The Legal Lives of Forests:
Law and the other-than-human in the Andes-Amazon, Colombia.

(An anthropological and legal theory approach)

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ABSTRACT

Legal institutions exclusively focused on human perspectives seem insufficiently capable of addressing current socio-ecological challenges in the Andean-Amazonian foothills of Colombia. It is critical to probe new analytical frameworks that integrate other-than-human beings within legal institutions and decision-making protocols in this region. Such an approach weaves together various fields of knowledge and world-making practices that include—but are not limited to—Indigenous legal traditions, ecological law, multispecies ethnography, and ecological economics. My dissertation discusses how human and other-than-human beings such as medicinal plants and what Indigenous peoples in Southwestern Colombia call the "invisible ones" (*los invisibles)* co-create legal protocols and institutions. Furthermore, it studies the conceptual openings, methodological challenges, and ethical conundrums of this approach for the broader Earth Law movement, particularly the rights of nature. What happens when we consider forms of agency beyond symbolic and multicultural frameworks in legal theory and practice? How does a law that emerges from plant-human-"invisible" peoples' entanglements challenge concepts of justice, agency, and value in times of socio-ecological transitions? How do forests become legal agents through different sets of territorial practices? My dissertation combines a multi-sited ethnography and a post-humanist approach in anthropology, law, and decision-making theory to study the entangled lives of law and ecology in the regions of Nariño and Putumayo, as well as the potential contributions of this framework towards a post-anthropocentric legal theory. In conversations with biologists, Indigenous practitioners from the Cofán and the Inga communities, legal scholars, and medicinal plants, particularly *Yoco* (Paullinia yoco) and *Yagé* (Banisteriopsis caapi), *Legal Lives* looks at how legal institutions emerge from the fabric of human and other-than-human forms of agency. This relational approach is at the core of the Earth Law movement and the radical paradigm shift it proposes for legal theory and practice in Latin America and beyond.

The dissertation is divided into three parts. The first one (*I. Towards a Law Otherwise*) offers an ethnographic approach to the law and comprises two chapters on the relationship between medicinal plants and legal protocols. Moreover, it includes three sub-chapters with the name of three different plants where I discuss the implications of vegetal agencies for socio-legal thought in the Andean-Amazonian region today. To further explore the connections between other-than-humans and the law, chapter 2 ("*Los Invisibles*") focuses on the making of an ethnobotanical research protocol with humans, plants, and what members of the Cofán community in the regions of Nariño and Putumayo refer to as the "invisible people" (*los invisibles).* Thus, *Towards a Law Otherwise* provides an ethnographic and conceptual basis to support the theoretical claims of the second part of the dissertation, namely: *The Rights of Nature: Limits and Possibilities*. Part II addresses some of the conceptual limits and political possibilities of the Rights of Nature in Latin America in the context of an emerging Earth Law movement. By attending to the social and legal worlds of other-than-human beings introduced in the first part of the dissertation, *Rights of Nature* proposes to reimagine fundamental premises of social and legal sciences at present, namely, (a) the idea that the law is primarily symbolic or propositional; (b) the notion that rights and responsibilities are commensurable across different legal cultures and cosmologies (Ch. 3

"Conjuring"), and that (c) the concept of legal personhood is fundamental for legal redress (Ch. 4 "Forest on trial"). Part II, a contribution to a relational theory of legal agency, therefore critically assesses core notions of Western law such as legal personhood, standing, rights and responsibilities. The third and final part of the dissertation (*III. Rhizomatic Agencies*) reviews and summarizes the argument concerning agency and discusses how parts I and II could serve as tools for legal transformation in concrete scenarios of learning and judicial decision-making. A summary of agency theory with ethnographic insights from the first section, chapter 5 ("Agency Scaffolding") dives into the limits of individual and collective forms of agency and explores the possibility of plural and rhizomatic agencies that include other-than-human beings in decision-making protocols. Chapter 6 ("Worlding with Indigenous Law: A teaching and learning proposal") can be considered as coursework material concerning Indigenous legalities. It refers to a specific Indigenous legal tradition—the Inga—as it transforms State law, while contributing with an emerging global Earth Law movement. The dissertation closes with a syllabus on "Indigenous legal traditions: from the Boreal to the Amazonian forests" (Chapter 7).

RÉSUMÉ

Les institutions sociales centrées sur l'humain et l'individu semblent insuffisantes pour faire face aux crises socio-écologiques actuelles. Il est nécessaire d'explorer de nouveaux cadres d'analyse qui nous permettent de reconnaître les manières dont les êtres non humains participent à la prise de décision et à la conception d'institutions sociales telles que le droit. Un concept élargi d'agence incluant de tels êtres est crucial et nécessite de combiner, d'une part, des domaines de connaissance tels que le droit indigène, l'anthropologie et l'économie écologique et, d'autre part, des méthodologies ethnographiques et une analyse juridique critique. Cette thèse étudie comment les êtres humains et les êtres plus qu'humains, par exemple, certaines plantes médicinales et ce que les peuples indigènes du Sud-Ouest de la Colombie appellent « les invisibles », interviennent dans la prise de décision concernant le territoire, et les implications de cette analyse pour le droit de la Terre émergent, y compris les droits de la nature. Qu'advient-il de la prise de décision "environnementale" lorsque nous étendons l'agence "sociale" au-delà des cadres de représentation culturelle et symbolique ? Quels sont les défis méthodologiques et éthiques de cette approche ? Pour répondre à ces questions, la thèse combine la philosophie du droit et l'anthropologie des relations entre les agents humains et plus qu'humains dans la région Andino-Amazonienne de Colombie (Nariño et Putumayo). En conversation avec des ethnobotanistes, des praticiens indigènes des peuples Cofán et Inga, des spécialistes du droit et des plantes médicinales telles que le yoco (Paullinia yoco) et le yagé (Banisteriopsis caapi), la thèse cherche à montrer comment des institutions telles que le droit peuvent émerger d'un réseau d'agences humaines et plus qu'humaines que nous appellerons "agences rhizomatiques". Notre objectif est de montrer comment l'agence et la prise de décision "environnementale" dépassent les domaines humain et symbolique et, en même temps, les domaines normatif et multiculturel dans les contextes néo-extractifs des contreforts andino-amazoniens. La violence coloniale, l'injustice socio-écologique et les économies néo-extractives de la région reposent sur des prémisses anthropocentriques, centrées sur le marché et sur l'État. Au-delà de ces prémisses, une nouvelle approche alignée sur une loi de la Terre propose un changement radical de paradigme dans les modèles juridiques, afin de réparer les communautés et de guérir les relations socio-écologiques. Ainsi, la thèse cherche à penser la prise de décision et le droit au-delà et avec l'humain et, de cette façon, à contribuer à la conception d'institutions qui prennent au sérieux la voix de ces êtres qui ne parlent pas ou ne pensent pas avec des mots.

La thèse est divisée en trois parties. La première (*I. Vers un droit autrement*) considère une approche ethnographique du droit et comprend deux chapitres sur la relation entre les plantes médicinales et les institutions juridiques dans la région andino-amazonienne de Colombie. Ces chapitres illustrent pourquoi l'interface entre les êtres autres qu'humains et les institutions, par exemple les normes et les protocoles de prise de décision, est importante aujourd'hui. Le premier grand chapitre comprend trois sous-chapitres portant le nom de trois plantes différentes, dans lesquels j'examine les implications des organismes végétaux pour la pensée socio-juridique dans cette région. Pour approfondir ces liens entre les autres que les humains et le droit, le chapitre 2 ("Los *Invisibles*") se concentre sur l'élaboration d'un protocole de recherche ethnobotanique avec les humains, les plantes et ce que les membres de la communauté Cofán des régions de Nariño et

de Putumayo appellent les "personnes invisibles". *Vers un droit autrement* offre une base ethnographique et conceptuelle pour soutenir les revendications théoriques de la deuxième partie de la thèse, à savoir *II. Les droits de la nature* : Limites et possibilités. Cette deuxième partie traite de certaines des limites et possibilités conceptuelles de la clause des droits de la nature en Amérique latine dans le contexte d'un mouvement régional et mondial émergent du droit de la Terre. En s'intéressant au monde social et juridique de la plante présenté dans la première partie de la thèse, les droits de la nature suggèrent de réimaginer les prémisses fondamentales des sciences sociales et juridiques actuelles, à savoir : i) le droit est principalement linguistique ou propositionnel ; ii) les droits et les responsabilités sont commensurables dans toutes les cultures et cosmologies juridiques (chapitre 3 "Conjurer"), et iii) l'identité de la personne est fondamentale pour la réparation juridique (chapitre 4 "La forêt en procès"). Ainsi, en tant que contribution à une théorie relationnelle de l'agence juridique, la partie II évalue de manière critique les notions fondamentales du droit occidental telles que la personnalité juridique, la qualité pour agir et les droits. La troisième et dernière partie de la thèse (*III. Agences rhizomatiques*) examine et résume l'argument principal concernant l'agence et discute de la manière dont les parties (I) et (II) pourraient servir d'outils de transformation juridique dans des scénarios concrets d'apprentissage et de jugement. Un résumé de la théorie de l'agence avec des aperçus ethnographiques de la première section, chapitre 5 ("Échafaudage de l'agence") sonde les limites des formes individuelles et collectives de l'agence, et la nécessité de tenir compte des agences plurielles et rhizomatiques qui incluent des êtres autres qu'humains dans les protocoles de prise de décision. Le chapitre 6 peut être considéré comme un support de cours concernant les légalités indigènes. Il fait référence à une tradition juridique indigène spécifique - l'Inga - qui transforme le droit étatique, tout en contribuant au mouvement émergent du droit de la Terre. La thèse se termine par un programme d'études sur les "Traditions juridiques indigènes et la décolonisation" (chapitre 7).

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PREFACE AND CONTRIBUTIONS TO KNOWLEDGE

Overview

1. The following elements of the thesis are considered original scholarship and potential contributions to knowledge. Part I (*Towards a Law Otherwise*) proposes an ethnographic approach to law, while studying the relationships between other-than-human beings, territorial governance, and legal institutions in the Andean-Amazon region of Colombia.[1] Thus, *Towards a Law Otherwise* can be considered as one larger ethnographic and theoretical argument concerning the socio-legal agency of plants and non-visible peoples in Southwestern Colombia (Andes-Amazon). **It suggests expanding normative systems such as law and ethics beyond anthropocentric views, while providing an empirical and theoretical basis for a critical ontological approach to legal tools such as the rights of nature in the Latin American context and beyond.**

2. Recent norms and judicial decisions on the rights of nature (RON) place life at the center of legal discourse in Latin America. This legal transformation thus purports to upend the paradigm of solely human legal subjectivity in recognizing the personhood of natural beings such as animals, rivers, and forests. Yet, the RON approach seems to depend on an assumption that the form of law is primarily symbolic and propositional. In this way, it reveals another critical modern assumption: the law is a system of norms made by humans to regulate human conduct in relation to an externally existing natural world, thereby insisting on a separation between law and ecological systems. Thus, part II (*The Rights of Nature: Limits and Possibilities)* argues that recognizing nature as a legal person and subject of rights falls short if *law* is understood as a matter of human language only and *nature* is understood as an adequate representation of cosmological interdependencies. The thesis of law as language *only* seems to reinforce a much-contested rift between mind and body; culture and nature, among other boundary-making

[1] I borrow the term "other-than-human" from de la Cadena 2014, 2015.

notions at the root of modern thought and practice. **Part II contributes a study of the conceptual limits and possibilities of the nature´s rights clause in Latin America within an emerging global Earth law movement.** By attending to the social and legal worlds of human and other-than-human beings introduced in part I, *Rights of Nature* suggests reimagining core premises of social and legal sciences. Moreover, **as a contribution to a relational theory of legal agency, it critically assesses basic notions of Western law such as "legal personality," "standing" and "rights" thus joining social and scholarly efforts to reorient the law as an instrument of transformation in contexts of neo-extractivism and colonial violence.**

3. The third and final part of the dissertation (*Rhizomatic Agencies*) reviews and summarizes *Legal Lives'* argument concerning agency and discusses how parts I and II could serve as tools for legal transformation in concrete scenarios of legal learning and adjudication. Digging into agency theory with ethnographic insights from the first section, **part III explores, among other things, the limits of human individual and collective forms of agency thus holding space open for plural and rhizomatic agency proposals that include other-than-human beings in decision-making protocol**s. Partly a review of agency proposals in various disciplines, *Rhizomatic Agencies* further explores the "agency problem" in ecological economics and proposes an ethnographically inspired concept of agency beyond human-only, atomized, individualistic, and solely rationalistic proposals that are frequent in collective action approaches at present. Moreover, Indigenous legal traditions expand legal agency beyond the human to include spirits, animals, plants, and other beings. **Therefore, part III contributes a selection of coursework material concerning Indigenous legalities and shows how a particular Indigenous legal tradition, the Inga, is transforming state law in the context of the Earth law movement.**

Specific contributions

4. With an interdisciplinary approach grounded in social and environmental research**, *Legal Lives* proposes different ways to study environmental and social conflicts beyond top-down and anthropocentric paradigms. It investigates how local legal practices challenge and transform**

mainstream environmental governance models; for example, the dissertation shows how other-than-human beings have been integrated into decision-making protocols in Amazonia and explores several conceptual, ethical, and practical implications of this approach for Western legal traditions. This line of research continues my previous ethnographic engagement with several communities across the Amazonian plains and the Andean foothills of Colombia, while following socio-cultural practices with different medicinal plants. In addition, plant practices are part of Indigenous struggles for territorial autonomy, and they go far beyond strictly ethno-ecological frameworks. A non-anthropocentric approach to human and other-than-human relations, *Legal Lives* contributes an empirical and conceptual framework for the growing fields of ecological and earth law and governance (see Anker et al 2021, Garver 2021, 2019, Pellizzon 2014).

5. Furthermore, *Legal Lives* follows Indigenous scholars, ethnobotanists, and legal thinkers, while integrating various interdisciplinary strands: from Earth law and Indigenous legal theory to territorial governance, and plant studies**. Therefore, *Legal Lives* contributes new ways to weave together the field of plant sentience and intelligence and relational approaches in social theory in Latin American.** In this sense, its objective is to provide an empirically sound and conceptually rich framework for the emergence of new ethical and legal possibilities that would allow us to face crucial socio-ecological challenges in this region.

6. Law and economics must work in tandem. **While *Legal Lives* expands social agency beyond the human, it also problematizes decision-making theory which is typically based on monetary valuation and anthropocentric notions of collective action**. Thus, *Legal lives* offers a non-anthropocentric framework in decision-making theory that integrates Indigenous theories of value into plural values scholarship. For instance, it assesses the limits and possibilities of relational epistemologies, namely the interface between humans and other beings and the kind of thinking it capacitates for economic theory. In particular, the dissertation probes whether a non-anthropocentric approach can contribute to the transformation of environmental and natural

resource economics, which are based on monetary valuation and consider the human as the only social and economic agent.

7. To the extent that it is possible or pertinent, ***Legal Lives*** **seeks to integrate Indigenous thinking and legal traditions into existing legal pluralism scholarship and teaching**. Inspired by the idea of restoring the Earth's life support capacities and the social practices needed for this goal, the dissertation joins ongoing scholarly efforts in disciplines such as law, anthropology, and economics that attempt to go beyond the notion that the individual or the group are the only decision and law-makers.

8. Moreover, *Legal Lives* investigates how non-anthropocentric thinking and practice interrogate constitutional law in Latin America by thoroughly analyzing the rights of nature clause through the lens of anthropological theory and Indigenous traditional plant knowledge. ***Legal Lives*** **expands the notion of legal standing using an ecological lens, while exploring the limits and possibilities of the "rights of nature framework.**" This framework is often based on modern notions of "personhood", "rights" and taken-for-granted colonial relations and extractivist agendas.

9. One of the overall ethical-political objectives of the dissertation is to contribute to the transformation of environmental law. *Legal Lives* finally claims that positive law is usually based upon the pervasive separation between humans and nature (as illustrated by conventional models of property) and therefore that we need an ecological law informed by scientific inquiry, Indigenous epistemologies, and other-than-human agencies. This *new* law should be attentive to local life experiences and conceptual practices and thus problematize categories such as "traditional knowledge," "Indigenous legal customs," and "multicultural frameworks," among other concepts. *Legal Lives'* keen interest in ethnographic work in Amazonia and—building upon the work of several scholars—Indigenous Law aligns with system-based approaches to the law and environmental governance too. However**, it recognizes the limits of human epistemologies**

and even the very possibility of "knowing" the ways of life on which Indigenous legal traditions are based.

In brief, *Legal Lives:*

1. **Furthers scholarly efforts towards a relational, place-based, and enactive theory of law for/from post-extractive Amazonia.** By weaving together three non-anthropocentric legal approaches, namely Indigenous legal traditions, ecological law, and ontological frameworks in legal studies, *Legal Lives*:
    a. **explores how these non-anthropocentric legal approaches deal with the material and ontological dimensions of law-making in Amazonia** (i.e. how does an ontological approach to the law look like in post-extractivist Amazonia? What are the world-making possibilities of non-anthropocentric approaches to law?)
    b. **explores how these approaches describe the relationship between legal environmental principles, values, and positive norms, and post-anthropocentric theories in social sciences and plant studies** (i.e. Are the rights of nature still anthropocentric? In what sense are plants a kind of prototype of cosmological interdependencies?)
    c. **identifies common (dis) agreements between these legal approaches concerning concepts** such as: a) the sources of the law, b) legal personhood and standing, c) justice and d) rights (i.e. how expanded notions of agency and justice that include other-than-human beings are mobilized and contested in post-extractivist Amazonia?)
    d. **analyzes how the law may look like at the interface between humans and plants** (Do other-than-human beings produce law? Do they have a 'say' in decision-making processes? How can we see this in practice at the level of the state?)

2. **Methodologically**, this thesis proposes a novel scholarly intersection between:

a. a **law beyond the human,** and the ethnographic study of how communities of practitioners (Indigenous and not) produce legal concepts in Southwestern Colombia. Particularly, how different agents engage with, produce, and get produced by a law "otherwise" through ritual and other embodied practices.
b. a legal hermeneutics, or a close reading of statutes, jurisprudence, and other forms of law in what *Legal Lives* calls a **comparative praxis of legal cosmologies** (chapter 3).
c. an extensive literature review on post-humanism, plant studies, Earth Law, and agency theory in connection to legal questions.

3. **Potential policy contribution:** There are many policy proposals regarding Indigenous Traditional Knowledge (TK) and Traditional Ecological Knowledge (TEK) in the Andean-Amazonian context (Caldas 2004; Nemoga *in press*). Comparatively, however, there is less explicit attention to Indigenous law and governance concepts and practices in policy frameworks for this region: *Legal Lives* proposes conceptual and practical elements towards a regulatory framework on *Indigenous Territorial Governance Systems for post-extractivist transitions in Amazonia.* With this, *Legal Lives* stands at the intersection between socio-ecological systems, environmental policy, and anthropological theory in a bio-culturally diverse and geopolitically contested region of the world.

Table 1: Summary of *Legal Lives'* potential scholarly contributions

CHAPTERS	FIELDS OF POTENTIAL CONTRBUTIONS
CHAPTER 1.1: Yoco *(Paullinia yoco)*: Cooling down the mind and learning law where the *law* is not named as such. **CHAPTER 1.2.** *Yagé* (*Banisteriopsis caapi):* "Moving words across worlds." **CHAPTER 1.3.** *Coca Leaf:* Territories in motion and learning law with the Amazonian "*mambe.*"	*Anthropology of plant-human relations*

CHAPTER 2: *"Los Invisibles:"* The Making of an Ethnobotanical Research Agreement with Humans, Plants, and 'Spirits' in the Colombian Andes (Nariño).	*Indigenous STS*
CHAPTER 3: Conjuring Sentient Beings and Relations in the Law: Rights of Nature and a Comparative Praxis of Legal Cosmologies.	*Legal theory and methodology/Earth Law*
Box 4: Other-than-humans and the law: Towards a Multinaturalist Jurisprudence.	*Constitutional hermeneutics in Latin America*
CHAPTER 4: Forest on Trial: Towards a Relational Theory of Legal Agency for Transitions into the Ecozoic.	*Legal theory / Earth Law*
CHAPTER 5: Agency Scaffolding: From Individual to rhizomatic agencies. Review and proposal.	*Ecological Economics / Plural Values*
CHAPTER 6: Worlding with Indigenous law: A teaching and learning proposal.	*Indigenous Legal traditions in Latin America / Earth Law / policy / legal education*
CHAPTER 7: Indigenous Legal Traditions: from the boreal forests to the Amazonian foothills. A syllabus.	*Indigenous Legal traditions/legal education*

CONTRIBUTION OF AUTHORS

Iván Darío Vargas Roncancio is the primary author of all chapters of the thesis. Mr. Vargas-Roncancio has led all stages of the research and writing and is fully responsible for its content and publication. Professor Nicolas Kosoy (McGill-NRS) provided academic supervision, intellectual guidance, and methodological and theoretical development in support of all chapters. Additionally, professor Kosoy co-authored chapter 5. Professor Eduardo Kohn (McGill-Anthropology), co-supervisor of the thesis, provided intellectual guidance, comments and suggestions at various stages of this thesis, particularly chapter 4. Professor Kirsten Anker (McGill Law) provided intellectual guidance, comments, and editing for chapter 3, and other aspects of the development of the thesis. *Taita* Hernando Chindoy Chindoy a traditional authority of the Inga Indigenous community of Colombia shared his vision of Inga law in chapter 6, section 4. Finally, Colombian ethnobotanist David Rodríguez-Mora offered first-hand experience

working with the Cofán people on local ethnovarieties of a highly valued medicinal plant in the Andean region of Nariño (chapter 2).

As a manuscript-based thesis, the chapters are identical to their published versions including individual reference lists. Formatting of these chapters has been changed only for consistency of headings, citation style, and page format per the guidelines of the Graduate and Postdoctoral Studies Office of McGill University.

List of publications

Chapter 3: Vargas Roncancio, I.D. (2021). "Conjuring Sentient Beings and Relations in the Law: Rights of Nature and a Comparative Praxis of Legal Cosmologies." In Anker, K., Burdon, P., Garver, G., Maloney M., & Sbert, C. (eds.). *From Environmental to Ecological Law*, London – NY: Routledge.

Chapter 1.1, section 2: Vargas Roncancio, I.D. (Sept. 2021*).* "Yoco (*Paullinia yoco)*" In Ryan, J., Gagliano, M., and Vieira, P., (eds.) *The Mind of Plants*. Synergetic Press: Santa Fe.

Abridged version of chapter 6: Vargas Roncancio, I.D. and Chindoy, H., (2021). "Indigenous Legalities." In Zelle, A., Wilson, G., Adam, R., Greene, H., (eds.). *Earth Law: Emerging Ecocentric Law. A practitioner's Guide*. Aspen Coursebook Series. Wolters Kluwer.

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INTRODUCTION: LAW AND THE PLURIVERSE

1. A story of encounters: a semiotic 'warfare'?

On a foggy night in October 1536,[2] coming from an expedition through the Orinoco River, *Conquistador* Federmann's troops retreated in fear at what they saw through the mist while surveying the Andean *páramos* of *Sumapaz*.[3] From a nearby plateau veiled by slowly descending clouds, the Spaniards were able to descry what looked like thousands of men wearing friar-like gowns and feather headdresses across several acres of winding hills (Moreno 2015, 13). As the freezing wind of the Andes slipped through their bodies like hundreds of minuscule razors, a shivering soldier dropped his bayonet on the ground. A frightened captain managed to drink the last gulp of whiskey from his corroded flask, as Federmann gathered his meagre cavalry giving the unavoidable order to retreat. What did Federmann's soldiers see through the fog?

The Colombian historian J.J. Borda described the state of the troops as they approached the Andean region of *Sumapaz*, located only a few miles Southeast from the newly founded city of *Santa Fe de Bogotá*: "Two days after Hernán Pérez's return to Bogota, a couple of indigenous folk brought a message from Lazaro Fonte. The message warned Quesada about the arrival of a group of Spaniards coming from the mountains of Sumapaz. The people he sent there noticed that the Spaniards were under the command of captain Federmann. The captain came from Venezuela … his troop was almost naked and in the most miserable situation and followed by dozens of famished dogs" (Borda 1904, 43).

[2] The next couple of pages are an abridged version of selected excerpts from an earlier work: Vargas-Roncancio 2017, 68-70 (Plants and the Law). Crucial to the conceptual and ethnographic argument of this thesis, these short excerpts are my point of departure for this thesis.

3 The Colombian mountainous region of Sumapaz was a pilgrimage site for the Muisca indigenous peoples in pre-Columbian times. Today, the people inhabiting this land depend on small-scale farming and livestock. For a political history of this region see Londoño 2011.

Famished and largely outnumbered, the Spaniards feared what they believed were hundreds of "merciless savages" in the distance ready to defend their land: "Confusing *frailejones* for hundreds of Indigenous men in battle positions, the Spanish troops finally withdrew the attack and sought the way back home. Thus, began a "magical resistance" of the *paramo* [the moors]."[4]

Did the soldiers see a human crowd as they surveyed the terrain? In the scene, the Spaniards were convinced that they were standing before hundreds of enemy lines in the distance. In fact, according to Northern Andes oral renditions of vegetal life, "the group of plants called *frailejón [Lat. espeletia]* acquired their name as a result of their perceived similarity with a friar walking partially hidden by the fog" (Zent and Zent 1999, 155). Precisely, Federmann's withdrawal occurred thanks to the perspective that rendered visible an army of humans instead of an "army" of shrubs.[5] Is such an episode a matter of representation or cultural belief only?

As this story of deterrence and survival in the Northern Andes suggests, the ontological boundaries between living entities can be quite blurry in conditions of exhaustion, hunger, and fear of the unexpected. The possibility of vegetal deterrence (plants influencing human behavior) may well be a literary trope to expose a productive misperception: when reality becomes a matter of distance and proximity, humans can truly see members of their own species concealed as *frailejones* (plants). Despite this explanation, narratives of a "misperception of reality" or "cultural belief of backward peoples" do not seem to foreclose other ways of engaging with these instances of plant-human relations in the past and in the present.

The misperception solution rests on an anthropocentric premise whereby interpreting and creating the world is only a matter of human values, experiences, material and symbolic technologies, and social institutions.[6] Challenging this underpinning premise of modernity, my

4 My translation. Original in Spanish: Al confundir los frailejones con hombres indígenas en posiciones de batalla y observar las filas que se repetían cientos de veces, las tropas españolas desistieron del combate y buscaron el camino de regreso que los había llevado hasta allí. Se iniciaba así una 'resistencia mágica' desde el páramo." Moreno 2015, 11.
5 On the notion of perspectivism, see Viveiros de Castro 1998.
6 For the notion of 'antropocentrismo fuerte' (hard anthropocentrism) see Mesa Cuadros 2013.

dissertation joins ongoing scholarly and social efforts towards non-anthropocentric concepts of politics, law, and society to address crucial challenges in the Amazon and beyond (See Anker 2017, De la Cadena 2015, Escobar 2020, Kohn 2013, Kosoy et al. 2012).

Since 2007, I have enjoyed life-changing learning experiences alongside Inga, Cofán, and Murui Indigenous communities of the Andean-Amazonian region, which have fundamentally challenged and transformed my approach to life and legal thinking. For example, several dialogues with members of these communities have taught me a valuable lesson, which, in paraphrasing legal scholar Boaventura de Sousa Santos, can be summarized as follows: *we are facing modern problems for which there are not (always) modern solutions.*

For example, the 2019 fires in much of the Amazon—particularly in Brazil—express this exacerbated modernity in agricultural systems: the exponential expansion of soy monocrops to feed agroindustries will not solve the modern problems of biodiversity loss, illegal grabbing of Indigenous lands and racialized violence against local populations. Conversely, the return to Indigenous territorial logics of care and small-scale food production seem better solutions to address the loss of local agro-ecosystems, the protection of fragile ecologies and the strengthening of local cultures. I firmly believe that Indigenous knowledge and lifeways should be at the forefront of contemporary debates around socio-ecological challenges worldwide, and a post-anthopocentric legal theory and practice is a step in this direction.

Discussing the ontological and epistemological underpinnings of legal disciplines such as environmental law and legal theory, this dissertation draws from several critical methodologies in the legal and social sciences and the humanities, which, broadly speaking, seek to reflexively explore how legal doctrines, norms, and practices may perpetuate colonial, imperial and "Western-centric" views and ways of thinking, living, and being, but also how legal theory and practice can contribute to epistemic justice and the decolonization *of* and *through* the law. In my view, this approach is at the center of legal pluralism and socio-ecological justice across civil, the common law, and Indigenous legal traditions of the hemisphere.

To be sure, such a post-anthropocentric approach to law and society suggests that institutions and decisions also emerge through the encounter between humans and other-than-human beings (Harris 2015, Vargas 2017). For Amerindian communities in Southwestern Colombian Amazon, for instance, plants such as yoco (*Paullinia yoco*), coca (*Erythroxylum coca*) and those mixed in the *ayahuasca* brew,[7] among others, play central political and normative roles within and outside their territories (UMIYAC 2000). These plants are considered sources of knowledge and authority, as well as the origin of law itself.

Returning to the opening story, the Spanish troops would have advanced in their attack had they learned that these lines of enemies in the distance were, in fact, a bunch of "harmless" plants with anthropomorphic shapes. In this case, the encounter between plants and humans was rendered impossible simply because those beings concealed under the mist were never vegetal from the perspective of the Spaniards. They were "literal" humans rather than human-like beings. In other words, the Spanish soldiers would have likely pursued the attack had they perceived resemblance (plants that looked like humans) instead of identity (humans like them).

The fear of the unknown coupled with the environmental conditions of the moor rendered the *frailejones* of *Sumapaz* blissfully imperceptible as plants and eventful as human people. Could we venture to say that the Spanish became animists by default, or even that the *páramo* (the moor) was defending itself? Are we to far off to say that the almost-invaders *produced humanity* out of plants? In other words, perceiving "plants" was impossible (and yet, not unthinkable) from the Spanish's point of view, as the troops faced countless lines of human enemies ready to attack. This eventfulness of the human across species, so to speak, is crucial for the concept/practice of the pluriverse (Escobar 2018, Kothari et al. 2019) and the way we can (or can't) connect this

7 The chacruna plant is a perennial shrub used in the preparation of the ayahuasca brew. The Cofan will call it "yage." The name comes from the Quechua verb 'chaqruy' meaning 'to mix'. Also, this plant is combined with the Banisteriopsis caapi vine for the preparation of the brew also known as yajé. The term comes from the Quechua as well, and it has been translated as the 'vine of the soul.' For further reference see: Daniel Mirante, On the Origins of Ayahuasca (online) 31 August 2008 <http://www.ayahuasca.com/ayahuasca-overviews/on-the-origins-of-ayahuasca/ (last accessed 24 October 2020. >(last accessed 4 February 2017.

concept/practice with normative statements such as this one: humans **must** respect the *páramo* and the *frailejones* because they are living entities like us (humans).

Drawing upon Brazilian anthropologist Eduardo Viveiros de Castro, the Spanish soldiers were before an instance of equivocation, that is, "not only a failure to understand (…) but a failure to understand that understandings are necessarily not the same, and that they are not related to imaginary ways of seeing the world [i.e. plants] but to the real worlds that are being seen ["i.e. human beings"]" (Viveiros de Castro 2014, 11). The question here is not so much *what* a human being *is* (essence), but rather *when* a being is rendered human in inter-being encounters, and for what social, political, and normative ends.

In other words, can friar-like plants be considered people, for instance, in a court of law? (Hall 2011) Should they be granted "human qualities" such as intent, decision-making, and/or intelligence before they can be considered purposeful legal agents in a legal venue? While ongoing efforts to grant rights to nature seem to offer a positive answer to these philosophical and practical questions, contrasting interpretations on the scope of these rights may lead to divergent understandings and equivocations (and certainly different ontological choices) about terms such as nature, legal agency, and justice. Does the clause of the rights of nature refer to any natural being? Does a microbe have the same right as a plant, an animal, or a mountain? How does thinking about other-than-human beings in terms of social agencies—instead of biological forces—contribute to legal theory and practice in times of socio-ecological crisis?

Anthropologist Eduardo Kohn's work with the Runa of the Ecuadorian Amazon offers an important methodological and ontological framework to reimage our relationships with other-than-humans. This framework is central to my empirical and theoretical argument about post-anthropocentric law. Kohn argues that both humans and other-than-humans use signs that are not always symbolic, that is, all species are sites of signification that are not limited to conventional,

referential, and linguistic symbols.[8] Based on Peirce's theory of signs, Kohn considers other non-symbolic modalities, namely icons and indices. An icon is a type of sign that indicates similarity to that which it represents, while an index indicates a relation of spatial or temporal contiguity with what it points to. These representational modalities "have to be brought into the anthropological agenda (…) because icons and indexes are the signs that nonhuman organisms use to represent the world and communicate between life forms." (Descola 2014: 269)

Kohn argues that "life-forms represent the world in some way or another, and these representations are intrinsic to their beings." And this means that we, humans, not only share our embodiment with other-than-human forms of life "but the fact that we all live with and through signs (…) signs make what we are." (Kohn 2013, 9). According to this approach, attributes such as cognition, memory and communication are distributed across different types of entities, rather than being the exclusive domain of humans endowed with brains and centralized nervous systems (See Gagliano 2018 for a similar argument). If "signs make what we are" there seems to be a radical continuity and interdependence between humans and other beings beyond the mere physicality of our bodies. This argument is of crucial importance for the way we define society, politics, and the law beyond modern partitions such as nature and culture, body, and mind, self and other, among others (De la Cadena 2010, Escobar 2018, Viveiros de Castro 1998, 2015).

In the initial story, the *frailejones* of *Sumapaz* were active participants in the production of an event that exceeded the idea of other-than-humans as external to a human observer in command of language and agency. *Both the Spanish invaders and the local frailejones co-emerged as humans* as they encountered each another in a nearby plateau veiled by slowly descending clouds. From the point of view of the encounter, Spaniards and *frailejones* are not pre-existent entities (Haraway 2007). Again, this idea of ***the human as an event of co-emergence*** presupposes a form of continuity across all life forms beyond the physicality of their bodies. Anthropologist Viveiros de Castro's notion of "equivocation" (2004) is an excellent conceptual tool to unravel these ideas of co-emergence and

8 Here Kohn uses Peirce's definition of a sign "as something that stands to somebody for something in some respect" (cited in Descola 2014, 271).

continuity of beings (Descola 2013).

As suggeseted above, the anthropological notion of "equivocation" defines a failure to understand that misunderstandings about the world are not the same across beings and therefore they don't refer to different *representations* of a common world or reality that plants, humans and other beings share, but to different *worlds* entirely. In the example, *frailejones* and the Spanish soldiers co-emerged through the encounter. This encounter, again, presupposed a continuity rather than a separation between the newcomers and the local *frailejones*. In fact, these *frailejones* communicated their positions or perspectives *as humans* by means of an iconic sign—a likeness with what the *frailejones* stand for from the point of view of the Spaniards, namely, an army of humans ready to defend their land. In the episode, the Spaniards were able to descry what looked like thousands of men wearing **friar-like gowns and feather headdresses—all icons of humanity**—across several acres of winding hills.

However, the "humanity of the plant," that is, what the "human" stands for as a common condition of all beings (Descola 2013) was only possible thanks to the equivocation on the part of the Spanish invaders who perceived likeness or sameness rather than difference: the Spanish soldiers *saw* (seeing as enacting a reality) hundreds of humans in battle positions rather than a forest of *frailejones*. If an equivocation is not a failure to understand what is *out there,* that is, a failure to understand what is *real*, but a failure to understand the possibility of different reals (Escobar 2018), then the Spanish's equivocation does not refer to a form of misperception leading to a form of misrepresentation (seeing humans rather than plants), but to *a real world* that is being enacted through practice ("human" *frailejones* ready to defend their land and "human" invaders ready to retreat).

Moreover, if the *frailejones* enacted their humanity through likeness or iconicity as they stand for humans (friar-like gowns and feather headdresses…), the Spanish invaders, on the other hand, enacted their own humanity by means of, with Kohn, an indexical sign: a retreat action to avoid the attack of the local friar-warriors insofar as these friar-warriors were real humans ready to

defend their territory. **To put it differently, the *frailejones* deceived the Spanish through a form of semiotic warfare, that is, embodying humanity by resemblance (an icon of the human) and by virtue of the Spanish's fear to be attacked (index of danger).** The famished and out-numbered Spaniards failed to understand and therefore retreated to save their lives. Had they succeeded in participating in the planthood of the *frailejon* the story would have been entirely different. In a way, this failure made humans out of plants. It created a world by means of practice and not only by means of representation.

The notion of co-emergence of humanity as a condition of being (Descola 2013) expresses a form of continuity of sign and matter. Continuities, however, are not universal but emplaced or place bound (Blaser 2019): neither the *frailejones* nor the Spanish humans preceded the event of their encounter but came into being by virtue of the equivocation. Thus, co-emergence through equivocation seems important to what counts as "society" because it tells us something about how the human comes to be through the relationships between different life forms (See chapter 1.1). Encounters between plants and humans, or, let us say, encounters between *humans*, can teach us something *new* about society, and what makes society work (decisions, institutions, norms) in times of deep socio-ecological changes and transitions. In a certain sense, a modern humanist analysis that separates humans from the rest of life does not seem sufficient to explain this type of encounters. If humans and other-than-humans can represent the world in myriad ways through symbols, icons, and indexes, can we say that social norms continue the logics of life? Is the law immanent to life? How does the law come into being through encounters? What is the relationship between law and ecology? (Capra and Mattei 2015).

2. The *law-ness* of life? Unlearning law "as usual" and learning law "otherwise."[9]

Discussing how ecological knowledge can imbue legal learning and practice, Alex, an US environmentalist, asked me this question a few months ago: "So, *this* would be the law. Right ? I

9 I'm here paraphrasing the "politics as usual" in De la Cadena 2010, and "anthropology otherwise" in Restrepo and Escobar 2005.

want to understand what *exactly* you mean by law, and how one can differentiate it from ecological relationships in nature." (Alex, interview, February 2020). I have encountered this challenging question many times before at different stages of my research. My first reaction was to describe my own experience as a law student, and how my perceptions about the law have changed over time as I interacted with different peoples, places, and beings. When I started to study law, I told Alex, I defined it as "justice." For me, there was no separation between social justice ideals in my home country and beyond, and the law as a normative social institution. In a way, the law was all about justice. As I learned about the history of legal ideas, you could say that I was an ius-naturalist [10] without even realizing it, simply because I did not hold any conscious separation between law and ethical systems, or better yet, the law was an ethical system of sorts.

As I started to learn about codes, decrees, statutes and constitutions, the word "law" became somewhat equivalent to the word "legal norms" and how they regulate social behaviour as well as the relationships between humans and the so-called "natural environment." I quickly became– or the law school turned me into—a "soft" positivist who hesitantly separated the law from any other sphere of life, for example, culture, morality, or environmental relations. Furthermore, when I learned how the law can also be defined by whatever was in the mind of a judge, or when I learned how the law was used to oppress marginalized communities, the positivist (law as norms) became a realist, and soon after a student of critical legal theories (Harris 2014). **All these legal schools of thought emphasized human agency or the all-too-human content of legal thought and practice.**

Towards my last year of law school," I told Alex, "I traveled to the Amazon and did fieldwork for a thesis on indigenous justice systems. There I encountered the word law in a totally different way. At times it seemed that law was everything I described above: "justice," "positive norms," "whims of an adjudicator," "power to oppress others," among other images and definitions. It seemed to me that there was a kind of imaginative space in which this word - law - had a

10 Iusnaturalism is a theory of law according to which legal norms follow a human universal knowledge on justice and harmony of relations. See Vallejo 2012.

relationship of continuity with the mountain and the river; the hummingbird, the jaguar, the beetle and the sacred liana that my friend David Rodríguez was endeavoring to study with the Cofán community in southern Colombia. **Law, then, meant nothing without the territory of all these beings or the territory as all the relations of these beings**. In fact, law did not come exclusively from the congressmen of a modern state, nor from the "cultural traditions" of local communities, nor even from a transcendental God. **There was something elusive in this word (law) that arose in our encounters with other beings.** Law, then, was closer to the idea of relations between human and non-human persons, and seemed to flourish also through these encounters (see chapter 1.1., and 4).

Moreover, law has been innumerably defined as a system of norms (Raz 1980), and I was willing to assume that law was also a "system," I told Alex, but I was less comfortable with the assumption that law was only about "norms." Law, for me, was certainly about relationships that connected people through normative arguments and emotions (Lemaitre Ripoll 2009), as well as anything that a state sanctioned to regulate social behavior (Kelsen 1991). My friend was not too concerned with this long detour. I tried to establish a definition that would assertively distinguish law from any other field of expertise (Davies 2017), but my interlocutor was less satisfied with my final answer: law is a system of relations between human beings and other beings. "Isn't this closer to ecology?" he hastened to retort. My open-ended and unsatisfactory answer to his challenging question got me thinking for a while and, in a way, this dissertation is an attempt to answer it. Is it even possible to delimit law and life? (Anker 2017)

In a sense, the law was all these definitions as expressions of a desire for social justice amid ongoing violence (Lemaitre Ripoll 2009). However, the law was also about a vision and a practice of a world. This dissertation proposes a definition of law with a very specific purpose in mind, namely, caring for life in a territory (*"el cuidado de la vida en el territorio"*) as Colombian biologist and yagé practitioner Marcela Bravo would put it. In a recent interview, I learned about her ethnographic concept of "knowing how to live there" (*"saber vivir ahí")* as she studies Inga

cosmologies and territorial struggles in the *Baja Bota Caucana* in Southern Colombia (Marcela Bravo, interview, June 2020).

I quickly realized how close her notion of knowing how to live *("saber vivir ahi")* there was to my own learning experience around justice systems in the Lower Putumayo region. "Law comes from there," an ethnographic concept I introduce in Chapter 4, was certainly about caring for the "continuity" of life in the midst of extractivism and colonial violence (Haraway 2016). Indeed, the notions of knowing how to live there and law comes from there situate law in the context of the surprising and often difficult negotiations between humans and other-than-humans as we all learn to live with each other. Even if we define law as a system of norms, that is, as a system of symbols (chapter 3), the concept of law as care of territory slows down the normativity of law so that this living concept can easily participate in the material entanglements of life. In a certain way, law is, above all, the relentless becoming of life, as well as a very concrete tool to make life flourish in territories. It expresses a kind of ecological ethics, that is to say, a form of orientation for living with the Earth that involves the Earth as an agent.

However, for life to flourish, we need both the positive collective rights of Indigenous peoples over their lands and specific forms of territorial governance, and the rights of nature**. In that sense, law comprises both the relations of life from which positive norms emerge, and these positive norms themselves.** Indigenous wills or testaments of the sixteenth and seventeenth centuries in New Granada recognized property rights to Indigenous ladinos shortly after the colonizing project unfolded in present-day Latin America (Vargas Roncancio 2008). This is an early example of how the symbolic record of law - written rules on paper - helps to create territories and ensure the continuity of life.

Moreover, in a recent conversation around the creation of an Indigenous intercultural university in the Amazon, I met *O,* a traditional healer from the Inga people in Southern Colombia.11

11 For the notion of traditional healer and traditional medic and what it means in the context of Yage shamanism in Colombia, see UMYAC Pensamiento de los Mayores: Código de ética de la medicina indígena del piedemonte amazónico colombiano, 2000.

Referring to what he called "our laws," *taita O* said the following:[12] "As always, we invoke our mother nature, who gives us our food and thank her for everything, the diversity, the world around us, calling it *alpa* =earth, *waira* =air and *iaku* = water, always innovation. As traditional medics, we do not have western science, but we do have our ancestral knowledge. The university […], we have it, and **we have our laws**, our culture and customs that may be in practice or not, but our ancestors have formed the knowledge, the laws, the rules, it is all written down. The landmarks are written on the trees and the stones; they are painted, drawn. They signify the knowledge, the law of the Inga people."[13]

The idea that "everything is written [the law] (...) (t)he landmarks are written on trees and stones", suggests that life has a kind of *lawness* to it. To defend life, to "know how to live there" (Bravo 2015), one also needs a kind of law that takes care of that particular "there," a complex notion of time-space that encompasses life relations and lived experience in specific territories. Therefore, to answer Alex's question, I needed to "define" law in at least three interrelated registers, namely: (i) as a legal naturalist concerned with social justice; (ii) as a legal positivist who finds law in state norms on collective land rights; and (iii) as a pluriversal practitioner who finds law in life relations in contexts of neo-extractivism (Svampa 2019) and for the purpose of caring for life. **It seemed to me that, while law has a kind of material reality, life also has a particular kind of *lawness* to it**.

As an example, the Colombian Constitution of 1991 recognized the autonomy of indigenous legal and justice systems, suggesting that indigenous peoples are a kind of "state" in their territories. They create law according to their cosmologies in the same way that modern cosmologies of the state create something that we can call "state law". This is what I mean by ontologies of law or the pluriversal orientation of law: rather than a single legal reality produced by state norms, Indigenous law (and other law, such as environmental law) can also emerge through encounters with human and non-human-like beings (Borrows 2010). For example, the Wuasikamas code

[12] While his intervention is an excellent example of the principle of radical interdependence, I would like to draw attention to the legal cues of his intervention.
13 Fieldnotes, intervention by Taita O, Indigenous Intercultural University meeting, Putumayo 2020.

(Chapter 6) or the Inga mandate to be the guardians of the territory requires a written title that recognizes the boundaries of the Inga reservation or *resguardo*.

Ultimately, this pluriversal orientation[14] suggest that the law "becomes with" the state, but also that it becomes with other-than-human practices (Despret 2004): what people do to care for life in particular territories (*cuidar la vida*) seems to have its own kind of lawness beyond a system of normative propositions or symbols issued by a state. In a way, this is also a matter of stories (and concepts) and how we tell them (and methodologies).

3. Law as storytelling

It was the time when plants and animals transmitted their powers and knowledge to people while hunting and dreaming.**15** One day, *Taita Yacha Runa,*[16] a hunter and *curaca,*[17] left his home searching for the place where the tapir lives. He walked for a long time in the company of his *alkusacha,*[18] carrying a blowgun and darts to hunt. Immersed in his thoughts, he did not realize that they were already in the *páramos* (moors) in the exact spot he was looking for. Following a path among dozens of *frailejones* (Espeletia grandiflora), the *Taita* saw a *ruku sacha.*[19] As they went

[14] On the pluriversal orientation of the law see sub-section "Universalism and the Pluriverse: pre-analytical assumptions of this project" in this introduction, p.46.

15 La Historia de la Danta (The Story of the Tapir) by the Inga Indigenous people of Colombia. Compiled by Taita (traditional authority) Inga Hernando Chindoy Chindoy who kindly shared this story with me (Personal communication, January 2020. Original in Inga and Spanish. My translation tries to capture the Spanish sintaxis of the story as communicated by taita Hernando) A condensed version in chapter 6 of this dissertation and the work Vargas I.D., and Chindoy H. 2021. "Indigenous Legalities: A vision" published as Vargas Roncancio, I.D., and Chindoy, H., (2020). "Indigenous Legalities: A vision." In Zelle, A., Wilson, G., Adam, R., Greene, H., (eds.). Earth Law: Emerging Ecocentric Law. A practitioner's Guide. Aspen Coursebook Series. Wolters Kluwer.) One of Forests go to Court's central claims is that going beyond standard Western narratives which locate the sources of law only within the state, we should treat Indigenous origin stories as law. See Napoleon and Friedland: "We engage with Indigenous legal traditions by carefully and consciously applying adapted common law tools such as legal analysis and synthesis, to existing and often publicly available Indigenous resources: stories, narratives, and oral histories." Napoleon and Friedland ("Engaging with Indigenous Legal Traditions through Stories") 2016: 725.

16 Inga term for "wise person."

17 Inga term for "traditional healer." In Quechua, "a member of the Inca provincial nobility often acting as administrator or ruler over an ayllu or group of ayllus." See Merriam-Webster, Online https://www.merriam-webster.com/dictionary/curaca [Visited on Sept. 27, 2020].

18 Inga for "mountain dog."

19 Inga for "old mountain."

further up into the mountain, they felt rather strange and suddenly the maloca or house of the tapir appeared before their eyes.

Taita Yacha Runa saw different plants with different types of leaves and fruits.[20] He cut some leaves and took them with him. Soon after, there was thunder and rain and the *Taita* saw two different kinds of plants, one small and the other large—the *shishajas* (Gaultheria insipida). He had to choose one of them and picked the small one. With this plant, he was able to see good spirits, but he rejected the larger one because it conjured evil spirits. Then, the *Taita Yacha Runa* saw a lagoon and the place where the tapir roams. Without even realizing it, he fell asleep and dreamt about the plants he had just seen. In his dream, he learned that some of these plants are for good luck, and that the small *shishaja* was good for protection against enemies. The *Taita* saw the lagoon in his dream and then two ducks swimming peacefully. One duck was white, and the other was yellow, and the *Taita* chose the first one. Having the opportunity to take the yellow duck, he decided to leave it there instead.

The *Taita Yacha Runa* then met an elderly *curaca,* and told him: *"I had taken all the knowledge that was offered to me in the moors, but left one (knowledge) in the place where I saw the yellow duck."* When *Taita Yacha Runa* finished speaking, the old *curaca* replied: "*Nuka kane dantakunapa suyumanda yaya* (I am the owner of the tapir, and of everything that you saw and heard) […] You did right to choose what you wanted, but you should have taken the yellow duck because the white duck means money, and the yellow duck means gold. Now you will never see the yellow duck again, and he will never be yours." This is how *Taita Yacha Runa,* hunter and *curaca*, discovered knowledge in the tapir's maloca. Since then, the tapir is the omen of good times, and people use her hooves to cure *mal aire* (bad air).

There are ways to get in step with the modes of presence and action of different kinds of beings beyond modern anthropocentrisms. This, for me, is a deeply ethical and methodological

20 Inga for "food garden."

challenge that involves a serious commitment to knowing (and the limits and risks of that) non-modern ways of creating worlds. The *Story of the Tapir* raises challenging questions in times of planetary crisis. In a world where animals, plants, and other beings have human features such as the power to communicate and transmit knowledge, words like "society", "agency", "person" and "law" seem to expand their meaning beyond the human. For communities in Southern Colombia, other-than-human beings can transmit their powers and personalities to humans in daily life and dreams, thus telling us a different story of what makes us humans (Caicedo 2015). Can *legal* stories bring forth new possibilities beyond anthropocentric narratives of crisis, transformation, and decision-making? (Escobar 2020) How can a form of law and society that is not centred around the modern human help us navigate present times of socio-ecological collapse? What would happen to normative systems when we leave room for "the time when plants and animals transmitted their powers and knowledge to people in dreams"? What if we imagine a form of law beyond human *only* modes of representation? (Kohn 2013) Moreover, how would this transform the rights of nature approach in the context of the Earth Law movement? This dissertation probes these and similar questions through ethnographic encounters with Indigenous practitioners, legal scholars, and biologists, and different medicinal plants across territories, ritual houses, legal documents, and zoom conversations in the Southwestern Andean-Amazonian regions of Putumayo and Nariño, Colombia.

4. Doing law with plants and humans in Amazonia

In 2019, I had the opportunity to join an ethnobotanical research project led by Colombian biologist David Rodríguez-Mora. The project's purpose was to study the diversity and classification of wild species of the *yage* vine (Banisteriopsis caapi) [21] among the Cofán people in

21 The traditional Amazonian yagé or ayahuasca concoction mixes the Banisteriopsis caapi with the chacruna (Psychotria viridis). The chacruna plant is a perennial shrub used in the preparation of the ayahuasca brew. The name comes from the Quechua verb 'chaqruy' meaning 'to mix'. Also, this plant is combined with the Banisteriopsis caapi vine for the preparation of the brew also known as yajé. The term comes from the Quechua as well, and it has been translated as the 'vine of the soul'. For further reference see Daniel Mirante, On the Origins of Ayahuasca. See: <http://www.ayahuasca.com/ayahuasca-overviews/on-the-origins-ofayahuasca/>

the *piedemonte Andino-amazónico,*[22] Southwestern Colombia. David, my friend and research interlocutor, describes his research project as follows:

> "It was very exciting for me to contemplate the possibility to carry out a project that would contribute to the recovery of Yagé, the most sacred plant for the Cofán, root of their cultural identity and their ancestral territory. But at the same time, I knew this was a huge responsibility, not only with the community and the Cofán nation but also with the Yagé plant itself. Widely regarded as a sacred master plant, the most important for the Amazonian people at large, I had heard numerous accounts that described the power of this plant's spirit. Additionally, I was aware that my training as an ethnobotanist had certainly not prepared me to know how to deal with plant spirits. Nevertheless, I felt reassured with the fact that this potential work was coming from the initiative of the Cofán authorities themselves and included the participation and endorsement of one of the most respected shamans in the Amazon." (Personal communication, 2019)

David framed his project to contribute to the protection of "the root of the Cofán territory" and "shamanic medicine," namely the yagé vine itself (Interview with legal scholar and Yagé practitioner A.A., Nariño, 2019). In David's view, studying this plant's diversity was an important stepping stone in designing sustainable harvesting methods and thus dealing with the rapidly declining wild populations of the plant, while ensuring the continuation of a world-known shamanic practice based on yagé.[23] While the purpose of his project was straightforward and seemingly aligned with the desires and expectations of the local community, the awaited co-creation of a scientific and legal protocol to guide the project was not without, again, surprising and enriching "equivocations."

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22 The foothills or piedemonte andino-amazónico, is situated at the junction of the Andes mountain chain and the Amazon basin. Biogeographically, the piedemonte ranges from the southwest of Colombia in the regions of Putumayo and Caquetá, to the South of Peru and Bolivia. The forests in this region have ecological characteristics of both the Andes and the Amazon, demonstrating high levels of diversity with crucial conservation challenges.

23 Rodríguez-Mora, D. Summary of Research Project:" Integrating ecomorphology and ethnoecology to test Cofán ethnovarietal classification of Banisteriopsis caapi in southwestern Colombia" (Research proposal). Unpublished, 2019.

As we learned earlier in the introduction, an "equivocation" is not only a failure to understand but "(…) a failure to understand that understandings are necessarily not the same and that they are not related to imaginary ways of 'seeing' the world but to the real words that are being seen" (Viveiros de Castro 2014, 11). For example, during one of the numerous meetings with the community that year, an Indigenous practitioner and yagé trainee considered that "since the territory protects itself, there is no need to do a project for that to happen."[24]

Interestingly, David's understanding of "protecting the territory" via the (scientific) study of the variability and conservation status of individual ritual plants was based upon our initial shared assumption that "protecting" the territory was a human endeavour, and that the territory was just the stage of this human decision.[25] On the contrary, for this local Indigenous trainee, any "protection of the territory" should count with the territory itself, which was not the backdrop of human action, but rather an active shaping force. In a way, the territory and the human seemed to be in "continuity" or constitutive relation with one another (Descola 2013).

This initial reaction to the research proposal and David's diplomatic skills to respond to it, stimulated a series of productive (dis) agreements that eventually led to the co-creation of a research protocol, which conjured the will of the plant and the "invisible peoples of the mountain" themselves (Field Notes, Nariño, 20919). It was apparent that establishing a research agreement with the community would require more than just the meeting of human wills through a host of rational deliberation procedures (Blaser 2019). More than objects of research, territory, plants, and "invisible peoples" themselves appeared as their active shaping forces from the outset.

By the end of the meeting, it was clear that conducting the project was not merely about studying the classification of plants, but about *learning with the plants*, and not a matter of "protecting territories" and "shamanic legacies," but about learning an entirely different way of engaging with

24 Andrés*, Indigenous practitioner, field notes, 2019. * Indicates the use of a different name to protect the identity of the interlocutor.
25 This assumption would later change as his project progressed. See chapter 2.

a place. Finally, any negotiation and eventual agreement with the community required calling respectful and humble attention both to the will of the community—with their internal deliberation procedures—as well as the will of other-than-human beings, in what David would later conceptualize as "the will of the mountain." (Interview, February 2020)

If the territory could protect itself, we needed to learn whether it was feasible for us to "conduct research" with the set of epistemological, ontological, and value operations informing our thinking and action in the world daily. Responding to the interpellation, David highlighted the "minimal needs of conservation of the vine" as a way to "protect the legacy of the Cofán medicine." Also, he insisted on how important it was to involve *all* the (human) community members in the design of this participatory endeavour. To be sure, studying the conservation status of ritual plants would, for him, contribute to the protection of the territory and culture of the community as a whole.

How can we care for a territory that seems to protect itself or a territory that governs itself? How does a plant make place? How can we participate – or not – in the modes of regulation that emerge from a willful place? After the meeting, words such as "community," "research," "territory," "agreement," "plant," and "research protocol" were subject to relentless "negotiations" and "mutual ontological equivocations." (See De la Cadena 2015 for a similar articulation of this idea).

5. Opening the conversation: Encountering the cultural protocol

In an intervention entitled *The Jaguar and the Telepatina of yagé* former Humboldt Institute director Brigitte Baptiste suggested something very similar when referring to the will of the "other" in the co-creation of protocols and norms. Recalling a research experience with an Amazonian community, she said: "We signed an agreement (with the community), but for this agreement to enter into force, we needed trust. There were good reasons to demand that this contract (between the Institute and the community) should go beyond the norm written on a piece of paper. The

cultural contract then required the intake of the plant."[26] To be sure, the participation of other-than-human wills in the making of normative claims seems to summarize the stakes of David's ethnobotanical project with the Cofán.

In another example of this frame shift, during a conversation with the oil sector about possible post-COVID scenarios in Colombia, renowned environmental law scholar and activist Gustavo Wilshes underscored the agentive capacities of non-human others and the limits of human agency through environmental protections and rights: "The pandemic expresses a call of the Earth. The first alert was given with what today is recognized as the climate crisis […], and this is not a business just between humans. We need to learn how to come to terms with other actors of the territory that are not resources. These actors are soils, hydro-meteorological dynamics, volcanoes, and ecosystems. One of the big challenges then is to learn how to consult with those ecosystems to avoid forcing them to claim their rights by force."[27] Wilshes' invitation urged us to re-think "rights," "responsibilities," "agreements," and other legal and political notions. What kind of law is this "law beyond the human"?[28] These and similar claims about the agentive capacities of nonhumans by indigenous practitioners, scientists, policy makers, and researchers seem to have something in common, namely, a normative type of language.

For example, David, the ethnobotanist, said: "I knew this was a huge responsibility, not only with the community and the Cofán nation but also with the Yagé plant itself." (Interview, 2019) [29] In turn, Brigitte Baptiste underscored how "the cultural contract required the intake of yagé," while the Indigenous trainee from the Cofán community insisted that "we do not need a protocol, for the territory takes care of itself." (Field notes, 2019) Finally, Wilshes, a Colombian environmental legal scholar, talked about "coming to terms with other actors of the territory" and "consulting with those ecosystems."

26 Baptiste, B. "El Jaguar y la Telepatina del Yagé". In https://www.youtube.com/watch?v=gK3BWngw7oI (Viewed 07.30.2020)
27 Wilshes G., Revista Semana, April 16, 2020. Original in Spanish.
28 I'm here borrowing from Kohn 2013.
29 Also based on Rodríguez, D. Summary of Research Project, Unpublished.

What is all this telling us? Responsibilities, contracts, and consultations with territories and ecologies abound in current conversations around environmental governance in Amazonia, especially after what some have called the "legal revolution" of nature's rights (Boyd 2017). Are scientists, environmental scholars, and Indigenous peoples asking for a new kind of contract that involves more than human agencies? What is agency, and how is it formed in Southern Colombia? Does the language of the rights of nature suffice in contexts of ongoing extractivism?

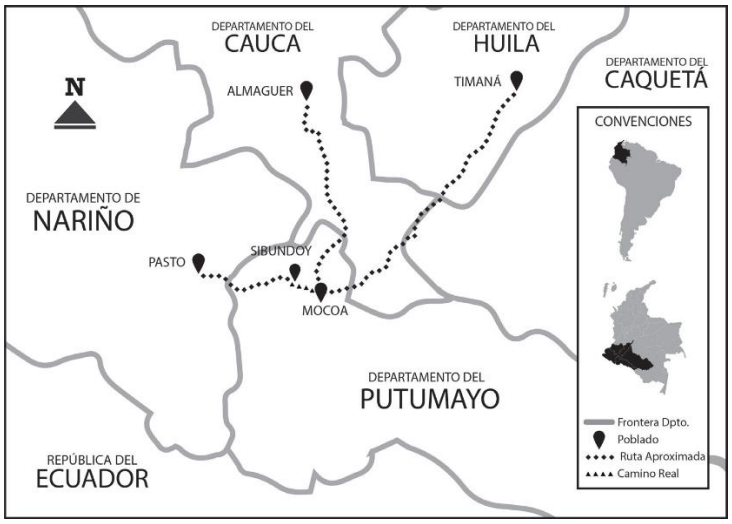

Figure 1: Andean Amazonian regions of Nariño and Putumayo, Colombia. *Source*: Arteaga-Montes, Giovanny. 'Historia del tramo "camino viejo" en el Putumayo.' En *Historia 2.0. Dossier Caminos, Rutas y Transportes en Latinoamerica.* 6(11): 84-104.

6. Extractives

Over the last few years, the Colombian Amazon has been the center of a new extractivist boom and the focus of important international conservation efforts. The expansion of the industrial oil, gold extraction and dams' construction are concurrently happening with a rise in environmental regulations in Colombia. Recently, legislation and court decisions continue protecting environmental rights while declaring the legal standing of rivers and forests. The Colombian Constitutional Court, for example, recognized the legal rights of a mercury-polluted river in the Pacific rainforest, and the Supreme Court did the same for the Amazon rainforest. Moreover, the

2016 Peace Agreement (PA) between the Colombian government and one guerrilla group included preserving the environment as a fundamental goal of its rural agenda (PA 2016). Nevertheless, this document still pushes for the industrial development and extractivist activities described above. Different cycles of resource extraction have led to disastrous deforestation after the PA was signed, which triggered international conservation efforts to increase steadily in this region. In the Colombian Amazon alone, deforestation doubled last year, thus heavily Impacting Indigenous territories and governance systems. What kind of research problem for the law does this tangled (post) extractivist landscape offer us?

Legal lives will not directly address the problem of extractivism in the Andean Amazon region-which is widely discussed in the literature (Ulloa and Coronado 2016, Svampa 2019, Gudynas 2011, among others). Rather, it takes critical studies on extractivism and neo-extractivism as a springboard for debating subsequent socio-legal and ontological challenges.

7. Problem

Current models of environmental governance exist in parallel to extractivist practices in this region. Nevertheless, recent legislation that highlights the rights of nature does not seem to address this ongoing paradox. To offer potential responses, *Legal Lives* studies how Indigenous, scientists, and legal scholars and practitioners contribute to a legal paradigm shift for this region: from a piecemeal environmental law to a systems-based ecological law (Anker et al 2021, Garver 2021). Environmental law generally focuses on remediating economic development's adverse side effects, restricting pollution, and protecting natural resources primarily for human use. Meanwhile, ecological law, as an alternative, integrates science and traditional knowledge systems to live in harmony with the Earth. Ecological law offers space for a new legal analytic that not only recognizes other-than-human beings' inherent value, but also their modes of participation in the making of the legal itself. *Legal Lives* is an ethnographic and conceptual proposal in this direction.

8. Proposal

Legal Lives ethnographically follows[30] Indigenous practitioners, scientists, legal scholars, and ritual plants across territories, field sites, and courts of justice to contribute to a larger paradigm shift. This emergent shift goes from reductionist environmental law and governance models to ecological, systems-based, and other-than-human jurisprudence in post-conflict Colombia. It explores the limits and possibilities of an ontological turn in legal theory and practice in the Andean-Amazonian region at the intersection between post-humanist anthropology, legal theory, and plant studies. How do forests become legal agents? How do human and other-than-human beings such as Amazonian plants co-produce protocols for forest governance? How does a law that comes from the territory challenges concepts of justice, agency, and value in times of socio-ecological transitions in this region? This dissertation is interested in some Amazonian plants as an entry point to discuss political and legal issues in contexts of extractivism and its (legal) alternatives. One crucial element of this exploration is learning how human communities produce what we can call "normative claims" as they engage with plants, particularly with plants of ritual importance.

These plants, however, are not only vegetal living beings. They are persons, teachers, masters, and guides (Gagliano 2018, Luna 1984). This language is important not only because it shows how some communities create worlds that are not amenable to modern partitions, but also because modern partitions are being relentlessly redefined, for example, through the idiom of the rights of nature (Martinez and Acosta 2017). Furthermore, these norms talk about nature as an object of protection and as a subject with rights, and so there is a significant change that is not only a change in epistemology; that is, a change in the tools we use to talk about the world and

[30] Research on Indigenous storytelling, plant-based medicine, and material and visual cultures is a crucial entry point into Indigenous legal systems, sources, and methodologies in Amazonia. I have conducted interviews and participant observation on the following topics: Indigenous plant-based medicine with Inga, Cofán, and Murui practitioners from the regions of Sibundoy, Nariño, Puerto Leguízamo, and Leticia in the Colombian Amazon (chapter 1.1. "Yoco," 1.2. "Yagé," 1.3. "Coca-Leaf," 2 "Los Invisibles"), as well as Indigenous storytelling as law (Ley de Origen or Law of Origin) with an Inga Indigenous scholar from Nariño (Chapter 6 "Worlding with Indigenous law." Vargas and Chindoy 2021).

draw meaning from it. It is also about how this language offers space for other practices to make things, to make realities, and to make worlds (Kothari et al. 2019). In a word, it is also an issue of ontology. Then, this dissertation is about the ontologies of the law. Ideas and practices about and with plants as persons and meaning-making selves (Kohn 2013) seem crucial to understanding this shift in law in the Andean-Amazonian region today.

Moreover, the dissertation discusses how particular kinds of forest beings in the Colombian Amazon, namely yagé (Banisteriopsis caapi), yoco (Paullinia yoco), and the spiritual owners of these plants, seem to trouble what we mean by the law in this region. I am particularly interested in the kind of agencies that emerge in our interactions with other-than-human beings such as ritual plants. Here, there may be instances of the co-production of legal norms, protocols, and procedures for environmental governance in context of extreme violence, neo-extractivism, and their alternatives. For example, the dissertation probes an ethnographically inspired notion of ingestion as a legal methodology and the limits and possibilities that this etic concept offers for legal practice in post-extractivist transitions in the Andean-Amazonian region today. Ingesting (plants) as a method is a necessary step in what Brigitte Baptist called the "cultural protocol" (see above). I prefer the notion of relational protocol as a way to emphasize other-than-human modes of participation in lawmaking in concrete places.

This participation beyond the human is crucial for the co-production of the research agreement (the law of the parties involved) between David Rodriguez and the Cofán in the region of Nariño, Southwestern Colombia. Thus, more than a mode of representation of an external reality, ingesting amounts to mutual feasting—an anthropophagic act of sorts between human people and other-than-human people enabling the co-emergence between them (Viveiros de Castro 2014, Fausto 2007). To be sure, the creation of the research protocol between David and the Cofán was unthinkable without the plant's ingestion as a someone, or as a person with a perspective or a point of view (Vivieros de Castro 1998).

An essential part of this legal agreement, ingesting the plant as a person is akin to negotiating between different beings. On the one hand, the vegetal people—but "not only" (De la Cadena 2014)—and on the other hand, the human people, whose humanhood was unthinkable without the relentless vegetal becoming of the human in diet, labour, medicine, and thought. The co-emergence of the vegetality of the human and the humanity of the vegetal brings forth a methodology with specific legal meanings, practices, and forms of agency that may transform what we mean by "law" and "territory" in the Andes-Amazon, and beyond.

Finally *Legal Lives* discusses how we re-encounter ourselves as living and social selves in radical interdependence with other beings. Also, how we can re-imagine and recursively ask the question of "agency" (who is the agent of this decision?) as we compose social relations and forms of law beyond the human, the state, and the symbolic (Anker 2017, Davies 2017). Is there something normative about life? Is there something of the living in the normative? In a word, the dissertation is about the "pluriversal possibilities" (Escobar 2020) of legal imagination in neo (post-) extractivist contexts in Colombia.

9. The Legal Lives of Forests: An overview of content

Social and legal institutions focused exclusively on human perspectives seem insufficiently capable of confronting current socio-ecological challenges in the Andean-Amazonian foothills of Colombia. It is important to explore emerging analytical frameworks to integrate other-than-human beings within legal institutions and decision-making processes in this region. Such an approach requires weaving together various forms of knowledge and world-making practices that include—but are not limited to—Indigenous legal traditions, ecological law, multispecies ethnography, and ecological economics. My dissertation discusses how human and other-than-human beings, such as medicinal plants and what Indigenous peoples in Southwestern Colombia call the “invisible ones” (*los invisibles)*, co-create legal institutions. And this requires an entirely ontological framework for the law. Furthermore, this dissertation will examine some of the implications, methodological challenges, and ethical conundrums of this post-anthropocentric

approach, for the broader Earth Law movement, particularly the rights of nature.

What happens when we consider forms of agency beyond symbolic and multicultural analytics in legal theory and practice? How does a law that emerges from plant-human-spirit entanglements challenge concepts of justice, agency, and value in times of socio-ecological transition? How may forests become legal agents through different territorial practices? *Legal Lives* combines a multi-sited ethnography and post-anthropocentric approaches in anthropology, law, and decision-making theory to study the entangled lives of law and ecology in the regions of Nariño and Putumayo, as well as the potential contributions of these ideas toward a relational legal theory. In conversations with biologists, Indigenous practitioners from the Cofán and the Inga communities, legal scholars and medicinal plants, in particular *Yoco* (Paullinia yoco) and *Yagé* (Banisteriopsis caapi), it looks at how legal institutions may also emerge from the fabric of human and other-than-human forms of agency. This relational approach is at the core of the Earth Law movement and the radical paradigm shift it suggests for legal theory and practice. My purpose, therefore, is to contribute to the legal "activation of relationality" to heal the web of life in Colombia and beyond (Escobar 2018).

a. Arc of this dissertation

The dissertation is divided into three parts. The first one (*I. Towards a Law Otherwise*) offers an ethnographic approach to the law and comprises two chapters on the relationship between medicinal plants and legal institutions in the Andean-Amazonian region of Colombia. These chapters illustrate how the interface between other-than-human beings and legal institutions matters today. The first large chapter includes three sub-chapters with the name of three different plants, where I probe the implications of vegetal agencies for socio-legal thought in this region. To further explore these connections between other-than-humans and the law, chapter 2 ("*Los Invisibles*") focuses on the making of an ethnobotanical research protocol with humans, plants, and what members of the Cofán community in the regions of Nariño and Putumayo refer to as the "invisible people" (*los invisibles).*

Towards a Law Otherwise offers an ethnographic and conceptual basis to support the theoretical claims of the second part of the dissertation, namely: *The Rights of Nature: Limits and Possibilities*. This part deals with some of the conceptual limits and possibilities of the Rights of Nature clause in Latin America in the context of an emergent regional and global Earth Law movement. By attending to the social and legal worlds of other-than-human beings introduced in the first part of the dissertation, *Rights of Nature* suggests re-imagining core premises of social and legal sciences, for example, i) the law is primarily linguistic or propositional; ii) rights and responsibilities are commensurable across legal cultures and cosmologies (Ch. 3 "Conjuring"), and iii) personhood is fundamental for legal redress (Ch. 4 "Forest on trial"). Thus, as a contribution to a relational theory of legal agency, part II critically assesses core notions of Western law such as legal personhood, standing, and rights.

The third and final part of the dissertation (*III. Rhizomatic Agencies*) reviews and summarizes the argument concerning agency and discusses how parts I and II could serve as tools for legal transformation in concrete scenarios of learning and adjudication. A summary of agency theory with ethnographic insights from the first section, chapter 5 ("Agency Scaffolding") dives into the limits of individual and collective forms of agency, and the need to hold space for plural and rhizomatic agencies that include other-than-human beings in decision-making protocols. Chapter 6 ("Worlding with Indigenous Law: A teaching and learning proposal") can be taken as coursework material concerning Indigenous legalities. It refers to a specific Indigenous legal tradition—the Inga—as it transforms state law, while contributing with the Earth Law movement. The dissertation closes with a proposal for a syllabus on "Indigenous Legal Traditions and Decolonization" (Chapter 7).

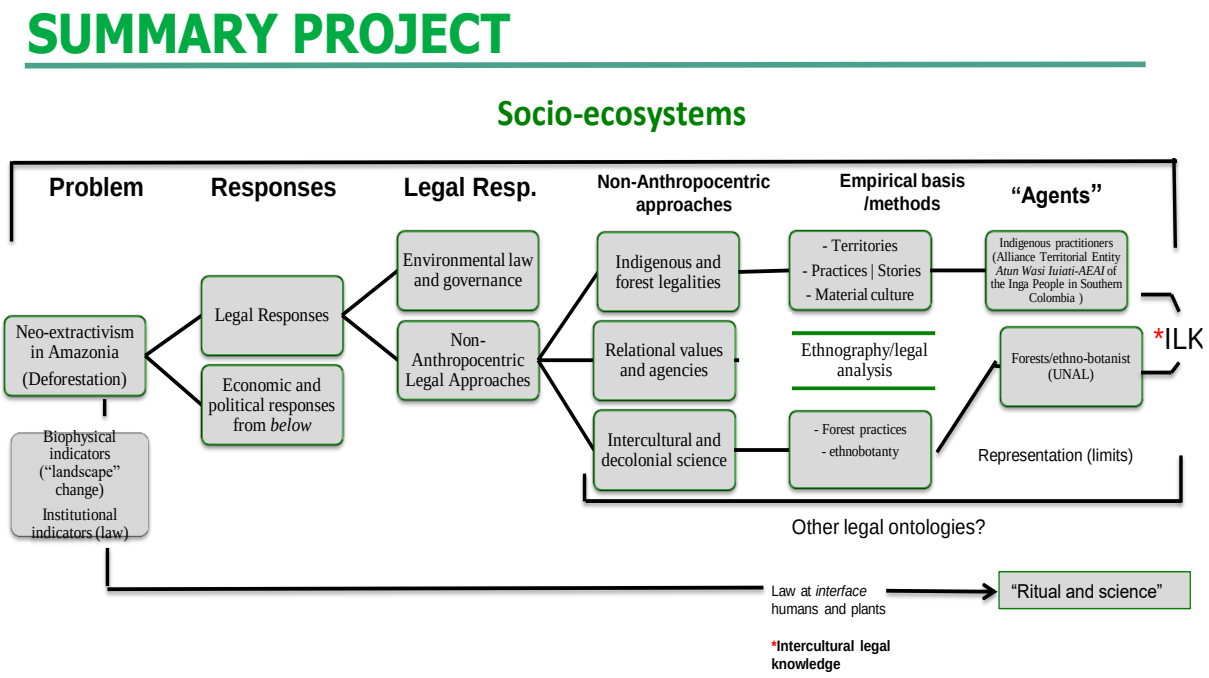

Figure 2: The Legal Lives of Forests: Summary of project.

10. Universalism and the Pluriverse: Pre-analytical assumptions of this project

The "modernist ontology of universalism" (Kothari et al. 2019: xviii) is based upon a dualist principle that separates human and other-than-human beings, body and mind, bio and geo, the living and the non-living, among other boundary-making concepts. This ontology of separation (Escobar 2018, 2020) determines how people produce knowledge, how they act, experience the world, relate to one another, and organize collectively. For example, the discipline of physics tends to presuppose the separation between an objective universe and the subjective experience and cultural beliefs of an independent human observer. [31] Similarly, economics tends to separate markets from the socio-ecosystems [32] where they are embedded (Brown and Timmerman 2015).

31 I'm aware of the generalizing nature of this statement and the internally multiple fields of physics that have challenged this point of views. For example, empirical concepts probing physical phenomena such as the notion of "quantum entanglement," that is, the "nonlocal correlation" of two or more particles in nonphysical proximity or "spooky action at a distance" (Einstein A, Podolsk B, Rosen N., 1935)

32 McGill energy scholar Matthew Burke makes an important point here and I agree with him: "This term (socio-ecosystems) I struggle with although don't have a simple way to bring these "systems" together. There is also the issue of

The same is true for almost all descriptive and normative disciplines of the modern learning/teaching apparatus (e.g. universities).

Brazilian anthropologist Eduardo Viveiros de Castro suggests that in the modern scientific paradigm, one knows something when one can see it from the outside, that is, when the world is de-subjectivized, and no intentions are attributed to the object of study (e.g. plants, animals, complex tropical ecologies). In contrast, for traditional medicine people (*sabedores)* in the "Americas," to know something well is to be able to attribute intentionality to this former object of study, namely when this object is rendered a subject (Viveiros De Castro 2013). Then, the modern ontology of universalism is about creating One world with humans on top of it. The "One World" is a way to highlight two core ideas (Law 2011; Escobar 2018). First, the notion that there is One single world made up of discrete and separable entities rather than interdependencies; and second, the notion that this world can be revealed only by science at the expense of other knowledge systems, or by relegating them to the status of cultural beliefs and myths of non-modern peoples (De la Cadena 2015).

Conceived from the perspective of the West, the idea of the One world thus suggests the primacy of one local experience (the West) and system of knowledge (Science) as the veritable source of knowledge of an external world as observed by a particular kind of human: the Western Man. Alternatives to this paradigm are emerging everywhere. The pluriversal alternative, for example, challenges this modernist orientation in favour of a multiplicity of possible worlds or ways of knowing, doing, and being (Kothari et al. 2019).[33] Following the Zapatista dictum, the pluriverse can be best described as "a world where many worlds fit" (*un mundo donde quepan muchos mundos* - Zapatistas 1996), namely a world where many ways of being, doing and knowing are rendered possible and are put at the service of "healing the web of life" (Escobar 2019).

reductionism, i.e., all society is ecology or all ecology as society. How can or should they remain distinct yet firmly embedded/interconnected/enmeshed?" Personal communication, 2020.

33 Broadly speaking, we define the word ontology as a set of claims about what the world is, as well as a set of practices through which the world comes into being for a people that is part of it. Epistemology here stands for how people represent the world, for example, through language and/or images.

As a generative cradle of alternatives to the ongoing global climate and justice crisis, the pluriversal project contests universalism without falling into cultural relativism. It proposes that we should try to understand another person's values, beliefs, and practices on their terms rather than through the standards of our own culture. While cultural relativism seems intuitively desirable from the perspective of any modern society, the focus on purely *cultural* differences and on culture as human practices and beliefs presupposes the existence of a universal nature that is common to all cultures, namely an external nature shared between different cultural groups, regardless of where these cultures are located or how they understand this seemingly external reality (Ingold 2011).

Cultural relativism then presupposes (1) the idea that culture is something separated from nature and/or that these two terms are universal; (2) the idea that nature is, in any case, the passive backdrop of human action; and (3) the idea that the human is the only cognitive and meaning-making self in the cosmos. Conversely, the pluriverse presupposes (1) a relational view of life and the idea that this "naturalist ontology" (Descola 2013), namely the separation of nature and culture, is specific to modern societies rather than universal across time and space; (2) the idea that non-human beings such as animals, plants, rivers, mountains and forests are sentient and cognitive; and (3) the idea that the human is part of the web of life and, therefore, only one subject in the community of life (Berry 1999).

While the pluriversal project endorses a multiplicity of ways of knowing, it is not only about knowledge creation. It is also about creating new worlds and possibilities, namely different ways of doing, feeling, and being.[34] This dissertation, then, arises from the general question of how the pluriverse and the possibilities it creates can transform legal theory and practice in Latin America.

34 The notions of knowing, doing, feeling and being together should be taken as ways of creating new worlds and possibilities beyond the dichotomy body/mind. In fact, we could say that there are minds that are distributed across multiple bodies (i.e. forests, plants), and "there are also minds that do not need a body at all" (i.e. spirits in the context of Amazonian cosmologies). Colombian anthropologist Daniel Ruiz, personal communication, 2020.

An ethical and political alternative, the pluriversal project, therefore, stands for a set of practices, knowledge systems and ways of being informed by the principle of "radical interdependence of everything that exists" (Escobar 2018). Examples of these are Indigenous traditional and innovative practices with the land; the emergence of an earth law movement and the recognition of Indigenous legalities (Mills 2019); post-development economies (degrowth, *Buen Vivir*); the local production of food based on embodied practices of spirituality; care work 35; healing practices beyond allopathic medicine based on the regeneration of local ecosystems; commons and commoning, and several scientific practices that follow from a commitment to mind-world holism (rather than dualism) such the notion of "embodied mind" in the work of Francisco Varela et al. (1991) or the "endosymbiotic theory" of Lynn Margulis (1967), among others.

Some of these practices "echo the autopoietic dynamics and creativity of the Earth and the indubitable fact that no living being exists independently of the Earth" (Escobar 2015, 14). Thus, the pluriverse entails modes of praxis, ideas, experiences, cosmovisions, projects, and possibilities at different scales and temporalities that follow a des-centralized, autonomous, experiential, and embodied logic. From this vantage point, the pluriverse seeks to bring forth different "ways of worlding" (Kothari et al. 2019), namely a "meshwork" of practices, ways of producing knowledge, doing things, and experiencing ourselves as part of a localized web of life and in the perspective of healing this web (Ingold 2011). In that sense, the pluriverse has more to do with creating worlds "beyond the human" (Kohn 2013)—or beyond the culture/nature divide—than with creating knowledge about a world outside of us. How do other-than-human beings contribute to this world-making project? How does a law beyond the human look? The next section will explore this in some detail.

35 See for example https://www.otraescuela.org/index.html

11. The pluriverse: a project of humans and other-than-human entanglements

Amerindian cosmologies exemplify this way of worlding in the pluriverse. For example, in Amazonia, animals, plants, mountains, and rivers, among other beings, are endowed with a form of interiority or soul with attributes "(…) identical to those of humans, such as reflexive consciousness, intentionality, affective life, and respect for ethical principles" (Descola 2013: 14). In this region, the world is not intrinsically organized through stable categories of nature and culture. All beings (human and not) share a common interiority concealed underneath their bodies' mask. This theory of the self as multiple natures (bodies) sharing a common interiority or culture across different kinds of beings affords an entirely different understanding of experience and knowledge (including legal knowledge) as something beyond cultural or human meaning only. Today, Indigenous peoples resist the modernist ontology of separation just described when they mobilize politically and legally on behalf of mountains, rivers, spirits, and forests.

These communities argue that these are sentient beings rather than cultural beliefs, objects, or resources to be managed, controlled, described, protected (as our earlier example shows) and exploited (Kothari et al. 2019). An essential ethical/political claim, the pluriversal project considers human and other-than-human beings as a community of subjects endowed with cognitive abilities, affective lives, and even rights (Davies 2017, De la Cadena 2015, Vermeylen 2017). Thus, the pluriversal project suggests that individual humans *do not exist*; that is, the individual is a modern fiction based on the premise of separation rather than the premise of radical interdependence of all that exists (Escobar 2018, Mills 2019).

What is emerging in current transitions to an earth-centered paradigm	**Discursive/practical dimension**	**What some describe as the 'anthropocene'**
All is mind	***Thought***	Mind = human
More-than-human represent in other than symbolic forms	***Representation***	Humans as subjects of knowledge More-than-humans as objects
Enhanced Includes nonhumans	***Social and political agency***	Narrow Humans alone (i.e. individuals and collectives)

Humans and non-human Post-normal science Co-production of knowledge (i.e. TEK-Science) More-than-humans as agents of knowledge as well	***Knowledge-making Science***	Humans alone Humans as agents of knowledge Scientific method
Pre-cosmological, telluric (cosmological), and social forces (Continuum)	***Power***	Social forces
Economy as living well (of all beings) Law as life (territory, forests, plants, humans)	***Economy and the law***	Economy as extraction Law as disembodied system of norms

Table 2. Comparison of ontological and epistemological features of the Anthropocene and Earth centered paradigm in thought and practice. Based on several sources i.e. Escobar 2018, Kohn 2013, Descola 2015, Capra and Mattei 2015, etc.

12. A pluriversal orientation for the law

Just as the decomposition of foliage in the soil feeds new life, we constantly experience the co-emergence and decay of human and other-than-human life. We humans and other-than humans always experience how all beings thrive in mutuality and even fade away relationally. We exist because of these intimate and relentless interdependencies. Other-than-human collectives such as forests, river systems, and deserts are not represented, controlled, and protected as discrete parts of an external reality but rather partner-with as agential forces with their own forms of intelligence (Gagliano 2018), political participation, and legal rights. Such is one of the central tenets of transformative narratives such as the pluriverse as we face the "interrelated crisis of food, energy, justice and meaning" both globally and locally (Escobar 2018). The law has much to contribute to this larger transformation.

Furthermore, ehe Ecozoic is another narrative/practice of transformation beyond the modernist ontology of universalism into something radically different—this is just a way to signal the uncertainty and creative potentials of what is yet to come. Originating in conversation between Thomas Berry and Brian Swimme (1992; Berry 1999), the Ecozoic describes a possible era distinguished by mutually enhancing relationships between humans and the "global"—yet

internally multiple—community of life. So, it is about a long-term horizon of change. It is about the Earth "not (as) a global sameness," but "as a differentiated unity (that) must be sustained in the integrity and interrelations of its many (…) modes of expressions" (Berry 2004). This means that the Earth should be "the primary concern of every human institution, profession, program and activity." (Ibid. See Greene 2014)

The Ecozoic is, first and foremost, a *project* for the transformation of human-Earth relationships in the face of planetary crisis. To state it in terms of Berry, this crisis stems from the discontinuity between humans and non-humans and the ensuing bestowal of all rights to humans alone (1999, 4). He insists that the task ahead is that of re-inventing the human while re-embedding our social and normative systems within the broader community of life. Furthermore, the Ecozoic challenges global narratives of the Anthropocene (Crutzen and Stoermer 2000), and we can consider the Ecozoic project as a narrative/praxis that offers excellent potential for transformation. However, we should not see this as another "universal solution" to our time's interrelated socio-ecological crisis.

Located epistemologically and geographically in the Global North, the Ecozoic narrative/praxis is one alternative in a great mosaic of alternatives to the modernist ontology of universalism today. As an alternative, it has great potential to inspire—and get inspired by— different ontological and epistemological proposals from different parts of the world, for example, the relational notion of Ubuntu in the African context (Le Grange 2012). The respectful and symmetric conversation (yet in the context of profound power asymmetries) between some forms of Indigenous knowledge and some forms of modern science, the ecologization of disciplines such as economics and law, and the formulation of policy frameworks beyond narratives of nature as a collection of "resources," among others, are deeply connected to Ecozoic-oriented transformations beyond the Anthropocene. This orientation is akin to the pluriversal project and affords interesting analytical elements for the law as an alternative to neo-extractivist economies and piecemeal environmental governance approaches. The following table summarizes some elements of this legal transition. In a way, my dissertation is an attempt to unpack this table:

"Western" Legal theory *	**Legal pluralism and *beyond***
Rift between law and other systems.	- Cultural diversity is accounted for within the law / other systems of knowledge - "Natural" systems - other-than-human beings
Environmental law and governance	**A pluriversal orientation of the law (ecological and earth-oriented law)**
- Humans and nature as separate - Managing environmental externalities via legislation. - Emergency response approach - Based on mainstream economic models (I.e. infinite planet) - Monetary Value	- Relational view of humans and nature - Based on ecological resilience, regeneration and care - Systemic and long-term vision - Connected to ecological economics (i.e. finite planet) - Plural Values

Table 3: From Environmental to Pluriversal Laws. Based on Garver 2013, Escobar 2018, and others.

a. Towards a pluriversal legal learning

Both the Pluriverse and the Ecozoic projects highlight human and other-human beings' co-emergence beyond what some call the Anthropocene (Crutzen and Stoermer 2000). The Anthropocene can be characterized as the differential human (adverse) impacts on Earth's life support systems and the Earth as a whole. While these two projects signal a global transition towards a new ecological era *after* the Anthropocene, we can also think of the "Ecozoic" and the "Pluriverse" as methodologies, that is, as ways of encountering these relations of co-emergence of life forms in what we do, in what we think, and how we are. What kind of methodology does the Pluriverse and the Ecozoic offer us? How can these methodologies help us go beyond "sustainable development" and "green narratives" of modernity? Solutions are not free of contradictions. The next section highlights some Ecozoic/Pluriversal methodological premises for legal learning. Although I do not have room to talk about the crucial differences between these two projects, both the Pluriverse and the Ecozoic consider that the transformation of learning and teaching is central to achieve a radical transformation of society beyond the Anthropocene.

The Pluriverse and the Ecozoic may offer important lessons for learning and teaching law today. This dissertation, in a way, is a proposal to learn and encounter law *differently*. Some of the

converging methodological premises of these two projects concerning the law are, for example: (1) where the law in the Anthropocene promotes a universal logic of separation, the Pluriverse and Ecozoic may foster the logics of interdependence (Mills 2019). The modern university tends to organize knowledge through compartmentalized disciplines that further separate the human and the other-than-human while devoting energy to one possible way of worlding: the One world. An alternative to this overarching project and with different degrees of commitment, the Pluriverse and the Ecozoic foster a three-fold schema for legal worlding: (i) the co-production of knowledge (i.e. sciences and systems of knowledge based on rooted epistemologies of Indigenous lifeways); (ii) multiple ways of doing, and (iii) multiple ways of being. Consistent with the logic of interdependence, the Pluriverse and the Ecozoic can be imagined as a *tejido* (or a web of webs) of knowledge, practices, and experiences of human and other-than-human beings and worlds, rather than a social institution organized around the reproduction of veritable knowledge about a pre-existent world.

Secondly, where learning and teaching law in the Anthropocene promote development, the Pluriverse and the Ecozoic projects may foster the healing of the web of life in what Escobar calls the "political activation of relationality" (Escobar 2020). The modern university tends to produce knowledge to create monetary value at the expense of other possible values.[36] The Pluriverse and the Ecozoic are not only webs of webs (of knowledge, practice, and being), but also pathways to heal the web of life on Earth (Escobar 2018). In this sense, knowledge, practice, and being can be at the service of this commitment in any node of the web in which we are located. My dissertation looks into one node of this web in Southern Colombia, working with Indigenous practitioners, legal scholars and plant scientists. Thus, the Pluriverse and the Ecozoic could be physically decentralized; epistemologically, ontologically, and value plural; and simultaneously local and global in the scope of their conversations and knowledge practices. This entails the re-creation of new languages, values, practices, and tools ranging from theoretical research to committed public policy, from inner reflection and transformation to collective conversation and action, from

[36] On the University – capitalism debate see, among others, C Heller, H. 2016. The Capitalist University: The Transformations of Higher Education in the United States since 1945. London: Pluto Press. doi:10.2307/j.ctt1gk07xz.

"joyful scholarship"[37] to local action, from thinking to sowing. Thus, the Pluriversal and Ecozoic ways of worlding with the law might be (or might not be) attentive to complexity, plural values, and different modes of knowledge and being, including the knowledge and modes of being of other-than-human selves such as plants, animals, forests, and rivers.

Third, where the Anthropocene's legal learning and teaching promotes colonialism, the Pluriverse promotes the decolonization of knowledge (Mbembe 2015), minds and territories, and the Ecozoic is beginning to incorporate this conversation. The Pluriverse can commit to the co-creation of knowledge as a tool to regenerate socio-ecosystems (i.e. Science and Traditional Ecological Knowledge respectfully working in tandem while acknowledging their limits and power asymmetries) and foster autonomous modes of living in local territories. As part of a decolonization project, the pluriverse is de-localized (a web of webs) and should promote knowledge practices to heal the web of life wherever we are located. For example, Colombian anthropologist Arturo Escobar (2019) suggests a relational concept of health as the "interaction between elements stemming from an entire range of systems (biophysical, economic, political, cultural, environmental, spiritual)." In this holistic perspective, he defines healing as "an emergent property of the dynamic interaction of the self-organizing networks entailed in these systems, not the result of a few factors" (2019, 3). Probing this definition, projects such as the Pluriverse and the Ecozoic can contribute to healing "the entire system of relations, not just bodies or ecosystems" as part and parcel of a larger decolonial project (Ibid, 3). The law, again, should join this conversation.

37 Thanks to my L4E colleague Shaun Sellers for this term.

Universalist project	Pluriversal project
Modernity	Non-modern/alter-
Cultural relativism	Pluriversality
Hierarchy	Horizontalism
Separation	Interdependence
The Western Man	All Beings
Science alone	Co-creation of knowledge
Representation of the One World	Ways of worlding (know., pract., being)
Patriarchy	Despatriarchalization
Coloniality	Descolonization
One world	Territories
Development	A world of multiple Multiplicity
	Worlds Healing/*Buen Vivir*/degrowth
Diversity	Multiplicity

Table 4: Worlding projects: summary of characteristics (Note: this comparison does not assume a clear-cut separation). Based on Kothari et al. 2019, Escobar 2018, De Castro 2013.

13. Connecting the dots: How do we encounter the law? How do we define it?

As a way to frame the philosophical and ethnographic conversation that follows, I have described two overarching alternative projects to modernity, namely the Pluriverse and the Ecozoic. Although these alternative projects have different trajectories and political and epistemological orientations, there are common critical points. I have focused on these commonalities rather than the differences. The "modernist ontology of universalism" is at the root of the ongoing colonization and destruction of ecological and cultural systems throughout the world, among other reasons, because it turns life into an object of knowledge and a source of economic value. The "modernist ontology of universalism" shapes everything from worldviews to socio-economic, political, and legal systems by which peoples organize their lives and their relationships with their territories. The idea of a "world where many worlds fit," or the Pluriverse, offers an alternative to the One World ontology of modernity. As usual, the law has been generally complicit in this modernist project, because it is based on the modernist principles of separation, anthropocentrism, racism, patriarchy, and colonialism.

How do we encounter other-than-human minds and selves in Amazonia? How do we learn to learn law where the law is named differently?	**Chapter 1** ("Yoco," "Yage," "Coca-leaf") and **Chapter 2** (*Los Invisibles:* The making of a research protocol)
How do we encounter other-than-human persons and agents in Amazonia?	**Chapter** 4 (Forest on Trial) and **Chapter** 5 (Agency Scaffolding)
What kind of legal methodologies can we create with other-than-human agents?	**Chapter 1**, **Chapter 3** (Conjuring Sentient Beings) and **Chapter** 3, box (Towards a multinaturalist jurisprudence).
What can we learn from Indigenous and other-than-human forms of legal making in Amazonia?	**Chapter** 5, and **Chapter** 6 (Indigenous Legalities in Amazonia), **Chapter** 7 (Syllabus)

Table 5: *Legal Lives:* Interrelated questions of research

14. Detailed description of chapters

Part I - Towards a Law otherwise: A Legal herbarium?

Part (I) ethnographically probes connections between humans, other-than-humans, and the law, and why these connections matter today. This part is comprised of two interconnected chapters: the first focuses on plant-human relations and the second is on the making of an ethnobotanical research agreement in Southwestern Colombian Amazon. The first chapter is divided into three sub-chapters and discusses possible interfaces between plants and social and legal theory: 1.1. *Yoco (Paullinia yoco)*: *cooling down the mind and learning law where the law is not named as such*; 1.2. *Yagé (Banisteriopsis caapi): moving words across worlds*, and 1.3. *Coca-leaf (Erythroxylum coca): territories in motion or learning law with the Amazonian mambe*. The second chapter is entitled "*Los Invisibles": the making of a research agreement with humans, plants, and 'spirits' in the Colombian Andes (Nariño): The voice of an ethnobotanist.* Part (I) can be considered as one larger ethnographic and conceptual argument concerning the socio-legal agency of plants and non-visible peoples in Southwestern Colombia (Andes-Amazon), and their potential contributions to expand normative systems such as law and ethics beyond anthropocentric views.

Chapter 1.1., *Yoco: Cooling down the mind and learning law where the law is not named as such*, has three sections. The first one tells a story of yoco (*Paullinia yoco*) and how this Amazonian vine prepares

humans to work with and learn about anything in the forest—and much more.[38] Expanding the idea of learning beyond the human, the second part entitled *learning norms with mind-full bodies*, surveys a relational approach to cognition in the work of Chilean neurobiologist Francisco Varela (1999). Varela's approach is crucial to understanding how normative systems such as ethics and law are grounded in the everyday experience of an organism (Varela 1991), and whether we can expand those systems beyond abstract and disembodied sets of norms, principles, and values sanctioned by a state.[39] Thus, this part considers a non-dualist and post-anthropocentric narrative of environmental decision-making that seeks to overthrow the idea of protecting an external and universal concept of nature with humans at the top.

Encountering the invisible ones as law in the Andes-Amazon, the third and last part of the chapter introduces the work of Colombian ethnobotanist David Rodríguez-Mora as he participates in the development of a research agreement that took his ethnobotanical research project as a starting point. This agreement involved plants and other beings in the region of Nariño not as objects of study, but as partners in the research process. I consider this research agreement or contract—and the embodied ethics it entails—as a form of ecological law (Anker et al. 2021, Garver 2021). This research agreement as a form of (non) state law expresses the limits and possibilities of a post-anthropocentric approach to the law, and Varela's work offers some crucial cognitive premises for this kind of approach.

Now, I turn to another crucial plant teacher in the Andean-Amazonian foothills. This plant person is central to the argument about learning law where the *law* is not named as such. Here, the focus is on the disruption of linear time as a pre-analytical premise of Western (legal) epistemologies. **Chapter 1.2** (*Yagé (Banisteriopsis caapi): Moving words across worlds and entangled temporalities in the Colombian Amazon*) is based on ethnographic encounters with the yagé vine (*Banisteriopsis caapi*) in

38 See Tropical Plants Database, Ken Fern. tropical.theferns.info. 2020-03-10. <tropical.theferns.info/viewtropical.php?id=Paullinia+yoco> (Visited 10.05.2020). On yagé see Weiskopf 2004.
39 See Winter's pioneering work (2001). A Clearing in the Forest. Law, Life, and Mind. Chicago: University of Chicago Press. Also, Chapter 3 ("Conjuring") of this dissertation.

Upper Putumayo, Colombian Amazon (Caicedo 2015, Weiskopf 2004),[40] and investigates different modes of learning and practicing time in this region and the potential normative consequences of this disruption. A snapshot of recent experiences with the yagé concoction with the guidance of several practitioners from the regions of Sibundoy (Upper Putumayo region) and the Guamuez Valley (Lower Putumayo), this chapter discusses whether a non-modern approach to the idea of time can contribute to a post-anthropocentric view of legal institutions and decision-making practices in Amazonia. How does attending to the entangled temporalities of Amazonia, namely, different forms of practicing time beyond the linear temporalities of modernity,[41] transform legal imagination? My larger goal here is to continue probing the limits and possibilities of what I have called the law of the place (Chapter 1.1.).

Encountering the legal in Amazonia involves the active participation of other-than-human beings such as medicinal plants (chapter 1.1 and 1.2). **Chapter 1.3,** *Coca-leaf: Territories in Motion,* offers further ethnographic guidance to illustrate what I have been calling a relational protocol, that is, a way to participate in the entangled lives of law and ecology in Southwest Colombia. Chapter 1.1 addressed how we can *learn to learn* law with the emetic yoco vine (Paullinia yoco), while chapter 1.2. explored how the altered temporalities of the yagé liana (Banisteriopsis caapi) trouble modern legal narratives (chapter 1.2). In a similar vein, chapter 1.3. follows plants and humans as they co-create (legal) knowledge and place. Particularly, it discusses ritual and everyday encounters between humans and a local preparation of the coca-leaf (Erythroxylon coca) amongst the Indigenous Murui of Putumayo, Puerto Leguizamo. *Coca-leaf* discusses how corporeal practices such as the ingestion of this plant-as-people can be considered as a form of interspecies dialogue. In doing so, the chapter aims to expand legal theory and practice beyond anthropocentric views, while discussing the decolonial potentials of plant-human relations in this region.

40 My observations here are based on personal experience and interaction with some practitioners, and they do not represent a unified view of a particular community.

41 On linear time in the modernity-coloniality project see Mignolo 2011: 158-164. A discussion of time in socio-ecological systems in Kolinjivadi et al. 2020.

Chapter 2, *"Los Invisibles:" The Making of a Research Agreement with Humans, Plants, and 'Spirits' in the Colombian Andes (Nariño): The voice of an ethnobotanist*. After analyzing some aspects of the entangled lives of law and ecology in Amazonia, chapter 2 tries a different format: it brings Colombian ethnobotanist David Rodriguez-Mora's own voice into the conversation without any analytical intervention on my part. It is a selection of excerpts from our year-long conversations about plants, law, the politics of naming nature, the invisible ones, and the ethical dilemmas we faced as we engaged with the entangled lives of ecology and norms with the guidance of plants and humans from Nariño.

Part II - The Rights of Nature: Limits and Possibilities

Chapters 1.1 ("Yoco"), 1.2 (Yage) and 1.3. ("Coca-leaf") are about learning law with plants, while chapter 2 ("Los Invisibles") is about the craft of a research contract with humans and other-than-humans in the regions of Nariño and Putumayo. With this in mind, the second part explores the limits and possibilities of the rights of nature in the context of an emergent Earth Law movement, while bringing relational principles back to the discussion about law-otherwise.

Chapter 3, *Conjuring Sentient Beings and Relations in the Law: Rights of Nature and a Comparative Praxis of Legal Cosmologies in Latin America,* furthers some of these arguments and proposes an analytics to encounter the rights of nature *differently* and beyond dualist ontologies: recent norms and judicial decisions on the Rights of Nature (RON) place life at the center of legal discourse in Latin America (Martínez and Acosta 2017). This "legal revolution" (Boyd 2017) thus purports to upend the paradigm of solely human legal subjectivity in recognizing nature's personhood. Nevertheless, the RON approach seems to depend on the assumption that the form of law is primarily linguistic and propositional. In this way, it reveals another critical assumption: that law is a system of norms made by humans to regulate human conduct concerning an externally existing natural world, thereby insisting on a separation between law and life processes. This chapter argues that recognizing nature as a legal person and subject of rights falls short if the law is understood as a matter of human language only, and nature is understood as an adequate

conception of cosmological interdependencies between "all that exists" (Escobar 2018). The thesis of law as language seems to reinforce a much-contested rift between mind and body, culture and nature, among other boundary-making notions at the root of modern thought and practice (Descola 2013). In what sense, then, could conjuring other-than-human beings as agents of legal meaning, rather than mere recipients of state-sanctioned rights, transform what we mean by law and RON in Latin America? A second part of the answer is provided in **chapter 4.**

Chapter 4, *Forest on Trial: Towards a Relational Theory of Legal Agency for Transitions into the Ecozoic,* explores the notion of personhood through an ethnographic and *ius*-philosophical lens. Persons such as humans and corporations can seek redress before a court of law. This chapter claims that the notion of legal personhood seems to actualize the contested modern tension between nature and culture in most of the social and legal theory at present. More than discontinuous and self-contained beings, Amazonian forests embody sentient and mind-bearing relations involving humans and other-than-human beings such as plants, animals, and spirits. Can the forest speak law? Do forests endlessly require the mediation of human modes of legal representation? Overflowing the person's ontological stability forests teach a notion of legal personhood beyond the human, the state, and the norm. Thus, an attempt to overcome anthropocentric concepts of personhood and agency, this chapter ethnographically engages with Amazonian legal cosmologies through ritual plants such as the yagé.

While there is a long way to go before state law listens to Indigenous legalities and other-than-humans, these last two chapters attempt to approach law both as a particular kind of symbolic representation, that is, a changing set of positive norms and procedures, as well as a non-symbolic form of representation that conjures up other-than-humans in legal theory and practice.

Part III: Rhizomatic Agencies and pluriversal laws: Emergent learning tools and adjudicating principles

The third and final part of the dissertation (*III. Rhizomatic Agencies*) reviews and summarizes the argument concerning agency and discusses how parts I and II could serve as tools for legal transformation in concrete scenarios of learning and adjudication. A summary of agency theory with ethnographic insights from the first section, chapter 5 ("Agency Scaffolding") dives into the limits of individual and collective forms of agency, and the need to hold space for relational or rhizomatic agencies that include other-than-human beings in decision-making protocols. Chapter 6 ("Worlding with Indigenous Law: A teaching and learning proposal") can be taken as coursework material on Indigenous legalities. It refers to a specific Indigenous legal tradition—the Inga—as it transforms state law and contributes with the Earth Law movement. *Rhizomatic Agencies* closes with a proposal for a syllabus on "Indigenous Legal Traditions and Decolonization" (Chapter 7).

Chapter 5, *Agency Scaffolding: From Individual to rhizomatic agencies: review and proposal*. This chapter explores agency theory in various disciplines, particularly the "agency problem" in the field of ecological economics (EE). The chapter proposes an ethnographically inspired concept of agency beyond human-only, atomized, individualistic, and solely rationalistic agency proposals that are frequent in collective action approaches at present. In addition, the chapter examines critical agency approaches that address race and power relations, and then explores agency proposals that include other living beings. However, post-humanist approaches sometimes remain unaware of power asymmetries and therefore tend to silence non-Western cosmologies and the colonial dynamics they are confronting.

The interdisciplinary field of EE reacts against the narrowness of environmental and resource economics, which applies conventional economics to environmental problems. In this sese, EE seems crucial to address the interrelated nature of the current global crises. The chapter concludes by suggesting a relational framework that considers hierarchical structures between humans and

other-than-human beings, as well as power-laden asymmetries across different social domains (i.e. race and the corporatization of the state); thus, the chapter pushes EE agency proposals beyond conventional collective action frameworks centered on human-only and atomized agency proposals.

Chapter 6, *Worlding with Indigenous law: A teaching and learning proposal,* will offer a point of view of what Anishinaabe legal scholar Aaron Mills calls "Indigenous legalities," a way to respond to Western legalities based on dualist ontologies (2019). By Indigenous legalities I do not mean only Indigenous legal *traditions*—a set of customs, norms, and procedures to regulate social behaviour—but also the local lifeworlds, which are distinct ways of knowing and being in the world, (Mills 2019) including forms of laws for humans and nature. Drawing from these principles, the chapter surveys some of the main tenets, methodologies, and sources of Indigenous legalities in the "Americas" as they contribute to Earth law. Indigenous legal theory and practice must draw from the living and knowledge systems where any legal order is already embedded: part of this task consists in taking seriously the systems of norms, procedures, and practices informed by the multiplicity of lifeworlds referred to as Indigenous legalities. In many countries, such as Colombia and Ecuador, environmental law at the state level is increasingly incorporating crucial elements of this vision. Such countries are said to have *pluri-legal systems*.

Following Indigenous legal practice in the Andean-Amazonian region, this chapter's life-enhancing vision embraces a relational, rather than separationist, view of the world. This view underscores the radical interdependency between human and non-human beings, pays attention to the benefits of pluri-legal systems, and recognizes the intelligence and communicative capacities of the non-human world. Thus, Earth law challenges the narratives and premises of Western law, and environmental law in particular. Indigenous legalities contribute to Earth law's emergent field by emphasizing a paradigm shift away from anthropocentrism to ecocentrism. Therefore, the purpose of this chapter is to enable understandings of the contribution of Indigenous legalities to Earth law and aims to contribute towards the preparation of legal scholars and practitioners to become advocates for Indigenous people and Indigenous legal systems. Part

1 concerns the differences between Western law and Indigenous legalities; Part 2 concerns the sources and methods of Indigenous legalities; Part 3 presents Colombian and Inter-American case law regarding Indigenous legalities, and Part 4 offers a vision of Indigenous legalities in the Andean-Amazonian context today: the *Wuasikamas* law, or the "law for the guardianship of Earth" of the Inga People of Colombia. The small boxes in this chapter are study questions and summaries of relevant case law, soft law and legislation regarding indigenous legal systems. The pedagogical proposal of this chapter is further developed in chapter 7.

Chapter 7, *Indigenous Legal Traditions: from the boreal forests to the Amazonian foothills. A syllabus.* What is the relationship between law, life, and culture? Do Indigenous legal traditions (ILT) offer a different view of the law? How do ILT conceptualize the socio-ecological contexts where the law is embedded? Can ILT contribute to global transformations for social and environmental justice? This syllabus offers an overview into the multiplicity, historical trajectories, and methods of analysis of some Indigenous legal traditions in the Americas. It first offers an overview of key schools of legal thought in the Western canon.

The syllabus is divided into three sections. The first one, *Indigenous Legal Traditions of North America*, reviews some aspects of Indigenous legal thinking and practice in Canada and the US. The second, *Indigenous Legal Traditions of Latin America*, will review ILT from various Indigenous communities in Latin America. *Indigenous Legal Traditions in Conversation (North-South),* the last section, explores how Indigenous legal theories from these two contested geo-political constructs (North and South America) interact with each other. The syllabus focuses on how ILTs respond to dominant models of environmental governance today, while transforming dominant legal theories and practices.

Legal Lives: A methodological note about the "boxes" at the end of the dissertation (see appendices)

The boxes in the "appendices" section are intimately connected to *Legal Lives'* arguments on human and other-than-human modes of social agency, embodiment, and legal theory. These

theme boxes are also an attempt to link personal experience, ethnography and theory in a way that may feel less constrained by the norms of academic writing. The issues they discuss are heterodox and yet somewhat interconnected: Indigenous statements on the use of medicinal plants; the notion of entanglement in social sciences; coloniality and race, and a letter to a cognitive scientist, among other themes.

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A COMPREHENSIVE REVIEW OF RELEVANT LITERATURE

The following review is divided into four parts: 1) post-humanist theory and material agency; 2) plant studies and plant-human relations; 3) Earth Law and the Rights of Nature; 4) Indigenous legal traditions and decoloniality.

1. Post-humanist theory and material agencies

a. Towards a post-humanist understanding of the encounter of beings

The notions of traditional knowledge (Vallejo 2007; Torres et al. 2004; Gómez 2010), traditional ecological knowledge (Lauer and Shakar 2009; Langton and Zane 2005; Pierotti and Wildcat 2000), Indigenous know-how (Yavo 2013), and Indigenous science (Snively and Williams 2001) populate scholarly and institutional discussions around local ways of dealing with plants, animals, soils, mountains, and other beings and relations. In one way or another, the heuristic potentials and political capaciousness of these concepts have been the object of critique in the anthropology of knowledge (Green 2008), political ecology (Rocheleau 2008; Escobar 2015), post-humanist anthropology (Kohn 2013, Descola 2013, Viveiros de Castro 1998, 2014, 2015), political ontology (Blaser 2013, De la Cadena 2015, Escobar 2018) and cultural studies (Castro-Gomez and Grosfoguel 2007) to mention just a few fields.

The place-based and relational character of local 'knowledge practices' in the Andean-Amazonian region concerning the "natural world" require novel languages to convey the highly asymmetrical character of environmental knowledge practices in colonial contexts (Walsh 2009; Taussig 2010 [1980]), as well as the limits of human representation of forest life (Kohn 2013; Descola 2013). Notions such as cultural translation (Buden *et al* 2009), transposition of knowledge (Lundberg and Kilhamn 2016), re-appropriation and re-signification (Rappaport and Cummins 2011), cultural hybridity (MaClean 2015), other-than-human agencies (De la Cadena 2015), and perspectivism and multi-naturalism (Viveiros de Castro 1998) are paramount to an epistemology and ontology of Amerindian forest practices and territorial governance models in the Andean-

Amazonian region today. Moreover, the relentless multiplicity of "Indigenous conceptual worlds" (Viveiros de Castro 2014, 2015) around "natural systems" can hardly be confined to concepts whose fundamental ontological premise is the modern separation between knowledge and life, culture and nature, and body and mind (Escobar 2018, Agrawal 2002). Thus, this section reviews some streams of post-humanist and relational approaches to social theory to start framing legal questions in a post-anthropocentric key.

b. Beyond Marx's 'metabolic rift' and the possibility of 'other' materialism

An earlier approach to the relationship between the 'social' and the 'natural' world can be found in Marx—deemed by some scholars as one of the first modern ecologists (Bellamy Foster 2000).[42] Marx employed the concept of metabolism to describe the material ex-change between nature and society, that is, a physical process prescribed by nature's own laws of sustainability mediated by the force of human labour.[43] Marx's materialist approach is grounded upon a notion of practical materialism that asserts the constitutive role of human agency in the reproduction and transformation of social relations.[44] Such relations of 'man' to 'nature' were "practical from the outset, that is, … established by action," he argues. [45] The notion of metabolism thus entails the 'essential' role of human action in transforming the material conditions of their own existence by mediating, regulating, and controlling 'nature'. For instance, soil nutrients absorbed by plants later become part of the human diet vis-à-vis the production of food.[46] Marx cautions, however, that the metabolic relations between humans and nature remain possible when premised on a principle of (metabolic) restitution, a process by which some of the nutrients that have been extracted from the soil are resituated under the form of manure. Yet, for Marx, nutrients, soils, and plants are all material conditions of production devoid of agentive properties. In fact, the notion of agency is

42 This idea has been challenged in Martinez-Alier 1995.
43 Carl Marx (Grundrisse) 1973, 489 and 527; Carl Marx, (Capital (I)) 1976, 283 – 290.
44 A materialist approach to reality considers that the origin and development of all that exists depends upon nature as a physical reality. Thus, a philosophical materialism as a complex worldview comprises, among others, a practical materialism that asserts the constitutive role of human agency in the reproduction and transformation of social relations. See Bellamy Foster 21.
45 Marx, (Texts on Method) 1975, 190).
46 Marx, (Capital (I)) 1976, 637; Bellamy Foster 200, 141.

out of the picture in Marx's work.[47] These 'natural elements' are mere forces of causality, while human praxis remains the eminent shaping force of nature and social life. The ontological premise of this kind of materialism is dualistic as opposed to relational, since 'nature' and 'culture' are considered separate spheres of life governed by different principles. An epistemological rift, as it were, this principle of separation lays at the root of our modern anthropocentrism with its widely known ecological, economic, and political impacts (Escobar 2015).

c. The possibility of other-than-human agencies

Notwithstanding Marx's contributions to understand the relationship between nature and society, a call for a 'nonhuman turn,' on the other hand, attempts to by-pass the dualistic foundation of his metabolic theses. A recent history of nonhuman agency could be traced back to mid-1990. This date saw the emergence of manifold theoretical approaches considering natural beings and material things as social agents themselves. Instead of privileging culture and human praxis—as Marxism would have it—these scholars have focused on what Donna Haraway calls 'naturecultures,' and Bruno Latour referred to as 'collectives.' (Haraway 1991, Latour 1993).

On this novel relation between 'nature' and 'culture', Haraway suggests that historically specific human relations with 'nature' must somehow "linguistically, ethically, scientifically, politically, technologically, and epistemologically - be imagined as genuinely social and actively relational (…) 'Our' relations with 'nature' might be imagined as a social engagement with a being who is neither 'it', 'you', 'thou', 'he', 'she' nor 'they' in relation to 'us'. The pronouns embedded in sentences about contestations for what may count as nature are themselves political tools, expressing hopes, fears, and contradictory histories (…) Curiously (…) efforts to come to linguistic terms with the non-representability, historical contingency, artefactuality, and yet spontaneity, necessity, fragility, and stunning profusions of 'nature' can help us refigure the kind of persons we might be." (Haraway 1991, 3) Similarly, on the notion of 'collectives' or assemblies between former

47 Nicolas Kosoy, personal conversation. Nov. 21, 2020.

natures and cultures, Bruno Latour argues that "science studies are talking not about the social contexts and the interests of power, but about their involvement with collectives and objects. The Navy's organization is profoundly modified by the way its offices are allied with its bombs; (…) I will use the word 'collective' to describe the association of humans and nonhumans and 'society' to designate one part only of our collectives, the divide invented by the social sciences." (Latour 2003).

Thus, these concepts propose a radical rethinking of modern dualisms while describing how they are produced in discourse and action. Their focus is on "the morphology of change giving special attention to matter (materiality, processes of materialization) as it has been so much neglected by dualist thought."[48] Here, attention to the cultural capacities of matter and the 'nonhuman' that, contra Grusin and others, I am calling an 'other-than-human' turn,[49] has influenced fields such as anthropology (Ingold 2011, Kohn 2013, Viveiros de Castro 1998), political theory (Bennett 2010), cultural studies, and legal theory (Braverman 2018), among other fields (Escobar 2018). Moreover, several emergent approaches and fields of practice foreground the agency of things (Hodder 2012), materials (De Landa 1997), and other-than-humans beings such as plants (Pollan 2002), soils (Lyons 2016), and animals (Few and Tortorici 2013) in contemporary Latin American social theory. As indicated, these approaches range from political ecology to political ontology (Escobar 2015, Blaser 2013, De la Cadena 2010), and from Amerindian perspectivism (Viveiros de Castro 1998) to post-humanist anthropology (2007, 2013), to only name a few.

Many of these works have very actively deconstructed the institutional and academic production of nature as an object of knowledge, exploitation, management, and conservation.[50] They have shown how what Western modern epistemologies (Mignolo 2011) call 'natural beings' are

48 The NonHuman Turn and the New Materialist Turn are tightly related. For a comprehensive account of the latter, see Rick Dolphijn and Iris van der Tuin 2012.

49 On nonhumans: "nature is not a domain defined by animality in contrast with culture as the domain of humanity. The real problem with the use of the category of 'nature' … lies … with the assumption of a unified non-human domain." Viveiros de Castro 1998: 470.

50 Eduardo Gudynas, Derechos de la Naturaleza y Políticas Ambientales (Jardín Botánico Bogotá 2014); Eduardo Gudynas, 'Alcances y Contenidos de las Transiciones al Post-extractivismo' (2011a) 82 Ecuador Debate 61; Eduardo Gudynas, 'Buen Vivir: Germinando Alternativas al Desarrollo' (2011b) América Latina en Movimiento.

produced as material forces of life, however devoid of agentive properties, a feature deemed exclusively cultural or human-like. For instance, in the case of political economy, to which political ecologists target their critique, nature is designated as the point of departure of economic processes having nothing to do with either the production of meaning, or political action. The co-emergent articulation between other-than-humans and humans, instead, suggest a new framework that is centered on the relation rather than the entity (Varela et al. 1991). A shift with major repercussions for the understanding of political and legal subjectivity and agency, this new framework suggests, among others, that life-entities such as plants and humans do not precede the relationships from which they emerge (Haraway 1991, Escobar 2015): "The law does not recognize a relationship as a legal subject. Only individuals (individual persons) can be legal subjects. It would not be too far off to say that (…) relationships [can be] the equivalent of legal subjects, insofar as they are embodied in persons ("including plants and animals") subject to political-ritual protocols and public attention."[51]

This *encounter* between other-than-humans and human beings in social theory and practice therefore points to the limits of human representation as the only source of any social form (i.e. practices, institutions, norms, decisions). Here, 'representation' stands for the language-mediated outcome of cognition, for example, the names given to the stuff of reality, as well as the act of standing for another person by contract or legal right, for example, when certain humans speak on behalf of other beings, including animals, rivers, and ecosystems, among others. Therefore, 'other-than-human' attention to social form can offer crucial analytical tools around the limits of human representation as the privileged site of meaning and action in a context of acute planetary crises. Following French anthropologist Philippe Descola, the project of post-humanism is "repopulating the social sciences ("including the law") with nonhuman beings, and thus of shifting the focus away from the internal analysis of social conventions and institutions and

51 Strathern 2005, 13. Roberto Esposito's philosophy of the impersonal, however, offers some analytic keys to the idea of 'the rights of nature' beyond the notion of the person. (2010). Can the idea of 'rights' survive without the notion of personhood? Esposito argues that in order 'to be able to assert legitimately what we call subjective rights (at least in the modern juridical conception of rights), one needs beforehand to have penetrated the enclosed space of the person. Thus, to be a person means enjoying these rights in and of themselves.' (Esposito 2010: 121). See Chapter 4 of this dissertation " Forest on Trial."

toward the interactions of humans with (and between) animals, plants, physical processes, [and] other forms of beings." (Descola 2014: 268). Similarly, anthropologist Eduardo Kohn's work with the Runa of the Ecuadorian Amazon suggests a shifting focus towards other-than-human - human relations, and other-than-human modes of meaning (Kohn 2013, 9). He argues that both humans and other-than-humans use signs that are not necessarily symbolic, that is, all species are capable of producing forms of meaning which are not limited to the creation of conventional, referential, and linguistic symbols.[52] Following Peirce's semiotics, Kohn considers other semiotic modalities: Iconic signs (that share likenesses with what they stand for) and indexical signs (that are in a relation of spatial or temporal contiguity with what they represent). These representational modalities, to be sure, "have to be brought into the anthropological agenda (…) because icons and indexes are the signs that nonhuman organisms use to represent the world and communicate between life forms." (Descola 2015, 269)

Following a similar line of inquiry for the case of plants, philosopher Michael Marder argues that vegetal life expresses itself otherwise and "without resorting to vocalization." For him, "aside from communicating their distress when predators are detected in the vicinity by realizing airborne (or in some cases belowground) chemicals, plants, like all living beings, articulate themselves spatially; in a body language free from gestures, they can express themselves only in their postures." (Marder 2013, 75).[53] The word *language* here describes plants' modes of expression as a form of spatialized materialiality. Thus, when it comes to plants, representation stands for "any network of (material) traces, of which consciousness is a highly circumscribed instance." (156) By a similar token, Kohn insists that "life-forms represent the world in some way or another, and these representations are intrinsic to their beings." What we, humans, share with other-than-human species is not only our embodiment "but the fact that we all live with and through signs

52 Here Kohn uses Peirce's definition of a sign "as something that stands to somebody for something in some respect" (cited in Descola 2014, 271).

53 Taking cues from Marder's philosophical project, Vanessa Lemm discusess various characteristics of vegetal life in Nietzsche's work—i.e. the plant as a living entitiy that is capable of measuring; the plant as a living being that is able to incorporate other beings and create value—in order to address the philosofical issue of the origin of value. Nietszche, according to Lemm, concludes that in terms of our (human) capacity to perceive the world, we are not that different from neither plants nor animals. In other words, the way in which humans feel and percieve the world does not differ from the way plants relate to the world as well. See Lemm 2016, 152.

(…) signs make what we are."(Kohn 2013, 9)

According to these post-humanist approaches, cognition, memory and communication are material-semiotic attributes distributed among different types of beings, rather than the exclusive domain of humans endowed with brains, centralized nervous systems, consciousness and language. In this sense, all living beings have the capacity to perceive, establish modes of communication and create dwellings by means of different modes of nonsymbolic representation that are expressed through indexes and icons, or as forms of "spatial materiality." With Kohn, nonsymbolic representation is 'intrinsic' to all forms of life.

Cognitive and social 'attributes' such as the capacity to signify, make choices, and create norms are materially and semiotically expressed in concrete places. This approach has the potential to expand concepts of society (Viveiros de Castro 1998), politics (De la Cadena 2010), and law (Anker 2017) beyond the human and the symbolic (Kohn 2013) since such attributes speak to the continuity rather than the separation between humans and other beings. In the opening story of my introduction (*Law and the Pluriverse*), the *frailejones* of *Sumapaz* were active social actors in the production of a place that exceeded the material as something external to the human 'observer'. Both the Spanish invaders and the local *frailejones* (moor plants) co-emerged as 'humans' insofar as these 'humans' were considered events rather than substances. The idea of the "human as an event of co-emergence" presupposes a form of continuity across all life forms.

Up to his point, the basic premise is the co-participation of *all* agencies in the cosmos, or relationality (Escobar 2018) in the production of multiple domains of theory and practice.[54] Let us further expand on this relational principle.

54 A new-materialist theory of law in Alain Pottage, The Materiality of What? (2012) 39(1) Journal of Law and Society 167. An etnnographic account on soy agency as it pertains to the law in Kregg Hetherington, 'Beans before the law: Knowledge practices, responsability, and the Paraguayan Soy Boom' (2013) 28(1) Cultural Anthropology 65.

d. *Sentience and Interdependence: A relational principle*

Recent studies in the field of animal cognition have discussed the moral basis of welfare beyond vertebrate animals showing how human cognitive and affective biases towards beings such as arthropods shape our notions of what counts as moral standing (Mikhalevich & Powell 2020).[55] Mikhalevich & Powell (2020) suggest that once science has sufficiently demonstrated cognitive capacities in a other-than-human species, its members should be granted moral consideration. This assumes that cognition is a potential attribute of *all* organisms. For example, a beetle should be considered capable of cognitive function if research confirms their capacity to perform tasks that humans recognize as cognitive or cognitive-like. This is an anthropocentric bias: cognition might not be a *property within* individual organisms but an emergent effect of the relationships between organisms and the world they continuously co-create (Varela et al 1992, Varela 1991, Ingold 2011).

The implications of this anthropocentric bias for the understanding of other-than-humans and morality are therefore multiple. For example, in relation to the human attribution of morality to other-than-human others, the anthropocentric bias considers moral values as matters of political concern if science is able to certify the cognitive *in* nature. There is certainly nothing wrong with establishing cognition beyond the human, the issue arises when science is considered as something preceding and separated from the very conditions of its emergence (Gagliano 2018, Haraway 2016, Tsing 2015), for instance, the cultural values, ethical orientations, political stances, epistemological preferences, and socio-economic determinants of research practice (Latour and Woolgar 1979).

Confronting this often-inescapable anthropocentric "bias"—or rather, presupposition—demands to pay attention to the ontological, epistemological, and axiological conditions of emergence of any scientific inquiry (Castro-Gomez 2005, Quijano Valencia 2016). From this, it follows that moral consideration of non-vertebrates, such as our beetle, emanates from scientific claims about

55 Comments of an earlier version of this short piece by M. Gagliano, A. Khavari, and S. Whalan.

cognition, in general, and other-than-human cognition. Scientific claims, as a set of practices from an externally positioned human, cast meaning over our speechless beetle, and in doing so, science without the other-than-human perspective reinforces the ontology that separates ecologies, knowledge practices, and socio-cultural values. This, of course, is not about science negationism, but a call to expand scientific practice beyond the confines of modern epistemologies that separate humans from the rest of life (Berry 1999) in times of acute socio-ecological crises.

While this anthropocentric bias suggests that human experience shall delimit the cognitive and the moral *in* the other-than-human, an ontological bias neatly separates our beetle from the human "observer" in a material and semiotic sense. This ontological "discontinuity" (Descola 2013) suggests the existence of an objective nature out-there (i.e. the beetle is *in* nature), which the human shall describe with some level of standardized accuracy. This ontology of separation, namely the idea that 'nature' is the domain of life while 'science' and 'culture', more generally, are the domains of *human* life, underpins both cognition research and moral philosophy.

Thus, more than expanding the scope of moral attribution to wider aspects of an external nature, we could examine how a theory of relational cognition and ethics may transform the underlying ontology that separates humans from the rest of life (Akhtar-Khavari 2020). Conceptualizing nature as an objective reality composed of a collection of discrete elements (Escobar 2018) therefore mobilizes moral philosophy to expand the circle of concern towards non-vertebrates at the expense of the relationships from which they emerge (Haraway 2016). This means that those new beings *exist* as discrete moral agents to the extent that science produces them as such (as discrete entities).

The strategy of 'uncovering' what we may call a 'dualist premise of scientific inquiry' challenges what we mean by human and other-than-human cognition and ethical standing in society. How can we re-orient normative systems in light of these assumptions? More than a property of beings assigned from external sources, could normative systems be considered as a sort of emergent property of inter-being relations? Describing cognition as something *intrinsic* to beings rather

than an emergent property of the ongoing and often unpredictable relations between them (Varela et al 1992) removes the beetle further away from the ecologies that make her emerge as such (Haraway 2007, Strathern 2016). We grant moral consideration to the beetle to separate her from her systemic relations (living and not), without paying much attention to the fact that the beetle's cognitive dispositions do not exist outside of these relations. Unless science can prove that these relations are cognitive in the same way in which substances or selves such as beetles, plants, and humans are, these relations are not given moral consideration at all. In other words, these relations are considered part of neither law nor ethics as subjects of protection and standing (See Chapter 3 "Conjuring"). If we give rights to one being—the beetle—only to ignore the relations from which she emerges, what we tentatively call epistemological bias further separates ecologies, values, and knowledge practices.

As we pay attention to relations, the moral consideration of non-vertebrate beings, challenges cognition as a property *of* beings. This also means that cognitive science is not the only source of knowledge about what is cognitive and what is not, nor that cognition is the only adequate description of the mind-like properties of living and nonliving relations (Ingold 2011). For some people, non-living beings like rocks have thoughts and feelings and science cannot disprove this. This does not mean that the alternative is a matter to be discarded as mere cultural belief (De la Cadena 2015).

However, a question remains, if science cannot prove or disprove the sentience of the nonorganic (perhaps the next moral frontier) can we then assume that rocks should not be considered as subjects of moral and legal attribution? Indigenous people from Australia to the Amazon and from the Andes to the boreal forests of Canada would certainly say otherwise. Having a 'mind' is not an attribute of beings, nor a property that you can find *in* an external nature (i.e. plants, beetles, glaciers, rivers). Mind 'is' *minding,* that is, process and emergence. What kind of law is then a law that is attentive to 'emergence' and 'social relations' between humans and other beings? Let us keep this question in mind as this review progresses.

In addition to plants and other living beings in relentless co-emergence, things, objects, and 'matter' participate in agency assemblies and express a type of social life of sorts (Appadurai 1986, Bennett 2011, Ingold 2011). This idea is important to push contemporary social and legal theory beyond the symbolic and multicultural frameworks in which they seemed to be trapped (De la Cadena 2010). In the next section I will examine in detail one of those cases where "things" not only have a social life but also a form of agency in the Andean context (for a similar argument in Amazonia see Santos-Granero 2013). The fact that 'things' do things is crucial for relational approaches to the law as well (See Chapter 4 "Forest on trial").

e. Writing history with clay and stone: Indigenous material literacies in the Andean region

In 2012, a major archaeological exploration took place in the Colombian municipality of Soacha, Cundinamarca, located only a few miles south of Bogotá. A group of 170 archeologists unearthed what is considered the largest archaeological site in Colombia dated from the *Herrera* period.[56] It covers an area of 7,8 hectares, and has been described as a unique case in Colombian history given its potential to account for a human group that inhabited this part of the country almost 3,000 years ago.[57] Thus far, archeologists have found evidence of a village-like settlement with some vestiges of family dwellings, ceremonial constructions, and funerary deposits:[58] over 30 well-preserved ceramic objects and hundreds of stone-carved tools to spin wool, 30,000 fragments of pottery and more than a 100 tombs, remains of ceremonial houses, and several other constructions all pointing to a major human settlement in the area.

56 The name herrera comes from the first place where ceramics from this period were found: the Herrera lagoon in the department of Boyaca. See Oquendo, Catalina, "Viaje a traves de la excavacion arqueologica mas grande del pais." In El Tiempo magazine, 2013. See http://www.eltiempo.com/archivo/documento/CMS-13242355. (Visited 11.23.2019). The Herrera Period or Pre-muisca (900 b.c. – 900 a.d) is the first period of archaeological occupation from which there are a good number of records. The presence of agro-potter groups from this period—prior to Muisca settlement— has been registered in all these sites during the last few decades. The influx of agro-potter cultures, perhaps coming from the Northern plains of the country, explains why agrarian practices achieved significant 'progress'. Also, the domestication of useful species such as corn favored the occupation of diverse terrains alongside the rivers of the mountain chain (cordillera).
Seehttp://www.banrepcultural.org/blaavirtual/faunayflora/paramo/para213.htm (Visited 11.23.2019).
57 EFE and Semana, "El Descubrimiento arquelogico mas grande de Colombia," in Semana magazine, 2013. See http://www.semana.com/nacion/articulo/descubrimiento-arqueologico-mas-grande-de-colombia/367219-3. (11.23.2019).
58 Ibid, Semana, p. 1

Given the lack of symbolic inscriptions on the surfaces of these materials, for example hieroglyphics, it may be inferred that *Herrera* peoples were not concerned with the practice of recording memory, and much less that objects hold a form of memory in and of themselves. In fact, the materials found at this site offer cues on how the *Herrera* peoples lived and the tools they used, but not so much on how they inscribed their own way of living. This connection between materials and history by means other than the inscription of symbolic signs hold space for socialities beyond the human. I use the notion of material inscription of memory to refer to practices that both express daily life activities, as well as the recording of events in the vein of the largely studied *khipu*, namely, the Andean cord notation system.[59] Practices within the domain of material culture such as weaving, stone carving, and pottery making can be considered forms of inscription of memory. However, the criteria to determine which practices count as *material literacy*[60] is beyond the scope of this review. Suffice it to say that materials are not only inserted into human affairs, but actively create what counts as society as well.

In what follows, I will discuss the notion of intercultural literacy in the work of anthropologist Joan Rappaport and art historian Tom Cumming (2012). *Beyond the Letter City. Indigenous Literacies in the Andes* studies the Spanish imposition of alphabetic and visual regimes on Indigenous modes of inscribing memory, and the Indigenous re-appropriation of colonial techniques in Colonial Andes (Colombia). Probing how humans and materials make history together, a working notion of material writing, and literacy illustrates how both non-lettered practices such as weaving, pottery, and stone carving as well as the materials they are made of co-produce history. To be sure, the notion of material literacy re-thinks pre-colonial modes of memory making and historical consciousness. By stressing the role of materials, this line of work bears a special interest for the law as well (Pottage 2012): material literacies go beyond the symbolic and re-establish

59 See Salomon, Frank. "The Twisting Paths of Recall: Khipu (Andean cord notation) as artifact" In Piquette, K.E., and Whitehouse, R.D. (eds.) Writing as Material Practice: Substance, Surface and Medium. Pp. 15-43. London: Ubiquity Press. 2013.

60 The Enyclopedia Britannica defines literacy as the "capacity to communicate using inscribed, printed, or electronic signs or symbols for representing language. Literacy is customarily contrasted with orality (oral tradition), which encompasses a broad set of strategies for communicating through oral and aural media. In real world situations, however, literate and oral modes of communication coexist and interact, not only within the same culture but also within the very same individual." Available at http://www.britannica.com/EBchecked/topic/343440/literacy.

historical continuities before and after the Colonial encounter, while expanding the sources of legal meaning based solely on the symbolic. In a sense, this line of work is part of a larger argument on how 'peoples' and 'things' make history and law together (Salomon and Niño-Murcia 2011).

i. Matter, meaning, history

A central tenet of the material turn in social theory[61] is that the "understanding of things that are written must (…) go beyond (the) study of textual meanings and take account of the *material worlds* in which writing is inextricably embedded." (Piquette & Whitehouse, 2013: 1. My highlight) For instance, in the absence of symbolic inscriptions or traces on the surfaces of the objects found in *Soacha*, the very materials of which they are made off hold some form of meaning to their finders. As British scholars Piquette and Whitehouse argue the notion of material writing implies that "analytical and interpretative priority (is) given, not (only) to the linguistic and semantic meanings of graphical marks, but to their physicality and the ways in which this relates to creators, (…) users," and interpreters (2013: 1).

Expanding the notion of writing to include material objects, post-humanist approaches bring forth the theme of historical continuity between pre-colonial and colonial ways of writing events by means of material artifacts. What if we open the notion of the archive to consider non-lettered forms of inscribing events? This is a crucial methodological premise of a law-otherwise in so far as it expands legal sources beyond symbolic inscription or propositional language (Anker 2005, 2014, 2017). What might happen to the notion of intercultural literacy expressed, for instance, in

61 On this particular issue, see Hicks, Dan, "The Material-Cultural Turn: Event and Effect". In Beaudry, Mary and Hicks Dan (Eds), The Oxford Handbook of Material Culture Studies. New York: Oxford University Press, 2010. Hicks: "The terms 'material culture' and 'material culture studies' emerged, one after another, during the twentieth century in the disciplines of archaeology and socio-cultural anthropology, and especially in the place of intersection between the two: anthropological archaeology. The purpose of this article, however, is to excavate the idea of 'material culture studies', rather than to bury it. Excavation examines the remains of the past in the present and for the present. It proceeds down from the surface, but the archaeological convention is to reverse this sequence in writing: from the past to the present. In the discussion of the history of ideas and theories, a major risk of such a chronological framework is that new ideas are narrated progressively, as paradigm shifts. The main argument of the article relates to the distinctive form taken by the 'cultural turn' in British archaeology and anthropology during the 1980s and 1990s." (2010)

legal documents such as Indigenous testaments, when we consider material practices as active sources of history? (Rappaport-Cummins 2012, 9, 66, 157) In other words, do weaving, stone carving, and pottery contribute to a colonial culture predominantly based on symbolic expressions of memory? (Rappaport-Cummins 2012, 126, 162) These questions, again, are far beyond the scope of this review but they are good to think with as we consider how legal theory and practice is embedded in larger assemblages of meaning and matter. Attention to the material worlds in which the social is inscribed help us to trace out the social action arising from 'humans' and 'other-than-humans' encounters. "What happens when this approach to materiality takes on the question of law?" (Pottier 2012: 167)

ii. Literacy beyond the letter: an archive of stones?

For Rapapport and Cummins the expression *colonial culture* stems from the difficulty of separating into discrete entities with manifold cultural trajectories that contribute to the formation of a common colonial world. The expression "colonial culture" describes "the voices of numerous cultural actors from different historical periods' (Rappaport & Cummins, 2012: 29), and how they become "inextricably intertwined" over the years. Following Serge Gruzinski (1999), the cultural contestation of this period is not visualized "as the confrontation of two opposite poles," but as a series of modulations that unfold over time. Such modulations took place "as much among Europeans as among Andeans, both of whom belonged to heterogeneous social constellations marked by a multitude of cultural, racial, occupations, and gender identities that could be altered by administrative petitions." (Rappaport & Cummins, 2012: 29)

Discussing the colonial archive as mainly formed by the letter, the visual, and the interpretation of the spoken word (Rappaport-Cummins, 2012: 21, 24), the notion of the text is still central to Rappaport-Cummins' larger claims about the formation of a 'colonial culture' and history making more broadly. The problematization of the archive beyond the symbolic, then, is relevant to the possibility of writing history with 'things' or considering things as historical agents themselves.

The Argentinian critic Cesar Paternosto (1996) writes the following on the connections between text, textile, and stone of special interest to the social agency of things in history and law:

> "Tectonic derives from the late Latin *tectonicus*, which derive from the Greek *tektonikos*, from *tekton*, carpenter or constructor. Inspired by Cecilia Vicuna's poetic work with metaphors that are hidden in the intimate heart of a word, I discovered that the Indo-European root *teks*—the etymon, the true meaning of the tectonic—means "to weave," and also to make a wicker or wattle framework for mud walls; in Latin, *texere* (to weave) is the word from which "text," "texture" and context are derived. And one of the root's suffix forms, *teks*-la, is in Latin tela (net, warp, spiderweb), while another of its suffix forms, *teks-na*, means "artisanry" (weaving or fabricating), which in Greek is *tekhne* (art, artisanry, skill). Thus, in its hidden meanings, the word "tectonic" illuminates the primordial meaning of art ('and the creative work of memory inscription'), in which weaving and constructing are identified with the same semantic resonance—a resonance that, from my point of view, becomes the subtext, the weft that interweaves with the expositive warp of the history of Andean art." (1996: 165)

Can 'things' be considered agents of history rather than passive objects of historical claims? The connection between the 'text' and the 'stone' offers potentials for grounded speculation on what expanding the archive to material practices might entail.[62] Whereas practices such as weaving, pottery, and stone carving are expressive acts in and of themselves, a post-humanist reading suggests that these things are *not only* pieces of external matter from which humans derive meaning, but part and parcel of relational constellations of history where meaning and matter are deeply entangled.

62 The historian Achille Mbembe affirms that 'the term 'archives' first refers to a building, a symbol of a public institution, which is one of the organs of a constituted state. However, by 'archives' is also understood a collection of documents—normally written documents kept in this building. There cannot, therefore, be a definition of 'archives' that does not encompass both the building itself and the documents stored there.' (2002: 19)

Rappaport & Cummins' focus on the lettered archive does not consider practices of Indigenous colonial subjects who neither engaged with the letter, nor with intercultural forms of literacy (2012: 11). To be comprehensive, the notion of colonial culture should expand the focus on Indigenous *ladino* practices such as issuing testaments as a form of 'intercultural literacy' (Rodriguez-Jimenez 2012) to material practices of Indigenous artisans such as weaving. Stemming from Paternosto's etymological account of the 'text' (*tek*, *textere*, *tek*-tonic), an archive is also an archive of stones.

f. Intercultural literacy, colonial culture, and historical continuity

Beyond the Lettered City is a study on Indigenous literacies in Northern Andes (present-day Colombia). It examines the colonial imposition of alphabetic and visual regimes of the Spanish culture, while describing how Andean peoples received, maintained, and subverted these dominant literacies by adding their own local traditions. Rappaport and Cummins' focus on the formation of a colonial culture by way of the reception, appropriation and reinterpretation of lettered practices, particularly legal documents, notarial manuals, dictionaries, religious images, catechisms and sermons, as well as a vast amount of administrative records produced by colonial authorities and their Indigenous scribes. While the book focuses on textual literacy it "…goes beyond the obvious point that alphabetically written archival documents provide the major source of (…) information on the colonial period" (2012:11), it leaves open the question of how different modalities of memory inscription beyond the symbolic played a role in the formation of a colonial culture. The lack of reference to the historical continuity of vernacular modes of engagement with memory can be explained by the book's primary focus on the lettered or alphabetic archive.[63]

However, Rappaport and Cummins suggest that colonial Andean studies have just recently paid attention to the intricate connections and interfaces between different social actors (2012: 28). The

63 On the notion of the vernacular see Illich, I., Obras Reunidas,, Mexico: Fondo de Cultura Economica, Tomo II, 2006 (in particular the collection of essays "En el Espejo del Pasado").

focus has shifted from the study of discrete social agents to the study of an emergent colonial culture that integrated different sectors of society in often surprising ways (2012: 29): they were not so much closed worlds, "as they were critical scenarios within which representations and, ultimately power, were wielded by colonial administrators and indigenous agents alike' (2012: 28). Citing Carolyn Dean's study on a seventeenth-century series of paintings of Corpus Christi processions in Cuzco (1999), "colonial culture is best comprehended as a complex process of 'relexification,'([64]) in which Andean (Indigenous) syntax was used to frame European utterances" (Rappaport & Cummins 2012: 28). In other words, European worldviews were transmitted using the grammar of the colonized. The authors explain this process in detail:

> "This is a striking example of the internalization of a new visual culture in the psyche of a native woman [the authors are referring to a Christian vision that a *muisca* woman had]. Her dream experience was shaped by a painting before which she may very well have prayed but whose iconography she probably did not fully comprehend. Nevertheless, in her vision the canvas becomes a vehicle mediating between her pagan past and her Christian future; the former is literally represented by the *jeque* (shaman), and the latter by the Dominicans (…) in this instance, the structures of the new civil and religious order are manifest in the woman's accessing of a particular form of colonial literacy over which her command was only partial (…) The exemplary nature of her tale is what caused it to be cast in writing, to enter into an epistolary genre and to be forwarded to the Jesuit General in Rome, where the letter is now stored. As a result, the traces of visual literacy that impacted the vision are recast in alphabetic form." (Rappaport & Cummins, 2012: 253).

64 This notion comes from linguistics, and refers to the 'the mechanism of language change by which one language replaces much or all of its lexicon, including basic vocabulary, with that of another language, without drastic change to its grammar. It is principally used to describe pidgins, creoles, and mixed languages. Relexification is not synonymous with lexical borrowing, which describes the situation where a language merely supplements its basic vocabulary with words from another language.' (Wikipedia, consulted on 11-23-2014). On the relationship between relexification, and culture see Brightman, Robert, "Forget Culture: Replacement, Transcendence, Relexification". In Cultural Anthropology, 10 (4), p. 509-546, 1995. Available at: http://www.jstor.org/stable/656256

As this passage suggests, the alphabetical form is the dominant form of historical record. An Indigenous woman's exposure to a painting whose iconography she did not "fully comprehend" and the ensuing alphabetic recording of this experience cast the letter a source of truth. Indeed, the cultural relexification hypothesis: 1) signals a complex process of cultural *mestizaje* in the colonial period (Rappaport-Cummins, 2012: 30), and the profound power asymmetries between different colonial actors;[65] 2) the emergence of a colonial culture that was heavily influenced by the Spanish lettered city,[66] and 3) the re-appropriation of the "Spanish letter" to secure the continuity of the colonial rule. However, the relexification does not fully account for the other kind of continuity, namely, the transmission of practical knowledge through material artifacts that refused a process of *mestizaje,* and, nonetheless, surely influenced what the authors call 'colonial culture'.[67]A "material semiotics"[68] approach to the archive thus affirms the historical continuity between pre-colonial Andean modes of engaging with memory (such as the cited *Herrera* period) and material practices that survived the colonial rule.

As indicated, the notion of "intercultural literacy" describes how Indigenous populations have engaged with alphabetic writing during the colonial period. However, when the letter and the visual are the main streams running towards the archive's well, they might become the privileged source of historical evidence at the expense of materials that carry historical meaning. The notion of intercultural literacy embodied in practices such as *ladino* testaments have obscured local forms of material memorialization that were not dependent on the alphabetic and the visual. Nonetheless, Rappaport and Cummins (2012) do refer to "native literacies" (5, 9) as something

65 I am well aware of the anachronistic use of the term 'actor' to refer to groups of peoples in the colonial period. I am using it to assert their active role in this process of hybridization.
66 Rama, Angel, The Lettered City (trans. Chasteen, John). Durham: Duke University Press, 1996.
67 I am not suggesting that instead of cultural mestizaje there was 'cultural purity'. On the contrary, I am suggesting that even holding onto this binary, both processes might have taken place simultaneously.
68 Bluntly put, this expression refers to the semantic value of materials, but also to their capacity to 'convey' meaning on their own. Refer to the following works on this particular issue (the agency of materials). Bennett, Jane. Vibrant Matter. A Political Ecology of Things. Durham: Duke University Press. 2010; Law, John, "Actor Network Theory and Material Semiotics." version of 25th April 2007, available at http://hwww.heterogeneities.net/publications/Law2007ANTandMaterialSemiotics.pdf. See also Keane, Webb, "Semiotics and the social analysis of material things," in Language and Communication, 23, 2003, 409-425. Available at townsendgroups.berkeley.edu/sites/default/files/webb_keane_semiotics_and_things.pdf. See Bolt, Barbara, "Material Thinking and the Agency of Matter", in Studies in Material Thinking, 1(1), 2007. Available at ww.materialthinking.org/sites/default/files/papers/Barbara.pdf.

other than "learning to read alphabetically inscribed texts and producing Western forms of pictorical representation" (9). In fact, they were richer than "mere adaptations of European practices of reading and viewing; they also transformed them, spawning intertextual reading that interacted with indigenous forms of recording and representation, including knot records (khipus), textiles, and sacred geography" (10). The affirmation that "Andean (Indigenous) syntax was used to frame European utterance" does not seem to extinguish possible sources and practices of literacy based on material cultural expressions such as stone carving, weaving and pottery making.[69]

Thus, the relexification hypothesis describes Indigenous nobility's lettered forms of memorialization and inheritance such as testaments. These testaments show how *ladino* Indigenous property owners progressively adopted the Catholic faith and therefore the hypothesis do not sufficiently account for lay Indigenous folk and their modes of inscribing memory through materials. I am referring to people, however incorporated into the "Spanish juridical arrangement" (2012: 29), who might have not been totally deprived of their forms of memory, nor necessarily influenced by the alphabetic mentality.

On this issue, the Austrian scholar Ivan Illich argues that any fundamental concept exists in relation to the alphabet in the Western world. Thus, the alphabetic mentality is a sort of relapse to the realm of the letter at the expense of other modes of representation. The alphabetic mentality differs from *literacy*—the capacity to read and write—in that it has become a mode of perception where the alphabet is the main metaphor through which the 'I' is conceived and situated (Illich, 2005: 555). I am using this expression in a slightly different way to include both the alphabetic 'function' (to read and write) and a sort of reductionism of memorialization and social agency to

69 Examples of this 'colonial culture' as well as the 'cognitive and philosophical transformations' (R & C, 2012: 254) that it implied are cited in their work: "It is precisely in the learning of a perspective by walking the streets of a reduccion, the observation of a corregidor kissing a royal decree, the recounting of a dream sequence that mirrors a painting, the introduction of Spanish tilework in a wattle-end-daub Andean village, that we can begin to perceive the process through which such cognitive transformation occurred." (R &C, 2012: 254)

the alphabetic mentality,[70] that is, Indigenous syntax to European utterances (lettered-alphabetic). Despite this overreliance on the 'text', *Beyond* makes a explicit reference to the inscription of memory through weaving:

> "Within colonial culture, the performative efficacy of multiple literacies that crosscut indigenous and European genres of inscription and narration was played out in administrative and ritual space. For example, royal decrees read at the investiture of northern Andean caciques shared ritual space with native weavings, which were conferred upon new caciques in a culture in which textiles were a prime vehicle for inscription of memory and power" (2012: 149).

In the next section I will suggest a notion of material writing to underline how crucially entangled matter and meaning are in the construction of history. Matter as a social agent is central to the formation of a "colonial culture" and its historical continuities up until today (Mignolo 2003).

g. Writing and material writing

Writing can be broadly defined as a human practice of inscribing meaning. This practice alters an object, for example, a piece of paper, a headstone, a piece of cloth, among other materials, to retain the alphabetic trace or any other symbol (Ingold 2007).[71] Conventionally, things can't convey meaning unless human practitioners assign meaning to them, that is, things are surfaces or mere carriers of meaning. This definition implies a separation between sign and matter, or human agency and bare objects. Does this cultural definition of writing foreclose meaning beyond the symbolic?

According to British archaeologist John Bennet the term writing embodies two different meanings: 1) "a *process* 'involving the interactions of human bodies with materials normally

70 Illich, Ivan, "Por un estudio de la mentalidad alfabetica", in Obras Reunidas II. Mexico: Fondo de Cultura Economica, p. 555-570, 2006.
71 Ingold, Tim. Lines. A Brief History. NY: Routledge. 2007.

mediated through various tools (pen, keyboard, etc.), and 2) a *substance* or the material residues of those bodily actions on, or in, the surface of media of many kinds." (Bennet 2013: 335) This double sense of writing as the material process of inscription, and its ensuing substance, requires another step, namely, the act of reading from which the effect of meaning emerges. For Bennet, the practice of reading is also deemed a bodily process of engagement with the substance of writing through the senses, for example, the tactility involved in the Braille system. However, reading can potentially refer to a "broader set of engagements than merely making sense of and absorbing a representation of language" (336). Such is the case of the Andean cord notation system—khipu—considered a nonlanguage-based form of writing (Salomon and Murcia 2011).

The material process of writing is just one possible form of representation, and like other forms "its appreciation is not limited to the visual dimension" (Bennet 2013: 337). In other words, it is not limited to writing in the sense of a material process of inscription of meaning on a surface (the production of traces). Since representational practices are not limited to the lettered inscription of memory, the archive can be expanded to other forms of representation that might open space for other ways of the human inscription of memory, as well as the co-participation of *things* as co-agents of history rather than mere recepients of meaning (Ingold 2011). Yet not all things make history. The scope of this review is limited to expand on this issue.

As Bennet suggests, "writing is a *particular* form of representation" (337), or a form producing meaning among many other forms. Certain definitions of writing emphasize the content of writing systems, for example as symbolic systems rather than the material embodiment of the writing process itself (Bennet 2013: 338). Similarly, Berry Powel defines writing as "a system of markings with a conventional reference that communicates information" (2009: 313). Here writing moves between the inscription of signs and the communication of meaning rather than the relationship between inscription and production of meaning. Other authors point to the relation between writing and speech (Roberton 2004), while others challenge definitions that limit writing to the representation of speech (Salomon and Murcia, 2011). Bennet (2013) goes a step further to affirm that "(…) not all writing is for reading by human eyes (i.e. certain inscriptions

in Egyptian tombs or Greco-Roman curse tablets), or strictly representative of human language (i.e. magic spells)" (Bennet, 2013: 337).

Textile-making, pottery, stone carving among other practices can be considered expressions of the material inscription of memory. These expressions act as bearers of memory and knowledge and testify to the historical continuities of Indigenous struggles in the Andes.[72] Rappaport and Cummins' notion of literacy includes practices of urban planners, painters, *escribas*, and members of the Indigenous nobility. The fact that certain forms of literacy are not explicitly taken into account in the colonial archive opens up new considerations of special interest in understanding the place of the other-than-human in the constitution of the social field: 1) the colonial archive is lettered both in the sense of the "lettered city" (the alphabet) as well as the local Indigenous re-appropriation of Spanish modes of engaging with memory, or intercultural "literacy." From this, it follows that historical claims depend upon symbolic evidence at the expense of others forms of representation; 2) the symbolic *is* memory and since memory is what exists in the archive, the symbolic *is* history. Therefore, making history beyond the symbolic holds space for things as social agents rather than bearers of human memory. 3) A "colonial culture" based on the letter creates a history without materials, and these materials are left out of social inquiry to enter the realm of naturalistic description.

Rappaport and Cummins (2012) further argue that Indigenous Andean communities "did not know narrative pictorial representation or alphabetic or hieroglyphic literacy before the arrival of the Spaniards, and that to enter into such literate conventions they needed to learn a new set of technologies, but also had to understand that what was represented was not embodied in the image or symbol, but referred to something outside of it" (Rappaport & Cummins, 2012: 254). This suggests that local peoples were forced into a series of cognitive transformations to engage with European symbolic systems at the expense of their own ways of producing memory.

72 For instance, ladino testament is an expression of intercultural literacy with legal purchase, but also guane textiles are expressions of pre-colonial literacies that might be treated as legal evidence of possession of a particular territory.

Indeed, adopting a form of literacy by means of alphabetic and visual inscription was part of a colonial symbolic system of occupation of local historical continuities, institutions, values, and territories. This occupation presupposed the separation between human representation and de-animated material world that was rendered as the external referent of symbolic description. In *Beyond's* words, local peoples need to understand that "what was represented was not embodied in the image or symbol but referred to something outside of it" (254). Conversely, objects such as pottery, textiles, and stones can become a material grammar where the 'thing' and its linguistic representation become a unit. Thus, 'things' can form a *tek archive* or an archive of stones insofar as the representation of the world cannot be separated from their material entanglements.

For instance, it appears that in the pre-colonial Mayan world the act of reading was already associated with three rather fleshy actions "one of which has to do with speaking (usually calling out or shouting), a second with counting, and a third with looking (or looking specifically at paper)" (Tedlock, 1992: 216). By analyzing Mayan forms of writing, the ethnographer and linguist Dennis Tedlock finds that the use of writing among the pre-colonial Maya "argues against (…) suggestions that literacy was not widely diffused among Mayan peoples until the alphabet was introduced." (Tedlock, 1992: 218) Further, "there is certainly no lack of Mayan terms and phrases that deal with the process by which speech is made into visible texts and texts are interpreted" (Tedlock, 1992: 218). Well before the introduction of the Roman alphabet in the so called "New World," this linguistic evidence suggests that reading and writing were both forms of material practice.

This seems to speak to our current interest in opening the question of 'material literacy' as a set of operations to record memory beyond the conventional notion of literacy, but also as a way to collide literacy and material culture. What is 'inscription' in the face of memory forms that some consider to be 'alive' and in permanent flux? The double risk of reducing past events to different expressions of material culture or material reductionism, while reducing the narration of events to alphabetic inscriptions or formal reductionism, should be considered as we try to expand the

notion of literacy beyond the symbolic and the human. Illich offers an interesting approach to this 'double-risk' by weaving together the notion of dwelling and the idea of inscribing memory:

> " (…) *habitar era permanecer en sus propias huellas, dejar que la vida cotidiana escribiera las redes y las articulaciones de su biografia en el paisaje. Esta escritura podia inscribirse en la piedra por generaciones sucesivas o reconstruirse en cada estacion de lluvias con algunas canas y hojas*" (Illich, *El arte de habitar*, 465).[73]
>
> "To inhabit was to remain in his own footsteps, to let daily life write the networks and articulations of his biography on the landscape. This writing could be inscribed on the stone by successive generations or reconstructed in each rainy season with some gray hairs and leaves." (Author's translation)

The acts of writing and inhabiting are similar insofar as both try to trace paths and boundaries of meaning and matter in specific places. The landscape becomes a text or an archive of stones: "*la morada nunca estaba terminada antes de ocuparse, contrariamente al alojamiento contemporaneo que se deteriora desde el dia mismo en que esta listo para ser ocupado.*" / "the dwelling was never finished before it was occupied, contrary to contemporary accommodation which deteriorates from the very day it is ready to be occupied." (Illich, *el arte de habitar*, 464)

73 Iván Illich in H20 The Waters of Forgetfulness refers to the change from Mnemosina (el pozo de los recuerdos) into the alphabetic text—where memory is monopolized by the 'letter'. gets inscribed: "el poeta clásico de Grecia ya no necesita de recuerdos de un mas allá. Sus fuentes están congeladas en textos. Sigue las *líneas de un texto escrito; el rio épico que alimenta su propia fuente ya no se recuerda. Ni una sola ciudad griega ha conservado un altar dedicado a Mnemosina ["Las Corrientes llevan los recuerdos que Leteo lavo de los pies de los muertos hacia ese pozo, transformando de esa manera a los seres desaparecidos en meras sombras, a este pozo del recuerdo que los griegos lo llamaron Mnemosina" (Illich, "Las Aguas de Leteo", 370)]. Su nombre se convirtió en un termino técnico para designar la "memoria", ahora imaginada como una pagina; el material de la memoria pasa del agua a la vasija; el leguaje escrito, que ha fijado las palabras en tabletas de arcilla, adquiere mas autoridad que la re-evocación del fluido, habla viviente. Antes se conocían muchos tipos de "escritura", pero todos eran como carriles, mojones o flechas que guiaban el flujo del habla en la dirección correcta. Los pictogramas o los ideogramas no tenían la exclusiva función técnica de fijar los sonidos tal como se pronunciaban, para que pudieran proferirse posteriormente y por algún otro en la misma forma. Antes de que la tradición épica se registrara; antes de que la costumbre pudiese fijarse en ley escrita, el pensamiento y la memoria estaban entrelazados en cada enunciación; el que hablaba no tenia modo de imaginar la distinción entre el pensamiento y el lenguaje. La voz no podía almacenarse, no dejaba sedimentos. La composición solmene tenia que adecuarse para seguir el ritmo del hexámetro, enfatizado por la pulsación de las cuerdas de la lira. La conciencia, a falta de la metáfora del alfabeto, tenia que imaginarse como una corriente llena de tesoros. Cada expresión era como un madero que el hablante pescaba en un rio, algo arrojado del mas allá que en ese momento había sido traído a las playas de su mente."* (Illich, El Estanque de Reflexión de Mnemosina, 372-3, FCE)

***

The notion of "material literacy" expands the archive beyond symbolic representation, while affirming the factuality and continuity of historical events that cannot be explained by the symbolic form only. Thus, material literacy in the pre-colonial and colonial Andes refers to the material inscription of memory that, despite colonial domination, continues until now through practices with clay, stone, and wool, among other materials (See Ingold 2011 for the notion of lively materials). Different peoples create stone archives that represent historical continuities of sign and matter despite ongoing colonial rule in the Andean region. The fact that these artifacts cannot be "translated" into written text speaks to a non-literary form of literacy in which things themselves are texts embedded in the materials from which they are made. Again, the agency of things is a matter of relationship or association with human creators. In a sense, humans and things co-make history and each other. This entangled reality of sign and matter can "speak."

Building upon the study of materiality, I suggest that attention to situated "inter-being" collaborations (Harris, 2014) and their role in the production of legal concepts at different scales, poses important ontological challenges to modern understandings of law, politics and knowledge production in the Andean region and beyond.[74] In short, this dissertation develops a proposal in which the relations between human beings and non-human beings become a place for the transformations of legal systems. These legal transformations are part of the post-extractivist transitions that are emerging in Latin America. (Gudynas 2009; Escobar 2015). The role other-than-human/human entanglements play in social theory lays at the heart of fundamental questions of modern social institutions. In the following section I will review several studies on the encounters between humans and plants, as they help us think about society and law differently.

74 Constitución de Ecuador de 2008, and Ley Marco de la Madre Tierra y Desarrollo Integral para el Buen Vivir. See http://www.harmonywithnatureun.org/content/documents/157Bolivia%20Ley%20300.pdf.

2. *Plant Studies and plant-human relation*

a. The (vegetal) other-than-human and the law

Questions about the role of other-than-humans in legal theory and practice "shed light on some of the most fundamental assumptions and constructions of contemporary modern law" (Braverman 2016, 2018, 127). A groundbreaking work in this direction, *Forest Law|Selva Jurídica* (Biemann & Tavares 2014) addresses Indigenous engagements with legal forms of activism in the face of 'neo-extractive' industries in Amazonia (Svampa 2019). Turned into a quarry for the world's economy since the 17th century, this region has been the source of rich epistemic diversity that is already transforming legal institutions: while granting rights to nature, the 2008 Constitution of Ecuador holds space for a non-anthropocentric view of law that is slowly but surely spreading to other areas of the legal discipline (Zelle et al. 2021, Harris 2014, Papadopoulos 2012).

In fact, this review (and the dissertation that follows) is attentive to what De la Cadena rightly calls "politics beyond politics," that is, a form of power that conjures "sentient entities (mountains, water, and soil—what we call 'nature') into the public political arena" (2010: 334). My approach to normative systems such as law and ethics foregrounds the limits of human representation as the privileged site of social, political, and legal meaning. In the words of Kohn, other-than-human 'selves' create forms of meaning beyond conventional, referential, and language-based symbols (2013). As "skilled practitioners," mountains, rivers, plants, and animals can co-create legal institutions as well (Ingold 2011, 11).

The question of other-than-human agency has been widely addressed in contemporary social theory. However, it has received much less attention in the legal field (Vermeylen 2017). In the Latin American context, contemporary legal scholarship generally approaches the rights of nature either as state-granted norms or as political achievements of Indigenous social movements (Acosta and Martinez 2011, Gudynas 2009). While these approaches are central to the

theory and practice of the rights of nature, they have not paid sufficient ethnographic attention to the modes of participation of other-than-humans in the legal field. By probing how the law emerges from life relations themselves (Anker 2017), my dissertation engages legal questions beyond normative and multicultural frameworks, that is, beyond a form of law recognized by a state. Other-than-human beings are then contested sources of legal concepts and practices, and I will provisionally call this space of legal creativity Indigenous-forest relational jurisprudence.

Along with the living entities that make up Indigenous collective worlds, Indigenous epistemologies and world-making practices in Amazonia suggest an altogether different approach to the law. What if other-than-human beings are the site of legal meaning rather than the passive receiver of natural rights? What if what we call 'law' in contemporary eco-centric approaches to legal concepts such as the rights of nature is already enmeshed in human/other-than-human alliances? Thinking with Indigenous Kamentzá Hugo Jamioy from the Upper Putumayo region in Colombia, plants and other beings may have a saying in what he refers to as the *law of nature,* which is not the same as the Western natural law.

Similarly, anthropologist Philippe Descola argues that in Amazonia animals, plants, and other beings see themselves as people whose bodies conceal an internal human form (2014). Moreover, Eduardo Viveiros de Castro distinguishes between Western multicultural ontology—as the diversity of cultural representations of a common nature—from Amerindian multi-naturalism—as the multiplicity of natures (i.e. life entities) sharing a common culture or interiority (1998).[75] Here, this review proposes a relational rather than an entity-oriented view of 'organisms' (Ingold 2011) as they partake in the making of socio-legal worlds in Amazonia, and the Andes. Paraphrasing ecologist and theologian Thomas Berry, considered one of the founding figures of the Earth Jurisprudence movement, the historical treatment of the Andean-Amazonian region of Colombia is a prime example of the 'radical discontinuity' between human and other-than-

75 I use the notion of 'multi-naturalism' to analyze the rights of nature. See the post-scriptum in Chapter 3 "Conjuring."

human beings and the ensuing "bestowal of all rights on the humans" alone (Berry 1999: 4). This radical discontinuity is at the root of the ecological and cultural devastation of this region. Conversely, the new approaches I have just briefly summarized provide elements for the task of reinventing the human (Berry 1988: 123) and the other-than-human by re-embedding socials institutions such as the law within the broader community of entangled forms of life and meaning (Berry 1999; Brown 2015).[76] In this sense, lants are good persons to think with about the law (Gagliano 2018, Hall 2011).

Plants are not only the vegetal stuff of the world's economy and scholarly imagination. Instead, they are sentient, political, and legal entities that do not precede the relationships from which they emerge (Haraway 2007). This insight poses a major shift for a theory of legal subjectivity in this region. For example, political philosopher Roberto Esposito (2010) asks whether the concept of rights can survive without the notion of personhood. Traditionally only persons [natural or juridical (Stone 1972)] have been considered legal subjects. Insofar as relationships are embodied in persons, the first can also be subject "to political-ritual protocols and public attention" (Strathern 2010: 95).

Assessing the limits of epistemology in legal scholarship, these scholars address the debate through relational lenses as well. Adding to this discussion, I suggest that plants embody and exceed Amerindian concepts of relationality and interdependency between living and nonliving entities. In other words, plants emerge as a sort of cognitive prototype of a relational (and contested) legal agency I believe central to Indigenous legal systems in contemporary Andes-Amazon. Section 2 will focus on the modes of socio-legal participation of plants.

76 The expression "Ecozoic era" was coined by Thomas Berry and Brian Swimme in their groundbreaking The Universe Story. The term broadly describes "the geologic era that Earth is entering – when humans live in a mutually enhancing relationship with Earth and the Earth community." See https://ecozoictimes.com/what-is-the-ecozoic/what-does-ecozoic-mean/ (2.22.2019).

b. Plants: A prototype of other-than-human (legal) agency?

As we have seen, other-than-human beings have been casted as agents of knowledge, shaping forces in social life, as well as subjects of rights in today's legal theory and practice.[77] Thinking with plants can provide a good entry-point to re-imagine what (else) counts as 'society', 'politics' and 'law' (Marder 2013, Gagliano 2018). Plants and humans, however, do not precede their encounters (Myers 2015): subterraneous and aquatic, aerial and aural, literal, and metaphoric, plants are constituted through vital relations with other beings and forces. They are embedded within life assemblages or 'meshworks' (Ingold 2011) that extend far beyond plants' perceived forms above ground, as well as their modes of movement. In the introductory vignette of this dissertation (*Law and the Pluriverse*), the withdrawal of the Spanish troops was enabled by the limits of (human) representation, which made it possible for the *paramo* or moor and its plant inhabitants (the *frailejones*) to survive for centuries to come. In a way, "plants" and "humans" do not precede the encounter but are a consequence of it.

As discrete entities, plants can accomplish tasks considered exclusive to humans according to anthropocentric concepts of agency (Calvo, Gagliano, Souza & Trewavas 2020; Franks, Webb, Gagliano & Smuts 2020; Mancuso and Viola 2015). Plants are sentient beings capable of perception, cognition, and communication (Gagliano, Abramson & Depczynski 2018; Gagliano, Vyazovskiy, Borbély, Grimonprez & Depczynski 2016; Gagliano & Grimonprez 2015). For instance, they can sense their immediate environments and transform light into food; they can interact with other plants through their roots; they can also alert their vegetal kin about the presence of predators, and even hunt, among other qualities. This is not to say that plants' 'attributes' are valuable because they resemble human 'attributes.' Again, that would be an anthropocentric stance to plant-human encounters. The case might be that plants are far more resourceful beings than their human counterparts and the cited studies tend to approach plants' abilities in their own terms (Myers 2014). Moreover, plants have been brought into contemporary legal debates: to what extent

77 See this review: "Post-humanist theory."

can plants be subjects of rights? When does the human right to obtain food from plants collide with the plants' rights to the regeneration of the soil where they grow? (Pelizzon & Gagliano 2015; Federal Ethics Committee on Non-Human Biotechnology 2008).

Some studies have focused on the relationship between plants and territories--"we think with plants about the nature of territory" (Betsky and Padwe 2016, 10), while others explore local-based alternatives to extractivist practices such as the free ex-change of seeds, and traditional banks of germplasm (Grupo *Semillas* 2016).[78] Furthermore, while vegetal beings are incapable of 'speech' in the linguistic sense, convergent examples of Amerindian cosmologies and Western sciences consider them capable of communication, meaning-creation, and a form of social action in accord with their own perspectives (Turner ed. 2020; Wall Kimmerer 2013). Indeed, plants are windows into larger conversations over representations of nature across time and space, legal personhood beyond the human, and alternatives to profit-oriented economies (See chapter 4: "Forest on Trial"). A short step towards an other-than-human theory of legal agency, the next sub-section will review some works in the field of plant sensing and intelligence, and how 'plant-thinking' may help us *think* through notions of socio-ecological justice and the natural contract.[79]

i. "They are Sentient Beings." A Western convergence

In the field of plant studies, scholars use different analytic frameworks to probe plants' modes of agency and intentionality. Botanical philosophers invite us to "consider the moral standing of plants arguing that they are other-than-human persons," (Hall 2011) while science and technology scholars offer a more nuanced take on vegetal intentionality in particular techno-scientific settings (Myers 2015). For example, they explore how different practitioners, for example scientists, assign meaning to the plants they work with and how "plants sense and make sense of their (own) worlds" as well (Myers 2015: 36. See Wohlleben 2015; Mancuso and Viola 2015). This is the case

78 See Grupo Semillas, (2016), "La Lucha por las Semillas Libres de los Pueblos Latinoamericanos: Experiencias de Brasil, Ecuador, Colombia, Honduras y Guatemala." Available at: https://www.semillas.org.co/es/la-lucha-por-las-semillas-libres-de-los-pueblos-latinoamericanos-experiencias-de-brasil-ecuador-colombia-honduras-y#_ftn23 (Nov. 11. 2020).
79 On plant-thinking, Marder 2013, 152; on 'socio-ecological justice', Lyons 2016; on the 'natural contract', Serres 1995.

of anthropologist Natasha Myers who explores how plants perceive and respond to their own environments suggesting that plants are perspectival entities whose meaning-making capacities are not reducible to the conceptual toolkit of their human counterparts—including notions of intentionality or even intelligence. To be sure, the locus of plant 'intelligence' is not a centralized brain, but a decentralized body, which might ask for different conceptual frameworks (See Chapters 1.1. "Yoco").

These studies attempt to overcome anthropomorphic categorizations of plant behavior as they discuss the possibility of a plant point of view. Philosopher Michael Marder proposes the notion of *plant thinking* to refer to what plants can do—and what *we* can achieve learning with plants—as well as to their "unique perspective, expressed at the cellular, organismic and environmental levels." The challenge, he argues, "is to look at the world from a plant 'point of view,' for if biology is to be a science of living beings, it must investigate the particular perspective correlated with each distinct form of life." (Marder 2013, 136) Marder implies, however, that life is a collection of discrete entities connected through vectors of predation and symbiosis. What if a focus on relations redefines attributes such as 'intelligence', 'memory', and 'intentionality' as emergent effects of inter-being encounters, rather than specific capacities of the modern human or the plant? Our current discursive and practical overreliance on self-contain entities (i.e. humans, plants, animals, among others) may overlook the importance of inter-species relations in social theory (Escobar 2018). This point is crucial as we explore a non-dualist approach to legal agency in sync with Amerindian relational views of life and justice.

Plant scientist Monica Gagliano investigate plants' ability to detect vibrations from distant sound sources for orientation towards water (2017). Similarly, an increasing number of studies ranging from plant communication and intelligence (Trewavas 2016), to vegetal neuro-physiology (Mancuso and Viola 2015) and plant bio-acoustics (Gagliano 2018) reveal a vegetal sensorium functionally similar to organisms with centralized nervous systems. Yet, again, plants' perspectival capacities (Viveiros de Castro 1998), as it were, are neither a mere analogue of human cognition, nor an enclosed set of vital attributes. In fact, plants are part and parcel of a shifting

assemblage of distributed agencies and material politics (Harvey *et al* 2014) that weave together soil, water, humus, deforestation, technologies, spirits, and legal codes reconfiguring political relations and environmental governance models.

Intelligence and sentience, therefore, are not *in* plants but *with* plants and this relational focus opens theoretical questions with potential legal interest**.** The case of plants invites us to re-think society and the law as exclusive cultural attributes of organisms endowed with brains and nervous systems: as plant scientists Viola and Mancuso have argued, plants can "breath without having lungs, nourish themselves without having a mouth or stomach, stand erect without having a skeleton, and […] make decisions without having a brain." (Mancuso &Viola, 2015: 34. My emphasis.) Yet, this framework is not without limitations: how anthropocentric is such a rendition of plant life? How can we study the social lives of plants *in their own terms*?

Indeed, the idea that plants and other organisms are capable of intelligent behavior may expand notions of representation beyond the human and the person as bonded selves. Plants modes of representation, this research is set off to demonstrate, are not reducible to those specific to the human, that is, symbolic and language-based signs (Kohn 2013, Marder 2013). Broadly speaking, this research builds upon a well-established scholarship that expand the notion of representation usually defined in two complementary ways (de la Cadena 2015; Escobar 2018). First, as the language-mediated outcomes of human perception, that is, the names human assign to exterior objects and the relations between them (Westermann and Mareschal 2014). And second, as the act of standing for another party by contract or legal right, for example, when humans speak on behalf of others in a congress or a court of law. This suggests that neither the language-mediated perception of a single reality, nor the act of speaking on behalf of others foreclose the possibility of other-than-human (legal) representation beyond symbolic signs (Kohn 2013).

c. Plants: Relationality and Indigenous botany in colonial contexts

From earlier histories of colonization and development to current scientific and economic uses of plant life, relations between humans and plants have been largely overlooked by social theory in

colonial contexts. How do Indigenous peoples in Southwestern Colombia interact with plants for food, medicine, ritual, and decision-making purposes? What concepts people use to describe vegetal beings in relation to other aspects of culture? Theoretically situated at the intersection between Indigenous studies (Santos-Granero 2011) and ethnobotany (Balée 2000, 1999, 1994; Berlin 1992; Rätsch 2005; Schultes, Hofmann, & Rätsch 2001), this review further adopts a relational point of view to study local engagements with plants in the Andean-Amazonian foothills. As perhaps it has been overstated, this perspective considers 'plants' as entities already enmeshed in constitutive relations with other beings. Joining this conversation, some ethnographic works have discussed how human and plants co-produce each other and the kind of knowledge practices that emerge from this interface, while others focus on how local practices with plants are central to understand how territories come into being (Betsky and Padwe 2016).

Indigenous classifications of plants and plant uses, on the other hand, are deeply rooted in local representations of plants as sentient beings, former humans, and even family members in Amazonia (Santos-Granero 2011; Echeverry and Kinerai 1993; Urbina 2010). Cultural representations of *certain* plant species as bearers of 'interiority' and even agency determine local taxonomies in this region (Descola 2013, UMIYAC 2000. See Pinkley 1973 for Cofan taxonomies). While this research tracks a series of discourses and material practices with plants, it is particularly attentive to certain Andean-Amazonian vegetal beings whose capacities for action and histories of colonization have determined Indigenous' political struggles for centuries (See chapters 1 and 2). This is the case of the tobacco plant *(Nicotiana tabacum),* the coca *(Erythroxylon coca)*, and the *caapi* vine both thinking companions and decision-making partners for many Andean-Amazonian communities today (Echeverry and Kinerai 1993). Plant-human relations have been at the root of territorial and political practices for centuries in this region (ZIO – A´I Foundation and Humboldt Institute 2004, Allen 2002, Caicedo 2015),[80] and today they are part of

80 ZIO – A´I Foundation and Humboldt Institute. 2004. Manual Botánico para el reconocimiento ambiental y cultural de Ukumari Kankhe (Resguardo del Oso.) Also see Cofàn People (with the support of various organizations), Plan de Salvaguarda del Pueblo Cofan. See https://www.mininterior.gov.co/sites/default/files/p.s_kofan.pdf (Nov. 11. 2020).

growing post-development responses to extractivist economies world-wide (Kothari et al 2018, Turner 2020).[81] New eco-centric articulations of the law are part and parcel of these responses.

3. Earth Law and the Rights of Nature

a. Ecological Law: an ontological framework

National constitutions, court decisions and governance models across the world are increasingly recognizing the role of other-than-human entities in law-making processes, while scholars study how this new legal framework interact with (post) development agendas in Latin America (Acosta 2011; Gudynas 2011). The contested Rights of Nature clause is a growing response to (neo) extractivist practices (Svampa 2019) underpinning the global "inter-related crises of climate, food, energy, poverty, and meaning" (Escobar 2016). While this response recognizes the inherent value and integrity of natural systems, beings, and relations (Berry 1999; Brown 2015), the increase of intensive extractive practices in this region is not matched by this growing development of jurisprudence on nature rights.[82] This telling discrepancy is the point of departure for this section.

A central tenet of my research is that the 'social' and the 'legal' are expressions of a continuum between human and other-than-human beings (including the super-natural and the 'inert') (Descola 2013). Moreover, the 'social' is an expression of the world-making possibilities of the law as exemplified by the notion of the natural contract (Serres 1992). In conversation with non-dualist approaches in cognitive science (Varela 1999), plant science and plant studies (Gagliano 2016, 2015, 2014), and Amerindian ethnography in Amazonia (Viveiros de Castro 1998), this

81 A reconstruction of this genealogy in Escobar, Beyond the Third World. In https://www3.nd.edu/~druccio/Escobar.pdf (Consulted Nov. 11, 2020).

82Extractivism in the Latin American context can be better described as 'capitalocene' (Moore 2015). This term accounts for human geological impacts on the planet across humans depending on differential levels of consumption, ownership of the means of production, and ecological footprint. Therefore, this notion accounts for concrete modes of production, division of labor, and power asymmetries, rather than abstract and generic human impacts on the planet. Therefore, a theory of accountability for global ecological damage should reflect these differentials.

review and research asserts that living entities besides the human are endowed with cognitive and agent-like capacities and therefore have integral roles to play within the social and the legal field.

A second tenet is that the law is embedded in larger onto-epistemic, material, and ecological contexts (Vermeylen 2017; Philippopoulus-Mihalopoulos 2017). This attention to the material and post-humanist dimensions of the law is closely related to eco-centric proposals in the Northern hemisphere, for example, the work of historian of ideas and theologian Thomas Berry. Berry proposes a deep transformation of social institutions and practices based on ecological principles in what he calls the Ecozoic era, or the transition toward a "mutually enhancing human-Earth relationship" (Berry 1999). While these works conceptualize the limits of a legal paradigm based on the separation between humans and the larger community of life (Berry 1999), legal norms and ecological relations (Capra and Mattei 2015), social and ecological justice (Harris 2014), among other dualisms, there hasn't been sufficient attention to the relational, systems-based (Garver 2019), and experience-grounded ontologies in which an emergent legal paradigm shall be based. This emergent paradigm seeks to de-center the human and the 'person' (See Chapter 4: "Forest on trial") in legal norms, practices, and scholarship (Grear 2017).

De-centering the human, an emergent legal paradigm adopts a relational approach that signals the recursive co-emergence between all beings. This paradigm privileges the integrity of the whole Earth community in the long-term over the interests of humans or any other species (Cullinan 2011). What *is* law under this new paradigm? (Davies 2017 for a critique of essentialist questions concerning nature of the law) Broadly speaking, the law is concerned with relations between individuals, communities (human and not), collectives, states and "elementary groupings themselves" (Graham 2011:15 cited in Burdon 2012: 28). It can therefore be defined as **a system of norms about relations**.

Paradoxically, explained in terms of norms and procedures separated from the ecological processes it is set off to regulate, legal theory often overlooks the relational and material

dimensions of law making and takes for granted notions of objectivity and subjectivity (personhood) profoundly tied to mechanistic worldviews (Capra and Mattei 2015).

An ontological or relational approach to the law considers the world-making capaciousness of legal institutions, and not only their prescriptive or normative attributes. In this vein, legal norms are already grounded in the concrete experience of humans and other beings as they relate to one another in concrete places, beyond the state formalism of top-down legal codification (Winter 2001). This perspective suggests a **systemic and emergentist legal ontology**, as opposed to a mechanistic and deterministic approach (Capra and Mattei 2015). The rules we live by emerge in recursive engagement with a world we (humans) co-create along with other species (Winter 211).

In fact, these rules are not circumscribed to a set of abstract norms separated from the concrete sensory-motor handling of living organisms (Varela 1999). According to this perspective, **the law or any other normative system does not precede the mind** (Winter 211) but is something that all organisms engage in "by moving, touching, breathing and eating" (Varela 1999: 7) insofar as all organisms are mind-bearing selves in relentless co-emergence. This relational framework offers an important point of departure toward a new legal paradigm for the post-extractivist Andean-Amazonian region.

Furthermore, while the law is conceptualized as a system (Van de Kerchove and Ost 1994), it is rarely approached from the vantage point of the systems it regulates at ever-increasing pace, for example, geological, biological, and social systems (Garver 2019). Within this predominant mechanistic paradigm, the law is conceptualized as an autonomous human institution severed from larger socio-material processes, while these processes are considered external to other-than-human 'nature' (Burdon 2012; Braverman 2018). At its root, this ontology of separation is responsible for the reinforcing relations between top-down environmental governance models, socio-economic disparities, and the overall degradation of socio-ecological systems in the Global South.

The field of ecological law (Garver 2013, 2019) reacts against these top-down and command and control approaches of environmental law, thus posing an important challenge to the anthropocentric legal narratives of Western modernity (Mignolo 2013). While ecological law scholars critically integrate the law within larger ethical and scientific concerns (Brown 2015; Garver 2013; Brown and Garver 2009), the relationship between ecological law, neo-extractivism, and colonial violence remains largely overlooked (Gudynas 2009). In this sense, this dissertation studies how three non-anthropocentric legal approaches take up the challenge of other-than-human normativities in context of rampant extractivism and ongoing colonial violence, namely Indigenous legal theories and systems and the emergent ontological turn in legal studies.

This non-anthropocentric approach borrows from Kohn and others to contribute to a new legal paradigm that entails a form of "ecologized" law.[83] Here, I distinguish between "ecological law" and "ecologized law." The latter foregrounds the *active* role other-than-humans play in making the law that emerges through various sets of practices. Ecological law, on the other hand, refers to the normative principles that can be applied to different legal subjects as they attend to relational principles and planetary limits (Garver 2019). While the former is grounded in legal theory and ecological economics, the latter is ethnographically based. Both are inspired by Indigenous conceptual practices and need to work in tandem.

Moreover, this review builds upon a well-established body of literature that seeks to understand and reverse the predominant colonial relation between Western modernity (Mignolo 2013, Escobar 2015) and "Indigenous conceptual worlds" (Viveiros de Castro 2014, 2015). Rather than focusing on how anthropocentric conceptions of the law might impact Indigenous life and cosmologies, I study how Amerindian ways of knowing and being challenge anthropocentric conceptions of the law. Brazilian anthropologist Eduardo Viveiros de Castro has termed this inversion a "remarkable reversal" (2014: 39).

83 Kohn 2014. Also see Capra and Mattei 2015.

In brief, the law stages the tension between anthropocentric and eco-centric claims about socio-ecological change. Thus far, ecologically oriented legal scholarship sometimes reinforces the separation between humans and other-than-humans because it takes for granted terms such as 'personhood', 'standing', and 'rights' (See chapter 3: "Conjuring"). In a way, this review and the following chapters remain attentive to the limits and possibilities of an ontological/relational turn in the social sciences and the humanities, and its potential itineraries within the legal field in Latin America.

b. Ecologizing the law: A question of method?

As indicated, anthropologist Eduardo Kohn's work with the Runa of the Ecuadorian Amazon offers rich ethnographic evidence and methodological guidance on the intrinsic meaning-making and sign-producing capacities of other-than-humans such as plants, and animals. In Amazonia, living beings create modes of meaning that are not limited to conventional, and language-based symbols. As outlined earlier in this review, Kohn identifies two representational modalities beyond symbolic signs, namely, icons, and indexes. Signs are iconic when they share likeness with what they stand for. For example, a picture of my grandmother is an icon of my grandmother. Words like *splash* and *hiccup* are also iconic. Words such as *ta ta* stand for: "[a]n image of chopping: *tap tap*. *Pu oh* captures the process by which a tree falls. The snap that initiates its toppling, the swish of the crown free-falling through layers of forest canopy, and the crash and its echoes as it hits the ground are all enfolded in this sonic image." (2013: 30)

Indexical signs, on the other hand, express a relation of spatial or temporal continuity with what they stand for. Or, in other words, an index stands for some physical feature that points to something other than itself, for instance, " […] the sound of the palm tree crashing frightened the monkey from her perch […] The crash, as sign (of danger for the monkey), is not a likeness of the object it represents (*like an icon*). Instead, it points to something else. Peirce calls this sort of sign an index.' (2013: 31) Life represents the world in myriad ways, and this sign-making capacity is also intrinsic to nonhuman beings, Kohn argues. Thus, what we humans share with nonhuman

species is not (only or even most crucially) our embodiment, 'but the fact that we all live with and through signs […] signs make what we are." (2013: 9) Non-symbolic representation then is common to all life, so life *is not* without signs. Consequently, signs are not the monopoly of (human) language and let alone legal language. Kohn's ontological and methodological argument concerning the mind-manifesting capacities of forests is of special interest for the *legal lives of forests* and will be explored in some detailed in chapter 1.1. and chapter 4.

The next sub-section outlines key pre-analytical assumptions of legal thought and practice in modern epistemologies, and probes how the relational approach we have just examined suggest an alternative framework for the law in times of planetary crisis.

c. Law as mutual flourishing: Towards a paradigm shift in legal education and practice

The human is part of larger flows of matter and energy and co-emerges with other animal, fungal, and vegetal forms (see Tsing 2015, Haraway 2007). This biophysical principle informs every dimension of our all-too-human experience: from nourishment and social systems to knowledge practices and legal protocols. Earth systems, however, are undergoing fundamental changes with increasing pressure on and demand for "natural resources" and "ecosystem services" for human societies. Furthermore, dominant environmental law regimes fail to prevent and remediate ecological degradation and cultural lost. One crucial response to the socio-ecological injustices of our time, some argue, is to critically re-imagine legal systems of the anthropocene (LS-A) such as environmental law (Garver 2019, 2013; Grear 2017; Vermeylen 2017). I consider this to be a crucial step towards a larger paradigm shift within Western law. As an example of how LS-A operate, this section of the review outlines several ontological, epistemological, ethical, and pedagogical assumptions of "western law" (Burdon 2011) as way to contribute to an altogether different vision (Anker 2014, 2017).

This vision focuses on models of Indigenous and ecological jurisprudence based on the radical interdependency between human and other-than-human beings. Moreover, are part and parcel

of an emergent legal ontology that I tentatively call Legal Systems for Post-Anthropocentric Transitions (LS-PT). Drawing from ethnographic and scientific evidence concerning the earthly co-emergence and interdependence between humans, animals, and plants, among other beings and relations (Margulis 1991; Margulis and Sagan 2002; Margulis, Sagan and Eldredge 1995; De la Cadena 2015; Escobar 2018), this section outlines key principles from earth law scholarship (Zelle et al 2021) to further leverage ongoing transitions into LS-PT. LS-PT challenge key premises of Western modernity, namely the separation between life and knowledge, nature and culture, body and mind, among others, and much work has advanced in this direction (Capra and Mattei 2015). However, the political and policy implications of a relational approach in social and legal theory have received much less attention in the Andean-Amazon context. This dissertation aims to contribute to this objective as well.

i. The Rights of Nature as an expression of a new legal paradigm?

National and transnational legislations, court provisions, and governance models across the world increasingly recognize the legal subjectivity of animals, rivers, and forests, among other beings and relations (Acosta and Martínez 2011; Burdon 2010; Harris 2014; Youatt 2017). The contested constitutional clause of the rights of nature (RON),[84] for example, is a growing legal response to the 'inter-related global crises of climate, food, energy, poverty, and meaning' (Escobar 2016: 13). While the RON expresses the interdependence between ecological and social systems, the legal discipline is still deeply informed by the mindsets, practices, and institutions casting nature a limitless source of goods and services to meet ever-expanding human needs (Mesa 2008). To state it in terms of scholar Thomas Berry—considered one of the founding figures of the Earth jurisprudence movement —the discontinuity between humans and nonhumans, and the ensuing bestowal of all rights to humans alone is at the root of the socio-ecological devastation of our planet (Berry 1999: 4). The task ahead, he insists, is that of re-inventing the human while

84 In the Latin American context see: Protective Action issued by the Provincial Court of Loja, Sentence No. 1121-2011-001, 30 March 2011; Constitution of the Republic of Ecuador 2008, Legislative Decree No. 0, Official Registration 449 October 20 2008; Colombian Constitutional Court, Sentence C-035 2016; Colombian Constitutional Court, Sentence T-622 2016; Justice Supreme Tribunal STC 4390-2018.

re-embedding our social and normative systems within the broader community of life. A radical transformation of legal education is part and parcel of this challenging task (Brown and Erickson 2016).

Anishinaabe scholar Aaron Mills suggests that "legal education harms when it fails to acknowledge and to begin to articulate the lifeworld beneath any system of law it aims to impart." (2016: 847).[85] Guided by this material legal principle, Mills and others ask how legal education and practice may incorporate the living and knowledge systems where the law is embedded. Particularly how the transformation of legal education may contribute to a larger paradigm shift for the law (Meadows 1999): from reductionist and growth-oriented legal orders to systems-based and life-enhancing jurisprudence (See Capra and Mattei 2015; Winter 2001). This challenging transformation is part of a larger legal and political agenda for global transition narratives that seek a "mutually enhancing human-earth relationship" (Berry and Swimme 1992). Let us take a closer look at some of the exclusively human-centered pre-analytical assumptions by reviewing a textbook on comparative law.

ii. *Legal Systems of the Anthropocene: A critical review of a legal textbook*

Comparative law, broadly speaking, is the systematic study of the similarities and differences between legal traditions. *Comparative Legal Traditions* (CLT) 86 offers an overview into the history, theories, and methods of this legal sub-discipline in the Western canon by comparing the traditions of Civil Law and Common Law. 87 This sub-section is organized around a set of pre-analytical dimensions of legal education in the Anthropocene as depicted by CLT. While such dimensions are deeply entangled, I'll treat them as separate domains for analytical purposes. For example, ontology is defined here as a set of claims and practices around the nature of the 'real'

85 Mills defines 'lifeworld' as '…the ontological, epistemological, and cosmological framework through which the world appears to a people.' He argues that 'lifeworlds begins with creations stories.' Mills 2016, 850, note 6.
86 Glendon, Mary Ann; Carozza, Paolo G. and Picker, Colin. Comparative Legal Traditions. St. Paul, MN: Thomsom/West. 2008 (1982).
87 For CTL authors the word tradition generally evokes the image of a frozen and static past. However, with this term they denote a "vital, dynamic, and ongoing system" of principles and norms (14). In this sense, the Anglo-American common law and the Romano-Germanic civil law are both examples of living traditions.

(Escobar 2018), while epistemology stands for how different agents represent this 'real' through language, behavior, and practice. Consequently, the way agents learn and teach what they render as real pertains to pedagogy, and the kinds of things they do with knowledge refers to politics. Politics signals the power-laden relationships between agents, as they negotiate (and produce) their positions within the social field. Finally, an ethics, in the context of this analysis, refers to the normative dimensions of power (politics), knowledge (epistemology), and being (ontology) in a particular discursive field (see Van Dijk 2000, 2005). I now turn to discuss this pre-analytical framework in some detail (Vargas-Roncancio *et al.* 2019).

Ontology of separation: In most Western legal narratives of the anthropocene (on 'Western Modernity' see Mignolo 2013), other-than-humans are confined to the realm of things that can be appropriated and/or protected by the law. Humans, on the other hand, are considered persons with legal rights and responsibilities in relation to these things. Both the traditions of Common Law and Civil Law, as CLT exemplifies, rest on the overarching assumption that the real encompasses two separate domains. On the one hand, *external objects* of rights such as cattle, land, forests, water, and minerals, and on the other, *juridical persons* such as humans, civil organizations, and corporations with rights and/or responsibilities toward these objects (CLT chapters 1 & 2).

Epistemology of expert knowledge: Along with this dualistic worldview, the legal narratives of the anthropocene, as depicted in CLT, generally defend a historiography that trace legal institutions back to the Roman Empire exclusively (CLT: 1 -16). Such accounts offer neither a broader connection to a deeper past, nor an analysis of the socio-material conditions involved in the making of legal systems—which are therefore separated from their underlying socio-ecological relations, or lifeworlds (Ingold 2011; Mills 2016). This division between disembodied legal historiographies and theories, and peripheral place-based legal 'stories' and 'beliefs' informs an epistemology of expert knowledge at the expense of local (legal) theory. This division renders invisible non-Western legal practices at the root of concepts such as 'patrimony', 'debt' and 'responsibility' [Monateri 2006; Lopez-Medina 2018 (2004)].

A politics of colonial asymmetry: Along with this dualistic framework, the legalities of the anthropocene tend to undermine the role Eastern law and culture played in the creation of a 'Western' legal canon (Dussell 1998). Additionally, Pre-Columbian normative systems and conceptions of order occupy the position of the 'Other' (Smith 2012) and are either subsumed within a universal Western self-represented by the idea of the 'state' [Hegel 2001 (1820)], or made absent from the official legal canon. The state is then considered the main law-producing unit, while collective subjects such as Indigenous communities only produce 'local customs'. This targets a fundamental pre-supposition that places political subjectivities along a civilizatory trajectory whose pinnacles are Western-modernity and the state-form (Mignolo 201, 2013).

An ethics of professionalization: This commitment to 'othering' is further echoed by the professionalization ideal of legal education in LS-A (Evetts 2012): "Comparative analysis (and legal education more broadly) begins by working out a topic: Your client poses a problem. Or your government wishes to formulate and implement a policy. Or in the course of your studies, you encounter a puzzle" (CLT: 9). For the most part, this ideal informs the ends of legal education. Legal fields such as property law or environmental law remain oblivious of local struggles for collective rights (including the rights of nature) thus reinforcing the enclosure of life-relations within silo regimes that are legible for state and capital alike (Graham 2011).

Teaching 'development': While comparing "societies (and legal traditions) at comparable stages of social and economic development […]" (CLT: 7), most legalities of the anthropocene run parallel with narratives of development (Escobar 2008). This commitment to the development script couples non-growth oriented legal traditions with backwards modes of production and being. Whereas many LS-A might recognize the dynamism of legal traditions (Glenn 2007)—the Common Law being a case in point—they tend to foster an image of society as a machine whose parts can be scientifically retrieved for analysis, and/or improved through the good environmental policies time and again. The law, then, is made a tool to 'develop' backward societies.

As exemplified by CLT, the Legal Systems of the Anthropocene (LS-A) are mostly characterized by an ontology of separation between humans and the larger community of life (Burdon 2010); an epistemology of expert knowledge that either invalidates non-modern legal systems, or renders them invisible and/or non-scientific local beliefs (De la Cadena 2010; Dussel 1998); a politics of coloniality reinforcing power asymmetries between social groups (Mignolo 2011); an ethics of professionalization that reproduce a liberal view of the legal practice (Evett 2012); and finally, a development and growth-oriented legal pedagogy doing violence to local practices of economic and cultural difference (Quijano Valencia 2016).

Partially reviewing ecological and Indigenous legal proposals, the next section puts forward an altogether different vision. The underlying assumption is that distinct lifeworlds, namely "…the ontological, epistemological, and cosmological framework through which the world appears to a people," produce legal meaning and practice in different ways (Mills 2016: 850). Thus, legal education can either incorporate methodologies from larger socio-ecological systems, or further contribute to the separation between law and life in theory and practice.

iii. Law for post-anthropocentric transitions

As indicated, Legal Systems of the Anthropocene (LS-A) are framed as independent sets of norms and procedures to regulate social systems and the 'natural resources' they depend upon. However, these systems are often grounded in a 'one-world ontology' paradigm as suggested in the previous section (Law 2011). From the perspective of the Western experience and its colonial legacies (Mignolo 2011; Dussel 1998), the 'one-world ontology' insists that humans and nature occupy one single real made up of discrete and separated entities (Escobar 2016). The vision of Legal Systems Post-Anthropocentric Transitions (LS-PT), on the other hand, is committed to a relational understanding of the real, as well as the socio-ecological processes where the law is embedded. I organize this vision around three important aspects of the multi-dimensional framework developed in the previews section, as follows:

A relational ontology: Broadly speaking, the law deals with a universe of relations between individuals, communities (human and not), states and 'elementary groupings themselves' (Graham 2011:15 cited in Burdon 2010: 28). Usually depicted as the interpretation of legal doctrine, however, legal education tends to overlook the relational and material dimensions of legal systems (Vermeylen 2017). LS-PT therefore consider a relational framework, that is, "a vision of the world that echoes the autopoietic dynamics and creativity of the Earth and the fact that no living being exists independently of the Earth," and each other (Escobar 2015: 14. See also Atleo 2011; Berry 1999; Cullinan 2011). To state it in terms of Nuu-chah-nulth scholar Umeek E. R. Atleo, the principle of interdependence, that is, "(l)iving in balance and harmony with diverse life forms," is applied to every dimension of existence through the development of human-other-than-human protocols (2011: 36).

This relational approach to life then seeks to de-center the human in legal systems, while attending to the world-making potentials of legal orders (Grear 2017; Vermeylen 2017; Philippopoulos -Mihalopoulos 2017). The prescriptive attributes of legal systems are maintained in most post-anthropocentric narratives (see Introduction: *Law and the Pluriverse)*, yet the law is not reduced to this regulatory function only: legal systems are defined by their iconic and indexical modes of representation (Kohn 2013), and world-making properties as well (Escobar 2018).

An epistemology of symmetry: A non-anthropocentric stance to knowledge making brings the principle of interdependence into legal theory, education, and normative systems. A vision for LS-PT underlines an epistemological symmetry between human and other-than-human beings (de la Cadena 2015). Thus, despite the diversity of corporeal dispositions, affects, and modes of being between different kinds of beings (Viveiros de Castro 1998; Descola 2013), the human does not have a monopoly over the world of meaning (social or otherwise). Rights-bearing agents in national legislations today, other-than-humans are also active law-making selves in that they represent the world in other than symbolic forms. Again, Kohn's work with the Runa of the Ecuadorian Amazon offers ethnographic evidence on the intrinsic sign-producing capacities of

other-than-humans such as plants, animals, and spirits (2013). As the polyphonic Earth jurisprudence movement suggests, the law emerges from a thinking and sentient Earth (Anker 2017; Berry 1999; Borrows 2016; Burdon 2012; Cullinan 2011; Zuni Cruz 2009). Thus, a vision for LS-PT expands the notion of human representation to include other-than-human sentient and intelligent beings as law-making selves in their own right (for the case of plants see Pelizzon and Gagliano 2015).

An ethics of care and socio-ecological justice: Attention to the situated character of inter-being relations, LS-PT challenges liberal understandings of justice as the distribution of individual rights and responsibilities (Rawls 1971). A more comprehensive notion of socio-ecological justice (Temper 2019), for example, is rooted in Indigenous *Ley de Origen* (Law of Origin) and *Derecho Mayor* (Earth Law) across the Andean-Amazonian region (Muelas 2000). Both Law of Origin and Earth Law are neither abstract notions actualized in positive law as rules and procedures, nor expressed through customary law only.

They are practices of situated justice and responsibility embedded in material labor, family care, communal nurturing, plant sowing, commensality, ritual, among other practices and social institutions. At the same time, these practices are non-future oriented in that they strive for a situated material world beyond a legal command that guides action for a later time. Indigenous Law of Origin and Earth Law propose embodied justice, rather than justice as an act of judicial adjudication alone; justice through material practices of living-together, rather than abstract ethical principles that only a few can relate to. Justice for emergent socio-ecological transitions, then, is incarnated, actual, and place-based. Other legal concepts will be radically re-visioned as we attend to their underlying lifeworlds (Mills 2016; Ingold 2011).

iv. Legal Systems for Post-anthropocentric Transitions: Final remarks

Living in balance and harmony with multiple, sentient, and intelligent life forms can compromise every dimension of existence: from nourishment and social relations to knowledge making and

legal protocols (Atleo 2011; Kimmerer 2013; Trosper 2009). A non-anthropocentric stance to life and knowledge takes this principle of interdependence seriously. If the human is already embedded within shifting assemblages of cosmic matter, solar energy, water, soil nutrients, cultivation technologies, and social systems, institutions, and protocols, among other expression of relational agencies, the human can't have the monopoly over the world of meaning, value, and power (Kohn 2013; Viveiros de Castro 2016). Other-than-human beings are not to be described, controlled, or protected as discrete parts of an external reality, but partnered-with as agential beings in and of themselves. To be sure, every*thing*, that is, every*one* co-emerge, thrive in mutuality, and even decay relationally, in the same way in which foliage decomposes in the soil to contribute to the emergence of a living tree.

As reviewed in the previous section, Legal Systems for Post-anthropocentric Transitions (LS-PT) are characterized by a relational ontology that foregrounds the radical interdependence between humans and other-than-humans (Kimmerer 2013; Borrows 2016); an epistemology of symmetry that integrates non-modern and modern legal ontologies, while recognizing the inherent sign-making capacities of living (and nonliving) other-tha-humans (Kohn 2013; Bennett 2010); a politics of care that fosters harmonious relations between human groups, and between humans and the territories they are part of (Muelas 2000); a de-professionalized ethics pledging for post-liberal views of legal practice that seriously engage with the imagistic and world-making properties of the law; and finally a post-development and degrowth oriented legal pedagogy respectful of local practices of cultural, legal, and economic difference (Escobar 2008; Quijano Valencia 2016; Kallis *et al* 2018).

An emergent legal agenda for socio-ecological transitions, thus, joins long-standing traditions of Indigenous resurgence movements across the world (Mignolo and Walsh 2018).88 This resurgence opens up a cross-cultural agenda for future research: 1) probing the relationship

88 Over the last few decades, indigenous organizations and social movements around the world have faced the interrelated crisis of extractivism, climate change, socio-ecological injustice, and epistemic violence using different strategies. These strategies range from political mobilizations on the ground to various forms of legal activism, and from practices of cultural resistance and autonomy at the local level to international advocacy efforts.

between indigenous legal traditions and science-based ecological law approaches; 2) exploring how decolonial research re-visions official legal historiographies; 3) analyzing how to effectively integrate other-than-human beings into decision-making models beyond multicultural frameworks; and 4) studying how we can connect ontological approaches to the law with socio-political realities on the ground, among other topics.

Dimensions of change	***Epochal change*** From human driven planetary change to human-earth mutual flourishing. **- Main features -**		***Legal change*** From Legal Systems of the Anthropocene to Legal Systems for Post-anthropocentric transformations. **- Main features -**	
	Anthropocene (Predominant)	*Ecozoic (Emergent)*	*Anthropocene*	*Ecozoic*
World-view (ontology)	One-world world Separation	Pluriverse Relationality	One-world world Separation things/persons	Relational ontology Interdepen./human-Other-than-human law.
Ethics	Individualism	Co-responsibility	Professionalization Allocation of rights	Care for territories Socio-ecological justice
Power relations	Top-down Asymmetrical	Dispersed Symmetrical	Western-self State	Decolonial/resurgence
Knowledge-making practices (epistemology)	Science (mainly) Expert-knowledge	Co-prod. of knowledge Other narratives	Official legal narratives Rights of Nature	Legal pluralism Nonhum. as legal agts and sources of law
Agents of knowledge	Some humans	Subalternized humans Other-than-humans	Some humans	Subalternized humans Other-than-humans
Pedagogy	Development-oriented Growth-oriented	Post-development Degrowth-oriented	Development-oriented Growth-oriented	Post-development Degrowth-oriented

Table 6: Comparison of ontological and epistemological features of Anthropocene and Earth-centered paradigms in legal thought and practice. Based on multiple sources see Vargas-Roncancio et al 2019.

d. Socio-ecological justice through the vegetal grid

As mentioned earlier, some studies have looked at how other-than-human entities partake in legal theory thus challenging divisions such as norm/fact, law/life, among others (Pottage 2012, Harris 2014, Papadopoulos 2012). There, attention to situated inter-being relations poses several challenges to modern understandings of justice. The notion of socio-ecological justice, for instance, is rooted in indigenous *Ley de Origen* (Law of Origin) and *Derecho Mayor* (Earth Law) across the Andean-Amazonian region.[89] First, Law of Origin and Earth Law are neither abstract

89 On Ley de Origen and Derecho Mayor in the Andean-Amazonian world see: Muelas 2000.

notions actualized in positive law as principles, rules, and procedures, nor expressed through customary law. Law of Origin and Earth Law practices of situated justice and responsibility are embedded in material labour, family care, communal nurturing, plant sowing, and practices of commensality, among others. Second, they are embodied as a 'common material world', whereby matter stands for shared conditions of existence between living and nonliving entities (Papadopoulos 2012, 1).

As the Greek scholar Dimitris Papadopoulos suggests, creating alternative material conditions of existence requires local associations of co-responsibility between different species, that is, a natural contract as a form of embedded relationality. Here law seems to stand for life, and life forms—indexically—seem to stand for legal principles of living-together. At the same time, such practices of justice are non-future oriented in that they strive for a common and situated material world beyond (or before) a normative command that guides action. Hence, Law of Origin and Earth Law propose embodied justice, rather than justice to come; justice through material practices of living-together, rather than abstract principles of conviviality that only a few people can read, translate, and control.

Moreover, feminist black legal scholar Angela Harris discusses a notion of socio-ecological justice that integrates what she calls "trans-species relations." For Harris, a theory of socio-ecological justice underscores nonhuman vulnerability as part and parcel of a concept of justice for the Anthropocene. The fact that human life is "inextricably intertwined with life and non-life, human and not" suggests that the notion of justice should include other-than-humans as entities that can potentially be subjected to various forms of injustice. In her words, "just sustainability embraces just social relations among persons, and sustainable relations between humans and the nonhuman world (…) care of the earth and for social justice simultaneously." (Harris 2014, 53)

In brief, she suggests integrating social justice and environmental justice, and forms of social inequality to environmental injustice. Again, can plant life inspire a law-otherwise? In the introduction of this dissertation, I asked the following: What did Federmann's soldiers see

through the fog? This question pointed to the problem of the production of humanity in the context of interspecies encounters. As suggested earlier, plants modes of engagement with other beings might be a sort of prototype of social (distributed) agency. An interface between worlds, plants connect and foster new relations among living beings. Additionally, in the context of a multi-naturalist approach to the CRE 2008, plants, rather than animals, offer a unique image of the plurality of natures or lifeworlds underpinning the constitutional clause (see **Box 4:** Other-than-humans and the law: Towards a multinaturalist jurisprudence). Plants' movements above and below ground, moreover, exemplify Amerindian principles of relationality and interdependency between all living, and nonliving entities (i.e. sun, dirt, bees, microorganisms, and water, among others).

4. Indigenous Legal Traditions and Decoloniality

a. Overview

Conventionally described in terms of norms and procedures, the law remains separated from larger social and natural systems. As a result, legal orders have become instrumental to the ongoing socio-ecological crisis of our time. How do Indigenous Legal Traditions (ILT) in the Americas conceptualize the relationship between law and life? Can ILT contribute to knowledge-grounded and life-enhancing legal paradigms? For the purposes of this review, I conceptualize ILT as situated and cross-generational indigenous governance protocols rooted in the principle of interdependence between humans and other than humans. ILT are already in relation to their underlying cosmological and historical contexts and could offer important guidance to probe the limits and possibilities of transforming conventional legal systems in times of planetary crisis. This section is a mouth opener on the relationship between law and life in Indigenous legal scholarship. Chapters 6 (Worlding with Indigenous law: a teaching and learning proposal) and 7 (Indigenous Legal Traditions: A Syllabus) will go into greater detail.

b. Decolonizing Legal Imagination

Scholarship and regulatory proposals around Indigenous Traditional Knowledge (TK) and Traditional Ecological Knowledge (TEK) abound in the Andean-Amazonian context (Caldas 2004; Nemoga *in press*). Comparatively, however, there is less explicit attention to Indigenous legal traditions in this region, as well as how they challenge dominant environmental legal models in extractivist contexts. By creating partnerships with a range of national and international NGOs, academics and state actors, indigenous legal systems and decision-making protocols are "partially connected" (Strathern 2005) to state and "colonial" norms in often complicated and surprising ways.

Several scholars explore the interface between decoloniality and legal theory. For example, Barreto's (2014) work on human rights and emotions, Warat's contribution on legal surrealism (1998) and Upendra Baxis's work on postcolonial legality (2005) are all attempts to bring legal theory into conversation with critics of modernity. In addition, these works explore possible intersections between decolonial theory and legal philosophy in the Latin American context, for example 1) Barreto's recovery of the decolonial theories of Dussel and Mignolo to address human rights issues in a global perspective (2014), 2) Baxis' (2005) critique of Western law from the point of view of the subaltern, and 3) Acosta and Gudyna's work on the rights of nature, political ecology and environmental constitutionalism in Ecuador and Bolivia (2009).

On the basis of this scholarship, I analyze issues of legal philosophy such as the sources of legal norms (Law of Origin), the relationship between law and ecological processes, but also urgent debates on territoriality and the collective rights of Indigenous people. I am also interested in Indigenous legal scholarship, as it probes decolonial critiques of modernity to go beyond rationalist theories of law, while refocusing life on the legal systems themselves. More than the critique of rationalism itself, I am interested in exploring how legal scholarship might benefit from relational ontological frameworks and decolonial theories. Some works point in that direction. Once again, Baxi (2005) and Barreto (2014) explore the role of emotions and suffering in human

rights discourses (HHRR) as a way of placing the voice and experience of subalternized victims at the center of the debate. They consider not only their experiences as victims, but also the role of emotions in the construction of political subjectivities. The 'decolonial gesture' (Mignolo, 2014) could not be more explicit in these proposals.

In the global North, Harris (2014) discusses a notion of socio-ecological justice that integrates what she calls 'trans-species relations'. Thus, she clearly advocates a notion of justice that considers not only human beings but also other beings (organic and non-organic), while appealing to a relational framework to challenge other categories such as legal capacity, compensation for damages, constitutional justice, among others. Furthermore, Indigenous legal scholarship explore the relationship between Indigenous cosmologies and collective land claims (Consejo Regional Indígena de Huila 2012) thus providing fertile ground for a legal theory that re-centers life in legal thought and practice. Finally, Pottage (2012) contributes to a "material ontology of legal studies" beyond the notion of a "system of rules", while Monateri traces the multicultural origins of the Western legal tradition (2006). These approaches go beyond the ubiquitous logocentric, rationalist and extremely formalistic approach to law and modernity by drawing attention to what Mignolo calls "shifting the geopolitics of knowledge, feeling and belief" (2011).

What is emerging in current transitions to an earth centered paradigm	***Law***	**What some describe as the 'anthropocene'**
Humans and nonhumans, relations,	**Legal agent**	Humans (i.e. individuals, groups, collectives, states)
Territories, land, mother earth, plants, ancestry, the non-visible	**Sources of the law**	God, reason, law, power
For ecological relations and between different life forms. Socio-ecological Justice	**Justice**	For humans and between humans. Social Justice
Natural Contract	**Legal institutions (property, contracts, etc.)**	Social contract

Table 7: Comparison of ontological and epistemological features of Anthropocene and Earth-centered paradigms in selected legal concepts. Based on several sources. See Vargas-Roncancio et al 2019.

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METHODOLOGY

Climate change and COVID-19 have revealed the limited response capacity of conventional environmental law and governance models that insist on the separation between law, society, and earth systems of sorts. A paradigm shift based on epistemic plurality, relational thinking, and decolonial praxis is needed. How are Indigenous epistemologies and legal systems contributing to this paradigm shift in law? What kind of theoretical and methodological tools does an Earth-oriented law offer us? Beyond the rights of nature approach, how does a law that is entangled with Indigenous territorial practices challenge anthropocentric and colonial concepts of justice, agency, and value in times of socio-ecological challenges? How do human and other-than-human beings such as Amazonian plants co-produce protocols for forest governance? At the intersection between Indigenous legal epistemologies, Earth jurisprudence, plant studies and post-humanist anthropology, I study these and similar questions using different methodologies to contribute to the decolonization and ecologization of environmental law and legal theory in the hemisphere.[90]

In what follows, I will 1) discuss previous research leading to *Legal Lifes'* combined methodological approach; 2) present an overview of methodologies for this research*; 3)* describe specific field methods and tools (i.e. interview scripts etc.); 4) outline some potential decolonial aspects of my methodological approach; 5) describe my positionality, and 7) discuss some methodological aspects concerning Indigenous legal traditions and forest legalities, or the law that emerges from the forest.

[90] By "hemisphere" I simply mean the diversity of cultures and ecologies across the "Americas" from today's Alaska to Tierra del Fuego in Argentina.

1. Previous research leading to *Legal Lifes*' methodological approach

I have studied various aspects of the politics, policy and legislation of biodiversity, access to genetic resources, and traditional ecological knowledge (TEK) in the Andean-Amazonian region from the vantage point of the following disciplines:

a. *Anthropology*: The Indigenous *chagra* is a traditional slash-and-burn cultivation system with important cosmological and political meanings for the Murui of Lagartococha, Colombian Amazon. This system is recognized by multicultural State legislation and policy as Traditional Ecological Knowledge. What happens when multiculturalism defines the limits of what counts as "Indigenous management" of their ancestral territories? Does multiculturalism suffice? Does it integrate Indigenous epistemologies into the State apparatus to then relegate them to the status of myth and/or cultural belief? Beyond multicultural frameworks, Indigenous territorial practices such as the *chagra* system hold space open for political imaginations whereby the territory—and not only the human—is a crucial actor with the capacity to negotiate with the state. For example, the Murui and their other-than-human kin seem to be redefining political agency in this region (Vargas 2017, Vargas 2011). How do Amazonian communities—of the human and other-than-human kind—redefine what counts as *legal agency* in this region? This methodological question is central to *Legal Lives.*

b. *Political Ecology*: Continuing with the critical examination of agro-biodiversity systems in this region, I have analyzed some socio-economic aspects of transgenic technologies, for example, land dispossession, and how GMOs deepen a metabolic rift with the land with disastrous ecological and social impacts, particularly in Indigenous and Afro-Colombian territories. Discussing secondary data on GMO cultivated area and type of GMOs used in agro-business, I based my analysis on Marx's concept of social metabolism and the international division of (scientific) labour. I concluded that transgenic technologies are part and parcel of a global hegemonic trend of agro-capitalism based on a productive imperative of land grabbing, the depletion of soil nutrients, and the de-politicization of scientific practice (Vargas 2013).

c. *Contract Law and Natural Resources Law:* Natural Resources law offers several mechanisms to protect biological diversity. Comparing different national and international legal frameworks to access genetic resources and associated traditional knowledge, I have studied the extent to which several contractual models promote biodiversity research while securing the fair and equitable sharing of benefits among different stakeholders, in particular, Indigenous and other local communities (Vargas and Nemogá 2010; Vargas and Gómez 2010). With this research background in mind, I now turn to the methodologies of this research.

2. The Legal Lives of Forests: Overview of methodologies

As discussed earlier in the introduction, the Colombian Amazon has been the center of a new extractivist boom, as well as the recipient of large international conservation efforts over the past few decades. The expansion of the industrial oil and gold extraction as well as the construction of dams is concurrently happening with a rise in new environmental regulations in a post-"peace agreement" in Colombia, particularly in Indigenous territories. Recently, court decisions have declared the legal standing of rivers and forests. For example, the Colombian Constitutional Court recognized the legal rights of a mercury-polluted river in the Pacific rainforest (Decision T-622/2016), and the Supreme Court did the same for the Amazon rainforest (Decision STC4360-2018/2018-00319). However, declaring the rights of natural entities seem limited to address this profound tension between law and economic practice.

To illustrate potential responses to this problem, *Legal Lives'* ethnographic and legal theory methodology follows Indigenous thinkers and practitioners (Inga and Cofán), legal scholars, and sustainability scientists in the Colombian Amazon as they contribute to a paradigm shift in law: from a highly regulatory environmental approach to a "rooted" (Mills 2016) and systems-based Earth law. Moreover, traditional knowledge and plant science in Amazonia are deeply intertwined. *Legal lives'* proposes an ethnographic and theoretical argument that asserts the intercultural, decolonial, and ontological dimensions of law and governance as we face the inter-

related crises of climate, inequality, and injustice in this critical region. Now, I summarize the methodological dimensions of this argument:

a. *Ethnographic Research (ER)*: Research on Indigenous storytelling, plant-based medicine, and material and visual cultures is a crucial entry point into Indigenous legal systems, sources, and methodologies in Amazonia. I have conducted interviews and participant observation on the following topics: Indigenous plant-based medicine with Inga, Cofán, and Murui practitioners from the regions of Sibundoy, Nariño, Puerto Leguízamo, and Leticia in the Colombian Amazon (chapter 1.1. "Yoco," 1.2. "Yagé," 1.3. "Coca-Leaf," 2 "Los Invisibles"), as well as Indigenous storytelling as law (*Ley de Origen* or Law of Origin) with an Inga Indigenous scholar from Nariño (Chapter 6 "Worlding with Indigenous law." Vargas and Chindoy 2021).

b. *Decolonial Research (DR) and Comparative Analysis of Legal Traditions and Cosmologies (CAL)*: Research in the humanities and social and legal sciences is often based, as Maori scholar Linda Tuhiwai Smith reminds us (2012), on beliefs, ideas, theories, and paradigms that separate the social and the "natural" world. How often do we critically consider the way they embody and perpetuate colonial views and ways of thinking, living, and being? I have been learning DR methodologies to investigate the theories and practices underpinning legal research and practice as they respond to the premises of a colonial matrix of power based on the domination of nature and human communities (chapter 1.3. "Coca-leaf," 6 "Worlding with Indigenous law," 7 "Indigenous Legal Traditions: A Syllabus."). Connected to this, CAL is a way to investigate how different cultural traditions and systems encounter legal concepts and the limits and possibilities of translation between them. For example, does the notion of "rights" exist across different legal cosmologies (i.e. "liberal" and "Indigenous")? (Chapter 3 "Conjuring," 4 "Forest on trial").

c. *Critical Legal Theory and Case Law Analysis (CLT & CLA):* The link between Indigenous legal systems and colonialism can be traced historically using different techniques, for example, the critical analysis of legal discourse from colonial testaments to biodiversity research contracts, at the semiotic, cognitive, and interactive levels (Vargas-Roncancio 2008). How do scholars and

adjudicators represent the relationship between Indigenous legal systems and positive law at the state and international levels? By describing instances of national and Inter-American jurisprudence (CLA), this methodological dimension explores how Indigenous legal systems and epistemologies contribute to an Earth-centered law in the hemisphere, thus transforming state and international law more broadly (Chapter 6 "Worlding with Indigenous Law," chapter 5 "Agency scaffolding". See Vargas-Roncancio and Chindoy-Chindoy 2021*).*

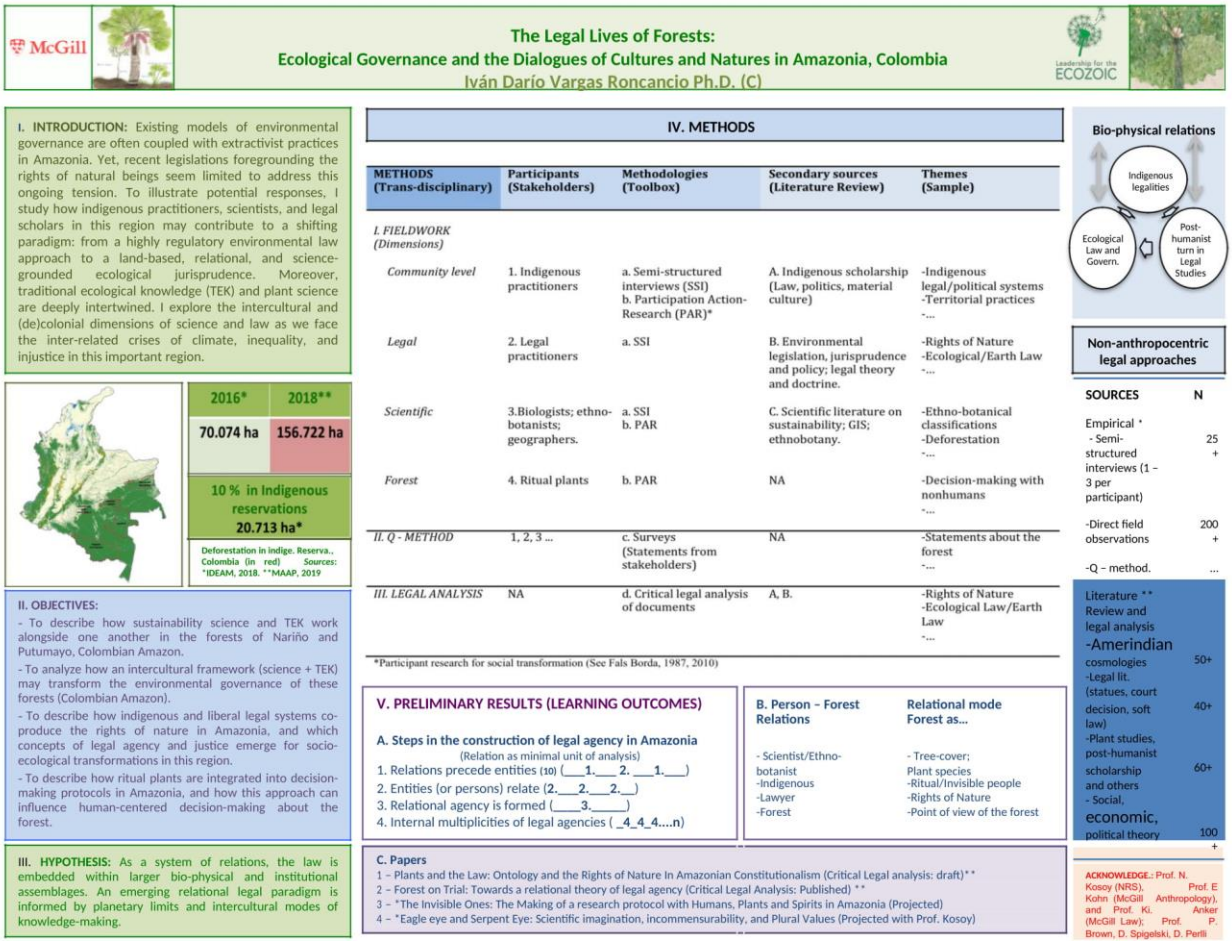

Figure 3: Poster: Project overview presented at the department of Natural Resources Sciences, McGill, Fall 2019. (Some elements have changed since then).

The next section will explore the *ethnographic research* dimension in more detail.

3. Specific field methods and tools

a. Field research: background

In preparation for field research, I have conducted fieldwork on Indigenous botany and material culture in the regions of Sibundoy (Upper Putumayo, Colombian Amazon), Puerto Leguízamo (Lower Putumayo, Colombian Amazon), and Leticia (Colombian Amazon). In Sibundoy, for instance, I learned about traditional weaving techniques with a local practitioner and healer who works with plants as well. Moreover, I conducted participant observation on the ritual use of some medicinal plants with a family from Eastern-Colombian Amazon, currently living in Bogota. The use of ritual plants in some areas of the city has been a way to keep Indigenous plant cultures alive despite the political and socio-economic circumstances forcing these communities to migrate from their ancestral territories.

b. Ethnography with Indigenous and non-Indigenous practitioners

i) Fieldwork with Inga and Cofán communities of Putumayo (Amazon) and Nariño (Andes): Between 2019 and 2020, I conducted fieldwork with Indigenous scholars, plant knowers, and other Indigenous practitioners in Southwestern Colombia. In particular, I worked with the Alliance Territorial Entity Atun Wasi Iuiai-AWAI of the Inga People of Colombia, which, to my knowledge, is one of the most articulated efforts to foster mutually beneficial relations between humans and Earth in South-western Colombia. Currently, AWAI is leading the creation of an Indigenous university with the support of a growing network of national and international partners. Chapter 6, section 4 (*Indigenous Inga law in Colombia*) was jointly drafted with Hernando Chindoy: a traditional Inga authority, AWAI's legal representative, a scholar of Indigenous law and a member of the Tribunal of Indigenous Peoples and Authorities of Southwestern Colombia.

ii) Fieldwork with a Colombian ethnobotanist: In 2019, biologist David Rodríguez-Mora started a research project with the Cofán community of *Jardínes de Sucumbíos* in the mountainous region of

Nariño, Colombian Andes. The purpose of the project was to evaluate the diversity and classification of wild Cofán varieties of the Yagé liana, *Banisteriopsis caapi*, recognized by elder healers and apprentices at the Resguardo Ukumary Kankhe (a protected territory in Southwestern Colombia).[91] I worked as David's field assistant for this project and conducted several interviews with him between 2019 and 2020, while participating in the co-creation of a research agreement between David and the Cofán community of *Jardines de Sucumbios*.

iii) Fieldwork with non-Indigenous practitioners (legal scholars, biologists, sustainability scientists): Between 2019 and 2020, I followed several legal scholars and other practitioners through virtual conversations and academic forums, for example, the "Rule of Law and the Limits of the Rights of Nature in Post Conflict Colombia": an *Environmental Peacebuilding in Colombia* series organized by DUCIGS/Rethinking Diplomacy Program in collaboration with the Environmental Law Institute (ELI); several academic events with the Ecological Law and Governance Association (ELGA), and multiple meetings and conversations leading to the co-creation of an Indigenous university initiative led by the Inga people of Colombia (AWAI). I was interested in understanding how legal scholars and other practitioners are contributing to an emergent Earth Law movement both at the regional and global levels. Moreover, I followed other non-Indigenous practitioners including biologists and sustainability scientists as they engaged with the law by way of critique, ritual, and other embodied practices.

The table below summarizes the ethnographic dimensions of my research.

91 Rodriguez-Mora, David. Integrating ecomorphology and etnoecology to test Cofan etnovarietal classification of Banisteriopsiss caapi in southwestern Colombia. Description of Research project. Courtesy of author.

Ethnographic dimension	Actors	Secondary sources	Overall Themes
Inga and *Cofan* communities *Places*: Nariño (Andes), and Putumayo (Amazon), Colombia, and online conversations.	Indigenous legal scholars Indigenous medicine practitioners. (Interviews, participant observation)	-*Planes de Vida* – Life plans -Institutional archives -Indigenous scholarship	-Indigenous legal systems -Practices of territorial care -Decision-making with other-than-humans
Legal scholars *Places*: Several virtual conversations and academic forums.	Justices; Earth Law scholars; policymakers. (Interviews, participant observation)	-Environmental legislation and jurisprudence -Legal theory and doctrine.	-Rights of Nature -Environmental rights -Earth Law
Earth/sustainability scientists *Places*: Jardines de Sucumbios, Nariño, Bogotá and online conversations.	Biologists; ethno-botanist; (Interviews, participant observation)	-Scientific papers -Research contracts -Biodiversity legislation. -Institutional archives.	-Ethno-botany -Ethics of research -Different epistemologies -Decision-making with other than-humans
Forests Plants as persons *Places:* the plant as an ethnographic place.	Coca leaf P. *Yoco* *B. Caapi*	-Scholarship on plants (ethnobotany, plant science, ethnographies on plant-human relationships).	-Other-than-human normativities -Vegetal legalities -Legalities of the invisible

Table 8: *Legal Lives*: Ethnographic dimensions

c. Methodological tools

i) Interviews: Guiding questions sets

The following is a sample of the general questions I used to start the conversation with different participants. Specific questions related to their roles as scientists, legal scholars, and Indigenous practitioners emerged during the interviews:

- Can you please describe your current work/practice?
- Can you describe the main intellectual and/or experiential influences that inform your work/practice?
- How would you describe the relationship between your work and other knowledge practices related to territory and territorial governance? How would you reconcile different knowledge traditions related to territorial governance? Are they compatible?

- Many Indigenous groups cast Andean-Amazonian forests as sentient entities rather than objects of knowledge, exploitation, and management. What is your take on this issue?
    - If forests are more than complex ecological relationships, can we say that they are also social actors? In what way?
    - How do you interact with different beings of the forest?
    - Who is a person in Amazonia?
    - How can plant practices contribute to territorial governance?
- How do you see and/or envision the relationships between your community and other stakeholders (i.e. the State or corporations) as they 'govern' the forest?
- As you know, different national to international standards increasingly grant rights to non-human entities such as animals, rivers, and forests. How do you see this trend developing? How does it relate (or not) to your work?
- In what sense can we affirm that the Amazonian forest is a subject of rights? What are the limits and possibilities of this proposal?
- How do ecological governance systems based on Indigenous knowledge and modes of being interact with State-led environmental governance models in Andes-Amazon.

Specific questions related to law, different legal traditions, and the rights of nature:

- Can you please describe the work you do?
- How would you describe the relationship between your legal work and Indigenous law and environmental governance systems?
    - How do you reconcile (or not) the different legal traditions?
- Are they compatible? Why? Why not?
- Why is law important for environmental protection?
- How do you see and/or foresee the relationships between your work as a legal scholar and the work of other actors such as scientists or State agents in relation to forest protection?
- Many indigenous groups consider forests as subjects and not as objects of knowledge. What is your opinion on this subject?

- What is your vision of the rights of nature?
- What are the main limits and possibilities of this emergent legal tool?
- Where do you think this legal trend is heading?

Specific questions related to ethnobotanical knowledge and territorial governance:

- Can you please describe your current research work?
- How would you describe the relationship between your work as an ethnobotanist and local knowledge practices related to medicinal plants?
- How do you reconcile (or not) different knowledge traditions concerning plants?
- Are they compatible? Why? Why not?
- Is ethnobotany important for environmental policy efforts? Why?
- How would you describe (or envision) the relationship between the communities you work with and other stakeholders concerning the protection of the diversity of the medicinal plants you study?
- Many indigenous groups consider the Andean and Amazonian forests to be subjects rather than objects of knowledge. What is your opinion on this issue?
- As you may know, national legislations around the world are granting rights to non-human entities such as animals, rivers, and forests. Does this legal innovation relate to your work in any way?

ii) Literature review

Legal Lives offers an extensive literature review of relevant secondary sources in the following sections: a) introduction, b) literature review, c) chapter 1.1., d) chapter 3, and e) chapter 6—where I conducted an online data search on "agency theory" approaches in several disciplines. Collective action is perhaps the most widely used theory of agency in a range of theoretical and empirical problems in ecological economics and similar fields (Ostrom 2004, 2010). An online search of four major databases (Science Direct, JSTOR, Wiley, and SAGE) in the social and

environmental sciences was conducted for the period 1980-2020. I used different agency proxies. The results are summarized in table 13 (*Agency proxies in four online databases: "All fields"*), and table 14 (*Agency proxies in four online databases: Ecological Economics*) and discussed in chapter 6.

iii) Analysis of qualitative data

For the analysis of qualitative data gathered during research, I used the NVivo software. (Sample in the figure below).

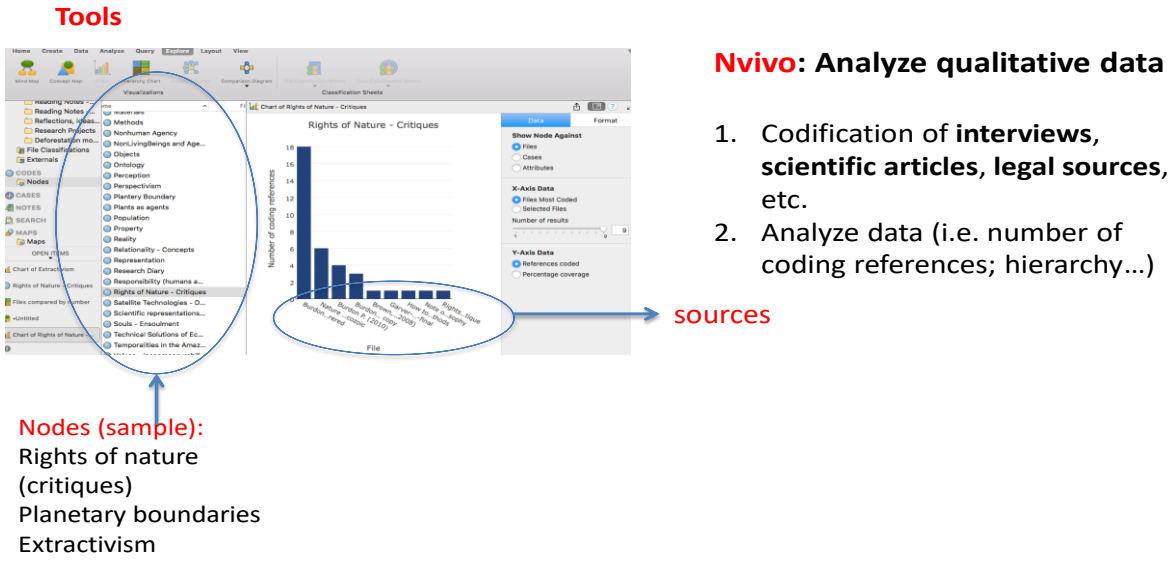

Figure 4: Analysis of qualitative data

4. Towards a decolonial orientation of methodology

I have come to define research as a deeply collaborative process that actively informs scholarly production and, ultimately, social transformation. With this underlying premise, this thesis is an attempt to bring a cross-disciplinary background to the research experience to analyze some of the social, ecological, and legal dimensions of human-to-human and human-to-other-than-human interactions across local and regional scales. My overall methodological goal is to learn how to situate the co-creation of knowledge in real-life scenarios with the perspective of contributing to the transformation of socio-ecological realities marked by racialized violence, socio-ecological injustice, and epistemic monolingualism.

Here, co-creation stands for the process of collective discussion of socio-ecological issues and the contexts where they emerge, as well as stimulating spaces for grounded imagination where the knowledge partners cultivate an ethics of attentive listening as they challenge each other's points of view with and generosity. In what follows, I describe my approach to methodology and how I see this approach connected to decolonial ways of conducting research.

Building upon the work of Indigenous Maori scholar Linda Tuhiwai Smith (2012), I belief that a decolonial orientation of methodology is as a way of critically investigating how modern beliefs systems, theories and paradigms about the "social" and the "natural" may embody and/or perpetuate different forms of colonial violence, for example, patriarchy, racism, classism, territorial dispossession, cognitive extractivism, among other forms of systemic oppression (Tuck & Yang 2012, Tuhiwai Smith 2012). A form of grounded imagination must follow this critical investigation, that is, a way to imagine transformative scenarios of university disciplines such as the law. In brief, a decolonial orientation of methodology requires the careful analysis of the modern principles that separate nature and culture, human and nonhuman beings, body and mind, among other boundary-making concepts, and how they block minoritarian knowledge practices and social transformation. In a sense, decolonial methodology is decolonial critique—but not only.

The modernist view of separation determines how people learn and produce knowledge, how they act, experience the world, relate to one another, and organize collectively (Kothari et al 2019: xviii). In my view, decolonial methodologies offer important lessons to go beyond liberal-modern views of the world that render non-modern experiences and knowledge as "cultural beliefs" or "myths." When it comes to law and territorial governance, decolonial research shows how Indigenous peoples across the "Americas" (a critique in Mignolo 2005) hold different views on the character and practice of legal knowledge and decision-making institutions, as well as different theories about what gives knowledge efficacy in situated contexts. For example, the sources of Indigenous legal systems are diverse and numerous and include "sacred teachings, naturalistic observations, positivistic proclamations, deliberative practices, and local and national customs" among others (Borrows 2010).

The study of these systems, therefore, requires a particular epistemological approach through which human and nonhuman beings— including plants and animals, the supernatural, and even the inert— are all engaged as social agents. I see this epistemological and methodological openness as one of the cornerstones of a different form of legal and territorial learning. In what follows, I'll outline some of the principles of this methodological orientation within the larger project of the decolonization of legal knowledge in Colombia, and beyond.

Where research in a liberal modern world promotes the logics of separation, decolonial methodologies foster the logics of interdependence. The modern university tends to organize knowledge through compartmentalized disciplines that further separate the human from the nonhuman. An alternative to this overarching project, decolonial pedagogies pursue the co-production of knowledge, for example, between sustainability sciences and other traditions based upon Indigenous lifeworlds. This relational vision holds space open for sentient and cognitive beings beyond the human in our knowledge-making practices. Thus, the logic of interdependence recognizes power asymmetries as well as the limits and possibilities of integrating knowledge systems. At the same time, this methodological orientation recognizes the territory as the material

principle that supports any learning and knowledge making. Without territory, there is no learning, and there is no knowledge.

Where research in a liberal modern world promotes "economic development," decolonial methodologies foster the healing of the web of life. The modern university tends to produce knowledge for the creation of monetary value at the expense of other possible values. A decolonial methodology is a way of putting the creation of knowledge at the service of plural values, for example, the flourishing of biocultural diversity as a territorial value.

Decolonial methodologies are decentralized, plural, and simultaneously local and global. My research deals with the grounded imagination of new languages, values, practices, and tools ranging from speculative research to socio-ecological justice; from personal reflection and experience to strategic litigation; from joyful scholarship to local action; from thinking to sowing.

Where research in a liberal modern world promotes colonial violence (racism, patriarchy, classism), decolonial methodologies promote the decolonization of minds, territories, and social institutions. Building upon the work of anthropologist Arturo Escobar, decolonial methodologies promote the "healing of the web of life" to counter interrelated forms of systemic violence. For example, Escobar suggests a relational concept of healing as the "interaction between elements stemming from an entire range of systems (biophysical, economic, political, cultural, environmental, spiritual)." (2019, 3) According to this holistic perspective, healing concerns learning how to repair "the entire system of relations," and not only our bodies or ecosystems.

5. Positionality

I position myself as a *mestizo,* male, and (non) modern-minded legal scholar from Latin America, who grapples with learning experiences and environments cutting across race, place, class, and intellectual difference. As a *mestizo* scholar from the so-called Global South, my current locus of enunciation (the Global North) certainly co-determines the cognitive, emotional, ethical, and aspirational geographies of my learning and writing. Like many colleagues, I´m in a process of

continues learning to exercise a self-reflexive freedom when it comes to the intellectual and practical choices of my work. Yet, I have been influenced by various expressions of a Western canon and its critiques. Urban middle class thinkers and Indigenous practitioners from the South and the North alike are part and parcel of this *sentipensante* learning. Indigenous and cultural studies in Latin America are transversal to my work as they contest disciplinary practices with a strong colonial heritage—as well as decolonial possibilities—such as anthropology and legal theory. *Legal Lives'* methodological orientation, which works with non-human practices and modes of agency, attempts to take political and legal theory beyond modern notions of agency, liberal democracy, and state power.

a. *Learning to partner-with*

Over the last few decades, Indigenous organizations and social movements in the Andean-Amazonian region of Colombia have faced the interrelated crisis of extractivism, climate change, socio-ecological injustice, and physical and epistemic violence using different strategies.[92] These strategies range from political mobilizations on the ground to various forms of legal activism, and from practices of cultural resistance and autonomy at the local level to international advocacy efforts. The Alliance Territorial Entity *Atun Wasi Iuiai-AWAI* of the Inga People in Southern Colombia is, to my knowledge, one of the most articulated and sustained efforts to foster human/non-human legal-political flourishing in a context of pervasive war, coca-crop economy, and depletion extractivism (*The Wasikamas* 2019).

From the Andean foothills to the Amazonian lowlands, Inga's ancestral and highly strategic territories reach across the Southern Colombian departments of Nariño, Cauca, Caquetá, and Putumayo. The Alliance's environmental, cultural, and legal agenda to create an Indigenous university (IU) in the Amazon join long-standing traditions of indigenous resurgence movements

[92] After the 2016 Peace Agreement, over 300 social leaders—many of them from indigenous backgrounds—have been assassinated. See, for instance the DeJusticia & Human Rights Data Analysis Group (HRDAG) joint analysis of this. https://www.dejusticia.org/en/leaders-assassinated-in-colombia-how-many-are-left-out-of-the-counts/ (3.24.2019).

across Latin America (Mignolo and Walsh 2018). The IU is inspired by cross-cultural normative principles deeply connected to my project: 1) to defend life *(defender la vida)* according Indigenous legal and governance systems; 2) to care (*cuidar*) for the territory as the basis of environmental governance and decision-making models; 3) to protect epistemic autonomy – as opposed to epistemic dependence – in harmony with local ecologies and socio-political realities; and 4) to engage in inter-cultural dialogue with Western science (i.e. restoration ecology, botany, etc.) among other principles.[93]

6. Engaging with Indigenous legal traditions in Amazonia: A methodological approach

Indigenous legal traditions emerge in creation stories, written documents, illustrations, material practices and the territories themselves.

a. Indigenous stories: I engaged with Indigenous law through stories as I encountered them in published texts, conversations, and oral renditions of local practitioners. "Engaging with Indigenous Legal Traditions through Stories" (Val Napoleon and Friedland 2016) has been a good methodological entry point: "We engage with Indigenous legal traditions by carefully and consciously applying adapted common law tools such as legal analysis and synthesis, to existing and often publicly available Indigenous resources: stories, narratives, and orals histories." (2016: 725).

b. Indigenous contributions to state jurisprudence: *Legal Lives* has analyzed constitutional jurisprudence on the rights of nature and territorial rights (chapter 6). However, for reasons of space, I did not track the evolution of important constitutional debates around these issues. For future research, the methodology of the "jurisprudential line" proposed by Colombian legal scholar Diego Lopez Medina (2002), is an excellent methodological tool for this type of legal analysis. In general terms, this methodology reconstructs the argument map of specific constitutional debates over time, while highlighting how the courts have decided on given problems, and the reasons (*ration decidendi)* that support their decisions. The methodology

[93] From Ursula Biemann, Outline for an Indigenous University in Colombia, draft. 2019 (not published).

requires defining a legal problem, determining how it has been resolved over time and the reasons for the decision (Lopez 2002). Instead, I have decided to apply anthropological reasoning to the study of certain constitutional clauses on the rights of nature (Chapter 3 and Box 4).

c. Territory: Legal theories and institutions such as the institution of property shape landscapes. More than the material backdrop of culture, Indigenous territories are norm-producing selves as well. My methodological premise here is that the state shapes *landscapes,* for example, through oil prospection contracts, while Indigenous legal protocols shape *sentient territories* through different sets of practices, including, but not limited to, the ingestion of ritual plants (Chapter 1.1., 1.2, 1.3. and 2). Here, the methodological question is how to draw legal meaning *with* the territory, and this leads to the challenging question of how we can engage with other-than-human agencies beyond human modes of symbolic representation.

d. The legal "narrative" of plants: As indicated in the introduction and was sufficiently developed in detail in the literature review section of this disserations, there is a growing body of work on the sentience and intelligence of plant life (Gagliano 2015). Furthermore, the law is a kind of symbolic representation; for example a system of written norms; at the same time, the law is a non-symbolic system expressed through images, sounds, lived experience, and material exchanges between different beings including plants. Drawing from Kohn (2013), the main ontological and methodological assumption toward a non-symbolic kind of law is that "life thinks," or in other words, that "life is semiotic" and thus goes beyond symbolic language (2013, 9). Extending the notion of representation to include animals, plants and forests, non-humans represent the world in myriad ways.

If, at a fundamental level, the law is a system of representations, that is, a system of signs beyond the symbolic, then beings like plants are law-making beings as well. Of course, this conclusion would be untenable unless we define "law" as human normative system, as well as a normative and ecological system beyond the human. This definition, in turn, requires breaking with the dualism that separates the human from other living beings. In other words, it requires a post-anthropocentric framework. Kohn suggests that what we humans share with other animals and

plants is not only our embodiment or physicality (Descola 2013), "but the fact that we all live with and through signs […] signs make what we are." (Kohn 2013: 9) Therefore, non-symbolic representation is common to all life and, consequently, signs are not the monopoly of the human. To be sure, this ontological principle offers a methodological guidance as well: in order to learn the law of the plant, we need to think-with the plant. In the Amazon, thinking with the plant or learning what the plant can teach us, requires non-symbolic and embodied methodologies such as ingestion, ritual, and others. And this goes beyond any analysis. If the law exceeds the symbolic, a methodology for engaging with this kind of law should suspend representation and critique (see chapter 1.1, and box 6: "*on connections").*

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PART I. – TOWARDS A LAW "OTHERWISE": A LEGAL HERBARIUM?

Chapter 1: On law, humans, plants and "*los Invisibles*" in Southwestern Colombia

Part (I) ethnographically probes connections between humans, other-than-humans, and the law, and why these connections matter today. This part is comprised of two interconnected chapters: the first focuses on plant-human relations and the second is on the making of an ethnobotanical research agreement in Southwestern Colombian Amazon. The first chapter is divided into three sub-chapters and discusses possible interfaces between plants and social and legal theory, namely, 1.1. *Yoco (Paullinia yoco)*: *cooling down the mind and learning law where the law is not named as such*; 1.2. *Yagé (Banisteriopsis caapi): moving words across worlds*, and 1.3. *Coca-leaf (Erythroxylum coca): territories in motion or learning law with the Amazonian mambe*. The second chapter is entitled "*Los Invisibles": The making of a research agreement with humans, plants, and 'Spirits' in the Colombian Andes (Nariño): the voice of an ethnobotanist*. Part (I) can be considered as one larger ethnographic and conceptual argument concerning the socio-legal agency of plants and non-visible peoples in Southwestern Colombia (Andes-Amazon), and their potential contributions to expand normative systems such as law and ethics beyond anthropocentric views.

CHAPTER 1.1 – Yoco (*Paullinia yoco)*: Cooling down the mind and learning law where the *law* is not named as such[94]

Introduction: Unpacking the law of the place

In Southwestern Colombia, the law is not exclusively a human affair. To unpack this claim, this chapter proposes an ethnographic and theoretical argument in what I'll conceptualize as a relational protocol, that is, a local way of dealing with the entangled lives of law and ecology in the Andean-Amazonian territories of Putumayo and Nariño.[95] The chapter follows a bundle of relations between Cofán practitioners and the emetic and tonic *yoco* vine (*Paullinia yoco*) in Southwestern Colombia. The underlying premise of the chapter is that humans and plants are part and parcel of a larger meshwork of lifeways (Ingold 2011) that are crucial for the craft of law in this region. Furthermore, the chapter sets the stage for one such instance of law-making, namely, an **ethnobotanical research agreement** (ERA) that involves the contested participation of different kinds of beings: an ethnobotanist, the political and spiritual authorities of the Cofán community, a legal scholar, several medicinal plants, and what members of this community call "the invisible ones" of the mountain.[96]

While this chapter holds that Indigenous legal traditions are entangled with and emerge from territories, it is not about the legal system of a particular community.[97] Instead, it focuses on how

94 This chapter is based on 12 months of ethnographic research across the regions of Putumayo and Nariño, Southwestern Colombia, and the cyberspace (after the Covid global pandemic). When appropriate, I will use initials to protect the identity of my interlocutors.

95 On the relationship between law and ecology see Anker 2017, Capra and Mattei 2015, Garver 2013.

96 I first heard about "los invisibles" in the municipality of Jardínes de Sucumbios, Nariño, 2019. Don O, Field Notes, 2019. "Los invisibles" (the invisible ones) lends itself as a central emic category (and, of course, much more) in the context of ethnobiological research with the Cofán led by Colombian biologist David Rodriguez-Mora, as well as my own work around the making of an ethnobotanical research protocol as a form of law in Southwestern Colombia. This protocol included human and other-than-human practitioners. On the other hand, the idea of a "relational protocol" is a central etic category of this work. It emerged in conversation with various interlocutors including biologists, legal scholars, Indigenous practitioners and, of course, plants. For a non-anthropological audience, "emic" and "etic" refer here to two different types of field work and their ensuing perspectives. Simply put, emic, from "within" the social group or from the perspective of the "subject," and etic, from "outside" or from the perspective of the "observer." Linguist Kenneth Pike coined these terms. See Pike K., 1967. Language in Relation to a Unified Theory of Structure of Human Behavior. The Hague, Netherlands: Mouton.

97 See Mills 2019, 2016 for a similar argument.

both humans and other-than-humans *make law together* in a particular place in Southwestern Colombia.[98] I have selected one instance of contractual law to exemplify this legal co-making. Before inviting the yoco to the conversation, a few lines about the ERA.

In the summer of 2019, Colombian biologist David Rodríguez-Mora began a research project with the Cofán community of Jardínes de Sucumbíos in the mountainous region of Nariño. The purpose of the project was to "evaluate the diversity and classification of the wild Cofán varieties of the Yagé liana, *Banisteriopsis caapi*, recognized by elder healers and apprentices at the Resguardo Ukumary Kankhe (a protected territory in southwestern Colombia)."[99] After multiple meetings and negotiations (see chapter 2 for details), the project, endorsed by the traditional authorities of the community, was formalized in a written document signed by the authorities, which, for the purposes of this chapter, is *law* in a double sense. First, it is a contract between humans that governs all aspects of research including—but not limited to—its object and purpose, the parties involved, duration, methodology, and expected benefits.[100] In this sense, the agreement is an expression of state law simply because it is premised on standard contractual principles of any modern state, for example, the idea that a contract has the force of law between the contracting parties.[101] In addition, the agreement concerns principles of environmental risk such as the

98 On Indigenous legal systems in the Colombian context, see the pioneering works by legal scholar and Special Jurisdiction for Peace (JEP) magistrate Dr. Gloria Amparo Rodriguez (http://gloriamparodriguez.blogspot.com/p/articulos.html). On particular Indigenous legal systems, see Perafàn, Carlos (2001) Sistemas jurídicos Tukano, Chami, Guambiano y Sikuani. Bogota: ICANH, 2000. On plant thinking and vegetal agencies, see Marder 2013, Gagliano 2018.

99 Rodriguez-Mora, David. Integrating ecomorphology and etnoecology to test Cofan etnovarietal classification of Banisteriopsiss caapi in southwestern Colombia. Description of Research project. Courtesy of author.

100 Agreement between David Rodríguez and the Resguardo Ukumary Kankhe of the Cofán People (2019), or Convenio específico para el desarrollo de investigaciones académicas celebrado entre David Rodríguez y el Cabildo Cofán Ukumary Kankhe. Courtesy of David Rodríguez (Not published).

101 Código Civil de la República de Colombia (CC), Art. 1278, and Art. 1089. The contracting parties should comply with the provisions of the contract. Art. 1089, CC indicates that obligations arise from the law, from contracts, quasi contracts, as well as illegal acts and omissions, or when there is fault or negligence. Regarding the specific case of contracts, Article 1091 CC indicates that the obligations arising from them have the force of law between the contracting parties and therefore must be fulfilled.

precautionary clause—taking preventive action in the face of uncertainty—[102], the fair sharing or research benefits, the "sustainable use of components of biological diversity,"[103] and the autonomy of Indigenous communities to determine their "traditional knowledge, innovations and practices associated with genetic resources and their derived products."[104]

While the ERA must comply with such principles and specific national regulations and standards on scientific research with biological material and associated traditional knowledge,[105] it also goes well-beyond the confines of state law to consider *other* configurations of "socio-ecological agency,"[106] community participation, and decision-making in the Andean-Amazonian slopes.

102 A standard definition: "The precautionary principle enables decision-makers to adopt precautionary measures when scientific evidence about an environmental or human health hazard is uncertain and the stakes are high." In European Parliament Think Tank, The precautionary principle: Definitions, Applications and Governance. Available at https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA(2015)573876 (Visited 11.02.2020). In the Colombian context,see for example Ley 99 de 1993: "Por la cual se crea el Ministerio del Medio Ambiente, se reordena el Sector Público encargado de la gestión y conservación del medio ambiente y los recursos naturales renovables, se organiza el Sistema Nacional Ambiental, SINA y se dictan otras disposiciones." Available http://www.secretariasenado.gov.co/senado/basedoc/ley_0099_1993.html. Also, Constitutional Court, Decision T-299 2008. Available at: https://www.corteconstitucional.gov.co/relatoria/2008/T-299-08.htm (Visited 10.04.2020).

103 See Title 1, Art. 1 of Decision 391/1991 "Régimen Común sobre Acceso a los Recursos Genéticos." Available at http://www.sice.oas.org/trade/junac/Decisiones/Dec391s.asp (11.02.2020).

104 Art. 7 of Decision 391/1991 "Régimen Común sobre Acceso a los Recursos Genéticos."

105 In Colombia, research projects involving biological diversity should have a Permiso de Estudio con Fines de Investigación Científica en Diversidad Biológica issued by the Autoridad Nacional Ambiental. Applicable norms: 1) Decreto 1076 de 2015: "Por medio del cual se expide el Decreto Único Reglamentario del Sector Ambiente y Desarrollo Sostenible," Capítulo 5 Investigación Científica. Sección 1 Investigación Científica Sobre Diversidad Biológica – which compiles Decreto 309 de 2000: "Por el cual se reglamenta la investigación científica sobre diversidad biológica." Resolución 068 de 2002: "Por la cual se establece el procedimiento para los permisos de estudio con fines de investigación científica en diversidad biológica y se adoptan otras determinaciones." Resolución 324 de 2015: "Por la cual se fijan las tarifas para el Cobro de los servicios de evaluación y seguimiento de licencias, permisos, concesiones, autorizaciones y demás instrumentos de control y manejo ambiental y se dictan otras disposiciones." Available at http://portal.anla.gov.co/permiso-estudio-fines-investigacion-cientifica-diversidad-biologica (Visited 10.04.2020). Academic studies on Permisos and Contratos de Acceso a Recursos Genéticos in Colombia: Rojas-Díaz, D.A and Nemogá-Soto, G.R. 2007. "Evaluación de la normatividad vigente sobre permisos de investigación científica en diversidad biológica en Colombia. Primer caso: UAESPNN." In Acta biol. Colomb., 12: 128; Vargas-Roncancio, I. D. and Nemogá-Soto, G.R. 2010. "Contratos de Acceso a Recursos Genéticos: Un análisis comparado." in Revista Pensamiento Jurídico, 27: 157-202; Nemogá-Soto, G. R., Ávila-Sánchez, L. A., Blanco-Martinez, J. T., Chaparro-Giraldo, A., Jimenez-Ariza, O. F., Lizarazo-Cortes, O. A., et.al. (2010). La investigación sobre biodiversidad en Colombia. (Research on biodiversity in Colombia. Bogotá: Universidad Nacional de Colombia and Instituto de Genética. National regulations concerning the protection of traditional knowledge: Decreto 1080 de 2015, Artículo 2.5.1.2.8. and 3.; Ley 191 de 1995, "por medio de la cual se dictan disposiciones sobre zonas de frontera, se establecen dos mecanismos de protección para el CT desarrollado en las zonas de frontera: el consentimiento previo y la distribución equitativa de beneficio." On the subject see: Zerda A. 2003. Propiedad intelectual sobre el conocimiento vernáculo. Bogotá: Universidad Nacional de Colombia.

106 Navarrete, D. M., & Buzinde, C. N. (2010). "Socio-ecological agency: From 'human exceptionalism' to coping with 'exceptional' global environmental change." In The International Handbook of Environmental Sociology, Second Edition (pp. 136-149). Edward Elgar Publishing Ltd.

These configurations, nonetheless, are not easily recognizable, and they come into being through what I will call 'conjuring other-than-human people in the legal field.'[107] By conjuring I do not only mean calling upon to appear by means of "ritual.'[108] De-ritualizing the verb, conjuring here means that the caller cannot always control that which has been called and therefore must reckon with the intentions, prohibitions, and decisions (norms!) of what she has conjured. Beyond the ritualized interpretation of the term, my analogical use here foregrounds the quality of what exceeds[109] human control over environmental decision-making and territorial governance, thus expressing something akin to the force of law in the Western legal sense of the expression.[110] Since the contract between the researcher and the community (ERA) conjures other-than-human beings in this specific use of the expression, it is an example of *non*state law as well[111]—which is the central focus of this ethnographic portion of my dissertation (Part I).

Indeed, the scope of the ERA between David R.M. and the Cofán community was expanded to include certain plants (as people) and the "invisible ones of the mountain,"[112] as the **condition of**

107 I first heard the word "conjuring" from a Cofán abuelo (elder) in Southern Colombia as he called upon the yagé people in a ceremony by blowing into the yagé concoction. Bajo Putumayo, Santa Rosa reservation, Amazonia, 2007. "Conjuring" also in the work of De la Cadena 2011.

108 For a comprehensive discussion of the place of ritual in the Western law, see the wonderful work by Allen Jessie: "A Theory of Adjudication: Law as Magic."

109 On the notion of excess see De la Cadena (2015).

110 In the Colombian legal systems, the expression "having the force of law" means that a legal act ("un acto normativo") which is not formally a 'law'—because it has not been issued by the Congress—nonetheless has the same hierarchical rank of a law. See Colombian Constitutional Court Decision C-893/1999. Moreover, the "force of law" raises a fundamental question: "what is the nature of the force underlying legal authority? Frederick Schauer does an excellent job describing the history of two models of the nature of that force: coercion (i.e., sanction based) and sanction-independent. Having identified these two distinct models, he then tries to make the case that the law is primarily about coercion and that the role of sanction-independent force has been overstated. His efforts to make this case rest upon an examination of the social science evidence in which he reaches different conclusions than those of many social scientists (…) social norms, moral values, and judgments about legitimacy all influence law-related behavior and, relying upon it, social scientists generally suggest that while sanctions matter sanction-independent forces are central to and often dominate the factors shaping people's law-related behaviors. Schauer argues that this considerable evidence is irrelevant to his analysis. He does so by creating a definition of sanction-independent motivation that he defines as "obey[ing] law because it is the law." He says that this category excludes the social science literature identifying the factors shaping compliance, and in particular he suggests that moral values and legitimacy do not meet his definition of sanction-independent factors […] Schauer concludes that coercion is the central force underlying law." Tyler, Tom R. (2015) "Understanding the Force of Law." In Tulsa Law Review, Vol. 51 [2015], Iss. 2, Art. 23: 507 – 519 (507).

111 I use the expression "nonstate" to highlight the participation of other-than-human agencies that the state considers either as "natural resources" (See Brown 2004. "Are there natural resources?), or "cultural belief" (See De la Cadena 2010. "Indigenous cosmopolitics").

112 Don O, Nariño, 2019.

possibility for the local validity, social efficacy, and ethical soundness of the research contract itself.[113] Interestingly, the ERA holds space for what former Humboldt Institute director Brigitte Baptiste has called the 'cultural contract.'[114]Recounting a similar research experience in Amazonia, Baptiste described this cultural contract as follows: "we signed an agreement (with the community) but for this agreement to enter into force we needed trust. There were good reasons to demand that this contract (between the Institute and the community) should go beyond the norm written on a piece of paper. The cultural contract required the intake of the plant."[115]

What happens when the law is not necessarily written on a piece of paper, or proclaimed by an official state act? What happens when the law emerges through the incorporation of another being into one's body? What sort of law is this embodied form of law and how can we recognize it? Beyond the necessary negotiations and written protocols between the human parties involved in the ERA, namely a Colombian biologist and the Cofán community, this cultural contract or protocol elicited and relied upon another kind of normative framework that I am calling the **law of the place**.[116]

Paraphrasing a crucial principle of adjudication in the Western legal tradition—the law of the *c*ase[117]—the law of the *p*lace is, analogically, the law on which the decision to create and potentially implement this agreement shall be based. Broadly speaking, the law of the place refers to locally negotiated rules and procedures that guide collective decisions based on everyday relations between human and other-than-human beings in a territory. And these rules and procedures are

113 See chapter 4 "Conjuring" for a methodology to compare state and nonstate legal propositions.
114 Baptiste, B. 2011. "El Jaguar y la Telepatina del Yagé". In https://www.youtube.com/watch?v=gK3BWngw7oI (Viewed 07.30.2020). My translation.
115 Ibid
116 A similar argument in Blaser (2016). As he argues, caring for atiku was, among others, about complying with local protocols to fully dispose of the animal remains. Caring for caribu, on the other hand, meant conducting a hunting ban to re-establish caribu populations. In my mind, this is a deeply legal question: atiku and caribu are two different reals rather than two different representations of a common external world or real. What if we probe this cosmopolitical argument in the legal field? What can we learn about ontology through the law - rather than the other way around?
117 The "law of the case" is a rule according to which the final judgment of the highest court is the final determination of the rights of the parties involved in a case: "If an appellate court has passed on a legal question and remanded the case to the court below for further proceedings, the legal question thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain the same." Allen v. Michigan Bell Tel. Co., 232 N.W.2d 302, 303.

tightly entangled with what the Cofán people often refer to as *los invisibles* (see part three of this chapter). Nonetheless, some of these rules and procedures are also clearly outlined in legal documents (UMIYAC 2000),[118] while others may arise through recursive situated practice and interaction between peoples and places. However, is this place-based law only locally valid? In this context, the law of the place should not be understood as local (state) law but a set of relations arising from the emplaced constitutive arrangements that human and other-than-humans weave (Blaser 2019).

Although the law of the place is situated and experiential, it does not lose its generalizing qualities. On the contrary, the law of the place dictates the relations and **responsibilities of** the parties involved in forest decision-making (i.e. David and the community), and embodies the normative reason or legal force that guides the agreement and the resolution of potential conflicts. In addition, the law of the place can become precedent for similar future cases by virtue of its effects when it has been breached: "When a person enters the territory, they must ask permission from their owners. Entering the territory without permission can bring unexpected consequences."[119] Thus, the law of the place can be formalized in expressions such as: the ERA cannot be conducted unless the parties involved have appropriately requested and obtained permission from the invisible ones.

The law of the place dictates the possibility, limits, procedures, risks, and outcomes of the research process. Without the 'cultural contract,' or as I prefer, relational protocol,[120] both the ethnobotanical research agreement and the scientific project would have been unthinkable. In other words, the ERA's legal framework is recognized by the Colombian state and yet it is nested within non*state* law—i.e. relational protocol—rather than the other way around. Given that the ERA involves state and *non*state forms of the law, it requires moving beyond conventional deliberation methods

118 The yagecero medics of the Colombian Amazon have written an ethical protocol for the responsible use of the plant. A protocol that all interested parties—including researchers—should follow. See Unión de Médicos Indígenas Yagéceros de la Amazonía Colombiana-UMIYAC (2000). "El Pensamiento de los Mayores. Código de Ética de la Medicina Indígena del Piedemonte Amazónico Colombiano." Mocoa: UMIYAC. Available: https://umiyac.org/ (Visited 10.03.2020).
119 Don O, Jardínes de Sucumbios, Nariño, 2019.
120 I prefer this notion to underscore the situated and 'multi-being' origin of the agreement.

between rational human decision-makers. It requires a disposition to ***learn,* and learn and practice law *differently* and with beings that are not only human**,[121] as well as a disposition to be captivated by place and its entanglements. This disposition, however, requires a method: conjuring. This was the underlying premise of a joint experience in which Colombian biologist David Rodriguez-Mora, my research interlocutor and friend, and a legal scholar and David's assistant in ethnobotany (myself), began a process of mutual learning across territories, ritual houses, and legal documents in Southwestern Colombia.

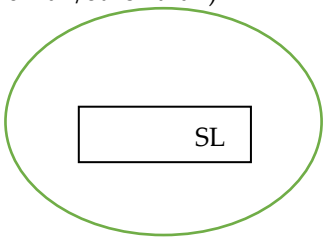
TYPE OF LAW		**RELAT. BTW SYSTEMS OF LAW**
Non*state* Law (NSL)	**State law (SL)**	**Nested relationship**
"Cultural contract" Relational protocol The law of the place	1. Research Agreement: *Convenio específico para el desarrollo de investigaciones académicas celebrado entre David Rodríguez y el Cabildo Cofán Ukumary Kankhe* **2.** *Permiso de Estudio con Fines de Investigación Científica en Diversidad* ***Biológica*** **(**Study Permit for Scientific Research in Biological Diversity) **and** other regulating laws, decrees, and resolutions. 3. Constitutional principles of the Colombian state.	NSL (human/other-than) 
EXPRESSED AS: "The cultural contract then required the intake of the plant." (Brigitte Baptiste, Humboldt Institute ex-director 2011)	**EXPRESSED AS:** **"***Acuerdo de hombres e instituciones."* /Agreement between people and institutions *(A.A. Field Notes, Nariño, 2019)*	

Table 9: Prevalence of the *law of the place* in the co-design of an ethnobotanical research agreement in Southern Colombia.

121 I am particularly referring to plants as people rather than objects of classificatory description and taxonomy.

a) Plan for the chapter

With the ERA in mind, the first part of the chapter, *learning to learn with vegetal minds*, tells a story of yoco (*Paullinia yoco*) and how this Amazonian vine prepares humans to work with and learn about anything in the forest—and much more.[122] Expanding the idea of learning beyond the human, the second part entitled *learning norms with mind-full bodies*, surveys a relational approach to cognition in the work of Chilean neurobiologist Francisco Varela (1999). Varela's approach is crucial to understanding how normative systems such as ethics and law are grounded in the everyday experience of an organism (Varela 1991), and whether we can expand those systems beyond abstract and disembodied sets of norms, principles, and values sanctioned by a state.[123] Thus, this part considers a non-dualist and post-anthropocentric narrative of environmental decision-making that seeks to overthrow the idea of protecting an external and universal concept of nature with humans at the top.

Encountering the invisible ones as law in the Andes-Amazon, the third and last part of the chapter, introduces the work of Colombian ethnobotanist David Rodríguez-Mora as he participates in the development of a research agreement that took his ethnobotanical research project as a starting point. This agreement involved plants and other beings in the region of Nariño not as objects of study, but as partners in the research process. I consider this research agreement or contract—and the embodied ethics it entails—as a form of ecological law (Garver 2013, 2019, Anker *et al*. 2021). The ERA as a form of (non) state law expresses the limits and possibilities of a post-anthropocentric approach to the law, and Varela's work offers some crucial cognitive premises for this kind of approach.

122 See Tropical Plants Database, Ken Fern. tropical.theferns.info. 2020-03-10. <tropical.theferns.info/viewtropical.php?id=Paullinia+yoco> (Visited 10.05.2020). On yagé see Weiskopf 2004.
123 See Winter's pioneering work (2001). A Clearing in the Forest. Law, Life, and Mind. Chicago: University of Chicago Press. Also, Chapter 3 ("Conjuring") of this dissertation.

b) Central claims

i) Law as meshwork

Thinking with plants, this and the subsequent two sub-chapters make two larger claims. First, non*state* law is not recognized as law in the region of Nariño. This means that *ecological relationships are not recognizable as normative, or as having the force of law if they are only conceived as biological factual phenomena* through scientific expertise (see Anker 2017 for a similar argument). This non-recognition underlines a modern assumption, namely, life and norm, or biological facts and territorial governance, are two fundamentally different domains of experience.[124] According to this ontology of separation (Escobar 2018), the human is the subject of meaning, that is, some*one* capable of creating cultural, and for that matter, legal institutions, whereas the other-than-human is, simply put, the object of observation and meaning: some*thing* passively awaiting the act of naming, or a preexistent biological state that scientific language could reveal with the appropriate instruments and methodologies. What if—as Kohn (2013) and Anker (2017) suggest—other-than-human beings think (and *think* law) as well?[125]

ii) Law as emergence

As a decision-making institution, the kind of nonstate law I am referring to here emerges in the contact zone (Platt 1991; Haraway 2008) between multiple kinds of selves (Kohn 2013, 16). And this means that *the law is neither intrinsically human nor other-than-human, or the law is not a pre-existent attribute of beings* expressed through the vehicle of (human) symbols or (other-than-human) chemical signals, among other signaling processes (Kohn 2013, Marder 2013, Wohlleben 2015). The law is akin to a form of relation between relations (Strathern 2005, Haraway 2016), that is, a form of relation between different co-emerging lifeways of the human and other-than-human kind.

124 See chapter 4 of this dissertation ("Forest on Trial") for the development of this argument in relation to the notion of "personhood."
125 See chapters 3 "Conjuring" and 4 "Forest on Trial."

These lifeways or "lines of movement and growth" (Ingold 2011, 4) in all beings, for instance, plants, animals, rivers, and rocks, relentlessly interlace with each other forming a meshwork.[126] Although the law of the place might exist as a symbol, that is, as human language, it surfaces as emergence rather than only as a set of pregiven propositions.[127]

What does human interaction with plants—which many communities in Amazonia consider people *or* persons—tell us about how to orient action and shape legal systems for a world of entangled existents? What can plants teach us about ethics and law for a world of multiple socio-ecological challenges? How can we learn a form of law that we can't simply reduce to "normative claims" about human behavior in society without losing something crucial about the role law can play to face current social-ecological crisis in the region—for example, the ability to authoritatively compel humans to act in ecologically sound ways? What is the role law can play in a world of sentient and mind-*full* beings?[128] Thinking with the yoco vine (*Paullinia yoco*), this chapter aims to contribute to a legal theory and practice for times of neo-extractivism, ongoing colonial violence, and "pluriversal possibilities" in the Andean-Amazonian region of Colombia, and beyond (Escobar 2020).

126 Anthropologist Tim Ingold defines a way of life as the trajectory of movement and growth of all beings. Every being is instantiated in the world "as a path of movement along a way of life" (2011, 4) and these paths or lines form a tapestry of co-emergent lifeways that he calls a "meshwork" (2011, 63). To further clarify this notion, Ingold contrasts the meshwork with the idea of "network," which represents the interconnection between preexistent entities in space. He notes that what is commonly known as the web of life, that is, the material relationships between organisms in an ecological community, is not a "network of connected points but a meshwork of interwoven lines" in a particular place (2011, 63). For example, winding rivers, growing plants, moving animals and humans, and even legal propositions are all ways of life or trajectories of growth and movement relentlessly emerging together.

127 Professor Kirsten Anker-McGill Law has rightly pointed out the global and general nature of these statements as presented in this paragraph. They are, in fact, quite vague at this stage of the argument. I hope that the following sections and sub-sections (in particular Part II of this chapter, in which I examine the work of neurobiologist Francisco Varela) will provide an adequate, nuanced and sufficiently clear picture of what I mean by "emergence" in the context of my intended contribution to legal theory.

128 On sentience and cognition in plants see Gagliano 2014, 2018.

2) Part 1: Learning to learn with vegetal minds

> To learn all this you need the medicine. The medicine is with the *yachas*, the savants who have given all this knowledge (…) You always need a fresh mind to be able to learn.
>
> *Abuelo O* Indigenous Inga and plant healer, Mocoa, Putumayo 2019.

Usually harvested in the wild and sometimes cultivated in *chagras*—an Amazonian slash and burn cultivation system[129]—*Paullinia yoco* is a tropical climber vine that grows up to 15 meters. The stems of this plant adhere to the neighboring vegetation through tendrils that eventually become woody, and the softer tissues of the bark and stems are commonly used to extract a white or brownish sap containing caffeine and theobromine (Weiss, L. and Kearns, J., 2015).[130] Conventionally used as a breakfast infusion across the Amazonian regions of Peru, Ecuador and Colombia, for example among the Cofán and Secoya communities (Belaunde and Echeverry 2008), this plant allays hunger and stimulates the muscles to endure long working hours in the forest.[131]

To prepare the yoco beverage one carefully rasps the phloem layer of the plant with a knife and dissolves the resulting sawdust in cold water. Besides its tonic properties, yoco is an anti-malarial antipyretic and remedy for the treatment of bilious disease, which is frequent in the Putumayo region.[132] Used by men and women, the yoco plant has emetic, psychoactive, contraceptive and even abortive properties,[133] and people in Amazonia consider that it gives advice to the person who ingests it (Belaunde and Echeverry 2008). More than a plant, however, yoco is person. And more than a person, it is a mode of relation: a mode of learning and participating in forest life. In

129 See Andrade 1990, 1992. For the ritual aspects of this cultivation system see Echeverry and Kinerai 1993.
130 See Ken Fern. Tropical Plants Database. Available: <tropical.theferns.info/viewtropical.php?id=Paullinia+yoco> (visited 10.05.2020); Also see, Vickers W.T.; Plowman T. 'Useful Plants of the Siona and Secoya Indians of Eastern Ecuador'. Fieldiana Botany New Series No. 15, 1984. (http://www.biodiversitylibrary.org), and Harvard Botanical Museum; Cambridge, Mass. Botanical Museum Leaflets Vol. 10. 1942. Available: http://www.biodiversitylibrary.org (Visited 10.04.2020)
131 Ibid.
132 R.E. Shultes and Killip, 'Paullinia yoco.' In https://pfaf.org/user/Plant.aspx?LatinName=Paullinia+yoco (Dec. 22, 2019).
133 Ibid.

what follows, I summarize the "steps"[134] of this learning with plants, and how this vegetal learning relates to normative systems such as ethics and law in Amazonia.

a) *Step 1 -Plants as teachers*

The concept of plants as teachers is a well-established trope in Amazonian ethnology (Luna 1984), and my first encounter with the yoco plant as people was in *Bajo Putumayo*, Southern Colombian Amazon, a few years ago.[135] At that time, I had the opportunity to meet the Cofán and the vegetal beings they live and work with in this region.[136] While I didn't know it then, the purpose of this trip was to start learning about what I now conceptualize as a relational protocol, namely a local way of dealing with the entangled lives of ecology and social norms in the *Bajo,* and with the special guidance of plants like yoco, yagé (*Banisteriopsis caapi*), and tobacco (*Nicotiana tabacum*).[137]

A creeping vine often referred to as the forest's sap, the yoco plant is part of diet and ritual for several communities today.[138] For example, it is ingested as a purgative before the ritual

134 Caveat: I don't use the word "step" to suggest "recipe" or "direction." I use this word to signal movement, activity, hesitancy, and error in the practice of learning with plants as persons.

135 On the concept of plants as teachers in Amazonia, Laura Dev (2018) suggests: "Shipibo healing practices, along with those of several other indigenous groups, have garnered global attention for their use of ayahuasca. I was under the impression that healers would learn their practices during an apprenticeship period, usually with older family members. However, when I began interviews, I was surprised that, though some of them had apprenticed with an elder, when asked who their teachers were and how they learned, most of them began by describing their plant teachers. Healers learn from plant teachers during quiet periods of deprivation and relative solitude called dietas (diets) (as described by, e.g., Jauregui, 2011). The dieta is a sensitive time in which the healer develops a relationship with a specific plant spirit that then assists them in learning and healing." (2018: 185)

136 The following text is based on ethnographic observations and the quotes do not represent the position of any particular Indigenous group. The quotes are translations from Spanish of selected excerpts of my field notes in the regions of Putumayo and Nariño, Southern Colombia (2019).

137 I will not refer to these plants in this section. On the use of tobacco among the Murui in Amazonia see the pioneering works of Colombian anthropologist Juan Alvaro Echeverry. Echeverry, J. A. and Kinerai, H. C. (1993). Tabaco Frío. Coca Dulce. Palabras del Anciano Kinerai de la Tribu Cananguchal para sanar y alegrar el corazón de sus huérfanos. Bogota: Concultura.

138 The yoco intake seems to be decreasing in this region. Factors involve the accelerated deforestation of Amazonian forests for cattle, monoculture, and other forms of extraction. Chemical engineer Eduardo Bolivar explores the indigenous utilization of yoco in the northwestern Amazonia, and its commercial extraction for the dietetic-supplements industry (w.d 153). See "Consejos para vivir bien: Una perspectiva histórica sobre los diferentes usos del bejuco yoco, Amazonia noroccidental." In Digital Library National University of Colombia.

consumption of *yagé*[139] at night.[140] For the Indigenous Airo-pai (Secoya), the *cuacuiyó* bird (*Lipaugus vociferans)* is the *ëjaë* or the owner of the plant, since the bird "cultivates the yoco in the forest" (Belaunde and Echeverry 2008, 87). Besides sowing the plant in her forest's plots (the forest as a *chagra*), the *cuacuiyó* feeds her offspring by swallowing the yoco's fruit (*guayo*), throwing the kernel, and retaining the pulp for her children (102).[141] Much like the breeding habits of the *cuacuiyó* reflect the use of the yoco to raise and nurture her chicks, the Secoya people employ this plant to educate their human children as well.[142] Insofar as the physical properties of the plant prepare the human body to undertake different activities in the forest,[143] the yoco, analogically, is considered a giver of advice who teaches the children to perform such activities. She is a knowledge holder. She holds medicinal and pedagogical knowledge. The plant heals and teaches.

b) *Step 2 - Learning "good and beautiful thinking"*

I clearly remember Cofán ***abuelo*** (elder) **O** 's smile as he explained how the *yoquito,* as he fondly referred to the plant, "is like the morning coffee for us, because you drink it fresh and cold very early in the morning before you go to work, and it'll give you *fuerza* (strength)."[144] And given its concentration of caffeine and theobromine[145] a single cup is effective as a stimulant to endure long working hours in the forest.[146] More crucially, however, yoco teaches how to start any activity with a fresh mind (*"con la mente despejada"*).[147] In fact, after drinking two full gourds of the

139 The yagécero medics of the Colombian Amazon have written an ethical protocol for the resposible use of the plant. A protocol that all interested parties—including researchers—should follow. See Unión de Médicos Indígenas Yagéceros de la Amazonía Colombiana-UMIYAC (2000). "El Pensamiento de los Mayores. Código de Ética de la Medicina Indígena del Piedemonte Amazónico Colombiano." Mocoa: UMIYAC. Available: https://umiyac.org/ (Visited 10.03.2020).
140 For the interaction between yoco and yagé in Amazonian shamanism see Belaunde and Echeverry 2008. Yagé is made from two plants: a vine (Banisteriopsis caapi), and a shrub, called chacruna (Psychotria viridis). See Caicedo 2015, Weiskopf, 2005.
141 Bolivar, E.E., Lopez W., Gallego L.M., Huerfano A., "Botando Pereza." El yoco entre los secoya del Putumayo. J.A. Echeverry (editor). Letiticia: Universidad Nacional de Colombia-IMANI.
142 Belaunde and Echeverry 2008, p103.
143 Belaunde and Echeverry 2008, p102.
144 I will use the Spanish 'abuelo' throughout the text instead of the English term 'elder' in order to acknowledge the local dignity of this position of moral, political, and shamanic authority.
145 While theobromine is a diuretic, it mainly acts "as a smooth muscle relaxant and cardiac stimulant." See Coleman W. "Chocolate: Theobromine and Caffeine." J Chem Educ. 2004. 81(8): 1232.
146 Weiss, L. and Kearns, J., 2015.
147 Abuelo O, Putumayo 2019.

beverage, this relational protocol or ´cultural contract´ requires developing a very important skill: the patient cultivation of what Indigenous practitioners[148] and scholars across Putumayo often describe as "*pensar bonito*" (good and beautiful thinking).

I first heard this expression from an Indigenous Inga artist and friend, Benjamin Jacanamijoy, as he recalled how his father, a reputed yagé medic from Upper Putumayo, said during a ceremony with the plant: "*pensar bonito!"* Benjamin replied: "*(…) caminando con el corazón contento"* [(…) walking with a joyful and happy heart]. In my mind, "*pensar bonito"* refers to a local way of thinking with the plant to orient good action [cultivating a joyful heart],[149] while nurturing relations of care in and with the territory. As Indigenous Kamentzá intellectual Hugo Jamioy put it in a poem, which is at once beautiful, ethical principle, and practical instruction:

> *"Bonito debes pensar […] luego, bonito debes hablar.*
> *Ahora, ya mismo, bonito empieza a hacer."*[150]
> (Do beautiful thinking […] then do beautiful talking.
> And now go, right away,
> And begin to do beautifully) (My translation)

The practice of "*pensar bonito"* comes with hard work and years of training with several plants. And the tonic and purgative yoco helps to train this skill by teaching the human how "to get rid of laziness (to work and think) and purge the anger"[151] in their dealings with others. In my experience, the plant "purges anger" and "gets rid of laziness" by setting in motion a reverberating sensation of warmth in the body. This bodily sensation rises from the stomach up to the limbs and the head, then helping to expel what the body does not need. With the plant aiding to cleanse what impedes this distinct form of thought—good and beautiful thinking

148 On the notion of practitioners in the Southwestern region of Colombia see Lyons 2020.
149 On "ethical orientations" and "thinking forests" see Kohn 2018.
150 By Hugo Jamioy Juagibioy indigenous Kamentza poet, weaver, and practitioner from upper Putumayo, Colombian Amazon. In Jamioy H. and Apushana V., 2013.
151 My translation from the Spanish expression ' para [botar] la pereza y [purgar] la rabia' in Belaunde and Echeverry 2008, pp107.

leading to good and beautiful action—the human body starts learning about the normative and embodied workings of the yoco's mind. In my view, the purpose of ethical principles such as "purging anger" and "getting rid of laziness" are related to the act of cleansing the body as a form of *listening* so one can "learn anything about the forest": [152]

> Wandering through tobacco plants, listening to *moriche* palms (*Mauritia flexuosa*), grateful and bewildered, the body learns to learn; travelling far, inwardly, crossing the lakes of lucid moments, and the feverish fields of dreaming, the body learns to *listen,* carefully.

When it comes to learning, the word "*limpieza*" (cleansing) can be approached from at least two different vantage points: i) an anthropocentric perspective, and ii) a relational perspective. The first one is an attempt to purify the body from what is not human, which reproduces a platonic ideal of purity. The second, on the contrary, is about engaging with nonhumans—who see themselves as humans (Viveiros de Castro 1998, Descola 2013)—according to their own terms, for the purpose of learning how to repair our relations with them through various learning mechanisms (i.e. ingesting the plant). It is, in a sense, a mode of "contamination" (Tsing 2015) to remove whatever inhibits the expression of a fresh mind and to re-compose broken relationships with nonhuman beings. The platonic cleansing concerns the individual experience of purification and detachment from the world in pursuit of a spiritual ideal of self-awareness. The relational cleansing concerns an ethical education of care for oneself and for the other. The former produces separated bodies, while the latter creates multiplicities and relations between entangled selves.[153]

c) *Step 3 - A mind outside of a (human) head, or mind as forest*[154]

Discussing what it means to learn ethics and law with Amazonian plants is decidedly a thorny task. And this is not only because one is unable to fully grasp personal experience with plant

152 Abuelo O, Field notes, Mocoa, Putumayo, 2019.
153 Thanks to L4E colleague Shaun Sellers for a conversation about this issue (June 2020).
154 Here I draw inspiration from Kohn 2013, 2018.

persons (Hall 2011), but because learning and knowledge cannot always be accounted for through propositional language (Tuhiwai-Smith 2012). There is always the possibility of either saying too much or saying too little. As Indigenous Inga scholar and political leader Hernando Chindoy Chindoy put it in a recent conversation on the creation of an Intercultural Pan-Amazonian University (IPAU) in the region of Putumayo: "We have our own routes to access knowledge, but we ought to revitalize them." [155]And this requires the aid of vegetal minds as the root of learning (and teaching).

The idea of "plants as teachers" has been common currency in Amazonian epistemologies for centuries.[156] Vegetal persons like the yoco vine seem to teach a method for re-centering corporeal experiences according to the traditional practice of knowledge creation in this region. What I have being calling a relational protocol to understand the entangled lives of ecology and norms in this region, surpasses the concept of plants as botanical objects of description, market use, and environmental conservation. A second ethical (and ontological) principle thus comes into being: the practice of defining former objects as persons as a form of caring.

This principle refers to transforming former (botanical) objects into subjects with a perspective (Viveiros de Castro 2013). And this principle was crucial for the legal development of the ERA between David R.M and the Cofán people because it changed the direction of the work in an unexpected way (see chapter 2). David's research process started off as an ethnobotanical project to evaluate the diversity and classification of the wild varieties of the Yagé liana recognized in Cofán territory, while documenting the spiritually significant plants at the resguardo.[157] Instead of evaluating the diversity and classification of these plants and documenting their taxonomic and ecological aspects, the ERA developed into a sustained ethical-political conversation between

155 Indigenous political leader H during a plenary meeting on the creation of an Indigenous university and intercultural knowledge. Mocoa, Putumayo, 2019.

156 For a recent conversation about this notion, see Luis Eduardo Luna (2019) "El Animismo Amerindio, las Plantas Sagradas y el Antropoceno." In AYA conference 2019. Available: https://www.youtube.com/watch?v=ZHiLl7NxP9w (Visited 10.03.2020)

157 Rodriguez-Mora, David. Integrating ecomorphology and etnoecology to test Cofan etnovarietal classification of Banisteriopsiss caapi in southwestern Colombia. Description of Research project. Courtesy of author.

different participants regarding whether scientific practice could help leverage Indigenous plant-based medicine in the Colombian health system. Issues of decolonial practice, participatory research design, awareness of epistemic limits, and the relevance of research practice became central to the whole process.[158] To be sure, understanding this crucial reorientation required reckoning with plants as persons through situated practice (i.e. conversations with the community, plant ceremonies, etc.) as caring for these plants and the territory they were part of, beyond scientific description.

As ***abuelo* O** said with clarity and precision during a long conversation in Mocoa last year concerning the IPAU - an initiative led by the Inga people of Colombia: "to learn anything at all one needs a clear head (mind)." This mind, however, can be delocalized and distributed across different sentient and cognitive beings, rather than situated in one human head.[159] In this sense, the plant teaches us to re-locate our learning experiences within the larger experience of a learning forest as it helps us to dis-locate our all-too-human minds from our all-too-human heads (Kimmerer 2013). What we often consider as the locus of thinking, decision-making, and communication (a head) now emerges as one node within a larger tapestry of forest learning that involves human and other-than-human beings. What does this tell us about normative systems and how they come into being? Let us continue probing this question.

d) *Step 4 – A "minga de pensaminto"*

While seated next to a *tulpa*[160] learning about the IPAU initiative, the idea of having a "clear head" made sense beyond "my common sense." Coming from various regions, Indigenous practitioners from five different communities across the Colombian Amazon, national and international artists, academics, former Colombian state officers, and friends, were all invited to participate in the first *minga de pensamiento,* or collaborative brainstorming work ("*pensar juntos"* or thinking-together).

158 This aspect of his research will be discussed in chapter 2.
159 Varela et al 1992; Varela 1999. See Gagliano 2018 for a similar argument.
160 Each of the stones that form the stove of the peasant and indigenos kitchens.

The purpose of this four-day meeting was to imagine and begin to conceptualize an intercultural university initiative led by the Inga with the participation of other communities, including the Cofán. The purpose of the *minga* was twofold. First, to learn about a decades-long ethno-educational project of the Inga people, and second, to find new ways to leverage a long considered ethno-educational process linked to Inga's political struggles for recognition and cultural autonomy.[161]

"To start learning anything," ***abuelo* O** said as he carefully ruminated on his thoughts, "one needs the clear head one gets with *yagecito*." In my mind, he was referring to a generic learning about the world that involves ingesting (and conversing with[162]) vegetal beings both in ritual and in everyday life, two continuous dimensions of experience in Amazonia. The *abuelo* was neither talking about the particularities of local botanical knowledge, nor about the cultural uses and social values associated with different plants of the forest. Most significantly, he seemed to be addressing certain plants as knowledge givers, learning partners, and mind-bearing persons in their own right and regardless of the human attribution of meaning.[163] The ***abuelo* O**, however, would not have applied any of these concepts at all. Why would he? While drawing an invisible semicircle with his hand in the air and pointing in the direction of the canopy, he said, almost providentially: "we have our ways of learning about this infinite library out there (…) and our learning has always happened with the guidance of the *mayores* (elders) and the plants of the *selva*."[164] "Clearing the head" is, after all, learning to *learn* otherwise and with the aid of vegetal minds.[165]

161 The minga took place in the city of Mocoa, Putumayo, 2019. The IPAU project is increasingly expanding its network of national and international friends and allies, for example, the Pedagogical University of Colombia, the National University of Colombia, the Javeriana University, among other, institutions and persons—most notably, Swiss artist and scholar Ursula Biemann.

162 On the notion of "conversation" between humans and plants, and between plants, see Urbina 2011, 201.

163 Anthropologist Eduardo Kohn discusses the sign-making capacities of nonhumans (2013).

164 For the notion of selva, see Lyons 2020.

165 The idea of learning to learn in the context of legal learning in the work of Anishinaabe legal scholar Aaron Mills, 2019.

e) *Step 5 – A clear head to suspend description*

Having a clear head, the *abuelo* may agree, involves a particular way of opening-up to vegetal others through the momentary suspension of a university-trained preference for description, taxonomy, and ultimately, certainty. In the context of the Inga initiative to create a university in their territory, the issue of "revitalizing our own ways of knowing" seemed unthinkable without the participation of other beings (plants, "invisible peoples"). And these other beings seemed to provide different principles for guiding this ambitious university project. For example, engaging with plants-as-teachers required a particular disposition of the body, as well as the suspension of modes of thinking and acting where the body is the passive backdrop for description, appropriation or protection, rather than an active force for the creation of social meaning, political agreement, and decision-making (See Merleau-Ponty 1945). "Clearing the head" with plants defies the premise of a mind as an enclosed space where human thoughts, decisions, and dreams reside. Fuzzy and erratic when not forthright and focused, this kind of mind is more than just the repository of information from an external world. To be sure, the *abuelo* was inviting the participants of the university *minga* to imagine what we may call "mind" and "learning" in a completely different way, and with the help of yoco and other plants of the forest.

f) Step 6 - "Mente fresca" or cooling-down the mind

A condition for the possibility of learning, having a clear head is a moment in a larger process that the ***abuelo* O** poetically called "*tener una mente fresca"* (having a fresh and cool mind). A *mente fresca* entails purging the body as a way of creating a disposition to learn, and in this sense purging amounts to a form of pedagogy: "The university we are designing here is a place where you can go drink the plant and purge the body to be able to *see*" (*para poder mirar),* as ***mama* U** said during an afternoon meeting in Mocoa last year. In other words, this learning process involves cultivating a disposition to learn with the body as a form of mind. And such a disposition is a particular quality of people that have been trained with the plant. Purging as listening and pedagogy, or expelling what the body does not need as a way of tuning into the forest and its

beings, is an integral part of this relational protocol for enduring the task of learning, which can be quite strict, rather than a simple act of cleansing a mindless body.

Extending an invitation to think about the body in a different way, the *abuelo* was conceptualizing learning as a process of cooling down *(enfriar)* the human body with the help of the plant. In fact, the yoco infusion is a cold beverage one drinks in the morning before working in the *chagra*, or doing any other activity in the forest.[166] In a sense, the body could be imagined the other way around: as a mind taking a cold shower early in the morning. A "*mente fresca*" with the strength to endure the task of always learning something new about this "infinite library out there." To put it differently, the ***abuelo O*** was disrupting the famous modern division between mind and body by inviting the people at the *minga de pensamiento* to cool down their minds-as-heads with their bodies-as-minds through the act of purging (as listening), thus inverting the Modern Cartesian division if not negating it altogether:

(1) *From*	Mind Body	*to*	(2)	body mind	*and*	(3) body = mind
("Western" university logic)		(Indigenous university logic)				(Forest as university or "the library out-there"[167])

Indigenous artist and ethno-educator ***mama* U** further highlighted this reverse logic of the university with this powerful statement: "my idea of a university is where people can throw up and sweat as part of the process of learning."[168] Based on my direct experience with the yoco and trying to go beyond my own common sense, the statement clearly captured the workings of the plant's mind:

> the bitter and earthy taste of the yoco infusion sparks an instant sensation of warmth through the limbs and the head to then ignite a mild *chuma* (*dizziness)* making the body quiver in slow motion. The *chuma* grows stronger as the stomach folds over onto itself,

166 On the Amerindian notion of "cooling down" (enfriar) with the help of plants like the tobacco, see Echeverry and Kinerai 2008.
167 Abuelo O, Mocoa, 2019.
168 Mama U, Mocoa, 2019.

while the bile and the plant are expelled with the urgency of a powerful relief. Bewildered and grateful, one can imagine the vibrant presence of a gentle song sprouting from the surrounding trees.

If the first step in this *learning to learn* required cleansing the body, the following steps concerned the reflexive moments of suspending the way humans usually think about these plants: we, humans, need to suspend the common sense that considers plants as sessile and mindless objects to be able to encounter plants-as-people, namely plants full of mind rather than things for disciplinary description and market use.

g) *Step 7 - Co-emergence through ingestion (and digestion)*

The reflexive moments teach us that *learning to learn from the vantage point of the plant* requires a particular form of training or "corporeal discipline" (Echeverry and Pereira 2010) involving the in-corporation of the plant as *gente* (as people).[169] In other words, making the plant part of the human through ingestion and making the human part of the plant through the *chagra* labor.[170] Thus, a full cycle of propagated digestion (a metabolism of sorts) was in the making: from human sowing to multispecies mutual eating, and from nurturing to expelling to nurturing new (vegetal) life. The *minga de pensamiento* was an opportunity to reckon with this relational protocol or way of dealing with the entangled lives of meaning and ecology, and the limits and possibilities this protocol affords for Amazonian interspecies (legal) epistemologies.

In addition, learning to learn the relational protocol is more than the liberal deference towards an Indigenous (and vegetal) *other*. It is about the co-emergence of people, meaning, and norm through ingestion, that is, learning to learn seriously, respectfully, and carefully how to engage

169 A discussion of the use of the coca-leaf as a "corporeal discipline" in the next section. See also Echeverry and Echeverry & Pereira 2010, and Echeverry & Kinerai 1993.

170 It is a small plot for family agriculture based on successional rotation and regeneration of the forest, as well as a theater of socio-ecological relations of nourishment, medicine, spirituality, and political life for thousands of human communities across the region. See Rodriguez 2010, Andrade 1990, 1992; Correa 1990, and chapter 1.3 of this dissertation.

with the yoco's perspective[171]—seeing with the yoco's eyes—through (vegetal) anthropophagy. In this context, ingesting is an event of co-emergence rather than co-existence between two kinds of people, namely, vegetal people and human people becoming together as mutual nourishment and thought (Despret 2004). In a way, the mind of the plant and the mind of the human emerge together via ingestion.[172] In this sense, humans and plants co-emerge by virtue of exchanging their perspectives in a shared experience of matter and meaning,[173] that is, the *cuacuiyó* bird disperses the seed; the human sows the vine and prepares the beverage early in the morning, and the vine purges the human body.[174] At the same time, the *Cuacuiyó* bird—the yoco's owner—cultivates the plant, while the vine teaches and "gives advice" to the human who learns to work and think with the plant. This relational insight was crucial for the design of the ERA, which followed the law of the place that emerged in recursive interaction between humans, plants, and the invisible peoples of Nariño, Southern Colombia (see Chapter 2: *Los Invisibles*).

h) Step 8 - Good and beautiful action

Engaging with the world from the perspective of minds relentlessly emerging through relations between clusters of human neurons, vegetal cells, water drops, soils, clouds, invisibles ones….and forests may help us to navigate good action for today's crises. This is an ethical and legal task of sorts. Plants like yoco are an entry point into a larger constellation of interdependencies (Escobar 2018). The yoco can help us to cool-down (*enfriar*) our minds to

171 On the notion of perspectivism see Viveiros de Castro, 1998.
172 On plants as selves in Gagliano 2018, and Kohn 2013. See Myers 2014.
173 Varela et al 1992, p172.
174 On yoco's ecology and pharmacology see: Guinard, M.L. (1927). "El yocco: nueva planta medicinal de la flora colombiana". Boletín de la Sociedad Colombiana de Ciencias Naturales. 89 feb-mar pp. 3-5; Mitchiels and Denis (1926). "Sur la liane yocco, drogue a caféine, du genre Paullinia. Bull. Acad. Roy. Méd. Belg. 6 (VII) pp. 424; Rouhier y Perrot (1926) "Le yocco, nouvelle drogue simple a caféine. Bull Sci. Pharm. 33, pp. 537-539; Schultes, R. E. (1943). "Plantae Colombianae IV. Una planta estimulante del Putumayo". Revista de la Facultad Nacional de Agronomia, pp. 59-79; Schultes, R. E. (1986). "Recognition of variability in wild plants by indians of the Northwest Amazon: an enigma". Journal of Ethnobiology 6 (2), pp. 229-238; Schultes, R. E. (1943). "Plantae Colombianae IV. Una planta estimulante del Putumayo". Revista de la Facultad Nacional de Agronomia, pp. 59-79; Schultes, R. E. (1942). "Plantae Colombianae n. Yoco: A stimulant of Southern Colombia". Bot. Mus. LeaJI. 10, pp. 301-324; Vickers, William y Thimoty Plowman (1984). "Useful Planls of the Siona Secoya Indians of Eastern Ecuador", Fieldiana 15; Weckerle C.S. (2003). "Purine alkaloids in Paullinia". Phytochemistry. 64(3), pp. 735-742; Zuluaga, Germán (2004). El Yoco (Paullinia yoco): La savia de la selva. Bogotá: Universidad del Rosario; Zuluaga, Germán y Carolina Amaya (1991). "Uso de purgantes en la medicina tradicional colombiana". Interciencia. 16(6) pp: 322-328.

participate in this larger world of relations. *Enfriar* requires removing (purging) whatever interrupts our ability to "*pensar bonito"* or "*mirar bien bonito,*" according to ***abuelo O.***

In my experience, learning with plants is a form of ethical training to become better partners for our wounded Earth. Thinking with plants through ingestion is then a form of ethical knowledge to align oneself with good action in today's world.[175] What happens when normative systems such as the law attend to this relational protocol? Indigenous practitioners and their vegetal partners in Amazonia are teachers in navigating the entangled realities of colonialism, extractivism, and violence in this region. "Get(ting) rid of laziness and purg(ing) anger"[176] with yoco may teach us a way to cool-down the mind (and the planet) and learn to care for the forest and its mind-full dwellers.

i) Closing: Yoco and the law

Activated by the ingestion of yoco as *gente* (people), the creation of this relational protocol teaches us something about the law that goes beyond the state's monopoly over legal meaning in this region. The relational protocol is an instance of this "excess" (De la Cadena 2015). The making of the research agreement I followed with an ethnobotanist, the political and spiritual authorities of the Cofán community, a legal scholar, several medicinal plants, and "the invisible people" of the mountain where these plants grow, required attending to this specific mode of legal learning beyond the solely human rationalization of conduct according to written norms sanctioned by a state. In this sense, learning law with plants complicates what we mean by this word (law) and the kind of world a law-otherwise is able co-create.[177] In a sense, this first section has argued that learning with plants is a way of weaving law and ecology together because it situates the legal conversation beyond the realm of state's command over nature and human relations, and into the realm of ecological and cosmological relationality as an expanded form of socio-legal

175 On ethical training see Varela, 1999, and Kohn, 2018.
176 Belaunde and Echeverry 2008, p107.
177 On the "otherwise" in social theory see Restrepo and Escobar 2005.

participation. This means, in a way, going beyond a dualistic ontology in life and law: on the one hand, the notion that the world is divided between nature and culture and, therefore, that the human represents and shapes this world as long as she is ontologically separated from it; and, on the other hand, that the law is a subset of social norms that vary across cultures and social groups, and regulate the relationships between individuals, social groups, and political institutions such as the State, as well as the relationships between societies and their surrounding environments. According to this ontological premise of separation between nature and culture, the State would be part of culture and, as such, would be the most important political unit insofar as it regulates the metabolism between nature (i.e., natural resources) and society through the institutions and binding legal norms it produces.

Learning to learn with plants can be an effective way of guiding action in the world. And this brings us to the second part of the chapter, *learning norms with mind-full bodies,* where I discuss an approach to cognition as emergence in the work of Chilean neurobiologist Francisco Varela (Varela et al 1991, Varela 1999). The main tenets of the next section are: 1) cognition is not a property of individual humans (Gagliano 2018; Gagliano et al. 2017; Gagliano et al. 2014; Mancuso and Viola 2015; Marder 2013), and 2) a non-dualist approach to mind may allow us to encounter others (human and not) as minds in relation to other minds (Koh 2013). This approach seems important for appreciating a different understanding of normative systems such as law and ethics in the Andean-Amazonian region, because it goes beyond narratives of environmental protection of an external and non-agentive nature.[178] A non-dualist approach to life and knowledge is also key in chapters (1.2) *Yage: Moving words across worlds,* and (1.3) *Coca-leaf: Territories in motion*.

178 Even beyond state granted personhood to non-human beings (see Part 2 of the dissertation: "Rights of Nature: Limits and Possibilities").

3) Part 2: Learning law and ethics with mind-full bodies?

The body does not have an outline
Philippopoulos-Mihalopoulos, 2017:123

a) Introduction: Embodied memories?

Lately, I have become aware of a curious phenomenon. When I write on a computer without intentionally focusing on the keyboard, I tend to decrease spelling mistakes. On the contrary, when I look at my hands mechanically pressing the keys, my spelling can be quite embarrassing. The recursive practice of typing without the intentional control of the event at hand made me realize that perhaps other parts of my body hold some form of "embodied memory."[179] When I try to match the movement of my fingers with the alphabet printed on the keyboard, I imagine pointing my attention to the event at hand as if telling my fingers what to do. However, when I try to remember the order of the alphabet on the said keyboard it seems that my spelling mistakes increase. Otherwise, my hands seem to remember the order of the alphabet on the keyboard.

It seems to me that we humans access the idea of a centralized self (Varela, 1999), namely, a stable "I" that is different from everything else out there, through these kinds of mundane events. This centralized "I" is supposedly in charge of retrieving information from an external and pre-given world. We seem to live under the assumption that daily experiences such as typing on the computer, eating, walking in the forest, ingesting ritual beverages, among other actions, are all expressions of an intentional commitment of the human towards an outside—what lays beyond our skin—independent and self-contained reality.

179 See Ianì, F. "Embodied memories: Reviewing the role of the body in memory processes." Psychon Bull Rev 26, 1747–1766 (2019). Iani explores the role of the body and its sensorimotor processes in memory. He claims: " (…) The sensorimotor model of memory (SMM) claims that the body is the medium where (and through which) sensorimotor modalities actually simulate the somatosensory components of remembered events, and predicts that memory processes can be manipulated through manipulation of the body (...)" 2019: 1749.

b) Neurobiologist Francisco Varela's ethics as practice

Do humans take for granted the existence of this self-contained *self*? Is this self or mind located somewhere in the brain? Does the brain control cognition and (ethical) behavior? Francisco Varela proposes a way to answer these questions with what he calls an enactive approach to cognition. In his book, *Ethical Know How. Action, Wisdom and Cognition* (1999), Varela intertwines two seemingly separate fields of knowledge that are of crucial interest for our argument about the making of a relational protocol in Amazonia, namely: cognitive science and practical ethics. Varela himself was a neuroscientist and a practitioner of mindfulness meditation, and his suggestive piece is deeply informed by a serious commitment to the question of experience from the perspective of the neurobiology of color, as well as the practice of mindfulness meditation.

The relationship between cognition and ethics is exemplified by the wise person's approach to ethical behavior: s/he is the "one who knows what is good and spontaneously does it (…)" (Varela 1999, 4). For Varela "(e) thics is closer to wisdom than to reason, closer to understanding what is good than to correctly adjudicating particular situations" (3). He calls this immediacy or spontaneity of experience "know-how" as opposed to the intentional adjudication of rational judgment, which he calls "know-what." This distinction is significant: ethical expertise is akin to a practical skill rather than the actual representation of an external reality separated from the cognitive self.

As a cognitive scientist, Varela draws from the work of J. Piaget who affirms that even the highest level of cognition is situated or grounded in the concrete activity of the whole organism (a plant or a human, for example), and not only the brain (Piaget 1935). According to this approach, the world is not something given to the human mind, but "something we engage in by moving, touching, breathing and eating" (Varela 1999, 7). This means that the world emerges in recursive engagement with it and cannot be reduced to a series of discrete entities that we represent in our brains upon having the experience. With this, Varela challenges a "computationalist" approach to cognition and life based on the rift between the knowing subject who represents (and acts

upon) reality by means of symbolic thought, and a pre-given world retrieved by a subject in command of a mind. This is what Varela calls an enactive approach to cognition as a way to foreground that cognitive processes do not "consist (…) in the perceptual guidance of action in a world that is inseparable from our sensory-motor capacities and (therefore) that "higher" cognition structures also emerge from recurrent patters of perceptually guided action." (17)

According to Varela's account, embodied action or enaction entails at least two associated characteristics. First, the situated character of experience or readiness-to-hand, and second, the individual sensory-motor capacities "that are themselves embedded in a more encompassing biological and cultural context" (12). Returning to the typing example, my memory of the order of the alphabet printed on the keyboard has less to do with a mental image or representation than with the recurrent sensory-motor coupling of my fingers and the keyboard (also Varela *et al.* 1992). According to this enactive approach to cognition, what do mundane events such as the one just described have to do with the attainment of "ethical expertise"? To answer this question, Varela draws from the work of Mencius, an early Confucian thinker from the 4th century BCE. Mencius's view of ethical experience challenges the dominant Western Christian tradition of The Original Sin and The Fall to affirm instead the fundamental goodness of the human experience. Mencius, however, does not point to an ontological *a priori*, but rather to a human capacity that can be nurtured through everyday practice and skill in what Varela himself calls the practice of transformation. "As far as what is genuinely in him is concerned (a person) is capable of becoming good (…) As for his becoming bad, that is not the fault of his native environment." (Mencius cited in Lee Yearly 1991, 60). The question is how people may cultivate the capacities and dispositions that are necessary to attain ethical expertise as an at-hand experience rather than an external, transcendental, and disembodied set of moral principles to be applied independently in any given situation.

Mencius believes that people actualize ethical behavior "when they learn to extend knowledge and feelings from situations in which a particular action is considered correct to analogous situations in which the correct action is unclear." (Varela 1999, 27). For example, when a person

moved by the feeling of compassion helps another in danger, they don't act by rationally adjudicating moral or legal norms. Instead, they spontaneously extend the feelings emerging from analogous situations to the situation at hand, regardless of the formal existence of the norm yet enacting the norm through the practice.[180] In other words, Varela, following Mencius, considers ethical expertise as a matter of situated training in a body that can learn: "One starts from a simple situation we can all handle and then extends one's skills in widening circles to situations that are more complex" (27-28).

This methodology requires at least two interrelated skills, first, attention, or the capacity to identify similarities between situations, and second, awareness, or the ability to allow similar feelings to appear in a new situation.[181] For Mencius, ethical training depends on clear perception of correspondences and affinities between situations by way of cultivating attention. Thus, he is opposed to the mechanical application of transcendental rules because they disallow the training of attention to the issue at hand. Remaining attentive, then, entails recurrent sensory-motor engagement with an enacted world. It requires a body becoming attuned to the world,[182] or, in a sense, a thinking body. Varela highlights what our body already knows: cognition is not located in the brain, but distributed throughout the body, which is why it is common to all living beings. This point is crucial for a more than human understanding of different types of normative systems (60).[183]

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[180] Mills (2019) point "would be that it's not about law as norms at all, but about training and resources for making good decisions in the context of that web of relationships." Kirsten Anker, personal communication, Jan. 2021.

181 In a recent conversation, McGill colleague Daniel Ruiz called attention to the semiotic character of these skills: identifying similarities as iconicity, and the ability to allow similar feelings to appear in a new situation as indexicality. Kohn (2013) suggests that icons and indexes are types of signs beyond human symbolic representation and therefore expressed by other beings. In the realm of ethics, this suggests that other-than-human beings are skillful (or skill-expressing) entities.

182 For a similar argument, see Ingold 2000 (2011) Ch. 9.

183 This argument is important for how we understand the notion of personhood in today's conversations concerning the rights of nature: it is becoming clear that the themes of the person and personhood are important not just for human rights theory but for the rights of nature theory as well. What we need is a theory of the person and personhood for the emergent rights of nature theory. However, there are ways to talk about the person based on non-modern ways. For example, the notion of self in Varela (1999) is very important for it emphasizes the idea of emergence rather than of bounded self: instead of thinking about persons from the vantage point of ontological separation, we can still think about persons from the vantage point of relational ontologies (See Chapter 4 "Conjuring" and 5 "Forest on Trial" of this dissertation). For this second meaning of person, I prefer to use the language of "the self." The self is, then, an emergent property of living lines or what Ingold calls ways of life (Ingold 2011). The person is a meshwork in the context of a non-modern theory of rights of nature.

c) In closing: mind-*full* plants that teach norms and behavior

Borrowing from Varela, my goal with this second part of the story was probing a rather simple idea: the practice of goodness (good and beautiful action) in our interactions with others is a way to attain ethical expertise. In my experience, learning to learn with plants amounts to a form of ethical training to become better partners for our wounded and flourishing Earth. Mind-full plants learn and teach, which means that we are not all-too-rational agents garnering knowledge from an external world, but mind-full beings that co-create this world with plants and *non*plants full of mind. Learning ethics with plants is crucial for the craft and practice of law in Amazonia, among others, because plants are "the root of the territory (...) plants are what holds culture together."[184] What does an ethical disposition and training with vegetal beings teach us about the law in Amazonia? This is our main question for the chapter. The third and final part introduces the work of Colombian ethnobotanist David Rodríguez-Mora as he engages with plants, humans, and the "invisible ones" in Southwestern Colombia.

4) Part 3. Encountering the invisible ones as law in the Andes-Amazon

Up to this point, I have argued that plant persons[185] such as the emetic yoco vine (*Paullinia yoco*) are not only vegetal objects of scientific description, but partners of a legal herbarium, that is, plant partners that create law with humans partners. This approach joins ongoing efforts to transform human-centered decision-making in times of planetary crisis—especially in the Amazon.[186] In the words of **A.A.,** a yagé practitioner and attorney who has worked with the Cofán for several decades: these protocols should go beyond "the mere agreement between men and institutions [for] any important decision goes through the remedy (*yagé*) first."[187] Thus, decision-making in this region requires a local mechanism to achieve the dual purpose of building trust

184 Interview with A.A. 2019, referring to ritual plants, and particularly the yage vine. See next sub-chapter.
185 On this notion see Hall 2011, Gagliano 2018 and others.
186 On decision-making and the importance of plants like yagé in this process, see Pérez, D. H. (2002). Plan de Vida del Pueblo Cofán y Cabildos Indígenas del Valle del Guamuez y San Miguel, Putumayo-Colombia. Bogotá: Fundación ZIO-A' I.
187 Interview with A.A., Nariño, 2019.

between the parties involved in the agreement, while holding space for the *will of different kinds of people*.

The consultation mechanism had to include the political-spiritual authorities of the community, as well as the invisible people of the mountain via the ingestion of the plant as a willful person, and with the mediation of the human authorities. Here is where the limits of our modern-trained willingness to know find their most transparent expression with the Cofán. These limits exposed what we can call a modern-trained naivety, namely, a propensity to expect to know beyond what we were allowed to know, or what was knowable. We needed to learn to slow-down our academic common sense to be able to align our research intentions, questions, designs, and instruments with the goals, interests, and protocols of the Cofán community. Here, not knowing was perhaps more important than its correlate and this even had a sort of ethical or normative quality (De la Cadena and Blaser 2018).

Building upon the work of Indigenous Maori scholar Linda Tuhiwai Smith (2012), we started to critically assess our beliefs, theories, and paradigms about "knowledge production" and "research," while critically and honestly examining whether or not they embodied and/or perpetuated forms of cognitive injustice (see Tuck & Yang 2012, Tuhiwai Smith 2012). We needed to carefully examine our initial presuppositions, questions, and research goals, and even be ready to abandon the research project altogether. Rather than investigating local plants and their uses, David and I—as his research assistant—started to learn how to humbly participate in local efforts to decolonize thought.

Taking this claim seriously involved a radical shift: what was initially a research project about the morphological description of local medicinal plants and their uses, became a long multispecies conversation across territories and ritual houses concerning the ethics of research and the pertinence and value of our knowledge practices. The aim now was to learn how to effectively align our work with local principles of territorial autonomy or, in the words of the Indigenous

National Organization of Colombia (ONIC), the principle of "unity, territory, culture and autonomy."[188]

To frame the conversation that followed, I´ll quote a recent declaration from the Indigenous organization representing traditional healers from five Indigenous *yagecero* communities in the Colombian Amazon (UMIYAC).[189] Issued by UMIYAC's spiritual and political authorities and endorsed by other Indigenous organizations, this statement is addressed to "academics, researchers, NGOs, humanitarian and development agencies, the United Nations, the World Intellectual Property Organization (OMPI), students, workers and the international civil society." Rather than analyzing the document, my purpose is to allow this normative statement to guide our conversation.

What follows is premised on two larger claims: 1) encountering the invisible ones in the regions of Nariño and Putumayo reveals our modern epistemic limits, ethical positionalities, and the (de)colonial possibilities (and realities) of our work, and 2) making law in Southwestern Colombia is a matter of reconciling with the forms of participation of the invisible ones despite these limits. [190]

188 The First National Indigenous Congress adopted the principles of unity, territory, culture, and autonomy, which configure ONIC's lines of action and the mandate of the Organization concerning state's compliance of Indigenous legislation (particularly Law 89 of 1890). ONIC thus recommend the adoption of these principles to all Indigenous people of the country for strengthening Indigenous autonomy and the exercise of their government protocols. See ONIC official webpage: https://www.onic.org.co/onic/143-nuestra-historia (Visited 10.26.2020).

189 Unión de Médicos Tradicionales Indígenas Yagéceros de la Amazonía Colombiana – UMIYAC.

190 On Decoloniality see Mignolo, Walter. "Geopolitics of Sensing and Knowing: On (De)Coloniality, Border Thinking, and Epistemic Disobedience." Confero 1(1): 129-150. 2013. Also, Mignolo, Walter and Walsh, Catherine. On Decoloniality: Concpets, Analytics, Praxis. Durham: Duke University Press. 2018.

a) Plan for *Encountering*

The first part of the chapter was about learning to learn a relational protocol,[191] namely a way to learn with the special guidance of vegetal minds like yoco. What follows is an attempt to illustrate how the (legal) agency of what the Cofán people from this region call the "invisible ones"[192] emerges in recursive (corporeal) interactions with the vegetal world and other beings of the forest. Inspired by UMIYAC's recent declaration, my argument for this section is two-fold, namely, 1) there is a form of ´cultural´ continuity between humans, plants, and the "invisible peoples" (Descola 2013).[193] And 2) the corporeal or fleshy-like relationship with medicinal plants—particularly the yagé vine (Banisteriopsis caapi)—is one way of enacting this continuity or communication with the invisible beings of the forest.[194]

The physicality of this experience[195] is as crucial as its normative dimensions, in other words, what we experience in our bodies teaches us something about the sorts of things we can or can't do in the forest, or how we may better orient our actions in a world of neo-extractivist practices and colonial violence.[196] In the words of *abuelo* O during one of our preparatory yagé conversations: "*échele un poquito más (*of the yagé brew*) para que mire bien*" / give him a little more so that he can *see* better.[197] This seemed critical to the relational protocol described above.

191 On the notion of learning to learn see Mills 2019.
192 In the context of this research, the first time I heard about los invisibles was in the municipality of Jardínes de Sucumbios, Nariño, 2019. Don A, Field Notes, 2019.
193 See chapter 5 (Vegetal Legalities) for a detailed explanation of Descola's notion of "continuity" along "physicality and interiority" axes, and how I try to re-purpose this idea for legal theory.
194 See Kohn E., "Anthropology as Cosmic Diplomacy: Toward an Ecological Ethics for the Anthropocene. Available at https://www.youtube.com/watch?v=87yJKnVSd0k&t=695s (Visited Sept. 20, 2020.)
195 For example, purging the body.
196 Extractivism in the Latin American context can be defined as the extraction of huge volumes of natural resources "... that do not receive additional processing or (that) are processed in a very limited way to (be destined) almost exclusively to export-oriented global markets." See Gudynas, Ernesto. "Más allá del nuevo extractivismo: transiciones sostenibles y alternativas al desarrollo." En Wanderley, Fernanda (Coord.). El Desarrollo en Cuestión. Reflexiones desde América Latina, La Paz: Oxfam y CIDES, pp. 379-410, pg. 385.Also, Ulloa, Astrid y Sergio Coronado. 2016. "Territorios, Estado, actores sociales, derechos y conflictos socioambientales en contextos extractivistas: aportes para el posacuerdo." In Extractivismos y posconflicto en Colombia: Retos para la paz territorial. Bogota: Universidad Nacional de Colombia-CINEP. 23-58. 2016.
197 Abuelo Q, Nariño, 2019.

"Invisible peoples" ←→ **Plant** ←→ humans

Fig. 5: Plants as interfaces between humans and "the invisible ones"

Before exploring the entangled lives of invisible peoples and ecological mandates and what this might mean for law and ethics, let us provide some context for what is happening in this region.

b) Extractives

Since 1970, the Southwestern region of Colombia, the territory of the Cofán and Inga communities and many others, has been affected by indiscriminate deforestation, the presence of guerrilla groups, drug traffickers, and paramilitaries.[198] In 1991, poppy crops (*Papaver somniferum*) began to be planted in this territory until they reached more than 2,500 hectares; between 2 and 3 tons of morphine or heroin were extracted and distributed in international drug trafficking networks each week.[199] The indiscriminate logging and soil sterilization caused by these plantations was further aggravated by the implementation of the *Plan Colombia* - a bilateral agreement between the governments of Colombia and the United States in 1999 to defeat the guerrillas and drug traffickers in the country. In addition, this *Plan* aimed at implementing social programs for farmers so that they could abandon "illicit crops."[200] While the country's internal armed conflict intensified, glyphosate spraying of illicit poppy crops left profound negative impacts on the Indigenous and peasant inhabitants of this area. Until 2002, the Cofán and the Inga people had suffered a great deal, while seeing the majority of school-age children and youth involved in the "illicit crop" economy (including coca monocrops for the production of cocaine), and no effort made to confront and overcome this situation:

198 Chindoy H., personal communication in preparation for joint publication (see Chapter 7 "Indigenous Legalities"), 2019.
199 Ibid
200 See Lyons 2020 for a discussion of the failure of this Plan.

> ""In just one municipality, Nariño (Aponte), the ancestral territory of the Inga, the community achieved collective ownership over their territory under the legal framework of the *resguardo* (reservation) issued by the Colombian Institute for Agrarian Reform-INCORA, currently known as the National Land Agency-ANT. This title was created through Resolution 013 of July 22, 2003, which grants a collective title over 22,283 hectares, duly delimited and with the special protection of the State The *resguardos* in Colombia are inalienable, unseizable, and imprescriptible." [201]

As this region has become an epicenter of the Colombian (neo-) extractivist boom (Burchardt and Dietz 2014), it has also become the recipient of internationally designed forest conservation programs (UN-REDD 2018). Ranging from the extraction of hydrocarbons and rare minerals to bioprospecting initiatives and infrastructural projects, today's extractivist-based economies in Southern Colombia run parallel with growing (and glowing) environmental narratives (Ulloa and Coronado 2016). A multi-faceted phenomenon, (neo-) extractivism is coupled with participatory and land-oriented reconstruction plans in war-torn rural areas of the country (Development Programs with Territorial Approach-PDET, 2018). Simultaneously, recent legislation and court decisions foreground the collective rights to a safe environment, while declaring the legal standing of natural beings (Acosta 2017, Gudynas 2009, 2011). The Colombian Constitutional Court, for example, has granted rights to a mercury-polluted river in the Pacific rainforest (2016), as the Supreme Court recognized the personhood of the Amazon in the face of exponentially increasing socio-ecological pressures in this region.[202] Moreover, a celebrated set of regulations, the 2016 Peace Agreement (PA) between the Colombian government and the largest guerrilla group in the country highlights the "preservation of the environment" as a crucial

201 Hernando Chindoy, personal communication, 2019.

202 In the Latin American context examples of this jurisprudence are: Acción de Protección de la Corte Provincial de Loja, Sentencia No. 11121 2011-0010 del 30 de marzo de 2011 [Protective Action issued by the Provincial Court of Loja, Sentence No. 1121-2011-001, 30 March 2011]; Constitución de la Repúbica del Ecuador 2008, Decreto Legislativo No. 0, Registro Oficial 449 de 20 de Octubre de 2008 2016 [Constitution of the Republic of Ecuador 2008, Legislative Decree No. 0, Official Registration 449 October 20 2008]; Corte Constitutional de Colombia, Sentencia C-035 de 2016 [Colombian Constitutional Court, Sentence C-035 2016]; Secc. Justicia. Decisión de la Corte frena 347 títulos mineros en páramos. El Tiempo 9Feb.201 2016; Corte Constitucional de Coombia, Sentencia T-622 de 2016 [Colombian Constitutional Court, Sentence T-622 2016]. Corte Suprema de Justicia, STC 4390-2018. [Justice Supreme Tribunal STC 4390-2018]

element of a long awaited—and still pending—rural reform in Colombia (Sheriff 2018). An impressive catalogue of rights, procedures, and institutional arrangements, this 300-page legal artifact remains mostly aligned with the extractive-based development model just described. [203]

In the Colombian Amazon alone, deforestation doubled in 2017 with nearly 10% of the deforested area overlaps with Indigenous territories even as international conservation efforts steadily increased in the region.[204] In light of this, there seems to be a productive tension between eco-centric legal narratives such as those considering the rights of nature, and anthropocentric economic practices, which currently poses serious constraints over the effectiveness of the command and control approaches regarding environmental governance models in the Andean-Amazonian region at present.[205] What does a bottom up approach look like? What can a relational protocol with plants and invisible peoples teach us?

As an example of this bottom-up approach, David wanted to study the conservation status and local ethno-classifications of highly regarded ritual plants in the mountainous region of Nariño.[206] At the beginning of the project, this was, for him, a significant step to supporting the Cofán community's "sustainable local economies" as well as the "legacy of their shamanic traditions."[207] This is how he relates the personal and political context in which the research project started:

> I was requested to introduce myself, so I shared with them my desire to make a difference in their community as a form of gratitude for the benefits that my family and I had received from *Taita* Q ceremonies. I then shared my experiences as an ethnobotanist, highlighting

203 An English version of the Colombian Peace Agreement in http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf. See the chapter on the Integral Rural Reform (visited 1.10.2020).
204 See Resultados Monitoreo de la Deforestación, IDEAM, 2018. Available: http://www.ideam.gov.co/web/atencion-y-participacion-ciudadana/publicaciones-ideam (Visited 1.10.2020)
205 For a critique of environmental law, see Garver 2019 and 2013, Grear 2017, Philippopoulos-Mihalopoulos 2017, and Vermeylen 2017.
206 See Vásquez-Cardona D., (2017). Conflictos Territoriales y Derechos al Territorio y al Agua en el Maciso Andino Nariñense. Bogota: Fundación Humanismo y Democracia, FUNDESUMA/CIMA, CINEP (Chapter 2). On a recent public hearing about extractivist conflicts in the región, see Redacción Medio Ambiente. Putumao hará audiencia pública para denunciar impacto de actividades de extracción. Bogotá: El Espectador. April 2019. See https://www.elespectador.com/noticias/medio-ambiente/putumayo-hara-audiencia-publica-para-denunciar-impacto-de-actividades-de-extraccion (Visited 1.10.2020).
207 Interview with David Rodriguez, Nariño 2019.

> my research with a community of farmers in the Boyacá department of Colombia. I mentioned that for that work, an illustrated field-guide was going to be published at the end of the year, giving back to the farmer's community a product that would preserve their imperiled traditional ecological knowledge (TEK). Although my hope was to conduct a study about wild edibles with the Cofán, I expressed that ultimately I was interested in conducting a work defined by the priorities of the community. The Cabildo authorities expressed their gratitude for my intention to collaborate with them, and they debated the idea of a potential study about wild edibles. They concluded that doing a project about wild edibles would hardly benefit them, because a prior book on medicinal plants had already been done, and it was seldom used by the students of the community. Instead, they talked about the challenges they had been having with their main cash crop, the sacred Yagé vine, because their fields had been sprayed with roundup for the past decades. As a derived measure from the War on Drugs, the Colombian government had been spraying the herbicide in their territory, causing a rampant decline of their wild and cultivated Yagé, damaging their arable land and compromising the health of their native ecosystems. However, with the signing of the Peace Agreement, Roundup spraying had ceased and the opportunity to recover the Yagé crop was now possible. I expressed to them that I could surely help with this challenge, but by the end of the meeting we decided to take some time to think about it before defining the project. Finally, they announced that we were going to have a ceremony that night, to support the discussion we had.[208]

In 2019, I had the opportunity to work with David as research assistant for his project " (…) defined by the priorities of the community."[209] Yet, to reckon with the limits and possibilities of conducting such a project, we needed to follow the law of the place, which required, first and foremost, taking seriously a "special mandate" coming from the Cofán community itself.[210] This mandate was both political and ethical and involved a major conversation beyond "symbolic representation" (Kohn 2013), and "(…) with other beings of the territory that are not resources"—as environmental legal scholar and activist Gustavo Wilshes reminded us earlier in the introduction of this dissertation. And it seemed to us that to start this conversation, which was part and parcel of the relational protocol, we needed to make room for other-than-human beings *on their own terms*. The plants that initially were part of David's botanical repertoire now seemed to guide our musings and

208 David Rodríguez, Personal Communication, February 2020.
209 Later on, we met other Indigenous colleagues from the Inga community who are now leading the creation of a Panamazonian Indigenous University with the growing support of various organizations—an initiative David and I have the privilege to be part of.
210 Conversation with A.A. lawyer and yagé practitioner. Nariño, 2020.

wanderings across territories, ritual houses, and legal documents.[211] These plants became a sort of interface between our all-too-human will and what my friend would later conceptualize as "the will of the mountain."[212]

c) On a plane to Putumayo: Two ways of life (biology and law) that co-emerged in conversation and disagreement

We were very excited about the whole thing. I wanted to learn about David's research as an ethnobotanist, and how his work and encounters with different beings in the forest informed his scientific work. There was a sincere disposition for the task of mutual listening and co-learning. Why did David decide to become an ethnobotanist? Why did he decide to work with the Cofán community amid hundreds of oil-extraction pits, ongoing colonial and state violence, and thousands of hectares of coca crops? Why did he "decide" to work with the yagé vine? As we travelled to Villagarzon, Putumayo, pressing questions around the meaning of research in this context and what the role of the researcher should be quickly emerged before us. While these issues were not initially explicit in my friend's research project, they were the elephant in the room from the beginning.

During our first encounter, it was quite clear that the research process was going to be as meaningful for us as its potential outcomes, and that the process would require a deep reflection concerning our own positionality. It was also clear that this process was one of opening up to a world *in place* - colonial histories, extractivist economies, violence, and stories of socio-ecological resilience – but also about opening up to a *different world*: a set of values, practices, and epistemological operations clashing against each other.

211 Some of these encounters took place during a series of conversations for the creation of an "Indigenous Pan-Amazonian university" led by the Inga people of Aponte, Nariño (Field notes, Mocoa, 2020).
212 First conversation on a plane on the way to Putumayo and then to Nariño. Field Notes, 2019.

Our attempts to be open to other ways of thinking and doing things in the field would eventually defy our well-established presuppositions about the nature of ethnobotanical knowledge, as well as the nature of the law. We wanted to weave together biology and law, and learn how these two disciplines become undone and reworked as we attempted to invite humans and other-than-human beings into the conversation. **Two ways of life (biology and law) co-emerged in conversation and disagreement.** Do plants make decisions? Are invisible people "real"? And to whom are they real? While these questions were not part of the repertoire of my friend's ethnobotanical research among the Cofán in the mountainous region of Nariño, they certainly were hovering in the background of our conversations like rapidly passing fireflies.

d) A tale of life: law and the "Invisible people"

"Actually, it was the other way around," David said. "It was more like *something else* made that decision for me. I wanted to do a study on the conservation status of some fruit-bearing trees in the region. But, you see, this was more pressing for the community and for the mountain." (David R., Interview 2019) David is a scientist and he is also deeply invested in Indigenous practices with these plants. At first, he was serious about the possibility of a *speaking* mountain and yet seemed less keen to allow the mountain to disturb the soundness of the scientific protocol. "It was the mountain, like, telling me that. It was not an invitation, but something like a mandate. Something I had to do regardless. But I want to be clear about a crucial point: one thing is the science and quite another is what I believe about local spirit-life. We need to do the science right, with the method and all." I was indeed very intrigued by the idea of a willful mountain or a mountain mandating someone to do something.

How did David get that mandate from the mountain? And how willing was my friend to acknowledge the fact that only a few days later it was the mountain itself that seemed to be against the whole research project - or at least, that was what I thought. We also needed to understand how to make things right by following the relational protocol. This required what many community members referred to as receiving "permission from the invisible ones." Did we

ask the "invisible people" permission to do this project in the proper manner? And what were the culturally appropriate protocols to do anything related to obtaining – or not obtaining - agreement from them?" Now you made me think about that old law book, *The Spirit of the Laws*," I said.

This memory made me realize that "spirits" are not quite the same across disciplinary boundaries and cultures. The spirit of the law that directed my friend to do his project was not quite the same *Spirit of the Law* as exists in the Western legal cannon. Yet, spirit life seemed quite pervasive across knowledge practices. Why not in science as well? If scientists like David received a mandate from the invisible people to perform what Western-minded people can only perceive as an imaginary duty, then what is really at stake is the status of the real. Let us not be so eager, though. We can say the mountain is a force of law in the same way in which the constitution of a country is a force of law. After all, spirit masters from the mountain and constitutional values guiding our lives are both invisible entities, aren't they?

i) "Los invisibles"

"*Para cualquier cosa, debemos pedirle permiso a los invisibles* "/ "We must ask permission from the invisible ones for anything," said ***Don R*** after a 4-hour trek from the municipality of Jardínes de Sucumbios to *el Resguardo del Oso* up in the mountains where "(…) the whole community used to live before they migrated to the municipality several years ago to be closer to the health system and the school for their children."[213] We crossed the Rumiyaco River in *tarabita,* a rope bridge with a hanging basket used to carry passengers and things across the river, to then find a small hectare of coca crops. "Who are the "invisible people"?[214] I asked and thought "what are the limits and

213 Conversation between David Rodriguez and Doña Y. Field notes, Nariño 2019.

214 The Amazonian notion of the "invisible ones" is akin to what Varela calls "self-less selves" in the ground-braking "Organism: A Meshwork of Selfless Selves": "(...) Understanding of emergent properties in distributed network processes lies precisely in that they are strong metaphors, nay, exemplars, for what is a selfless self: a coherent whole which is nowhere to be found and yet can provide an occasion for coupling. I underline strong metaphor because without those examples this apparent paradox of non-localization liable to designation as a totality, becomes a contradiction. Unless this apparent paradox is addressed on this constructive meta-level, we quickly slide back into the traditional debates about existence vs. non-existence of self, persona, holism, and the like. The novelty provided here is that we change levels

possibilities of asking this question?" Below there are some accounts from members of the Cofán people of Nariño who David and I interacted with. They do not so much define who the invisible ones are[215] but rather express **a mode of engagement with place** as well as the mandates and obligations concerning *"el cuidado de la vida en el territorio"* (caring for life in the territory)[216] between this kind of people ("*los invisibles"*), and the kind of people that we, humans, can become as we learn to creatively navigate these critical times of planetary crisis and pluriversal possibilities (Escobar 2020). After all, "the territory takes care of itself,"[217] and yet, this territory can take care of us if we take care of it as an ongoing kind of *we* that involves all beings and relations. Below there is a selection of local claims about the *invisible ones.* These claims have a normative-like kind of language, that is, the invisible people seem to come into being as they allow or prohibit certain behaviors.

through a two-way passage: "upwards" as emergent properties from the constituting elements, and "downwards" as the constraints on the local interactions due to the global coherence. Thus, a non-substantial self can nevertheless act as if present, like a virtual interface." (Varela 1991: 100). One of the key questions of this dissertation concerns the making of a research protocol with other-than-human selves. We might ask: Are "the invisible ones" emergent properties of the forest? Are they emergent properties of the interaction between Indigenous practices, plants, traditional medics, ethnobotanists, and the forest as a larger self? (Kohn 2013) Are the "invisible ones" virtual selves? Varela himself seems to offer important cues to answer these questions: "If this narrative is necessarily constituted through language, then it follows that this personal self is linked to social life because language cannot but operate as a social phenomenon. In fact, one could go one step further: perhaps the selfless 'I' is a bridge between the corporeal body which is common to all beings with nervous systems and the social dynamics in which humans live. 'Me' is neither private nor public alone, but straddles both. And so do the kinds of narratives that go with Ts, such as values, habits, and preferences. In purely functionalist logic, 'I' can be said to be for the interactions with others, for creating social life. Out of these articulations come the emergent properties of social life for which the selfless 'I's are the basic components. Thus, whenever we find regularities such as laws or social roles and we conceive of them as externally given, we succumb to the same fallacy of seeing any emergent property as having substantial identity, instead than as emergent properties of a complex distributed process mediated by men's (sic) interactions. Such social emergences can be projected as "exogenous" reference points (…), but they can equally well be deconstructed by the same kind of argument we have followed here." Varela 1991: 101.

215 Similarly, for the Shipibo in the Peruvian Amazon: "(…) healing practices, in-line with many indigenous ontologies, are based on the premise that plants are animate and capable of communicating with, teaching, and healing humans. I use the term "plant spirit" or "plant spirit master" to refer to the Shipibo ibo, which in Spanish is sometimes called the dueño, espíritu or madre of the plant, translating as its owner/master, spirit, or mother. Each type of teacher plant has a distinct ibo, though not all plants have the power to heal or teach. This is distinct from the materiality of the plant itself, or from a plant as an individual specimen. Material plant specimens can be viewed as individual manifestations of the plant spirit master of the species, which is how Fernando Santos-Granero18 describes the idea of spirit masters for the Yanesha. Eduardo Kohn describes the existence of animal spirit masters of the Runa in Ecuador as the beings who own and care for the animals of the forest, and live in the spirit realm. This is analogous to the Shipibo conception of ibo." Dev 2019.

216 Biologist Marcela Bravo, Interview, June 2020.

217 Cofán Indigenous practitioner, Nariño, 2019.

- "Los invisibles me dejan collares y diseños" - Abuela M

- " Cuando una persona entra al territorio debe pedir permiso a sus dueños: los invisibles. Entrar al territorio sin permiso puede traer consecuencias inesperadas- asociado a esto están los cuidados especiales en el manejo de la planta. Aquí hay una fuente normativa de gran valor: Se trata de una serie de vedas y prohibiciones: no pasar por encima de la planta; que las mujeres no la manipulen; que el investigador no coseche una planta silvestre; que no se saque del territorio." (Field notes, Nariño 2019)

- "No es necesario proteger algo que ya está protegido por los invisibles" - Joven W.

- "Hasta los invisibles saben. Ellos -según doña Y - están presentes en nuestras conversaciones. Quizá estén también leyendo estas líneas que usted está pintando. " - Doña Y

- "Una experiencia de investigación que requiere un acuerdo fuerte. ¿Cómo pueden los invisibles acceder a los términos del acuerdo? ¿Cómo saber si están de acuerdo con continuar este ejercicio?" (Field notes, Nariño 2019)

- "Esto no quiere decir que en el plano de la vida cotidiana no exista una permanente invocación de los espíritus o lo invisibles como dice Doña Y: "Los invisibles saben lo que estamos conversando." (Field notes, Nariño 2019)

- "Este soplo es para pedir protección y permiso ahora que entramos en el territorio sagrado Cofán cuyos dueños espirituales son los "invisibles" (gente que vive en ciudadelas invisibles en la selva)." (Don O, Nariño 2019)

- "El aire es fresco y la lluvia incesante (…) P está organizando el mercado y la abuela recomienda taparlo (…) es extremadamente cauta con todo. La riqueza de todo lo que está ocurriendo es abrumadora (…) (Field notes, Nariño 2019) "Hay que tapar la comida para que los invisibles no se la lleven" - Abuela M

- "Los seres invisibles son abuelos ancestros de la gente Cofán que están viviendo aquí y no se

- "The invisible ones leave me necklaces and designs" - **Abuela M**

- "When a person enters the territory, they must ask permission from its owners: the invisible ones. Entering the territory without permission can bring unexpected consequences." Associated with this are special care practices in handling plants. Here is a valuable normative source in regards to plants (mandates and prohibitions): "do not go over the plant; women should not cook yagé; the researcher should not harvest a wild plant without permission from the invisible ones; the plant should not be removed from the territory. " (Nariño 2019)

- "It is not necessary to protect something that is already being protected by the invisible people" - **W.**

- "Even the invisible know. They are present in our conversations. Perhaps they are also reading these lines that you are writing. "- **Doña Y**

- "A research experience requires a strong agreement. How can the invisible ones access the terms of this agreement? How do you know if they agree to continue this work? " (Nariño 2019).

- This does not mean that in the plane of daily life there is no permanent invocation of the spirits or the invisible, as Doña Y says: "The invisible know what we are talking about. " (Field notes, Nariño 2019)

- "This breath (*soplo)* is to ask for protection and permission now that we enter the sacred territory of the Cofán whose spiritual owners are the invisible people who live in invisible citadels in the jungle." **Don O.**

- "The air is fresh and there is an incessant rain (…) P is organizing the food and the grandmother recommends covering it (…) she is extremely cautious with everything (…) (Nariño 2019).

dejaron dominar de los españoles. Ellos son gente como nosotros (dice la abuela) (…) tienen sus cultivos. Se ponen plumas en la nariz, hacen sus celebraciones. A la abuela le regalaron un collar en una toma de yagé. Ellos tienen maloca grande. Hay gente invisible mala (invisible) e invisibles buenos (…) Por envidias hay malos. Tienen sus cultivos de yuca, ají (…) tabaco (…) La abuela ha ido a fiestas con los invisibles y ellos tienen la cara pintada (…) tienen también un lugar para bañarse. Parece que algunos invisibles se roban los niños." (Field notes, Nariño 2019)

- "La Abuela M nos habló de los invisibles (…) son gente ancestral que vive en malocas grandes y que hoy nos permite estar aquí. "¿Cómo pedirles permiso?", pregunto yo. "Pues simplemente pidiéndolo" Dice la abuela." (Field notes, Nariño 2019)

- "Toda la mañana ha llovido. D quiere salir a treparse al mismo palo de ayer. A y el abuelo intentan disuadirlo contándole historias de personas a las que los invisibles les "desamarraron los nudos que hicieron para treparse y se cayeron." El abuelo también habla de un yagé silvestre que es invisible. Que no se deja encontrar (…)." (Field notes, Nariño 2019)

- "El abuelo habla de las muchas guerras espirituales que ha liberado para vencer a sus enemigos. En una de esas rascas, el yagé le mostró a los seres invisibles que le regalaron al abuelo una chonta entregada en un precioso cofre." (Field notes, Nariño 2019)

- "Si los invisibles no estuvieran de acuerdo con su presencia aquí nos iría mal a nosotros. Pero ellos están de acuerdo." Abuela M

-"You have to cover the food so that the invisible ones don't take it away" - **Abuela M.**

- "The invisible beings are ancestral grandparents of the Cofán people who are living here and did not allow themselves to be dominated by the Spanish. They are people like us (says the grandmother) (…) they have their crops. They put feathers on their noses, they do their celebrations. The grandmother was given a necklace at a yagé ceremony. The invisible ones have a big maloca. There are invisible bad people and invisible good people (…) Because of envy there are bad guys. They have their crops of cassava, chili (…) tobacco (…). The grandmother has been invited to celebrations with the invisible ones and they have painted faces (…) they also have a place to bathe. It seems that some invisible ones steal children. " ***Abuelo* R**.

- "**Abuela M** told us about the invisible ones (…) they are ancestral people who live in big malocas and who allow us to be here today. "How to ask permission?" I ask. "Well, just asking," says the grandmother. " (Field notes, Nariño 2019)

- "All morning it has rained. D wants to go out to climb the same tree as yesterday. *A* and the *abuelo* try to dissuade him by telling him stories of people who the invisible ones "untied the knots they made to climb up a tree and then they fell down." The grandfather also talks about a wild yagé that is invisible. This plant cannot be found (…)."

- "The ***abuelo Q*** talks about the many spiritual wars that he has waged to defeat his enemies. In one of those *rascas (*yagé nights*)*, the yagé showed the invisible beings who gave grandfather a *chonta* delivered in a precious box. " (Field notes, Nariño 2019)

- "If the invisible did not agree with your presence here it would be bad for us. But

they agree." **Abuela M**

The invisible people (*los invisibles)* are the owners of the territory and the plants growing there, and we are required to ask their permission before doing anything in the forest. To ask permission, we needed the mediation of the most respected and powerful medicine men (*abuelos mayores)* of the community. The *abuelos mayores* communicate the "request of consent" to the *invisibles* through the ingestion of the yagé plant as part of what we have been calling a relational protocol.[218] While asking for permission is also the act of asking someone using symbolic language ("How to ask permission?" I asked. "Well, just asking," the *abuela* replied[219]), it is also about a "corporeal disposition" (Echeverry and Kinerai 1993) or mode of engagement with other minds in what we have been calling "ingestion' (see also chapter 1.3. *Coca leaf: Territories in motion*). However, the act of asking for permission through symbolic language is not necessarily the best way of obtaining (or not) the consent of the *invisibles*. In my view, a crucial element of this relational protocol is the *cosmological translation of the invisibles' will*, which the *abuelo* performs in a yagé ceremony:

"Invisible peoples" ←→ **Plant** (*yagé*) ←→ humans (*abuelo mayor)*

Fig. 6: The *yagé* as an interface between the human and the *invisibles*

"Making things right for the project" as David would put it evokes a normative principle of sorts. According to this principle the scientific method of ethnobotany and the relational protocol with the Cofán community and their other-than-human kin must work in tandem.[220] In this way, the ethnobotanical research may well exceed the purely morphological description of plants, or even a policy catalogue of best sustainability practices. Ultimately, the research was about different

218 The forest communicates agreement in other ways: rain, footprints of animals, the presence or absence of game, etc. The best way is by asking the plant in a yage ceremony.
219 Abuela M, Nariño 2019.
220 Field notes, Nariño 2019.

ways of encountering and interpreting (or failing to interpret correctly) the will of human and other-than-human beings as they co-intervene in decision-making processes.

David's ethnobotanical work would have been unthinkable without this "permission from the invisible ones."[221] Such permission refers to the limits and possibilities of what I'll conceptualize as invisible legalities, that is, a series of mandates for doing or not doing something in the forest, whose sources are not reducible to the usual mechanisms of human political representation and deliberation (De la Cadena 2010). In fact, these sources of authority (the force of law!) depend on reckoning with the forest's mind through the invisible ones, even if the *invisibles* come into being through human symbols. Perhaps here is where we found our own limits to 'knowing' radically different alterities: "It is not necessary to protect something that is **already being protected** by the invisible people" and "even the **invisible know.** These statements, which are also legal mandates, arise in the relationships (and tensions) of everyday life between humans and these "beings who may seem invisible to us and yet have a word about how things should be done."[222]

Statement	Normative function
1. "The invisible ones **leave me** necklaces and designs" - **Abuela M**	1. Donation (invisible ones making gifts)
2. "When a person enters the territory, **they must ask permission** from its owners: the invisible ones. **Entering the territory without permission can bring unexpected consequences."** Associated with this are special care practices in handling plants. Here is a valuable normative source in regards to plants (mandates and prohibitions): "**do not go over** the plant; women **should not cook** yagé; the **researcher should not harvest a wild plant without permission** from the invisible ones; the plant should not be	2. Permission to do something/ duty to consult / prohibition of trespassing (the invisible prohibits access to their territory or permits certain actions / *invisibles* as property owners.

221 Don O, Nariño, 2019.

222 A.A, Nariño, 2019. For a discussion about the ontology of spirit life in Amazonia see Viveiros de Castro 2007.

removed from the territory. " (Nariño 2019)	
3. "It is not necessary to protect something that is **already being protected** by the invisible people" - W.	3. Guardianship / mandate / tutelage (the invisible ones protect the interests of the territory as their owners.
4. "Even the **invisible know.** They are present in our conversations. Perhaps they are also reading these lines that you are writing. "- **Doña Y**	4. Witness / hearsay (the invisible ones are witnesses)
5. "A research experience requires a strong agreement. **How can the invisible ones access the terms of this agreement**? How do you know if they agree to continue this work? " (Nariño 2019)	5. Agreement / contract (the invisibles negotiate the terms of a relation or contract)
6. This does not mean that in the plane of daily life there is no permanent invocation of the spirits or the invisible, as **Doña Y** says: "The **invisible know** what we are talking about. " (Field notes, Nariño 2019)	6. Witness
7. "This breath (*soplo)* is to ask for protection and permission now that we enter the sacred territory of the Cofán whose spiritual owners are the invisible people who live in invisible citadels in the jungle." **Don R.**	7. Prohibition of trespassing
8. "The air is fresh and the rain is incessant (…) P is organizing the food and the *abuela* recommends covering it (…) she is extremely cautious with everything (…) (Nariño 2019)	8. Tutelage / mandate
9. "You have to **cover the food so that the invisible ones don't take it away**" - A **Doña Y**	9. Stealing (the invisible one still human property)
10. "The **invisible beings are ancestral grandparents of the Cofán** people who are living here and **did not allow themselves to be dominated by the Spanish**. They are people like us [says the grandmother] (…) **they have their crops**. **They put feathers in their noses, they do their celebrations**. The	10. Kinship relations / inheritance / bequest (the invisible ones are grandparents. Humans inherit their qualities and things) / kidnapping (invisible stealing human children)

grandmother was given a necklace at a yagé ceremony and the invisible ones have a big maloca. There are invisible bad people and invisible good people (…) Because of envy there are bad guys. They have their crops of cassava, chili (…) tobacco (…). [The grandmother] has been invited to celebrations with the invisible ones and they have painted faces (…) they also have a place to bathe. It seems that some invisible steal children too." ***Abuelo* R**,	
11. "Grandma M told us about the invisible ones (…) they are ancestral people who live in big malocas and who allow us to be here today. "How to ask permission?" I ask. "Well, just asking," says the grandmother." (Nariño 2019).	11. Kinship relations / duty to consult
12. "All morning it has rained. D wants to go out to climb the same tree as yesterday. *A* and the *abuelo* try to dissuade him by telling him stories of people to whom the invisible ones " untied the knots they made to climb up a tree and then they fell down." The grandfather also talks about a wild yagé that is invisible. This plant cannot be found (…). " (Nariño 2019)	12. Injury / torts (invisible ones injuring humans)
13. "The grandfather talks about the many **spiritual wars** that he has waged to defeat his enemies. In one of those *rascas (*yagé nigths*),* the yagé showed the invisible beings who gave grandfather a *chonta* delivered in a precious box. " (Nariño 2019)	13. Self-defense / proportionality / Donation
14. "If the invisible did not agree you're your presence here it would be bad for us. They agree." **Abuela M**	14. Consent (invisible people allow the presence of humans in their territory)

Table 10: Normative claims by the "invisible ones"

While the *invisibles* could grant permission to actively do things in their territory, they actively prohibit certain behaviors as well (*"*the *abuelo* tried to dissuade him by telling him stories of people to whom the invisible ones "untied the knots they made to climb up a tree and then they fell down"). For example, one **cannot** step or "go over the plant," or "women **should not** cook *yagé,"* or participate in a ceremony when they are menstruating (Caicedo 2015).

Concerning David's interest to perform research activities in the territory, the *invisibles* prohibit "harvesting a wild plant without their permission." While these norms and prohibitions can be understood as locally binding cultural protocols, any person external to the community should follow them as well, and in that sense, these norms are *erga omnes*.[223] Moreover, these norms are not, simply put, a set of "cultural beliefs" of a particular community of humans (De la Cadena 2010), for they also establish ecological functions of significant importance such as restricting the overexploitation of wild varieties of the sacred plant.[224] In this sense, these norms exemplify an ecological characteristic of the law beyond the exclusive attribution of human meaning.

"Invisible peoples" ←→ **norms** ←→ humans

Fig. 7: Norms as relations between invisible people and traditional practitioners

Again, who are *los invisibles?* What is their ontological status? In what sense can they be considered as "existent"? (See Chapter 4 "Conjuring"). And what are the limits and possibilities of asking these questions within Western legal frameworks? Do the *invisibles* matter for the law beyond the recognition of their official legal "status" as "local cultural beliefs" or "immaterial patrimony" within the conventional multicultural framework of the Colombian state?[225] In a

223 "Towards all" or "towards everyone". Legally, *erga omnes* rights or obligations are owed toward all. For example, a property right is an *erga omnes* title, and thus enforceable against anybody infringing that right.

224 On the ecological functions of ritual see Grimes R. (2003) "Ritual and the Environment." In The Editorial Board of the Sociological Review, Oxford: Blackwell2003.

225 See Art. 7, Colombia's Constitution of 1991: "The State recognizes and protects the ethnic and cultural diversity of the Colombian Nation." Art. 246: "The authorities of the indigenous [Indian] peoples may exercise their jurisdictional functions within their territorial jurisdiction in accordance with their own laws and procedures as long as these are not contrary to the Constitution and the laws of the Republic. The law will establish the forms of coordination of this special

relatively recent ethnographic piece, Brazilian anthropologist Eduardo Viveiros de Castro explores the "ontology of Amazonian spirits" (2007) among the Yanomami. He says:

> For the *Yanomami* "(w)e could say that the *xapiripë* [*los invisibles, for the Cofán*] is the name of the disjunctive synthesis that connects-separates the actual [the actual being normative expression of mandated behavior, for example, the obligation to ask permission from the invisibles to undergo research] and the virtual, the discrete and the continuous, the edible and the cannibal, the prey and the predator (…) **A spirit in Amazonia is less a thing than an image** (…) **less an object than an event, less a transcendental figure than a sign of the immanent universal background** - the background comes to the surface in shamanism, in dreams and in hallucinations, human and the nonhuman, the visible and invisible trade places [it can be said that certain norms are given in a yage ceremony]. A 'spirit', in sum, is less a 'spirit' in opposition to an in-material body than a dynamic and intensive corporality (…) displaying sometimes terrifying appearance, superb body ornamentation, perfume, beauty (…) In sum, a constitutive rather than a negation of corporality: **a spirit is something body insofar as it possesses too many bodies, capable of different corporal forms**. The interval between any two bodies rather than a non-body or no body." (Viveiros de Castro, 2007: 160-161. My highlights).

The invisibility of these spirits has less to do with our human sensory-motor capacities to perceive *them* as coherent external substances: "A spirit in Amazonia is less a thing than an image (…) less an object than an event, less a transcendental figure than a sign of the immanent universal background." The invisibility of the *invisibles* has to do with our (in)capacity to engage with the relational coherence or efficacy of those existents as they participate in social situations by allowing or prohibiting certain behaviors or becoming involved in local decisions. This capacity to "access" the relational coherence of the invisible people is widely available in the Cofán community through dreams, images, symbolic language, material culture and, of course, ceremonial experiences with plants. In so far as *los invisibles* come into being in all these different ways, their social presence can also be recognized as **the law of the place**, that is, a set of norms and procedures for making local decisions to manage the territory.

jurisdiction with the national judicial system." (Translated by Marcia W. Coward, Peter B. Heller, Anna I. Vellve Torras, and Max Planck Institute). Available https://www.constituteproject.org/constitution/Colombia_2005.pdf (11.09.2020)

Therefore, *los invisibles* might have more of a territorial existence anchored in concrete practices with the land than a metaphysical existence separated from these practices; more of a social immanence oriented toward cultural resilience and autonomy than a transcendental presence imposed by a constitutionally mandated "cultural belief." In this sense, *los invisibles* are political beings performing a kind of politics of survival: "[t] he **invisible beings are ancestral grandparents of the Cofán** people who are living here and **did not allow themselves to be dominated by the Spanish"** ***Abuelo*** **R**.

While representative democracy manifests the *spirit of democracy* through aggregate social behaviors (individual votes), the act of conjuring or calling upon also enables the invisibles of the mountain to live through recursive territorial practice such as the yagé ceremonies. To be sure, these practices are essential to make decisions about the mountain. However, here the 'social' must not be equated with the (modern) human: this social immanence of spirit life comprises all sorts of other-than-human agencies because all existents are or *can be* persons.[226]

In this sense, Viveiros de Castro further suggests that if all existents are not necessarily *de facto* persons, "the fundamental point is that there is *de jure* nothing to prevent any species or mode of being [*including invisible peoples*] from having that status." (Viveiros de Castro 2014: 58. My underlines). A clear example of this is the rights of nature clause where bundles of natural entities—from rivers to ecosystems—receive a personality of sorts to be able to exist before state law (See Chapter 4 "Forests on Trial").

The problem, however, is not one of taxonomy or classification. For example, in the case of the ERA, the issue was not so much about identifying new wild species of medicinal plants in the Cofán territory, but about determining whether scientific expertise was able to contribute with the protection of the territory by rendering visible these "unknown" varieties of the "sacred sacrament." Nonetheless, the territory was able to protect itself thanks to the *invisibles* as they

226 A critique of personhood in chapter 4 of this dissertation: "Forest on trial"

come into being, among others, through social practice and normative claims (see table on *normative claims of the invisible ones*)*:* the law of the place.

This ontology of the *invisibles* is beautifully captured in this passage: All "cosmic constituents are intensively and virtually persons because all of them, no matter which, can reveal themselves to be (transform into) a person. This is not a simple logical possibility but an ontological potentiality. Personhood and perspectiveness—the capacity to occupy a point of view—is a question of degree, context and position rather than a property distinct to specific species." (Viveiros de Castro 2014: 58).

As this ethnological record suggests, perspectives—including the point of view of the spirit—are not essences "out-there," but emergent attributes that are highly dependent on emplaced relationships (Blaser 2019).[227] For example, we cannot claim that invisible people are always persons, that is, existents with the capacity to authorize or deny certain behaviors such as conducting a piece of research about *yagé* (*Banisteriopsis caapi*) varieties in the wild. This agency may however emerge *via* the encounter with the human (the shaman, for example) who surrenders his will to the invisible people through the ingestion of the plant. To "access" spirit life and "negotiate" or surrender our will to them, one must drink *yagé*. In this sense, Viveiros de Castro further argues:

> "(T)he way humans see animals, spirits and other actants in the cosmos is profoundly different from how these beings both see them and see themselves. Typically, and this tautology is something like the degree zero of perspectivism, humans will, under normal conditions, see humans as humans and animals as animals (in the case of spirits, seeing these normally invisible beings is a sure indication that the conditions are not normal: sickness, trance and other "altered states")." (Viveiros de Castro 2014: 56).

These "altered states" are propelled by the ingestion of the plant. In this sense, learning or encountering this *other kind of law* and the principles it entails as one negotiates (surrenders one's

227 In another text (Vargas-Roncancio 2017b), I use the notion of "Amerindian perspectivism" (Viveiros de Castro 1998) to propose an interpretation of article 71-72 (Constitution of Ecuador of 2008) concerning the rights of Nature and how this interpretation might expand Constitutional law beyond the human in the Latin American context.

will) with invisible peoples, requires the act of carefully listening to the other. The ingestion of plants seems to be a vehicle for this kind of listening. Moreover, "in seeing us (humans) as nonhumans, animals and spirits regard themselves as (their own species) as human: they perceive themselves as (or become) anthropomorphic beings when they are in their houses or villages, and apprehend their behavior and characteristics through a cultural form: they perceive their food as human food—jaguars see blood as manioc beer, vultures see the worms in rotten meat as grilled fish—their corporeal attributes (coats, feathers, claws) as finery or cultural instruments, and they even organize their social systems in the same way as humans institutions, with chiefs, shamans, exogamous moieties and rituals." (Viveiros 2014: 57. My underlines). This shows that spirits hunt, perform ceremonial rituals, cook, and do other activities similar to those of humans. As ***abuela M*** narrates in the case of the Cofán of Nariño:

> They are people like us [says the grandmother] (…) **they have their crops**. **They put feathers in their noses, they do their celebrations**. The grandmother was given a necklace at a yagé ceremony and the invisible ones have a big maloca. There are invisible bad people and invisible good people (…) Because of envy there are bad guys. They have their crops of cassava, chili (…) tobacco (…). [The grandmother] has been invited to celebrations with the invisible ones and they have painted faces (…) they also have a place to bathe. It seems that some invisible steal children too.

One should then assume that the *invisibles* co-produce norms, or that all these 'cultural features' are embodied forms of the social rules and conventions they live by. What is the law from the vantage point or perspective of an *invisible* that might see us, humans, as subjects of norms? The legalities of the invisible complicate the law in several different ways.

e) Towards the Legalities of the Invisible

How do the "invisible people of the mountain" co-create binding governance protocols? What is the appropriate methodology to engage with this form of decision-making and "what are the limits of our own knowledge" as we ask these kinds of questions?[228] This section claims that place

228 Conversation with David Rodríguez, Zoom Call, July 2020.

making and ritual can be considered modes of the law in the Andean-Amazonian region. Without compromising the generalizing qualities of the law, this section closes by arguing that the law is embedded or "emplaced" in territories (Blaser 2019). Borrowing from Kohn, these agreements—and more often than not, disagreements—between humans, plants, and "invisible peoples"—are instances of a form of "ecologized" law.[229] Here, I distinguish between "ecological law" and "ecologized law." The latter foregrounds the *active* role other-than-humans play in making the law that emerges through various sets of practices. Ecological law, on the other hand, refers to the normative principles that can be applied to different legal subjects as they attend to relational principles and planetary limits (Garver 2019). While the former is grounded in legal theory and ecological economics, the latter (ecologized law) is ethnographically based. Both are inspired by Indigenous conceptual practices and need to work in tandem.

Invisible and ecologized legalities, then, have the potential to transform state law conventionally defined as a system of norms,[230] while at the same time exceeding the ontological and epistemological underpinnings of state law. In other words, an ecologized form of the law would be one that is able to conjure[231] other-than-human beings such as plants and spirits as sources of legal meaning rather than objects of taxonomic and ethnological description, top-down protection, and even as subjects of state-granted rights (see chapter 3 "Conjuring"). This legal "excess" (De la Cadena 2015), so to speak, seeks to harness the modes of presence and participation of *other wills* in order to open space for an enhanced view of legal participation in the face of interrelated forms of planetary crisis (climate change, pandemics, bio-cultural loss, epistemic extractivism, among others).

229 Kohn 2014. Also see Capra and Mattei 2015.

230 By 'state law' I mean substantive norms and administrative procedures around the "environment", for example, biodiversity law, natural resources law, and similar fields. The main assumption here is that a piece of "law" is valid as long as there is an act of state power supporting it (i.e. congress statutes, executive rulings, jurisdictional decisions).

231 Conjure: call upon to appear by means of ritual. De-ritualizing the verb would leave us with a "calling upon" where the caller cannot control that which has been called-upon, and therefore has to reckon with the desires, intentions and decisions of the conjured. My analogical use of the term simply intends to foreground this quality of what exceeds human control.

f) Now…let us breathe in!

Up to this point, this chapter has discussed how Amazonian vegetal beings such as the yoco *(Paullinia yoco)* can teach us something about a form of ecologized law in ritual and daily life. In particular, the chapter has probed the concept of *ingestion* (of plants) as a legal method specific to this region and suggested exploring the limits and possibilities this method could represent at a larger geographic and conceptual scope. Broadly speaking, this method consists of "distilling"[232] legal meaning from "radical interdependencies" between plants and humans (Escobar 2018; Mills 2019), which suggests that the law can also be studied beyond well-established assumptions about its origin, sources, and form (Davies 2017).

Ingestion as method is a crucial step in what I have called a relational protocol. Ingestion amounts to an event of co-emergence between several kinds of beings, namely, vegetal people—but "not exclusively" (de la Cadena 2014)—and humans whose humanity is unthinkable without relentless vegetal becoming as nourishment, thought, local legal institutions and decision-making protocols. What I call *co-emergence* brings forth a way of dealing with legal meaning and form in the context of the rights of nature, and beyond. In the face of the ethnographic argument laid out in this chapter, chapter 3 ("Conjuring") discusses a comparative interpretative methodology to probe the limits and possibilities of the Rights of Nature as we problematize and, to the extent possible, compare notions of "rights" and "nature" in particular Indigenous and non-Indigenous contexts.

5) Conclusions of chapter 1.1.

This chapter (cooling down the mind and learning law where the *law* is not named as such) is part of a larger argument of my dissertation concerning the entangled lives of law and ecology in Amazonia. I have focused on two main aspects of it. First, how we can *learn to learn* the law that emerges from relations, but also how "the mandate of the mountain," as biologist David

232 I owe this idea to Colombian anthropologist Daniel Ruiz. Personal conversation, Nov. 2018.

Rodriguez-Mora calls it, becomes part of a larger conversation about knowledge making and meaning in this region. In fact, the ethnobotanical research agreement (ERA) David signed with the Cofán involved the contested participation of human and other-than-human agencies. There were multiple epistemological and methodological challenges in the process of creating the legal artifact we have called an "ethnobotanical research agreement," which we will explore in detail in chapter (Chapter 2: "*Los Invisibles")*. How do the "invisible ones" mediate norms for doing or not doing something in the forest?

Beyond answering this difficult question—which confronts us with the limits of our own knowledge "as we dare to ask the question" (Conversation with David Rodríguez, 2020)—this chapter has suggested that the ingestion of plants as persons to encounter the law of the place is one mode of the *legal* in Amazonia. However, this *non*state law exists with modern state law[233] **in a nested relationship.**[234] Moreover, I suggested that the state should take this seriously, as it proposes viable intercultural environmental governance models for this region. What I am calling the legalities of the invisible, or what the state law has rendered invisible time and again or confined to the status of myth or cultural belief—the mandates of the invisible people—is place-dependent and yet does not lose its generalizing qualities. A legal theory and practice for this region must probe the limits and possibilities of engagement with the cosmological, biological, and "spiritual" life of a place, while accounting for the colonial relationships involved in this process (see Chapter 6). However, beyond multicultural frameworks, state law may consider the serious implications of the law of the place.

This chapter outlined three preliminary steps in the crafting of a research agreement with the Cofán. These steps are represented by the three sub-sections of the chapter, namely, (i) yoco: learning to learn with vegetal minds, (ii) learning norms with mind-full plants, and (iii) encountering the invisible ones. Exploring the ethnobotanical diversity and Cofán classification

233 For example, Study Permit for Scientific Research in Biological Diversity in Colombia and regulating laws, decrees, and resolutions.
234 See table 1: Prevalence of the law of the place in the co-design of an ethnobotanical research agreement in Southern Colombia

of *Banisteriopsis caapi*—a ritual plant commonly referred to as *yagé* —this agreement also required the mediation of the invisible people of the mountain where the plant grows. This chapter aimed to examine the convergence of legal theory and science as it followed plants, peoples, and *los invisibles* that Indigenous and non-Indigenous people like David and myself encountered in forests, everyday speech, scientific practice, and legal language in Southern Colombia. Given the fundamental elusiveness of what the Cofán call the "invisible ones," this ethnographic attempt has important limitations.

The first part of the section, *learning to learn with vegetal minds,* told a story of the Amazonian yoco as part and parcel of a relational protocol for encountering the law of the place. I claimed that learning with plants is central to the question of the law in this region. What does the "recursive interaction" or "know-how" (Varela 1999) with plants tell us about how we may guide action in the world? (Kohn 2018) This issue brought us to the question of ethics and other normative systems. The second section, *learning norms with mind-full plants* (plants full of mind!), discussed, in some detail, the work of Chilean neurobiologist Francisco Varela and his theory of ethics, which is based on an enactive approach to cognition. Varela is primarily concerned with how people cultivate the capacities and dispositions that are necessary to attaining ethical expertise as an on-hand experience rather than a transcendental and disembodied set of top-down normative principles. As we learn to *listen* the other-than-human in normative systems, for example, by cultivating what *abuelo* O from the Inga called a *mente fresca* (cooling down the mind), this embodied approach to mind is crucial to reckoning with the law of the place. This brought us to the last section.

Encountering the "invisible ones" opened the door to *los invisibles,* as the Cofán call these highly social and somewhat elusive beings beyond direct human perception that nonetheless guide human life in Southwestern Colombia. In a limited way, the section probed how *los invisibles* act and what this means for the making and practice of law in this region. The section introduced the work of Colombian ethnobotanist David Rodriguez-Mora as he learns to work with humans, plants, and *los invisibles* in the forests of Nariño. "Making things right," as David put it in one of

our numerous conversations between 2019-2020, evokes the practice of a normative principle. This principle weaves the scientific and the relational protocols together to encounter the law of the place. Chapter 2 (*Los Invisibles)* provides detailed ethnographic support concerning the making of the Ethnobotanical Research Agreement (ERA) between David and the Cofán.

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Connecting to chapter 1.2.

Now, I turn to another crucial plant teacher in the Andean-Amazonian slopes. This plant person is central to the argument about learning law where the *law* is not named as such. Here the focus is on the disruption of linear time as a pre-analytical premise of Western (legal) epistemologies. Chapter 1.2 (*Yagé (Banisteriopsis caapi): Moving words across worlds and entangled temporalities in the Colombian Amazon*) is based on ethnographic encounters with the yagé vine (*Banisteriopsis caapi*) in Upper Putumayo, Colombian Amazon (Caicedo 2015, Weikopf 2004),[235] and investigates different modes of learning and practicing time in this region and the potential normative consequences of this disruption.

235 My observations here are based on personal experience and interaction with some practitioners, and they do not represent a unified view of a particular community.

CHAPTER 1.2. – Yagé *(Banisteriopsis caapi):* Moving words across worlds

A snapshot of recent experiences with the yagé concoction with the guidance of several practitioners from the regions of Sibundoy (Upper Putumayo region) and the Guamuez Valley *(Lower Putumayo),* this chapter discusses how a **non-modern approach to the idea of time** may contribute to a post-anthropocentric view of legal institutions and decision-making practices in Amazonia. How does attending to the entangled temporalities of Amazonia, namely, different forms of practicing time beyond the linear temporalities of modernity,[236] transform legal imagination? My larger goal here is to continue probing the limits and possibilities of what I have been calling the law of the place.[237]

1) Ethical premises

The *yagecero* medics of the Colombian Amazon have approved an ethical protocol to regulate the ritual use of medicinal plants such as *yagé* (*Banisteriorpsis caapi)*. This protocol is known as "*El Pensamiento de los Mayores. Código de Ética de la Medicina Indígena del Piedemonte Amazónico Colombiano" (*Elders Thinking: Ethical Code of the Indigenous Medicine of the Andean-Amazonian Piedmont).[238] The Code is based on accumulated experience with the plant over generations.[239] In the following, I will briefly summarize the main aspects of this form of Indigenous law, which will guide the relationships between indigenous practitioners, medicinal plants and other actors, including researchers, the state, companies and the general public (see Box 1, Annex 1). [240]

236 On linear time in the modernity-coloniality project see Mignolo 2011: 158-164. A discussion of time in socio-ecological systems in Kolinjivadi et al. 2019.
237 This form of law comes into being as a relational protocol, that is, the entangled lives of law and ecology in Amazonia.
238 See Unión de Médicos Indígenas Yagéceros de la Amazonía Colombiana-UMIYAC (2000). "El Pensamiento de los Mayores. Código de Ética de la Medicina Indígena del Piedemonte Amazónico Colombiano." Mocoa: UMIYAC. Available: https://umiyac.org/ (Visited 10.03.2020).
239 Ibid, preface.
240 This ethical protocol comprises 5 different Indigenous groups: Cofán, Inga, Siona, Kamentzá and Coreguaje.

This protocol or Code has numerous references to the notion that it is the plant that teaches or transmits knowledge to humans .[241] In seventeen points, the Code summarizes the provisions and regulations issued by the UMIYAC - Association of Indigenous Yagecero Medics of the Colombian Amazon - in relation to the following aspects: 1) the identity of "traditional medics" and their forms of legitimization; 2) the protocols to be followed by traditional medics, and apprentices; 3) the relationship between traditional medics, communities and the outside world; 4) the behavior of medics when performing ceremonies; 5) the sale of healing services and advertising; 6) the relationship between traditional medics and Westerners; 6) Indigenous intellectual property rights; and 7) the trade in medicinal plants (UMIYAC 2000: 6-7). In addition, the Code 8) includes a proposal for certification of traditional practitioners to ensure their authenticity, and the risks associated when charlatans administer medicine (p. 8).

9) The Code also addresses alcohol consumption and the risks associated with it, especially during healing ceremonies (p. 25); 10) the refusal to consider the practice of traditional medicine as ambivalent, that is, as a practice to do good and evil at the same time (p. 18) (it is always for the good of the patient); 11) the prohibition to advertise the therapeutic service without the permission of the traditional medics and their communities (p. 25); 12) the commitment to remain in the Indigenous community (p. 23); 13) the recovery of traditional garments (p. 23); 14) the prohibition of any form of discrediting among traditional doctors themselves (p. 28); 15) the creation of an ethics tribunal (p. 28); 16) the need for national and international legislation for the conservation of territories and cultural autonomy; 17) the prohibition of yagé trafficking and of the sale of raw or prepared yagé to be distributed to non-indigenous persons (p. 37); 17) the prohibition of other types of medicines and doctors from taking on the name, practices, symbols and ceremonial garments of yagé healers (p. 31), among other important provisions. [242]

241 See Caicedo 2005 for an outstanding ethnographic account of the yagé circuits in Colombia, including a close reading of the Code.
242 See Caicedo 2015: 166 onwards, and Chapter 4 of this dissertation ("Forest on Trial").

Despite its written form, the Code is not reduced to its symbolic expression. It is an ongoing practice of accumulated experience between peoples and the territories they are part of. For *Doña Y*, a political leader of the Cofán community of Jardínes de Sucumbíos, "the mayores [elders] are the owners of this knowledge" (Nariño, 2019), In fact, the knowledge of the yagecero shamans concerning the practice of this form of medicine is protected by intellectual property laws on vernacular knowledge in Colombia and beyond (Zerda 2002).

Thus, going beyond its symbolic expression, the law of the place can be formulated as follows: **the practice of yagé cannot take place if those concerned have not properly followed the provisions of the aforementioned Code**. When a person enters the territory of the plant, so to speak, he or she must ask permission from its *sabedores* - the yagecero medics - who receive the knowledge and healing powers of the plant itself (Caicedo 2015; Weiskopf 2002). Moreover, while the law of place is situated and embodied in territories and practices, this type of law does not lose its generalizing properties or its binding force: the law of place, or the law that arises from place, dictates the responsibilities that any concerned person must follow in their dealings with this powerful concoction.

However, this kind of law goes well-beyond the normative conventions of the multicultural state. It exceeds cultural belief tied to ethnicity as a modern category of difference (De la Cadena 2010). The law of the place is grounded on direct experience over generations of plants and humans in relentless entanglement and expression. Therefore, it neither easily lends itself to modern taxonomies or multicultural accounts in relation to the classification systems of science (Nieto 2006), nor to the constitutional reforms of a nation. The yagé vine is the root of the territory. The origin of law and well-being.[243]

243 AA, interview, Nariño 2019.

2) Plan for the chapter: conceptual persons that aren't good to think-with anymore!

The idea that culture defines human-*only* modes of experience seems to travel well in social theory, material objects, and everyday life. Ranging from people's conversations and academic journals to material objects, cities, and natural parks, this "conceptual personae" (Deleuze and Guattari 1991) seems to claim ownership over imagination, language, time, and history. Specifying the human in relation to other living beings, the culture personae, so to speak, does not easily embrace the uncertain, the open-ended, and the unexpected (Strathern 2005). Why do we insist in a particular mode of being—the modern human (Wynter 1992)—that will separate us from the rest of life once and for all in times of planetary crisis?

The notion of nature, on the other hand, is often located at the periphery of human experience in words such as 'environment' or 'wilderness,' when not at the very core of what some may push to the margins of scientific and social description: bodies, emotions, feelings, and direct experiences.[244] Recourse to the *nature personae* when culture cancels out the possibility of ways of being, doing, knowing and feeling other than human does not necessarily set this possibility in motion. Nature also seems to hinder the imagination (See chapter 3: "Conjuring"). How can we re-imagine a shared experience of life and decay that involves beings and relations of the human and other-than-human kind? [245] The famous dualism tends to alternatively privilege one term over the other at the expense of the "radical interdependency" of our bodies, minds, and experiences in the universe (Mills 2019, Escobar 2018, Berry 1992, Dubashia 2018).

What follows is organized in three steps. First, I present the notions of *common* and *altered temporalities* (part 1) to probe how definitions of time in "Western modernity" (Mignolo 2011) are disrupted by a powerful other-than-human: the yagé plant (*Banisteriopsis caapi*). In *other-than-*

244 Varela 1999. See Gagliano 2018 for an argument about expanding the analytic horizon of science-making beyond human modes of representation.
245 See De la Cadena 2010, 2015; Kohn 2013; Descola 2013; Tsing 2015; Haraway 2016.

human sources of order and the socio-ecological contract (part 2), I delve into the potential normative consequences of this disruption and stress how the body becomes a central locus of decision-making in Amazonia. Finally, a biologist turned "bridge" between worlds briefly discusses Colombian biologist Marcela Bravo's reflections and experiences with the idea of space and time as she learns to become a "bridge" between worlds. "*puente entre mundos*"[246]—the Inga world and the *mestizo* world where she stands with her two feet (one on each!)—thus "*trayendo y llevando palabra*"[247] or moving words across worlds.

3) **Part 1.** Common and altered temporalities

How do you make place and history with plants? Historiographical accounts of the Amazonian region tend to conceal stratified temporalities that scape our modern-trained perceptions of time and history,[248] and define these layers as ritual or cultural belief (De la Cadena 2010). Yagé, the Andean-Amazonian concoction, could be a door into these other layers. With yage as people,[249] human people can learn that time can also go beyond human experience, that is, time can also be immanent to places rather than a transcendental norm of human abstraction imposed upon other life forms.[250] Beyond abstract time, time (or temporality) is more than the relentless continuity of events and could also be conceived as a place-making practice shared by different kinds of beings.[251] And this idea challenges the way we organize history as a continuum of events with the dubious Eurocentric telos of civilization, development, and progress (Mignolo 2011).

"When is this happening?" He asked, "It *is* happening yesterday, and *here*."[252] The future enters

246 A bridge between worlds. Interview with M. Bravo, June 2020.
247 Bravo, Marcela (2015). "Ugpachisunchi i katichisunchi kilkaikunata–llevando y trayendola palabra-: territorio, "saber vivir ahí" y pensamiento Inga." MA thesis, Universidad Pedagógica Nacional. Available http://www.luguiva.net/admin/pdfs/Leidy-Saber%20vivir%20ah%C3%AD-marzo%202.pdf (10.26.2020)
248 See Taussig 1980 for an argument against lineal historical narratives in Amazonia.
249 In Amazonia, animals, plants, and spirits are considered people. See Descola 2013; Kohn 2013, Viveiros de Castro 1998. According to Brazilian anthropologist Eduardo Viveiros de Castro, the corporeal form of each species "(…) is a mere envelope which conceals an internal human form, usually only visible to the eyes of particular species or to certain trans-species beings such as shamans" (1998: 470-471).
250 See Luna 1984; Weiskopf 2002; Caicedo 2015; Taussig 1980.
251 See Ingold 2011 and Kolinjivadi et al 2020 for a similar argument.
252 A dialogue between two practitioners during the ingestion of the brew. Field notes, Sibundoy Valley, Putumayo, 2019.

the past as the past enters the future in what Colombian anthropologist and yagé practitioner William Torres calls an "aion-temporality" (2000). In aion-temporality, the actuality of the mundane and the virtuality of the sacred intertwine with each other thus troubling the linear historical path that goes from a past of non-modernity and stagnation into a future of modernity and progress (Quijano 2014).

On the one hand, I use the expression "common temporality" to refer to the human experience of continuity of everyday events, and on the other hand, "altered temporality" (Shannon 2001) to point out the disruption and discontinuity of this experience through encounters with the Amazon plant itself. 253 These encounters compel yagé practitioners to reckon with the vanishing feeling of a human self, while opening their bodies to the embedded continuities of other forms of life. Anthropologist Eduardo Kohn eloquently describes the ontological and ethical conundrums of this vanishing self:

> "One of the most profound visionary experiences I had in my work last year in the Amazon was the complete dissolution of my 'self' as I became a conduit for the rush of forest life that today I can only call ongoingness itself. I allowed my bounded individual self to die—a bit—to a larger holobiome [a meshwork or assemblage of a host and other species living in or around it, which together form a discrete ecological unit (254) that engulfed the good in me, but I also felt the urgent need to hang on to a less than perfect kind of *me* as a historically committed site of difference that might make a difference. (…) In this process, I have become convinced that an ethics of ongoingness must involve some sort of orientation—which is not the same as belief—toward these powerful doubled and doubling kinds of beings whose reality is not at every moment palpably existent, and who, their generality notwithstanding, nonetheless risk becoming 'astralized' (p. 36) out of our worlds if too many of their tentacles become severed. For I am convinced that we need their orientation in these troubled times (…) how can we learn to inherit our connections to the

253 See Weiskopf's accounts of these kind of experiences (2002).
254 See the work of Margulis, Lynn and Fester, René. 1991. Symbiosis as a source of evolutionary innovation. Speciation and morphogenesis. Cambridge: MIT Press.

powerful ones?" (Kohn 2018).

The (human) self dissolves within broader continuities of human and non-human relations from the point of view of altered temporalities. Conversely, the (human) self can still appear as discontinuous, that is, as something separate from other selves from the point of view of the common temporalities of everyday life. In common temporalities, the self perceives the movement of the world (the change, decay, and renewal of life) as taking place outside of its embodied experience.

What if, as Torres argues, the altered temporality of yagé calls into question this sense of external, disembodied duration or the relentless unfolding of events - which is, supposedly, always susceptible to scientific description - by virtue of the dissolution of a self - any kind of self - within the broader "meshwork" of a forest that brings forth modes of participation beyond the human? (Kohn 2013. On meshwork, see Ingold 2011) How can we avoid "astralizing" (altering, exoticizing) this altered temporality given the importance that this temporality seems to have for the care of territories and communities?

Torres argues that the plant activates another time ("*un tiempo otro*") whose main property is to *escape* the immediate present, that is, the present of the "I think this and that," the present of "cogito," the present of "self-importance," and the present of "sedentary rationality." The brew activates an aion-temporality or **a time without duration**: "In a single instant a foreseen event is activated (…) The anaconda-ancestor emerges in the ritual space and embraces it, while the *selva's* spirits-ancestors appear with their feathers and crowns (…) quartz collars, jaguar tusks (…) and healing chants. The anaconda embraces the drinker's body [and] chants the conjurations close to their ear (...) She devours the drinker's body, takes them away to the sub-aquatic world, then becoming a serpent-jaguar adorned with feathers, and finally catapulting the drinker into the celestial (…) These past experiences narrated through myths are now lived in the future, in an instant with no thickness nor extension subdividing the yagé practitioners into a past and a future life." (Torres 2000: 85-6. My translation from Spanish)

The temporality of yagé, however, does not only refer to a ritualized moment during the yagé ceremony, namely the return of the anaconda. The return of the anaconda is undoubtedly a mandate to take care of the communities and territories on a daily basis: "*After 500 years of Conquest, dispossession and death of our communities and our wisdom, this is the first time we have been able to gather the traditional Indigenous* yagecero *medics of Colombia to meet each other, exchange knowledge, befriend and unite for a single cause and in a single thought (...) We consider that yage, the medicinal plants, and our wisdom to be a gift from God and a great benefit for the health of humanity. We are obliged to show the world, decisively and seriously, our values."* (UMIYAC, *Pensamiento de Los Mayores* 2000, 6. Author's translation).

For several Amazonian communities, everyday life is about dealing with neo-extractive economies, colonialism, and physical violence, as well as the cultural and ecological impacts of these practices in their territories.[255] The temporality activated by the plant—which is "the root of the territory"[256]—has a clear mandate: recovering community agricultural practices, systems of governance, and strengthening communal hope as a transformative force in the **present**. While working with the Inga of the *Baja Bota Caucana* in Southern Colombia, biologist and yagé practitioner Marcela Bravo calls this mandate "*saber vivir ahí" (*"learning how to live there"), which is a skill one learns with the plant as the root of the territory.[257]

Indeed, the linear common temporality of the everyday becomes entangled with the spiral ceremonial time of the ritual: on the one hand, development projects, colonial occupations, political struggles, and mobilizations, and on the other, the return of the anaconda to learn how to live well in the territory, or "to learn how to live there." This learning takes place with the plant as the root of the territory. In the words of Colombian attorney and yagé practitioner A.A., "any decision of collective importance such as permitting a state's action or intervention in the territory (i.e. the

255 See Mesa Permanente del Pueblo Cofán, Histórica del Pueblo Cofán. In https://pueblocofan.org/nuestra-historia/ (Nov. 11, 2020)
256 Interview with A.A., Nariño (Southern Colombia), 2019.
257 Interview with Marcela Bravo, June 2020. Also see her Master's thesis Bravo 2015.

provisioning of public services, any economic project, research activities etc.) requires the intake of the plant. The intake of the plant is a political act."[258] That the plant activates an aion-like temporality seems crucial for the decision-making process. However, due to colonialism, this methodology strays time and again away from any conventional decision-making model centered on the idea of rational deliberation between individual or collective human agents (see chapter 6: Agency Scaffolding): "In the morning we already knew what we needed to do. We learned that with the *remedio* [the plant]. The *yagecito* told us"/ *El yagecito nos dijo."*[259]

It is worth clarifying that the altered temporality of the plant does not cancel out rational deliberation at all. Quite the opposite, deliberation is further expanded to include other modes of participation and, in that sense, the process of deliberation require expanding the borders of the political community in order to include what Marcela calls other "*seres y existencias*"/ beings and existents.[260] Moreover, as we learned earlier with yoco, the relational protocol—getting attuned to the *law of the place* through a series of steps—involves cleansing the body of the human participant so that she can become a "conduit for the rush of forest life" (Kohn 2018: 101). Only in this way the human can participate in the layered temporalities beyond the present of "cogito" and "sedentary rationality" (Torres 2000), and the anaconda can take her "away to the sub-aquatic" and other worlds. Moving across worlds has an ecological function in times of planetary crisis.

Thus, the altered temporality of yagé and the common temporality of everyday life co-intervene in the constitution of the "*real"* (Escobar 2018), namely, ecological relations and systems; decision-making protocols and political struggles; local institutions of governance and sense of futurity. In the words of A.A., lawyer and yagé practitioner, as she remembered the four constitutional pillars

258 Interview with A.A., Colombian attorney and yagé practitioner, Nariño, 2019.
259 Cofan practitioner after a ceremony (field notes, 2019) referring to a prior consultation process with Ecopetrol (the Colombian national oil company).
260 Interview with Marcela Bravo, June 2020.

of the National Indigenous Organization of Colombia-ONIC ("unity, territory, culture and autonomy"):261 "the yagé is the *root* of the territory"/ (*el yagé es la raíz del territorio*). 262

I am neither proposing an ontological discussion of time in this region (Fausto and Heckenberger, 2007), nor reflecting on how altered temporalities interact with human cognitive processes of sorts (Shanon, 2001). I am more interested in learning how this altered temporality that is woven into the tapestry of multi-species encounters may inform collective decisions about the forest beyond neo-extractivist projects and state-led conservation agendas amid ongoing colonial violence.263 By experiencing the whirl of past and future events, yagé practitioners are able to disrupt this common-durational time as they weave back themselves after the yagé experience. The plant conveys (teaches!) a mode of social and ethical participation that involves other-than-human peoples peopling the Amazon in a shared fabric of vitality, suffering, decay, renewal, hope and struggle "*por la defensa de la vida en el territorio*"/ (in defense of life in the territory). 264

Anthropologist Tim Ingold further suggests that human life involves the passage of time as an embodied experience (2011). However, when human relations become re-assembled within the larger tapestry of other forms of life by virtue of these altered temporalities, the perception of time is a matter of partnership and composition, or what Torres calls an "instant with no thickness nor extension" (2000: 86). In a way, the perception of time would be a shared practice (a work of art?) rather than a cognitive process whereby the human retrieves information from an external world (Varela, Thompson & Rosch 1992). There seems to be something fundamentally *a*-human about time and all the things it organizes in life (the law!), for the human is already in partnership with other beings (plants, microbes, fungi, water, sunlight): **the assemblage perceives time as a matter**

261 The First National Indigenous Congress adopted the principles of unity, territory, culture, and autonomy, which configure ONIC's lines of action and the mandate of the Organization concerning state's compliance of Indigenous legislation (particularly Law 89 of 1890). ONIC thus recommends the adoption of these principles to all Indigenous people of the country to strengthen Indigenous autonomy and exercise their government protocols. See ONIC official webpage: https://www.onic.org.co/onic/143-nuestra-historia (Visited 10.26.2020).
262 Interview with A.A. Nariño 2019.
263 See Chindoy, Hernando (2018). "A preservar el vestido de la tierra." In La Silla Vacia. In: https://lasillavacia.com/silla-llena/red-pacifico/historia/preservar-el-vestido-de-la-tierra-69172 (Visited Oct. 26, 2020).
264 Interview with M. Bravo, Zoom meeting, June, 2020.

of an embodied composition of a world. In this sense, time cannot be reduced to chronology as a transcendental category of history, neither in biology nor in social thought. 265

Based on similar accounts about the plant (Caicedo 2015, Weiskpf 2002, Luna 1984), time is about the making of a sentient ecology rather than a transcendental *a priori* to organize experience on a territory as a mindless stage for human action. My argument is thus about socio-ecological relations and human/other-than-human continuities by way of the analytics of entangled temporalities: the struggle between the time of development (pipelines, coca crops, soy monocrops) and the time of survival ("unity, territory, culture, and autonomy"266). The next section will further explore the potential implication of this 'temporal discussion' for normative systems such as the law.

4) **Part 2.** Other-than-human sources of order and the socio-ecological contract

D and *E* slowly drank the brew in three long sips feeling an irresistible nausea. A brief spasm crowned their heads. They sat down, shivering, while waiting for 10, 15, or perhaps 20 minutes. 267 The plant sent them back to the hammock. *D* and *E* travelled far, inwardly, while crossing the lakes of lucid moments, and the feverish fields of dreaming. They felt the vibrations of the candlelight in their eyes feeling a profound isolation. "I can feel my blood moving fast through my veins," one of them said. The plant branched out through their limbs, heads, and organs as well. They asked for help. Almost stumbling up to the *taita's* [elder] corner, *D* and *E* pleaded for a cure. "This is too much," somebody said. The *taita* asked them to sit down: "*Calma! Mejor salga y saque lo que tiene adentro"* [Calm down! or better go out and expulse all that you have inside)], he said with a soft yet firm voice. "*Carajo*! The plant got us!" The drinkers imagined a time before time, or something very special that was preceding and sustaining "all of this." Plants such as those

265 Guerrero & Margulis et al. 2013, Haraway 2016, Tsing 2015.
266 See ONIC official webpage: https://www.onic.org.co/onic/143-nuestra-historia (viewed on Oct. 26, 2020.)
267 A version of this account in Vargas Roncancio 2017: 85 – 87.

combined in the *ayahuasca* brew [or yagé brew, as the Cofán people call it] play a central role in Amazonian communities' political and legal dealings within and outside their territories.

To be sure, the Cofán and the Inga often invite plants to the negotiation table with other (human) actors, as I have learned from them on several occasions in the region of Putumayo and Nariño, Colombian Amazon. From the point of view of these communities, for instance, ongoing engagements with these plants seem necessary for health as well as politics: the *consulta previa* (prior consent) with states, researchers or companies is usually preceded by a yagé ceremony to discuss the convenience of the proposed venture for the community. From the point of view of the state or the company, however, this consultation excludes potentially affected other-than-human inhabitants and allies—forests, lagoons, plots, grass, and animals, among others—who are not asked their 'opinion'.

However, the consultation with the plant will take place in these cases, and it will always involve the human body (ingestion). In a process of plant-human consultation, the (vegetal) counterparty will dwell in the drinker's body or, in other words, this consultation takes the form of bodily conversation between entities. In our example, it was apparent that the plant was materially questioning the dichotomies that humans use to organize social experience. Thus, any inter-species conversation would depend upon the *limpia* (cleansing) of the human body, namely the expulsion of excess as a way to achieve a clear mind and be able to *listen to what the other has to say (see chapter 1.1. Yoco). The limpia allows the emergence of a bodily conversation that exceeds the conventions of dialogue between actors ex-changing symbols in a space of rational deliberation.*

However, the conversation is not symmetrical: the human drinker must surrender to the world of yagé and lose any aspiration to control the outcome of the conversation, which is often not the case in prior consultation with state agents.*268 In fact, the plant often engages with* the human as a "digestive tract"—a part of the human body that the vegetal *other* seem to talk to, for "dialoguing"

268 Riaño-Murcia, Diana. 2014. "Revisión critica del derecho a la consulta previa de proyectos y sus procedimientos." Grupo Semillas. Available https://www.semillas.org.co/es/revisi (Nov. 11. 2020).

and "cleansing" are two sides of the same coin. The plant does not just appeal to the biography or ideas of the human drinker, but to the materials of their bare existence that would allow for a (corporeal) dialogue between mind-*full* living beings.

Some drinkers may represent this dialogue as an inner conversation with themselves as opposed to a conversation with a plant that was acting at the level of a powerful purge. Once the plant meets the human in the belly, there emerges a condition of shared materiality that makes the dialogue a possible event. In fact, the effective incorporation of the body of the plant into the body of the drinker propitiates this shared materiality in a very intimate sense: a radical embodiment that cancelled the need for divisions. From then on, the collaboration is possible as the emergent effect of inter-species encounters, whereby both the human and the plant engage in a process of thinking and doing together.

Indigenous practitioners I have met in the cities of Bogotá and Putumayo say that the plant teaches them how to organize labor, how to produce of food, and practice medicine. *Yagé* is a combination of various elements put together through human action, and human action stands for the emergent effect of multi-species collaborations (Haraway 2016) through food, medicine, ritual practice, among others. Following the plant's guidance renders future encounters with her possible. Conversely, the plant needs the human as a learning partner: the plant and the human are co-responsible in their mutual survival. This radical interdependency calls attention to other ideas of what counts as social. As Descola (2013), Viveiros de Castro (2014) and Kohn (2013), among others, have pointed out, the capacities for interiority are not the exclusive resort of humans. Social norms might well be already socio-ecological!

What we learn with *yagé* is "common sense" from the point of view of an ecological *ethos,* namely, that what we deem exclusively human (societies included) is produced in relation with other-than-human beings. In fact, I am not referring to human labor intentionally transforming nature to reproduce human history (i.e. Marx). Again, this seems to be a self-reproduction of the human through human praxis. I am suggesting that there are multiple modes of other-than-human

production of the social through labor, other-than-human material speech, and certainly, other-than-human instances of law making such as the Constitution of the Republic of Ecuador (2008), which incorporates Ecuadorian Indigenous principles of thick life-relationality. The case may well be that other-than-human beings force the recognition of their own rights in collaboration with their human Indigenous allies. These allies might have considered vegetal modes of conversation—such as the one just described—in their dealings with lawmakers. Yet, if plants and humans co-create one another then the only possible subject of rights is the **relation** itself. Plants might be a good entry point to imagine this other-than-human rootedness of legal institutions and practices in the Andean-Amazonian region, and beyond.

A) Other temporalties matter for normative systems

I see temporality as a story about human and other-than-human alliances in the co-creation of a shared socio-normative whole. In my view, this powerful agent (the plant) intervenes in social life in a direct and often disruptive fashion. Reckoning with yagé as a social agent or force troubles the assumption of separation thus inviting us to embrace the radical interdependence of all that exists (Escobar 2018). However, this interdependence is not only about the shared physicality of all beings leaving aside cognition, ethics, social life, meaning, or what Descola calls "interiority" (2013).

Yagé-as-person disrupts this foundational separation between the materiality or "physicality" of human and other-than-human life, and the "interiority" or cognitive qualities of the human. In a sense, yagé as person makes assemblages with the matter and energy flows of ecology, and the symbolic tissues of the social space. In the words of Viveiros de Castro "[a]nimals impose the same categories and values on reality as humans do: their worlds, like ours, revolve around hunting and fishing, cooking and fermented drinks, cross-cousins and war, initiation rituals, shamans, chiefs, spirits…" (1998: 477).

Other-than-human personhood is not an invitation to a modern 'anthropomorphization' of other-than-human qualities and dispositions (see Chapter 4 "Forest on Trial" for a critique of the

personhood of nature). This would imply that things like "action," "cognition," "morality" and the "experience of time" are defining features of a human being who in an act of hospitality grants human membership to prior objects such as plants, animals, and rivers. Instead, these features co-emerge reciprocally. This has been confirmed by influential scientific insights committed to a mind-world monism, for example, the "embodied mind" of Francisco Varela *et al.* (1992), and the "endosymbiotic theory" of Lynn Margulis (1967). Yagé practices "echo the autopoietic dynamics and creativity of the Earth and the indubitable fact that no living being exists independently of the Earth" (Escobar 2015: 14). Despite the flat distribution of this "condition of humanity" (Descola 2013) across different kinds of beings, how can we avoid the ontological divide in notions such as common and altered temporalities?

Among the Inga communities of the Colombian Amazon, the sources of political authority are not limited to the modern human being. Human interactions are regulated through the mandates, provisions, and prohibitions set forth by the plant's master whose voice the *taita* or yagé healer translates into rules for living a good life in the territory. In that sense, the common temporalities of history and the altered temporalities of plant-human encounters intertwine with each other thus revealing just an analytical distinction between them. The yagé weaves together a tapestry of cosmological, ecological (material), and historical continuities that brings into being a socio-ecological contract or form of local multi-species authority. In the words of Marcela Bravo as she describes Inga conceptions of territoriality and medicine:269

"People know how to live in the territory and the conception of the territory of the Inga indicates a lesson about living *with* the territory [my emphasis]: it is not about arriving and imposing one's form [point of view] because there, there is also a relationship, the agency of those who are in the territory: the macaw, the eagle, the river, the mountain, the moor and there are a lot of stories that I could tell you for hours and hours. I have drawn, I have thought about making books for children, stories, I have pictures of the stories (…) the real condition is the medicine [the "root of the territory" in terms

269 Turner (ed.) 2020 for a similar argument in the context of the First Nations on Turtle Island.

of A.A.], and the force of survival for Indigenous peoples [in the territory] is the medicine [yagé and other medicines including the territory itself] and it is something that is so scary [for modern thought] for that reason: the fact that there is a traditional doctor, a midwife, a *sobandero*, is politically irreverent. It is a [non-modern] re-existence amid modernity."270

If we, humans, share cognitive and moral capacities with other-than-human beings, how can we ***learn to perceive in partnership*** with these other beings in times of planetary crisis? In the context of the yagé practice, I would argue that this learning and perception happens with the belly. In fact, bodily excess is part and parcel of the relational protocol, and it is via the ritual event of expulsion that we are compelled to question the bi-dimensional toolkit we use to organize our experience of the world: self and other, up and down, inside and outside, norms and ecologies, sacred and profane, reason and flesh. The plant teaches a political and legal theory of the flesh: "a glimpse into the a-temporal ongoingness of other-than-human forms of social authority." (Fieldnotes, Mocoa 2019) Thus, the plant weaves together the "virtuality of a pre-cosmological" time (Vivieros de Castro 2014), or the "the return of the anaconda" (Torres 2000), and the actuality of the historical and common temporality of life events in times of crisis and "re-existence amid modernity."

In this sense, the encounter between the plant and the human is an encounter for conversation (Grillo 1988). And this conversation is possible thanks to the meeting of bodies as minds as *abuelo* O said in Mocoa last year. Again, the condition of possibility for this conversation is the *limpia*, the cleansing of the body and the expulsion of excess: "…a deep cry begotten in the heart of his thinking esophagus, the only part of his body that the plant seemed to talk to. The only part that doesn´t allow for second meanings." (Field notes 2019) In this case, the conversation is conceived in a plane of asymmetry between the plant and the human: **the drinker learns to loosen the self to encounter the law of the place**, which brings us to the next and last part: the ethical responsibility of translation across worlds.

270 Interview with M. Bravo, June 2020. Conducted in Spanish.

5) Part 3: A biologist becoming "*puente entre mundos*" [271]

Carrying and bringing the word is a metaphor of weaving using a *guanga* [272], says Marcela: "The strings come and go and then they are tightened down below with a baton ("la macana") (…) the words, the threads, go back and forth, but they are never the same words. They are never the same threads. It is never the same bridge. And then, it is not always good to create bridges: sometimes we need to break them because there is no longer a need to go and return using the same path (…) the old path no longer serves me. In this back and forth something new emerges: the threads of time and space that go back and forth are part of the same fabric. There are no words in Inga that treat time and space separately. It is always space-time: complementary pairs that arise together." [273]

a) Rooting oneself in the territory

"When you speak about spatialities and temporalities," she continues, "I believe that there are different dimensions where one can experience space and time simultaneously. I have asked that a lot because, for example, to understand the case of midwifery, which is something that interests me a lot (…) In relation to this [*she is referring to the question of space and time for the Inga*] the issue of seeding the womb [*Marcela here is referring to the practice of sowing the placenta under the tulpa,* [274] *as a way to enraizar or rooting the newborn in her territory for ever]* I have approached them the Inga to see what they say about that, and it turns out that this [*placenta seeding*] can be done in many places as well, and not only the territory; these practices can be done regardless of the place where you are located [*Marcela here refers to how earthing the placenta in the place where you were born creates an almost physical connection to that place, and even when you go away, whatever happens in that place influences or dictates your life elsewhere. All because of the placenta seeding and the connection that it crates with the person*

271 A bridge between worlds. This final section is a selection and translations of several excerpts of an interview conducted with M. Bravo in June, 2020.
272 A type of Andean loom. See Bravo 2015. For the guanga Weaving in the Andean world see also Chiran-Caipe and Hernandez-Burbano, 2013.
273 My recollection of Marcela Bravo's explanation of "trayendo y llevando palabra," October, 2020. See also Bravo 2015.
274 The tulpa is a central cooking fire typical of Indigenous houses in the Andean-Amazonian region. It is made up of three stones that form a triangle.

whose placenta has been earthed]. This is akin to Einstein's ideas of the curvature of the space and black holes, don't you think?," she asked me. "So, don't you see that space and time can be curved and the Inga have known this for centuries?"

"In relation to the materiality of the territory so that life can exist," Marcela continues, "I have also asked [*this to the Inga*] and they [*always*] keep [*this material*] connection with their ancestral territory [*despite their mobility*]: they are merchants, as you know. [*The Inga are*] proud: they walk with all their necklaces all over the country; with all their garments; and they easily get money because they can sell a remedy [*she is here referring to plant-based medicines*]. We are all medicine [*and*] the medicine is sown [*like the placenta*] and if we need the medicine at some point, we can always activate that knowledge, and it comes out right away. It is not something like a predestination, or that there is a "chosen one" because everyone is already chosen." Marcela takes a deep breath, and then continues:

"So, time and space, as we understand them, are not like our time on the clock or this external reality that we touch: I can walk, I can go to different places, and I can know other cultures and others, but I always have *that* connection with the ancestral territory [t*hrough the placenta*] and that is why they defend their territory, why they struggle. That is why even if they do not live there, it is their territory because there is medicine [*in each of us, because of our connection to the territory through the placenta even if we are far away*]."

"Let us say [*she continues*], for example, that the yoco in the San Rafael reservation is almost gone, and why is that? Because the (…) guerrillas walk by and step on it; the peasants walk by and step on it; those who plant coca walk by and step on it (…) and then the yoco is materially there, you see the lianas, but the spirit [*of the plant*] is already gone because this lack of respect," Marcela cautions. "There is a material basis, and in that sense, I am a materialist like Marx, because I do understand and conceive the Earth in a material sense, jut because it is the medium for the recreation of culture (…), but that territory must be there because that territory [*makes*] life (…). Now imagine the vine is planted, but it no longer has the spirit (…) to heal. What happens then with that plant? It is not a teacher anymore. We need to learn these *rules* of respect."

Marcela then asks: "What happens with the medicine here in Bogotá? [*she is referring to yagé practices in urban settings*] For example, here [*in the city*] there are also *iachas* [*medicine people*] and they do ceremonies. Where do they bring the plants from? Well, from Putumayo, from the territory, that is, they connect with their grandparents, cousins, and uncles, and there is a trade of plants and seeds, and all the time this medicine is moving, that is, all the time the territory walks because when an Inga walks (…) the territory also walks with her: they walk with the seeds, with the songs, with the *fluidos* [medicinal liquids], with the feathers, and the feathers come and go (…). They move the word of the plant across all these different worlds."

"And the Inga go to Ecuador, to Peru, to Venezuela, and they all return on the date of the *Calusturrinda*, the Carnival of Forgiveness and Reconciliation as we want to say it in Spanish. (…) They come from wherever they are: Argentina, Germany (…) to be at the carnival in the territory. How do you explain this? There is a space and a time where people conceive that it is a time to be in the territory, which is a time to affirm the connection they have with the territory and to rekindle the ties of friendship and trust, to say sorry, to say (…) this happened to me, I have cried, I have eaten, I have been happy, I have learned, I worked and, again, I am in the territory (…) They invite everyone to the carnival, but when they feel that you can already have a place in that world, it is no longer "I come because it is good," but it is already [a responsibility]: "why didn't you come to the *Calusturrinda*? What happened to you?"

Marcela continues: "If you really are from here and have a place here, you have to affirm that relationship with the territory, and that is affirmed by ingesting the medicine of yage, and by going to the *Calusturrinda* and participating in the march when they call you out (…) I am not an Inga person, and I am also a woman and that prevents me from participating in certain scenarios, but that intercultural relationship is woven from there, for example, the *abuelito* P allows me to make and administer incense during the ceremony, and they won't let anyone, those are the *chacanas*, or

expressions of that interculturality, they are the bridges, because they also make bridges to come to us, not just us to go to them." [275]

Conclusions of chapter 1.2.

What we can learn with yagé is quite clear from the point of view of the ecological ethos for our times: what we deem exclusively human is created with other-than-humans not as human praxis transforming nature to produce human history, but as the co-emergence of "all that exists" across time and space (Escobar 2018). History conceals layers of temporality that scape our perception. Yagé —the Amazonian brew—is a door to these other layers. In the words of biologist and yage practitioner Marcela Bravo:

"You had raised the question of space and time, the materiality of existence and the possibility of affecting other planes of existence, what we consider the tangible parts of matter. It is a tremendous question. I want to tell you that we, as *mestizos* in the world that we live in today, we are always afraid of time and space [*she is referring to the way we could alter our experience of time and space with plants like yagé*]. For example, when we are connected to medicine plants or with the territory, logically the plants become like a challenge because we are used to the everyday clock, we set the time, 4:00 o'clock, and well, we work with the clock, including this biological clock (…) what do you say if it dawns at 4:30? I am not going to get up at 4:30 am, and I turn over and continue sleeping. Well, when one goes to any territory, we experience a space-time dimension that is different. Once I was scared because, when I ingested the medicine [*yagé*]—the *abuelo* says that you always have to light a candle for the Virgin Mary—this idea of space-time took hold of me."

"I was sitting down and said: yes, yes, time is passing, and the candle has to burn, that's how I will find out when it is going to dawn, because I did light the candle at midnight" […] I am going to have the notion of space and time with the candle. But I was at the ceremony […] and the candle did not

275 End of commented excerpt of interview with M. Bravo, July 2020.

burn out and that was terrible. I had never felt that feeling **when time does not pass**: it should be dawn by now, right? Why is the candle still there? And then I tell you that that candle was never consumed, the ceremony was over, in the morning the healing was done, it dawned, and the candle was intact […] so yesterday when you were asking me, I thought that there are many things that one does not talk about [*particularly in modern institutions such as the university*]."[276]

With yagé we learn, to paraphrase Escobar, that time sits in places (Escobar 2001). Time is an embodied experience from beginning to end (Ingold 2011), and the placentas that kept us alive in the womb can be re-seeded in our territories so that we can maintain a viable and lasting connection with these territories, thus "bending time and space," as Marcela would say, in our wanderings through life; keeping alive in the present moment our past in our mother's womb, and enhance our presence in the territories we have left (or never left), even if we live in new places where we can make a home.

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Connecting to chapter 1.3

Encountering the *legal* in Amazonia involves the active participation of other-than-human beings such as medicinal plants (chapter 1.1 and 1.2). Chapters 1.1. ("Yoco: learning to learn") and 1.2. ("Yagé: moving words across worlds") address the question of how we can learn to *learn* law with the guidance of plants such as Amazonian yoco (*Paullinia yoco)* and yage (*Banisteriopsis caapi*), and the conceptual openings, ethical dilemmas and political possibilities that arise from this approach. Following a similar line of work, chapter 1.3 follows the ritual and everyday encounters with a local preparation of coca leaf (*Erythroxylon coca)* among the indigenous Murui of Putumayo (Echeverry and Pereira 2010). The chapter further describes how humans and plants meet and make decisions together. Don A, an elder and medicine man from the Murui community of Puerto Leguízamo, Putumayo, would call this process of co-decision "ordering the world with the plants." The chapter explores how bodily practices, such as ingesting plants as people, can be considered as a form of dialogue between different kinds of beings. In doing so, the chapter aims to expand legal theory and practice beyond anthropocentric views, while analyzing the decolonial potentials of plant-human relations in this region.

CHAPTER 1.3 - Coca-leaf: Territories in motion, and learning law with the Amazonian "*mambe*" [277]

1) **Introduction:** Vegetal co-making

A well-known popular image depicts the Amazonian forest as a green vastness. A radically diverse and mostly "unknown" and complex ecology, this region has been pictured as an open-ended continuum where millions of life forms copiously proliferate, ex-change matter and energy, and decay (Slater 2002, Lyons 2020). Similarly, the Amazonian forest has been imagined as a huge recycling machine where everything—the mineral, the vegetal and the animal—loops back into soils and waters relentlessly co-producing new life. The *chagra* system, on the other hand, follows a similar principle of metabolic ex-change: it is a small plot for family agriculture based on successional rotation and regeneration of the forest, as well as the space of socio-ecological relations of nourishment, medicine, spirituality, and political life for thousands of human communities across the region (Rodriguez 2010, Andrade 1990, 1992; Correa 1990). The *chagra* could then be imagined as the site of the measurable and human-like (Kawa 2016).

However, far from clear-edged pieces of a huge vegetal puzzle, the vast, human-like and measurable remain in continuity co-forming and co-decaying: forest and *chagra* interact and overlap as they compose and decompose each other's bodies to later co-emerge in relational dance. Participants of such process of mutual shaping, Don A, a local *sabedor* from the Murui community in region of Puerto Leguizamo, Putumayo, as well as the plants he works with, particularly the coca leaf (*Erythroxylum coca*), are integral to this meshwork of life forces and agencies morphing into socio-ecological kinships in this region. As he tells the origin of the first *chagra* during a nightlong *sentada de mambia* (session of coca chewing until dawn), Don A is keen to declare the primordial vegetal ontology of the world he re-creates in real time as he travels and

277 This section is a follow up of an earlier work in the region of Puerto Leguízamo, Lagartococha, Putumayo. (Vargas-Roncancio 2017). Exploring the entangled lives of law and ecology in Amazonia via plant-human relations, several arguments of this section have been reworked and improved based on new ethnographic data (2019-2020).

works in the forest while ingesting his coca mix with other community members. The *sentada de mambia,* as **Don A** calls it, refers to the act of ingesting a coca-based preparation called *mambe* in ritual and everyday contexts. *Sentada* also refers to the act of discussing community matters with its members, while chewing the coca mix in the *mambeadero*, maloca or community house:

> *"Muinajeba luego fue enviado con la espiritualidad. Guamo se enfrentó a Muinajeba y luego empezaron a competir. Muinajeba encontró la coca de monte (esa es la coca de los animales) y luego la coca humana. Encontró el tabaco y luego el árbol donde nació la comida. En ese árbol había de todo y todo el mundo comía. Creció muy alto y ya nadie podía subirse. Muinajeba comenzó a hablar con algunos animales y le dijo al sapo que subiera al árbol, pero él solo podía llegar hasta cierta parte. Luego le dijo al zorro pero ese bajaba comida para él solo. Muinajeba le habló a uno de los jefes que primero creó Dios y mandó llamar al picaflor que trajo la candela. Luego mandó a una persona con un hacha y con ella tumbó el árbol. Cuando calló el palo, de las astillas se formaron lo peces. El tronco formó el río Putumayo y las ramas sus vertientes; las hojas, los lagos. Ahora tocaba sembrar las semillas y con ellas se hace la primera chagra. Muinajeba entonces formó la primera chagra" (*Interview with *Don A* in the *mabeadero,* Puerto Leguizamo, Bajo Putumayo).
>
> *Muinajeba* was then sent with spirituality. *Guamo* confronted *Muinajeba* and soon after they both started to compete. *Muinajeba* found the *coca de monte* (this is the coca of the animals), as well as the human coca. Then, he found the tobacco, and a big tree where all the food comes from. There was about everything in that tree, and everybody ate from it. It grew tall and no one was able to climb up to the top. *Muinajeba* talked to some animals and then asked the frog to climb the tree, but he could only reach part of it. Then, he asked the fox to do it, but he climbed only to gather food for himself. Finally, *Muinajeba* asked one of the first chiefs that God created. He asked the hummingbird that brought the fire, and then sent a person with an ax. The tree was cut, and when it fell down the splinters became fish. The trunk formed the Putumayo River, and its branches the streams; the leaves were lakes. Now it was the time to sow the seeds, and thus the first *chagra* was created. *Muinajeba* created the first *chagra.* (Author's translation. See Vargas-Roncancio 2017: 257).

Probing a non-anthropocentric approach to human-other-than-nonhuman interactions in this region of Putumayo, I begin chapter 1.3 by describing plant-human relations in the context of the ritual and everyday use of a specifically Amazonian preparation of the coca-leaf (*Erythroxylon coca*). Combined with *yarumo* ashes (*Cecropia peltata),* the coca leaves are thinly macerated to obtain a regionally distinct admixture known as *mambia*. Encounters between plants and humans are crucial to local modes of knowing, living, and shaping places such as the *chagra* plot in this region (Echeverry and Kinerai 1993). In the second part of the chapter, I describe how plant-

human relations—via ritual and everyday use of the *mambia*—perform what I call a nomadic ecology or a territory in motion. In light of recent fieldwork in Leticia (Amazon), I prefer this second notion because it highlights the continuities between ecologies as webs of life or material interrelations of beings, and the sentience and intelligence of these beings in situated historical and political contexts (Escobar 2008).

Furthermore, I use the twin notions of nomadic ecology and territory in motion in two distinct ways. First, as a way to refer to the human act of traveling long distances with human and other-than-human beings, for example when ***Don A*** roams through the forest to hunt and collect wild seeds to sow in his *chagra*, as well as when this *chagra* co-shapes the forest as it successionally moves to another plot to allow the previous one to rest, regenerate, and make the forest anew (Heckenberger, Russell, Toney & Schmidt 2007). In the second sense, territory in movement refers to the act of planning community work in the *chagra*, as well as soul-travelling through the cosmos with the aid of sacred plants, that is, without moving from one's physical position in the *maloca* or communal hut. The *maloca* is a representation of the cosmos and the human body, and Don A uses *mambia* to order the world (*"ordenar el mundo")* in real time as he performs this cosmological itinerancy.

Ordering the world, in this manner, is a non-linear action. The third part echoes chapter 1.2. ("Moving Words Across Worlds"), as it explores the notion of non-human temporalities to describe relations between species beyond teleological notions of time and history, as well as the decolonial potential that this time-with-the-plant can offer for thinking about law. An ethnographic conversation concerning what we can call the material agency and speech of plants,[278] this chapter suggests that questions of corporality and ingestion are crucial for a legal theory beyond the lettered archive, namely, beyond the idea that the form of law is, or should be, primarily linguistic or propositional (Chapter 3: "Conjuring"). This vision about the law has a direct bearing on current discussions around the nature/culture divide, and how undoing this

278 For similar arguments about the agency of plants, see Gagliano 2018, Marder 2013, Myers 2014.

modern division can push the "legal revolution" of the rights of nature beyond modern frameworks of analysis (Boyd 2017).

2) ***"La Mambia Dice."*** *The Vibrations of the Coca-leaf as Knowledge*[279]

The literature on the ritual and everyday use of the Andean coca is abundant (Chambi 2005; Manga 2003; Allen 2002; Mantegazza 1996). Comparatively, however, its Amazonian counterpart has received less scholarly attention, particularly when it comes to the ritual, political, aesthetic, and pedagogical uses of this plant (Urbina 1992, 2010). Although relatively recent in the Amazon the *mambe* is a historical institution that "has been incorporated into myths, everyday life, and the ceremonial, and symbolic universe of many Amazonian groups" (Echeverry and Pereira 2010: 590). Nonetheless, the ritual and everyday use of the specific Amazonian preparation, the *mambe*, seems limited to the regions of the *Great Vaupés* (basins of the Vaupés, Apoporis and Mirití rivers, and towards the Caquetá river), and the Caquetá-Putumayo interfluve, "with some extensions to the South and East resulting from migrations of these groups" (2010: 590), as well as certain urban regions of Colombia such as Bogotá, Cali and Medellin. W, a Murui man from Leticia, Colombian Amazon, says the following about *mambe:*

> *"Cuando le preguntaban ¿Y qué es esto? El decía: -eso es coca, pero aprender lo que es el mambe es otra cosa.* ***El mambe tiene que ver con la palabra dulce y con aprender las disciplinas corporales y morales para vivir bien*** *(…)." Una vez llegamos a la maloca de su padre nos sentamos en un madero atravesado. El abuelo estaba cerniendo la coca en una tela azul. Un Ticuna, yerno, pilaba la coca en un pilón y en frente había una teja de zinc con un montón de ceniza de yarumo. El abuelo las recogía periódicamente para mezclarlas con la coca cernida en un calabazo grande. W habla* ***del mambe como una herramienta****. Como una resma de papel blanco sobre la cual se escribirá la palabra "uno quiere que ese papel este limpiecito!" dice. Sin tachaduras "así como los blancos escriben sobre las hojas, nosotros también escribimos sobre las hojas de coca. Si aqui no hay separación entre el derecho y la vida, a diferencia de las constituciones del estado Colombiano, nuestra Ley de Origen no cambia, no varía no es un "artículo transitorio" (risas)." Excerpts from conversation with* W, *Leticia, Colombian Amazon. Author's translation.*

279 This section brings new ethnographic insight into an earlier argument concerning the material language of the coca leaf as a vibration and "corporeal discipline" (see Echeverry and Pereira 2010). Vargas 2017b

> "When they asked him "what is this?" he used to say: that's coca, but learning what *mambe* is…well, that is something else. The *mambe* has to do with learning the **sweet word** and with learning the **corporal and moral disciplines to live well** (…)." Once we arrived at his father's *maloca* we sat down on a trunk. The *abuelo* was sifting the coca with a blue cloth. A Ticuna from a nearby *resguardo* (reservation), his son-in-law piled the *coca* in a *pilón*, and there was a zinc tile with a pile of *yarumo* ashes right in front of him. The *abuelo* collected the ashes with his bare hands to mix them with the coca that was previously sifted. W **speaks of the *mambe* as a tool**. Like paper on which one writes words: "one wants that paper to be really clean!" – he says. "Just as white people write on these pieces of paper *(hojas de papel),* we also write on the coca leaves *(hojas de coca)* (…) In fact, there is no separation between the Law of Origin and life for us, unlike the constitutions of the Colombian state, our Law of Origin does not change: it does not vary, it is not a "transitory article" (laughs)." *Excerpts from conversation with* W, *Leticia, Colombian Amazon. Author's translation.*

For the Murui, *mambear* coca is a practice associated with the education of the body and the spirit. It is a vehicle of socio-political and legal meaning that is best crystalized in the community institution of the *mambeadero*—"a place for the preparation and consumption of the coca dust, as well as a site of dialogue," and decision-making (Echeverry and Pereira 2010: 566). According to anthropologists Juan Álvaro Echeverry and Edmundo Pereira, the corporeal and social disciplines embedded in the institution of *mambe* have what they call "religious and spiritual meanings." The Murui people assert this dimension of *mambe* when they say that the coca "has a spirit." In fact, *mambear* coca "is not to paint one's mouth with green" ("*mambear coca no es pintarse la boca de verde").* The stimulant effects of *mambe* do matter, these scholars argue, but so do the social and bodily disciplines associated with each community's understanding and management of the coca plant itself (2010: 566).

On the religious character of the *mambe* Don A, who is from a Murui community near the town of Puerto Leguízamo (Colombian Amazon), says that *"(…) oramos en la noche y trabajamos al día siguiente. Queremos que esta coca sea dulce, que sea al servicio de mi Dios, porque o si no, lo bueno se puede ir yendo y lo malo se puede ir acumulando. Nosotros nos relacionamos con Dios a través del mambeo"* / (…) we pray at night, and then we work during the next day. We hope that the coca is sweet and to the service of our Lord. Otherwise, what is good could go away and what is bad could

accumulate. We are in relation with God through the *mambeo* (Author's translation)]. Nonetheless, the "spirit of the coca" does not refer to an abstract entity since it is fully embedded in labor, practices of care, the education of children, inter-tribal relations, among other aspects of community life.

> "Mambear es para mejorar (…) *cuando mambeamos recordamos los actos del día y vamos corrigiendo para mejorar." Dice W. De allí se derivan varios principios normativos: "**El que mambea no se levant**a pero eso no se debe interpretar literalmente. Eso quiere decir que quien mambea no se va (no se levanta) de su territorio." Así mismo "**el que mambea no se duerme**. Pero eso no quiere decir que usted no pueda dormir. El "no duerme" es que hay que estar despierto, atento a todo lo que pueda causar daño, a todas las enfermedades. Mambear es estar despierto, vivir de acuerdo a unos principios de vida saludables. (…) Hay 3 cuerpos en cada ser humano: el cuerpo físico, el cuerpo del pensamiento, y el cuerpo espiritual. Hay enfermedades que abarcan esos tres cuerpos y hay medicina (y alimentos) para cada uno de ellos. Así como hay comida para alimentar el cuerpo, también hay comida para alimentar el pensamiento y el pensamiento se alimenta con la coca." Excerpts from conversation with* W, *Leticia, Colombian Amazon.*
>
> "*Mambear* coca is about improving: when we *mambeamos* we remember the acts of the day and we correct ourselves to improve," says W, and one can derive crucial legal principles from this insight: "whomever do *mambe* does not get up, but this should not be interpreted literally. This means that whoever does *mambe* does not leave (does not get up) from their territory." Similarly, "whoever *mambea* does not sleep. Yet again, this does not mean that you cannot sleep at all (…) Not sleeping means that you have to be attentive to everything that can cause harm to you, or to your community. Ultimately, *mambe* is about being awake, it is about living a good life (…) There are three kinds of bodies in every human being: the physical body, the thinking body, and the spiritual body. There are diseases that can attack these three bodies and there is medicine (and food) for each of them: just as there is food to feed the body, there is food to feed our thought as well, and you feed thought with *mambe." Excerpts from conversation with* W, *Leticia, Colombian Amazon. Author's translation.*

The coca spirit expresses itself materially in different ways in the body of the *mambeador* as was made clear during a nightlong *mambe* session with **Don A** and other men of his community: P, **Don A's** nephew, prepared the *mambia* by gently moving a bunch of coca leaves with his bare hands in a simmering copper pan, while a sheen of sweat bubbles sprouted on his forehead. Once toasted, the coca was poured into a wooden container, tenderized, and then mixed with *yarumo*

ashes. Seated next to him, **Don A**, the storyteller, went on to explain the details of his roaming through the forest a couple of months back. As he poured a large spoon of the mix into his mouth, **Don A** told us how the forest wanted him to survive: "*me dió comida, me dió abrigo, pero también me dió susto*" / it gave me food, it sheltered me, but it also scared me (author's translation).

The most experienced *mambeadores* pour two to three full spoons into their mouths, while beginners like me unsuccessfully tried to avoid the momentary lack of breath provoked by a modest teaspoon of the *mambia* mix. Quite an entertainment for the community men! Everybody was willing to be guided by the plant: *"Vamos a ver cómo nos va con la palabra que da la mambia"* / "Let us see how everything goes with the word given by the plant."

The material spirituality of the *mambia*, so to speak, can best be described as a vibration or resonance that is enabled by the sensory acuity gained through the gradual ingestion and absorption of the plant into the bloodstream. The stimulation is mild, and it sharpens concentration, facilitates communication with other people, and helps recovering lost memories and stories. To be sure, the senses open to the lure of full alertness, as well as the perception of sounds, colors, smells, and shapes of the forest. Such a resonance comes and goes making the skin quiver in slow motion each time, almost like the wind shaking the top branches of a tall tree. These vibrations or *señales,* as **Don A** would describe them, take place in the skin. The skin co-emerges not as the limit of bodies separating humans from the rest of the world, but as an interface where the vibrational speech of the coca's embodied vibrations and human perception meet one another.[280]

Plant-human encounters, that is, the meeting of *mambia's* vibrational language and the human skin, can also be described as a "shared body" (Lyons 2016), that is, a material and semantic continuity between several beings and forces. The most experienced *mabeadores* could read these vibrations like an open book, like *hojas de papel (pieces of paper)* in **W**'s words, to diagnose illnesses,

280 See Vargas 2017b: 259-260 for details.

or as signposts to mark different moments in the story that is being told. Vibrations might be a mode of plant communication and the stories resulting from this form of embodied dialogue, like **Don A**'s roaming in the forest, may well be a matter of collaboration between human and other-than-human bodies and modes of co-intentionality. The encounter between the *mambia* and the human through vibration is created, nourished, transmitted, and sustained as a story: a fleshy story (Haraway 2008).

However, the plant wants to see us first while keeping us alert and open to the encounter (Gagliano, 2018). A natural-like host, curious to learn about our intentions, stories, and desires, the plant offers the possibility of a new mode of inquiry. In what sense is the plant curious? Curiosity as any other human-like feature may well be expressed materially. In the case of the *mambia,* this attribute suggests that the plant holds a form of interiority or agent-like capacity (Descola 2013): like a piece of clothing or envelop, the plant's body conceals underneath a form of intentionality.

However, this agential capacity comes into being by virtue of the relationship between the plant and the human, among others, via the act of ingestion as a material condition of plant/human co-emergence and mutual learning. How can we "know" if the plant is capable of making decisions or choosing between options?[281] I suspect that vegetal intentionality revealed itself in the context of a bodily encounter between the human and the plant as one can experience during a *mambia* session. In fact, the encounter with the coca opens the issue of who counts as a subject of knowledge in human and other-than-human relations. In other words, is the plant divesting the human from the epistemological command? Is the plant producing knowledge at all? And if so, what kind of knowledge?

Rendered a colonial subject after centuries-long negation, criminalization, and elimination of its vegetal kin, the coca plant communicates with the human by means of its own mode of material

281 See Gagliano 2018 for an impressive scientific and experiential journey to plant agency.

language or speech. On this point, **Don A** would agree with scholar Michael Marder when he affirms that vegetal beings express themselves otherwise "without resorting to vocalization" (Marder 2013: 74). For Marder, "aside from communicating their distress when predators are detected in the vicinity by realizing airborne (or in some cases belowground) chemicals, plants, like all living beings, articulate themselves spatially. In a body language free from gestures, they can express themselves (…) in their postures." (Marder 2013: 75) Similarly, anthropologist Eduardo Kohn's work with the Runa of the Ecuadorian Amazon is an example of this shifting focus towards other-than-human modes of meaning. He argues that both humans and nonhumans use signs that are not necessarily symbolic. Kohn insists that "life-forms represent the world in some way or another, and these representations are intrinsic to their beings."

In fact, what we, humans, share with other-than-human species is not only our embodiment "…as certain strains of phenomenological approaches would hold, but the fact that we all live with and through signs…signs make what we are. "(2013: 9). In fact, the word language here describes plants' modes of communication as a form of spatialized materiality, which **Don A** would also agree, expresses a will independent of human intentions, desires, and specific modes of agency: *"Las plantas se quieren unas a otras pero hay plantas mas cariñosas que otras. Por eso hacemos cultivos diversificados para que se apoyen entre ellas. También hay plantas más poderosas que otras, más celosas que otras y más mágicas que otras."* / " Plants love each other. There are plants, however, that are more affectionate than others. This is why we cultivate diversified crops, so they can support each other. In the same way, there are plants that are more powerful than others, more jealous than others, more magical than others (Interview with *Doña C, Don A's wife,* Puerto Leguizamo, Bajo Putumayo).

These plants can teach, but learning requires what W calls "an act of humility" on the part of the human learner:

> *Para aprender no se puede uno sentar al nivel del abuelo en un butaco. Uno debe acurrucarse (…) estar en la tierra. Es un acto de humildad. Si usted está sentado y cómodo: ¿Está durmiendo o poniendo atención? La disciplina del mambe es corporal. El aprendizaje de esas herramientas debe ser corporal también. "Como nosotros" dice W "estamos también con un pie en Occidente,*

entendemos que las técnicas de enseñanza también cambian. La gente busca comodidad para aprender. Estar bien sentadita". Eso me remite a su frase más importante: "el que mambea no se levanta," claro no se levanta (…) no se va del territorio. Sin embargo, este sentido metafórico no cancela el sentido literal. Hoy nos dió hambre a eso de las 3:00 p.m. y nos levantamos de la maloka (que también es un territorio) y no pudimos ver como W vertía la hoja tostada en el pilón para hacer mambe: "Ustedes se levantaron y cuando uno entra en el conocimiento de estas plantas debe controlar las ansias de comer. No se levanta para atender otras cosas. Debe concentrarse en lo que está." W nos contó una anécdota de un jóven que llegó y quería ir al baño luego de pasar un rato largo escuchando a un sabedor. Y como ya le habian dicho que "que el que mambea no se levanta," él no quería desobedecer ese mandato y no se levantó y se aguantó las ganas de mear (risas). W también contó la historia de un abuelo que en el mambeadero dijo lo siguiente: "bueno, para no trasnocharlos dejemos aquí" y ya eran mas de las 5:00 a.m. después de estar sentados mambeando toda la noche (risas)." Excerpts from conversation with W*, Leticia, Colombian Amazon. Author's translator.*

"You cannot sit at the same level of the *abuelo* when you are learning with *mambe*. One must curl up (…) be on the ground. It is an act of humility. If you are sitting comfortably, you are either sleeping or not paying attention. The discipline of the *mambe* is corporal and learning those tools must be a corporeal discipline as well (…) We have one foot in the West and we understand that teaching techniques must also change. People seek comfort to learn. To be well seated," W says as he pours a spoon full of *mambe* into his mouth: "whomever does *mambe* does not get up" (...) They don't leave the territory." However, this metaphorical meaning does not cancel out the literal one. Around 3 p.m. we were hungry and got up from the *maloca*—which is also a form of territory—and we could not see how W prepared the *mambe*: "You got up earlier. When you start learning about these plants, you ought to control your craving to eat or doing other things. One does not get up to attend to other things. One focuses on what one is doing." **W** told us an anecdote about a young man who wanted to go to the bathroom after spending a few hours listening to the *abuelo* as he was doing *mambe.* But he remembered that "whomever *mambea* does not get up," and so he wanted to withhold his urges to go to the bathroom. He did not want to disobey the command and did not get up, and so he resisted the urge to take a piss (laughs).
W also told the story of an *abuelo* who said the following in the *mambeadero*: "well, so as not to stay up late, let's leave it here" and it was already after 5:00 a.m. after sitting all around doing *mambe* the night before until dawn the next day (laughs)." *Excerpts from a conversation with* W*, Leticia, Colombian Amazon. Author's translation.*

This mode of communication between the human and the plant is made possible through a series of material transformations whereby the coca becomes *mambia* through human labor.

Simultaneously, the human becomes a *mambeador* through the agency of the plant.[282] Colombian scholar Fernando Urbina who is well known for his work on the symbolism of coca use among Murui-Muinane communities in the Amazon affirms that the coca leaf—itself a symbol of both tongue and speech—helps the human to remember what it was told in the *mambeadero*. There, the *hombre sentado,* the wise person seated on the ritual stool "vertebrates reality with words" (Urbina 2010: 142). When the *mambeador* is just a boy he listens to the words of power in the "germinal shadow of his mother's place" (Urbina 2010: 142).

When he grows up, like a plant, he is invited to the illuminated space of the *coqueadero* or *mambeadero* in the company of other men. These words will later become meaningful and real as they unfold in community rituals and the daily life of the adult. In this way, when a guiding word is needed, the coca, which is the tongue, will offer the right one. That is, the one that was heard next to the elder, Urbina argues (2010). More than the content of the learning (what), what matters is how something is learned, that is, next to the elder and *mambeando coca.*

The human learns the word of the coca (*'la palabra de la coca')* by incorporating it as *mambe*. In other words, (legal) knowledge becomes a matter of eating. Eating the tongue, as it were, grants the human access to knowledge on community rituals, and prepares them to plan and undertake the necessary labor to cultivate the *chagra*—where the coca and other foods grow. In other words, powdered coca embodies humanity through labor while the human *mambeador* embodies plant-hood through the ingestion of *mambe*. A material feedback loop between living beings, this tissue of human and other-than-human agencies is itself a conversation on and of mutual nurturance and legal principles embodied in practices and places.

As we have learned in chapter 1.1. (Yoco) and chapter 1.2. (Yage), the law is not only a matter of State norms to govern environments: it is also about following the relational protocol to learn how to live well with the territory, that is, learning how to live well with humans and other-than-

282 I am referring here to the way the body of the coca plant is transformed by means of human, and nonhuman agencies. For a poetic and photographic description of the mambia process see Urbina (1992)

human peoples. Encountering the law in this region then is also about participating in the entangled lives of ecologies (i.e. plants, chagras, forests) and the human "corporeal disciplines" to teach people how to organize the world, as **Don A** would say. It is about learning to work in the *chagra* and the forest according to ecological principles. To be sure, the *mambe* is a way to part-take in this legal conversation between humans, plants and other beings of the forest.

> Andean intellectual Eduardo Grillo brilliantly puts it:
>
> "(…) here (in the Andean world), conversations cannot be reduced to dialogue, to the word, as in the modern Western's world but rather conversation engages us vitally: one converses with the whole body. To converse is to show oneself reciprocally, it is to commune, it is to dance to the rhythm which at every moment corresponds to the annual cycle of life. Conversation assumes all the complications characteristic of the living world. Nothing escapes conversation. Here there is no privacy. Conversation is inseparable from nurturance. For humans, to make *chakra*, that is, to grow plants, animals, soils, waters, climates, is to converse with nature. But in the Andean-Amazonian world, all, not only humans, make and nurture the *chacra* (the chagra is the Amazonian counterpart). The human *chacra* is not only made (nurture) by humans; all, in one way or another, participate in the creation/nurturance of the human *chacra*: the sun, the moon, the starts, the mountain, the birds, the rain, the wind…even the frost and the hail." (Grillo 1994b: 34).

Anthropologist and feminist science studies scholar Kristina Lyons goes a step further. Indeed, this conversation implies bodily contact between life entities, but also an emergent "shared body" (Lyons 2016) whose connecting tissue is what I will call *skin*—so, both tactility and ingestion are mutually implicated in Andean-Amazonian conversations with plants. A bundle of beings emerging as a single body, plant-human encounters—from sowing the land to the transformation of coca leaves into *mambia*; from ingesting the *mambia* to the planning of labor in the *chagra*—may well expand the scope of agency to include other beings and relations. When these entities emerge as a shared body, the word *agency* becomes a matter of bodily convergence (ingestion) and material distribution of action across different life forms (vegetal or not). In other words, eating the plant, that is, eating the bundle of relations that make the plant emerge as such is the condition of possibility of any collective mode of knowledge and action.

On this issue, **Don A** will insist on the notion of fostering a cyclical chain across human animals, animals and vegetal beings: "…*con las plantas dueñas* (coca y tabaco) *se alimenta el espíritu y se encuentra la fuerza para el trabajo, de esa forma mantenemos una cadena cíclica entre lo animal, lo vegetal y lo humano"* " (…) with the coca and tobacco plants (owners) we feed our spirit, and find the strength in order to work. In this way, we are able to hold the cyclical chain between the animal, the vegetal, and the human." (Author's translation.)

What is the relational body of plants-humans like? How would this relation appear to the plant as some*one* with a perspective? (Viveiros de Castro 2014) The *chagra* where the coca grows offers a unique image of this relational body, or material continuum between life-entities (forest-and-*chagra*). P says that *"para dimensionar la chagra hay que tomar en cuenta el aspecto físico, el aspecto de salud, el territorio, el aspecto de la educación, lo cosmogónico. La chagra es una herencia y se transmite de dos maneras: oral y espiritual."* "In order to measure the complexity of the *chagra* one has to take into account several aspects, including the material, the dimension of health (human and not), the territory, the education, and the cosmogony, among others. The *chagra* is a heritage that is transmitted both orally and spiritually." (Author's translation.) To be sure, the *chagra* is the "shared body" of human and other-than-human entities, where the cyclical chain between the animal, the vegetal, and the human is nourished and maintained.

Moreover, the *chagra* is not a stable being whatsoever. Much like Lyons describes in her work with *campesinos* in the region of Putumayo, Colombia: "When farmers refer to what technicians call "soil", they are never referring to a stable object that can be managed by humans, but rather an entanglement of life-propagating relations that include microbes, insects, sunlight, *selva,* decaying leaves, animal feces and urine, human labor, and *mistica."* (Lyons 2014). In fact, the *chagra* also becomes forest when the community (of human and other-than human) prepares another small area to cultivate, while the previous one is left to rest gradually growing into a

berbecho, and then a secondary forest.[283] *Chagra* is forest, but forest is also *chagra*. Relations emerge from relations.

An expression of such embodied spirituality, material practices in the *chagra* are planned during the night in the *mambeadero* where *la palabra* (the word) is co-produced along with the human. As **Don A** poetically expressed it: "*la coca es como un lago grande que da palabra en abundancia. El ambil es como un chorro que cae del cielo y orienta esa palabra y le da dirección (ordenar el mundo).*" / "The *coca* is like a big lake that gives words in abundance. The *ambil (liquid tobacco)* is like a cascade falling from the sky guiding those words towards a particular purpose (ordering the world)." (Author's translation). In a similar vein, Murui elder Don José García beautifully addresses this conversation of, and on, mutual nurturance between plants and humans, as follows:

> *"Al sembrar se canta, se silba para que la coca se ponga contenta. Al cantar se pone feliz porque presiente que se va a hacer baile. Y así crece rápido. Esos cantos son las oraciones. ¡Como antiguamente todo se hacía coqueando. Cuando el cultivo está pequeñito y apenas hermoseando, se sacan tres o cuatro hojitas de cada matica. Hay algo que se hace cuando se da el primer repunte, se saca una ramita y se pone encima de un tronco en medio del cocal. Esa ramita llama a las deabajo diciendoles: --¡Vengan, vengan¡ ¡Vengan a mi casa¡ ¡no se queden¡ Y así las hace crecer. Y las de abajo responden: --¡No, no nos dejen¡ ¡Espérenos¡ Pues de la misma manera nosotras nacimos. ¡Espérenos¡ Y así intentan subir. Unas matas hace caso y otras no. Por eso hay unas que crecen rápido y otras no."* Abuelo José García. From Urbina 2011: 201.
>
> "While you sow you sing and whistle, so the coca is happy. When you whistle the coca is happy because she senses that there is going to be a dance. And thus, she grows faster. These chants are prayers. As in the past, everything was done *coqueando* (using coca). When the crop is small and barely beautifying you take three or four small leaves from each plant. Then, you take a branch and put it on the top of a trunk in the middle of the *cocal.* This little branch calls the others saying: Come on! Come on! Come to my house! Don't stay behind! And thus, it makes them grow. And the branches underneath reply: Wait, don't let us behind! Wait for us! Thus, they try to climb. Some plants obey and others do not. That is why some plants grow faster." *Abuelo José García*. From Urbina 2011: 201. Author's translation.

A counterpoint to Don A's teachings, Doña C, his wife, says that for plants to grow pretty (*'para que crezcan bonitas')* one has to converse with them—again the notion of conversation in its

283 For a description of phases of the chagra, see Andrade 1992, 1990; Correa, 1990 and Rodríguez, 2010.

material sense comes to the fore: *"Primero uno siembra la yuca y el plátano. Después el ñame, el daledale (se muerde la hoja para avisarle a uno que la fruta está lista), el chontaduro, umarí, uva caimarona, caña, copoazú, piña, borojó, caimo. Hay que estar limpiando para que se levante la fruta si no se la come el monte. Hay que conversar con las plantas para que crezcan: 'yo la siembro aquí para mantenerme de usted, para que de buen fruto, un buen árbol, y ellas escuchan."* / "First one sows the manioc and the plantain. Then the *ñame*, the *daledale*, *caimarona* grape, *copoazú*, pineapple, *borojó*, *caimo*. You have to clean the terrain for the fruit to grow otherwise the *monte* will eat it. You need to talk with the plants, so they can grow (…) I sow you here, plant, so that I can live off of you, so that you offer good yields, a good tree, and they listen." (Author's translation)

The tropes of conversation and shared body are useful tools to engage with the ontology of the *mambia* in the Colombian Amazon. One night, *mambear* brought into being a woven object, as *Don A*; almost like a soft piece of clothing gently pressing against the skin.[284] In fact, coca's speech became the material language of vibrations with the capacity to anticipate a flesh-like consistency that helped us visualize the steps to take care of the *chagra*. Moreover, the fabric of words and images woven by *Don A"*s stories also opened a window into the past of his forest roaming, a past made present and material through the *mambe*: *"Como si la historian estuviera viva* [It was as if the story was alive], I thought. '*La mambia llama el pasado y es como si una ventana se hubiera abierto"* [The *mambia* summons the past, and it is as if a window had been opened], *Don A* said as he poured another spoon full of *mambia* into his mouth.

A matter of sudden emergence, the *mambia* taught us how the skin—rather than the brain only—can become a site of knowledge in its own right. In the relationship between the language of vibration of coca and the skin, the latter was neither the surface for the workings of perception, nor the exposed surface for the contingencies of sunrays, cold winds, scratches, and the passing of time, among other events. One night it became a site of active knowledge as well as embodied memory. When compared to the lettered legal archive, can vibrations and plants be considered

284 See Echeverry, Juan Alvaro and Kinerai, Hipólito Candre 1993. This text reminds us of the potentiality of vibrations as epistemic devices.

sources of legal knowledge? During the *mambia* session, the skin becomes the canvas of a collective geometry of sensations and memories. The *mambia* holds a language on its own whose grammar was akin to a bundle of vibrations that is rendered possible through the ingestion of the plant as *people,* as someone with a perspective. These vibrations are a sort of testimony without words about the itinerant and life-propagating character of the socio-ecological partnerships that I am calling a nomadic ecology or territory in motion: Life partnerships that have moved, walked, and shaped living beings, ecologies, territories, and knowledge practices for centuries in Amazonia.[285] As an instance of this ecological nomadism where plants play an essential role, I will retell the story of Don A's roaming through the forest in the next section.

3) **Making life in Amazonia:** Moving with the forest

More than 20 years ago, **Don A** wandered alone across the Amazon for several days. Eventually, he was able to recover the trail back home to tell the story of his roaming. He encountered vines, *ceiba* trees (Taíno: *ceiba*. Amaz. deno.: *Ceiba*; Lat. *Caiba pentadra*), *moriche* palms (Amaz. deno.: *Moriche;* Lat. *Mauritia flexuosa),* and hundreds of other members of a vegetal world in constant flux. Such plants, Don A said, led him back to his family and *chagra.* Negotiating his subsistence with whichever being was willing to cooperate, Don A lived off of fruits, plants, and small animals. The Amazon fed him, shared its hints, and finally proposed a route for him to follow. As he would say, the forest *roamed* with him, thus showing a form of natural empathy whereby home and other-than-home, food and enemy, human and nonhuman, among other dualisms, were no longer tenable distinctions to make sense of the event.

The forest partnered with the human by procuring his survival, while the human enhanced the boundaries of his family members. Moreover, the distinction between dwelling in a single

285 The term 'socioecological' has been discussed in a number of recent works in the fields of geography and anthropology. For a detailed review on this term see: Annals of the Association of American Geographers, Vol. 105, Number 2, March 2015. Special Issue: Futures: Imagining socioecological transformation. Other scholars prefer the use of 'cosmologies' or even 'natures' (where the human is already implicated in the concept) to refer to these arrangements between social relations and natural relations, while avoiding the Western heritage of the scholarly field of 'political ecology'.

territory and the fabric of life beyond the human settlement became quite blurry for him: a new form of collaboration emerged in a place deemed as the other—the *forest*; a place turning into a nomadic ecology or territory in motion, that is, a place in continuous motion and transformation; a place becoming-home as it moved with Don A as he moved with *them.*

Don A risked his life for several days while becoming an integral part of a continuum of life forces morphing into socio-natural kin. To be able to reach his destination (the *chagra)*, he had to establish agreements of survival and collaboration with the other-than-human others that he encountered along the way. "In the *chagra,"* he said, "plants are together and closer to the house, but in the forest, one is alone, and it is not always easy to find the plant one needs." A family of life forms was in the making as Don A wandered alone through the forest. Yet, this vital relationality of lively materials involved in his survival—plants and small animals, waters, and soils, among others—*wandered* through him as well. This was an inner ecology on the move. Where can we locate, then, the precise limits between beings, family, and place? The forest, also a product of human action, certainly had something about it that was entirely *chagra*-like.[286] In fact, Don A's intimate knowledge of forest ecology would later become the *chagra* for his family. In other words, a space made from the very *stuff* of a different place: the roaming forest.

It is always surprising to encounter other beings. However, these encounters do not entice the universal moral choice of a community of settlers commanding action over their surroundings, but rather here, the embodied mode of skill, co-emergence, and eventuality of the disperse community of foragers that make both place and people emerge from relations.[287] On the one hand, such interactions with this not-so-unfamiliar forest forced **Don A** to part-take in sequences of collaboration, predation, and survival with this emerging family of other-than-human relatives.[288] On the other hand, this dense yet ephemeral relationality made it difficult for him to dwell long in one single place: he had to move to live! Human and other-than-human mobility

286 See Kawa on *terras pretas* or dark soils of anthropogenic origin (2016).
287 On embodiment see Varela 1999.
288 On this point see the insightful text by Carlos Fausto 2007.

became the condition of possibility of survival, while *place*—also on the move— far from the backdrop of human action became the resulting effect of human and other-than-human encounters. This is what **Don A** taught us: his return to the *chagra* was preceded by the formation of a nomadic community of life forms (plants and animals), or a territory in motion that also inhabited him. *Chagra* and *forest* constitute a single continuum of Amazonian life. "*Selva* is home," **Don A** insisted, and *chagra* may be *selva* for other-than-human beings as well—plants included.

I heard this story in the *mambeadero* one night and it occurred to me that the act of roaming through the forest was neither a single activity nor a prerogative only of humans. In fact, **Don A** was not alone as he moved through the forest. He was traveling with the *mambia*, while the *mambia* travelled with him (and within him). Moreover, what made him move also moved with him, for example, the small animals and plants that procured his survival. *What* travels, then? Or better yet, *who* travels? There is not a simple answer to this question. It suffices to say, however, that the community of other-than-human and human peoples formed, in **Don A's** story, a nomadic ecology or territory in motion.

As stated, humans and other-than-humans become a bundle of relations, or better yet, a shared-body, namely, life-forms depending on the relations with other beings. **Don A** needed to connect with other entities by means of ingestion, tactility, or even refusal to engage with several beings for his own sake. For that to happen those entities moved underneath, like plant roots, or above ground, like leaves trying to catch sunlight. An emerging bundle of life relations on the move—to which **Don A** was already a part—as it were, this territory in motion transformed place with each new step. "*Mambia*-human," a "partially connected" entity (Strathern 2004) created its own dwelling as *they* moved.

Furthermore, *mambia*-human changed the surface of the Amazonian soil by leaving a material trace (like a spoor. Surely, this material imprint was made possible thanks to the *mambia* that inhabited **Don A's** body (i.e. ingesting the plant; eating the tongue to produce speech!), which afforded him the necessary bodily capacities to orient himself through the forest. Similarly, the

chagra, another nomadic ecology depending upon the *mambia* gathering where the work is planned and organized, leaves a material trace when it rotates through the forest. In fact, since many Amazonian soils are very acidic and have only a thin layer of organic matter (Lyons 2016), traditional agricultural systems of slash and burn (*chagra*) require the rotation of the area of cultivation from one place to the next. In fact, this *chagra* itinerancy through the forest is instrumental to the formation of a secondary forest: "…*cuando quemamos los palos la ceniza se vuelve la comida del suelo"* […when we burn the trees the resulting ashes become soil's food], **Don A** said once. The human therefore moves to produce place and, in return, the place, thus created, moves to co-shape other places, other humans, and other-than-human beings. To put it bluntly, a nomadic ecology is another name for life relations.

Don A also traveled with seeds back and forth between sites: "*Yo traje unas semillas del Ecuador y pienso hacer una investigación con ellas, experimentar para ver si se dan aquí. Tengo estas semillas de durazno. Las pongo a ablandar en agua por ahí unos 15 minutos, y luego las pongo a germinar en semilleros. Les hecho agua a la sombra para evitar los insectos"* / "I brought some seeds from Ecuador, and I will research and experiment on them to see if they grow here. I have these peach seeds, for example, and I will put them in water for 15 minutes or so to make them softer. I will then sow them in seedbeds. Then, I will water them under the shadow to avoid insects."

I imagine the encounter between the human and the *mambia* as a learning moment about/with life amid a dense ecology of relations. They are ways to engage in knowledge practices that cut across the sedentary rationality of the Western legal archive. Such a learning moment may be able to tell us how *mambia* comes into being as a powerful non-modern teaching force where subjects and objects no longer precede their encounters in the legal field. Moreover, such a learning moment with the *mambia* signals the option of a compositional relationality where eco-centric modes of knowing, feeling, and acting in the social and legal worlds of the forest emerge in the midst of entangled forms of violence and survival. Is the *mambe* and the relations that it enables, a tool for the re-generation (Esteva 1998) of human/non-human relationalities in this region? The next section will tackle this issue.

4) **"Mambear Coca-leaf":** An Amazonian way with decoloniality?

In what way can the human use of coca leaves be considered as a legal decolonial practice in the Amazonian region? Decoloniality seeks to provincialize Western knowledge practices, including the law. It sheds light (while undoing) colonial forms of direct and indirect violence across time and space; a violence that renders inferior and eliminates peoples, ways of being, and epistemic practices that refuse to be accommodated within Euro-American universalistic logics. Moreover, decoloniality also emerges from the difference and multiplicity inscribed in race, gender, sexuality, class, and ecological relations both in the present and in the past. In the case of human and other-than-human encounters decoloniality highlights corporeal experiences of mobility over sedentary abstraction and universal reason. Furthermore, this term proposes a temporality and spatiality of co-existence attuned to Indigenous circular geometries of time and space. This is a temporality and spatiality that imagines ancestral and modern practices of life in a level of relative symmetry (Tuhiwai Smith 2012).

Affirming the existence of agents furnished with human-like attributes might expand legal decolonial agendas further to include other living beings as subjects of knowledge and sources of legality. Going back to the *mambia* night, the-plant-in-relation-with-the-human enacted a collective memory of co-existence which the colonial violence attempts to conceal time and again through civilizational fantasies as well as development discourses and agendas. To be sure, the methodology employed by the plant was to sensitize, awaken, and empower the skin as a territory of knowledge. As a result of this capillary collaboration between the plant and the human, the *mambia* produced an effect of reality in everybody's *piel* [skin]; an ecology of vibrations translated into the language of skill, labor, and emotions as collective forms of knowledge necessary for living and dwelling-together as an ecology on the move: a nomadic ecology.

Again, I refer to a humble resonance that I was unable to translate into signs, but also unable to represent or even to know at all. This very happening was telling stories of how the plant goes

about telling stories, teaching, and producing action beyond the horizontal transmission of lettered forms of (legal) knowledge, but also through the co-production of a form of ephemeral life [the vibration]. This ephemerality involved the active collaboration between the forest, the plant, the *mambia*, the chewer, and the story as decolonial collective of life enhancing forces (Escobar 2015).

It all started with the skin…

Is this a kind of knowledge and legal practice that the Western archive would be able to recognize, listen to, or even foster? In what sense is this kind-of-knowledge decolonial? A methodology to account for the role of vibrations in decolonial knowledge practices should also consider mechanisms to enhance plant-human encounters. In my view, lettered approaches about how this dense relationality comes into being are rather insufficient. Instead, vibrations telling stories emerge as a form of knowledge where the body becomes a potential decolonizing partner that troubles Western non-organic approaches to theory and life.

More than a mode of critique, in this example, decoloniality is a conversational experience between different peoples (human and not). For instance, while foraging through the forest, **Don A** engaged in conversation with manifold beings that procured his survival and aided his return to the *chagra*. Moreover, he took part in bodily interactions with other-than-human peoples capable of cognition and memory. During the *mambia* session, for instance, the plant was keen to meet the visitors while upsetting the trajectory of Western epistemology (other-than-humans *knowing* humans) and affirming the relational ontology that made possible their encounter. In this sense, the plant was itself examining the very notion of human subjectivity.

In engaging with non-Western existential, epistemic, and legal commitments, I also realized that the plant was pushing another understanding of colonial relations in what Gunadule

communities call Abya-Yala.[289] Thus, humans and other-than-humans could be simultaneously called upon as a decolonial praxis of delinking (Mignolo 2011). The *mambia* was a part of this praxis. Yet, a change of epistemic direction also implies co-laboring a new body—a shared body: *mambia* was teaching a corporeal methodology necessary to weave unstable continuities between the world of the *forest*—the unfamiliar—and the world of the *chagra*—the humanized forest. In other words, delinking from the colonial matrix of power is to be done in partnership.

Moreover, the act of walking through the *chagra* is itself a way to retrieve the past from the standpoint of the present whereby all members of the natural family co-laborate. **Don A** was not the exclusive force in his own survival since the forest was willing to offer him cues to recover the trail back to the *chagra*. Again, knowledge of survival through bodily skill was possible only in the context of such a dense relationality between the human walker and other beings (see Ingold 2000).

Finally, the *mambia*—and the vibrations it enabled that night with **Don A** —might inform a non-modern understanding of time in which the practice of the *mambia* could grant access to the past. However, the past is not deemed distant but co-existent with the present. The present of the *mambia* was, simultaneously, the possibility of a collective future experienced as memory in transformation. On the one hand, the co-existence of a plurality of times complicated the idea of temporal boundaries as a result of the agency of plants. The simultaneity of times also enabled the existence of a collectivity of beings in its convergent trajectories of becoming-together (Despret, 2004). On the other hand, liminal spaces proliferated everywhere that night of *mambia* eating: 1) between the slow-motionless of vibrations and the spins and accelerations of ecological cycles; 2) between knowledge embodied by words and knowledge embodied by experience (Maturana & Varela, 1994) and skill; and 3) between the skin as a site of suffering and pleasure,

289 Abya-Yala is the Guna name for the expression 'land in its full maturity' or 'land of vital blood', and it is the name used by the Kuna people of today's Colombia and Panama to refer to the American continent. On the notion of coloniality and colonialims see Mignolo 2000.

and the skin as a site of meaning making within a temporal register that superseded the linearity of modernity.

5) **Embodied Duration:** On the temporalities of plant-human encounters

What can we learn about this temporality of co-existence and life relations between plants and humans beyond linear notions of time and history? As a possible contribution to this larger question, I suggest that several temporal registers inform relations between humans and plants in the Amazon. Particularly, different understandings and practices *with* time co-shape the everyday of Amazonian human and other-than-human encounters (Ingold 2000). This meeting of times creates a space where different peoples as well as their stories and multiple experiences of duration foster what decolonial scholar Rolando Vasquez calls "relational temporalities" (2012).

Vasquez proposes a decolonial critique of time to liberate the past from the modern representations of history. He argues that "(t)he discourse of history, in its affirmation of modernity, the negation of its exteriority and the disavowal of the 'other' (including the other-than-human), has been a key mechanism of the modern/colonial control over representation. History as the monumentalization and inscription of the past in textuality," he argues, "produces a narrative of the past that functions as a teleology of the modern hegemony of the present." (2012: 7)

Thus far, his take on temporality works as a critique of history from a decolonial perspective. Yet, when exploring how the notion of relationality brings to the fore a different understanding of time beyond the past/present dichotomy, Vasquez pushes the decolonial critique of time beyond historiography: "When speaking of the *muntú*, the philosophy of Colombian afro-descendants, Manuel Zapata Olivella says: 'the muntú conceived the family as the sum of those dead (ancestors) and those alive, united by the word to the animal, to the trees, to the minerals (land, water, fire, star) and to the tools, in a world that is indissoluble"(2012:8). Relationality, then, is

not only limited to present connections between different beings. For instance, this is true of the beings encountered by **Don A** in his roaming through the forest. Rather, it also includes connections with the past populated by ancestors who are made present in the everyday. In the Aymara world, for example, the idea that the 'future lays in the past' also speaks to the co-presence of all periodizations of time: past, present, and future. Thus, ancestors, living people, and people yet to be born are all part of the same community of life.

My take on temporality is slightly different when it comes to relations between plants—such as the coca leaf—and humans. I attempt to go beyond time organized as past, present, and future, that is, as an experience of duration. While Vasquez's relationality is premised on the co-presence of these three modes of duration, I consider temporality an embodied practice all the way through. More than recognizing the historical co-presence of beings from different times to overcome the dichotomy identified by Vasquez, I suggest exploring how different beings (humans and other-than-human, living or dead) enact temporalities together. In this way, I attempt to move beyond the ontology of the line implied in the notion of duration. In my view, time as duration insists in one real only (Escobar 2012).

Even though decolonial critiques of time—such as Vasquez's—plea for the co-presence of these three modes of temporal expressions in the now, in making-the-present and conjuring ancestors and non-living people of the future, Vasquez confines the issue of presence to the plane of the present time from the point of view of the subject of enunciation. Again, the human is the one in command of the mechanism of representation. As I have suggested earlier, my interest is to reclaim plants as subjects of knowledge, but also to re-claim relations as social agents.

I suggest switching the emphasis from duration to enaction. That is, from the idea of time as abstract duration to the idea of time as practice and embodied experience of multiple beings (Ingold 2000; Varela *et al* 1991), to suggest that different temporalities create bodies and foster

multiple historical trajectories of human and other-than-human encounters in the Amazon.[290] To be sure, the ancestral time of Indigenous sociality in the Amazon, the bio-social temporality of plants, and the temporal registers of State agents become thickly entangled while compromising the messy materiality of multiple lifeforms in this region.[291] Let me try to exemplify this rather obscure couple of paragraphs by returning to the story of ***Don A*** as he *mambea* with the Murui community.

As suggested earlier, the plant meets the human in the space of colonial difference, thus forming an alliance where subaltern knowledge and political resistance of Indigenous peoples, and their other-than-human partners become deeply entangled. However, such beings do not precede their encounters, but become-together through them. Here the past does not *exist* since it is actualized in the moment of the relation. In the case of the *mambia* experience, I claim that neither the plant nor the human traverse individual durational trajectories leading to their actual forms, but instead become-together as they practice the becoming together. The temporality of the coca-leaf in the act of becoming-with the temporality of the human, feels like a humble resonance or vibration in the skin. I am unable to translate or represent such a resonance, and I do not claim *to know it* at all.[292] While the durational temporality of history is translatable into signs, this might not be the case with enacted temporalities of coca vibrations which exceed human representation.

As the subject of enunciation of this experience, I have described such an encounter with the plant as a sensation of resonance in the skin. However, I will not claim that I was witnessing clear physical stimuli. That would be equivalent to saying that the plant behaves according to my own experience of duration and perception, thus granting me the capacity to represent such experience using words. As I resist the impulse of speculative elaboration on this matter, and since my goal is to exemplify what I mean by 'enacted temporalities', I will stick to the premise of becoming-together with the plant beyond the search of a stable ontology. However, the

290 For instance, rain cycles, mythical time, and temporality of progress, among others.
291 On the notion of 'entanglement' in the Amazon see Slater 2002.
292 On the issue of vibration see Viveiros de Castro 2004.

vibration was somehow telling of how the plant goes about telling stories, teaching, and producing action: it was not through the horizontal transmission of lettered knowledge, but through the co-production of a form of an ephemeral life [the vibration] and resonance involving the active collaboration between forces activated by the plant. A methodology to recognize the role of vibrations in decolonial knowledge practices should also ask how plants, resonance, body, and skin could all become the tissues of an archive of decolonial delinking from the modern matrix of power. Hence, the urgency to undo the temporal, spatial, and subjective underpinnings of history-making to include other temporalities, locales, agents, and relations.

I suggest that the *mambia,* along with the vibrations it enables, informs a non-modern understanding of time whereby the practice of the *mambia* grants access to a past already inscribed in the environment (rocks, rivers, forests, etc.). However, this past is not casted as a distant memory but as a living memory co-existing with the present of the plant-human encounter. Appealing to duration seems less necessary when the embodied ecology of time collides it with place, perhaps cancelling the need for a predetermined *telos*. Again, the present of the *mambia* grants a collective future experienced as memory in transformation in the very present of the encounter with the plant. I certainly agree with Vasquez that going back to the past is bringing it to the present. Making-presence cancels the need for duration while inviting us to think about ways of rendering the passing of time as an embodied experience all the way through.

6) **In closing:** Decolonizing Nature?

Over the last 20 years, Colombia has witnessed a State-led campaign that criminalizes and eradicates hundreds of hectares of coca crops in the country. '*La mata que mata*' (the plant that kills) was the motto behind the elimination of coca-leaf yields around the country via the glyphosate aerial spraying (*fumigation*) (Lyons 2015). The campaign inadvertently acknowledged that a plant has itself the capacity to *end* life thus holding a form of agency. However, coca crops, rather than the cocaine obtained by means of a complex global network of war, economy, politics, and chemistry, is the one deemed capable of terminating a form of life rendered acceptable or

rather legal by state law. However, the criminalization of plants and humans in the Amazon has been contested for decades in this region.[293] I suggest that plants have finally met humans in the space of colonial difference (Mignolo 2000, 2002), [294] and by this I refer to the space where the potentials for decolonization emerge not only from recognizing subalternized human knowledge, but also from plant-human assemblages (or shared bodies) official historiographies and legal narratives have rendered invisible or even harmful.

In this chapter, I have engaged with vibrations as active material events taking place in the skin and through the incorporation of certain plants. At the same time, I have argued that knowledge is a matter of partnership and co-intentionality between different sentient beings (plants and human): the skin is not only a membrane that separates interiorities from exteriorities, but the locus of knowledge. This take on the skin may open-up the evocative notion of *sentipensar* to other senses (Escobar 2015).

The event of vibration conflates with the event of thinking by making it almost impossible to distinguish between the two. The skin, as it were, is itself thinking. The relationship between thinking and feeling-with-the-skin enabled by the plant has the potential to interrupt the division between knowledge practices and bodily-perception through the senses. Perception as the act of engaging the world with the senses, and thinking as the act of signifying it, are both woven together. Engagement with the skin in decolonial practices poses the question of what it means to compromise modes-of-being-in-the-world and not only the way in which one produces knowledge. Working with the *mambia* thus entails the task of confronting our own habits of thought and practice, but also how we are in (and as) place with other beings.

293 See Maria Clemencia Ramírez 2011.

294 Colonial difference: 'The colonial difference is the space where coloniality of power is enacted. It is also the space where the restitution of subaltern knowledge is taking place and where border thinking is emerging. The colonial difference is the space where local histories inventing and implementing global designs meet local histories, the space in which global designs have to be adapted, adopted, rejected, integrated, or ignored. The colonial difference is, finally, the physical as well as imaginary location where the coloniality of power is at work in the confrontation of two kinds of local histories displayed in different spaces and times across the planet. If Western cosmology is the historically unavoidable reference point, the multiple confrontations of two kinds of local histories defy dichotomies.' (Mignolo, 2000, ix). Note: This definition does not pretend to be exhaustive. Colonial difference should be taken as a proposal always renewing itself contextually. It is an open space of decolonial imagination.

This might be a story of the decoloniality of nature, or about the ongoingness of decolonial life relations where other-than-humans and humans coproduce each other. In other words, humans and other-non-humans can engage in other forms of imagining, knowing, and dwelling together. For instance, the plant communicates with us through vibrations and thus changes the direction of modern epistemologies (subject knowing objects) in order to experiment with the reverse logic whereby (former) objects get to 'know' (former) subjects. This chapter was an attempt to bypass the binary division altogether. In my own academic work, I strive to participate in moments of evanescence and blissful vulnerability (Zakour and Gillespie, 2013), but I attempt to engage with habits of thinking and doing whereby becoming-with other forms of life is not always amenable to academic discourse.

The proposal of decolonizing research is somewhat closer to the experience of bodily exposure and co-creation with sentient ecologies (Smith, 2012). This proposition requires further explanation. For now, it is sufficient to say that it aims at enhancing the scope of the decolonial conversation beyond the human by approaching the question of bodily exposure, tactility, and suffering with other-than-human others and within the very practice of knowledge making. In that sense, this chapter was a story about the ongoingness of life relations and how humans and plants co-produce knowledge and place. If the chapter was successful in describing the relational character of a plant form of material agency through encounters between humans and the coca leaf, the next part of this dissertation will address how such a form of agency could contribute to a non-anthropocentric understanding of legal agency in times of socio-ecological crises.

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Connecting to chapter 2

After analyzing some aspects of the entangled lives of law and ecology in Amazonia, Chapter 2 attempts a rather different format: it introduces the Colombian ethnobotanist David Rodríguez-Mora's own voice into the conversation without any analytical intervention on my part. It is a selection of excerpts from our year-long conversations about plants, law, the politics of naming nature, the invisible people, and the ethical and conceptual dilemmas we both faced as we engaged law and ecology with the guidance of plants and humans in Nariño.

CHAPTER 2 – *"Los Invisibles:"* The Making of a Research Agreement with Humans, Plants, and 'Spirits' in the Colombian Andes (Nariño): The voice of an ethnobotanist.

> (…) most natural sciences work (and work effectively if often unreflectively) with the assumption that objects are found, and most social sciences work with the assumption that their objects are *made.* For example, antibacterial compounds are taken as given in the world, and natural products chemistry *find* them in ingenious ways…in the social sciences, by contrast, various objects, both physical and abstract, become significant when specific actors, recognizing the origins of that significance in social activities, apprehend the social roles of these objects."
> Green L et al 2015: 10.

1. "The sample matches the name…."

"Field work is always very spontaneous. Despite that there is a structure, let us say, you play a lot with the flexibility of the investigation because it depends on many factors, for example, the geographical location of the people and places where you are going to do the work. So, even though we were going with a local knower *(sabedor)*—we visited different places—we began to work either early or later in the morning depending on how difficult it was to access the place: sometimes we had to drive for 1 hour on a motorcycle, or even 2 hours, and sometimes we just woke up to immediately start the work; sometimes the interviews were very quick, and some other times very long depending on what the person knew and wanted to share with us. So, there was a lot of variation."

"Also, depending on weather conditions, we had to do the interview indoors, and when it cleared out, we were finally able to collect the sample. Field experience is very versatile and, as an ethnobotanist, I learned to adjust the work to incorporate these other variables. Moreover, it was important that the research participant felt very comfortable with the work that was being done, and also that they understood the importance of what we were doing, and how it was going to benefit not only them, but also that it was a way to maintain the cultural legacy of the region."

"At the same time, I designed the interview in such a way that I was able to link [the information that the participants shared with me verbally] with as many plant samples as I was able to collect. Often-times, you found that participants give you the names of different plants for a given sample, and then it was tricky to associate this information with the samples themselves. This can be quite demanding, and this explains why ethnographic works alone **are often limited because you do not have a sample that you can use to verify and support the information you obtain in the field with the interviews."** ~ *Interview with David R.M. My emphasis. May 2020.*

The classification of plants is as important as the sample. "It is not only essential to support the information that is collected in the field, but it is also important to know, to identify, which plant you are talking about (…) the scientific classification [tends to be] more specific than the cultural [local] classification because it is based on information from the plants [themselves] that is much more precise, and more easy to define (…) So, **what determines the local classification is the name:** for example, the same name can be used for three different kinds of plants, so you are talking about three different "things" [with the same name] and that leads to confusion (…) names (…) allow us to better understand the potentials of each plant for the human benefit, namely: the properties, use, management, monitoring [and other] processes can be better carried out when more precise information is available." ~ *Interview with David R.M. My emphasis. May 2020.*

"In addition, the material evidence [the sample] is what allows you to speak the same language in scientific terms because you can talk to me as a peasant, traditional healer, Indigenous or city-dweller about a plant that you use in your daily life for stomach pain, and even say: "it's called basil." But if you go to three different places, you could find three plants with that very same name that have very different properties and uses (…) the sample in each of these populations will allow you to carry out different analysis and [understand] the possibilities that these plants can offer to the world." ~ *Interview with David R.M. My emphasis. May 2020***.**

2. On ethnobotanical methodologies

Research methodologies in ethnobotany are very versatile and variable because ethnobotany, by definition, is a discipline that encompasses many areas of knowledge: "historically, it has been fed by anthropology, botany and photochemistry (...) and these three research aspects are part of ethnobotany and there are different methodologies within those disciplines that you can integrate as an ethnobotanist. However, I can tell you about three research approaches, or methodologies, that are common in ethnobotany, and these are: field methodologies, botanical methodologies *proper*, and information analysis. So, in the field, you are going to have methodologies associated with the documentation of the information that you want to keep, and there, you have different possibilities available to you: for example, you can record an interview (…) you can take notes; you can make lists and fill in spaces; you can give people questionnaires and take photos (…) there is a range of possibilities."

"The techniques that I learned were semi-structured interviews, so I had an idea of what I was going to ask, but this technique allowed for the necessary flexibility to communicate with the participant as I was taking notes and recording the conversation. Often-times, however, it is a challenge to record a full conversation because then you will have to listen to what was said again, and it can be quite demanding if you have multiple participants and plants that you want to classify. So, in that first experience, I began to realize that it was good to have a structure as concise as possible. For example, a questionnaire, or even a list of the possible characteristics of the plants you want to study, and thus just use the recording in case you need to supplement or verify some information." *~ Interview with David R.M. My emphasis. June 2020***.**

3. Describing the plant

Depending on your research question there are many characteristics that you can "collect" in the field. **As an ethnobotanist, "it is essential to have a very good physical description of the plant.** This information can come from [the person] you interview, or from your own observations in

the field or both; it all depends on the research question. You want to document each species, each plant (…) if they are angiosperms (…) and some visible characteristics might be lost when you collect the plant; when you collect it and press using alcohol and newspaper (…) these [natural] characteristics will change: the flower will dehydrate, it will dry out, the coloration will change, the fruit will also change (…) other characteristics may be present in the field, though."

"For example, a particular smell. In the case of edible fruits, the taste and the smell can be quite important to fully identify the plant, and even aspects such as the time of collection can be very key because, let's say, that you collected a plant that has the flower open at the very moment of its collection, and it turns out that this plant only opens its flowers at noon, so all that information is essential for working with that species (…). So, how would you be able to contribute to the understanding of a species and its relationships to a particular culture, habitat, or ecosystem? You always try [your best] to include as much information as you possibly can to answer your research question. **And this may require that you document the plant in ways that may not be apparent through your research work**."

"As I was doing a general inventory, I was not focusing so much on the measurements of the plants [David is referring to a previous research experience in a different region]. Here, the emphasis was very different. I mean, there are many [pieces] of information that I was not collecting there (…) **it was more important for me to understand the *habit* of this plant**: is it a herb? Is it a tree? (...) There are different ways of characterizing the habit of a plant. The habit is what defines the general body of the plant, so a grass differs from a tree by the kind of tissue that it forms [as well as] the structure. For instance, a grass is non-woody."

"This characteristic or definition will be very important when you are talking about a grass that you have never seen, and even more so when it is a new or unknown species of grass (…) this could be relevant to trace the difference between one species and another: for example, whether a given plant is woody or not. There are several types of habits: lianas, shrubs (…). There are trees that reach the forest canopy, and there are different ways to define these characteristics, or

the structure of this plant. So, this is called habit in botany [the shape of plants]. So, I paid more attention to the habit and general characteristics of the plant, the arrangement of the leaves, colorations, and so forth. But the information will always depend on your research question."

"I was also interested in the general use of the medicinal plant—what disease is it used for, and what part of the plant is used and how—and you try to catalog the information as best as possible. Many times, it is demanding—especially when you do not have the experience. **There was information that I lacked and that was important by the time I started the analysis, and then I had to call the participant again. It all depends on your research question, but my general approach is to be as detailed as I can with the information I collect in the field, both in terms of the habit and the use of the plant."**

"For the study with the Cofán, the herbarium that best represents the sacred *yagé* vine is located at the University of Michigan. So, from there, I am going to ask for loans of the *yagé* samples that they have, so that I will be able to compare them with the data that I have collected in the field here. Then, I will be able to determine the species, which is, strictly speaking, the botanical work. This work depends on your experience identifying the families of the plants, and then, at a more detailed level, the genus of the plants and the species."

"The Linnaean classification is based on a binominal nomenclature, that is, a nomenclature with two names: one that is more generic, and the other that is more specific. So, this is why a category is called gender and another species. **So, the species is going to be defined by certain parameters that are unique to the plant under study, and the genus is going to encompass a broader group that is going to be differentiated by the species. In fact, that is a broad question in biology, which does not have a definitive answer** (…) there are many answers about what defines a species, but despite of that, it largely remains an unanswered question, it is very useful for the management of biological diversity, and for understanding the relationship between different biological organisms in a given habitat or ecosystem. And, ultimately, to establish the relationship that humans can have with [other] species."

"The last part of the ethnobotanical research is the data analysis, which will depend, once again, on the research question. Let us say that the stage that is common to all ethnobotanical studies is the physical identification of the species, but if you do not have the material to validate the species, that is, to support what species you are referring to according to accepted scientific parameters, then you do not have a way to use a common language within science. Ultimately, you would be talking about something that has not been defined or that you cannot support with evidence (a sample). So, depending on your research question, you can do anthropological, photochemical, or conservationist studies. As you see, the approaches and the outcomes can vary significantly." ~ *Interview with David R.M. My emphasis. June 2020***.**

4. A bridge between "science" and "culture"

"For me, it has always been very important to take responsibility as a scientist: not only to become a bridge between communities and science, but also to handle the information that I can access in the field with the greatest of care, and to tie it into the processes of scientific discovery in a way that benefits these communities. My interest in [ethnobotanical] work (…) is to recognize the value or knowledge of medicinal plants, so that they [the people] could develop a sustainable economy with the plants of the region (…) **the most interesting approach for me is to generate a kind of scientific work that is able to benefit the community as a whole, rather than engaging in processes of extraction of active principles from plants, or the phytochemical improvement of plants."**

"I feel that I can be a bridge between "science" and "culture" [having my] feet in both places [as a way to] contribute to the development of a kind of science that supports and strengthens communities [rather than pushing for] a scientific breakthrough that ignores the origin of this knowledge (…) that was what I was always very clear about with the Cofán, and what motivated me to do field work in the first place." ~ *Interview with David R.M. My emphasis. June 2020***.**

5. The project with the Cofán began: Uncovering "natural diversity" to protect "cultural legacy."

"I wanted to learn [ethnobotany] from the Cofán Indigenous people themselves, and when I came to the series of ceremonies in January, I met a member of the Cofán community. He was a member of the *abuelito* Q' s community I connected a lot with, and I expressed my interest in offering my support as a scientist to develop a project in the community. [He] told me that he thought it was very good, and that I **had to go to the community to talk to the *cabildo* [community council] (…) he told me that he was going to discuss this with the community, and [that I should] call him the next day to arrange a meeting with the council. That's how it all started**. The next day after a ceremony with *abuelito* Q, I joined my wife in *Jardines de Sucumbios* to talk about this possible collaboration with the *cabildo*. **They were very interested, and they also were waiting for me [to do a] yagé ceremony with them that very same night** (…) We had a very significant ceremony (…) and I met another person who was visiting the community, A.A, a lawyer, who shared her experience and celebrated the importance of [this kind of] work to contribute to the protection of the Cofán territory, and its cultural legacy."

"I initially wanted to work with edible wild plants because of my interest in permaculture and the **importance of [recovering] foods from the forest itself (…), but the governor of the *cabildo* and the community as a whole, were not so interested in that topic, and then I suggested that they should propose a different one that would benefit them.** They told me about a crisis that they were experiencing in the last decades with the most important plant of their culture, which is the *yagé* [*Banisteriopsis caapi*], and they told me that in the last three decades *yagé* populations had considerably decreased, mainly due to external pressures that were receiving in relation to oil extraction, glyphosate spraying, and deforestation associated with the invasion of their territory and land grabbing. And for me, it was very important to work with the sacred yagé vine that was the most important plant for them, which had been so beneficial for me and for my family."

"So, I told them that we could study the *yagé* populations in their *resguardo* (reservation), a protected territory (…). They thought it was a more interesting topic than edible plants and we set on that plan: together, we would work on a project that would allow them to better document their relationships with the sacred *yagé* vine, as well as the decrease of wild populations of this plant in the Ukumari Kankhe reservation, and with it seek to protect their ancestral territory and their ancestral legacy. So, when I returned to the region, I saw it as an interest of the community to work on an issue that they saw was going to have a greater impact (…). "

"On that visit, I realized that they had different types of *yagé* in the reservation and reviewing the literature I did not find documentation on the varieties of *yagé* [in this particular region]. So, that is how the project was developed: to start identifying –using the scientific method—which varieties of *yagé* are found in the *resguardo,* and how documenting this biological diversity would help the Cofán people to protect their territory (…). Since then, I started developing a relationship with the community, and began to design the project with them." ~ *Interview with David R.M. My emphasis. May 2020.*

"Since *yagé* is the most important plant for the Cofán people, and according to their worldviews, it is the root of their culture, their people and their territory, the diversity that this plant represents in the territory is essential to keep that culture alive. **Therefore, if I can verify that this diversity exists by using the scientific method, or, in other words, if I can show that this biological diversity is not simply a matter of what the Cofán say or believe; if this *yagé* diversity indeed exists in their ancestral lands, then what I am doing is verifying that there is a need for legal protection of this diversity."** ~ *Interview with David R.M. My emphasis. July 2020.*

6. "The importance of studying the plant…"

"The importance of studying diversity in the wild is that it reveals the dynamics or represents the possibility of understanding **the dynamics of plant populations and the ecosystems themselves regardless of the influence of people**. Of course, this is not guaranteed because we cannot

determine how much of that territory has been defined by the interaction [between ecosystems] and peoples, and how much has been simply the result of the process of natural selection (…).

"If f those [wild] *yagé* populations and the territory itself have been designed by the Cofán people originally, well, the preservation of that territory in its wild state represents the history, and the survival of that territory in present times and how these [yagé] populations are contributing to the territory (…) In fact, all these life-sustaining processes are deeply grounded in biological relationships found in every a territory, and if we did not have that biological diversity in the territory, we would not have the services that the territory offers to regenerate life, of all species, of humans and of the planet." ~ *Interview with David R.M. My emphasis. July 2020***.**

7. The challenges to study the "root of the territory" and the need to integrate scientific epistemologies and lived experience.

"**Cofán science is very important because it manages to assemble all the elements to explain how the plant heals (…). Thus, integrating knowledge traditions is a big challenge because science has a very defined, very concrete method that allows you to reach conclusions in a specific and concrete way, so that you can have a more solid foundation to make decisions**. And with *yagé*, because it is not only a plant but also a ritual (…) a ritual that defines a culture (…) you are talking about multiple relationships, which [for the point of view of] the scientific method represents a real epistemological and ethical challenge**. For example, the medicinal use of the *yagé* concoction poses many challenges for our discipline: it is a ritual in which this medicine is used, and there are of course mainly cultural elements that our discipline does not always consider."**

"**However, the culture does not exist without the relationship with the environment, so other types of relationships with the environment are also involved in the research process**. [There are] some elements that are physically present in the ritual, and others at a conceptual and abstract level (…) in that **sense, I can tell you that the jaguar is a very important element of the**

***yagé* ceremony, but you do not study jaguars when you study ethnobotany (…) Although shamans do use the fangs because they give them power, science is not going to be able [to explain this].** I [can] experience, define or even describe the power that the fangs give to the shaman, but as an ethnobotanist, my **main concern is to study the plants that are used in the ritual. We are concerned with the validity and replicability of this kind of information**."

"This is where the research is going: we study the active components of *yage*, and see how these components can help [us with] the treatment of certain diseases, **and what current literature proves is that there are components of the sacred vine of *yagé*** (*Banisteriopsis caapi*) that have a very promising potential for the treatment of psychological diseases. There are studies that have included *yagé* practitioners and have evaluated their psychological state before and after the ritual, or before and after a certain number of rituals. And there are already important results that have shown how, after a certain number of rituals, people manage to live an emotional life that allows them to approach existence in a freer way, and in a calmer way, with less fear and resistance to what is being experienced, and there are specific psychology indices that have been used to reach these conclusions."[295]

"I think that *yagé* has (…) great value, but also I see what you ask me about the limitations of the two sciences [Western science and traditional science], and about the limits and possibilities of integration of the two. The challenge is that the scientific method does not have a way of integrating all aspects of the ritual to generate specific conclusions about the taxonomy and the benefits this plant offers."

"There are many variables, there are also many clinical variables, that is, we are talking about a medicine that has been used ancestrally for the well-being of people (…) almost like a *panacea*, but at the same time a *panacea* that for the cultural point of view is a spirit (…) then we are making

[295] See Jiménez-Garrido, D.F., Gómez-Sousa, M., Ona, G. *et al.* Effects of ayahuasca on mental health and quality of life in naïve users: A longitudinal and cross-sectional study combination. *Sci Rep* **10,** 4075 (2020). https://doi.org/10.1038/s41598-020-61169-x https://www.nature.com/articles/s41598-020-61169-x

baby steps to understand all those effects [of] the ritual. From the [point of view of the] scientific method, I still do not know of approaches that can deliver a holistic or comprehensive validation of the practice of yagé. In that sense, I consider that the [Cofan] science of yagé is very important because through [direct] experience [with the plant] it manages to assemble all those elements to explain how the plant heals…". ~ *Interview with David R.M. My emphasis. August 2020***.**

"For me, it is something totally admissible—not as a scientist but as a human, and by talking with you about my life experiences with this plant, I managed to learn to value and develop crucial elements for what it means to be human, to exist (…) As a possibility of being, I could decide to stay in Bogotá and devote my time to a certain type of work, but I could also decide to come here to learn [from the Cofán], and at the same time [use] the clear and precise methods of science to work on a research question that I consider can bring a greater understanding of the plant, and the relationships that are woven into it (…) Ultimately, that is my commitment as a human with the Cofán people: to contribute to the protection and preservation of the their cultural legacy, and their ancestral territory." ~ *Interview with David R.M. My emphasis. June 2020***.**

8. "Again… I'm not talking as a scientist right now, but my work is actually a mandate from the mountain."

"Again, I speak as a human and not as a scientist, only because it was a very meaningful experience that I lived. I told you about the experience with yagé, and then with the ceremonies that I lived with *abuelo* Q who is recognized, in his community and in the Amazon as a whole, as one of the most important *sabedores* of the yagé medicine (…) This experience allowed me to understand that my work was not only an academic opportunity as a scientist, but also a commitment to Cofán culture from the vantage points of the elements that define it. When I got to speak with the *cabildo*, and they proposed that project to me, it seemed to me of great interest, but it was only in the *yagé* ceremonies with *abuelo* Q that I felt that I was mandated to do that job, and it was only because of the experiences we lived with him. I asked the plant [for] a clear

guidance to generate the greatest contribution to the preservation of the Cofán cultural legacy (…) I was going to have a very strong experience that was going to show me some guidance."

"That morning I was full of energy, totally lucid (…) I have no way of proving that [*David is referring to a personal experience with the plan connected to the development of the project*] (…) it was clear that my research work was not simply an academic one, but also a mandate from the invisible people of the mountain (…) I felt at that time that *abuelo* Q in his role as the highest authority of the Cofán people was giving humanity a vote of confidence for allowing him to live so many years (over 106) because he believes that we can still reverse the destruction of the planet, the cultural damage, the destruction of the ancestral territory (…)."

"I feel it as a great commitment (…) we can do something not only to reverse the decline of the yagé populations, but also to revitalize the (yage) culture and put it in the place it deserves as a world culture, and as a framework of life that supports the ancestral territory and the science of yagé (…) and that, as a whole, is what gave me that feeling of commitment, and why I consider that my work is actually a mandate from the mountain." ~ *Interview with David R.M. My emphasis. June 2020***.**

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Connecting to Part II

Part I (*Towards a Law Otherwise*) proposed an ethnographic approach to the law by studying the relationships between other-than-human beings such as medicinal plants, decision-making, and territorial governance in the Andean-Amazon region of Colombia. *Towards a Law Otherwise*, then, encompass an ethnographic and theoretical argument concerning the socio-legal agency of plants and the invisible peoples in this region. With this empirical and conceptual foundation, part II (*The Rights of Nature: Limits and Possibilities)* will propose a critical and non-dualist approach to the rights of nature to expand normative systems beyond anthropocentric views and practices.

PART II: RIGHTS OF NATURE: LIMITS AND POSSIBILITIES

Part II (*The Rights of Nature: Limits and Possibilities*) deals with some of the conceptual limits and possibilities of the rights of nature clause in the context of an emergent Earth Law movement in Latin America. Based on the socio-legal worlds of other-than-human beings already introduced in the first part, *Rights of Nature* re-imagines core premises of the social and legal sciences, namely the idea that the law is primarily linguistic or propositional; the notion that rights and responsibilities are commensurable across different cultures and legal cosmologies (Chap. 3 "Conjuring"), or that personhood is fundamental for legal redress (Ch. 4 "Forest on Trial"). As a contribution to a relational theory of legal agency, *Rights of Nature* proposes a new comparative methodology for legal analysis (Ch. 3 and box 4) and revisits the notion of legal personhood by thinking with plants as "prototypes" of distributed socio-legal agencies (Ch. 4). Thus, part II draws from legal theory, post-humanist anthropology, ethnographic examples from Amazonia, and the emerging field of plant sentience and intelligence.

CHAPTER 3: Conjuring Sentient Beings and Relations in the Law: Rights of Nature and a Comparative Praxis of Legal Cosmologies in Latin America[296]

1. Introduction

Recent norms and judicial decisions on the Rights of Nature (RON) place life at the center of legal discourse in Latin America (Martínez and Acosta 2017). This "legal revolution" (Boyd 2017) thus purports to upend the paradigm of solely human legal subjectivity in recognizing the personhood of nature. Nevertheless, the RON approach seems to depend on an assumption that the form of law is primarily linguistic and propositional. In this way, it reveals another critical assumption: that law is a system of norms made by humans to regulate human conduct in relation to an externally existing natural world, thereby insisting on a separation between law and life processes. This chapter argues that recognizing nature as a legal person and subject of rights falls short if law is understood as a matter of human language only and nature is understood as an adequate conception of cosmological interdependencies between "all that exists" (Escobar 2018). The thesis of law as language seems to reinforce a much-contested rift between mind and body, culture and nature, among other boundary-making notions at the root of modern thought and practice (Descola 2013). In what sense, then, could conjuring other-than-human beings as agents of legal meaning, rather than mere recipients of state-sanctioned rights, transform what we mean by law and RON in Latin America?[297]

This chapter probes this question in three steps. First, it discusses a relational ontology of law based on the principle of radical interdependence of all that exists (Escobar 2018; Mills 2019), then explores how this approach may challenge understandings of RON premised on an ontology of

[296] Special thanks to Kirsten Anker for her encouragement, enriching conversations and insightful comments and suggestions at various stages of this chapter. Also, thanks to Laura Gilbert, Daniel Ruiz, Joshua Sterlin and Herman Greene for reading an earlier version of the chapter. Thanks to Nicolás Kosoy, Eduardo Kohn, Geoffrey Garver and Peter G. Brown for ongoing conversations around these issues, and to L4E project manager Dina Spigelski for her ongoing support. This research was supported and fundedby the Leadership for the Ecozoic (L4E) project at McGill University. Last but not least, thanks to Colciencias in Colombia.

[297] Similar argument in Cullinan 2003; law and language in Anker 2014; language and other sign modalities beyond the human in Kohn 2013.

separation or fragmentation of the living. 298 As a way to encounter radical interdependencies in law, the third part discusses a methodology to harness RON's potentials to heal socio-ecological relations 299 concealed by a theory of "law as language" (Anker 2017: 208). The chapter concludes that repairing 300 these relations through the law involves the crucial speculative step of rethinking our ontological commitments to an all-too-human law to hold space open for another legal imagination and practice (Stone 1972. See Pellizon and Gagliano 2015).

2. Relational Ontologies in Legal Thought

The principle of "radical interdependence" suggests that entities do not precede the relationships that comprise them (Escobar 2018). In fact, all existents, whether minerals, animals, plants, human or rivers, co-emerge relationally. From discrete entities to interdependencies, the implications of this "remarkable reversal" (Viveiros de Castro 2014: 39) for legal theory and practice are profound. This section argues that the law can be imagined as a *way of life* and thus embraces Anker's radical proposal to consider "what it is to take forests, mountains, and rivers as law" (2017: 194) or as more-than human language (Kohn 2013). A theory and practice of law based upon this principle, namely a relational legal ontology, could leverage much-needed socio-ecological transformations in Latin America.301

A. Law as meshwork

Anthropologist Tim Ingold defines a way of life as the trajectory of movement and growth of all beings. Every being is instantiated in the world "as a path of movement along a way of life" (2011: 4) and these paths or lines form a tapestry of co-emergent lifeways that he calls a "meshwork"

298 Drawing from Escobar (2018), as used here the word ontology refers to how people, human and not, enact different worlds or "reals" rather than different cultural representations of a singular and common reality. Ontology also refers to the normative attributes of these world-making practices and the limits and possibilities of comparing and translating between them.
299 Law as a healing practice in Swaim 2006.
300 Escobar (2018) suggests the notion of "design" as a political-ontological praxis of repair.
301 For the ontological dimensions of law see Vermeylen 2017; Davies 2017; Boulot&Sterlin unpublished.

(2011: 63). To further clarify this notion, Ingold contrasts the meshwork with the idea of "network," which represents the inter-connection between preexistent entities in space. He notes that what it is commonly known as the web of life, that is, the material relationships between organisms in an ecological community, is not a "network of connected points but a meshwork of interwoven lines" in a particular place (2011: 63). For example, winding rivers, growing plants, moving animals and humans, and even legal propositions, are all ways of life or trajectories of growth and movement relentlessly emerging together. The notion of a way of life then blurs the dividing lines between life as the domain of biological phenomena and law as the domain of social meaning in Western metaphysics. 302 Depicting ways of life and movement rather than substances, indigenous concepts of the self in Amazonia further illustrate this relational ontology.

In Amazonia, animals, plants, mountains, and rivers, among other beings, are endowed with a form of interiority or soul with attributes "(…) identical to those of humans, such as reflexive consciousness, intentionality, affective life, and respect for ethical principles" (Descola 2013:14).303 In this region, the world is not intrinsically organized through the stable categories of nature and culture since all beings (human and not) share a common interiority concealed underneath the mask of their own bodies (Descola 2013). This theory of the self as multiple "natures" or bodies sharing a common interiority or "culture" across different kinds of beings affords quite a different understanding of the law as something beyond cultural or human meaning. For indigenous communities in Southwestern Colombia, legal protocols come into being through ritual and everyday relations between animals, plants, spirits, and humans mediated by the *taita* (often a traditional political authority*),* or the shaman (medicine and spiritual person).[304] Applied in instances ranging from ritual procedures to research contracts and from prior consultation between the state and local authorities to the allocation of justice in the community itself, legal meaning in these protocols is the emergent effect of inter-being

302 Drawing from Ingold (2011), I am making an analytical distinction between life—a cell, for example—and living as the capacity to move or act, which life shares with nonlife such as rocks, mountains, and rivers, among others.
303 Also see De la Cadena, 2015; Kohn 2013; Viveiros de Castro 1998.
[304] Conversation with A.A. former education advisor in Colombia, and Yagé practitioner. Southern Colombia. Field notes, 2019.

engagements rather than the will of the human expressed through the vehicle of language.[305] This legal cosmology imagines the law as a meshwork and challenges "Western" legal theory on at least two fronts. First, it expands the arc of legal subjectivity to include humans and more-than-human beings as ways of life or movement rather than settled bodies with pre-designed limits. Strathern claims that, although the modern conception of the (natural or corporate) individual as the archetypal legal person prevents the recognition of relationships as legal subjects, both relationships and legal subjects "are embodied in persons (human and not) subject to political-ritual protocols and public attention" and so can be equivalent (2005: 13). An ontological commitment to relations rather than substances has a special bearing in concrete scenarios of adjudication where legal redress requires politically contentious demarcations of socio-ecosystems (See Colombian Constitutional Court, Decision T-622/2016).

Secondly, this relational principle exceeds or destabilizes the dualistic categories that structure legal thinking from the ground up in modern law. For example, in its Decision SU-510/1998, the Colombian Constitutional Court grasped that the non-separation between the plane of spirituality and the plane of the mundane practiced by the Ika (an indigenous group in Northern Colombia) was part of the general integration of systems (religious, social, legal) in Ika life. Non-separation is expressed by Ika through *pagamentos* (payments) to Mother Earth – such as through offerings of food, archaeological objects, human hair, semen, blood, cotton-threads, seashells, and communal work – and precedes almost any human act from the most ordinary to the most arcane. The Ika were seeking to prevent the proselytising activities in their communities of an evangelical church, which prohibits *pagamentos* as superstitious beliefs. The Court upheld an Action of Protection on the basis that proselytism was a threat to local forms of embodied spirituality as an expression of the Ley de Origen (the Original Law of Universal Balance) and therefore to indigenous rights to cultural diversity. The Court writes that "each thought, act, fact or object, regardless of the field in which it occurs or is found, has a religious meaning that is essential to individual and collective existence" (Decision SU – 510/1998, p. 64). To explain the relational

[305] Conversation with David Rodríguez, biologist and plant scientist working on the preservation of wild populations of medicinal-ritual plants in Southern Colombia. Field notes, 2019.

principle, the Court highlights the Ika metaphor of weaving, noting that weaving fabric literally means "weaving the fabric of one's life," that is, participating in a way of life that both create material forms (a piece of fabric) while exceeding these forms to *do* persons with thoughts and social roles. A relational practice with material and social/semiotic orientations, weaving "organizes and intertwines the web of social relations where the weaver is also inserted." (Ibid, p. 44) Thus, it is through weaving that "thoughts are organized and embedded in the universal order that fulfills […] the Mother's (Earth) Law" (Ibid, p. 44). Powerfully, in drawing on Ika cosmologies and material practices of interdependence to uphold the Ika Ley de Origen, the Court itself engaged in a relational practice of weaving between the dualistic categories of law "proper" and Indigenous "custom".

So how does a relational ontology transform our understanding and practice of the RON beyond the recognition of state-granted rights to natural entities? What does it mean to grant rights to relationships instead of substances and/or persons? In the next section, I claim, first, that although it promises to draw on these relational ontologies, RON does so in a limited way. Taken as legal language to shift the idea of actors, namely as a human *only* issue, the RON approach transposes the notion of the individual as a legal subject onto nonhuman fluid agencies without integrating their constitutive interdependencies. Secondly, and perhaps more crucially, RON's *realpolitik* is far removed from the ontological commitment to the nonhuman as a value in itself (Gudynas 2011). Although several Latin American nations recognize nature as a subject of rights via their constitutions, 306 legislation, 307 and case law, 308 the RON approach has had the effect of concealing extractivist economies (Weitzner 2017) and the rights that enable these economic practices (i.e. property, entrepreneurial freedom, patents), to the detriment of the rights advanced, for example, the rights "to exist, persist, maintain […] vital cycles, structure, functions and […] evolutionary processes" of nature (Constitution of Ecuador 2008, Art. 71). Taken as a set of normative propositions to expand the arc of legal subjectivity to rivers, forests, and animals,

306 Constitution of the Republic of Ecuador 2008, Legislative Decree No. 0, Official Registration 449 October 20, 2008.
307 Statute of the Rights of Modern Earth No. 071, 21, Dec. 2010, Bolivia.
308 Colombian Constitutional Court, Sentence C-035 2016; Colombian Constitutional Court, Sentence T-622 2016; Justice Supreme Justice Court, Colombia, STC 4360-2018.

RON actually conceals the lifeways where these rights are embedded, namely a tapestry of territories, indigenous struggles, forms of legal meaning, and economic systems, 309 among others. Partly thanks to a deep-seated conception of the law as a human domain separated from and on top of the living relations it aims to regulate, RON forms a seemingly autonomous set of normative propositions in a meshwork of lifeways turned into resources, commodities, and environmental services through the circuits of capital (Kosoy and Corbera 2010). As autonomous propositions these rights can be played off – balanced, cost-benefitted – against other abstract rights to resources that ignore the lifeways that sustain them both.

3. Rights of Nature and Ontologies of Separation

A game changing leap in legal theory, the Rights of Nature approach is still grounded in the ontology of separation between law and life that endorses a conception of law as human language only (see Anker 2017). However, RON has the potential to heal socio-ecological relationships. This section summarizes important challenges this pervasive ontology of separation poses for the implementation of RON and the final section, *Reweaving the legal fabric: A tectonic methodology*, probes how enacting RON as meshwork can become a tool for what Escobar calls the "political activation of relationality" (2018. See Blaser 2013). This activation of relational ontologies "can be gleaned from developments in fields as varied as local food and environmental activism, opposition to extractivism, alternative economies […] and some varieties of urban environmentalism, as well as from emerging transition frameworks such as degrowth in the Global North and 'alternatives to development' and *Buen Vivir* in the Global South […]." (2018: 101) Yet, this activation will need to go hand in hand with ensuing legal transformations not only at the level of positive law but also at the level of legal imagination. A tectonic methodology can be a step forward in this direction.

309 On the relationship between ecological law and degrowth economica see Garver 2013.

A. The challenges: Diffuse nature, collision of cosmologies, discreteness, and human mediation

Generally speaking, Western legal theory is based upon the primacy of separation between social facts and ecological interdependencies; norms and values; positive law and local customs, among others. And it is precisely because of this separation that it is possible to speak of rights for *external* natural beings. It is challenging, however, if one takes a rights approach, to say that nature should be *in* law without radically transforming what we mean both by nature and law. The difficulty of a legal embeddedness of "nature" speaks to the limits of using categories of a legal ontology based on "nature," and of the concept of rights as trump-style claims conferred by the state on nonhumans, giving them legal meaning which they would otherwise lack. There are a number of conceptual, but also deeply political, challenges in understanding rights of nature:

i. *Diffuse nature*: The notion of nature is diffuse because this word may refer to humans and nonhumans, or to nonhuman beings only (Greene, *unpublished*, 1). Since nature is pervasive in human life and human impacts are pervasive in nature, they cannot be separated. Whereas this argument is common parlance in social theory today (Ulloa 2005), it highlights the need for a new language of interdependence to overcome the primacy of separation and its cascading effects on socio-ecosystems. This diffuse character of nature speaks to the encounters between divergent ways of seeing and worlding, or different cosmologies.
ii. *Collision of cosmologies:* The second challenge refers to what we can call the collision of legal cosmologies (western and non-western). The Constitution of Ecuador, for example, recognizes an ample set of rights for natural beings in the following terms: "Art. 71. Nature, or Pachamama, where life is reproduced and occurs, has the right to integral respect for its existence [...]."310 The clause undoubtedly expands the circle of rights to a generic nature as an index of a legal paradigm shift in contexts of socio-ecological collapse. Do we need to seek the consistency between this clause and the principle of radical interdependence outside of the legal text (the proposition)? At the propositional level, the clause extends personhood to

310 See Political Databases of the Americas, 2012.

a *generic* nature that is immediately equated to the Andean Pachamama. For Quechua speaking people, however, Pachamama encompasses the Earth/time; the Sun and the Moon; the Goddess of Fertility, and the prime origin of all that exists.311 Does this generic nature 2.0, that is, as legal person,312 encapsulate the inter-existences of Pachamama? Does granting rights to the Andean Condor or the Amazonian manatee secure the ongoingness of the relations that make these nonhuman selves thrive? And what about the rights of the Andean mountains and the Amazonian rivers where these (non) human people co-emerge? This challenge brings us closer to the problem of rendering all existents either as discrete substances or as fluid life-ways or "paths of movement and growth" (Ingold 2011).

iii. *Discreteness:* This nature is composed of millions of species and "each aspect of nature involves a different (socio-legal) interest." (Greene, 2) As a result, it is impossible to articulate legal claims for each component of nature (see Burdon 2010) which means that a democracy of rights based on discrete beings is impracticable and may lead to an identity politics for nature with challenges similar to those already faced by humans groups, such as, the state recognition of peasant communities as collective actors beyond markers of ethnicity or race. Here is a telling example to illustrate this point: "one may say an ant has a right to live, to eat, and to protect itself by stinging, but does it have such rights at all times and in all places? If not, what are the ant's rights relative to other components of nature, especially humans?" (Greene, 2) Therefore, the state recognition of rights refers to the problem of representation and mediation of (human and non-human) interests.

iv. *Human mediation*: The nonhuman will always require the mediation of a human guardian because nonhuman beings cannot articulate legal claims before a court of law using a symbolic system of communication (see Kohn 2013). The self-standing of nonhumans, as it were, is impossible within a legal system based on an idea of law as language only, or a conception of law as a human-only system of meaning.[313] However, this difference in modes of communication between human and nonhuman selves should not foreclose *other forms of*

311 Diccionario Quechua-español-Quechua Edición de la Municipalidad del Cusco, 1995.
312 Critique of personhood in Vargas 2020.
313 On decision-making in plants, Gagliano 2015. On more-than-human legalities, Braverman, 2018.

speaking and listening in the legal field. The understanding of rights as a human language only performs a particular kind of difference between the human and other lifeways, for example, a mountain. And this kind of difference is specific to the so-called naturalist ontology of modernity that pro-claims the existence of a single common nature shared between different human cultures that have different representations of it (Descola 2013), or different cultural systems.

These challenges raise at least three crucial questions for legal theory. What should be considered as existent for concrete scenarios of adjudication? What kind of people should act on whose behalf? And what is the procedure for adjudicating rights in contexts of pervasive extractivism and war? The preceding assessment calls for a radical transformation of RON's legal imagination. As RON highlight substantial territorial and cultural claims by indigenous and peasant communities in Latin America, established critique has underlined the dangers of reducing those rights to a mere icon of "environmental statehood" (Rossotto 2014) in contexts of extractivism. The gap between aspirational legal propositions, on the one hand, and increasing neo-extractivist practices, on the other (Svampa 2019; Gudynas 2011), is but a symptom of a deeper rift between the co-emergent logic of life and the mechanistic logic of the law in modern societies (Capra and Mattei 2015).

4. Reweaving the Legal Fabric: A Tectonic Methodology to Encounter RON in Life

By following RON to their underlying lifeworlds and bringing the latter back to the surface of adjudication, in this section, I propose a tectonic reading methodology as an invitation to harness RON's potential to "heal the web of life," following Colombian anthropologist Arturo Escobar (2018, 2019). Escobar suggests a relational concept of health as the interaction between elements stemming from an entire range of systems (biophysical, economic, political, cultural, environmental, spiritual). According to this holistic perspective, we can also define healing as "an emergent property of the dynamic interaction of the self-organizing networks entailed in these systems, not the result of a few factors" (Escobar 2019: 3). Adopting this perspective, Escobar

suggests, “one reaches the conclusion that what needs to be healed is the entire system of relations, not just bodies or ecosystems.” (Ibid) With this in mind, the next section fleshes out a methodology to harness these healing possibilities in the law. The methodology should be considered as a mode of asking questions and following legal propositions to their underlying life-worlds and compares two contrasting RON imaginaries. The first one will be referred to as the state proposition, which describes RON as (state) language to grant legal subjectivity to nature. The second one, the cosmological proposition, imagines RON as a meshwork of life-ways, namely an opportunity for the legal activation of relationality. This section claims that RON as simply *language* makes nature as network (ontology of separation), whereas RON as *lifeway* makes cosmos as meshwork (relational ontology).

a. Reading RON as text and as teks

A tectonic reading of the law refers to the act of comparing two different albeit partially connected enactments of the law. In this context, "proposition" designates a unit of comparison. For the purposes of my argument, the phrases “X has a right to Y” or “X has a responsibility to Y” are examples of such a propositional language. In addition, I use the term “tectonic” in two ways:

(1) As the underlying plates of the earth’s crust shifting us inexorably around the globe, crashing into each other. Following RON’s relations all the way to their underlying life-worlds is first and foremost to encounter the collision of two different modes of worlding through the law, namely separation and interdependence.

(2) The act of weaving, for example, a fabric like that woven by the Ika community in Northern Colombia. The Indo-European root of tectonic (teks) means to weave and “to make a wicker or wattle framework for mud walls” (Paternosto 1996: 165). In fact, the words “text,” "texture," and "context" all derive from the word textere, which comes from the same root as teks. “One of the root’s suffix forms, teks-la, is in Latin tela (net, warp, spiderweb), while another of its suffix forms,

teks-na, means "artisanry" (weaving or fabricating), which in Greek is tekhne (art, artisanry, skill)" (ibid). I use these two meanings analogically.

Once we notice the collision of ontologies represented in these two propositions (state and cosmological), we can now begin to analyze how they are enacted through the law vis-à-vis the Rights of Nature. For our purposes, the tectonic analysis refers to the legal proposition both as a text, that is, the words written in a document, as well as teks, that is, the action of weaving a meshwork (spiderweb, *tela* or fabric) in the Ingoldian sense. This tectonic strategy reveals different modes of worlding through the law. A corollary of the radical ontological difference between separation and interdependence, RON-as-text would be akin to a state proposition that enacts rights for nature as a delocalized abstract person. At the same time, RON-as-*teks* would be akin to a cosmological proposition that enacts rights for a radically situated bundle of socio-ecological relations in particular places vis-à-vis fluid legal meshworks. RON as *teks* recursively emerges from local ecologies and places with histories that cannot be transplanted into other places without some form of colonial damage. In brief, RON-as-text makes nature as network, whereas RON-as-teks makes cosmos as meshwork (see Table 11).

State Proposition	***Cosmological proposition***
RON as language	*RON as lifeways*
RON as text	*RON as teks*
Network	*Meshwork*
Nature	*Cosmos*

Table 11: Collision of cosmologies

In table 12, I bring these two RON ontologies together and engage in a comparative analysis between them. In a way, the table attempts to call attention to the mutual incommensurability

between these two ontologies (and the different worlds they *world*) as it follows RON to their constitutive meshworks. The comparative methodology includes the following steps: (1) the selection of propositions *a* and *b* (*state* and *cosmological* propositions respectively); (2) defining criteria of comparison between them while acknowledging the limits of cross-ontological translation—or the impossibility of ontological equivalence or incommensurability (Munda 2016); (3) determining the fluid "outcomes" of comparison, as well as (4) possible questions for practical scenarios of adjudication.

(a) State proposition	**(b) Cosmological proposition**
Pre-analytical assumption: The rights of nature are transparently listed in the law (i.e. a Constitution). They "exist" as language.	**Pre-analytical assumption:** The Rights of Nature may not *exist* as legal language and the general notion of "rights" may not have a local equivalent. Strictly speaking, the comparison may not be possible and this itself can be considered an outcome of the act of comparison. "Rights" to something might be locally articulated as "responsibilities" towards something or oneself.
(1) Selecting the proposition	***(1) Selecting the proposition***
Chapter 7: Rights of Nature	**Conception and Application of the Law of the Origin of the Inga People (Colombia)**
Art. 71: Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution. Every person, people, community or nationality, will be able to demand the recognition of rights for nature before the public organisms. (Constitution of Ecuador, 2008)	Wasikamas law (the law of the guardianship of the Earth) is recognized in daily life as the existence of an infinite web of relationships between humans, animals, plants, spirits, and minerals. Wasikamas is found in the Inga language as one of the most important sources where the Ancestral Knowledge of our community is revitalized; this knowledge holds the key to the Andean and Amazonian worlds. Wasikamas is *samai* (joyful resting) or encounter between beings in time and space.[314]

314 Taita Hernando Chindoy, Personal communication, Feb. 2020.

(2) Criteria of Comparison

a. What is considered as existent (e.g.):
   - Nature or Pachamama (partition of beings)
   - Humans
   - …
b. Who has (or has not) rights
   - Nature and all its partitions
   - …
c. What kind of rights does this "who" has?
   - Right to exist
   - Right to evolutionary processes
   - …
d. Who speaks at the court of law
   - Humans (person, people, community or nationality…) on behalf of nature.
e. Reading strategy and aim of the proposition
   - Exegesis under conditions of law as a system of norms.
   - Aim: allocating rights and responsibilities among existents.

(2) Criteria of Comparison

a. What is considered as existent (e.g.):
   - Web of relationships
   - Plants, animals, humans, minerals (continuity of beings)
   - …
b. Who has (or has not) rights
   - It is hard to determine based on this propositional form only.
   - More than rights, the law is about the guardianship of the Earth.
   - Existents are interdependent and this interdependence can be subject to rights. Ensuing need to "compose" this local interdependence before adjudicating rights.
c. What kind of rights does this "who" have?
   - Those emerging from encountering what is considered as existent
   - Guardianship of the Earth.
   - Responsibilities rather than rights.
   - Rights (to exist, etc.)
d. Who speaks at the court of law
   - Web of relations where humans are embedded.
   - Humans as bundles of relations speak on "behalf" of those socio-ecological relations.
e. Reading strategy and aim of the proposition:
   - Tectonic: following relations through propositions and experience.
   - Aim: harnessing RON as a tool to re-compose "the infinite web of

	relationships" or healing life in a place (see below).
(3) Determining fluid "outcomes" of comparison	***(3) Determining fluid "outcomes" of comparison***
• Legal ontology of separation • RON as text • Providing a normative horizon for protection for nature (i.e. environmental law)	• Legal relational ontology • RON as *teks* can heal socio-ecological relations • Offering a normative horizon of regeneration of life relations in contexts of extractivism (i.e. earth law, ecological law).
(4) Determining possible questions for practical scenarios of adjudication.	***(4) Determining possible questions for practical scenarios of adjudication.***
• *Pachamama* is the Fertility Goddess who presides over planting and harvesting, embodies mountains, rivers and forests, and causes natural disasters as well. Are nature and *Pachamama* the same? Are we granting rights to the same kind of *person*? • Are these persons (nature and *Pachamama*) partially connected? • Does granting rights to nature with all its partitions, harm *Pachamama* in anyway?	• What are the challenges and possibilities of considering this story as a source of law? • "How much" ontological uncertainty about the subject of rights is acceptable before engaging in the act of adjudication? • Does the idea of the sacred impose yet another dualism between a transcendental entity and the inherent powers of a creative-Earth itself?

Table 12: Tectonic reading of the Rights of Nature

This comparative analysis attempts to encounter legal language differently, that is, as one thread in a living tapestry of human and more than human life-ways. This analysis is then an invitation to read the state proposition (e.g. "Nature has rights to…") in the broader context of extra-legal and extra-human "evidence." In this sense, it aims to probe the possibilities and limits of translation between different legal systems and the worlds they capacitate and, perhaps more importantly, it is an invitation to consider the nonhuman seriously in legal theory and practice. Although schematic, the analysis suggests that healing relations through the law—or,

paraphrasing Escobar (2018), the legal activation of relationality—is also a task of comparison between propositions (and between relations). But it is also a task of following RON's lifeways as far as they can take us in a particular legal case. Next, I unpack the elements of this comparison.

b. Comparing propositions: what do we make of this analysis?

i. Pre-analytical assumptions: The state proposition—RON as a set of normative claims— suggests that the rights of nature exist first and foremost as state language. This premise brings into being a particular kind of legal entity: nature. The cosmological proposition—RON as meshwork—suggests exactly the opposite, that is, RON might not *exist* as such and even the notion of "rights" might not have a local equivalent where the web of life has been broken and yet the activation of legal redress is still needed. This radical difference could cancel out the "resolution" of a case vis-à-vis the mere recognition of rights. In fact, the comparison between these two propositions reveals the possibility of their mutual incommensurability given the absence of a common ground of comparison. In other words, what the state proposition sees as rights, the cosmological proposition might see as responsibilities (a sort of legal "perspectivism." Viveiros de Castro 1998). The underlying tectonic effect—the collision of cosmologies—presents us with an interesting realization, namely there are different ways of conceptualizing what the law *is* as well as different ways of worlding through the law, and they might not be mutually commensurable.

ii. Selecting the proposition: In the state proposition, RON is ontologically prior to acts of comparison and adjudication. Hence, these rights *exist* primarily as language vis-à-vis positive law. Conversely, in the cosmological proposition, RON *becomes* both (a) an emergent property of cross-ontological comparison or its impossibility (that is, RON is what comes after (dis)-agreements between agents of the human and non-human type), as well as (b) what is already recognized as "an infinite web of relationships" in the everyday of a particular collective, for example, the Law of the Guardianship of the Earth of the Inga People. While selecting the state proposition is somewhat straightforward, this is not the case when it comes to deciding about the cosmological proposition. The sources of cosmological propositions can be multiple (storytelling

as law, locally codified law, deliberative law, material culture, etc.) and the selection mechanism is not extinguished simply by selecting isomorphic equivalences across cultures (i.e. what is the definition of "nature" in modern and non-modern societies?). Is the act of comparison even possible? Is there something akin to "rights" in a local community that allows comparison? Is comparing actually translating? What are the risks of translating across ontologies when it comes to local law, culture, and territory?

iii. Criteria of Comparison: Five themes come to mind once we've established the limits and possibilities of cross-ontological comparison (Descola 2013) in contexts of adjudication. First, we have to determine what is considered as *existent*, for example, "nature," "human and more-than-human persons," "inter-being relations," and "meshworks," among other *existents*. Depending on what is rendered as existent, we've to establish who has (or hasn't) rights to *what* and what kind of rights does this "who" have. Once we have established what is deemed as existent and the kinds of rights predicated upon them, for example, the regeneration and respect for reproductive cycles, we'll then need to establish who will be considered as a legitimate spokesperson for the rights-holder. And this question is not only about legal representation in the context of adjudication, but also about learning the local protocols of representation outside of the court. These protocols could involve careful and respectful engagement with locally appropriate decision-making protocols with different kinds of beings. The fourth step would be then to determine the proposition's reading strategy and aims.

In general, we imagine two general kinds of reading strategies, namely *exegesis* under conditions of law as a system of positive norms, and *tectonics*—in the double sense of encountering the collision of ontologies and following the socio-material relations of rights—under conditions of law as meshwork. The first strategy (exegesis) leads to the allocation of rights among pre-determined existents, while the second (tectonics) harnesses RON's capacities to heal relations in flux and becoming (ways of life). Exegesis and tectonics are both important and complementary strategies, which means that comparing between them is not a zero-sum game. How can the law heal relations? Following the cosmological proposition, the law can heal relations by cultivating

and stimulating their conditions of emergence in a particular place. In this context, the word "healing" refers to the holistic regeneration—to the extent possible—of the fabric of dynamic and self-organizing interactions between ways of life (i.e. minerals, plants, humans, animals, spirits, legal propositions) that make up the meshwork of a particular place. More than allocating rights between existents, the cosmological proposition aims at articulating a kind of law that can become a tool to regenerate (re-weave) socio-ecological relationships that make up a place (spiritual payments, ecological corridors, seed diversity). And this requires a kind of legal imagination and language where beings are not only considered subjects with rights, but also law-producing selves. This is what we've called the legal activation (or healing) of relationality.

iv. Determining fluid outcomes of comparison and possible questions for practical scenarios of adjudication: Both the state proposition and the cosmological proposition open up a shared horizon of environmental protection. Where RON as text provides a normative horizon for the protection of "nature", RON as *teks* offers a normative horizon for the regeneration and "ongoingness" (Haraway 2016) of life relations in contexts of extractivism (i.e the principal source of harm). Again, they are partially connected. Although the state proposition weaves *Pachamama* and nature together, this begs the question of whether nature and *Pachamama* are the same kind of entities. Are we granting rights to the same kind of *subjects*? On the other hand, the cosmological proposition opens the critical question of how far can we go with ontological uncertainty when it comes to deciding who is a "subject" of rights and what is an "object" of protection. Is this sort of ontological undecidability acceptable in practical contexts of adjudication? These questions will remain open for the time being. Suffice it to say that this methodology is as much about learning to ask questions as it is about learning to weave RON's relational field for a particular case involving unsettled existents such as nature and *Pachamama*.

5. Conclusion: Healing Socio-ecological Relations through the Law

This chapter has offered a few thoughts on two different projects. The first, RON as text, is based upon the ontological assumption that the real is divided into nature and culture and other

cascading divisions. This ontology leads to seeing what positive law calls "nature" as a legal person, often at the expense of the relations behind the mask of legal subjectivity. The second, RON as *teks*, is based upon another pre-analytical assumption, which, following Escobar, I have termed the Principle of Radical Interdependence. Translated into a legal principle, this cosmological premise suggests that the project of the law is also about discerning (legal) meaning in relationships beyond the human, language, and the state (Davies 2017), and I have proposed a methodology to encounter such relations in the law: tectonic reading.

The current coupling of textual RON with the persistence of the development/extractivist project in Latin America demands yet another braiding move, namely, to imagine economic relations from the vantage point of indigenous cosmologies of interdependence (see Atleo 2011). A potential future step for this line of inquiry would be to explore an animist framework for economic practice as part of a post-extractivist agenda for this region. Understanding law as meshwork and economics as reciprocity is an integral part of a relational imagination and practice to heal the web of life and nurture its radical ongoingness.

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Connecting to chapter 4

This chapter has offered a few thoughts on two different projects. The first, *right of nature as text*, which is based upon the ontological assumption that the real is divided into nature and culture, and other cascading divisions. This ontology leads to seeing what positive law calls "nature" as a legal person, often at the expense of the relations behind the mask of legal subjectivity. The second, *rights of nature* as *teks* or human and other-than-human entanglements, is based upon another pre-analytical assumption, which, following Escobar (2018) and Mills (2019), I have called the *Principle of Radical Interdependence*. Translated into a legal principle, this cosmological premise suggests that the project of the law is also about discerning (legal) meaning in relationships beyond the human, language, and the state (Davies 2017), and I have proposed a methodology to encounter such relations in the law: a tectonic reading.

If chapter 3 examined the notion of rights, chapter 4 will deal with the notion of personhood in legal theory and practice. Legal persons such as human beings and companies can seek legal redress in a court of law. The notion of legal personhood, however, seems to actualize the contested modern tension between nature and culture in most of social and legal theory at present. More than discontinuous and self-contained beings, Amazonian forests embody sentient and mind-bearing relations involving humans and other-than-human beings such as plants, animals, and spirits. Can the forest speak *law*? Do forests endlessly require the mediation of human modes of legal representation?

CHAPTER 4 - Forest on Trial: Towards a Relational Theory of Legal Agency for Transitions into the Ecozoic[315]

1. Introduction: Vegetal Agencies in the Law

With the serene joy of decades of experience and struggle, Don D, an indigenous elder from the Cofán community in Bajo Putumayo, Colombian Amazon, was seated on an old-looking stool holding a piece of cord. "P passed away," he said, and then remained silent. As I introduced myself and paid my respects, I was able to recognize the skin of the manioc plant in the elder's hand. "*El abuelo es yuca*" (the elder is a manioc plant), I thought as I was musing about plants as persons in Amazonia (Gagliano 2013). Are human engagements with other beings limited to the dubious epiphany that we all depend on the mineral, vegetal, and animal life of the world? What do other-than-human beings have to do with the law in this region?

National legislations and governance models across the world increasingly recognize the legal subjectivity of other-than-human beings (Acosta and Martínez 2011, Harris 2014, Youatt 2017). The contested clause of the rights of nature (RN),[316] for instance, is a growing response to economic practices underpinning the "inter-*related global crises of climate*, food, *energy*, poverty, and *meaning"* (Escobar 2016, 13). While the RN express the radical interdependence between natural and social systems, dominant environmental governance models in Amazonia seem deeply entangled with what Colombian legal scholar Gregorio Mesa calls an "ethics of consumption". He refers to the social mindsets and institutions casting nature an endless quarry of material goods and ecosystems services to meet ever-expanding human needs (2008, 333). Increasing eco-centric legal proposals such as the RN emerge in the midst of neo-

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316 In the Latin American context we have, among others, the following judicial decisions: Protective Action issued by the Provincial Court of Loja, Sentence No. 1121-2011-001, 30 March 2011; Constitution of the Republic of Ecuador 2008, Legislative Decree No. 0, Official Registration 449 October 20 2008; Colombian Constitutional Court, Sentence C-035 2016; Colombian Constitutional Court, Sentence T-622 2016; Justice Supreme Tribunal STC 4390-2018.

extractivist/colonial practices with lasting negative impacts on socio-ecological systems (Gudynas 2009). This tension is an expression of the pervasive ontology of separation between nature and culture in much of environmental law and governance models today (Atleo 2011, Vargas et al. 2019). How can a new legal ontology contribute to a shifting paradigm: from a highly regulatory environmental approach to a relational and knowledge-grounded ecological jurisprudence? (Burdon 2012, Cullinan 2011 Pelizzon 2014).

By drawing connections between the law and larger socio-ecological systems (Garver 2013, 2019), the first section of this chapter challenges a standard definition of the law as a 'system of norms', while rendering visible the ontological and cognitive dimensions of legal practices (Vermeylen 2017, Philippopoulos-Mihalopoulos 2017, Winter 2001). In particular, it analyzes how the notion of personhood (see Anker 2017)—central to Western theories of rights and justice [López, 2018 (2004)]—conceals understandings of the law as a potential emancipatory and world-making tool for transitions into the Ecozoic, an era of mutually enhancing human-Earth relationships (Berry 1999, Berry and Swimme 1992). Based on ethnographic encounters in the Colombian Amazon, as well as a short review in the field of plant communication and intelligence (Gagliano 2017, Mancuso and Viola 2015, Marder 2013, 2016, Myers 2015), the second section illustrates how nonhuman collectives, I tentatively call nonpersons, overflow the ontological stability of objects and subjects. This working notion offers analytical keys for a concept of legal agency beyond the modern divide actualized by the idea of personhood.

While much of current debates about the RN are framed in terms of granting legal personhood to nonhumans (Youatt 2017), I suggest calling attention to the relational framework of indigenous thought foregrounding the earthly co-emergence of humans and other-than-humans in legal systems (Borrows 2016, Kimmerer 2013). Inspired by the principle of interdependence (see Atleo 2011), the chapter concludes by asserting how other-than-human legalities might become compelling sources of a legal ontology beyond human-only, hyper-regulatory, and interculturality-blind environmental legal frameworks today, as well as the questions this effort raises.

2. Why plants?

I am considering the case of plants, among others, for two main reasons. First, much attention has been given to the figure of the animal in social theory (Few & Tortorici 2013), while studies on the relationship between plants and social systems have received much less attention (Marder 2013, Gagliano 2013, Gagliano et al. 2014). Moreover, the sessile character of plants affords a compelling case against an idea of agency based on human perceived movement as an index of change.

An increasing number of studies ranging from plant communication and intelligence (Trewavas 2016) to vegetal neuro-physiology (Mancuso and Viola 2015) and plant bio-acoustics, reveal a vegetal sensorium functionally similar to organisms with centralized nervous systems (Gagliano 2018). For example, as sign-making selves some plants can locate water sources through their roots by sensing the sounding vibrations of water moving inside pipelines. Plants' ability to detect vibrations "may represent a very efficient way of capturing information from distant sound sources for orientation towards water." (Gagliano et al. 2017, 152)

A suggestive proposition, the idea that plants can *listen* and orient themselves towards water sources might well sound a mere humanization of biological phenomena. Yet, as anthropologist E. Viveiros de Castro would argue, "[…] when everything is human, the human is an entirely different thing." (Viveiros de Castro 2014) Moreover, Myers develops an ethnographic argument on the limits of anthropogenic classification of plant life, namely the tendency to define plants attributes in terms of human attributes. She uses expressions such as the "plant turn" (2015, 40), or "vegetal epistemology" (42) to account for a non-anthropocentric stance to plant modes of knowledge and being.

However, a focus on relations, encounters, and "mutual differences" (de la Cadena, 2015) may redefine much-praised human attributes such as intelligence and memory as emergent properties of inter-being encounters (Haraway 2008). They are not specific capacities of neither humans (i.e. the human point of view) nor plants (i.e. the plant point of view) defined as discrete entities

themselves (Escobar 2015). To be sure, plants and humans co-emerge in symbiosis in legal worlds (Margulis and Sagan 2002).

3. Personhood reinforces the ontological dualism between humans and nature. Can we think of legal agency beyond this divide?

In the foreword for *Lively Legalities*, Wolfe asks his readers the following compelling question: "What sense does it make that a highly developed animal such as a tiger or an orca is regarded as 'the same' as a toaster or a pile of bricks, while in US law at least, corporations and ships of state are legally designated as persons?" (Wolf 2016, pxiv)

Indeed, natural and juridical persons such as humans and corporations equally hold some legal standing, such as the ability to seek redress before a court of law (Stone 1972). While the distinction between the natural (i.e. laws of 'nature') and the juridical (i.e. positive norms) is not a settled discussion, the fact that legal entities such as corporations can be considered persons intriguingly expands the notion of personhood beyond the human.

For Dewey the "'person' signifies what the law makes it signify," and it is therefore an empty and positional signifier. Similarly, Marder elaborates on the neighboring notion of subjectivity as the capacity to act with intent to "actively shape the world" (2016, 56). For example, organisms such as plants can actively shape their own milieus, thus expressing a subjective or person-like property akin to the notion of rights.[317]

Does reckoning the legal personhood to non-humans such as plants and forests reinstate the ontology of separation between humans and the rest of life at the root of dominant legal systems? An almost commonsensical perspective would say that to be a person entails "enjoying […] rights in and of themselves" (Esposito 2010, 121). In the field of legal theory, however, it remains rather

317 Wohlleben writes "plants are perfectly capable of distinguishing their own roots from the roots of other species and even from the roots of related individual." (2015: 17).

unclear whether the idea of rights—including the right to obtain legal remedy—can exist without the modern concept of the person. For Esposito, "the enclosed space of the person" in not a necessary condition of legal rights (2010, 122); in fact, "no one is born a person […] Some might become a person, but precisely by pushing those that surround him into the dimension of the thing." (2010, 126)

Pushed into the dimension of 'thing-like phenomena', entities and processes such as water systems, forests, and nitrogen cycles are devoid of agency (and rights) unless they are made into persons through the law. In other words, nonpersons (or things) would be, at best, objects of environmental protection with no rights "in and of themselves".

Thus, the ability to have rights and duties expresses the inherent legal capacity of persons as opposed to the inherent natural behavior of things. Dewey furthers this ontology of separation when affirming that "molecules or trees" behave "exactly as they do" by force of nature—rather than by the rule of law (1926, 661). As he allocates agency on the side of the person at the expense of the passive materiality of nonpersons ("molecules and trees"), Dewey actualizes the pervasive distinction between subjects and objects via a theory of personhood. Similarly, Stephens suggests a compelling tripartite spectrum to define nature: from "(…) *relatively* untransformed nature at one pole, borderline places such as traditional farms and country paths (…) and the world of completed artifacts and radically instrumentally transformed goods (…) the other pole." (Stephens 2019) While this notion differentiates the intensity and scale of human intervention over an *external* nature, it seems to locate agency and liberty on the human-end exclusively thus re-inscribing the modern tension between subjects and objects just described. To state it in terms of geologian Thomas Berry, the radical discontinuity between human and other-than-human beings, and the ensuing "bestowal of all rights on the humans" alone, underpins the ecological and cultural devastation of the planet (1999, 4). The task ahead is then "reinventing the human" by re-embedding social institutions such as the law within the broader community of life. I see this project connected to the re-evaluation of deeply entrenched notions such as the pair subjectivity/personhood.

a. Situating non-personhood within legal ontologies

While some scholars contest the idea of rights given the little evidence of their real effectiveness (Posner 2014), legal theory might benefit from a conception of agency beyond the legal twins of personality/subjectivity thus expanding the notion of rights. This endeavor re-conceptualizes the limits of a legal ontology based on the separation between persons and things; the disentanglement of legal norms and vital relations; and the decoupling of social and ecological justice.

A relational and experience-grounded approach to the law, on the other hand, seeks to de-center the human in legal systems (Grear 2017) to acknowledge the recursive interactions between humans and other-than-human selves (Kohn 2013). This relational idiom privileges the integrity of the whole Earth community in the long-term over the interests of humans alone (Cullinan 2011). Yet, what does the expression legal ontology refer to in this context?

Broadly speaking, the law deals with a universe of relations between individuals, communities (human and not), states and "elementary groupings themselves" (Graham, 2011, p15 in Burdon, 2010, p28). However, usually depicted in terms of norms and procedures separated from the larger socio-ecological processes they regulate, Western legal theory tends to overlook the relational and material dimensions of law-making. It takes for granted notions of personhood and subjectivity profoundly tied to mechanistic/Cartesian worldviews (Capra and Mattei 2015. See Anker 2017).

Under this predominant mechanistic paradigm, the law is conceptualized as an autonomous human institution separated from its socio-material processes (Burdon 2012, Braverman 2016). Rather than something circumscribed to a set of abstract norms separated from the concrete sensimotor handling of living organisms (Varela 1999), the rules-we-live-by arise in recursive engagement with the world humans co-create with other selves. Thus, the law does not denote something pre-given to the mind, but "something we (humans and not) engage in by moving,

touching, breathing and eating." (Varela 1999, 7)

In contrast, an ontological approach to the law considers the world-making potentials of legal systems, and not only its prescriptive attributes. Beyond the universalistic formalism of top-down legal codes (Winter 2001), legal norms are grounded or embedded in the concrete experience of humans, and I will later argue, other-than-humans. A systems-based legal ontology thus brings to trial mechanistic and deterministic approaches to the law.

b. On how ontological choices may determine legal frameworks

As early as 1972, US Justice William O. Douglas argued that trees should have legal standing. For him, "[i]nanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes [...] So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life [...]." [318] To the extent that the entities in this list should be granted rights, can we say that they should be considered persons as well? What ontological commitments do we make when personifying 'nature'?

More than enclosed entities, forests, meadows, swamplands and the like are often defined as bundles of ever-renewing relations eluding the stability of the bounded-self (Haraway 2008). In order to have standing, however, these entities require the legal quality of personhood regardless of their living and human-like attributes. To be sure, the entity in question ought to be a person first (it needs to occupy the "enclosed space" of the bounded self) in order to have rights.

To be a person, however, one does not necessarily need to be alive. For example, a corporation can become a person in order to hold legal standing and rights. This de-coupling between 'personhood' and 'life' creates fictional persons (corporations) with rights regardless of ecological

318 See Sierra Club Vs. Rogers Clark Ballard Morton, Secretary of the Interior, et al. 405 U.S. 727 (more) 92 S.Ct 1361, 31 L. Ed. 2nd 636.

considerations. This ontology of separation, again, divorces the law from larger socio-ecological processes by affording legal standing to the person, and thus re-inscribing the rift between humans and other-than-humans. As mentioned before, a "'person' signifies what the law makes it signify" (Dewey 1926, 655) or, in other words, the law is made into an autonomous sphere of action fictionally—but quite productively—separated from the life systems it depends upon.

Fluid relations with elusive embodiments, nonpersons such as water cycles, soils, and forests best describe what Amazonian indigenous ethno-botanist Abel Rodríguez calls the "figure of life" – or how life emerges and takes hold (Rodríguez 2014). Extending this argument to the legal realm, nonpersons could claim a strong presence within the law that includes the language of rights but is not reducible to it. Rather than bearers of rights afforded by humans, these relations are sources of the law (Borrows 2016), as well as law-making agents in their own right (Strathern 2005).
In this context, to *create the law* stands for a quality of what I provisionally call semiotic relations, namely, the relational and meaning-producing character of life (Kohn 2013).

c. Standing on the legal stage, the actor conceals the human and its constitutive relations underneath the mask of the person

As the idea of corporate legal personality illustrates (Dewey 1926), the realm of person-like phenomena is rather stable, predictable, and limited. The realm of relational-like phenomena, on the other hand, appears rather vast, unpredictable, and politically contentious. What happens with obliterated life-relations unaccounted for by the law as *persons*? In the multiple and relentlessly productive field of Amerindian cosmologies, humans, animals, plants and spirits conceal an internal human form (Descola 2013, Viveiros de Castro 1998, 2014). The person stands for a mask or clothing (Rodriguez's "figure of life") concealing underneath human-like properties of nonhuman selves such as rivers, plants, and forests (See Kohn 2013). While living beings can only become juridical persons through an act of legal recognition reinstating the separation between the 'person' and the 'thing' (Esposito 2010), non-personality re-organizes the relational web of legal agencies. For example: An 80.000 years old organism, the *Populus tremuloides,* or the

pando pose, looks like a grove of separated trees with a densely intertwined complex root system underneath the topsoil. [319] As legal theory increasingly grounds its conceptual tool-kit within the life sciences, nonpersons such as the pando pose uncanny challenges to a theory of legal agency based on the twin notions of subjectivity and personhood. Especially when we learn that more than half of the biomass of this life system reverberates under our feet, and beyond the human purview (Wohlleben 2015, 85). The notion of personhood here reveals itself inadequate, for it manages the elusive stability of life relations through the counting of persons-for-the-law.

The legal person-making machine, thus, seems to eclipse that which stands behind the legal mask of personhood: a messy and often unpredictable "meshwork" of relations escaping the logic of the enclosing law (Ingold 2011). In other words, while the notion of personhood is a legally produced quality of humans and other-than-human beings, this notion renders invisible the relations that make life entities emerge from underneath the field of human visibility. I am suggesting that life-relations often shape the legal purview of personhood and thus require concepts attuned to its material unfolding. Deemed a necessary legal fiction, the notion of personhood can certainly be extended to highly heterogeneous kinds of entities from corporations and states to forests and rivers. The list is endless. My argument advocates for a legal ontology that considers how life works, and what kind of legal theory emerges from this realization. I will further explain this point below.

In a context of increasing recognition of the rights of nature (Gudynas 2009, Burdon 2010), one may wonder whether legal categories used to adjudicate human affairs can easily be transferred over to nonhuman beings. Particularly in the case of interconnected entities seen as discrete selves above ground (the pando), while concealing underneath a complex organization beyond the reach of direct human perception (the law).

Legal adjudication of personhood not only meets the constraints of human perception—and their

319 See https://pandopopulus.com/about/pando-the-tree/ (Visited on 06.27.2019).

specific modes of symbolic representation—but also the unexpected materiality of inter-being encounters reverberating under our feet. Before any juridical personalization, Esposito insists, living beings constitute a plane of indivisibility whereby life (human and not) *is* to itself; "[…] in which the form, precisely of life, is the form of its own content (2010, 132)." The mask (the person) and the actor (life relations) become one and the same.

Up to this point, I have suggested that life entities such as plants and forests can either be persons epistemologically separated from their vital relations, or fully placed within them. Shifting our dominant Western theories of rights necessitates an opening up of the enclosed space of the person in order to consider the relations behind the legal fiction (or mask) of personhood. It is the law that needs to be integrated into the logic of life, and not the other way around. Partially guided by the threads of ethnography and plant science, the next section offers some empirical grounding for the larger argument on the relational (or nonpersonal) ontologies of the law. I ask how the legal adjudication of rights may look from the vantage point of plants and forests as relations rather than (bounded) substances.

4. Indigenous law, plants, and ritual: A story of Amazonian legal concepts[320]

"*De Aquí viene el derecho indígena,"* ("indigenous law comes from *here*") said the *taita*[321] in the midst of an intense vertigo with the *ayahuasca* (*Banisteriopsis caapi*) brew[322] known as *chuma*.[323] Like a firefly hovering in the background of my memories, this enigmatic statement has stayed with me for quite some time.

320 This short ethnographic account does not represent the positions of the people I have the opportunity to interact with in Lower Putumayo. I will use different names to protect the identities of peoples and places.
321 Name given to a traditional healer in some parts of the Amazon.
322 The chacruna plant is a perennial shrub used in the preparation of the ayahuasca brew. The name comes from the Quechua verb 'chaqruy' meaning 'to mix'. Also, this plant is combined with the Banisteriopsis caapi vine for the preparation of the brew also known as yajé. The term comes from the Quechua as well, and it has been translated as the 'vine of the soul'. For further reference see Daniel Mirante, On the Origins of Ayahuasca. See: <http://www.ayahuasca.com/ayahuasca-overviews/on-the-origins-ofayahuasca/>
323 The chuma is the healing vertigo akin to a deep drunken sensation in the context of plant-based rituals in some regions of the Amazon.

Some time ago a friend invited me to the Lower (*Bajo*) Putumayo region located only some miles north of the Colombian border with Ecuador. "There is a ceremony with the Cofán elders, and a group of visitors from the Cumbal region (Colombian Andes)" he said. "What is a *toma?"* I asked halfway between curious and bewildered. "*Ayahuasca*! But this time it's going to be with the *mayores (elders).* They know how to manage this plant." I had heard quite a few stories of people having some intense experiences with the "soul creeper vine" also known as *yagé* (Schultes and Hofmann 2012). But I had also heard one must keep a strict diet before ingesting the brew with a "person who knows it," as my friend said, and in the appropriate ritual setting. With trepidation, I accepted his invitation yet remaining highly undecided about doing the *toma* itself. Such a bidding, however, had to be endorsed by a middle aged *Ingano taita* from the Upper Putumayo region, who was summoned to lead the ritual.

The *taita* finally accepted once he decided that I had the rightful intentions. The plant "calls upon the people needing it", he said, and I imagined a bunch of entangled systems of underground roots connected to an ancient stump somewhere in the Amazon, while sending chemical signals all the way from the canopy to the Andean mountains. Soon we would set out on the road to the unexpected, yet open to dialogue with the "sacred vine" in its own terms (Schultes and Hofmann, 2012). We met at the bus terminal. A good *Ingano* seasoned in the arts of trading plants and ritual objects all over the country, the *taita* bargained with an office clerk to get a reduced fare on the tickets; we bought some snacks for the trip, and finally set forth on the way down to the *Bajo.* After around12 hours of paved roads and hilly-sceneries we arrived to *Mocoa,* capital of Putumayo and the urban hinge between the Andes and the Amazon.

Founded by Avendaño in the middle of the 16th century, this city vanished within a few decades after its creation. Refusing to abide by the sword, the cross, and the bible, a group of audacious locals known as the *Andaquíes* burned the whole place down several times, and then returned to the forest to never leave it again. With the specter of the *Andaquies* quietly hiding behind the

bushes, we arrived to our final destination a few hours later.[324] "Light up a tobacco before getting in. It will help you to *pensar bonito* [to have beautiful thoughts]," the *taita* said as we entered the *resguardo*. "This is an ancestral land and we owe respect to its owners, so we pay with the tobacco plant," he continued almost putting forth the clause of a sacred contract between the human newcomers and its forest hosts.

We walked in silence for over 30 minutes along a muddy trail between all kinds of trees colored in several tones of green. The branches were almost embracing one another above, while a potpourri of invisible birds momentarily suspended the rhythm of our conversation as we walked through the forest.

At the end of the trail, we found a place with *malocas* (traditional wooden constructions). "And the elder?" the *taita* asked - "keep on walking and you will find his house by the creek," one of the residents replied. After we arrived to the *abuelo's maloca* we climbed up a few steps to find a humble living room where we rested for a bit. Fleeting hens and ducks passed by under the wooden house floor, as the *abuela* handed us some *chicha de maíz* (a fermented corn drink). Early in the morning we began our bodily preparation for the upcoming *toma* that night. We walked through a forest of *moriche* palms (*Mauritia flexuosa*), tobacco trees, and plantains to find a creek about a mile away from the *abuelo's* residence. One of the community leaders was waiting for us with *totumas* (gourds) filled with the "tea of the Indians." This was the way he jokingly named an infusion of the local *yocco* plant (*Paullinia yocco)*.

In large quantities, this plant may be used as a purgative, whereas a single cup may evince its tonic properties: "the *yocco* gives strength to work; it purges the body, and it cures the soul," one of the community members said. Light and aligned, our bodies were slowly getting ready to endure the night of the *toma*. As I learned later that day, this ritual of the *ayahuasca* ingestion was particularly important, for it was offered to seal a pact of intercultural exchange and learning

324 Thanks to anthropologist Kristina Lyons for sharing this reference.

between two indigenous communities, the Cofán from the lowlands, and the Pastos from the Andean mountains of the Great Cumbal.

An earthly mirror of the cosmos, the *Gran Maloca*, where the *toma* was upheld, is an ample and sturdy wooden construction with a rich *caraná* palm roof (*Mauritia carana*). It is also a boa, a tree-world, and the house of spirits where we ingested the plant after a daylong preparation of bodies and minds. To the right, a forest of tobacco trees moved rhythmically with the wind, while the left side nested the *chagra* (family plot) plants wide-opened to the sunlight. "Don't go to the tobacco forest: the spirits live there entangled with the trees and it can be dangerous for you," the *taita* said at some point of the evening. That evening we started to learn about "where the indigenous law comes from," and what plants can teach us about it. "*De Aquí viene el derecho indígena"* (indigenous law comes from *Here)* the *taita* said in the midst of the *chuma*. What did he mean by this? I asked myself. Can plants be not only bearers of rights but also law-making entities? And what does such an odd place "*Aquí*" ('Here') represent for the human and other-than-human *people* I met?

a. Legal Plants: How vegetal others invite us to think about environmental law and governance otherwise

Several studies in the fields of Amerindian anthropology and plant science render vegetal beings capable of performing tasks considered exclusive to the human per anthropocentric definitions of language and agency.[325] For instance, plants are deemed intelligent and sentient entities thus opening up a cascade of theoretical considerations with potential legal interest.[326] The case of plants invites us to re-think culture (and the law) as an exclusive attribute of organisms endowed with brains and nervous systems (Varela 1999). As plant scientists Viola and Mancuso argue plants can "breath without having lungs, nourish themselves without having a mouth or

325 See De la Cadena 2015, Kohn 2013, and Viveiros de Castro 1998. On plant science and anthropological takes on the matter see Myers 2015. On cognition and life see Ingold 2011, Varela 1999.
326 On plant communication and memory see Mancuso and Viola 2015, Trewavas 2016.

stomach, stand erect without having a skeleton, and […] make decisions without having a brain." (Mancuso &Viola 2015, 34).

The idea that plants and other organisms are capable of intelligent behavior expands notions of representation beyond the human, and the person as a bounded self. Yet, plants modes of representation are not reducible to those specific to the human, that is, symbolic and language-based symbols (Kohn 2013). Broadly speaking, I expand the notion of representation usually defined in two complementary ways. First, as the language-mediated outcomes of human perception, that is, the names assigned to exterior objects and the relations between them (Westermann and Mareschal, 2014). And second, as the act of standing for another party by contract or legal right, for example, when humans speak on behalf of others in a congress or a court of law (Vieira and Runciman, 2008). Yet, neither the language-mediated perception of a single and stable reality, nor the act of speaking on behalf of others foreclose the possibility of other-than-human (legal) representation and practice beyond symbolic signs.

Anthropologist Eduado Kohn's work with the Runa of the Ecuadorian Amazon offers rich ethnographic evidence on the intrinsic meaning-making and sign-producing capacities of other-than-humans such as plants and animals of interest to my argument. In Amazonia, he argues, life forms create modes of meaning not limited to conventional, and language-based signs. Utilizing Pierce's semiotic framework, Kohn identifies two other representational modalities beyond symbolic signs, namely icons and indexes. Signs are iconic when they share likeness with what they stand for. For example, a picture of your family is an *icon* of your family. Terms like *splash*, *hiccup* and *meow* are also iconic.

Indexical signs, on the other hand, express a relation of spatial or temporal continuity with what they stand for. Or, in other words, an index stands for some physical feature that points to something other than itself, for instance, " […] the sound of the palm tree crashing frightened the monkey from her perch […] The crash, as sign (of danger for the monkey), is not a likeness of the

object it represents. Instead, it points to something else […] this sort of sign (is) an index." (Kohn 2013, 31)

What we humans share with nonhuman species is not only (or even most crucially) our embodiment, Kohn argues, "but the fact that we all live with and through signs […] signs make what we are." (2013, 9) Non-symbolic representation then is common to all life, so life *is not* without signs. Consequently, signs are not the monopoly of (human) language—let alone legal language—thus living selves represent the world in myriad ways, and this sign-making capacity is intrinsic all life forms. Living organisms such as humans, animals, and plants are not only persons, for life recursively exceeds what the law deems as such for the purposes of granting legal rights. Paraphrasing Dewey, *life* "does not signify what the law makes it signify". Quite the opposite, the *law* does signify what life makes it signify. Sign-making life, then, overflows the norm, namely the classic *ought-to-be* of the law putting "life in order" (Foucault 1978, 138). The norm, however, cannot exist outside the living where it is embedded (Braverman 2016), for life constantly exceeds the purview of the law, as well as its person-making machine.

Additionally, if representation is not a property of human persons alone (as 'legal fictions'), then representation is not only the human attribution of meaning upon semiotic-devoid matter. Representation, then, becomes a strong property of nonpersons; simply put, nonpersons-as-relations exist outside the purview of the law-as-a-system-of-norms. A system that governs what kind of life shall be granted with rights. Paradoxically, however, nonpersons are the *rule*, while persons, or what the law defines as such, are the exception (Teubner 1987). In the example, *pando* represents the world through other-than-symbolic modalities (indexes and icons), and these representations are essential to its life experience. Marder furthers this argument when arguing that vegetal life expresses itself otherwise and without resorting to vocalization or language. For him, "aside from communicating their distress when predators are detected in the vicinity by realizing airborne (or in some cases belowground) chemicals, plants, like all living beings, articulate themselves spatially; in a body language free from gestures, they can express themselves only in their postures." (Marder 2013, 75)

To summarize, as sign-producing entities, nonhuman selves such as the *pando* operate in a double register. On the one hand, they can be *persons* and thus "signify what the law makes it signify" (Dewey 1926, 655) through environmental governance models and the rights of nature clause. In this sense *pando,* as a subject of rights, shall claim legal remedy via the figure of legal guardianship (Stone 1972).

However, as Roberto Esposito has made clear it needs to "penetrate the enclosed space of the person" first (2010, 121). That is, the *pando* (and *pando's* guardian) needs juridical personality through the codifying legal apparatus, so that it can claim legal standing to be recognized and protected. On the other hand, the *pando* can be a nonperson, or the excess of the law. Such non-personality amounts to what escapes the purview of the legal eye, namely the rhizome that makes up more than half of *pandos'* biomass beneath the soil (Wohlleben 2015) making it more-than-a-collection-of-surface-trees. Insofar as *pando* is more-than-trees it occupies a non-personal body. Yet, in order to live, this body does not need to be purified as a person by the legal machine. As a person, however, *pando* is within the purview of an endangered species act, a biological resources protection treaty, or a constitutional clause granting them rights as well.

As a nonperson, I wonder if the *pando* would prefer to go unnoticed so that it can occupy the generative excess of the law, that is, the material-semiotic processes that make the law possible through the *pando's* relational self. The elusive character of the *pando* self affords an entirely different perspective of the world this vegetal form of life is able to inhabit (Marder 2013), as well as the kind of legal thinking that emerges from this realization. The law might indeed be an entirely different thing from the perspective of the concealed rhizome, rather than the perspective of the visible tree (Kohn 2018).

5. Expanding agency to non-persons in the court of justice

The Anthropocene has become a buzzword in today's parlance about climate change, biodiversity loss, and related socio-ecological impacts of differentiated human agency. Critical legal studies have recently approached the complicated dynamics of multispecies relations in the production of the law, while situating the human within larger assemblages of living and non-living agencies (Grear 2017, Philippopoulos-Mihalopoulos 2017, Vermeylen 2017).

As a system of norms and procedures, the law is almost exclusively depicted as an all-too-human institution. This legal ontology achieves the double task of undermining the material and nonhuman dimensions of the legal field, while reinforcing a paradigm that separates humans from the larger community of life (Brown and Timmerman 2015). Does more-than-human life express other kinds of legalities (Braverman 2016)?

As a positional legal fiction, the notion of personhood conjures certain entities at the expense of others in the legal field. For instance, corporations are considered legal persons, yet persons are not always of the human kind. What is left outside the person-making legal apparatus? This chapter expanded the notion of legal agency beyond the human and the person, while suggesting that plants and forests are not only rights-bearing entities but sources of legal meaning as well.

Indigenous practices with plants wield repercussions that extent far beyond local life, and into formal environmental politics in the Andean-Amazonian region. In fact, indigenous relationships with sacred plants exceed ritual spaces to occupy the politics of the everyday, and local dealings with the state law. The ingestion of *Paulina yoccco* and the *Banisteriopsis caapi,* for example, play an active role in decision-making protocols in this region thus affording a compelling entry point to other legalities.

Yet, there is a long way before state-oriented legal frameworks incorporate more-than-human vegetal legalities in theory, and practice (Pelizzon and Gagliano 2015, Braverman 2018, Davies

2017). Whilst this emergent jurisprudence may benefit from indigenous cosmologies and plant science alike, symbolic representation distinguishes the law from other fields of practice, and experience. The law is almost exclusively conceived as a lettered practice. Can the plant speak *law*? Does the forest always need the mediation of the botanist, for example, in a court of law?
I drew from Eduardo Kohn's work with the Runa of the Ecuadorian Amazon. "Life thinks," he claims as an ontological premise of his work thus extending the notion of representation to nonhuman selves such as animals, plants, and spirits. This chapter expanded the legal framework of agency to engage with the law both as a particular kind of symbolic representation—for example, as a set of positive norms produced by humans—as well as a non-symbolic form of representation vis-à-vis images, processes of materialization, sounds, and experience involving other-than-human selves.

Read as a proposal on legal philosophy, *How Forest Think* (2013) also offers an analytically sophisticated methodology to explore instances of legal meaning – i.e. sonic images of the forest, shamanistic chants, and ecological relations - as sources of legal principles, and procedures. Such an effort, however, involves a particular mode of attunement to the social worlds plants and humans co-create through sowing, commensality, and ritual, among other practices. An attempt to expand the notion of the law beyond the symbolic (the legal norm), I consider these practices as sources of legal meaning in their own right.

In fact, forest's legal agencies might be better expressed in terms of alliance or partnership between inter-dependent humans, and forests. This move problematizes languages of personhood and legal guardianship that separate humans from the larger community of life. Inter-being alliance thus recognizes the human mind as part and parcel of the larger mind of the forest (Kohn 2013).

If the human can engage with the forest through science, the human can also learn how to think-with forests in a court of law. While this methodological question requires an independent treatment, appropriate cultural engagement with plants may be one such mode of learning with

forests' minds, and the legal protocols they harness for post-extractivist transitions in Amazonia. While botanists and anthropologists may be summoned to render testimony on behalf of forests and cultures—respectively—it remains an important challenge to explore whether judges should engage with other-than-human beings as they do with humans as expert witnesses.

How far-off are we from asking judges and legislators to interact with other-than-humans such as forests and rivers as they decide cases involving these kinds of beings? Should a judge, for example, ingest, in some cases, a ritual plant to understand what the forest *wants* when it comes to a mining license in Amazonia? Could this be considered an appropriate methodology for adjudicating justice in certain cases? Could a judge walk the *páramo* (a fragile ecosystem of the Andes), let it speak the language it speaks best, and then consider this experience a form of witness testimony? Should we elect legislators with proven commitment to listening to forests? How about forest literacy as a requirement for licensing lawyers and adjudicating justice? These are some questions for potential engagements on this thorny issue.

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CONNECTING TO PART III AND CHAPTER 5

RHIZOMATIC AGENCIES AND PLURIVERSAL LAWS: EMERGENT LEARNING TOOLS AND ADJUDICATION PRINCIPLES

A summary of agency theory with ethnographic and theoretical insights from the two previous parts, part III delves into the limits of individual and collective forms of agency, while holding space open for relational or rhizomatic agencies in decision-making protocols. This part comprises three chapters. Chapter 5 (*Agency Scaffolding*) reviews agency theory in several disciplines and explores the "agency problem" in the field of ecological economics. The chapter proposes an ethnographically inspired concept of agency beyond human-only, atomized, individualistic, and solely rationalistic agency proposals that are frequent in collective action approaches at present. Furthermore, chapter 6 (*Worlding with Indigenous Law: A teaching and learning proposal*) can be taken as coursework material concerning Indigenous legalities. It refers to a specific Indigenous legal tradition—the Inga—as it transforms state law and contributes to the Earth Law movement. The dissertation closes with a proposal for a syllabus on *Indigenous Legal Traditions and Decolonization* (Chapter 7).

CHAPTER 5 – Agency scaffolding. From individual to rhizomatic agencies: Review and proposal[327]

1. Agency theory: a survey of approaches

Broadly speaking, agency theory (AT) concerns the agency problem and how to solve it (Jensen & Meckling 1976, Ross 1973). Reviewing AT approaches in the fields of economics, management, and corporate governance over a 47-year period, Panda & Leepsa (2017) define this agency problem in terms of the principal-agent relationship.[328] A very pragmatic and applied theory (2017: 91), the principal-agent problem harkens back to Adam Smith (1937[1776]). It deals with how the separation of ownership from direct control, information asymmetries and risk preferences in the context of a firm or organization, enhance the agency cost and different ways to minimize this cost (Panda & Leepsa 2017, Baker 2019).

Studying the relations between owners and managers (Zogning 2017), AT also involves any type of organization except for owner-managed firms (Panda & Leepsa 2017). However, Bendickson *et al.* (2016) suggest that AT has a limited explanatory power for the modern-day business and transactions in a globalized society (2016: 174). Similarly, Zogning (2017) tests AT in relation to the performance of companies and the remuneration of CEOs, while Madison *et al* (2017) explore how stewardship governance of family firms affects both individual-level behavior and firm-level performance. (2017: 347) Yet all these approaches still focus on individual agency. Examining the assumption that narrow self-interest underlies agency theory, Bosse *et al.* (2014) claims that perceptions of fairness also mediate agency relationships through "positively and negatively reciprocal behaviors" (276).

[327] Vargas Roncancio, I.D. and Kosoy, N. (*to be submitted*). "Agency Scaffolding: From Individual to rhizomatic agencies. Review and proposal" *Ecological Economics*.

[328] The principal-agent problem assumes that the principal or shareholder's interest and the agent's interests are not always aligned with each other.

Insofar as the agency relationship can be defined as how one acts on behalf of another, agentic behavior is omnipresent in society under different names, for example, "bureaucracy, organizations, professions, roles, markets, labor, government, family, trust, social exchange, and so on" (Shapiro 2005: 282). Despite the pervasiveness of agency relationships, the disciplines of economics and management seem to dominate AT debates thus opening a window of opportunity for sociological (Shapiro 2005), organizational (Abdelnour et al. 2017), psychological (Shogren et al. 2017), environmental and other approaches (Groeneveld et al. 2017). For instance, the so-called causal agency theory (Shogren et al. 2017) is an extension of the functional theory of self-determination (TSF) in the fields of psychology and other behavioral sciences (Wehmeyer et al. 2003). TSF defines self-determination as the range of social and psychological functions, "given actions perform for an individual" (Shogren *et al.* 2017: 55). In this sense, self-determination is a general psychological construct within the theoretical architecture of human agentic behavior with potential applications in a wide range of disciplines: from social psychology and law to human development and special education, among others.

While the principal-agent problem has been empirically tested in economics and management, much of its theoretical implications are transferable to other fields. This is the case of human resource development (HRD) (Baker 2019: 303. For an approach to the principal-agent problem in ecological economics see Moyle 1998, Calfucura 2018). Nonetheless, rational choice models dominate non-economic approaches to agency theory at present (Olson 1965). Yoon (2019) suggests a step forward: despite the relevance of AT for HRD, it has not been sufficiently explored or effectively utilized in the field (2019: 335). Drawing from Banduras' cognitive AT (1986)—which integrates four core properties of human agency: intentionality, forethought, self-reactiveness, and self-reflectiveness—Yoon (2019) proposes a translational and implementational model that goes beyond individual factors. This approach concerns what he calls 'reciprocal determinism' between the agent and the surrounding environment at micro, meso, and macro levels (351), thus expanding AT models typically centered on the notion of an autonomous individual.

AT has been central to institutional theory as well. For example, Abdelnour *et al.* (2017) dissociate agency from individuals to suggest that social actors "*qua* occupants of roles and positions" enter the social stage and exercise agency (2017: 1775). Insofar as social actors can be groups and/or collectives, Abdelnour et al. propose a four-fold schema to probe the relationship between actors and institutions: "the willful actor, collective intentionality, patchwork institutions and modular individuals." (2017: 1792. See Ludwig 2017, chap. 2 "Plural Agency"). These agentic features problematize the idea of solely willful individuals that exist *prior* to their modes of socialization at different levels of social interaction. Beyond the archetypical individual as proxy of social agency, some institutional accounts consider everyday practice of situated individuals "coping with the institutional complexities of their work" (Smets et al. 2013: 1279). However concrete and situated it may be, the individual is still the central category in this line of work (Ludwig 2017, Bratman 1999).

Furthermore, environmental sciences have applied AT to address agent-based models of land-use change. An AT's systematic review in environmental modelling, Groeneveld *et al.* (2017) survey defining futures of agentic behavior including uncertainty, adaptation, learning, interactions, and heterogeneities of agents (2017: 39). Human decision models concerning the environment, they argue, are "primarily based on economic theories, such as the rational actor" (39), thus overlooking agential behavior beyond autonomous individuals making decisions with symmetric access to information and resources.

In brief, we have referred to AT vis-à-vis the principal-agent problem in the context of the firm; how different non-economic disciplines have approached AT and ways to decenter the individual while attending to the roles they play in society (Abdelnour et al. 2017), issues of institutional complexity (Smets 2013), reciprocal determinism between agent and environment (Yoon 2019), uncertainty and other socio-environmental factors (Groeneveld *et al* 2017).

a. Critical approaches

The fields of critical sociology and race theory have their own AT proposals. AT pioneering works claim that corporate managers are agents to shareholding principals (Jensen and Meckling 1976), which implies that agents' main task is securing shareholder value (Christiaens 2020: 393). Yet, AT has moved beyond corporate governance to reconfigure state's structure and power in what Christiaens calls a "discursive mutation" (2020: 409). Similarly, Ray identifies a double gap: organizational theory scholars tend to see organizations as race-neutral bureaucratic structures, while race and ethnicity scholars have "neglected the role of organizations in the social construction of race." (2019: 26.) Thus, Ray argues that organizations are racial structures (Roy 2019: 31, Bell 2014, Rojas 2007) that may "enhance or diminish the agency of racial groups" (Roy 2019: 47).

Both the corporatization of the state (Christiaens 2020) and the racialization of organizations (Ray 2019) trouble and expand AT beyond corporate governance and race-free organizational dynamics. Nonetheless, these approaches are premised on a crucial pre-analytical assumption: the human is the only social agent (see Goldman 1970). Moreover, whilst these critical approaches do offer an approach that is cognizant of inter-species hierarchies, they still operate within a human-only framework. Expanding sociology beyond human-centered AT approaches, Carter & Charles (2016) propose a theory of animal agency (Steward 2009; Bhattacharyya and Slocombe 2017. An ethological perspective in Radhakrishna & Sengupta 2020). This "animal challenge" (Carter & Charles 2016, 79), however, does not forfeit the discipline of sociology. Quite the opposite, it offers an opportunity to rework "its foundational concepts" (93) insofar as animals can be regarded as social actors as well (Carter & Charles 2016. See Donaldson & Kymlicka 2010). This expanded model of agency tends to create analytical hierarchies between humans and animals as social agents.

A way to solve the hierarchy problem, Actor Network Theory (ANT)—a theoretical and methodological approach to social life (Nimmo 2011)—is based upon the assumption that all

things in society and nature exist as changing networks of relationships (Latour 1996). In this way things, processes, objects, concepts, nonhuman beings and other relevant factors in concrete social networks have a symmetrical value insofar as they all participate in network as humans do (On "radical symmetry" see Shapiro 1997). A highly influential AT with applications in several fields, ANT holds space for the nonhuman in a wide spectrum of social relations (Muniesa 2015, Mol 2010, Law and Hassard 1999, Gomart and Hennion 1999). To be sure, ANT has been used in multiple disciplines outside sociology, for example, urban studies and planning (Valderrama and Jorgensen 20008, Rydin 2012, Beauregard 2012), new media and design (Yaneva 2009), international relations and law (Austin 2015, Leander 2013), environmental and urban studies (Rydin et al. 2012; Tate 2013), and many other fields. Developed by STS scholars Michel Callon (1986), Bruno Latour (2005) and John Law (1987), ANT can be better described as a "material-semiotic" approach because it deals with relations among things (material) and among concepts (semiotic), and between things and concepts.

However, this radical symmetry within the network might weaken the explanatory power of the notion of agency in contexts with profound asymmetries of power between the actors involved in the network. In a sense, there are important hierarchical and asymmetric relations between agents and agency events which require critical approaches ([8] and [9]), and ANT to work in tandem.

Thus far, we've discussed dominant theories on agency built on an all-too-human, rationalistic and individualistic framework; then, we surveyed some critical approaches on race and power relations and considered inter-species agency frameworks such as ANT. However, critical approaches continue to be based on humanist frameworks, while theories of inter-species agency often fail taking into account power asymmetries and therefore tend to silence non-Western cosmologies and their decolonial struggles. We suggest a holistic framework that considers both human and other-than-human relations (i.e. ANT), as well as power relations across different social domains (i.e. race theory and the corporatization of the state).

Let us now examine some aspects of agency theory in ecological economics (EE). This highly interdisciplinary field reacts against the narrowness of environmental and resource economics, which applies conventional economics to environmental problems. Thus, EE approaches are crucial to address the interrelated nature of the current global crises.

2. Agency in Ecological Economics

a. *Introduction*

As far as we know, there is not a unified theory of agency (AT) in the field of ecological economics. However, there are explicit or implicit agency claims that underpin a wide range of research problems in the field (See Otto et al. 2020, Kolinjivadi 2019, Fletcher and Buscher 2018, Lliso et al. 2020, Van Hecken et al 2015, Kemkes et al 2010). In this context, we define agency both as agency relationship, that is, acting on behalf of another person, group, or institution (Shapiro 2005), for example when a manager acts on behalf of the owner of a company, or a congressman acts on behalf of the citizens of a country. More broadly, we define agency as an action that produces an effect of some kind, for example, when a judge pronounces his decision in a court, when two people play chess, or when a person pays a parking ticket (Ludwig 2017).

Collective action theory is, perhaps, the most broadly used AT across a wide range of theoretical and empirical problems in ecological economics and other fields (Ostrom 2010). An initial AT online search in four large databases, namely Science Direct, JSTOR, Wiley, and SAGE between 1980 (formal origins of the field of ecological economics) and 2020 shows the following results. These results are for "*All fields"* including ecological economics (**Note**: the selection of the key-words was based on recent review AT papers by Panda & Leepsa 2017 and Shapiro 2005, as well as Ludwig's *From Plural to Institutional Agency* [2017]):

Keywords	*Science Direct*	Jstor	Wiley	SAGE-Journals
Humanist approaches				
"**Collective Action**"	18,924	58,404	22,882	21,658
"Principal-Agent"	9,573	14,438	7,454	4,315
"Agency Theory"	5,810	7,399	5,324	2,564
"Individual Agency"	3,272	7,490	4,370	3,146
"Agency relationship"	1,578	2,038	1,059	530
"Group Agency"	326	726	373	213
"Institutional Agency"	602	288	152	149
"Hierarchical Agency"	49	128	18	14
"Plural Agency"	10	15	12	5
"Nested Agency"	2	6	3	2
Other modes of "agency"				
"**Material Agency**"	344	518	252	272
"Relational Agency"	97	59	96	90
"Animal Agency"	100	196	114	63
"Spirit Agency"	7	121	41	26
"Plant Agency"	49	28	18	8
"Rhizomatic Agency"	0	0	0	0

Table 13: Keyword search in four online databases: "All fields"

Keywords	*Ecological Economics*
Humanist approaches	
"**Collective Action**"	450
"Principal-Agent"	65
"Individual Agency"	25
"Agency Theory"	8
"Agency relationship"	3
"Institutional Agency"	2
"Hierarchical Agency"	1
"Group Agency"	1
"Plural Agency"	0
"Nested Agency"	0
Other modes of "agency"	
"Indigenous" AND "Agent"	229
"Relationality"	192
"Nonhuman"	49
"Indigenous" AND "Relationality" AND "Agent"	30

"Indigenous" AND "Nonhuman"	**3**
AND "Agent"	0
"Relational Agency"	0
"Material Agency"	0
"Animal Agency"	0
"Spirit Agency"	0
"Plant Agency"	0
"Rhizomatic Agency"	0

Table 14: Keyword search in four online databases: Ecological Economics

Based on this online survey, we can draw the following preliminary conclusions: (i) a humanist approach to agency dominates in social and environmental research; (ii) "collective action" dominates agency theory both in the field of ecological economics and other fields; (iii) there is virtually no reference to "other modes of agency" beyond the human in the field of ecological economics under the selected keywords. However, (iv) there are substantial references to the proxy of *relationality* and the *nonhuman* where we may be able to pin down different agency claims, and how they are used across a wide range of theoretical and empirical problems in the field; (v) the notion of *material agency* is the dominant agency concept beyond humanist approaches; (vi) there is a substantial production of literature under the ["Indigenous and Agent"] keyword (229 references).

The results are substantially reduced when we combine ["Indigenous and Agent"] and ["Relationality"] with only 30 references. Based on these preliminary results, we have selected the following key words for the rest of our review: 1) for *Humanist Approaches*: ["Collective Action"]; 2) for *Other Modes of Agency*: ["Indigenous and Relationality and Agent."] The selection criterion is three-fold: 1) works produced between 1980 and 2020, 2) predominance of keywords (see tables), and 3) direct claims about agency theory in humanist and other agency approaches.

b. *"Collective Action" as an index of agency claims: Definition and problem*

Broadly speaking, collective action "occurs when several individuals are required to contribute to an effort in order to achieve an outcome," for example, when members of a local community

build a communal house, or a group of peasants maintain an irrigation system for their family crops (Ostrom 2004: 1, 2010). With a wide range of disciplinary approaches and applications (Kanazawa 2000, Van Vugt & Van Lange 2006, Kopelman 2009), collective action theory has been particularly influential in the field of natural resources management (Ostrom 1990, Gibson, McKean & Ostrom 2004; Agrawal and Ostrom 2001; Kurian & Dietz 2004; Poteete and Ostrom 2007. An approach in ecological economics in Polski 2005). While collective action is based on joint action (Ludwig 2017), the agency problem becomes relevant when nonparticipants in a collective action event benefit from the joint action of others (i.e. free-riding).

In the seminal *The Logic of Collective Action,* Olson (1965) says: "it is often assumed that groups of individuals with common interests are expected to act on behalf of their common interests much as single individuals are often expected to act on behalf of personal interests." (1965: 1) However, for him, where the benefits of cooperation can be obtained "without contributing to the costs" (Gillinson 2004: 8), "rational, self-interested individuals will not act to achieve their common or group interests." (Olson 1965: 2) Olson thus suggests different ways to solve this problem for larger groups, namely, positive, and negative selective incentives.

A positive "selective benefit" or incentive is a reward "contingent upon taking part in the action" (Dowding 2007. See Ioannou 2012), while a negative selective incentive is a penalty "imposed on those who do not" take part in the joint action for a common good (Dowding 2013). While much has changed since 60's, the notion of a rational and autonomous individual is still the main premise behind free-riding behavior, and appears to be the core pre-analytic assumption of collective action as well (a critical examination of self-interest in collective action in: Ioannou 2012, Green and Shapiro 1994, Elster 1990, Muller and Opp 1986). Finally, Ostrom (2000) transparently illustrates this individual bias, as follows: "I assume multiple types of players—"rational egoists," as well as "conditional cooperators" and "willing punishers"—in models of nonmarket behavior." (2000: 137).

c. *"Collective Action" as an index of agency claims in Ecological Economics*

How do selected texts in ecological economics use collective action (CA) theory? Scholars use CA theory in several ways. Beyond the establishment of a central authority, privatization and self-governance as widely used models for collective action, Yang and Wu (2009) suggest that "scholars who have comparative advantages in knowledge and information over other social actors (such as herders and governments) can help game players resolve their collective action dilemma(s) in social–ecological systems under certain conditions." (2009: 2412) This positive outcome, they argue, can be achieved through the **participation of scholars** as information providers, governmental agents, scholar–entrepreneurs, and pure game players (Ibid). Similarly, Melindi-Ghidi et al. (2020) study the role of environmental knowledge brokers to suggest that they can be effective where farmers have "low environmental awareness."

Moreover, Whittaker (2011) argues that contrary to "the caricature of (Adam) Smith (…) as a promoter of self-interest, he recognized the value of other-regarding behavior," which has a direct bearing on environmentally oriented collective behavior (2011: 33). While these and similar approaches pose alternatives to standard models of collective action, they seem to take for granted the idea of rational decision-making actors *qua* knowledge information holders or environmental information brokers. Thus, they quicky discard local knowledge, agencies, and values as valid ways to resolve collective action dilemmas. Critical scholarship on Payments for Ecosystem Service (PES) offers a substantially different approach to common-pool resource dilemmas and collective action theory by incorporating plural values and participatory methodologies (See Kosoy and Corbera 2010).

PES "promote ecological stewardship and conservation behaviour through provisioning of economic incentives often as market-inspired transactions." (Kolinjivadi et al. 2017: 489). However, collective action claims are not uniform across PES literature (e.g. Washborune et al. 2019, Smith and Day 2018, Van Hecken et al 2015, Kemkes et al 2010). In some cases, the focus is on evaluating the effectiveness of economic incentives to influence collective behavior in

particular ways (Kolinjivadi et al 2016, Van Hecken et al 2015), or probing when and how "individual and collective rewards are conditional on a minimum collective conservation level being achieved." (Midler et al 2015: 394. Our highlight). Moreover, when Indigenous peoples are involved in decision-making processes, collective action claims revolve around Indigenous preferences and values to evaluate PES incentives (Lliso *et al.* 2020). These approaches share a critique of the overly rational and overly structuralist models of collective action, thus calling for greater attention to the political, social, and cultural values involved in decision making processes (Van Hecken et al 2015, Kosoy and Corbera 2010, Kosoy et al 2007).

In addition, these approaches conceive socio-ecological problems as collective action (social) dilemmas rather than market failures (Muradian and Cardenas 2015). In fact, the classic market failure that results from incentives to free ride on the payments of others is a common point of contention in collective action/PES literature (Smith and Day 2018: 36). While PES schemes are generally studied using collective action lens, this is but one instance of how collective action theory is used as the preferred agency framework to study socio-ecological problems in the field of ecological economics.

Let us take a closer look at one possible limitation of this framework. Collective action "occurs when several individuals are required to contribute to an effort in order to achieve an outcome" (Ostrom 2004, 1; Ostrom 2010). While CA theory probes different incentives to realize a desired collective result, several PES accounts assume the 'individual' as the archetypical unit of action simply because CA agency claims *typically* locate decisions at the individual level (i.e. individual incentives to perform x or y activity) and outcomes at the collective level (i.e. building an irrigation systems for a rural community). Therefore, collective action theory seems to make a distinction between the *locus* of decisions (the individual) and the *form* of the desired outcome (the collective or plural action itself). In the words of Kirk Ludwig, "the central problem of institutional (collective) action is to understand how the structure of institutions is grounded in **more primitive forms of joint intentional action**, and how those more primitive forms of joint

intentional action are expressed through those institutional structures." (Ludwig 2017, 2. Our emphasis).

Here, the agency problem is about determining the locus of intention, that is, determining whether intention or intentionality is an attribute of individual humans. For Ludwig there are no group or collective actions *per se* and therefore there are no collective agents as such. Only aggregates of individual "I-intentions" (Tuomela 2000, Tuomela and Miller 1988, Bratman 1999). To be sure, "there is nothing strictly speaking that is a joint action in the sense in which there are actions in the case of individuals. Actions in the case of individuals are those events of which they are primitive agents." (Ludwig 2017, 11)

According to this atomized account of collective action as the aggregate of I-intentions, individuality is a function of both human and individual cognition: "(…) as there is no joint agent of what groups do (…), there is no need to postulate group level cognitive states to explain it." (Ludwig 2017, 12) However, Ludwig acknowledges that this is not a universally shared view (Ludwig 2017, 5, note 1). In fact, the idea that groups have minds or "are agents in their own right, or are subjects of cognition, decision, intention and action" (Ibid) has a robust multi-disciplinary support (See Korsgaard 2008, Tollefsen 2002a, 2002b, Goldstone and Theiner 2017, among others).

How does a social multi-criteria evaluation approach address the problem of atomized agency? (Munda 2004) Ecological economics scholars constantly produce agency claims within multi-criteria analysis frameworks.[329] For example, Kolinjivadi et al. (2015) apply social multi-criteria evaluation[330] as a collective "decision-support framework to determine the acceptability and

[329] Multi-criteria assessment (MCA): "is a decision-making tool used to evaluate problems when one is faced with a number of different alternatives and expectations and wants to find the best solutions with regard to different and often conflicting objectives (...) MCA has the potential to take into account conflicting, multidimensional, incommensurable and uncertain effects of decisions explicitly enabling it to focus more on the – decision process‖ itself, and not on a final result (Munda, 2008)." Antunes, Paula. Multicriteria assessment (MCA) In http://www.ejolt.org/2015/02/multi-criteria-assessment-mca/ (Viewed Oct. 14th, 2020)

[330] Social Multi-Criteria Evaluation (SMCE): "Like other evaluation processes, multi-criteria assessment (MCA) needs to deal with different value systems when facing a real problem of social choice. One possible way of dealing with the

payment vehicle of PES within a set of alternative policy considerations for a complex ecosystem management decision." (2015: 99) These authors highlight the "legitimacy that different PES designs may have for improving resource quality and capabilities for well-being" of local people as the main decision-making agent (Ibid. See Garmendia and Gamboa 2012). Other scholars frame agency in terms of participation and evaluation (Antunes et al. 2009), participatory multi-criteria analysis (Garmendia and Gamboa 2012), and participative multi-criteria analysis (Paneque Salgado et al. 2009). In fact, the use of multi-criteria evaluation "in combination with participatory approaches provides a promising framework for integrating multiple interests and perspectives [as] diverse **individual** priorities can be grouped in a reduced set of social preferences by means of cluster analysis reinforced with a **deliberative** appraisal among a wide variety of social actors." (Garmendia and Gamboa 2012, 110. Our highlight).

Although the decision-making process involves deliberation and makes room for disagreement, the process itself, again, seems to depend on a pre-analytic and archetypal individual agent, however participatory the process might be. After all, "individual priorities", "deliberative appraisal" and "irreconcilable positions" all presuppose cognitively atomized I-intentions that engage in rational deliberation process in ever increasing participatory rings. Is there room for relational deliberation in decision-making processes?

subjectivity involved is to design participatory MCA processes where criteria selection, weighting and aggregation steps are performed with the input of a broader group of actors, in order to account for different interests and values (Munda, 2008) or combining MCA with participatory techniques (Antunes et al., 2006; Kallis et al., 2006). Each manner of conducting MCA is closely connected to participation, to validate the overall structure and framing of the analysis. It should however be noted that participation is a necessary condition but may not be sufficient for reaching transparency and accountability. A way of approaching the issue of participation in MCA is through the adoption of a Social Multi-criteria Evaluation (SMCE) framework, which defines the concept of evaluation as a mixture of representation, assessment and quality check connected with a given policy problem, based on a specified objective (Munda, 2008). SMCE aims to foster transparency, reflection and learning in MCA decision processes, simultaneously integrating political, socio-economic, as well as ecological, cultural and technological dimensions of the problem." Antunes, Paula. Social Multi-Criteria Evaluation (SMCE). In http://www.ejolt.org/2015/02/multi-criteria-assessment-mca/ (Viewed Oct. 14th, 2020)

d. "Indigenous AND Relationality AND Agent" as an index of agency claims in Ecological Economics

Neo-classical economics has been largely dominated by anthropocentric premises, and the same is generally true for ecological economics. Washington and Maloney stress the need for ethics in a *new* ecological economics that involves other-than-human modes of existence (2020). A *new* ecological economics is therefore grounded in an eco-centric view of the world that fosters "nature's intrinsic value and extends respect for the nonhuman world" (2020, 543). While this proposal does not refer to specific modes of agency of the other-human world, it describes a form of ethics that goes beyond the commodification of nature, that is, an ethics that promotes nature's *intrinsic* value (A similar approach in Brown 2012).

However, this ethical aspiration finds important barriers when considering the methodological premises of various approaches in ecological economics. Using a principal-agent framework to analyze human-nature interactions, Nuppenau (2002) models the interactions between nature and humans in a market economy. Besides the usual human evaluation of nature, Nuppenau explores the possibility of a different kind of value that arises from nature-human relations (2002: 33). Interestingly, human agency is not the only source of value in a market economy, and he proposes a formal model for a "mutually beneficial exchange between humans and nature."

According to the model, "humans are the principal and nature is the agent" (2020, 33), and this agency relation requires "the derivation of a **behavioral equation** for nature as anticipated by humans," that is, an equation that would be able to predict other-than-human behavior in particular socio-ecological systems (ibid). While the model foregrounds nature's agency vis-à-vis its contribution to a form of exchange value, the model places natural beings below human interests rather than reckoning with their intrinsic value. After all, the chosen frame is that of a principal-agent relation.

This approach seems to disallow an eco-centric form of ethics as illustrated by Washington & Maloney (2020) because it rests upon a crucial methodological assumption: the model has the intrinsic virtue of anticipating nature's contribution to a form of exchange value. Taking nature's agency and interests seriously may require a different methodological approach, that is, an approach that is able to go beyond modelling nature-human interactions within a principal-agent framework. Claiming nature as a source of value and social agency does not automatically debunk the anthropocentric bias in which the model is premised (Washington and Maloney 2020, 543): the human holds the position of the shareholder, while nature occupies the position of an *agent* of human interests. For many communities around the world this relationship is inverted: the human is the *agent* while nature is the *principal* (See final section).

Similarly, Vargas A. et al. (2020) explore whether environmental cost-benefit analysis (CBA) has improved decisions in Colombia. Studying the role CBA plays in the environmental licensing process, they suggest that CBA's influence on the final decision has been limited. Yet, for them, the problem "does not reside in CBA but in the process" itself (2020:1). While there is a legal-procedural obligation to perform CBA, "there is no requirement that the results must be considered in the decision-making," and since the problem lies in the process rather than the instrument "using a non-monetary assessment method instead of CBA, such as multicriteria analysis, will not lead to better decisions." (2020, 1) What does this tell us? What constitutes a "better decision"? By foreclosing non-monetary evaluation in environmental decision-making, CBA approaches not only cancel out nature's agency claims, but the possibility of any (human) participatory approach.

In our view, nature-human exchange modelling (Nuppenau 2002) and CBA in environmental licensing (Vargas A. *et al* 2020) illustrate a sort of methodological stasis in ecological economics (EE) around agency theory. This poses a significant barrier to eco-centric ethical and legal approaches in the field (Washington and Maloney 2020, Brown 2012). A relational framework seems crucial to achieve a "mutually beneficial exchange between humans and nature"

(Nuppenau 2002) that would be able to recognize the modes of participation of other-than-humans in the field.

A critical contribution to this relational approach, Kolinjivadi (2019) cautions that EE is conceptually moving closer to environmental economics given its "tendency to understand economic transformation through dualistic (…) representations of nature and society." (2019, 32) Attending either to human action over a passive and external nature, or "non-negotiable nature" imposing itself upon human systems thus privileges reductionistic approaches at the expense of the methodological and value pluralism of EE (Ibid). This agency fragmentation between nature and society results in dualistic analysis that always leaves aside one term of the relation. Kolinjivadi suggests a "unified social and material analysis" in three sub-fields: social metabolism, socio-ecological governance, and ecosystem services. The underlying premise of this kind of proposals is that humans and non-humans are co-constituted as socionatures, and such ontological premise should sustain of a form relational ethics for EE.

Questions guiding the table

(1) Definition (*What is 'agency'?);* (2) Agent/membership (*who is the agent*?); (3) Intention/features (*what does the agent want*? *Characteristics*); (4) Agentive functions (*agent's role);* (5) Discourse/action (*what and how is the decision expressed? Examples).*

		SOCIAL		**SOCIO-ECOLOGICAL**	
Types ***Characteristics***	**Individual**	**Plural**	**Institutional**	**Participatory (Multi-Criteria Assessment - making)**	**Rhizomatic**
Definition	-Acting on behalf of another. (Shapiro 2005) - Agency relationship.	-Aggregation of individuals contributing to a collective outcome. (Ostrom 2004, 2010)	-Institutional action based on role in an institution. - Institutions as networks of interrelated roles and functions occupiers perform. (Ludwig 2017: 5)	-Dealing with different value systems when facing a real problem of social choice. - Participatory MCA processes with input of a broader group of actors to	-Co-emergence of humans and other-than-humans.

				account for different interests and values. (Munda, 2008)	
Agent /membership	-Individuals Intentionality, forethought, self-reactiveness, and self-reflectiveness (Banduras 1986); Willful actor and modular individual (Abdelnour *et al.* 2017*)*	-Groups Collectives Aggregation of individual agents.	-Institutions -Patchwork institutions (Abdelnour *et al.* 2017*)* Institutional membership as socially constructed. (Ludwig 2017)	Communities -Local people (Garmendia and Gamboa 2012). -Scholars as information providers. (Yang and Wu 2009)	-Socio-ecological collectives, other-than-human, (dis-) continuities – physicality and interiority. (Descola 2013); Perspectives (de Castro 1998)
Intention/ features	-I-Intentions (Ludwig 2017) - Solving Principal-Agent problem	-Joint intentional action (Ludwig 2017) -We-intentions -Collective intentionality (Abdelnour *et al.* 2017*)*	-Create norms -Coping with institutional complexities. (Smets *et al.* 2013).	Participatory decision-making. -Uncertainty, adaptation, learning, interactions, heterogeneities of agents. (Kosoy *et al.* 2007, Groeneveld *et al.* 2017).	-"*cuidado de la vida en el territorio*"/ caring for life in the territory (Bravo I*nterview,* June 2020)
Agentive functions	Minimizing agency costs. -Management "Procurement of shareholder value." (Christiaens 2020)	- Contribute to a collective outcome. (Ostrom 2004, 2010)	Normative mediation of plural actions	Participative multi-criteria analysis (Paneque Salgado *et al.* 2009). -Improving resource quality and capabilities for well-being making agent (Kolinjivadi *et al.* ; Garmendia and Gamboa 2012).	Co-emergence of socio-legal institutions
Discourse/action	-I buy a blue car -I read a chapter on	-We buy a house -We build a community well.	-The Constitutional Court declared the personhood	-An intercultural research group conducted research on	-Socio-ecological practices; corporality; commensality; 'ritual';relational

	agency theory.	of the Atrato River.	traditional justice systems. Participatory techniques (Antunes et al., 2006; Kallis et al., 2006).	decision-making. -Humans, plants and invisible peoples co-produce decision in Amazonia.

Table 15: Summary - Agency: From Individual to Rhizomatic. Based multiple sources and ethnographic fieldwork in Amazonia

3. *Towards a relational or rhizomatic agency theory in Ecological Economics*

Thus far, we have examined different aspects of agency theory in various disciplines; briefly described the typology and characteristics of agents involved in decision-making processes and examined several aspects of the agency problem (Jensen & Meckling 1976) within the field of ecological economics. Now, we suggest an ethnographically based concept of agency that goes beyond human-only, atomized, individualistic, and rationalistic agency proposals that are recurrent in collective action approaches at present.[331]

For Amerindian communities, animals, plants, mountains, and rivers, among other beings hold a form of interiority (or soul) endowed with attributes "(…) identical to those of humans, such as reflexive consciousness, intentionality, and affective life, and respect for ethical principles" (Descola 2013:14). For the Indigenous Ika of Northern Colombia, for example, *Serankwa*, the creator, left everything from rivers and forests to social rules: "according to the spiritual teachings of our ancients, the rivers are our veins and arteries; the forests represent our hair and the hair of our bodies; the **stones are our ancestors** peacefully resting (…) we understand that everything was left by our father Serankwa – the creator of everything that exists and the Laws of Universal Order (…) These laws are to keep the balance between humanity and the cosmos."[332]

[331] These 'beyond' agency proposals are based on non-monetary forms of valuation ((Martinez-Alier, Munda, and O'Neill 1998).

[332] Original in Spanish: Rodríguez, Gloria and Mestre-Busintana, Kasokaku. 'Concepción y Aplicación de la Ley de Origen del Pueblo Iku (Arhuaco).' In CONAI et al., Somos Hijos del sol y la Tierra. Derecho Mayor de Los Pueblos Indígenas de la Cuenca Amazónica. Manthra Editores. w.d. p. 58.

In light of this ethnological evidence, how can we link economic practice with Amerindian understandings of agency?

Beyond extractivism, economic relations can also be considered as relations of mutual aid (Mills 2019) between human and other-than-human family members. In this sense, the economic system can be framed as a system of kinship relationships. One of the most salient assumptions of the economic discipline is the idea that nature and society, namely the domains of ecological processes and social values, respectively, are two separate dimensions of the real (Escobar 2018). Even ecological economics seems to rehearse this unassumed yet pervasive separation: in a degrowth society "(…) **nature** and **labor** will be de-commodified, **people** will work less, and exploit one another and **nature** much less" (Kallis 2018: 11. Our emphasis). While the ethical inspiration of this approach favors other-than-human beings, nature is still the passive backdrop of human action (nature/labor; people/nature). The transformation is not only semantic or conceptual, but also political and ontological (Blaser 2013).

In EE, nature will be given value not as a commodity to be exchanged in the marketplace but as a value-in-itself. While we can agree with this ethical/political premise, the problem is the subtle assumption according to which the human is the only meaning-making self who is capable of producing and allocating value in the world.[333] One problem of this underlying EE premise is the conceptual trap of the category of "nature" (i.e. rights of nature), and the kind of thinking it capacitates. If "nature" is not an external reality to be protected but the relations that nurture an ecological kinship, then both humans and other-than-humans should be considered as *agents* in the economic system. If nature is mind and is sentient (Kohn 2013; Gagliano 2018) then economics is a form of ecology and ecology is relentless co-emergence and reciprocity between human and other-than-human beings, or mutual aid. In this sense, the economy will not be defined as the production of human value (i.e. hammers, stocks, and eco-parks), but as the co-production of (social) life in reciprocity (Kimmerer 2013; Atleo 2011).

[333] Under a post-growth regime this generic nature would be considered an external object of protection rather than exploitation and evidently, there is nothing wrong with wanting to protect nonhuman animals and rivers.

The ontological models of naturalism and animism predominant in Western and Amazonian cosmologies respectively, are of particular interest for this argument (Descola 2013). Naturalism contends that nature *is* an independent empirical existent subject to different modes of human description, control, and protection. Animism, on the contrary, considers all beings as sentient and cognitive. What can a kinship lens offer to economic theory? (Trosper 2009; Atleo 2011) What would happen if an ecologically minded theory such as degrowth considers a non-dualist ontological framework? Kallis himself defines the economy as "an imaginary that institutes and refashions reality, always imperfectly, to suit its imagination." (2018: 58)

Whereas the imaginary of degrowth refashions the economic reality within broader scientifically identified ecological limits of a finite planet (Rockström et al. 2009), the imaginary of growth casts the economic reality as a set of market exchanges within the social sphere regardless of ecological limits. What may happen when another imaginary has the potential to redefine economic relations as a complex kinship system, and science as one among many ways to encounter and co-produce this system?

A naturalist framework would say that the economy is embedded within the matter and energy flows of a finite planet. According to this onto-material premise, the human is the main actor of the economic process and science is the knowledge system that describes the economic processes of this finite planet. An animist model would say that the economy *is not* embedded in the ecology of a finite planet for "economy" and "ecology" would be two analytical dimensions of a planetary kinship system.

What would happen with concepts such as social metabolism, exosomatic, and endosomatic energy, among others, when the object of the economic relation ("nature" as matter and energy flows) is placed within an entirely different ontological framework? In a word, we suggest radicalizing (enrooting) EE by probing a relational framework that pays attention to non-Western cosmologies to re-imagine key concepts in the field, and most crucially, that provides an answer to the question "who is the agent?" in times of planetary crisis.

To close this chapter, we present three preliminary arguments based on syllogistic reasoning to probe this transition from individual to collective and other-than-human modes of agency. We use the expression rhizomatic agency to highlight the entangled, subterraneous, and often unpredictable nature of collective agencies that involve humans and other-than-human beings. We use ethnographic data collected during fieldwork in Southwestern Colombia between 2019 2020 to illustrate these arguments:

a. From individual to rhizomatic agencies: an overview through examples

Rationale: We consider that values and reality are in dialectic co-construction. Moreover, we understand values as relational, that is, values only emerge when two or more agential forces engage with one another to bring forth reality. We understand agency as an emergent property of the encounter between these forces, which are not exclusive to the human. Now, we will present an overarching logical argument starting from individual agency based upon hedonistic and individualistic values and ending with a rhizomatic agency based upon collective and interspecies values. We draw from the previous literature review, as well as empirical evidence from fieldwork in Southern Colombia to highlight the importance of relationality as a driver in evolutionary processes from the sub-atomic particles and the cell to entire socio-ecosystems. In doing so, we aim at understanding the potentials of our socio-ecosystems, by unleashing our relational and reciprocal existence relentlessly bringing forth plural realities.

Argument 1: Beyond the Individual and Species

(1) Individual decisions are based on values solely articulated through individual agency.

From (1) it follows that:

(2) Individual preferences are given, not socially constructed.
(3) The individual as the legitimate decision-maker.
(4) When an individual cares for herself, the aggregation of individual maximization of benefits leads to social wellbeing.

If she rejects (2), then values are socially constructed making room to (5) power and social asymmetries in playing a major role in defining the decision-making space.

If (5) is accepted, then (3) should also be rejected, thus giving rise to (6) a multiplicity of agencies upon which values operate and decisions are articulated.

If (6) is accepted, then (4) cannot but also be rejected as (7) social wellbeing/agencies is an emergent property beyond individual values.

The following ethnographic quote illustrates the logical argument on the need to go beyond individual and species:

[…] "we part-took in three Ayahuasca ceremonies where we experienced ineffable and tangible forms of healing and teaching, and we felt compelled to return six months later with my relatives. Once again, we all felt objective and subjective benefits, and I decided to offer the Cofán my service [as a botanist]. They welcomed my offer and invited me to speak with the Cofán authorities in their community. There, we conducted three meetings, all of which were followed by a corresponding [yagé] ceremony. And at the end of my visit, my project was defined in the community's terms, but also in terms of the mountain (…).

"The *Cabildo* authorities expressed their gratitude for my intention to collaborate with them, and they debated the idea of a potential study about wild edibles. They concluded that doing a project about wild edibles would hardly benefit them, because a prior book on medicinal plants had already been done, and it was seldom used by the students of the community. Instead, they talked about the challenges they had been having with their main cash crop, the sacred yagé vine, because their fields had been sprayed with roundup for the past decades." (*David Rodriguez-Mora, Colombian ethnobotanist, personal communication, 2019*)

Argument 2: Beyond Monist Value

(1) For a given socio-ecosystem, all values can be captured through one single metrics of lenses.

From (1) it follows that:

(2) Everything is commensurable and hence losses in one value can be substituted for increases in other values.

(3) Winners compensate losers hence we will be better off overall.

If she rejects (2) then (4) incommensurability exists and perfect substitutability is impossible. If (4) is accepted, then (3) has to be rejected, thus (5) languages of valuation should reflect the plurality of socio-ecosystem' agencies.

The following ethnographic quote illustrates the logical argument on the need to go beyond monist value:

"It was very exciting for me to contemplate the possibility to carry out a project that would contribute to the recovery of yagé, the most sacred plant for the Cofán, root of their cultural identity and their ancestral territory. But at the same time, I knew this was a huge responsibility, not only with the community and the Cofán nation, but with the Yagé plant itself. Widely regarded as a sacred master plant, the most important for the Amazonian people at large, **I had heard numerous accounts that described the power of this plant spirit. Additionally, I was aware that my training as an ethnobotanist had certainly not prepared me to know how to deal with plant spirits**.

"Nevertheless, I felt reassured with the fact that this potential work was coming from the initiative of the Cofán authorities and included the participation and endorsement of one of the most respected shamans in the Amazon (…) I requested the yagé spirit to guide me on this path to conduct a meaningful research that would provide the greatest benefit for the Cofán and the yagé populations. I then went to lie on my hammock, meditating on my purpose and feeling the yagé going down to my belly. Forty minutes later, I felt the desire to vomit, and I went down the wooden steps and then off the house to puke by an ice-cream-bean tree. I collected myself by the firepit and enjoyed the heat, while *taita* [name] started chanting. It has always fascinated me how the shaman's chant echoes so deeply into my body, at times igniting visions of colorful patterns that make me feel the yagé becoming activated. I then went and sat next to the *taita* [name] and chatted with him after he had finished chanting."

"I have always treasured those moments in which Taita [name] opens up to share his life stories and experiences during ceremony. He told me stories about his upbringing among shamans in the forest of [name]. He was a hunter, a fisherman, a logger, a miner, a boat captain, a farmer, a cattle ranger, not to mention other temporary occasional jobs. But since age 20, he had mainly been working as a traditional doctor, healing patients with Yagé and other medicinal plants." (*David Rodriguez-Mora, Colombian ethnobotanist, personal communication, 2020. Highlight by the author)*

Argument 3: Beyond human agency

(1) Agency is predicated upon human, individual, and rational decision-makers in a given society.

From (1) it follows:

(2) The human is at the top of the evolutionary hierarchy.
(3) The human individual is separated from larger socio-ecosystems.

the human individual can have access to complete and timely information to make decisions.

If she rejects (2) there is no so-called evolutionary ladder hence (5) no hierarchy nor exceptionalism. If (5) is accepted then (3) has to be rejected because (6) we, *Homo sapiens* are part and parcel of a complex and uncertain co-evolutionary process. If (6) is accepted (4) is rejected as (7) decisions should be made under conditions of epistemological and ontological uncertainty.

The following ethnographic quote illustrates the logical argument on the need to go beyond human agency and epistemological uncertainty:

"Integrating knowledge traditions is a big challenge because science has a very defined, very concrete method that allows you to reach conclusions in a specific and concrete way, and in that way, you can have a more solid foundation to make decisions. And with yagé, because it is not only a plant, but it is also a ritual (…) a ritual that defines a culture (…) you are talking about multiple relationships which [for the point of view of] the scientific method represents a real challenge (…).

"[For example] the medicinal uses of yagé pose many challenges because in the ritual in which that medicine is used, there are mainly cultural elements. [However] the culture does not exist without the relationship with the environment, so other relationships with the environment are also involved. [There are] some elements that are physically present in the ritual and others exist at a conceptual and abstract level (…) In that sense, I can tell you that the jaguar is a very important element of the yagé ceremony, but you do not study jaguars within ethnobotany (…) Although shamans do use the fangs because they give them power, then let us say that through science you are not going to be able [to explain this]. I [can] experience, define or describe the power that the fangs give to the shaman, but you [are mainly concern with] the properties of the plants that are used in the ritual (…)". (*Interview with David Rodriguez-Mora. My emphasis. May 2020)*

4. Concluding remarks

Decision-making in Amazonia is *human* and *other-than-human* because it involves humans, plants, "spirits" and other beings; it is *emergent* because is not reducible to the sum of *known* individual decisions, but the effect of the interrelation across different kinds of beings: these agents and decisions come into being as they encounter each other. Decision-making is also *hierarchical* because it requires the consent of human authorities such as the *Cabildo,* as well as the will of the invisible ones (chapter 1.1. and 2). Moreover, it is *uncertain* because it unfolds in contexts of

asymmetric access to information: as owners of the territory, the invisible peoples may disagree with a human decision, which suggests that even if humans *know something,* for example, the decline of wild populations of a medicinal plant, what they "know does not necessarily lead to best decisions: decisions require the *will* of an "other," or a "radical alterity" (Caicedo 2015) that we can't possibly fully *know*: *los invisibles.*

Moreover, in our all-too-human perspective, "knowing something well" is essential to reaching "good" decisions, and those decisions ensue the act of knowing something well. However, knowledge, or at least some understanding of what knowledge is, is not always necessary for decision-making in cases where the *will* of a non-human party is essential for that decision. We make decisions in contexts where our all-too-human knowledge and will can be put on hold, or even be yielded to the will of other beings.

Decisions in the Amazon are collective and sometimes unexpected. *Not knowing* something, for example, ignoring who the agent is, can be crucial for decision-making: not knowing is not equivalent to ignoring, but rather to understanding the limits of what we can possibly know. After all, we cannot *know* the invisible ones by their forms, but rather by their effects: what they command is tangible. In fact, information can be highly irrelevant in these contexts. Contrary to most decision-making theory, decisions often precede information. However, this does not mean that these decisions are "arbitrary" or "blind." This means, for example, that human language and human decisions find their limits in Amazonian decision-making practices that involve beings that we can't fully know.

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Connecting to chapter 6

In chapter 5 we explored different aspects of agency theory in various disciplines; we briefly described a typology and characteristics of the agents involved in decision-making processes and examined some aspects of the agency problem within the field of ecological economics. Finally, we suggested a concept of agency inspired by ethnography and characterize it as "rhizomatic," given the non-human, subterranean (such as roots found underground), and unexpected dimensions of this type of agency in Amazonia. Chapter 6 suggests that this type of relational agency (see Chapter 4) is crucial to indigenous legal systems and decision-making processes. This chapter explores a more concrete way in which relational or rhizomatic agency can be expressed in legal education.

CHAPTER 6: Worlding with Indigenous law: a teaching and learning proposal [334]

Introduction

> In the public arena, I've heard the Skywoman story told as a bauble of colorful "folklore." But, even when it is misunderstood, there is power in the telling. Mos of my students have never heard the origin story of this land where they were born, but when I tell them, something begins to kindle behind their eyes. Can they, can we all, understand the Skywoman story not as an artifact from the past but as instructions for the future?
>
> Robin Wall Kimmerer, *Braiding Sweetgrass* 2013, 9.

In recent decades, Indigenous communities in Latin America have faced intensified "natural resource" extraction and socio-ecological and political violence in their territories. 335 Indigenous struggles, ranging from mobilizations on the ground to various forms of legal activism at local, national, and international levels, are part of an ongoing grassroots movement to resist the worst consequences of development and Western modernity. 336

Western Modernity (WM) is, broadly speaking, characterized by the separation between humans and the larger community of life. 337 It endorses a paradigm of expert knowledge[338] at the expense of non-modern legal systems that are based on oral tradition, and the intimate relationship between humans and nature. In addition, Western Modernity reproduces power asymmetries

334 A substantially abridged version of this chapter published as: Vargas Roncancio, I.D., & Chindoy Chindoy, H., 2020. "Indigenous Legalities." In Zelle, A., Wilson, G., Adam, R., Greene, H., (eds.). Earth Law: Emerging Ecocentric Law. A practitioner's Guide. Aspen Coursebook Series. Wolters Kluwer. Thanks to the Inga Indigenous people of Colombia, specially Hernando Chindoy Chindoy. Unless otherwise indicated all translations into Spanish are mine.

335 After the 2016 Colombian Peace Agreement over 300 social leaders—many of them from Indigenous backgrounds—have been assassinated. See DeJusticia & Human Rights Data Analysis Group (HRDAG) joint analysis of this. https://www.dejusticia.org/en/leaders-assassinated-in-colombia-how-many-are-left-out-of-the-counts/ (01.18.2020).

336 See Escobar 2008, Mignolo 2011.

337 See Escobar 2018, Burdon 2010.

338 Since the invention of the discourse of economic development after World War II and the problematizing of "poverty" (in other words the ways of life of most of the world's people at that time), expertise in "economic development" has been particularly pertinent. Part and parcel of\ that expertise was how to bring Western legal conventions of, among others, property and contract to bear to promote the market economy. *See* Arturo Escobar, "The Problematization of Poverty: The Tale of Three Worlds and Development," in *Encountering Development: The Making and Unmaking of the Third World* 21-54 (1995).

between social groups 339 and growth-oriented economic system. 340

An expression of this paradigm, environmental law is often framed as an independent set of norms and procedures to regulate the human use of an external nature. This model, however, remains grounded in what scholars John Law and Arturo Escobar have called a 'one-world world' (OWW) ontology. 341 Conceived from the perspective of the Western historical experience and its colonial trajectories, the OWW ontology suggests that regardless of cultural variations and belief systems, humans and nature occupy one single real world made up of discrete and separated entities. This vision is grounded on an 'ontology of separation' between nature and culture and poses significant challenges for legal practice today. 342

This chapter will offer a point of view of what Anishinaabe legal scholar[343] Aaron Mills calls "Indigenous legalities" (ILs) to respond to these features of Western legalities. 344 By ILs I do not only mean Indigenous legal traditions 345— a set of customs, norms, and procedures to regulate social behavior—but also the local "lifeworlds," modes of thinking and acting of which these systems form part. 346 Particularly, I am referring to "rooted" forms of law, which are characterized by "mutual aid" between human and nonhuman beings in particular territories. 347

339 See Quijano 2014, Mignolo 2011.
340 See Kallis 2018, Garver 2013.
341 See Law 2007, Escobar 2018. For the purposes of this chapter, we define ontology as a set of claims about the nature of reality.
342 See Vargas Roncancio et al 2019.
343 *Anishinaabe* is an ethnic term generally referring to the shared culture of the First Nations' groups of the Great Lakes area in both America and Canada.
344 See Mills 2016, 2019. 'Anishinabek' meaning the 'good people' (Borrows 2010). The community has a strong and long-standing attachment to the Great Lakes region, partly because their traditions indicate that this is where they originated as a people. According to Borrows (2010, chapter 9), the Anishinabek take their identity from the dying of the first animals out of which the first Anishinabe arose. The stories of this creation explain how the world came to have its present form and are embedded in observations of how beings relate to one another.
345 See Glenn 2014.
346 Mills defines 'lifeworld' as '…the ontological, epistemological, and cosmological framework through which the world appears to a people.' He argues that "lifeworlds begins with creation stories.' Mills, 2016: 850.
347 See Mills 2019: iii. Mills (2016) suggests that legal practice may harm when it fails to acknowledge the lifeworlds beneath any legal system. The work of Irene Watson also illustrates the rooted character of Indigenous legalities: '(…) a natural system of obligations and benefits, flowing from an Aboriginal ontology'. Watson 2015: 2.

Drawing from these principles, the chapter surveys some of the main tenets, methodologies, and sources of ILs in the "Americas" 348 as a contribution to the emergent field of Earth law. 349 Legal theory and practice, I suggest, must draw from the living and knowledge systems where any legal order is already embedded. Part of this task consists in taking seriously the systems of norms, procedures, and practices informed by the multiplicity of lifeworlds referred to as "Indigenous legalities." 350 In many countries, such as Colombia and Ecuador, law at the state level already incorporates Indigenous legalities. Such countries are said to have *pluri-legal systems*. Following Indigenous legal practice in the Andean-Amazonian region, 351 the life-enhancing vision I endorse in this chapter embraces a relational, rather than divisionist, view of the world. This view foregrounds the "radical interdependency" between human and nonhuman beings, 352 pays attention to the co-production between modern and non-modern legal systems and traditions and recognizes the intelligence and communicative capacities of the nonhuman world. 353

Earth law challenges the narratives and premises of Western law and, in particular, environmental law. 354 Indigenous legalities contribute to the emergent field of Earth law by emphasizing a paradigm shift away from anthropocentricism to ecocentrism. The purpose of this chapter is to enable students to understand the contribution of Indigenous legalities to Earth law and prepare practitioners to be advocates for Indigenous peoples and Indigenous legalities. Section II concerns the differences between Western law and Indigenous legalities; Section III concerns the sources and methods of Indigenous legalities; Section IV presents Colombian and Inter-American case law regarding Indigenous legalities; and Section V offers a vision of Indigenous legalities in the Andean-Amazonian context today: the *Wuasikamas* law, or the "law

348 For a critique of this and similar notions see Mignolo 2005.
349 See Zelle et al 2021.
350 See Mills 2016, Braverman 2018.
351 See Muelas 2000, Wuasikamas 2019.
352 See Escobar 2018, Borrows 2010, Kimmerer 2013.
353 On the cognitive and semiotic capacities of non-humans see Kohn 2013 and Gagliano 2018. A vision of this approach in legal theory in Vermeylen 2017 and Clark et al 2019. For the notion of territory in the Colombian context see Micarelli 2008. Our vision also supports a post-liberal view of legal practice, and finally a post-development and degrowth-oriented legal pedagogy respectful of Indigenous practices of cultural, and economic difference. On degrowth see Kallis 2018. On decolonial economics see Quijano Valencia 2016.
354 See Garver 2013, Greene 2021.

for the guardianship of Earth" of the Inga people of Colombia. 355 For further reference, Appendix 4 lists international and national standards and jurisprudence on Indigenous peoples and their rights.

Note to legal practitioners, teachers, and scholars: What can you expect from this chapter? You may need to help a [western] judge and legislator understand this vision. To achieve this goal, you can turn to state and Indigenous legal sources, while understanding the limits and possibilities of juggling between these two worlds to defend people and the land. To help you with this task, this chapter combines the analysis of Indigenous legal concepts and sources of law, as well as jurisprudence on Indigenous issues from national and regional contexts. I believe that this approach will help you gain a better understanding that will allow you to enter the world of IL and its ability to transform 'Western' law. I am going to unpack some key concepts, analyze Indigenous stories as legal sources, as well as jurisprudence, so that by the time you finish the chapter you will be able to cross back and forth between 'Western' and ILs.

1. Coloniality and Law

This chapter builds upon a well-established body of work that reverses the predominant colonial relation between Western Modernity, and Amerindian worlds.356 Rather than focusing on how anthropocentric conceptions of the law might impact Indigenous life and legal systems, I am more interested in showing how Amerindian ways of knowing and being can transform Western (state) legal systems. I strongly believe that attention to ILs will offer a useful lens to transform state law in the face of socio-ecological crisis of sorts. One important step in this direction is to recognize how different forms of colonial violence both in the Global South and the Global North have affected Indigenous lifeworlds and legal systems.

355 In conversation with Hernando Chindoy. See The Wuasikamas 2019, and See Vargas & Chindoy 2021.
356 See Viveiros de Castro 2014, 2015.

Since the famous 16th century *Valladolid Debate* in Spain, the *Derecho Indiano* re- inscribed a thing-like conception of Indigenous others which deprived them of their humanity. The second step of this long history ranging from the violence of the euphemistic colonial 'encounter' to the state management of cultural diversity today, is the 'invention' of the Indigenous as a minor (non-capable) with the ensuing need for state tutelage. I can call this the legal modern/colonial foundation of racism.357

The *Debate* (1550–1551) was the first moral and legal dispute in European history to discuss the appropriate course of treatment of Indigenous peoples under the 'tutelage' of the Spanish crown. One of the practical outcomes was, precisely, the distribution of humanity along the lines of a nature-culture grid, and, consequently, the negation and elimination of local epistemologies – including ritual, social, and legal epistemologies – up until today.358

Take the following textbook on legal history to illustrate how predominant accounts of Western law tend to undermine Indigenous legalities: *Comparative Legal Traditions* (CLT).359 Comparative law, broadly speaking, is the systematic study of the similarities and differences between legal traditions,360 and CLT offers an overview on the history, theories, and methods of this legal sub-discipline in the Western context.

357 See Mignolo 2005, Quijano 2000. Miranda Johnson (2016) states that white settlers dispossessed the original inhabitants through wars and violence, and by using specifically designed legal instruments for the seizure of land. Now, these colonial settlers call these lands theirs. The settler states began to structure forms that would exclude the recognition of surviving Indigenous nations in order to keep the land. Similarly, Watson (2018) states that First Nations have repeatedly been viewed as non-existent. The idea of the absence of law in First Nations' territories is supported by the moral case for colonialism and the notion of the 'savage' and 'backward natives' (Watson 2018: 2). She further states that international law, as an example of this, is an 'organized system of domination' (2018: 3). International law is a body that grew out of the colonial project, she continues; a tool, in fact, used to exclude First Nations from 'recognition' within state regimes. That power is currently normalised and masked as beneficial. Watson thus critiques the international legal regimes. Indigenous rights are still centred upon an anthropocentric, and colonially constructed identity. Indigenous laws, she argues, are essential for justice. How, then, do we move beyond a rights discourse that is framed within a matrix of coloniality? How do we reconstruct international law? (Watson 2018, 4)

358 If ontology, in the context of this chapter, refers to as a set of claims about the nature of reality, epistemology stands for how a 'who' (i.e. an individual human or collective) represents the nature of reality through language (signs), practice, and behavior.

359 Glendon, Carozza, and Picker [2008) (1982)] Comparative Legal Traditions. St. Paul, MN: Thomsom/West.

360 For CTL authors the word tradition generally evokes the image of a frozen and static past. However, with this term they denote a "vital, dynamic, and ongoing system" of principles and norms (14). In this sense, the Anglo-American

The book starts with a chapter on the origins and "distribution" of the largest legal tradition in the Western world: Civil Law. The narrative begins with a detailed account of the Roman Law (RL) both as the foundational moment of the Western legal canon, as well as its authorized source of veracity. It then continues with the afterlives of RL amidst seemingly dispersed and unsystematic "Medieval customs," to then study the expansion of the Christian law throughout Europe.

Once the CLT traces the foundational (imperial) moment of Western law in Rome, it follows a steady line of precise civilizatory progression well into the scholastic tradition of the Canon law, and the ulterior formation of National laws in the mid-16th century. Finally, this history book lands on the Napoleaonic Code successfully exported to the former European colonies during the first half of the 19th century.

CLT goes on to describe the legal structures, principles, and legal actors of the Civil Law's republics (civilized?) to then focus on the parliamentary government, the separation of powers, and the enforcement of the judicial review, among other themes. While this narrative is an impeccable comparative synthesis of the evolution of two major legal traditions in the Western context, we shall ask: What is missing from this picture? Does this standard legal narrative displace Indigenous peoples' systems of law in the 'American' context? How have Indigenous peoples influenced and shaped legal institutions in the Western context? While we are not answering these historiographical questions, suffice it to say that they are relevant for our argument on the multiplicity of ILs in colonial contexts and their importance to face today's socio-ecological crises.

As the CLT continues its epic legal journey from the Roman law to the Napoleonic, it also seems to undermine the violent histories of imperial/colonial domination, as well as the pervasive

common law and the Romano-Germanic civil law are both examples of living traditions whose "goods extend for generations, sometimes through many generations." (14. Citing Alasdair MacIntyre)

cultural transplants and re-appropriations of fundamental 'Western' legal constructs.361 It is worth then to notice two additional absences of this standard account, which amount to fundamental ontological and political pre-suppositions. First, the role Eastern law and culture played in the formation of Roman law, and the colonial character of legal structures imposed upon already existing 'Pre-Columbian' modes of governance in the so-called "New World." 362

While occupying the position of the *Other*,363 the law of the East and the law of Pre-Columbian peoples are either ontologically subsumed within a pre-analytical (yet also internally multiple) 'Western Self', or simply made absent from the official historiografical account.

Anishinaabe legal scholar John Borrows, for example, states that Canada's legal system is rather incomplete. For him, Indigenous laws are often ignored, diminished, or denied as being relevant or authoritative sources of legal meaning. Therefore, he suggests, Canada, as a more-than-settler space needs to be constructed around a broader horizon; one that takes seriously Indigenous legalities embedded in larger lifeworlds. 364 The colonialist *ethos* just outlined is present in other areas of the law as well. For example, Steven Newcomb considers that 'International law serves as an excellent example of (…) the linguistic colonization of the present (Indigenous legalities) by the past'.365

A means by which polities called 'states' carry forward and maintain a reality of domination and dehumanization. In other words, the system called international law has created the ability for a nation to claim to have conquered another nation or peoples and then, additionally, to have a

361 See Monateri 2006.
362 In 'Aboriginal Nations, the Australian Nation-State and Indigenous International Legal Traditions', (in Watson, I. (ed.) 2017, Indigenous Peoples As Subjects Of International Law, London: Routledge), Ambellin Kwaymullina suggests that there has always been an Indigenous international Legal order. To be sure, First Nations formed complex networks of relationships across time and space, and the system of international law as we know it now and the Declaration of Human Rights are all in their infancy. First Nations have been practicing such bodies for a long time, only in a different manner.
363 See Smith 2012.
364 See Borrows 2010. Also see Mills 2016; Ingold 2011. To be sure, 'Indigenous legal traditions' (Borrows 2010) organize dispute resolution in a different way compared to common law or civil law. They have their own distinctive methods and different underlying worldviews.
365 See Newcomb 2017, 20.

right to maintain and control those conquered. Newcomb calls this "the domination of Indigenous Peoples by states." 366 International law has a 'Western' origin (although we agree on the complexity of this category), provides an account of the positivist school, and tends to occupy itself with relations of domination.

Irene Watson, an Indigenous legal scholar from the Tanganekald, Meintangk Boandik First Nations Peoples of the Coorong in South Australia, clearly summarizes this tension as '(…) the story of the conflict between authority and power. Authority is in the hands of First Nations Peoples and (their) law(s), while power is held by states by way of a violent foundation.'367 How, then, can we recognize Indigenous legalities from myriad colonial, interrelated and increasingly complex legal systems and sources?368 Watson argues that "(w)e already know and have known forever whom we are, *we were here first*, and we already know the land and each other. We have our own stories of whom we are and how came to be, but now we are in a dialogue about our future and survival, about genocide." 369

While the law is instrumental to achieve socio-ecological transformations, it cannot be left to human 'settlers' and the state alone.370 This realization requires a theoretical and practical move of crucial importance, namely, to expand the law beyond the normative, the human, and the state.371 This goal also requires expanding notions of representation, agency, standing, rights and justice, in order to include other-than-human beings within the legal system. This approach does not only consider the normative aspects of legal systems, but also their world-making and

366 See Newcomb 2017, 21.
367 See Newcomb 2017, 97.
368 Miranda Johnson (2016) considers that 'colonial states still designed policies of assimilation: they forced Indigenous peoples to become citizens of the colonial customs and laws. In the settler state, there was only one nation recognized - the white settler nation. These policies, however, are yet another example of colonization; they threaten the cultural survival of Indigenous Peoples and thus First Nations offered resistance, according to Johnson. Moreover, Irwin Lee (2000) addresses 'the difference of worldviews between Indigenous and non-Indigenous Peoples (…), and how Indigenous Peoples have struggled to sustain their authenticity in the face of oppressive cultural denials by colonial states.' Daan de Bruijn, Review for 'Indigenous Legalities', source No. 1 and 2 (Not published).
369 Newcomb 2017, 101.
370 See Mills 2019, Johnson 2016.
371 See Davies 2017.

emancipatory capacities. We believe ILs can contribute with this earth law framework (see table above). The next section studies different ways of recognizing Indigenous legalities today.

2. Recognizing Indigenous legalities

> The essence of the gift is that it creates a set of relationships. The currency of gift economy is, at its root, reciprocity. In Western thinking, private land is understood to be a "bundle of rights," whereas in a gift economy property has a "bundle of responsabilities" attached.
> Robin Wall Kimmerer, *Braiding Sweetgrass,* 2013, p28

Indigenous communities recognize and define their legal systems according to their own worldviews and practices. This section will survey several sources and methodological approaches to ILs at present. Indigenous peoples across the Americas hold different views on the character and practice of law, as well as different theories about what gives the law its binding force. The sources of ILs are diverse and numerous, for example, 'sacred teachings, naturalistic observations, positivistic proclamations, deliberative practices, and local and national customs', among others.372 The study of ILs, therefore, requires a particular epistemological approach through which human and nonhuman beings - including the supernatural and the inert – are all considered social agents as well.

In sync with Indigenous cosmologies,373 the science of plant intelligence and communication,374 and various expressions and ethnographic description of Indigenous thought,375 I suggest that living entities besides the human are endowed with cognitive and agent-like capacities. Transferring this anthropological argument to the legal field, we suggest that other-than-human beings have integral roles to play within legal systems. ILs offer a place-based framework and system of practice to account for these other sources and agencies and treat them as law.

372 Borrows 2010, 33 (Edition from McGill Library Digital Collection). See appendix for summary of 'positivistic law' as sources of Indigenous legalities.
373 See Belaunde and Echeverry 2008, Echeverry and Candre 2008, Kimmerer 2013, Luna 1984, Urbina 2011.
374 See Gagliano and Marder 2016, Gagliano 2015, Gagliano et al 2014.
375 See De la Cadena 2015, Descola 2013, Jamioy and Apushana 2013, Kohn 2013, Rocha 2018, Vivieiros de Castro 1998.

Anishinaabe Indigenous legal scholar John Borrows offers a comprehensive account of such sources in the North American context. In what follows, I summarize some of his important insights on the subject and offer examples from Latin America to his ideas in a different legal geo-location. I believe there are some important commonalities between the two regions.

a. From "Sacred law" to 'Customary Law'. John Borrows´ framework meets Andean-Amazonian Indigenous jurisprudence

i. "Sacred Law": The Creator

Stemmed from the Creator, "(…) creation stories or revered ancient teachings (…), these laws are often given the highest respect." 376 They are the source of spiritual principles of crucial importance for Indigenous legal systems. Creation stories, which refer to the formation of the world, are one source of such sacred law. They "(…) contain rules and norms that give guidance about how to live with the world and overcome conflict. (…) They contain instructions about how all beings should relate to specific territories." 377 Sacred laws may be less flexible than laws coming from other sources, and "(…) their recognition, enforcement, and implementation can be seen as foundational to the operation of other laws." 378 Working with Elders in Saskatchewan, Borrows learned that treaties also flow from a sacred source, "because they brought Canada into existence within their (ancestral) territories":379

> "The laws surrounding Canada's formation in many treaty territories are profound because they are meant to encourage the spiritual, moral and legal capacities of all the people who would come to live here [today's Canada]. The sacred nature of the treaties is one reason why many First nations would not consider abandoning them despite generations of

376 Borrows 2010, 33 (Edition from McGill Library Digital Collection).
377 Borrows 2010, 34 (Edition from McGill Library Digital Collection).
378 Borrows 2010, 34 (Edition from McGill Library Digital Collection).
379 Borrows 2010, 35 (Edition from McGill Library Digital Collection).

government neglet. It would be a violation of the Creator's law, sacred law, to turn away from their promises to him and others in maintaining peace and order throughout the lands on which they lived (…) The fact that Canada's creation is not universally regarded as flowing from a sacred source does not undermine the laws of those First Nations who see things differently. For people in these spaces, treaties can be regarded as sacred creation stories about Canada's formation if placed in their best light." 380

Consider the following:

1. For the Indigenous Iku in northern Colombia, *Serankwa,* the creator, 'left everything' – rivers, forests... the law:

"According to the spiritual teachings of our ancients, the rivers are our veins and arteries; the forests represent our hair and the hair of our bodies; the stones are our ancestors peacefully resting (…) we understand that everything was left by our father *Serankwa* – the creator of everything that exists and the Laws of Universal Order (…) These laws are to keep the balance between humanity, nature and the cosmos." 381

What are the challenges and possibilities of considering this creation story as a source of law? How does a sacred origin of the law challenge rationalist conceptions about the origin of the law as a 'social institution'? Does the idea of the 'sacred' imposes yet another dualism (between a transcendental entity and the immanent powers of creation of the Earth itself)?

2. In the Andean context, the Constitution of Ecuador (2008) refers to a sacred entity as well:

Chapter 7: Rights for Nature.

"Art. 71. Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution." 382

Pachamama is a fertility goddess who presides over planting and harvesting, embodies the mountains, and causes natural disasters. Can you think of another example of state law (i.e. case law, statute, constitutional norms, etc.) with a specific reference to a sacred source or entity? What would it happen

380 Borrows 2010, 36 - 37 (Edition from McGill Library Digital Collection).

381 Original in Spanish: Rodriguez, Gloria, and Mestre-Busintana, Kasokaku. 'Concepción y Aplicación de la Ley de Origen del Pueblo Iku (Arhuaco).' In CONAI et al, Somos Hijos del sol y la Tierra. Derecho Mayor de los Pueblos Indígenas de la Cuenca Amazónica. Manthra Editores. w.d. p. 58.

382 Constitution of the Republic of Ecuador 2008. Political Database of the Americas. http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html

if Western courtrooms invoked Pachamama in their decisions? What is this telling us about the transformation of constitutional law?

ii. *"Natural Laws": Nature as kinship*

'Natural laws' refer to law derived from observations of the physical world. Necessary to understand how the earth maintains itself and functions, these laws are also important to acquire knowledge on how to 'read' the world and understand our place in it. Thus, the law is related to the workings of the natural world and our effects on it; the law is then written on the earth. Moreover, we are all related to each other and each is to be respected for their being. This, Borrows suggests, reinforces a determination to act in accordance with the laws of nature as interpreted from the natural world surrounding us; it helps to regulate behavior:383

"Indigenous peoples who practice this form of law might watch how a plant interacts with an insect and draw legal principles from that experience. Other may study how an insect interrelates with a bird and take legal guidance from that encounter. Some might examine how a certain bird relates to an animal or another bird and see standards for judgement in this relationship. There might also be analogies drawn from behaviours of watersheds, rivers, mountains, valleys, meadows, or shorelines to guide legal actions. As such, these laws may be regarded as literally being written on the earth (…) For many Indigenous people, the casebook for learning natural law requires an intimate knowledge of how to read the world; understanding natural law from this point of view does not require an intimate knowledge of how to read legal philosophy."384

383 Borrows 2010, 37 (Edition from McGill Library Digital Collection). See for example Delgamuukw v. Attorney General (British Columbia). When referring to Mi'kmaq - known as the "People of the Dawn - Legal Traditions, Borrows (2010, chapter 3) refers to the family-based nature of Mi'kmaq's social relations and legal practices. Moreover, decisions are made through the knowledge obtained from other living beings. Law is derived from observations, discussions and daily routines with/of the land. Thus, the ecology in which this community lives is their classroom, and the land and all other living beings are considered teachers in their own right. Further, the leaders of extended families and community spiritual leaders are in charge of guiding and sustaining these ecological relationships as well. Yet, the community aspires to give everyone an opportunity to participate in decision-making. Mi'kmaq legal traditions therefore are flexible, natural, customary, deliberative, and sacred (deriving laws from nature, deliberation, and custom) – including sacred responsibilities to the world.

384 Borrows 2010, 38 (Edition from McGill Library Digital Collection).

Like decomposing foliage in the soil nurtures new life, we constantly experience the co-emergence and decay of human and nonhuman life. We experience how everything thrives in mutuality, and even fades away relationally. Nonhuman beings, then, are not to be represented, controlled, and 'preserved' as discrete parts of an external reality, but recognized as bundles of relations embodied as persons with rights. Yet, we believe this poses a true ethical and *ius*-methodological challenge to face the socio-ecological crises of our time. Therefore, our vision of ILs troubles deeply entrenched assumptions about what counts as a person in legal theory and practice. The following story from the Andean-Amazonian region is a case in point.

The Story of the Tapir
La Historia de la Danta

By the Inga Indigenous people of Colombia
Compilation by Taita Hernando Chindoy Chindoy385
(Original in Inga and Spanish language)

<<Era el tiempo en el que las plantas y los animales transmitían sus poderes y saberes a los hombres durante la caceria y los sueños. Un dia, Taita Yacha Runa (hombre sabio), cazador y kuraka (médico) del pueblo Inga, salió de su casa en busca del lugar de las dantas. Había caminado un largo tiempo junto a su alkusacha (perro de monte); llevando con él su

<< It was the time when plants and animals transmitted their powers and knowledge to people while hunting and dreaming. 386 One day, *Taita Yacha Runa*,387 a hunter and *curaca388*, left his home and went searching for the home of the tapir. He and his *alkusacha389* had walked for a long time carrying with them

385 Also see Chindoy Chindoy 2017. 'Wasikamas-El Modelo del Pueblo Inga en Aponte-Nairño-Colombia' In Knowing our Lands and Resorces. IPBES-UNEP-UNESCO-FAO-UNDP.

386 La Historia de la Danta (The Story of the Tapir) by the Inga Indigenous people of Colombia. Compiled by Taita (traditional authority) Inga Hernando Chindoy who kindly shared this story with me (Original in Inga and Spanish. Personal communication, January 2020. A shorter version of this chapter published as Vargas Roncancio, I.D., and Chindoy, H., (2021) "Indigenous Legalities" In Zelle, A., Wilson, G., Adam, R., Greene, H., (eds.). Earth Law: Emerging Ecocentric Law. A practitioner's Guide. Aspen Coursebook Series. Wolters Kluwer.) One of the central claims of Forests go to Court is that if we want to go beyond standard Western narratives that locate the sources of law within the state only, we should treat Indigenous origin stories as law proper. A similar argument in Napoleon and Friedland: "We engage with Indigenous legal traditions by carefully and consciously applying adapted common law tools such as legal analysis and synthesis, to existing and often publicly available Indigenous resources: stories, narratives, and oral histories." Napoleon and Friedland ("Engaging with Indigenous Legal Traditions through Stories") 2016: 725.

387 Inga term for "wise person."

388 Inga term for "traditional healer." In Quechua, "a member of the Inca provincial nobility often acting as administrator or ruler over an ayllu or group of ayllus." See Merriam-Webster, Online https://www.merriam-webster.com/dictionary/curaca [Visited on Sept. 27, 2020].

389 Inga for "mountain dog."

bodoquera y una jigra con los dardos propios de un cazador. Iba tan concentrado en sus pensamiento que no se dio cuenta de que se encontraba en un lugar cercano al páramo. Siguiendo su camino entre los frailejones empezó a divisar el ruku sacha (monte viejo), la vegeación espesa y misteriosa de las montañas del páramo. A medida que el Taita cazador y su fiel alkusacha se fueron adentrando en las montañas del paramo empezaron a sentir una extraña sensación en sus cuerpos y al instante apareció ante sus ojos un lugar increíble y hermoso, donde se unían diferentes formas y colores con la vegetación. Allí, Taita yacha Runa, cazador y kuraka, empezó a mirar diversos y variados tipos de vinan: estas matas con sus bonitas hojas conformaban una chagra multicolor. Habiendo mirado esto, dicidió cortar algunas hojas de vinan y al momento empezó a tronar y a llover. Enseiguda miro dos plantas, una pequeña y una grande; eran las shishajas. Siendo necesario escoger una de las dos plantas pensó en la más pequeña. Sería a través de ella que conocería a los buenos espíritus; desechó la grande porque mediante ella iría hacia los espíritus malignos. Allí mismo pudo observar una laguna y en sus alrededores por primera vez descubrió el lugar donde dormían las dantas. En aquel instante, sin darse cuenta, se quedó dormido y mediante el sueño empezó a comprender el valor de cada una de las plantas que había visto. Aprendió que los vinan eran para tener y regalar la buena suerte y la shishaja pequeña preparada como bebida, para evitar los malos espíritus y como "contra" frente a los enemigos. En ese mismo sueño volvió a ver la laguna y dentro de ella vió dos patos nadando, uno blanco y otro amarillo. Escogió el pato blanco y a pesar de tener la oportunidad de llevarse el pato amarillo lo dejó en el mismo lugar.

Pasado un tiempo, Taita Yacha Runa se encontró con un kuraka de avanzada edad. Creyendo conveniente hacerlo, empezó a contarle lo que había visto cuando

the *Taita Yacha's* blowgun and darts. Immersed in his thoughts, he didn't realize that he was already in the place he was looking for in the *páramos* (moors), where different shapes and colors blended with the surrounding vegetation. Following a path among hundreds of *frailejones* (Espeletia grandifora), the *Taita* began to see the *ruku sacha:390* the thick vegetation of the *páramos*. As the *Taita* and his faithful *alkusacha* went deeper into the mountain's forest, they felt rather strange: the house of the tapir suddenly appeared before their eyes in all its sprouting shapes and colors. *Taita Yacha Runa* saw different plants with different types of leaves and fruits in the *chagra391* of the tapir. Then, he decided to cut some of these leaves and take them with him. Soon after, there was thunder and rain, and the *Taita* saw two different kinds of plants, one small and the other large, the *shishajas* (Gaultheria insipida). He had to choose one of them and picked the smaller one. With this plant, he was abe to see good spirits, and rejected the large one because it had evil spirits. The *Taita Yacha Runa* was able to descry a lagoon and, for the first time, the place were the tapir lives. Without even realizing it, he fell asleep and dreamt about the plants he had just seen. In his dream, he learned that some of these plants were for good luck, and that the small *shishaja* was useful in avoiding evil spirits, and as protection against enemies. In the dream, he was also able to see the lagoon, and then he saw two ducks that were swimming, peacefully. One of them was white and the other was yellow, and the *Taita Yacha Runa* chose the first one. Having a chance to take the yellow duck as well, he decided, instead, to leave it there.

390 Inga for "old mountain."
391 Inga for "food garden."

se encontraba despierto y lo que había observado en el sueño. Le contó que había tomado todos los saberes que se le habían ido ofreciendo en las montañas cercanas al páramo, pero que había dejado uno en el lugar donde lo vió. Se trataba del pato amarillo que había dejado nadando en la laguna. Al momento que dejó de hablar Taita Yacha Runa, el anciano kuraka le contestó: Nuka kane dantakunapa suyumanda yaya (Yo soy el dueño y señor de las dantas, de todo lo que viste y oíste). Hiciste bien en escoger lo que tú querías; debiste haber tomado el pato amarillo cuando tú lo mirabas; el pato blanco significa dinero y el pato amarillo, oro. Ahora jamás volverás a verlo y ya nunca será tuyo.

Fue así como Taita Yacha Runa cazador y kuraka descubrió el saber que había en el lugar de las dantas. Desde entonces las dantas son el augurio de buenos tiempos y las pezuñas de sus patas son utilizadas para curar enfermedades de mal aire (…).>>

After a while, *Taita Yacha Runa* met an elderly *curaca*. Believing it was convenient, the *Taita* began to tell him what he had seen when he was awake, and what he had seen in dreams too: *"I had taken all the knowledges that had been offered to me in the mountains near the moor, but left one (knowledge) in the place where I saw the yellow duck,"* the *Taita* said. When *Taita Yacha Runa* finished speaking, the old *curaca* replied: "*Nuka kane dantakunapa suyumanda yaya* (I am the owner of the tapir, and of everything that you saw and heard) […] You did right to choose what you wanted, but you should have taken the yellow duck because the white duck means money, and the yellow duck means gold. Now you will never see the yellow duck again, and he will never be yours." This is how *Taita Yacha Runa,* hunter and *curaca*, discovered the knowledge that was in the house of the tapir. Since then, the tapir is the augury of good times and his hooves are used to cure *mal aire* (bad air) *(…)*

In *Engaging with Indigenous Legal Traditions through Stories,* Napoleon and Friedland offer an insightful entry point on Indigenous stories of natural phenomena as sources of Indigenous legalities: "We engage with Indigenous legal traditions by carefully and consciously applying adapted common law tools such as legal analysis and synthesis, to existing and often publicly available Indigenous resources: stories, narratives, and orals histories."392

Consider the following questions after reading the story:

1) How one derives norms of conduct from the observation of – and participation in - the natural world?

2) How does this differ from conceptions of natural law* in the Western legal canon?

(*A set of unchanging moral principles considered as the basis for all human conduct)

392 Napoleon and Friedland 2016: 725. For Girard, Phillips and Brown (2018), orality too is an important feature of Indigenous legal systems. Most legalities are reliant on memory and transmitted orally, and the law finds its content in origin stories.

This story puts forth a challenging theoretical and practical question. For some Indigenous communities, animals, plants, and other beings have 'human' features such as the ability to communicate with other beings and make decisions. For other Indigenous communities, it is the other way around: the human acquires the powers and personalities of non-human beings, for example, through ritual and dreams (the tapir brings good fortune). How does a conception of life that is not only centred on the human being impact the law? Can we think about the law beyond human modes of representation (that is, symbolic language)?

To illustrate this problem, Australian Indigenous legal scholar Ambellin Kwaymullina studies what she calls 'relationship-based' citizenship. For her, all relationships ultimately trace back to the Ancestors and are expressed through kinship systems that go beyond the human. The kinship system reflects the networks of relationships, and is cyclical as it enfolds the present, past, and future. Then, '(t)o be an Aboriginal citizen of an Aboriginal Nation is to exist within these networks of relationship, the pattern – or story – of which was laid out by the (…) Ancestors and which is upheld through the law'.393 Briefly, kinship systems extend not only to humans but also to all forms of life and it is through kinship systems that laws are enforced. In fact, in Indigenous societies to be a full human being is to be part of a larger ecological collective. 394

iii. "*Deliberative Law"*: *The community*

This expression captures the dialogic nature of what Borrows calls "Indigenous Legal Traditions." Most Indigenous legalities are developed through relentless oral communication between people so that the law maintains a dynamic and adaptive force. This fluid characteristic is also central to resisting colonial systems of domination:

393 See Kwalymullina 2018, 14.
394 See Kwaymullina 2018.

> "An especially broad source of Indigenous legal traditions is formed through processes of persuasion, deliberation, council, and discussion. While sacred and natural law might sometimes form the backdrop against which debate occurs, the proximate source of most Indigenous law is developed through people talking with one another. The human dimension of these laws means that recognition, enforcement, and implementation make them subject to re-examination and revision through the generations. (…) When Indigenous people have to persuade one another within their traditions, they must also do so by reference to the entire body of knowledge to which they have access, which includes ancient and modern understandings of human rights, due process, gender equality, and economic considerations (…) Since no Indigenous person or community is completely detached from the world, many influences will be brought to bear on Indigenous legal developments."395

Given its greater social participation over time, deliberative law is a process based on relationships that create strong legal ties. Collectivity and inclusion are important for laws to be established and enforced in Indigenous societies. The deliberative law is expressed, for example, in circles that invite you to participate in the development of legal standards. Circles are considered sacred and represent the gathering of people in an atmosphere of equality. Everyone can speak. Circles are also meant to remind people about Mother Earth and her journey through life. 396

Next to the circle, gatherings and other large public assemblies can be held to encourage the discussion and resolution of issues. Still, other ways to develop laws through persuasion, council,

395 Borrows 2010, 44-45 (Edition from McGill Library Digital Collection).

396 According to Borrows, the Earth, for the Anishinabek, is a living being who has thoughts and feelings; it has a soul with many moods and activities and can exercise agency by making choices. The Earth has, in a word, personality. It is a sacred being that helps to generate life, and, as such, is treated with great respect and wonder. Thus, the 'Original Instructions' (the law) come from the Earth, and must be respected and honored (Borrows 2010, chapter 9). There is, moreover, a universal bond between all living things; a web of kinship relations and spiritual energy that flows between, from, and through every living being and their relationships. The structure of the Anishinabek language, Borrows suggests, depicts the Earth in this manner as well. Land's sentience is a fundamental principle of Anishinabek law as well as the principle of 'mutual obligations and entitlements' that must be respected to sustain life and live healthy. All governmental structures, then, require humans to consult with the Earth's Creator and seek the Earth's receptiveness before making a decision (Borrows 2010).

and debate remain important. In short, many Indigenous legal traditions develop in a deliberative fashion, either through councils, circles, feats, or other informal and formal meetings and gatherings.397

Consider the following:

Scholars Gloria Amparo Rodriguez, a Colombian legal scholar, and Kasokaku Mestre Busintana, practitioner and intellectual from the Iku Indigenous community of the *Sierra Nevada de Santa Marta*, Northern Colombia, have written the following on the notion of deliberation':

"Within the principles of the Iku Indigenous community (northern Colombia) we talk about the consultation or spiritual permission of nature. This means that if you are going to build a *maloca* (traditional hut), you must first agree with nature: with the trees, with the stones, with the vines, with the mud (…) with all the elements that are going to be used. You must pay the (spiritual) owners of these materials, otherwise, as indicated by tradition (the law), you are breaking the Law of Origin. You must perform the permission rituals with the guidance of the *Mamos* (spiritual leaders), otherwise there will be conflict between people and an imbalance of the natural order: droughts, heavy rains, landslides and other problems. These rites and ceremonies were established by father *Serankua* and the ancestors." 398

The deliberative dimension of the law includes the 'consultation or spiritual permission of nature'. How does this passage expand a human-centered vision of deliberation? How might a human-non-human theory of deliberation contribute to an expanded theory of democracy in the Western context?

397 From Borrows 2010, 44 (Edition from McGill Library Digital Collection). On Indigenous law as a living legal order see: Clogg. J., Askew, H., Kung, E., & Smith, G. (2016). Indigenous Legal Traditions and the Future of Environmental Governance in Canada. Journal of Environmental Law and Practice, 29, 1-24. For Clogg et al (2016), this law is based on many sources such as customs, songs, stories, language, elders and Indigenous knowledge keepers, and ceremonies. Moreover, there is no one Indigenous legal order: it is dependent on the specific circumstances of each group and based on the many sources. Indigenous legalities, thus, are best understood in the context of a group's language, stories, discourse and values. Elders and knowledge keepers are the primary authorities for interpreting Indigenous jurisprudence. Therefore, Indigenous law is not rigid, but continuously evolves through overlapping processes which include storytelling, perceptions, sensations, and other activities that eventually make up the teachings, customs, and agreements. There are ongoing processes of negotiation, discussion and compromise. Language and mythos are the underlying framework upon which deliberation occurs.

398 Original in Spanish: Rodriguez, Gloria, and Mestre-Busintana, Kasokaku. 'Concepción y Aplicación de la Ley de Origen del Pueblo Iku (Arhuaco).' In CONAI et al, Somos Hijos del sol y la Tierra. Derecho Mayor de los Pueblos Indígenas de la Cuenca Amazónica. Manthra Editores. w.d. p. 63.

iv. "*Positivistic Law": the Legislator*

For Borrows, positivistic law refers to those rules that regulate social behavior. As such, "they do not necessarily depend on appeals to the Creator, the environment, or deliberative processes to possess their force." They are made by a person or group of people (a council) regarded as sufficiently authoritative in the community, and "they rely more on the authority and intelligence of those who create them" than on the notion of sacred creation, deterministic nature, or fluctuating community deliberation. The Indigenous authorship of these binding norms is then a key element. Expressions of positivistic law can be found in proclamations, regulations, codes, teachings, and even normative proposals to reform state law. 399 However, to remain faithful to the notion of Indigenous legalities, these expressions of positive norms do not always stand by themselves. They require other sources: 400

> "I must confess that positivistic law as a source of authority (without a broader justification for its use) prompts greater concern for me than the other sources we have been discussing. My concern about statues and commands not only relates to Indigenous legal traditions; I see problems with the over-reliance on this source within common law and civil law traditions too. My worry is that if a prominent leader or group rules through his form of law for too long, without the restraining influences fond in the other sources identified to this point, this could lead to great corruption." 401

399 Borrows 2010, 55 (Edition from McGill Library Digital Collection).

400Indigenous positive laws are also an important protection against colonial influences. Moreover, oral recitation is an important legal principle within Indigenous communities, and customary law - as one expression of oral law but not only - is fundamental when realizing Indigenous peoples' human rights (Tobin 2014). Tobin, for example, analyses the importance of customary law in tribal, national and international governance. She further reviews the legal status of customary law and its relationship with positive and natural law on both the international and national level. Customary law can then be seen as a study of what Tobin calls 'living law', namely an evolving body of lived practice adapting to the conditions of the time in an organic manner. To be sure, one can see customary law as intrinsically intertwined with the spiritual, ecological and cultural lives of Indigenous peoples and their symbiotic relationship with their lands and all living beings. Customary law thus has great potential to broaden the horizon of legal theory and practice in the realisation of intercultural justice and respectful relationship with the Earth (Tobin 2014, Borrows 2010). Customary law and traditional knowledge systems are vital for present-day land relations and thus to move towards an Earth law. With Tobin (2014) we consider that customary law is too narrow to fully discuss Indigenous legalities but important to address still. Tobin highlights the importance and potential of customary law, its relation to Indigenous legalities, and how it ultimately can bring humanity back to a relationship of reciprocity with the Earth.

401 Borrows 2010, 56 - 57 (Edition from McGill Library Digital Collection).

Consider the following:

"PROJECT FOR A NEW CONSTITUTION OF THE PLURINATIONAL STATE OF THE REPUBLIC OF ECUADOR402

by the CONFEDERATION OF INDIGENOUS NATIONALITIES OF ECUADOR-CONAIE

For us, the National Constitutional Assembly is an instrument to build a truly democratic and plurinational Ecuador that guarantees a dignified, economically fair, and socially intercultural life.

(…)

1. OF THE STATE MODEL

As a source of power, the new Political Constitution of the State must recognize that sovereignty belongs to the people, and will be exercised through various democratic expressions, namely: direct democracy via popular participation; collective, community-based, and representative democracy through the different organs of public power. As the major legal-political structure of the country, the State must be established as plurinational, sovereign, communitary, social and democratic; independent, secular, unitary, and respectful of gender equality.

The government will be republican, semi-presidential, responsible, and administratively decentralized. Spanish and Kichwa will be considered official languages at the national level. The other languages of the Indigenous nationalities will be official in their respecive territories."

Now, you might want to compare this Indigenous proposal with the initial articles of the constitution of your own country. What are the main differences and similarities between them? In what way can we say that this proposal is based on Indigenous cosmovisions? Consider, for example, that this legal proposal recognizes the Kichwa as an official language of the state.

402 Original in Spanish. This constitutional project was submitted by the CONAIE to the Constitutional Assembly of Ecuador in 2007. See CONAIE. Nuestra Constitución por un Estado Plurinacional, 2007; CONAIE. Principios y Lineamientos para la nueva Constitución del Ecuador. 2007.CONAIE. Proyecto Político de las Nacionalidades del Ecuador. 2007 (http://www.institut-gouvernance.org/en/analyse/fiche-analyse-453.html#h2)

v. "*Customary Law'": back to the community*

According to Borrows, customary law "(…) can be defined as those practices developed through repetitive patterns of social interaction that are accepted as binding on those who participate in them." 403 It is also important to note that customary law is not specific to Indigenous communities. Western law also relies on custom as a source of normative authority. For example, in international law:

> "Customary international law is one component of international law. Customary international law refers to international obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties. Customary international law results from a general and consistent practice of states that they follow from a sense of legal obligation. Two examples of customary international laws are the doctrine of non-refoulement and the granting of immunity for visiting heads of state."404

Indigenous customary law in Canada has been most strongly recognized in the context of marriage and family relationships. However, while customary law has been a source of law in countries such as Canada, it should not be considered the only source of Ils.

Consider the following:

"In *Casimel v. I.C.B.C.,* the British Columbia Court of Appeal held that a seventy-seven-year-old woman and a ninety-nine-year-old man had legally adopted their daughter's thirty-year-old son according to Carrier law and, thus, when he died, were entitled to death benefits as dependent parents under the province's *Insurance Act.* This case rested upon the finding that Carrier law allowed grandparents to be considered as full parents in their customary regime, and that natural parents were no longer considered to possess the rights or obligations of a

403 Borrows 2010: 59-60 (Edition from McGill Library Digital Collection). 'Indigenous legal traditions are best viewed through the lens of customary law.' (Girard, Phillips and Brown, 2018: 27)

404 Legal Information Institute, Customary International Law, Cornell Law School. See https://www.law.cornell.edu/wex/customary_international_law (visited 02.10.2020).

parent under this system. Furthermore, the court held that neither Canadian common law, nor federal or provincial statute, nor constitutional law abrogated Carrier customary law."405

According to the broad definition of customary law ("repetitive patterns of social interaction"), both the law of Indigenous societies and the law of non-Indigenous societies are based on custom. How do you prove 'the existence' of these customs in a family law case like the one just presented?

Up to this point, we have learned how Indigenous legalities derive from sacred, ecological, participatory, or deliberative, positivistic, and customary sources. In addition, Indigenous legalities should be considered as bodies of stories, naturalistic observations, deliberations, rules, procedures, and customs that change across time and space.

Indigenous legalities have influenced state law, while state law has also become a source of indigenous legalities. Since 1992, for example, the Colombian Constitutional Court has widely cited Indigenous views and modes of governance. There we can find jurisprudence on Indigenous cultural identity, Indigenous special jurisdiction (Indigenous Special Jurisdiction) and land rights, among other issues, where Indigenous ways of seeing the world have greatly impacted these legal constructions.406 Rather than focusing on how anthropocentric conceptions of the law might impact Indigenous life and legal systems, we are also interested in how Amerindian ways of knowing and being challenge anthropocentric legal systems.

Below I present examples of jurisprudence from the Constitutional Court of Colombia and the Inter-American Commission on Human Rights to illustrate this point. As these cases reveal, different expressions of indigenous legal knowledge and thought are slowly being incorporated into regional and national legal systems, thus transforming the legal concepts, practices and paradigms of the so-called "Western legal canon".

405 Borrows 2010: 60-61 (Edition from McGill Library Digital Collection).On the Carrier (Dakelh)communit see https://www.thecanadianencyclopedia.ca/en/article/carrier. (Visited 02.10.2020)

406 See for example the Constitution of the Gitanyow nation. This constitution states in their preamble the recognition of the Gitanyow nation under international as well as state (Canadian) law - right to autonomy and self-government -. The document furthermore states the fundamental principles and institutions of the Gitanyow Peoples as well as their governance systems. See http://www.gitanyowchiefs.com/images/uploads/constitution/Gitanyow_Constitution_2009.pdf

3. Colombian and Interamerican case law and Indigenous legalities

a. *The Colombian Constitutional Court*

On several occasions, the Constitutional Court has recognized the country's ethnic diversity and the ensuing need to protect Indigenous peoples, systems of knowledge and fundamental rights. In what follows, I present examples of iconic constitutional cases that tackle different aspects of Indigenous legalities, namely the notions of 'cultural identity'; the concept of 'traditional knowledge' (TK) and its relationship with 'life' and 'territory'; the idea of 'Law of Mother Earth' ('*Ley de la Madre*' - Decision SU-510/1998), and the right to 'prior and informed consent' with Indigenous groups.

i. On cultural identity as a fundamental right of Indigenous groups

In Decision T-380/1993, the Constitutional Court (CC) considered:

(…)

The protection the Charter extends to the cultural diversity of the country and comes from the recognition of different forms of cultural life - whose manifestations and permanent reproduction are attributable to these communities as autonomous collective subjects, rather than aggregates of individual members. These members, precisely, come into being through the group and assimilate as theirs the unity of meaning that arises from the experience of being in a community (…) When the community's interests are undermined, the defense of diversity can neither be reduced to a paternalistic attitude, nor to the will of individual members of the community (…). It is impossible to speak of the protection of ethnic and cultural diversity and its recognition without first granting

(…)

La protección que la Carta extiende a la anotada diversidad se deriva de la aceptación de formas diferentes de vida social cuyas manifestaciones y permanente reproducción cultural son imputables a estas comunidades como sujetos colectivos autónomos y no como simples agregados de sus miembros que, precisamente, se realizan a través del grupo y asimilan como suya la unidad de sentido que surge de las distintas vivencias comunitarias. La defensa de la diversidad no puede quedar librada a una actitud paternalista o reducirse a ser mediada por conducto de los miembros de la comunidad, cuando ésta como tal puede verse directamente menoscabada en su esfera de intereses vitales y, debe, por ello, asumir con vigor su propia reivindicación y exhibir como detrimentos suyos los perjuicios o amenazas que tengan la virtualidad de extinguirla. En este orden

substantive constitutional personality to the Indigenous community. Constitutional personality, then, is the only mechanism that gives Indigenous communities a status to enjoy fundamental rights and to demand their protection every time these rights are violated (CP art. 1, 7 and 14).

(…)

The recognition of (the country's) ethnic and cultural diversity in the Constitution implies the acceptance of otherness, which is linked to the acceptance of multiple forms of life and systems of understanding that are different from those of the Western culture. Several Indigenous groups have retained their language, traditions and belief systems. These systems do not conceive existence as something separate from the experience of the community as a whole. Thus, the sole recognition of fundamental rights of the individual (…) is contrary to the constitutional principles of democracy, pluralism, respect for ethnic and cultural diversity, as well as the protection of the cultural richness of the nation.

de ideas, no puede en verdad hablarse de protección de la diversidad étnica y cultural y de su reconocimiento, si no se otorga, en el plano constitucional, personería sustantiva a las diferentes comunidades indígenas que es lo único que les confiere estatus para gozar de los derechos fundamentales y exigir, por sí mismas, su protección cada vez que ellos les sean conculcados (CP art. 1, 7 y 14).

(…)

El reconocimiento de la diversidad étnica y cultural en la Constitución supone la aceptación de la alteridad ligada a la aceptación de multiplicidad de formas de vida y sistemas de comprensión del mundo diferentes de los de la cultura occidental. Algunos grupos indígenas que conservan su lengua, tradiciones y creencias no conciben una existencia separada de su comunidad. El reconocimiento exclusivo de derechos fundamentales al individuo, con prescindencia de concepciones diferentes como aquellas que no admiten una perspectiva individualista de la persona humana, es contrario a los principios constitucionales de democracia, pluralismo, respeto a la diversidad étnica y cultural y protección de la riqueza cultural."

As this case shows, the Constitutional Court considers that all the elements that make up an ethnic community – i.e. language, traditions, and knowledge systems - cannot be conceived separately. For this reason, the constitutional protection of Indigenous 'belief systems,' 'languages,' and 'traditions' already implies the necessary protection of other elements that integrate the 'ethnic community' – i.e. Indigenous governance and justice systems.

Consider the following:

In T-380/1993, the Court states "(t)hese (knowledge) systems do not conceive (individual) existence as something separate from the experience of the community as a whole." If an Indigenous person has been removed from his/her community, how may this event affect

his/her fundamental right to a 'cultural identity'? Is the right to a cultural identity a collective right *per se*?

In addition, on the notion of 'Indigenous cultural identity', T-477/ 2012 said:

(…) (…)

RIGHT TO INDIGENOUS CULTURAL IDENTITY-Special constitutional protection.

Cultural identity encompasses a set of features of a society or social group in relation to their ways of life, traditions, and beliefs systems – including spiritual, material, intellectual, and affective dimensions. These features, to be sure, create a sense of belonging to a social group (…) cultural identity is thus a right on its own not only because the legal system recognizes it as such (article 7 and 8 of the CP), but also because the cultural identity of a group is intimately linked to the constitutional postulates of a Social Rule of Law. These postulates include the following: pluralism, freedom and dignity, as well as the recognition and respect for difference; the free exercise of this difference, and the enrichment of life in society (…) Cultural identity is a fundamental right of a collective as well as its members.

DERECHO A LA IDENTIDAD CULTURAL INDIGENA*-Protección constitucional especial*

La identidad cultural es un conjunto de rasgos característicos (noción de identidad) de una sociedad o de un grupo social relacionados con su forma de vida, sus tradiciones y creencias en el ámbito espiritual, material, intelectual y afectivo que genera en sus integrantes un sentido de pertenencia a dicho colectivo social y que es producto de su interacción en un espacio social determinado (noción de cultural). La identidad cultural constituye un derecho no sólo porque el ordenamiento jurídico lo reconoce como tal (artículo 7 y 8 de la C.P), sino porque está íntimamente ligado con los postulados constitucionales dentro del Estado Social de Derecho de pluralismo, libertad y vida digna que implican el reconocimiento y el respeto a la diferencia, el ejercicio libre de la misma y el enriquecimiento de la vida en sociedad, sin olvidar que el límite lo constituyen los derechos del otro. Es así, un derecho fundamental del colectivo social y de cada una de las personas que pertenecen a él.

(…) (…)

TRADEMARK LAW-Case in which the exploitation of distinctive symbols of the cultural identity of Indigenous communities by third parties outside that community is prohibited.

The relationship between trademark law and the right of Indigenous communities to cultural identity and the protection of their

DERECHO DE MARCAS-*Caso en el que se prohíbe la explotación de símbolos distintivos de la identidad cultural de las comunidades indígenas por parte de terceros ajenos a esa colectividad.*

La relación entre el derecho marcario y el derecho de las comunidades indígenas a la identidad cultural y la protección a su conocimiento tradicional, solamente encuentra su expresión en el

traditional knowledge only finds its expression in paragraph g) of article 136 of Andean Decision 486 (2000), which states that they* (third parties) cannot register as trademarks those signs whose use in trade unduly affects the right of a third party, in particular when: "(…) g) consist of the name of Indigenous, Afro-american, or local communities, or of such denominations, words, letters, characters, or signs as are used to distinguish their products, services or methods of processing, or that constitute an expression of their culture or practice, unless the application is filed by the community itself or with its express consent". With the registration of a brand, it is intended to grant distinctiveness for the commercialization of a product and said distinctiveness also implies refraining from using generic or descriptive expressions, promoting acts of fair competition and not misleading the consumer, much less affecting the rights of third parties, such as that of Indigenous communities through the use of expressions or denominations closely linked to their cultural identity, which consist of the name of the communities, or the denominations, words, letters or signs used to distinguish their products.

(…)

literal g) del artículo 136 de la Decisión Andina 486 en el que se dispone que no podrán registrarse como marcas aquellos signos cuyo uso en el comercio afectara indebidamente un derecho de tercero, en particular cuando: "(…) g) consistan en el nombre de las comunidades indígenas, afroamericanas o locales, o las denominaciones, las palabras, letras caracteres o signos utilizados para distinguir sus productos, servicios o la forma de procesarlos, o que constituyan la expresión de su cultura o práctica, salvo que la solicitud sea presentada por la propia comunidad o con su consentimiento expreso". Con el registro de una marca se pretende otorgar distintividad para la comercialización de un producto y dicha distintividad implica además de abstenerse de usar expresiones genéricas o descriptivas, promover actos de competencia leal y no inducir en error al consumidor ni mucho menos afectar derechos de terceros, como por ejemplo el de las comunidades indígenas mediante el uso de expresiones o denominaciones estrechamente vinculadas a su identidad cultural, que consistan en el nombre de las comunidades, o las denominaciones, palabras, letras o signos utilizados para distinguir sus productos."

In this decision, the Court considered that a trademark registration of a coca-based product damages Indigenous cultural identity. This is one of the most iconic constitutional cases on the notion of 'traditional knowledge' because it defines TK as part and parcel of the fundamental right to a cultural identity. In this case, the Court grants constitutional protection against the economic abuse of Indigenous symbols considered both as (traditional) 'knowledge' and (Indigenous) 'cultural identity.' As indicated above, Indigenous cultural identity is a fundamental right with a direct constitutional action to grant redress - the Protection Action (*Acción de Tutela)*.

Consider the following:

Article 136 of the Andean Decision 486/2000 states that a person (for example, a firm) cannot register as trademarks those signs whose use in trade unduly affects the right of a third party, in particular when: '(…) g) consist of the name of Indigenous, Afro-American, or local communities (…) unless the application is filed by the community itself or with its express consent.' (Our highlights)

A pharmaceutical company obtains the consent of the members of an Amazonian community to use the name of this community on the label of a new product. However, several members of the community disagree with this. Can this consent be considered sufficient and/or legitimate for the purposes of using the Indigenous name on the product's label? Can an Indigenous individual* promote a Protection Action for the violation of his/her fundamental right to cultural identity given lack of consent? What does 'express consent' mean?

ii. *On Indigenous cultural identity and traditional knowledge*

In T-477/2012, the Court continues to build important jurisprudence on traditional knowledge, and its connections with 'cultural identity' as a fundamental right of Indigenous groups. This decision refers to the notion of 'intangible knowledge', and the relationship between 'knowledge' and 'life'. Moreover, the ruling considers the link between 'knowledge and life' as object of constitutional protection as well.

This case refers to the fair distribution of benefits derived from the commercial use of genetic resources and associated traditional knowledge. The ruling mentions important international instruments on this topic as well.

Decision T-477/2012:

(…) (…)

Traditional knowledge (TK) is part of the cultural identity of ethnic communities, and it is the manifestation of an intangible cultural heritage as well. TK must be protected to promote the cultural identity of a group, while avoiding the use and unduly

El conocimiento tradicional hace parte de la identidad cultural de las comunidades étnicas y es la manifestación del patrimonio cultural intangible, que debe ser protegido en aras de promover la identidad cultural y de ser usado o apropiado abusivamente por terceros, pues

appropriation of TK by third parties (…) TK reflects Indigenous' relationships with their land, their ancestors, cosmogony, and history. TK is an intellectual activity expressed in the social, cultural, environmental and political fields; it is the product of many generations and their relationship with the world around them, and as such, this knowledge is consistent and valid. Various international norms (…) have recognized the need to protect the Traditional Knowledge of ethnic communities (…) (T)he Convention on Biological Diversity (Rio de Janeiro, 1992) (…) established, among other obligations, that States must: a) respect, preserve and maintain traditional knowledge for the conservation and sustainable use of biological diversity; b) promote its application "with the approval and participation of those who possess that knowledge" and c) encourage the benefits derived from that knowledge to be shared equally. In its turn, the Andean Decision 391/1996 "Common Regime on Access to Genetic Resources" recognizes the existence of Traditional Knowledge and the power of communities to decide over this knowledge. In the same vein, Statute 191/1995 "Through which provisions on Border Zones are dictated" establishes, in article 8, the need to obtain prior and informed consent from Indigenous communities when accessing traditional knowledge associated with genetic resources, as well as the duty to the fair sharing of benefits with Indigenous peoples. Traditional knowledge is part of the fundamental right to a cultural identity of the Indigenous community and therefore must be protected against any type of violation.

(…)

contiene el derecho a la vida misma de dichas comunidades y son el reflejo de su relación con la tierra, con sus antepasados, con su cosmogonía, con su historia, es así una actividad intelectual que se manifiesta en el campo social, cultural, ambiental y político, producto de muchas generaciones de relación con el mundo en general que hace que dicho conocimiento sea consistente y válido. Diversos instrumentos internacionales incorporados al ordenamiento interno han reconocido la necesidad de proteger el conocimiento tradicional de las comunidades étnicas. Así, del Convenio sobre la Diversidad Biológica hecho en Río de Janeiro el 5 de junio de 1992 se puede derivar normas de amparo al conocimiento tradicional. Dicho Convenio, entre otras obligaciones, definió que los Estados deben: a) respetar, preservar y mantener los conocimientos tradicionales para la conservación y utilización sostenible de la diversidad biológica; b) promover su aplicación "con la aprobación y participación de quienes posean esos conocimientos" y c) fomentar que los beneficios derivados de esos conocimientos se compartan equitativamente. Por su parte, la Decisión Andina 391 que establece el "Régimen común sobre acceso a recursos genéticos" (1996) reconoce la existencia del conocimiento tradicional y la facultad de las comunidades de decidir sobre ellos. En igual línea, la Ley 191 de 1995 "Por medio de la cual se dictan disposiciones sobre Zonas de Frontera" establece en el artículo 8º la necesidad de obtener el consentimiento previo de las comunidades indígenas para el acceso al conocimiento tradicional asociado a los recursos genéticos y el deber de retribuir equitativamente los beneficios en pro de los pueblos indígenas. El conocimiento tradicional es parte del derecho fundamental a la identidad cultural de la comunidad indígena y por ende ha de ser protegido ante cualquier tipo de vulneración.

(…)

According to this decision, traditional knowledge has both tangible and non-tangible aspects. Andean Decision 391/1996 on the "Common Regime of Access to Genetic Resources" recognizes the existence of traditional knowledge, and the power of communities to decide over this kind of knowledge. In addition, the ruling calls on the state to promote the fair distribution of the benefits derived from the commercial use of this kind of knowledge.

Consider the following:

1. The Indigenous community X has given consent to a university laboratory. This lab is studying the medicinal properties of certain plant* that grows in the ancestral territory of this community. In addition, Indigenous community Y believes that the spiritual master of this plant will be upset with this research. As a result, collecting any samples of this plant will bring disastrous consequences for the two communities living in the same ancestral land. The case is presented to you, and you must decide whether a 'consent' thus obtained from Indigenous group X is valid despite strong opposition by the other community. What would you do?

2. The traditional authorities of these two communities have different methodologies to grant consent for development projects in their territories. In this hypothetical case, the traditional authority of community X considers that the project will benefit community Y as well. They claim that the potential benefits of this project could be used to build a traditional medicine center for the entire region. How would this information affect your decision?

3. To add another layer of complexity, the decision-making protocols of these two communities are also different. What is the "valid" protocol for obtaining consent in contexts of plural (traditional) systems and values? What is the applicable "traditional law" in this case? How would you reconcile these different Indigenous viewpoints? (Recall that, according to the T-477/2012 ruling, Traditional Knowledge is "an intellectual activity that is expressed in the social, cultural, environmental and political spheres" of a given community.)

iii. *On Traditional Knolwedge and Traditional Indigenous Law*

In Decision SU-510/1998, the Constitutional Court has written about the relationship between 'Indigenous law', 'cosmology' and 'material culture' as a continuum (see below). When reading the following piece of jurisprudence think about the sources of Indigenous legalities that we have learned up to this point.

(…)

For the Ika (Indigenous group from Northern Colombia), weaving is an activity that transcends the mere manufacture of cotton fabrics for clothing. Thus, this is an activity of a profoundly moral nature with profound metaphysical consequences. The Ika consider that weaving a fabric is actually weaving "the fabric of one's life". The resulting fabric or tapestry represents a metaphorical activity where the cotton threads are considered *thoughts*. These thoughts slowly organize and intertwine the network of social relations where the weaver is also inserted. For the Ika, "weaving is thinking" and "thinking is living." This explains why "who does not think, does not live". Through weaving, thoughts are organized and embedded within a universal order. By weaving and thinking a balance between the opposites is achieved thus fulfilling the "Mother's Law".

(…)

(…)

Para los Ika, el tejido es una actividad que trasciende la mera fabricación de telas de algodón para la elaboración del vestido, convirtiéndose en una actividad de carácter moral con profundas consecuencias de carácter metafísico. Los Ika consideran que, al tejer una tela, están tejiendo "la tela de su vida", como quiera que el tejido constituye una actividad metafórica en la cual los hilos de algodón son como los pensamientos que, poco a poco, se organizan y se entrelazan con la red de relaciones sociales en la que se encuentra inserto el tejedor. Para los Ika, "tejer es pensar" y "pensar es vivir", razón por la cual "quien no piensa no vive". A través del tejido, los pensamientos se organizan y se insertan dentro de un orden universal. Así, tejiendo y pensando, se logra el equilibrio entre los opuestos, dando cumplimiento a la "Ley de la Madre".

(…)

Consider the following:

According to this constitutional decision, "weaving" and "thinking" are expressions of the same action for the Ika community. Therefore, to think is to weave, and to weave is to think. What does Indigenous material culture have to do with the law? The materials for weaving come from "nature" and the "final product" (a garment or a bag) is the representation of human thought. To the extent that the notion of traditional knowledge includes tangible and non-tangible elements (D. T-477/2012), how is this idea transforming our pre-established

concepts about legal meaning and practice? Is law strictly reduced to the "symbolic" (to language)? Is the Colombian Constitutional Court actively creating Indigenous-based jurisprudence through material culture? Does the Court consider nature to be a source of Indigenous law?

iv. On informed consent with Indigenous communities: Development projects in Indigenous territories

Decision SU-039/97 of the Constitutional Court is a paradigmatic case on prior consultation with Indigenous communities. This piece of jurisprudence examined the scope of the right to participation of Indigenous peoples in projects that affect their traditional lands. The UN High Commissioner for Human Rights Office has summarized this case as follows:

"This case was taken to the Constitutional Court of Colombia by the Ombudsman on behalf of the U'wa people and against the Ministry of Environment and the private oil company Sociedad Occidental de Colombia, Inc. The case dealt with the right of Indigenous peoples to participate through consultations in decisions that may affect them, in particular related to defence and preservation of Indigenous land. (…) The legal question examined the scope of the right to participation of Indigenous peoples in projects that affect their land. The Court considered Constitutional rights related to protection of ethnic integrity (Articles 7, 10 and 70) as well as the right to self-determination (Article 330) and the right to participation (Article 40)." (Our highlight)

(…)

"The Constitutional Court found that the process used to secure an environmental license for oil exploration had not been adequate as it had ignored the U'wa community's fundamental right to be formally and substantially consulted. This decision was grounded on the principle that participation through consultation is a fundamental right because it is an essential way to preserve the ethnic, social, economic and cultural integrity of Indigenous communities, which was necessary for their survival as a social group." *UN High Commissioner for Human Rights Office. Annotated Compilation of Case Law, 2015: 75.*

Similarly, in T-993/2012 the Court said:

(…) (…)

For the Court, the right of Indigenous peoples to have their own social, economic and

Para la Corte, el derecho de los pueblos indígenas a

cultural life, and to profess their own religion and practice their own language (art. 27 of the International Covenant on Civil and Political Rights) is closely linked to the right to have their own territory (…) (T)he Indigenous territory and resources; traditions and knowledge systems together constitute a legacy that unites - as a whole - the present generation and the generations to follow.

tener su propia vida social, económica y cultural, así como a profesar y practicar su propia religión y a emplear su propio idioma (art. 27 del Pacto Internacional de Derechos Civiles y Políticos), está estrechamente vinculado al derecho que tienen a poseer su propio territorio, sobre el cual puedan dichos pueblos edificar sus fundamentos étnicos, en la medida en que el territorio indígena y sus recursos, así como la tradición y el conocimiento, constituyen un legado que une –como un todo– la generación presente y a las generaciones del future.

Although T-993/2012 does not directly analyze the notion of "traditional knowledge," it nonetheless addresses the relationship between Indigenous communities and land ownership, thus affirming the intimate connection between these two elements. In this way, the Court highlights the holistic nature of Indigenous worldviews as a cornerstone of the right to participation (prior consultation). Undoubtedly, prior consultation is an expression of the principle of self-determination which includes the power of self-government and the ability to guide behavior in accordance with a local system of norms, protocols, and procedures – which brings us to Indigenous law and governance systems. On this topic, the Court has said (T-477/2012):

(…)

PRIOR CONSULTATION-Mandatory.

The right to the protection of ethnic cultural identity has been analyzed by this Corporation (the Court) from two different perspectives: a negative perspective (…) (referring to) how preventing public manifestations of religious practices outside of (Indigenous) traditions is a way to avoid the disappearance of (a particular) culture; and a positive perspective expressed in the reproduction of (Indigenous) cultural identity through ethnoeducation and other processes. In addition, based on the principle of self-

(…)

***CONSULTA PREVIA**-Obligatoriedad.*

El derecho a la protección de la identidad cultural étnica ha sido analizado por esta Corporación desde dos perspectivas: una perspectiva negativa cuando ha considerado que se evita la desaparición de dicha cultura por ejemplo impidiendo las manifestaciones públicas de prácticas religiosas ajenas a su tradición; y una perspectiva positiva manifestada en el mantenimiento y reproducción de su identidad cultural mediante procesos como la etno educación. Asimismo, esta Corporación ha definido que las comunidades étnicas tienen la facultad, con base en el principio de

determination (…) the Court has affirmed that ethnic communities have the power to both determine their own institutions and government authorities as well as to determine and maintain their norms, customs, worldviews, development options and life projects, and to adopt those internal or local decisions that they deem most appropriate for the conservation, or protection of these purposes. As a manifestation of this principle, national and international law have established the obligation to carry out a prior consultation with these communities before adopting legal or administrative measures that may affect them directly. (…) (The Court has protected the right to prior consultation in cases of) environmental licenses, construction contracts linked to development projects that directly affect ethnic communities, as well as decisions that allow the exploitation of resources within Indigenous territories (…) and issues related to ethnoeducation. It is thus a right in continuous construction whose protection depends on the affectation that can be demonstrated in each specific case. (Our highlights)

autodeterminación y en aras de garantizar el derecho a la identidad cultural, de fijar sus propias instituciones y autoridades de gobierno, darse o conservar sus normas, costumbres, visión del mundo y opción de desarrollo o proyecto de vida y adoptar las decisiones internas o locales que estimen más adecuadas para la conservación o protección de esos fines. Como manifestación de dicho principio, el ordenamiento nacional e internacional ha instituido la obligatoriedad de realizar una consulta previa a dichas comunidades antes de adoptar medidas legales o administrativas que las puedan afectar de manera directa y específica. En sede de tutela y de constitucionalidad la garantía de este derecho se ha dado cuando se trata de aspectos relacionados con licencias ambientales, contratos de obra ligados a proyectos de desarrollo que afectan directamente a las comunidades étnicas, decisiones que permiten la explotación de recursos dentro de sus territorios y en los cuales desarrollan prácticas tradicionales y en temas relacionados con etno-educación. Se trata así de un derecho en continua construcción cuyo amparo depende de la afectación que se logre demostrar en el caso concreto.

Consider the following:

Based on the constitutional principle of self-determination, Indigenous communities have the power to dictate their own systems of laws, justice, and government. Do you think that the recognition of Indigenous governance systems based on a relational worldview (see section 1 of this chapter) is transforming liberal notions of 'participation' and 'consultation' in the context of the modern State? And if so, how? Can you provide one example?

v. *On territory, Indigenous rights, and the 'Western legal canon'*

In T-622/2016, the Court resolves a conflict over the violation of the collective rights of Afro-Colombian communities due to mining activities carried out in the Atrato River, Chocó (Colombian Pacific). While this opinion does not directly address the protection of traditional knowledge, the Court's decision to protect the fundamental rights to life, health, water, food security, culture and territory, could be considered an indirect way to protect TK, as well as the traditional governance systems that belong to it.

Ruling T-622/2016:

(…)

The Constitutional Court has repeatedly recognized that Indigenous, tribal and Afro-Colombian peoples have a concept of territory and nature that is alien to the legal canons of Western culture. For these communities (...) the territory, and its resources, is closely related to the existence and survival of the community, from a religious, political, social, economic and even ludic point of view. Therefore, the territory should not be considered an object of domination, but an essential element of the ecosystems and biodiversity with which these communities daily interact (for example, rivers and forests). For these ethnic communities, then, the territory does not belong to an individual, as understood under the classical conception of private law, (...) it acquires an eminently collective character.

(…)

La Corte Constitucional, en reiterada jurisprudencia, ha reconocido que los pueblos indígenas, tribales y afrocolombianos tienen un concepto del territorio y de la naturaleza que resulta ajeno a los cánones jurídicos de la cultura occidental. Para estas comunidades, como se ha visto, el territorio –y sus recursos– está íntimamente ligado a su existencia y supervivencia desde el punto de vista religioso, político, social, económico e incluso hasta lúdico; por lo que no constituye un objeto de dominio sino un elemento esencial de los ecosistemas y de la biodiversidad con los que interactúan cotidianamente (v.gr . ríos y bosques). Es por ello que para las comunidades étnicas el territorio no recae sobre un solo individuo –como se entiende bajo la concepción clásica del derecho privado– sino sobre todo el grupo humano que lo habita, de modo que adquiere un carácter eminentemente colectivo.

In this case, the Atrato river was also considered a legal entity with constitutional rights of protection, conservation, maintenance, and restoration. In addition, this decision is

unprecedented in the country. 407 By protecting the rights of the river from mining activities, the traditional knowledge (and governance systems) necessary for different forms of community life with the river is protected as well. This element shows how the notion of relationality is taken up by the Court. This decision defends the holistic view of Indigenous cosmologies since it does not distinguish between 'natural resources and biodiversity' (life) and 'traditional knowledge' (including law and governance). Instead, the Court protects them as a single person with rights.

Consider the following excerpt of the Constitution of the Republic of Ecuador (2008):

"Chapter 7: Rights for Nature

Art. 71. Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution." 408

In this article, 'nature' passes from an 'object' of protection to a 'subject' of rights. How does this important transformation challenge notions of standing and agency in the 'Western' law? Can nature defend itself in a court of law? Can you list some philosophical problems here?

B. Inter-American Commission on Human Rights (IACHR) ***409***

The collective tenure of land is a key component of Indigenous worldviews and ways of being. The Inter-American Commission on Human Rights has referred to this issue in several cases. For the Commission, communal property right to the lands that Indigenous peoples have traditionally used and occupied, is a function of their customary land use patterns and tenure. In addition, the Commission refers to the state's duty to take effective measures to recognize Indigenous communal property right to the lands that they have traditionally occupied and used, and to delimit, demarcate and title the territory on which their right exists. Below, we summarize two iconic cases.

407 This decision is also similar to the legislation of Mother Earth in the Bolivian context, as well as the Constitution of Ecuador of 2008.

408 Constitution of the Republic of Ecuador, 2008. Political Database of the Americas. http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html

409 Excerpts from United Nations – Human Rights Office of the Hight Commissioner, Land and Human Rights. Annotated Compilation of Case Law, 2015.

i. Belize, Maya Indigenous community of the Toledo District v. Belize, Case 12.053, Report No. 40/04 (12 October 2004).

"This case involved the failure of the State to recognize and protect the lands of the Mopan and Ke'kchi Maya People of the Toledo District of Southern Belize. It also dealt with the State granting logging and oil exploration concessions, without adequate consultation, to private corporations with resulting activities that damaged the land including sources of food. (…) Legal questions included how to interpret the American Declaration on the Rights and Duties of Man in the context of Indigenous land rights, with a particular focus on the scope of the obligation to protect the right to property." *Annotated Compilation of Case Law*, 2015: 46.

In *Maya Indigenous community of the Toledo District v. Belize*, IACHR ruled:

(…)

"Para. 95 […] a review of pertinent treaties, legislation and jurisprudence reveals the development over more than 80 years of particular human rights norms and principles applicable to the circumstances and treatment of Indigenous peoples. Central to these norms and principles has been the recognition of the need for special measures by states to compensate for the exploitation and discrimination to which these societies have been subjected at the hands of the non-Indigenous.

(…)

"Para. 98 In deciding upon the complaints in the present petition, therefore, the Commission will afford due consideration to the particular norms and principles of international human rights law governing the individual and collective interests of Indigenous peoples, including consideration of any special measures that may be appropriate and necessary in giving proper effect to these rights and interests.

(…)

"Para. 151 In summary, based upon the foregoing analysis, the Commission concludes that the Maya people of southern Belize have a communal property right to the lands that they have traditionally used and occupied, and that the character of these rights is a function of Maya customary land use patterns and tenure. The Commission also considers that this right is embraced and affirmed by Article XXIII of the American Declaration.

"Para. 152 The Commission further concludes that the State has violated the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people, by failing to take effective measures to recognize their communal property right to the lands that they have traditionally occupied and used, and to delimit, demarcate and title or otherwise establish the legal mechanisms necessary to clarify and

protect the territory on which their right exists.

"Para. 153 In addition, the Commission concludes that the State, by granting logging and oil concessions to third parties to utilize the property and resources that could fall within the lands which must be delimited, demarcated and titled or otherwise clarified or protected, without effective consultations with and the informed consent of the Maya people and with resulting environmental damage, further violated the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people.

"Para. 154 Finally, the Commission notes the Petitioners' contention that the failure of the State to engage in meaningful consultation with the Maya people in connection with the logging and oil concessions in the Toledo District, and the negative environmental effects arising from those concessions, constitute violations of several other rights under international human rights law, including the right to life under Article I of the American Declaration, the right to religious freedom and worship under Article III of the American Declaration, the right to a family and to protection thereof under Article VI of the American Declaration, the right to preservation of health and well-being under Article XI of the American Declaration, and the "right to consultation" implicit in Article 27 of the ICCPR, Article XX of the American Declaration, and the principle of self-determination.

"Para. 155 In its analysis of this case, the Commission has emphasized the distinct nature of the right to property as it applies to Indigenous peoples, whereby the land traditionally used and occupied by these communities plays a central role in their physical, cultural and spiritual vitality. As the Commission has previously recognized with respect of the right to property and the right to equality, "[f]or Indigenous people, the free exercise of such rights is essential to the enjoyment and perpetuation of their culture." Similarly, the concept of family and religion within the context of Indigenous communities, including the Maya people, is intimately connected with their traditional land, where ancestral burial grounds, places of religious significance and kinship patterns are linked with the occupation and use of their physical territories. Further, the Commission has specifically concluded in its analysis of this case that the duty to consult is a fundamental component of the State's obligations in giving effect to the communal property right of the Maya people in the lands that they have traditionally used and occupied. (Our highlight)

"Para. 156 Accordingly, in light of its analysis of the nature and content of the right to property in the context of Indigenous peoples, including the Maya people of the Toledo District, the Commission considers that the additional claims raised by the Petitioners are subsumed within the broad violations of Article XXIII of the American Declaration determined by the Commission in this case and therefore need not be determined.

(…)

The UN High Commissioner for Human Rights Office concludes the following in regards to this case:

"The Commission looked at the current state of law with respect to Indigenous land rights, including jurisprudence from the African Commission on Human and Peoples' Rights and the International Labour Organization to interpret, *inter alia*, the right to property in the American Declaration in the particular context of Indigenous peoples. In doing so, the Commission held that the State violated the right to property "by failing to take effective measures to recognize their communal property right to the lands that they have traditionally occupied and used, without detriment to other Indigenous communities, and to delimit, demarcate and title or otherwise establish the legal mechanisms necessary to clarify and protect the territory on which their right exists" and "by granting logging and oil concessions to third parties to utilize the property and resources that could fall within the lands which must be delimited, demarcated and titled or otherwise clarified and protected, in the absence of effective consultations with and the informed consent of the Maya people." *Annotated Compilation of Case Law*, 2015: 46.

As this case demonstrates, there are several conceptions of property and property rights at play.

Consider the following:

On the notion of property, legal scholar Kirsten Anker writes:

"In the Marshall and Bernard cases a question arose as to whether "nomadic or semi-nomadic peoples" in Canada would ever be able to claim aboriginal title under the test which required exclusive possession at the time British sovereignty was asserted. The Mi'kmaq of the 18th century, ancestors of the two defendants charged with taking timber in breach of provincial forestry regulation in the cases, were described as "moderately nomadic". In the result, Marshall and Bernard were unsuccessful in establishing that the Mi'kmaq held aboriginal title over the land on which the timber cutting had taken place. The Supreme Court majority upheld the trial judge's finding that they had not provided sufficient evidence of pre-sovereignty Mi'kmaq possession because they had not demonstrated "regular and exclusive use" of the specific logging sites. Chief Justice McLachlin, writing for the majority, leaves open the question of aboriginal title for nomadic peoples as an issue of fact, noting that in the common law what will count as sufficient acts of possession is dependent on context, the nature of the land and the uses to which it is susceptible (…) Justice LeBel, in separate reasons, is concerned that the above test is "incompatible with a nomadic or seminomadic lifestyle" and relies too heavily on common law concepts rather than incorporating "aboriginal conceptions of territoriality, land use and property." He implies that the core of aboriginal title is a connection between First Nations peoples and the land rather than any particular mode of use."

(…)

"At the same time as the modern usage of the term "property" was emerging, the men of the scientific revolution (such as Descartes and Bacon) were developing an epistemology based around the distinction between nature and culture that Graham holds as the invidious core of the dysfunctional property paradigm. Not only was man defined by his attainment of culture through civilization (and nature defined by its lack of cultural qualities) but man's relationship to nature was one of external mastery: man was to subjugate and tame nature through the methods of science. And indeed culture underwent its own change in definition: the tending of natural growth and animal husbandry became a metaphor for the cultivation of human minds and eventually a measure of human accomplishment. Through the notion of "improvement" – applying human effort to render the land more profitable – agriculture and human culture became increasingly linked in a progress-oriented discourse." 410

How does this liberal conception of property (second paragraph) change after incorporating Indigenous Mi'kmaq 'conceptions of territoriality' and/or 'Maya customary land use patterns and tenure' (Inter-American Case Law)? Based on the analysis of Kirsten and the 'Maya Indigenous community of the Toledo District v. Belize', can you identify the main differences between these different conceptions of ownership?

ii. *Kichwa Indigeous People of Sarayaku v. Ecuador, Series C No. 245 (27 June 2012).*

On the obligation to consult and the traditional possession of land

"This case involved the granting of a permit by the State to a private oil company to carry out oil exploration and exploitation activities in the ancestral territory of the Kichwa Indigenous People of Sarayaku, without previously consulting them. The company's activities included the installation of high-powered explosives in several parts of their territory, depriving the people from subsistence activities and cultural practices. The forcible entry caused destruction of sacred sites and led to confrontations between the Indigenous community, the company and Ecuador's armed forces. (….) The key legal question was whether the State had adequately respected and guaranteed the rights of the Sarayaku People, including the right to prior consultation and consent, the rights to free movement and residence, communal Indigenous property, cultural identity, life and personal integrity. The Court also dealt with alleged lack of judicial protection and enforcement of judicial guarantees and elaborated on criteria for prior and informed consultation.' *Annotated Compilation of Case Law*, 2015: 62.

410 See Anker 2011, 235-6.

In the case *Kichwa Indigeous People of Sarayaku v. Ecuador (Series C No. 245),* the IACHR said:

(…)

"Para. 149. In this case, the Court finds that there is no doubt regarding the Sarayaku Peoples' communal ownership of their territory, which is exercised in a time-honoured and ancestral manner. This was expressly recognized by the State through the adjudication made on May 12, 1992 (supra para. 61). Notwithstanding the foregoing, in addition to the points noted in the section on the facts of the case (supra paras. 51 to 57), the Court considers it pertinent to emphasize the deep cultural, non-pecuniary and spiritual ties that the community has with its territory, so as to fully understand the damages caused in this case.

(…)

"Para. 160. It is for all the aforementioned reasons that one of the fundamental guarantees for ensuring the participation of Indigenous peoples and communities in decisions regarding measures that affect their rights and, in particular, their right to communal property, is precisely the recognition of their right to consultation, which is recognized in the ILO Convention No. 169, among other complementary international instruments.

(…)

"Para. 166. The obligation to consult Indigenous and Tribal Communities and Peoples on any administrative or legal measure that may affect their rights, as recognized under domestic and international law, as well as the obligation to guarantee the rights of Indigenous peoples to participate in decisions on matters that concern their interests, is directly related to the general obligation to guarantee the free and full exercise of the rights recognized in the Convention (Article 1(1)). This implies the duty to adequately organize the entire governmental apparatus and, in general, all the organizations through which public power is exercised, so that these are capable of legally guaranteeing the free and full exercise of those rights. The foregoing means that States have the obligation to structure their standards and institutions in such a way that Indigenous, native or tribal communities can be consulted effectively, in accordance with international standards in this matter. Thus, States must incorporate those standards within the prior consultation processes, so as to generate sustained, effective and reliable channels for dialogue with Indigenous communities in processes of consultation and participation through their representative institutions. (Our highlights)

"Para. 167. Given that the State must guarantee the rights to consultation and participation in all phases of planning and implementation of a project that may affect the territory on which an Indigenous or tribal community is settled, or other rights essential to their

survival, these processes of dialogue and consensus-building should take place from the first stages of planning or preparation of the proposed measures, so that the Indigenous peoples can truly participate in and influence the decision-making process, in accordance with the relevant international standards. To that effect, the State must ensure that the rights of Indigenous peoples are not disregarded in any other activity or agreement reached with private or third parties, or in the context of public sector decisions that would affect their rights and interests. Therefore, where applicable, the State must also carry out the tasks of inspection and supervision of their application and, when appropriate, deploy effective means to safeguard those rights through the corresponding judicial organs.

(…)

"Para. 177. The Court has established that in order to ensure effective participation by members of an Indigenous community or people in development or investment plans within their territory, the State has the duty to consult the community in an active and informed manner, and in accordance with its customs and traditions, in the context of a continuous communication between the parties.

Moreover, these consultations should be undertaken in good faith, through culturally appropriate procedures and must be aimed at reaching an agreement. Similarly, the Indigenous people or community must be consulted in accordance with its own traditions, during the early stages of the development or investment plan, and not only when it is necessary to obtain the community's approval. Also, the State must ensure that members of the community are aware of the potential benefits and risks so they can decide whether or not to accept the proposed development or investment plan. Finally, the consultation must take into account the traditional decision-making practices of the people or community. Failure to comply with this obligation, or engaging in consultations without regard to their essential characteristics, compromises the State's international responsibility. (Our highlights)

(…)

"Para. 232. The State, by failing to consult the Sarayaku People on the execution of a project that would directly affect their territory, was in breach of its obligations, under the principles of international law and of its own domestic law, to adopt all necessary measures to guarantee the participation of the Sarayaku People, through their own institutions and mechanisms and in accordance with their values, traditions, customs and forms of organization, in the decisions made regarding matters and policies that affected or could affect their territory, their cultural and social life, their rights to communal property and to cultural identity. Consequently, the Court considers that the State is responsible for the violation of the right to communal property of the Sarayaku People,

recognized in Article 21 of the Convention, in relation to the right to cultural identity, under the terms of Articles 1(1) and (2) thereof.

(…)

The UN High Commissioner for Human Rights Office concludes the following in this case:

"The Court held that Ecuador was responsible for the violation of the Indigenous peoples rights to consultation, communal property, and cultural identity. The Court also found that the State was responsible for having gravely placed at risk the right to life and personal integrity and that it had violated the right to a fair trial (judicial guarantees) and to judicial protection of the Sarayaku People. The Court elaborated on prior consultation standards, pointing at principles of good faith, culturally adequate procedures, informed conduct and attempts to reach agreement. It reaffirmed the State duty to consult, which cannot be delegated to third parties and which requires that the State effectively organizes its standards and institutions in such a way that Indigenous, native or tribal communities can be consulted effectively." *Annotated Compilation of Case Law* 2015: 62. (Our highlight)

Consider the following:

The IACHR foregrounds the notion of 'culturally adequate procedures' as an essential component of the obligation to consult Indigenous peoples. For example, "(…) the consultation must take into account the traditional decision-making practices of the people or community.' Moreover, the Commission states that '(…) Failure to comply with this obligation or engaging in consultations without regard to their essential characteristics, compromises the State's international responsibility." (*Annotated Compilation of Case Law* 2015: 62. Our hightlights).

However, "culturally appropriate procedures" may vary from one community to the next. Can you think of an example? Do you think that consultation with Indigenous communities should always aim to a collective agreement (i.e. consent to perform development projects in local lands)?

After reviewing a few cases to learn how the CCC and the IACHR are incorporating elements of Indigenous legalities in the sub-continent—a.k.a normative systems and their lifeworlds and cosmologies—the chapter now turns to one such expressions of Indigenous legalities in the Colombian context (the Wasikamas Law of the Inga people). If the third part focused on how Amerindian ways of knowing and being have challenged anthropocentric or human-centered

legal systems, the next section studies some aspects of an Indigenous legal system and how it interacts with the state law – and has been affected by it (constitutional law).

4. The Law of the Indigenous Inga in Colombia: The work of *taita* Hernando Chindoy Chindoy [411]

For centuries, the Indigenous Andean-Amazonian populations of Colombia have faced the "ontological occupation of (their) territories." 412 By this I mean the pervasive seizure of their lands, waters, sub-soils, knowledge practices, modes of governance and being. In the face of this reality, I suggest a "rooted" legality based on Indigenous worldviews and stories (Mills 2016).

As suggested earlier in the introduction, indigenous legalities encompass not only systems of customs, norms, and procedures for regulating social behavior, but also the land and the multiple ways of thinking and acting of which this system is a part. I will begin this last section with an Inga account of the origin of law and land, and the duty of care among humans, and between humans and the territory of which they are a part. I consider this story to be a form of law in its own right. As you read the story, think about how the Inga community conceptualizes law (is it an ancestral mandate? A set of procedures to regulate behavior between humans and nature? A set of moral principles based on the land? All of the above?)

Génesis del Derecho Territorial Propio de los Wasikamas Inga en Aponte	***Genesis of the Territorial Law of the Wasikamas Inga in Aponte***
Por el pueblo Inga de Colombia Texto recuperado por el *taita* Hernando Chindoy Chindoy *(Original en idioma Inga y español)*	By the Inga people of Colombia Retrieved by *taita* Hernando Chindoy Chindoy (Original in Inga and Spanish language)

411 Thanks to Taita Hernando Chindoy Chindoy for answering the questions in which this section is based.
412 See Escobar 2016: 12.

<<Cuando los Inga, parte del Tawaintinsuyu, región chinchaisuyu, comenzaron a ser expropiados del territorio por parte de la corona española, en los momentos más dolorosos de esa historia, Taita Intí (Padre Sol) en una noche de rayos, con lluvia y viento, engendró a Carlos Tamabioy, insigne Cacique, guía y orientador espiritual de los Inga. Tamabioy nace en Aguaríco, un punto sagrado del territorio panamazónico, siete mamás tuvieron que amamantarlo y murieron por inanición, el niño creció tan rápido que para el mediodía ya era un adulto, en horas de la tarde recorrió todo el territorio y al finalizar el día reunió a todo el pueblo Inga y Camenzá y les dijo: "esta es mi tierra que les dejo a ustedes mis hijos y a mis descendientes para que las cuiden, protejan y usufructen como propias hasta el final de los tiempos y que nada ni nadie les interrumpa; vivan como hermanos en unidad y no olviden que jamás están solos, los ríos, selvas, montañas y todo lo que allí existe son de nuestra familia y serán vuestros protectores", dicho esto, partió con el último brillo del sol. Desde entonces, y por más de 300 años, todos los Inga presentes en Colombia celebran cada año el ritual de Atún Puncha-Día del Perdón, ceremonia de fin e inicio de año Inga en conmemoración al legado y memoria de quien ahora llaman Taita de Taitas (Padre de Padres) Carlos Tamabioy; en dicha ceremonia piden perdón a la Tierra y a los seres espirituales por todo el daño causado, si existen enemistades entre vecinos, en este momento se abrazan, danzan y disfrutan bebidas y alimentos en señal de familiaridad y oran por todo lo que ha significado vivir, se considera que si ya no se está vivo para una nueva celebración, el alma está tranquila porque todo lo mejor se realizó en vida.>>

<<In the most painful moment of history, the Spanish crown expropriated the lands of the Inga of Tawaintinsuyu — the *Chinchaisuyu* region. In a night of lightning, rain, and wind, *Taita Intí* (Father Sun) begat Carlos Tamabioy, a distinguished chief-man and spiritual leader of the Inga. Tamabioy was born in Aguaríco, a sacred place of the pan-amazonian territory, and seven mothers had to breastfeed him before dying of hunger. The child grew so fast and strong that by noon he was already an adult. By the afternoon, he had already toured the whole territory. At the end of the day, he gathered all the Inga and Camenzá peoples and said: "This is my land that I leave for you, my children and descendants, to take care of, protect, and benefit from as your own until the end of time. Nothing and nobody shall interfere. You must live in unity and not forget that you are never alone, for the rivers, forests, mountains, and everything that exists is part of our family. They will be your protectors." When he finished, he left with the last shine of the sun. Since then, and for more than 300 years, all the Inga of today's Colombia each year celebrate the ritual of *Atún Puncha* —The Day of Forgiveness – a ceremony at the end of the year and the beginning of a new one. This is how the Inga commemorate the legacy and memory Carlos Tamabioy, the *Taita* of *Taitas* (Father of Fathers). In this ceremony people ask the Earth and the spiritual beings for their forgiveness for all the damage humans have caused. And if there is enmity between neighbors, the *Atún Puncha* is the moment to embrace each other, to dance, and to enjoy *chicha* (fermented beverage) and food as a sign of kinship. The Inga also prays as recognition for being alive. If somebody is no longer alive with us for a new celebration, we

believe it means that their soul is calm because they have done their best in life.>>

The Wasikamas law: The Guardianship of the Territory

By *taita* Indigenous legal scholar Hernando Chindoy Chindoy

(Translation by Iván D. Vargas Roncancio)

Inspired by the idea of conversations between nations, the following text places indigenous law and state law in relative epistemic symmetry. The text is framed as a set of arguments to support the constitutionality of the Wasikamas law in a hypothetical case of constitutional review. As such, the text can be considered a form of indigenous jurisprudence.

1. For the Inga, an Indigenous community moving forward through time and space, the law is Wasikamas (the Guardianship of the Territory), rooted in principles that discourage theft, lies, and laziness; and affirm living with dignity, in a state of wellbeing, and in community with Mother Earth.

2. The Inga people are part of the living culture of the Great Inca nation. By 1450, the Inca administered the territory they called *Tawaintinsuyu,* which includes the regions of *Collasuyu*, *Chinchaysuyu*, *Antisuyu* and *Contisuyu*. The regions of Caquetá, Cauca, Putumayo and Nariño of today's southern Colombia together integrated what the Inca called *Chinchaisuyu*. According to the official census of 2018, the population of the Inga has risen to 19,561 inhabitants. In this territory of the Colombian Amazon, the Inga coexist with other ancestral peoples, specifically the Cofán, Siona, Camentzá, Quillasinga and Pasto.

3. Wasikamas law is recognized in daily life as the existence of the infinite network of relationships between human beings and non-human beings in their material and spiritual dimensions. Wasikamas is found in the Inga language as one of the most important sources where the Ancestral Knowledge of our community is revitalized; this knowledge holds the keys to understanding the Andean and Amazonian worlds, as expressed orally. Wasikamas thus embodies *samai* (joyful resting) as a relational pillar for every lively encounter in those worlds. Speaking from a perspective of 'bioculturality' and a 'political ecology of peace', Wasikamas expresses the vital energy of the conductive threads of life and spirituality of the Inga people.

4. One of the principles of Wasikamas is *Suma Kausai*, which, rooted in origin and history, is the foundation of the relationship between the earth and the human. This relationship requires points or nodes of encounter and non-separation to 'guard the territory' – what the 'West' calls 'property.' For us, however, the territory is *samai* or a point of joyful resting for living well. In

other words, what is defined as property in the West, is, for the Inga, a meeting and resting node for the soul and the body. And this finite space accompanies the entire path of human and non-human existence beyond the Earth, time, and space.

5. The methodology to recognize and study Wasikamas is the return to Ancestral Knowledge from a decolonized perspective and through our own language (the Inga language). And this requires a journey of spiritual connection through sacred plants such as the *Yagé* or *Ambiwuaska*. This connection allows us to understand and engage in dialogue with the non-human beings throughout all time.

6. The Wasikamas Oral Code is in constant dialogue with the Constitutional Law of the Colombian State, both of which need to be understood in order to maintain *Samai* or intercultural peace. There are clashes between these two kinds of law, and, strictly speaking, they do not *complement* each other but *support* each other. Wasikamas exists in its own path and is not only of human creation because there are other actors involved, and most humans still do not understand this principle. In recent times, so-called human rights and Earth rights are the meeting point for strengthening these new dialogues.

A. The Wasikamas Process

7. In the midst of armed conflict and drug trafficking, the Inga Indigenous community in Aponte, Region of Nariño – part of the greater Inga nation of Colombia – has a population of 4,250 people. The Inga of Aponte found Wasikamas, an oral code to fight for sovereignty and the ancestral territory that belongs to the Inga. The code also clears the way for dialogue stemming from ancestral knowledge and the principle of nonviolence to liberate the territory from war and drug trafficking. In this way, the Inga undertook an unprecedented process over the last 450 years of community life in this region known as the Colombian Massif (*Macizo Colombiano*). The Inga have maintained a system of social cohesion that has also allowed them to face groups of guerrillas, paramilitaries, drug traffickers, State agencies, and public forces, among other actors, in order to defend their rights as a community. These actors have arbitrarily exercised violence over the territorial rights of the Inga people, while degrading local ecosystems and affecting the social, economic, cultural and environmental well-being of the Inga in Aponte. Between 1986 and 2003, more than 150 people were killed and more than 1,000 were forcibly displaced from their lands. This situation led to decision T-025/2004 and Order 004/2009 of the Constitutional Court. These decisions established that the Inga community is at high risk of physical and cultural extinction.

8. In dialogues with the State in 2003, the Inga managed to obtain the collective title of 22,283 hectares of ancestral territory under the figure of the *Resguardo* (reservation). The Inga community designated 17,500 hectares as a sacred area or part of the house of non-human beings. The community has organized itself with a local governance model rooted in a shared vision of justice and collective action that ensures health, education, community services, ecosystem restoration and sustainable livelihoods for the community. At the same time, the organization created the *Court of Indigenous Peoples and Authorities of the Colombian Southwest*, as a way to support other

Indigenous peoples to reclaim their ancestral territories and to break free from drug trafficking and war. Since 2017, the Wasikamas Oral Code became the foundation of the organizational process of the entire Inga people of Colombia living in the departments of Caquetá, Cauca, Putumayo, Nariño and different cities throughout the country. The communities in these regions are all organized through the Indigneous Inga Territorial Entity *Atun Wasi Iuiai* -AWAI- of the Inga People of Colombia.

B. Localization and historical background

9. The Wasikamas Oral Code comes from the Department of Nariño, southwest of Colombia, and maintains the language of the Inga community. Both the Inga language and culture have their origins in the Inca Civilization that expanded through the Andean mountains in the current territories of Peru, Bolivia, Chile, Ecuador, Argentina and Colombia between the 13th and 16th centuries. Specifically, the Inga descend from a Mitimae colony that migrated through the Peruvian rainforest, passing through Iquitos, and then the Aguarico and Putumayo rivers to settle on top of the central eastern Andes mountain range in the territory already inhabited by the Camentzá people. The Camentzá welcomed the Inga within their community life, so that both coexist with their cultures in the same territory today. Currently, the Inga people live in the departments of Caquetá, Cauca, Putumayo, Nariño, and also live in different cities of Colombia where they have been displaced by violence and impoverishment due to the expropriation of their ancestral lands.

10. The *resguardo* of the Inga People of Aponte is located in the municipalities of El Tablón de Gómez, Nariño, and Santa Rosa, Cauca, between 1,500 and 3,800 meters above the sea level. According to the 2015 census, the population of the *Resguardo* is 3,651 Indigenous inhabitants (951 families) and 620 non-Indigenous inhabitants (105 families). The territory of the *resguardo* is part of the 'Colombian massif' (Macizo Colombiano), an eco-region that is located over the Andes mountain range in southwestern Colombia and covers an area of 4.8 million hectares. The Central and Eastern mountain ranges originate here, and Andean, Amazonian, and Pacific ecosystems also converge. In addition, the five most important river tributaries in the country are born in the Massif: the Magdalena, Cauca, Putumayo, Caquetá and the Patía rivers. This explains why this eco-region has been referred to as the Colombian river star. The 17,500 hectares of the *resguardo* are extraordinarily biodiverse, with more 471 species of birds, including parrots and the Condor of the Andes; the spectacled bear, the *danta* (tapir), the deer, and the cougar. There are also 28 lagoons in this territory, as well as a great diversity of tree species (i.e. the *yuiu*, *romerillo, Colombian pine, yellow, chaquiro, guayacán, mulato and oak páramo.)*

11. Based on the testament of the *Taita* of *Taitas* Carlos Tamabioy, the Inga community of Aponte venerates the Earth as a mother and considers the rest of visible and invisible beings as part of a single family. This testament was dated in March 1700 and duly notarized before the Spanish Crown. Since 1750, the community has always faced lawsuits in defense of their ancestral territory. Since 1930, the Inga of Aponte has been subject to processes of colonization and miscegenation (*mestizaje)* that has led to the transformation of its own cultural values, thus

jeopardizing the permanence, and physical and cultural survival of our community through time and space.

12. Since 1970, our territory has been affected by indiscriminate deforestation, the presence of guerrilla groups, drug traffickers and paramilitaries. In 1991, poppy crops (*Papaver somniferum*) began to be planted in our territory up until they reached 2,500 hectares; between 2 and 3 tons of morphine or heroin were extracted and distributed weekly in international drug trafficking networks. The indiscriminate logging and soil sterilization caused by these plantations was further aggravated by the implementation of the *Plan Colombia* - a bilateral agreement between the governments of Colombia and the United States in 1999 to combat the guerrillas and drug trafficking in the country. In addition, this *Plan* aimed at executing social programs for farmers so that they could abandon illicit crops. While the country's internal armed conflict intensified, glyphosate spraying of illicit poppy crops left deep negative traces on the Indigenous and peasant inhabitants of this area. Until 2002, our people experienced pain while seeing how the majority of school-age children and youth were all involved in illicit crops, and no effort has been made to confront and overcome these negative elements that were ending the life of the Inga People.

13. Inga women have faced the problem of losing their children, but it is thanks to their courage and initiative that the community began to analyze how they would live as a people. During an intense and ongoing community dialogue in 2003, the Inga rediscovered the oral tradition of the Wasikamas Oral Code in the ancestral knowledge of the elderly. Based on this discovery, the community formed a strategy with the Inga authorities to face the negative elements deteriorating people's lives, giving way to an unprecedented process of institutional strengthening and cultural identity.

C. The Wasikamas Oral Code

14. The Inga of Aponte achieved collective ownership over their territory under the legal figure of the *resguardo* (reservation) issued by the Colombian Institute for Agrarian Reform-INCORA, currently known as the National Land Agency-ANT. This title was created through Resolution 013 of July 22, 2003, which grants a collective title over 22,283 hectares, duly delimited and with the special protection by the State. The *resguardos* in Colombia have a status that is inalienable, unseizable, and imprescriptible.

15. As of 2004, the Inga in Aponte agreed with the Government of Colombia to develop the National Family Rangers Program designed to respect cultural and community values. This program, at the same time, was aimed at paying Indigenous peoples and peasants who had committed to eliminate illicit crops from their lands. The Inga in Aponte, with Wasikamas, negotiated to receive the money through a communal fund created by themselves and that would allow them to support the entire community and work together to strengthen their governance and free their territory from the presence of guerrillas, paramilitaries, drug traffickers, as well as the army and the police. Between 1986 and 2004, these groups have been responsible for the violation of all the rights of our ancestral people. Government funds were received from 2004 to

2006, and as such, the pillars for the social, economic, cultural, spiritual, and environmental advancement of our community were laid. Since 2007, the Inga people of Aponte stopped receiving money from the government and began to strengthen sustainable livelihoods, while been governed by the Wasikamas Oral Code as part of the Integral Mandate of Life for the Survival of the Inga People in Aponte.

D. Origin and Structure of the Wasikamas

16. Wasikamas is a Code of relationships between the Inga, the territory and the visible and invisible non-human beings. This code is for the maintenance of harmony and good living between all beings. Wasikama also exists in the Inga language, which is protected by the elders who survived after fighting for the territory they originally called 'Jachinchoy'. The property of this territory has been lost in legal cases with the colonizers since 1750 and onwards. In the midst of this long history of violence, and on the verge of physical and cultural extermination, the Inga of Aponte-Nariño have re-encountered Wasikamas, an oral Code based on Ancestral knowledge. This code lays out the law of living well, rooted in the principles that discourage theft, lying, laziness, and affirm living a dignified life. In this way, the Inga people are recuperating their autonomy, sovereignty, spirituality, and the rights of Mother Earth within the space and time that corresponds to them. The Inga have also organized themselves through the political-administrative figure of the *Major Cabildo* (a governance structure from colonial times. The Inga have been in *minga* – days of collective reflection –to revitalize and decolonize their governance systems), and the *Minor Cabildos* (similar to ministries) of health, education, communication, economy, public and community services, justice, women and family, children and youth, Inga guardians. They have also adopted *the Integral Mandate of Life for the Survival and Permanence of the Inga People de Aponte*. This document is a Charter for the Inga people.

17. In order to share this process, support other peoples of the region, and strengthen local governance, they have created an *Alliance of Indigenous Women of Nariño* and a *Court of Indigenous Peoples and Authorities of the Colombian Southwest*, with the participation of seven ancestral peoples present of the regions of Caquetá, Cauca, Putumayo, and Nariño (the Awá, Cofán, Eperara Siapidaara, Inga, Nasa Uh, Quillasinga and Siona). In the regional and global context, Wasikamas is also an organization that strives to lay its foundations in the form of Cultural Embassies in capital cities. Our aim is to share the history of our people, our dignity, mutual understanding, and the life processes that are also kept in hearts beyond the human.

E. Vision of Wasikamas Law

- Thriving as community in the infinity of time and space, while following the relational code between human and non-human beings. Also, by remembering the origin of this code in the sacred and ancestral territory of the central eastern mountain range of the Andes. In this territory, the Inga people thrive to keep their own rules and procedures that have allowed them to survive as an autonomous community, with their own territory, customs and language, as well as the spiritual and religious systems within the framework

of principles that discourage theft, lies, and laziness and affirm living with dignity, in a state of wellbeing and in community with Mother Earth.

- Always contribute to the unity of the Inga people, which is rooted in self-government, autonomy, legal standing, cosmology, and thinking that stems from Ancestral Knowledge.

- To decolonize thinking under the principles of dignity, respect, and biocultural peace.

- Wasikamas is the thought and living memory of *Taita* of *Taitas* Carlos Tamabioy, as well as other guardian ancestors that are present in the wind, fire, water, earth, light, darkness and the peace. Wasikamas is based on orality and dialogue of knowledge with non-human beings achieved through the sacred plant of yagé.

F. Wasikamas and its relationships with the Colombian State Law

18. In Colombia, the Political Constitution of 1991 determines that "The State recognizes and protects the ethnic and cultural diversity of the Colombian Nation". The Constitution has also established that Indigenous communities –as groups of families of Amerindian descent – "share feelings of identification with their ancestral past, and maintain traits and values of their traditional culture, forms of internal government and social control that differentiate them from other rural communities." (D. 2001 of 1988, article 2). The status of these communities, in the constitutional text, is expressed as follows: a. They form a special constituency for the election of Senators and Representatives (CP articles 171 and 176), b. They exercise jurisdictional functions within their territory in accordance with their own rules and procedures, provided they are not contrary to the Constitution or laws (CP article 246); c. They are governed by Indigenous Councils according to their uses and customs in accordance with the Constitution and the law (CP article 33O); d. Their territories or reservations are of collective property and of a non-disposable, inalienable, imprescriptible and unattachable nature (CP articles 63 and 329); and they deserve greater protection (Article 13, subsection 2 ° C.P.)." Regarding matters of justice in the municipality of Aponte, the Colombian Constitutional Court ruled: "traditional practices and uses constitute the frame of reference for the exercise of that faculty (the authority to adjudicate justice in administrative and criminal matters)" and "the determination (of this faculty) corresponds autonomously to the Indigenous community itself, with the only limitation whereby the traditional normative system cannot contradict the Constitution or the laws."

19. Following this constitutional orientation, the Inga of Aponte created what they called the High Council of Justice in 2004. This council investigates and cures all kinds of diseases - from the theft of a chicken to homicides, the creation of armed groups, drug trafficking and affectations to Mother Earth. For the Inga, there is no conception of "crime" as defined by the Criminal or Administrative Code. Rather, the human being commits a "crime" because there are diseases that penetrate the human body and take over it. Treatment with medicinal plants, advice and isolation are ways of dealing with these diseases.

20. The Wasikamas Oral Code is a contribution to the dialogue around justice and public policies on Earth and non-human rights, despite the whims and interests of human beings. The Wasikamas Code advances in the direction of a biocultural peace, that is, the harmonious coexistence achieved and maintained between human beings and all visible beings from here and there, from above and below, and from all places in time and space.

21. With Wasikamas, the Inga people of Aponte have fostered dialogues and, sometimes, have received discouraging criticisms to break their ancestral spirit. However, the community has become stronger, and their legal cases in matters such as health, education, legal standing, and government have been a referent for other Indigenous, Afro-descendants, and peasants of Colombia. Globally, Wasikamas is recognized by the United Nations Development Program (UNDP) as a global example of resilience and social, economic, and environmental progress, for which they received the 2015 Equator Prize.

Study Questions

Though the industrial revolution began in the middle of the 18th century, the West was still composed of largely agrarian societies until the 20th century. In a sense, Western agrarian societies, not just Indigenous societies, were colonized by industrial civilization at this time. People tend to think of Indigenous societies as exceptions to Western development, ones that need protection but not ones serve as guiding lights for future civilizational transitions. Consider that colonizing industrial societies are not sustainable and the ways of agrarian societies were sustainable and are in need of recovery. Using the Inga of Aponte and the recovery of their community through *Wuasikamas* as a guiding light, consider these questions:

a. What ancestral wisdom and knowledge might the modern West draw on for living well with Earth?

b. Where did this ancestral wisdom come from, what is its story of origin?

c. What do the Inga teach us about the meaning of property and guardianship of the territory?

d. What do the Inga tell us about the new commons and collective rights and responsibilities for territory?

e. How would the principle of non-separation, or being embedded in an infinity of relations change Western law?

f. What do the Inga tell us about the role of local communities in relation to states for purposes of Earth law?

g. What can bring a common mind and ethos, a "*Wuasikamas*" to local communities in complex urban/globalized societies?

h. How can people in complex urban/globalized societies learn from nature so as to create laws in harmony with other-than-human beings?

Conclusions

Earth systems are undergoing fundamental changes with increasing socioeconomic pressure on and demand for resources and ecosystem services. Most dominant Western environmental law and governance systems fail to prevent and remediate ecological degradation. Environmental law is primarily concerned with pollution management and control without considering ecological interdependencies (Garver 2013); it takes the human as its exclusive subject and nature as its object, privileging, for the most part, neo-liberal conceptual practices within the sphere of governance (Grear 2017). This ontology of separation—a vision of the real that separates humans and the rest of life—reinforces the myth of human exceptionalism, namely the idea that humans operate above or outside Earth's ecological systems (Grear 2017, Haraway 1991)

Indigenous legalities envision law and governance systems appropriate for the emergent conditions of a time period with mutually enhancing human-Earth relationships (Berry and Swimme 1994). Broadly speaking, they propose a fundamental transformation as a result of which social and legal institutions would foreground human-Earth interactions.

Drawing on and further contributing to the field of Earth law, Indigenous legalities incorporate the normative traditions and relational governance principles of Indigenous worlds as part and parcel of a new legal vision for times of transition. Such an approach aligns with Thomas Berry's notion of the "great law" based on the idea that the universe is a communion of subjects, not a collection of objects (Berry 1999).

In addition, and in conversation with scholars working with local communities in the Andean Amazonian region, Indigenous legalities are based on the principle of interdependence and mutual co-emergence of all beings. 413 This principle orients "a vision of the world that echoes the autopoietic dynamics and creativity of the Earth and the indubitable fact that no living being

413 For example, De la Cadena 2015, Descola 2013, Escobar 2018, Kohn 2013, and Viveiros de Castro 2015, among many others.

exists independently of the Earth." (Escobar 2015, 14) When it comes to the law, the principle of interdependence is at the root of both Indigenous legalities and Earth law.

Moreover, as extensively described in Amerindian cosmologies, animal studies, and plant science, among other fields of knowledge, nonhuman beings are capable of different forms of representation and communication. More than objects of cognition and control, nonhuman beings are agents of knowledge and even legal subjects today. In our view, Indigenous legalities across the Americas offer compelling elements for an expanded, multiple, and life-thriving legal paradigm beyond the individual and the state. Thus, Indigenous legalities contribute to the emergent Earth law that capacitates other-than-human selves as subjects of rights but also as legal agents in their own right.

From the Andean foothills to the Amazonian lowlands, the Inga's ancestral and highly strategic territories reach across the Southern departments of Nariño, Cauca, Caquetá, and Putumayo in Colombia. The environmental, cultural, and legal agendas of the Inga in the Andes-Amazon join long-standing efforts of Indigenous resurgence movements across Latin America, and beyond (Mignolo and Walsh 2018). Moreover, the work of the Inga is inspired by several interconnected normative principles which are part of the *Wuasikamas* oral code: (1) to defend life according to Indigenous legal and governance systems; (2) to care for the territory as the basis of environmental governance and decision-making models; (3) to foster epistemic autonomy — as opposed to epistemic dependence—in harmony with local ecologies and sociopolitical realities; and (4) to engage in intercultural dialogue with Western science and governance systems, among other principles. 414

In this chapter, I have studied, among other things, how state law incorporates Indigenous legalities, and how legal practitioners may engage with their principles and methodologies. The increased recognition of Indigenous legalities is helping to bring into being the emerging paradigm of Earth law, thus becoming an important tool for the protection of Indigenous peoples

414 From Biemann, U. Outline for an Indigenous University in Colombia – Draft, 2019 (Not published).

and their territories. The wisdom of Indigenous legalities is becoming part of the legal system outside those territories transforming state law.

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Supreme Court of Canada. *Delgamuukw* v. British Columbia. Report: [1997] 3 SCR 1010. Case Number 23799.

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United Nations Development Programme. 2019. *The Wuasikamas Movement of the Inga People in Aponte, Colombia*. Equator Initiative Case Study Series. New York, NY.

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Connecting to chapter 7

In Chapter 6 we discussed a view of what Anishinaabe jurist Aaron Mills calls "Indigenous legalities," or a way of responding to Western legalities that are based on dualistic ontologies. By Indigenous legalities I refer not only to indigenous legal traditions—a set of customs, norms, and procedures for regulating social behavior—but also, and perhaps more crucially, to local "lifeworlds." A lifeworld is a "distinct way of knowing and being in the world" (Mills 2019: 24). Building on these principles and with a special focus on Inga legalities (Colombia), Chapter 6 reviews some of the central principles, methodologies, and sources of Indigenous legalities in the hemisphere to contribute to the Earth law movement. With a similar purpose, chapter 7 proposes a syllabus for a course on Indigenous Legal Traditions that intertwines Boreal and Amazonian forests, life-ways and legal traditions.

Chapter 7: Indigenous Legal Traditions: From the Boreal to the Amazonian forests. *A syllabus*

In what follows, I will present a 1) a suggested syllabus on Indigenous legal traditions in the hemisphere; 2) a sample of one of the modules, 3) and a teaching philosophy statement.

1. A syllabus

Course Overview

The law deals with a universe of relations between individuals, communities, states, and social groups of sorts. However, usually described in terms of norms and procedures, the law remains separated from the larger social and ecological systems it is set off to regulate. As a result, legal systems have become instrumental to the ongoing socio-ecological crisis of our time. What is the relationship between law, life, and culture? Do indigenous legal traditions (ILTs) offer a different view of the law? How do ILTs conceptualize the socio-ecological contexts where the law is embedded? Can ILTs contribute to global transformations for social and environmental justice? This course offers an overview into the multiplicity, historical trajectories, and methods of analysis of indigenous legal traditions in the Americas. By reviewing several examples, we will study some aspects of indigenous law and systems of governance, as well as their underlying cosmologies. Before delving into the topic, the course will offer an overview of key schools of legal thought in the Western world.

For the purposes of this introductory course, we conceptualize indigenous legal traditions as the situated and cross-generational legal reflection and practice of indigenous communities, traditional authorities, and indigenous scholars, as well as their underlying 'lifeworlds' (Mills 2016). Indigenous governance protocols, to be sure, are rooted in the principle of interdependence between humans and nature. We thus aim to expand the notion of law beyond the idea of a 'systems of norms' produced by the state in order to include other legal traditions, as well as the life systems where they are embedded. Attending to the cosmological, epistemological, and ecological dimensions of ILT (lifeworld), we will learn how different practitioners (indigenous and not) use the law to respond to marginalization and violence while proposing culture-based legal systems.

The course is divided into three sections. The first one, *Indigenous Legal Traditions of North America,* reviews some aspects of indigenous legal thinking and practice in today's Canada and the U.S. The second part of the course, *Indigenous Legal Traditions of Latin America*, will review ILT from various Indigenous communities in today's Latin America. *Indigenous Legal Traditions in Conversation (North-South),* our last section, explores how indigenous legal theories from these two contested geo-political constructs (Global North and Global South) interact with each other.

We will focus on how ILTs respond to dominant models of environmental law and governance today, while transforming dominant legal concepts and practices.

Learning outcomes

1. By the end of this course students should be able to synthesize key as aspects of legal approaches in the Western world, namely the relationship between the law and other social, ethical, and cultural spheres.
2. Students should be able to understand and conceptualize indigenous legal traditions in relation to their underlying cosmological contexts in the Americas. Moreover, they should be able to analyze the relationship between law and life according to particular Indigenous cosmologies.
3. Students should be able to critically integrate Indigenous Legal Traditions into their own legal thinking, while recognizing some of the historical trajectories, theoretical, and methodological approaches of ILT in the Americas. Additionally, students should be able to evaluate how ILT respond to ongoing colonial practices in indigenous territories, and how the ILT can become a decolonizing tool.
4. Students should be able to analyze the tensions between ILT and dominan environmental governance frameworks in the Americas.

Learning Method

Students will meet once a week for lectures and collective discussions. Students will also learn from a wide range of literature and audiovisual content, engage with invited speakers, and work collaboratively through discussion and writing assignments. Given the emphasis on students' participation attendance is highly encouraged. Some of the readings will be uploaded to [name of system], and others will require students' use of library resources. We will have guest speakers by Zoom and links will be provided beforehand.

Course materials

The assigned material will include a wide range of articles and book chapters. Some readings may change based on observation of student engagement and class dialogue.

Books

- Borrows, John. *Freedom and Indigenous Constitutionalism*. Toronto: University of Toronto Press, 2016.
- Tuhiwai-Smith, Linda. *Decolonizing Methodologies. Research and Indigenous Peoples.* NY: Zed books. 2012.
- Umeek, Atleo Richard. E. *Principles of Tsawalk. An Indigenous Approach to Global Crisis.* Toronto/Vancouver: University of British Columbia Press. 2011.

- Wall Kimmerer, Robin. *Braiding Sweetgrass. Indigenous Wisdom, Scientific Knowledge, and the Teaching of Plants.* Minneapolis: Milkweed Editions. 2013.

Course content

I. *Indigenous Legal Traditions of "North America*:" An overview of some aspects of Indigenous legal thinking and practice in today's Canada and the US.

Week 1: What do we mean by Legal Traditions, Indigenous Legal Traditions, and Forest Legalities?

Readings

- Glenn, Patrick, *Legal Traditions of the World* (3rd ed.). Oxford: Oxford University Press. 2007. Chapter 1: A Theory of tradition? The changing presence of the past. Pp. 1-29.
- Royal Commission on Aboriginal Peoples, "Aboriginal Concepts of Law and Justice: The Historical Realities" in Royal Commission on Aboriginal Peoples, ed., Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada (Ottawa: Minister of Supply and Services Canada, 1996) 12.
- Napoleon, Val. *Recovering Indigenous Legal Systems and Governance* (Video). Available at http://www.indigenousbar.ca/indigenouslaw/audiovideo/#recovering

Optional readings:

- Glenn, Patrick, *Legal Traditions of the World* (3rd ed.). Oxford: Oxford University Press. 2007. Chapter 2: Between traditions: Identity, persuasion and survival. P.31-57.
- Lindber, T. "The Doctrine of Discovery in Canada". In *Discovering Indigenous land. The Doctrine of Discovery in the English Colonies.* Oxford: Oxford University Press. 2010. Hunt, S. "Ontologies of Indigeneity: the Politics of Embodying a concept." *Cultural Geographies* 21(1) (2014): 27-32.

Week 2: What do we mean by 'lifeworlds' and 'context' in Indigenous Legal Traditions?

Readings:

- Mills, Aaron. "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today". 61:4 McGill LJ 2 847.

- Ingold, Tim. *The Perception of the Environment. Essays on livelihood, dwelling and skill.* London/NY: Routledge. 2011 (2000). Pp. 9-26.
- Borrows, John. *Freedom and Indigenous Constitutionalism*. Toronto: University of Toronto Press, 2016. Chapter 1: Physical Philosophy: Mobility and indigenous freedom (pp. 19-27).
- *Guest Lecturer (TBD)*

Optional readings:

- Ingold, Tim. *The Perception of the Environment. Essays on livelihood, dwelling and skill.* London/NY: Routledge. 2011 (2000). Chapter 6 (A Circumpolar night's dream).
- Johnston, Basil H. "Is That All There Is?: Tribal Literature" (1991) 128 Can Literature 54.

Week 3: What does 'Indigenous constitutionalism' refer to?

Readings:

- Borrows, John. *Freedom and Indigenous Constitutionalism*. Toronto: University of Toronto Press, 2016. Chapter 3. Indigenous Freedom and Canadian Constitutionalism. (pp. 103-127)
- Bell, Leland. "Sacred Fire", The Beaver (Summer 1981) 56 at 56–57.
- Johnston, Darlene. "Welcome Address" (2007) 6:1 Indigenous LJ 1.

Readings

- Turpel, Mary Ellen. "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences" (1989–1990) 6 Can Hum Rts YB 3.

Week 4: Topics in indigenous law (1): Indigenous Legal Theories.

Readings:

- Lindberg, Tracey. 'Critical Indigenous Legal Theory Part 1: The Dialogue Within.' In *Canadian Journal of Women and the Law.* 27(2): 224-247. 2015.
- Atleo, Richard (Umeek). *Principles of Tsawalk. An Indigenous Approach to Global Crisis.* Vancouver: University of British Columbia. 2011. Introduction (pp. 1 – 9); Chapter 3. Genesis of Global Crisis and a Theory of Tsawalk (pp. 57 – 78).
- Borrows, John. *Freedom and Indigenous Constitutionalism*. Toronto: University of Toronto Press, 2016. Chapter 2. Civil (dis) obedience, freedom and democracy. A. Moving Beyond Abstractions. Remembering grounded stories (pp. 50-54).

Optional readings:

- Grear, Ann. "Towards a New Horizon: In Search of a Renewing Socio-Juridical Imaginary". *Oñanti Socio-Legal Series*, 3, 966. 2013.
- Napoleon, V. *Thinking About Indigenous Legal Orders*. Research Paper for the National Centre for First Nations Governance. 2007. Disponible en: http://fngovernance.org/ncfng_research/val_napoleon.pdf

Week 5: Topics in indigenous law (2): Indigenous Legal Methodologies.

Readings:

- Tuhiwai-Smith, Linda. *Decolonizing Methodologies. Research and Indigenous Peoples.* NY: Zed books. 2012. Introduction; Chapter 3: Colonizing knowledges; Chapter 6: The indigenous people's project: Setting a new agenda.
- Napoleon, Val & Friedland, Hadley. 'An inside job: Engaging with Indigenous Legal Traditions through stories.' (2016) 61:4 McGill LJ 725-754.
- *Guest Lecturer (TBD)*

Optional Readings:

- Onabigon, Edward. "Elder's Comments" in Roger Neil, ed, Voice of the Drum: Indigenous Education and Culture (Brandon, Man: Kingfisher, 2000) 282.

II. *Indigenous Legal Traditions of "Latin America"*: An overview of ILT from various Indigenous communities in today's "Latin America."

Week 6: The Law of Abya-Yala: A Gunadule name for 'America' ('The Land in its full maturity')

Readings:

- Del Valle Escalante, Emilio. 'Self-Determination: A Perspective from Abya Yala.' In *E-International Relations. https://www.e-ir.info/2014/05/20/self-determination-a-perspective-from-abya-yala/*
- Sandra Brunnegger, 'Legal Imaginaries: Recognizing Indigenous Law in Colombia' in Austin Sarat (ed.) *Studies in Law, Politics, and Society (Studies in Law, Politics and Society, Volume 55)* Emerald Group Publishing Limited, pp.77 – 100. 2011.

Optional readings:

- Mignolo, Walter. "Epistemic Disobedience, Independent Thought, and Decolonial Freedom". *Theory, Culture, and Society.* 26 (7-8): 159-181.

2009.

- Mignolo, Walter. "Geopolitics of Sensing and Knowing: On (De)Coloniality, Border Thinking, and Epistemic Disobedience." http://eipcp.net/transversal/0112/mignolo/en.

Week 7: Decolonizing Legal Teaching

Readings:

- Baldi, Cesar. "Decolonizing the Teaching of Human Rights?" *Critical Legal Thinking. Law and the Political.* 2013.
- Barreto, Jose Manuel. "Decolonial Strategies and Dialogue in the Human Rights Field. A Manifesto". *Transnational Legal Theory.* 3 (1): 1-29. 2012.

Optional readings:

- Baxi, U. "Postcolonial Legality." *In* Schawarz, S., Ray, S. (eds.). *A companion to postcolonial Studies*. Oxford, Blackwell. 2005.
- Baldi, Cesar. "Sumak Kawsay, Interculturality and Decolonization." *Critical Legal Thinking.* 2013. http://criticallegalthinking.com/2013/04/15/sumak-kawsay-interculturality-and-decolonialization/

Week 8: Law in the Lacandona Forest: Zapatistas' Legal Institutions.

Readings:

- Speed, Shannon, "Exercising rights and reconfiguring resistance in the Zapatista Juntas de Buen Gobierno." In Goodale, Mark and Merry, Sally. (Eds.) *The Practice Human Rights. Tracking Law Between the Global and the Local.* New York: Cambridge University Press. 2007.
- Marcos, Silvia. "The Zapatista Women's Revolutionary Law as it is Lived today." In *Open Democracy.* 2014. *https://www.opendemocracy.net/en/zapatista-womens-revolutionary-law-as-it-is-lived-today/*
- *Guest Lecturer (TBD)*

Optional readings:

- Collins, Stephen. 'Indigenous Rights and Internal Wars: The Chiapas Conflict at 15 years' in *Social Science Journal*, Vol 47, Issue 4, p.777. 2010.

Week 9: The Rights of Nature and *Buen Vivir* in the Andean context.

Readings:

- Gudynas, E. 'Buen Vivir: Today's tomorrow.' *Development*, 54(4), 441–

447. 2011.

- Humphreys, D. 'Rights of Pachamama: The emergence of an earth jurisprudenc'. in *the Americas Journal of International Relations and Development*, 20, (459–484). 2017.
- Tanasescu, Mihnea. 'The Rights of Nature in Ecuador: The Making of an Idea.' In *International Journal of Environmental Studies*. 70(6): 846-861. 2013.
- Youatt, Rafi. "Personhood and the Rights of Nature: The New Subjects of Contemporary Earth Politics". *International political Sociology*.11:39-54. 2017.

Optional readings:

- Caria, S. & Domínguez, R. (2016) Ecuador's Buen vivir: A New Ideology for Development Latin American Perspectives, Issue 206, Vol. 43 No. 1, January 2016.
- Taita Lorenzo Muelas, *Leyes de Origen y Derecho Mayor.* (Video) Disponible en: https://www.youtube.com/watch?v= D38AUb0-4s
- Lorenzo Muelas. "El Derecho Mayor no Prescribe." En *Ecología Política,* No. 19, 2000. 99-104. Disponible en: http://www.jstor.org/stable/20743076?seq=1#page_scan_tab_contents

III. *Indigenous Legal Traditions in Conversation*

This section explores how Indigenous legal theories from these two contested geo-political constructs (Global North and Global South) might interact with each other. We will focus on how ILTs respond to dominant models of environmental governance today, while transforming dominant definitions of law.

Week 10: Translation between Legal Traditions: Limits and Possibilities.

Readings:

- De la Cadena, Marisol. *Earth Beings. Ecologies of Practice.* Durham: Duke Uni. Press. 2015. Story 3: Mariano's Cosmopolotics: Between Lawyers and Ausangate.
- Zuni Cruz, Christine. 'Law of the Land: Recognition and Resurgence in Indigenous Law and Justice Systems'. In Benjamin J Richardson, Shin Imai & Kent McNeil, eds, *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Oxford: Hart, 2009) 315 at 335.
- Blaser, Mario. "Ontological Conflicts and the Stories of Peoples In Spite of Europe: Towards a Conversation on Political Ontology." *Current Anthropology*. Volume 54, Number 5:547-568. 2013.

Optional readings:

- Viveiros de Castro, Eduardo (2004). "Perspectival Anthropology and the Method of Controlled Equivocation," *Tipití: Journal of the Society for the Anthropology of Lowland South America*: Vol. 2: Iss. 1, 2004.

Week 11: Relationality and Interdependence: Earthly principles across Indigenous Legal Cultures.

Readings:

- Umeek, Atleo Richard. E. *Principles of Tsawalk. An Indigenous Approach to Global Crisis.* Toronto/Vancouver: University of British Columbia Press. 2011. Chapters 4: The Nuh-chah-nulth Principle of Recognition (pp. 79-92); Chapters 6: The Nuh-chah-nulth Principle of continuity (pp.117-138).
- Wall Kimmerer, Robin. *Braiding Sweetgrass. Indigenous Wisdom, Scientific Knowledge, and the Teaching of Plants.* Minneapolis: Milkweed Editions. 2013. Learning the Grammar of Animacy (p. 48 – 62).
- *Guest Lecturer (TBD)*

Optional readings:

- Daly, Lewis. 'What kind of people are plants? The challenges of researching human-plant relationships in Amazonian Guyana.' In *Engagement.* https://aesengagement.wordpress.com/2015/12/08/what-kind-of-people-are-plants-the-challenges-of-researching-human-plant-relations-in-amazonian-guyana/

Week 12: Indigenous and Environmental Governance (1).

Readings:

- Trosper, Ronald. *Resilience, Reciprocity, and Ecological Economics.* Northwest Coast Sustainability. London/NY: Routdlege. 2009. Introduction; Chapter 1: Sustainability needs tested ideas from the Pacific Northwest.
- Harris, Angela P., 'Vulnerability and Power in the Age of the Anthropocene'. In *Washington and Lee Journal of Energy, Climate, and the Environment.* Research Paper No. 370. 2014.

Week 13: Indigenous and Environmental Governance (2).

Readings:

- United Nations Development Programme. *The Wuasikamas Movement of the Inga People in Aponte, Colombia*. Equator Initiative Case Study Series. New

York, NY. 2019. (Example of indigenous environmental governance in Southern Colombia)
- Concluding remarks.

Week	Theme
1	What do we mean by legal traditions, and Indigenous legal traditions and Forest Legalities?
2	What do we mean by *lifeworlds* and *context* in Indigenous Legal Traditions?
3	What does *Indigenous Constitutionalism* refer to?
4	*Topics in Indigenous law (1)*: Indigenous Legal Theories.
5	*Topics in Indigenous law (2):* Indigenous Legal Methodologies.
6	The Law of Abya-Yala: A Gunadule name for *America* ('The Land in its full maturity')
7	Decolonizing the Teaching of Law
8	Law in the Lacandona Forest: Zapatista's Legal Institutions.
9	The Rights of Nature and *Buen Vivir* in Andean contexts.
10	Translation between Legal Traditions: Limits and Possibilities.
11	Relationality and Interdependence: Earthly principles across Indigenous Legal Cultures.
12	Indigenous and Environmental Governance (1).
13	Indigenous and Environmental Governance (2).

Table 16: Indigenous Legal Traditions: Summary

Criteria for assessment

- ***Participation***. Participation is vital to the success of this course. Consistent with Indigenous ways of learning, we're going to learn together, and grading dedicated to participation reflects that purpose. Participation means connecting experientially with the material, that is, drawing connections between the readings and larger personal, social, cultural, political, and other contexts. This means taking risks and sharing your perspective in class. We're going to learn that we need each other to make this class work; we're going to practice the very thing we're learning. [*Here, I'm borrowing from Anishinaabe Indigenous scholar Aaron Mills: "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today". 61:4 McGill LJ 2 847. Assessment section of his "Anishinaabe Constitutionalism" syllabus*].
- ***Memos and posting comments***: To facilitate participation and to assist in the comprehension of the course materials, you are responsible for writing memos on the readings for *three weeks of the class*. Memos should be one to two paragraphs long (150-300 words). They must state the main points of the readings and provide a response. What is a response? You may raise a question (for instance, ask for clarification of a claim or statement you find puzzling or hard to understand); link the reading to earlier ones; note its relevance to popular culture, anthropology, philosophy, current events,

or your own disciplinary or intellectual interest etc.; offer a critique, or make a new argument. The point is to show you have seriously *thought* about the reading material.
- ***Take-home essay (midterm)*** consisting of two questions connecting legal sources from the assigned reading with larger contexts (cultural or otherwise).
- ***Final Essay (take home):*** In addition to the memos and the midterm, you will have 1 take home final essay exam on assigned topics, approximately 5-6 pages long.

2. Sample of module: *Indigenous Legal Traditions and Forest Legalities*

Module rationale

The human is radically embedded within shifting assemblages of solar energy, water, soil nutrients, animal and plant life, cultivation technologies, and complex social systems of sorts, among other beings and relations. Living in mutual co-emergence with sentient and intelligent life forms thus compromises every dimension of our own existence, from physical nourishment and community building to knowledge making and legal protocols (Atleo 2011; Kimmerer 2013). Should humans then have the monopoly over the world of meaning, value, and power? (Viveiros de Castro 2016) As extensively described by anthropology, animal studies, and plant science, among other disciplines, nonhuman selves are capable of other than symbolic forms of representation, and communication (Descola 2013; Gagliano 2015; Few et al 2013; Kohn 2013). Thus, far from objects of cognition and control, other-than-human beings are agents of knowledge and even legal subjects today (Acosta and Martínez 2011). Indigenous legal traditions across the Americas offer compelling elements for an expanded and life-thriving legal paradigm beyond the norm and the state; a paradigm shift that integrates other-than-human selves as legal agents in their own right.

Problem

Environmental law and governance models are often framed as independent sets of norms and procedures to regulate the human use of an external nature (Garver 2013, 2018). These models, moreover, remain grounded in a 'one-world world' ontology paradigm (Law 2011). Conceived from the perspective of the Western historical experience and its colonial trajectories, the one-world ontology suggests that regardless of cultural variations and belief systems, humans (and other-than-humans) occupy one real world made up of discrete, and separate entities. This vision poses a significant challenge to the Ecozoic, and one that could worsen the ongoing destruction of socio-ecological systems across the planet.

Building upon the works of scholars from the polyphonic 'ontological turn' in social sciences and the humanities (De la Cadena 2015; Descola 2016; Escobar 2018; Kohn 2013, and Viveiros de Castro 2015), this module is based on the principle of interdependence and mutual co-emergence of all beings. This principle, to be sure, orients "a vision of the world that echoes the autopoietic

dynamics and creativity of the Earth and the indubitable fact that no living being exists independently of the Earth" (Escobar 2015: 14). When it comes to legal systems, this understanding is at the root of an emergent legal ontological framework.

Proposal

Andean-Amazonian indigenous and *mestizo* populations currently face the 'ontological occupation of (their) territories' (Escobar 2016: 12), namely the pervasive seizure of their lands, waters, and sub-soils; knowledge practices, and modes of being. As the law appears instrumental to socio-ecological transformations, it cannot be left only to the humans and the state. With this premise, the module explores a pluralist and rooted jurisprudence (Mills 2016) that expand the law beyond the normative, the human, and the state. This theoretical and practical move, to be sure, necessitates a radical conceptualization of notions of representation, agency, standing, rights and justice in order to include other-than-human beings within the legal field. An ontological approach to the law, therefore, does not consider the prescriptive attributes of legal systems alone, but their world-making, emancipatory and transformative capacities as well.

Exploring the relationship between law, life, and culture, this module asks: do indigenous legal traditions (ILT) offer a different view of the law? How do ILT conceptualize the socio-ecological contexts where the law is radically embedded? Can ILT contribute to global transformations for socio-ecological justice? We first offer a brief overview of key schools of legal thought in the Western world in order to situate ILT. The module will then delve into the multiplicity of theories and methods to engage with indigenous legal traditions, and forest legalities in the Latin American context. For our purposes, ILT refers to the situated and cross-generational legal reflection and practice of indigenous communities, traditional authorities, and indigenous scholars, as well as their underlying "lifeworlds" or cosmologies (Mills 2016). The notion of forest legalities, on the other hand, refers to how legal thought and practice conjures and capacitates more-than-human selves within the legal conversation (Braverman 2018).

Indigenous governance protocols, for example, are rooted in the principle of intimate interdependence between humans and other sentient and sign-producing life forms such as plants, animals, and 'invisible peoples' (Cofán elder, *Personal Conversation* 2019). Thus, we aim to expand the notion of the law beyond the idea of a 'systems of norms' produced by the state in order to foreground other legalities (Braverman 2018), and the living systems where they are enmeshed. Attending to the cosmological, epistemological, and ecological dimensions of ILT, we will learn how different practitioners (indigenous and not) in the Andean-Amazonian context use this expanded conception of the law to respond to ongoing colonial and epistemic violence in their territories, while contributing to the aforementioned paradigm shift.

Learning objectives

1. By the end of this module students should be able to synthesize key aspects of legal approaches in the Western world, namely the relationship between the law and other social, ethical, and cultural spheres.

2. Students should be able to analyze the tensions between ILT and dominant environmental governance frameworks in Latin America.

3. Students should be able to conceptualize indigenous legal traditions in relation to their underlying cosmological contexts in Latin America.

4. Students should be able to critically integrate Indigenous Legal Traditions into their own legal thinking, while recognizing some of the methodological approaches of ILT in Latin America. Additionally, students should be able to assess how ILT respond to ongoing colonial practices in indigenous territories, and how the ILT can become a decolonizing tool.

Mechanics of the session:

1. The instructor will introduce the session and present our guest speaker **(20 min).**
2. Guest Speaker. Suggested topics: (i) *Law of Origin in Southern Colombia and the Struggle of the Inga People of Aponte, Nariño*. (ii) *How does indigenous ritual use of plants contribute to indigenous modes of governance in Southern Colombia?* (subject to change). **(45 min.)**
3. Q&A **(15 min.)**
4. Break **(5-10 min.)**
5. We will then split into two groups and have discussion sessions integrating the readings, and ideally our speaker's presentation **(20 min).** Guiding question: Based on the readings and the speaker's presentation, what are the limits and possibilities of the Rights of Nature approach (RofN)?
6. Following the discussion, each group will draft a *Bill of NonHuman Rights* (4 to 5 articles) considering the critical approaches just discussed. Guiding questions: Does this Bill foreground a strong ecocentric approach? Does it integrate humans and how? What are the limits and possibilities of the RofN approach in the face of pervasive extractive economies around the globe? **(30 min.).**
7. Each group will present their *Bill of NonHuman Rights* to the rest of the class (**5 - 10 min.**) with **15 minutes** to debrief.

Potential Readings

- Anker, Kirsten. 'Law As…Forest: Eco-logic, Stories and Spirits in Indigenous Jurisprudence.' In *Law Text Culture*, 21: 191. 2017.

- Burdon, Peter. 'The Rights of Nature: Reconsidered'. In *Australian Humanities Review*, 49: 69. 2010.
- Chapron, Guillaume; Epstein, Yaffa and López-Bao, José. 'A rights revolution for nature'. In *Science*, 363 (6434): 1392-1393. 2019.
- Mills, Aaron. 'The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today'. 61:4 McGill LJ 2 847. (***Read pp. 847-874***),
- Youatt, Rafi. 'Personhood and the Rights of Nature: The New Subjects of Contemporary Earth Politics'. In *International political Sociology*, 11:39-54. 2017.

Other material (optional)

- Borrows, John. *Freedom and Indigenous Constitutionalism*. Toronto: University of Toronto Press, 2016. Chapter 1: Physical Philosophy: Mobility and indigenous freedom **(*Read 19-27*).**
- Brunnegger, Sandra. 'Legal Imaginaries: Recognizing Indigenous Law in Colombia' in Austin Sarat (ed.) *Studies in Law, Politics, and Society*, 55: 77 – 100. 2011.
- Barreto, Jose Manuel. 'Decolonial Strategies and Dialogue in the Human Rights Field. A Manifesto'. *Transnational Legal Theory.* 3 (1): 1-29. 2012.
- Tanasescu, Mihnea. 'The Rights of Nature in Ecuador: The Making of an Idea.' In *International Journal of Environmental Studies.* 70(6): 846-861. 2013.
- -WIPO, Customary Law and Traditional Knowledge. https://www.wipo.int/publications/en/details.jsp?id=3876 2016

3. A teaching philosophy

Introduction: I have come to define teaching as a deeply **collaborative learning process** that actively informs scholarly production and, ultimately, social transformation. With this underlying premise, I bring a cross-disciplinary background to the classroom in order to analyze the social, ecological and legal dimensions of human-to-human and human-to-nature interactions across local, hemispheric, and global scales. I base my teaching approach upon two mutually reinforcing pillars: detailed analysis of legal dogmatics and jurisprudence and implementation of **popular education** techniques learned from previous work with human rights activists in Colombia (Freire 1996, Fals-Borda 2009) 415.

My overall teaching objective is to **situate legal learning** in real-life scenarios with the perspective of contributing to the transformation of socio-ecological realities marked by racialized violence, socio-ecological injustice, and epistemic monolingualism. Here, **co-learning** stands for the process of collective discussion of legal issues and the contexts where they emerge, as well as creating a space for **grounded imagination** where both instructor and students cultivate an **ethics of attentive listening** as they challenge each other's points of view with argumentative thoroughness and generosity. In what follows, I describe my approach to teaching and the skills needed to develop it, and then explore how I see this approach connected to decolonial ways of teaching. 416

I. Approach: My approach to teaching has grown, has been challenged, and has ultimately been refined. The following set of **skills** is central to my teaching and mentoring approach and practice: (A) co-creating a space that encourages participation across difference, (B) fostering methodological pluralism and epistemic rigour, and (C) stimulating curiosity and responsibility. These skills are meant to gauge and collegially challenge each other's perspectives as we find ways to make explicit connections, for example, between classroom materials from Indigenous Legal systems and the Civil law tradition, and contemporary socio-ecological challenges. Moreover, these skills are complemented by four **tasks:**

(a) being attuned to and mediating social relations among students and between students and learning tools, (b) co-taking responsibility for students' disciplinary training, thematic engagement, and attainment of analytical reading and writing skills, (c) structuring and guiding lively and analytically rich class discussions, and finally (d) facilitating critical self-positioning. In brief, my approach seeks to stimulate sustained participation of students and capacity to connect to course materials through critical reflection and personal experience, while encouraging co-learners to ask themselves how they may be implicated in the social, legal and/or

415 An example of this is a workshop where participants share their testimonies of peace-building initiatives using different media (i.e. oral, visual, written) and describing the social, personal, and institutional challenges they face to implement these initiatives in their territories.

416 See Tuck E., & Yang 2012 for a critical approach to different ways in which the word "decolonization" is used.

environmental phenomena being studied. An example of this approach involved working closely with students on a writing assignment for an environmental thought seminar at McGill. This assignment was a final research paper wherein students propose solutions for an environmental challenge and identify the "Theory of Change," worldviews and values underlying these solutions. The task is highly synthetic, drawing from the seminar discussions, materials, real-life experiences, and disciplinary training in environmental sciences. I was able to support students' as they defined accurate environmental problems, prepared sentence outlines, and submitted the final essays while providing detailed feedback every step of the way.

II. Skills*: A. Creating a safe space to encourage participation across difference.* Aware that students at McGill Law come from various disciplines, backgrounds, and cultural settings, I am fully committed to integrating and learning from different perspectives and experiences as I teach, supervise, and mentor students. This includes, for example, posing close-reading questions and, when appropriate, examining the political and ethical assumptions embedded in legal texts: how does *X* piece of legislation or jurisprudence represent subalternatized populations and their knowledge practices and ways of being? What does *Y* piece of Civil law dogmatics tell us about conflicting views of property, territory, and nature?

This iterative question-and-answer approach seeks to stimulate participation across different positionalities and modes of self-identification, while nurturing mutual learning. When appropriate and useful for the purposes of the critical attainment of legal concepts, this approach harnesses *experience*, that is, personal histories and backgrounds as they inform legal constructs. Rather than reaching agreement on a particular topic, this skill is meant to foster a space of mutual trust, collegiality, and readiness to learn across often-incommensurable differences (Tuck & Yang 2012).

B. Pluralism and epistemic rigour: What are the limits and possibilities of different (legal) traditions and modes of reasoning in the legal field? What kind of methodologies can help us to respectfully engage with traditions that are not ours? In my view, a crucial element of pluralistic learning is to facilitate the *purposeful* engagement with different methodologies and learning sources, while **making explicit connections between these methodologies and concrete life-projects and places**. This skill requires an **ethics of attentive listening** that explores the limits of our own knowledge practices as we probe new learning opportunities beyond the lettered archive.

C. Informed curiosity and response-ability: How can learning different (legal) thought traditions be put at the service of resolving conflicts and transforming our practices as researchers, teachers and legal practitioners? With feminist science scholar Donna Haraway, I define responsibility as the "ability to respond" (2016), that is, a **kind of preparedness and ethical disposition to transform our "usual" scholarly practices** and forms of engagement with our communities and territories. In addition, this ability or skill depends on *informed curiosity*, that is, the capacity to seriously and respectfully engage with other epistemic traditions, and when engagement increases risk of harm, respectfully withdraw from it. Informed curiosity leads to prudence, and

prudence to informed action. I connect this approach (*skills* and *tasks*) to a "decolonial pedagogy" (Walsh 2014. See also Bagele 2012, Hale 2008, Reason & Bradbury 2008).

III. Teaching as "decolonial pedagogy." Building upon the work of popular educator and decolonial scholar Catherine Walsh (2013), I define *decolonial pedagogy* as a mode of teaching and learning which critically investigates how modern beliefs systems, theories and paradigms about the "social" and the "natural" world may embody and/or perpetuate different forms of colonial violence, for example, patriarchy, racism, classism, territorial dispossession, cognitive extractivism, among other forms of systemic oppression (see Tuck & Yang 2012, Tuhiwai Smith 2012).

A form of grounded imagination must follow this critical analysis where both the instructor and the students are able to prefigure and engage in transformative scenarios of change while drawing from a **solid knowledge** (*task*) of what they aim to transform, for example, university disciplines such as law and economics (Vargas et al 2019). In brief, this form of pedagogy is based on the careful examination of how modern principles that separate nature and culture, human and nonhuman beings, body and mind, among other boundary-making concepts, may inform disciplinary and cross-disciplinary knowledge practices. The modern view of separation determines how people learn and produce knowledge, how they act, experience the world, relate to one another, and organize collectively (Kothari et al 2019: xviii).

In my view, decolonial pedagogies in the classroom offer important lessons for learning and teaching as they respond to a liberal-modern view of the world that renders non-modern experiences and modes of learning as "cultural beliefs" or "myths". When it comes to the law, *teaching as a decolonial pedagogy* suggests that Indigenous peoples across the "Americas" (a critique in Mignolo 2005) hold different views on the character and practice of law, as well as different theories about what gives the law its binding force. The sources of Indigenous legal systems are diverse and numerous and include, as John Borrows teaches us "sacred teachings, naturalistic observations, positivistic proclamations, deliberative practices, and local and national customs" among others (2010).

The study of these systems, therefore, requires a particular epistemological approach through which human and nonhuman beings— including plants and animals, the supernatural, and even the inert— are all considered social agents. I see this epistemological openness as one of the cornerstones of a different form of legal learning. In what follows, I outline some of the principles of this form of pedagogy within the larger project of the decolonization of law in the hemisphere and close with the **learning objectives** of a teaching syllabus I'm developing around these themes.

(A) Where learning in a liberal modern world promotes the logics of separation, decolonial pedagogies foster the logics of interdependence. The modern university tends to organize knowledge through compartmentalized disciplines that further separate the human from the nonhuman. An alternative to this overarching project, decolonial pedagogies pursue the co-

production of knowledge, for example, between sustainability sciences and other traditions based upon, borrowing from Aaron Mills, Indigenous lifeworlds (2016). In addition, this relational vision is able to hold space open for sentient and cognitive beings beyond the human in our knowledge-making practices. The logic of interdependence is also about recognizing power asymmetries and the limits and possibilities of integrating knowledge systems.

(B) Where learning in a liberal modern world promotes "economic development," decolonial pedagogies foster the healing of the web of life. The modern university tends to produce knowledge for the creation of monetary value at the expense of other possible values. A decolonial pedagogy is a way to put knowledge creation at the service of plural values, for example, the protection of biocultural diversity and community nurturing as ways to heal the web of life.

(C) Decolonial pedagogies are decentralized, plural, and simultaneously local and global in the scope of their conversations (i.e. hemispheric Indigenous legal systems). My teaching philosophy is about the grounded imagination of new languages, values, practices, and tools ranging from speculative research to committed socio-ecological justice policy; from inner reflection and transformation to collective conversation and action, for example, by learning about strategic litigation; from joyful scholarship to local direct action; from thinking to sowing.

(D) Where learning in a liberal modern world promotes colonial violence (racism, patriarchy, classism), decolonial pedagogies promote the decolonization of minds, territories, and social institutions as a way to dismantle different expressions of colonial violence. Building upon the work of anthropologist Arturo Escobar, decolonial pedagogies promote the "healing of the web of life" to counter interrelated forms of systemic violence. Escobar suggests a relational concept of healing as the "interaction between elements stemming from an entire range of systems (biophysical, economic, political, cultural, environmental, spiritual)." (2019) According to this holistic perspective, an **analytics of healing the colonial violence** concerns teaching and learning how to *repair* "the entire system of relations, not just bodies or ecosystems". An example of this in the classroom is the study of ways to incorporate relational principles in legal reform

Finally, my teaching philosophy builds upon the body of work that reverses the predominant colonial relation between Western modernity and Indigenous world-making practices. It primarily concerns how Indigenous ways of knowing and being can transform Western legal systems, rather than how Western law impacts Indigenous life and legal systems only. Indigenous legalities offer a useful lens to transform Western law in the face of socio-ecological crises. To illuminate the ways that Indigenous legal systems can transform Western legal systems, one must first understand how Western colonial systems have impacted Indigenous lifeworlds and legalities (Mills 2019, 2016) and how this colonization persists. This is a crucial task in my teaching approach. I am currently working on the syllabus of a course tentatively entitled "Hemispheric Indigenous Legal Systems and Decolonization" (draft available upon request) and the following is how I envision the learning outcomes for this course.

(1) By the end of this course students should be able to synthesize key aspects of legal approaches in the Western world, namely the relationship between the law and other social, ethical, and cultural spheres. (2) Students should be able to conceptualize crucial aspects of Indigenous legal Systems (ILS) in relation to their underlying cosmological contexts and lifeways in the Americas. Moreover, they should be able to analyze the relationship between law and life according to situated Indigenous conceptual systems, while drawing from different sources (legal and otherwise). (3) Students should be able to critically integrate elements of ILS into their own legal learning, while recognizing some of their historical trajectories, theoretical, and methodological approaches in the hemisphere. Additionally, students should be able to assess how ILS respond to ongoing colonial violence in Indigenous territories, and how the ILS can become a decolonizing tool. (4) Students should be able to analyze the tensions between ILS and dominant environmental governance frameworks in the Americas, while assessing the limits and possibilities of integrating Indigenous and Western approaches to the law.

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COMPREHENSIVE SCHOLARLY DISCUSSION

1. Climate change and COVID-19 have revealed the limited response capacity of conventional environmental law and governance models that insist on the separation between law, society, and Earth systems of sorts. A paradigm shift based on epistemic plurality, relational thinking, and decolonial praxis is needed. How are Indigenous cosmologies and legal systems contributing to this paradigm shift in law? What kind of theoretical and methodological tools does an Earth-oriented law offer us? Beyond the rights of nature approach, how does a law that is entangled with local territorial practices challenge anthropocentric and colonial concepts of justice, agency, and value in times of socio-ecological transitions? How do human and other-than-human beings such as Amazonian plants co-produce protocols for forest governance? At the intersection between Indigenous legal epistemologies, Earth jurisprudence, plant studies and post-humanist anthropology, *Legal Lives* explored these and similar questions using different methodologies to contribute to the decolonization and "ecologization" of environmental law and legal theory in the hemisphere.

The legal "narrative" of other-than-human beings: a methodological consideration

2. The law is conventionally defined as a system of normative statements (Kelsen 1991), that is, as language, or a form of symbolic representation. However, the law can also be defined as a non-symbolic system comprising ecological relations, lived experience, artifacts, and dreams, among other sources (Anker 2017, 2014, Borrows 2016, Davies 2017, Mills 2016, Pelizzon and Gagliano 2015). This expanded definition is based on a bold ontological and methodological assumption, namely, humans are not the only thinking selves in the world (Kohn 2013). More broadly, this means that "life thinks," or that "life is semiotic" (2013, 9), that is, beetles, plants, fungi, fish, and tapirs are not only sentient but cognitive and meaning making (Gagliano 2018, Mikhalevich & Powell 2020, among others). They "represent" the world in one way or another.

3. Expanding the notion of representation to animals, plants, and others has profound implications for legal thinking and justice in Amazonia. If, on a fundamental level, the law is defined as a system of representations, that is, as a system of signs that include language as well as other sign modalities, then, fungi, beetles, plants, and forests can teach us something crucial about law and justice; about where they come from, what they do, how they change over time, and how they can contribute to addressing different social-ecological challenges (Borrows 2016, Anker et al 2021).

4. However, such a broad definition of law and justice would be untenable unless we, *humans*, open ourselves to the possibility of a mode of socio-legal agency that exceeds *us*; that is, a mode of doing things in the world, for example, making decisions about the "environment" or adjudicating justice, whereby human perspectives are considered one among *many* in a larger cosmological meshwork of forces and lifeways (Ingold 2011, Viveiros de Castro 1998). And, contrary to modernist views that separate nature and culture, this suggests a form of "continuity" (and cultural interiority) between humans and other beings (Descola 2015) that invite us to reimagine law and justice for times of ecological crisis and profound transformations (Anker et al 2021). Plants such as the ambihuasca (Banisteriopsis caapi) are masters, partners, and sources of an "ancestral" yet emergent and rapidly evolving practice of justice in Amazonia, and beyond (*Mama R,* Inga Community Baja Bota Caucana, Colombia. See Luna 1985, Caicedo 2015).

5. Earth-oriented—or rather, vegetal—legal thinking requires post-anthropocentric analytical frameworks and methodologies (see Chapter 3, section "*Reweaving the legal fabric: a tectonic methodology to encounter the rights of nature in life"*). For example, Kohn suggests that what we humans share with other animals and plants is not only our physicality, "but the fact that we all live with and through signs […] signs make what we are." (2013: 9) And this ontological principle may also offer a compelling methodological guidance for an Earth law praxis (Zelle et al 2020). For instance, learning the law from the vantage point of a territory requires thinking *with* this territory as a "person" of sorts, rather than an object of scientific description: in Amazonia thinking with medicinal plants or learning what plants can teach us about territorial governance involves what we may call "embodied methodologies" insofar as they emerge from direct experience,

ritual, dreaming, work, language, and imagination— things that most anthropocentric legal theory (Burdon 2020) seem to relegate to the status of "cultural belief" or myth (De la Cadena 2010).

6. For the Inga communities of Southwestern Colombia, for example, law and justice are based on four main pillars or mandates, namely: "do not steal, do not lie, do not be lazy, and live with dignity." (*Taita H,* Inga Community, Nariño) For centuries, the Inga of the Caquetá, Putumayo, Cauca, and Nariño regions have designed different social institutions to resolve conflicts arising from non-compliance with these mandates. This dissertation has focused on one of these institutions, namely the ingestion of the ambihuasca (*Banisteriopsis caapi)* brew and other plants in ritualized and everyday settings. When humans encounter the plant, they reflect on the sources and consequences of their actions and learn how to correct course guided by the traditional medic and the plant itself (UMIYAC 2000).[417]

7. As a ways of resolving conflicts, repairing cosmological relations, and restoring harmony between human people, and between human people and other-than-human people—including "*las cosas invisibles"* (UMIYAC 2000)—the ambihusca-*consejo* or advise enact one form of non-symbolic justice (or not only symbolic!) at the margins of the state. What can the current Colombian state model of transitional justice based primarily on liberal/modern notions of reparation and accountability learn from these forms of embodied justice?

8. Learning with territories, plants, animals and other beings surpasses symbolic analysis, that is, it might require different forms of embodied engagement with these beings insofar as they "suspend" representation and critique as we usually understand these terms in the social sciences (see Chapter 1.1, and Appendix 1, Box 5, "On connections"). The following central argument of my dissertation concerning the rights of nature (chapter 3) can further illustrate this ontological and methodological finding:

[417]Another institution is the *Atun Puncha*. The *Atun Puncha*—the Great Day—or Carnival of Forgiveness is when the Inga communities commemorate the legacy of Carlos Tamabioy, unite in thought, song, and spirit to celebrate the beginning of a new year of life, forgive each other and start a new cycle (Interview with H. Chindoy, Jan. 2021).

1. *Basic assumption:* Normative systems such as the law are usually defined in terms of their all-too-human qualities (i.e. language). This means, among other things, that they are fundamentally separated from ecological relations. However, a global "legal revolution" is taking place: the rights of nature (Boyd 2017).
2. In a sense, the rights of nature challenge this premise of separation between human norms and life, or between culture and nature. Yet, the rights of nature approach seems to take the word "law" for granted.
3. The law is conventionally understood as a system of norms made by humans to regulate human societies and the relationship between them and the environment (Graham 2011). Thus, the law is considered as a human system. An all-too-human system!
4. Taking the rights of nature seriously may require an entirely different understanding of what the law is or could become. *Legal Lives* suggests that attention be paid to what legal scholar Christopher Stone (1972) has called our "ontological choices" or commitments to the law in times of crisis and socio-ecological transitions. Here, we define "ontology" as engagement with the real as multiple (Escobar 2018): a world where many worlds fit, or the pluriverse (Zapatistas 1996. See *Legal Lives'* Introduction: "Law and the Pluriverse").
5. *Legal Lives* aimed at showing how we can imagine the law *differently* and with analytical precision, that is, how we can situate the law within the pluriverse as a hypothesis of the real and how it comes into being through practices (Zapatistas 1996, Kothari et al. 2018, Escobar 2018). To contribute to this *new* understanding of the law, *Legal Lives* ethnographically followed legal scholars, Indigenous practitioners, biologists, and ritual plants across legal documents, conversations, territories, and courts of justice.
6. The rights of nature are concrete instruments for socio-ecological transformation. Yet, our ontological commitments to either i) a form of law as a system of norms *only*, or ii) a form of law as pluriversal possibilities (Escobar 2020), may lead to different orientations for the rights of nature in times of deep transitions.
7. One of these ontological commitments emphasizes the attribution of rights to natural entities such as rivers, forests, and animals through the State (i.e. constitutions, statutes, case law). And this orientation suggests that, contrary to commonly held anthropocentric

views of life and social systems, **nature has value-in-itself**. Thus, much like other historically marginalized groups, the intrinsic value of nature as a legal principle has a place in the current state apparatus. However, this normative orientation is closer to a multicultural interpretation of nature's rights. A multicultural interpretation creates "nature" as a constitutional subject or person (see chapter 4) that is recognized by the rule of law often at the expense of practices of legal difference based on local cosmologies. Such legal local differences are therefore considered myth, cultural belief (De la Cadena 2010), or local custom. According to this view, law = state (i.e. norms, power, decisions, frameworks, values).

8. On the other hand, a pluriversal orientation for the rights of nature goes beyond the multicultural recognition of nature's intrinsic value vis-à-vis the State's constitution. According to this second ontological commitment, "nature" is an active social force rather than the backdrop of human action and the State's normative recognition. Moreover, "nature" is also the locus of legal meaning rather than the recipient of state-sanctioned rights alone (see chapter 1.1., and chapter 3).
9. In other words, "nature" is not just the object of legal meaning vis-à-vis the allocation of rights, insofar as the relations that make up "nature" are themselves law-producing relations. This is consistent with Indigenous legal cosmologies from the Boreal to the Amazonian forests (Mills 2019, Borrows 2016, UMIYAC, 2019). Yet, the word "nature" is not an adequate description of cosmological interdependencies.
10. This does not mean that there is *a singular* nature out-there, and *multiple* representations over this common "nature." On the contrary, "nature" is *multiple* and cultural representations are *singular;* or, better yet, the capacity to represent and create the world is distributed across different kinds of beings (Viveiros de Castro 1998, Kohn 2013). This means that plants, animals, humans, and other beings share similar attributes, for example, cognitive abilities, moral standing, and decision-making capacities of sorts. This idea has solid backing in anthropology, cognitive science, plant studies, among other fields (See Descola 2013, Franks, Webb, Gagliano, and Smuts 2020, Gagliano et al. 2015, Kimmerer 2013, Wohlleben 2015, Gagliano, Abramson, Depczynski 2018).

11. Therefore, what matters for a pluriversal orientation of law is not so much the existence of cultural representations of a common nature that is external to us (humans), but the possibility of multiple "natures" with human-like perspectives from which different worlds and possibilities can emerge: a "multi-naturalist" interpretation of the rights of nature is only possible in a world of multiple worlds (Viveiros de Castro 1998. see Chapter 3, and Box 2). And this implies a different legal ontology beyond multiculturalism.

There are multiple limits to this kind of approach, however. I will signal some of them in what follows.

The Rights of Nature in Colombia: Ranging from rivers to entire ecosystems, the increasing recognition of legal personhood for natural beings has been, in terms of legal scholar David Boyd, a legal revolution. The Colombian legal system is a case in point. Between 2016 and 2020, our courts have recognized the rights of ten different rivers (2016, 2018, 2019); one moor (2018); the Colombian Amazon as a whole (2018); two Afro-Colombian collective territories; the collective territory of the Eperara Euya Indigenous nation (2020); three national parks, and numerous animals including bees, and other pollinators (2018). What is all this telling us? What are the limits and possibilities of affording legal personhood to natural entities amid exponentially increasing neo-extractivist economies in the region?

Context: Since 1970, the Southwestern region of Colombia, territory of the Cofán and Inga Indigenous communities and many others, has been affected by indiscriminate deforestation, the presence of guerrilla groups, drug traffickers, and paramilitaries. In 1991, poppy crops (*Papaver somniferum*) began to be planted in this territory up until they reached more 2,500 hectares by end of the decade. The indiscriminate logging and soil sterilization caused by these plantations was further aggravated by the implementation of the *Plan Colombia*—a bilateral agreement between the governments of Colombia and the United States in 1999 to defeat the guerrillas and drug traffickers in the country. While the country's internal armed conflict intensified, glyphosate spraying of illicit poppy crops left deeply negative traces on the Indigenous and peasant

inhabitants of this area: the Cofán and Inga peoples have suffered unimaginable losses in Southern Colombia, while seeing how their school-age children and youth are increasingly involved in the "illicit crops" production chain and no effort has been made to overcome this situation, as environmental and social leaders are increasingly targeted, forcibly displaced, and assassinated (H. Chindoy, interview 2021).

As this region has become an epicenter of the Colombian (neo-) extractivist boom, it has also become the recipient of important internationally designed forest conservation programs. Ranging from the extraction of hydrocarbons and rare minerals to bioprospection initiatives and infrastructural projects, today's extractivist-based economies in this region seem to run parallel with powerful environmental narratives as well. A multi-faceted phenomenon, (neo-) extractivism is coupled with participatory and land-oriented reconstruction plans in war-torn rural areas of the country. Simultaneously, recent legislations and court decisions foreground the collective rights to a safe environment, while declaring the legal standing of natural beings.

For example, the Colombian Constitutional Court has granted rights to a mercury-polluted river in the Pacific rainforest (2016), as the Supreme Court recognized the personhood of the Amazon in the face of exponentially increasing socio-ecological pressures in this region. Moreover, a celebrated set of regulations, the 2016 Peace Agreement (PA) between the Colombian government and the largest guerrilla group in the country enlists the "preservation of the environment" as a crucial element of a long awaited—and still pending—rural reform in Colombia. An impressive catalogue of rights, procedures, and institutional arrangements, this impressive legal artifact remains, however, mostly aligned with the extractive-based development model just described.

In the Colombian Amazon alone deforestation doubled between 2016-2018 and nearly 10% of the deforested area overlaps with Indigenous territories as international conservation efforts steadily increase in the region: there seems to be a productive tension between eco-centric legal narratives

such as the rights of nature, and anthropocentric economic practices, which poses serious questions not only to the effectiveness of the command and control approaches of environmental governance models in the Andean-Amazonian region, but also Earth oriented legislation and case law.

Interrogating a legal revolution? What are some of the barriers to realize the eco-centric orientation of the rights of nature and other measures in our context? As impressive and meaningful as this legal revolution is, I would argue that recognizing nature as subject of rights might fall short if the **law** is understood as a matter of language *only,* and nature as an adequate conception of ecological and cosmological interdependencies. The thesis of law as language *only,* seems to reinforce a much-contested rift between culture and nature and other boundary-making concepts at the root of modern legal thought and practice. How can Indigenous legal traditions contribute to this eco-centric project? Can the law become an emancipatory tool for these communities? Could reckoning with other-than-human beings as agents of legal meaning, rather than mere recipients of state-sanctioned rights, transform what we mean the rights of nature (RON) and the law more broadly? These are pressing questions.

Some of the challenges: As discussed in this dissertation, modern legal theory is mostly based upon the primacy of separation between social facts and ecological interdependencies; norms and values; positive law and local customs, among others. And it is precisely because of this separation that it is possible to speak of rights for *external* natural beings. It is challenging, however, if one takes a rights approach, to say that nature should be *in* law without radically transforming what we mean both by nature and law. The difficulty of a legal embeddedness of "nature" speaks to the limits of using categories of a legal framework based on "nature," and of the concept of rights as trump-style claims conferred by the state on nonhumans, giving them legal meaning that they would otherwise lack. There are several conceptual, but also deeply political, challenges for the realization of the RON today in our country (see chapter 3 for a detailed analysis):

1. *Diffuse nature*: Since nature is pervasive in human life and human impacts are pervasive in nature, they cannot be separated. The notion of nature is diffuse because it may refer to humans and nonhumans, or to nonhuman beings only.

2. *Discreteness:* Nature is composed of millions of species and "each aspect of nature involves a different (socio-legal) interest." As a result, it is impossible to articulate legal claims for each component of nature. This may lead to a sort of multi-naturalist identity politics with challenges that are similar to those already faced by multi-cultural politics. Extractives, to be sure, target this compartimentalized nature.

3. *Human mediation and collision of legal cosmologies*: The self-standing of nonhumans, as it were, is impossible within a legal system based on a conception of law as a human-only system of meaning. The difference in modes of communication between human and nonhuman selves should not foreclose other forms of speaking and listening in the legal field.

Some questions remain: These conceptual and political challenges raise at least three crucial questions for the theory and practice of the Rights of Nature and other Earth-centered tools: 1) What should be considered as existent in concrete scenarios of adjudication? 2) What kind of people should act on whose behalf? And 3) what is the procedure for adjudicating rights in contexts of neo-extractivism and war such as Colombia? The preceding assessment calls for a radical transformation of RON's legal imagination. As RON highlight substantial territorial and cultural claims by Indigenous and peasant communities in Colombia, established critique has underlined the dangers of reducing those rights to a mere icon of the state's "environmental politics." The gap between aspirational legal propositions, on the one hand, and increasing neo-extractivist practices on the other, is but a symptom of a deeper rift between the co-emergent logic of life and the mechanistic logic of the law in modern societies.

A way forward?: Inga intellectual and political leader Hernando Chindoy says the following: "Inga law is recognized in daily life as the existence of the infinite interrelations between human and

nonhuman beings in their material and spiritual dimensions. Inga law is also found in the Inga language as one of its most important sources (but not the only one) where the ancestral knowledge of our community is revitalized […] Inga law is *samai*, or a point of joyful encounter and resting of all beings, and it is a pillar for every lively encounter with these other worlds (invisible worlds) […] The methodology to recognize and study the law is the return to ancestral knowledge from a decolonized perspective and through our own language. And this requires a journey of connection [with all beings of the forest]." (Personal Communication, Feb. 2020)

To be sure, Indigenous legal traditions in Colombia and Latin America raise a crucial question in times of planetary crisis. In a world where animals, plants, and other beings hold "human features" such as the ability to communicate, make decisions, and transmit knowledge to humans, words such as "society" and "law" seem to take on an entirely different meaning. What would happen to conventional knowledge and legal systems when—in the words of Indigenous legal scholar Hernando Chindoy—we leave room for "the time when plants and animals transmitted theirpowers and knowledge to people in dreams"? What if we imagine a form of law beyond human modes of representation? This posses a serious methodological challenge as well: how can we seriously engage with legal traditions—in research, teaching and social life at large—that go beyond "symbolic language," when predominant research methodologies seem mostly aligned with anthropocentric narratives?

CONCLUSIONS AND SUMMARY

PART I: TOWARDS A LAW OTHERWISE: A LEGAL HERBARIUM?

1. Part (I) ethnographically explored connections between humans, other-than-humans, and the law, and why these connections matter today. This part was comprised of two interconnected chapters: the first focused on plant-human relations and the second concerned the making of an ethnobotanical research agreement in southwestern Colombian Amazon. In addition, the first chapter was divided into three sub-chapters and discussed possible interfaces between plants and social and legal theory: 1.1. *Yoco (Paullinia yoco): Cooling down the mind and learning law where the law is not named as such*; 1.2. *Yagé (Banisteriopsis caapi): Moving words across worlds, and 1.3. Coca-leaf (Erythroxylum coca): Territories in motion or learning law with the Amazonian mambe*. The second chapter was entitled "Los Invisibles": The making of a research agreement with humans, plants, and 'spirits' in the Colombian Andes (Nariño): the voice of an ethnobotanist.

2. Thus, part (I) can be considered as one larger ethnographic and conceptual argument around the socio-legal agency of plants and non-visible peoples in Southwestern Colombia (Andes-Amazon), and their potential contributions to expand normative systems such as law and ethics beyond anthropocentric views. Bellow, I outline each of these sub-chapters and the conclusions I reached.

3. *Yoco: Cooling down the mind and learning law where the law is not named as such*, has three sections. The first one told a story of yoco (*Paullinia yoco*) and how this Amazonian vine prepares humans to work with and learn about anything in the forest—and much more! Expanding the idea of learning beyond the human, the second section entitled *learning norms with mind-full bodies*, surveyed a relational approach to cognition in the work of Chilean neurobiologist Francisco Varela (1999). Varela's approach was crucial to understand how normative systems such as ethics and law are grounded in the everyday experience of an organism (Varela 1991), and whether we can

expand those normative systems beyond abstract and disembodied sets of norms, principles, and values sanctioned by a state (Winter 2001). Therefore, part 2 considered a non-dualist and post-anthropocentric narrative of environmental decision-making that seeks to overthrow the idea of protecting an external and universal concept of nature with humans at the top.

4. *Encountering the invisible ones as law in the Andes-Amazon,* the third and last part of the chapter, introduced the work of Colombian ethnobotanist David Rodríguez-Mora as he participated in the development of a research agreement that took his ethnobotanical research project as a starting point. This agreement involved plants and other beings in the region of Nariño not as objects of study, but as partners in the research process. I consider this research agreement or contract—and the embodied ethics it capacitates—as a form of ecological law (Anker *et al*. 2021, Garver 2013, 2019). As a form of (non) state law, therefore, this research agreement embodies some of the limits and possibilities of a post-anthropocentric approach to the law, and Varela's work offered some key cognitive premises for this kind of approach for normative systems.

Conclusions chapter 1.1.

5. This chapter was part of a larger argument of my dissertation concerning the entangled lives of law and ecology in Amazonia. I have focused on two main aspects of it. First, how we can *learn to learn* the law that emerges from relations, but also how "the mandate of the mountain," as biologist David Rodriguez-Mora called it, became part of a larger conversation about knowledge making in this region. In fact, the ethnobotanical research agreement (ERA) David signed with the Cofán involved the contested participation of human and other-than-human agencies: indeed, there were multiple epistemological and methodological challenges in the process of creating the legal artifact we have called an "ethnobotanical research agreement," which we explored in some detail in chapter 2 (*"Los Invisibles")*. How do the "*invisibles*" mediate norms for doing or not doing something in the forest?

6. Beyond answering this difficult question—which confronts us with the limits of our own knowledge "as we dare to ask the question" (Conversation with David Rodríguez, 2020)—this chapter has suggested that the ingestion of plants as persons to encounter the law of the place is one mode of the *legal* in Amazonia as well (in the same way that a Land Management Plan, or any environmental legislation for that matter, can be considered law). However, this *non*state law exists with modern state law **in a nested relationship.**

7. Moreover, I suggested that the state should take the law of the place seriously, as it proposes viable intercultural and inter-epistemic environmental governance models for this region. What I called the legalities of the invisible, or what state law has made invisible again and again or even confined to the status of myth or cultural belief - that is, "the mandates of the invisible people" - depends on a *place* and yet does not lose its generalizing qualities. A legal theory and practice for this region must probe the limits and possibilities of engagement with the cosmological, biological, and "spiritual" life of a place, while accounting for the colonial relationships involved in this process (see Chapter 6). However, beyond multicultural frameworks, state law may consider the serious implications of the law of the place for socio-ecological transitions in this region.

8. Thus, chapter 1.1. outlined three preliminary steps in the crafting of a research agreement with the Cofán. These steps were described in three sub-sections (i) yoco: learning to learn with vegetal minds; (ii) learning norms with mind-full plants, and (iii) encountering the invisible ones. Exploring the ethnobotanical diversity and Cofán classification of *Banisteriopsis caapi*—a ritual plant commonly referred to as *yagé* —the research agreement between David and the Cofán required the mediation of the invisible people of the mountain where this plant occurs. In this section, the chapter aimed to examine the convergence of legal theory and science as it followed plants, peoples, and *los invisibles* that Indigenous and non-Indigenous people like David and myself encountered in forests, everyday speech, scientific practice, and legal language in southern Colombia. Given the fundamental elusiveness of what the Cofán call the "*invisibles*," this ethnographic attempt has important limitations.

Let us discuss these specific conclusions in some detail.

9. The first part of the chapter, *learning to learn with vegetal minds,* told a story of the Amazonian yoco as part and parcel of a relational protocol for encountering the law of the place. I claimed that learning with plants is central to the question of the law in this region. What does the "recursive interaction" or "know-how" (Varela 1999) with plants tell us about how we may guide action in the world? (Kohn 2018) This issue brought us to the question of ethics and other normative systems. The second section, *learning norms with mind-full plants* (plants full of mind!), discussed, in some detail, the work of Chilean neurobiologist Francisco Varela and his theory of ethics, which is based on enactive approaches to cognition.

10. Varela's primary concern is with how people cultivate the capacities and dispositions that are necessary to attain ethical expertise as an on-hand experience rather than a transcendental and disembodied set of top-down normative principles. As we learn to *listen* the other-than-human in normative systems, for example, by cultivating what *abuelo* O from the Inga called a *mente fresca* (cooling down the mind), this embodied approach to mind was crucial to reckoning with the law of the place.

11. This brought us to the last section of the chapter. *Encountering the "invisible ones"* opened the door to *los invisibles,* as the Cofán call these highly social and somewhat elusive beings beyond direct human perception that, nonetheless, guide human life in southwestern Colombia. In a limited way, the section probed how *los invisibles* act and what this means for the making and practice of law in this region. The section introduced the work of Colombian ethnobotanist David Rodriguez-Mora as he learns to work with humans, plants, and *los invisibles* in the forests of Nariño. "Making things right," as David put it in one of our numerous conversations between 2019-2020, evokes the practice of a normative principle. This principle weaves the scientific and the relational protocols together to encounter the law of the place. Chapter 2 (*Los Invisibles)* provided detailed ethnographic support concerning the making of this Ethnobotanical Research Agreement (ERA) between David and the Cofán.

12. Now, I turn to another crucial plant teacher in the Andean-Amazonian slopes. This plant person is central to the argument about learning law where the *law* is not named as such. Here, the focus was on the disruption of linear time as a pre-analytical category of Western (legal) epistemologies. Chapter 1.2 (*Yagé [Banisteriopsis caapi]: Moving words across worlds and entangled temporalities in the Colombian Amazon*) is based on ethnographic encounters with the yagé vine (*Banisteriopsis caapi*) in Upper Putumayo, Colombian Amazon (Caicedo 2015, Weikopf 2004), and investigates different modes of learning and practicing time in this region and the potential normative consequences of this disruption.

13. A snapshot of recent experiences with the yagé concoction with the guidance of several practitioners from the regions of Sibundoy (Upper Putumayo region) and the Guamuez Valley (Lower Putumayo), this chapter discussed whether a non-modern approach to the idea of time can contribute to a post-anthropocentric view of legal institutions and decision-making practices in Amazonia. How the juridical imagination is transformed in response to the entangled temporalities of the Amazon, that is, to the different ways of practicing time beyond the linear temporalities of modernity? (Mignolo 2011) My larger goal here was to continue exploring the limits and possibilities of what I have been calling the law of the place.

Conclusions chapter 1.2.

14. The idea that culture defines human-*only* modes of experience seems to travel well in social theory, material objects, and everyday life. Ranging from people's conversations and academic journals to material objects, cities, and natural parks, this "conceptual personae" (Deleuze and Guattari 1991) claims a sort of "theoretical monopoly" over imagination, language, time, and history. Specifying the human in relation to other living beings, the culture personae, so to speak, does not easily embrace the uncertain, the open-ended, and the unexpected (Strathern 2010). Why do we insist on a particular mode of being—the modern human (Wynter 2007)—that continuously separates us from the rest of life in times of planetary crisis?

15. The notion of nature, on the other hand, is often located at the periphery of human experience through words such as 'environment' or 'wilderness,' when not at the very core of what some may push to the margins of scientific and social description: bodies, emotions, dreams, feelings, and direct experiences. Resorting to the nature personae when culture cancels out the possibility of other-than-human modes of being, doing, knowing, and feeling, does not necessarily afford a better language for these times of crisis and "pluriversal politics" (Escobar 2021). Nature seems to be in the way of imagination as well (See chapter 3: "Conjuring") How can we reimagine a shared experience of life and decay involving human and non-human beings and relationships, and from there build social institutions for these times? The famous dualism tends to alternatively privilege one term over the other at the expense of the "radical interdependency" of our bodies, minds, and experiences in the universe (Escobar 2018; Berry 1999; Bohm and Dubashia 2018).

16. This chapter discussed the notions of *common* and *altered temporalities* (section 1) to explore how definitions of time in "Western modernity" (Mignolo 2011) are disrupted by a powerful other-than-human: the yagé plant (*Banisteriopsis caapi*). In *other-than-human sources of order and the socio-ecological contract* (section 2), I delved into the potential normative consequences of this disruption and stressed how the body becomes a central locus of decision-making in Amazonia. Lastly, *a biologist becoming "bridge" between worlds* (section 3), briefly recounted Colombian biologist Marcela Bravo's musings and experiences with the idea of space and time as she learns to become "*puente entre mundos*," or a bridge between worlds**:** the Inga world and the *mestizo* world where she stands with her two feet (one on each!)—thus "*trayendo y llevando palabra*" or moving words across worlds.

17. Moreover, what we can learn with yagé is quite clear from the point of view of an ecological *ethos* for our times*:* what we deem exclusively human is created *with* other-than-humans not in the sense of human praxis transforming and external nature to produce human history, but as the co-emergence of "all that exists" across time and space (Escobar 2018). History conceals layers of temporality that scape our modern-trained perception of the world. Yagé —the Amazonian brew—is a door into these other layers.

18. The Cofán and the Inga often invite plants to the negotiation table with other (human) actors, as I have learned from these communities on several occasions in the Putumayo and Nariño region. From the point of view of these communities, ongoing engagements with the plant are necessary for health and politics: the *consulta previa* (prior consent) with states, researchers or companies is usually preceded by a yagé ceremony to discuss the convenience of the proposed venture from the point of view of the community in expanded socio-ecological terms. From the point of view of the state, however, this consultation excludes forests, lagoons, plots, grass, and animals, among others. Yet, the consultation with the plant will always take place in these cases, and it will involve the human body (ingestion) in one way or another.

19. In a process of plant-human consultation, the (vegetal) counterparty is awaken in the drinker's body. In other words, the consultation is a "conversation" between different entities in a human drinker's body. In our example, it was apparent that the plant was materially questioning the dichotomies that humans use to organize social experience, and therefore, any inter-species dialogue requires the *limpia* (cleansing) of the human body, or the expulsion of excess to experience a clear mind and thus being able to *listen what the other has to say (see chapter 1.1. Yoco).*

20. The *limpia* allows the emergence of a bodily conversation that exceeds the conventions of rational dialogue between actors ex-changing symbols in a space of deliberation. However, the conversation is almost never symmetrical: the human drinker must surrender to the world of yagé and thus abandon any aspiration to control the outcome of the conversation—which is not the case in prior consultation with state agents where the outcome is almost always already decided by the state. In fact, the plant engages with the human as a "digestive tract"—a part of the human body that the vegetal *other* seems to talk to, for "dialoguing" and "cleansing" are two sides of the same coin. The plant does not just appeal to the biography or ideas of the human drinker, but to the materials of their bare existence that would allow for a (corporeal) dialogue between mind-*full* living beings. The surrender of control is similar to the Hobbesian partial surrender of individual freedom to the power of the sovereign as a precondition of the social contract.

21. Some drinkers may represent this dialogue as an inner conversation with themselves as opposed to a conversation with a plant acting at the level of a powerful purge. Once the plant meets the human in the belly, there is a condition of shared materiality that renders this asymmetric conversation possible as an inter-human event. In fact, the incorporation of the body of the plant as *human* into the body of the *human* drinker is a radical embodiment that cancels out the need for any modern division, thus worlding a relational reality of inter-being deliberation in a very material sense.

22. This means that for the Cofán and Inga practitioners with whom I have the privilege of learning, the sources of political and legal authority are not limited to modern humans. Human interactions are regulated through the mandates, provisions and prohibitions established by the master of the plant, whose voice the taita or yagé healer translates into rules for living well in the territory. In this sense, the common temporalities of history and the altered temporalities of the encounters between plants and humans are intertwined. Yagé weaves a tapestry of cosmological, ecological (material) and historical continuities that gives rise to a new socioecological contract or a form of multi-species local authority.

23. Chapters 1.1. ("Yoco: Learning to learn") and 1.2. ("Yagé: moving words across worlds") addressed the issue of how we can learn to learn law with the guidance of plants like the Amazonian yoco and yagé. Following a similar line of work, chapter 1.3. (Coca-leaf: territories in motion) followed ritual and everyday encounters with a local preparation of the *Erythroxylon coca* amongst the Indigenous Murui of Putumayo (Echeverry and Pereira 2010). This chapter explored how humans and plants meet and make decisions together. Don A, a *sabedor* from the Murui community of Puerto Leguízamo, Putumayo, would call this process of co-decision "*ordenar el mundo con las plantas"* (the ordering of the world with the help of plants).

24. Encountering the legal in Amazonia involves the active participation of other-than-human beings such as medicinal plants (chapter 1.1 and 1.2). Chapter 1.3, *Coca-leaf: Territories in Motion,* offered further ethnographic guidance to illustrate what I have been calling a relational protocol, that is, a way to participate in the entangled lives of law and ecology in southwest Colombia. Chapter 1.1

addressed how we can *learn to learn* law with the emetic yoco vine (Paullinia yoco), while chapter 1.2. explored the altered temporalities of the yagé liana (Banisteriopsis caapi) and how they trouble the lineal legal temporalities of prior consultation (chapter 1.2). Similarly, chapter 1.3. followed plants and humans as they co-create knowledge and place. In particular, how daily encounters between humans and a local preparation of the coca leaf (*Erythroxylon coca*) among the Murui of Putumayo can broaden legal theory and practice beyond anthropocentric views.

Conclusions chapter 1.3

25. Over the last 20 years, Colombia has witnessed a state-led campaign that criminalizes and eradicates hundreds of hectares of coca crops in the country. "*La mata que mata"* (the plant that kills) was the motto behind the elimination of coca-leaf yields around the country via the glyphosate aerial spraying (*fumigation*) (Lyons 2015). The campaign inadvertently acknowledged that a plant has itself the capacity to *end* life thus holding a form of agency. However, coca crops, rather than the cocaine mix obtained by means of a complex global network of war, economy, politics, chemistry, and desire, is the one deemed capable of terminating a form of life rendered acceptable or rather *legal* by state law.

26. The criminalization of plants and humans in the Amazon has been contested for decades in this region (Ramirez 2011). I suggest that plants have finally met humans in the space of colonial difference (Mignolo 2000, 2002), and by this I refer to the space where the potentials for decolonization emerge not only from recognizing subalternized human knowledge, but also from plant-human assemblages (or shared bodies) that official historiographies and legal narratives have rendered invisible, or even harmful.

27. In this chapter, I have engaged with *vibrations* as active material events taking place in the skin and through the incorporation of *mambe* (the Amazonian coca-leaf preparation). At the same time, I have argued that knowledge is a matter of partnership and co-intentionality between different

sentient beings (plants and human): the skin is not only a membrane that separates interiorities from exteriorities, but a locus of knowledge itself.

28. This conceptualization of the skin as a knowledge interface can open the evocative notion of *sentipensar* to other senses (Escobar 2015). The event of vibration is conflated with the event of thought thus making it almost impossible to distinguish between the two. The skin, so to speak, is itself thinking. The relationship between thinking and feeling with the skin that the plant allows for has the potential to disrupt the division between knowledge practices and bodily perception through the senses. Perception—as the act of engaging the world with the senses-and thinking-as the act of signifying the world—are intertwined. Engaging with the skin in decolonial practices raises the question of what it means to engage with other ways of being in the world, and not just how knowledge is produced. Working with the *mambia* thus involves the task of critically (and carnally) confronting our own habits of thought and practice, but also how we are in (and as) place with other beings.

29. Chapter 1.3. was a story about the (de)coloniality of nature, and about the continuity of decolonial relations in which other-than-humans and humans co-emerge, co-suffer, and co-flourish. For example, the plant communicates with us through vibrations and thus turns the direction of modern epistemologies (i.e., human subjects knowing non-human objects) to perform the reverse logic: (former) objects come to know (former) subjects. This chapter is an attempt to avoid the binary divide altogether. In my own academic work, I strive to participate in moments of evanescence and blissful vulnerability (Zakour and Gillespie, 2013), and attempt to engage in habits of thought and action in which becoming-with-other forms of life is not always (and not necessarily) amenable to academic discourse.

30. The decolonizing research proposal is somewhat closer to the experience of bodily exposure and co-creation with what we can also call sentient ecologies (Smith 2012). This proposition requires more explanation. For now, it is sufficient to say that it aims at enhancing the scope of the decolonial conversation beyond the human, by approaching the question of bodily exposure,

tactility, and suffering with other-than-human others and within the very practice of knowledge making. In that sense, this chapter was a story about the ongoingness of life relations and how humans and plants co-produce knowledge and place.

Conclusions chapter 2

1. Upon analyzing some aspects of the entangled lives of law and ecology in Amazonia in the previous chapter, chapter 2 used a different format: it brought Colombian ethnobotanist David Rodriguez-Mora's own voice into the conversation with limited analytical intervention on my part. It was a curated selection of excerpts from our year-long conversations and interviews about plants, law, the politics of naming nature, los *invisibles*, and the ethical dilemmas we both faced as we tried to engage with the interconnected lives of ecology, norms, and territories with the guidance of plants and humans from Nariño, Colombia.

PART II: RIGHTS OF NATURE: LIMITS AND POSSIBILITIES

1. Part II dealt with some of the conceptual limits and possibilities of the Rights of Nature clause in Latin America in the context of an emergent regional and global Earth Law movement. By attending to the social and legal worlds of other-than-human beings introduced in the first part of the dissertation, *Rights of Nature* suggested to re-imagine core premises of social and legal sciences, for example, (i) the idea that the law is primarily linguistic or propositional; (ii) rights and responsibilities are commensurable across legal cultures and cosmologies (Ch. 3 "Conjuring"), and iii) personhood is fundamental for legal redress (Ch. 4 "Forest on trial"). Thus, as a contribution to a relational theory of legal agency, part II critically assessed core notions of Western law such as legal personhood, standing, and rights.

2. Recent norms and judicial decisions on the Rights of Nature (RON) place life at the center of legal discourse in Latin America. This "legal revolution" thus purports to upend the paradigm of solely human legal subjectivity in recognizing the personhood of nature. Nevertheless, the RON

approach seems to depend on an assumption that the form of law is primarily linguistic and propositional. In this way, it reveals another critical assumption: that law is a system of norms made by humans to regulate human conduct in relation to an externally existing natural world, thereby insisting on a separation between law and life processes. This chapter argued that recognizing nature as a legal person and subject of rights falls short if law is understood as a matter of human language only and nature is understood as an adequate conception of cosmological interdependencies between "all that exists". The thesis of law as language seems to reinforce a much-contested rift between mind and body, culture and nature, among other boundary-making notions at the root of modern thought and practice. In what sense, then, could conjuring other-than-human beings as agents of legal meaning, rather than mere recipients of state-sanctioned rights, transform what we mean by law and RON in Latin America?

Conclusions chapter 3

3. This chapter has offered a few thoughts on two different projects. The first, RON as text, is based upon the ontological assumption that the real is divided into nature and culture and other cascading divisions. This ontology leads to seeing what positive law calls "nature" as a legal person, often at the expense of the relations behind the mask of legal subjectivity. The second, RON as *teks*, is based upon another pre-analytical assumption, which, following Escobar, I have termed the Principle of Radical Interdependence. Translated into a legal principle, this cosmological premise suggests that the project of the law is also about discerning (legal) meaning in relationships beyond the human, language, and the state (Davies 2017), and I have proposed a methodology to encounter such relations in the law: tectonic reading.

4. The current coupling of textual RON with the persistence of the development/extractivist project in Latin America demands yet another braiding move, namely, to imagine economic relations from the vantage point of indigenous cosmologies of interdependence (Atleo 2011). A potential future step for this line of inquiry would be to explore an animist framework for economic practice as part of a post-extractivist agenda for this region. Understanding law as

meshwork and economics as reciprocity is an integral part of a relational imagination and practice to heal the web of life and nurture its radical ongoingness. Part of this larger project requires creating new relational languages, and chapter 4 is an attempt in this direction.

5. Persons such as humans and corporations can seek redress before a court of law. The notion of legal personhood, however, actualizes the contested modern tension between nature and culture in most of social and legal theory at present. More than discontinuous and self-contained beings, Amazonian forests embody sentient and mind-bearing relations involving humans and other-than-human beings such as plants, animals, and spirits. Can the forest speak law? Do forests endlessly require the mediation of human modes of legal representation? Overflowing the ontological stability of the person, forests teach a notion of legal agency beyond the human, the state, and the norm.

6. An attempt to overcome anthropocentric concepts of agency, chapter 4 (*Forest on trial)* ethnographically engaged with Amazonian legal cosmologies through forest minds and relations. It probed several questions other-than-human legalities entail in legal practice. Thus, chapter 4 was an attempt to dwell with the law both as a particular kind of symbolic representation, that is, a changing set of positive norms and procedures, as well as a non-symbolic form of representation that conjure other-than-human selves within legal theory and practice.

Conclusions chapter 4

7. The Anthropocene has become a buzzword in today's parlance about climate change, biodiversity loss, and related socio-ecological impacts of differentiated human agency. Critical legal studies have recently approached the complicated dynamics of multispecies relations in the production of the law, while situating the human within larger assemblages of living and non-living agencies (Grear, 2017; Philippopoulos-Mihalopoulos, 2017; Vermeylen, 2017). As a system of norms and procedures, the law is almost exclusively depicted as an all-too-human institution. This legal ontology achieves the double task of undermining the material and nonhuman

dimensions of the legal field, while reinforcing a paradigm that separates humans from the larger community of life (Brown and Timmerman, 2015). Does more-than-human life express other kinds of legalities (Braverman, 2016)?

8. As a positional legal fiction, the notion of personhood conjures certain entities at the expense of others. For instance, corporations are considered legal persons, yet persons are not always of the human type. What is left outside the person-making legal apparatus? This chapter expanded the notion of legal agency beyond the human and the person, while suggesting that plants and forests are not only rights-bearing entities but sources of legal meaning as well.

9. Moreover, Indigenous practices with plants wield repercussions that extent far beyond local life, and into formal environmental politics in the Andean-Amazonian region. In fact, indigenous relationships with sacred plants exceed ritual spaces to occupy the politics of the everyday, and local dealings with the state law. The ingestion of *Paulina yoccco* and the *Banisteriopsis caapi,* for example, play an active role in decision-making protocols in this region thus affording a compelling entry point to other legalities.

10. Yet, there is a long way before state-oriented legal frameworks incorporate more-than-human vegetal legalities in theory, and practice (Pelizzon and Gagliano, 2015; Braverman, 2018; Davies, 2017). Whilst this emergent jurisprudence may benefit from indigenous cosmologies and plant science alike, symbolic representation distinguishes the law from other fields of practice, and experience. The law is almost exclusively conceived as a symbolic (language-based) practice. Can the plant speak *law*? Does the forest always need the mediation of the botanist, for example, in a court of law? **How far removed should judges and decision makers be from direct experience with these beings in legal proceedings and decisions involving them?**

11. I based my work on Eduardo Kohn's work with the Runa of the Ecuadorian Amazon. "Life thinks," he states as an ontological premise that goes beyond the notion of representation to include non-human beings, such as animals, plants and spirits, as creators of meaning. This

chapter expanded the legal framework of agency to engage with the law both as a particular kind of symbolic representation—for example, as a set of positive norms produced by humans—as well as a non-symbolic form of representation vis-à-vis images, processes of materialization, sounds, and experience involving other-than-human selves.

12. Read as a proposal on legal philosophy, *How Forest Think* (2013) also offers an analytically sophisticated methodology to explore instances of legal meaning—i.e. sonic images of the forest, shamanistic chants, and ecological relations—as sources of legal principles, and procedures. Such an effort, however, involves a particular mode of attunement to the social worlds plants and humans co-create through sowing, commensality, and ritual, among other practices. An attempt to expand the notion of the law beyond the symbolic (the legal norm), I consider these practices as sources of legal meaning in and of themselves. In fact, forest's legal agencies might be better expressed in terms of alliance or partnership between inter-dependent humans, and forests. This move problematizes languages of personhood and legal guardianship that separate humans from the larger community of life. Inter-being alliance thus recognizes the human mind as part and parcel of the larger mind of the forest (Kohn 2013).

13. If the human can engage with the forest through science, the human can also learn how to think-with forests in a court of law. While this methodological question requires an independent treatment, appropriate cultural engagement with plants may be one such mode of learning with forests' minds, and the legal protocols they harness for post-extractivist transitions in Amazonia. While botanists and anthropologists may be summoned to render testimony on behalf of forests and cultures—respectively—it remains an important challenge to explore whether judges should engage with other-than-human beings as they do with humans as expert witnesses.

14. How far-off are we from asking judges and legislators to interact with other-than-humans such as forests and rivers as they decide cases involving these kinds of beings? Should a judge, for example, ingest, in some cases, a ritual plant to understand what the forest *wants* when it comes to a mining license in Amazonia? Could this be considered an appropriate methodology

for adjudicating justice in certain cases? Could a judge walk the *páramo* (a fragile ecosystem of the Andes), let it speak the language it speaks best, and then consider this experience a form of witness testimony? Should we elect legislators with proven commitment to listening to forests? How about forest literacy as a requirement for licensing lawyers and adjudicating justice? These are some of the final questions raised by this chapter.

PART III: RHIZOMATIC AGENCIES AND PLURIVERSAL LAWS: LEARNING TOOLS AND ADJUDICATION PRINCIPLES

1. A summary of agency theory with ethnographic and theoretical insights from the two previous parts, *Rhizomatic Agencies* dived into the limits of individual and collective forms of agency and suggested to hold space open for plural and rhizomatic agencies in decision-making protocols. This part comprised three chapters. Chapter 5 (*Agency Scaffolding*) reviewed agency theory in several disciplines and explored the "agency problem" within the field of ecological economics. The chapter proposed an ethnographically inspired concept of agency beyond human-only, atomized, individualistic, and solely rationalistic agency proposals that are frequent in collective action approaches at present.

2. Chapter 6 ("*Worlding with Indigenous Law: A teaching and learning proposal*") can be taken as coursework material concerning Indigenous legalities. It referred to a specific Indigenous legal tradition—the Inga—as it transforms state law and contributes to the Earth Law movement. Part III closed with a syllabus proposal on "Indigenous Legal Traditions: From the Boreal to the Amazonian forests" (Chapter 7). I now address the conclusions of each of these final chapters.

3. Chapter 5 addressed several aspects of the agency theory in various disciplines and explored the "agency problem" within the field of ecological economics (EE). It proposed an ethnographically inspired concept of agency beyond human-only, atomized, individualistic, and solely rationalistic agency proposals that are frequent in collective action approaches at present. In addition, it examined critical approaches to agency that address race and power relations, and

then explored agency proposals that include other living beings. However, some of these post-humanist approaches remain unaware of power asymmetries and therefore tend to silence non-Western cosmologies and the colonial dynamics they are facing today.

4. The interdisciplinary field of EE reacts against the narrowness of environmental and resource economics, which applies conventional economics to environmental problems. In this sese, EE seems crucial to address the interrelated nature of the current global crises. The chapter suggested a relational framework that considers hierarchical structures between humans and other-than-human beings, as well as power asymmetries across different social domains (i.e. race and the corporatization of the state), thus pushing EE agency proposals beyond conventional collective action frameworks centered on human-only, atomized, individualistic, and solely rationalistic approaches.

Conclusions chapter 5

5. In this chapter, we have examined different aspects of agency theory in various disciplines; briefly described the typology and characteristics of agents involved in decision-making processes and examined some aspects of the agency problem (Jensen & Meckling 1976) within the field of ecological economics. Then, we suggested an ethnographically based concept of agency that goes beyond human-only, atomized, individualistic, and rationalistic agency proposals that are recurrent in collective action approaches at present. This concepts, rhizomatic agency, is inspired by "Indigenous conceptual worlds" (Viveiros de Castro 2016) in the Andean-Amazonian region of Colombia.

6. For Amerindian communities, animals, plants, mountains, and rivers, among other beings hold a form of interiority (or soul) endowed with attributes "(…) identical to those of humans, such as reflexive consciousness, intentionality, and affective life, and respect for ethical principles" (Descola 2013:14). For the Indigenous Ika of Northern Colombia, for example, *Serankwa*, the creator, left everything from rivers and forests to social rules: "according to the spiritual

teachings of our ancients, the rivers are our veins and arteries; the forests represent our hair and the hair of our bodies; the **stones are our ancestors** peacefully resting (…) we understand that everything was left by our father Serankwa – the creator of everything that exists and the Laws of Universal Order (…) These laws are to keep the balance between humanity and the cosmos." In light of this ethnological evidence, how can we link economic practice with Amerindian understandings of agency?

7. Beyond extractivism, economic relations can also be considered as relations of mutual aid (Mills 2019) between human and other-than-human family members. In this sense, the economic system can be framed as a system of kinship relationships. One of the most salient assumptions of the economic discipline is the idea that nature and society, namely the domains of ecological processes and social values, respectively, are two separate dimensions of the real (Escobar 2008). Even ecological economics seems to rehearse this unassumed yet pervasive separation: in a degrowth society "(…) **nature** and **labor** will be de-commodified, **people** will work less, and exploit one another and **nature** much less" (Kallis 2018: 11. Our emphasis). While the ethical inspiration of this approach favors other-than-human beings, nature is still the passive backdrop of human action (nature/labor; people/nature). The transformation is not only semantic or conceptual, but also political and ontological (Blaser 2016).

8. In EE, nature will be given value not as a commodity to be exchanged in the marketplace but as a value-in-itself. While we can agree with this ethical/political premise, the problem is the subtle assumption according to which the human is the only meaning-making self who is capable of producing and allocating value in the world. One problem of this underlying EE premise is the conceptual trap of the category of "nature" (i.e. rights of nature), and the kind of thinking it capacitates. If "nature" is not an external reality to be protected but the relations that nurture an ecological kinship, then both humans and other-than-humans should be considered as *agents* in the economic system. If nature is mind and is sentient (Kohn 2013; Gagliano 2018) then economics is a form of ecology and ecology is relentless co-emergence and reciprocity between human and other-than-human beings, or mutual aid. In this sense, the economy will not be defined as the

production of human value (e.g. hammers, stocks, and eco-parks), but as the co-production of (social) life in reciprocity (Kimmerer 2015; Atleo 2012).

9. The ontological models of naturalism and animism predominant in Western and Amazonian cosmologies respectively, are of particular interest for this argument (Descola 2013). Naturalism contends that nature *is* an independent empirical existent subject to different modes of human description, control, and protection. Animism, on the contrary, considers all beings as sentient and cognitive. What can a kinship lens offer to economic theory? (Trosper 2009; Atleo 2012) What would happen if an ecologically minded theory such as degrowth considers a non-dualist ontological framework? Kallis himself defines the economy as "an imaginary that institutes and refashions reality, always imperfectly, to suit its imagination." (2018: 58)

10. Whereas the imaginary of degrowth refashions the economic reality within broader scientifically identified ecological limits of a finite planet (Rockström et al. 2009), the imaginary of growth casts the economic reality as a set of market exchanges within the social sphere regardless of ecological limits. What may happen when another imaginary has the potential to redefine economic relations as a complex kinship system, and science as one among many ways to encounter and co-produce this system? (Escobar 2018)

11. A naturalist framework would say that the economy is embedded within the matter and energy flows of a finite planet. According to this onto-material premise, the human is the main actor of the economic process and science is the knowledge system that describes the economic processes of this finite planet. An animist model would say that the economy *is not* embedded in the ecology of a finite planet for "economy" and "ecology" would be two analytical dimensions of a planetary kinship system. What would happen with concepts such as social metabolism, exosomatic and endosomatic energy, among others, when the object of the economic relation ("nature" as matter and energy flows) is placed within an entirely different ontological framework? In a word, we suggest radicalizing (enrooting) EE by probing a relational framework that pays attention to non-Western cosmologies as a way to re-imagine key concepts in the field,

and most crucially, that provides an answer to the question "who is the agent?" in times of planetary crisis.

12. Furthermore, decision-making in Amazonia is *human* and *other-than-human* because it involves plants and spirits; it is *emergent* because is not reducible to the sum of its *known* individual agencies, but the effect of their relations: these agencies come into being as they encounter each other. Decision-making is also *hierarchical* because it requires the consent of human authorities such as the *Cabildo,* as well as the will of the invisible ones (chapter 1.1. and 2). Moreover, it is *uncertain* because it unfolds in contexts of asymmetric access to information: as owners of the territory, the invisible people may disagree with a human decision, which suggests that even if humans *know something,* for example, the decline of wild populations of a medicinal plant, what they know does not necessarily lead to best decisions: decisions require the *will* of an "other," or a "radical alterity" (Caicedo 2015) that we can't possibly fully *know*: *los invisibles.*

13. Moreover, in our all-too-human perspective, "knowing something well" is essential to reaching "good" decisions, and those decisions ensue the act of knowing something well. However, knowledge, or at least some understanding of what knowledge is, is not always necessary for decision-making in cases where the *will* of a non-human party is essential for the decision. We make decisions in contexts where our all-too-human knowledge and will can be put on hold, or even yielded to the will of other beings.

14. Decisions in the Amazon are collective and sometimes unexpected. *Not knowing* something, for example, ignoring who the agent is, can be crucial for decision-making: not knowing is not equivalent to ignoring, but rather to understanding the limits of what we can possibly know. After all, we cannot *know* the invisible ones by their forms, but rather by their effects: what they command is tangible. In fact, information can be highly irrelevant in these contexts. Contrary to most decision-making theory, decisions often precede information. However, this does not mean that they are "arbitrary" or "blind." This means that the symbolic finds its limits in Amazonian decision-making practices, where "complete information" or even the category of "information" are not necessarily relevant factors.

15. In chapter 6 (*Worlding with Indigenous law)*, I have offered a point of view of what Anishinaabe legal scholar Aaron Mills calls "Indigenous legalities," or a way to respond to Western legalities based on dualist ontologies (2019). By Indigenous legalities I do not mean *only* Indigenous legal traditions—a set of customs, norms, and procedures to regulate social behaviour—but also the local "lifeworlds," which are "distinct ways of knowing and being in the world" (2019: 24). Drawing from these principles, the chapter surveys some of the central tenets, methodologies, and sources of Indigenous legalities in the Americas to contribute to the Earth law movement.

16. Indigenous legal theory and practice must be grounded in the life and knowledge systems in which any legal order is already embedded. And part of this task is to take seriously the systems of norms, procedures and practices of Indigenous communities that are informed by a multiplicity of life worlds. In many countries, such as Colombia and Ecuador, state-level law already incorporates Indigenous legalities. These countries are said to have plurilegal systems.

17. Following Indigenous legal practice in the Andean-Amazonian region, this chapter's life-enhancing vision embraces a relational, rather than separationist, view of the world. This view underscores the radical interdependency between human and non-human beings, pays attention to the benefits of pluri-legal systems, and recognizes the intelligence and communicative capacities of the non-human world.

18. Moreover, Earth law challenges the narratives and premises of Western law and, in particular, environmental law. Indigenous legalities contribute to Earth law's emergent field by emphasizing a paradigm shift away from anthropocentrism to ecocentrism. The purpose of this chapter was, then, to enable understandings of the contribution of Indigenous legalities to Earth law and aimed to contribute towards the preparation of legal scholars and practitioners to become advocates for Indigenous people and Indigenous legalities.

19. Part 1 was concerned with the differences between Western law and Indigenous legalities; Part 2 explored the sources and methods of Indigenous legalities; part 3 presented Colombian

and Inter-American case law regarding Indigenous legalities, and part 4 offered a vision of Indigenous legalities in the Andean-Amazonian context today: the *Wuasikamas* law, or the "law for the guardianship of Earth" of the Inga People of Colombia.

Conclusions chapter 6

20. Earth systems are undergoing fundamental changes with increasing pressure on and demand for resources and ecosystem services for human societies. Most dominant Western environmental law and governance systems fail to prevent and remediate ecological degradation. Environmental law, for example, is primarily concerned with pollution management and control without considering ecological interdependencies; it takes the human as its exclusive subject and nature as its object, privileging, for the most part, neo-liberal conceptual practices within the sphere of governance. This ontology of separation—a vision of the real that separates humans and the rest of life—reinforces the myth of 'human exceptionalism', namely the idea that humans operate above or outside earth's ecological systems.

21. Indigenous legalities (ILs) envision law and governance systems appropriate for the emergent conditions of a time period with mutually enhancing human-earth relationships. Broadly speaking, they propose a fundamental transformation in the way social and legal institutions foreground human-earth interactions. Drawing upon and further contributing to the field of Earth Law, ILs incorporate the normative traditions and relational governance principles of Indigenous epistmemic and worldmaking systems as part and parcel of a new legal vision for times of transition. Such an approach aligns with Thomas Berry's notion of the 'great law' based on the idea that the universe is a communion of subjects, not a collection of objects.

22. In addition, and in conversation with scholars working with local communities in the Andean Amazonian region, ILs are based on the principle of interdependence and mutual co-emergence of all beings. This principle orients "a vision of the world that echoes the autopoietic dynamics and creativity of the Earth and the indubitable fact that no living being exists independently of

the Earth" (Escobar 2015, 14). When it comes to the law, the principle of interdependence is at the root of Indigenous legalities and Earth Law. Moreover, as extensively described in Amerindian cosmologies, animal studies, and plant science, among other fields of knowledge, nonhuman beings are capable of different forms of representation and communication. 418 More than objects of cognition and control, nonhuman beings are agents of knowledge and even legal subjects today. In our view, ILs across the 'Americas' offer compelling elements for an expanded, multiple, and life-thriving legal paradigm beyond the individual and the state. Thus, ILs contributes to the emergent Earth Law that capacitates other-than-human selves as subjects of rights but also as legal agents in their own right.

23. From the Andean foothills to the Amazonian lowlands, the Inga's ancestral and highly strategic territories reach across the Southern departments of Nariño, Cauca, Caquetá, and Putumayo in Colombia. The Alliance's environmental, cultural, and legal agendas in the Andes-Amazon join long-standing efforts of Indigenous resurgence movements across Latin America, and beyond.419 Moreover, the Alliance's work is inspired by several interconnected normative principles which are part of the Inga system of laws and rooted cosmologies (the Wasikamas Oral Code): 1) to defend life according to Indigenous legal and governance systems; 2) to care for the territory as the basis of environmental governance and decision-making models; 3) to foster epistemic autonomy – as opposed to epistemic dependence – in harmony with local ecologies and socio-political realities; and 4) to engage in inter-cultural dialogue with Western science and governance systems, among other principles.

24. In this chapter, I have studied, among others, how state law incorporates Indigenous legalities, and how legal practitioners may engage with their principles and methodologies. The increased recognition of ILs is helping to bring into being the emerging paradigm of Earth Law, thus becoming an important tool for the protection of Indigenous peoples and their territories. The wisdom of ILs is becoming part of the legal system outside those territories therefore

418 See Viveiros de Castro 2015; Descola 2013; Gagliano 2015; Kohn 2013.
419 See Mignolo 2011 and Walsh 2018.

transforming state law. This chapter has then analyzed how 'Indigenizing' legal theory[420] and practice (i.e. national and regional case law) can leverage a larger paradigm shift in legal systems of sorts, namely from a reductionist, growth-oriented, and monolithic law, to systems-based, relational, and life-enhancing legalities.

Conclusions chapter 7

25. The law deals with a universe of relations between individuals, communities, states, and social groups of sorts. Usually described in terms of norms and procedures, however, the law remains separated from the larger social and ecological systems it is set off to regulate. As a result, legal systems have become instrumental to the ongoing socio-ecological crisis of our time. What is the relationship between law, life, and culture? Do indigenous legal traditions (ILT) offer a different view of the law? How do ILT conceptualize the socio-ecological contexts where the law is embedded? Can ILT contribute to global transformations for social and environmental justice? This syllabus offers an overview into the multiplicity, historical trajectories, and methods of analysis of some Indigenous legal traditions in the Americas. By reviewing several examples, the syllabus proposed a study of some aspects of Indigenous constitutionalism and systems of governance, as well as their underlying cosmologies (Mills 2016). Before delving into the topic, the syllabus offers an overview of key schools of legal thought in the Western canon.

21. For the purposes of the proposed syllabus, chapter 7 conceptualizes Indigenous legal traditions as the situated and cross-generational legal reflection and practice of Indigenous communities, traditional authorities, and indigenous scholars, as well as their underlying 'lifeworlds' (Mills 2016). Indigenous governance protocols, to be sure, are rooted in the principle of interdependence between humans and nature. Thus, the course aims to expand the notion of law beyond the idea of a systems of norms produced by the state in order to include other legal

[420] On the term "Indigenizing" as it is applied to law see: Bacca, Paulo. 2019. "Indigenizing International Law and Decolonizing the Anthropocene: Genocide by ecological means and Indigenous nationhood in Contemporary Colombia." in *Maguare* 33, 2: 139-169.

traditions, as well as the life systems where they are embedded. The syllabus is divided into three sections. The first one, *Indigenous Legal Traditions of NorthAmerica*, reviews some aspects of Indigenous legal thinking and practice in Canada and the US. The second part of the course, *Indigenous Legal Traditions of Latin America*, reviews ILT from various Indigenous communities in Latin America. *Indigenous Legal Traditions in Conversation (North-South),* the last section, explores how Indigenous legal theories from these two contested geo-political constructs (North and South America) interact with each other. The syllabus focuses on how ILTs respond to dominant models of environmental governance today, while transforming dominant legal theories and practices.

POTENTIAL FUTURE WORK

From Anishinaabe to Amazonian legalities in Turtle Island and *Abya-yala,* which in Guna language means "land in its full maturity," relational thinking and decolonization orient Indigenous legal and economic systems in the hemisphere. I propose a collaborative trans-disciplinary, transsystemic, and intercultural research plan on Indigenous law and governance, which furthers current work on:

1) *Indigenous jurisprudence and law and language,* by bringing Amazonian ethnography and Indigenous conceptual practices into the project of expanding the law beyond the symbolic (Anker 2015, 2017).

2) *Indigenous and Earth constitutionalism and methodologies* (Mills 2016), for example, by bringing "rooted law analytics" (Mills 2019) in conversation with Amazonian plant-based medicine; current developments in plant science (Gagliano 2018), and post-humanist approaches in social theory.

3) *Indigenous legal history*, by bringing Indigenous legal traditions from the Andes-Amazon to historical and comparative attention within a larger hemispheric framework.

4) *Ecological law* (Anker et al. 2021, Garver 2021, 2019, among others), by examining current socio-ecological problems at the intersection between law, economics, ethics and science.

Using collaborative methodologies such as Participatory Action Research (PAR), this plan weaves together the boreal and the Amazonian forests in the perspective of decolonization of territories, minds, and normative systems in the hemisphere. Below I summarize the axes, themes, initial research questions, and methods for future potential work around these issues.

Axis 1: ***Legal education and decolonization***. Theme: Hemispheric pedagogies for the decolonization of law: How can we connect Indigenous practitioners and scholars across the hemisphere around questions of territoriality, law, and legal learning? How do we learn *law* across cultural, epistemological, and ontological difference? Led by the Inga people of Colombia, the intercultural Indigenous university project—of which I have the privilege of being a member—has an axis on Indigenous governance and territory.

Axis 2: ***Legal research methodologies***. Theme: Earth Law and law beyond the human: How can we teach forest epistemologies, or the way forests *know,* and we *know with them*? Do forests *teach* law? This axis will comparatively delve into Indigenous legal cosmologies and embodied practices in Canada and Amazonia around the sentience of forests and the legal possibilities this affords beyond the rights of nature. *Methodologies*: Ethnographic Research, Comparative Analysis of Legal Traditions and Cosmologies.

Axis 3*: Legal theory and Indigenous ecological economics*. Theme: Radical interdependence, Indigenous economic systems and historical change: How does a relational theory of socio-ecological and cognitive justice look like? How does an Indigenous ecological economics look like? How can we historicize these relational approaches? *Methodologies*: Critical Legal Historiography, Storytelling, Plural Values.

Axis 4*: Translating upcoming Earth Law textbook into two Indigenous languages and Spanish:* *Book*: *Earth Law: Emerging Ecocentric Law. A practitioner's Guide* (Zelle T. et al, Aspen Coursebook. Wolters Kluwer). As part of the hemispheric decolonization of law, I believe translating substantive and practical work on Earth Law into Indigenous languages can be useful.

Methodology: Professional translation into different language (TBD. Selection criteria: pertinence, availability of resources, potential impact).

An Indigenous University initiative in Amazonia led by the Inga people of Colombia.

In the context of the co-creation of an Indigenous university in the Colombian Amazon led by Territorial Entity Atun Wasi Iuiai-AWAI of the Inga People of Colombia, with the support of a growing network of national and international allies, this dissertation can become a tool for the co-design of an intercultural research proposal on Indigenous law and territorial governance beyond established anthropocentric paradigms. Inga law and governance systems are part and parcel of this university initiative.

Inga law and territorial governance: Learning law otherwise at the Indigenous University

Using collaborative methodologies such as Participatory Action Research (PAR), this plan weaves together Andean and Amazonian forest practices in the perspective of a post-anthropocentric orientation of legal and economics systems. Below, I summarize initial themes, research questions, and potential methodologies for collective work around this transformative approach:

Theme 1 - *Ecological law and policy: Learning across epistemological difference in Amazonia and the Andes*: How do we learn 'law and governance' across cultural, epistemological, and ontological difference? The intercultural Indigenous university led by the Inga people of Colombia will offer a research axis on Indigenous law and territorial governance. Potential methodologies: PAR with selected Inga communities; critical legal analysis.

Theme 2 - *Ecological law and policy: Reconciling Indigenous governance protocols and state policy frameworks in Colombia?* How do Indigenous forest practices and scholarship on territoriality and law contribute to socio-ecological transformations in post-Peace Accords Colombia? This theme will comparatively delve into documented Indigenous protocols for environmental decision

making and cultural autonomy in the Andean-Amazonian foothills (i.e. *Planes de Vida, Planes de Salvaguarda*). In addition, this theme will synthesize buoyant scientific work concerning the sentience and 'intelligence' of forests (plants, animals, ecosystems) and the limits and possibilities this framework offers for intercultural governance in the region. Potential methodologies: comprehensive literature review (CLR), intercultural analysis of Indigenous governance protocols in Southern Colombia.

Theme 3 - *Indigenous ecological economics and the principle of radical interdependence (a theoretical approach)*: How does an Indigenous ecological economics look like? Potential methodologies: CLR, analysis of selected Indigenous economic plans in the Andean-Amazonian foothills.

While personal background and academic choices determine several aspects of these research ideas, we see research as a profoundly collaborative and transformative process that involves humans and other-than-human forms of agency and participation. The pertinence, epistemological orientation, and design of legal, policy, and economic research with Indigenous colleagues and communities should attend to Indigenous interests, methodologies, and research protocols. This is the spirit of the outlined research plan and therefore the themes and questions remain tentative.

APPENDICES

Appendix 1. Related themes: "boxes"

Note: The boxes below are connected to the main arguments of the thesis concerning agency, embodiment, non-human modes of representation, and legal theory, among others themes. They are, to be sure, an attempt to link experience, ethnography, and theory in a way that may feel less constrained by the norms of academic writing. The issues they discuss are heterodox and yet interconnected: Indigenous statements on the use of medicinal plants; the notion of 'entanglement' in social sciences; coloniality and race, and a letter to a cognitive scientist, among other themes.

Box 1. UMIYAC's *Unión de Médico Indígenas Yageceros de la Amazonia Colombiana*) *Declaration* of 2019 [421]

"We are the original people that have inhabited these ancient lands of the Amazon, cultivating medicinal plants and practicing the knowledge and wisdom of our grandmothers and grandfathers to live in peace and harmony with Mother Earth. Over 500 years ago, our lands were invaded in order to extract the resources and wealth in the territories where we lived in communion with Mother Nature. With the arrival of colonization, also came the religions that caused irreparable damage; by imposing the bible and the word of god outside of our spiritual and millennial cultures. They wanted to erase our sacred connections with nature, criminalize our spiritual ceremonies and **mocked our botanical science.**

"**Today we are still suffering from colonization and invasion**. Armed groups, drug- traffickers, land grabbers, mining and hydrocarbons multinationals, timber traffickers and cattle ranchers continue to threaten the survival of our people, guardians of **Amazonian ecosystems; which serve as the vital organs for life throughout the planet. The spiritual authorities of the Indigenous peoples of the Amazon basin are the people responsible for preserving the spiritual traditions and knowledge of the sacred medicine of the yagé.** Through the practice of yagé medicine we have managed to resist the invasion and protect our autonomy. **With yagé we also heal the illnesses of community members, protect our territories and protect the lives of**

421 UMIYAC (2019), "Declaration about cultural appropriation from the spiritual authorities, representatives and indigenous organizations of the amazon region." Available at: https://umiyac.org/2019/11/01/declaration-about-cultural-appropriation-from-the-spiritual-authorities-representatives-and-indigenous-organizations-of-the-amazon-region/?lang=en (Visited 10.03.2020).

our leaders. Thanks to communicating with the spirits of Mother Earth through the sacred yagé plant since childhood, we have cultivated wisdom and learned which medicinal plants are useful for curing diseases. Yagé is not a hallucinogen and is not a psychedelic plant. **Yagé is a plant that has a living spirit and teaches us how to live in peace and harmony with Mother Earth.**

"Yagéceros or Indigenous doctors have to comply with strict norms and adhere to spiritual laws, as stipulated in the UMIYAC document: *Thought of the Elderly: Code of Ethics of the Indigenous Medicine of the Colombian Amazonian Piedmont*. The learning path to be a traditional doctor is difficult and can be a lifetime process. According to our customary systems of evaluation, Indigenous communities know who are the true yagéceros that by their reputation, wisdom and lineage can assume the responsibility of caring for the spiritual and physical health of the Amazonian Indigenous people.

(…)

"**No one outside the Indigenous communities can cultivate, sell yagé or officiate ceremonies**. According to our own customary systems, the only people who can perform yagé ceremonies are the yagéceros doctors, the iachas, the curacas and the knowledgeable women who have the endorsement and the recognition of the Amazonian Indigenous communities, of our traditional authorities and of Indigenous organizations such as UMIYAC, **in accordance with the Law of Origin and Fundamental Law.** (…) Our lives and the conservation of our territories depend on the integrity of our traditional knowledge. Therefore, we also call on national and international institutions, the United Nations and the World Intellectual Property Organization (OMPI), to include the voice of Indigenous people in all negotiations concerning traditional knowledge (CC.TT.) " [422]

422 UMIYAC (2019) "Declaration about cultural appropriation from the spiritual authorities, representatives and indigenous organizations of the amazon region." Availalble: https://umiyac.org/2019/11/01/declaration-about-cultural-appropriation-from-the-spiritual-authorities-representatives-and-indigenous-organizations-of-the-amazon-region/?lang=en (Visited 10.03.2020)

Box 2: On Entanglements to Encounters. What the bleep is this about? (A license in "controlled" speculation)

This short speculative box is about how empirical concepts probing physical phenomena such as the notion of "quantum entanglement" (QE), that is, the "nonlocal correlation" of two or more particles in nonphysical proximity or "spooky action at a distance" (Einstein A, Podolsky B, Rosen N., 1935), could illuminate an ethical-political dimension of matter and life that is not reducible to scientific description although it is deeply entangled with it (Barad 2007; Funtowicz & Ravetz 1994).423 For analytical purposes, this dimension refers to the social conditions of emergence of scientific description of physical phenomena from sub-atomic particles to entire socio-ecosystems.

This notion of continuity between meaning (ethics and politics) and matter (from sub-atomic particles to large objects in the universe) exists in Amerindian worlds as well (Descola 2013). For example, Indigenous groups living on both sides of the frontier between Ecuador and Peru "(…) differ little from the other tribes that make up the Jivaro group, to whom they are linked through both their language and their culture, when they declare that most plants and animals possess a soul (wakan) similar to that of humans. This constitutes a faculty that classifies these [as] "persons" in that it provides them with a reflexive awareness and intentionality that enable them to experience emotions and exchange messages with both their peers and also members of other species, including humans. This extralinguistic communication is made possible by the recognized ability of a wakan soundlessly to convey thoughts and desires to the soul of another being, thereby modifying the latter's state of mind and behavior, sometimes without it realizing this. For this purpose humans have at their disposal a vast collection of magic incantations (anent) by means of which **they are able, from a distance, to affect not only their fellows but also plants, animals, spirits, and even certain artifacts**". (Descola 2013: p. 15 Digital Edition)

A central non-modernist premise of this experience of continuity between humans and other-than-human worlds (or between matter and meaning) is the notion that physical phenomena is intertwined with systems of value (Graeber 2001) which extend far beyond human representation.424 This convergent Amerindian and Western insight around the continuity of meaning and matter, illustrated, for example, in the capacity to affect plants and artifact through incantations (words), considers the agential properties of matter (Bennett 2010) and the kind of thinking and decision-making it capacitates.425 I argue that these systems of value, or values, emerge when two or more agential forces distributed across human and other-than-human

423 Before we continue, a word about the word "entanglement." In quantum physics, "entanglement is the physical phenomenon that occurs when a pair or group of particles is generated, interact, or share spatial proximity in a way such that the quantum state of each particle of the pair or group cannot be described independently of the state of the others, even when the particles are separated by a large distance." In Wikipedia (consulted 11.03.2020). Entry based on Einstein A, Podolsky B, Rosen N; Podolsky; Rosen (1935). "Can Quantum-Mechanical Description of Physical Reality Be Considered Complete?". Phys. Rev. 47 (10): 777–780. Bibcode:1935PhRv...47..777E. doi:10.1103/PhysRev.47.777, among others.

424 For a similar argument see Escobar 2020, Viveiros de Castro 2015, Descola 2013, Kohn 2013.

425 It is not clear whether QE can be experimentally modeled in living systems except for a recent study using bacteria and light (Marletto et al 2018).

"selves" (see Varela 1991)426 encounter one another to bring forth the real (Escobar 2018). In other words, the relentless coming into being of life forms through processes of materialization and meaning—which are in tandem with each other—has a relational character.

Values can be considered as the hinge between matter and meaning. Values, then, emerge from matter and produce matter but they *also* emerge from meaning and produce meaning. The idea of *encounter* accounts for these conditions of emergence of non-scientific and scientific description of socio-ecosystems in constant co-production. Thus, knowledge traditions operate within the terrain of the ethical and the political so as to capacitate the coming into being of worlds—or "pluriverse" (Kothari et al. 2019)— beyond and with the human, symbolic representation, and scientific description. *Encounters* as it were, is another name for value systems that *encounter* each other to bring forth a plural real.

These encounters and mutual affectations between separated things (or things that not necessarily touch each other and yet affect each other) reveal an ethical/political/epistemological principle of sorts: the "radical interdependence of everything that exists" (Escobar 2016) depends on suspending any pre-conceived claim about the nature of the real. To illustrate the deep link between biophysical phenomena and what I am calling *encounters of systems of value*, we can draw from historical data and direct ethnographic experience (see below). Historical data and direct experience in Amazonia teach two things: i) the principle of relationality is a driver in evolutionary processes from sub-atomic particles to entire socio-ecosystems, and ii) decision-making concerning "nature" is amenable to this principle and thus involve the active participation of other-than-human beings as social agents rather than just biological or physical forces.

A central ontological claim here is that matter and meaning are deeply entangled properties of the *real* (Law 2007). And this is apparent in our case study about the invisible ones (Chapter 1.2. *Yoco*, and Chapter 2: *Los Invisibles*) where I attempt to describe how "the invisible people," as the Cofan community refer to these beings, intervene in the co-creation of an Ethnobotanical Research Agreement (ERA) in Southwestern Colombia. While this relational principle refers to how biophysical phenomena and social meaning are co-produced, the notion of *encounters* offers an important analytical nuance, namely different systems of value or plural values (Munda 2016) lie at the root of **any** ontological claim about what counts as *real*, and thus it is the encounter between values that creates the conditions of emergence of any socio-ecological arrangement as something beyond the individual, the human, and the market as totalizing categories to engage with the world. In this sense, "social institutions" (meaning) and "life" (matter) are always in dialectic co-construction through the *encounters of systems of value*. However, values are neither pre-given attributes of human behavior—for example, double dipping *is unethical* or depositing a ballot in a box during election season *is a political action*—nor pertain to the domain of culture as opposed to the domain of nature. For the purposes of this chapter 1.2. (*Yage: Moving words across worlds*),

426 "Organism connotes a knotty dialectic: a living system makes itself into an entity distinct from its environment through a process that brings forth, through that very process, a world proper to the organism." (Varela, 1991: 79)

values are the "emergent properties" (Varela 1999) of living systems in any scale, as they bring forth a world that also creates them. In other words, *world* and *self*, specify each other (Varela 1991).

These *encounters of values* take place through often-intense negotiations between different kinds of agencies that might result in profound disagreements between the parties involved (Rancière 2004). So far, I have concentrated on one-such instance of potential disagreement, namely, the co-production of ERA which involved the contested participation of human and other-than-human agencies and institutions in a small region of the Colombian Amazon.

Final note on values: In the famous environmental conflict on bauxite mining in the sacred Nyamgiri Hills in India,427 different agents understand and articulate the values around those hills in opposition to one to another. One group establishes that the hills are valuable due to the bauxite content in the mountain hence only realizable through mineral extraction, while the local Indigenous group, the Dondria Ghong, renders the mountain as a deity to be revered and protected. For our purposes, (i) the values concerning the mountain do not exist in isolation; (ii) the value of the hills as mineral ore is reinforced by a value system that prioritizes mining extraction over any other value system (hence the notion of encounter—which is not always a conflict-free one; (iii) as the opposite is also true, the value of the hills as a God is reinforced through rituals and cultural practices that materialize the mountain as a deity; and (iv) different value systems give priority or respond to various configurations of power; (v) there is not an intrinsic value in 'nature' for nature comes into being as the expression of a particular value system (coloniality/ "Western modernity"/development. See Mignolo 2011, Escobar 2008). (vi) What we deem as 'real' does not exist outside of the co-production between forces of the human and other-than-human kind.

427 See EJAtlas "Niyamgiri-Vedanta Bauxite Mining, India." Available: https://ejatlas.org/conflict/niyamgiri-vedanta-bauxite-mining-india (Nov. 11, 2020).

Box 3 - Indigenous perspectives on plants: radical plurality

There is not *an* Indigenous perspective on plant life. There are countless and ever-emerging ways of engaging with plants in Amerindian cosmologies across time and space. Peoples' practices and ecologies, knowledge and ways of observing and experiencing the world, are all interwoven. Ecological weavings across Amerindian times and spaces are multiple and internally complex. Within this multiplicity, Indigenous peoples seem to share a palpable relational experience with the Earth, sometimes called "Mother Earth," "Pachamama," "Abya-yala" or "Turtle Island." This experience translates into a vital, respectful, and reciprocal engagement with life that is grounded on the notion that everything (e.g. the Earth itself, animals, plants, rocks, rivers, etc.) is animated and plays a crucial role in the wellbeing, balance, and preservation of life. Regarding plants specifically we find that they are often considered as wise teachers sharing, for instance, vital healing attributes and remedies. On a deeper level, plants teach about life and mutual aid between humans and the larger community of life.

For example, anthropologist Sabina Aguilera says the following on plant life among the Ralámuli: "For northern Mexico's *Ralámuli* people, for example, "plants are beings that have existed long before mankind emerged in the world and are wise. Each plant has its own mind and some of them are known to have specific powers and qualities". According to *Ralámuli* thought "plants themselves tell when they are good to heal. In fact, if you connect with the world by observing you will find all the answers". This is possibly why the word "nature in *Ralámuli* language does not exist. It is not needed because there is simply no separation between nature and culture. The word "plant" does not exist either since each plant has its name, which can also change according to specific stages of their lives. This is why all flora and fauna is *rijimala*, a word used to refer to family members/relatives that goes beyond the human realm. Traveling from northern Mexico many kilometers further south to the Colombian Amazon we encounter a similar perspective."[428]

As described earlier, *Don* **A** and the plants he works with, particularly the coca and the tobacco, are part and parcel of the fabric of life forces and agencies morphing into socio-ecological families in Amazonia. Telling the origin of the first *chagra* - traditional slash and burn cultivation system – is not only *telling* a story of the primordial vegetal origin of the world, but, in fact, an active *ordering of the world* in real time and with the help of the *mambia* (coca-leaf and yarumo admixture.)

These instances of Amerindian relationships with plants through ritual, material culture, food, and storytelling share common characteristics. First, the fact that all life is interdependent and co-emergent, and thusly culture and nature cannot be considered as separate domains of life. Also, all beings are sentient and mind bearing, and that is why *rijimala* and *Muinajeba* can be considered as kin members and ancestors in their communities with their own thoughts, desires, intentions, and stories to tell. Another important commonality is the profound extent

428 Sabina Aguilera, personal communication, 2020.

to which colonial relations have disrupted and transformed Indigenous territories, cultures, and ultimately, vegetal cosmologies.

The time is ripe for a respectful dialogue between Amerindian and Western science. Weaving this conversation together involves a reflexive understanding of the similarities and often-profound disagreements between these knowledge traditions regarding the nature of the real, the self, and the meaning of living well together. Learning how to appropriately engage with the cultural protocols of each other's knowledge practices with plants is one important step in this direction.

Box 4: Other-than-humans and the law: towards a "multinaturalist" jurisprudence

Over the last three decades, Latin American constitutional history has focused on the social, political, and economic effects of institutional reforms that incorporate the nation's cultural diversity within the state law.[429] However, during the last few years, the emergence of environmental constitutions in countries such as Colombia, Ecuador, and Bolivia has opened questions about the limits of multiculturalism, as nature is made an important political player within the state's legal and political narratives (Hale 2002). Is Latin America creating room for the point of view of the other-than-human world in legal theory and practice? How is standing before a court of law transformed when using the lens of situated other-than-human agencies? In recognizing the rights of nature and *pachamama* (Mother Earth), the article 71 of the Constitution of Ecuador 2008 suggests, on the one hand, that multicultural frameworks are incapable of including forms of difference profoundly tied to ecological realities:

"Art. 70. Persons, communities, peoples, nations and communities are bearers of rights and shall enjoy the rights guaranteed to them in the Constitution and in international instruments. Nature shall be subject of those rights that the Constitution recognizes for it.'

"Art. 71. Nature, or Pachamama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature.'

On the other hand, several instances of the application of article 71 favouring the protection of the environment against the implementation of development projects asserts natural beings as social agents in their own right:

"On 30 March 2011 the Provincial Court of Loja granted an injunction against the Provincial Government of Loja to stop violating the Constitutional Rights of the Vilcabama River to exist and maintain its vital cycles, structure, function, and evolutionary processes. This is the first successful Rights of Nature case under Article 71 of the Ecuadorian Constitution. The government's project to build a road without required environmental impact studies detrimentally affected the river's flow causing flooding, and disrupted wildlife and local communities' livelihoods (…) The Court upheld the precautionary principle that until the Government can prove that the widening of the road would not affected Nature the presumption is for the protection of the rights of Nature."[430]

[429] Selected excerpts with changes from Vargas-Roncancio 2017. Excerpt from pp: 76-81.

[430] Acción de Protección de la Corte Provincial de Loja, Sentencia No. 11121-2011-0010 del 30 de marzo de 2011 [Protective Action issued by the Provincial Court of Loja, Sentence No. 1121-2011-001, 30 March 2011]. See also Gaia Foundation 'Recognition of the Rights of River Vilcabama' Earth Law Precedents (online) 27 January 2012 <gaiafoundation.org/earth-law-precedents> (last accessed 6 November 2016).

This constitutional innovation has successfully challenged long-standing principles of Western law, and some of the main tenets of modernity itself. In particular, the radical separation between nature and culture, and the exclusive social agency of humans. Paradoxically, however, this constitution emerges in a context of intensive extraction of natural resources or neo-extractivism (Svampa 2019). To be sure, nature, the emergent subject of rights, still remains the perennial object of knowledge and economic value for the state and capital alike. As Eduardo Gudynas has argued (Gudynas 2011), Latin America's long history of colonization has been always marked by an extractivist ethos.[431]

In this context, Indigenous movements and social scholars alike discuss the possibility of a post-extractivist era in the face of global environmental problems, and its ensuing socio-economic inequalities. In fact, the juridicisation of Amerindian principles of relationality and interdependency casts natural beings as repositories (and producers) of value-in-itself (i.e. the 'bio-centric' turn), as it is represented in folk stories, knowledge systems, material culture, and local ecologies (Gudynas 2009).[432] In other words, the intrinsic value of nature is an opportunity to slow down capitalism, and legal fetishism or the idea that changing the law translates into a change in the real conditions of existence of human and other-than-human beings (Stengers 2010). How should we understand the limits of this constitutional clause in the midst of neo-extractivist activities? Are multiculturalism and extractivism related? Is nature falling within a multicultural narrative? To start answering these questions, I will propose two interpretations of Article 71 of the Constitution of Ecuador 2008, and argue that the way we, humans, represent and relate to other beings in the context of law, do matter when it comes to living-together in a polluted planet.

Two Anthropological Readings of the Rights of Nature

The clause on the rights of nature is becoming a well-established reference in contemporary Latin American legal culture, as well as a powerful instance of political transformation (Martinez and Acosta 2017). For several reasons, this clause represents a discontinuity in our regional constitutionalism.[433] First of all, it asserts the material and semantic continuity between 'nature' and 'culture', while proposing a new socio-ecological contract in the sub-continent (Serres 1992). As the French anthropologist Philippe Descola puts it when highlighting the continuity of the human and the nonhuman world, "this is not a matter of a metaphorical correspondence of a quite classic nature between human development and plant (nonhuman) development. Instead, what we find is a material ("and I would argue, semantic") continuity between two orders of life." (Descola 2013: 25). However, the juridicization of the environment in national constitutions (Skagen, 2013) raises concerns about how this novel set of rights shall affect local ecologies, upset dominant representations of nature so central to 'sustainable' development projects, and how these rights will impact the rule of law across the region (Palacio Castañeda 2009). It could be

[431] For example, 17th – 19th centuries silver mining economy in Potosi to contemporary and ubiquitous forms of coal, oil, timber, and gold extraction.
[432] On the bio-centric turn in Latin America, Gudynas 2009. On Indigenous Legal Theory, Muelas 2009.
[433] I am referring to a discontinuity within the anthropocentric legal narrative whereby the human is considered the subject of the law, while nature is casted as its object.

argued, for instance, that extending the circle of rights to nonhuman beings does violence to non-Western systems of justice grounded upon relations of reciprocity with local territories, ancestors, and future generations,[434] as well as the non-separation between (legal) knowledge and life. In part, the issues raised by the nonhuman clause are related to a strong multicultural heritage in the region. Thus, what are the limits of a multicultural reading of this clause?

From "Western Multiculturalism" to "Amerindian Multinaturalism"

The word *nature* can be enacted in several ways, for example, a multiplicity of animals, plants, and minerals, among others, inhabiting the planet; nature as the material and biological aspect of a given culture or society, or as an all-encompassing ecology of relations that includes the human; and nature as a 'society' of humans and other-than-human beings dwelling, collaborating, and suffering together. A list of possible associations can go on and on. However, I will engage in the following provisional classification on the relationship between 'nature' and 'culture' as one of the founding binaries of modern ontologies: first, multiculturalism, which states the existence of one nature and multiple cultural representations of it, and second, multinaturalism, which asserts the existence of many natures and one single culture (or interiority) shared among different beings (human and not).

These two conceptual schemes populate today's conversations in environmental anthropology, and discussions on environmental policy in the sub-continent. On the one hand, we have Descola's retrieval of the ubiquitous animism, which he defines as a plurality of natural beings "endowed with (one) identical soul and culture." (Descola 2013: 173). This model resonates with what Viveiros de Castro calls multinaturalism, "to designate one of the contrastive features of Amerindian thought in relation to Western multiculturalist cosmologies." Viveiros de Castro argues that where multiculturalism is "founded on the mutual implication of the unity of nature and the plurality of cultures—the first guaranteed by the objective universality of body and substance, the second generated by the subjective particularity of spirit and meaning," the Amerindian multinaturalist conception of this relation, "would suppose a spiritual unity and a corporeal diversity." (Viveiros de Castro 1998: 471).

On the other hand, the model of naturalism or multiculturalism in Viveiros de Castro's definition conveys one single nature and multiple cultural representations of it (Descola 2013: 174). In other words, this model refers to a singular world endowed with as many interpretations and social engagements as there are human cultures. The fundamental difference between these models rests on the continuity or discontinuity on the axis of corporeal differences, and the multiplicity or unity of cultural expressions or perspectives on the axis of interiority. Thus, we are within a multinaturalist framework whenever we affirm the "corporeal heterogeneity of classes of existing beings," (Descola 2013: 173) but the cultural unity or non-fragmentation of culture (interiority).

[434] On state's self-proclaim 'universal validity' of legal principles, and local indigenous knowledge systems see Iván Vargas, Sistemas de Conocimiento Ecológico Tradicional. El Caso de una Chagra Amazónica (online) 22 August 2011 < http://www.bdigital.unal.edu.co/4097/1/ivandariovargasroncancio.2011.pdf> (last accessed 4 December 2020).

Conversely, if we propose the oneness of nature and the multiplicity of cultural perspectives and expressions in relation to it, we step into a multicultural framework.

This distinction becomes useful to comprehend the terms in which the CRE 2008 conceptualizes nature, as well as the political significance of using one ontological framework over the other. Overall, whenever we say nature—in the singular—we enact the plural *cultures,* thus confirming the singularity of the world from where there can be as many cultural expressions or interpretations as possible. In fact, Article 71 refers to the 'rights of nature' seemingly backing a multicultural perspective since it enacts one single nature as a material continuum of nonhumans to which distinct cultural expressions (communities, persons, organizations, tribes, social movements, among others) relate in different ways. However, this interpretation seems to reinstate the ontological difference between nature and culture, rather than its material and semantic continuity—more attuned to a conception of nature as a value-in-itself (biocentrism). In fact, a material continuity between humans and nonhumans only accounts for a shared materiality, but not for a shared experience of collaboration in the making of multiple worlds, which requires common moral and cognitive capacities distributed across multiple species. As Descola argues:

"If the sociability of humans (…) and plants are so intimately connected in Amazonia, that is because their respective forms of collective organization stem from a common model that is quite flexible and that makes it possible to describe interactions between nonhumans by using the named categories that structure relations between humans." (Descola 2013: 173)

Within a multicultural framework, however, nature is not casted as a partner in ethical symmetry with the human, but the marginalized *other* to which humans relate differently (Descola 1986: 120). The multicultural interpretation of the rights of nature resonates with what legal hermeneutics calls exegesis or literal interpretation. To be sure, nature is defined as a singular entity that embraces all living beings in a continuum of shared materiality (or physicality), but at the same time affirming the semantic (or internal) discontinuity—ontological difference—between them:

ONTOLOGICAL DISCONTINUITY BETWEEN HUMANS AND NATURE
Multicultural Interpretation
'Art. 71. **Nature (SINGULAR)**, or *Pachamama*, where life is reproduced…

(a singular materiality, or a singular material world)

… and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. **All persons, communities**, **peoples and nations (PLURAL** *a multiplicity of cultural expressions and interpretations)* can call upon public authorities to enforce the rights of **nature**.'

A multinaturalist (Viveiros de Castro) or animist (Descola) interpretation, on the other hand,

restores the ethical symmetry between humans and nonhumans, which the naturalist interpretation seems to cancel out when reducing the latter to their bare materiality. By the same token, this new interpretation affirms the subjectivity of nature by recognizing the agent-like capacities of nonhumans and pluralizing its material expressions (different worlds) as well. A multinaturalist approach therefore requires an organic interpretation of the Constitution—as opposed to a literal one—whereby despite the singularizing language used to evoke nature in Articles 70 and 71, expressions such as 'life cycles' and 'elements comprising an ecosystem' (Art. 71), open up room for natural multiplicities. When pluralized in this way, nature turns into nature(s) (a plurality of worlds), and the notion of rights can be attributed to different "elements comprising the ecosystem." For instance, the rights of waters, the rights of animals, the rights of forests, the rights of plants, and following British anthropologist Marilyn Strathern, "the rights of relations." (Strathern 2010, 13).

ONTOLOGICAL CONTINUITY BETWEEN CULTURE AND NATURE
Multinatural Interpretation
'Art. 71. **Nature (PLURAL)**, or *Pachamama*, where life is reproduced…

(An internal plurality of beings sharing the same culture i.e. cognitive and moral capacities)

…and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. **All persons, communities**, **peoples, and nations (SINGULAR** *a singularity of cultural expressions, or a shared interiority)* can call upon public authorities to enforce the rights of nature… promote respect for all the elements comprising the ecosystem**.**

Indeed, if we say nature(s), we are saying one culture—in singular—indicating that to each natural world there corresponds a common cultural continuity (a human condition in Descola's expression), whereby humans and nonhumans alike share common cognitive attributes:

"Animals (and plants) are people, or see themselves as persons (…) the manifest form of each species is a mere envelope (a 'clothing') which conceals an internal human form, usually only visible to the eyes of the particular species or to certain trans-species beings such as shamans. [435] This internal form is the 'soul' or 'spirit' of the animal; an intentionality or subjectivity formally identical to human consciousness, materializable in a human bodily schema concealed behind an animal mask." (Viveiros de Castro 1998, 470 – 471).

In other words, humans, animals, and plants—for that matter—all share a common condition which Descola calls humanity*:* "the site of intentionality, subjectivity, and ultimately, culture." (Descola 2013: 472). Furthermore, the multinatural approach attempts to challenge this anthropocentric bias in the legal field, and plant's modes of engagement with the world offers a

[435] The example of ayahuasca, the ritual brew used by many Amazonian communities, might be helpful to understand the politics of nonhumas such as plants.

unique image to undertake this kind of constitutional interpretation. In my view, the multinatural approach achieves a double task. First, it opens room for a multiplicity of natures (vegetal and otherwise), instead of an all-encompassing natural world endowed with abstract rights. Second, it precludes the impulse of interpreting natural realities through a multicultural lens, thus translating the issue of nature from the field of epistemology into the field of multiple ontologies populating the law. When it comes to the multicultural approach, instead, the possibility of one single nature subjected to multiple representations could take away modes of agency with a role to play in today's ecological crises. Yet, what do plants have to do with this multinatural interpretation of Article 71 of the CRE 2008? What legal lessons can we learn from plants modes of engagement with other beings?

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Box 5: On Connections, Free Associations and Political Possibilities in Latin America

A Letter to Francisco Varela and Édouard Glissant[436]

(Re-appropriating the language of the other *en nuestros propios términos*)

"Relation is the knowledge in motion of beings,
which risks the being of the world.
Relation strives toward the being of the universe,
through consent or violence.
This effort is not primarily spatial."
(E. Glissant, *The Poetics of Relation*, p. 187)

"[…] the point is not that experience strictly
determines conceptual structures and modes of thought;
it is, rather, that experience both makes possible
and constrains conceptual understanding across a multitude of cognitive domains."
(F. Varela, *Ethical Know-How*, p. 16)

1. Connections

A warm morning light creeps all around the apartment. The day is promising. I will add two hours of extra sleep, a month-worth of meticulous laundry, and a visit to the farmers market. I may even watch this documentary about animal intelligence provided that the cat remains interested (I better clean that litter-box!) All of it may sound stimulating – if I stretch the notion. This is a full circle of uneventful deeds!

I'm fully awake. No need for the extra sleep although my body may appreciate the gesture. I now begin to understand the origin of this pervasive separation between my thinking and the pulsations of my body; between a somewhat difficult writing process in another language, and the expectations of academic rigor; between musing and doing. While all of this gravitates over the surface of the familiar, my hand starts writing a letter. I'm sipping a cup of coffee. I'll have some mango.

I'm addressing this letter to the Caribbean philosopher Eduard Glissant and the Chilean neuroscientist Francisco Varela. Over the past few months they have inspired me to embrace the political and poetic possibilities of seemingly arbitrary mental associations such as those of the cat's litter-box and animism, marmalades and sticky votes,[437] coffee and mindfulness, among

[436] Vargas Roncancio, I.D., (2021). "On Connections, Free Associations and Political Possibilities in Latin America." In Molano P., Rocha-Vivas, M., & Rojas-Sotelo, M., (eds). Mingas de la Imagen. Estudios Ecocríticos, Indígenas e Interculturales, Bogotá: Pontificia Universidad Javeriana.

[437] I'm referring to the votes of this past congressional election in Colombia. Ex-president Alvaro Uribe Velez remains stuck to power like nothing happened.

other associations.[438] What is the place of metaphor in social theory and social change? What is the place of metaphor in political and legal systems?

"Por mi parte, entre otras cosas, llevo tantos años gastando mi cuerpo en estas letras baldías, desde que soñé con mi nombre escrito en cortezas de canelo macho," says Machi Adriana Paredes Pinda in this volume (Pinda 2020)

There must be some sense of purpose musing on the chaotic background of the mind: the subsoil of the lived experience and the invisible non-order of our mental life.[439] However, this "*chaos-monde"*—as Glissant calls it—is only disorder if one assumes there to be an order poetics is expected to fully reveal with all its force and intensity (poetics is not a science) [1997(2010): 94]. *Este caos-mundo que la poesía está llamada a revelar es, sin embargo, un lugar de paso.* Errant and transient, *pues la poética parece desconfiar de los lugares estables*. To dwell in the unknowable, in the unnamable, *es vivir en riesgo—me dije esta mañana mientras el café hervía en la olleta*. *Pero no bastaba recuperar la conciencia del carácter errático y trashumante de ese lugar; de ese locus poético. Esta mañana de sábado mientras tomo sorbo a sorbo una taza de cortado,* it might be worth asking again *¿Cómo conectar ese lugar poético con la inmediatez de la experiencia y la vida cotidiana?* How can we turn this poetic flesh into *carne política*? *Hace falta dibujar una línea de fuga—trun, trun, carajo! El café acaba de despordar la olleta—Pero, ¿Una línea de fuga hacia dónde?* My mind is now fully invested in finding a towel to clean the coffee spill.

If the ambition of poetics, as Glissant suggests [1997(2010): 94], is to protect the energy of the order *que sostiene al chaos-monde,* the ambition of politics is to turn the chaos into an effective principle of relation for a better world: "a world where many worlds fit" or pluriverse (Escobar 2018). It is about confronting and perhaps embracing the potencies of chaotic encounters with emergent totalities, and then turning these encounters into political orderings. *Mejor dicho, es confrontar, combatir y acoger la diferencia en uno y en el mundo, y volverla potencia creadora de la vida-en-común. El amor-abisal y profundamente dislocador transita hacia la potencia creadora de lo común y entonces se convierte en un paso necesario hacia cualquier destino politico:*

"Chaos-monde is neither fusion nor confusion: it acknowledges neither the uniform blend—a ravenous integration—nor muddled nothingness. Chaos is not "chaotic." But its hidden order does not presuppose hierarchies or pre-cellencies—neither of chosen languages nor of prince-nations. The *chaos-monde* is not a mechanism; is has no keys. The aesthetics of the *chaos-monde* (what we were thus calling the aesthetics of the universe but cleared of a priori values) embraces all the elements and forms of expression of this totality within us; it is totality´s act and its fluidity, totality´s reflection and agent in motion. The baroque is the not-established outcome of this

[438] On coffee and mindfulness see http://codydehaan.com/blog/coffee-and-mindfulness.

[439] On this point, Rodolfo Kusch suggests: "[…] la necesidad de ver claro para enseñar cosas claras encierra una trampa, porque implica cancelar la potencialidad del pensamiento. Significa no comprender que cuando se piensa realmente, se lo hace en una oscura nebulosa. Pensar claro recién se da al cabo de un largo itinerario que pasa por una penosa y oscura gestación donde de nada valen los métodos." En Esbozo de una Antropología Filosófica Americana, 1978, P. 10.

motion. Relation is that which simultaneously realizes and expresses this motion. It is the *chaos-monde* relating (to itself)." [Glissant, 1997 (2010): 94]

Una línea de fuga (Deleuze y Guattari 2002) de lo cuasi-innombrable caótico - que se escenifica en algún lugar del pensamiento - hacia la experiencia y la política de la vida cotidiana, o lo que podría llamarse carne-política. No obstante, la línea de fuga no anula el caos. Lo cualifica. Apunta a un caos-mundo entendido como un orden sin jerarquía [Glissant, 1997(2010): 94], el cual está basado en la proliferación de diferencias y en un principio de realidad que nada tiene que ver con las ontologías binarias de la modernidad, pues se trata de un principio de realidad basado en la relacionalidad:

"Rhizomatic thought is the principle behind what I call the Poetics of Relation, in which each and every identity is extended through a relationship with the Other." [Glissant 1997 (2010): 11]

La línea de fuga tampoco anula la errancia o la trashumancia. Se proyecta lejos del espacio abismal o el caos innombrable que niega toda posibilidad de subjetividad (subjetividades políticas, éticas, ecológicas), anulando cuerpos e ideas por igual—hacia un espacio en donde la subjetividad se reconoce en un plano relacional:

"Yet, the belly of this boat dissolves you, precipitates you into a non-world from which you cry out. This boat is a womb, a womb abyss. It generates the clamor of your protests […]" [Glissant, 1997(2010): 6. On the slave trade through the Atlantic]

It is a line of flight towards the *chaos-monde* where the organizing principle is relational and away from a chaos-abyss where everything is eaten but never renewed. (I will do my laundry immediately. This is getting too *obscure*. I need 5 quarters for the machine. I will have to do the groceries first and then ask for cash-back in quarters).

Dear F. Varela and E. Glissant*:*

I hope you did not mind too much that I have been using two languages. The gesture is intended to be a reminder of the powerful and generative practice of border-thinking, introduced by Gloria Anzaldúa back in the 80's, as a creative method. I strongly believe that you both practice some form of border-thinking and this letter pays homage to this way of knowing/doing/feeling.

Professor F. Varela: you weave together Western theories of cognition and Eastern practices of meditation. In the space that emerges out of this encounter, Western science and Eastern teaching traditions find their *vasos comunicantes y su propia formación discursiva, práctica y emocional que nos permite reencontrar en la experiencia vital, la sustancia misma del conocer* (Varela 1999). *Professor E. Glissant*, you teach us how history and poetics, politics, and cosmologies *se co-crean incesantemente.*

Tal vez ustedes ya se conocían. I would not be surprised, since your lines of thinking nicely overlap in many ways. Before I began to unfold some of the perplexities and connecting attempts leading

to this letter, please let me scribble an imaginary genealogy. What I would like to share with you is an attempt to connect my thinking with my emotions:

Ancestros Sentimentales

En su Testamento Moral Rilke sugiere la existencia de ancestros sentimentales: una prole totalmente ajena a los huesos y la carne; un linaje espiritual que a fuerza de vivir en las aguas más profundas—allí donde habitan poderosos animales cuya fealdad es el efecto lógico de su propia luz—pudieron fundar una ciudad colosal. Ese linaje espiritual no tiene padres ni abuelos. Es más parecido a una familia imaginaria de alguna isla a punto de sumergirse. Los espíritus más antiguos de ese linaje entran por la cabeza de las mujeres y viajan directo a sus vientres (esta referencia es verídica. Los Trobriandeses así explican el nacimiento de los niños). Allí, y durante una prolongada gestación, ocurre un milagro. Las madres amadas por aquellos espíritus (se trata de un masivo apareamiento entre espíritus y mujeres –la tácita referencia a Gabriel y María es más una coincidencia que una alusión deliberada) alimentan esa creatura sentimental por años y años.

En la fricción de madres y espíritus más bien concurren la cabeza y el estómago elevados a la categoría de órganos sexuales. El día del parto, el día del nacimiento de esa portentosa prole espiritual, las mujeres abrazan con cariño sosegado el turbio dolor de su espera y, sin quererlo, aquella asume la sutil materialidad de un gesto insondable, de un halo de luz. Los espíritus recién nacidos viajan libres por una ciudad a punto de sumergirse fundando nuevos idiomas para comunicar su milenaria perplejidad. Sin excepción, todos estos espíritus nacen viejos, casi a punto de morir: vagabundos en ciudades de metal e ilusiones; trágicas siluetas que muerden su piel y la del mundo; figuras espectrales que no pueden dejar de errar, de trashumar. Sospecho que Borges, Cortázar, Juarroz, Bolaños y muchos más son hijos de esa familia.

La segunda generación habría nacido mucho antes. Se trata de la conjunción necesaria entre la primera y una que nunca existió. Un naciemiento mucho más modesto de aporías con forma humana (Deleuze, Artaud, Glissant, ellos y sus obras). Estos espíritus son mucho más espectrales, casi inexistentes. Hablan el idioma del Aleph; el idioma del tiempo. Quizá sean menos y tal vez el producto de un truculento apareamiento de voces y carne.

La tercera generación es estrictamente sensible. Seres CON carne y hueso. Viajan por ciudades reales, visitan museos reales, leen libros y extrañan. Son el sentido más reciente de esa sutil genealogía; dulces y envidiosos; hijos de sí mismos. Son el producto de sus propias invenciones; están hechos del material de sus fantasías. Son la carne poética. Sin ellos la vida no tendría sentido. A ellos la primera y la segunda generación les deben todo. Son los portadores de su memoria y los directos responsables de la única existencia que ahora poseen (quizá la mejor, no sé).

Reading your work has propelled my thought into different directions. Through this short and intimate genealogy, I have attempted to show to what extent my concerns are epistemic and emotional, but also political and aesthetic: what happens with the politics of life when we reconstruct an intimate genealogy? How do we conceive the future from then on? To be sure, it is increasingly difficult for me to hold on to a linear narrative and I hope you don't interpret this

statement as a sign of effortless writing. It is rather *un intento de pensar* in-disciplinarily—as you did—in part because I have been exposed to theoretical machines that privilege this approach, but also because I'm learning to embrace it as a *política de vida.*

I believe these gestures are rooted in the practice of decolonial critique, but they endorse a certain politics of the theory too (what can "theory" do?) *que se proyecta como una crítica al pensamiento dualista y a la violencia epistémica de Occidente.*

Indeed, *hay ciertas genealogías que crean ruido, pero hay otras que son* thinking companions. *A partir de allí, ciertas nociones o ideas emergen—como apariciones—del fondo caótico de los sueños y de las vibraciones silenciosas de la conciencia. Son retazos de tiempo que nos permiten prolongar nuestra palabra y nuestro andar en el mundo* (I now realize that it might take more than one hour to do the laundry…). *Nos permiten identificar lazos emotivos, intuiciones políticas y finalmente realidades concretas que queremos vivir, transformar y compartir*. (Do we want to partner with our ancestors in order to navigate the fading-life of the present that some people call the anthropocene?)

I believe many of the "concepts" you both have shared in your writings are real thinking-companions. You have connected the dots of realms seemingly severed, or otherwise made-as-separate by the powerful *hechizo* of modern universalism. I believe that tracing the lines that link different worlds together may resembles the struggle of today´s politics in the South, as well as your own methods of knowledge making. In this sense, I believe your thinking is also strongly political.

"¿Puedo ser solo humana individua sola anclada en el fetichismo moderno/posmoderno del privilegio y sus "rizomas"? ¿Acaso un día mis arterias y venas recordarán un canto aún no nombrado un secreto no capturado un susurro no penetrado, por la farándula multiculturalista de occidente?" (Pinda, 2020)

(I also try to imagine a way to connect the dots of politics and science; *Sumak Kawsay* and real livelihoods in the South, politics and poetics).

Certainly, there are things that connect better than others and there are ways in which connections can be more effective. Take for instance your work, *Prof. F. Varela*, in which you first weave and then *remacha*—as a skilful craftsman—a relational science of the mind and the teaching traditions of Buddhism to describe the principles of an ethical know-how that can be attained through experience (Varela 1999). It is precisely because you speak from a place of simple truth that I feel that matters of belief and matters of reason easily coalesce thus cancelling out the need for epistemic certainty. You highlight what our intuition and body already *know* in relation to the centrality of experience in the process of cognition, and how cognition is not localized in the brain—much less in our consciousness—but scattered *en todas las células*, thus becoming a condition that is shared with all living beings: *life is embodied knowledge*. Your powerful analysis of the nervous system, phenomenology, and ethics is intricate but it leads to a simple—yet not easy—resonance: the self is virtual.

It is an "emergent property" in the interactions between clusters of neurons, lived experience, and the immediate present (Varela 1999: 60). Your thinking has the power to guide us as we dwell in the void character of the self, and still trusting its capacity to create the world: We don´t know in our minds, but rather in our bodies. We are not rational agents that discover the world, but living beings that co-create it. Perhaps, I'm doing no justice to the extent of your ideas.

Voy directo al mercado a comprar las verduras. Pensaba lavar la ropa primero pero necesito monedas para la máquina. *El día es claro, pero hace frío.* I'm walking down the street wearing my *ruana*, and thinking about this "virtuality of the self." *Cavilar sobre la virtualidad del "ser" me hace pensar que la materia es nada. Carajo! Por supuesto que la materia es algo: la veo todos los días cuando limpio las gracias del gato.*

En cualquier caso, estas ideas parecen resonar con el proyecto epistémico de la decolonialiad: I might no longer be the one who knows, nor *that* which my body and mind signal as exterior is there to be grasped by me ["But we shall perhaps see that the verb *to understand* in the sense of "to grasp" [*comprendre*] has a fearsome repressive meaning […]" [Glissant 1997 (2010): 26]]. *"I"* and *"that"* participate in a singular experience neither requiring a center, nor asking for lines or images that vehicle its expression.

2. Political possibilities

Dear E. Glissant: I like to think about politics as an organizing principle of existence. As a way to *tejer (como lo hacen los pueblos indígenas, afros y campesinos cuando caminan, piensan, tejen mochilas, aran la tierra y se levantan para luchar por sus derechos, como si todo aquello fuera la misma acción)* desires, things, visions, and imaginations that are flouting in a background of messy encounters in the *chaos-monde*. This "organizing" principle is either an imagination or a historical possibility—among many—granting us an opportunity for co-habitation (humans and nonhumans alike). A space that is public as an effect of its visibility. But that is also particular, intimate, and silent, as a result of its opacity [Glissant 1996 (2010)].

The creation of a public space is a form of inscription, *como también lo es la escritura e incluso el acto cotidiano de caminar*. *Dear E. Glissant*: You affirm that as much as there is a production of transparency (the idea of "meaning") in the literary text, there is also an equal production of opacity to which you seem to assign a positive connotation. I believe the same is true for the production of the public space (or any space in general) through the practice of politics vis-à-vis the substantiations of democracy, communal protests, votes, and other forms of participation:

"The literary text (*o el espacio público como otra inscripción que depende de una gramática distinta*) plays the contradictory role of a producer of opacity. Because the writer (*el sujeto público, el ciudadano, e incluso el excluido o marginado*), entering the dense mass of his writings (*las posibilidades participativas de/desde el espacio público)*, renounces an absolute (*o busca reducir la complejidad del caos-mundo en el que está immerso*), his poetic intention, full of self-evidence and sublimity. Writing´s relation to that absolute is relative; that is, it actually renders it opaque by realizing it

in language. The text passes from a dreamed-of-transparency to the opacity produced in words." [Glissant 1997(2010): 115]

¿Cómo puedo apreciar esa opacidad? Eso que se niega a la transparencia del lenguaje escrito y oral, de la representación y el símbolo, pero que es producido en el acto mismo de participar en la vida pública. Sí. La democracia produce votos

…y los votos producen políticos

… y los políticos producen políticas

...y las políticas producen ciudadanos

…y los ciudadanos producen otra vez lo público…todo eso lo puedo conocer y apreciar. Pero, ¿puedo "ver" la opacidad? ¿Esa intensa relacionalidad que la politica de siempre oculta? ¿En dónde queda inscrita la opacidad? ¿En los deseos? ¿En la imaginación? ¿En el aire? Eso es. Producimos un espacio público otro *que no puede ser accedido a través de la mirada-que-busca-la-transparencia de la política estatal ya que su naturaleza es la opacidad. La política produce ciudadanos y ciudades, infraestructura, colegios, uniformes militares, pero también produce una ABSOLUTA OPACIDAD que no nos hemos acostumbrado a hacer visible ¿podemos nombrarla sin encarcelarla en la representación? Ahí se juntan los dos lenguajes. Ahí puede surgir un camino de exploración.*

2.1. Weaving the perception of things: Urban encounters with the law

Montreal, July 2020

Let's do a thinking/doing experiment on perception, or better yet, an experiment on how *perception gets done* through the action of capturing, cutting, shuffling, and assembling images of singular-totalities in the city of Montreal.

The exercise can become a modest testimony of a personal journey through the city to reflect about the law (see Anker 2017 for a similar gesture). A thread of captions that refuses social significance as well as historical reference, it composes one possible present that we can all inhabit. However, it conveys—or rather conjures—things ready-for perception; things already-put-together-in-different scales; things that comprise a city already planned.

This might be a three-fold exercise, namely (i) an experience of representation (i.e. taking pictures of random places of the city), (ii) an action of scaling down (i.e. focusing on big places, then smaller, and even minuscule spots of the city), (iii) and finally an ephemeral exercise of mental urban planning beyond the proposed, vivid and already materialized city that we all seem to encounter when we walk.

Each of the photographs may represent singular-totalities, for example, a bench and a pair of scissors; a mural and an abandoned house; a cup of coffee and a library in construction; a sculpture and a humble pebble left unnoticed in the street. "Perception"—we are told—is a bodily act of retrieving information from objects that exist outside of ourselves. Instead, what if we think about an idea of perception as relation through experimentation and improvisation. Here

perception is assembled rather than given. It is constructed rather than instructed. It is always partial rather than total and it is political rather than epistemic, that is, perceiving is primarily for the task of doing something rather than for getting knowledge about something—unless knowing is a form of doing. How about thinking about the perception of the law in these terms? Not as something given but as something assembled or even woven like la *ruanita en una calle como simbolo de una protesta campesina*?

Some questions emerge:

1) How does the experience of perception change when the captions of our little mental experiment are cut right in the middle? Is there a difference between perceiving given totalities (a bench; a building; a mural) and perceiving severed singularities (a half bench/half building; a half street/half un-occupied house)? *What happens when we cut the perceived totality of the law right in the middle?* What do we get when the law is not perceived as a totality – i.e. the legal system of a given nation?

2) If the images together represent an attempt at perceiving the city as a whole, what might happen to the experience of perception (as anticipation of given totalities) when the images are cut in the middle and then reassembled in different ways – a half-bench or a half-tree?

3) What kind of a city (the law!) can we imagine/create when we shuffle its proliferating singular-totalities, and reassemble the city otherwise according to our affective experience? When we connect and freely associate pieces of images that don't fit together to begin with, because the totality is not pre-existent but rather composed in the recursive act of interacting with it? When we undo established points of reference, devices of memory, and historic icons scattered throughout the city of laws such as a sculpture (i.e. the reified norm), a building (i.e. the hierarchies of the legal system)?

Finally, this action can be taken as an ephemeral urban planning exercise. Does this help us to think about politics and the law? In what way connecting - or better yet weaving together pieces of the city - might help us to re-politicize the design of a place that humans and nonhumans can inhabit together (Escobar 2018)?

For this, we might have to engage in an exercise of free association.

3. Free associations

Dear E. Glissant and F. Varela: Let's believe for a moment that we live in a place where free association takes the lead in institutional spaces such as the university. Free association is, in fact, a very important principle of contractual law, namely, two or more parties willing to convene in doing, not-doing or giving something away either hoping to draw some kind of benefit, or avoiding a damage to their property, and/or personal integrity. They *freely* associate for the common goal of obtaining a benefit. However, free association is also a technique used in

psychoanalysis by means of which the patient works through her/his own unconscious materials rather than the discourse of the analyst hoping for a cure, a relief, or some kind of comfort. It is like playing with your own poop. I believe the cat will agree! A real paradise for human babies (and other species)!

Indeed, if we allow a convergence between these two terms, that is, free association as a contractual experience and free association as a psychoanalytical principle, there might emerge a "borderline" *en donde dos hilos se tejen: (i)* one of the ordering principles of modernity, the so called free will of the liberal subject, and (ii) the individual and collective cure—a cure for the *tejido* of modernity made off of the silver of Potosi and the steel of the Industrial Revolution. I believe this *tejido* is not a very soft one or at least not one that I would wear, for a *ruana* (or poncho) made off of steel might be a little embarrassing, not to mention uncomfortable!

In brief, the science of ordering the world and the experience of healing the world working together in free association—associating with the partners of our choice and wildly imagining new collective alternatives to create better opacities (Glissant). We might even say (risking a thought) that the ambition is to combine the science of the mind with the experience of mindfulness (Varela). And yet, this will be an easy association altogether for science is meant to reconstruct causality while experience is meant to deal with the living (according to mainstream ways of looking at it at the very least).

Let's say that the *ruana* is occupied with warming up a new politics.

The *ruana* (poncho) certainly symbolizes these two meanings, namely, it brings security (the security of the law, the principle of predictability, and the principle of legality; pretty much like the project of science) against the contingencies of the weather. But it also symbolizes work, struggle, and *lucha* to achieve a collective cure against the "evils" of state politics and capitalism. It is a symbol of working with our own materials (the sweat of our work, and the saliva of our discourse). It is like the 2013 *campesino* movement in Colombia where the *ruana* became a core symbol of the struggle, but also a symbol of urban solidarity with the movement itself:
Cumbre Agraria. Colombia

El 31 de marzo del año 2014, la Cumbre Agraria que surgió de un gran movimiento campesino en Colombia hizo entrega formal del "Pliego Unificado de Exigencias: Mandatos para el Buen-vivir, por la Reforma Agraria Estructural Territorial, la Soberanía, la Democracia y a Paz con Justicia Social", al hoy ex-presidente Juan Manuel Santos. Esta es una propuesta unificada del sector agrario, campesino y popular en Colombia que de atenderse significaría un enorme paso en la superación de la violencia, la dependencia económica y la desigualdad en nuestro país. La propuesta es un tejido "posible", un tejido bien tejido, como el de las ruanas de Boyacá. El pliego-tejido propone 8 ejes y propuestas gruesas en temas de vital importancia para la vida nacional: 1.Tierras, Territorios Campesinos y Ordenamiento Territorial, 2. La Economia propia contra del modelo de despojo, 3. Mineria, ejergia y ruralidad, 4. Cultivos de coca, marihuana y amapola, 5. Derechos políticos, garantías, víctimas y justicia, 6. Derechos sociales, 7. Relación campo-ciudad, 8. Paz, justicia social y solución política. Frente al primer punto, el pliego propone, entre

otros puntos: "1. Que sean las comunidades y los pueblos quienes definan cuáles deben ser los usos del territorio y las maneras de habitarlo, conservarlo y cuidarlo conforme a las cosmovisiones de los pueblos y comundidades agrarias…2. Que el gobierno nacional nos dé garantias para la elaboracion de esa ruta de ordenamiento territorial y que las figuras mencionadas sean consignadas en la normativa colombiana y sean reglamentadas conforme a las decisione de las organizaciones, pueblos y comunidades participantes….3.Una politica de reforma agraria integral que redistribuya y democratice la propiedad de la tierra, que desmonte el latifundio como expresión histórica de la desigualdad…5. Que se completen los procesos de titulacion colectiva para los pueblos indigenas y afros que aún están pendientes… 13. La restitución integral de las tierras despojadas a las familias, comunidades y pueblos víctimas del desplazamiento forzado, teniendo en cuenta enfoques colectivos y énfasis comunitarios en tales procesos de reparación." (Ver http://prensarural.org/spip/spip.php?article13670).

Estas propuestas son un interesante tejido entre con una clara tendencia autonómica (que las comundiades definan los usos del territorio) y deliberativa (que el Estado reconozca y sancione los acuerdos normativamente). Sin embargo, la cooptación del tejido por parte del Estado es un riesgo latente. El reto es no dejar que el tejido se vuelva un nuevo tipo de ensamblaje que empate con los piñones institucionales del capital y el poder político estatal. El tejido es autónomo y de la autonomía viene la fuerza de sus hilos. Por otro lado, el ensamblaje puede reducir el tejido a una maquina amaestrada de conexiones entre "entidades discretas" (la maquinaria de la burocracia estatal).

Así, los poderes del tejido no son constitutivos sino constituyentes— y están en devenir constante…En otras palabras, el tejido deviene; el tejido no es. Pero esos poderes no-estatales también pueden ensamblar. Ensamblan cuando deciden volverse una maquina legible para establecer condiciones de posibilidad de una deliberación 'racional' con el Estado. Así, se puede devenir tejido para dejar abierta las posibilidades de acción mas allá del Estado y el capital, pero también se puede devenir ensamblaje (parcialmente) para definir, cerrar, pactar, contratar y en fin, tornarse un poder constitutivo con identidad legible de acuerdo con los fines que permitan que la lógica del tejido siga floreciendo.

Cuando los poderes no estatales tejen son como prolongaciones del entramado de la vida. Su política es la política de potenciar la vida en su constante devenir y de ahí la propuesta de respetar la autonomía territorial de sujetos colectivos como los campesinos. Por el contrario, cuando dichos poderes ensamblan establecen una relación diferente con ella. La vuelven recurso. De modo que la flexibilidad del tejido puede abrirlo también al ensamblaje (en ocasiones). Este ultimo punto es importante pensarlo por fuera de la aparente lógica binaria del tejido-ensamble. El tejido puede prolongar creativamente su autonomía y a la vez puede 'ensamblarse´ para potenciarla.

Como dirían los Zapatistas "somos red cuando estamos separados y somos asamblea cuando estamos juntos", pues "(s)e trata de forjar mecanismos descentralistas: ser red cuando estamos separados y asamblea cuando estamos juntos, como se dice en el Congreso Nacional Indígena, en vez de pretender que somos asamblea en todo momento o que lo es un grupo de supuestos representantes o delegad@s." (Esteva, Nuevas formas de la Revolución S.F, 15). Somos tejido cuando estamos separados y somos ensamblaje cuando estamos juntos. El tejido se volverá legible cuando ser legible le permita seguir siendo tejido. Por otro lado, está el riesgo de volver el tejido un 'enredo'--un enredo innecesariamente enredado--y por eso hay que

ponerle pies pues el tejido camina mejor en la tierra; pero su caminata debe seguir los caminos trazados por las luchas concretas de los tejedores.

4. The political possibilities of free association (in the double sense)

Dear Professors: I'm looking into weaving to gather elements, which at first sight seem decidedly unrelated. I hope to take seriously the proposal of placing different fragments into conversation. A fragmentary—and hopefully evocative—dialogue between un-related relatives such politics and poetics, marmalades and votes, and *ruanas* and *marchas*. Yet, the inspiration drawn from your writings might open up vast spaces of experimentation and I wish to move within the limits of materiality, virtual self, relationality, *chaos-monde* and opacity, *para imaginar* a politics of the thread (*la politica del tejido*) as opposed to the politics of the *amarres*.

I wear my *ruana de camino al mercado* and I know that this gesture means much more than covering my body and collecting immediate memories. The *poncho* or *ruana* has become a powerful symbol of a long-lasting struggle for *campesino* recognition, respect, autonomy and dignity in Colombia. As it appears, I hope to let it—the *ruana*—emerge as a fragmentary account of some of the powerful notions that have circulated in your writings. Walking with the *ruana* in a strange land is walking in full awareness of *who is walking* and *what they are walking for.* What does it mean to walk with the *ruana* where symbols of other kinds circulate in this place-of-the-present while telling us stories of state power? In a place where this *poncho* is, perhaps, an ethnic oddity, I would like to ask what the very fabric of the *poncho* tells us about nature, autonomy and the law.

The poncho is a thread of wool made to endure the cold weather in the Colombian *altiplano*. I bought this *ruana* in a farmers market in Bogotá for the winter of the North. When I purchased it, the *Paro Agrario* was in full effervescence and the *ruana* rapidly became a symbol (for the *political* transparency of the struggle, but also the *poetic* opacity of its symbols) of the *lucha campesina* against the Free Trade Agreement with United States, and in favor of *la autonomia y territorialidad campesina*.

4.1. Methods section

…weave your own fabric
…collect the sweat of your struggle
…imagine and play!
…do it again!

Dear F. Varela and E. Glissant:

I imagine you both wearing the *ruana,* and I think about how its thick *tejido* might be able to warm up an alternative politics beyond the heat of the ongoing war in Colombia, and the cold of the difficulty of implementing the Peace Accords. One last word: Letting the *ruana* speak is participating in this intimate opacity of the *campesino* struggle in Colombia. Would this be the

time to think and do a politics of the *ruana*? Would this be the time to freely associate with the partners of our choice, while connecting the poetic dots of political and legal possibilities beyond the state?

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BOX 6: A letter from a mestizo. Thinking as feeling in ongoing times of racism

How did ideas of race and nature come to be in social theory and systems of domination? Since the famous – or maybe not that famous –16th century *Valladolid Debate* in Spain, the law created very peculiar conceptions about humans and nature. The *Debate* (1550–1551) was one of the first moral and legal disputes in European history to discuss the treatment of Indigenous peoples by the Spanish crown in the Americas. A practical result of this debate was the classification of life as either nature or culture and the division of humans according to the color of their skin, thus the darker the skin of people, the closer they were to nature (Quijano 2000). This technique naturalized hierarchies between the European colonizers and the rest of humanity, while inventing laws that justified the colonial domination of peoples and lands in what came to be known as "The New World". Rather than reconstructing the genealogies of this debate, the following letter is about the ongoing consequences of this foundational act of colonial and racial violence.

I'm writing in two languages because I want to tell you a story of border- making and borderland. I want to tell you a story of impurities and *mezclas*. I'm not just thinking about what makes me different to my neighbors regardless of how distant they're in the past or how far they're in the future. Actually, I'm thinking about how these differences create a world of shared suffering, strength, and imagination. Let me be clear from the beginning. I've always felt this border-making machine right under my skin beyond the academic habit of thinking about it.

Over the years, I've been created as a as a *mestizo*, and for me this is a fact of life. First, let me talk about my ancestors. Multiple streams of blood flow impatiently through my veins and the bodies of those to come will also have the corporeal memories of my Indigenous ancestors that suffered during the Spanish *encomienda.* The memory of my ancestors emit the aura of *una borrachera con chicha de maiz para celebrar la vida* (a joyful drunkenness with a fermented maize beverage to celebrate life) and the unknown tubers of their *chagras* (small plots) have a way to make me remember things I've never experienced before (or that I've forgotten!). Yet, my ancestors exhale the garlic from the Spanish mouth and the sweat of their furious travels through the Atlantic. You see, my body is not mine and it isn't here either. It belongs to the memory of this terrible "encounter" between peoples that I didn't know—and whose stories I hardly remember—but whose kin and memory, in a very intimate sense, I can't refuse. As a matter of temporal perspective, I even hesitate to say that I'm fully here. I refuse to claim that "I" am actually writing a letter, for I believe that my ancestors somehow guide my hand to say what they need to say. I believe my writing is already woven into this uneasy past. You might hear many voices *agolpadas en la garganta de esta historia* (crowded in the throat of this story), or at least I hope so…

This encounter was not a pacific one. When I say blood, I mean that there was more blood that moistened the fertile soil of forgotten seeds than the blood that nurtured life in human bodies. I mean that there was far less sweat on the skin of my Indigenous ancestors *cazando el tapir en la*

selva (hunting the tapir in the forest), or sowing the *chagra* to feed their people. There was more sweat pouring into the dirt of the Spanish *mita*, as the colonized were digging for silver hurting *la tierra* against their will, as if they were doing against their natural relatives, the mountains, they same thing that was done to them. I'm sure the Colonizers thought it was right to enjoy the gifts of nature…I think they still do today.

Some scholars would say that the European city is a pure expression of European imagination. And they would say this to keep us silent and obedient. That all those universities, ideas, books, artifacts, railroads and smoky towers, were all the logical result of uncontested superiority and that Indigenous peoples were only good for *servidumbre* and oblivion. *Nosostros siempre hemos creido* (we've always thought) that all these marvels of European splendor rest upon the sacrifice and subjugation of peoples on the other side of the Atlantic, and of people further South of the edge of the Mediterranean—the "universals" of the Masters of the Four Oceans are only *su propia versión de los hechos* (their own take on the facts). Yes, another stream of blood flows through my veins: the blood and memories of the peoples that make kin with *ceibas, baobabs, zebras*, and the powerful *djembe*. *Cimarrones* and *palenqueros* from today's America are there to put together a better picture. Don't forget to let them speak and to listen carefully. Especially now!

Créeme! The strategy was perversely simple. The European divided humanity according to the color of their skin and established hierarchies to exert control and justify domination. They put into question the humanity of the First Dwellers of these lands using the cleanest syllogistic logic, and thus invented people's inherent inability for rational thought, self-government, transcendental experience, and the most mundane capacities of life. The absence of this necessary "traits" of the civilized was an integral part of the machine of total colonial domination over peoples and lands. It went as follows: The *conquistador* deduced the animal-like nature of our ancestors based on a significant chain of absences in their modes of being, namely, if the dwellers they found didn't respond to the *requerimiento,* then it meant that they didn't know the Christian God (the only God), and therefore they didn't have a soul.

If they didn't have a soul, then they didn't have a way to access reason to be able to distinguish right from wrong. If they didn't have reason to guide their lives, then they were ruled by instinct, which means that they were closer to animality than they were to humanity. If they are indeed animals, they are nature (rather than culture) and therefore objects of appropriation and control (See Quijano 2014). Thus, the exploitation and *conversion* of the First Dwellers of these lands followed a single and clean scholastic logic. This logic still remains disguised under new arguments and conceptual tricks.

Ladinos, mulatos, zambos and everyone in between populate this continent from the bottom-up since time immemorial and with new names. Our bodies, longings and imaginations are the result of persistent encounters between "civilization" and "savagery". I've to tell you that imagination retreats when one tries to make sense of the Supreme Violence that brought us here. Some scholars refer to this colonial "encounter" as the Darker Side of Western Modernity. For them, there are no castles, silver plates, exquisite tablecloths, railroads, legal codes and smoky towers

without this sacrificial moment. We're sons and daughters of this past. We owe this very moment to the matrimony of violence and reason, to the mingling of myth and science. More than four hundred years after this "encounter"—a matter of pure chance, for the most part, in Europe's desperate attempts to find a way out of its historical subordination in relation to the East and China—the self-appointed Master of Humanity with the power to name and classify has reflected many times upon this sacrificial violence.

However, He has been unable to acknowledge how this violence actually shapes His "success" in History. Europe (not the place but the set of epistemological, ontological, and value operations that made colonial violence possible) has projected a terrible path into the future, and it has attempted to erase dissident stories of historical change from the collective consciousness of other peoples. And yet "we", the *mezclas*, "we", the impure, are time going forward and time that goes backwards; *somos memoria perdida y memoria recuperada* (we're lost memory and retrieved memory). Right at the edge, right at the very limit where these cultural trajectories meet, relentlessly (the one that got interrupted and the one that got pushed forward), something new emerges each time: a plural *nosotros*, the border *plural*. *Nosotros,* the impure. Being *nosotros* also means being the interruption of the old and the irruption of the new-multiple. Being *nosotros* means a strong drive to Create Belonging, beautifully and patiently, in the midst of two worlds that are themselves multiple.

As part of its internal reflection about history, Europe has understood the strong connection between lost memory, recuperated memory, and domination...hence History! The violence that once attacked the body was *al mismo tiempo una violencia en contra de los sistemas de vida, de las palabras y las memorias de los pueblos* (a violence against the life systems, words, and memories of our peoples). Bare violence was unsustainable. Bare violence meant sacrificing workforce in the altar of nonsense and the very possibility for self-appointed mastery over everyone and everything…the possibility of pending wars in Europe! Europe needed the nation-state to manage all these differences and incorporating them into their codes, constitutions, and all sorts of systems. This recognition of cultural difference via the fiction of national identity was essential to keep the colonial machine going. But don't be fooled. None of this was set up since the beginnings of time! There was no early mastermind that designed the necessary steps to achieve total domination over people, nature, and time.

We're also border in the sense that no historical narrative is neat and tidy. In every step of the way there was at least one sign of struggle that accounts for any historical outcome*: luchas populares, movimientos sociales, marchas, pitos, cuerpos pintados…no nos hemos quedado quietos* (popular struggles, social movements, creative social protests, we haven't been quiet). The idea of belonging to one nation beyond state boundaries has served many communities well. We're border because we are nation(s), but not nation-states. We are border because we can think and feel part of a nation of multiple nations and peoples of the human and nonhuman kind. We are border because we can be nation(s) against the state and because difference comes before sameness.

This is the real issue for me. We're border because by not being border we castrate the potentialities of imagination. No being border is being the father with the sword in one hand and the cross in the other. But it also means being untouched by history. Being border is being impure because impurity is the possibility of cutting sameness *justo en el ombligo* (right in the middle); the belly to which the master of everything always seems to return to when he feels powerless or nostalgic.

Unas Palabritas de Ayer: Despertando a la Conversa

Monte en la boca,
Jardín de sílabas:
El niño dice madre.

Así comenzó.

Un viaje intempestivo al corazón del mundo.
Si, algunos pesos, un sombrero de fieltro y la insondable curiosidad de los felinos.
Una mano áspera; ojos poblados de cielos antiguos.
Abajo las gallinas y los pavos hacían sus nidos en la tierra seca...
Un mundo de galerías invisibles y puentes imponderables: ¡objetos que por igual desafiaban la gravedad y el miedo!
Era preciso adentrarse en el cuerpo de la planta para develarse a su mirada.
El "mareo de la vida", lo llamaban. Para entrar en las ciudades invisibles y ver el Rostro Fluido de la Vida en todas sus formas y diseños: las innumerables resonancias que escondía cada objeto, cada gesto y cada palabra.

Atreverse al vuelo suspendiendo los conocidos hábitos.
Atreverse al vuelo suspendiendo la consistencia de la piel.
Atreverse al vuelo suspendiendo las geometrías de la memoria para dibujar otros mapas, otras rutas; las marañas secretas de un tiempo antiguo sin tiempo ¡presente intenso y eterno!

Si. Un viaje intempestivo al corazón del mundo.

Se entra a ese mundo por la boca y por la boca sale la palabra y hacía la boca va la Alquimia Sagrada. Se bebe en sorbos cortos ese s*aber* que no se puede saber ni contener. La densa selva vertida en la bebida calentando el cuerpo y espantando el miedo.
En el corazón del mundo se está a merced del viaje. No hay escapatoria. Aguantar, aguantar. Solo se puede aguantar. Aguantar el sabio *tacto* de la planta hasta que el cuerpo se encuentre a sí mismo en todos los cuerpos.

Unas Palabritas de Ayer: Cerrando la Conversa

…Hasta que el cuerpo se desborde en soplos y se entreteja al Cuerpo del Mundo en informes humaredas de tiempo. Aguantar el mareo como quien aguanta el Animal de lo Incierto. Como quien Aguanta el Porvenir. Luego, nacer suave entregado al amanecer dulce…

Nadie ciertamente nadie pudo haber advertido esos paraísos suspendidos.

Allí llegamos sin miedo y sin coraje a vivir lo que Tocaba. Así, un llamado al corazón de uno mismo. A la honesta vivencia de la vida; a la honesta vivencia de uno mismo y presenciar los paraísos interiores.

El "mareo de la vida" luego de la Comida Sagrada.

El "mareo de la vida" luego del soplo de la tierra abriéndose paso entre dendritas y memorias.

Y el *mareado* pensaba que ese vuelo era necesario. Que ese vuelo es la felicidad. Que ese vuelo tenaz es un paraíso prefigurado. La sorpresa enseña ¡Solo bastaba respirar!

Appendix 2. Letters addressed to potential participants.

No. 1: Letter addressed to an ethnobotanist.

Dear
[Name of the ethnobotanist]

I am a PhD candidate in the Natural Resource Sciences program at McGill University, and I am currently doing a research project about scientific and indigenous knowledge of Andean-Amazonian forests, and how this knowledge is applied in the environmental management of these two regions. My purpose is to better understand how a complex ecology involving human and nonhuman beings contributes to a much-needed legal change in these regions of Colombia.

In particular, I am interested in learning about your work as an ethno-botanist, and how it is connected to other spheres of social life. The following are the kinds of questions I will be asking: how do you interact with different beings of the forest? How do forests and traditional knowledge practices about them relate to your own work as an ethno-botanist? How do you see and/or envision the relationships between your work, and the work of other stakeholders such as the State?

There will be no monetary compensation for participating in this study but will cover any potential logistical costs such as meals, and transportation. Also, I expect this research can contribute to your own scientific work.

If you have any questions or concerns about this research, you may contact me, my research supervisor (Natural Resource Science Department), and/or the McGill ethics office.

Researcher [Name]
Research Supervisor [Name]

You might also contact the REB office if you have concerns about your rights and welfare as a research participant:

Ethics Office [Name]

No. 2: Letter addressed to potential Indigenous participants, Southern Colombia.

Dear
[Name of organization or person]
Colombia

As you may remember from other conversations, I am studying environmental issues at McGill University in Canada. I am also doing a research project about indigenous forest knowledge and legal systems in Amazonia. With this letter, I want to ask permission to do some interviews with members of your community about these themes. Specifically, I want to learn how best we can contribute to a legal shift to protect the forest. In my opinion, this legal change should pay attention to indigenous knowledge and governance models.

I would like to ask, among others, how do you communicate with different beings of the forest? Does indigenous knowledge influence state's programs to protect the forest? What are the limits and possibilities of giving rights to natural beings?

There is no monetary compensation for participating in this project but it will cover any potential logistical costs such as meals, and transportation. If you are interested and have any questions, please contact me, my research supervisor, and/or the McGill ethics office.

Researcher [Name]
Research Supervisor [Name]

You might also contact the REB office if you have concerns about your rights and welfare as a research participant:

Ethics Office_[Name]

No. 3: Letter addressed to legal scholars

Dear
[Legal Scholar]
Colombia

As you may remember from our previous dialogues, I am conducting graduate studies on environmental issues at McGill University in Canada, and I am currently developing a research project on indigenous and scientific knowledge of Amazonian forests, local and state-led environmental governance frameworks, and indigenous legal systems. I am also part of a partnership that aims to define and facilitate sustainability transitions founded on mutually enhancing human-Earth relationships. My research ethnographically follows indigenous practitioners, scientists, and legal scholars across territories, laboratories, and courts of justice. In particular, how they contribute to shift from a piecemeal environmental law to a system-based and scientifically grounded ecological law.

With this letter, I am exploring the possibility of conducting a series of interviews on legal issues and the environment; in particular, the evolution of the rights of nature in our country.

There is no monetary compensation for participating in this project but it will cover any potential logistical costs such as meals, and transportation. If you are interested and have any questions, please contact me, my research supervisor, and/or the McGill ethics office.

Researcher [Name]
Research Supervisor [Name]

You might also contact the REB office if you have concerns about your rights and welfare as a research participant:

Ethics Office [Name]

Appendix 3. Consent forms

No. 1: Consent form for legal scholars

REB file number_____

Participant Consent Form

Title of Project: The Legal Lives of Forests: Ecological Governance and the Dialogue of Cultures in the Andean-Amazonian Region, Colombia.

Sponsor(s): Leadership for the Ecozoic Program – McGill University

Purpose of the Study: With this consent form, I am formally inviting you to participate in the research project ***The Legal Lives of Forests: Ecological Governance and the Dialogue of Cultures in the Andean-Amazonian Region, Colombia***. I am a graduate student at McGill University, and I am currently developing a study on indigenous ecological and legal knowledge, local ecological governance practices, and the rights of nature. My purpose is to better understand how legal scholars contribute to a much-needed legal and policy shift in Southern Colombia. In other words, this research will analyze how legal practitioners protect Amazonian forests, for example through the defense of the rights of nature. Moreover, this study will contribute to an inter-cultural legal framework for forest governance in this region.

Duration of this portion of the study: One-two months. **Duration of the whole study:** 12 months.

Study methods and procedures: My methodology involves semi-structured and open interviews with legal scholars such as yourself, as well as the analysis of jurisprudence on the rights of nature and intercultural environmental policy in Colombia.

Below is a detailed description of the research activities of this project.

1. *Interviews*: I'll conduct between 1 and 3 interviews (one hour each), and I'll to record your voice so I will be able to better capture and represent your ideas and perceptions.
2. *Document collection:* I'll access institutional archives. In particular, minutes and related documents on the jurisprudence of the rights of nature in the Constitutional Court.

The following are some initial questions about your role as legal scholar.

- Can you please describe the work you do?
- How would you describe the relationship between your legal work and indigenous law and governance systems around the environment?
    - How do you reconcile (or not) different legal traditions?
    - Are they compatible? Why?

- Why is law important for the protection of the environmental?
- How do you see and/or envision the relationships between your work as a legal scholar, and the work of other actors such as scientists or State-agents in relation to the protection of the forest?
- Many indigenous groups consider forests as subjects rather than objects of knowledge. What is your take on this issue?
- What are the rights of nature and why is this important?
    - What are the main opportunities and limitations of this legal tool?
    - Where do you see this legal trend going?

Duration of this portion of the study: One-two months. **Duration of the whole study:** 12 months

Voluntary Participation*:* Participation in this study is voluntary, and you may refuse to participate in all or parts of the study; you may decline to answer any of the questions, and you may withdraw from the study at any time, for any reason. If you decide to withdraw from the study, the information collected from you will be destroyed unless you give permission to do otherwise. Data will be de-identified one month after the data is collected. This means that all the information about you, for example your name or place of origin, will be replaced with a code to avoid the disclosure of your personal identity and potential unwanted exposure. There is also a code key that will allow me as the researcher of this study to link the personal information collected with the codes assigned to this information. This code key will be securely stored in a doubled-layered password protected computer as well. Moreover, information collected from you can still be withdrawn should you decide to withdraw from the study. By consenting, you do not waive any of your legal rights. There are not conflicts of interest in this study.

Potential Risks: There are no known physical, emotional, economic, and/or political risks for being involved in this study. Also, hardcopies of documents such as this informed consent will be stored in a secure locker cabinet, and I will be the only person with a key to access this locker. Also, you might potentially identify others as participants in this study, and eventually talk about this research. I will minimize this risk by doing separate interviews with you and other participants at different times and locations.

Potential Benefits: The study will help different academic and policy actors in Colombia and beyond to gain a more comprehensive understanding of forest governance in this region today, while proposing an intercultural policy that integrates indigenous knowledge and science.

Compensation: There will be no monetary compensation for participating in this study, but it will cover any potential logistical costs such as meals, and transportation, etc.

Confidentiality: No personal identifying information will be used, for example, personal names, health insurance numbers, or any other personal data. Data will not be shared with third parties, and it will be used for the purposes of my dissertation research exclusively. I will store all the information in a password-protected computer.

Identifying data - including hardcopies and digital copies of consent forms or any other identifying information - will be destroyed within 4 years after this information is collected. The final results of this study will be disseminated in targeted academic journals and conferences. The results will also be shared with you.

Yes:_____No:_____You consent to be identified for your contributions to this research in future research papers, or other academic publications.
Yes:_____No:_____You consent to have your place of origin identified.
Yes:_____No:_____You consent to have your organization's name identified.
*Yes:_____No:_____You consent to be audiotaped (Note: There will be **no** video-recording, and I will not disseminate audio recordings. I will transcribe some audio recordings as part of my ethnographic data - i.e. quotes from interviews).*

Questions: If you have any question or concerns about this project, please contact either me or my supervisor.

Research Supervisor [Name]

If you have any ethical concerns or complaints about your participation in this study, and want to speak with someone not on the research team, please contact the McGill Ethics Manager at 514-398-6831 or lynda.mcneil@mcgill.ca.

Please sign below if you have read the above information and consent to participate in this study. Agreeing to participate in this study does not waive any of your rights or release the researchers from their responsibilities. A copy of this consent form will be given to you and the researcher will keep a copy.

Participant's Name: (please print) _____

Participant's Signature: _____

Date: _____

Researcher [Name]

Supervisor [Name]

No. 2: Consent form for etnobotanist

REB file number_____

Participant Consent Form

Title of Project: The Legal Lives of Forests: Ecological Governance and the Dialogue of Cultures in the Andean-Amazonian Region, Colombia.

Sponsor(s): Leadership for the Ecozoic Program – McGill University

Purpose of the Study: With this consent form, I am formally inviting you to participate in the research project ***The Legal Lives of Forests: Ecological Governance and the Dialogue of Cultures in the Andean-Amazonian Region, Colombia***. I am a graduate student at McGill University, and I am currently developing a study on indigenous ethno-botanical knowledge and local governance practices in the southern departments of Nariño and Putumayo. With this project, I'll learn how local communities manage and protect the diversity of several medicinal plants in their territories. I am particularly interested in your work as an ethno-botanist with the Cofán community of Nariño. By studying how traditional plant knowledge and ethno-botany work along one another, my study will contribute to the development of an inter-cultural policy framework to protect medicinal plants species such as the *Banisteriopsis caapi*.

Study Procedures: My methodology involves *fieldwork observations* and *interviews* about your etnobotanical work in the forests of this region (Nariño). More concretely, I am interested in learning about how you study different medicinal plant species in the field, and how you integrate indigenous knowledge to do that.

Here are the details of the research methodology:

1. *Interviews*: I'll conduct several interviews about your scientific work with different medicinal plants (5+ interviews, 1+ hour each). I'll record your voice, so I will be able to better capture and represent your ideas and perceptions.
2. *Participant observation*: For a period of **12 weeks** approximately, I'll observe how you perform botanical work, for example, how you take field measurements and the instruments you uses; how you record information; how you collect different specimens, and how you press them for further study, among other procedures.
3. *Photographs:* If you consent, I might take photographs of your work, more specifically of your hands as you manipulate instruments for your research in the field. I might also take photographs of landscapes. I will **not** take any photographs that will identify you or any other person in this research. Some photographs will potentially be published to support the claims of my fieldwork.

The data collected during the study will help me to form a better picture about your scientific work with this community in Nariño.

- Can you please tell me about your current work?
- How would you describe the relationship between your work as an ethnobotanist and local knowledge practices involving medicinal plants?

    - How do you reconcile (or not) different knowledge traditions?
    - Are they compatible? Why?
- Is ethnobotany important for environmental policy efforts? Why?
- How would you describe the relationship between scientific practices such as ethnobotany, on the one hand, and policy issues around the forest, on the other?
- How would you describe (or envision) the relationship between the communities you work with, and other stakeholders?
- Many indigenous groups consider Andean-Amazonian forests as subjects rather than objects of knowledge. What is your take on this issue?
- As you might know, national legislations around the world are giving rights to nonhuman entities such as animals, rivers, and forests. How do you see this issue? Does this legal trend relate to your work in any form?

Voluntary Participation*:* Participation in this study is voluntary, and you may refuse to participate in all or parts of the study; you may decline to answer any of the questions, and you may withdraw from the study at any time, for any reason. If you decide to withdraw from the study, the information collected from you will be destroyed unless you give permission to do otherwise. Data will be de-identified one month after data is collected. This means that all the information about you, for example your name or place of origin, will be replaced with a code to avoid the disclosure of your personal identity and potential unwanted exposure There is also a code key that will allow me as the researcher of this study to link the personal information collected with the codes assigned to this information. This code key will be securely stored in a doubled-layered password protected computer as well. Moreover, information collected from you can still be withdrawn should you decide to withdraw from the study. By consenting, you do not waive any of your legal rights. There are not conflicts of interest in this study.

Potential Risks: There are no known physical, emotional, economic, and/or political risks for being involved in this study. Also, hardcopies of documents such as this informed consent will be stored in a secure locker cabinet, and I will be the only person with a key to access this locker. Also, you might potentially identify others as participants in this study, and eventually talk about this research. I will minimize this risk by doing separate interviews with you and other participants at different times and locations.

Potential Benefits: The study will help different academic and policy actors in Colombia and beyond to gain a more comprehensive understanding of forest governance in this region today, while proposing an intercultural policy that integrates indigenous knowledge and science.

Compensation: There will be no monetary compensation for participating in this study, but it will cover any potential logistical costs such as meals, and transportation, etc.

Confidentiality: No personal identifying information will be used, for example, personal names, health insurance numbers, or any other personal data. Data will not be shared with third parties, and it will be used for the purposes of my dissertation research exclusively. I will store all the

information in a password-protected computer. Identifying data - including hardcopies and digital copies of consent forms or any other identifying information - will be destroyed within 4 years after this information is collected. The final results of this study will be disseminated in targeted academic journals and conferences. The results will also be shared with you.

Yes:_____No:_____You consent to be identified for your contributions to this research in future research papers, or other academic publications.
Yes:_____No:_____You consent to have your place of origin identified.
Yes:_____No:_____You consent to have your organization's name identified.
*Yes:_____No:_____You consent to be audiotaped (Note: There will be **no** video-recording, and I will not disseminate audio recordings. I will transcribe some audio recordings as part of my ethnographic data - i.e. quotes from interviews).*

Questions: If you have any question or concerns about this project, please contact either me or my supervisor.

Research Supervisor: [name]
If you have any ethical concerns or complaints about your participation in this study, and want to speak with someone not on the research team, please contact the McGill Ethics Manager at 514-398-6831 or lynda.mcneil@mcgill.ca.

Please sign below if you have read the above information and consent to participate in this study. Agreeing to participate in this study does not waive any of your rights or release the researchers from their responsibilities. A copy of this consent form will be given to you and the researcher will keep a copy.

Participant's Name: (please print) _____

Participant's Signature: _____

Date: _____

Researchers: [Name]

Supervisor: [Name]

No 3: Consent form for Indigenous participants

REB file number_____

Participant Consent Form

Title of Project: The Legal Lives of Forests: Ecological Governance and the Dialogue of Cultures in the Andean-Amazonian Region, Colombia.

Sponsor(s): Leadership for the Ecozoic Program – McGill University

Dear _____

With this letter, I am inviting you to participate in the research project *The Legal Lives of Forests: Ecological Governance and the Dialogue of Cultures in the Andean-Amazonian Region, Colombia.* This project is a study on indigenous knowledge about culturally important plants, and how they are used to make decisions about the protection of the territory. These decisions are based on indigenous values and involve humans and non-human beings of the forest. The study is also about traditional ecological knowledge and how it can help us to create better policies to protect plant species that are rapidly disappearing in Amazonia. For this purpose, I'll interview plant knowers and community leaders like you. For about 3 months, I'll learn how you work with plants on a daily bases, but also how plants are present in community-based decisions about the forest. The study will help different academic and policy actors in Colombia and beyond to gain a more comprehensive understanding of forest governance in this region today while offering some regulatory elements to design an intercultural policy that integrates indigenous knowledge and science.

The information obtained during the study will help us to form a better picture about the protection of the cultural and biological diversity of the forest. This is a list of possible questions I'll be asking in more formal interviews:

- Can you please tell me about your current work?
- How would you describe the relationship between your work and other knowledge practices involving medicinal plants?
    - How do you reconcile (or not) different knowledge traditions?
    - Are they compatible? Why?
- Is indigenous knowledge important for environmental policy efforts in Amazonia? And if so, why?
- How would you describe the relationship between the communities you work with, and other stakeholders?
- Many indigenous groups consider Andean-Amazonian forests as subjects rather than objects of knowledge. What is your take on this issue?

- As you might know, national legislations around the world are giving rights to nonhuman entities such as animals, rivers, and forests. What are your thoughts about this legal change?

Participation in this study is completely voluntary, and you may choose not to participate in all or parts of the it; you may also decline to answer any of the questions, and you may withdraw from the study at any time, and for any reason. If you decide to leave the study, the information collected from you will be destroyed unless you give permission to do otherwise. The information obtained in the interviews will be de-identified one month after data is collected. This means that all the information about you, for example your name or place of origin, will be replaced with a number or letter to avoid the disclosure of your personal identity and potential unwanted exposure. There is a code key that will allow me as the researcher of this study to link the personal information collected with the letters and number assigned to this information. This code key will also be securely stored in a computer. Moreover, information collected from you can still be withdrawn should you decide to withdraw from the study. By consenting, you do not waive any of your legal rights. There are not conflicts of interest in this study.

There are not known physical, emotional, economic, and/or political risks for being involved in this study. Also, hardcopies of documents such as this informed consent will be stored in a secure locker cabinet, and I will be the only person with a key to access this locker. Also, you might potentially identify others as participants in this study, and eventually talk about this research. I will minimize this risk by doing separate interviews with you and other participants at different times and locations.

There will be no monetary compensation for participating in this study, but it will cover any potential logistical costs such as meals, and transportation, etc. No personal identifying information will be used, for example, personal names, health insurance numbers, or any other personal data. The information of this study will not be shared with third parties, and it will be used for the purposes of my research exclusively. I will store all the information in a password-protected computer. Identifying data - including hardcopies and digital copies of consent forms or any other identifying information - will be destroyed within 4 years after this information is collected. The final results of this study will be disseminated in academic journals and conferences. The results will also be shared with you during a workshop where we'll write a policy proposal to protect the forest based on your cultural values and knowledge.

Yes:_____No:_____You consent to be identified for your contributions to this research in future research papers, or other academic publications.
Yes:_____No:_____You consent to have your place of origin identified.
Yes:_____No:_____You consent to have your organization's name identified.
*Yes:_____No:_____You consent to be audiotaped (Note: There will be **no** video-recording, and I will not disseminate audio recordings. I will transcribe some audio recordings as part of my ethnographic data - i.e. quotes from interviews).*

If you have any question or concerns about this project, please contact either me or my supervisor.

Research Supervisor: [name]

If you have any ethical concerns or complaints about your participation in this study, and want to speak with someone not on the research team, please contact the McGill Ethics Manager at 514-398-6831 or lynda.mcneil@mcgill.ca.

Please sign below if you have read the above information and consent to participate in this study. Agreeing to participate in this study does not waive any of your rights or release the researchers from their responsibilities. A copy of this consent form will be given to you and the researcher will keep a copy.

Participant's Name: (please print) _____

Participant's Signature: _____

Date: _____

Researchers: [name]
Supervisor: [name]

Appendix 4. Sample of international and national law on Indigenous peoples and their rights.[440]

A. INTERNATIONAL LAW

Document	Type	Relevant articles/ Cases	Sources
United Nations Declaration on the Rights of Indigenous Peoples	Declaration	Relevant Articles Art. 10 on right not to be forcibly removed from lands or territories - free, prior and informed consent of Indigenous peoples Art. 11 on right to practice and revitalize cultural traditions and customs (past, present and future manifestations included) Art. 26 on right to the lands, territories and resources which Indigenous peoples have traditionally 'owned' Art. 46 on safeguarding of territorial unity Case Law *Kichwa Indigenous People of Sarayaku v. Ecuador*, 2012.	UNDRI, 2007
Universal Declaration of Human Rights	Declaration	Relevant Articles Art. 1 on equality, freedom and dignity of all human beings Art. 27 on the right to freely participate in the cultural life of the community	UDHR, 1948
International Labor Organization Convention, No. 169	Convention	Relevant Articles Art. 4(1) on special measures in order to safeguard Indigenous peoples and their livelihoods, institutions, cultures and environment Art. 5(a) on recognition and protection of values and cultures of Indigenous peoples Art. 6(1)(a) on consultation with Indigenous peoples regarding measures that will affect their communities Art. 13 on respect for Indigenous peoples and their relationship with the land Case Law *International Labour Organization Committee of Experts on the Application of Convention and Recommendations (CEACR): Observation concerning Indigenous and Tribal Peoples Convention*, 1989 (No. 169) - Brazil	ILO, 1989
International Convention on the Elimination of All Forms of Racial Discrimination	Convention	Relevant Articles Art. 5 on list of rights which are to be enjoyed by everyone	ICERD, 1969
International Covenant on Economic, Social and Cultural Rights	Treaty	Relevant Articles Art. 1 on right to self-determination	ICESCR, 1966
International Covenant on Civil and Political Rights	Treaty	Relevant Articles Art. 1 on right to self-determination Art. 27 on rights of minorities to enjoy their own culture, their own religion and their own language	ICCPR, 1966

[440] Thanks to Daan de Bruijn for her support with these tables.

		Case Law *Lovelace v. Canada*, 1977 *Kitok v. Sweden*, 1985 *Ominayak v. Canada*, 1990 *Marshall v. Canada*, 1991 *Lansmänn and Others v. Finland*, 1992 *Hopu & Bessert v. France*, 1997	
American Declaration of the Rights and Duties of Man (also known as the "American Declaration" or "Bogota Declaration")	Declaration	Relevant Articles Art. 1 on right to life, liberty and personal security Art. 2 on right to equality before the law Art. 23 on right to property Case Law *Brazil, Comunidad Yanomam*i, 1985 Paraguay, *Enxet-Lamenxay and Kayleyphapopyet (Riachito)*, 1999 *Mary and Carrie Dann v. United States,* 2002	ADRDM, 1948
American Declaration on the Rights of Indigenous Peoples	Declaration	Relevant Articles Art. 1(2) on right to self-identification as Indigenous peoples Art. 2 on recognition multicultural and multilingual character of Indigenous peoples Art. 3 on right to self-determination Art. 6 on collective rights of Indigenous peoples Art. 9 on recognition juridical personality of Indigenous peoples Art. 10 on rejection of assimilation or of destruction of Indigenous cultures Art. 13 on right to cultural identity and integrity Art. 14 on systems of knowledge, language, and communication Art. 15 on Indigenous spirituality Art. 19 on right to protection of a healthy environment Art. 20 on rights of association, assembly, and freedom of expression and thought Art. 21 on right to autonomy or self-government Art. 22 on Indigenous law and jurisdiction Art. 23 on participation of Indigenous peoples and contributions of Indigenous systems Art. 25 on right to land, territory, and resources	ADRIP, 2016
American Convention on Human Rights	Convention	Relevant Articles Art. 12 on freedom of conscience and religion Art. 21 on right to property Art. 24 on right to equal protection Case Law *Mayagna (Sumo) Awas Tingni Community v. Nicaragua,* 2001 (Inter-American Commission on Human Rights (IACHR)) *Kaliña and Lokono Peoples v. Suriname* 2016 (Inter-American Commission on Human Rights (IACHR))	ACHR, 1969
Charter of the Organization of American States	Treaty	Relevant Articles Art. 45, a and f on the right to material well-being and spiritual development.	OAS, 1948
United Nations Conference on Environment and	Convention	Relevant Articles Chapter 26 on recognising and strengthening the role of Indigenous peoples and their communities	UNCED, 1992

Development, Agenda 21			
Convention on Biological Diversity	Convention	Relevant Articles Art. 7, j on the preservation of traditional knowledge Art. 8 on in-situ conservation Art. 12, 2 on the exchange of information/Indigenous and traditional knowledge. Art. 18, 4 on the cooperaton for the development and use of Indigenous and traditional technologies.	CBD, 1992
Convention on the Rights of the Child	Convention	Relevant Articles Art. 30 on rights of a child who is Indigenous to enjoy their own culture, religion, and language	UNCRC, 1989
European Convention on Human Rights	Convention	Relevant Articles Art. 9 on freedom of thought, conscience and religion Art. 14 on prohibition of discrimination	ECHR, 1950
First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms	Convention, Protocol No. 1	Relevant Articles Art. 1 on the protection of property	ECHR, 1950
African Charter on Human and Peoples' Rights	Charter	Relevant Articles Art. 2 on enjoyment of rights and freedom, without distinction of any kind Art. 3 on equality before the law and equal protection of the law Art. 8 on freedom of conscience and religion Art. 14 on right to property Art. 19 on equality of all peoples Art. 20(1) on right to existence Art. 20(2) on right of colonized and oppressed peoples to free themselves from domination Case Law *Endorois Welfare Council v. Kenya*, 2003	ACHPR, 1998
World Bank Operational Directive 4.10: Indigenous Peoples**	Operational Directive	Relevant Articles (sample) 2. On the recognition of identities and cultures of Indigenous peoplesand connection to land. 3 and 4. On how the term 'Indigenous Peoples' is defined. 6. On how prior and informed consultation.	World Bank Revised version, 2013
Resolution on the situation of the Indigenous peoples of Brazil Official Journal C 287 , 30/10/1995 P. 0202	Resolution	Relevant Articles (sample) 1. Support for the defense of human rights of Indigenous groups 2. Call on the Brazilian authorities to protect Indigenous territories.	European Parliament, 2012

B. NATIONAL LAW

Document	Type	Case/Relevant articles	Sources
Constitution of Ecuador	Constitution	Relevant Articles Arts. 71-74 on rights of nature Case Law *Loja - Vilcabamba River case*, 2011	Constitution of 2008
Te Urewera Act, New Zealand	Act	Relevant Articles Section 11 on recognition Te Urewera as a legal entity	NZ Legislation, 2014
Te Awa Tupua (Whanganui River Claims Settlement) Act, New Zealand	Act	Relevant Articles Section 12 on Te Awa Tupua recognition Section 14 on Te Awa Tupua declared as a legal person	NZ Legislation, 2017
Constitution of Colombia	Constitution	Relevant Articles Chapter 3 on collective rights and the environment Case Law *The Atrato River Case*, 2016 (Constitutional Court) *Amazon Basin as a subject of rights* (Supreme Court of Justice)	Constitution of 1991
Constitutional Act, Canada	Constitution	Relevant Articles Part II, Section 35 on rights of the aboriginal peoples of canada Right of self-government in Canada for Indigenous peoples. Recognition Indigenous law in the Canadian legal system. Case Law *R. v. van der Peet*, 1996, para. 263 about recognition ancestral laws. *R. v. Pamajewon*, 1996 *R. v. Marshall*, 1999, para. 130 about recognition of aboriginal law as law in Canada.	Constitution Act, 1982
U.S. Constitution	Constitution	Relevant Articles Amendment 14 Case Law	
Indian Civil Rights Act	Act	Whole document	Indian Civil Rights Act, United States, 1968
American Indian Religious Freedom Act	Act	Whole document	American Indian Religious Freedom Act, United States, 1978

Appendix 5. Tables on law and post-anthropocentric law

Legal models and alternatives: Presented at the department of Natural Resources Sciences, McGill (Some content has changed)

12/7/2020

LEGAL MODELS
"CONTRASTING FEATURES"

1

ENVIRONMENTAL LAW (Anthropocentric)	RULE OF ECOLOGICAL LAW (non-anthropocentric)
- Humans and nature as separate	- Relational view of humans and nature
- Managing environmental externalities via legislation.	- Based on ecological sustainability
- Emergency response approach	- Systemic and long term vision
- Based on main stream economic models (I.e. infinite planet)	- Based on ecological economics model (i.e. finite planet)

Based on Massimiliano Montini, 2017 and Garver, 2013, 2019.

12/7/2020 2

2

'Reinforcing features of Ecological Law'

Adapted from Garver, 2013

12/7/2020 3

3

12/7/2020 4

4

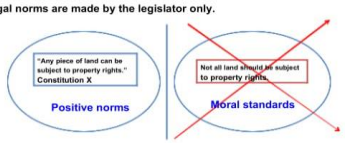
Western Legal Theories: Quick review!

1. **Natural Law:** Law and human morality are the same, i.e. what is legal is just or fair.

5

2. **Positivism:** Here morality and law are separated.

Legal norms are made by the legislator only.



6

1

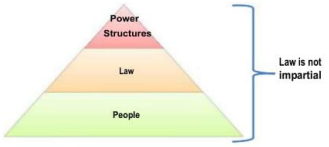
3. **Realism:** Law should emulate the methods of natural science, i.e., rely on empirical evidence.
   - Goal: Predicting judges decisions.

Exploring:
- Psychological factors
- Physical factors
- Environmental factors

→ Legal decision (judge)

7

4. **Critical Legal Studies:** Laws are used to maintain the status quo of society's power structures.



8

Summary

- Natural Law → Law = morals
- Positivism → Law ≠ morals
- Realism → Factors of legal decisions
- Critical Legal St. → Law = power

9

So…

Western Legal theories	Legal pluralism
Rift between law and other systems.	Cultural diversity is accounted for within the law. - Other systems of knowledge. - Natural systems.

10

2.b. Legal Pluralism

The law as a single structure.

"Towers of Babel"

Emily Aichurch, 2005.
Source: http://www.emilyallchurch.com/gallery/babel-towers/

11

PREMISE 1: Law as relationships

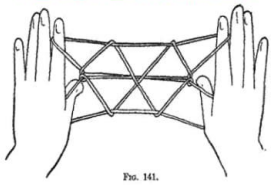


FIG. 141.

Carrying Wood

Source: Navajo design - http://www.stringfigures.info/cf/carrying-wood.html

12

PREMISE 2: Law as a system of norms

Where are indigenous territories and laws in this map?

Legal Systems World Distribution

Image: The Common Law and Civil law Legal Traditions.
Source: Public domain. http://chartsbin.com/view/aq2

13

13

PREMISE 3: Western Law is one legal tradition.

Clearing the forest of legal cultures

Image: Abel Rodriguez (Nonuya, Colombian Amazon).
Seasonal changes in the flooded rain forest, Ink on paper, 2005.
Source: www.documenta14.de

14

14

Yet…

1. Law separated from larger social and ecological systems it is set off to regulate.
2. Contributing to ongoing socio-ecological crisis.

ILT link law and the lifeworlds where it is embedded.

15

15

Indigenous Legal Traditions
(4 mutually reinforcing features)

16

16

Additive model…

Civil law + Environmental Law + International law + ….

= The LAW ?

17

17

The belt is:

Law – protocols for care
Medicine - keep woman uterus warm
Culture – dress culture

Woven symbols are mandates to care for the land and each other.

So…

Indigenous material culture IS ALSO a source of law.

"Chumbe" belt – Inga people
Southern Colombian Andes – Amazon, Putumayo
Source: Hands of an indigenous woman in the Sibundoy Valley.

18

18

METHODOLOGY

TOOLS

19

Ethnographic dimension	Actors	Secondary sources	Overall Themes
COMMUNITY	Indigenous practitioners (Interviews)	-*Planes de Vida* – Life plans -Institutional archives -Indigenous scholarship	-Indigenous legal systems. -Practices of territorial care
LEGAL	Legal practitioners (Interviews)	-Environmental legislation and jurisprudence -Legal theory and doctrine.	-Rights of Nature -Ecological Law
SCIENTIFIC	Biologists; ethno-botanists; geographers. (Interviews)	-Scientific papers -Policy papers -Institutional archives.	-Ethno-botanical classifications -Deforestation (GIScience)
FOREST	Plants*	-Scholarship on plants (ethnobotany, plant science, ethnography on plants).	Decision-making with nonhumans.

20

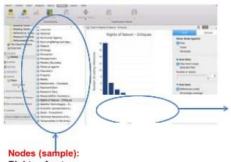
Research Process

Place	Southwestern department of Nariño, Colombia.
Ethnographic dimensions	Community; Scientific
Theme	The co-production of a research agreement with human and other-than-human agencies. Agreement: Ethno-botanical classifications of Banisteriopsis caapi among Cofan peoples.
Actors	Ethnobotanist*; indigenous community; ritual plants; myself.
Methodology for research contract (Steps)	1. Agreement between (human) people. 2. Inter-institutional agreement (D.R´s university and cabildo) 3. Ask the elder's permission 4. Ask the mountain Plants under study are "vessels" to communicate with "invisible people."

*David Rodriguez, Ethnobotanist. Fieldnotes, 2019.

21

Tools



Nvivo: Analyze qualitative data

1. **Codification of interviews, scientific articles, legal sources, etc.**
2. **Analyze data (i.e. number of coding references; hierarchy…)**

sources

Nodes (sample):
Rights of nature (critiques)
Planetary boundaries
Extractivism

22

Sources for a paper (model)

Sources	N
Empirical:	
- Semi-structured interviews	12
- Fieldwork (2019) Notebooks	3
- Research Protocol: "Diversity and classification of Banisteriopsis caapi"*	2
- Agreements between community and researcher.	3
Literature review:	
- On Amazonian cosmologies	18
- Statutes, court decisions, etc.	9
- Plant sentience (i.e. Gagliano, 2018), social studies of plants.	20
- Other relevant sources	40

* David Rodriguez (ethnobotanist)

23

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CHAPTER 6: Worlding with Indigenous Law

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