The Dilemmas of the Bio-legal Turn and the Commitment to a Vital Phenomenology of Law

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Abstract

This paper aligns with the latest trends in the philosophy of Law aimed at promoting a more balanced ecological relationship among the planet's diverse forms of life. It pays particular attention to Pachamama and Earth Jurisprudence, key bio-legal movement figures. The paper's main goal is to examine potential and ethical-legal challenges—referred to as dilemmas—associated with the two approaches. The methodological focus is on a vital ethic that facilitates a new understanding of non-human entities. Consequently, this study provides insights into navigating the challenges faced by bio-legal paradigms.

Keywords: bio-legal paradigms; earth jurisprudence; pachamanism; ecological ethics; non-human subjectivity.

Los dilemas del giro biojurídico y la apuesta por una fenomenología vital del derecho

Resumen

Este trabajo se inscribe en las nuevas tendencias que propone la filosofía del derecho para contribuir a un mejor equilibrio ecológico entre las distintas formas de vida que habitan el planeta, también, se presta especial atención al Pachamanismo y la Jurisprudencia de la Tierra, que son destacados representantes del movimiento biojurídico. Se analizan las limitaciones potenciales y jurídico-morales de estos dos enfoques, a los que he denominado dilemas. Luego, se hace una propuesta metodológica centrada en una ética vital que sirva de base para el acercamiento a una nueva subjetividad de los entes no humanos. Como resultado, este estudio ofrece algunas ideas para afrontar la encrucijada del paradigma biojurídico.

P*alabras clave*: paradigma biojurídico; jurisprudencia de la tierra; pachamanismo; ética ecológica; subjetividad no humana.

Os dilemas da virada biojurídica e a aposta por uma fenomenologia vital do direito

Resumo

Este trabalho inscreve-se nas novas tendências propostas pela filosofia do direito para contribuir para um melhor equilíbrio ecológico entre as diferentes formas de vida que habitam o planeta. Além disso, é dada especial atenção à Pachamama e à Jurisprudência da Terra, que são representantes de destaque do movimento biojurídico. São analisadas as limitações potenciais e jurídico-morais dessas duas abordagens, às quais denominei dilemas. Em seguida, é feita uma proposta metodológica centrada em uma ética vital que sirva de base para a aproximação de uma nova subjetividade dos entes não humanos. Como resultado, este estudo oferece algumas ideias para enfrentar a encruzilhada do paradigma biojurídico.

P*alavras-chave*: paradigma biojurídico; jurisprudência da terra; pachamanismo; ética ecológica; subjetividade não humana.

Introduction

This article is the primary result of a doctoral research conducted from 2017 to 2022, which analyzes the recognition of a sacred site known as "the black line" as a subject of law, based on a shared experience within the Arhuaco community of the Sierra Nevada. It is currently part of a research project named "Multiple Enunciations of the Legal Epistemology of Indigenous Peoples in Colombia: A Comparative Study from the Global South," code: 25-042-SNIT, Zoon Politikon research group .

During the ongoing environmental crisis humanity faces, there is growing justification to grant a legal status to natural rights. This approach should be seen as part of a range of legal and political strategies aimed at preserving life on our planet during the Anthropocene era. Thus, a movement comprised of academics, political activists, and global and local environmentalists can be recognized as a new conceptualization of law. I have termed this shift the "bio-legal turn." While the name may be controversial given the movement's heterogeneous nature, certain commonalities suggest a shared foundation.

The principles of biocentrism have emerged from various expressions of the same initiative in biology and ecology, including thinkers such as Leopold, Naess, Devall, Sessions, Moore, and Leimbacher, as well as Stone. In contrast to environmentalist-utilitarian views, this proposal seeks to decentralize human interests to re-centralize nature. Different tendencies within the movement achieve this goal to varying degrees, leading to theoretical developments in ethics and law. These theories advocate for recognizing nature as a legal subject (Birnbacher, 1998) and call for establishing a circular, dialectical relationship between humans (as subjects) and nature (as an object) within legal frameworks (Bosselman, 1986; Birnbacher, 1998).

Consequently, this legal movement, which originated in the 19th century, supports the inclusion of nature in the language of rights to fulfil three main objectives: 1) to strengthen and expand the overall protection of nature through the legal system; 2) to enhance procedural opportunities, allowing environmental advocates to go to court on behalf of nature, especially in cases against executive actions. Gaining "subjective rights" will grant nature the formal ability to sue on its own behalf; and 3) to ensure the prioritization of environmental concerns are in legislation, as well as in the administration of justice and executive decisions (Birnbacher, 1998, pp. 47-48).

The contemporary version of the bio-legal turn raises several important issues, with a central focus on a struggle to recognize the rights of non-humans. Some authors advocate specific subjects, such as animals, highlighting the differences and similarities in rationality of humans and other species. This perspective aims to demonstrate that certain animals deserve rights (Singer, 2009). While this anthropocentric approach is significant, it is not the primary focus of this article. Instead, it will concentrate on the

recognition and justification of the rights of nature. In this section, I will outline the main features of the key currents within the bio-rights movement: Legal Pachamama (the Andean model) and Earth Jurisprudence (the European model). The emphasis here is on recognizing nature as a legal subject. It is important to identify the similarities between the perspectives in addressing the challenges of incorporating such rights into existing legal systems. For example, what mechanisms would be used to establish legal subjectivity? Would this fall under the purview of the state, society, or a relational ontology? (Escobar, 2016). Additionally, is the creation of this legal subject a matter of legal or moral concern, reflecting the Legalist versus Realist debate? (Naffine, 2009).

1. Andean model of bio-legal turn: Pachamanism

Accordingly, Gudynas (2014) identified the turning point of the pachamanist project as the vision of 21st-century socialism promoted by Chavez in Venezuela (1999), Morales in Bolivia (2005), and Correa in Ecuador (2006). Around these three personalities, other sympathizers of the political turn formed in the region. It is thus a Latin American political-legal program, albeit asymmetrical. The following illustrates these constitutional changes with a table based on Boyd (Gudynas, 2014, p. 61)

Table 1. Map of the evolution of bio-legal discourse in South America

Country	Substantive environmental, rights	Legal procedure	Individual responsibility to the environment	Government obligations to the environment	Rights of Nature
1. Argentina	+	+	+	+	-
2. Bolivia	+	+	+	+	-
3. Brazil	+	+	+	+	-
4. Chile	+	+	-	+	-
5. Colombia	+	+	+	+	-
6. Ecuador	+	+	+	+	+
7. México	+	-	-	+	-
8. Perú	+	-	-	+	-
9. Uruguay	-	-	+	+	-
10 Venezuela	+	+	+	+	-

Source: Gudynas (2014, p. 61).

The above graph indicates that the environmental law thesis has been formally accepted. However, some countries face an apparent contradiction between their economic models and their constitutions, particularly in Colombia. These nations are among those that hypocritically comply with international treaties (Simmons, 2009). In contrast, some countries, such as Mexico, openly denied legal and environmental

protections for a specific period. Additionally, countries such as Ecuador and Bolivia advocate a radical interpretation of the rights of nature, especially in regions with higher indigenous populations. This blend of progressivism and Pachamanism has led to what is known as the biocentric turn in various parts of the continent.

The term Pachamama reflects an ancestral indigenous wisdom of several Andean countries in Latin America and provides a framework to interpret and justify the rights of nature. This concept encompasses the idea of Pacha (world) and mama (mother) within a socio-political and cultural movement aimed at restoring a 'pure' society of the Runa or jaqi, which refers to the pre-Hispanic peoples (Estermann, 2006, p. 156). This movement seeks to recover their ancestral and cosmological philosophy, operating as an extra-systemic and counter-hegemonic model that rejects the frameworks established since the conquest of the Americas. While it might be tempting to view this as a metaphor for a lost pre-modern paradise—a concept that is paradoxically a modern myth—Pachamama has its roots in progressive Latin American politics. The movement has developed through the state's legal and political channels. Additionally, "Pacha" embodies one of the fundamental values of Andean philosophy: relationality. This understanding is based on the different layers of reality, which, for the Runa or jaqi, include three realms: Hanaq/alaxpacha (the upper world), kay/akapacha (the world we inhabit), and uray (or ukhu). These are not distinct 'worlds' or 'layers,' but somewhat different aspects or 'spaces' of the same reality (Estermann, 2006, p. 158).

Andean philosophy can be compared to various philosophical and religious traditions, such as pantheism and Taoism. It seeks to reject the classical dualities of modern Eurocentric thought and emphasizes the concept of wholeness in all human relationships, both among humans and between humans and nature. Two key principles that embody this Andean connection are correspondence and reciprocity. Correspondence refers to a mutual correlation between entities, which manifests at all possible levels and types of interaction betwen two or among more subjects. This perspective also rejects scientific causality, which tends to narrow down reality into categories such as similarity, adequacy, identity, difference, equivalence, implication, deduction, or exclusion. Reciprocity, on the other hand, represents a practice involving human and non-human entities that contributes to universal balance. This understanding is framed within a cosmological perspective that is often dismissed by Western thought. The radical concept of reciprocity is linked to the notion of cosmic justice, enabling the development of a theory of human rights that includes respect for nature (Ávila, 2011). These foundational ideas are crucial to comprehend the connection between Pachamanism and Law, particularly in relation to the constitutions of Ecuador and Bolivia.

The bio-legal turn in the Ecuadorian Constitution

The 2008 Ecuadorian Constitution marks a significant evolution in dialogues surrounding environmental rights and indigenous sovereignty. This movement aligns closely with left-progressivist trends, reflecting a broader biocentric approach within constitutional law. However, it is essential to note that these democratic advances are nuanced, characterized by a "light-dark" quality rather than fitting neatly into traditional leftist categories. They could be more accurately described as "brown," indicating a convergence of ecological concerns with indigenous rights, which diverges from the orthodox left's typical red imagery (Gudynas, 2014).

A pivotal element of this constitutional shift is a robust and well-organized indigenous movement in Ecuador. This movement transcends mere legal frameworks, asserting that one cannot fully comprehend the dynamics between Correa's government and indigenous communities solely through a constitutional lens. Among the most remarkable normative innovations embedded in the Constitution is Chapter VII, which articulates the rights of Nature. Specifically, Article 71 of the Constitution proclaims: "Nature, or Pacha Mama, in which life reproduces and takes place, has the right to full respect for its existence and the preservation and regeneration of its life cycles, structures, functions, and evolutionary processes."

Furthermore, this article empowers any individual, community, people, or nation to demand that public authorities uphold the rights of nature, thereby embedding environmental guardianship within the legal framework (Constitution of the Republic of Ecuador, Official Registry No. 449, October 20th). Significantly, Article 71 is not an isolated provision; it reflects a broader ethos present throughout the Constitution. The principles associated with Pachamama—an indigenous concept signifying Mother Earth — echo in various constitutional elements, including the right to a healthy ecologically-balanced environment (Article 14), the right to appeal on environmental grounds (Article 71, 397), and specific protections for indigenous peoples in contexts such as mining (Articles 56, 57). In contrast to other Latin American constitutions, such as those of Venezuela and Argentina, which may exhibit more conventional liberal progressivism, Ecuador's Constitution stands out for its revolutionary integration of ecological and indigenous matters. This groundbreaking approach positions Ecuador as a leader in the global discourse on environmental rights, reflecting an innovative synthesis of cultural heritage and legal advancement. It is undeniable that, in some cases, this legal framework has protected "Mother Nature." Through the rulings of the Ecuadorian Constitutional Court (Sentence No. 166-15-SEP-CC, 2015).

However, these sentences resemble liberal European or Latin American legislation. Indeed, they could be more innovative in legal theory and raise doubts when juxtaposed with extractivist companies' economic and business interests. During President Correa's term, the Ecuadorian government granted environmental licens-

es to oil companies and mining in the Amazon, which is not far from the neoliberal models of the subcontinent (Colombia and Peru) and is therefore called brown progressivism. The result is that positivist legal rhetoric has been incorporated into the Ecuadorian Constitution. It does not immediately solve the problems that European legal biocentrism points out.

The Bio-Legal Turn in the Bolivian Constitution (2009)

The *Movimiento Socialista de Los Trabajadores* (MST-*Socialist Workers' Movement*) played a fundamental role in shaping the ideological framework of the Bolivian Constitution of 2009. This constitution stands as a significant advancement in Latin American constitutional thought, particularly for decolonial scholars. At its core, the Bolivian Constitution's first article presents a bold vision of a pluralist nation-state, a revolutionary concept within political philosophy. Specifically, it declares Bolivia to be a social unitary state characterized by diverse national common law, offering a legal foundation that embraces plurality in political, economic, legal, cultural, and linguistic dimensions as an integral part of the country's ongoing integration process (Prada, 2008).

The constitution emphasizes a need to promote a thorough decolonization process rooted in Andean constitutional traditions. The notion of "plural nationality" encapsulates the intricate tapestry of Bolivia's social reality, grounded on four fundamental principles: a) "peoples' self-determination," which emphasizes indigenous communities' autonomy and governance ; b) "plurality" and "pluralism," highlighting the coexistence of diverse cultural identities; c) "decolonization," advocating for the dismantling of colonial legacies; and d) a holistic expression of indigenous peoples' self-determination that emphasizes harmony with nature and reverence for communal values.

An illustrative example is "Sumak Kawsay," which advocates the restoration of collective well-being across all dimensions of life and serves as an alternative to the dominant exploitative development model (Macas, 2010). This concept is intricately tied to interrelated values: "Pakta Kawsay" (balance) promotes individual and community equilibrium through collaborative efforts; "Alli Kawsay" (harmony) facilitates the preservation of harmony both collectively and individually; and "Runakay" (know-how) embodies the comprehensive wisdom derived from nature (Pacari, 1984). Despite the progressive stance on decolonization articulated within the Bolivian Constitution, it lacks a dedicated section on the rights of nature, a paradigm shift that the Ecuadorian Constitution embraced.

This gap prompted the establishment of Standard 071 in 2010, which formally introduced a Mother Earth's Rights Law. Article 7 delineates the core elements of Mother Nature's subjective rights, which include the right to exist, the right to a diverse ecosystem, the right to clean water, the right to unpolluted air, the right to ecological balance, the right to restoration, and the right to a contamination-free life. However,

there remains a persistent tension within the legal framework, as this spirit of Andean constitutional principles struggles to harmonize with conflicting articles within the constitution. This tension underscores the ongoing challenges in fully operationalizing these ideals within Bolivia's legal and societal fabric. The importance of industrialization and the exploitation of natural resources is emphasized.

These contradictions are common in the Latin American context, where there is a tendency for excessive legal rhetoric that lacks the power of an actual law. The distinction between law as written and law as implemented is a topic of debate across different legal cultures. However, established norms need to have a greater substantive impact and greater effectiveness in this region. This issue is connected to the pitfalls of legal language and legalism (López, 2004). Moreover, new provisions have emerged aimed at radically reshaping the understanding of nature, as some decolonial theorists advocate.

However, these provisions must navigate the challenges posed by Positive Law while also reinterpreting moral rights. Similar to the Ecuadorian model, the Bolivian Constitution has not yet fully integrated all epistemic and philosophical perspectives into its legal framework. This shortcoming may stem from an evident need to change how liberal law is conceived progressively. Consequently, developing a conceptualization of the rights of nature that goes beyond its inherent limitations remains a necessary undertaking. As noted by indigenous intellectuals in recent years, there is a recognition that indigenous struggles in Latin America cannot be effectively addressed within the premises of the modern Western state, which often imposes a top-down model of plurinationalism (Llasag, 2021).

Another issue is the essentialism surrounding indigenous subjectivity, which depicts the Latin American Indigenous person as the ultimate environmental saviour responsible for restoring cosmic balance, often referred to as Pachamama. This perspective mirrors the Judeo-Christian notion of redemption and, conversely, hinders a more holistic approach to political thought.

Legal Pachamanism seeks to strengthen Mother Nature's position and establish procedural mechanisms to implement it. This approach is highly typical of legal formalism, which originated in the French ius civile of the nineteenth century and was prevalent in most Latin American countries (López, 2004). In addition, although Pachamanism does develop a theory of values as described above, it needs to explain how these values are meticulously integrated into legal discourse. As a result, this project needs a profound reflection on the justification of the legal subjectivity of non-human beings. That is the debate over recognizing legal or moral rights for organisms outside the human line. The Eurocentric legal bio-turn then takes up this premise through Earth Jurisprudence.

The new conceptualization of law and nature

Law and nature should be understood as part of the primary Law of the universe, referred to as the "Great Jurisprudence" (Burdon, 2011). This concept is ultimately defined as the ability to connect social organizations with cosmic forces. It is important to understand the universe through multiple networks, allowing the Law to extend beyond traditional legal thinking. Thus, Great Jurisprudence introduces a fresh perspective into earthly jurisprudence, focusing on concepts such as the fundamental interconnectedness of all things. It emphasizes the continuous flow underlying everything, the emergence of order from chaos, creativity in processes far from equilibrium, complexity, self-organization, and evolving emergence (Greene, 2011).

This perspective leads to an understanding of new laws that reflect an interconnected complex flow throughout the universe. The relationship between cosmic forces and social organizations underlies this legality. This is supported by a radical philosophy of Law that transcends a traditional definition of positive Law (Cullinan, 2011). Earthly jurisprudence, therefore, is a philosophy that aligns with Great Jurisprudence goals. It focuses on human governance and aims to integrate the human legal system into the Earth community (Murray, 2014). Consequently, its framework is in dialogue with the concept of deep ecology. It ultimately proposes a bionomy-ecology jurisprudence that offers alternatives to create a new legal subject at the biosphere level: the Earth. Furthermore, Earth jurisprudence involves an ethical commitment to the Earth as a guarantor of the realization of its rights.

This ethical commitment is encapsulated in a legal theory called Wild Law, which advocates for a new kind of legal ethics toward nature. The initiative to confer enforceable rights on ecosystems—allowing individuals to take legal action to protect wildlife—means that wildlife law functions as a theory of the ecology of Law, fitting within the Western legal system. It does not aim to establish a new branch of Law or Environmental Law; instead, it suggests ways to reshape existing Law to recognize additional non-human rights holders. However, legal biocentrism's legal ethical components need to be revised to address theoretical practical challenges.

The first theoretical objection prompts us to consider how legal discourse can align with these new subjects. In traditional legal thought, the element of action or intentionality is essential for defining rights, as it leads to the recognition of free choices and mutual obligations within a rational society—qualities traditionally attributed solely to humans, and perhaps extending to some proto-human animals. An alternative approach involves recognizing non-human entities as subjects deserving of special protection and the obligation to respect their rights. This leads to a pivotal question: Should nature be recognized as a bearer of legal and moral rights?

These rights are much easier to recognize as legal instead of moral rights. Legal rights are not contingent on an active action (freedom-obligation). Instead, the interest that a human group determines to protect, such as abstract entities, extends to human beings' incapacity to exercise actions proper to conscience and established rationality. Conversely, moral rights entail intentional actions. Moreover, "beings that are neither actually nor potentially sentient are not the proper subject of a moral right" (Rescher, 1980, p. 85).

This would address objections to incorporating the rights of nature. However, a predicament persists because the legal system is not solved, which is part of the problem, but in particular, because the Law requires a justifying theory that gives meaning to its application. Hence, it is imperative to justify the inclusion of non-humans as subjects of Law. In that sense, following those within this movement encourages an ideological project more ambitious than the field of legal rights, involving the basics of moral rights, crucial to adopt the term 'holder of rights' utterly. "Go toward making a thing count judicially, to have a legally recognized worth and dignity in its contemporary group of rights-holders" (Stone, 2010, p. 4).

In any case, the mark of Kantian philosophy is present in those who think the attribution of rights to the non-human is inconceivable. It is the human condition materialized via rationality; being rational subjects, we are moral. It leads to the a priori obligation to experience. The Categorical Imperative only expresses what constitutes obligation. "R*eason objectively and universally lays down the form of a Command to an individual as to how he ought to act"* (Kant, 1887, p. 35). This statement becomes metaphysical, formalistic, abstract, and objective, and it contains blind faith in the European philosophical legacy. If the subject is non-rational, it is not moral, nor can it have a will. These remain the political and regulatory pillars that define moral rights to this day.

Regarding the objections raised by "moderate environmentalists," I can again identify the Kantian rationalist bias to the extent that he did classify rights as innate and acquired (Kant, 1887). First, are those rights belonging to everyone, regardless of any act of legal recognition. In the opposite sense, the second results from a judicial acknowledgment process. Moderate scholars, and the more liberal (bio-legal) scholars engage in this discussion, starting from Kantian moral metaphysics. It is precisely one of the weakest points of the bio-legal approach since they are bogged down in the legal debate.

This position brings together the notions of legal and moral rights developed by modern philosophy, neglecting nature as a rights-holder. This attempts to answer practical objections, that is, an adequate access of nature to the judicial system. This questioned expanding standing. It is a legal term that means being qualified to assert or enforce legal rights or duties in a judicial forum. Since one has a sufficient protectable interest in the outcome of a justiciable controversy (Merriam-Webster 2011), the

name of non-humans makes a difference. Regarding how the movement addresses this issue—the guardianship approach, for instance, the answer is no. Focusing on the needs of non-humans, the approach cannot judge the needs of rivers, lagoons, or forests, reverting to a paternalistic view of environmental Law. Likewise, invoking the protection of nature differs in nothing from the mechanisms already established to protect areas at risk of extinction or those suffering high contamination levels, and so forth. Moreover, finally, it is striking how dignity continues to be privileged as the supreme principle applicable to the new rights holder described above.

The same applies when attempting to enter the rights of nature through the language of human rights. Rights are generally understood as moral rights. It means, for example, that not all human species have these rights. Moral capacity implies conscience, autonomy, and the capacity to commit to their society. In that way, moral rights, in the end, are transformed into citizen political rights (Ackerman, 1980). Accordingly, human rights are considered a result of a specific moral-political process that derives from the composition of a moral person. It would prevent talking about non-human rights from the device of human rights as we now know it. Critics of expanding moral rights to nature cling to the morality of the personality based on its capacity for consent, a privilege of only some members of the same human species. Therefore, it would be one thing to be the holder of rights and quite another to be potentially the receiver.

Therein, some scholars pose a rhetorical question. Even if grass and plants "need" water, in the sense that they will die without it, why does it follow that we have to water them? Do they have any moral importance? (Elder, 1984). For these reasons, I did not emphasize the human rights intersection and non-humans' rights, precisely because it is clear that, in this regard, this discourse is a replica of the moral rights of the legacy of modern anthropocentric Law. Therefore, in the next section, I propose novel ideas about including non-humans as subjects of moral rights and returning to some precepts of Pachamanism and European legal biocentrism. However, this approach is based on different assumptions. Since it has been a prolonged theoretical reflection process, in addition to my experience with the sacred place of the Arhuaco people, called the black line. Therein, I give supremacy to the experiential value that leads to a radical ethical commitment developed through a phenomenology of Law and vital ethics.

Method. Phenomenology of Law as a Mechanism of Expansion of Non-Human Subjects

Traditionally, phenomenology is characterized by several distinct attributes that collectively shape its framework. Firstly, it is fundamentally a descriptive theory that elucidates how interpersonal interactions shape human perception, underscoring the role of our experiences with others in constructing our understanding of the world.

Secondly, in phenomenology, clarification is not synonymous with explanation; it eschews the search for causal laws governing the existence of phenomena. Instead, its primary aim is to delineate individual entities' boundaries and essence, focusing on what makes them unique. Thirdly, phenomenology employs an eidetic approach, which seeks not to catalogue all possible properties of a given entity but to uncover the core characteristics that define its essence.

This approach emphasizes the significance of particular aspects intrinsic to the entity being examined. Finally, phenomenology adopts a reflective stance; unlike natural sciences, which often focus directly on measurable entities, phenomenology prioritizes our subjective experiences with entities. It invites exploration into how consciousness perceives, interprets, and engages with the world around it (Crowell, 2013). Moreover, phenomenology proposes a vital link between subjectivity and intersubjectivity. Through intentional and intuitive acts, individuals come to a profound awareness of their existence and identity. This self-awareness transcends a mere acceptance of external judgments and fosters a deeper understanding of one's beliefs and values. Such awareness leads to decisions that embody a commitment to a specific worldview, shaping how one perceives and interacts with the universe.

This process facilitates the development of self-knowledge, where a commitment to personal beliefs guides ethical actions and influences one's understanding of the world; consequently, this has significant moral implications (Moran, 2001). Nevertheless, individuals' self-knowledge is foundational to creating a genuinely intersubjective world. The subjective awareness of "I" represents a mode of self-discovery within the context of shared social practices (Crowell, 2013). This awareness arises from other entities' intentional acts, enabling the construction of a shared consciousness that creates a familiar universe. This communicative methodology allows for a transition from imagined realities to concrete experiences. However, the material nature of this shared reality is contingent upon each subject's level of emotional intensity and their specific circumstances. These concepts are intertwined with perception: intensity relates to the depth of commitment and intersubjective negotiation among individuals, while the timing of existence is closely linked to moral consent and validation concerning the constructed world. In this light, the fundamental attributes of phenomenology—namely, descriptive, clarifying, eidetic, and reflective—remain consistent and relevant.

The primary distinction between this approach and the vitalism associated with human rights lies in understanding that consciousness is anchored in more than mere rationality. Despite this, a phenomenological approach to human rights seeks to establish an interpretive foundation that recognizes the complexity of human experience. It is reasonable to advocate for a phenomenological method that encourages perpetual movement and adaptation, thereby opening pathways to a conceptual third space. In

this space, a subject is not confined to traditional categories such as man, citizen, or human; relatively, this new conceptualization positions a subject as a dynamic verb, emphasizing the agency to create meaning through actions. The focus of phenomenology shifts away from simply incorporating other subjects, such as humans, animals, or sacred places. Instead, the emphasis lies on understanding it as a dynamic process that continually oscillates between the whole and its parts, allowing for a rich exploration of the interconnectedness of existence.

This phenomenological vision does not advocate for an absolute objectivity, nor does it seek to interpret through a rigid canon or dogma. Instead, it embraces the challenge of navigating the complexities of pluralistic identities and experiences, fostering a rhythm of alterity—understanding that the sacred qualities in others also resonate within us. An overly rigid understanding of the foundational subjects related to human rights can lead to intellectual stagnation. Therefore, it is essential for the thoughtful first subject to transition from a purely intellectual rational perspective to a more nuanced appreciation of the affective-experiential dimensions of human existence, which can only be approached through the lens of singular lived experiences. Consequently, human rights should be conceptualized as an empty vessel or an open space—representing the potential for realizing all possibilities within human experience.

Embracing alterity and affectivity, which I have termed the "hermeneutics of enchantment," becomes imperative, underscoring the need to recognize and value the emotional connections that bind us to one another. In conclusion, phenomenology serves as a philosophical framework to foster political commitment and facilitate a bridge between understanding and direct engagement with existential issues.

Thus, the proposal for a third subject centers on the political struggle to preserve the existential and physical integrity of sacred spaces. This transparent, open-door hermeneutic approach is increasingly urgent, calling for a more expansive inclusive conception of human rights. This comprehensive framework must merge theoretical insights with practical applications, aiming to ensure a tangible realization of human rights within a realm of potentialities and possibilities. The result seeks to foster fundamentally non-rational relationships that exist outside the confines of legalistic frameworks, allowing for a deeper understanding of moral subjects beyond the limitations of rational mechanisms.

A phenomenology of enchantment differs, for example, from the traditional legal hermeneutic approach because it persists in a dogmatic autopoietic analysis of legal positivism. This work contributes to multiple vindictive emancipatory struggles, which are not included within the hegemonic language of human rights in philosophical, legal, political terms. To understand no human entities, singularity is crucial to accept ontic alterity, the spirit of unity, and our immanent relationship as a whole. They constitute this relational meeting in a specific experiential time; at

that moment, singularity makes sense in relation to the effects of Law and human rights. That singularity means comprehending totality from an ontology apprehended through contact with it.

It addresses a new version of alterity (Levinas, 2006) that significantly broadens an understanding of the subject and introduces an ethical matter, otherness, proposing responsibility for the other and the pinnacle of reconfiguring a new subjectivity. Only by acknowledging others do we become subjects. It leads to being responsible before others. It turns out crucial to expanding the notion of an individualistic subject of human rights. In addition, responsibility in the role is a bond, one imperative order in such a way that subjectivity implies subjection before others for others (Levinas, 2006). Vitalist phenomenology of law becomes an ethical component through commitment.

Commitment as an Expansion Device within the Principle of Solidarity

Solidarity has its limitations, both synchronically and diachronically. Hence, in the production of a third subject of human rights, commitment operates as a more radical element than solidarity. In this case, what are the characteristics of ethical commitment to human rights? First, what should be understood by commitment? Second, what is activism within the discourse of commitment? Moreover, third, what are the foundations to invent a new militant relationship with ethics and morality? Historical precedents show that the idea of commitment has not been extensively addressed by modern Eurocentric thought. Instead, the theses of biological causality have been incorporated into the philosophical and political categories of liberalism. Thus, co-responsibility operates through an almost geometric reciprocity, in many cases mediated by the utility of relationality within the framework of civil society.

However, anthropological and biological theories have impacted the political legal model from the 19th century to date, to the point that this animus of the selfish ego persists even in the most recent notions of environmental solidarity, which can be called metaethics. Even these environmental versions lack common sense, as they seek to defend the absurdity of continuing to enjoy and use all profitable objects amid an unprecedented ecological crisis in the Anthropocene. It does not mean that, within modernity, and especially in humanities, there are no divergent trends proposing a transition from solidarity to commitment.

In this sense, there is an appeal to a commitment to evolution, but not simply as something utilitarian or focused on the preservation of one or more species. Instead, evolution is interpreted as an interrelationship with the very flow of life. Therefore, cooperation cannot be seen simply as a preservation strategy; commitment implies being part of the different junctures that intersect the planes of the sensible and the supra-sensible. The fundamental axiom is that if I care for the thread of life, I care for myself. In this category of moral value, entities are always part of nature, without externality.

Conclusions

To conclude, this article presents a nuanced examination of two distinct interpretations of the bio-legal turn that have emerged in recent years, underscoring the urgent need for significant socio-legal reconfiguration. These interpretations offer diverse research pathways that pave the way for a deeper understanding of the intersection between law, ethics, and environmental considerations. A significant contribution of this paper lies in its exploration of the phenomenology of law, which raises critical questions about human and non-human entities' moral rights . This discussion is essential to advancing academic discourse on Earth jurisprudence, a framework that recognizes the intrinsic rights of nature and promotes ecological justice.

Furthermore, this article provides a critical analysis of Pachamanism, arguing that it falls short by failing to engage in rigorous philosophical reflection within its overarching project. This lack of philosophical engagement limits its effectiveness in addressing the complex ethical issues at play. To genuinely incorporate non-human subjects into the evolving discourse on rights, it is imperative to undertake a profound moral philosophical reconfiguration. This reconfiguration will serve as the foundation for a meaningful political legal implementation, ensuring that the rights of the environment and its non-human constituents are appropriately recognized and protected in contemporary legal frameworks.

In addition, Pachamanism is an important social movement that serves as a collaborative laboratory, bringing together a diverse coalition of academics, activists, and indigenous communities from the Global North and South. This initiative seeks not only to raise awareness of ecological issues but also to advocate for the legal protection of sacred sites with cultural spiritual significance. Despite its potential, political progressivism does not automatically lead to a legal revolution; this limitation often prevents meaningful transformations that would support Mother Nature's rights. Pachamanism embodies a biocentric legal shift, which redefines our understanding of human rights by recognizing nature's intrinsic rights. This movement encompasses several concepts, including great jurisprudence, which refers to overarching legal philosophies that prioritize ecological integrity; earth jurisprudence, which emphasizes the interdependence of all living beings within legal frameworks; and wild law, which advocates for the legal recognition of nature's rights. Collectively, these ideas represent an innovative approach to addressing contemporary legal challenges while fostering a more sustainable relationship with the environment.

However, the movement faces significant theoretical practical divergences. Specifically, discussions around the precise methodologies for enacting an ecological-legal revolution remain unresolved. Some proponents suggest that legally recognizing nature's rights is a more feasible approach than advocating for moral rights. In contrast, others contend that granting legal standing to non-human entities could effectively

navigate practical obstacles within the existing legal system. This prompts an essential question: why should nature and its advocates be constrained by modern, liberal Western legal frameworks rather than be integrated into a holistic lifeworld that acknowledges their intrinsic connections and values?

This question is at the heart of the environmental crisis, which is exacerbated by the prevailing values of the Anthropocene, a period marked by unprecedented human impact on the planet. In this context, the minor law, or the existing judicial system, is often restricted by a higher normative framework defined by great jurisprudence. Importantly, the social and biological realms do not exist in isolation; they are deeply intertwined. Therefore, the legal phenomenon must adopt a holistic perspective, breaking free of its conventional limitations and embracing a more inclusive understanding that reflects the interconnectedness of all life forms.

References

Ackerman, B. (1980). *Social Justice in the Liberal State*. Yale University Press.

Ávila Santamaría, R. (2011). El derecho de la naturaleza: fundamentos. In C. Espinosa Gallegos-Anda & C. Pérez Fernández (eds.), *Los Derechos de la Naturaleza y la Naturaleza de los Derechos* (pp. 35-74). Ministerio de Justicia, Derechos Humanos y Cultos. http://hdl.handle.net/10469/24847

Birnbacher, D. (1998). Legal rights for the natural object. Philosophical critics. In E. Morscher, O. Numaier & P. Simons (eds.), *Applied ethics in a troubled world* (pp. 29-40). Kluwer Academic Publishers. https://doi.org/10.1007/978-94-011-5186-3

Burdon, P. (2011). The great jurisprudence. In P. Burdon (ed.), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (pp. 59-75). Wakefield Press.

Capra, F. &. Mattei, U. (2015). *The Ecology of Law: Towards a Legal System in Tune with Nature and Community*. Berret-Koehler Publishers.

Corte Constitucional del Ecuador. (2015, May 20th). Sentencia n.º 166-15-SEP-CC. Caso n.º 507-12-EP. https://share.google/OSEABqUNG7yvKfMxd

Crowell, S. (2013). *Normativity and Phenomenology in Husserl and Heidegger.* Cambridge University Press.

Cullinan, C. (2011). *Wild Law*: A *Manifesto for Earth Justice*. Green books.

Elder, P. (1984). Legal Rights for Nature: The Wrong Answer to Rights Question. *Osgoode Hall Law Journal*, *22*(2), 285-295. https://doi.org/10.60082/2817-5069.1935

Escobar, A. (2016). Thinking-feeling with the Earth: Territorial Struggles. *Revista de Antropología Iberoamericana*, *11*(1), 11-32. https://aries.aibr.org/storage/antropologia/netesp/numeros/1101/110102.pdf

Estermann, J. (2006). *Filosofía andina*. *Sabiduría indígena para un mundo nuevo* (2nd ed.). Instituto Superior Ecuménico Andino de Teología.

Greene, H. F. (2011). Cosmology and Earth Jurisprudence. In P. Burdon (ed.), *Exploring Wild Law: The Philosophy of Earth Jurisprudence*. (pp. 126-136). Wakefield Press.

Gudynas, E. (2014). *Derechos de la Naturaleza. Ética biocéntrico y políticas ambientales* (1st ed.). Programa Democracia y Transformación Global; Red Peruana por una Globalización con Equidad; Cooperación; Centro Latino Americano de Ecología Social.

Kant, E. (1887). *The philosophy of Law* (W. Hastie, trad.) (1st ed.). T & T Clark. https://archive.org/details/cu31924032296547/mode/2up

Llasag, R. (2021). Constitucionalismo plurinacional: plurinacionalidad desde arriba y plurinacionalidad desde abajo. In B. A. De Sousa Santos (ed.), *Descolonizando el constitucionalismo. Mas allá de promesas falsas o imposibles* (pp. 271-302). Akal.

Levinas, E., 2006. *Otherwise, than being* (Sixth ed.). Duke University Press.

López Medina, D. E. (2004). *Teoria impura del derecho. La transformación de la cultura jurídica latinoamericana* (1st ed.). Legis.

Macas, L. (2010). Sumak Kawsay. La vida en plenitud. *América Latina en Movimiento*, (452), 14-16. https://www.alainet.org/es/revistas/452

Merriam-Webster. (2011). *Merriam-Webster.com dictionary*. https://www.merriam-webster.com/

Moran, R. (2001). *Authority and Estrangement: An Essay on Self-Knowledge*. Princeton University Press.

Murray, J. (2014). Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology and Law—Part 1, *Liverpool law review, 35*, 215-231. https://doi.org/10.1007/s10991-014-9148-1

Naffine, N. (2009). *Law's Meaning of Life. Philosophy, Religion, Darwin and the Legal Person*. Hart Publishing.

Pacari, N. (1984). Las culturas nacionales en el estado multinacional ecuatoriano. *Cultura. Revista del banco central de Ecuador, 6*(18), 113-123.

Prada Alcoreza, R. (2008). Análisis de la nueva Constitución Política del Estado. Crítica y Emancipación. *Revista latinoamericana de Ciencias Sociales*. CLACSO, *1*(1), 35-50. https://www.clacso.org.ar/criticayemancipacion/detalle.php?id_libro=56

Republic of Ecuador. (2008, October 20th). *Constitución de la República del Ecuador*. Registro Oficial n.º 449, October 20th. http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/eyJjYXJw-ZXRhIjoicm8iLCJ1dWlkIjoiMDZmMTE3NmQtMGMxNC00OTNmLWFhZGYtMjQ0ZmQ0OWQ1OT-VmLnBkZiJ9

Rescher, N. (1980). *Unpopular Essays on Technology Progress*. University of Pittsburgh Press.

Simmons, B. A. (2009). *Mobilizing for human rights. International Law in domestic politics* (1st ed.). Cambridge University Press.

Singer, P. (2009). *Animal Liberation. The Definitive Classic of the Animal Movement*. Ecco Book/Harper Perennial.

Stone, C. D. (2010). *Should Trees Have Standing?: Law, Morality, and the Environment* (3rd ed.). Oxford University Press.