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Conjuring the past: Slow violence and the temporalities of environmental rights tribunals

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ABSTRACT

In his 2011 *Slow Violence and the Environmentalism of the Poor*, Rob Nixon argues that the 'slow violence' of environmental collapse - the too often 'invisible' violence that unfolds over decades or even centuries, from the acidification of the oceans to the radioactivity of depleted uranium – represents a formidable representational challenge for contemporary environmental activists. In an era in which 'the media venerate the spectacular and when public policy is shaped primarily around perceived immediate need', the challenges of making visible the 'staggeringly discounted casualties' associated with environmental destruction are both substantial and urgent (2011: 3). Based on ethnographic research with rights of nature activists in Peru and Australia, this paper analyses the narrative and performative strategies that are increasingly being experimented with at Rights of Nature Tribunals to subvert, extend, and otherwise complexify the spatio-temporalities of mainstream environmental policy making. Drawing on recent work in feminist posthumanism and post-colonial eco-criticism, I argue that these temporal tactics, while still largely marginal to hegemonic policy blocs, are raising important questions about the scalar habits and assumptions that continue to anchor much environmental policy-making.

In his 2011 *Slow Violence and the Environmentalism of the Poor*, Rob Nixon pursues a problem that is increasingly central to a range of diverse disciplinary conversations: the problem of speed. While space-time compression has long been recognized as fundamentally characteristic of post-modernity (though, as Hartmut Rosa has pointed out, it has also been a perennial complaint since at least the time of the Industrial Revolution), the last few years have witnessed a growing preoccupation across the disciplines with apparent intensifications in the speed of social life (Harvey, 1990; Martineau, 2017; Rosa, 2013). From sociologist Judy Wajcman, who has explored the role of information communication technologies (ICTs) in contributing to faster rhythms of work and an increase in multi-tasking to political theorist William Connolly, who has worried about how speed may be destabilizing the kinds of *long duree* thinking that have historically been essential to democratic deliberation, recent shifts in the nature of temporal experience have become objects of uneasy attention across the disciplines (Wajcman, 2015; Connolly, 2002). The world, we are told, is accelerating rapidly (albeit unevenly) across a number of dimensions (Duclos et al., 2017; Eriksen, 2016), and the result is what Cymene Howe has called a "chrono-mashup" in which different modes of experiencing time are drawn into increasingly discordant relief (Howe, 2016). To provide just a few examples of this burgeoning scholarship: A new-found awareness of humanity's role within geological time sits uncomfortably alongside perceptions of ever-increasing high-speed digital time that make it difficult to think beyond the "nanosecond of the present" (Boellstorff, 2008; Boyer, 2013); calls for attention to the deep time of the Anthropocene rest uneasily alongside demands for more respectful engagement with the diverse time-frames – both mundane and cosmological – long nurtured by Indigenous communities (Davies, 2016; Todd, 2016); and celebratory accelerationist accounts of techno-driven futures bump up against manifestos for a return to "slow scholarship" and other forms of "slow living" (Collard and Dempsey, 2014; Stengers, 2014; Fitz-Henry, 2017).

While not committed to a Luddite conception of speed as inherently pathological or destructive (Connolly, 2002), Nixon takes some of the most critical strands of recent thinking about the politics of these temporal transformations firmly into the domain of post-colonial environmental justice. Adding a temporal dimension to Johann Galtung's pioneering work on structural violence, he asks how the slow violence of incremental environmental change – those gradually unfolding processes of "toxic drift, biomagnification, deforestation, [and] the radioactive aftermath of wars" – can be made visible, and thus actionable, in a world in which "the media venerate the spectacular [and] when public policy is shaped primarily around perceived immediate need" (Nixon, 2011: 2, 3). Given the rapid acceleration of the media cycle and the velocity with which the present is disappeared as soon as it becomes

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"spectacle deficient" (Nixon, 2011: 6), how is it possible to either conceptualize or maintain a sustained political focus on the "staggered and staggeringly discounted casualties" that are mounting all around us, "under-represented in strategic planning as well as in human memory" (Nixon, 2011: 7, 3)? How might this planning look different if those beings – both human and other-than-human – whose deaths too often "pass unmourned in the corporate media" were instead evoked and re-evoked through "stories, images, [and] symbols adequate to the pervasive but elusive violence of *delayed effects* (2011: 7, 3)?

These are questions that urgently demand engagement on the part of transnational environmental activists who are at the forefront of trying to make visible precisely such casualties. Taking as my point of departure Nixon's invitation to think more carefully about the representational practices of these activists – practices that may become increasingly necessary to the cultivation of more robust forms of environmental accountability – this article asks: What visual and narrative tactics are currently being experimented with by radical environmental NGOs in their efforts to draw attention to the diverse time-scapes of ongoing socio-ecological violence? What "creative forms of temporal arrangement" are they using to create ruptures in the speeds too often relied upon by corporations and governments in their rush to distance themselves from this violence (Ahmann, 2018: 144)? How, specifically, do these temporal re-arrangements re-scale the ways in which environmental problems are framed, both temporally and spatially? And what political work – if any – might this rescaling perform?

While the answers to these questions are obviously diverse, numerous, and sometimes conflicting, I focus here on one of the most active parts of the global environmental movement – the Global Alliance for the Right of Nature. The Global Alliance for the Rights of Nature, founded in Quito, Ecuador in 2010, is a group of environmental lawyers and activists from Australia, South Africa, Ecuador, Bolivia, and the United States (among elsewhere) who are committed to expanding legal structures, both domestically and internationally, to include provisions for what they call the rights of nature or the rights of ecosystems. Inspired by Ecuador's 2008 constitution which has been widely hailed as one of the most biocentric constitutions in the world – the first anywhere in the world to include four articles granting nature (or, in Quechua, Pachamama) the "right" to "exist, persist, maintain and regenerate its life cycles" – they believe that one of the primary drivers of massive ecosystem loss is a narrowly utilitarian and human-centric conception of ecosystems as forms of property rather than types of persons with inalienable rights akin to those of human beings (Cullinan, 2011; Burdon and Maloney, 2014; Boyd, 2017). Since 2006, NGOs including the Pachamama Foundation in Ecuador, the Community Environmental Legal Defence Fund in the U.S., and the Australian Earth Laws Alliance in Australia have all attempted, with varying degrees of success, to operationalize these rights in municipal, provincial, and national courts. Despite significant variation in their understandings of, and efforts to develop secondary legislation in relation to, these rights (see Kauffman and Martin, 2018 for a good overview of these efforts), they are united in their resistance to human exceptionalism, a sense of urgency about the need to reframe ecosystems both morally and legally, and in most cases, a significant opposition to extractive capitalism.

While the Global Alliance and its member organizations are involved in a range of projects at a number of different scales – from international symposia on the rights of nature to local efforts to drive protections for particular ecosystems into law – in this article I focus on one prong of their broad-based work: the annual People's Tribunals for the Rights of Nature that have been held in parallel with the UNFCCC negotiations in cities from Quito to Paris since 2014. Long-term ethnographic fieldwork on movements for the rights of nature conducted principally in the U.S. and Ecuador since 2012 informs the background to this article as well as many of its principal insights; however, the specific data presented are drawn from participant-observation and interviews with key participants at the international and Australian tribunals in 2014, 2016, and 2018. By attending closely to the public testimonies, both written and oral, that were presented at two of these tribunals – the first in Lima, Peru in 2014 and the second in Brisbane, Australia in 2016 – I show how rights of nature activists sought to challenge, expand, and otherwise destabilize the dominant temporal orientations of mainstream environmental policy makers: UN negotiators in the case of the first tribunal and Australian federal and state governments in the case of the second. In so doing, I extend Chloe Ahmann's recent call to "take stock of time as an instrument of social movements," paying more textured attention to the ways that environmental activists engage in "slowing, speeding up, condensing, and reordering time to serve different needs" (Ahmann, 2018: 165, 146). Specifically, I bring together recent work on environmental social movements with post-colonial and post-human scholarship that has been sharply critical of the processes by which dominant temporalities have served to eclipse or peripheralize both human and other-than-human communities. As Kim Tallbear has recently argued in the context of the United States, narratives of temporal progress are always "co-constituted with deadly hierarchies of life," and thus, re-thinking those hierarchies and the violence they legitimate means fundamentally re-thinking the temporalities that underpin policy-making at a range of scales (Tallbear, 2019: 2). While much of this scholarship has focused primarily on the destructive temporalities of settler-colonial nation-states, its principal insights can be productively extended – and further concretized – by considering the spatio-temporal circumscriptions of environmental policy-making bodies both within and beyond settler-colonial states (Tallbear, 2019; Rifkin, 2017).

My central argument is that activist articulations of variegated and expansive temporal registers at the Rights of Nature tribunals served to powerfully reframe environmental problems both temporally and spatially, albeit for still relatively small audiences. Taking direct aim at the "deadly hierarchies of life" that construct rivers, oceans, and mountains as "de-animated bodies," rights of nature advocates evoked unconventional temporal trajectories in their efforts to draw attention to socio-ecological violence both ongoing and long in the making – violence that is often neglected, or seen as irrelevant, by future-focused policy-makers with mandates to devise cost-efficient solutions to climate change adaptation or climate-friendly regional development initiatives (Tallbear, 2019: 2). By foregrounding these diverse time-scapes, they both created and bore witness to equally unconventional spatial geographies, using multi-directional and multi-scalar temporal frames to knit together places too often treated as outside the circuits of global capital or re-centring places assumed to be spatially peripheral to those circuits (Thrift and May, 2001). In so doing, they powerfully challenged state and corporate efforts to circumscribe accountability for ongoing ecosystem losses in the Gulf of Mexico and Western Australia, effectively provincializing approaches that remain primarily concerned with short-term strategic horizons and spatially narrow "geographies of responsibility" (to use Doreen Massey's elegant phrase) (Massey, 2004). Careful attention to such activist-led spatio-temporal rearrangements may prove more critical to the work of addressing climate change than is generally acknowledged by policy experts at the UN conferences or in the Australian commonwealth.

1. Un-learning the common sense of slow violence

The International Rights of Nature tribunal is a little-known civil society-led forum convened by the Global Alliance for the Rights of Nature once a year in parallel with the UN COP meetings on climate change. The inaugural session was held in January 2014 in Quito, Ecuador, where I have conducted long-term fieldwork since 2006; the second was held in Lima, Peru, in December of the same year; the third took place in Paris in December 2015 and the fourth in Bonn, Germany in 2017. Initiated primarily by Latin American environmental and Indigenous rights activists affiliated with the transnational Global Alliance for the Rights of Nature, the tribunals are the first people's

tribunals anywhere in the world to hear cases brought on behalf of the natural world – cases alleging that the rights of rivers, corals, mountains and underground aquifers have been systematically infringed by both governments and corporations in ways that the annual UNFCCC meetings seem unable or unwilling to address with their relentless focus on mitigation and adaptation using "clean development" and other "green technology" mechanisms. As is true of all peoples' tribunals, the decisions are not legally binding and the ecosystems bringing the cases have never technically lost. However, from the perspective of legal activists the tribunals provide important, albeit still largely symbolic, spaces for reframing prominent environmental and social justice cases, educating the public about the rights of nature, issuing recommendations for mitigation and remediation plans, and considering more formal measures by which these cases might be prosecuted in the future.

Overseen by a panel of independent experts – including sociologists, former Ministers of Energy and Non-Renewable Resources, environmental lawyers, and Indigenous elders – the tribunals are explicitly inspired by the people's tribunals that have been held all over the world since the 1960s. Like many other recent environmental tribunals (including the trial of Monsanto at the Hague in October 2016), they are modelled on the Russell-Sartre War Crimes tribunal that was convened in 1966–1967 to consider crimes associated with the American military intervention in Vietnam. Inspired more recently by the Permanent People's Tribunal in Bologna, Italy, they are the first to insist on moving beyond an anthropocentric focus on violations of people's rights. As South African lawyer, Cormic Cullinan, who played a founding role in establishing the tribunals has put it: "The worldview which informs the Earth Rights Declaration and the Tribunal is based on the recognition that the rights of human communities can only be protected in the long term by protecting the rights of all…to continue to play their roles within the Earth community" (Cullinan, 2014: 5). The cases on behalf of ecosystems are brought primarily by civil society organizations with long histories of engagement with the ecosystem in question. The judges are selected for their legal, technical, or sociological expertise, chosen by the International and Regional Secretariats to ensure gender and ethnic diversity, and required to adhere to the standards laid out in the Universal Declaration for the Rights of Nature, which was signed at the World People's Conference on Climate Change in Cochabamba, Bolivia in 2010. Since 2014, these tribunals have heard the cases of mountains threatened by Canadian and Chinese mining interests in Peru and Ecuador (the Conga-Cajamarca mines and the Mirador project), of parts of the Ecuadorian Amazon that are still home to lingering damage from oil extraction (Chevron-Texaco), of rivers likely to be dammed for the large-scale generation of hydroelectricity in Brazil (Belo Monte), and of the ongoing health and environmental impacts of hydraulic fracturing (Oklahoma, USA). In 2016, the first-ever Australian Rights of Nature Tribunal was organized in the Queensland capital city of Brisbane by the Australian Earth Laws Alliance, one of the founding members of the Global Alliance. The six independent experts assembled in Brisbane heard the cases of old-growth forests destroyed by logging in Western Australia, ongoing challenges to the Mardoowarra River basin presented by mining exploration and hydraulic fracturing, the effects of coal seam gas operations on the Great 5 Artesian Basin, and the failures of the Australian Commonwealth and Queensland state governments to protect the Great Barrier Reef. In all these tribunals, the primary aim was to create space for the articulation of ecological rights violations that are not yet recognized as such by either international or domestic law, and that are too often constructed as either invisible or inevitable by the development imperatives of extractivist nation-states (Gudynas, 2010).

In what follows, I provide two illustrative examples of the kinds of temporal reorientations in which rights of nature activists continue to engage – one from the international tribunal in Lima in 2014 and one from the Australian tribunal in 2016. Each illuminates a different temporal strategy intended to complicate both the speed and the relentless future-orientation of mainstream environmental policy-making. After analysing the cases, I conclude with a set of broader reflections on the scalar challenges currently facing transnational environmental activists.

2. Lima, Peru, 2014: The Gulf of Mexico versus British Petroleum

The first-ever case against a transnational corporation brought in defence of the rights of nature was lodged in the Ecuadorian Constitutional Court in November 2010 by the Quito-based environmental NGO, *Accion Ecológica* (hereafter AE). Four years prior to the establishment of the International Rights of Nature Tribunal in 2014, this case was the first civil society-led effort in Ecuador to attempt to operationalize the country's 2008 constitution in relation to a transnational corporation (Fitz-Henry, 2012; Colon-Rios, 2014). As is by now well-known, the Deepwater Horizon rig that British Petroleum leased from the Swiss firm Transocean exploded in the Gulf of Mexico on April 22, 2010, leaving eleven rig-workers dead and 4.9 million barrels of crude oil spilling largely uninterrupted into the Gulf of Mexico for nearly four months. As David Bond has noted, the spill was unprecedented in many ways, not the least of which was that its "coordinates [were] multiple and frighteningly unbound" and that, unlike the Exxon Valdez spill which released oil for only 12 h on the ocean's surface, the deep-water blowout was "indeterminate and multidirectional,… disaggregated and going in different directions" (Bond, 2013: 696, 699). In the long and painful weeks that followed, both corporate and alternative media were filled with images of pelicans drenched in oil, millions of dead fish washed belly-up on the shores of Louisiana, and dolphins asphyxiated on beaches from Texas to Florida. By all accounts, in addition to the substantial economic losses sustained by a range of maritime industries, the non-human casualties were massive. As the world subsequently watched 1.8 million gallons of chemical dispersants sprayed into the Gulf as part of BP's haphazard, previously untested, and largely ineffective effort to contain the disaster, the sense of moral outrage only deepened. For at least a few months, the gruesome spectacle of this explosion and its aftermath remained squarely in the public eye.

Right from the beginning, however, British Petroleum was understandably invested in attempting to circumscribe the disaster, both spatially and temporally – a process I have written about in greater detail elsewhere (Fitz-Henry, 2012). One particularly egregious incident should make the point. At a press conference on May 31, 2010, former CEO Tony Hayward notoriously remarked: "I'm sorry. We're sorry for the massive disruption it's caused their lives. There's no one who wants this over more than I do. I'd like my life back" (Lyons, 2011: 96). While the remark was immediately stigmatized, later parodied, and eventually retracted by Hayward, it is in many ways a very precise statement of BP's dominant temporal orientation – wanting its life back, wanting the disaster to be over, wanting new exploration to begin as quickly as possible. And, indeed, as the spectacle of the burning rig receded in public memory, British Petroleum – ingeniously rebranded as Beyond Petroleum – got its wish. While Hayward was forced to resign for expressing his eagerness to leave the Deepwater disaster decisively in the past, BP's Louisiana website evidences precisely this kind of relentless future focus – euphorically celebrating the rapid techno-driven achievements of an ever-expanding deep-water energy frontier that has only grown larger in the years since the 2010 spill. "In 2017," it announces triumphantly, "BP used advanced technology to locate an additional 1 billion barrels of oil in its existing Gulf of Mexico oilfields" (accessed 30 April 2019). And again: "Between 2014 and 2017, [BP's] average daily production in the deepwater Gulf increased from 252,000 barrels of oil equivalent to 304,000" (accessed 30 April 2019). And yet again, perhaps most alarmingly: "In 2017, BP announced a new gulf project called 'Mad Dog 2.' Scheduled for start-up in 2021, this project will produce up to 140,000 barrels of crude oil per day from as many as 14 production wells" (accessed 30 April 2019).

Partnering with key environmental actors in Nigeria, India, Colombia, and elsewhere (identified in court documents as the "Defenders of Nature"), *Accion Ecológica* (AE) first brought the case on behalf of the Gulf of Mexico to Ecuador's highest national court presided over by Judge Nina Pacari. Signed by well-known environmental activists Vandana Shiva and Nnimmo Bassey, the case was brought on the grounds of universal jurisdiction, with plaintiffs claiming that even though BP was not incorporated in Ecuador nor did its operations directly affect the plaintiffs (the "Defenders of Nature"), the violations in the Gulf were so egregious that they could and should be prosecuted in any court anywhere in the world. Universal jurisdiction, as is well-known, has been used by both states and international organizations to claim jurisdiction over people accused of serious crimes against international law, regardless of where the crime took place or the nationality of the perpetrator. It has usually been reserved for only the most serious crimes against humanity, including genocide and torture. The plaintiffs in this case recognized that international law does not yet recognize the crime of ecocide and that it would thus be extremely difficult to bring a universal jurisdiction case (Higgins et al., 2013). However, because Ecuador was the only country in the world to recognize rights for nature in their constitution, activists hoped to work toward a legal precedent that might inspire similar legal innovations elsewhere in the world. As they explained in their lawsuit: "We take this action because the philosophy of universal jurisdiction is grounded in the prosecution of crimes that outrage the conscience of humanity, and the environmental disaster in the Gulf of Mexico outrages this conscience and compels us to denounce it before judicial bodies where judicial guarantees can be enforced both for us, the plaintiffs, and for the offenders" (Martínez et al., 2010: 4). Despite its likely difficulties, the lawsuit was conceived as a direct challenge to the current narrowness and weakness of international rights regimes in relation to crimes against Nature. As the plaintiff explained: "The international system of rights is clearly biased toward protecting the interests of transnational corporations that make excessive, irresponsible, and predatory use of their rights to property and free enterprise, based on a development philosophy that is antagonistic to nature" (Martínez et al., 2010: 6). Despite these impassioned arguments, and not at all surprisingly, the Ecuadorian high court rejected this argument, pointing out that it was the inappropriate forum in which to hear the case and that furthermore it lacked the jurisdiction to do so.

Some four years after the failure of this initial lawsuit, the accelerated pace at which BP was expanding its deep-water drilling was one of the main developments that AE and its international supporters sought to challenge at the 2014 International Rights of Nature Tribunal in Lima. While representatives from AE had initially wanted a binding decision in a formal court, they came to recognize the value of people's tribunals in generating broad-based support for the cultural transformations necessary for more effective contestation of the oil industry over the long-term. Long after media attention had moved on from the traumatic images of the pelicans immobilized by heavy crude, AE resisted BP's efforts to confine the ongoing disaster both spatially and temporally. They rejected the losses they had suffered in Ecuador's highest court. And they saw an opportunity to continue to agitate for a moratorium on deep-sea drilling. In response to all the "staggeringly discounted" lives that the company seemed eager to overlook or downplay in its desire to "[get its own] life back," AE brought the second case to the first International Rights of Nature Tribunal in Quito on January 17, 2014 (Nixon, 2011: 3, Lyons, 2011: 96). It was formally admitted for consideration at the Lima tribunal on December 5, 2014. The hope was that a decision in this People's Court, albeit non-binding, would begin to put pressure on the Ecuadorian government to revisit its decision from 2010.

The material presented in Lima by the AE representatives was organized in significant part around a recognition of the multiple temporalities that have been explicitly downplayed by BP's rush to expand deep-water drilling. While this insistence on temporal multiplicity took a number of different forms – emphasizing, for example, the temporally uncertain pathways by which the Gulf Stream distributed oil residues far from the Macondo rig into the Atlantic Ocean – most viscerally persuasive was their focus on the seasonal migratory patterns of a range of marine mammals that continue to be disrupted by the spill and its chemical aftermath. As AE's written submission to the tribunal explains in language that is simultaneously cold, precise, and closely attuned to the diverse ecological time-scales affected by the disaster: "Whole ecosystems were subjected to the critical and *long-term effects* of the spill and the use of chemical dispersants, threatening the stability and the possibility of existence of different species living in the Gulf. Mass mortality of populations of animals, plants, and microorganisms occurred" (Martínez, 2014: 1). To provide just a few examples of this "mass mortality," AE representatives noted that more than 90 species of neotropical birds make the trip northward from Central and South America across the Gulf each year (Martínez, 2014: 1). As they explained: "A month after the spill was the peak of their migration… Smoke from burning oil affected their migration, some were lost, others were killed by poisoned air" (Martínez, 2014: 2). Not dissimilarly, they continued, the bluefin tuna (already on its way to extinction) travels across the Atlantic to spawn in the warm waters of the Gulf of Mexico between mid-April and mid-June – a journey whose initial interruption has had ongoing effects because oil is known to cause hypothermia in tuna offspring, thereby directly contributing to the inability of the species to reproduce itself.

This attention to the diverse temporal rhythms of migrating marine animals was a key mechanism by which to bring the public assembled at the tribunal into the lives and deaths of a range of other-than-human beings who make their homes around the Gulf of Mexico. It was a strategy also intended to challenge the narrow cartographies on which BP has continued to rely, underscoring the fact that the Gulf of Mexico is not some bounded marine landscape that can be easily mapped and contained, but a place of multiple intersections where each year many different species knit their lives together as they journey in multiple directions toward far-flung shores. Further bolstering this spatio-temporal reorientation, representatives went on to show maps illustrating the degree to which the stranding of marine mammals along the southern coast of the United States has remained a pervasive feature of the landscape. These maps demonstrated that as recently as July 2013 and in areas far beyond what was technically considered the affected zone, marine animals continued to be stranded at significantly elevated rates. (Such figures are now widely supported by scientific studies from organizations like the U.S.-based Centre for Biological Diversity). By constructing the Gulf in this way, activists were able to resist the narrow parameters within which BP has repeatedly drawn the boundaries of the "affected zone," demonstrating instead the wide and diffuse reach of the spill that travelled via the bodies of poisoned animals to spaces far removed from the Macondo rig. From the seahorses "suffocated and poisoned" by the oil plumes and the seagrasses that died when they were no longer able to access light for photosynthesis to the explosive growth of bacteria which depleted crucial oxygen levels in the sea and the dolphins that continue to be born with lung deformities, these civil society representatives adamantly refused Hayward's flippant dismissal of the effects of the spill as "very, very modest" and next to nothing in comparison "to the very big ocean" (Martínez, 2014: 4; Lyons, 2011: 96). Instead, they insisted on bearing witness to what Nixon describes as "a microbial and cellular catastrophe whose temporal and physical dimensions we are ill-equipped to imagine and the science of which we do not adequately understand" (Nixon 269: 277). They insisted that those in attendance at the tribunal dwell more carefully both on the micro-temporalities of affected sea life and, by means of attention to these temporalities, the substantial spatial diffusion of the damages, which had found their way into communities and depths far removed from the spectacular media images of the burning rig.

While there was no talk at the UNFCCC meetings in Lima about the

possibility of instituting a moratorium on deep-water exploration (nor was there even an entertaining of the suggestion that there be binding regulations on fossil fuel companies more generally), Esperanza Martínez and other Global Alliance activists argued that attention to the ongoing deaths of these other-than-human beings demanded significantly more far-reaching action on climate change than any of the government negotiating teams were willing to consider. Not only had the oil from the spill very directly produced effects on the thermo-regulation of the climate, but the long-term effects on intricately entangled marine lives were simply incalculable. Taking into consideration these testimonials, in its final ruling the expert judges recommended a "moratorium on oil and gas exploration and production in deep seas as well as the progressive abandonment of maritime operations overall" – a suggestion that is as politically unthinkable to mainstream environmental policy-makers as it is timely, urgent, and pragmatic (GARN, 2014, accessed 30 April 2019). In addition to recommending that the international fossil fuel divestment campaign prioritize BP, they further urged the United Nations to "create a collective, multilateral process to assess petroleum operations at sea, to consider and impose moratoria, and to identify necessary reparation actions for *disasters past, present and future*" (GARN, 2014, accessed 30 April 2019). Again, this explicitly temporal focus on hydro-carbon disasters past, present, and future stood in sharp contrast to the policy discussions taking place at the UN meetings just down the street – discussions at which representatives from the hydrocarbon sector were influential contributors, supporting future-oriented approaches toward carbon pricing that focused, both optimistically and narrowly, on "present and future generations of humankind," rather than on the many past generations that continue to be affected by oil disasters (UN Lima Draft Declaration 2014). At the UN meetings, despite significant progress being made toward the Paris agreement of 2015, the primary emphasis remained on continuing the technical examination of "applications with high mitigation potential" and exploring new avenues for carbon pricing (UN Lima Draft Declaration 2014). Into these discussions, rights of nature activists introduced the diverse time-scapes of damaged migration pathways, anaemic dolphins, and hypothermic tuna. They sought to remind the public of the slow violence still unfolding in the Gulf and to thereby suggest a range of more expansive policy alternatives that would look not just to the bright futures of carbon pricing (a move consistently supported by some of the largest oil and gas companies), but to the violent pasts of hydrocarbon exploitation.

3. Brisbane, 2016: The Mardoowarra River vs. the Federal and Western Australia Governments

Different, but equally innovative ways of reorienting, reordering, and strategically diversifying time were evident at the first-ever Australian Rights of Nature Tribunal, which took place on October 22, 2016 in the Banco Court building in downtown Brisbane in the state of Queensland. As the portraits along the walls of the main hallway on the third floor of the building dramatically attest, the Banco Court has long been presided over by disproportionately white male magistrates – a reality made all the starker by the opening ceremony to the tribunal, which featured a group of Indigenous dancers symbolically re-occupying the space. Bringing traditional aesthetic forms directly into the halls of the Supreme Court of Queensland, the dancers issued an implicit demand that would be re-iterated by nearly all the expert witnesses who followed, both the Traditional Owners and the non-Indigenous representatives of forests, river basins, and the Great Barrier Reef. Put simply, that demand was that the cases on behalf of the rights of nature respect and ultimately seek to secure binding recognition of the extraordinary diversity of Indigenous Laws long neglected by colonial institutions such as the Banco Court. These diverse Laws, Traditional Owners repeatedly reminded the audience, are anchored in particular sovereign territories and song-lines that were not only never ceded to the Commonwealth government, but that have been subject to repeated interventions since 1788; most recently, by Native Title legislation that has ultimately served to further fragment and undermine local sovereignty. In the Australian context, the focus on locating these cases – and rights of nature discourses more broadly – within more historically expansive frameworks than are usually admitted within the confines of settler colonial spaces remained a persistent theme throughout the tribunal. In a very real sense, the primary temporal displacement effected was the displacement of the kind of future-focused linearity characteristic of the settler-colonial state (Simpson, 2014; Rifkin, 2017; Tallbear, 2019). While the case against BP in Lima had sought to redirect attention to the multiple time-scales of affected marine species – a reorientation that activists hoped would introduce more widespread resistance to the participation of oil and gas companies at the UNFCCC meetings –, the cases in Brisbane sought instead to displace the dominant temporalities of the settler-colonial state – temporalities long over-determined, as Deborah Bird-Rose has shown of the Western tradition more broadly, by a relentless future orientation that stands in stark contrast to Indigenous understandings of always-multiple and returning times (Rose, 2004).

The first case to be presented was by Dr. Anne Poelina, a Nyikina Traditional Custodian and guardian of the Mardoowarra River in the Kimberly region of Western Australia. The Mardoowarra River (known to settler-descendants as the Fitzroy River) is a 455-mile river whose catchment area is home to some 7000 people in Western Australia, approximately 80% of whom are Indigenous. After paying her respects "to the bloodline and song-line of this country that holds the memory of this Country" – not Australia, but more specifically the Aboriginal Country on which the Banco Court sits – Dr. Poelina immediately began the work of temporal reorientation that is, she explained, an integral part of sharing the significance of the Mardoowarra. "What we say," she explained to the audience assembled in the main courtroom, "is that we have a law of relationship, a law between human and non-human, a time that is timeless. We talk about it not in a lineal progression, but in a circular story-telling way… What we say is that the Mardoowarra is a living system. It was created by the Rainbow Serpent." As a legal and ethical guardian of the Mardoowarra River, Dr. Poelina repeatedly reframed the river within more expansive and multi-directional temporal frameworks than are currently admitted either by environmental planners in Western Australia or by the mining companies that have increasingly threatened those living systems over the past decade – a river created by the Rainbow Serpent at the beginning of time, part of a "time that is timeless," central not to a "lineal progression," but to a circular story that is always unfolding.

Like many river systems in Australia, the Mardoowarra River is currently threatened by mining operations and exploration leases that have expanded rapidly over the past decade. As expert witnesses at the tribunal testified in response to questions from the judges about the primary threats facing the river: "The Fitzroy River is covered from source to sea with mining tenements," many of which are currently focused on the extraction of shale gas. These observations are borne out by numerous scientific reports from across the region. According to a 2012 report by the Centre for Conservation Geography, exploration and operating licenses across the Kimberley have increased by some 500% over just the last ten years. Both the companies involved – such as Rey Resources Ltd – and the Western Australian governments have rushed headlong into projects for oil, liquified natural gas, and heavy rare earth elements, some of which have projected lifespans as short as 10–20 years. Like British Petroleum, which has dramatically expanded its deep-water operations since the 2010 disaster in the Gulf, mining companies across the Kimberley have rapidly scaled-up their operations – now threatening, according to the Pew Environment Group, some 80% of the rivers and floodplains across the region. To provide just a few examples of what this means from the perspective of the Western Australian government: According to the website of the Kimberly Development Commission, "Western Australia's resources industry

grew significantly over the past decade due to unprecedented overseas demand, which resulted in a mineral production and revenue increase from $27.9 billion in 2002–03 to $105 billion in 2016–17" (Kimberley Development Commission, 3 October 2018). And again: "Buru Energy operating the Ungani conventional oilfield in the Canning Basin recommenced shipping crude oil…in June 2017. Production ramped up from 1000 barrels per day (BOPD) in Q2 2017 to 1500 BOPD in Q4 2017 with a target of 3000 BOPD in Q2 2018." (Kimberley Development Commission, 3 October 2018). These staggering increases in production are, it should be noted, celebrated by the state government within extraordinarily short-term time frames – for example, the 15 years from 2002 to 2017 that saw a fourfold increase in extraction – and they remain narrowly future-focused on quarter-by-quarter projections of production increases. It perhaps goes without saying that these are projects fundamentally driven by speed and structured to respond first and foremost to rapid shifts in commodity markets.

It is precisely these constricted and speeded-up temporal horizons that the defenders of the Mardoowarra River sought to destabilize by means of their testimonies, clearing the ground for more visceral appreciations of the slow violence of ongoing damage not only to the river, but to the Indigenous communities who belong to the river and who are the custodians of its Laws. To help the settler-descendant majority assembled at the tribunal better understand this reality, Dr. Poelina consistently evoked multiple and overlapping times, inviting the audience into novel relationships with both the river and with the Aboriginal Laws of that Country more broadly – experiences that she hoped might radically challenge the narrow, fragmented, and still deeply colonialist ways in which the Mardoowarra is currently being approached by the state and federal governments. Drawing on Indigenous understandings of time in which "the past, present, and future are fused," she concluded her testimony: "I stand here in time with a memory of the Fitzroy River, the Mardoowarra… Some people may say it's 20 million, 50 million years old. But we say that it is… from the beginning of time." This orientation to a deep past that is also always present – whether 50 million years ago or at the beginning of time – served to powerfully destabilize the narrow focus on short-term economic projections that too often renders the ongoing violence to the Mardoowarra invisible.

While in the case against BP *Accion Ecológica* sought to illuminate the slow violence of ongoing marine deaths by exploring the diverse temporalities of non-human others that BP wanted to confine to the past, in the case against the Australian federal and Western Australia state governments, the representatives of the Mardoowarra River instead sought a more thoroughgoing decolonization of settler-colonial relationships to time that might make space for a recognition of what they called the "living Laws of the river." These "living laws" or "First Nation Laws" – Laws that are still not honoured in courts like the Banco Court – are critical to the rights of nature movement in the Australian context because the slow violence being inflicted on the Kimberley by mining companies and state development organizations is also always the violence of ongoing settler-colonial occupation. Thus, the learning of environmental responsibility in Australia centrally entails the unlearning of colonial legal singularity and a cultivated attention to the multiple Laws of particular Countries, particular rivers, and particular forests. This learning fundamentally entails a reorientation to both time and space – both to the ongoing time of colonization and to the diversity of ancestral time-scapes that fundamentally define certain places like the Mardoowarra River. Seen in this light, the Mardoowarra is not a resource, but a spatially complex and multi-dimensional living system whose Laws remain poorly understood by mining companies and state development planners.

4. Mourning the past, taking responsibility for the future

"The living," John Berger provocatively noted some years ago, "reduce the dead to those who have lived; yet the dead already include the living in their own great collective…Until the dehumanization of society by capitalism, all the living awaited the experience of the dead. It was their ultimate future. By themselves the living were incomplete. Thus the living and the dead were interdependent. Always. Only a uniquely modern form of egoism has broken this interdependence. With disastrous results for the living, who now think of the dead as the eliminated" (Berger, 2008: 19). Whatever one may make of Berger's critique of the deformations of capitalism, the moral importance of maintaining visceral contact with the "great collective of the dead" is a point that many philosophers have made through the years. Albeit in a quite different context, but with a similarly grim assessment of capitalism's tendency toward destructive ruptures that do not allow for experiences of inter-generational continuity, Jacques Derrida has similarly insisted on the impossibility of justice in the absence of a sustained consideration of the dead. As he argues most succinctly in his 1993 *Specters of Marx*: "No ethics, no politics, whether revolutionary or not, seems possible and thinkable and just that does not recognize in its principle the respect for those others who are no longer or for those others who are not yet there, presently living, whether they are already dead or not yet born" (Derrida, 1993: xviii). This is what he calls, in a wonderful phrase, the "non-contemporaneity with itself of the living present" – a phrase that vividly captures the fact that the present is never just the present, but always inhabited by multiple and multiply demanding "ghosts of generations" (Derrida, 1993).

Derrida and Berger are both keenly attentive to the need to become more cognizant of the human dead in the present ("be they victims of wars, political or other kinds of violence, nationalist, racist, colonialist, sexist, or other kinds of exterminations, victims of the oppression of capitalist imperialism or any of the forms of totalitarianism") (Derrida, 1993). However, it is multi-species ethnographers and feminist post-humanists who have been most vocal about the importance of new forms of storytelling by which, to return to Nixon, the "intergenerational aftermath" of socio-ecological losses can become palpable (Nixon, 2011; Tsing et al., 2017). As growing numbers of feminist and posthumanist scholars working in the environmental humanities have recently pointed out, perhaps the most pressing temporal challenge of the contemporary moment is the development of multi-scalar storytelling practices by which to engage audiences in stories of inter-generational loss. Donna Haraway, for example, has pointed out the urgent need for new narrative practices by which to simultaneously honour the dead and cultivate an expanded sense of inter-generational environmental responsibility. In her recent *Staying with the Trouble,* she argues that "many kinds of absence, or threatened absence, must be brought into ongoing response-ability, *not in the abstract, but in homely storied cultivated practice*" (Haraway, 2016). "In our times of surplus death of both individuals and of kinds," she continues, "a mere five human generations can seem impossibly long to imagine flourishing with and for a renewed multi-species world" (Haraway, 2016: 166). Impossibly long, perhaps. But it is, she rightly insists, precisely such flourishing that needs to be imagined. And this can only take place if there are spaces created for a more sustained acknowledgement of these "many kinds of absence" – both human and other-than-human (Haraway, 2016: 166).

Pursuing a similar set of insights, in their edited volume *Extinction Stories*, Deborah Bird-Rose, Thomas van Dooren, and Matthew Chrulew argue for alternative forms of story-telling that might allow for more visceral recognition of those ongoing absences created by the accelerating extinctions of whole worlds and ways of being driven to collapse by extractive capitalism. As Chrulew et al explain: "The ways in which we might study and, indeed, try to counter extinction draw…on the distinctively *multiple temporalities of storytelling*, on creative attempts to produce new ways of understanding and relating to time, of measuring and counting time, of taking time – ours and theirs – and of giving it back to creatures prematurely deprived of…time" (Rose and Van Dooren, 2017: 10). While these students of extinction focus primarily on particular creatures – passenger pigeons, Hawaiian crows,

birds of paradise – and on experimental narratives that interweave history, geography, ornithology, and so forth, their call for attention to "creative attempts to produce new ways of understanding and relating to time" is a call that resonates strongly with the work already being performed by many of the activists associated with the Global Alliance for the Rights of Nature (Rose and Van Dooren, 2017: 13).

While these activists are not concerned with narrative innovation within scholarly communities, and while they do not focus their energies primarily on species extinction of the sort that preoccupies these theorists, they are arguably at the forefront of putting into practice new forms of ecological storytelling that are richly temporal. And unlike some of these post-human theorists, they are far more explicit about the corporations responsible for the deaths and disappearances to which their testimonies bear witness. Indeed, they are centrally invested not just in new aesthetic possibilities for narrating species loss, but in putting these stories to political work as testimonies in courts of law on behalf of non-human beings. Creating a public (albeit symbolic) space that explicitly resists the spatially and temporally constricted "commonsense" of mainstream environmental governance bodies which are too often over-determined by powerful industries, these activists fundamentally challenge both corporate amnesia and narrowly circumscribed "geographies of responsibility" (Nixon, 2011; Massey, 2004). In their view, these governance bodies, in their rush to respond to the dangerous accelerations of the present, tend to rely on anaemic visions of inter-generational responsibility that too often look only to the future – visions that fail to take an accurate body count of both human and other-than-human absences: The bloodlines of generations brutally violated by British occupation. The ancestors that continue to make themselves felt in the country of the Kimberley. The river with its own Laws long trampled by colonial administrators and their contemporary heirs. The spawning fish unable to make their way into the warm waters of the Gulf. The missing birds whose children will never be able to make the journey north. To return again to Nixon: These are the lives and deaths that too often "go unmourned" in the headlong rush into ever-speedier and denser techno-futures, never finding their ways into courts of law or receiving the accountability they demand (Nixon, 2011: 7).

While this neglect may to some degree be pragmatically inevitable, my argument has been that these activists are making a particularly important connection between the accelerations of the contemporary moment (which they are performatively destabilizing through their diverse invocations of slow violence) and the relentless push across many policy domains to think exclusively forward in time (which they are likewise challenging through their focus on recovering those pasts often dismissed or devalued by corporations and governments). The extraordinary importance of these orientations to diverse pasts is similarly stressed by feminist political theorist Joan Tronto, who has provocatively observed that "the present serves now as a prelude to the future rather than…an extension of the past" – a temporal reorientation that has had significant effects on how we think about inter-generational justice (Tronto, 2003: 121). Explaining the challenges of the past for the feminist movement (broadly conceived), she concludes:

> Attempting to resolve issues of justice without recognizing the continuing heavy weight of the past only privileges those who are already powerful enough to evade their responsibilities to the past. While it is tempting to look toward the future, every indication suggests that those who fail to learn from the past are doomed, not to repeat it, but to think that they have escaped it. Is it possible, then, not to dwell in the past; not to be blind to the past and wish only for the future; but to bring all these times together?" (Tronto, 2003: 129).

My central observation has been that "bringing all these times together" for the rights of nature movement involves not only challenging the speed of the corporate media, but refusing to be siloed into narrowly accelerationist future-oriented frameworks that deform the human capacity to stand in continued relation to a diversity of pasts. By rejecting the blind-spots created by these accelerations, new geographies of responsibility come sharply into view. The Gulf of Mexico and the Mardoowarra River are transformed into thriving centres of intersecting lives – both human and other-than-human – that are intimately shaped (and damaged) by global investments in extractive enterprises as well as powerfully demanding of forms of care rarely explored in so-called 'global' forums like the COP meetings. Taking my cue from the activists associated with the Global Alliance, I have suggested that a cultivated, storied resistance to the dominant spatio-temporalities of the present might centrally involve the creation and multiplication of spaces – like the international and Australian tribunals – in which to nourish orientations to a diversity of multiply-scaled pasts. Without reckoning emotionally with this multiplicity, it seems unlikely – as philosophers, social theorists, and scholars working in the environmental humanities have repeatedly noted in a range of diverse contexts – that institutions of environmental governance operating at a range of scales will be able to productively think either the time-scales or the geographies necessary for more thoroughly addressing the current ecological predicament. Instead, it is far more likely that they will remain locked within narrow and often misguided approaches driven by short-term, market-focused, future-oriented investments that fail to reckon with, and to learn from, the ongoing losses of the past.

It is far too early to say what may become of these extra-legal experiments. There is much to be critical of here and other scholars are likely to raise important questions about the conceptual and juridical limitations of these tribunals, the limited influence they currently exert at the UN and elsewhere, and the precise ways in which such expanded conceptions of time and space might be operationalized by policy-makers. However, at a time in which extractive companies continue to exert enormous influence over policy-making at all scales – from the local to the international – it seems important to at least consider the reframings of radical environmental movements like the Global Alliance for the Rights of Nature. As political theorist William Connolly has recently put it, the central challenge for progressive movements in the contemporary conjuncture is to "counter cultural orientations oscillating wildly between the stances of mastery, studied indifference, disappointment, and aggressive nihilism with an *ethos of reflexive attachment to a world that is rich in diverse meanings and purposes"* (Connolly, 2017: 119). As I have suggested, it is toward the multiplication of precisely such reflexive attachments that transnational activists for the rights of nature are currently mobilizing a range of diverse spatio-temporalities. Their work of bearing witness to the deaths of other-than-human beings who are not being registered on any corporate balance-sheet is a way of powerfully rejecting all approaches to environmental governance that do not attend to the ongoing-ness of violence – both colonial and ecological – that is too often conceived as either past or irrelevant.

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