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ARTICLE

Multinaturalism in International Environmental Law: Redefining the Legal Context for Human and Non-Human Relations

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Abstract

International environmental law has come a long way in addressing humans' extractive and negative relationship with nature, although despite its profound anthropocentrism and economic focus. This paper analyzes how and whether international environmental law can be conceived differently by incorporating different perspectives about the human/nature relationship. More specifically, the article engages with the concept of *multinaturalism*, as developed by anthropologist Eduardo Viveiros de Castro, to address the advantages and significance of admitting indigenous forms of life in international environmental law. Forms of life which not only relate to nature differently but can conceive *of* nature differently. Taking such an approach requires a methodological shift to examine the existence of forms of life that invert the traditional Western conception of nature and culture, thus allowing for the potential to move international environmental law beyond anthropocentrism, while providing elements to resolve the tension between development/economic concerns in ecological conservation and long-term species survival.

Keywords: Environmental Law; Human Rights; History and Theory of International Law

There is little doubt about the urgency in sorting out ways to resolve – or at least mitigate – the effects of the current climate crisis our planet is currently undergoing. Consequently, there is also a growing sense that there is a need to find different solutions to tackle the environmental disarray in which we find ourselves nowadays. In the context of international environmental law, there is no doubt that how and whether states have been effectively willing to engage with the object of the climate and ecological crisis poses a significant problem.[1] Another issue, however, has to do with the very content of the rules, principles, and norms of international environmental law guiding environmental action in different instances across the globe.[2] Though much has been done to attain such

[1] The succession of failures in the various international conferences, including Kyoto, Paris, and others (and their successive conference of the parties) and the constant threat by certain states to withdraw from these agreements shows how 'fragile' the environmental legal framework seems to be despite much advancement. For a general overview of how states positions have impacted or generated the fragility of international environmental law, see Usha NATARAJAN and Kishan KHODAY, "Locating Nature: Making and Unmaking International Law" (2014) 27(3) Leiden Journal of International Law 573.

[2] Vito de LUCIA, *The 'Ecosystem Approach' in International Environmental Law* (Oxford: Routledge, 2019) at 6.

objectives, all actions – technological advances or regulatory frameworks – fundamentally rely on one form of life:[3] Western. It illustrates one way to *relate* to nature: separating the human from and objectifying it.[4] Western life does have the potential for self-reflective critical junctures, yet it still relies on modes of societal organization, embedded in capitalist ideals[5] and based on market economy principles where all things have a financial and monetary value, including the planet.[6] International environmental law is essentially grounded in an economically driven process to create mechanisms to protect the planet effectively and is ineffective as a means to "contain" or "mitigate" ecological harm.[7]

This article proposes to tackle this problem through the lenses of recent developments in cultural anthropology. Drawing on insights from this discipline, this article considers how other forms of life relate to the planet and how the separation of human/nature may – or perhaps should – be relativized, and argues that these may provide a way to recalibrate our "regulatory" instruments from living with nature to living *in* nature.[8] In particular, this article addresses such questions making use of a recent anthropological theory called Amerindian perspectivism. This theory can be explained, in short, as "an ontology founded on extending humanity to other types of beings with which social relations are established, the opposite of Western naturalism, therefore, where humans and animals differ radically in terms of their cultural attributes".[9] According to perspectivism, the main difference between the various "humans" is showcased by their "bodily differences".[10] Most important within the theoretical framework proposed by Amerindian perspectivism is the fact that it suggests the idea of *multinaturalism*[11] instead of *multiculturalism*. This article argues that such a concept of multinaturalism may offer a more helpful setting to rethink normative relationships between humans and non-humans in international environmental law. While multiculturalism assumes a unity of nature and multiplicity of cultures, multinaturalism admits a "unity of spirit and a diversity of bodies".[12] In multiculturalism, the subject constitutes the *particular* and nature represents the *universal.* On the other hand, in multinaturalism, the subject constitutes the *universal* and nature takes the form of the *particular*.[13] In this context, the world becomes populated by a diversity of *points of view*, where every being is a "potential centre of intentionality" and

[3] *Ibid*., at 13–4. The concept of "form of life" used in this study follows the definition provided by Rahel Jaeggi. Although it mostly focuses different forms of life within a Western context, the concept used by Jaeggi describes the phenomenon I hope to tackle here with the expression 'form of life'. Broadly taken, a form of life is a set of social practices and social relations orders established through habitual forms of association with a normative character. Such social practices and relations are collectively structured and contain both habitual and normative expectations. Rahel JAEGGI, *Kritik von Lebensformen* (Frankfurt: Suhrkamp, 2014) at 77–8.

[4] Geoffrey GARVER, *Ecological Law and the Planetary Crisis: A Legal Guide for Harmony on Earth* (Oxford: Routledge, 2021) at 65.

[5] Rahel JAEGGI and Nancy FRASER, *Capitalism: A Conversation in Critical Theory* (Cambridge: Polity, 2018) at 15, 18.

[6] Geoffrey Garver discusses how various economists in the last decades have tried to set the price of our planet. See Garver, *supra* note 4 at 66.

[7] De Lucia, *supra* note 2 at 6.

[8] And as Louis Kotzé notes, no solution for our current problems will be found without use of our 'social regulatory institutions', Louis KOTZÉ, "Global Environmental Constitutionalism in the Anthropocene" in Louis KOTZÉ, ed., *Environmental Law and Governance for the Anthropocene* (Oxford: Routledge, 2017), 189 at 189.

[9] Aparecida VILAÇA, *Praying and Preying: Christianity in Indigenous Amazonia* (Oakland: University of California Press, 2016) at 18.

[10] *Ibid*.

[11] Eduardo VIVEIROS DE CASTRO, *Cosmological Perspectivism in Amazonia and Elsewhere*, HAU Masterclass Series Volume 1 (Manchester, UK: HAU Books, 2012).

[12] Eduardo VIVEIROS DE CASTRO, *Metafísicas Canibais* (São Paulo: UBU, 2018) at 43.

[13] *Ibid*.

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can "apprehend every other being according to their own and respective characteristics and potentialities".[14]

It is increasingly possible to identify intersections between different fields of international law concerned with maintaining a sound, healthy, and natural environment where humans can live well with the minimum interference in the life of other species. However, international environmental law has not yet dared to account for indigenous peoples' form of life as a *model* for establishing normative relations, rather than merely *an object*. The present text hopes to shed light on how a turn to other cosmologies or perspectives can decisively influence contemporary international environmental law's development. In this sense, one underlying argument throughout this article is that international environmental law ought to undergo an epistemological shift to better respond to today's climate and ecological crises.

Amerindian perspectivism was originally centred in Latin-American indigenous groups' experiences.[15] Nevertheless, it offers the potential for both an epistemological and methodological shift in international environmental law. Such a shift could allow for a proper examination of the existence of various forms of life that invert the Western conception of nature and culture.[16] Furthermore, perspectivism shows that these forms of life are present alongside conventional Western forms of life, and thus require a methodological transformation in treating different life and normative contexts. Focusing on the notions of personhood and the public, the article therefore suggests that a *multinatural* approach to the relationship between humans and non-humans may prove to be a meaningful way to move forward in reforming international environmental law. Multinaturalism pushes forward a solid non-anthropocentric perspective on how to address the position and agency of humans and non-humans, as well as their relations in the world. Considering the current climate regime[17] we live in nowadays, these are essential questions.[18]

More importantly, the article explores how indigenous forms of life[19] may offer a different way to rethink the relationship between nature and culture at the international

[14] *Ibid.*, at 42.

[15] Viveiros de Castro certainly develops his idea of perspectivism based on his ethnographical work with Amerindian indigenous populations, he does point to the fact that such approach can be both identified and utilized in other parts of the world. For this, see Eduardo VIVEIROS DE CASTRO, "Os Pronomes Cosmológicos e o Perspectivismo Ameríndio" (1996) 2(2) Mana 115. But also, for understanding how indigenous cosmologies have also begun to influence or participate in the new comprehension of how humans and non-humans can establish different types of relations. Marilyn Strathern does, however, recognize that Amazonia might just be the region that serves as the "locus classicus of debates about ontologies": Marilyn STRATHERN, *Relations: An Anthropological Account* (London: Duke University Press, 2020) at 43.

[16] The move towards regaining new discursive spaces to understand the proper role of law within the Anthropocene is not limited to Amerindian perspectivism. Elsewhere, indigenous cosmologies are also used and understood both as points of departure and new contexts within which to situate the relations between what is taken as human and non-human. For an interesting example of how this can be articulated in the context of Australian aboriginal populations, see Kate WRIGHT, "Rhythms of Law: Aboriginal Jurisprudence and the Anthropocene" (2020) 31(3) Law and Critique 293.

[17] On the current climate regime we live in nowadays and how this affects directly our political conditions, see Bruno LATOUR, *Où atterrir? Comment s'orienter en politique* (Paris: La Découverte, 2017).

[18] Dipesh CHAKRABARTY, *The Climate of History in a Planetary Age* (Chicago: University of Chicago Press, 2021) at 100.

[19] For the purposes of clarification, this article relies on the definition of indigenous peoples provided by Articles 1 and 5 in the *Indigenous and Tribal Peoples Convention*, 27 June 1989, C169 (entered into force 5 September 1991). The definition is broad enough to encompass the variety of groups expressing different forms of life by original populations. For a discussion on the history of how indigenous peoples came to be defined in international law, see Ben SAUL, *Indigenous Peoples and Human Rights: International and Regional Jurisprudence* (Oxford: Hart Publishing, 2016) at 31 ff.

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level. More specifically, it looks at the relations between human and non-human entities, and how this helps reconceptualize international environmental law. It does this in three ways: first, it highlights the necessity to create substantive intersections between international environmental law and the laws dealing with indigenous populations. Second, Amerindian perspectivism also provides new avenues to rethink the idea of personhood that may be useful to rethink legal personality for non-human entities. This has been the object of much tension, especially since, in the last decades, a variety of non-human entities such as animals and rivers, amongst others, have begun to be recognized as proper "legal subjects".[20] Finally, Amerindian perspectivism offers a new way to rethink how indigenous points of view has the potential to reconstitute that what Western traditions of law and politics call the "public". In this respect, it is crucial to note that bringing indigenous discourses to the very fore of the discussion about the relationship between humans and non-humans operating as an act of resistance against long-standing discursive and practical forms of colonialism.[21] By highlighting the potential contribution of indigenous forms of life to the law governing human and non-human relations, this article also opens a pathway to countering the Western uniform worldview that has informed international environmental law to date.[22]

Therefore, the article hopes to shed light on much-ignored versions of a story about humans and non-humans that remain untold and which illustrate differently what our relations with the world could be.[23] In attempting to avoid "appropriative violence" of such stories,[24] the article focuses on the possibilities that making use of concepts and ideas from Amerindian perspectivism – based on multinaturalism – open for new legal understandings of our relations with a world composed of the humans and non-humans.

But for this purpose, the article will proceed in the following way. First, it discusses the existing limitations of international environmental law on two fronts to tackle contemporary ecological crises: the focus on economic driven measures to mitigate environmental harms and its centrality on the human as the subject of protection. This illustrates the fundamentally Western and uniform worldview basis upon which international environmental law is constructed. The article then proceeds to present basic tenets of Amerindian perspectivism and how this theory offers elements to rethink some of the basic tenets informing the field of environmental law. The last section then articulates how Amerindian perspectivism, more specifically the concept of multinaturalism, can open new avenues to engage with the questions of rights, personhood, and the public in international environmental law. Finally, it delves into the content of Amerindian

[20] There are several examples that can be drawn from domestic jurisdictions, such as the decision of the High Court of India to declare the Ganga and Yamuna rivers as living entities (later overruled by a decision of the Supreme Court of India); also, the case of the Constitutional Court of the Republic of Colombia establishing the Atrato River as a "subject of rights": *The Altrato River Case (Center for Social Justice Studies et al. v. Presidency of the Republic et al.)*, Decision of 10 November 2016, [2016] Judgment T-622/16; For other examples, especially in Africa, see, *Harmony with Nature*, Report of the Secretary General, UN Doc A/75/266 (2020), at para. 51 [*Harmony with Nature (2020)*].

[21] Wright, *supra* note 16 at 294.

[22] De Lucia, *supra* note 2 at 12.

[23] Zoe Todd provides a powerful critique of how, despite great talk of post-humanism and all different ontological varieties, the stories told by traditional and indigenous populations remain very much untold. These theories remain to a great extent grounded on euro-centric forms of thought and models of being-in-the world. Although, I do not agree fully with her critique, I think she is correct in pointing out that local experiences are not indeed properly engaged with and taken seriously outside of a classic European frame of thought. For this, again, Zoe TODD, "An Indigenous Feminist's Take on the Ontological Turn: 'Ontology' is Just Another Word for Colonialism" (2016) 29(1) Journal of Historical Sociology 4 at 7–10.

[24] Kathleen BIRRELL and Daniel MATTHEWS, "Re-storying Laws for the Anthropocene: Rights, Obligations and an Ethics of Encounter" (2020) 31(3) Law and Critique 275 at 276.

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perspectivism to examine the normative consequences thinking international environmental law with indigenous forms of life can have. This should provide a decisive challenge to our very idea of modernity.[25] In conclusion, the article proposes that such a multinaturalist approach may serve as a departure point to rethink international environmental law in a manner such that one can reconsider the relations between different entities in what we call nature. By allowing elements of other forms of life to effectively participate in the composition of some of its most decisive tenets, legal forms concerned with the environment may become more directly entrenched in peoples' lives and, therefore, more effective in attaining their societal objectives.

I. Advantages and Limitations of Modern International Environmental Law's Discourse Concerning the Relations of Humans and Non-Humans

A. Regulatory and Procedural Limits of Modern International Environmental Law's Discourse

Most of the ecological crises our planet goes through nowadays result from a variety of indiscriminate and uncontrolled industrial developments in different parts of the world.[26] Since the 1970s, states have tried to tackle these crises, such as climate change or deforestation, by establishing normative instruments – international environmental law – to limit or regulate industrial activities to mitigate their adverse effects on the environment. However, there is no shortage of criticism of these environmental regulations and their failure to attain their set objectives. The result is that instead of resolving environmental harms and ecological crises, these have increasingly become more common and serious. This lack of effectiveness from environmental law has also revealed a dissonance between understanding our relationship to nature and what needs to be done to protect the environment. Therefore, to better address current planetary crises, there must be a shift in how humans see themselves as part of the variety of ecosystems composing our natural environments. Such a shift can be reflected in different attitudes, positions, or actions. One of these actions can – and perhaps should be – the adaptation of our current environmental normative framework to best respond to the planetary needs. First however, environmental law must detach itself from a long-standing anthropocentric position where, as previously mentioned, the relationship between humans and the environment is understood from a primarily economic perspective. In this sense, to better solve our current ecological and planetary crises there is the need for a fundamental transformation of the regulatory – or better yet, normative – frameworks upon which our activities and relations with nature are based. To look for inspiration in other forms of life means to challenge our ways of regulating our relations with the environment and our exact position within nature.

Nevertheless, international environmental law has indeed come a long way in creating mechanisms to solve some of the different environmental problems and crises contemporary society faces. It has fallen short, however, of attaining many of its objectives of preserving the environment. As Philippopoulos-Mihalopoulos argues, there is a need for environmental law to be critically assessed considering its shortcomings. For Philippopoulos-Mihalopoulos, environmental law must become more "ontologised", meaning it should account for different subjects' forms of life and how they observe and live the world surrounding them.[27] It also must become more "material", in the

[25] See Bruno LATOUR, *Nous n'avons jamais été modernes: Essai d'anthropologie symétrique* (Paris: La Découverte, 2005); Also, see Marilyn STRATHERN, *Property, Substance and Effect: Anthropological Essays on Persons and Things* (London: Athlone Press, 1999) at Ch. 6.

[26] De Lucia, *supra* note 2 at 6.

[27] Andreas PHILIPPOPOULOS-MIHALOPOULOS, "Critical Environmental Law in the Anthropocene" in Louis KOTZÉ, ed., *Environmental Law and Governance for the Anthropocene* (Oxford: Routledge, 2017), 117 at 132.

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sense that it should be thought of more in relation to its impact on the various "bodies" it impacts, and the material impacts it has on the world.

Moreover, environmental law should become "situated", in that it understands that humans – although not the only beings impacting the environment – are decisive agents in its change without requiring "proof of causal link".[28] Lastly, he argues that environmental law should also turn "mineralized", meaning it should account not only for human and non-human agency as potentials for the transformation of the environment. It should also account for the "inhuman", the mineralized aspects of nature that also change nature; for example, with the possibilities of future fossilized humanity and how humans interact with other non-human materialities such as the deep Earth, oceans, etc.[29] Philippopoulos-Mihalopoulos' critique of the current state of environmental law provides a picture of the complexities that need to be introduced in international environmental law to better grasp and deal with current ecological problems. What can be drawn from complicating environmental law is that one needs to find ways to resolve the fundamental tension between economically grounded forms of regulating our use of nature and the complex aspects of our lives within the natural world. Indeed, one essential aspect of a "critical" environmental law, as Philippopoulos-Mihalopoulos puts it, is that it should remain a "space of tension and self-generating undecidability", space that navigates between the "all or nothing of environmental law".[30] This results in an inevitable incapacity of modern regulations to attain their objectives of solving or mitigating ecological crises. The various setbacks identified during the last decades with the multiple conventions (Kyoto, Paris, etc.) and their subsequent conference of parties is but one illustration of such disarray.[31]

One central difficulty with the field of international environmental law is that, like all other fields in international law, it is permeated by a language in which the idea of rights and obligations is predominant. This is not surprising, given environmental protection has been constructed around the idea of protecting vulnerable living entities distinct from humans with the main purpose of precisely guaranteeing humans' future survival on the Earth. Thus, it was by default an anthropocentric goal.[32] The normative framework so far created has revolved around the idea of establishing obligations for public and private authorities as well as individuals to act in such a way to avoid affecting general harm to the environment.[33] At the very least, the goal has been to safeguard the maintenance and survival of living species necessary for the equilibrium of such an environment.[34] It

[28] *Ibid.*, at 134.

[29] *Ibid.*, at 133.

[30] Andreas PHILIPPOPOULOS-MIHALOPOULOS, "Towards a Critical Environmental Law" in Andreas PHILIPPOPOULOS-MIHALOPOULOS, ed., *Law and Ecology: New Environmental Foundations* (Oxford: Routledge, 2011), 18 at 18. Philippopoulos-Mihalopoulos describes the poles as being "environmental-law-includes-everything" on one side, and as "environmental-law-does-not-exist" on the other, *ibid.*

[31] Natarajan and Khoday, *supra* note 1 at 577.

[32] De Lucia, *supra* note 2 at 12; Saskia VERMEYLEN, "Materiality and the Ontological Turn in the Anthropocene: Establishing a Dialogue between Law, Anthropology and Eco-Philosophy" in Louis KOTZÉ, *Environmental Law and Governance for the Anthropocene*, ed., (Oxford: Routledge, 2017), 137 at 138; and Anna GREAR, "Deconstructing Anthropos: A Critical Legal Reflection on 'Anthropocentric' Law and Anthropocene 'Humanity'" (2015) 26 Law Critique 225 at 226.

[33] For example, the preamble and Art. 4A of the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, 22 March 1989, 1673 U.N.T.S. 125, 28 I.L.M. 657.

[34] For instance, Art. 1 of the *Convention on Biological Diversity*, 5 June 1992, 1760 U.N.T.S. 79, 31 I.L.M. 818 (entered into force 29 December 1993); and the Preamble and Art. 2 of the Paris Agreement: *Adoption of the Paris Agreement*, Conference of the Parties Twenty-first Session, U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (2015), online: UNFCCC <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf>, at Annex. For a non-binding text, a good example of the above mentioned can be taken from the UN Forest Agreement, from 2007: *Non-legally*

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also sets out rights for affected people to participate in decision-making concerning activities potentially harmful to the environment.[35]

Besides establishing rights and obligations for a wide range of *humans* or *human governed* institutions, international environmental law has come a long way in creating mechanisms to ensure that environmental protection is adequately coupled with the requirements of modern capitalism.[36] With different degrees of success or failure, one finds, for example, environmental impact assessments (EIA)[37] and carbon markets,[38] with are both positioned by modern international environmental law to ensure that environmental protection is structured by market-driven processes that couple ecological protection with minor economic damage.[39] These mechanisms rely on the idea that the environment can be divided into units and the "services" it provides to humanity can be ascribed "prices" to be regulated by market forces.[40] This shows that although both legal and political strategies have been put in place to reduce humans' impact on the natural environment they all are embedded within the liberal logic of the market economy. The limits of international environmental law are set within and by the structures of modern capitalism, so much so that environmental protection and conservation regulations are invariably thought of within the context of maximal efficiency and cost reduction. Doing this also means assuming that we are perfectly informed about our ecosystems and natural environments. These can, therefore, be ascribed monetized value and, therefore, be "stripped away of its ecological—and, ultimately, spiritual essence".[41] All of which seems to fit well with the modern Western form of life.[42] However, it does not consider other non-Western forms of life and their relationship with the natural environment.

Although environmental law seeks to couple economic growth and economic interests[43] with environmental protection, reflected mainly by modern formulations of the

Binding Instrument on All Types of Forests, Resolution adopted by the General Assembly on 17 December 2007, UN Doc. A/RES/62/98 (2008). Although the Paris Agreement takes a *broad rather than deep* approach, it has been properly hailed as a great advance regarding its objective to reduce emissions. See Daniel BODANSKY, Jutta BRUNNÉE, and Lavanya RAJAMANI, *International Climate Change Law* (Oxford: Oxford University Press, 2017) at 249.

[35] Generally, for example, Arts. 1 and 3 of the 1998 *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, 25 June 1998, 2161 U.N.T.S. 447 (entered into force 30 October 2001).

[36] Broadly taken as consisting of allowing a general private ownership of means of production, dividing between "owners and producers", establishing of "free labor markets", and by setting a dynamic of capital accumulation oriented towards "expansion of capital…coupled with an orientation toward making profit instead of satisfying needs". This is the basic definition used as point of departure by Nancy Fraser and Rahel Jaeggi to critique and historicize the concept of capitalism. See Jaeggi and Fraser, *supra* note 5 at 15.

[37] EIAs have become an essential feature of any process of implementation of development projects. For instance, they play a decisive role in the World Bank Environmental and Social Standard 1, see The World Bank, "Assessment and Management of Environmental and Social Risks and Impact" in *The World Bank: Environmental and Social Framework* (2017), online: The World Bank <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf#page=29&zoom=80>.

[38] A great example is the European Union Carbon Trading Scheme, set out in *Directive 2003/87/EC of the European Parliament and of the Council*, 13 October 2003, Official Journal of the European Union, L.275/32.

[39] Garver, *supra* note 4 at 68.

[40] Mark SAGOFF, *The Economy of the Earth: Philosophy, Law, and the Environment*, 2nd ed. (Cambridge: Cambridge University Press, 2008) at 88.

[41] Garver, *supra* note 4, at 61.

[42] Jaeggi, *supra* note 3 at 67–9.

[43] These often are the central motors for certain environmental treaties. In the case of the CBD, for example, the so-called "Megadiverse countries" promotion of indigenous rights were a way they had to make sure they were guaranteed easier legal access to their genetic resources. For this, see Manuela CARNEIRO DA CUNHA, *'Culture' and Culture: Traditional Knowledge and Intellectual Rights* (Chicago: Prickly Paradigm Press, 2009) at 19.

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principle of sustainable development,[44] the various existing normative instruments still fail to account for the various inequalities that the current system generates.[45] Instead of just considering humans as the central element in the broader process of protecting the environment, there must be a new understanding of the relationship between humans and nature.[46] International environmental law, with all its intersections with other fields of international law (trade, investment, human rights, or otherwise), is premised on a fundamental separation between humans and nature.[47] From the 1980s onward, an increasingly economic-driven purpose has taken over international environmental law.[48] The separation process between humans and nature was also, in different ways, an objective sought by legal positivism. This meant precisely allowing for law – and in this case, international environmental law – to be developed as a technology to achieve specific goals.[49] Such an aspect of law is at the heart of the problem for Vito de Lucia, who sees international environmental law as "self-reflexively aware of its problems".[50] As de Lucia argues, environmental law knows "where the problem lies", but despite its development, it knows that the solutions are "outside of its grasp".[51]

Indeed, this problem has much to do with how law, and more specifically positive law, has served as an instrument to create a separation between the subjects of law and the objects of law – in this context, between humans and nature.[52] The law as a neutral element[53] has artificially progressively disconnected humans and nature. It allowed for the idea of environmental protection to be seen as an object of regulation, instead of a process in which all things in nature are attributed significant aspects of subjectivity. This disconnection, it has been recognized, has created challenges that, as observed above, have induced the expansion of inequality and detached international environmental law from more ambitious projects, or projects that go beyond environmental protection or mitigation. For this to change, new legal ontologies must be put in place in the context of this new geological era we live in – the Anthropocene.[54] There is an increasing recognition that those fundamental concepts taken for granted in Western law, such as sovereignty or property, have different normative meanings for other peoples. As Viñuales illustrates, the concepts of subject and object of law are used indiscriminately as universals deriving from Western legal traditions. Still, they often do not match those of indigenous populations in Latin America and elsewhere.[55] Such deficiencies are of great significance. They raise not only the question of what role is there for law in times of the Anthropocene,[56] but also whether there is still a role for law in coupling different

[44] Philippe SANDS and Jacqueline PEEL, *Principles of International Environmental Law*, 4th ed. (Cambridge: Cambridge University Press, 2018) at 218–9.

[45] By looking at the Mariana Dam environmental disaster, in 2015, Stephan Lessenich has pointed to how in fact the mechanisms and normative framework put in place to safeguard environmental protections have displaced and highlighted the process of externalizing environmental harm and damages to less developed parts of the world indeed increasing rather than reducing the inequality between countries in the "North" and countries in the "South". For this, see his Stephan LESSENICH, *Neben uns die Sintflut: Die Externalisierungsgesellschaft und ihr Preis* (Berlin: Hanser Berlin, 2016).

[46] Jorge E. VIÑUALES, *The Organisation of the Anthropocene: In Our Hands?* (Leiden: Brill, 2018) at 33–4.

[47] *Ibid.*, at 16.

[48] Sagoff, *supra* note 40 at 87.

[49] Viñuales, *supra* note 46 at 20.

[50] De Lucia, *supra* note 2 at 13.

[51] *Ibid.*

[52] Viñuales, *supra* note 46 at 17.

[53] *Ibid.*, at 17–8.

[54] *Ibid.*, at 24.

[55] *Ibid.*, at 21–8.

[56] *Ibid.*, at 24.

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forms of life and worldviews – concerning the relations between humans and non-humans in nature – under the guise of one normative context. Modern social and cultural anthropology may point to interesting routes that can be taken by legal scholarship to make sense of inevitable potential conflicts between different contexts of normativity in this respect.

B. Indigenous Forms of Life in International Environmental Law

Indigenous and environmental law have both found direct resonance in normative instruments, both domestic and international law. The latter has been incorporated in different documents that have significantly impacted how their forms of life are articulated with modern legal systems. In most of these instruments, one finds provisions that recognize the specificities of indigenous forms of life and those that directly relate their modes of living to the constitution and maintenance of a healthy natural environment. Such instruments recognize the distinctive features of indigenous social, political, and eventually legal orders, but more importantly it sees their inevitable and inherent connection with environmental protection.

Central to both fields (international environmental law and indigenous peoples' rights) is humans' relationship with the natural environment surrounding them. In this sense, it has also become ever more evident that protecting indigenous peoples' rights entails considering their modes of life and their direct relationship with nature.[57] This assessment has been made beyond academia. The importance of accounting for the intersection between what indigenous or aboriginal populations can tell about their relations with nature and the potential such relations have for safeguarding the environment as a whole have been remarked in international fora.[58]

For instance, Article 5 of the ILO Convention Indigenous and Tribal Peoples (C169)[59] states that indigenous peoples should be allowed to retain their normative order intact while participating directly in the country's life. This is followed closely by Article 7 of the UN Declaration on the Rights of Indigenous Peoples which provides for the right of indigenous peoples to live peacefully as "distinct" peoples, and by Article 8 which states that indigenous peoples are to retain their customs, which are the guiding norm for their social life.[60] The American Declaration on the Rights of Indigenous Peoples goes in the same direction in Article XIII, 3 and XVI, 4.[61] However, the American Declaration goes a step further: it directly refers to the articulation that a "healthy environment" has with indigenous life forms. It also indicates that states should always strive to make sure that natural environments are not affected in particular if it disturbs the "harmony" in their social and spiritual life.[62]

Despite integrating provisions protecting indigenous peoples' lives, these instruments fail to properly accommodate and articulate their forms of life with the environment, especially within the generally anthropocentric Western tradition of human rights. In this context, Amerindian perspectivism and the concept of multinaturalism offer a theoretical basis to understanding why such specific forms of life can be considered as a tool to

[57] Mihnea TĂNĂSESCU, "Rights of Nature, Legal Personality, and Indigenous Philosophies" (2020) 9(3) Transnational Environmental Law 429 at 430.

[58] For example, Harmony with Nature (2020), *supra* note 20 at para. 45.

[59] Article 5, Indigenous and Tribal Peoples Convention, *supra* note 19.

[60] Article 8.1, *United Nations Declaration on the Rights of Indigenous Peoples*, 2 October 2007, UN Doc. A/RES/61/295 (adopted by the General Assembly on 13 September 2007).

[61] Article XIII (Right to Cultural Identity and Integrity), *American Declaration on the Rights of Indigenous Peoples,* AG/RES.2888 (XLVI-O/16) (adopted at the thirds plenary session on 15 June 2016).

[62] See Article XIX, *ibid*.

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turn international law more "multiethnic". Moreover, it points to new directions as to how to guarantee a sound human and non-humans relations. The following section looks at the central aspects of Amerindian perspectivism. Then, focusing on the concept of multinaturalism highlights potential conceptual avenues that can be articulated to debate the issues of international environmental law discussed above.

II. Varieties of Ontologies: Amerindian Perspectivism and the Potential for Epistemological and Ontological Shifts in International Environmental Law

Much of what has been constituted as the main discourse concerning the relationship between humans and nature draws from a longstanding colonial experience that pushed away traditional and indigenous local knowledge and forms of life through violence.[63] One of the main aspects of Amerindian perspectivism – also somewhat situated in what some call the ontological turn in anthropological studies – is that by reversing how we look at the dichotomy between nature and culture and allowing ourselves to be given "an image of us in which we do not recognize ourselves"[64] we can articulate an epistemology counter to those founded on colonial practices.[65] More importantly, the ecological crisis faced by humanity nowadays showcases the limits of our ages old dichotomy between nature and culture. To this end, the ontological turn in anthropological studies provides powerful tools to transcend such nature/culture divides and pushes us to find proper epistemological means to engage with different forms of life.[66] There are limitations to such an attempt.[67] The fact remains that challenging the current onto-epistemological premises upon which existing environmental legal frameworks have been built opens new avenues to rethink how we, as humans, insert ourselves within the larger world and how our relations with other *non*-humans may be rearranged. The colonial aspect of a much-propagated separation between nature and culture has also generated a distinction in treatment between the Global North and Global South perspectives of environmental protection.[68] The resistance to a Global North imagery of ecological conservation has been taken up worldwide.[69] Therefore, thinking about the foundations of international environmental law on the basis of different ontologies has also a strong decolonial potential. Amerindian perspectivism proposes just that, and the following subsections will lay out the conceptual framework upon which to rethink modern environmental law shortcomings.

A. Ontologies and New Normative Scenarios for Environmental Law

One of the main focuses of the previous section dealt with how different aspects of international environmental law and indigenous laws intersect to safeguard nature's

[63] *Ibid.*, at 295.

[64] Patrice MANIGLIER, *La Parenté des Autres (à Propos de Maurice Godelier, Métamorphoses de la Parenté)*, Critique, n. 701 (Paris: Fayard, 2004) at 758–74, cited in Viveiros de Castro, *supra* note 12 at 21.

[65] Viveiros de Castro, *supra* note 12 at 21–2.

[66] Vermeylen, *supra* note 32 at 143.

[67] An interesting critique comes from Zoe Todd, who argues that the *decolonial* operation cannot be detached from the very academic practice. She sees that despite grand talk of how we should *consider* indigenous discourses for the world we live in, very little is yet done to include proper indigenous scholars in the very university space. See Todd, *supra* note 23, especially at 15 ff.

[68] Natarajan and Khody, *supra* note 1 at 581.

[69] Rosemary J. COOMBE and David J. JEFFERSON, "Posthuman Rights Struggle and Environmentalisms from Below in the Political Ontologies of Ecuador and Colombia" (2021) 12(2) Journal of Human Rights and the Environment 177 at 178.

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protection. Central to these transformations in how legal systems understand the relationship between humans and the natural environment is the acceptance of different worldviews by courts that illustrate other forms of kinship and relations between us and the world. Recent developments in anthropological theory, grounded on a wide variety of ethnographic work, have shown that these different relationships between humans and non-humans constitute a different context where social life is organized. The first aspect is that the classic distinction between nature and culture typical of Western cosmologies cannot pass without critique when assessing indigenous social and religious life.[70] Such a critique reenacts the separation between these two categories and questions the generally accepted correspondence to ideas of universal and particular, objective or subjective, fact or value.[71] Suppose for Western thought such dualism is a form of capturing continuities and ruptures in the string of modern life. In that case, there is a good reason for thinking this conceptual binarism can be revisited, and a new "ontological distribution" can be taken as acceptable.[72]

The results from the observations made in these ethnographical works referred to above have led to a variety of new theoretical constructions. One such construction is that of Amerindian perspectivism developed by Viveiros de Castro. Other authors, such as Philippe Descola, have taken a different direction and proposed various new schemes of ontology to identify new forms of relations between the various entities in the natural world.[73] The central aspect of these new theoretical complexes in anthropology is concerned mainly with how one "sees" things in their ethnographical material.[74] Rather than being a metaphysical quest for understanding the true nature or the *thing-in-itself* in the world, the theories identified within the scope of the ontological turn are methodological projects posing "ontological questions to solve epistemological problems".[75] Generally, in this context the ontological turn operates a shift in the problematization of the world. It moves from the problem of how "one sees things" to the question of "what is there".[76] And as Holbraad and Pedersen summarize, the ontological turn is less about *seeing differently* but rather about *seeing different things*.[77]

In this context, one significant ontological scheme devised is that described as *animism*. Providing a brief explanation of what animism means will help us understand why perspectivism is probably more adequate for renewing the relations between humans and non-humans in legal contexts. Animism has similar assumptions to perspectivism, but differs in its treatment of or premised point of departure. Like in perspectivism, in animism humans assume that non-humans see each other as humans because of their interior properties, such as souls, subjectivities, intentionality, etc.[78] However, the ontological condition of beings within the spectrum of animism and perspectivism differs in how these ontological *spectrums* situate humans and non-humans. Animism assumes a positional ontology where humans and non-humans are set out with stable identities, each with specific internal properties.[79]

[70] Viveiros de Castro, *supra* note 11 at 45.
[71] *Ibid*., at 45–6.
[72] Philippe DESCOLA, *L'Écologie des Autres: L'Anthropologie et la Question de la Nature* (Paris: Quae, 2011) at 32.
[73] Marilyn Strathern identifies Descola's theoretical potential in focusing on the "interplay between terms and relations" and that is why Descola's schemes concentrates on "external relations among beings or things": Strathern, *supra* note 15 at 7.
[74] Martin HOLBRAAD and Morten Axel PEDERSEN, *The Ontological Turn: An Anthropological Exposition* (Cambridge: Cambridge University Press, 2017) at 4.
[75] *Ibid*., at 5.
[76] *Ibid*.
[77] *Ibid*., at 6.
[78] Philippe DESCOLA, *Par-delà nature et culture* (Paris: Gallimard, 2005) at 198.
[79] *Ibid*., at 202.

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On the other hand, for perspectivism the difference lies in the fact that non-humans, although seeing themselves as humans, see humans as non-humans.[80] In the case of perspectivism, there is an inversion of logic. It assumes a "constant epistemology and variable ontologies".[81] If humans see non-humans as non-humans, and non-humans see themselves as humans, it is then taken that non-humans will also see humans as non-humans.[82] Non-humans will identify their bodily morphology typical of their species as human and all others as non-humans.[83] The "ontological situation" of animism, in contrast, is one where humans are satisfied to accept that non-humans see themselves as humans.[84] In animism, non-humans distinguish themselves from humans by specific behavioral habits pre-determined by certain biological traits particular to each species.[85] These different ontological schemes set out new possible *relation* schemes for beings and things.[86] To think of a potential philosophy of differences that can account for multinatural ontologies[87] is to think of a philosophy of relations.[88] The consequences are severe. Establishing new relational contexts requires admitting the possibility for new contexts of normativity to arise. The subject's position can be diversified, not only because of its inherent properties or attributed predicates, but fundamentally because of its position. These ontological articulations provide a new way to rethink relations between humans and non-humans and consider the same boundaries of rules of law that aim to facilitate such relations. The normative content of such a methodological position (perspectivism) drawn from Viveiros de Castro remains broadly connected to the implications the relations and non-relations have for understanding our place in the world. It is not clear whether, for Viveiros de Castro, law has an effective role in determining the various ways to arrange relations between humans and non-humans. Viveiros de Castro hopes to return to a prose in which the indigenous anthropology was formulated in terms of "organics fluxes" and "material codifications" and would, therefore, be released from the "suffocating" legal-theological jargon (*pavoroso palavrório jurídico-teológico*).[89]

B. Multinaturalism and a New Context of Normativity for the Relation Human and Non-Humans in International Environmental Law

For Eduardo Viveiros de Castro, Amerindinan perspectivism suggests a conceptual rearrangement when discussing the conditions to consider indigenous life. Especially concerning Western forms of life, one should use the expression "multinaturalism" "to designate one of the contrastive features of Amerindian thought compared to modern 'multiculturalist' cosmologies".[90] Again, such re-adaptation of concepts has to do with the contents of such concepts in indigenous cosmologies and the different status subjects

[80] *Ibid*., at 199.

[81] Viveiros de Castro, *supra* note 12 at 68.

[82] *Ibid*.

[83] *Ibid*., at 201. Noteworthy is the fact that the bodily morphology does not only include that which constitutes the "physical body". It consists also of a set of behaviors and modes of being ('*conjunto de maneiras e modos de ser*') of the species. Viveiros de Castro, *supra* note 12 at 66. Another way of looking at how the physical body is represented otherwise and goes beyond the physical attributes of a species is provided by Anna Grear, where bodies are seen as "affective, affectable assemblages entangled in a lively world of matter's own incipiencies": Anna GREAR, "Legal Imaginaries and the Anthropocene: 'Of' and 'For'" (2020) 31 Law and Critique 351 at 358.

[84] Descola, *supra* note 78 at 199.

[85] *Ibid*., at 200.

[86] Strathern, *supra* note 15, at 43–4.

[87] Viveiros de Castro, *supra* note 12 at 34.

[88] *Ibid*., at 119.

[89] *Ibid*., at 41.

[90] Viveiros de Castro, *supra* note 11 at 46.

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have in their conceptual framework.[91] Multinaturalism is not necessarily about reaffirming a "variety of natures", but the "naturality of variation", or as Viveiros de Castro affirms: "variation *as* nature".[92] Ultimately, this means that the concept of nature ought to encompass difference or, better yet, different forms of understanding nature as the standard cognitive position defining the relationship between humans and non-humans. Multinaturalism, in this sense, ought to be taken as an "indigenous cosmopolitical theory (*uma teoria cosmopolítica indígena*)".[93]

The immediate result of such inversion between the ideas of nature and culture in indigenous cosmologies is how humans perceive non-human entities and elements – any other thing constituted by a subjectivity – differs significantly from how these other entities see and relate to humans.[94] Because they are endowed with specific subjectivities at the beginning of time, they are also ascribed to the same level of what in Western thought one calls consciousness, and can look at us in ways similar to those we look at them. This means, for instance, that animals, spirits, and natural elements, rather than seeing themselves as such, see themselves as humans.[95] They anthropomorphize their beings whenever in their "natural" habitats and relate to the world the same way humans do. They see food like human food,[96] bodily parts as decorations, and, more importantly, identify in their social order some of the same institutional attributes one sees in human society.[97] Although this has general implications for the relationship between humans and non-humans in nature, Amerindian perspectivism does not necessarily include all animals and natural elements in this context. There is a clear emphasis on species with a specific symbolic and practical significance in the world (apex predators, rivals, allies, and enemies of humans are the main prey of humans, etc.). This position reveals that the inversion propelled by perspectivism has much to do with the relative and relational statuses of predator and prey humans have with other entities.[98]

The idea of a common origin for all things under the guise of human can also be identified in various myths of American peoples. And these are generally stories of when animals and humans were not distinguished.[99] The ontological "entanglement" is an essential trait of the myth. For Amerindian perspectivism, the different "points of view" are made more apparent and cancel themselves, giving it the "character of an absolute discourse".[100] In the myth, every non-human entity "appears to others as it appears to itself (as human), while acting towards others as if already showing its distinctive and definitive nature (as animal, plant or spirit)".[101] Therefore, different from our process of distinguishing culture and nature by separating animals and humans, the condition common and original to both humans and animals is not animality: it is humanity.[102] And if this does not provide a differentiation between culture and nature effectively, it does show nature "distancing itself from culture".[103] In the myths, then, animals have "lost

[91] *Ibid.*, at 47.
[92] Viveiros de Castro, *supra* note 12 at 69.
[93] *Ibid.*, at 71.
[94] Viveiros de Castro, *supra* note 11 at 48.
[95] *Ibid.*, at 47–8.
[96] And as Viveiros de Castro explains, "[t]his 'to see as' refers literally to percepts and not analogically to concepts, although in some cases the emphasis is placed more on the categorical rather than on the sensory aspect of the phenomenon": *ibid.*, at 48.
[97] *Ibid.*
[98] *Ibid.*, at 53–4.
[99] Claude LÉVI-STRAUSS and Didier ERIBON, *De près et de loin* (Paris: Odile Jacob, 1988) at 193.
[100] Viveiros de Castro, *supra* note 11 at 60.
[101] *Ibid.*, at 61.
[102] *Ibid.*, at 56.
[103] *Ibid.*, at 57.

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the qualities inherited or retained by humans".[104] Humans are what they have always been, while animals are ex-humans.[105]

For many of the Amerindian peoples – and Viveiros de Castro reviews ethnographic work that reveals this is typical of much of the peoples from North to South America – the original state of the universe is one where all things are the same; it is a state of "indifference".[106] The indifference also means that the very condition of the universe, in the beginning, was not one of "nothingness" but rather one of "somethingness".[107] As Weiss describes, in the beginning of everything, human beings and other elements are there. When "the curtain goes up, the actors are already on stage".[108] Humans then had powers that they do not have now and have changed and in that time were immortal. In many ways, the world was different, such that the sky was closer to Earth, and this very Earth could speak.[109] Looking at the Campa mythology, Weiss shows how the universe develops in the process of "diversification", where humankind is the first substance from which all other entities will ultimately result.[110] Something identified in Amerindian ideas of beginning is that creation is rarely thought off *ex nihilo*.[111] All things come from a process of transformation and in that very beginning, what one verifies is not a variety of beings but the condition of universal humanity.[112]

It is also important to note that the very concept of human for these other peoples is different from the one Westerners have.[113] The condition of the *human* is identified in a pre-cosmological situation, one where the whole world inserts itself in this proto-humanity.[114] And as Danowsky and Viveiros de Castro state, this situation can be described as a humanity[115]-without-world (*humanidade-ainda-sem-mundo*). This anthropomorphic multiverse gives way to a world where the species become stabilized. This anthropomorphic multiverse is constituted by *animalizing* the human, which results in a counter mythical *humanization* of the animal.[116] Therefore, in this multiverse things and persons that have a normative content for those living in an anthropocentric or Western form of life will have a different value for other peoples. These changes operate in what is called an "ethnographical present".[117] This is a present for "cold societies" (*sociedades frias*) where all cosmopolitical changes have already operated, where one finds *slow societies* (*sociedades lentas*) against "acceleration".[118] This ethnographical present is in no way a *still* present.

[104] *Ibid*.

[105] *Ibid*.

[106] *Ibid*., at 55. See also, Mauro William BARBOSA DE ALMEIDA, "A Formula Canônica do Mito" in Paride BOLLETTIN and Renato ATHIAS, eds., *Claude Lévi-Strauss visto dal Brasile* (Padova: CLEUP, 2011), 147.

[107] Gerald WEISS, "Campa Cosmology" (1972) 11 Ethnology 157 at 169.

[108] *Ibid*.

[109] *Ibid*., at 170.

[110] *Ibid*., at 169–70.

[111] Viveiros de Castro, *supra* note 11 at 60.

[112] *Ibid*.

[113] Déborah DANOWSKI and Eduardo VIVEIROS DE CASTRO, *Há Mundo por Vir? Ensaio sobre os Medos e os Fins*, 2nd ed. (Rio de Janeiro: Instituto Socio-Ambiental, 2017) at 94.

[114] *Ibid*., at 95

[115] For a clarification of what Viveiros de Castro sees as "humanity": a crucial difference established in the social sciences between the *humanity*, as the "moral condition which excludes animals", and *humankind*, the recognition that human beings are "an animal species amongst others" (Eduardo VIVEIROS DE CASTRO, "Cosmological Deixis and Amerindian Perspectivism" (1998) 4(3) The Journal of the Royal Anthropological Institute 469 at 479.

[116] *Ibid*., at 97.

[117] As opposed to a "historical present".

[118] Danowski and Viveiros de Castro, *supra* note 113 at 95.

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On the contrary, it expands and develops at infinite speeds and "extra historical accelerations". Danowski and Viveiros de Castro, for example, attribute to the idea of *buen vivir* (*sumak kawsay*) a content closer to that of an extreme sport than to that of a slow countryside retirement.[119] The normative content of these experiences opens a vast new range of possibilities for rethinking and operating typical concepts applied and considered in traditional international environmental law. Many of these experiences have already been used as potential tools to reassess human and non-human relations. They have given rise to a significant area of legal thinking that considers the rights of nature. Within this broader context, multinaturalism as described above may also reconsider typical legal concepts such as a person and thing. The following section shows how some of these rearrangements can be articulated and their consequences for the relationship between law and the environment, between humans and non-humans.

III. Amerindian Perspectivism as a Model for Re-Enacting Indigenous Forms of Life and International Environmental Law

A. Nature and its Rights: Constructing a Normative Space for Non-Western Experiences in International Environmental Law?

In the past decades, international law became a space containing a variety of specific branches, each dealing with particular – and sometimes – unconnected issues. Often referred to as "fragmentation", this phenomenon meant the creation of various specialized disciplines, such as international human rights law or international environmental law. In scholarship, this also meant that international law's current fragmented state has turned from treating certain topics from the lenses of very specialized fields.[120] As mentioned above, amongst these different specialties one finds international environmental law and indigenous peoples and international law. For evident reasons, there are many ways in which these two different fields intersect in substance.[121] However, these fields have recently come closer in terms of topics and methods, and new modes of engaging with common issues have arisen. One way in which they have somewhat converged was by being framed within the context of human rights. Considerations of whether the right to a healthy environment can be taken as a fundamental human right[122] or how to guarantee indigenous peoples' social, political, economic, civil, physical, and cultural integrity within a human rights framework[123] have all been recently advanced. Questions remain about how to properly operationalize such indigenous forms of life within a context that still lacks the proper mechanism to protect such rights effectively. Together with the current ecological crisis, the rise of new comprehensive extractive industry – especially in developing countries – has further complicated the articulation of local, and mostly indigenous populations, and contemporary normative frameworks aimed at their protection,[124] such as human rights. In light of the increasingly alarming

[119] *Ibid*., at 97.

[120] See *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission (ILC), finalized by Martti KOSKENNIEMI, UN Doc. A/CN.4/L/682 (2006), at 104, para. 201.

[121] Generally, Lawrence WATTERS, "Indigenous Peoples and the Environment: Convergence from a Nordic Perspective" (2002) 20 UCLA Journal of Environmental Law and Policy 237; Also, Laura WESTRA, *Environmental Justice and Rights of Indigenous Peoples: International and Domestic Legal Perspectives* (Oxford: Routledge, 2013).

[122] Bodansky, Brunnée, and Rajamani, *supra* note 34 at 298.

[123] See, generally, Saul, *supra* note 19.

[124] Maristella SVAMPA, "Commodities Consensus: Neoextractivism and Enclosure of the Commons in Latin America" (2015) 114(1) South Atlantic Quarterly 65 at 67.

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rate at which such extractive industries have expanded and affected local lives,[125] environmental law has to seriously account for different forms of life.

Such intersections have been ingrained in a deep theoretical debate about the proper ethical and legal framework within which humans do and should relate to nature. Such a question has both a descriptive and normative dimension. The latter has come to define most of what has been proposed regarding potential changes in environmental protection and justice. Such intersection is also at the core of what can be termed a sub-field of law concerning the "rights of nature".[126] Such rights of nature, which are broadly but not exclusively grounded on the developments of earth jurisprudence,[127] have provided instrumental arguments for much of recent nature rights and climate change litigation.[128] The discourse of rights of nature developed as a reaction to an economic-oriented international environmental law that saw nature as a commodity.[129]

The rights of nature discourse combines traditional legal theory with positive elements of international and domestic environmental law. Still, it includes different perspectives brought by diverse local populations but, more importantly, aboriginal peoples about the relationship humans have with nature. Indeed, within the context of the recent rights of nature[130] movement, which sets out non-human entities in nature as potentially endowed with legal personality, there has been a more consistent attempt to include or at least to represent such forms of life as potential alternatives to the relations between humans and the environment.[131]

The turn in scholarship has been effectively reflected in various normative instruments at the domestic level. Various domestic jurisdictions have come to recognize elements of indigenous cosmologies either through new legislation or case law.[132] This was done mainly by recognizing the legal personality of natural entities, or by allowing a certain degree of autonomy to decision-making processes existing within indigenous rituals.[133] Recent examples of Latin-American constitutions, such as that of Ecuador and Bolivia,[134] exemplify how indigenous forms of life and their cosmological elements

[125] The alarming rate in which our 'objectification' of nature is increasing has been pointed out by many in and outside legal scholarship. See Jaeggi and Fraser, *supra* note 5 at 3; Also, Svampa, *ibid*., at 65.

[126] For a broad overview of what at the international level has come to constitute the rights of nature, including documents, list of experts, reports, etc., see United Nations, "UN Documents on Harmony with Nature", online: Harmony with Nature UN <http://www.harmonywithnatureun.org/unDocs/>. The Harmony with Nature project also presents a comprehensive compilation of most national laws dealing with the topic of rights of nature.

[127] A good general description of what constitutes earth jurisprudence, see Thomas BERRY, "Rights of the Earth: Recognizing the Rights of All Living Things" (2002) 214 Resurgence: Challenge at Johannesburg.

[128] Harmony with Nature (2020), *supra* note 20 at paras. 56–64.

[129] Vermeylen, *supra* note 32 at 139.

[130] There is significant criticism also of the position that the rights language might be the most adequate to treat humans and non-humans relations in the Anthropocene. Kathleen Birrell and Daniel Matthews make an interesting case for replacing the rights discourse with a one in which the concept of obligation is prioritized. See Birrell and Matthews, *supra* note 24.

[131] Harmony with Nature (2020), *supra* note 20 at para. 46.

[132] *Ibid*., at paras. 47–50.

[133] *Ibid*.

[134] *Constitution of the Republic of Ecuador*, 28 September 2008 (entered into force 28 October 2008, as amended to 7 May 2011), Art. 10. In more detail, these rights are described in Arts. 71 to 74, under the title of "Rights of Nature"; *Bolivia (Plurinational State of) Constitution of 2009*, 25 January 2009 (entered into force 7 February 2009), Preamble: "*Cumpliendo el mandato de nuestros pueblos, con la fortaleza de nuestra Pachamama y gracias a Dios, refundamos Bolivia*". And in more detail in the *Ley de derechos de la Madre Tierra*, *Bolivia Law of the Rights of Mother Earth*, 7 December 2010, Act 071 (entered into force 21 December 2010), in which concepts such as Mother Earth, life systems, and others are set out and defined.

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have been incorporated to give environmental law a different meaning.[135] Law, in these contexts, recognizes nature less as an object of protection but as an agent of change, capable of legally acting to maintain its physical integrity. For example, there remain problems of how to operationalize the protection of nature based on them being granted legal personality. However, there is no doubt that accounting legally or constitutionally indigenous cosmologies alter how one understands the role of law governing human and non-human relations.

For this purpose, different actions have been put in practice to better protect the environment, both in theory and in practice. They range from ascribing legal personhood to non-human entities to recognizing how local or indigenous governance systems may contribute to developing better forms to relate to nature.[136] A defining aspect of these transformations has been highlighting that the environment cannot be considered in isolation from specific forms of life, including from local populations and with Western modes more broadly. Consistent with the expectations of a legal transformation during this new geological era of the Anthropocene, modern legal strategies have justly and aptly been understood. They have instrumentalized intersections between different legal fields to justify theoretically and in practice that legally safeguarding the environment goes far beyond the protection of nature.[137]

One of the advantages of such an approach is that it supposedly allows non-human entities to draw out specific rights and participate in judicial proceedings to seek their protection.[138] There are various attempts to incorporate indigenous "cosmogony" into an otherwise Western legal process. These attempts generate a dialogical process that may provide better elements to argue that transposing local or indigenous conceptions of nature to a Westernized legal system, through granting such entities legal dispositions, is how one can imagine different forms to distribute relations between humans and non-humans through law. However, these developments at the national level have not yet been matched by the normative space created within the field of international environmental law. The latter focuses mainly on the *human* aspects of the environmental harms, and social consequences are one of the fundamental deficiencies of such a mismatch.

These new approaches and strategies can also create potential normative tensions that may render some of the objectives of safeguarding cultural and natural elements around the globe inoperant. Drawing on indigenous cosmologies or local cultures can potentially be a place for a conflict between different contexts of normativity. Cosmological elements drawn from such specific cultural universes are usually inserted within a particular normative world that defines the relationship between entities in ways often not replicated or understood in Western forms of life and relationships with the natural environment. Although this may be an honest and good-willing attempt,[139] this also means that simply

[135] *Harmony with Nature*, Report of the Secretary General, UN Doc. A/73/221 (2018) at para. 22.

[136] Here there are some good examples from Africa: Harmony with Nature (2020), *supra* note 20 at para. 51.

[137] Indeed, although focus is given to the intersection between indigenous laws and international environmental law, the recent field of rights of nature incorporates a variety of elements pertaining to international human rights law and international economic law.

[138] The question concerning the conditions of possibility for non-human entities to participate in judicial proceedings, or to effectively be taken seriously as entities endowed with rights, is one that has a long history. It finds its origins in the environmentalist movement in the 60s and 70s, but is perhaps epitomized by Christopher Stone's classic, where he first interrogates about the very conditions for attributing – in a Western legal context – non-human entities (or the environment more broadly) means to protect themselves from harm. See his Christopher STONE, *Should Trees Have Standing? Law, Morality, and the Environment*, 3rd ed. (Oxford: Oxford University Press, 2010).

[139] See, for instance, *Harmony with Nature*, Report of the Secretary General, UN Doc. A/74/236 (2019) at para. 22.

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transposing such elements to the legal world may leave out essential traits of their specific normative contexts. As a result, they lead to an unsatisfactory operationalization of such protection processes while also doing injustice to those from whom such elements are culturally original. Identifying the "legal personality" of natural entities is a good pragmatic solution to guaranteeing more than just their protection. It needs to account for the proper ways to properly understand such "personhood" in their original normative contexts. As previously mentioned, this broadly fits within the context of a rights-based approach that seeks to ascribe some (indirect) agency to non-human entities, allowing for the law to take them not merely as an object but as subjects of rights. However, although it advances in comparison to the traditional model of international environmental law, ascribing legal personality to non-human entities without adequately discussing the worldviews and contexts of normativity they presuppose may lead to such developments returning to the old subject-object model. In this case, although nature is a subject of law, the lack of adequate operationalization will be just another legal object with privileges.[140]

Drawing from contexts of normativity originating in indigenous forms of life allows us to recalibrate some of the normative standards regulating our relations with the environment. It also provides us with fundamental insights into how we should better tackle the current ecological crises our planet faces as well as gain fundamental insights into how we should better tackle current ecological crises our planet faces. The following section discusses how taking recourse to Amerindian perspectivism may aid in providing answers for these regulatory limitations allowing us to rethink how to deal with current environmental crises.

B. Multinaturalism and the Way for Rethinking Personhood for International Environmental Law

Persons or, more specifically, legal persons are "naturalized" legal artifacts.[141] It is a known function of the law that it can effectively distinguish persons and things.[142] But it has already been debated, argued, and proposed that all new legal and social developments should inevitably carry the meanings they have in their original social order.[143] In the context of the Western legal universe, on the contrary, understanding the meanings belonging to other normative contexts implies a "fundamental departure" of their "original" legal constitution.[144]

Philippe Descola identifies two approaches to rethink the relations between humans and non-humans: humans identify in a set of beings called *animals* certain kinds of properties innate to them which make them similar to humans and for which reason they should be granted rights.[145] In this case, plants, trees, and other living beings are excluded from the rights universe. Another trend, which Descola associates with holistic ethics, considers all living beings endowed with properties that justify them being granted legal personhood.[146] He sees this latter position as coming very close to *animism*,[147]

[140] Miguel VATTER, "Nature's Law or Law's Law? Community of Life, Legal Personhood, and Trusts" in Marc DE LEEUW and Sonja VAN WICHELEN, eds., *Personhood in the Age of Biolegality: Brave New Law* (London: Palgrave, 2020), 225 at 226. For a general comment on this, Anna GREAR, "Should Trees Have Standing: 40 Years On?" (2012) 3 Journal of Human Rights and the Environment 1 at 1.

[141] Alain POTTAGE and Martha MUNDY, *Law, Anthropology and the Constitution of the Social* (Cambridge: Cambridge University Press, 2009) at 1–2.

[142] *Ibid.*, at 5.

[143] For this, see also Nicole GRAHAM, *Lawscape: Property, Environment, Law* (Oxford: Routledge, 2011) at 37–8.

[144] Pottage and Mundy, *supra* note 142 at 5.

[145] Descola, *supra* note 78 at 271.

[146] *Ibid.*, at 273.

[147] *Ibid.*, at 274.

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where the condition of the moral subject is universalized to all beings despite the physical heterogeneity of all creatures, humans, and non-humans.[148] On the other hand, Descola argues a naturalist ontology that subjects all human society to the laws of nature – one where culture is always subject to nature[149], which could also be coupled with the idea of attributing legal personality to non-humans.[150] However one takes it, both ontological schemes, animism and naturalism, rely on a relatively structured but rigid notion of personhood that largely depends on the properties innate to each of the beings. They both ignore the potential fluidity of personhood that multinaturalism under Amerindian perspectivism proposes. A person will be a person depending on their point of view.

In this context, Amerindian perspectivism also provides a new way of conceptualizing the idea of personhood that may be useful to rethink legal personality for non-human entities. Recently, as mentioned above, this has become the issue of much debate in Latin American constitutions. The various strategies courts and scholars have found that to justify or understand the existing legal personality of non-human entities displays the necessity to push modern international environmental law beyond its boundaries.[151] Nevertheless, it is important to note that there can be different "degrees" of personhood in different myths. As Viveiros de Castro puts it: "some non-human beings evince this attribute in a more consequential manner than others; as a matter of fact, many of them have power of agency far superior to humans and in this sense are 'more persons' than the latter".[152] Therefore, how humans relate to non-humans is always open to a different context and personal experience.[153] However, these different relations do not necessarily mean that non-human entities are always to be taken as "persons" in relation to humans; their relations must not always be "predicated on a shared personhood".[154] Although one might not immediately recognize there is a duality when dealing with, for instance, animals, nothing prevents them from being at the same time persons and not persons.

Nevertheless, such a duality belongs fundamentally to the persons themselves and not to their performances in relation to others. This is irrespective of contrasts such as "reality vs. illusions, economy vs. ideology, or practice vs. theory".[155] A note needs to be made here about the universal character of such assertions. This kind of attribution of personhood to non-human entities does not resonate with all indigeneity, for many indigenous peoples refuse that animals in our world, outside of their myths, are endowed with subjectivity and consciousness.[156] However, what comes out as a decisive point is that in each of those peoples where humanity is the original shared departure state and where personhood is attributed to non-humans, the normative relations and associations in the natural world are completely reordered. For the law to assimilate such perspectives, it needs to confront some of the most basic tenets of a longstanding tradition whereby, for instance, legal personality is an attribute deriving solely – but not

[148] *Ibid.*, at 278.
[149] *Ibid.*, at 279.
[150] *Ibid.*, at 278.
[151] See, for example, Amaya ALVEZ-MARÍN, Camila BAÑALES-SEGUEL, Rodrigo CASTILLO, Claudia ACUÑA-MOLINA, and Pablo TORRES, "Legal Personhood of Latin American Rivers: Time to Shift Constitutional Paradigms?" (2021) 12 Journal of Human Rights and the Environment 147 at 147.
[152] Viveiros de Castro, *supra* note 11 at 54.
[153] *Ibid.*
[154] *Ibid.*, at 55.
[155] *Ibid.*, at 56. Viveiros de Castro states to simplify: "The personhood of animals (and of humans) is in effect a question of context; but contexts cannot be imported ready-made from our own intellectual context—they must be defined in Amerindian terms". *Ibid.*, at 57.
[156] *Ibid.*, at 54–5.

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exclusively ascribed to – humans. In doing so, some legal texts in domestic jurisdictions have begun to break with such a tradition. This has not yet been put into practice in international legal contexts, but the space and the conditions are there for such an experience.

Rethinking the concept of personhood in normative contexts concerned with the environment provides us with suitable instruments to tackle various environmental problems. Therefore, reconceptualizing the idea of "person" in legal contexts such as environmental and international environmental law allows us to consider how *others* grant normative positions to entities seen as mere *objects* of regulation in the West. Animals, rivers, mountains, the ocean, all become ascribed an inherent normative content that requires a different degree of protection or conservation that would otherwise not be granted if they were taken as objects of law. To ascribe a kind of personhood to these non-human entities, even if not of a legal character, provides for the possibility of reading their positions in law as one that is not necessarily attached to their "economic" importance. This means that other considerations must be made when devising mechanisms to protect or conserve them or mitigate the effects human actions can have on their well-being. Rethinking the concept of personhood for non-human entities impacts more than just how we position them in law, it also redefines the possibilities for devising practical mechanisms to guarantee their existence together with ours effectively.

C. Rearranging the Public for International Environmental Law in a Multinatural Context

One other central element that Amerindian perspectivism offers is to rethink how we can insert indigenous points of view into Western legal ordering, and the potential constitution of what they have similar to, and what we call, "public". If power is something that Westerners identify with "invention and individual force", something that is present in collectivities, then, says Roy Wagner, the "Westerner *is* power and *does* morality".[157] In turn, the tribal person "does or follows power (special roles, guiding magic, or spiritual helpers) and 'is' moral".[158] In this context, we can identify that different Amerindian peoples will have as many political and moral unities as households.[159] This is exemplified by, for instance, the *parakanãs*, or the *arewetés*, in West Brazil.[160] Different tribes organize their political forms in distinct ways, or what we call their "public spheres". Therefore, the normative context for human and non-human relations can also be different.

The space within which the public is articulated in Western societies is inevitably exercised by political power. In Western societies, political power has been hailed as such a critical feature of a society that the concept of *power* itself cannot be, in many aspects, separated from the *political*.[161] In the Western tradition power can only be conceived in its coercive form. As such, it unavoidably belongs to the sphere of the political.[162] Pierre Clastres, on the other hand, argues that coercion should not be taken as the decisive element defining the *political* of a *public*.[163] He sees that, even in societies

[157] Roy WAGNER, *The Invention of Culture* (Chicago: University of Chicago Press, 2016) at 87–8.

[158] *Ibid*.

[159] Carlos FAUSTO, *Inimigos Fiéis: História, Guerra e Xamanismo na Amazônia* (São Paulo: EDUSP, 2001) at 217.

[160] *Ibid*., at 218.

[161] Jean-William LAPIERRE, *Essai sur le Fondement du Pouvoir Politique* (Aix-en-Provence, France: Editions Ophrys, 1968) at 40–1. Lapierre does recognize the existence of other forms of power apart from the *political* power. However, it is a question for him – and for us here – to determine the quality of that power that serves as foundation for the social order as such, which is, according to Lapierre, undeniably *political*. The nature of this power, which is based on coercion, or a relation of command/obedience is what is at stake ultimately.

[162] *Ibid*., at 70–3.

[163] Pierre Clastres argues that there are ways of conceiving of power without the 'coercive' feature. It suffices to look at the experience of many Amerindian populations and the way in which they organize their own social orders. For an interesting explanation of what Clastres has in mind when he critiques the idea of coercive

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where normative contexts are established without proper political mechanisms. For this, he does distinguish that the fundamental aspect defining the organization of particular societies – outside the scope of the Western world – is not necessarily political power but the existence of mechanisms of coercion or violence.[164] In the current context of climate crisis, the concept of the political needs to be redefined – with severe consequences of what one understands as being the public of political unity. For instance, as Bruno Latour has argued, politics should be reorganized in a terrestrial sense, to make sense of the new challenges that cannot anymore fall under the categories of "local" and "global".[165]

Again, Amerindian perspectivism and multinaturalism offer elements to rethink decisive aspects of international law that can be useful to change our relationship with nature. The distinction between "culture" and "nature" in indigenous and Western thought reveals similarities and discrepancies. One sees in both settings that culture is decisively impacted and given "meaningful expression" by the moral and conventional contexts within which they are inserted, in that they "relate" constructions and "are themselves" constructions that set the scene of a world.[166] This means that the rules we construct are defined and define the normative position each of the entities – humans and non-humans – have in the social universe to which we belong. However, individual and collective associations from members of a specific social order form all these conventions. Such associations are constructed through participation in various contexts, some of which belong to a universe outside of that of our social order. Therefore, the concepts of "enemy", "peace", "right", "wrong" are devised through associations that assume individual and collective encounters with other contexts.[167] These formations, which compose much of the canvas of our reality, are given "largely by *other* associations of the elements that articulate the context. The elements they acquire through participation in contexts external to the one in question."[168]

Such associations and relations point to a strong argument for rearranging the normative context of international law in line with that of local experiences and indigenous populations. The normative contexts developed through the tensions between global and local experiences can also provide a space for reorganizing or reaffirming the necessary materiality of law.[169] More importantly, thinking about different contexts of normativity generated by these tensions between various forms of life and international legal life forces us to accept the necessity to conceive of politics differently. The variety of existing ontologies should become primary informing forces of political processes leading to new models of decision-making processes.[170] Here, there is yet another pointer for rethinking the concept of personhood in a significant way to rearrange our relation to nature. One assumes that the "social and conventional order" will inevitably take an anthropomorphic form in every phenomenological world. In all social relations, including humans and non-human entities, one always requires an explanation that relates humans

power, see his interview to the review: Pierre CLASTRES, *Entretien avec L'Anti-Mythes* (Paris: Sens Et Tonka, 1974) at n. 9, 14.

[164] Pierre CLASTRES, *La Société contre l'État* (Paris: Minuit, 1974) at 24.

[165] Latour, *supra* note 17 at 42.

[166] Wagner, *supra* note 158 at 41.

[167] *Ibid.*

[168] *Ibid.*

[169] Anna GREAR, "Resisting Anthropocene Neoliberalism: Towards New Materialist Commoning?" in Anna GREAR and David BOLLIER, eds., *The Great Awakening: New Modes of Life Amidst Capitalist Ruins* (Santa Barbara: Punctum Books, 2020), 317 at 336.

[170] *Ibid.*, at 341.

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and non-humans as distinct.[171] An alternative can be to expand this relational observation to reconceptualize such distinctions and identify continuities between the living and their surrounding environment.[172]

Finally, rearranging how one can understand the *public* in a multinatural context requires us to adapt contemporary public participation mechanisms in decision-making processes concerning activities potentially endangering the environment. As mentioned above, and again echoing Latour, local decisions have a decisive impact on how people elsewhere live. Therefore, political decisions must be made following various interests that blur the traditional boundaries of territorial states. For example, the construction of dams in one city in a country in the Global South may significantly impact the lives of people in the Global North (and vice-versa) if one considers the general adverse effects it could cause on ecosystems.[173] Also, decisions concerning the mitigation of the climate change effects taken by a small group of states decisively affect many other peoples' lives elsewhere in the world. In light of such interconnectedness between actions and peoples, decision-making mechanisms need to be redefined in theory and practice to account for multiple interests to avoid new ecological crises and reduce the environmental harm caused by human activities.

IV. Concluding Remarks

Amerindian perspectivism offers different manners in which to consider how modern Western legal systems can better articulate different forms of life that include and reorient human relations towards nature. Ascribing the characteristic of "human" to things that belong to a context one calls "natural" provides a new ontological horizon on which we can redirect our relations and associations. Modern law is broadly constructed on the notion that the *legal* person can and should derive essentially from what has been termed the human.[174] If law can account not only for the diversity of cultures (*multi* cultures), but also for how we can see nature differently on the basis of a different concept of nature, then the very concept of rights can be used to better grasp our relations with the natural environment.[175] It is precisely within the Anthropocene that we ought to remove the *anthropos* from its position of "exclusive subject and target of juridical framework".[176]

Learning from indigenous thought and understanding about how they ascribe subjectivities and the content of their intersubjective relations provides an opportunity to reconstruct legal forms beyond moral arguments more in line with our era.[177] In a way,

[171] Wagner, *supra* note 158 at 87.

[172] Wagner, for instance, refers to gives the examples of how causality of things is constituted according to one's convention and how it is constitutive of order in mythological discourses; see *ibid*., at 87–8: "As the 'order' of things and of people, it is not 'power' in the sense of our natural world (though it manifests itself through power), but rather the key to power, the knowledge that bestows power and that power can help one to win."

[173] See Lessenich, *supra* note 45.

[174] This is also largely founded on a contractarian notion that the law is to be used amongst those who can by the use of reason deduce the necessary hypothetical rules that govern the public and private relations. See Immanuel KANT, "Metaphysical First Principles of the Doctrine of Right" in Immanuel KANT, *The Metaphysics of Morals*, 2nd ed. (Cambridge: Cambridge University Press, 2017), 1 at para. 56, for this, but also, for another example, his Immanuel KANT, *Anthropology from a Pragmatic Point of View* (Cambridge: Cambridge University Press, 2006).

[175] Idelber AVELAR, "Amerindian Perspectivism and Non-Human Rights" (2013) 17 Revista Ciencia y Cultura 255 at 261.

[176] *Ibid*., at 262.

[177] *Ibid*., at 266.

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if the Amerindian perspectivism cannot be universalized to comprehend the almost infinite indigenous experiences in the world for evident reasons, it at least suggests new ways of reordering the normative world for humans' non-human relations. In this sense, perspectivism serves as a potent critical tool to debunk many of the colonially formed and anthropocentric modeled legal concepts constructed based on Western forms of life. A step into the outside world of the Westerners might be just what one needs to reorient legal relationships and transform our relations with the natural world.

It is perhaps time to turn one assumption of international environmental law upside down. The assumption that legal pluralism integrates a *multi*cultural perspective on the world and accepts the idea that *one nature* exists ontologically for all. Rather than one nature, many cultures accept a variety of ontological possibilities by taking the possibility of various natures seriously – or of naturally accepting *variation* – as the standard. Thus, nature should be taken less as a technocratic term. Instead, it is a concept containing the conditions of possibility for a variety of onto-epistemologies. It is a concept that allows for a different look at what constitutes the world that surrounds us and how we should learn it and normatively relate to it. Turning international environmental law towards multiple understandings of nature might provide a better grounding for a different type of legal pluralism. Types of pluralism where persons, spaces, publics are understood more fluidly.[178] A pluralism that challenges the very foundations of what we have come to understand as modern law and modernity in different ways.

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[178] Andreas PHILIPPOPOULOS-MIHALOPOULOS, "Looking for the Space between Law and Ecology" in Andreas PHILIPPOPOULOS-MIHALOPOULOS, ed., *Law and Ecology: New Environmental Foundations* (Oxford: Routledge, 2011), 1 at 3.

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