involved in the process of creating the rights of Nature, what histories and power relations were part of the drafting process, and what the practical implications of the rights of Nature have been.

The process of translation will be analysed from the perspective of decolonization. Defining the term 'decolonization' is a project that many authors have been working on. A fruitful definition in the context of this thesis is one formulated by Linda Tuhiwai Smith who defines decolonization as a process in which "positions, spaces, discourses, languages, histories, textures, and world views (..) are being contested, struggled over, resisted and reformulated"[88]. This definition acknowledges that decolonization involves more than the handing over of power of governance to Indigenous peoples. Colonial influences have been shaping languages, institutions, cultures, and mindsets, from the methods I use to execute this research to the ways in which humans relate to nature. Decolonization means that all these ideas are "contested, struggled over, resisted and reformulated"[89]. This is a process of scrutinization and renunciation of colonial ideas, but also an opportunity to rethink and redesign the world according to new values and ideas. Decolonization is important for doing justice to different peoples and their worldviews, and doing justice also involves learning from previously colonized peoples with the purpose of creating a sustainable world. Therefore, the process of translation might be at the core of decolonization. Without translation and communication, the full potential of decolonization cannot be reached.

Decolonization does not mean that Western knowledge or theory has to be rejected completely. Linda Tuhiwai Smith, Professor of Education and Māori Development with a Māori background, writes that decolonization has to be about centring Indigenous concerns and worldviews in order to understand theory and research from Indigenous perspectives and for Indigenous purposes.[90] At the same time, there are colonial ideas that might better be rejected completely because they are oppressive. Ecofeminists have argued that the Western

[87] See Eden Kinkaid, "'Rights of nature' in translation: Assemblage geographies, boundary objects, and translocal social movements," *Transactions of the Institute of British Geographers* 44, no. 3 (2019): 555-570, https://doi.org/10.1111/tran.12303.

[88] Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 1999), 201.

[89] Ibid, 201.

[90] Tuhiwai Smith, *Decolonizing Methodologies*, 41.

relationship between humans and nature is one of colonization.[91] The colonial conceptions of nature are leading to the destruction of ecosystems, so it can be doubted whether it is possible to solve the climate crisis and live sustainably without reimagining human relations to nature based on Indigenous worldviews. Again, the creation of new realities through the process of translation is key. It is not necessary to copy Indigenous worldviews in detail, but there will need to be alternatives to colonial ideas which Indigenous peoples can help create.

The definition of decolonization remains relatively abstract, which is not necessarily a problem. Decolonization involves the reimagination of the world and this cannot be neatly defined in advance. The case studies discussed in this thesis will be analysed in terms of their potential to unsettle colonial frameworks about nature, but in doing so they also provide insights into what decolonization of human-nature relations entails, does not entail, or should (not) entail. How decolonization of understandings about nature can look like is best explored through analysing examples of rights of Nature initiatives that have aimed to do so. Before starting the exploration of the case studies, I will provide a brief overview of the literature that in general terms discusses the extent to which Indigenous worldviews are reflected in rights of Nature and whether or not scholars think this has the potential to unsettle colonial frameworks.

Environmental lawyer Joseph Kowalski identifies several ways in which rights of Nature represent Indigenous concepts. First of all, rights of Nature acknowledge that nature is a living entity rather than an abstract concept.[92] Giving nature legal personhood or the right to exist assumes that nature is alive, whereas from a colonial perspective nature is seen as passive or dead. Indigenous cultures often personify nature, such as the personification of nature as *Pachamama* in Ecuador, and this includes the notion of nature as living entities.[93] These elements of Indigenous worldviews are incorporated into environmental law, which, according to Joseph Kowalski, will lead to decolonization of the law. On the other hand, the notion of legal personhood is different from Indigenous personhood, so the question can be raised of whether this is an apt translation. There have been scholars arguing that environmental legal personhood is anthropomorphizing nature by defining nature based on human criteria.[94] When nature is granted legal personhood, it gains rights that are associated with human beings, such as the right to file a lawsuit or to own property. However, legal personhood is not exclusive to humans; corporations and nation-states have already changed the meaning of legal personhood. Besides, is anthropomorphism always a bad thing? In the process of translation from the Indigenous cultural sphere to the Western legal sphere, the concept changes meaning a little, but this does not mean that environmental legal personhood is conceptually problematic.

A second point of how rights of Nature reflect Indigenous cosmologies and decolonize law is that rights of Nature can ensure the protection of nature for nature's sake, rather than for the sake of humans.[95] People can enforce nature's rights even when they themselves do not have an interest in the case. When non-human interests are also seen as valuable and important to consider, this would diminish the extreme anthropocentrism of environmental law. Rights of Nature advocates argue that rights of Nature present an ecocentric alternative to colonial anthropocentrism, which would more accurately reflect Indigenous worldviews.[96] Mihnea Tănăsescu is critical of this rhetoric because the distinction between ecocentrism and

[91] Val Plumwood, "Decolonizing Relationships with Nature," *Philosophy, Activism, Nature*, no. 2 (2002): 7-30, https://doi.org/10.4225/03/57D8A62177281.
[92] Kowalski, "Environmentalism Isn't New," 49.
[93] O'Donnell et al., "Stop Burying the Lede," 12.
[94] Tănăsescu, "Rights of Nature, Legal Personality and Indigenous Philosophies," 25.
[95] Kowalski, "Environmentalism Isn't New," 49.
[96] Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," 3.

anthropocentrism still reinforces the idea that the interests of humans and nature are different and that we can only centre one of them.[97] Indigenous worldviews do not necessarily centre ecosystems, but their thinking is based on the notion of reciprocity between humans and nature. Although 'reciprocity' -as much as 'ecocentrism'- can be pretty rhetoric without any practical depth, speaking about reciprocity will subvert human/nature dualisms. To summarize, rights of Nature present a less extremely anthropocentric framework that challenges human-nature dualisms and hence represents Indigenous worldviews.

The duties that human beings hold towards nature that accompany rights of Nature are a third example of how Indigenous worldviews are incorporated into environmental law. These duties can be seen as the legal variant of the responsibility towards nature that Indigenous peoples feel.[98] Granting legal personhood to a natural entity results in the situation where harming a river would be the legal equivalent to harming a human.[99] Indigenous peoples described that "we can actually feel sorry for the land, like you would feel sorry for someone who has been hurt"[100]. From these three examples, I conclude that there is a process of 'deterritorialization' and 'reterritorialization' of Indigenous concepts related to nature taking place in the creation of rights of Nature. This process will be closely examined in the upcoming chapters to analyse whether this contributes to the decolonization of human-nature relations.

Several rights of Nature scholars point out aspects to be aware of when analysing the case studies. Mihnea Tănăsescu writes that in some cases the references to Indigenous worldviews might be merely symbolically employed for political or environmental reasons.[101] Using 'the Indigenous symbol' can be a rhetorical strategy to legitimize certain claims, but when Indigenous peoples are in fact not consulted or involved, this changes the potential for decolonization. In the analysis of case studies, it is necessary to assess whether the references to Indigenous worldviews are merely symbolic or based on reality.

Furthermore, Tănăsescu warns for the possibility that rights of Nature are used against Indigenous peoples.[102] Several Indigenous practices in agriculture or conservation of nature actively intervene in the environment. An example is the practice of cultural burning, which means that parts of the land are being burned down to restore the land and create new fertile ground.[103] This practice, when used carefully and in combination with other techniques, has allowed Indigenous peoples to live in places where the geographic conditions are not optimal for agriculture. Rights of Nature could be used to prohibit these Indigenous practices that intervene in nature. Subsequently, a lot of Indigenous knowledge about agriculture and how to work on difficult lands gets lost, even though we need this knowledge to decolonize agriculture and to adapt to the circumstances of climate change. To illustrate, according to the Climate in Colour organization, a prohibition of this Indigenous practice in Australia is already leading to an increase in uncontrollable wildfires.[104] This danger needs to be considered in the implementation and application of rights of Nature to avoid adverse impacts on the decolonization of agriculture.

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[97] Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," 3.
[98] Ibid.
[99] Ibid, 50.
[100] G. Yunupingu, "Concepts of land and spirituality," in A. Pettel-Gray, *Aboriginal Spirituality, Past, Present, Future,* Melbourne: HarperCollins, 1997, as quoted in Kowalski, "Environmentalism Isn't New," 24.
[101] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 1.
[102] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 17.
[103] "The Colonial History of Climate," *Climate in Colour*, online course, https://climateincolour.com/courses/5ff3481cf2efbe33825535f1.
[104] "The Colonial History of Climate," *Climate in Colour*, online course, https://climateincolour.com/courses/5ff3481cf2efbe33825535f1.

On a conceptual level, Rawson and Mansfield point out a problem with the concepts of rights and legal personhood which both have a colonial history.[105] It is argued that under colonialism the rule of law was used to 'order' the population. Colonized people were transformed into subjects of imperial rule because they were given a position in the legal system. This position was not one of full humanity, because the colonized people were not granted rights or the legal status of personhood. Thus, the law can define who is human and who is dehumanized through granting or revoking rights and legal personhood. Moreover, the process of potential inclusion of people in the definition of the legal person is based on an assessment of their suffering, making violence a precondition for inclusion.[106] Throughout history, legal personhood has been extended to different people, and now even to nature, but that does not take away that legal personhood and rights are concepts that always divide and define who is on the inside and outside. Rights of Nature could be argued to naturalize these Western colonial divisions rather than to present an alternative to this logic of creating oppressive divisions.[107] Recognizing that the foundations of rights of Nature are problematic, it would be wise for environmentalists to also consider alternative ways of decolonizing relations to nature. Notwithstanding, I think it is important to further research the impacts of rights of Nature as this is increasingly becoming a political and legal reality. The following chapters will examine the theoretical frameworks as well as the practical implications of rights of Nature in Ecuador and New Zealand.

[105] Ariel Rawson and Becky Mansfield, "Producing juridical knowledge: 'Rights of Nature' or the naturalization of rights?" *Environment and Planning E: Nature and Space* 1, no. 1–2 (March 2018): 104, https://doi.org/10.1177/2514848618763807.
[106] Ibid, 105.
[107] Ibid, 106.

Chapter 2: Ecuador

Ecuador is the first, and as of 2021 the only, country that has included rights of Nature in its constitution.[108] The constitutionalization of these rights happened in 2008 when an entirely new constitution was drafted and approved by referendum. Rights of Nature in Ecuador make an interesting case study for this thesis for two reasons. First, since Ecuador has been a pioneer in the field of rights of Nature, being one of the first countries to create rights of Nature laws and the first country to include these laws in a constitution, many academics and activists have been looking at Ecuador as a role model for their own campaigns. Therefore, it is interesting to analyse whether Ecuador can also be a role model for the decolonization of human-nature relations. Second, rights of Nature in Ecuador are presented as having their origins in Indigenous worldviews of peoples living in the country. The Indigenous concepts of *sumak kawsay* and *Pachamama* have been included in the constitution, which means that a process of translation has taken place which can be analysed in terms of decolonization.

In this chapter, it is explored whether including rights of Nature in the constitution of Ecuador has led to decolonization of the relationship between humans and nature. This requires a more in-depth exploration of the worldviews of the Indigenous communities living in Ecuador, specifically the Quechua people, which can be found in section 2.1. Thereafter, I will examine the process of decolonization in three different ways: a close reading of the rights of Nature articles in the constitution (2.2), a genealogy of the rights of Nature articles in three different narratives (2.3), and a social-legal analysis of court cases and their consequences (2.4). Central in my analysis will be the discourse used around rights of Nature as well as the practical implications.

In my work, I use the opposition between Indigenous and colonial. This is in many ways a simplification. The words Indigenous and colonial point to the origins of certain ideas that can manifest themselves in various ways in different people. In the context of rights of Nature in Ecuador, the label 'colonial' applies to the practices of the Ecuadorian government, which has internalized the ideas of nature as property and the human as the controller of nature. Around 2008, when Ecuador granted rights to nature, the government pursued economic growth through large-scale natural resource extraction, which was based on the idea that nature is a dead instrument that humans can use to their advantage. [109] In their efforts to make money, the government was exploiting and destroying the territories of its own Indigenous population, a process Tănăsescu calls 'internal colonization'.[110] Naturally, these colonial worldviews have also impacted the Indigenous population, and, threatened in their way of life, some Indigenous people have opted to work in the agriculture or oil industries that are polluting their own habitats.[111] Thus, the Indigenous worldviews that will be presented in the next section are a framework of understanding human-nature relations rather than a reality directly applicable to every Indigenous individual.

[108] Mihnea Tănăsescu, "The rights of nature in Ecuador: the making of an idea," *International Journal of Environmental Studies* 70, no. 6 (2013): 846-861, http://dx.doi.org/10.1080/00207233.2013.845715.
[109] Tănăsescu, "The rights of nature in Ecuador," 847.
[110] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 6.
[111] Ibid.

2.1 Ecuador's Indigenous Population and Sumak Kawsay

There are 14 distinct Indigenous nationalities living in Ecuador.[112] According to the census of 2010, 6.8 percent of the Ecuadorian population self-identified as Indigenous.[113] Most of the Indigenous people of Ecuador live in the rural areas of the Andes mountains. The group that is most important for rights of Nature is the Quechua people. There are Quechua peoples living in the Andes in several South American countries, which all share the Quechua language but speak different dialects, Kichwa being the dialect often spoken in Ecuador.[114] The several sub-groups of Quechua peoples together form the largest Indigenous nation in the world.[115]

As the Quechua language was used by several Indigenous communities and was the language of administration in the Inca empire, the Spanish used Quechua to spread Christianity in colonial times.[116] Having a shared language made it possible for cultural elements to be exchanged. This shows that we should not see Indigenous culture as pre-colonial. Indigenous cultures have developed together with, despite, and against colonial powers. Attitudes towards nature of the Quechua people, however, are still different from the colonial conceptions. The Indigenous population of Ecuador shares an outlook on nature with many other Indigenous peoples. Their worldviews are characterized by interdependence and reciprocal relationships with nature (see Chapter 1.3). In the Quechuan culture, these ideas about nature are related to *Pachamama* and *Sumak Kawsay,* two concepts that have been incorporated into rights of Nature discourse and the constitution of Ecuador.

Talking about these Indigenous concepts in this theoretical manner comes with some problems. In an article about the use of sumak kawsay in Western discourse, Javier Cuestas-Caza argues that to build a true understanding of sumak kawsay outside of the westernized interpretation, it is not enough to talk about it in abstract terms.[117] This needs to be accompanied by empirical studies of the knowledge but also the practices of the Indigenous communities. The concepts we are concerned with now, Pachamama and sumak kawsay, are both concepts that gather much of their meaning through practices. Both concepts have a spiritual and practical aspect to them, and they go to the core of Indigenous identities, which makes it difficult to do justice to the richness of the concepts in a theoretical paper. At the same time, the process of translation, which is necessary if we want to learn from Indigenous cultures and create more sustainable realities, requires that people can have a conversation about worldviews without necessarily having to adopt the spiritual and practical sides of these worldviews. This thesis will write about Indigenous worldviews and rights of Nature in a theoretical manner but connect these concepts to practice wherever possible.

The Indigenous concept that is mentioned in the Ecuadorian constitution as a synonym for nature is Pachamama. The best translation of this concept would be 'Mother Earth', although there are scholars arguing that this also does not fully capture the Indigenous meaning.[118] In

[112] "Ecuador," World Directory of Minorities and Indigenous Peoples, accessed May 30, 2021, https://minorityrights.org/country/ecuador/.
[113] Ibid.
[114] "Quechua," Encyclopedia Britannica, accessed May 30, 2021, https://www.britannica.com/topic/Quechua.
[115] "Quichua," World Directory of Minorities and Indigenous Peoples, accessed May 30, 2021, https://minorityrights.org/minorities/quichua/.
[116] William Mitchell, "The Appropriation of the Quechua Language by the Church and the Christianization of Peru in the Sixteenth and Early Seventeenth Centuries," (PhD diss., University of Edinburgh, 1991).
[117] Javier Cuestas-Caza, "Sunak kawsay is not buen vivir," *Alternautas,* accessed May 2021, http://www.alternautas.net/blog/2018/3/2/sumak-kawsay-is-not-buen-vivir.
[118] See for example Daniela di Salvia, "Para una dialéctica de la naturaleza andina. Aproximaciones filosófico-antropológicas a las creencias quechuas en los Apus y la Pachamama," *Gazeta de Anthropología* 27 no. 1 (2011).

Quechuan Andean cultures, Pachamama refers to a goddess who sustains life on earth.[119] She is the essence and giver of all life, in the natural realm but also the human-social realm, which again shows the interconnectedness of these realms in Indigenous thought.[120] Pachamama is at the same time a spiritual and earthly concept, so 'Mother Earth' encompasses more than just the 'earth'.[121] That Pachamama is a present force in the everyday life of Indigenous peoples living in the Andes is visible in the descriptions of rituals: Morales, the Indigenous President of Bolivia at the time when the country established rights of Nature, remembers that his parents every day at dawn made a ritual *ch'alla* offering of coca leaves and alcohol to Pachamama.[122] In the words of another Aymara: "Since the Pachamama is a living being, she must be fed and nourished, if she is to produce well and provide good food"[123].

The second concept that is mentioned in the constitution as an aspiration is sumak kawsay, which is translated in the constitution to the Spanish 'buen vivir', or 'good way of living' in English. Sumak kawsay is the cosmovision of the Quechua peoples.[124] In the rights of Nature discourse, sumak kawsay is understood to be a non-linear and non-progressive kind of development[125] aiming to maintain harmony with other people and with nature.[126] It evokes a sense of the collective, which reaches beyond the human world and encompasses nature. This makes it different from Western individualist conceptions of well-being.[127] Sumak kawsay represents the ideal and imaginary Indigenous life, a Beautiful Life, which constitutes the social project Indigenous peoples are trying to achieve in life.[128] In this mode of existence, all beings are in balance, from animals and plants to stars and spirits, "governed by the principles of relationality, complementarity, correspondence, reciprocity and cyclicity"[129].

In the rights of Nature movement, sumak kawsay and buen vivir are used as synonyms, and this is also what we find in the Ecuadorian constitution. However, Javier Cuestas-Caza suggests that this translation is not accurate anymore as buen vivir has gained a different meaning since it has been incorporated in the discourse of post-developmentalists and socialist-statists.[130] Many of these initiatives have turned out to use buen vivir merely as a new adjective to development and to reinforce 'progressive neo-extractivism'. Buen vivir was merged with other intellectual movements such as deep ecology, ecosocialism, and

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[119] David Humphreys, "Rights of Pachamama: The emergence of an earth jurisprudence in the Americas," *Journal of International Relations and Development* 20 no. 3 (2017): 459-484.

[120] Karl S. Zimmerer, "The Indigenous Andean Concept of "Kawsay", the Politics of Knowledge and Development, and the Borderlands of Environmental Sustainability in Latin America," *PMLA* 127 no. 3 (May 2012): 603.

[121] Esperanza Martínez, "Pachamama y Sumak Kawsay," *Pueblos indígenas, derechos y desafíos* (2010): 7, https://comitesromero.org/sicsal/reflexiones/CentenarioProanhoEMartinez.pdf.

[122] David Humphreys, "Rights of Pachamama: The emergence of an earth jurisprudence in the Americas," *Journal of International Relations and Development* 20 no. 3 (2017): 8.

[123] Ibid.

[124] "Buen Vivir: The Rights of Nature in Bolivia and Ecuador," *Rapid Transition Alliance,* December 2, 2018, https://www.rapidtransition.org/stories/the-rights-of-nature-in-bolivia-and-ecuador/.

[125] Development might also not be the right word, because Cuestas-Caza says that sumak kawsay is not an alternative for development or a new form of development, but an 'alter-native and alter-world path'. See Cuestas-Caza, "Sunak kawsay is not buen vivir."

[126] "Buen Vivir: The Rights of Nature in Bolivia and Ecuador," *Rapid Transition Alliance,* December 2, 2018, https://www.rapidtransition.org/stories/the-rights-of-nature-in-bolivia-and-ecuador/.

[127] Oliver Balch, "Buen Vivir: the social philosophy inspiring movements in South America," *The Guardian,* February 4, 2013, https://www.theguardian.com/sustainable-business/blog/buen-vivir-philosophy-south-america-eduardo-gudynas.

[128] Cuestas-Caza, "Sunak kawsay is not buen vivir".

[129] Ibid.

[130] Ibid.

ecofeminism which all have their foundation in Western thought. Having become incorporated into the Western framework, buen vivir does not capture the same meaning anymore as sumak kawsay. Instead, it can better be translated as 'alli kawsay', a more pragmatic and everyday notion of improving the quality of life of all interconnected beings but including learned cultural notions such as capital and the market.[131]

From these observations, it follows that we should be careful to assume a close connection to Indigenous thought when people are talking about buen vivir or sumak kawsay. The fact that the concepts lose part of their meaning when they are incorporated into Western post-development discourse, and potentially also in the rights of Nature discourse, might not always be a problem, as learning from Indigenous culture does not have to mean that the postcolonial world will start living according to the exact same ideas and culture as Indigenous peoples. However, it is a problem from a decolonial point of view when Indigenous ideas are used to market practices and policies that produce adverse effects that distort the original meanings. This might particularly be a problem when theory and practice are decoupled. Therefore, in the following investigation of rights of Nature in Ecuador, it is important to reconnect the theoretical rights of Nature laws that have been established with their practice. In the creation of rights of Nature, who had a seat at the table and how were Indigenous concepts understood? What potentialities do the laws create, and what consequences have they had in practice?

2.2 Rights of Nature in the Constitution of Ecuador

The preamble of the constitution establishes the basic principles whereupon rights of Nature are built. Next to acknowledging the Indigenous peoples in Ecuador's territory by referencing the age-old roots and the wisdom of all cultures that enrich society, the preamble states: the people of Ecuador are "celebrating nature, the Pacha Mama, of which we are a part and which is vital to our existence"[132]. Moreover, Ecuador is building "a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the sumak kawsay"[133]. These sentences, together forming one-third of the preamble, show a commitment to including Indigenous worldviews in the constitution (see 'Pacha Mama' and 'sumak kawsay' discussed above) and a commitment to a different position of humans in nature. It recognizes that humans are part of nature and depend on nature for survival. The constitution is supposed to create a situation for humans to live in harmony with nature, which it does by recognizing nature's rights.

These rights are recognized in Article 10, mentioning that "Nature shall be subject of those rights that the Constitution recognizes for it"[134]. We can find these rights in the section about rights of Nature (Article 71-74). Especially Article 71 and 72, which are worth quoting in full, describe what rights the Constitution recognizes for nature:

> Article 71. Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.
>
> All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.

[131] Cuestas-Caza, "Sunak kawsay is not buen vivir".
[132] Ecuadorian Constitution, preamble.
[133] Ecuadorian Constitution, preamble.
[134] Ecuadorian Constitution, art. 10.

> The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.[135]
>
> Article 72. Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.
>
> In those cases of severe or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.[136]

In these articles, Nature, or the Indigenous *Pacha Mama*, is given legal subjectivity. Specifically, nature is granted the "right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes"[137] and the "right to be restored"[138]. Therefore, Ecuador is part of the first branch of rights of Nature cases, as described in Chapter 1.1, which grants existence rights to nature as an abstract whole.

Nature is defined in the constitution as that "where life is reproduced and occurs". This abstract and vague definition may be supplemented by words that seem synonymous to nature in this constitution: Pachamama, life cycles, ecosystems, natural systems, natural cycles, environment, natural wealth. The vagueness of the term 'nature' might constitute a problem in the application of nature's rights.[139] Whereas 'Pachamama' indicates an Indigenous view on nature that does not make a sharp distinction between humans and nature, talking about the rights of 'natural systems' creates the possibility to reinforce the human/nature dualism. Agricultural land is an 'ecosystem' and part of Pachamama, but it might not be considered a 'natural system' because it is managed by humans, so it is unclear whether this would fall under the rights of Nature.[140] Moreover, the Amazon rainforest is something many would consider 'nature', but this was also to an extent managed and shaped by Indigenous populations.[141] Thus, depending on the interpretation of these concepts by lawyers, the wording of the constitution articles itself can limit the potential for decolonization of these articles as they might reinforce the human/nature dualism. In English and Spanish, words such as 'nature' have connotations that are hard to get around, making language the first barrier to decolonization.

On a more positive note, the Ecuadorian constitution is a good example of how the law can become less anthropocentric by considering nature as a subject with its own interests. Article 71 states that "all persons, communities, peoples, and nations can call upon public authorities to enforce the rights of nature"[142]. Everybody, irrespective of personal damage, can represent nature in court. The non-anthropocentric worldview also shines through in Article 72 which establishes nature's right to be restored "apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems"[143]. This article argues that nature's interests exist and must be considered

[135] Ecuadorian Constitution, art. 71.
[136] Ecuadorian Constitution, art. 72.
[137] Ecuadorian Constitution, art. 71.
[138] Ecuadorian Constitution, art. 72.
[139] Tănăsescu, "The rights of nature in Ecuador," 856.
[140] Ibid, 856.
[141] Ibid, 856.
[142] Ecuadorian Constitution, art. 71.
[143] Ecuadorian Constitution, art. 72.

alongside human interests, which Article 73 also does when it imposes a duty on the state to protect nature: "The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles"[144]. Still, the anthropocentric worldview of protecting nature for human's sake is also part of the constitution, included in the section of rights of Nature. Article 74 establishes the human right *to* nature but adds that this does not mean that nature can be appropriated: "Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy the good way of living. Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State"[145].

When drafting the constitution, rights of Nature activists were not only concerned with getting rights of Nature articles included, but also with how these articles would fit in the bigger context of the constitution.[146] Substantiating the rights of Nature articles are for example several human rights, such as the right to water (Article 12), the right to food (Article 13), and the right to a healthy environment (Article 14). This strengthens the argument that human rights and nature's rights are connected.[147] Nevertheless, the constitution contains some articles that might contradict the human-nature relations that rights of Nature establish. Article 408 discusses natural resources. It says:

> Nonrenewable natural resources and, in general, products coming from the ground, mineral and petroleum deposits, substances whose nature is different from that of the soil (…), are the unalienable property of the State. (…) The State shall participate in profits earned from the tapping of these resources, in an amount that is no less than the profits earned by the company producing them.[148]

Whereas rights of Nature want to undo the idea that nature is first and foremost someone's property by making it a subject, the constitution later declares that natural resources are the unalienable property of the state, and that the state can use these to make a profit. Article 408 does include some environmental requirements, "these assets can only be produced in strict compliance with the environmental principles set forth in the Constitution"[149], but in practice Article 408 offers the possibility to build a case against rights of Nature by relying on this constitutional law.

2.3 History and Process of Translation

In this section, I will turn to the process of translation. I will build on the work of Mihnea Tănăsescu, an important scholar in the field of rights of Nature. Based on interviews done in Ecuador with people involved, Tănăsescu describes how the topic of rights of Nature, which was not a mainstream topic at that time, came up in the Constitutional Assembly and how it gained enough support to end up in the constitution.[150] What makes the account of Tănăsescu particularly interesting is the way he identifies several narratives around this process of translation and tries to find out what narrative is, or what narratives are, closest to reality. From

[144] Ecuadorian Constitution, art. 73.
[145] Ecuadorian Constitution, art. 74.
[146] Tănăsescu, "The rights of nature in Ecuador," 856.
[147] Tănăsescu, "The rights of nature in Ecuador," 856.
[148] Ecuadorian Constitution, art. 408.
[149] Ecuadorian Constitution, art. 408.
[150] Tănăsescu, "The rights of nature in Ecuador."

a decolonial perspective, these narratives shine different lights on the relationship between Indigenous communities and rights of Nature and the potential to decolonize views on nature. Thus, I will summarize the narratives identified in Tănăsescu's work and analyse those from a decolonial perspective.

Rights of Nature as the result of grassroots struggles aiming to mainstream Indigenous worldviews

Rights of Nature were included in the Ecuadorian constitution on 28 September 2008, when the population approved the newly drafted constitution by referendum.[151] Politically and economically, there had been a lot of unrest in the country. Since 1979, when Ecuador held its first democratic elections, presidents only served for an average of 2.5 years before there would be another change in leadership. Economically, there was discussion about the position of the oil industry and other resource-extraction industries, as these industries were a crucial source of income but caused environmental damage and social inequalities, in particular affecting Indigenous communities.[152] For these reasons, from the 1990s onwards, the Indigenous population united under the name of the Confederation of Indigenous Nationalities of Ecuador (CONAIE). Over the years the CONAIE, and its political branch *Pachakutik*, established itself as an important political force in the country.[153]

The presidential elections of 2006 were presented as the opportunity to reform the country and establish a new political economy. Ecuador elected Rafael Correa, who was highly popular among the Indigenous population and the poor. He was part of the Alianza País movement, which does not call itself a traditional political party.[154] Alianza País wanted to turn over the economic and political status quo and aimed to empower citizens through a 'citizen's revolution'. Their government plan to establish a society based on the principles of buen vivir ended up serving as the inspiration for the new constitution, although rights of Nature were not included in their plan yet.[155]

When in power after the 2006 elections, it was decided that a new constitution was needed to reform the country. In accordance with their aspiration of a citizen's revolution, the process of drafting the new constitution was extremely participatory. First, in 2007, a referendum was organized about the possibility of creating a Constitutional Assembly, which was approved by over 80 percent of the electorate.[156] Subsequently, the citizens could vote to elect the deputies of this assembly where Rafael Correa's Allianza País again won the majority of the positions.[157] Even after this election, citizens were encouraged to become involved by sending in proposals and opinions that would be considered by the members of the Constitutional Assembly.[158] Numerous NGOs, movements, and organizations made use of this opportunity, among them organizations lobbying for rights of Nature, such as Fundación Pachamama with the help of the Community Environmental Legal Defence Fund (CELDF), the organization that was instrumental in passing the first-ever rights of Nature ordinances in the United States.[159]

[151] Tănăsescu, "The rights of nature in Ecuador," 846.
[152] Ibid, 847.
[153] Ibid, 846.
[154] Ibid, 847.
[155] Ibid, 848.
[156] Marc Becker, "Correa, Indigenous Movements, and the Writing of a New Constitution in Ecuador," *Latin American Perspectives* 38, no. 1 (2011): 49.
[157] Becker, "Correa, Indigenous Movements, and the Writing of a New Constitution in Ecuador," 49.
[158] Tănăsescu, "The rights of nature in Ecuador," 848.
[159] Tănăsescu, "The rights of nature in Ecuador," 853.

The initial spark of the discussion and lobbying process for the potential constitutionalization of rights of Nature seems to be a proposal from a group of citizens that asked the assembly to consider animal rights. This was regarded positively among some environmentally-minded members of the Assembly, among them Alberto Acosta, President of the Assembly.[160] Acosta is an economist, academic, and environmental activist, who in his environmental work had seen how Indigenous communities can serve as an inspiration. Years earlier, Acosta had been travelling through the Amazon together with Carlos Viteri Gualinga, an Indigenous anthropologist.[161] They had learned about the worldviews of Indigenous communities living in the Amazon, their principles of communal life, the inclusion of non-human voices in political decision-making, and the absence of concepts such as progressive development. Acosta and Gualinga then identified the concept of rights as useful to make the Amazonian philosophy understandable to the West. To them, "good living [buen vivir or sumak kawsay] is the original idea out of which rights for nature evolved, and the only lens through which they can be understood"[162]. Inspired by these previous experiences and the citizen's proposal about animal rights, Acosta wrote two papers, *Do Animals Have Rights?* and *Nature as a Subject of Rights,* of which the latter was published on the website of the Constitutional Assembly, establishing rights of Nature as a topic of discussion.[163]

The first time rights of Nature were placed on the official agenda was five months from the beginning of the Constitutional Assembly.[164] The first discussion took place in Roundtable 5 of the assembly, which focused specifically on Natural Resources and Biodiversity. The discussions in this working group mirrored the content of the Allianza País plan regarding nature and the economy. The roundtable wanted to "redefine the society-nature, economy-society, and nature, environment and culture interrelations"[165], bringing these aspects in equilibrium, rather than having economic[166] motives dominate as has been the old norm in Ecuador. In discussions of this roundtable, we can read that these ideas were explicitly connected to the principles of sumak kawsay, as well as Indigenous rights and human rights. These quotes from Constitutional Assembly members show the presence of connections to Indigenous worldviews in the process of drafting the constitution:

> Because we are part of nature, to speak of nature's rights is to speak of the rights of communities, the rights of the Huaorani, the rights of the uncontacted tribes, because they live from nature.[167]

> Nature is not a mere thing amenable to property. It is a subject with an existence more concrete and real than that of juridical persons, capital associations with fictious existence, whose rights we did recognize.[168]

What this narrative suggests is that rights of Nature were the result of bottom-up initiatives of Indigenous communities and other groups with similar goals who advocated for the inclusion

[160] Tănăsescu, "The rights of nature in Ecuador," 848.
[161] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 7.
[162] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 8.
[163] Tănăsescu, "The rights of nature in Ecuador," 848-849.
[164] Tănăsescu, "The rights of nature in Ecuador," 849.
[165] Tănăsescu, "The rights of nature in Ecuador," 849.
[166] The concept of economics often has colonial and capitalist connotations, which is clearly visible in this context of pinning economics against nature. The term 'economics' can also be decolonized to include Indigenous worldviews. For example, Indigenous peoples have been intervening in the Amazon rainforest to ensure resources for survival and well-being and divide these resources over the people, which might also be considered economics in a redefined sense.
[167] Tănăsescu, "The rights of nature in Ecuador," 851.
[168] Ibid, 851.

of Indigenous understandings of nature in the constitution. We have seen that President Rafael Correa had a large following among the Indigenous population, and Indigenous advocacy groups such as Fundación Pachamama were actively contributing to the creation of nature's rights. Furthermore, Rafael Correa's ideas of challenging the neoliberal status quo were inspired by the Quechua notion of sumak kawsay (buen vivir). In the discussions on rights of Nature in the Constitutional Assembly, people were aware of the necessity to redefine the relations between society and nature, and moral arguments were presented of why it is wrong to regard nature as an object, which are all characteristics of Indigenous relations to nature. In this narrative, rights of Nature flow naturally from Indigenous philosophy and culture. Thus, including rights of Nature in the constitution means including Indigenous worldviews, resulting in the decolonization of the conceptions of nature in the constitution. This narrative ignores that there is a process of translation taking place when rights of Nature are created because it assumes that Indigenous worldviews can directly be incorporated into the law without any changes resulting from the process of deterritorialization and reterritorialization. Unfortunately, this positive account of the potential of rights of Nature to decolonize human-nature relations is downplayed by other narratives that shine a light on other influences in the process of translation.

Rights of Nature as a strategic tool used by Indigenous peoples

The reason we might have to look for other narratives is a conceptual uneasiness recognized by Mihnea Tănăsescu in the abovementioned narrative. The positive story described above is based on the idea that rights of Nature fit into the history of Indigenous resistance in Ecuador and that rights of Nature can only be understood with Indigenous philosophies in mind. What is overlooked in this argument is that rights of Nature are not a direct copy of Indigenous cosmovisions. Indigenous peoples do not speak of 'rights'.[169] Rights are primarily a Western creation with a troubling colonial history, as pointed out by Rawson and Mansfield.[170] Tănăsescu explains that Indigenous peoples do not need rights for nature, because the intrinsic respect for nature that is part of Indigenous culture will prevent them from harming the environment.[171] Including the concept of rights was introduced to make the West more open to the idea. Therefore, arguing that rights of Nature naturally flow from Indigenous philosophies would be inaccurate. There is a process of translation of Indigenous concepts taking place that has to be critically examined.

Yet, Indigenous peoples might advocate for rights of Nature, not because they strive for recognition of their worldviews, but because rights of Nature can be used as a tool to generate attention for the Indigenous interests that have long been ignored by the state. As Pepe Acacho, an Indigenous leader associated with the CONAIE, said: "The struggle of these communities needed a springboard toward an outside world that would otherwise not listen, and they found this springboard in the translation of Kichwa philosophy."[172] Indigenous communities suffered from 'internal colonization' in Ecuador. At the root of this lie the economic model of resource extraction and the failure to recognize Indigenous collective and territorial rights.[173] To defend their existence and protect their interests, rights of Nature could play a similar role to human rights: not inherent in Indigenous worldviews, but nevertheless useful to

[169] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 8.
[170] Rawson and Mansfield, "Producing juridical knowledge: 'Rights of Nature' or the naturalization of rights?" See Chapter 1.4 of this thesis for more explanation.
[171] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 8.
[172] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 8.
[173] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 6.

make a case in a world that recognizes the importance of human rights.[174] Rights of Nature thus acted as a tool to strengthen Indigenous power against the state and to change the system from within.

The power struggle between Indigenous communities and the state is visible in the discussions within the Constitutional Assembly. One conflict centred around the role of Indigenous peoples in decision-making about the extraction of natural resources. Indigenous representatives wanted a right to *consent*, while the representatives of the government were only willing to grant them the right to *consult*.[175] The state won this conflict, as Article 408 of the constitution makes natural resources the property of the state, who can use them 'in the national interest' while only having to *consult* Indigenous communities.[176] Another point of debate was the creation of the position of Nature's Ombudsman, who was to act as a legal guardian of nature's rights.[177] Proponents wanted the creation of this position together with the dissolution of the post of Minister for the Environment, as this position symbolized the state's inadequate environmental policy. Again, the state can be said to have won this debate, as the constitution only includes the possibility to establish an Ombudsman in the future.[178] Because situations like these had been going on for generations, Indigenous communities considered the sudden attention for sumak kawsay and rights of Nature a tool to advance their interests. The connection between rights of Nature and Indigenous rights was made explicit in discussion in the Constitutional Assembly, as one member stated:

> The right of nature to exist, and to have its vital cycles, which support life, not be altered by human aggression, mixes with the collective rights of the indigenous nationalities and their self-determination in order to strengthen the fight for the defence of the territories against the aggression of extractive and development activities.[179]

If rights of Nature are not the direct inclusion of Indigenous worldviews but merely strategic tools, what does it mean for the potential of rights of Nature to decolonize human-nature relations? On the one hand, we can remain optimistic about the possibility that rights of Nature can be used to change the system from within. Although some changes inevitably are made in the process of translation from Indigenous worldviews into rights, rights of Nature do attract more attention to the knowledge of Indigenous communities, and they might be used to improve the position of Indigenous peoples in the country. On the other hand, to quote Audre Lorde, "the master's tools will never dismantle the master's house".[180] Resorting to the Western concept of 'rights' to dismantle Western outlooks on nature might be an approach that will not lead to the imagined results. If Indigenous worldviews are replaced by Western concepts without fully understanding the meaning of the Indigenous ideas, colonial frameworks are likely to be reinforced. In order to give a more informed answer to this question of whether decolonization would be possible, we need to look at what happened after the constitutionalization of rights of Nature to see whether this tool has been used to advance Indigenous interests and put a hold on the exploitation of nature. Before I will do this in section 2.4, there is one more narrative about the creation of the constitution that needs to be explained.

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[174] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 18.
[175] Tănăsescu, "The rights of nature in Ecuador," 850.
[176] Ecuadorian Constitution, art. 408.
[177] Tănăsescu, "The rights of nature in Ecuador," 852.
[178] Tănăsescu, "The rights of nature in Ecuador," 852.
[179] Tănăsescu, "The rights of nature in Ecuador," 851.
[180] Audre Lorde, "The Master's Tools Will Never Dismantle the Master's House," in *Sister Outsider: Essays and Speeches* (Toronto: Crossing Press, 1984), https://collectiveliberation.org/wp-content/uploads/2013/01/Lorde_The_Masters_Tools.pdf.

Rights of Nature as a project of a small group of lobbyists

The final narrative about the creation of rights of Nature is not explicitly told by anyone, but that has been deduced by Mihnea Tănăsescu in his research process. This narrative says that the reason rights of Nature ended up in the constitution was a manner not of convincing people of the value of Indigenous worldviews but of luck and effective lobbying.[181] Even though the topic ended up on the agenda of the Constitutional Assembly, support for rights of Nature remained marginal.[182] It was mainly a small group of assembly members, among them Alberto Acosta, who remained working on the topic with the help of lobbyists from Fundación Pachamama and the CELDF, the organization behind rights of Nature ordinances in the United States. When Acosta noticed that support for rights of Nature was minimal in Roundtable 5 on Natural Resources and Biodiversity, he decided to move the discussion to Roundtable 1 where fundamental rights were discussed.[183] The strategy that was pursued from that moment onwards was to lie low and to lobby as much as possible through unofficial channels to avoid blowing up the conversation in official discussions.[184] This informal strategy managed to convince several assembly members. Yet, what may have helped as well is the power of ignorance.[185] Many assembly members did not grasp the meaning of rights of Nature and also did not care enough to understand. Thus, a combination of luck and effective and forceful lobbying resulted in the approval of rights of Nature in the constitution.

This narrative suggests that rights of Nature did not start with grassroots movements gaining support, but instead with a select group of people in the Constitutional Assembly, mainly lawyers and academics. Alberto Acosta, president of the assembly, was the key figure in this process. Tănăsescu argues that this narrative would be the most probable one.[186] If we accept that rights of Nature in Ecuador are the result of the smart lobbying efforts of a few individuals, it becomes less likely that the inclusion of rights of Nature at that stage had the potential to decolonize the colonial relations to nature. It seems that a lot of people were not aware of how the inclusion of rights of Nature would possibly change the way people look at nature, so nature's rights were not created by the assembly with the intention to decolonize. Although it might still be that rights of Nature decolonized people's ideas in the years subsequent to its adoption, at the moment of creating them it was unlikely to have happened on a large scale. One question remains to be answered. If this narrative is the most probable one, why is the first narrative about the Indigenous genesis of rights of Nature so widespread?

Tănăsescu suggests that maintaining the image of the Indigenous origins was part of the lobbying strategy of the Constitutional Assembly.[187] He calls this the 'Indigenous symbol' and states that this symbol was used to mask the political aspect of the rights of Nature project. Most of the arguments of the assembly members for nature's rights are moral. They are arguing that nature is a subject, and it should be treated as a subject by giving it rights. However, regarding something as a moral subject does not necessarily mean that it should also be a legal subject.[188] There is a gap between the moral and the legal that needs to be bridged by the act of translation, which is a political act. Using the Indigenous symbol means implying that Indigenous communities already show us what it is like to live with nature's rights. Even though Indigenous peoples do not know the concept of legal personhood, the Indigenous

[181] Tănăsescu, "The rights of nature in Ecuador."
[182] Tănăsescu, "The rights of nature in Ecuador," 852-853.
[183] Tănăsescu, "The rights of nature in Ecuador," 853.
[184] Ibid, 854.
[185] Ibid, 854.
[186] Ibid, 855
[187] Ibid, 855.
[188] An example given by Tănăsescu of when moral and legal rights are not the same is the case of ships, which have legal rights but are not regarded as moral subjects we should have respect for.

symbol is used to argue that if we see nature as a moral subject, it should be given legal rights. Suddenly, rights of Nature are not something the Constitutional Assembly came up with themselves, but something "uncreated, unmediated, and apolitical"[189]. The Indigenous symbol, therefore, masks the political process of translation.

What makes this symbol particularly effective is the stereotype of the 'ecological Indian' or the environmental 'noble savage'. As already described in Chapter 1.3, this patronizing and harmful stereotype suggests that Indigenous peoples always live in harmony with nature and do not intervene in it. This stereotype is employed and reinforced by rights of Nature activists because it makes it easier to argue that we should follow the example of Indigenous communities and accept rights of Nature.[190]

The combination of the Indigenous symbol and the 'ecological Indian' stereotype does not leave much room for a positive perspective on possibilities for decolonization. Decolonization of worldviews cannot happen if the Indigenous perspective is reduced to symbols and stereotypes that fit the arguments of people operating in colonial frameworks.

2.4 What Happened After 2008?

The creation of meaning of rights of Nature in Ecuador did not end with the adoption of the constitution in 2008. Since 2008, several lawsuits have tried to apply rights of Nature, sometimes successfully, sometimes not. This section will examine these cases and their consequences for two reasons: first, these cases give insight into how these abstract rights should be interpreted, and second, decolonization means little if only staying on the theoretical level without bringing change in practice.

Once the constitution was approved by referendum, environmental lawyers and activists turned their attention to the secondary laws and institutions that had to be created to give the constitutional rights practical implications.[191] Barely having had the time to celebrate the success of the constitutionalization of rights of Nature, they faced the first disappointment as the government was not intending to create any of these institutions or secondary laws at all. President Rafael Correa introduced a new mining law that would expand existing mining operations and initiate new mining projects. He argued that this would be in line with buen vivir and the new political economy because these projects would be supervised by the state to ensure environmentally and socially responsible mining. Besides, the profits that these industries would bring were necessary to invest in sustainable energy, education, healthcare, and other public goods, all of which would make the dream of buen vivir a reality.[192] One can see how the meaning of 'buen vivir' is drifting further away from the original Quechua meaning. In the government's understanding, buen vivir means development towards better living conditions, while the Quechua peoples do not even know the concept of linear progressive development.[193]

[189] Tănăsescu, "Nature advocacy and the indigenous symbol," 14.
[190] Tănăsescu, "Nature advocacy and the indigenous symbol," 16.
[191] Craig Kauffman and Pamela Martin, "Testing Ecuador's Rights of Nature: Why Some Lawsuits Succeed and Others Fail," (paper presented at the International Studies Association Annual Convention, Atlanta, GA, March 18, 2016), 4.
[192] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 4.
[193] See Cuestas-Caza, "Sunak kawsay is not buen vivir."

Indigenous and environmental activists heavily criticized the Mining Law for violating rights of Nature and Indigenous rights and twisting the meaning of buen vivir, but nevertheless, the law passed.[194] An attempt to overturn the law by challenging the constitutionality of the law based on rights of Nature before the Constitutional Court failed, as the court argued that the law contained sufficient procedures designed to avoid environmental damages.[195] The court also pointed to Article 407 of the constitution, granting the government the power to make exceptions to restrictions to mining in environmentally sensitive areas if this is in the national interest. The passing of the law was followed by nationwide protest, especially when a similar situation occurred with the Water Law. Ecuador's government responded by arresting nearly 200 Indigenous activists on the grounds of terrorism for protesting the mining activities. Moreover, the government dissolved several Indigenous and environmental organizations involved with the protests, among them Fundación Pachamama.[196]

Clearly, the government was not intending to limit environmentally harmful activities executed by the state, but, since rights of Nature are part of the constitution, civil society can try to enforce these rights through legal actions. Kauffman and Martin, who have analysed all thirteen cases that used rights of Nature in Ecuador up until 2016, identified five cases initiated by civil society actors, of which only two were successful.[197] The first time rights of Nature were successfully enforced was in 2011 in a case started by a group of local concerned citizens who acted as guardians for the Vilcabamba river. They argued that the rights of the river were violated as construction material from a road enlargement project was dumped in the river, causing erosion further down the river.[198] The court acknowledged that the rights of Nature were violated and that the municipal government had to pay for the rehabilitation of the river and its environment. The outcome of this case was celebrated by rights of Nature activists as the reasoning of the court sets a very important precedent.[199] Although the complaint could have been made without involving rights of Nature by merely relying on property rights, the plaintiffs challenged the court to take the rights of Nature seriously. This they did, as the court recognized the "indisputable, elemental, and irremediable importance of Nature"[200] for present and future generations.

The court also quotes Alberto Acosta saying that the human being is part of nature and that we can apply ancient knowledge of original cultures to prevent us from destroying the earth.[201] These signs of sympathy of the court to the rights of Nature movement also translate to a couple of decisions that will make it easier for civil society to make their case.[202] For example, the court recognizes that it is difficult to present arguments in the name of nature, so they will be less rigid with formalities. Rights of Nature plaintiffs do not have to prove that damage to nature is certainly caused by the defendant but can instead make an argument based on probability. The court says that "until it can be shown that there is no probability of danger to the environment of the kind of work that is being done in a specific place, it is the duty of

[194] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 4.
[195] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 6.
[196] "Global Alliance for the Rights of Nature supports Fundación Pachamama," *Global Alliance for the Rights of Nature,* December 6, 2013, https://www.therightsofnature.org/support-fundacion-pachamama/.
[197] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 6.
[198] Tănăsescu, "The rights of nature in Ecuador," 858.
[199] Jim May, "Ecuadorian Court Recognizes Constitutional Right to Nature," *Widener Environmental Law Center,* July 12, 2011, https://blogs.law.widener.edu/envirolawblog/2011/07/12/ecuadorian-court-recognizes-constitutional-right-to-nature/.
[200] May, "Ecuadorian Court Recognizes Constitutional Right to Nature," translated from the decision in Wheeler c. Director de la Procuraduria General Del Estado de Loja.
[201] May, "Ecuadorian Court Recognizes Constitutional Right to Nature."
[202] May, "Ecuadorian Court Recognizes Constitutional Right to Nature."

constitutional judges to immediately guard and to give effect to the constitutional right of nature, doing what is necessary to avoid contamination or to remedy it."[203] Furthermore, the burden of proof to show the absence of damage is put on the defendants. Finally, very significant is that the court argued that in cases of conflict between constitutional rights, the rights of Nature prevail, because the impacts of a polluted environment will affect more people than is the case with other constitutional rights.[204] In sum, this ruling confirmed the importance of rights of Nature and set the precedent for an interpretation favourable to civil society.

Kauffman and Martin have argued that the decision made by the court in the aforementioned case was a highly politicized one. They say that the political character of rights of Nature cases has been an obstacle to the application of nature's rights.[205] The rights of Nature in Ecuador are relatively vague and lack secondary law. In such politically sensitive cases, it is therefore easier for judges to rule in favour of what they have known for years: that economic activities are protected by individual rights, such as the right to property and the right to work. Even in the Condor-Mirador case that was handpicked by rights of Nature activists to be a case that was clearly violating rights of Nature (environmental damage was recognized by scientists and even the government), the judge did not rule in their favour.[206] The reasoning of the court was dubious. For example, the judge argued that the mining project would not affect a protected area. However, there is evidence that it *does* affect a protected area, and more importantly, this should not matter, because the constitution clearly states that *all* Nature has rights.[207] Civil society blamed their loss on a lack of judicial independence.[208] They point to a 2010 memo, in which President Correa instructs judges that approve a preventative action against a state project to reimburse the state for the damages and harm incurred as a result of suspending the project. Other environmental lawyers argue that the problem is not a lack of independence, but a lack of knowledge among judges of how to interpret nature's rights. In another case, regarding the Tangabana plantation, the judge ruled that the claimants could not bring suit because they did not own the affected land, even though Article 71 of the constitution allows anyone to file a suit in the name of nature.[209] To avoid setting more negative precedents, many rights of Nature activists decided not to file more lawsuits.[210]

It is not just civil society that can file lawsuits in the name of nature; other actors, such as the government, can do so as well. This happened a lot: six out of thirteen rights of Nature cases until 2016 were initiated by the state, and the state won all of them.[211] The most remarkable case, which was also the second case in which rights of Nature were enforced, concerns mining in the Esmeraldas and Zamora-Chinchipe provinces. In this case, it was the state who acted as the guardian of nature to sue a group of unauthorized miners for infringing nature's rights.[212] The state's motives were likely to be related to the desire to control and regulate all mining as much as it was a response to local citizens complaining about the pollution that resulted from the unauthorized mining.[213] It was the state, in the name of nature, that won, which allowed President Correa to declare a state of exception in the involved provinces and

[203] May, "Ecuadorian Court Recognizes Constitutional Right to Nature," translated from the decision in Wheeler c. Director de la Procuraduria General Del Estado de Loja.
[204] May, "Ecuadorian Court Recognizes Constitutional Right to Nature."
[205] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 9.
[206] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 10.
[207] See Ecuadorian Constitution, Article 71.
[208] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 11.
[209] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 11-12.
[210] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 9-11.
[211] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 14.
[212] Tănăsescu, "The rights of nature in Ecuador," 858.
[213] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 14.

send the army into the mining territories to confiscate and destroy all personal mining property.[214]

From an optimistic perspective, the government-initiated rights of Nature cases help to spread more awareness and knowledge about rights of Nature in judicial circles and to build jurisprudence that can also be used in other circumstances by environmentalists.[215] Evidence of the increasing awareness about rights of Nature in courts are the cases in which the court decided to apply rights of Nature even though neither of the parties relied on these rights to make their case.[216] However, the unauthorized mining case won by the state also portrays the hypocrisy involved in the enforcements of rights of Nature. In the aforementioned Condor-Mirador case, which was similar to the unauthorized mining case with the exception that the mine was owned by the state, the court did not enforce the rights of Nature. Although the outcomes of these cases remedy environmental damage, it is often individuals or local communities, such as the unauthorized miners, that bear the costs, while the government or big companies have so far gotten away with resource extraction. This raises the bigger question of how the climate crisis can be addressed without reinforcing existing power relations that make vulnerable people, including many Indigenous communities in Ecuador, the ones who are the first to experience the consequences of stricter environmental law, making them even more vulnerable. From this perspective, advocating for rights of Nature also has to mean advocating for stronger social and political rights, in particular for marginalized people. Decolonizing the law has to be part of a larger movement to decolonize relations in other spaces in society.

The happenings after the adoption of the constitution in 2008 show that the inclusion of the Indigenous concepts of sumak kawsay and Pachamama into the constitution have not fundamentally changed the way Ecuadorian public figures envision the relation between humans and nature. The government twisted the meaning of buen vivir to make it possible to continue with resource extraction and the pollution of the environment, reinforcing the colonial understandings of nature. Rights of Nature in this context might even become a tool for the government to pursue their own projects that might benefit the environment but increase the power of the state and come with social costs for already vulnerable communities. Earlier in this thesis, I have argued that rights of Nature might be used against Indigenous communities because their practices of intervening in nature might be scrutinized as a violation of nature's rights.[217] The government-initiated cases concerning rights of Nature can be seen as a warning that this is a real possibility.

It can be questioned whether these outcomes are generalizable outside of the context of Ecuador at that time. For example, rights of Nature activists have questioned the impartiality of judges following a memo from the President, which is not supposed to be possible in a state with a strong Rule of Law. Still, I think the events in Ecuador can serve as a warning of how neoliberal governments can continue unsustainable projects and maintain a colonial view on nature despite renouncing this in rights of Nature laws. The case of Ecuador shows the importance of establishing secondary laws and institutions that provide more clarity for courts on how to interpret rights of Nature. When courts use an interpretation favourable to environmentalists, such as in the Vilcabamba case, rights of Nature can bring about the results envisioned by rights of Nature activists. The reasoning of the court in this decision showed that the court had understood the ways in which rights of Nature were supposed to change attitudes

[214] Tănăsescu, "The rights of nature in Ecuador," 858.
[215] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 15.
[216] Kauffman and Martin, "Testing Ecuador's Rights of Nature," 16.
[217] See section 1.4, page 19.

towards nature, serving as a glimpse of hope that colonial relations to nature might be starting to be unsettled.

2.5 Summary

The case study of Ecuador presented rights of Nature to be two-faced. At first sight, Ecuador seemed to have included Indigenous perspectives on nature in their constitution, but the narratives identified by Tănăsescu problematize this claim. The inclusion of rights of Nature was a top-down rather than a bottom-up initiative and the connection between nature's rights and Indigenous worldviews is less direct than some activists would like us to believe, which means that the potential to decolonize might also be smaller than initially expected based on the rights of Nature rhetoric. Problems can arise in the process of translation, such as when the government used a twisted version of the concept of buen vivir to continue with environmentally damaging projects. Furthermore, the rights of Nature articles in the constitution allowed for the introduction of decolonial worldviews, but its weakness lied in the vagueness of the articles as well as the possible contradictions with other constitutional articles. As the decisions of the courts in rights of Nature cases showed, judges were unsure of how to interpret rights of Nature or could intentionally utilize contradicting articles to dismiss claims based on nature's rights. In these situations, people in power will benefit most from the rights of Nature while marginalized communities bear the costs. This analysis does not want to argue that rights of Nature are never a good pathway to decolonize relations with nature, but it does warn us of the difficulties that may arise. Most importantly, it shows that there is no inherent connection between rights of Nature and decolonization, so we should harbour a little suspicion against people that make this claim.

Chapter 3: New Zealand

The rights of Nature movement consists of two main branches. Ecuador is part of the first branch which aims to grants specific rights to Mother Earth or nature in its entirety. Other examples of this branch are Bolivia, some cases in the United States, and the Universal Declaration on the Rights of Mother Earth. To take a closer look at the second branch of the movement, which aims to give legal personhood to specific natural entities, New Zealand is a suitable candidate for a case study. Rights of Nature in New Zealand have inspired similar cases in other countries, for example in India.[218] In light of decolonization, New Zealand makes an interesting case because the discourse around rights of Nature suggests a close involvement of the Māori, the Indigenous population of New Zealand.

As of 2021, two natural entities in New Zealand have been granted the status of a legal person. In both cases, this is declared in Acts of Parliament, which in the absence of a constitution but in a system of parliamentary supremacy are very significant.[219] The *Te Urewera Act 2014* grants the rights of a legal person to a former national park, Te Urewara, and the *Te Awa Tupua Act 2017* does the same for the Whanganui River.[220] The Mount Taranaki will be added as a third case soon, as this has already been agreed upon in a signed Agreement of Principle between the Crown (New Zealand Government) and the Ngāti Maru iwi, but the agreement still has to officially go through Parliament to become law.[221] To be able to provide an in-depth analysis, this chapter will focus on one of these cases, the Te Awa Tupua Act regarding the Whanganui River. This act is similar in form and history to the other cases, making it possible to draw some conclusions about New Zealand's approach in general. As with the previous case study, the perspective through which this case will be analysed is one of decolonization.

3.1 Māori Views on Nature

The name for the Indigenous population of New Zealand is Māori. In 2013, 14.9 percent of the New Zealand population identified as Māori.[222] There are several Māori iwi (which would translate to *tribe(s)*) in New Zealand, but the iwi that is relevant for this case is mainly the Whanganui iwi, named after the Whanganui River that flows in its territories and is central to the Indigenous identities.[223] There are several other iwi that also mentioned in the Act as having interests in the Whanganui river[224], as well as there are several hapū (clans or descent groups within an iwi) involved[225], but for clarity purposes they are grouped under 'Whanganui iwi' in the Act, which is what I will do in this chapter as well. In the context of New Zealand, the term

[218] The Uttrakhand High Court in India explicitly mentioned New Zealand's decision in its ruling to grant the river Ganges legal personality. See Cano Pecharroman, "Rights of Nature: Rivers That Can Stand in Court," 8.
[219] Craig Kauffman and Pamela L. Martin, "Comparing Rights of Nature Laws in the U.S., Ecuador, and New Zealand: Evolving Strategies in the Battle Between Environmental Protection and 'Development'," (paper presented at the International Studies Association Annual Conference, Baltimore, USA, February 23, 2017), 20.
[220] Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," 2.
[221] Ibid, 2.
[222] "New Zealand," *Minority Rights Group International,* accessed May 25, 2021, https://minorityrights.org/country/new-zealand/.
[223] David Young, "Whanganui tribes," *Te Ara - The Encyclopedia of New Zealand,* accessed May 26, 2021, https://teara.govt.nz/en/whanganui-tribes.
[224] These iwi are: Ngā Rauru Kītahi, Ngāti Apa, Ngāti Maniapoto, Ngāti Maru, Ngāti Rereahu, Ngāti Ruanui, Ngāti Tuwharetoa, and Whanganui Iwi. See *Te Awa Tupua Act 2017,* sec. 7.
[225] These hapū are: Ngā Paerangi, Ngā Poutama, Ngāti Hau, Ngāti Hāua, Ngāti Kura, Ngāti Pāmoana, Ngāti Patutokotoko/Peketuroa, Ngāti Rangi, Ngāti Ruakā, Ngāti Tuera, Ngāti Tupoho, Ngāti Uenuku. See *Te Awa Tupua Act 2017,* schedule 1 sec. 1.

Māori is used much more frequently than the term 'Indigenous'.[226] As the several Māori iwi to a large extent share their language and culture, it is possible to group the Indigenous experiences of New Zealand under this term without reducing the individual differences too much; hence, I will use the term Māori when speaking about Māori worldviews. Before presenting an overview of Māori relations to nature, I deem it necessary to repeat the limitations stemming from my personal position as a researcher. As I do not master the Māori language, I do not have full access to the subtleties of translation or the specific practical implications of the theoretical concepts.

Māori relations to nature are part of *tikanga*, Māori customary values and practices that are embedded in their social context.[227] When asking several Māori why nature should be respected, one would get answers based on various concepts, but a common answer is that nature should be respected because each creature has a *mauri.*[228] Mauri would translate to a 'life force', which unites all beings into an interdependent whole. All is connected through mauri; nothing can flourish when one part is damaged. For example, when there was a problem of environmental damage due to the discharge of sewage into a river, a Māori leader claimed that this had led to an imbalance in the mauri, creating problems for all interconnected beings.[229] Therefore, the idea of mauri limits the potential of humans to dominate the environment, as damage done to nature would result in unnecessary harm to humans as well.

In the Māori worldview, the relation between humans and other creatures is one of kinship.[230] The dichotomy between humans and the natural world that is present in colonial thinking is contradicted in the Māori view that sees all species as part of one family.[231] This can be taken literally, as the Māori have a legend of creation that tells that everything stems from an earth mother (Papatūānuku) and a sky father (Ranginui), making all beings each other's kin.[232] This is an example of *whakapapa,* genealogy, which also explains why the Māori feel deeply about the land, often referring to a particular place of birth or ancestors' birth.[233] They call themselves 'tangata-whenue', people of the land. The word 'whenue' (land) also translates to placenta, meaning that the land is the place of connection between humans, other living beings, and the earth mother Papatūānuku. The role of human beings in this interconnected system is one of *kaitiakitanga* (guardianship).[234] As human beings are in a reciprocal relationship with the land, they have to take care of it and be its guardian.[235] Since 'reciprocity' is a relatively abstract concept that is often used but rarely defined in rights of Nature rhetoric, it would be fruitful to ask ourselves what is meant by this concept. A reciprocal relationship suggests a mutual dependency of humans and nature. Humans need nature for survival, but it could also be

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[226] Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 1999), 6.
[227] "Tikanga," *Māori Dictionary,* accessed May 26, 2021, https://Māoridictionary.co.nz/search?keywords=tikanga.
[228] John Patterson, "Respecting Nature: a Māori Perspective," *Worldviews* 2, no. 1 (1998): 69-78, https://www.jstor.org/stable/43809105.
[229] Patterson, "Respecting Nature: a Māori Perspective," 70-71.
[230] Patterson, "Respecting Nature: a Māori Perspective," 71.
[231] Patterson, "Respecting Nature: a Māori Perspective," 74.
[232] Mike Boyes, "Re-envisioning nature from a New Zealand Māori perspective," (paper presented at the European Institute for Outdoor Adventure Education and Experiential Learning Conference, Ratece-Planica, Slovenia, September, 2010): 1-7.
[233] Boyes, "Re-envisioning nature from a New Zealand Māori perspective," 4.
[234] Christopher Rodgers, "A new approach to protecting ecosystems: The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017," *Environmental Law Review* 19, no. 4 (2017): 270, https://doi.org/10.1177/1461452917744909.
[235] Ibid, 270.

argued that nature needs humans to flourish. Therefore, being in a reciprocal relationship, or a relationship of guardianship, does not mean that the natural world should be completely left alone. I will connect the concept of reciprocity to Patterson's explanation of the importance of balance in Māori worldviews. He says that, in Māori worldviews, any decision of intervening in nature must be made aiming to maintain the deep sense of harmony and balance amongst the various creatures involved.[236]

The Whanganui River, which is given legal personality in this context, is of particular importance to the Whanganui iwi. It has an important economic value, being a source of food and means of transportation, but also serves as a spiritual mentor.[237] A report about the river describes it as "the aortic artery, the central bloodline of that one [Atihaunui] heart"[238]. The centrality of the river to the Māori iwi identities is reflected in their common phrase 'Ko au te awa, Ko te awa ko au', I am the River, the River is me.[239] The Whanganui River has its own *whakapapa* and origin stories, which personify the natural world[240] and explain the connection between the river, the mountains from which it stems, and the Whanganui iwi.[241]

In these Māori perspectives on nature, many elements can be recognized that have been discussed in relation to Indigenous worldviews in general. Māori are connected with nature in a reciprocal relationship, particularly with their ancestral lands and, in the case of the Whanganui iwi, the Whanganui river. These relations are envisioned as kinship relations with natural entities as living beings. In their role as guardians, humans can use and control nature but always with respect to the inherent value of nature and the balance amongst all living creatures.

3.2 History and the Process of Translation

The recognition of legal personhood for the Whanganui river is closely tied to historical developments during colonialism and the recent efforts to reconcile. To understand the significance of the rights of Nature laws and analyse the Te Awa Tupua Act granting those rights, a brief overview of the history of colonialism and settlement negotiations is necessary.

The relevant history starts in 1840 when the Treaty of Waitangi was signed between New Zealand's government (the Crown) and various Māori iwi.[242] This treaty, which can be considered the founding document of New Zealand as a nation under British sovereignty, addressed the issue of ownership of the land.[243] The introduction to the treaty explains that Queen Victoria of the United Kingdom had initiated the treaty because the number of European settlers in New Zealand was growing and she wanted to establish laws and institutions to avoid the 'evil consequences' of lawlessness.[244] It says that the treaty was drafted with the Tribes of New Zealand in mind, "anxious to protect their just Rights and Property and to secure them

[236] Patterson, "Respecting Nature: a Māori Perspective," 71.
[237] "Te Awa Tupua – Whanganui River Settlement," *Whanganui District Council,* accessed May 28, 2021, https://www.whanganui.govt.nz/About-Whanganui/Our-District/Te-Awa-Tupua-Whanganui-River-Settlement.
[238] Liz Charpleix, "The Whanganui River as Te Awa Tupua: Place-based law in a legally pluralistic society," *The Geographical Journal* 184, no. 1 (2017): 22. https://doi.org/10.1111/geoj.12238.
[239] Young, "Whanganui Tribes."
[240] O'Donnell et al., "Stop Burying the Lede," 12.
[241] Young, "Whanganui Tribes."
[242] Kauffman and Martin, "Comparing Rights of Nature Laws in the U.S., Ecuador, and New Zealand," 16.
[243] Cano Pecharroman, "Rights of Nature: Rivers That Can Stand in Court," 7.
[244] "Treaty of Waitangi," signed on February 6, 1840, retrieved from https://nzhistory.govt.nz/politics/treaty/read-the-treaty/english-text.

the enjoyment of Peace and Good Order"[245]. In the three short treaty articles, it was established that rights of governance were given to the British Crown but the Māori maintained Chieftainship over their lands.[246] However, there are two issues with this agreement. The first issue is the language barrier between the Māori and the Crown. The treaty was signed in two different languages, but the words used in these versions were slightly different, which was particularly problematic for terms such as 'ownership'.[247] While the Māori believed 'governorship' was ceded to the government, in English this was 'sovereignty' which has slightly different connotations and implications. Furthermore, regardless of the language issues, the Crown clearly violated several parts of the agreement in the decades after the ratification of the treaty, because a period of aggressive colonialism followed that resulted in a loss of control over their lands for many Māori.[248]

Following these treaty violations, the Whanganui iwi tried to secure their authority over the river and the land through litigation. The 1960s and 1970s in New Zealand were characterized by a 'Māori Renaissance'.[249] The Māori protest movement demanded redress for years of treaty violations, unfair treatment, and the loss of their lands. It was not necessarily the European usage of the river they wanted to prevent, but their disrespect of *mana* and the violation of authority (*rangatiratanga*).[250] In response to these protests, the government established the Waitangi Tribunal to research and settle matters regarding the alleged violations of the Waitangi Treaty and to suggest possible means of reconciliation.[251] The tribunal consisted of a maximum of 20 members who were appointed on the recommendation of the Minister of Māori Affairs, taking into account their expertise on the different aspects of the matters discussed as well as their Māori or Pakeha (European settler) background.[252] The Waitangi Tribunal only held the power of recommendation, but, as Tănăsescu writes, it managed to compel the government to take notice of the findings and made a mark on public policy.[253] In 1985, the government extended the tribunal's jurisdiction back to 1840, granting it the power to assess potential treaty violations dating as far back as the moment of ratification. This opened the door for settlement negotiations with various Māori iwi for historical and continued breaches of the Treaty. One of the cases discussed by the tribunal concerned the ownership of the Whanganui River. The tribunal tried to answer the question of who owns the river "in the context of the social framework of the affected Māori people, and not in the context of any alien structure to which Māori norms do not relate"[254]. The conclusion of their 1999 report *Wai 167* was that the Crown had violated the Treaty of Waitangi.[255]

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[245] "Treaty of Waitangi," signed on February 6, 1840, retrieved from https://nzhistory.govt.nz/politics/treaty/read-the-treaty/english-text.

[246] Tom Barraclough, "How far can the Te Awa Tupua (Whanganui River) proposal be said to reflect the rights of nature in New Zealand?" PhD diss. (University of Otago, 2013), 9.

[247] Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," 12-13.

[248] Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," 12.

[249] Kauffman and Martin, "Comparing Rights of Nature Laws," 16.

[250] Waitangi Tribunal, "The Whanganui River Report", 1999, xviii, https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68450539/Whanganui%20River%20Report%201999.pdf.

[251] Kauffman and Martin, "Comparing Rights of Nature Laws," 16.

[252] *Treaty of Waitangi Act 1975,* art. 4, https://www.legislation.govt.nz/act/public/1975/0114/latest/whole.html.

[253] Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," 14.

[254] Waitangi Tribunal, "The Whanganui River Report," as quoted in Barraclough, "How far can the Te Awa Tapua (Whanganui river) proposal be said to reflect the rights of nature in New Zealand?" 12.

[255] Barraclough, "How far can the Te Awa Tupua (Whanganui river) proposal be said to reflect the rights of nature in New Zealand?" 10.

> We have found that, in Māori terms, the Whanganui River is a water resource, a single and indivisible entity, which was owned in its entirety by Atihaunui[256] in 1840. We have further found that the Treaty has been breached by the Crown in various ways. Broadly put, the Tribunal has found that the acts of the Crown in depriving Atihaunui of their possession and control of the Whanganui River and its tributaries and its failure to protect Antihaunui rangatiratanga[257] in and over their river were and are contrary to the principles of the Treaty of Waitangi. Atihaunui have been and continue to be prejudiced as a consequence.[258]

The Tribunal recognized the Māori ownership rights, authority rights, and rights of control over the river.[259] Whenever public access to parts of the river had to be continued, this was based on permission granted by the Māori and not by right. Moreover, it argued that the Māori do not merely own the river bed, as English law had defined it, but the river as a single entity including the water and river banks.[260] The tribunal advised that a structure needs to be found in which Māori customary law regarding the river can be recognized and included: "Still lacking, however, is a New Zealand legal framework for rivers and water that is able to accommodate the distinctive sources of law for this country from both England and the Pacific or that accommodates legal presumptions from England concerning the Crown's radical title with the New Zealand reality that the "radical title" was already spoken for."[261]

The report of the tribunal started negotiations over settlements between the Crown and the Māori that ultimately resulted in the Te Awa Tupua Act. The analysis of the tribunal, and by extension the Treaty of Waitangi itself, heavily influenced the focus of the negotiations and the formulation of the subsequent Act.[262] The first round of negotiations took place between 2002 and 2004, but these ended without an agreement being reached.[263] The conversation between the Whanganui iwi and the Crown recommenced in 2009. The negotiations took several years, and in the meantime various documents were published: a Record of Understanding in 2011[264], an agreement outlining the key elements in 2012[265], and finally the Deed of Settlement in 2014.[266] The Deed of Settlement had to be translated into an Act of Parliament, the Te Awa Tupua Act, which was approved by parliament in 2017.[267]

Being a researcher positioned at the other side of the world from New Zealand, gathering information about the content of the negotiations is difficult. During the years of negotiations, no information was made public, apart from the aforementioned official documentation. Therefore, academic work on the Whanganui River settlement is mainly based on the information that documents such as the Record of Understanding provide. Although these documents do offer some insights into how the negotiations developed, it does not help us

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[256] Atihaunui-a-Pararangi, Atihaunui in short, are the Māori people of the Whanganui River.
[257] The Māori term of 'sovereignty', as it appears in the Treaty of Waitangi.
[258] Waitangi Tribunal, "The Whanganui River Report", xi.
[259] Barraclough, "How far can the Te Awa Tupua (Whanganui river) proposal be said to reflect the rights of nature in New Zealand?" 16.
[260] Waitangi Tribunal, "The Whanganui River Report," xiii.
[261] Charpleix, "The Whanganui River as Te Awa Tupua," 24.
[262] Barraclough, "How far can the Te Awa Tupua (Whanganui river) proposal be said to reflect the rights of nature in New Zealand?" 9.
[263] Whanganui Iwi and the Crown, "Record of Understand in relation to Whanganui River Settlement," October 13, 2011: 6, https://www.ngatangatatiaki.co.nz/assets/Uploads/Important-Documents/DocumentLibrary_WhanganuiRiverROU.pdf.
[264] Whanganui iwi and the Crown, "Record of Understand in relation to Whanganui River Settlement," 6.
[265] Charpleix, "The Whanganui River as Te Awa Tupua," 24.
[266] Charpleix, "The Whanganui River as Te Awa Tupua," 24.
[267] Cano Pecharroman, "Rights of Nature: Rivers That Can Stand in Court," 7.

understand how rights of Nature were introduced, and by whom, and how a compromise was reached. What we do know is that the main parties involved in the negotiations were the Minister for Treaty of Waitangi Negotiations, Chris Finlayson, and this team, on behalf of the Crown, and the Whanganui River Māori Trust Board on behalf of the Māori iwi, although a negotiator for the Māori stressed that the key decisions were made in local assemblies.[268] The first time the concept of legal personhood appeared in the documentation was in the agreement of 2012.[269] According to Kauffman and Martin, the inclusion of legal personhood resulted from efforts by Western lawyers to codify Māori worldviews[270], but there is no evidence that can confirm this. Other evidence suggests that rights of Nature were proposed by Māori iwi. In a documentary about the river, Gerrard Albert, Māori negotiator, said that the Māori were searching for a way to incorporate their view of the river as a living whole and legal personhood was the closest approximation they could find.[271] In a 2010 news article, he mentions that the iwi had made a proposal to the Crown that could be called 'unorthodox' and 'outside of standard arrangements'.[272] Nowhere can we find conclusive information about how rights of Nature were introduced in these negotiations and how this was received, but both parties claim that legal personhood reflects the Māori worldview and benefits all.

What could have helped smoothen the introduction of legal personhood in this Act are earlier developments in legal culture in New Zealand.[273] New Zealand knows a specialized Environment Court that makes decisions about the *Resource Management Act 1991*. This Act takes a holistic approach to the management of all aspects of the environment, recognizes the relationship of Māori with their ancestral lands, and requires the involvement of Māori in decision-making on environmental issues. It includes that decision-makers should pay attention to Māori 'kaitiakitanga' (guardianship) and the ethic of stewardship.[274] The idea of the appointment of guardians for natural entities has also been used before in several earlier cases, but without the notion of legal personhood. Furthermore, the New Zealand High Court takes a liberal stance on issues of standing in cases about environmental damage.[275] The court allows public interest groups to defend nature on behalf of local communities when the environmental damage impacts these local people, which it almost always does. This means that the issue that led Christopher Stone to suggest that nature should have standing was already partly solved. In light of this legal culture, legal personhood was a new but logical development.

In 2017, the Te Awa Tupua bill was discussed in the parliament of New Zealand for its third reading, whereafter the bill was passed. Transcripts of the speeches during the debate give the impression that the general sentiment was one of celebration.[276] Speeches from several members of parliament, in English and Māori, emphasize the uniqueness of the content of the

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[268] "Crown iwi river wrangle could be nearing end," *Whanganui Chronicle,* December 19, 2010, https://www.nzherald.co.nz/whanganui-chronicle/news/crown-iwi-river-wrangle-could-be-nearing-end/LCAQA2HJZMZISRJ4IMEYI23OFY/.

[269] Charpleix, "The Whanganui River as Te Awa Tupua," 24.

[270] Kauffman and Martin, "Comparing Rights of Nature Laws," 16.

[271] David Freid, dir., *The River Is Me* (New Zealand: MEL Films, 2018).

[272] "Crown iwi river wrangle could be nearing end," *Whanganui Chronicle,* December 19, 2010, https://www.nzherald.co.nz/whanganui-chronicle/news/crown-iwi-river-wrangle-could-be-nearing-end/LCAQA2HJZMZISRJ4IMEYI23OFY/.

[273] Rodgers, "A new approach to protecting ecosystems," 268.

[274] Rodgers, "A new approach to protecting ecosystems," 268.

[275] Rodgers, "A new approach to protecting ecosystems," 268.

[276] New Zealand Parliament, "Te Awa Tupua (Whanganui River Claims Settlement) Bill - First Reading," May 24, 2016, https://www.parliament.nz/en/pb/hansard-debates/rhr/document/51HansD_20160528_00000012/te-awa-tupua-whanganui-river-claims-settlement-bill.

settlement, but more so the uniqueness of the process, which, although difficult at times, is an example of how two worlds can come together. The speeches during the third reading are full of praise and excitement from members of different parties, Māori and Pakeha. The Te Awa Tupua Act has a long history, which illustrates the problems that arise when two different views about nature clash, the amount of time it takes to come to an agreement, but also the potential for conversation and collaboration. Māori people have been crucial in developing this rights of Nature Act, which has a wider significance than just being about rights of Nature. Although the informal dynamics of negotiations unfortunately could not be analysed, the process in its historical context of settling colonial harms suggests a potential for decolonizing human-nature relations. In the next section, it will be examined whether the content of the Te Awa Tupua Act lives up to this promise.

3.3 Close Reading of the Te Awa Tupua Act and Other Documentation.

In its capacity of settling matters of dispute between the Crown and Māori that have been going on for centuries, the Act addresses several different topics. A significant part of the text is devoted to acknowledgements and an official apology by the Crown.[277] The Crown acknowledges the deep connection between the Whanganui River and the Whanganui iwi and hapū. It admits that the Whanganui iwi have never willingly relinquished their rights and have tried to protect their relationship with the river, but the Crown did not adequately respect this. Moreover, the Crown recognizes that legislation implemented by the Crown disregarded Whanganui iwi interests and apologizes for this. With the Te Awa Tupua Act, all historical claims are settled.[278] This is the context in which rights of Nature appear, taking the form of legal personhood. There are two topics I will specifically address, legal personhood and issues of ownership, based on a close reading of the relevant articles.

Legal Personhood

The Te Awa Tupua Act of 2017 declares the Whanganui River to be a legal person. This is not an entirely correct way of putting it, as the Act makes a distinction in definition between the Whanganui River and Te Awa Tupua, the Māori word for the river. Whereas the river is defined as the body of water including streams, lakes, wetlands, and the beds of these bodies of water[279], Te Awa Tupua is the legal person created by the Act. According to section 12, "Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements"[280]. Thus, talking about the Whanganui River merely refers to the physical aspects of the river, while Te Awa Tupua incorporates the meaning that the Māori give to the river with all its metaphysical aspects. In light of this distinction, it is relevant to pay attention to the choice of words throughout the analysis of the Te Awa Tupua Act.

Interestingly, the Act is hardly readable without having some knowledge about the meaning of relevant Māori words. The Act often refers to phrases taken from Māori understandings of the world, such as *mana, tikanga,* or *mauri* (see Chapter 3.1), sometimes without providing an English translation of these concepts when it is not considered relevant for the interpretation of the law. The absence of translation is understandable given the difficulty of accurately explaining the full meaning of a concept in another language, and this Act is not the place for

[277] *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017,* sec. 69 and 70.
[278] *Te Awa Tupua Act 2017,* sec. 87.
[279] *Te Awa Tupua Act 2017,* sec. 7 'Whanganui River'.
[280] *Te Awa Tupua Act 2017,* sec. 12.

extensive elaboration on the issues of translation. The frequent use of Māori words in the Act endorses the idea that the Act is the result of years of close collaboration between the Crown and Māori iwi. Māori words are not just incorporated as a symbol but are key to understanding the text.

One of the key concepts that gives the Act its name is Te Awa Tupua, the indivisible and living whole of the physical and metaphysical aspects of the Whanganui River. In this definition, the river is recognized as a living entity, which is characteristic of many Indigenous cosmologies, including the Māori worldview, and is crucial for the shift from the river as property to the river as a subject that can be bestowed legal personhood. Another characteristic of Indigenous views on human-nature relations is the recognition of interconnectedness. This shows section 13, which states the intrinsic values that represent the essence of Te Awa Tupua. One of these values is the Māori phrase "Ko au te Awa, ko te Awa ko au"[281], I am the River and the River is me, describing the connection between the River and the Whanganui iwi and the human responsibility for the river that flows from this connection. Another intrinsic value, "Ko te Awa te mātāpuna o te ora"[282], says that the River is the source of spiritual and physical sustenance for the life and natural resources within and around the river, which includes the Whanganui iwi people. Later in the text, the Crown is even talking about an "inalienable connection of those iwi and hapu with Te Awa Tupua"[283], and it says that the Crown "acknowledges and respects this intrinsic connection"[284]. Despite this explicit recognition of the interconnection between humans and nature, it is always phrased in terms of 'the Other'. The Crown does not extend this worldview to the possibility that it is not just the Whanganui iwi who are connected to their natural environment but that this holds up for all humans. This raises the question: what does decolonization exactly mean? Is it enough to recognize the value of the worldview of the other, or is it necessary to replace the colonial conceptions about nature? These questions will be reflected upon in the conclusion.

The aforementioned articles that define Te Awa Tupua and its intrinsic values lead up to section 14, which is relevant in the discussion about rights of Nature because this article establishes Te Awa Tupua as a legal person: "Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person"[285]. All the laws about legal persons will apply to the river, most importantly that the river can sue, or be sued.[286] The choice of words in this article is significant because the decision to grant legal personhood to Te Awa and not Whanganui River means that it is the river from the Māori perspective that is granted these rights. It means that the Māori understanding of the river is recognized and incorporated in law, which is a promising example of decolonization of the law. Another interesting aspect of section 14 is that Te Awa Tupua has been granted rights but also several duties and liabilities of a legal person. In theory, it is possible for people to sue the river, for instance for damage caused by floods. It is unclear what this will do in practice, but it might be a tool to use the legal personhood of the river for colonial purposes.

Subsequently, the Act discusses how the river can use its rights and duties, given that it does not possess speech or the capacity to undertake legal action. The solution that was decided upon, according to section 18, is the establishment of the guardian office of Te Pou Tupua, which is supposed to be "the human face of Te Awa Tupua and act in the name of Te Awa

[281] *Te Awa Tupua Act 2017,* sec. 13.
[282] *Te Awa Tupua Act 2017,* sec. 13.
[283] *Te Awa Tupua Act 2017,* sec. 19.2.
[284] *Te Awa Tupua Act 2017,* sec. 69.3.
[285] *Te Awa Tupua Act 2017,* sec. 14.
[286] "Legal Person," Cornell Law School Legal Information Institute, accessed May 22, 2021, https://www.law.cornell.edu/wex/legal_person.

Tupua."[287] The office is concerned with upholding the Te Awa Tupua status and the intrinsic values of the river and aims to promote and protect its health and well-being.[288] If necessary, Te Pou Tupua will be the body representing the river in court.[289] Besides, Te Pou Tupua should develop mechanisms for engaging with and reporting to the Whanganui Iwi about matters concerning the river.[290] The guardian office of Te Pou Tupua comprises two persons: one nominated by the Whanganui Iwi, and one nominated on behalf of the Crown by the Minister for the Environment, in consultation with the Minister for Māori Development and the Minister of Conservation.[291] The nominees should have "the mana, skills, knowledge, and experience to achieve the purpose and perform the functions of Te Pou Tupua"[292]. They should not only secure the physical and ecological rights of the river but also attend to the spiritual and cultural aspects.[293]

There are two bodies created with the task of supporting this guardian office. There is an advisory group, called Te Karewao, again consisting of persons appointed by the Māori as well as the Crown.[294] The second support group, Te Kopuka, concerns itself with developing strategy regarding the river.[295] This group can have up to twenty members and includes representatives of organizations or individuals with an interest in the river, such as environmental groups, local authorities, the fishing industry, and other organizations with a commercial or recreational interest in the river. All these groups should act in accordance with the purpose to advance the river's health and well-being. A fund of one million New Zealand dollars was established to support the bodies with these tasks, next to a 30 million fund created to advance the river's health and restoration.[296]

Māori are well-represented in all the bodies with the task of protecting the river. The design of these bodies shows an intention of the Crown and Māori to work together and to decide on matters regarding the river collaboratively in good faith. The creation of Te Pou Tupua, which can represent the river in court, ensures that the rights of the river can be enforced if necessary. All the above suggests that the Māori views on the relation between humans and nature are taken seriously, are being incorporated into the system, and will have practical implications. Therefore, the theoretical development of legal personhood for the Whanganui River in the context of the Te Awa Tupua Act seems to have the potential to decolonize relations to the river and incorporate different worldviews.

Ownership and Property

The articles on legal personality for Te Awa Tupua are only a small part of the Te Awa Tupua Act. In Subpart 5 of the Act, questions about ownership are discussed. The topics of ownership and property rights are important in the Te Awa Tupua case because of its history. The Te Awa Tupua Act is the result of years of struggles over violations of the Treaty of Waitangi. In this treaty, agreements were made around ownership, sovereignty, and authority over the land. The Whanganui iwi pointed out that the Treaty was violated, and that was the reason for the

[287] *Te Awa Tupua Act 2017,* sec. 18.
[288] *Te Awa Tupua Act 2017,* sec. 19.
[289] *Te Awa Tupua Act 2017,* sec. 19.
[290] *Te Awa Tupua Act 2017,* sec. 19.
[291] *Te Awa Tupua Act 2017,* sec. 20.
[292] *Te Awa Tupua Act 2017,* sec. 20.
[293] "Comparing Rights of Nature Laws," 18.
[294] *Te Awa Tupua Act 2017,* sec. 27 and 28.
[295] *Te Awa Tupua Act 2017,* sec. 29.
[296] Whanganui District Council, "Te Awa Tupua – Whanganui River Settlement."

establishment of the Waitangi Tribunal, ultimately resulting in the settlement that is the Te Awa Tupua Act. Thus, underlying this Act and underlying the choice for legal personhood is the concept of ownership and the question of who should be considered the legitimate owner of the riverbed, the water, and the riverbanks.[297]

This history of struggles over who owns the river and the land is interesting in relation to the colonial conceptions of nature that have been discussed in Chapter 1.2. In this chapter, I have argued that the classification of nature as property under the law reflects colonial worldviews that see nature as consisting of lifeless objects. Environmental lawyer Susana Borràs has argued that the classification of nature as property under the law allows for continuing environmental damage in current times of ecological crisis.[298] Property law leaves a lot of freedom for people to decide for themselves what to do with the property, which makes exploitation a possibility. For these reasons, the West might be required to look for alternatives to the classification of nature as someone's property. However, the concept of ownership is fundamental in the current organization of the world and might be particularly challenging to change. In this system, many Indigenous people are fighting for ownership over their lands rather than the abolishment of rights to ownership over nature, because that might make them potentially more vulnerable. In what follows, these questions will be explored in the context of Te Awa Tupua.

First, I will describe Māori worldviews and their conceptions of ownership of nature. In the Māori worldview, we can find ideas relating to property and ownership, but these are different from the Western concepts. Collins and Esterling argue that in Indigenous worldviews no one can 'own' or hold as 'property' living things.[299] Elements of nature are as much recognized as sovereign living beings as they are instruments needed for human survival. The conceptions of 'property' that Indigenous peoples hold are rooted in collective and intergenerational thinking, closely tied with culture and self-determination.[300] They are not owners of a piece of land, but temporary guardians or users. Therefore, the concepts of authority and guardianship are closer to the Māori meaning than ownership. To illustrate, European settlers were welcome to use resources on the condition that they contributed to the land, the iwi, and its customary law.[301] Acting according to guardianship and reciprocity, the Māori allowed everyone to use the resources as long as they maintained balance and gave something in return. Moreover, Māori iwi define their lands not by lines on a map, but by history, ancestors, and relationships.[302] To conclude, Indigenous ownership is a collective, temporary notion that is subject to the requirements of reciprocity and the maintenance of balance.

Still, Māori have made claims to water or land based on ownership, such as in the Whanganui River settlement negotiations, but many have argued this to be a response to the imposition of Western conceptions of property.[303] The use of terms like property and ownership could be considered a tool for Māori iwi to achieve the self-determination and collective control that are

[297] Barraclough, "How far can the Te Awa Tupua (Whanganui river) proposal be said to reflect the rights of nature in New Zealand?" 10.
[298] Ibid, 114.
[299] Toni Collins and Shea Esterling, "Fluid Personality: Indigenous Rights and the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 in Aotearoa New Zealand," *Melbourne Journal of International Law* 20, no. 1 (2019): 206.
[300] Ibid, 206.
[301] Barraclough, "How far can the Te Awa Tupua (Whanganui river) proposal be said to reflect the rights of nature in New Zealand?" 15.
[302] Charpleix, "The Whanganui River as Te Awa Tupua," 23.
[303] Collins and Esterling, "Fluid Personality," 217.

part of their culture. Summarized by Alex Frame: "if it is property, then it is our property!"[304] Given that the history of the Te Awa Tupua Act is characterized by struggles about ownership and Māori worldviews do not know the same concept of ownership, the legal framework of the Te Awa Tupua Act might limit the potential to decolonize this colonial conception of nature as property.

The Te Awa Tupua Act is dealing with questions of ownership in a somewhat unconventional manner. Section 41.1 describes that "the fee simple estate in the Crown-owned parts of the bed of the Whanganui River vests in Te Awa Tupua"[305]. This means that the absolute ownership rights previously held by the Crown have been transferred to Te Awa Tupua as a legal person at the time of the passing of the bill. Because Te Awa Tupua is a legal person, it has the right to own property, so the river will partly be the owner of itself. This decolonizes the perception of the river because it is no longer the property of a human being but a living entity with authority over itself. However, one could also argue that this perpetuates the colonial conception of nature as property because it does not completely change the system of property rights. Instead of abolishing the possibility of owning the river as property, the Act finds a way within the existing system to make Te Awa Tupua the property of itself. A sceptical view on the potential to decolonize is supported by the fact that the Act makes several exceptions to the vesting of property rights in Te Awa Tupua. One exception is that nothing changes in the already existing private property rights over the river.[306] These existing rights can be customary rights from the Māori[307], but also the property rights of companies or industries. Furthermore, excluded are the absolute property rights over any part of the riverbed held under the *Public Works Act 1981* or parts that are located in the marine and coastal areas.[308] These parts of the river that have public functions or are located in specific areas where multiple other interests come together will remain the property of the Crown. The same goes for the legal roads, railway infrastructures, or other structures in the riverbed.

Another important exception to the vesting of property rights in Te Awa Tupua concerns the water in the river. Despite Māori claims stressing the particular importance of the ownership of the water because without water, there is no river, the Act only vests the fee simple estate of the riverbed in Te Awa Tupua.[309] Given that the Te Awa Tupua Act recognizes Te Awa Tupua as a 'living and indivisible whole' this distinction between the riverbed and the water is strange. However, the parts of the Act about ownership use 'Whanganui River' and not 'Te Awa Tupua', which avoids internal contradictions. The reason for the exception made for the water is that under common law water cannot be owned and is thus not regarded as property.[310] As a result, the consent of the guardians of the river is not required for the use of the water.[311] Whereas the absence of a property status of the water might be close to Māori worldviews, some Māori fear that this will be abused by industries. This goes to the heart of the complexity of the issue. Incorporating Māori worldviews into the law might not always turn out to benefit the people and nature, but not recognizing the legitimacy of their views can be equally harmful.

In the issue of ownership, we clearly see two systems interacting: Māori customary law and Western common law. These are not two equal systems. The Western system has been

[304] Ibid, 217.
[305] *Te Awa Tupua Act 2017,* sec. 41.1.
[306] *Te Awa Tupua Act 2017,* sec. 16.
[307] See *Te Awa Tupua Act 2017,* sec. 46.2.b.
[308] *Te Awa Tupua Act 2017,* sec. 41.2.d.
[309] Collins and Esterling, "Fluid Personality," 217.
[310] Collins and Esterling, "Fluid Personality," 202.
[311] Matthias Kramm, "When a River Becomes a Person," *Journal of Human Development and Capabilities* 21, no. 4 (2020): 308, doi: 10.1080/19452829.2020.1801610.

dominant for centuries and therefore it has set the frame in which negotiations have taken place. Although the two parties have stated their intention to find common ground, it is the Western system that by being the norm determined the language, values, knowledge, and institutional life at the backdrop of the negotiations. The difficulty of this situation is acknowledged by the Crown in the Act: "The Crown acknowledges that the approach taken by Whanganui Iwi in respect of this settlement represents significant compromise and generosity of spirit by Whanganui Iwi"[312]. To some extent, the Te Awa Tupua Act managed to change the frame, to introduce new language and new realities about how humans relate to nature. It creates a system of river management in which the two worldviews can exist separate from each other but collaborate as partners on matters that concern both parties. On the other hand, the Act can also be seen as an example of how Māori worldviews are incorporated into the Western legal system which results in the perpetuation of internal hierarchy. One can even wonder if the existence of two equal views on human-nature relations is enough in a time of global warming. All in all, the Te Awa Tupua case is not a bad example of how to decolonize human-nature relations, but the question can be raised of whether decolonization does not require more than the Te Awa Tupua case has offered.

3.4 Practical Implications

During the third reading of the bill, Peeni Henara, Member of Parliament, said: "We will see in time whether the comments in this bill will be effective and secure outcomes … Therefore, the cry to the tribe seated about: be awake, alert, and vigilant. Do not mistakenly assume that the journey of this proposal has ended – no, no, no, it has not!"[313] Indeed, it is important to consider the practical implications of the Act. At the time of writing, almost four years after the bill passed in September 2017, the rights or duties of the Whanganui River have not yet been part of any case discussed in court. This is not due to lacking implementation of the Act, because the guardian offices and advisory bodies that the Act established have been set up and are doing a lot of work.[314] An important organization is Ngā Tāngata Tiaki o Whanganui, the replacement of the Whanganui River Māori Trust Board that was a key player in the negotiations. This organization is in close contact with the Whanganui iwi and publishes Annual Reports and Annual Plans.[315]

A lack of enforcement of the river's rights in court does not mean that the river's rights are not protected in other ways. Most of the Te Awa Tupua Act focuses on the collaborative management of the river. If any issues or conflicts arise, this will be picked up by all the different bodies that have been established to protect the health and well-being of the river who will try to find a solution. The system of management set up in the Act therefore seems intended to prevent conflict rather than to settle conflict in court. The legal rights of the river can be helpful because they can empower Māori in case of disagreement within the guardian bodies and they can be a last resort in cases of extreme conflict, but it is not surprising that the rights of Te Awa Tupua have not made it to court yet. Still, the Act is relatively young so there might be cases

[312] *Te Awa Tupua Act 2017,* sec. 69.19.

[313] Peeni Henare, "Speech during third reading of the Te Awa Tupua Bill," March 14, 2017, retrieved from https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20170314_20170315_12.

[314] See Ngā Tāngata Tiaki o Whanganui, "Te Pou Tupua," accessed May 25, 2021, https://www.ngatangatatiaki.co.nz/our-story/ruruku-whakatupua/te-pou-tupua/; The Office of Te Pou Tupua, "Te Pou Tupua," accessed May 25, 2021, https://www.tepoutupua.nz/.

[315] Ngā Tāngata Tiaki o Whanganui, "Annual Report 2019-2020 and Annual Plan 2020-2021," retrieved from https://www.ngatangatatiaki.co.nz/.

in the future that will give us more insights into how a court will interpret the rights and duties of the river as a legal person.

As for now, an assessment of the effectiveness of the Act in protecting nature through a change in thinking about human-nature relations has to be based on the information provided in the Act. An analysis of the Act has shown that there are several possible limitations: existing private property rights are not affected, the vesting only applies to the riverbed and not the water, and the Whanganui River remains subject to other legislation.[316] However, the recognition of the Māori worldview and the establishment of the many protective bodies stem hopeful that Māori perspectives on nature will be taken seriously.

The successes of the Te Awa Tupua Act in decolonizing human-nature relations can be to a large extent attributed to the bottom-up approach. The involvement of local Māori communities was extensive, in the negotiation processes as well as in the enforcement of the Act, and this was important for creating an Act that represented Indigenous worldviews accurately. The close involvement of local peoples is possible because New Zealand is an example of the second branch in rights of Nature that focuses on a specific natural entity. The involvement of local people will only be possible on a smaller scale. Therefore, the case of New Zealand might be difficult to replicate on a bigger scale, for example on the national level. Moreover, it can be a disadvantage that the second branch of rights of Nature only considers one natural entity at the time, because environmentalists might do a lot of work in specific cases without this affecting the bigger system. Decolonization of human-nature relations requires changes in worldviews on a systemic level that the case of New Zealand does not yet offer. Thus, the local scale that has been an advantage in involving Indigenous communities and setting up an enforceable system of management might also be a downfall in its potential to decolonize relations between humans and nature.

3.5 Summary

The Te Awa Tupua Act that grants legal personhood to the Whanganui River is the result of a cultural struggle that is bigger than only involving environmental conflict. Its history is one of centuries of struggle about ownership of the river and the land. During years of negotiation between the Crown and the Whanganui iwi, legal personhood was considered to be the best approximation of how the Māori view the river. The Te Awa Tupua Act recognizes the Māori perspective on nature as legitimate and incorporates elements of this perspective into the Western legal system, thereby decolonizing the colonial conception of nature which used to be the norm. Limitations to this potential to decolonize stem from the incorporation of the Māori worldviews in a dominant colonial legal system that is still property-focused. The rights of the river have not been enforced in court yet, but other organizations make sure that the river is protected in the river management. I would conclude that the Whanganui River case is an example of a possible pathway towards decolonization. Whether it is the best pathway can be subject to disagreement, but the Te Awa Tupua Act was created with the intention to incorporate Māori views on nature and this seems to be done to the best of their abilities.

[316] Collins and Esterling, "Fluid Personality," 202-203.

Chapter 4: Conclusions

The rights of Nature movement is an umbrella term for initiatives that have in common the granting of rights to natural entities, but the diversity of approaches within the movement is significant. Ecuador and New Zealand are examples of the two main branches within the movement that represent the different forms of rights of Nature: general existence rights versus legal personhood. Next to these differences in form, the case studies of Ecuador and New Zealand differ in their histories, the involvement of the Indigenous population, and the level of success in protecting nature and empowering Indigenous peoples. Their potential to decolonize human-nature relations is shaped by these different forms, histories, and practices. Thus, as Tănăsescu argues, rights of Nature do not represent "a single, linear and unproblematic influence of 'indigenous cosmovisions' on the western conception of rights"[317], contrary to the common rhetoric of rights of Nature activists. Arguments about decolonization through rights of Nature would have to be based on the analysis of case studies in their context. Through comparing the two case studies, I will make some careful suggestions about the possibility of rights of Nature to unsettle colonial frameworks and the conditions under which this is might happen.

From a legal perspective, the main difference between Ecuador and New Zealand is the form of the rights of Nature. Ecuador is part of the first branch of rights of Nature that grants existence rights to nature in general. The constitution of Ecuador states that nature has the right to exist, to regenerate, and to be restored.[318] This is different from New Zealand that granted specific natural entities, such as the Whanganui River, legal personhood. In Ecuador, everyone can call upon the public authorities to enforce the rights of Nature, whereas in New Zealand there are specific bodies created with the purpose to protect the natural entity that are the human representatives of nature in court. The benefit of the general possibility to enforce the rights of Nature, such as in Ecuador, is that these rights can empower environmental organizations or local communities who can use the rights to be heard. The generic phrasing of the rights and their enforcement means that rights of Nature can be applied on a large scale in various different cases, which makes their potential impact significant. This is what happened in practice, because during the years after the constitutionalization of the rights environmentalists have tried to enforce the rights in various cases all over the country.[319] However, the fact that the rights of Nature can be enforced by everyone also means that parties like the government can use them to pursue their own interests. In Ecuador, rights of Nature have been used to establish a governmental mining monopoly that harmed the local unauthorized miners.[320] Mihnea Tănăsescu warned us for the possibility of rights of Nature to be used against Indigenous environmental practices[321], and the situation in Ecuador confirms that this is a genuine risk. From a philosophical perspective, we should ask ourselves whom we want to speak for nature. Nature always has to be represented in court by one or more human beings and there is no way of knowing what nature would say. In New Zealand, they have created a body whose job is to protect the river and to speak in the name of nature, which assumes that these local people committed to the river can best approximate nature's interests. Ecuador gives everybody the opportunity to speak for nature, which could be argued is more democratic, but also creates the risk that nature's rights are used to give a more legitimate face to particular human interests. Rights of Nature in the form used by Ecuador are a tool that can be used for different purposes by different people. Thus, they can

[317] Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," 3.
[318] Ecuadorian Constitution, art. 71-72.
[319] See Kauffman and Martin, "Testing Ecuador's Rights of Nature."
[320] Ibid.
[321] Tănăsescu, "Nature Advocacy and the Indigenous Symbol," 17.

simultaneously be used by Indigenous peoples to decolonize how humans relate to nature as well as by corporations and the government to reinforce colonial practices.

To make sure rights of Nature contribute to decolonization, it is recommended to make nature's rights part of a bigger movement for Indigenous social, political, and economic rights, which might limit the harmful actions of the government and empower Indigenous voices. This is what contributed to the successful cases of New Zealand. Together with rights of Nature, Māori were also given political authority over their lands, and they received an apology for centuries of injustices. The Crown expressed a commitment to respecting the Indigenous worldviews, which could be an explanation of why the rights of Nature so far have not been necessary to settle any conflicts. The President of Ecuador at that time also claimed to be an ally of the Indigenous population but never established any measures that materialized that support. Thus, decolonization of colonial worldviews through rights of Nature will be most successful if being part of a larger effort to decolonize. This is not a ground-breaking conclusion but nevertheless it is important to repeat because there is a real possibility that people will think adopting rights of Nature is enough to decolonize human-nature relations and protect the environment.

Compared to Ecuador, the form of rights of Nature in New Zealand is less generic. The rights apply to a particular natural entity and guardianship bodies are created specifically for the enforcement of the rights. Whereas this is lacking in Ecuador, the approach of New Zealand structurally involves the Indigenous population because at least half of the guardians of nature are appointed by Māori iwi. This increases the likelihood that rights of Nature will be used to empower Indigenous peoples and to promote their relations to nature, assuming that Indigenous peoples will actually make decisions that are not in line with the colonial conceptions of nature. Given the care for the river that Māori expressed during the creation of rights of Nature, this seems to be a safe assumption, but it would be an oversimplification to assume that all Indigenous peoples will always act as ecological saints. If the guardian bodies would fail to act in the interest of nature, the structure of the enforcement rights in New Zealand does not allow for other organizations to enforce the rights of Nature in court, unlike in Ecuador. Still, the chances that rights of Nature will be used to reinforce colonial frameworks in Ecuador by parties like the government or the fossil fuel industry is much bigger than the chances that Indigenous peoples in New Zealand will do so, which is why the model of New Zealand seems to be more suitable for decolonization.

In New Zealand, natural entities are granted legal personhood. Although this sounds vague, it means that all laws that involve legal persons will now also apply to the natural entity. In theory, it is therefore clear what rights nature possesses. What remains vague is how all these rights and duties can be applied in practice. Since there have been no judgements from courts involving the rights of Nature yet, it remains to be seen how nature can enforce its rights and be held accountable for its duties. The same applies to the case of Ecuador. The Ecuadorian constitution specifies which rights are granted to nature, such as the right to exist or the right to regenerate, but it is unclear what these rights entail in practice. Moreover, the entity that is granted rights is 'nature', which is used synonymously with *Pachamama* and other terms like 'natural resources' or 'ecosystems', but since the distinction between nature and culture is nearly impossible to make it remains vague what exactly falls under the category of nature. Both forms of rights of Nature, legal personhood and existence rights, leave a lot of room for interpretation of the rights in practice. For these reasons, it is important that secondary laws and institutions are established to give judges more guidance in how to apply and interpret nature's rights. Particularly when the goal is to avoid rights of Nature reinforcing colonial ideas about the relation between humans and nature, these guidelines can be crucial. In Ecuador, the government prevented the initiation of these secondary laws and institutions, which

resulted in judicial decisions that lack consistency and are contradictory to the purpose of the rights of Nature articles. New Zealand did establish the guardian bodies which created strategy documents and regulations, although no court cases have occurred yet so there is no information about how judges would interpret the rights. The New Zealand bodies also received funding to perform their tasks, which is important because environmental organizations in Ecuador have reported to lack the money needed to go to court to enforce the rights of Nature. From this comparison, I would conclude that a carefully designed process of implementation, application, and enforcement is more important for the potential of the rights of Nature to decolonize human-nature relations than their theoretical form. The point where rights of Nature are applied in practice is important for decolonization, but this is also the point where most problems occur.

Important for the potential to decolonize human-nature relations is the extent to which Indigenous peoples were involved in the process of creating the rights of Nature laws. In Ecuador, several Indigenous organizations helped to lobby for rights of Nature, mainly because they saw the opportunity to use these rights for more political influence and to protect their natural environments. However, the extent to which rights of Nature were the result of Indigenous grassroots movements is exaggerated. It was a limited group of people with influence in the Constitutional Assembly that managed to convince enough politicians to incorporate the rights of Nature in the constitution. They emphasized the connection with Indigenous worldviews because of its symbolic power to legitimize and depoliticize the creation of nature's rights. Whereas Ecuador's rights of Nature are mainly the result of top-down processes, the cases in New Zealand show bottom-up approaches that centred the local Indigenous population. The rights of Nature legislation in New Zealand is the result of long processes of negotiation between Māori and the Crown. Although rights of Nature represent a compromise between the two parties made on an unequal playing field, it is a compromise that the Indigenous population seemed to be content with as they saw enough of their worldview reflected in the legislation. If rights of Nature laws want to decolonize human-nature relations, it is necessary that they reflect the ideas of Indigenous peoples and the involvement of Indigenous peoples in the process of translation will most likely ensure this. Therefore, bottom-up approaches such as in New Zealand are more likely to be successful in decolonizing environmental law.

I would conclude from comparing the two cases that Ecuador, being one of the first countries to implement rights of Nature, has done a lot of important work in starting the conversation on rights of Nature and Indigenous relations to nature, but the context and form of the rights have created some problems that have limited the potential to decolonize the human-nature relations in practice. Nevertheless, it could be said that Ecuador has decolonized its relations to nature in theory and has helped us understand what the limiting factors to the application in practice could be. New Zealand chose a slightly different form of implementation and thereby managed to avoid some of the problems of Ecuador. The involvement of Indigenous peoples in creating legal personhood for nature in New Zealand was not merely symbolic, and the establishment of guardian bodies will ensure enforcement and prevent abuse of the rights. Therefore, the bottom-up approach of New Zealand has more potential than Ecuador to decolonize human-nature relations, not only on paper but also in practice. However, we must not forget that Ecuador's position in the world economy makes it particularly difficult to enforce nature's rights because the country depends on natural resources and polluting industries as a significant source of income.[322] The country of New Zealand is wealthier and can afford to

[322] Throughout the last decade about 10 percent of the Ecuador's GDP came from revenue of natural resources, compared to a global average of about 6 percent. See "Ecuador: Natural resource income," Global Economy, accessed June 8, 2021, https://www.theglobaleconomy.com/Ecuador/Natural_resources_income/.

focus on the protection of nature, which makes it easier for New Zealand to be a successful example of how humans can live in harmony with nature.

The case of New Zealand managed to avoid the problems of rights of Nature in Ecuador, but the case raises questions of its own. Indigenous worldviews have been incorporated in Acts of Parliament after extensive consultations with Indigenous peoples, but is this already decolonization? The laws of New Zealand still primarily define nature as property, which is characteristic of the colonial views on nature. The Indigenous view on nature is presented as an alternative to the Western system, but it could also be argued that decolonization requires that colonial ideas be replaced by Indigenous ones. As the colonial ideas have laid the foundation for the current climate crisis, it might be better to fully embrace Indigenous relations to nature rather than merely acknowledging their existence as a sidenote to the daily business. New Zealand currently is not doing that yet, because the Indigenous worldviews are always phrased in terms of 'the other', as an exception rather than the norm. In my opinion, the case of New Zealand is lacking the potential to decolonize human-nature relations due to their lack of willingness to fully challenge the norm. Although the recognition of the validity of Māori worldviews is progress in a sense, the colonial system remains in place when the West can decide what parts of Indigenous worldviews are valid and what not. Decolonizing worldviews cannot be based on colonial powers wanting to make exceptions, because that will reinforce the unequal power relations. Neither Ecuador nor New Zealand has shown to really want to learn from Indigenous worldviews and practices. In the end, challenging the colonial norms about human-nature relations is crucial if we want to limit the disastrous consequences of climate change.

A similar dynamic is unfolding in the field of law, because the case of New Zealand raises the question of how Indigenous law relates to the Western legal system. In New Zealand, Indigenous worldviews have become incorporated into the Western legal system, but this system is historically rooted in colonialism.[323] Charpleix warns for the perpetuation of internal hierarchy when trying to incorporate Indigenous law into Western law, which limits the potential for real decolonization of the law.[324] It is suggested that legal pluralism would be a better solution in terms of decolonization than incorporating bits and pieces of Indigenous law into the Western legal system, but such a system might still legitimate oppressive colonial ideas. Again, for decolonization to be possible, the current legal norms will have to be challenged, which involves a critical analysis of the Western legal system and an exploration of the benefits and pitfalls of legal pluralism. It falls outside of the scope of this thesis to address all these topics in detail, but I hope to show that the cases in New Zealand, being an example of how human-nature relations can start to be decolonized, serve as to initiate discussion on decolonizing (environmental) law and ethics on a larger scale.

Worldwide decolonization of human-nature relations and environmental law is the ultimate goal, and rights of Nature might contribute to this. Accordingly, I will reflect on what Ecuador and New Zealand can teach us about the possibilities of expanding the rights of Nature movement to other countries. Ecuador and New Zealand are both countries that house Indigenous peoples and this has a significant influence on the creation and formulation of the rights of Nature. Future research could examine case studies of countries that have implemented rights of Nature without Indigenous people explicitly playing a role, such as India[325], to find out to what extent these rights also decolonize human-nature relations. In this thesis, I have argued New Zealand to be a more promising example for decolonization than

[323] See Chapter 1.4 for a brief discussion on the colonial history of legal personhood and the concept of rights.
[324] Charpleix, "The Whanganui River as Te Awa Tupua," 25.
[325] See O'Donnell et al., "Stop Burying the Lede," 17.

Ecuador because of its bottom-up approach. The success of New Zealand is partly based on the ability to involve the local population and listen to their wishes, but this was part of years of negotiations. So far, only three natural entities have been granted legal personhood, so its effects on decolonizing human-nature relations in general is not significant yet. To extend this approach to other natural entities, it is important to follow a similar process of consultation with the local population, but the organizational structures to achieve this might not be available everywhere. The Whanganui iwi were politically organized according to a representative system, which allows the guardianship system to work. In other countries and regions, other types of guardianship would have to be considered. So, this bottom-up approach might be more difficult to replicate than Ecuador's top-down approach. Every country can constitutionalize rights of Nature as Ecuador did, but similar to Ecuador this might not lead to the envisioned results. Future research can look into the options for establishing rights of Nature in more countries to decolonize human-nature relations on a larger scale.

Finally, I want to make some observations related to the process of translation, starting with an observation about the spiritual aspects of Indigenous worldviews. As discussed before, Ecuador granted rights to 'Nature'. Nature with a capital N has become mainstream in the rights of Nature movement to indicate that nature is a subject or to refer to the meaning of nature which goes beyond the physical and includes social and metaphysical aspects. This personification and deification of nature is inspired by Indigenous worldviews. The constitution of Ecuador refers to the goddess *Pachamama*, Mother Earth, and in New Zealand, Te Awa Tupua refers to the river including the physical and metaphysical aspects. The spiritual aspect of nature from an Indigenous perspective might create difficulty in the process of translation of these concepts into legal rights. In the Western worldview, the personification and deification of nature in most cases is replaced by scientific understandings of nature. In the process of decolonization, it is important that Indigenous concepts are incorporated into the Western worldview, but it is highly unlikely that the spiritual aspects of these concepts will be embraced by the West.[326] The case of New Zealand showed that the government was willing to recognize Te Awa Tupua, the river including its metaphysical aspects, but continued to use the purely physical term 'Whanganui River' in the majority of the legislation. As metaphysical aspects are important to the Indigenous understandings, it raises the question of whether we can decolonize relations to nature without having to incorporate the spiritual aspects. It creates a challenge in the process of translation of finding a legal equivalent to the Indigenous concepts that captures their meaning in a context devoid of spirituality.

What else I see as a challenge in the process of translation is the role of language. While writing this thesis, it was sometimes a struggle to find the right words to accurately present certain ideas. The main example that I have given is the distinction between humans and nature that reinforces human/nature dualisms. Another example would be the discussions about the word 'ownership', because Indigenous worldviews gave different meanings to this concept that are difficult to capture in an English word. These examples show that decolonization is also a process of finding new language to represent the new ideas. Translation sometimes requires us to translate concepts into a language that does not yet exist.

Translating Indigenous worldviews into rights of Nature is a political process, because there is more than one way to go about it and the decisions that are made in the process of translation will heavily influence the realities that are created. This requires caution, but also creates

[326] The discrediting of everything that is not scientific knowledge gathered by the accepted methods in the Western world might in itself be something that needs to be decolonized, but this would require a much deeper paradigm shift than rights of Nature would be able to create.

possibilities for imagining the decolonial futures we want to live in. Because translation is a matter of politics, it is important to have an open conversation about it. We should ask ourselves the questions that this thesis tried to ask: who is involved? What language is used, and why? Who will benefit, and who will pay the price? Unfortunately, based on the case of Ecuador it was shown that rights of Nature advocates often try to de-emphasize and de-politicize the process of translation. The Indigenous symbol is employed to argue that rights of Nature represent the inclusion of Indigenous worldviews into the law, which will therefore always yield positive results. This is a naïve assumption, which is likely to backfire on the Indigenous communities. The rights of Nature movement will benefit from more open conversations about the political nature of this process. It should be recognized that translation inevitably will lead to changes in meaning in order to start discussions about what meanings we want to create.

All in all, I think legal personhood and rights of Nature are worth exploring more because they introduce a different way for humans to relate to nature and in doing so have the potential to start the process of decolonizing human-nature relations. The rights of Nature initiatives have problems that limit their potential to decolonize, but the movement is still relatively young so further research could prevent some of these problems from occurring in the future. Given the prospects of accelerating climate change, it is necessary to use all opportunities for changing Western values and learning from Indigenous peoples. At the same time, the movement should be careful not to romanticize the role of Indigenous peoples in the creation nature's rights. It should be clear that Indigenous peoples often support the movement because it offers them opportunities to protect their environment, but the concept of rights of Nature itself is not an Indigenous concept, nor does their implementation always have to benefit Indigenous peoples. The rhetoric employed by the movement can be dangerous because it does not match reality. In the process of translating Indigenous worldviews into legal rights of Nature, there are many ways in which colonial frameworks can be unsettled or reinforced, to a large extent depending on the context as illustrated by the differences between Ecuador and New Zealand. If we connect rights of Nature too closely with Indigenous worldviews, we lose sight of the radical alternative political arrangements that Indigenous cultures can offer.[327] Particularly in light of the fundamental critiques that scholars have offered on the colonial origins of legal personhood and the anthropocentric character of rights of Nature, exploring radical alternatives to rights of Nature remains important. When discussing rights of Nature, we should take into account that nature's rights are not the end result but an experiment in changing the ways in which the West relates to nature.[328]

An important reason I am of the opinion that despite all the limitations discussed in this thesis rights of Nature can make a difference is my personal experience with telling people about this project. Most people reacted in a similar way: initial surprise of the existence of nature's rights, followed by curiosity. Telling people that rivers can have rights creates a disruption of the familiar and a moment of imagining how the world could be. Of course, decolonization requires more than this temporary shift in perspective on what is possible. Throughout the research process, I noticed the importance of understanding historical contexts and maintaining a critical attitude to avoid romanticization of Indigenous worldviews and rights of Nature. Decolonization means struggling with finding the right language and being critical of all that is familiar, including research methodologies. It means admitting the position of myself as a researcher working on a project outside my comfort zone, which comes with unintended assumptions and biases that I have tried to avoid but might still influence my argumentation. And finally, it involves connecting theory with practice, which is why I replaced the artificial plastic plants in

[327] Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," 25.
[328] Ibid, 24.

my room with real living pieces of nature. As they grow, they serve as a personal reminder of the lessons learned and the continuing struggle for decolonization.

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