Rights of Pachamama: The emergence of an earth jurisprudence in the Americas

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Abstract Earth jurisprudence represents an alternative approach to the law based on the belief that nature has rights. In this view, a river has the right to flow, species have the right to continue to exist in the wild, and ecosystems have the right to adapt and evolve over time. Proponents of Earth jurisprudence argue that, by treating nature as exploitable resources, contemporary legal systems actively promote environmental harms. Recognising rights of nature, they argue, will transform core values and inspire social changes that promote economic development which respects nature's limits. Since 2006, rights of nature have been recognised by some sub-federal public bodies in the United States and by the governments of Ecuador and Bolivia. This paper sets out to answer two questions. First, what explains the legal recognition of rights of nature in Ecuador and Bolivia? Second, what factors impede a wider adoption and implementation of Earth jurisprudence? Amongst the constraints, it will be argued, is that Ecuador and Bolivia continue to pursue an extractivist economic development model, with assertions of national sovereignty over natural resources tending to prevail over Earth jurisprudence and environmental conservation.
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Keywords: *buen vivir*; ethnopopulism; neoliberalism; Pachamama; rights of nature; sovereignty

Introduction

Earth jurisprudence (sometimes known as Earth law or wild law) presents a critique of mainstream legal approaches under which, proponents argue, laws have been passed that legitimise the exploitation and degradation of the natural world, with environmental problems treated primarily as anthropocentric concerns. Earth jurisprudence has been defined as 'a philosophy of law and human governance that is based on the idea that humans are only one part of a wider community of beings and that the welfare of each member of that community is dependent on the welfare of the Earth as a whole' (Cullinan 2011: 13). Central to Earth jurisprudence is the

view that nature has rights. To Judith Koons, who defines jurisprudence as 'a search for wisdom,' an Earth jurisprudence 'would not endorse short-term economic gain, but would regulate human activities to support mutually beneficial relations among humanity, other-than-human species, and Earth processes' (Koons 2012: 389).

Earth jurisprudence may be seen as a set of moral rights on how humans relate to, interact with, and use the natural world. The Gaia Foundation suggests that it is a way of life and of thinking about and relating to Earth, rather than a written law (Gaia Foundation 2015). Despite this view, however, there have been some moves to codify Earth jurisprudence in law, with rights of nature receiving national-level recognition in two countries in Latin America: Ecuador in 2008, and Bolivia in 2010. A central concern of this paper is the question of how the moral claim that nature has rights has received legal recognition in these countries. Within the philosophy of law, moral rights and legal rights are seen as distinct, and the relationship between them is not always clear.[1] Some moral rights are also legal rights, such as the right to freedom of association. However, a moral right need not have legal status (such as the right to be treated with courtesy) and some legal rights are not based on morals (such as the right to file an appeal to a court decision within a specified time period). The Roman historian and senator Tacitus might disagree on this second point: Tacitus wrote '*Non mos, non ius*' (no morality, no law) (cited in Mittelstadt 1995: 37). One interpretation of *non mos, non ius* is that something that is not accepted as an unwritten law cannot then become written law (Verhaeghe 2014: 43). The principle articulates a relationship between moral and legal rights: a right must first be morally accepted within its cultural context before it can be incorporated into the law.

This paper addresses two questions. First, what explains the legal recognition of rights of nature in Ecuador and Bolivia? It will be seen that, in these countries, the legal recognition of nature's rights reflects a distinctly Andean worldview: Pachamama (sometimes written as Pacha Mama), or Mother Earth, is an Andean goddess who sustains life on Earth. The idea of Pachamama embraces a collectivist notion of a community of all species and ecosystems. Second, what factors impede a wider adoption and implementation of Earth jurisprudence?

To approach these two questions, an extensive literature review and synthesis were undertaken using academic databases to identify published peer-reviewed journal articles and other scholarly outputs in two areas: analyses of Earth jurisprudence by environmental lawyers, environmental philosophers, political scientists, and activists; and the environmental history, political economy, society, and culture of Latin America, in particular of Ecuador and Bolivia. Websites of groups advocating Earth jurisprudence (such as the Pachamama Alliance) were researched, with links followed to identify grey literature and additional print and electronic source material.

The paper is structured as follows. The first section outlines the intellectual origins of Earth jurisprudence and the first proposal in the United States that nature be granted legal rights, an appreciation of which is necessary to set the context for

the legal recognition of rights of nature in Ecuador and Bolivia. The second section examines how Ecuador and Bolivia became the first, and so far the only, countries legally to recognise rights of nature. The analysis in this section situates this recognition within the context of resistance and protest in these countries. The third section presents the main factors that currently impede a greater uptake and implementation of Earth jurisprudence, identifying both some definitional and conceptual uncertainties as well as some pragmatic constraints in Ecuador and Bolivia.

The origins of rights of nature

The idea that nature has rights has different origins in different cultures, and a survey of all the bodies of environmental thought throughout history which express this idea lies outside the purview of this paper. Instead, this section aims to identify those sources that have made the strongest contribution to contemporary Earth jurisprudence discourse.

The belief that humans have a duty to care for Earth is integral to the cultures of many indigenous peoples in Latin America, particularly in the Andes.[2] It can also be traced in indigenous communities in Africa and Asia and is proving increasingly attractive within environmental activist circles in the global North. The intellectual origins of rights of nature, in particular that there are right and wrong ways that humans can relate to the environment, can be traced to environmental activists and moral philosophers of the nineteenth century (Atkinson 1991; Goodin 1992). In North America, in 1949, Aldo Leopold called for a land ethic that 'enlarges the boundaries of the community to include soils, waters, plants and animals' (Leopold 1949: 203). Leopold stressed that humans were just one amongst many members of the community, although he did not argue that all members of this community had rights.

The idea that nature should have rights in law was first articulated in the USA in Christopher Stone's 1972 paper 'Should Trees have Standing?'. Standing, or *locus standi*, is 'the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case' (USLegal.com 2015). Stone argued that trees should not be denied legal rights of protection simply because they cannot speak. He suggested that guardians – those who wish to defend the rights of trees – should be able to bring legal action against those whose actions would harm them (Stone 1972). He did not argue that no tree should ever be felled, but that sufficient individuals of a species should be left to enable the species to flourish in the wild.

Stone's paper formed the basis of a 1972 dissenting opinion in the US Supreme Court. In *Sierra Club v. Morton*, the Sierra Club opposed the economic development of a valley in the Sequoia National Forest, arguing that it would have adverse ecological affects. The court ruled that, as the Sierra Club had not

demonstrated that the club or its members would suffer injury, it had no standing in the case (Baude 1973). However, in a dissenting opinion, Justice William Douglas cited Stone's recently published paper to argue that standing should be conferred upon natural objects so that guardians of nature could sue for their preservation (Hogan 2007).

The idea of rights of nature has found support from some environmental philosophers. Roderick Nash (1989) has argued that extending rights to other species and natural objects is a broadening of liberal political theory, which recognises that some human rights should be restricted for the common good. Nash elaborates a biocentric rather than an anthropocentric liberalism to argue that freedom of human action should be limited further to prevent people from interfering with the freedoms of non-human species and nature. Thomas Berry (1999, 2006) argues that the degradation of nature leads to the degradation of humans. He observes that contemporary legal systems fail to address the causes of environmental problems and legitimise the exploitation of nature. He advocates a new jurisprudence to uphold rights of nature, arguing that any component of the Earth community has three rights: 'the right to be, the right to habitat, and the right to fulfil its role in the ever-renewing processes of the Earth community' (Berry 2011: 229). Berry writes of a Great Law in which the Universe is the primary law giver: 'Rights originate where existence originates. That which determines existence determines rights' (Berry 2006: 149). So a river has the right to flow, species have the right to continue to exist in the wild, and ecosystems have the right to adapt and evolve over time. A fundamental implication of this view is a realignment of the law and governance from anthropocentric to Earth-centric. The only laws that humans should create and observe should be those derived from the laws that govern life on Earth.

Proponents of Earth jurisprudence argue for the subjectification, as opposed to objectification, of nature; that is, the treating of nature and its ecosystems and species as subjects with their own rights, in much the same way that liberal democracies treat people as subject citizens with rights. They argue that the idea that nature comprises objects is a false premise of mainstream legal systems that treat the environment as resources that can be subject to property rights. Therefore, treating nature as a subject is to recognise its intrinsic worth (Koons 2008; 2009: 57).

Berry's work has influenced one of the leading contemporary legal scholars on Earth jurisprudence, Cormac Cullinan, who argues that effective nature protection requires not tinkering with contemporary legal systems but a foundational transformation of the law. For Cullinan (2002, 2011), the law, which articulates a society's vision of itself, provides an essential normative framework that shapes human behaviours and practices by establishing the moral limits of what is right and wrong. A jurisprudence based on nature's rights would reorient how humans behave in relation to nature, leading to a fundamentally different type of society. Earth jurisprudence, therefore, is concerned not only with defining the rights of the

natural world; equally importantly, it redefines the duties of people and their relationship with nature. Those who argue for rights of nature insist that our most important duty is to respect the Earth, both from a moral standpoint (because it is right) and from an instrumental standpoint (because human rights flow from the Earth, and only by respecting nature's rights can human rights, such as those to food, water, and health, be fully realised). Proponents of Earth jurisprudence argue that contemporary legal systems both legitimise environmental harms (for example, by permitting pollution and forest clearance) and criminalise those who seek to protest against such harms. Opponents, however, argue that rights are essentially anthropocentric: they are social constructs that can apply only to humans and to institutions created by humans, thus it makes no sense to talk of rights for ecosystems and species other than humans.

While the idea of rights of nature has existed for some time, it was only in this century that the idea started to gain political purchase from public authorities. On a worldwide scale, the first legal recognition of rights of nature occurred in the United States in 2006 in Tamaqua Borough, Pennsylvania, when an ordinance recognised ecosystems as 'legal persons' in order to prevent the dumping of sewage sludge on wild land (Community Environmental Legal Defense Fund 2006). This was the first time that a public body in the United States granted legal personhood to nature. Since then, there have been other cases, including a 2010 ordinance in Pittsburgh that banned natural gas drilling and stated:

> Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Pittsburgh. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems. (Pittsburgh Pennsylvania Code of Ordinances 2013)

By establishing legal standing for residents to protect the local environment, the ordinance appears to draw ideationally from Stone's 1972 paper which argued that guardians may speak for nature. However, the actions taken by public authorities in Tamaqua Borough and Pittsburgh represent isolated, small-scale challenges to the corporate-driven development model in the United States, and the idea that natural communities have rights has yet to receive legal recognition at the federal level.

In 2008, Ecuador became the first country to recognise rights of nature in its constitution. Article 71 of the 2008 constitution declares:

> 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. (Constitution of the Republic of Ecuador 2008)

This article is consistent with Stone's argument that guardians of nature should be able to bring legal action though the courts. The court case, *Wheeler v. Director de la Procuraduria General Del Estado de Loja* of March, 2011, was the first case brought under Article 71. The court ruled that flooding caused by dumping road works debris into the Vilcabamba River violated rights of nature and it ordered the removal of the debris to restore the right of the river to flow (Daly 2012: 64).

In 2009, a new constitution was adopted by Bolivia which stipulates that Bolivians should 'protect and defend an adequate environment for the development of living beings' (Constitution of the Plurinational State of Bolivia 2009: Article 108.156). The constitution does not recognise rights of nature. However, the following year, Bolivia's legislative assembly passed the Law of the Rights of Mother Earth (using the Spanish expression, Madre Tierra, rather than Pachamama), which holds that 'The State and any individual or collective person must respect, protect and guarantee the rights of Mother Earth for the well-being of current and future generations' (Bolivia Law of the Rights of Mother Earth 2010: Article 2).

The next section addresses the empirical puzzle at the heart of the first question that this paper examines: What explains the legal recognition of rights of nature in Ecuador and Bolivia?

Explaining the legal recognition of rights of nature in Ecuador and Bolivia

The recognition of rights of nature as legal rather than merely moral rights in Ecuador and Bolivia needs to be understood in the context of resistance and opposition to grievances such as inequality, poverty, and what many Latin American citizens and intellectuals see as the historical exploitation of the continent. Resistance in Latin America has many different pathways that include, but are not limited to, the resistance of citizens and social movements to business and government, and the resistance of local, regional, and national actors to economically powerful actors such as the US government, the World Bank, and transnational business corporations. Within communities, cultures of resistance can take many different forms, including organised and spontaneous protests and occupations. Yashar (2005: 4–5) observes the enactment of resistance through dances, stories, and ritual, while Hale (1994: 5) notes that resistance can include prayers to the Pachamama.

In explaining the legal recognition of rights of nature in Ecuador and Bolivia, this section will examine the resistance of social movements to dominant political and economic elites and the role of these movements in prising open political space

that enabled the articulation of indigenous demands, including beliefs on Pachamama and nature. Central to this process was the election of political leaders – Evo Morales, president of Bolivia since 2006, and Rafael Correa, president of Ecuador since 2007 – who themselves opposed traditional political parties and business elites and who, in different ways, are allied to important social movements. Morales was brought up to show respect to the Pachamama. An Aymara, Morales recalls his parents making a ritual *ch'alla* offering of coca leaves and alcohol to the Pachamama every day at dawn (Sivak 2008: 33).[3] In the words of one Aymara, 'For the Aymara person or *jaqi*, the *Pachamama* is the reason for being. Since the *Pachamama* is a living being, she must be fed and nourished, if she is to produce well and provide good food' (Mamani-Bernabe´ 2015: 65–66). By contrast, Correa, a Catholic and economics lecturer, has given no indication of a cultural attachment to Pachamama so early in life, although as a politician he has been receptive to the idea.

Both Morales and Correa have garnered political support through speaking out against the historical exploitation of their countries. Each has drawn from a rich tradition of resistance in Latin America, including the work of Eduardo Galeano.[4] In *Open Veins of Latin America*, Galeano (1973) argued that the continent's natural resources have been systematically plundered, contributing to the enrichment of North America and Europe while impoverishing Latin America. The view that the continent has suffered structural exploitation by the global North is shared by many contemporary scholars (for example, Karl 2003; Carruthers 2008; Burbach et al. 2013) and finds expression in Miller's environmental history of the continent: 'For much of Latin America's history, the world economy has treated the region as a basket of natural resources that have been packaged and shipped to satisfy the consumption of richer foreign nations' (Miller 2007: 219). Michael Painter has argued that the pressures of export markets in Bolivia have led to 'downwardly spiralling cycles of economic underdevelopment and environmental destruction' (Painter 1995: 134). This narrative continues to resonate strongly in activist circles, with one Bolivian activist suggesting that social movements are working 'at closing the veins of Latin America' (cited in Newell 2008: 54).

Much of the resistance to the economic exploitation of the continent draws from dependency theory. This argues that a neocolonial relationship has evolved between the developed countries of the centre of the world economy (which corresponds closely with what is now known as the global North) and the underdeveloped satellite countries of the world periphery (the global South) (Frank 1966, 1969; Galtung 1971; Bodenheimer 1971; A m i n 1977). Central to perpetuating dependency is the comprador class, a clientele class in peripheral countries, which exploits its own people, yet is itself exploited by the centre. Dependency theory has had a notable impact in Latin America, both within the academy and in social movements (Angotti 1981). A core idea of dependency theory is that economic development is weak in peripheral countries when they are dominated by

the centre, and stronger when they weaken their ties to the centre.[5] There is some evidence, presented below, that the Morales and Correa governments have been influenced by this idea, with both pursuing policies consistent with the view that, in order to develop, Bolivia and Ecuador need to assert their autonomy in relation to the United States and to challenge powerful transnational economic actors.

The role of social movements

The support of social movements was central to the election of Morales and Correa. Both were elected during lengthy periods of political instability and economic crisis that enabled the growth of social movements. In Ecuador and Bolivia, as elsewhere in Latin America, social movements can be broadly divided between indigenous peoples' movements and populist movements that are left-inclined, representing workers, mestizos as well as white voters. Throughout much of Latin American history, these movements have tended to operate separately: many efforts to forge alliances between them in the 1980s and 1990s met with failure, leading one commentator to write of a *popular-indı´gena* divide 'between Che Guevara and the Pachamama' (Hale 1994). Morales and Correa secured election because they were able to garner support from both types of movements.

To Deborah Yashar, a key variable in the articulation of resistance and protest in Latin America and the rise of social movements is political associational space. Political associational space exists when actors have freedom of association and expression without interference or repression from the state and when civil rights are respected (Yashar 2005: 75–79). Authoritarian rule in Ecuador and Bolivia closed down political associational space, rendering political resistance more difficult, and sometimes dangerous. From 1979 onwards in Ecuador and from 1982 in Bolivia, the fall of authoritarian leaders followed by political liberalisation and democratisation enabled a more vibrant civil society to emerge that provided space for the growth of social movements. To Roberta Rice (2012), a further factor that contributed to social mobilisation was the political party systems in Ecuador and Bolivia. In both countries, mainstream political parties were unresponsive to demands from indigenous and marginalised groups, instead representing business and political elite interests. Whereas in countries with responsive political systems social grievances are channelled primarily into electoral politics, in Ecuador and Bolivia indigenous movements pursued a dual strategy, working within the political system while also channelling dissent and discontent into extra-parliamentary means, such as protests and demonstrations (Rice 2012: 119–22).

In Bolivia, indigenous peoples form a statistical majority at 71 % of the population, while in Ecuador they are a significant minority at 43 %.[6] In both countries, indigenous peoples have been responsible for destabilising governments since the turn of the millennium (Van Cott 2007: 136), and their support was considered essential to a successful presidential campaign. Indigenous movements

originally emerged to defend their land and natural resources and to assert their autonomy from the state. Following the introduction of neoliberal policies in Ecuador and Bolivia in the 1980s – such as public expenditure cuts in education and health, an enhanced role of the private sector and the opening of markets to international investment and trade – they broadened their focus to include critiques of actors such as transnational corporations. In both countries, neoliberalism reinforced the role of US-based businesses and international finance institutions such as the International Monetary Fund (Drake 2007).

In 1995, the coca growers' movement in Bolivia formed its own political party, Asamblea de la Soberanı´a del Pueblo (ASP/Assembly for the Sovereignty of the People). In 1999, Evo Morales and his supporters left ASP to form the Movimiento al Socialismo (MAS) led by Morales (Rice 2012: 81). MAS was involved in the demonstrations and protests against low incomes and neoliberal policies, in particular the planned privatisation of water and gas, which helped bring down two presidents (Gonzalo Sa´nchez de Lozada in 2003, and Carlos Mesa in 2005). Morales was a vocal critic of the planned privatisations which, as Perreault suggests, should be 'viewed against the historical backdrop of Bolivia's colonial past and neo-colonial present' (Perreault 2008: 247).

MAS is an example of what Rau´l Madrid (2012) terms an ethnopopulist movement. Ethnopopulism is a strategy adopted by social movements and political leaders to increase their political influence by reaching out and making populist appeals that attract not only indigenous people but other constituency groups. An effective ethnopopulist strategy draws in a range of voters by appealing to diverse groups. Most populist movements in Latin America have been led by whites or mestizos and have failed to engage with indigenous voters. MAS has melded indigenous demands, such as land reform and access to education, with a populist agenda that focuses on reducing unemployment and poverty and restoring control of local resources to the community level (Madrid 2012: 190–92). By reaching out across class and ethnic divisions, MAS has assembled a mix of overlapping political constituencies, agendas, and ideologies. Through bringing together indigenous activists and those from socialist movements, MAS has created what may be seen as an 'indigenous nationalist' reform agenda (Kohl and Bresnahan 2010; Postero 2010). Morales himself has been called a 'social movement president,' with one foot in the state and another in Bolivia's social movements (Aguirre and Cooper 2010; Gustafson 2010).

In Ecuador, Correa, who leads the Alianza Patria Altiva y Soberana (PAIS Alliance/Proud and Sovereign Fatherland Alliance), has also engaged in an ethnopopulist strategy, although his appeal is more populist than indigenous (Madrid 2012: 107). Unlike Morales, Correa has no roots in social movements. He has received qualified, and often strained, support from indigenous movements in Ecuador which were engaged in sociocultural struggles over land rights and natural resource governance well before his election. The largest indigenous group,

Confederación de Nacionalides Indígenas del Ecuador (CONAIE/Confederation of Indigenous Nationalities of Ecuador) was formed in 1986 through a merger between the highland indigenous federation, Ecuador Runacunapac Riccharimui (ECUANARI), and Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana (CONFENAIE), the largest Amazonian group. CONAIE, which has a national profile that is unmatched by indigenous movements in Bolivia, has achieved its position partly through ethnopopulism, emphasising that its demands are not only for indigenous peoples with the slogan '*Nada so´lo para los Indios*' (Nothing only for Indians) (Bello 2004: 159, cited in Rice 2012: 54).

CONAIE has consistently challenged the Ecuadorian political elite and, like MAS in Bolivia, the movement organised protests that contributed to the overthrow of presidents (Abdalá Bucaram in 1997, and Jamil Mahuad in 2000). In 1997, and following lobbying from CONAIE, a constituent assembly was convoked to draft a new constitution. The resulting 1998 constitution granted rights to indigenous peoples which, according to Andolina (2003: 748), were 'unprecedented in their collective character,' including education in indigenous languages, access to clinics and conservation of indigenous lands. However, the constitution did not go far enough for CONAIE in recognising indigenous rights. CONAIE formed a political party, Pachakutik, although the party suffered a decline after supporting a former army officer, Lucio Gutiérrez, as president in 2003.

During the 2006 election campaign, Correa's criticism of the *partidocracia* (the traditional political parties and their business supporters, which may be seen as the Ecuadorian comprador class), and his vow to remove them from power found favour in CONAIE and Pachakutik (Petras and Veltmeyer 2011: 93). During the campaign, CONAIE lobbied for another constituent assembly to draft a new constitution that would promote stronger indigenous rights. Correa adopted this proposal, leading to resentment from indigenous leaders who felt he had stolen the idea (Becker 2011: 47). CONAIE supported Correa in the second round of presidential voting. Since then, however, Correa has had a difficult relationship with social movements, alienating many of his supporters by permitting oil and mineral prospecting on indigenous lands (Becker 2013).

There is a diversity of social movements in Ecuador and Bolivia, with competing tensions between and within them. In both countries, there are differences between highlands and lowlands. However, and notwithstanding these differences, the rise of organised movements has strengthened the claims to collective and indigenous rights. These rights, often articulated within a framework of justice, include collective rights to land, community development, natural resources and knowledge, and the preservation of indigenous languages, culture, and lifestyle (Rice 2012; Eckstein and Wickham-Crowley 2003). In both countries, social movements have emphasised values based on solidarity, respect, and coexistence; the same values, in other words, that resonate in Earth jurisprudence. Morales and Correa gained political support from these movements by adopting an anti-establishment

reform agenda, promising populist policies, and a more prominent role for indigenous groups. Their election enabled them to pursue a political strategy that rejected the individualist emphasis of neoliberalism, emphasised collectivism, and provided fertile ground for Andean debates on the rights of nature to flourish.

Morales and Correa in power

In office, Morales and Correa have pursued anti-neoliberal policies (Silva 2009; Flores-Macias 2012). Morales has spoken of 'transforming our inheritance from neoliberalism and colonialism to a homeland for all' (Green Left Weekly 2006), while Correa said after his election that 'the long, dark night of neoliberalism' is over (cited in Lucero 2009: 77). Both have acted to increase the share that their countries receive in tax revenues from oil and mining corporations. Correa has renegotiated with oil companies over revenue-sharing and issued a decree increasing the state's share of profits from 50 % to as high as 99 % (Madrid et al. 2010: 168). Similarly in Bolivia, Morales has demanded that foreign firms increase the share of the profits they pay to the state and redistributed surpluses from the hydrocarbon and mining industries to poorer sections of society (Bebbington and Bebbington 2011: 137). A key part of Morales' agenda is the 'decolonisation' of the state from external influences (Kohl and Bresnahan 2010: 13). His economic policies emphasise stimulating the internal market in order to reduce dependence on external demand and foreign capital. The governments of the two countries have also pursued a more independent foreign policy. In 2008 Morales expelled the US ambassador and Drug Enforcement Administration, and in 2013 he expelled USAID (BBC 2013) for conspiring against his government.[7] The Correa government has also cooled relations with the US including closing a US military base. In 2010, Correa suspended payments on $4 billion of foreign debt (Petras and Veltmeyer 2011: 148). In 2012, the Ecuadorian embassy in London granted asylum to WikiLeaks founder Julian Assange who leaked thousands of US secrets to the media.

The governments of the two countries have also sought to weaken their dependence on international economic institutions, in particular by withdrawing from the International Centre for Settlement of Investment Disputes (ICSID), a body created by the World Bank to adjudicate disputes between transnational investors and host governments. Critics have accused the ICSID of favouring foreign investors at the expense of host countries, what one commentator has termed 'negative environmental sovereignty' (Hippolyte 2012). Bolivia was the first country to withdraw from ICSID in 2007 (Gaillard 2007) followed by Ecuador as the second in 2010.[8]

The political strategies of Morales and Correa are thus consistent with the dependency theory prescription that self-sustaining development requires the weakening of ties with powerful external actors. Both seek alternative national

development models. Their election created an historical opportunity for a more heterogeneous and diverse set of social values to be admitted to the political process, including indigenous beliefs on nature.

The recognition of rights of nature

Following their election, Morales and Correa convoked constituent assemblies. In Bolivia MAS won 50.3 % of the votes in the constituent assembly elections, while in Ecuador the PAIS Alliance won nearly 70 % (Madrid 2012: 51, 106). In both assemblies, indigenous movements were prominently represented. The new Bolivian constitution was adopted by referendum in 2009. It redefines Bolivia as a plurinational state, recognising indigenous peoples as nations. The plurinational state embodies a new form of sovereignty in which the traditional sovereignty of the state co-exists with indigenous ideas of nation and self-determination (Gustafson 2009: 987–88; Schilling-Vacoflor 2011).[9] While the constitution does not itself recognise rights of nature, it paved the way for the Law of the Rights of Mother Earth of 2010, which recognises seven rights of Mother Earth: the rights to life; to the diversity of life; to water; to clean air; to equilibrium; to restoration; and to pollution-free living (Bolivia Law of the Rights of Mother Earth 2010, Article 7). The law also defines the duties necessary for upholding the rights of Mother Earth: the state has the duty to develop policies that will 'prevent human activities causing the extinction of living populations, the alterations of the cycles and processes that ensure life, or the destruction of livelihoods, including cultural systems that are part of Mother Earth' (Article 8); while people, and public and private legal entities, have the duty to 'Uphold and respect the rights of Mother Earth' (Article 9).

The primary political figure in the adoption of Article 71 of the 2008 constitution of Ecuador was Correa's former political ally, Alberto Acosta, the president of the constituent assembly. Acosta promised to work according to the principle of *sumak kawsay* (an old Quechua expression variously translated as 'living well,' 'good life,' or 'good way of living') in leading the drafting of the new constitution (Becker 2011: 50), and pledged to include the concerns of indigenous groups and ethnic minorities in the constitution.

In the case of Ecuador, a transnational network, the Pachamama Alliance, was influential in the legal recognition of rights of nature. Research has shown that such networks can 'carry' ideas from one country or jurisdiction to another, reframing issues and leading over time to the transformation of national policy agendas (Keck and Sikkink 1998; Yashar 2005).[10] For example, the World Rainforest Movement and the Third World Network have helped to redefine tropical deforestation as not solely a conservation issue but also a human rights and indigenous peoples' rights issue. The Pachamama Alliance is based in San Francisco, with an Ecuadorian sister organisation, Fundación Pachamama, which advised the constituent assembly. The Community Environmental Legal Defense Fund (CELDF) – a US-based

group which has been influenced by Christopher Stone's writings[11] and which works with the Pachamama Alliance – collaborated with Fundación Pachamama, and at their request travelled to Ecuador to meet with delegates to the constituent assembly (CELDF 2008; see also Stober 2010: 237; Arsel 2012: 133). The CELDF had earlier advised Tamaqua Borough, Pennsylvania, on the drafting of the 2006 ordinance that recognised ecosystems as legal persons. Tanasescu notes that Article 71 of the 2008 constitution of Ecuador is very similar to a draft proposal prepared by Fundacio´n Pachamama with the help from the CELDF (Tanasescu 2013: 847; see also Dellert 2010: 119).

The belief that nature has rights is deeply embedded in Andean culture, and no suggestion is made here that transnational actors placed the idea on the Ecuadorian political agenda. Nor is there any evidence that Stone's work influenced the Ecuadorian constituent assembly *directly*. However, there is evidence that Stone's work influenced the assembly indirectly via the work of Fundación Pachamama and the CELDF. Stone's contribution to the Ecuadorian constitution, therefore, was not to suggest that nature has moral rights, but to articulate an argument, which resonated in Ecuadorian society, that the moral rights of nature could be recognised in law.[12] There is no evidence that a transnational network played a similar role in Bolivia, although the Ecuador case served as a precedent for Bolivia by providing the first national-level legal recognition of rights of nature.

In addition to Pachamama, *buen vivir* is another Andean concept that is central to Earth jurisprudence in the two countries. This is usually translated as 'living well' or 'good living' and is not to be confused with standard of living defined in monetary or economic terms. It includes a spiritual component and a notion of community to which harmony among people and between people and nature is integral (Villalba 2013). One interpretation of *buen vivir* which appears in the Ecuadorian constitution is *sumak kawsay* (Constitution of the Republic of Ecuador 2008: preamble, Articles 14, 250, 275 and 387), the Quechua phrase invoked by Alberto Acosta at the Ecuadorian constituent assembly. While the phrase *buen vivir* is not in the Bolivian constitution, various ethical indigenous principles consistent with it do appear, including (from the published English translation) *ñandaereko* (harmonious life), *teko kavi* (good life), *ivi maraei* (land without evil), and *qhapaj ñan* (noble path or life) (Constitution of the Plurinational State of Bolivia 2009: article 8). Eduardo Gudynas (2011) has detected differences in how *buen vivir* informs the two constitutions: for the Bolivian constitution *buen vivir* serves as an underlying ethical principle, while in the Ecuadorian constitution *buen vivir* is conceived as a cluster of rights including the rights to water, food, a healthy environment, culture, and education. Two commentators, Ana Agostino and Franziska Du¨bgen (2012: 6–10), suggest that, as a cultural principle that is indigenous to Latin America, *buen vivir* articulates a 'language of opposition' to mainstream models of economic growth and global capitalism. A similar argument can be made about rights of nature.

This section has argued that similarities in the socio-political, economic, and cultural milieu in Ecuador and Bolivia since the turn of the millennium led to the legal recognition of rights of nature. In both countries, this recognition emerged from long-standing collective memories of struggles against economic exploitation, poverty, and western models of development. However, while this tradition of resistance provides the broad context within which the legal recognition of rights of nature emerged, it does not explain this recognition. The analysis in this section reveals that four factors were necessary. The first was the emergence of charismatic political leaders who opposed the governing elites of their countries and who campaigned on a platform of radical change. The second was the ability of these leaders to channel social discontent from a range of social movements into electoral support by adopting an ethnopopulist and anti-neoliberal political strategy. The third was the convoking of a constituent assembly with prominent representation from community groups that enabled the expression of a plurality of social values in a new constitution, including the beliefs on Pachamama and nature of indigenous peoples. The fourth was the role of actors outside the two countries being examined. In Ecuador, the involvement of a transnational network both demonstrated that the legal recognition of rights of nature was possible and contributed to the drafting of a key article in the 2008 constitution, which then provided a precedent for Bolivia's Law of the Rights of Mother Earth in 2010.

It has been argued that different cultural and intellectual currents are confluencing to shape contemporary Earth jurisprudence. This poses a radical theoretical alternative to contemporary economic models and environmental policies, but it does not yet present a coherent practical alternative. There are some fundamental constraints to realising and reifying Earth jurisprudence. These are examined in the next section, both in general terms and with reference to Ecuador and Bolivia, to address the second question that this paper examines: What factors impede a wider adoption and implementation of Earth jurisprudence?

Barriers to implementing rights of nature

There are some important unresolved definitional questions in the rights of nature debate. One relates to the defined scope of Earth jurisprudence. Because there is no definitive, single source from which the idea of rights of nature has sprung, it is not always clear to which 'parts' of nature rights can be said to belong. Stone's argument on trees has a species-specific focus, the Pittsburgh ordinance granted legal standing to 'Natural communities and ecosystems,' whereas the Ecuadorian constitution and Bolivian law of 2010 both mention nature and Pachamama (or Mother Earth). Clearly, an Earth jurisprudence that focuses principally on individual species would be very different to one that has a planetary focus.

A further definitional question relates to how the core concepts of Earth jurisprudence should be interpreted. Morales voices a surprising interpretation of Mother Earth that relates to Bolivia's fossil fuel industry: 'I thank the Mother Earth, the *Pachamama*, and ask her that the oil continues to appear' (cited in Sivak 2008: 124). There are also different views within the Bolivian government on *buen vivir*, with one interpretation based on an indigenous worldview and another advocating a more pragmatic interpretation based on national development (Fontana 2013: 36). In Ecuador, Alberto Acosta has suggested that Correa's support for extractive industries is inconsistent with *sumak kawsay* (Becker 2013: 55).

Uncertainties in defining where nature's rights belong are not merely abstract philosophical points: they raise foundational questions on how Earth jurisprudence can be operationalised, including who should be granted standing in court to act as guardians on behalf of nature (Whittemore 2011). Michelle Bassi suggests that, because nature is not defined in Ecuador's constitution, complainants could take action under the constitution to define nature as they so wish, including representing corporate interests (Bassi 2009: 468). For example, could felling timber in virgin rainforest be justified for freeing land for 'nature' such as palm oil plantations? Merely to ask this raises further fundamental definitional questions on how we imagine nature, and where the boundary should be drawn between 'nature' and human interventions in the natural work. Presumably, some human interven-tions might still be considered 'nature' that has rights (such as managed woodland for wildlife and recreation), whereas others might be considered violations of nature's rights (such as genetically modified crop monocultures). What, then, are the criteria for determining what is nature, and what is not?

If Earth jurisprudence is to gain stronger traction it is likely to conflict with mainstream legal systems which have evolved historically as anthropocentric, granting rights only to humans and human constructs, such as business corpora-tions. As Michelle Maloney (2014: 196) has argued, recognising that nature has rights challenges 'the supremacy of human interests and forces a rethink of the underpinning objectives and operation of the law.' In effect, those who administer contemporary legal systems sit at an apex administering justice among humans. All else is subsumed under the law, including nature. Earth jurisprudence proponents, however, propose a new hierarchy of rights at the apex of which sit rights of nature, which are of a higher order than all other rights, such as human rights, the rights of humans to own property, and the rights of states, none of which can exist unless nature's rights are first respected. An Earth jurisprudence would vie for supremacy with dominant legal systems, which have the advantage of well-established bodies of case law.

Within Earth jurisprudence, there is an unresolved tension on property. While an ecocentric legalism would be very different to contemporary anthropocentric legal systems, the role of property in the former is unclear. One proponent of Earth

jurisprudence, Nicole Graham (2011: 267), points out that property law does not regulate human-nature relations; it regulates relationships between different people who view the Earth as tradable resources and commodities. This enables property owners to enrich themselves by exploiting the land for private gain. It might be posited that Earth jurisprudence challenges the entire notions of property and property rights, a challenge that the powerful propertied interests that benefit from owning and trading natural resources can be expected to resist. However, Carol Rose argues that the idea of property is not incompatible with environmental ethics. To Rose, property should be seen as a gift that should be handed on to others intact. 'We can use the concepts of property, and especially common property, to derive norms of responsibility and carefulness about a shared trust that we want to last' (Rose 1994: 31). It can be argued, therefore, that Earth jurisprudence need not abandon the idea of property, although it would need to place some strong new obligations on property owners, limiting the use of property so as not to compromise ecological integrity. In this view, an Earth jurisprudence would need to balance rights *of* nature and rights *to* nature by introducing a collectivism whereby rights are distributed across communities of humans and non-human species.

The conceptual tension between rights of nature and property was not resolved in the constitutions of Bolivia and Ecuador. Both recognise individual and collective ownership of property, and stipulate that property ownership has a social role/function.[13] However, whether, and if so when, the social role should trump the rights of property owners in order to uphold rights of nature is unclear. Furthermore, both constitutions express traditional notions of sovereignty over natural resources. In Ecuador, sovereignty is qualified with reference to an intergenerational context: 'The State shall exercise sovereignty over biodiversity, whose administration and management shall be conducted on the basis of responsibility between generations' (Constitution of the Republic of Ecuador 2008: Article 400). The Bolivian constitution asserts that 'natural assets […] will be the responsibility and exclusive authority of the State, and the sovereignty over natural resources may not be compromised' (Constitution of the Plurinational State of Bolivia 2009: Article 346). The legal and constitutional systems of the two countries thus include unreconciled contradictions between four sets of rights: of the sovereign state, of indigenous peoples, of property owners, and of nature.

In Ecuador and Bolivia, such contradictions have translated into political conflicts between the national governments and community groups. Despite recognising rights of nature, the Morales and Correa governments remain committed to statist and extractivist models of economic development. Both have been distracted from implementing post-neoliberal reforms by increased domestic opposition (Kennemore and Weeks 2011). In Bolivia, MAS enjoys most support in the western highlands. Regions dominated by the traditional political classes in the eastern lowlands, in particular Tarija and Santa Cruz in the *media luna* region,

oppose MAS and have asserted 'resource regionalism,' namely the claim that natural resources should be used for the regional, rather than the national, economy (Kohl and Bresnahan 2010: 13; Kohl and Farthing 2012). These regions, which benefitted from the neoliberal era, are demanding decentralisation and greater autonomy. US government agencies have been active in supporting, and in some cases funding, members of the Santa Cruz oligarchy that opposes MAS (Kennard 2015). MAS also faces social pressure to use income from its natural resources, such as forestry, gas, and minerals, to meet pressing short-term problems such as poverty alleviation, a strategy that often leads to further environmental degradation (Farthing 2009). In 2010, demonstrators in the Bolivian mining town of Potosi protested not for nature, but for greater economic development in the form of roads and factories (Burbach et al. 2013: 94). Morales has also been accused of governing primarily for the Aymara, neglecting other indigenous peoples (Albro 2010). The MAS government has ignored protests from indigenous peoples protesting against hydrocarbon extraction and mineral mining. One activist, Oscar Olivera, has criticised the water consumption of the San Cristo´bal Mine, which killed off life in the region, as 'a violation of the rights of Mother Earth' (Olivera, interviewed by Webber 2012: 12).

Whereas the greatest threat to Morales comes from the oligarchy in the eastern lowlands, opposition to Correa has come from indigenous and environmental groups protesting against what is seen as a continued reliance on neoliberal policies to please the middle classes (Kennemore and Weeks 2011: 279). In 2010, CONAIE passed a resolution condemning the government's policies, including mineral prospecting on indigenous lands (Petras and Veltmeyer 2011: 182–83). Correa has ordered a crackdown on indigenous groups, with arrests following indigenous protests against oil extraction and mineral mining. Ecuador's treatment of indigenous peoples led to international censure in 2012 when the Inter-American Court of Human Rights ruled in the case *Kichwa Indigenous People of Sarayaku v. Ecuador* that the government should have consulted with local indigenous people before commencing oil drilling on indigenous land (Inter-American Court of Human Rights 2012). In 2013, the Correa government's commitment to Earth jurisprudence was thrown into question when police raided the offices of Fundacio´n Pachamama, one of the groups that campaigned for the inclusion of rights of nature in the 2008 constitution (Global Alliance for the Rights of Nature 2013).

In short, the two governments that pioneered the legal recognition of rights of nature have faced political pressures from different constituency groups. Balancing these competing political demands has curtailed their room for manoeuvre in implementing the post-neoliberal strategies on which they were elected, including rights of nature. Petras and Veltmeyer (2011) suggest that both governments have, in effect, implemented a modified neoliberalism. According to James Bowen (2011), Correa is co-opting indigenous elites into the political system while marginalising indigenous demands that compromise elite power. Regalsky (2010) makes a similar argument about Morales who, he suggests, is concerned with

building a centralised state that co-opts indigenous groups while trying to reconcile their demands with those of the powerful landowners in the eastern lowlands.

In neither country is environmental conservation and upholding rights of nature the main priority. This was apparent with Ecuador's 2007 proposed Yasuní Ishpingo Tambococha Tiputini (Yasuní-ITT) scheme. Under the proposal, the government of Ecuador would desist from exploiting oil reserves in the Yasuní National Park if the international community would compensate it for doing so (Martin 2011). An international trust fund for donations was established. In August 2013, after just $13 million of the $3.6 billion that Ecuador was seeking had been deposited, Ecuador announced that it was abandoning the scheme (Watts 2013: 13). The case suggests that, while the Correa government is motivated to an extent by respect for nature, it is also prepared to use its natural resources to bargain with other actors for financial gain, and to maintain its rights to develop these resources should it not receive the financial returns it seeks.

In neither country, therefore, should the adoption of rights of nature be seen as unfettered or unconditional. The new norms of rights of nature are colliding with national economic development priorities, and within the political elites of the two countries the contradictions between the two appear to be unacknowledged and unexamined. The pro-economic growth bias of the modern state has led Samuel Alexander to question whether the state has the capability to uphold the rights of nature. He argues that all states depend upon a taxable economy and are, therefore, structurally inclined to promote growth to finance their policies (Alexander 2014: 40). He suggests that the best way to promote Earth jurisprudence is from below, through NGOs and citizens' networks, rather than from above, through the state.

Conclusion

Christopher Stone's idea that trees have rights was initially seen as outlandish by many in modern industrialised societies. However, the idea that nature has rights has long been accepted, and indeed is seen as obvious, in other cultural spaces, such as the Andes. It has since been gathering growing respect and acceptance not only in South America but with some public authorities in the United States and within civil society around the world.

In explaining how rights of nature have received legal recognition in Ecuador and Bolivia, this paper also provides some indication of how similar recognition may occur in other countries. A number of contingencies aligned in Ecuador and Bolivia that made the legal recognition of rights of nature possible. In both countries, there were unrepresentative party political systems dominated by parties that represented elites. Significant sections of the population had only a limited voice in national-level politics and sought outlets in addition to electoral politics to express grievances. In both countries, political liberalisation created political

associational space for opposition and protest that enabled social movements that were supportive of Earth jurisprudence to flourish. In particular, the emergence of ethnopopulist movements that articulated both indigenous and leftist concerns was crucial to securing the election of presidents, Morales and Correa, both of whom were elected on a reformist platform. In both countries, indigenous peoples had a strong voice in constituent assemblies convoked to draft a new constitution. In the case of Ecuador, which served as a precedent for Bolivia, the role of a transnational network was important in the legal recognition of rights of nature.

The paper has also identified some constraints and areas of uncertainty with which proponents of Earth jurisprudence will need to grapple. There is a lack of definitional clarity in some important areas, such as what exactly is nature, to which features of nature can rights be said to belong, and who should speak for nature in courts. There are also tensions between Earth jurisprudence and contemporary legal systems, in particular on property. In Ecuador and Bolivia, political pressures have diverted governmental attention from implementing post-neoliberal reforms and forced the ruling parties to make pragmatic choices in order to continue governing effectively.

At this stage, speculating on the future of Earth jurisprudence as a political project would be unwise. Although the moral claim that nature has rights is embedded within Andean culture, this is no guarantee that the rights claimed will continue to receive legal recognition in Ecuador and Bolivia. Constitutions and laws are frequently rewritten in Latin America, and it is possible that the legal recognition of rights of nature may fail to survive future constitutional change and legal reform, being viewed historically as an unsuccessful experiment by the Correa and Morales governments. If this is one extreme, the other is that increasingly more governments could adopt Earth jurisprudence, perhaps first in Latin America then further afield, leading to a tipping point whereby cumulative changes in domestic politics generate a transformation of international relations.

Earth jurisprudence must challenge an aggressive anthropocentrism. Fully respecting rights of nature on a global scale would require imposing some strong and legally enforceable limitations on environmental use, which would be permitted only to the extent that it does not disrupt harmony with nature. Global economic relations would be very different, with a new corpus of international law that would regulate the world economy in order to maintain the global ecological balance. Opposition to such an endeavour could be expected from business corporations that rely on the exploitation of natural resources and political parties focused on short-term economic gains. However, the response from those who support Earth jurisprudence would likely be that it is precisely such institutions that most need to change given their historical contributions to the degradation of the Earth.

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Notes

1 I am grateful to an anonymous reviewer for drawing my attention to this point.

2 Mother Earth also features in the cultures of North American indigenous peoples (Gill 1987; Weaver 1996). In 1991, the First National People of Color Environmental Leadership Summit in Washington DC adopted a manifesto on environmental justice that 'affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species and the right to be free from ecological destruction' (cited in Harvey 1996: 369).

3 On the ritual of the *ch'alla* offering of food and liquor to the Pachamama in Bolivia see Nash (1989: 184–87).

4 Morales and Correa paid tribute to Galeano after he died in April 2015 (Washington Post 2015). 5 Dependency theory is both explanatory and ideological. Within scholarly circles, it retains some persuasive proponents (for example, Hills 1994; Higginbottom 2013). Critics argue that, by suggesting that the centre is able to enjoy independent, self-sustaining development at the expense of the periphery, dependency theory represents an inert structural determinism that treats Latin American countries as 'passive recipients' at the mercy of powerful external actors (Kay 1989; Hey and Klak 1999: 69; Robinson 2008). The theory also fails to explain the rise of peripheral countries such as Singapore and South Korea (Williams 2011). Despite these weaknesses, dependency theory has provided an ideological narrative of opposition and resistance for politicians and activists in Latin America and elsewhere in the global South.

6 2006 figures from the Inter-American Development Bank, cited in Van Cott (2007: 128).

7 Kennard (2015: 178–240) provides evidence that USAID bypassed the government of Bolivia to directly fund groups opposing Morales.

8 The ICSID lost political support throughout much of Latin America following the *Metalclad v. Mexico* case of 2000. The government of Mexico decided to close a waste disposal facility owned by Metalclad Corporation after a geological survey revealed that the facility would contaminate water supplies. Metalclad sued the Mexican government claiming that the closure represented an expropriation of its assets. The ICSID ruled in favour of Metalclad, awarding the business US$15.6 million (Weiler 2001).

9 The plurinational state is not to be confused with the multinational state, such as the United Kingdom and Switzerland. During the Ecuadorian constituent assembly, CONAIE pressed for Ecuador to become a plurinational state. The 2008 constitution mentions 'plurinational Ecuador' (Article 6), 'plurinationalism' (Article 257), and the 'plurinational […] identity of Ecuador' (Article 380.1).

10 Hochstetler and Keck (2007) build on the work of Keck and Sikkink (1998) by examining processes of interaction between domestic and international actors in Brazil, arguing that North American and European ideas have sometimes collided, and sometimes melded, with Brazilian understandings of the environment, in the process shaping Brazilian environmental politics.

11 The CELDF website makes references to Stone whose book *Should trees have standing? Law, morality and the environment* (Stone 2010) can be purchased from the CELDF website http://www.celdf.org/section.php?id=186 (last access on 21 July, 2015).

12 It may be asked whether Stone was influenced by Andean cultural beliefs on *Pachamama* when he wrote 'Should trees have standing?.' Stone does not admit to this. Nearly four decades after publishing his 1972 paper he wrote of its origins. He makes no mention of Andean culture and

attributes the idea to a spontaneous and improvisational attempt to keep the attention of students in a class (Stone 2010: xi).

13 The 2008 constitution of Ecuador states: 'The State recognizes and guarantees the right to property in all of its forms, whether public, private, community, State, associative, cooperative or mixed-economy, and that it must fulfil its social and environmental role' (Article 321). The 2009 constitution of Bolivia states: 'Every person has the right to individual or collective property, as long as it performs a social function' (Article 56.I) and 'Private property is guaranteed provided that its use is not detrimental to the collective interest' (Article 56.II).

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