

Natural Jurisdiction: Shifting Boundaries from Exploitation to Connection

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Abstract

The biodiversity crisis has been compared to a war that we are losing. International environmental laws are meant to protect but the combative language and actions around our relationship with nature remains. The Eurocentric legal grounding of nature as property is problematic as ecological systems do not abide by political boundaries. This article explores the historical western underpinnings of our relationship with nature and the current aspirations of sustainability. Steps towards change and the reconsideration of the legal standing of nature include the Earth Charter, the pending EU illegal deforestation law that challenges sovereignty over natural resources, the United Nations' Harmony with Nature that highlights the growing rights of nature around the world, and the Yellowstone to Yukon Conservation Initiative as a wholistic, transboundary ecosystem approach. It follows that a more interconnected shift is needed with the provision of ecological limits as a form of natural jurisdiction.

Introduction

"Humanity is waging a war with nature," declared António Guterres, Secretary General of the United Nations in December of 2020.¹

Mr. Guterres' strong choice of words warrant a closer look. The climate and biodiversity crises are referenced on a scale usually reserved for serious state conflicts. Waging war implies nature has standing beyond exploitation and declares the antagonist as the collective of humankind. Humanity, I would argue, is too wide a generalization since the culprits and victims of the climate and biodiversity crises are not equal in their exposure or contribution. However, referencing war in this case exemplifies the severity of the issue while also implying the inherent weaknesses of the laws that allow it.

Now picture the battle ground from two different perspectives: from the people on the ground, who see intricate connections consisting of millions of species forming the most complex systems on earth.

¹ António Guterres, 'Secretary-General's Address at Columbia University: "The State of the Planet"' (2020) <<https://www.un.org/sg/en/content/sg/speeches/2020-12-02/address-columbia-university-the-state-of-the-planet>> accessed 11 February 2021.

Meanwhile, others, office bound, view it as raw materials that could, with some imagination and labour, be made into something productive.²

It really is no wonder then that the language used in the relationship to the environment is so combative. Nature in the latter example is made to be redone. Land, and the rights to resources, have long been fought over. There is, of course, another perspective to this, older than the colonial exploitation, of relationships with nature that were (and still are) much more consensual and respectful. Just as history is written by the victors, so has this other worldview been mostly silenced and replaced legally by a more Eurocentric world view.³ But sovereignty over nature is not the only worldview we need to consider.⁴

Nature is not just natural capital for exploitation but active, participative aspect of our lives. Paulina Ochoa Espejo suggests, "we could concentrate on practices that shape the land and make places and thing about their value in environmental terms."⁵ Sundhya Pahuja also called our relationship with nature as a battle and the legal framework was in need a of "critical redescription".⁶ A new vocabulary is needed, a different perspective, to respect the shift that is happening. To do so we need to look through Ochoa Espejo's 'a prism of place'⁷, with a more grounded perspective via Pahuja's 'laws of encounter'⁸.

My argument is that we need to move away from the combative language to shake us out of the exploitive paradigm. The global effect of our modern world means we are disconnected not just from nature but our sense of place. This creates not only a cognitive dissonance, but laws and policies no longer grounded on the land they are supposed to protect.

The United Nations' Harmony with Nature touches on this nature-based movement and I will use this example of a small step to jurisdictional inroads and relate them to the legislations, such as the pending EU illegal deforestation law, that challenges sovereignty over natural resources. Lastly, I will consider the

² With a nod to Locke's theory of labour. See more detail on Locke's theories at: John Locke, *Locke's Two Treatises of Government* (Peter Lasslet ed, Second, Cambridge University Press 1968).

³ Mihnea Tănăsescu, 'Rights of Nature, Legal Personality, and Indigenous Philosophies' [2020] *Transnational Environmental Law* 1.

⁴ Paulina Ochoa Espejo, 'On Political Theology and the Possibility of Superseding It' (2010) 13 *Critical Review of International Social and Political Philosophy* 475

⁵ Paulina Ochoa Espejo, *On Borders: Territories, Legitimacy, & the Rights of Place* (Oxford University Press 2020). 94

⁶ Sundhya Pahuja, 'Laws of Encounter: A Jurisdictional Account of International Law' (2013) 1 *London Review of International Law*.

⁷ Ochoa Espejo (n 5). xiii

⁸ Pahuja (n 6).

Yellowstone to Yukon Conservation Initiative as a wholistic, transboundary ecosystem approach which proposes pragmatic consensual jurisdiction to an area.

A (Unnatural) History

Many scholars, including Anne Orford, cite Thomas Hobbes's *Leviathan* as the start of our perception of our current legal world.⁹ Hobbes saw nature as chaotic and of much need of order, which could only be maintained by some authority. While the connotations to nature are negative in this sense, Hobbes was still taking the idea of jurisdiction and bringing it down a notch from the authority and universal jurisdiction that the Pope and Holy Roman Emperor wanted. He proposed that people needed protecting in order to attain peace and that required a more local authority, but an overruling authority nonetheless.¹⁰

Hobbes' rationale for a responsibility to protect resurfaced after WWI by Carl Schmitt but instead of being a protection for individual people it further "legitimized the political structure of the absolutist state".¹¹ This philosophy formed the basis of sovereignty and the corresponding distancing of nature as part of the system.¹²

Nature however was then (and still is by most accounts) property. This diminishes the importance and role of land as merely a cog in the development wheel, the raw material of potential income. Defining the land as property changes the understanding, making it exclusionary and 'an act of power'.¹³

Natural (as more than) Capital

Sovereignty over natural resources was seen by the United Nations as a way of encouraging development and increasing the wealth for developing nations.¹⁴ The aim was noble enough, with the

⁹ Anne Orford, 'Protection in the Shadow of Empire', *International Authority and the Responsibility to Protect* (Cambridge University Press 2011).

¹⁰ Anne Orford, 'Constituting Order' in James Crawford and Martti Koskenniemi (eds), *The Cambridge Companion to International Law* (Cambridge University Press 2012).

¹¹ Orford (n 9).

¹² *ibid.*

¹³ Blair Fix, 'Can the World Get along without Natural Resources?' (*Economics from the top down*, June 2020) <<https://economicsfromthetopdown.com/2020/06/18/can-the-world-get-along-without-natural-resources/>> accessed 1 December 2020. citing Nitzan, Jonathan and Bichler, Shimshon, *Capital as Power: A Study of Order and Creorder*, (2009) Routledge

¹⁴ Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press 1997). 2

intention to provide decolonized countries with a means of building their economy and gaining back control of their resources from colonizing states.¹⁵

Exploitation of natural resources was encouraged in a move from "exploitive colonialism" to 'cooperative colonialism', though it did not really filter down to the those on the ground to the local level.¹⁶ The General Assembly has instructed that resources "must be utilized in interests of development for developing countries".¹⁷ Theoretically, economic development would drive prosperity and ultimately lead to improved livelihoods for the state's peoples. This has not always happened.¹⁸ The current wealthy disparity among states is evidence to the contrary.¹⁹

Breaking down this idea of wealth via natural resources required the capturing of the natural capital, not of the protection of biological diversity.²⁰ This wealth does not account for the other, less tangible benefits of nature (air purification from forests as one) that is now considered an element of ecosystem services. While both the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity have referred to environment as 'common concern of humankind'²¹ the conventions do not entertain the idea of biodiversity being more than resources under the control of the state.²² This limiting framing will not be replaced until we see that strict sovereignty of state is not the only viewpoint.²³

Conflicts in jurisdiction tend to be the most paramount conflicts internationally.²⁴ This is compounded by issues around the environment that are not solely about nature but are interlaced with trade, human rights, and long list of potential other conflicts. Much like the ecosystem itself, an action or infraction in one area, is connected to a domino like set of consequences in other connected areas. This does not

¹⁵ Francesco Francioni, 'Realism, Utopia, and the Future of International Environmental Law' in Antonio Cassese (ed), *Realizing Utopia: The Future of International Law* (Oxford University Press 2012) p457; Jeffrey Atteberry, 'Turning in the Widening Gyre: History, Corporate Accountability, and Transitional Justice in the Postcolony' (2019) 19 *Chicago Journal of International Law* 333, 374.

¹⁶ Balakrishnan Rajagopal, *International Law from Below* (Cambridge University Press 2003). 71

¹⁷ GA Res 2158, 1996

¹⁸ Francioni (n 15). 457

¹⁹ Jason Beckett, 'Creating Poverty' [2016] op. cit 988.

²⁰ Schrijver (n 14). 16-17

²¹ GA Res.43/53 27 January 1989

²² *ibid* 389; Robyn Eckersley, 'Ecological Intervention: Prospects and Limits' (2007) 21 *Ethics and International Affairs* 293 <<https://doi.org/10.1111/j.1747-7093.2007.00101.x>> accessed 7 December 2020.

²³ Espejo (n 4); Antony Anghie and SJ Quinney, 'Rethinking Sovereignty in International Law' (2009) 5 *Annual Review of Law and Social Science* 291

²⁴ Martti Koskeniemi, 'The Politics of International Law-20 Years Later' (2009) 20 *The European Journal of International Law* 7.

bode well for law where the aim is to isolate the crux of an issue. It impacts the level of expertise needed to consider any problems. And it leads to "fragile compromise" between different political segments that do not always play well with one another.²⁵

Why (Natural) Jurisdiction?

By definition from Cambridge Dictionary, jurisdiction is 'a country, state, or other area where a particular set of laws or rules must be obeyed'.²⁶

Regarding the environment, we normally speak of protected spaces or, more recently, nature rights, but never of jurisdiction. But in this age of worldwide trade and digital communications, global interactions have punched some holes in the strict observance of state sovereignty.²⁷ This porosity affects territorial political boundaries that once encased jurisdiction²⁸ because boundaries are needed to encompass a jurisdiction.²⁹ Considering F.A. Mann's qualifier that jurisdiction is a 'an ingredient or a consequence of sovereignty', we can thus extend that territory is the grounding feature in a state.³⁰ Vaughan Lowe further elaborates that jurisdiction helps ensure the uniqueness of states.³¹ Considering the different types of ecosystems and their complexity, uniqueness is also apparent in nature and explains why universal or state laws may not be optimal or logical for all the environments within its boundaries. It gets more interesting, albeit more complicated, if you consider that jurisdiction is based not just on what but '*who* has the authority to speak in the name of law'.³²

Natural jurisdiction, as described in *The Spiliada* case, is 'the place with which the case had the most real and substantial connection'.³³ Substantial would be the hard ecological limits which should be the

²⁵ *ibid.*

²⁶ Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/jurisdiction>

²⁷ Sheila Kennedy, 'Holding "Governance" Accountable: Third-Party Government in a Limited State' (2006) 11 *The Independent Review* 67. 69

²⁸ *ibid.*

²⁹ Jan Klabbbers, 'The Setting of International Law', *International Law 2nd Edition* (Cambridge University Press 2018).

³⁰ FA Mann, *The Doctrine of International Jurisdiction Revisited after Twenty Years* (Martinus Nijhoff 1984); as cited by Maria Gabunelē, *Functional Jurisdiction in the Law of the Sea*, vol 62 (Martinus Nijhoff Publishers 2007).

³¹ Vaughan Lowe, 'Jurisdiction' in Malcolm D Evans (ed), *International Law* (Oxford 2006); as cited by Gabunelē (n 27).

³² Shaunnagh Dorsett and Shaun McVeigh, 'Questions of Jurisdiction' in Shaun McVeigh (ed), *Jurisprudence of Jurisdiction* (Oxford: Routledge-Cavendish 2007); as cited by Orford (n 9). 39; emphasis added.

³³ *The Spiliada Maritime Corporation v Cansulex AC460.*

barometer that development needs to abide by. If taken in this context, along with the community connection Dianne Otto describes, real jurisdiction could then be the ecosystem.³⁴

Otto's discussion regarded listening to community of women but it could also extend to the natural community, if nature had a voice. While some make the call to more international efforts it can, if viewed from a different perspective, be an opening for a more local approach for jurisdiction. For the word jurisdiction, taken from latin (*jus* and *dictio*) means speaking the law. I argue that the law needs to listen as well.

Listening, and considering the common good, would require cutting into state jurisdiction.³⁵ If Sheila Kennedy's assertion that the state is no longer singularly all powerful,³⁶ who then has authority? If one considers the greater common good then some paring of the state sovereignty would need to happen, justifiably due to 'the task of environmental protection is of such tremendous importance that it requires a partial sacrifice of sovereignty'.³⁷

Finally, if we take the original Cambridge definition discussed above, in context of ecological laws, (and considering the enormity of the environmental crises *that must be obeyed*), nature could be construed of needing, if not having, jurisdiction. The issue however is the lack of authority which could be argued come from the weakness of international environmental laws.

Environmental (soft) Law

International laws, due to the complexity of issues, suffer from fragmentation and problems with weighing risks and outcomes. This is especially apparent for environmental law as it struggles to gain ground against more established economic based laws.³⁸ It is not from a lack of environmental treaties or actions but of the creation of a system of 'reciprocal obligations' but not much else.³⁹

Ecosystems, of which the law rarely considers as a wholistic entity, are so complex that even experienced ecologists cannot always predict what will happen to a habitat and the cumulative effects

³⁴ Dianne Otto, 'Beyond Legal Justice: Some Personal Reflections on People's Tribunals, Listening and Responsibility' (2017) 5 London Review of International Law 225

<<http://academic.oup.com/lril/article/5/2/225/4259206>> accessed 2 December 2020.

³⁵ Johanna Rinceanu, 'Enforcement Mechanisms in International Environmental Law: Quo Vadunt' (2000) 15 J. Envtl. L. & Litig 147.

³⁶ Kennedy (n 27).

³⁷ Rinceanu (n 35).175

³⁸ Andreas Philippopoulos-Mihalopoulos, *Law and Ecology: New Environmental Foundations* (Taylor & Francis Group 2011). 19

³⁹ Francioni (n 15).

of invasive development.⁴⁰ How then could the lawmakers? This gap in legal understanding has been being critically analyzed by a number of nature rights scholars.⁴¹

Internationally, we seemed to be on the right track with the Stockholm Declaration,⁴² in 1972, as it broached the idea of environmental protection for the 'common good'. This was actually closer to bringing the authority of nature than the following conventions. It forged the idea of obligations towards the international community as a '*whole*'.⁴³ Failing to capitalize on this language and intent, Francioni argues, has led us to the crisis we face now.⁴⁴ The authority of community was diluted in subsequent conventions. The Rio Declaration⁴⁵ for example, reverted back to more combative language bringing back the word 'exploit' (in principle 2) due in part to the contestations from wealthy nations and the recognition of sovereignty over natural resources.⁴⁶ It reiterated the relationship using the language of a war of control over protection: '[I]nternational legal recognition of the territorial rights of states is based on the fact of possession and the power to assert control and to defend a territorial claim rather than on any moral entitlement'.⁴⁷

The power struggle is still based on global markets hard wired for economic growth that underpins the treaties and regulations so that the impetus for development tends to have more authority than protection of the environment.⁴⁸

Development plans do not always consider ramifications of changes to a complex system and the time required to adapt. An appreciation for jurisdiction of nature thus requires not only a grounding in place but also a sense of time. Nixon calls environmental degradation 'slow violence' because it does not have

⁴⁰ Julianne Lutz Newton and Eric T Freyfogle, 'Sustainability: A Dissent' (2005) 19 *Conservation Biology*.

⁴¹ Christopher Stone, 'Should Trees Have Standing? Law, Morality and the Environment' (1972) 45 *Southern California Law Review* 450; Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Chelsea Green Publishers 2011); David R Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (ECW Press 2017).

⁴² 'UN General Assembly, United Nations Conference on the Human Environment, 15 December 1972, A/RES/2994'.

⁴³ Francioni (n 15).455, italics mine

⁴⁴ *ibid.*455

⁴⁵ Rio Declaration on Environment and Development (A/CONF.151/26, vol.I)

⁴⁶ Schrijver (n 14).

⁴⁷ Eckersley (n 22).

⁴⁸ Geoffrey Garver, 'A Systems-Based Tool for Transitioning to Law for a Mutually Enhancing Human-Earth Relationship' (2019) 157 *Ecological Economics* 165.

the urgency of an emergency, but the results are still cataclysmic.⁴⁹ In the same way, the connections to place are built over time through living in and working with the environment.⁵⁰

If jurisdiction is the encompassing of the legal workings of a place, then sustainable development was meant to balance the social, economic and environmental parameters. However, sustainable development still relies on economic growth (as converse to economic stability or balance). Considering that we are already using more resources than the planet can replenish on a yearly basis, this plan does not add up.⁵¹ As long as economics win over environmental, the sustainable development goals cannot succeed.⁵²

The sustainable development ideals are still missing something – ethics.⁵³

Naturalizing (Earth) Law

Law, like nature, does evolve.⁵⁴ As societal attitudes change (or as western ideas catch up to indigenous traditional knowledge) the frameworks adapt. Nature rights may be part of the evolution but I argue that legal personhood, as it applies to one element of nature, limits the scale that this perspective change needs. I am suggesting we consider the broader interconnections, making the ecosystem, or the planet, the boundary.

The Earth Charter, as one example, encompasses a 'bold way of thinking' but not one that every state has embraced.⁵⁵ Building on the Stockholm Declaration discussed earlier, Our Common Future Report, was thought to be the advance work for the Rio Declaration. But as we saw, that language was softened in Rio and instead Our Common Future evolved separately into the Earth Charter.⁵⁶ The difference from the Rio Declaration shows split in relinquishing power, as Rio shifted focus to sustainable development,

⁴⁹ Rob Nixon, 'Slow Violence' [2011] *The Chronicle Review* <<https://www.chronicle.com/article/slow-violence/>> accessed 11 December 2020.

⁵⁰ Ochoa Espejo (n 5). 112

⁵¹ Beckett (n 19).

⁵² Garver (n 48).

⁵³ Lutz Newton and Freyfogle (n 40).

⁵⁴ Boyd (n 41). 206

⁵⁵ Alfonso Fernández-Herrería and Francisco Miguel Martínez-Rodríguez, 'The Earth Charter as a New Worldview in a Post-Neoliberal World: Chaos Theory and Morphic Fields as Explanatory Contexts' (2019) 75 *World Futures* 591 <<https://www.tandfonline.com/doi/abs/10.1080/02604027.2019.1634417>> accessed 11 December 2020.

⁵⁶ *ibid.*

whereas the Charter went beyond trying to compromise development into aiming for 'sustainable ethics' and considering the deeper connections.⁵⁷

The underpinnings of conservation are based on respecting ecological connections. Christopher Stone demanded we ask about the moral dilemmas and ethics that face environmental questions and to consider the 'constituency' of nature.⁵⁸ How we do so is the struggle. Authors that examine environmental ethics reveal that such a shift call for a complete restructuring⁵⁹ or radically new approach.⁶⁰ It is important to recognize the vernacular shift needed.

The Universal Declaration for the Rights of Mother Earth is a significant change in language and the references to nature.⁶¹ On International Mother Earth Day, 22 April 2020, the United Nations Harmony with Nature speech, listed examples of the changes in perception around the world including mention of the degrowth movement, various Presidents' and Prime Ministers' movement away from GDP as the primary indicator for the countries wellbeing, and 'restoring humanity's broken relationship with the land and with Nature as a whole'.⁶² But it is the statement, in paragraph 36, regarding being 'guided by the laws of the Earth' that reinforces the ecosystem or natural jurisdiction ideal.⁶³

Laws of the Earth require thinking beyond borders. The European Union (EU) has broached this paradigm and dented the sovereign armour a bit with overarching regulations such as the Habitats Directive where nature protection is enforceable across all EU member states.⁶⁴ While the EU has extended its jurisdiction outside the EU before⁶⁵ it is now proposing to extending its obligations to environment worldwide via a proposed illegal deforestation legislation.⁶⁶ The framework also breaks

⁵⁷ *ibid.*

⁵⁸ Christopher Stone, *Earth and Other Ethics: The Case for Moral Pluralism* (Harper & Row 1977). 39

⁵⁹ Kurt A Strasser, 'Visions of "Eco-Law": A Comment on Capra and Mattei, The Ecology of Law: Toward a Legal System in Tune with Nature and Community.' (2017) 7 *Accounting, Economics, and Law* 1 <<https://doi.org/10.1515/ael-2016-0058>> accessed 11 December 2020.

⁶⁰ Fernández-Herrería and Martínez-Rodríguez (n 55).

⁶¹ Boyd (n 41).

⁶² UN Harmony with Nature A/75/266 United Nations General Assembly: Seventy-fifth session Item 18 (g) of the provisional agenda Sustainable Development Harmony with Nature Report of the Secretary-General 28 July 2020.

⁶³ *ibid.*

⁶⁴ Alison E Beresford and others, 'The Contributions of the EU Nature Directives to the CBD and Other Multilateral Environmental Agreements' (2016) 9 *Conservation Letters* 479.

⁶⁵ Jan Klabbbers, *International Law 2nd Edition* (Cambridge University Press 2017). 105 citing the *Wood Pulp* case

⁶⁶ Aleksandra Heflich, 'An EU Legal Framework to Halt and Reverse EU-Driven Global Deforestation: European Added Value Assessment' [2020] European Parliament <[https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU\(2020\)654174](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2020)654174)> accessed 19 November 2020.

new ground for the EU where it considers that ancient forests are candidates for legal status (though it struggles with how to best incorporate this step).⁶⁷

The illegal deforestation plan is one way where the EU legislation, while a good start, misses the connection with territory and relies on proxy (corporations) to ensure compliance. But it also perpetuates the remoteness of the issue for consumers and the potential disenchantment of people on the ground. The plan arguably may be too fragmented to accomplish much.⁶⁸ Feasible goals require more connectivity.⁶⁹ Fragmentation, akin to disconnection, is where most of our environmental laws fall apart.

The New Zealand Te Urewera Act⁷⁰, which gave the national park Te Urewera legal personhood, is a radical change as it was developed for the 'benefit of the land' instead of control by state.⁷¹ The ethic of the plan for Te Urewera topples Hobbes' theory but aligns with Ochoa Espejo's consideration of our connection as our 'duties to the place'.⁷²

The Yellowstone to Yukon Conservation Initiative⁷³ also embodies this idea. Protecting such a large corridor requires trying to reach a pragmatic consensus that works for nature and people including other conservation groups, business, ranchers, First Nations, ecologists, politicians, lumber and extraction companies (and their shareholders) across two countries.⁷⁴ Just as this ecosystem does not abide by state lines, the initiative has to navigate variety of laws and policies from both sides. Ecological boundaries need to be respected over regional ones, and grassroots efforts over political wrangling.⁷⁵ To really work, the legal workings will need to, to borrow Pahuja's term, *encounter* the ecosystem.⁷⁶ It has done so by moving away from negative language to one of acknowledging the connectedness and

⁶⁷ European Parliament, 'EU Legal Framework to Halt and Reverse EU Driven Global Deforestation' <<https://oeil.secure.europarl.europa.eu/oeil/popups/printsummary.pdf?id=1637022&l=en&t=D>> accessed 19 November 2020.

⁶⁸ Heflich (n 66).

⁶⁹ Lutz Newton and Freyfogle (n 40).

⁷⁰ Te Urewera Act 2014 (NZ).

⁷¹ Tănăsescu (n 3).

⁷² Ochoa Espejo (n 5).

⁷³ <https://y2y.net/about/>

⁷⁴ Suzanne Lorton Levesque, 'Yellowstone to Yukon Conservation Initiative: Reconstructing Boundaries, Biodiversity and Beliefs', *Reflections on Water: New Approaches to Transboundary Conflicts and Cooperation* (2001).

⁷⁵ Peter Aengst, 'The Yellowstone to Yukon Initiative: A New Conservation Paradigm to Protect the Heart of North America', *Proceedings of a conference on the biology and management of species and habitats at risk* (1999).

⁷⁶ Pahuja (n 6).

celebration of nature.⁷⁷ It is in some ways similar to Ecuador's constitution which cites that nature rights are not restricted to political territories but speak to 'all of Earth's ecosystems'.⁷⁸

Summary

As David Kennedy remarked, 'sovereignty is bound up with war'⁷⁹ but as Mr. Guterres' continued in his speech, 'Nature always fights back and is already doing so with growing force and fury'.⁸⁰

Ochoa Espejo asks 'what would self-determination mean if we were to think of territories and draw borders in terms of the internal complexity of place-specific relations, rather than following the main economic concerns at the level of states and empires?'⁸¹ I would like to extend that question to consider from a nature-community aspect as well. Nature needs the authority to draw the line.

Development needs to work in a way that respects ecological integrity. There are limits and we are surpassing them at greater and greater rates of speed. Which means growth, as we know it, must change.⁸² I conclude with my argument that, if environmental law is to work, it needs to be more grounded in the actual jurisdiction of nature. Which means it needs to see the ecological limits as hard limits, not aspirational goals. It needs to fiercely protect the resources for the common good for these limits are the essential, real territorial boundaries. In essence, nature is the authority we must abide by, if not for its sake, then for our own good.

⁷⁷ Charles C Chester, 'Yellowstone to Yukon: Transborder Conservation across a Vast International Landscape' (2015) 49 *Environmental Science & Policy*.

⁷⁸ The Rights of Nature, 'Ecuador Adopts Rights of Nature in Constitution' <<https://therightsofnature.org/ecuador-rights/>> accessed 21 March 2020.

⁷⁹ David Kennedy, 'Lawfare and Warfare' in James Crawford and Martti Koskenniemi (eds), *The Cambridge Companion to International Law* (Cambridge University Press 2012). 158

⁸⁰ Fiona Harvey, 'Humanity Is Waging War on Nature, Says UN Secretary General' *The Guardian* (2 December 2020) <https://www.theguardian.com/environment/2020/dec/02/humanity-is-waging-war-on-nature-says-un-secretary-general-antonio-guterres?CMP=Share_iOSApp_Other> accessed 5 December 2020.

⁸¹ Ochoa Espejo (n 5).113

⁸² Beckett (n 19).

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