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LAW AND THE MASTERY OF NATURE

by

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Submitted in partial fulfilment of the requirement for the degree

LLM (Law and Political Justice)

In the Faculty of Law,

University of Pretoria

25 June 2024

Under supervision of

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Declaration of Originality

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Declaration

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Acknowledgements

It would be impossible to list every person who has supported me in my pursuit of this degree, during the last two years. However, I want to express my sincere gratitude to those who have made this journey possible and worthwhile.

To my colleagues, who became friends – Barbara, Tumelo, Elme, Blossom, Lizelle: thank you for your consistent support and encouragement. Ndumiso, thank you for going above and beyond to invest in my growth as a scholar and as a person. I am infinitely grateful that our paths crossed. Ilana, thank you for being a constant pillar of strength and support – a true friend.

To the Department of Jurisprudence, thank you for your support throughout this journey. Learning from and with all of you has been a privilege. I would particularly like to thank my supervisor, Prof Modiri, for your wisdom and guidance.

Last but not least, I would like to thank my friends and family. Thank you for reminding me that life also exists outside of books, and thank you for living it with me. I would especially like to express my gratitude to my parents and my sister. Pappa, Mamma, Annie: thank you for bringing colour into my life, even on the darkest of days. I am forever grateful for your love, trust and support. Thank you for believing in me.

Summary

By approaching the current global climate crisis in a historical and philosophical context, this study aims to trace the origin of this crisis to the advent of Western Modernity, and its unique conception of nature. Moving from this starting point, this study aims to critique the way in which Western Modernity and its Anthropocentric conception of law have established a relationship of mastery between humans and nature. To illustrate this relationship of mastery, this study will draw on Ecofeminist literature.

In order to critique Western Modernity, this study further adopts an Ecocentric lens, by situating humanity within the larger Earth ecosystem. This study will frame ecocide as the legacy of Western Modernity, in the sense that it stands on the same core principles as Western Modernity, namely progress, capitalism and colonialism. By linking ecocide to Western Modernity, this study will also elucidate the power relationship between the West and the Global South, as a core concern of climate justice.

Lastly, this study will attempt to shed some light on how the relationship between humanity and nature might be reconceptualised and restored, by evaluating the potential of the framework of Degrowth and its complimentary legal framework of ecological jurisprudence. In this sense, this study will attempt to envision ways in which law can function to resist ecocide, and to abandon the logic of mastery.

1 Introduction

This is no longer simply a matter of justice, but now also a matter of survival.[1]

1.1 Problem statement

It has been widely reported that 2023 was named the hottest year on record.[2] Global temperatures soared approximately 1.46 degrees Celsius above pre-industrial levels, and atmospheric concentrations of greenhouse gases such as carbon dioxide and methane continued to increase, reaching record levels during the past year.[3]

In terms of the latest Intergovernmental Panel on Climate Change (IPCC) Report, marginalised regions that suffer from development constraints are more vulnerable to climate disasters.[4] These vulnerable regions include Africa, Asia, Central and South America, as well as small island communities, indigenous peoples, subsistence farmers and low-income communities.[5] The IPCC further states that human mortality rates as a result of climate disasters were 15 times higher between 2010 and 2020 in these highly vulnerable regions, than in regions with low vulnerability.[6] And even though the West[7] has contributed the most to the current ecological crisis through its long history of overconsumption and greenhouse gas emissions, it is often the Global South[8], that is more vulnerable to the effects of climate change.[9]

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1 V Plumwood *Feminism and the Mastery of Nature* (1993) 6.

2 Copernicus Climate Change Service 'Summer 2023: the hottest year on record, with global temperatures close to the 1.5 degrees Celsius limit' 9 January 2024 https://climate.copernicus.eu/copernicus-2023-hottest-year-record (accessed 10 January 2024).

3 As above.

4 H Lee & J Romero (eds) *Climate Change 2023: Synthesis Report, Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2023) 5.

5 As above.

6 As above.

7 The overarching term 'the West' will be used throughout this study to refer to the general regions of Europe and North America, also known as the Global North or 'developed countries'.

8 The term Global South will be used throughout this study to refer to regions that are categorised as 'developing countries', as well as formerly colonised, marginalised, low-income countries and indigenous communities.

9 Lee & Romero (n 4) 5; F Sultana 'Whose growth in whose planetary boundaries? Decolonising planetary justice in the Anthropocene' (2023) *Geography and Environment* 2.

The central concern of this study is the deepening climate crisis, as well as the unequal distribution of the blame for its causes, as well as its consequences. As the IPCC statistics show, the Global South is bearing the brunt of the climate crisis. It is, however, the West, *not* the Global South who has contributed the most to the creation of the climate crisis.

By studying the global climate crisis in a legal, philosophical and historical context, this study traces its origins to the inception of Western Modernity and the birth of modern law. With the advent of Western Modernity, the way in which the West conceived of nature changed. The West began to understand the concept of 'nature' as being separate from humanity's existence.[10] This alienation from nature enabled its desacralisation, objectification and commodification – in other words, the mastery of nature, facilitated by modern law. Humanity now finds itself in a dysfunctional and dislocated relationship with nature.[11] It is the continued existence of this dysfunctional relationship and the role that law has played in maintaining this relationship, that has prompted this study.

By examining Western Modernity, and its conception of nature through an Ecocentric lens, this study will illustrate the way in which Western Modernity, particularly through modern law, has facilitated the establishment of a longstanding relationship of mastery over nature, by defining *being human* in terms of humanity's ability to dominate of nature. Essential to this examination, will be an engagement with the fact that modern law has privileged a white, particularly male elite group over human beings who do not fall within this group.

As such, this study will further demonstrate that humanity's mastery over nature is interlinked with the marginalisation and (legal) exclusion of some categories of human beings on the basis of a category's proximity to nature. This will lead me to examine role that modern law has played in structuring and maintaining this

10 WD Mignolo *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (2011) 12.

11 M Crook, D Short & N South 'Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and glocal ecosystems environments' (2018) 22(18) *Theoretical Criminology* 307.

relationship of mastery over nature, and over certain categories of human beings, such as women, indigenous peoples and poor communities.

By engaging with the climate crisis historically as well as in the current global context, I will frame ecocide as the legacy of Western Modernity. I will particularly illustrate how modern law has played a role in enabling ecocide. This discussion will also include an exposition of what Martin Crook, Damien Short and Nigel South refer to as the nexus between ecocide and the genocide of indigenous peoples.[12] In this sense, this study of Western Modernity and the mastery of nature, perpetuated through its legacy of ecocide, will necessitate an examination of the power relations between the West and the Global South.

The last issue I will engage, is a possible response to ecocide – specifically the idea of Degrowth. As a response to the crisis of ecocide, Degrowth is gaining traction in Europe – emanating from the same birthplace as Western Modernity.[13] In an attempt to engage the possibility of resisting ecocide, I will examine the contribution which Degrowth could make, particularly as a response to modern law. In this sense, I will consider the possibilities of alternative conceptions of being, of ethics and of law. This examination will also pay particular attention to the plight of the Global South.

Ultimately, this study aims at opening up the possibility of a paradigm shift, beyond the legacy of Western Modernity and its legal framework. Through this shift, humanity might be able to reconsider, or even possibly restore its relationship to and within nature, to resist ecocide. As this study will suggest, rethinking humanity's relationship with nature is not only a prerequisite for a just legal framework, but also for the survival of the greater Earth ecosystem.

1.2 Motivation

It is, at this point, undeniable that human activity on Earth is causing great destruction and harm to the living and non-living elements of its ecosystem. In response to the climate crisis, there has been an increase in scholarly engagement with climate change and its effects in various disciplines, such as economics, anthropology, law,

12 Crook, Short & South (n 11) 299-300.
13 Beyond Growth 2023 Conference https://www.beyond-growth-2023.eu/about-beyond-growth/ (accessed 1 October 2023).

history and philosophy. This study aims to engage with and contribute to this body of scholarship.

Historical accounts of pre-colonial life in different parts of the world, as well as living indigenous knowledge systems indicate that human communities can live and have lived in harmony within the Earth ecosystem. According to Māori history, for example, the indigenous people of New Zealand have historically had an intricate and interconnected relationship with nature.[14] This is further substantiated by the relationship between human beings and nature in indigenous African societies. African philosophy suggests that the indigenous people of Africa lived as part and parcel of nature, striving to maintain relations of harmony within human communities and with nature.[15] These knowledge systems are grounded in the sacredness of the Earth ecosystem.[16]

The birth and subsequent global spread of Western Modernity can be understood as the moment in which these ideas of sacredness and harmony were disrupted. It was the moment in which Europe affirmed itself as the centre of the world.[17] In terms of the Western worldview, the workings of sacred forces cannot be relied on to govern human affairs.[18]

Indigenous ideas of sacredness and harmony were further disrupted, as the economic system of capitalism spread from the West through its project of colonisation, causing a degree of alienation between humanity and nature.[19] Humans no longer perceived themselves as an integrated part of the Earth's ecosystem.[20] Consequently, the Earth has, in the last few centuries, faced unprecedented violence and destruction due to human activities, which can be understood as a process of ecocide.

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14 GR Harmsworth & S Awatere 'Indigenous māori knowledge and perspectives of ecosystems' in JR Dymond (ed) *Ecosystem services in New Zealand – conditions and trends* (2023) 274.

15 MB Ramose *African Philosophy Through Ubuntu* (1999, revised ed 2005) 106.

16 IA Kanu (ed) *African Ecological Spirituality: Perspectives in Anthroposophy and Environmentalism – A Hybrid of Approaches* (2021) 6.

17 E Dussel 'Eurocentrism and Modernity' (1993) 20(3) *boundary 2* 65.

18 K Nunn 'Law as a Eurocentric Enterprise' (1997) 15 *Law & Inequality* 337.

19 J Moore 'The Capitalocene, Part I: on the nature and origins of our ecological crisis' (2017) *The Journal of Peasant Studies* 7.

20 Mignolo (n 10) 12.

This study asks the question of whether there is a way to rethink or even restore the dysfunctional relationship between humanity and nature. If so, what would it take – particularly in a jurisprudential sense – to enable this shift?

1.3 Significance of study

Our current reality, as indicated in the 2023 IPCC Report, has shown that global warming reaching 1.5 degrees Celsius between 2021 and 2040 will cause irreversible risks to the Earth's ecosystems.[21] In Africa, particularly, these risks include biodiversity loss, species extinction, food insecurity and malnutrition, increased poverty rates and increased human mortality due to heat and diseases.[22] These risks indicate that the issue of ecocide is, therefore, not solely a concern of the destruction of the Earth, but a concern due to the detrimental effects it will have on humanity and its survival.

As climate change escalates, climate activism has become more and more prevalent. The Climate Action Network currently consists of more than 1 800 non-governmental organisations across more than 130 countries, fighting against the climate crisis.[23] It is, in my view, just as critical to engage the climate crisis from a philosophical, historical and legal point of view.

This study is therefore of particular importance, because it seeks to engage the climate crisis and its roots on a philosophical, historical and legal level. The importance of this study is twofold. Firstly, it seeks to engage an ontological question, which asks us to reconsider the essence of what it means to be human. In other words, if our humanity is not determined by our mastery over nature, how can humanity be (re)defined?

Secondly, this study is of importance because it seeks to examine an ethical question concerning humanity's relationship to nature. In this sense, nature can be seen similarly to the categories of race, class, gender and so forth, as it is a space where power is demonstrated.[24]

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21 Lee & Romero (n 4) 12.
22 Lee & Romero (n 4) 5, 50.
23 Climate Action Network International https://climatenetwork.org/ (accessed on 20 June 2023).
24 R Chakrabarti (ed) *Critical Themes in Environmental History of India* (2020) 5.

Through addressing questions of being and power, this study frames the relationship between humanity and nature as a political and legal concern.

1.4 Research questions

This study will seek to engage three main research questions that emanate from the research problem. The questions are as follows:

(1) How did the advent of Western Modernity and its conception of law transform the relationship between humanity and nature?
(2) What is ecocide and how is it related to Western Modernity and its legal framework?
(3) Can Degrowth disclose a different understanding of the relationship between law and nature in response to ecocide?

1.5 Methodology and approach

This study will bring together several approaches to engage the problem(s) sufficiently. The study, as a whole, will be approached through an Ecocentric lens. Ecocentrism was described by Aldo Leopold in 1948, when he theorised the 'land ethic', by stating that:

> A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends to do otherwise.[25]

An Ecocentric approach thus perceives of the Earth as one whole of which humans are, just like other forms of life, a part of.[26] Ecocentrism is the idea that all forms of life have intrinsic value, despite their relationship to humans.[27]

Ecocentrism is an idea that is in opposition to the dominant Anthropocentric world view. As opposed to Ecocentrism, Anthropocentrism sees nature as an object

25 A Leopold *A Sand County almanac: With other essays on conservation from Round River* (1970).
26 F Tete 'Ecocentrism as Theoretical Framework for Environmental Ethics' (2022) 9(2) *Jurnal Sosialisasi* 104.
27 As above.

apart from humanity – a means to an end, as far as it can be used by humans.[28] As such, an Anthropocentric world view sees nature as holding mere instrumental value.

As this study concerns law, it must be noted that I am not proposing that 'nature' be granted rights, in the same sense that humans or juristic persons have been granted rights. Even in this sense, where 'nature' has been granted rights or measures have been taken to conserve it, it has been for the purposes of conserving nature merely for human use – for our consumption and our enjoyment.[29] This is where Ecocentrism can be distinguished from Biocentrism. Whereas Biocentrism argues that all living things are equal and should enjoy privileged rights as individuals, Ecocentrism considers humans as simple members of the biotic community.[30] As such, moral dignity and rights are rather afforded to the ecosystem as a whole.[31]

An Ecocentric perspective thus speaks to the idea of harmony within the Earth ecosystem. In this regard, I understand Ecocentrism to be informed by indigenous knowledge. The Māori worldview, for instance, acknowledges that there is an equilibrium in the natural universe.[32] This means that when one part within this universe shifts, the entire system is disrupted out of balance.[33] This worldview, therefore, understands that there is an interrelationship of dependency between the living and the non-living.[34] Similarly, ancestral knowledge of indigenous people of the Andean-Amazonian region illustrates that human beings can live in harmony with each other and nature.[35] By living in accordance with the value of *buen vivir*, these communities represent an alternative human civilisation, which is inherently anti-Anthropocentric and anti-capitalist.[36]

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28 D Donev 'Ecocentrism or the Attempt to Leave Antropocentricity' (2019) *Trivent Publishing* 178.
29 CD Stone 'Should Trees Have Standing? – Towards Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 563.
30 Donev (n 28) 181.
31 As above.
32 GR Harmsworth & S Awatere 'Indigenous māori knowledge and perspectives of ecosystems' in Dymond (n 13) 274.
33 As above.
34 GR Harmsworth & S Awatere 'Indigenous māori knowledge and perspectives of ecosystems' in Dymond (n 13) 274, 276.
35 A Acosta & MM Abarca 'Buen Vivir: An Alternative Perspective From the Peoples of the Global South to the Crisis of Capitalist Modernity' in V Satgar (ed) *The Climate Crisis: South African and Global Democratic Eco-Socialist Alternatives* (2018) 134.
36 A Acosta & MM Abarca 'Buen Vivir: An Alternative Perspective From the Peoples of the Global South to the Crisis of Capitalist Modernity' in Satgar (n 35) 133-134.

Taking an Ecocentric approach will, therefore, entail considering humanity as being part of nature, as opposed to apart from it, by drawing on indigenous knowledge systems. This approach will emphasise the interrelatedness between humanity and all other living and non-living things in the Earth ecosystem.

To provide a narrative of the unfolding of Western Modernity, with a specific focus on the relationship between humanity and nature, and the role that law has played as both structuring and being structured by this relationship, a historical and philosophical approach will be taken. To further illustrate the exclusionary character of law in Western Modernity, I will draw on Ecofeminist literature. Ecofeminism illustrates the close link between mastery over nature and women's oppression.[37] By drawing on this theory, I will be able to demonstrate the intersectional character of the category of nature, and how it has been implicitly used as a category of exclusion in a legal and political sense.

Lastly, the study will also draw on the theory of Degrowth to provide an alternative conception of the relationship between law and nature. As opposed to the relationship of mastery that humanity has established over nature, the theory of Degrowth illustrates the possibilities beyond mastery, giving due regard to the interrelatedness and interdependence between the living and the non-living in the Earth ecosystem.

1.6 Chapter overview

This mini-dissertation consists of five (5) chapters. The study consists of three (3) substantive chapters that will develop the argument as follows:

In **Chapter 2**, I will provide a historical and philosophical interpretation of the impact that Western Modernity has had on the relationship between humanity and nature. As a starting point, I will identify and examine some of the foundational principles of Western Modernity, particularly in relation to the natural world. The Western conception of 'nature' will be explored in terms of the human/nature dualism, as well as what Val Plumwood describes as a multi-layered sphere of exclusions.[38] This will include a reflection on the specific role that modern law has played in the

[37] Plumwood (n 1) 1.
[38] Plumwood (n 1) 107.

institutionalisation and maintenance of the relationship of mastery that humanity claims over nature.

In **Chapter 3**, I will provide an overview of the current crisis of ecocide within which humanity finds itself. The ecocidal effects of the dysfunctional relationship between humanity and nature will be explored, with a specific focus on the ecocide-genocide nexus, which has been produced by conquest and colonialism of indigenous people.[39] This nexus will be explored, in order to establish the effects that ecocide has on indigenous communities, particularly in the Global South and Africa. As such, the power relations between the West and the Global South will also be explored in this Chapter.

In **Chapter 4**, I will attempt to shed some light on how the relationship between humanity and nature might be reconceptualised or possibly restored. Here, this study will attempt to address an ontological question by considering an alternative way of being human, as opposed to being masters of nature. In this discussion, the study will reflect on the potential of the theory of Degrowth to provide an alternative conception of the relationship between law and nature. In this manner, the study will attempt to envision an alternative way in which law can be constructed to resist ecocide. Ultimately, this Chapter will evaluate the potential of the theory of Degrowth to disrupt the legacy of Western Modernity and its concomitant conception of law.

In **Chapter 5**, I will end off with a conclusion, where I will reflect on the arguments developed throughout the study.

[39] Crook, Short & South (n 11) 299-300.

2 Western Modernity: Becoming the masters of nature

Human relations to nature are not only ethical, but also political.[1]

2.1 Introduction

In this Chapter, I will start off by contextualising Western Modernity historically. For the purposes of my examination, I will place emphasis on the notion of law that emerged with Western Modernity. Through this discussion I will disclose three foundational principles of Western Modernity and its concomitant notion of modern law, namely, the core notion of progress, the novel economic system of capitalism, as well as the project of colonialism. In doing so, I will illustrate the implicit and explicit links between these principles, in terms of Plumwood's 'master model'.[2]

Essential to this discussion of Western Modernity and its notion of law, will be the particular conception of nature that emerged in the West during this period. With the advent of Western Modernity, the way in which the West conceived of nature also changed. The West began to understand the concept of 'nature' as being separate from humanity's existence.[3] As I will illustrate, this process of separation and alienation, was in many ways, facilitated by modern law.

This Chapter will thus engage with the way in which Western Modernity and its conception of law has shaped the relationship between humanity and nature, with a particular focus on the role that modern law has played in the structuring of this relationship. My exposition of this modern conception of law will outline it as both a body of rules, as well as a constituting force of modern society, which finds its basis in an Anthropocentric worldview and finds expression through systems of exclusion. To illustrate these processes of exclusion, I will focus on examples of dispossession and discrimination, as they are related to the alienation between humanity and nature.

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1 V Plumwood *Feminism and the Mastery of Nature* (1993) 13.
2 Plumwood (n 1) 23.
3 WD Mignolo *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (2011) 12.

By drawing on Ecofeminist literature, I will emphasise the way in which humanity's mastery over nature has resulted in the exclusion and domination of marginalised communities, such as indigenous people, women, and poor communities.[4] In this sense, I will explore the way in which modern law functions as an instrument of, as well as a necessary condition for domination and exclusion. Ultimately, this Chapter will attempt to interrogate the relationship of mastery that humans have established over nature, in order to identify the origin and effects of its mastery.

2.2 The rise of Western Modernity

Prior to the 17th century, Western civilisation was based on principles of faith, tradition and particularly, religious authority.[5] From 1650 onwards, these principles were increasingly questioned and challenged, as reason and rationality became the defining factors of Western civilisation.[6] Through a process of rationalisation, the West began to eliminate and displace ideas based on myth, supernatural theories and religion.[7] Instead, humanity, society, culture and politics were redefined according to secular reason.[8] Max Weber famously describes this period as the 'disenchantment of the world'.[9] With this statement, Weber refers to the end of perceiving of the world, specifically the natural world, as magical and sacred.[10] This shift signifies the rise of Western Modernity.

The rise of Western Modernity marks a rather notable shift in Western history, philosophical thought, culture, art, politics, as well as scientific and industrial advancement. For the purposes of this study, I will not elaborate on each of these aspects. Beyond brief historical contextualisation, my exposition of Western Modernity will be limited to its notion of modern law, and its conception of the relationship between humanity and nature. As such, Western Modernity will be understood as a

4 Plumwood (n 1) 23.
5 JI Israel *Radical Enlightenment: Philosophy and the Making of Modernity 1650-1750* (2001) 3.
6 Israel (n 5) 3-4.
7 Israel (n 5) 4.
8 As above.
9 M Weber 'Science as a Vocation' in D Owen & TB Strong (eds) trans R Livingstone *The Vocation Lectures* (2004) 12-13.
10 AJ Cascardi *The Subject of Modernity* (1992) 16.

pivotal shift in Western and global culture, which has had an undeniable impact on the relationship between humanity and nature.

At the core of this understanding of Western Modernity is the central motif of progress.[11] This idea of progress suggests that the state of things can always be better: the natural environment and social behaviour could be better understood; technology could be better utilised; and society, and its politics, could be improved.[12] However, as Scott Veitch, Emilios Christodoulidis and Marco Goldoni correctly point out, the idea of progress is a double-edged sword.[13] On the one hand, materials such as coal, gas and fossil fuels, as well as large-scale factory farming sustain modern human life on Earth. On the other hand, the exploitation of the natural world, through the extraction of natural materials, as well as factory farming, produces deadly emissions that threaten all life on Earth.[14] As such, the idea of progress can be understood as a logic that has led to great destruction to the Earth and its ecosystems.

Aside from the motif of progress, the emergence of Western Modernity is also inextricably linked to the emergence of capitalism as a historically novel mode of human social organisation.[15] Weber argues that the emergence of capitalism can be seen as 'the most fateful force' in modern life.[16] For Weber, capitalism is at the base of the defining institutions of Western Modernity.[17] The fundamental shift that capitalism inaugurated, was a shift in what was valued in Western society.[18] As opposed to placing value on land productivity, value shifted onto labour productivity, which formed the very basis for the capitalist mode of production.[19] This means that there came an end to making a subsistence living on land, and humans now had to trade their labour to make a living.[20]

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11 S Veitch, E Christodoulidis & M Goldoni *Jurisprudence: Themes and Concepts* (2018) 12.
12 As above.
13 Veitch, Christodoulidis & Goldoni (n 11) 13.
14 H Lee & J Romero (eds) *Climate Change 2023: Synthesis Report, Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2023).
15 FJ Broswimmer *Ecocide: A Short History of the Mass Extinction of Species* (2002) 54.
16 M Weber *The Protestant Ethic and the Spirit of Capitalism* trans T Parsons (1958) 17.
17 Weber (n 16) 17; Cascardi (n 10) 17.
18 J Moore 'The Capitalocene, Part I: on the nature and origins of our ecological crisis' (2017) *The Journal of Peasant Studies* 17.
19 As above.
20 K Marx *Capital Volume One: The Process of Production of Capital* F Engels (ed) trans S Moore & E Aveling (1887, first published in 1867) Part VIII, Chapter 26.

This shift to the capitalist mode of production was not only made within Western society, but also spread around the globe through the violent projects of colonialism undertaken by the West. As such, in conjunction with the motif of progress, and the shift to a capitalist economy, I contend that Western Modernity cannot be understood without linking it to colonialism. As Enrique Dussel argues, Western Modernity must be understood as the moment in which the West affirmed itself as the centre of the world.[21]

In her book, *Feminism and the Mastery of Nature*, Plumwood elaborates on this notion, by arguing that the West constructed itself to be, what she refers to as, the 'master model'.[22] She describes the master model as a white, largely male elite.[23] But, as Plumwood argues, some characteristics which are generally associated with masculinity, are also those that have come to define being human in modern terms: rationality, control over nature, as well as social and culture life.[24] As such, embedded in this master model is the assumption that it is simply a *human* model.[25] And at the core of the existence of this master model is its dependence on maintaining a distance from, and dominance over nature.[26]

The existence of the Western master model also presupposes the existence of the objects which it can master. By situating itself at the centre of the world, the West therefore also determines that which exists beyond the centre, the other – existing on the periphery.[27] As such, Dussel argues that Western Modernity was only truly born when the West could pose itself against the other.[28] In order to categorise this other, the West uses the category of 'nature' to describe everything which can be 'mastered' by it. Anyone who is black (as opposed to white), female (as opposed to male) or poor or working class (as opposed to elite), is seen as a deviation from the master model and thus a deviation from the 'norm'. As such, this *other* is perceived as an object which can be dominated.

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21 E Dussel 'Eurocentrism and Modernity' (1993) 20(3) *boundary 2* 65.
22 Plumwood (n 1) 23.
23 Plumwood (n 1) 23, 26.
24 Plumwood (n 1) 25.
25 Plumwood (n 1) 23.
26 As above.
27 Dussel (n 21) 73.
28 Dussel (n 21) 66.

Western Modernity thus originated when the West constituted itself as a unified conqueror, explorer and coloniser of the other.[29] As such, the birth of Western Modernity also tells the story of the origin of this other, that was identified by the West as available to be conquered, explored and colonised.[30] Walter Mignolo refers to this dynamic between the West and the other, as the 'darker side' of Western Modernity.[31] On this darker side, the West in the centre, dispenses freely with human and non-human life, and nature on the periphery.[32] This can be observed in the histories of conquest and colonisation in Africa and the Global South, where enslavement, violence and dispossession speaks to this logic of dispensability.

Through its core principles of progress, the economic system of capitalism and the project of colonialism, Western Modernity has determined the trajectory of human life on Earth for the last 500 years.[33] The global legacy of Western Modernity still functions through a logic of dispensability of human life, as well as other living and non-living natural material on Earth.[34] And at the very core of this legacy, lies the mastery of nature.[35]

2.3 Western Modernity and nature

Western Modernity inaugurated arguably one of the most detrimental shifts in the relationship between humanity and nature.[36] During the rise of Western Modernity, the relationship between humanity and nature became distinguished by humanity's unprecedented capacity to alter nature, through destruction on a planetary scale.[37] At the centre of this relationship of domination, is the alienation of humanity from nature. The West's alienation from nature is a product of many legal, historical and contextual factors, which I will try to illustrate here.

Western Modernity is particularly characterised by the perception of nature as a lifeless world, which permits humans to see ecosystems and their inhabitants as

29 As above.
30 As above.
31 Mignolo (n 3) 6.
32 As above.
33 As above.
34 As above.
35 Mignolo (n 3) 12-13.
36 Broswimmer (n 15) 10.
37 Broswimmer (n 15) 4.

mere resources for human use.[38] The purpose of this type of thinking is absolute control, dominion and mastery over living beings and material nature.[39] This logic is most evident in the capitalist institution of private property ownership of land, where a part of nature becomes defined and entrenched as a 'natural and inalienable human right'.[40] This is evident from John Locke's claim in 1689, stating that 'land that is left wholly to nature is… indeed… waste[d]'.[41]

The privatisation and commodification of nature, and particularly land is essential to Western Modernity and its economic system of capitalism. As such, Jason Moore argues that the system of capitalism is premised on the separation between humanity and nature.[42] This purposeful alienation from nature historically enabled its desacralisation, objectification and commodification. Once established as a mere 'source' of the natural resources that powers the capitalist economic system, nature becomes available for extraction and exploitation.[43] The basis of the capitalist economic system is, therefore, the idea that humans are separate from and free to act upon nature.[44]

The relationship of mastery and dominance, that the West established over nature, can be understood in terms of a contrast between what is accepted as human, and what is categorised as nature. As such, a human/nature dualism developed, by conceiving of human beings as consisting of the opposite qualities of nature, and nature consisting of the opposite qualities of being human.[45] Nature was particularly understood as the realm on which 'mankind' could act and manipulate.[46] Whereas the West defines humanity in terms of mastery, it defines nature in as far as it could be instrumentalised and used as a means to an end, in other words: mastered.

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38 Broswimmer (n 15) 56.
39 Broswimmer (n 15) 57.
40 Broswimmer (n 15) 57.
41 Broswimmer (n 15) 57; J Locke *Two Treatises on Civil Government* (1689) 212.
42 Moore (n 18) 7.
43 Mignolo (n 3) 12-13.
44 Moore (n 18) 7.
45 Plumwood (n 1) 104.
46 P Fitzpatrick *The Mythology of Modern Law* (1992) 63; LJ Jordanova 'Natural Facts: A Historical Perspective on Science and Sexuality' in CP MacCormack & M Strathern (eds) *Nature, Culture and Gender* (1980) 66.

Christian thought can be seen as laying the foundation for the theorisation of a human/nature dualism.[47] Genesis 1:26 in the Christian Bible reads:

> Then God said, "Let us make man in our image, after our likeness. And let them have *dominion* over the fish of the sea and over the birds of the heavens and over the livestock and over all the earth…"[48] (*emphasis added*)

From the first instance, Christian thought therefore suggests that human beings are not only superior to other biotic organisms on Earth, but are also divinely granted the rights to dominate the rest of the creation.

To justify such domination, Christianity created a narrative that suggests that human beings are inherently more valuable and superior to nature, as their god created humanity in his own image and also bestowed them power over nature.[49] The main characteristic that is identified as setting human beings apart from the rest of the creation, is that they have souls in need of salvation.[50]

Christian thought asserts that humanity's true value is rooted in the spiritual world, not the material world – indicating a separation between mind and body.[51] Thinkers in the medieval period, such as Saint Augustine clarified this separation by identifying the natural world where the body resides as an inferior, mortal realm, which serves as an instrument to the gaining of salvation for the superior, immortal mind or soul.[52]

This dualism between mind and body is then further explored in Cartesian thought.[53] The categories of human and mind are synthesised, to represent the totality of the rational human.[54] The categories of nature and body are synthesised, to represent the natural world.[55] Whereas the category of the rational human is then seen as a sphere of control and mastery; the category of nature is seen as a sphere of chaos to be mastered and dominated.

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47 Plumwood (n 1) 105.
48 The Bible (English Standard Version) Genesis 1:26.
49 The Bible (English Standard Version) Genesis 1:26-31.
50 The Bible (English Standard Version) 1 Peter 1:8-9.
51 The Bible (English Standard Version) Colossians 3:2-4.
52 Plumwood (n 1) 106.
53 Plumwood (n 1) 106.
54 Plumwood (n 1) 106.
55 Plumwood (n 1) 106.

This dualism becomes particularly dangerous, when it becomes secularised, and shifts away from its metaphysical and cosmological roots. In this shift, the notion of mastery and domination of nature plays a fundamental role in securing freedom and virtue for the rational human. In this sense, Hobbes makes the argument that man can live in a peaceful society, by abiding to a law of nature, which is derived, not through nature, but rather through human reason.[56]

It is this natural law that obliges man to discard his state of nature, so as to live in peace with other men.[57] This meaning of nature, as a 'lawgiver' relies on the idea that nature can be known rationally, through philosophy.[58] As such, it does not truly indicate an appreciation for nature, but rather feeds into the idea that humans can know and 'master' nature.

Shane Phelan notes that nature has several meanings in modern political theory.[59] These meanings have been studied and debated in a quest for clarity and certainty that has plagued Western modern thought.[60] Although the term 'nature' is used to signify origin and authenticity, it concurrently signifies primitiveness and incompleteness.[61] This can be observed in Thomas Hobbes' theorisation of the 'state of nature' as a pre-political state of human existence.

In *Leviathan*, Hobbes posits that peace through civilisation is only established once man discards his natural state.[62] The natural state of man, according to Hobbes, is a state of violence, war and disorder.[63] As such, there are no organised political, economic or legal spheres in the state of nature.[64] It is through the conception of modern law that an organised political society comes into existence. In this sense, it is essential that nature be excluded from this new political society.

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56 T Hobbes *Leviathan* (1651) 80.
57 As above.
58 S Phelan 'Intimate Distance: The Dislocation of Nature in Modernity' (1992) 45(2) *The Western Political Quarterly* 387.
59 Phelan (n 58) 386.
60 Phelan (n 58) 388.
61 Phelan (n 58) 386.
62 Hobbes (n 56) 80.
63 Hobbes (n 56) 77-78.
64 Hobbes (n 56) 78.

Theories on the state of nature, as described by Hobbes, as well as Jean-Jacques Rousseau, suggest that humans have the capacity to act beyond instinct.[65] These philosophers argue that humans must do so, in order to become fully human.[66] As such, they argue that the state of nature – a state of being which is categorised as natural – is undesirable, and must be 'overcome'.[67] If nature is not overcome, Rousseau argues that man would be a 'half-developed being'.[68]

Hobbes' argument suggests that nature is recognised as an inherent part of man (read human), but it is simultaneously seen as primitive and incomplete. This alludes to the idea that, for humans to develop fully and to make *progress*, they will need to separate themselves from, and rule over, nature. As such, the alienation of humans from nature becomes an ontological precondition for *being human*.

It must be noted that this conception of being human, as apart from nature is particularly observed in Western Modernity. The way in which nature is defined and constructed, is thus a product of a particular human culture.[69] Culture can be understood as the 'manifestation of what a society has created, what a society values and what a society believes'.[70] This includes the customs and beliefs, the way of life and social organisation of a particular society.[71] In this understanding, culture is behaviour that is particular to human beings, such as ideas, beliefs, creative arts, law and customs.[72] This conception of nature as apart from humans is then, particular to the West.

As such, a new conception of nature became crystalised with the advent of Western Modernity and the shift it inaugurated in Western culture.[73] Arturo Escobar refers to this conception of nature as 'capitalist nature'.[74] In this sense, Western Modernity particularly perceives the concept of 'nature' as separate from humanity's

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65 Phelan (n 58) 390.
66 Phelan (n 58) 380.
67 As above.
68 JJ Rousseau *Emile, or On Education* trans B Foxley (1911) 12; Phelan (n 58) 391.
69 A Escobar 'After Nature: Steps to an Antiessentialist Political Ecology' (1999) 40(1) *Current Anthropology* 3.
70 K Nunn 'Law as a Eurocentric Enterprise' (1997) 15 *Law & Inequality* 324.
71 AS Hornby (ed) *Oxford Advanced Learner's Dictionary of Current English* (2015).
72 LA White Encyclopaedia Britannica 'culture' 2022 https://www.britannica.com/topic/culture (accessed 1 October 2023).
73 Escobar (n 69) 6.
74 As above.

existence.[75] One of the signifiers of progress in the West, as the driving force of Western Modernity, was the shift to perceiving nature as the source of natural resources, such as food, coal and oil, that fuels the capitalist economic system and sustains modern human life.[76] In terms of the cultural shift inaugurated through Western Modernity, nature came to be perceived as a repository for the natural resources necessary for the fulfilment of the economic goals of the 'masters' of these materials.[77]

2.4 Modern law: Instrument of the master

Western Modernity emerged during the 17th and 18th centuries, as Europe attempted to break from a past that was ruled by tradition, religion and superstition.[78] In the place of the metaphysical, Western Modernity introduced the philosophical 'Age of Reason', otherwise known as the era of 'Enlightenment': a time when the world was to be understood through science, rationalism and experimentation.[79] The shift from a defining humanity through the metaphysical, to an emphasis on rationality, also signified a shift away from nature. This shift was, in many ways, shaped by law.

In defining law, Peter Goodrich notes that the discipline of law is one that aims to rationalise human social behaviour, so as to confine it within the boundaries of reason.[80] He, therefore, argues that the discipline of law was traditionally built on a foundation of rationality.[81] As such, I understand law in the modern sense as a shift from seeing social behaviour as natural and unpredictable, to perceiving of it in reasonable and rational terms. However, this construction of the discipline of law as an abstract realm of doctrine and science, is ignorant to the irrationality, chance and change which dictates human life as *part of* nature.[82]

The idea of natural law, or laws of nature, is founded on the belief that there are universal moral laws that humans may not contravene.[83] Even though the natural law

75 Mignolo (n 3) 12.
76 As above.
77 Mignolo (n 3) 12-13.
78 Veitch, Christodoulidis & Goldoni (n 11) 11.
79 Veitch, Christodoulidis & Goldoni (n 11) 11; I Kant *An Answer to the Question: What is Enlightenment?* trans T Humphrey (1992, first published in 1784).
80 P Goodrich 'Law and Modernity' (1986) 49(5) *The Modern Law Review* 545.
81 Goodrich (n 80) 547.
82 Goodrich (n 80) 545.
83 S Ratnapala *Jurisprudence* (2009) 123.

tradition originally posited that law was universal and determined by supernatural and cosmological forces, natural law as it is understood in the age of Western Modernity, is determined and created by humans themselves.[84] By seeking to understand natural law through reason and rationality, a secularised natural law theory thus emerged during the rise of Western Modernity.[85]

This secularised modern conception of natural law can be understood as the law that governs the 'natural' instincts of humankind.[86] Weber notes that this new understanding of rational natural law is governed in accordance with the principle of reason.[87] And just as reason provided the means by which man could 'master' nature, René Descartes argues that reason also called upon man to rise above natural urges by controlling them with laws.[88] These laws are thus derived through rationality, not through nature.

The rupture between humanity and nature was facilitated and shaped by modern law which emerged with Western Modernity. This modern conception of law, as a body of rules, as well as a constituting force of modern society, finds its basis in an Anthropocentric worldview. William Murdy defines Anthropocentrism as a view that affirms that 'mankind is to be valued more highly than other things in nature'.[89] In terms of this worldview, nature is regarded as instrumental to human well-being – as a means to an end, without value in itself.[90] Modern law is, in this sense, is not only founded on the exclusion of nature from 'mankind', but also humanity's mastery over nature.

It is precisely this particular conception of nature as excluded from humanity, and supposedly governed by rational modern law, that is fundamental to the workings of Western Modernity. It is this idea of separation that has laid the foundation for the exclusion and domination of those located in close proximity to nature.[91] Seemingly, systems of exclusion and mastery are fundamental to law.

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84 Ratnapala (n 83) 146.
85 Ratnapala (n 83) 145-146.
86 Nunn (n 70) 340.
87 Cascardi (n 10) 17.
88 Cascardi (n 10) 24.
89 WH Murdy 'Anthropocentrism: A Modern Version' (1975) 187(4182) *Science* 1168.
90 Murdy (n 89) 1169.
91 Plumwood (n 1) 26.

Margaret Davies suggests that modern law particularly gains its identity from processes of exclusion.[92] She bases her argument on the fact that a legal system at its most basic level, is premised on the exclusion of an 'other', on the grounds of politics or morality.[93] In order to determine what is law, a normative line needs to be drawn in terms of what law is not.[94] This line may exclude politics, morality, and social behaviour, but it may also exclude other legal systems, as well as certain groups of people.[95] In terms of Davies' argument, exclusion is a fundamental part of modern law.[96] It is particularly these processes of exclusion that constructs modern law to be perceived as a single, universal concept of law.[97]

It must, however, be noted that modern law is not universal. In this regard, Kenneth Nunn argues that modern law is a Eurocentric enterprise.[98] Similar to the way in which the conception of nature is determined by a particular culture of a society, Nunn argues that a society's conception of law is determined through its culture.[99] In order to describe European culture, Nunn identifies some of its most significant attributes, which is exemplified in its law.[100]

Most notably, Nunn identifies the attribute of 'objectification' as an essential element to European culture.[101] He states that Eurocentric culture views the world outside Europe as a 'collection of objects to be controlled'.[102] As Nunn puts it, to legalise is to objectify.[103] As such, Nunn's argument suggests that modern law exists through the objectification of that which is outside of the West, and therefore perceived as non-legal or illegal. In terms of its Anthropocentric foundation, modern law particularly excludes and objectifies nature.

Furthermore, Nunn identifies the attribute of 'desacralisation' as an essential feature of European culture, and states that nature is particularly desacralised to the

92 M Davies 'Exclusion and the Identity of Law' (2005) 5 *Macquarie Law Journal* 6.
93 As above.
94 Davies (n 92) 10.
95 As above.
96 Davies (n 92) 6.
97 Davies (n 92) 13.
98 Nunn (n 70) 327.
99 Nunn (n 70) 324.
100 Nunn (n 70) 333-334.
101 Nunn (n 70) 336.
102 As above.
103 Nunn (n 70) 348.

extent that it has been stripped of any spiritual value or character.[104] This is represented in modern law, as it is seen as a science, thought up through man's rationality.[105] As such, through the creation of his own law, man becomes, what Nunn calls a 'self-policing entity' who does not need to answer to anyone.[106] This relates to Plumwood's dominant master model, which is a white, mostly male, elite category.[107] As opposed to the master model, nature then becomes a sphere of multiple, layered and even conflicting exclusions.[108]

For example, women are excluded from the master model, but white women may sometimes be privileged more than black or indigenous women. Furthermore, poor communities are excluded, but those communities who are poor and white, might still be seen as in closer proximity to the master model, than to nature. As such, these categories of exclusion, in terms of the master model function in an intersectional fashion, where some groups might be in closer proximity to the master model, and others might be in closer proximity to nature. Exclusions from the master model are thus multi-layered and sometimes conflicting. However, ultimately nature and all that is in close proximity to it remains in contrast to the master model.[109] This contrast between the master model and nature in turn feeds into intra-human domination, based on grounds such as race, gender and class.

One group which has been excluded and dominated, as a result of its proximity to nature, is women. This is due to their reproductive abilities and perceived natural instincts for nurturing their offspring. Historically, women have been oppressed in society through gender norms that have limited their role to the household and domestic tasks, where they are perceived as means that fulfil men's needs.[110] These norms have been and continue to be challenged, but women continue to suffer under conditions such as unequal gender pay gaps, discrimination based on gender, as well as gender-based violence.

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104 Nunn (n 70) 337.
105 Nunn (n 70) 350.
106 Nunn (n 70) 350.
107 Plumwood (n 1) 23.
108 Plumwood (n 1) 107.
109 Plumwood (n 1) 107.
110 M Becker 'Patriarchy and Inequality: Towards a Substantive Feminism' (1999) 1 *University of Chicago Legal Forum* 25.

Another group that has been victim to such exclusion, is indigenous people, who have lived or continue to live in harmony with their environments. Indigenous communities have been historically perceived as living in close proximity to nature. But as opposed to seeing this as a harmonious lifestyle, the West has perceived of the lifestyle of indigenous communities as primitive. As Charles Mills states in his description of the relationship between race and space:

> The natives are continuous with the flora and fauna of these spaces, natural men part of a natural world, the objects rather than the subjects of the distinctively human process of moulding nature to human ends…[111]

A further example of a category of exclusion is poor communities, who rely on their environments for survival and thus, often live in close proximity to nature. This group often converges with the category of indigenous people, due to the economic injustices they have suffered as a result of colonial-capitalism. As such, poor indigenous people face exclusion from two different angles.

These examples of exclusion illustrate that the West's notion of humans as the masters of nature, can be correlated to intra-human domination.[112] The relationship between humanity and nature is, therefore, not only ethical, but also political.[113] While the master model is seen as the norm, the indigenous, female, and poor communities, who are perceived as being closer to nature, are categorised as a deviation from the norm.[114]

By constructing ideas of freedom around the master model's dominion over and separation from nature, modern law has shaped Western societies in terms of the exclusion and domination of the indigenous, female, and poorer communities.[115] As Phelan also notes, seeing nature as inferior to humanity, has served to privilege humans over animals, to justify oppression based on race in the name of 'civilisation' and to provide a justification for male domination over females.[116] This ontological framework created through the human/nature dualism lays the groundwork for the

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111 CW Mills 'Black Trash' in L Westra & BE Lawson (eds) *Faces of Environmental Racism: Confronting Issues of Global Justice* (2001) 78.
112 Plumwood (n 1) 13.
113 Plumwood (n 1) 13.
114 Plumwood (n 1) 23.
115 Plumwood (n 1) 23.
116 Phelan (n 58) 386.

logic of dispensability applied in the world as systems of domination, exploitation, and appropriation.[117] As such, Crook, Short and South argue that even though law serves humans, history has shown that it does not serve the planet, nor does it actually serve all humans equally.[118]

Beyond exclusion, modern law also functions as a Eurocentric system of control, where it is the mechanism which commands and controls human life – even outside of Europe.[119] Nunn emphasises that law has been utilised in the conquest and the enslavement of conquered indigenous people around the world.[120] In this sense, law has functioned as an instrument to ensuring that the world is constructed around Eurocentric principles.[121] Law has thus served as Western Modernity's regulating and constituting force, in the institutionalisation and maintenance of the relationship of mastery between humanity and nature. This conception of law is, however, dependent on the Western worldview and is thus particular to the culture of the West.

In this sense, Nunn argues that modern law is not universal, as it functions to create a specific historical and political reality, and is drawn from a particular worldview.[122] Although the West has produced its own conception of law that has been presented as universal, these legal systems have been formed in a specific Western historical and cultural context.[123] Nunn argues that law must be understood as a Eurocentric enterprise, as it functions as part of a project of promoting European values and interests, at the cost of the other.[124] In this sense, modern law must be understood as being distinctly Western, and shaping the societies in which it emerged and those on which it was consequently imposed, in terms of a particular Western master model.

The exclusionary tactics of modern law has functioned to exclude whole communities and their legal systems, such as indigenous people, from that which is

117 Moore (n 18) 8.
118 M Crook, D Short & N South 'Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and glocal ecosystems environments' (2018) 22(18) *Theoretical Criminology* 311.
119 Nunn (n 70) 351.
120 Nunn (n 70) 352.
121 Nunn (n 70) 354.
122 Nunn (n 70) 325.
123 Nunn (n 70) 326-327.
124 Nunn (n 70) 328.

'law'.[125] In terms of modern law, indigenous people have been historically associated with lawlessness and 'un'-civilisation in the absence of law.[126] That which is outside of law, untamed nature and human passion, has set the stage for the order of modern law.[127]

Unfortunately, these forms of exclusion are not the result of the mere application of discriminatory laws, but are rather the result of modern law's complicity in skewed power relations and social exclusion.[128] Being critical of the culture of the West, thus requires us to be critical and reflective of modern law.[129] In doing so, we open the door to debating law and its place in human society.[130] If law is to be seen as a code which represents the ideal society, and its fundamental moral values,[131] it must surely be critically examined by the humans who make up that society as a whole. The following two sections will examine law, as an instrument of Western Modernity, by considering examples of how law has functioned to dispossess and discriminate.

2.4.1 Dispossession: Alienation from land

Western Modernity, as a shift away from religious doctrine and superstition, represented a shift towards a legal worldview where divine law was replaced by human law.[132] Friedrich Engels argues that law was a key element to the dominant capitalist worldview.[133] In this respect, Karl Marx outlines a key role played by law in the capitalist economy, in the capture of land by dispossession, particularly through the domestic European process of enclosure, as well as the conquest of other indigenous communities on a global scale.[134]

In the process of what Marx calls primitive accumulation, land was taken, in order to secure labour power for the capitalists.[135] In order to become the owners of

125 Davies (n 92) 21.
126 Fitzpatrick (n 46) 72.
127 Fitzpatrick (n 46) 81.
128 Davies (n 92) 22.
129 Goodrich (n 80) 553.
130 As above.
131 Goodrich (n 80) 554.
132 R Knox 'The World Outlook of the Bourgeoisie' in B Skeggs et al (eds) *The SAGE Handbook of Marxism* (2021) 876.
133 R Knox 'The World Outlook of the Bourgeoisie' in B Skeggs et al (n 132) 877.
134 R Knox 'The World Outlook of the Bourgeoisie' in B Skeggs et al (n 132) 879.
135 Marx (n 20) Part VIII, Chapter 26.

capital, the capitalist elite took control of the means of production, which includes the means of subsistence, such as land, and other natural resources.[136] Through controlling these means, the capitalist elite created labourers, who had no means to sustain themselves without land and resources.[137] These labourers were then forced to sell their labour, to create a living.[138] As Marx states, the process of primitive accumulation is quite literally the historical process of alienating the labourer from their means of production.[139] The means of production is then no longer seen as a society's means of subsistence, but rather as capital.[140]

As an example of primitive accumulation, I consider the process of parliamentary enclosure that took place in the United Kingdom (UK). This process of capturing of the Earth's commons, emerged first in England.[141] The rising capitalist class and the aristocrats banded together to remove peasants from the land, to create space for crucial commodities.[142] The collectively managed natural spaces and resources were fenced off and privatised at the elite's disposal, and transformed into 'property'.[143]

Jerome Blum notes that the purpose of such enclosure was to increase the productivity of land, in order to produce more profit for landowners.[144] Between 1710 and 1760, for instance, the English Parliament passed more than 240 bills of enclosure, where land and all resources on such land was privatised and made unavailable for common use.[145] As enclosure developed into an increasingly global project, indigenous people all over the world were displaced and removed from their land through conquest and colonisation.[146] The enclosure of the commons can be seen as the single modern mechanism which has contributed most to the dysfunctional relationship between humanity and nature.[147]

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136 As above.
137 As above.
138 As above.
139 As above.
140 As above.
141 Broswimmer (n 15) 70.
142 As above.
143 J Hickel *Less is More: How Degrowth Will Save the World* (2020) 45.
144 J Blum 'English Parliamentary Enclosure' (1981) 53(3) *The Journal of Modern History* 501.
145 Blum (n 144) 478-479.
146 Broswimmer (n 15) 70.
147 Broswimmer (n 15) 71.

For a more local example, I consider the Natives Land Act 27 of 1913 (Natives Land Act), which was passed by the Union of South Africa. In terms of this Act, the South African government determined the areas of land on which indigenous people could live, as well as where they were allowed to own land.[148] This Act provided just more than seven percent of the total South African territory to its indigenous people.[149] By dispossessing the local indigenous population of their land, they were forced to become labourers – free or captive – for the colonial landowners, to ensure their own survival.

The history of dispossession, as facilitated by modern law, indicates that law is embedded in the way in which Western Modernity functioned and shaped the relationship between humans and nature. Law was indeed integral to the establishment of alienation from and mastery over nature in this regard.

2.4.2 Discrimination: The master model vs the other

Robert Knox notes that a further significant aspect which Marx outlines, is understanding law as ideology.[150] Law has been utilised as an ideological instrument which has naturalised and justified relationships of power and exploitation.[151] Law has been (re)shaped by Western Modernity, just as it has also served to shape and maintain the relationship of mastery between humanity and nature according to the terms of Western Modernity.

Christopher Stone suggests that since the earliest ideas of law and rights, those who were 'outside' the family, group or clan, were seen as alien and therefore, rightless.[152] Even within that family, some members, such as children or women, were afforded less rights than other members.[153] Historically, in Roman Law, the father as the *Patria Potestas*, had *jus vitae necisque* over his children: the power of life and death.[154] As such, the father had unrestricted power over his children, including the

148 Sections 1 & 2 of the Natives Land Act 27 of 1913.
149 HM Feinberg 'The 1913 Natives Land Act in South Africa: Politics, Race, and Segregation in the Early 20th Century' (1993) 26(1) *The International Journal of African Historical Studies* 68.
150 R Knox 'The World Outlook of the Bourgeoisie' in B Skeggs et al (n 132) 880.
151 As above.
152 CD Stone 'Should Trees Have Standing? – Towards Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.
153 As above.
154 Stone (n 152) 451.

power to sell them.[155] To him, a child was less than a person – a child was an object, a thing, property.[156] From these early ideas of modern law, it seems clear that the master model reserved for itself the power to dominate all that which is not white, male, and elite. The existence of modern law has been dependent on processes of mastery and exclusion of those located in close proximity to nature.[157] Simultaneously, modern law has also been instrumental in processes of exclusion.

The most prominent example of such legal exclusion can be illustrated through the history of voting rights. Historically, women, indigenous people, as well as poor communities were prohibited from taking part in politics and democratic voting processes. In South Africa, for instance, white women only gained the right to vote in 1933.[158] Furthermore, various laws that discriminated against indigenous and poor communities, governed the voting regulations in South Africa until colonial-apartheid came to an official end.[159] It was only in 1994, when people from all genders, all races, and economic backgrounds were allowed to vote in the South African democratic elections.

Despite politically excluding these categories of humans, law has historically extended rights to institutions such as corporations, trusts, governments, partnerships in the form of juristic persons.[160] Ironically, it is often precisely these juristic persons who have contributed the most to ecological destruction. As Rob White argues, it is often conventional and legal forms of human activities such as large-scale extraction by global mining companies, that prove destructive to nature, as opposed to those activities that are branded as illegal, such as local small-scale mining or fishing by indigenous people without 'legal' permits.[161]

Through these examples, I have attempted to illustrate the ways in which modern law has served to facilitate, regulate and maintain the West's mastery over

155 As above.
156 As above.
157 Plumwood (n 1) 26.
158 Women's Enfranchisement Act 18 of 1930.
159 In the Cape Colony, every man was allowed to vote, as long as he met certain economic requirements, S Trapido 'The Origins of the Cape Franchise Qualifications of 1853' (1964) 5(1) *The Journal of African History* 37; Cape Franchise and Ballot Act 1892; Separate Representation of Voters Act 46 of 1951.
160 Stone (n 152) 452.
161 R White *Crimes against Nature: Environmental criminology and ecological justice* (2008) 11.

nature, and consequently, its mastery over human beings who live in close proximity to nature. Law has played an essential role in alienating humans from nature, specifically to ensure labour power for the elite, through mechanisms such as land dispossession and appropriation.[162] Furthermore, law has functioned to exclude those who live in close proximity to nature, by withholding rights and legal protections. As such, I argue that modern law has been essential in the domination and mastery of nature, as established by Western Modernity.

2.4 Conclusion

In this Chapter, I have provided a contextualisation and overview of the ways in which Western Modernity has shaped and disturbed the relationship between humans and nature. As a starting point, I have provided an overview of the historical emergence of Western Modernity, as well as its global influence as a cultural force. In doing so, I have identified three key features that underlie the notion of Western Modernity. Firstly, the central motif of progress, as the idea that the state of things could always be better. Secondly, the emergence of capitalism as a novel economic framework. Thirdly, I have identified colonialism as a core feature of Western Modernity.

By considering each of these three features as its inextricable foundational principles, I have illustrated that Western Modernity is the moment in which the West affirmed itself as the 'master model' at the centre of the world. Following Plumwood's theory of the 'master model', I have argued that the white, mostly male, elite human being is perceived as the norm, through its domination and mastery of nature.[163]

In order to situate itself as the 'master' of the world, the West also determined who and what would be excluded from this master model, and is thus objectified to be mastered. By drawing on Ecofeminist theory, I have argued that this exclusion and marginalisation by the master model is based on the exclusion and domination of nature. It is then on the basis of their proximity to nature, that indigenous people, women and poor communities are excluded and marginalised.

In order to substantiate this argument, I have particularly focused on the role which modern law has played in the domination and mastery of nature, and those who

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162 Hickel (n 143) 56-57.
163 Plumwood (n 1) 23, 26.

live in close proximity to it. I have illustrated this argument, by focusing on law's constitutive function as the basis of modern society, as well as its instrumental function, by making reference to examples of legislation and policies that have excluded women, indigenous communities, as well as poor communities. In particular, I have considered laws that have facilitated dispossession, such as the laws of enclosure in the UK and the Natives Land Act in South Africa. Moreover, I have considered instances of laws that have been instrumental to the discrimination against these marginalised groups, such as voting rights which have historically excluded women, indigenous communities and poor communities from political activities.

Ultimately, this Chapter is an attempt to illustrate the ways in which Western Modernity and its concomitant feature of modern law, has damaged the relationship between humanity and nature, to the extent where humans have been alienated from nature, enabling the objectification, commodification and desacralisation of nature.

3 Ecocide: The legacy of Western Modernity

We're already in the middle of it. We are living in a world that is dying.[1]

3.1 Introduction

As a result of the relationship of mastery between humanity and nature, as it has been shaped by Western Modernity and modern law, the Earth finds itself in an era of ecological crisis. In a recent study, the current climate crisis was described as an extinction crisis of 'biological annihilation' that represents a 'frightening assault' on the Earth ecosystem.[2] In this Chapter, I will frame the climate crisis of ecocide as the remaining legacy of Western Modernity and its legal framework.

As a starting point I will discuss the concept of ecocide, considering both its origin and its meaning.[3] By tracing the origin of ecocide to Western Modernity, I will explain that it can be understood as the legacy of Western Modernity. I will do so, by illustrating that ecocide is a result of same foundational principles that Western Modernity was built on: the core notion of progress, the economic system of capitalism and the project of colonialism. As such, this discussion will revolve around these three central motifs of Western Modernity, and the resultant ecocide which now threatens the Earth ecosystem.

In order to show how Western Modernity has led to ecocide, I discuss what Crook, Short and South refer to as the ecocide-genocide nexus.[4] By considering the way in which ecocide is an extension of colonial genocide, I will follow Alexander

1 J Hickel *Less is More: How Degrowth Will Save the World* (2020) 18.
2 Hickel (n 1) 16; G Ceballos, PR Ehrlich & R Dirzo 'Biological annihilation via the ongoing sixth mass extinction signaled by vertebrate population losses and declines' (2017) 114(30) *Proceedings of the National Academy of Sciences*.
3 P Higgins, D Short & N South 'Protecting the planet: a proposal for a law of ecocide' (2013) 59(3) *Crime, Law and Social Change* 251-266.
4 M Crook, D Short & N South 'Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and glocal ecosystems environments' (2018) 22(18) *Theoretical Criminology* 299-300.

Dunlap's argument that ecocide forms part of a larger extermination strategy which is particularly aimed at indigenous people, as well as other marginalised groups.[5]

Through this discussion, I will argue that capitalism has inherently ecocidal tendencies, which not only results in the destruction of natural resources, but also the dispossession and genocide of formerly conquered indigenous people. This argument will be strengthened, by particularly focusing on the power relationship between the West and the Global South. As such, it will be essential to note modern law's complicity in skewed power relations and processes of social exclusion.[6]

In this Chapter, I will ultimately aim to disclose the links between Western Modernity and ecocide, as the process of destruction of the greater Earth ecosystem.

3.2 Ecocide: Framing the climate crisis

The term ecocide was first coined by a group of scientists to describe the environmental destruction and the potential human health catastrophe that would arise from the chemical warfare strategies employed by the United States (US) in the Vietnam War.[7] It was first used at the Congressional Conference on War and National Responsibility in Washington, which aimed to address the matter of US war crimes committed in Vietnam.[8]

In its early formation, the term ecocide was thus envisaged as a crime committed within the context of war.[9] More recently, the term has been used to condemn the West's destruction of indigenous land, knowledge and culture, in the context of the global climate crisis that we are facing.[10] And today, the term ecocide is more colloquially used to describe the most pressing environmental issue of our time, namely climate change.[11]

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5 Crook, Short & South (n 4) 299; A Dunlap 'The 'solution' is now the 'problem': Wind energy, colonisation and the 'genocide–ecocide nexus' in the Isthmus of Tehuantepec, Oaxaca' (2018) 22(4) *International Journal of Human Rights* 557.

6 M Davies 'Exclusion and the Identity of Law' (2005) 5 *Macquarie Law Journal* 22.

7 D Short *Redefining Genocide: Settler Colonialism, Social Death and Ecocide* (2016) 38; D Zierler *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment* (2011) 14.

8 Short (n 7) 40.

9 Short (n 7) 41.

10 Short (n 7) 38.

11 As above.

Climate change can be understood as the consequence of the warming of the Earth ecosystem.[12] Such warming is caused by human activities, particularly through greenhouse gas emissions caused by energy use, land use and lifestyle patterns of consumption and production.[13] The crisis of global warming has escalated to such an extent that the Northern hemisphere experienced its hottest summer on record, in this past year.[14] According to the IPCC, some of the biggest concerns regarding global warming is the impact that it will have on the availability of life-sustaining resources such as water supply and food security across the globe.[15]

In a response to these concerns, a useful way of measuring the extent to which human activities are causing ecocide to the Earth, was developed in 2009. According to the planetary boundaries framework, which was developed by Johan Rockström and 28 other internationally renowned scientists, nine processes have been identified as critical for the maintenance of a stable and resilient Earth ecosystem.[16] The nine processes mapped through this framework include, for instance: biosphere integrity; land system change; and climate change.[17]

This planetary boundaries framework functions by measuring the systems and processes that regulate life on planet Earth, according to historically known ranges.[18] Once these systems and processes start functioning outside of the historically known ranges, it is scientifically unlikely that we will be able to maintain stability within the

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12 H Lee & J Romero (eds) *Climate Change 2023: Synthesis Report, Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2023) 43.

13 As above.

14 Copernicus Climate Change Service 'Summer 2023: the hottest on record' 5 September 2023 https://climate.copernicus.eu/summer-2023-hottest-record#:~:text=The%20June%2DJuly%2DAugust%20(,warmest%20for%20the%20summer%20season (accessed 1 October 2023); L Paddison CNN 6 September 2023 'The world has just experienced the hottest summer on record – by a significant margin' https://edition.cnn.com/2023/09/06/world/hottest-summer-record-climate-intl/index.html (accessed 1 October 2023).

15 Lee & Romero (n 12).

16 Stockholm Resilience Centre at Stockholm University 'Planetary boundaries' 2023 https://www.stockholmresilience.org/research/planetary-boundaries.html#:~:text=These%20nine%20planetary%20boundaries%20were,has%20been%20revised%20several%20times.; K Richardson et al 'Earth beyond six of nine planetary boundaries' (2023) 9 *Science Advances* 1.

17 Richardson et al (n 16) 4.

18 Richardson et al (n 16) 1.

Earth ecosystem.[19] It is therefore, in our interest of survival and in the interest of the entire Earth ecosystem, that these systems function within the planetary boundaries.

However, in a 2023 study it was found that six out of nine planetary boundaries have already been transgressed through human activities.[20] The findings of this study confirm that humanity is impacting the Earth ecosystem at an extremely concerning, unprecedented level.[21] As such, the stability and resilience of the Earth ecosystem is being threatened to an extent that the survival of life on Earth cannot be guaranteed.

If we consider the meaning of the term 'ecocide', it can be broken down to a combination of two words. 'Eco-' stems from the Greek term '*oikos*', referring to a 'house' or 'habitat', and can be translated to the word 'ecosystem'.[22] An ecosystem can be understood as a complex biological system of organisms that interact with each other and with the environment within which they exist.[23] The second part of the word, stems from the French element '*-cide*' or the Latin element '*-cida*', which translates to 'killer' or 'to kill'.[24] Polly Higgins, Damien Short and Nigel South, as cited in Short, describes 'ecocide' as:

> the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished…[25]

Higgins, Short and South goes further to describe two types of ecocide.[26] Firstly, they describe human-induced ecocide or 'ascertainable ecocide', which is ecocide caused by human agency, usually through the activities of corporations or companies, meaning that the individual(s) responsible for the damage can be identified.[27] As Jeremy Williams notes, it is indeed possible to quantify and identify the

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19 As above.
20 Richardson et al (n 16) 9.
21 Richardson et al (n 16) 11.
22 Oxford English Dictionary https://www.oed.com/viewdictionaryentry/Entry/59402 (accessed on 1 June 2023); Oxford Reference https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100247521 (accessed on 10 January 2024).
23 As above.
24 Online Etymology Dictionary https://www.etymonline.com/word/genocide (accessed on 1 June 2023).
25 Short (n 7) 63; Higgins, Short & South (n 3) 257.
26 Short (n 7) 64; Higgins, Short & South (n 3) 257.
27 As above.

corporations and individuals who are responsible for climate change.[28] According to the 2017 Carbon Majors Database, 100 fossil fuel companies can be identified as responsible for 71 percent of global greenhouse gas emissions.[29] And if these companies and their management can be identified, they can also be stopped.

The second form of ecocide described by Higgins, Short and South is ecocide by 'other causes' or 'non-ascertainable ecocide', such as natural disasters like floods or earthquakes, where the perpetrator cannot be so easily identified.[30] Even though the second type of ecocide cannot be stopped, its frequency could be reduced if human-induced ecocide is stopped.[31] As such, it is imperative that human-induced ecocide be addressed.

I agree with the urgency with which ecocide must be addressed. But my concern relates to who must bear the responsibility for addressing human-induced ecocide. Although Europe accounts for less than 20 percent of the global population, in 2017, it boasted 50 out of the 100 biggest global polluters.[32] Moreover, the US was home to a further 32 of these polluters in that same year.[33]

Historically, Europe and North America have been responsible for approximately 60 percent of global carbon emissions.[34] In contrast to this, Africa has been responsible for approximately three (3) percent of global carbon emissions.[35] This indicates that not *all* humans are responsible for causing ecocide. Moreover, not *all* humans are facing the effects of ecocide. This leads me back to Plumwood's theorisation of the 'master model'.

As the legacy of Western Modernity, ecocide is a product of the West, and of the master model. Through its own alienation from nature, in attempt to master the natural world, this white, mostly male elite has contributed the most to the climate crisis. It is therefore, not in the interests of justice to place the blame for ecocide on *all*

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28 J Williams *Climate Chance Is Racist: Race, Privilege and the Struggle for Climate Justice* (2021) Chapter 1.
29 P Griffin *CDP Carbon Majors Report 2017* (2017) 8.
30 Short (n 7) 64; Higgins, Short & South (n 3) 257.
31 Short (n 7) 64.
32 Williams (n 28) Chapter 1.
33 As above.
34 As above.
35 As above.

of humanity. Marginalised communities, made up of women, indigenous people and poor people, have factually contributed the least to the climate crisis.[36] Yet, it is becoming more evident that they are paying the price for it.

3.3. The ecocide-genocide nexus

Before the concept of ecocide, Raphael Lemkin theorised the concept of genocide in relation to the experience of Jews at the hands of the German government, in 1944, by combining the Greek word '*genos'*, which translates to tribe or race, and the Latin element '-*cida*', which translates to 'to kill'.[37] In 1948, the United Nations (UN) adopted the Convention on the Prevention and Punishment of the Crime of Genocide 1948.[38] In terms of this Convention, genocide is defined as:[39]

> …any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part…

Since then, the concept of genocide has been clarified particularly in relation to the role of cultural destruction.[40] Whereas the common understanding of genocide is the killing of people, cultural genocide can be understood as the destruction of a social group through the destruction of its culture.[41] As explained in Chapter 2, the word culture can be understood as the customs and beliefs, the way of life and social organisation of a particular group.[42] Culture is behaviour that is particular to human beings, including ideas, beliefs, law and customs.[43]

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36 G Nakat Greenpeace 'Climate justice and social justice: Two sides of the same coin' 21 February 2023 https://www.greenpeace.org/international/story/58334/climate-justice-and-social-justice-two-sides-of-the-same-coin/ (accessed 10 January 2024).

37 Short (n 7) 2; R Lemkin *Axis Rule in Occupied Europe: Analysis, Proposals for Redress* (1944) 79.

38 Short (n 7) 2.

39 Article II of the Convention on the Prevention and Punishment of the Crime of Genocide 1948.

40 Short (n 7) 3.

41 As above.

42 AS Hornby (ed) *Oxford Advanced Learner's Dictionary of Current English* (2015).

43 LA White Encyclopaedia Britannica 'culture' 2022 https://www.britannica.com/topic/culture (accessed 1 October 2023).

In formulating the definition of genocide, Lemkin envisaged two phases.[44] Firstly, genocide would entail the destruction of the 'national pattern' of the oppressed group, through physical killing of individual members.[45] Secondly, genocide would entail the imposition of the 'national pattern' of the oppressor on the remaining oppressed population or the territory, if the entire population is killed.[46] As such, genocide does not only take place through physical killing, but is also perpetrated when the culture of the oppressor is imposed upon the oppressed group.

Short elaborates on Lemkin's second element of genocide, by identifying it as a process of cultural genocide, where the way of life of the oppressed population is undermined.[47] As Lemkin states, genocide does not necessarily require physical killing, but could signify a coordinated plan of various actions which are aimed at the destruction of the essential foundations of the livelihood of a group.[48] This plan would then be oriented towards the disintegration of the political and social institutions of culture, the language, religion, values and economic system of the individuals of the group.[49] As such, Lemkin defines the concept of genocide as inextricably linked to colonialism.[50]

Genocide can thus also be understood as a cultural project, where the culture which is the binding force that holds a group together, and secures its integrity and physical well-being, is destroyed.[51] Even though its principal technique is mass murder, the interconnected character of land and ecosystems, with the culture of indigenous people, means that ecocide should be understood as 'ecologically induced genocide'.[52] As such, the cultural link between indigenous people and their environment, including land, means that ecocide through the destruction of ecosystems, can indeed result in genocide.[53]

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44 Lemkin (n 37) 79.
45 Lemkin (n 37) 79; Short (n 7) 18.
46 Lemkin (n 37) 79.
47 Short (n 7) 18.
48 Lemkin (n 37) 79.
49 As above.
50 As above.
51 Crook, Short & South (n 4) 305.
52 Crook, Short & South (n 4) 306; M Crook & D Short 'Marx, Lemkin and the genocide-ecocide nexus' (2014) 18(3) *International Journal of Human Rights* 298-319.
53 Crook, Short & South (n 4) 305; A Brisman 'Not a bedtime story: Climate change, neoliberalism, and the future of the Arctic' (2013) 22(1) *Michigan State International Law Review* 262-263.

Short goes so far as to argue that cultural genocide must be understood as being central to genocide itself.[54] He asserts that we can consider the '*genos'* in genocide to be a social formation, which is made up of social relations which form a culture.[55] If we do so, then genocide is the forcible destruction of the social formation.[56] This destruction does not necessarily require physical killing, but could be executed through the breaking down of religion, language, and practices that maintain the social relations within a group.[57] This would include relations with the environment and the land.

If culture is seen as vital to the physical well-being and survival of a group, its destruction could indeed have genocidal effects.[58] As such, the destruction of nature through dispossession, extraction and exploitation, which is enabled by the alienation of indigenous people from their environments, can be understood as the ecocide-genocide nexus. This nexus is a site of activity for the West, historically and in the current global order.

As an example, Short considers the experiences of indigenous people living under settler-colonial rule, arguing that their lives continue to be shaped by genocide, or as Patrick Wolfe observes, through a 'logic of elimination'.[59] Wolfe argues that the primary motive for the elimination of indigenous people is access to territory, as territoriality is settler-colonialism's necessary condition.[60] This can also be extended to the forceful removal and displacement of indigenous people. As indigeneity can be perceived as synonymous with attachment to the natural environment and land, the disruption of this relationship has critical effects on the integrity of indigenous people and their existence.[61] Wolfe argues that land is necessary to sustain life, and as such, struggles over land are often struggles for life.[62]

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54 Short (n 7) 17.
55 Short (n 7) 33.
56 As above.
57 As above.
58 Short (n 7) 19.
59 Short (n 7) 17; P Wolfe 'Settler colonialism and the elimination of the native' (2006) 8(4) *Journal of Genocide Research* 388.
60 Wolfe (n 59) 388.
61 Short (n 7) 35.
62 Wolfe (n 59) 387.

Through the project of colonialism, the West has alienated indigenous people from nature, by imposing its own culture and by extension its modern legal system on these communities, through conquest. Through this alienation, the essence of indigenous life and culture has been disrupted and even destroyed. As such, Crook, Short and South note that ecocide is intimately related to the notion of genocide, specifically in the afterlife of colonialism.[63]

The destruction of land, and livelihoods, through methods of extraction and exploitation undermine the life and existence of indigenous people.[64] Ultimately, Dunlap argues that these tactics can be seen as forming part of a larger extermination strategy, aimed at indigenous people.[65] However, whereas genocide is a crime in terms of the Rome Statute of the International Criminal Court 1998 (the Rome Statute), there is legally no international crime of ecocide.[66]

In the 1980s, the UN considered the possibility of including of an environmental crime within its Draft Code of Crimes Against the Peace and Security of Mankind 1996 (the Code).[67] This Code was later adopted as the Rome Statute.[68] Even though the crime of ecocide was left out of the Rome Statute, some states have opted to include this crime within their domestic laws, such as Vietnam, Russia, Armenia and Ukraine.[69] In more recent years, international lawyer and environmental activist, Higgins, has advocated for the criminalisation of ecocide in its own right.[70] Her campaign specifically places a focus on the vast and devastating impact that ecocide has on indigenous people, who are dependent on their environment for their well-being, as well as the spiritual and cultural integrity of their communities.[71]

3.4 Capitalism and the ecocide-genocide nexus

63 Crook, Short & South (n 4) 299.
64 As above.
65 Crook, Short & South (n 4) 299; Dunlap (n 5) 557.
66 Article 5 of the Rome Statute of the International Criminal Court; Crook, Short & South (n 4) 303-304.
67 Short (n 7) 44.
68 As above.
69 Short (n 7) 48.
70 Short (n 7) 61.
71 Short (n 7) 62.

To illustrate the link between ecocide and genocide, it is also necessary to understand the political economy of genocide, which is the economic model of capitalism.[72] Crook, Short and South place the process of primary accumulation, through violent and predatory invasion and expropriation of indigenous land at the core of the political economy of genocide.[73] This speaks to both capitalism and colonialism, as central motifs of ecocide, in the afterlife of Western Modernity.

Human-induced ecocide marks a radical and dysfunctional shift in the interactions between humanity and nature.[74] This shift, which has been caused by growth-driven capitalism, is at its core, antithetical to the reality of nature's finite resources.[75] Due to the finite character of the natural world, capitalism and its growth imperative is inherently unsustainable, from an ecological perspective.[76]

To explain the unsustainability of growth, Jason Hickel states that even though all living things grow, nature contains a self-limiting logic to growth where organisms grow to a point of maturity and then maintain that state of equilibrium.[77] However, as opposed to reaching a healthy equilibrium, cells can continue replicating due to a biological 'coding' error, which can be observed in the growth and spread of cancer cells.[78] Economically speaking, this kind of growth can become deadly, as is becoming evident in the climate crisis.[79]

The ecocidal tendencies of the capitalist system violate the limitations which the natural world imposes on the conditions of production, as well as natural metabolic cycles.[80] Through reducing natural resources to objects and commodities, nature is undervalued to the extent where it is seen as a mere source of natural resources.[81] As Short argues, capitalism is structurally oriented towards the production of commodities which align with the imperatives of capital accumulation, as well as exchange value.[82] This disconnect between capital's destructive consumption of energy and natural

72 Crook, Short & South (n 4) 308.
73 Crook, Short & South (n 4) 309.
74 Crook, Short & South (n 4) 307.
75 Short (n 7) 187-188.
76 Short (n 7) 188.
77 Hickel (n 1) 20.
78 As above.
79 As above.
80 Crook, Short & South (n 4) 307.
81 As above.
82 Short (n 7) 55.

materials, and the limitations of nature and its metabolic cycles results in climate disaster.[83]

To fuel the capitalist system, the West has therefore over-exploited, extracted and plundered land, natural resources and indigenous communities, particularly located in the Global South. It is essential to note, that processes of invasion and expropriation of land, through colonisation, affect non-human life and the environment just the same as humans.[84] It is, therefore, not only humans that fall victim to ecocide.[85] Seen as part and parcel with the ecocidal practices of capitalism in pursuit of growth, these implicit or explicit forms of exploitation and human alienation from nature, constitute the conditions for the 'eco-genocidal destructive production' of capitalism.[86]

Furthermore, a dominant culture of overproduction, overconsumption and increasing extraction is being driven by capitalist elites.[87] By controlling advertising and media, which is increasingly dependent on influencer culture on social media, as well as controlling the means of production, the capitalist elite is continuing on a path of destruction through perpetual growth.[88] This growth is beneficial to them, in terms of accumulation and resource control, but they are simultaneously catapulting us into an irreversible ecological crisis.[89]

Unfortunately, due to globalisation and the influence of capitalism in pop-culture, the Global South is influenced to reproduce this unsustainable Western culture through mirroring acts of overconsumption and excessive disposal.[90] It is, however, not the capitalist elite in the West who are the victims to most ecocidal effects, but instead the well-being and livelihoods of the global majority – particularly marginalised communities in the Global South – are negatively affected.[91]

Following from the theorisation of the Western master model, and its domination of nature and all those who live in close proximity to nature, it seems that

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83 As above.
84 Crook, Short & South (n 4) 309.
85 As above.
86 As above.
87 F Sultana 'Whose growth in whose planetary boundaries? Decolonising planetary justice in the Anthropocene' (2023) *Geography and Environment* 3.
88 As above.
89 Sultana (n 87) 4.
90 Sultana (n 87) 5.
91 Sultana (n 87) 4.

it is also those who live in close proximity to nature who face the brunt of the climate crisis. The power relationships of mastery established through modern law and the master model now becomes perpetuated in the unequal manner in which the excluded and 'mastered' communities are affected by ecocide. On this point, the interdependent economic relationship between the West and the Global South is worth considering.

In Walter Rodney's 1972 book, *How Europe Underdeveloped Africa*, he argues that Europe's development came at the cost of underdeveloping Africa.[92] Rodney illustrates this relationship between development and underdevelopment as interdependent, meaning that one could not exist without the other.[93] He argues that Europe and/or the West historically established a parasitic relationship with the rest of the world, specifically Africa and the Global South.[94]

Through the exploitation, destruction and the resource commodification of Africa and the Global South, the West significantly increased its economic power. In this sense, Rodney argues that if it were not for this relationship of exploitation, the West would not have developed as it did, and Africa and/or the Global South would have been in a very different position.[95]

Something that stands out to me in Rodney's analysis is the exploitation and destruction of the entire ecosystems of the places which the West had conquered. Even though Rodney does not pay particular attention to this aspect, it is clear to me that the development of the West had come at the cost of the destruction and exploitation of human communities, as well as ecosystems in Africa and/or the Global South. The West has not only become economically developed at the cost of underdeveloping Africa, but also at the cost of nature, and those who live in proximity to nature.

This is significant, because even though the West has played the largest part in contributing towards the climate crisis, it is not necessarily the West who is paying the price for climate change. As statistics indicate, the US and Europe have historically emitted the most greenhouse gases – more than any other countries – making them

92 W Rodney *How Europe Underdeveloped Africa* (1972) 45.
93 As above.
94 See Rodney (n 92).
95 As above.

the biggest contributors to the climate crisis.[96] Yet, according to the latest IPCC report, it is those who have generally least contributed to climate change, who are the most vulnerable.[97] This is directly linked to economic growth. The more economic growth in a country or region, the more it has contributed to climate change. The less economic growth in a country or region, the more vulnerable it is to climate change.

Today these tensions are also evident in the notions of 'developed' and 'underdeveloped', which remain in use to signify economic status. Developed countries, who have historically participated in projects of colonisation, such as the US and European countries like Germany, France, Italy, Spain and the UK, are also referred to as 'advanced economies' or 'high income' countries.[98] Whereas, underdeveloped countries, who have historically been colonised, such as Asian countries like India, South American countries like Mexico and Brazil and most of Africa, including Nigeria and South Africa, are also referred to as 'emerging markets', 'developing economies' and 'lower income' countries.[99]

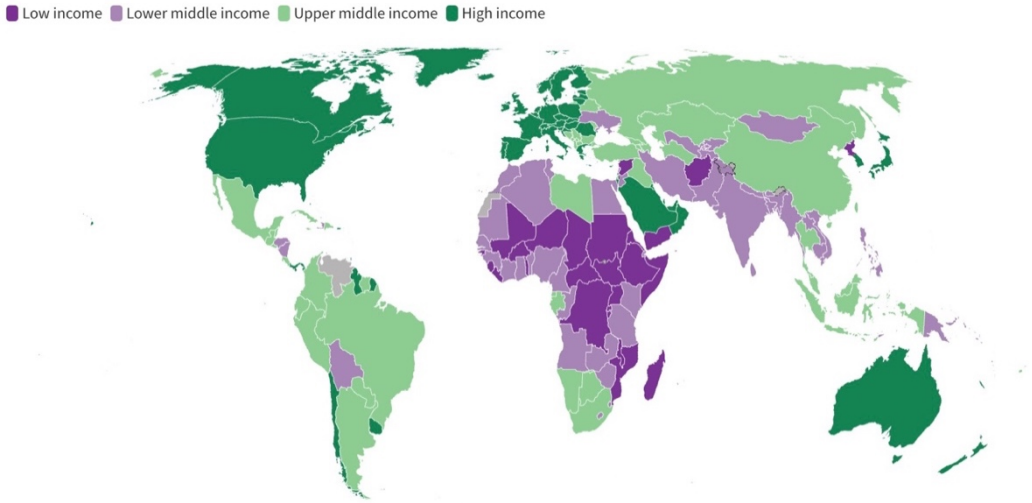

Figure 1: A world map, indicating economies based on the gross national income (GNI) per capita data from 2022. Source: The World Bank.[100]

96 H Ritchie Our World in Data 'Who has contributed most to global CO2 emissions?' 1 October 2019 https://ourworldindata.org/contributed-most-global-co2 (accessed 10 January 2024).

97 Lee & Romero (n 12) 48.

98 International Monetary Fund *World Economic Outlook: Navigating Global Divergences* (2023); The World Bank 'The World by Income and Region' 2024 https://datatopics.worldbank.org/world-development-indicators/the-world-by-income-and-region.html (accessed 10 January 2024).

99 As above.

100 The World Bank 'The World by Income and Region' 2024 https://datatopics.worldbank.org/world-development-indicators/the-world-by-income-and-region.html (accessed 10 January 2024).

As seen in Figure 1, countries that have been previously colonised and exploited by the West, still suffer economically with lower income economies. What is also clear, is that the West, specifically the US, Canada and most of Europe boast stable and high-income economies.

Greenpeace states it is low-income countries, often consisting of indigenous people and people of colour, as well as marginalised groups, such as women and people with disabilities, who are more likely to pay the price for the climate crisis.[101] These regions and communities are more vulnerable to climate injustice, as they do not have access to financial resources to adapt to or recover from climate disasters.[102] This is confirmed in the 2023 IPCC report, which states that people are more vulnerable to climate disasters when they are located in areas that suffer from high poverty levels, governance challenges and a lack of basic services and resources.[103] As such, the latest global crisis of ecocide perpetuates the cycle of oppression, conquest and colonialism, where it is once again the marginalised previously oppressed and colonised regions that are suffering the most.

Ecocide is a result of extraction, overproduction, overconsumption and the vast disposal of these products.[104] However, due to the functioning of capitalism and colonialism, these activities have been unequally distributed across the globe.[105] Studying nature, and our relationship to it, then essentially becomes an examination of power relationships within the global order.[106]

The Global South has not only been economically exploited by the West, but it also suffers most when it comes to the climate crisis. A study of the relationship between humanity and nature, therefore, necessitates an interrogation of the power relationship between the West and the Global South. It is precisely these power relations that have been shaped by the functioning of modern law on a global scale, to the exclusion of nature and those who live in close proximity to it.

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101 G Nakat Greenpeace 'Climate justice and social justice: Two sides of the same coin' 21 February 2023 https://www.greenpeace.org/international/story/58334/climate-justice-and-social-justice-two-sides-of-the-same-coin/ (accessed 10 January 2024).

102 As above.

103 Lee & Romero (n 12) 51.

104 Sultana (n 87) 2.

105 As above.

106 R Chakrabarti (ed) *Critical Themes in Environmental History of India* (2020) 5.

3.5 Conclusion

In this Chapter, I have shown that the current global climate crisis of ecocide is the result of Western Modernity and the particular relationship which it established between humans and nature. In order to do so, I have argued that ecocide has been built on the same foundational elements as Western Modernity, namely: the core driving force of progress; the economic framework of capitalism; and the project of colonialism.

As a starting point, I have discussed the origins and meaning of the concept of ecocide. In doing so, I have illustrated that the West has contributed the biggest share to the climate crisis. In an eco-genocidal destructive production process of capitalist accumulation, through the extraction from and exploitation of the Global South, the West has plundered the Earth ecosystem.

I have, furthermore, problematised this as it is not the West which is bearing the largest burden of the effects of ecocide. It is rather marginalised communities, who are made up of women, indigenous people, as well as poor communities, who have contributed the least to the climate crisis, who are most vulnerable to its effects.[107] In this sense, I have argued that ecocide forms part of a larger 'extermination strategy' of these marginalised groups, which follows from historical projects of colonialism.[108] Historically marginalised groups, such as conquered indigenous people face the harshest effects of the climate crisis, even though they have contributed the smallest share. I have illustrated that this perpetuates the relationship of mastery which has been established through modern law and the master model.

There is thus a parasitic relationship between the West and the Global South, when it comes to ecocide. While the West has developed itself, it has simultaneously underdeveloped the Global South. This relationship of development and underdevelopment is mirrored in the causing of ecocide by the West, and the devastating effects of ecocide imposed on the Global South. As such, this unequal power relationship of mastery, historically established through the notion of progress,

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107 G Nakat Greenpeace 'Climate justice and social justice: Two sides of the same coin' 21 February 2023 https://www.greenpeace.org/international/story/58334/climate-justice-and-social-justice-two-sides-of-the-same-coin/ (accessed 10 January 2024).

108 Crook, Short & South (n 4) 299; Dunlap (n 5) 557.

the economic system of capitalism and projects of colonialism, is perpetuated through ecocide.

4 Resisting ecocide: Possibilities beyond mastery

We too must hurl ourselves against and through the metaphorical concrete that keeps us imprisoned within an economic and political system that does not blanch at committing genocide and ecocide.[1]

4.1 Introduction

In the preceding Chapters, I have illustrated the way in which Western Modernity and the emergence of modern law, has fundamentally disturbed the relationship between humans and nature, to an ecocidal extent. In doing so, I have argued that ecocide can be understood as the legacy of Western Modernity, insofar as it is grounded in the same core principles of progress, capitalism, and colonialism.

In Chapter 2, I particularly considered the way in which law functions to exclude and marginalise communities, based on their proximity to nature, as nature became perceived as a commodified, desacralised object to be mastered. In Chapter 3, I have argued that this commodification, desacralisation and objectification of nature, by the West, has resulted in the current global climate crisis. I have also, particularly emphasised the fact that the West has contributed most to the climate crisis, but that it is the Global South – the communities who live in close proximity to nature – who are most vulnerable to the effects of ecocide. The structure of the master model of Western Modernity is thus perpetuated through ecocide.

In this Chapter, I will evaluate the potential framework of Degrowth for its ability to resist ecocide and restore the relationship between humans and nature. In order to do so, I will consider the ways in which Degrowth could disrupt the foundation upon which ecocide has been established, namely: progress, capitalism and colonialism. This discussion will include an exposition of what Degrowth entails, as well as its potential legal complement of ecological law, as an alternative to Anthropocentric modern law.

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[1] D Jensen *Endgame, vol. 1: The Problem of Civilisation* (2006) 383.

Ultimately, this discussion will attempt to shed some light on how the dysfunctional relationship between humans and nature might be reconceptualised, beyond mastery, through the framework of Degrowth and an ecological jurisprudence. In this manner, I will attempt to envision an alternative way in which law can function to resist ecocide.

4.2 Growth and progress

As a starting point, it would be helpful if we consider the concept of growth, and its relationship to the notion of progress. Growth can be seen as expressions of progress. The progress of human communities and societies, since the advent of Western Modernity, is measured through their material and economic growth. Giorgos Kallis et al distinguishes between these different kinds of growth. On the one hand, material growth refers to the increase in the amount of material and energy which is transformed by humanity, for instance, the amount of coal burned, or plants and animals eaten.[2] On the other hand, economic growth refers to the increase in the monetary value of goods and services which are exchanged on the market, and calculated as each country's Gross Domestic Product (GDP).[3]

GDP is popularly understood as a direct presentation of the development and progress taking place in a country. However, Hickel argues that this metric is flawed, as it produces the total monetised economic activity, without indicating whether that activity is useful or whether it is destructive.[4] As I have shown in Chapters 2 and 3, the idea of progress has fuelled a logic which has led to devastating ecological degradation. As a core contributing element of ecocide, the positive connotations that humanity links to growth and progress, must be interrogated.

In this sense, Kallis et al distinguish between three rhythms of growth.[5] The first rhythm of growth is biological growth, which is a cyclical process, for instance, seeds growing into trees which will bear seeds and human babies growing into adults who

2 G Kallis, S Paulson, G D'Alisa & F Demaria *The Case for Degrowth* (2020) 8.
3 Kallis et al (n 2) 9.
4 J Hickel *Less is More: How Degrowth Will Save the World* (2020) 87.
5 Kallis et al (n 2) 10.

will bear children.[6] This rhythm of growth is normal, natural and can be observed throughout the Earth ecosystem.[7]

Secondly, as opposed to normal growth, perpetual growth can occur, such as invasive plants dominating others, or cancer cells producing tumours.[8] But these instances of unusual growth will eventually come to an end, as the habitat becomes inhospitable, or the host body dies of cancer.[9] Kallis et al therefore stress that there is nothing natural to a process of perpetual growth.[10] Biologically, and historically, all processes of growth have taken place within the limits of nature.[11] Even human behaviour on Earth has been controlled by these limits, as can be observed in the historical cyclical rises and falls of cities and empires.[12]

However, perpetual growth has become increasingly normalised in human communities since the dawn of Western Modernity. This new rhythm of growth, namely compound growth, is characterised by unprecedented increases in global economic activity, overconsumption of resources, and drastic increases in waste generation and greenhouse gas emissions.[13] GDP is the metric used to measure compound growth.[14] The global focus on the measuring of countries' GDP growth, has meant that economic growth is pursued for growth's sake, not to meet the ends of human needs or planetary well-being.[15] It is this extreme pursuit of economic growth, and *progress*, which has brought great destruction to the Earth ecosystem, which is increasingly negatively affecting human communities.

However, compound growth has elicited polarising responses. There are those, like myself, who are concerned with, and warn of the breaching of planetary limits, the ecocidal destruction of the natural environment and the resulting human conflicts.[16] On the other side of the coin, the capitalist elite hope and plan for this type of growth

6 As above.
7 As above.
8 Kallis et al (n 2) 10-11.
9 Kallis et al (n 2) 11.
10 As above.
11 As above.
12 Kallis et al (n 2) 11-12.
13 Kallis et al (n 2) 12.
14 Hickel (n 4) 87.
15 Hickel (n 4) 89.
16 Kallis et al (n 2) 13.

to continue.[17] But, as Kallis et al argue, compound growth is unsustainable not only due to the finite natural resources, but also because it results in increasing debt, inequality and local and global financial crises.[18] Unfortunately, the capitalist economy insists on compound growth continuing, seemingly indefinitely. However, the theory of Degrowth proposes that there is an alternative.

4.3 Degrowth: An alternative to capitalism

As growth has caused nature to be increasingly exploited and damaged, it has also caused severe debt, inequality and financial ruin on a global scale.[19] While economists and politicians predominantly argue that these social ills could be solved with more growth, Degrowth scholars identify the problem to be growth in itself, arguing that the material sacrifices of the Earth ecosystem which is made in the pursuit of growth, have become intolerable.[20] The question which has been asked by Degrowth scholars in this regard is, whether there is a way for humanity to flourish without growth.

4.3.1 Delineating Degrowth

The term Degrowth, or rather *décroissance*, emerged in the West when it was first used by French intellectual, André Gorz in 1972, when he posed the question of whether the economic system of capitalism is compatible with the survival of the Earth ecosystem.[21] The public debate about Degrowth, however, only truly started in 2002, when a special issue of the magazine *Silence* was published in tribute to Nicolas Georgescu-Roegan, who was the inspiration for Gorz, and a pioneer of ecological economics and bioeconomics.[22] Giacomo D'Alisa, Federico Demaria and Giorgos Kallis suggest that this was likely the starting point for today's Degrowth movement in the West.[23]

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17 As above.
18 Kallis et al (n 2) 28.
19 Kallis et al (n 2) 24.
20 As above.
21 G D'Alisa, F Demaria & G Kallis (eds) *Degrowth: A Vocabulary for a New Era* (2015) 1; A Gorz 'Nouvel Observateur' trans M Bosquet *Proceedings from a public debate organized in Paris by the Club du Nouvel Observateur* (1972) iv.
22 D'Alisa, Demaria & Kallis (n 21) 2.
23 As above.

At a conference in Paris of the academic collective Research and Degrowth in 2008, the term 'Degrowth' was first officially used in the English language.[24] Since then, the theory of Degrowth has spread across the globe, as a movement as well as an academic school of research, which is also taught at universities around the world.[25] In May 2023, scholars, politicians and other stakeholders came together in the European Parliament at the Beyond Growth Conference, which focused on the creation of policies for a sustainable and prosperous future in Europe, without growth.[26]

The foundational concern of Degrowth is the association of the term 'growth' with something that is better, which makes it inherently desirable.[27] Degrowth attempts to confront this unquestioned desire for growth, in order to imagine a different future for humanity.[28] As such, Degrowth seeks to question the common belief that perpetual growth is natural, and that this also translates to economic expansion being part of human nature.[29] In this sense, the strength of Degrowth's critique of growth rests on the notion that human communities do not need to expand and grow economically, in order to live well and flourish.

Degrowth can thus be described as a critique of economic growth as a social objective, and a critique of capitalism as a system that is dependent on growth.[30] As opposed to the objective of growth and the system of capitalism, Degrowth envisions a change in the course of history, where material use and market transactions are restricted, and communities build institutions and relationships that enable humanity to flourish without growth.[31] This would require a shift away from capitalism in its entirety.

Hickel describes the praxis of Degrowth as the process of reducing material and energy use by the economy, to bring humanity's economic activities back into

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24 D'Alisa, Demaria & Kallis (n 21) 3.
25 As above.
26 Beyond Growth 2023 Conference https://www.beyond-growth-2023.eu/about-beyond-growth/ (accessed 1 October 2023).
27 D'Alisa, Demaria & Kallis (n 21) 5.
28 As above.
29 Kallis et al (n 2) 15; Hickel (n 4) 94.
30 D'Alisa, Demaria & Kallis (n 21) 3.
31 Kallis et al (n 2) 18.

harmony with the Earth's ecosystem, in a just and equitable way.[32] This would effectively mean that income and resources must be fairly (re)distributed, people must be liberated from work that is not needed, and there must be a shift to investing in the things that we as humans need for our well-being.[33]

As opposed to the capitalist focus on economic growth and expansion, Degrowth suggests that what matters is how resources are distributed.[34] However, in order to distribute resources, these resources must be reclaimed.[35] As such, one of the essential pillars of Degrowth is establishing a different relationship between humans and nature, through reclaiming 'the commons'.[36] The commons can be seen as everything that forms part of the Earth ecosystem that also sustains human life.[37] In this sense, Hickel argues that, at the heart of Degrowth, there must be an ethical sense of interconnectedness and interdependence between humans and nature.[38] As such, Degrowth directly speaks to the notion of Ecocentrism, in acknowledging that humans are interconnected to, as well as dependent on nature.

Practically, the process of commoning takes place when people collaborate to sustain, create and enjoy their shared resources through communication, regulation, relational support and experimentation.[39] This process is in contrast to the capitalist, expansionist tradition of privatising, objectifying and commodifying nature and its resources.[40] Whereas capitalism thrives on the privatisation of land, the commodification of material resources, and the exploitation of human labour, Degrowth leans into a collaborate process of commoning, where these key pillars of capitalism are disrupted or reversed.

However, Degrowth also supports the notion that humanity's survival does not solely depend on the material components of the commons, such as water and land, but also, the social and cultural systems which regulate human behaviour and reproduction, such as epistemologies, languages, religions, politics and legal

32 Hickel (n 4) 184.
33 As above.
34 Hickel (n 4) 152-153.
35 Hickel (n 4) 158.
36 Kallis et al (n 2) 17.
37 As above.
38 Hickel (n 4) 239.
39 Kallis et al (n 2) 17.
40 As above.

systems.[41] As such, there is a need to rethink the dominant, capitalist culture and social systems that not only shapes Western societies, but also most societies across the globe as a result of the effects of colonisation and globalisation.

Degrowth scholarship suggests that examples of commoning can be observed from common modes of production and consumption in eco-communes or co-living communities with, for instance, community food gardens, and communal childcare.[42] Kallis et al argue that these initiatives can act as a foundation for the pursuit of Degrowth.[43] Firstly, these initiatives are inspired by a spirit of living within a community and within that community's means.[44] Secondly, activity within the community is oriented towards the needs and the well-being of the community, not towards the generation of profit.[45] Furthermore, these initiatives encourage community ownership and production, based on cooperation and sharing within the community.[46] Lastly, as opposed to the existing capitalist systems, community activity takes place at a slower pace, within the means of the community, and produces less negative socio-ecological impacts.[47] These initiatives function to enhance the well-being of humanity and nature.[48]

As such, Degrowth encourages relational modes of production, consumption and caring, in order to rethink the current global order, specifically relating to privatisation and ownership.[49] In this sense, Hickel argues that Degrowth is about making the shift towards another kind of economy altogether: an economy which is not dependent on growth.[50] This would require the rethinking of the economies of the West, to make the shift to organising Western economies around human and ecological flourishing, instead of capitalist accumulation.[51]

In order to rethink and reshape these economies, and societies as a whole, changes to legal frameworks are essential. Rethinking law is essential to the process

41 As above.
42 Kallis et al (n 2) 45-46, 57.
43 Kallis et al (n 2) 62.
44 As above.
45 As above.
46 As above.
47 As above.
48 Kallis et al (n 2) 62-63.
49 Kallis et al (n 2) 58.
50 Hickel (n 4) 33.
51 Hickel (n 4) 33.

of commoning and shifting away from growth.[52] Growth has been encouraged and enabled through the dysfunctional relationship between humanity and nature, which functions through multiple layers of exclusion and hierarchisation.[53] In Chapter 2, I illustrated how law has been implicated in facilitating and entrenching these exclusions and hierarchies. However, reimagining law along the lines of Degrowth is possible.

4.3.2 Degrowth and the rule of ecological law

In order to rethink the dominant economies that are currently centred around ideas of progress and capitalist accumulation, we would also need to rethink our conception of law. Crook, Short and South argues that by recognising the systemic violence that is produced by the capitalist organisation of societies, a radical reimagining of law could assist in undercutting the roots of law in Western Modernity.[54] As such, Degrowth needs a legal component to facilitate the process of bringing its theory into practice.

Mark Levene and Daniele Conversi argue that the entirety of the Western world-system, including economics, socio-cultural behaviour, and its fundamental values, cannot be sustained any longer.[55] On the question of law, Hickel suggests that a legal framework must be imagined to fundamentally reverse the economic policies that have allowed for unprecedented capital accumulation and privatisation of the commons.[56] At its core, capitalism functions on one principle of taking more than you give back.[57] It is precisely this principle that must be eliminated.

In order for humanity to operate according to the natural limits of our environment, we must restructure our economies, by drastically limiting growth.[58] Degrowth proposes that dominant economies must produce and consume in different ways, and more importantly produce and consume *less*.[59] In ecological terms, a legal framework must then then be based on the principle of reciprocity. In simple words:

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52 Kallis et al (n 2) 54.
53 Kallis et al (n 2) 41; V Plumwood *Feminism and the Mastery of Nature* (1993) 107.
54 M Crook, D Short & N South 'Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and glocal ecosystems environments' (2018) 22(18) *Theoretical Criminology* 304-305.
55 M Levene & D Conversi 'Subsistence societies, globalization, climate change and genocide: discourses of vulnerability and resilience' (2014) 18(3) *International Journal of Human Rights* 282.
56 Hickel (n 4) 167.
57 Hickel (n 4) 248.
58 Hickel (n 4) 114-115.
59 Kallis et al (n 2) 5.

do not take more than the ecosystem can regenerate, and make sure to give back in return.[60]

A transformative way of thinking of law in order to protect the whole Earth ecosystem can be observed in the movement of certain indigenous communities who have been aiming to get the UN General Assembly to adopt a Universal Declaration of the Rights of Mother Earth.[61] The draft Declaration states that the Earth, and all members of its ecosystem have the inherent right to life and to exist, the right to be respected and the right to regenerate its biocapacity and to continue its vital cycles and processes, among other rights.[62] The draft declaration further states that all human beings are responsible for ensuring that they live in harmony with the Earth.[63]

However, in order to truly reimagine law, we would need to depart entirely from Anthropocentric law to Ecocentric law. As such, we would need to reject the Western conception of nature and accept that humans are indeed part of the Earth ecosystem.[64] The question of a reimagined legal framework thus centres on a fundamental question about human ontology. In order to reimagine law, we must firstly accept that we are part of the Earth ecosystem.[65] And in turn, this acceptance would require us to rethink the frameworks that govern human life on Earth, in their entirety.

Shifting from Anthropocentric legal framework to an Ecocentric framework will require us to fundamentally alter the way in which we think of and theorise law. In order to understand what an Ecocentric legal framework could consist of, I will consider the theory of ecological jurisprudence. According to Geoffrey Garver, the rule of ecological law may be a suitable foundation for Degrowth.[66] The rule of ecological law combines the idea of ecological law, and the idea of the rule of law.[67]

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60 Hickel (n 4) 231.

61 Hickel (n 4) 251; the Universal Declaration of the Rights of Mother Earth was drafted from the World People's Conference on Climate Change and the Rights of Mother Earth in Bolivia on Earth Day in April of 2010.

62 Article 2(1)(a), (b) & (c) of the Universal Declaration of the Rights of Mother Earth.

63 Article 3(1) of the Universal Declaration of the Rights of Mother Earth.

64 F Tete 'Ecocentrism as Theoretical Framework for Environmental Ethics' (2022) 9(2) *Jurnal Sosialisasi* 104.

65 D Donev 'Ecocentrism or the Attempt to Leave Antropocentricity' (2019) *Trivent Publishing* 181.

66 G Garver 'The Rule of Ecological Law: The Legal Complement to Degrowth Economics' (2013) 5 *Sustainability* 317.

67 Garver (n 66) 318.

Ecological law can be understood as a reimagining of law, which centres on the establishment and maintenance of a healthy Earth ecosystem.[68] Thomas Berry suggests that a viable relationship between humanity and nature can be envisaged through a jurisprudence which sees its primary task as the establishing of optimal conditions for the healthy functioning of the Earth ecosystem.[69] At this point, I will circle back to the essence of Ecocentrism, as stated by Leopold's primary land ethic: 'a thing is right when it tends to preserve the integrity, stability and beauty of the biotic community'.[70] At the basis of ecological law, lies this notion, of the preservation of the integrity of the Earth's ecosystem. As such, ecological law is Ecocentric to its core.

Garver argues that this conception of ecological law, combined with the rule of law could serve as a legal complement to Degrowth.[71] The rule of law, as it is used here, can be understood as two-fold. Firstly, the rule of law signifies that legal institutions and legal norms ought to provide a fair and just framework for the guidance of human behaviour.[72] Secondly, this legal framework ought to be limited by the natural, finite restrictions of the Earth ecosystem.[73] As such, this legal framework must be guided and informed by the ecological limits of the Earth itself.[74] In this sense, the rule of law must coincide with the rules of the Earth ecosystem, to ensure its preservation.

The rule of ecological law would mean that the Earth's commons must be shared within the ecosystem, according to the needs of all its members.[75] Essentially, Berry argues that ecology is not a mere consideration in law, instead law must be seen an 'extension of ecology'.[76] Law, as part of human culture, is thus also part of nature, and must therefore, be held accountable by the limitations of nature. Practically speaking, the planetary boundaries framework indicates nine processes that are critical for the maintenance of a stable and resilient Earth ecosystem.[77] This framework

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68 Garver (n 66) 318; T Berry *The Great Work: Our Way Into the Future* (1999) 61.
69 As above.
70 A Leopold *A Sand County almanac: With other essays on conservation from Round River* (Outdoor Essays & Reflections 1970) 224-225.
71 Garver (n 66) 317.
72 Garver (n 66) 319.
73 As above.
74 As above.
75 Garver (n 66) 318; Berry (n 68) 61.
76 As above.
77 Stockholm Resilience Centre at Stockholm University 'Planetary boundaries' 2023 https://www.stockholmresilience.org/research/planetary-

could serve to guide and to regulate human behaviour within the limits of the Earth ecosystem.[78]

To lay the foundation for the rule of ecological law, Garver asserts that ecological jurisprudence should be formulated on the basis of some mutually reinforcing features.[79] The most fundamental feature would be the recognition of humans as part of the greater Earth ecosystem.[80] Furthermore, ecological jurisprudence must be guided by the restrictions imposed by ecological limits and planetary boundaries, to establish optimal conditions of the flourishing of the Earth ecosystem.[81] Another essential feature of the rule of ecological law would be that it should disrupt and alter human activities on a systemic level, where there is a radical shift in the economy, particularly regarding the use of natural resources and energy.[82] Garver also states that the rule of ecological law must be binding and it must be applied on a global scale, in order to be effective.[83]

I contend that the rule of ecological law, as theorised by Garver, suggests that there is indeed a viable alternative to law that does not function to exclude, dispossess and discriminate. However, the reality is that this alternative – an ecological jurisprudence which aligns with Degrowth and operates within the planetary boundaries – will impose drastic limitations on human behaviour.[84] As modern law is premised on Anthropocentrism, the Ecocentric alternative of ecological law will not be compatible with that legal paradigm. Making the shift to an ecological jurisprudence, will require a complete and fundamental rupture of Anthropocentric legal systems.

4.4 Possible limitations of Degrowth

In light of the arguments above, I am to a greater extent convinced that Degrowth and its complementary rule of ecological law, could indeed disrupt the legacy of Western Modernity. I have illustrated that Degrowth's rejection of economic growth could

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boundaries.html#:~:text=These%20nine%20planetary%20boundaries%20were,has%20been%20revised%20several%20times.; K Richardson et al 'Earth beyond six of nine planetary boundaries' (2023) 9 *Science Advances* 1.

78 Garver (n 66) 320.
79 Garver (n 66) 325.
80 As above.
81 Garver (n 66) 326.
82 As above.
83 Garver (n 66) 328.
84 Garver (n 66) 325.

potentially challenge the positive connotations that is commonly associated with progress, as the driving force of Western Modernity and its legacy of ecocide. Furthermore, Degrowth disrupts the dominant economic model of capitalism, by providing an alternative anti-capitalistic economic framework. It seems clear that, in these instances, Degrowth could indeed function to resist ecocide.

I am, however, not convinced that Degrowth effectively disrupts the remaining central element to Western Modernity and its legacy of ecocide, which is colonialism. The afterlife of colonialism remains evident in the underdevelopment and domination of the Global South, even in the 'post'-colonial world order. In this sense, I am interested in the ways in which Degrowth could serve to level the playing field between the West and the Global South – not only in an economic sense, but also epistemologically, socially, culturally and legally.

As history tells us, many countries in the Global South that gained independence from colonialism attempted to roll out progressive policies to rebuild their countries, as a means to recover from the injustices of colonialism.[85] In doing so, the Global South threatened the West's access to cheap exploitable labour, natural resources and the markets they had captured over centuries of colonialism.[86] As a result, the West decided to intervene by using its control over the World Bank and the International Monetary Fund (IMF), to hinder the independence of the Global South.[87] By 'investing' in the Global South, with loans and financial aid, the West undertook to assist the Global South with its 'development'.

The project of 'development', as introduced in this 'post'-colonial context, presupposes an acceptance of the universally *positive* character of the concept of progress which had been driving Western Modernity's capitalist expansion over the globe.[88] In this sense, Vandana Shiva argues that 'development' for purposes of capitalist accumulation, cannot be separated from colonialism and its mechanisms of poverty creation and dispossession – no matter the context.[89] As such, this idea of

85 Hickel (n 4) 89.
86 Hickel (n 4) 90.
87 As above.
88 V Shiva *Staying Alive: Women, Ecology and Survival in India* (1988) 1.
89 As above.

'development', is another expression of Western hegemony over the Global South. Kwame Nkrumah branded this mechanism as 'neo-colonialism'.[90]

Development was thus introduced into the Global South specifically, under the false guise of the improved well-being of its people, but the terms of this well-being was to be determined by the Western economic categories of needs, productivity and growth.[91] Dussel refers to this problem as the 'fallacy of developmentalism'.[92] According to Dussel, this idea of development assumes that all other cultures are expected to follow the path of European progress.[93] In other words, the fallacy is the idea that one universal path of development exists, which is the path that the West has followed.

This notion of development refers to sociological and economic changes, but also an ontological idea.[94] As the self-designated centre of the World – the master model – the West gave itself the right to 'develop' the other, who it assumes to be in closer proximity to nature, and therefore, available to be mastered. In this regard, Sylvia Wynter argues that the concept of 'development' is not purely empirical, but also teleological.[95] Wynter argues that development is a culture-specific concept with a *telos* that is oriented toward the Western world system.[96]

In line with these sentiments, Kallis et al emphasises the caveat that Degrowth specifically makes a case for high income countries in the West.[97] As such, countries from the Global South or low income countries should not feel pressure to align with this path.[98] Degrowth scholars, in fact, encourage the Global South to find its own alternatives to development.[99] In line with this notion, Wynter suggests that Africa, as a 'developing' continent, should no longer attempt to attain development, but should

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90 K Nkrumah *Neocolonialism: The Last Stage of Imperialism* (1965) ix.
91 Shiva (n 88) 1.
92 E Dussel 'Eurocentrism and Modernity' (1993) 20(3) *boundary 2* 68.
93 As above.
94 As above.
95 S Wynter 'Is 'development' a purely empirical concept or also teleological?: a perspective from 'We the Underdeveloped'' in AY Yansané (ed) *Prospects for Recovery and Sustainable Development in Africa* (1996) 299.
96 S Wynter 'Is 'development' a purely empirical concept or also teleological?: a perspective from 'We the Underdeveloped'' in Yansané (n 95) 299-300.
97 Kallis et al (n 2) 83.
98 As above.
99 Hickel (n 4) 169; F Sultana 'Whose growth in whose planetary boundaries? Decolonising planetary justice in the Anthropocene' (2023) *Geography and Environment* 3.

rather focus on rethinking the *telos* of such development.[100] As such, Wynter calls for an 'epistemological revolution', where the idea of development is redefined and reconceptualised.[101]

Wynter's suggestions thus align with those of Degrowth scholars, with regards to the Global South. These scholars note that although the high-income countries of the West do not need growth to achieve human well-being and flourishing, the same conclusion cannot be held up for the low-income countries of the Global South.[102] These countries can continue to stay within the safe planetary boundaries, while improving social indicators such as life expectancy, nutrition and income.[103]

However, as I have indicated in Chapter 3, the economies of the West and the Global South are so closely intertwined, that what is done in the West or in the Global South, will affect the other, and vice versa. In other words, if Degrowth is applied to the overgrown capitalist economies of the West, this would have serious consequences for the Global South. D'Alisa, Demaria and Kallis go so far as to suggest that this shift could potentially create space for the liberation of the Global South.[104]

It is precisely the overexploitation of the Global South's natural and human resources that has made the excess growth in the Global North economies possible.[105] The economic system of capitalism in the West has been dependent on processes of land enclosure, colonisation, dispossession and the exploitation of nature and humans, specifically in the Global South.[106] As such, moving away from capitalism by making the shift to Degrowth to the Western economies, could potentially bring an end to the exploitation of natural and human resources in the Global South, allowing for its own liberation.[107]

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100 S Wynter 'Is 'development' a purely empirical concept or also teleological?: a perspective from 'We the Underdeveloped'' in Yansané (n 95) 312.
101 As above.
102 Hickel (n 4) 169; Sultana (n 99) 3.
103 Hickel (n 4) 169.
104 D'Alisa, Demaria & Kallis (n 21) 5.
105 As above.
106 Hickel (n 4) 78.
107 D'Alisa, Demaria & Kallis (n 21) 5.

However, my concern is that the theory of Degrowth is instrumental, in the sense that it is looking to provide material solutions to ecocide. But the problem of ecocide is not only material. What is at issue here, is the relationship between humans and the Earth ecosystem. As I have noted, the issue of ecocide is thus threefold: the central driver of progress; the economic system of capitalism; and the afterlife of colonialism. If all three of these issues are not adequately addressed, I am not convinced that ecocide will be effectively resisted. The question remains whether Degrowth effectively addresses the afterlife of colonialism, particularly in relation to the concerns of the Global South.

Degrowth scholarship admits that it sources inspiration from indigenous knowledge systems from the Global South.[108] Even though the term Degrowth first became popular in Europe, the theory itself draws on and engages with various indigenous traditions in other parts of the world.[109] This is sensible, as indigenous knowledge systems could provide an understanding of the interrelatedness between humans and between humanity and the Earth ecosystem.

However, Degrowth claims that it attempts to synthesise contemporary ideas with indigenous wisdom.[110] I contend that this is problematic, as a significant part of indigenous knowledge systems relates to the metaphysical and is often grounded in spirituality. If Degrowth is to draw out only the material value from these knowledge systems, it would, in my opinion, represent an insufficient appreciation for indigenous communities and their epistemologies.

Consider, for instance, the African philosophy of ubuntu. In terms of this philosophy, a single individual cannot define, nor pursue their purpose without the community.[111] It is, therefore, essential that the individual and the community recognise their interrelatedness.[112] Mogobe Ramose argues that this interrelatedness includes humans, as well as nature.[113] A state of harmony can thus only be reached when a balanced relation is reached between humans and nature.[114] The philosophy

108 As above.
109 Kallis et al (n 2) 19; D'Alisa, Demaria & Kallis (n 21).
110 Kallis et al (n 2) 20.
111 MB Ramose *African Philosophy Through Ubuntu* (1999, revised ed 2005) 106.
112 As above.
113 As above.
114 As above.

of ubuntu is, however, grounded in a metaphysical notion of cosmic harmony.[115] This notion is derived from the significant role that the living-dead ('ancestors') play in the protection and maintenance of the community.[116]

A further example that illustrates the metaphysical grounding of indigenous knowledge, is the worldview of indigenous Māori. The Māori worldview is described through Māori knowledge (mātauranga Māori), Māori language (te reo Māori) and ancestral lineage (whakapapa).[117] Central to Māori beliefs is the complex and evolutionary story of the origins of the universe.[118] According to the Māori worldview, there is a pattern of genealogical webs, that can be traced back to a supreme being.[119] This genealogical series is referred to as whakapapa (ancestral lineage).[120] The Māori whakapapa is rooted in supernatural and cosmological beliefs about gods and the creation of humankind.[121] It is these beliefs that confer various responsibilities and obligations upon Māori, to strive to maintain the well-being of all things within the Earth ecosystem.[122]

In order to adequately address the afterlife of colonialism, as the remaining foundational principle of ecocide, Degrowth would need to show an appreciation for the metaphysical side of the relationship between humans and the Earth ecosystem. In this sense, something sacred must be recognised and restored in this relationship. This would enable alternative epistemologies from the Global South to sufficiently contribute to the restoration of the relationship between humans and nature, in order to abandon mastery.

4.5 Conclusion

In this Chapter, I have evaluated the potential of the framework of Degrowth, to reconceptualise and even restore the relationship between humans and nature. As a

115 Ramose (n 111) 45-46.
116 As above.
117 GR Harmsworth & S Awatere 'Indigenous māori knowledge and perspectives of ecosystems' in JR Dymond (ed) *Ecosystem services in New Zealand – conditions and trends* (2023) 274.
118 As above.
119 As above.
120 GR Harmsworth & S Awatere 'Indigenous māori knowledge and perspectives of ecosystems' in Dymond (n 117) 274-275.
121 As above.
122 GR Harmsworth & S Awatere 'Indigenous māori knowledge and perspectives of ecosystems' in Dymond (n 117) 275.

starting point, I have discussed Degrowth as an alternative framework to structure the current global order, in order to resist ecocide. As Hickel phrases it, when facing the crisis of ecocide, what is ultimately at stake is the economic system of capitalism.[123]

Firstly, I have established that Degrowth attempts to reconsider the way in which the concept of progress, as measured by economic growth, is perceived in a positive light. Furthermore, I have discussed Degrowth as an alternative framework to the economic model of capitalism. In this sense, I have explained the various ways in which Degrowth is a departure from capitalism, looking at processes of reducing economic growth and the commoning of labour and natural resources.

I have also discussed the legal complement to Degrowth, namely the rule of ecological law, as theorised by Garver.[124] This discussion considered the Ecocentric nature of ecological law, leading me to argue that law can be reimagined if it is framed within the natural, finite restrictions of the Earth ecosystem. This would, however, require a complete departure from modern Anthropocentric legal frameworks.

Lastly, this Chapter included a reflection on the possible limitations of Degrowth. Even though I have shown that Degrowth could fundamentally disrupt the afterlife of Western Modernity, by conducting economics in an alternative way to capitalism, and providing an alternative perspective on the concept of progress, I am not as convinced that the afterlife of colonialism will be adequately disrupted by Degrowth.

I have particularly stressed this point, by considering some indigenous perspectives from the Global South. In doing so, I have argued that indigenous knowledge systems are grounded in the metaphysical and cosmological thinking. As such, I am not convinced that an alternative framework which is entirely instrumental, could restore the relationship between humans and nature. To do so, something sacred must be restored or rediscovered in nature – and in ourselves.

123 Hickel (n 4) 24.
124 Garver (n 66) 317.

5 Conclusion

Since [the master] is set on a course of devouring the other who sustains him,
the story must end either with the death of the other on whom he relies,
and therefore with his own death,
or with the abandonment of mastery…[1]

History tells us that humans lived in harmony within the Earth ecosystem, in various regions across the world, maintaining sacred connections to their natural environments.[2] With the birth of Western Modernity and the concurrent emergence of modern law, this sacred relationship to nature was fundamentally disrupted. It is this fundamental disruption of the harmony that was once maintained in the Earth ecosystem, which prompted this study.

Throughout the last 500 years, Western Modernity and its legacy has altered the relationship between humans and nature, resulting in an unprecedented capacity to interfere with nature, through destruction on a planetary scale.[3] With the means of its driving force of progress, its economic system of capitalism and the project of colonialism, Western Modernity has spread across the globe, functioning through a logic of dispensability of both human and non-human life, as well as non-living materials on Earth.[4] Hidden behind the rhetoric of Western Modernity, is humanity's mastery of nature.[5]

We are in the midst of a global climate crisis. Human activities have unequivocally caused global warming through the emission of greenhouse gases, unsustainable energy use and land use, as well as overconsumption and

1 V Plumwood *Feminism and the Mastery of Nature* (1993) 195.
2 GR Harmsworth & S Awatere 'Indigenous māori knowledge and perspectives of ecosystems' in JR Dymond (ed) *Ecosystem services in New Zealand – conditions and trends* (2023) 274; MB Ramose *African Philosophy Through Ubuntu* (1999, revised ed 2005) 106; IA Kanu (ed) *African Ecological Spirituality: Perspectives in Anthroposophy and Environmentalism – A Hybrid of Approaches* (2021) 6.
3 FJ Broswimmer *Ecocide: A Short History of the Mass Extinction of Species* (2002) 4.
4 WD Mignolo *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (2011) 6.
5 Mignolo (n 4) 12-13.

overproduction.[6] This has led to human-induced ecocide, which is affecting the entire Earth ecosystem. At the core of this study, lies the current global climate crisis, particularly its causes as well as its effects.

As a starting point for my study, I traced the origin of the global climate crisis to Western Modernity, its conception of nature and the ways in which modern law has functioned to exclude and master nature. I have provided a historical overview of the concept of Western Modernity, as well as the way in which it has conceived of nature as separate from humans. In doing so, I have examined the way in which Western Modernity established a relationship of mastery between humans and nature, by defining *being human* in terms of its domination and mastery of nature.

By drawing on Ecofeminist literature, I have particularly interrogated the ways in which the human/nature dualism has resulted in the exclusion and domination of categories that are perceived to be in closer proximity to nature. These categories include, for instance, women, indigenous and poor communities.[7] As such, this study has shown that humanity's mastery over nature can be correlated to intra-human domination.[8]

By following what Plumwood refers to as the master model, I have argued that humanity's mastery of nature has also included the mastery over humans who live in closer proximity to nature. In this sense, I have investigated the role that modern law has played in structuring and maintaining this relationship of mastery. This investigation has included an examination of modern law as a constitutive force, shaping modern societies in terms of processes of exclusion, as well as an examination of law as an instrument of domination and mastery utilised by the West. In this regard, I have provided examples of legislation and policies that have served to dispossess, alienate and discriminate against communities in closer proximity to nature. As such, I have situated the relationship between humanity and nature, as a matter of legal and political justice.

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6 H Lee & J Romero (eds) *Climate Change 2023: Synthesis Report, Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2023) 42.

7 Plumwood (n 1) 23.

8 Plumwood (n 1) 13.

In the second section of this study, I examined the global issue of ecocide, in order to demonstrate how it is related to Western Modernity. As a starting point, I have discussed the meaning and origin of the concept of ecocide. I have also attempted to illustrate the severity of the current climate crisis. By doing so, I have tried to disclose the connections between ecocide and Western Modernity. My contention is that ecocide is the legacy of Western Modernity, as it is perpetrated on the same foundation that Western Modernity was founded on: the notion of progress; the economic system of capitalism; and the project of colonialism.

The connection between ecocide and Western Modernity finds particular expression in the ecocide-genocide nexus and its political economy of capitalism.[9] As Dunlap explains, ecocide is an extension of colonial genocide, which means that ecocide can be seen as forming part of a larger extermination strategy which is aimed specifically at previously conquered indigenous people.[10]

In this regard, I have emphasised the fact that the climate crisis has been largely caused by the West, through its culture and activities. Furthermore, I have also emphasised the fact that despite the West contributing the greatest share toward the climate crisis, it is vulnerable communities in the Global South, who are most affected by climate change.[11] As such, there is a longstanding unequal relationship of exploitation and domination between the West and the Global South, established through modern law, which must be addressed in tandem with issues of climate change and the concerns of nature.

In her 2018 TEDx Talk, climate activist Greta Thunberg states that 'we cannot save the world by playing by the rules, because the rules have to be changed'.[12] The global world order as we know it is suffering from severe ecological decline and degradation, which is threatening humanity's survival on Earth. Particularly,

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9 M Crook, D Short & N South 'Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and glocal ecosystems environments' (2018) 22(18) *Theoretical Criminology* 299-300.

10 Crook, Short & South (n 9) 299; A Dunlap 'The 'solution' is now the 'problem': Wind energy, colonisation and the 'genocide–ecocide nexus' in the Isthmus of Tehuantepec, Oaxaca' (2018) 22(4) *International Journal of Human Rights* 557.

11 Lee & Romero (n 6) 5; F Sultana 'Whose growth in whose planetary boundaries? Decolonising planetary justice in the Anthropocene' (2023) *Geography and Environment* 2.

12 G Thunberg TEDx Talks 'School strike for climate – save the world by changing the rules' 12 December 2018 https://www.youtube.com/watch?v=EAmmUIEsN9A (accessed 1 October 2023).

marginalised groups in the Global South are the most vulnerable to the effects of ecocide.[13] To remedy this reality, authors have noted that the reality of climate change and its potentially irreversible effects on Earth require a reimagining of human politics, economic and legal systems.[14]

In the West, the framework of Degrowth has emerged as an alternative possibility to the current global capitalist order. In the final part of this study, I have evaluated the potential of Degrowth and its ability to provide resistance to ecocide, and possibly restore the relationship of harmony between humans and nature. In order to do so, I have particularly considered the ways in which Degrowth could fundamentally disrupt the core foundation of ecocide, which was established at the dawn of Western Modernity.

I have provided an examination of the economic framework of Degrowth, and its potential legal framework of ecological law. Through this discussion, I have demonstrated that this framework could indeed disrupt ecocide, by providing an alternative perspective on the core motif of progress, as well as providing a viable alternative to the economic system of capitalism. Ecological law takes a particular Ecocentric stance, which is a direct challenge to the Anthropocentric foundation of modern law.

However, my evaluation of Degrowth has also raised concerns regarding its limitations. As I have stated, concerns of climate justice directly relate to the unequal relationship of exploitation and mastery between the West and the Global South. In this regard, I am not convinced that Degrowth will adequately disrupt the last remaining pillar of ecocide: the afterlife of colonialism.

Even though Degrowth scholars admit to drawing inspiration from indigenous knowledge systems and communities in the Global South, it limits its framework to the material world. I have argued that this is problematic, as a fundamental part of indigenous knowledge systems are grounded in the metaphysical and the

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13 G Nakat Greenpeace 'Climate justice and social justice: Two sides of the same coin' 21 February 2023 https://www.greenpeace.org/international/story/58334/climate-justice-and-social-justice-two-sides-of-the-same-coin/ (accessed 10 January 2024).

14 Crook, Short & South (n 9) 302; P Higgins, D Short & N South 'Protecting the planet: a proposal for a law of ecocide' (2013) 59(3) *Crime, Law and Social Change* 251-266; J Hickel *Less is More: How Degrowth Will Save the World* (2020).

cosmological. Merely extracting their instrumental value shows an insufficient appreciation of these indigenous knowledge systems. In order to fully address the issue of ecocide, by fundamentally disrupting the afterlife of colonialism, the framework of Degrowth would be required to demonstrate an understanding and an appreciation for the metaphysical relationship between humans and the Earth ecosystem.

Ultimately, in this study, I have attempted to envision a shift beyond ecocide, beyond the legacy of Western Modernity. Degrowth and its ecological conception of law, which is grounded in Ecocentrism shows great potential in this regard, as an alternative to the capitalist economies and Anthropocentric modern legal systems that govern the global order. As such, I argue that if humanity was able to create the world as we know it, this means that we can create another world. Beyond mastery, another world is possible.

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