

Archive of Alex May's PhD Draft Notes on Interconnected Law



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Introduction to the Archive

Alex May is a British academic who started a PhD at Birkbeck University in October 2022. Prior, Alex studied an undergraduate law degree at Oxford University (2011-2015), which included a year's study abroad in Bonn, Germany. A year later, he completed an LLM at the London School of Economics (2016-17). Alex wrote his dissertation about Earth Jurisprudence and human rights law, which planted the seeds that became the idea for Interconnected Law. Mapping ideas for his LLM dissertation, Alex realised what he envisioned was (at least) a PhD scale project.

This crystallised a wish to work on ideas about law and ways to communicate these so as to change our legal system and the wider world. Having identified a distinct part of this thinking to cover on the Masters dissertation, Alex channeled the larger vision into Interconnected Law as a side project in the subsequent 5 years. The PhD at Birkbeck allowed Alex to take on Interconnected Law as his core focus.

Due to long term illness, Alex has been unable to complete the PhD as intended and is entering medical retirement. Therefore, to bring the most developed form of the Interconnected Law approach into the world, this 'Archive of Alex May's PhD Draft Notes' has been created. The original notes have been reviewed by an editor and researcher who arranged a collection of drafts in accordance with a 'schema of Interconnected Law' made by Alex. This schema maps out the order in which elements of the approach should be

introduced to make a compelling case for the novelty, broad applicability, and necessity of Interconnected Law.

Edits have been made to the precise wording of the drafts for coherence only and parts have been reshuffled to reduce gaps or leaps in content. The editor mostly avoided breaking pre-written sections. Due to the draft nature of the documents collated, the writing varies in formality and tone. To retain the authenticity and flow of Alex's drafts, some sections needing further elaboration or deeper consideration have been retained with light edits made as needed. To give readers a good sense of what is going on structurally, these parts are signified with clear signposting such as "Note: ..."

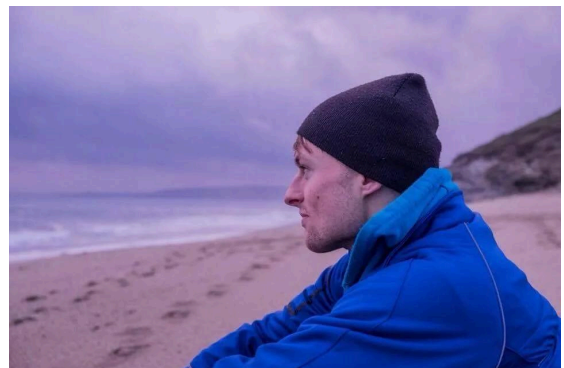
- There are parts where Alex added a short note to himself to make linkages between elements.
- Offcuts and reminders to make specific additions are also included.
- Some of Alex's questions about the structure, contents, and order of the texts have been retained as extra insight into the direction the drafts were moving in and how they may be developed.
- There are some quotations which are not embedded in sentences or passages. This indicates the draft state of the chapter versions passed onto the editor. Many quotes and excerpts included in the draft chapters have been kept in this archive document to provide readers with a richer context.

The purpose of this archival document is to share the Interconnected Law approach with the world in its most detailed and refined state. The intended audience is anyone interested in ideas about social ecology, relationality, and how the law *can and must* play a more active, value-driven, role in the networks of our lives.

More information about Alex, and the development of the Interconnected Law approach can be found at www.interconnectedlaw.com and www.alexmay.co.uk

Other key documents released in this round of editing to share the most updated version of the approach include:

- [*A Very Short Introduction to Interconnected Law.*](#)
- [*An Overview of Interconnected Law.*](#)



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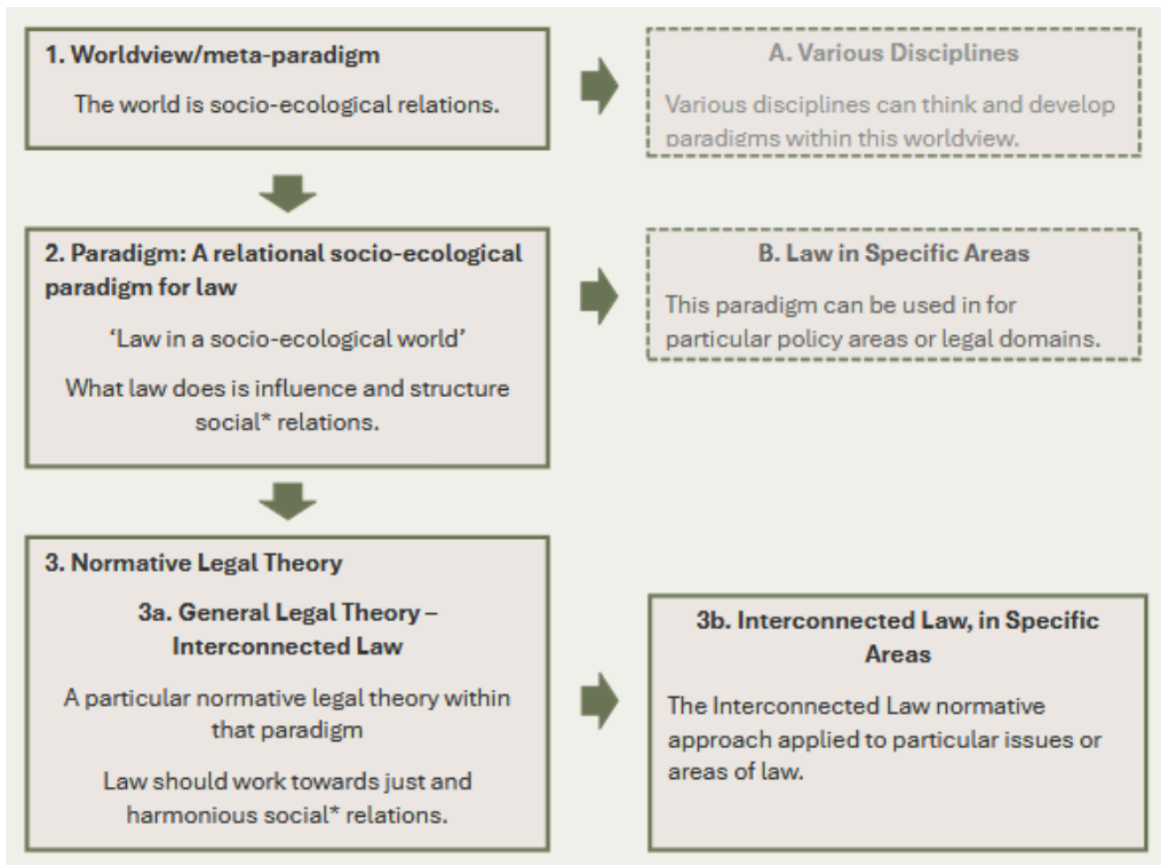
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Interconnected Law Schema

This archive of PhD draft notes has been organised in accordance with Alex May's 'Schema of Interconnected Law'. This represents the most recent refinement of the legal theory's structure, and maps out the order in which key parts should be covered to help the approach land with as many people as possible.



Some parts of the schema are more comprehensively covered in the draft texts than others. The Shema accompanies this archive as an indication of the flow that a further developed version of the PhD chapters would follow, and how the parts layer up to produce a socio-ecologically holistic legal theory applicable to a variety of issues and areas of law. The schema was also used to guide the synthesis of various articles, blogs, and presentations made by Alex into the following two pieces of writing (mentioned briefly in the introduction to the archive):

- [A Very Short Introduction to Interconnected Law](#) - 5-10 minutes read time, offering basic details, intended to seed further engagement with the approach and its component parts.
- [An Overview of Interconnected Law](#) - approximately 20-30 minutes read time, going into a medium level of detail and prompting readers to rethink law's role in our lives through this approach.

Further details on this 3-part release of updated materials on Interconnected Law are in the Editor's note.

Part 1: World view and Meta Paradigm

Introduction

The core purpose of this thesis is to provide a socio-ecologically holistic conceptual framework for law, which I am terming 'Interconnected Law'.

Various strands of this type of thinking exist, as we will come onto. Yet so far, the scholarship which exists, relational and holistic and ecological approaches, has (1) not fully come together in a socio-ecologically holistic approach and (2) not been fully developed as legal theory, to make a conceptual framework for law. This work is therefore pioneering, at least in English language legal theory, and in my view at least, very important.

This introduction will set out the core idea of Interconnected Law, cover many themes relevant to the project, and lay out some foundations. It will also set out what will be covered in subsequent chapters.

Notes: the introduction is seeking to set things out from first principles, covering my arguments, but not setting out those I am drawing on and weaving together. There needs to be something added here about whether ideas are neutral and the relationship between ideas and material reality. Not a duality but of course related. Ideas about humans and law linked to social forms and modes of productions and relational dynamics. I think that is kind-of implied but if I'm leading with paradigm and worldview then that is important to include.

The Approach's Critique

This is based on an argument that law - both the way people think about law and the legal system itself - is in need of a paradigm shift. Law is part of our society, our social order, and has a role in structuring and mediating social relations. It reproduces particular social arrangements and particular ideas about how the world should be, both in between individuals (as it is usually thought about) but, more importantly, at the macro level. It is not homogenous or simply top-down in this, but this is a big part of what law does.

This means that law's framework - both the mechanics of how law works, but also the ideologies behind these mechanics - matters significantly. This has different aspects. One is the 'justness' of the social relations which law is reproducing. My thesis is not primarily about this, though of course it is not completely separate from it either. My argument is primarily a jurisprudential one, not a socio-political critique of law (though, of course, political and social critique is necessarily some part of this). Instead, this is about the conceptual paradigm of law. The conceptual paradigm is not completely neutral, the ideology(ies?) of law are of course informed by other values, which have political elements to various degrees. The core part of this is to say that the current legal system's worldview, the paradigm law is operating in, is wrong. As we will come back to in a section about Descriptive v Normative, this is a blend of 'factually' wrong and 'normatively' wrong (as these can never actually be separated). Of course this will be a simplification, because law is not homogenous. It is dynamic, ever-evolving, a site of contestation. Nonetheless, we can simplify it to critique various things.

Our current legal system is based on the paradigm of atomised individuals abstracted from their socio-ecological context. It conceptualises individuals as independent from the world they live in, working towards freedom (and other values) in an individualised way and with the legal system primarily concerned with securing 'right' to individuals. This is missing the fundamentally relational nature of the individual human experience and society in general: that our life, the realisation of freedom (and other values), is fundamentally about relationships and interactions with others. This is the "social" dimension - in quote marks because of the 'social ecology' caveat which will be returned to shortly.

It also conceptualises humans - individually or collectively - as separate from the rest of nature. In Western society, this can be seen both in the dominant Judeo-Christian religions, in which humans are special and given dominion over the rest of nature, and it can be seen in the dominant scientific movement which developed out of the enlightenment, the most famous example being Francis Bacon's idea of using scientific understanding to dominate nature.

Note: This wording - 'rest of nature' or 'nonhuman nature' - is to be clear that humans are part of nature, that 'nature' is not the nonhuman other but something we are part of. We must therefore specify 'nonhuman nature'. This wording will get repetitive. Perhaps I will slip back simply into 'nature'. Perhaps I will make a point of keeping it.

In general, the natural world exists almost entirely as objects and resources to be extracted and utilised for human purposes. The extractive economic mode is part of this, which causes huge ecological destruction (and human harm both within the system and as a result of it), which includes but is not limited to capitalism.

Even various 'green' approaches are in this mode of thinking, in ideas of conservation for keeping nature as something for humans to enjoy, or a recognition of nature services such as a healthy environment. This human-nature division is not only about how we see the world, an anthropocentric understanding of ourselves as the top/centre of the cosmology instead of part of something bigger, but also means that we destroy the natural world we live in, even when this harms humans and undermines the ecological conditions necessary for our survival.

Note: Of course there are problems about generalising this: it is a system of a few over many, but neither am I satisfied in talking only of the capitalocene instead of the anthropocene.

Of course, law does not entirely do these things. There are limits where this conceptual framework runs up against facts where we must recognise the flaws of this paradigm, and our relational or ecological essence is featured in legal thinking. The argument is not that there is nothing in law, or legal thinking, which does not match this relational conception, only that it is not the dominant understanding.

There are also, of course, countercurrents against this dominant paradigm, alternatives and resistance. Legal scholarships, legislation and legal doctrines exist which challenge this paradigm. The point is that law primarily does this, and that this abstracted atomised individual is the core essence of the legal paradigm.

The Interconnected Law Framework (Introducing Social Ecology and Relationality).

Moving now from the critique to the positive response emerging from this critique: Interconnected Law is based on a recognition of the human subject which lives embedded (embodied, entangled, not completely bounded, etc) in a network of socio-ecological relations. In other words, we live in an interconnected world.

This includes the positive response to the two critiques set out above: the shift from an atomised individual abstracted from social context to a predominantly relational model; and the shift to humans within an ecological world. Each of these will, of course, be set out in more detail.

Introducing Social Ecology - Murray Bookchin's Philosophy

Structural note: Social Ecology as an ecological approach will now be foreshadowed in this Worldview section. Social Ecology needs to be mentioned here as part of an ecological worldview, with the idea of society-within-and-mixed-with-ecology trailed, then parked, before being addressed in the legal literature review. Social Ecology Proper will be returned to in part 3a to establish this lens more substantively and to clarify how it bridges the gap between Social and Ecological law. This will resolve various tensions.

So far, the majority of critical scholarship has been *either* social *or* ecological, the separation between society and nature existing in our thinking. Critical scholarship has been partial, either society abstracted from nature or ecological relations abstracted from social relations. Crucially, Interconnected law is an intervention in the field which weaves these strands together.

This goes further than merely covering both social and ecological in the same framework. Instead, as there is no separation between humans and nature, because society is within an ecological world, social relations are ecological relations and ecological relations include social relations. This is why I use the term 'socio-ecological' for relations or the framework: to designate that it is both.

Note: All social relations are ecological because humans and society are within an ecological world. Not all ecological relations are social relations because there are nonhuman ecological relations: birds eating fish, fungi and trees relating, ants and aphids, and uncountable others. Yet all ecological relations *which involve humans* are social relations: when humans are involved, social and ecological are inseparable. And, of course, there are various relations in which human activity impacts nonhuman ecology: these are not separate worlds, just that these exist outside of "society" (though, never fully outside it, everything is still connected and entangled).

This is taken from Murray Bookchin's philosophy of Social Ecology ¹. Beyond the points just described - that society emerged from and remains within nature; and that therefore social and ecological relations are indistinguishable - the other core aspect of social ecology is that (almost) all 'environmental' or ecological issues which involve humans are inseparable from the social relations which are part of these. Whereas our contemporary politics treats 'environmental' or 'green' issues as if they are somehow different from social

¹ Murray Bookchin, *The Philosophy of Social Ecology: Essays on Dialectical Naturalism* (2nd edn, Black Rose Books 1996)

issues (for example, the general separation of 'red' from 'green' politics), issues from climate change to habitat loss to soil erosion to pollution to ambient air quality are actually all social issues. This goes beyond merely an 'intersectional' sort of approach which recognises an overlap in harms and domains, saying rather that ecological issues are produced by social relations, the effects come about through social relations, that the ecological was never not-social in the first place.

Bookchin's main point in this thrust is to say that our ecological domination is not inherent in being human. This is a pushback both against modernity, colonialism and capitalism, and against Marxist thinking.

Introducing Relationality - Jennifer Nedelsky's Project

Jennifer Nedelsky's relational approach is another significant development in legal theory which I will heavily draw from and develop. As described in the previous section, it is a paradigm shift in understanding the self, law and liberal values. It forms a significant basis for my socio-ecologically holistic approach, being one of the components of the 'socio' components.

Nedelsky's is not the only relational approach - as she says, feminists have generated many. But hers is the most developed with specific regard for political and legal thinking, so the best to draw from for my project.

At its core her project is about understanding relationships as fundamental to people and to law:

"Relationships are central to people's lives—to who we are, to the capacities we are able to develop, to what we value, what we suffer, and what we are able to enjoy." ²

In this way of thinking, the individual cannot be conceived of as separated from their social environment (to which I will add the ecological dimension). Instead, each individual not only lives in a relational network but is constituted by it, interwoven.

She is quick to say that she means more than just that the fact of relationships and interactions are a part of our lives:

"All political and legal theorists, and every institution of law and government, recognize that human beings live together. But a relational approach to human life is something more than the recognition of this fact. In my version of a relational approach (feminists have generated many), the human subjects of law and government are not best thought of as freestanding individuals who need protection from one another. People's interactions with one another matter not simply because their interests may collide." ³

Her challenge is both to the idea that the human subject should be thought of as a freestanding individual and to the idea that our law is about protecting people from each other. Of course, these are inter-related propositions: once we recognise the fundamental fact of interdependence, it follows that we should positively foster this.

² Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (Oxford University Press, 2011) 3.

³ Nedelsky (n 2) 19.

Although our political and legal theory has developed beyond a crude Hobbesian world in which the state must intervene so that we do not live in a war of all against all, this is nonetheless still the core of liberal thinking (and, for example, human rights law and theory). Securing freedom for the individual *from* others, with negative liberty being predominant - though this is far from the only freedom which liberal human rights secures. The division of the UDHR list of human rights into civil and political and socio, economic, and cultural does broadly fall along the line of liberalism and negative liberty versus positive autonomy and more collectively minded values.

So, the alternative of thinking of society as a collection of freestanding individuals at risk from each other is to recognise that society and each person's life is something we create together. The fundamentals of interdependence is that we support and care for each other. This line of thinking leads us towards *something about encouraging social relations in which we all do good things for each other*, and perhaps that law should be about encouraging this norm.

To avoid an easy misunderstanding from the outset: this is the broader use of the word 'relationships' than the narrow sense of either capital-R Relationship or intimate relationships. It means all types of social relationships and relations:

"In my view, each individual is in basic ways constituted by networks of relationships of which they are a part-networks that range from intimate relations with parents, friends, or lovers to relations between student and teacher, welfare recipient and caseworker, citizen and state, to being participants in a global economy, migrants in a world of gross economic inequality, inhabitants of a world shaped by global warming."⁴

Before we come onto this detail of Nedelsky's relational conception of the self, law and rights, and autonomy, let's look at what her project is. Let's begin with why she chose to focus on self, autonomy, law and rights:

"In the Anglo-American tradition, conceptions of self, autonomy, and rights are mutually constitutive. By offering a shift in the conception of each, and by linking these shifts to legal theory and practice, I advance a new "articulation" in the context of law, of the language of rights, and in the political theory of selfhood. But my aspiration is that a relational way of thinking about self, about core values like autonomy, about law and rights, becomes part of common sense, the everyday understanding of ordinary people. It is then that the articulation will really take hold."⁵

Her aim is to change how people think, both in law and more generally:

"At one level, what I am advocating is just a shift in emphasis that moves relationship from the periphery to the center of legal and political thought and practice. But, at another level, I think this shift amounts to a gestalt-like change in how people see the world, in daily habits of thought as well as political theory and jurisprudence. My aim is, thus, simultaneously grandiose and humble: to shift habits of thought so that people routinely attend to the relations of interconnection that shape human experience, create problems, and constitute solutions. My aspiration is a relational habit of

⁴ Nedelsky (n 2) 19.

⁵ Nedelsky (n 2) 38.

thought in everyday conversation, in scholarship, in policy making, and in legal interpretation.”⁶

This shows both a paradigm shift (in her words, a ‘gestalt-like change’) in legal and political theory specifically and a broad cultural shift in worldview (in her words, ‘habit of thought in everyday’). These are, of course, linked, because legal thinking is within a broader worldview. ‘Gestalt’ is a German word which means something like the ‘configuration’ or ‘form’ of something, but can also be translated to mean a ‘unified whole’. It is most prominently known for its use in ‘Gestalt Psychology’, which looks holistically at the human mind and behaviour in relation to the world around it.

In essence, this is exactly the same as my project, the idea of a socio-ecologically holistic approach to law and of Interconnected Law. After establishing that legal thinking is within a broader paradigm, I establish that broader worldview, then develop a paradigm for law within this. The key difference between mine and Nedelsky’s projects is that mine is *socio-ecological*, instead of only having the human dimensions of our social experience. One way of understanding my project, therefore, is to see it as expanding outwards from Nedelsky’s work to think both about society as a whole and to think ecologically.

Note: check that in other appropriate places I have described that it is Earth Jurisprudence expanded to society, social ecology worldview into law, or holistic approach to law.

She describes her project as having both conceptual and institutional dimensions. In other words, it is both about the abstract ideas and about materially changing the way the legal system functions:

“Similarly, I see my conceptual and institutional objectives in reciprocal relation to each other: I am trying to articulate and promote a conception of selfhood which will help law better accomplish its objectives of securing core values, such as dignity and equality; I am advocating a **relational** approach to law which will help articulate and reinforce a conception of the self that will foster optimal relations among people and the planet they live on.”⁷

This passage also helps to clarify what her aim is. Nedelsky’s project is not primarily a ‘political’ one as such. Her aim is to change how people think, providing a conception which can then be used to ‘foster optimal relations’. Nedelsky - at least in *Law’s Relations* - does not provide a theory of justice or political ideas about what optimal relations in society look like, as it is only about the conceptual framework (developed in detail) of the relational way of thinking.

It is also interesting to note that this is one of the few passages which recognises an ecological dimension - that the relations are ‘among people and the planet they live on’. More on this shortly below.

Nedelsky’s Engagement with Liberalism

Law’s Relations is primarily an engagement with (traditional) liberalism, critiquing it so as to develop her relational framework.

⁶ Nedelsky (n 2) 3.

⁷ Nedelsky (n 2) 36.

“The individualism of traditional liberalism remains a powerful part of the dominant framework of thought. It is that dominance I want to shift, so I need to speak to it”⁸.

This is not to say that the relational approach is confined to one political tradition - the opposite is the case. “I claim that all matters of justice will benefit from relational analysis. All areas of law will be clearer through this lens.”⁹. In another passage she describes how even someone wanting to uphold traditional Catholic values would benefit from the relational approach.

As discussed in the section about the holistic paradigm [section ref], the reductionist (or individualistic) and holistic (or relational) paradigms exist in and across different cultures and modes of thought. In anarchist thought, for example, the same tension can be seen between individualist anarchism and social anarchism. In Murray Bookchin’s words, “*For some two centuries, anarchism — a very ecumenical body of anti-authoritarian ideas — developed in the tension between two basically contradictory tendencies: a personalistic commitment to individual autonomy and a collectivist commitment to social freedom.*”¹⁰.

To be clear, these different paradigms are not the same as the choice between individualist versus collectivist or communitarian ideas. That choice is about values, and whether to prioritise something for the individual or at the collective level. The relational approach is instead a framework about how we understand the world, including the individual and the relationship between individual and collective. The relational framework is therefore useful for all sorts of political traditions. The framework and values do have a relationship, but Nedelsky’s argument - which I follow - is that the relational framework is a better understanding of the world and so a better methodology.¹¹.

All of that said, *Law’s Relations* is almost exclusively engaging with liberalism. As Nedelsky describes, this is because it is the dominant ‘framework of thought’:

“First, in order to claim that making relationships central to legal and political analysis can make a difference, I do not need to claim that no liberal theorists have taken important steps in this direction. Such a claim would be false. I do, however, say that liberal individualism is still the dominant mode of thought. One of the easiest ways to see this is through the role “independence” plays in liberal theory. (This dimension of liberal individualism is, of course, particularly salient to this project because of my rejection of independence as a good shorthand for autonomy.)”¹².

Note: We will come onto looking at the relational conception of autonomy below.

She challenges liberalism on its own terms, arguing that the relational framework is better suited to realising the aims of liberalism than the liberal-individualist approach:

“In short, I want to persuade liberals that my approach yields better protection of the real value of autonomy and critics that the transformation is deep enough to transcend the individualistic

⁸ Nedelsky (n 2) 7.

⁹ Nedelsky (n 2) 85.

¹⁰ Murray Bookchin, *Social Anarchism or Lifestyle Anarchism* (AK Press 1995) Part 1.

¹¹ Nedelsky (n 2) 77.

¹² Nedelsky (n 2) 8.

limitations of traditional liberalism.”¹³.

As her approach is a conceptual framework, a way of thinking not committed to any particular normative outcome, it is not tied to a particular set of values. So while Nedelsky is not a liberal, though she shares some of the liberal values, she still points out that the relational approach is better for those who do want to realise an individualistic society and realise liberal values. She even describes how liberalism is better understood [couldn't find where] as a certain structuring of social relations through individual rights.

Another way she makes this argument is by engaging with liberal values. Autonomy is the primary value she engages with, which will be covered below, but she says that this way of thinking can be applied to other values such as equality, dignity and security. Nedelsky argues that individualistic approaches and the bounded conception of self are conceptually flawed, as are the understandings of autonomy as independence and autonomy as control. A relational conception of autonomy is superior. Further, she argues that the liberal approach is a poor way to realise autonomy. She therefore makes the cunning argument that liberal values are better realised through her relational approach, instead of through the dominant individualistic liberal approach¹⁴.

In Chapter 1, Section IV subsection C p86 she describes her normative relationship with liberalism, saying that she shares the belief in the significant worth and distinctness of each individual but that

“Understanding how to honor and nurture each individual is best done through a relational approach. It is relationships that enable individuals to flourish and develop the capacities that liberalism has long highlighted — reason, autonomy, liberty — as well as the capacities for love, play and emotion that make life valuable and that have not received the same attention in the liberal tradition.”¹⁵.

Although traditional liberalism is her focus, she does recognise that ‘egalitarian liberalism’ is a separate strain¹⁶. She describes egalitarian liberalism as having a major focus on the conditions for equality and therefore pays attention to social context and social relations. Nonetheless, although egalitarian liberalism recognises and seeks to change social context and therefore has flavours of relational thinking, it is still far from being fundamentally relational in its approach and is typically based in liberalism. Therefore, egalitarian liberalism too would benefit from a relational manner of thinking.

Notes: Maybe this goes somewhere about the link between the framework and the values. Add methodology/normative link

“I think that habits of individualistic thought make the illusions easier to sustain. Conversely, I think habits of relational thought will make it easier to see the interconnection and thus to accept the urgency of stopping the harm that causes such acute suffering to many and harm to all who live in the societies that tolerate it.”¹⁷

¹³ Nedelsky (n 2) 7.

¹⁴ Nedelsky (n 2) 38. (Also chapter 3, Reconciving Autonomy)

¹⁵ Nedelsky (n 2) 86.

¹⁶ Nedelsky (n 2) 7-9.

¹⁷ Nedelsky (n 2) 25.

Paradigm Shift

This critique and framework may be familiar to you, the reader. This could be because you are familiar with some of the materials I am working with. More broadly, though, you might be familiar with something else in a relational paradigm, and can recognise the same pattern in my writing here.

Fritjof Capra (writing with Pier Luigi Luisi) sets out his conception of the 'holistic' or 'systemic' paradigm as compared to 'reductionist' or 'mechanistic' paradigms. They term these meta-paradigm, as they show how mechanistic and holistic paradigms exist within various different disciplines.

- *"At the forefront of science, a radical change of paradigms - from a mechanistic to a systemic and ecological worldview - is now emerging. The very essence of this paradigm shift is a fundamental change of metaphors: from seeing the world as a machine to understanding it as a network of ecological communities."*¹⁸
- *"A corresponding paradigm shift has yet to happen both in jurisprudence and in the public conception of the law. It is now urgently needed, since the major problems of our time are systemic problems, and our global crisis is an ecological crisis in the broadest sense of the term."*¹⁹

Capra's and Luisi's description of this meta-paradigm in their book *The Systems View*²⁰ is perhaps the clearest approach, but they are not the first or only theorists to take this approach (nor do they claim to be!). What is particularly useful about their meta-paradigm is the links it makes between different disciplines.

Within law and related fields there is a significant amount of scholarship in the holistic paradigm, although the dominant thinking is still very much entrenched in a reductionist (or mechanistic) paradigm. Someone who is familiar with these notions will pick up the same pattern easily. When I explain my work to someone who knows about computing, I say it's a shift from conceptualising humans as discrete independent entities to living in a network, and what thinking about society as a network means for law. When I explain it to someone who knows ecology, it is quite easy for them to understand that law thinks only about individual organisms instead of the relations between organisms (which is, the field of ecology) - and then be shocked that we are quite far behind conceptually! When I explain it to someone who has familiarity with Buddhist thinking, it's easy to point out that 'everything is connected', that each individual is actually an inter-being, and it's thinking about law in that paradigm.

I therefore see my work as being a development of a holistic approach to law, using Capra's language. As was stated already, and will be explored in the literature review, while there are various legal theories in the holistic paradigm, a general approach to law in this paradigm is still lacking. Capra's own book, written with jurist Ugo Mattei, is one example of such scholarship.

¹⁸ Fritjof Capra and Pier Luigi Luisi, *The Systems View of Life: A Unifying Vision* (Cambridge University Press 2014)

¹⁹ Fritjof Capra and Ugo Mattei, *The Ecology of Law* (Berrett-Koehler Publishers 2015) Preface.

²⁰ Capra (n 18)

Expansion of Subjects

Part of Interconnected Law is a recognition that humans live in a world which contains far more than just humans. I described the individual human lives embedded in a socio-ecologically relational world. One change that is part of Interconnected Law is the shift in understanding of the individual subject. Yet the individual human subject is not the only subject in our world, and nor should it be the only subject in our law.

Within humans, we should also think in terms of collective human subjects. We live our lives not only as individuals, but also as collectives: families, neighbourhoods, communities, municipalities, societies. (This is a 'holonic' approach, which I will come back to shortly.) These are also entangled, not only vertically in the manner of matryoshka dolls, but that individuals belong to different collective units on the same level, and that these collectives are not discrete but intermingling and overlapping.

Collective subjectivity is part of the human world - communities exist, cities exist, families units exist, social groups exist - and must also be part of our legal system. The collective units at different scales should be recognised as such, because humans do not live as discrete abstracted independent individuals but as part of collectives, and these collectives should have some form of human subjectivity. This is part of the conceptual framework of Interconnected Law, though it is an undeveloped part.

One easy example of this is collective rights of indigenous people, which do exist in various international and domestic legal systems. A second easy example are 'class action' lawsuits or group claims, such as certain groups of employees or consumers. There are also collective rights of groups of people with particular characteristics, often 'protected characteristics', including women, children, future generations, disabled people. These rights are often exercised in a collective sense, when a situation which law is involved in recognises that it affects a group of people with similar characteristics.

Another crucial aspect of subjectivity - (both existing in the world, and as is argued as part of Interconnected Law, should be part of law) - is non-human aspects of nature. This means involving non-human aspects of nature in the legal system (and more broadly, political and governance systems) as subjects, with legal subjectivity (ie, personhood, but they aren't persons!) and rights. This is generally known as 'Rights of Nature', although it is important to recognise this is just one component of the broader idea of Earth Jurisprudence. This includes giving various aspects of nature legal recognition and agency (though of course, this would have to be carried out through humans on their behalf, in their interest).

This should happen at various levels of scale. Individual animals should have legal subjectivity, although these would be limited in importance, primarily to protect their physical autonomy, access to habitat, and other fundamental ecological needs. The scale of habitats and ecosystems, taken as a whole entity (comprising, of course, all of the beings which inhabit them), is a more important one. A particular ecosystem, from the smaller scale of a meadow or woodland through to the larger scale of an entire river basin or region, should have legal subjectivity. At the larger scale, either the scale of a whole legal jurisdiction (i.e. a nation-state) or at the planetary scale, 'nature' should also have legal subjectivity. The totality of nature in the UK, for example, should have legal subjectivity, as should the atmosphere in general. The rights which particular subjects have would vary - Article 1(6) of the 2010 Universal Declaration of the Rights of Mother Earth says that "all other

beings also have rights which are specific to their species or kind and appropriate for their role and function within the communities within which they exist”²¹

Of course, this is a radical change from our current legal systems and legal thinking, and there are many dimensions of this which will be explored later. However, it should be noted from the outset that while this is a radical change, it is one which has already seen some development in various jurisdictions in the last decade.

Holonic Thinking

Part of Earth Jurisprudence is the ‘holonic’ approach. A ‘holon’ is something which is both a whole and part of a bigger whole, a ‘holarchy’. This overcomes the reductionist dichotomy between parts and wholes, pointing out that most things are both, that things are themselves systems while being subsystems of a larger system. Holonic thinking is a frame for understanding almost everything in its essence of being both a part and a whole, instead of a separate category of things. This way of thinking about interconnected scales is not always present, or not always made explicit, in other scholarship (?), but it is present in Nedelsky’s relational approach in terms of ‘nested relations’ which recognises relations and collectives at different scales.

Within our bodies, for example, we can recognise that each organ is a ‘whole’ organ while being part of an organism. The heart, lungs, gut, brain, and so on can be understood as their own system, working relatively autonomously and distinctly from other organs, yet also closely interrelated with these other organs. Organs are themselves made of tissues, which are made up of cells. The bodymind is a whole system, made up of these smaller systems, which are made up of systems: it turtles all the way down.

Going in the other direction, each organism is part of bigger things too. Ecosystems are essentially holonic, with individual animals relating to all sorts of other animals and non-alive chemical flows in an ecosystem. Animals are part of families, communities and species which relate at that scale in the holarchy, with various interrelations which have a tendency towards equilibrium or can phase-shift to a different equilibrium. If there are suddenly lots of foxes, there will be fewer rabbits, some of the foxes might die of hunger, and the rabbit population can increase again. Or, perhaps there is a pollutant which kills off one part of the ecosystem, and the effect cascades through the whole relational web.

A hierarchical organisation is an example of holonic thinking in regular human life, whether it’s a business, an army, a public institution or an education institution. Each person is usually part of a small team, which will have someone in charge of that team; teams are grouped together in clusters, or divisions, or departments. Up at the top of the organisational hierarchy, the different heads of department come together in some sort of committee, which typically has one overall leader. At each scale, each group can be understood as a relatively autonomous system distinct from other parts of the organisation, while also relating to other parts and only meaningfully existing as part of the whole.

In the same way, human social orders are best understood ‘holarchically’. This is a common part of how we understand the world in a day-to-day way, but rarely explicitly features in legal or political theory. Earth

²¹ Universal Declaration for the Rights of Mother Earth (drafted at Peoples’s Conference in Cochabamba, initiated by President Evo Morales Ayma of Bolivia, 2010) Section 1(6).

Jurisprudence does not say much about inter-human social relations, and so does not generally include this idea, but it can be seen in how Nedesky writes about nested relations. Exactly what the holons are depends on the social order. An individual is often part of a household and/or partnership or immediate family. They might also be part of a wider family, some other kin relations, friendship groups of close friends and looser acquaintances, and part of a community(ies). Often we are part of some sort of 'holarchic' organisation(s), as described above, whether it's an economic organisation, a charity, a political organisation, an interest or activity group, and so on.

There is also a spatial dimension: we have immediate neighbours, which form social relations at the immediate 'neighbourhood' level (even if people do not know their neighbours, there is almost always at least some sort of socio-spatial relationships). Going up in scale, rural people might live in a town, which is part of a broader regional area, or urban people live in a 'district' (whether formally defined or informally) within a city, are part of the city as a whole, and a municipal region. Typically these form some sort of society or nation, though this form of social organisation again varies around the world. And, in case it wasn't clear, **all of these social relations are entangled**: these are not dichotomous bounded social groupings but mapping out a dense and complex web of relations. And, of course, a full picture must also include relations with nonhuman elements, mapping humans in the ecological world we live in. Again, this happens at all levels of scale, from immediate ecosystems (someone with hay fever experiences these viscerally!) to the planetary system we are part of (such as the various ways we each relate to the atmosphere, such as through climate change).

This holonic approach, present in Earth Jurisprudence, is therefore also adopted into this socio-ecologically holistic approach: understanding the world as a system of entangled holons which relate to each other as part of a holarchy is part of holistic thinking!

Part 2. Descriptive legal theory

There is a question in any legal theory of the balance between being descriptive and normative which is probably familiar to the reader. I will attempt to answer this with regards to my own project. In short, a descriptive or functional theory of law in this world is about what law does, not what law should do. This is value neutral; useful for anyone working with or about law, because it's about law as an instrument.

Attempting to Provide Neutral Descriptions of Law

My view is that there is no complete objectivity or neutrality - matching (I think) thinkers such as Donna Haraway, Margaret Davies, (and I am sure others in traditional jurisprudence or the critical canon). When it comes to legal theory, while I do think that descriptive approaches to law have value and are worth distinguishing from arguments about how law should be, even attempts to provide a neutral description will have some normativity in them.

For my theoretical work, there are different layers of normativity.

The first is the 'descriptive' one: that a relational paradigm is a better way of understanding the world than the current 'reductive' way. This exists both in general as a worldview and then specifically about law. This strand of the argument is the scientific sort, that a relational understanding is a better description of the world we are in than a reductive model. This is not completely absent of normativity, but it is the same sort of normativity that we should believe that the Earth is round. The holistic paradigms in various scientific disciplines have similar arguments, such as in biology and medicine, that we should understand organisms holistically because it is a better understanding than a mechanistic approach.

Of course here, it is specifically an argument that this worldview is better for thinking about law. It is about how we understand the individual, society and nature, and this has significant implications for law, both legal theory and legal systems. There is a normativity that we *should* think about law in this way, but this is relatively value neutral. It is not completely value neutral, though, as it has political significance. It means a shift to thinking about communities not individuals, for example. To me it feels akin to arguments about the Earth not being the centre of the universe, about recognising that humans are a product of evolution going back millions of years (and not divinely created in recent history), or that animal biology is not simplistically sexually binary (which challenges contemporary arguments about gender). These are significant political topics, but the descriptive strand of the argument is just: this is a more true way of understanding the world.

Note: Capra and Luisi in 'Systems View' talk about how paradigms are never value free. The scientific revolution claimed that values were separate from facts, but they say that Kuhn describes how scientific facts emerge out of human perceptions and values, a paradigm, which they cannot be separated from, and therefore the larger paradigm within which the research is pursued will never be value-free. Though, of course, this should also be a critique of their approach...

In this sense, I think it is the case that a relational paradigm for law is better for a range of political positions, perhaps even all. An authoritarian regime would likely be able to better achieve their goals through a relational paradigm, as it better represents the world they are in. (For example, encouraging people to snitch on family, friends and neighbours for political acts or thoughts fits well in a relational paradigm.) Religious groups, conservative groups, centrist liberals and the radical left are all likely to benefit, in some way, from adopting a relational paradigm for thinking about law (and the world in general).

The exception to this is where there is intentional mismanagement - political actors who are not in good faith and have actual goals different to their stated goals, such as those who claim that privatisation of public services is better for citizens when they either do not care about quality public services but instead seek simply to benefit corporate interests or remake society in their ideology.

Law is a social institution of power

Note: the following text was originally published in a blog for Open Democracy ²²

²² Alex May, 'Interconnected Law: A Paradigm Shift in Legal Thinking' (*Open Democracy* 2020) <<https://www.opendemocracy.net/en/oureconomy/interconnected-law-paradigm-shift-legal-thinking/>> accessed 11 January 2026

In the relational understanding of law, the argument is not that law should do something about the network of relationships that make up our society: it is that it already does. Law is pervasive, part of the fabric of every aspect of human activity. Though we often name politics, society, culture, economics and even art as separate domains, these are all interwoven with each other, and law is part of this interwoven jumble of human activity.

Our legal systems influence and structure many of our relationships, whether through the gentle reproduction of existing patterns of relations or firm enforcement of particular relational structures.

In each of these, law can foster positive relationships which empower people, or it can enable abusive and destructive relationships. Understanding law in this way, we can see that law's goal should be to facilitate just and harmonious relationships and conditions in society, and to transform exploitative and abusive relations into better ones.

The way that law affects our relationships is most obvious in the ones most commonly associated with the word 'relationship'. The legal institution of marriage does much to reproduce a certain type of social relationship, and the way this has changed over time legally, such as whether women could own property or vote and the recent creation of civil partnerships, is part of changing social relations over time. Our current law has little to say directly about social relationships which fall short of these, although it may often be involved if there is joint ownership of a house or a child involved.

Law structures all sorts of relationships beyond these intimate ones. Criminal law affects many aspects of how we can and should interact with one another, such as by trying to protect people from being attacked by others, stopping people drinking in the streets (unless as part of a particular establishment), or even in some instances banning certain types of gathering. Whether an activity is designated as 'criminal' has huge effects for how something is perceived socially, which can deter people from engaging in dangerous activities and also create situations in which certain communities are heavily policed. Access to space is also mediated by law, affecting who can access and control parts of the city and who particular spaces are for.

The coronavirus regulations come to mind as an excellent example of how law affects social relationships. The regulations have changed how we relate to one another, who and how many people we can meet with in different types of location, and which sorts of activities are permitted. Yet this is not an exceptional use of law, only one which is broader in scope, more intense in effect and at a greater pace of change, which makes them stand out compared to the way law is typically integrated into our way of life. The legal response to COVID-19 has been an epitome of the individualistic response, by criminalising people who do not follow the rules but not changing their relational context. The need for more systemic change, such as financial support, functioning sick pay, workplace rights or proper health and safety enforcement, has lagged behind this individual criminalisation and fallen short.

Having a job is a significant and necessary part of most people's lives, and law does much to mediate employment relations. Law sets a foundation for how people must be treated, such as minimum wages and protections against discrimination, but in other parts of employment relations its absence leaves employment conditions down to social and economic power dynamics. Law is absent on whether remuneration for work should be just, or whether people should be treated with respect. A lack of union rights, for example, helps

perpetuate unequal power dynamics in workplaces, whereas stronger union rights create a legal structure that can be used to empower workers.

We can see how law fosters conditions in which exploitation is easily possible in the intersection of immigration law and employment law. When someone's visa status links a person's right to be in the country with a particular job that 'sponsors' their visa, or when it is made a criminal offence for certain categories of immigration status to work, those who employ them know that exploitation and abuse is unlikely to be reported to authorities, giving employers a near *carte blanche* regarding these workers.

Even in the mythical 'free market', law and the state work to make economic activity viable. It is law that creates the legal form of a 'corporation', creating entities separate from the individuals involved in them, and law which enforces contracts and protects private property. Within 'the market', law is involved with relationships that businesses have with consumers and also has a role in whether ecosystems can be destroyed for the extraction of 'natural resources' or to build a factory.

This relational aspect of law is perhaps implicitly understood when people seek to use law as a means of bringing about social change. Yet this 'relational' understanding of law is rarely explicitly recognised or understood. When I first saw this relational approach to law described during my master's degree, it was revelatory.

The Limits of Nedelsky's Scope

The main downside to Nedelsky's work is the scope, which she is upfront about. This is not meant as a criticism: her work is a powerful rethinking of the individualistic approach to self, autonomy and law and is rich and detailed. As described above, it is not a theory of what society is or what politics should be about, and is primarily about the mode of thinking, focused on challenging the liberal paradigm at its foundations.

The primary shortcoming is that the wider ecological world or approach is absent from her framework, and she only thinks about inter-human relations. She does recognise that this is missing, saying: "*it is important to acknowledge at the outset that this book does not address this most basic interdependence, our relationship to the earth.*"²³ and that, "*In an optimal relational approach, our place in the ecology of earth would be recognized as a relationship that shapes and is shaped by all others.*"²⁴

Note: An interesting comment I should note somewhere though it doesn't fit here - "I increasingly think that dignity will be even more useful than equality when it comes to thinking about wise relations with the earth and her many dimensions, including other life-forms."²⁵ This recognises the diversity type thinking that has indeed developed in Earth Jurisprudence: everything is valuable, but everything is different, with a different role to play in the Earth Community and with different rights, or the same rights but *personalised* (?) to what they are.

²³ Nedelsky (n 2) 12.

²⁴ Nedelsky (n 2) 34.

²⁵ Nedelsky (n 2) 82.

Although she recognises this is missing, she does not attempt to include it even in a summary fashion in her description of a relational approach. It would not have been too much extra to include ecological relations, both small and large scale, in the description of the nested relations which each person lives within. Perhaps that is asking too much though: *Law's Relations* is a pioneering breakthrough of the inter-human relational approach; recognising the ecological dimension of the human existence and recognising that the social and ecological are inseparable would be two more breakthroughs.

She expresses the hope that 'environmentalists' engage with her work:

"I also hope my audience includes environmentalists. Within the mainstream of North American culture, they may be the people who have most cultivated a relational approach to their projects. The very concept of ecology is relational. It is about fundamental interdependence. So it is important to acknowledge at the outset that this book does not address this most basic interdependence, our relationship to the earth."

"I like to think that my argument here is a step in the direction of such a reorientation. Even though its focus is on relations among human beings, it invites the kind of relational thinking that will promote a respectful relation to earth and her many life-forms. (I briefly address the issues of human relations with nonhuman entities at the end of chapter 3.)" ²⁶.

I therefore feel I would have her blessing to pick up where she left off in developing this into a socio-ecologically holistic approach!

The below quote chimes with Davies' *Ecolaw*.

Ecological interconnection: "And, as suggested above, the earth itself is both a condition and effect of these relationships. Once attention is drawn to what kinds of relationships generate a given problem, and what is shaping those relationships, it will become clear that the human institutions and norms I offer as examples above are themselves conditioned by the availability of natural resources as well as the way humans have constructed control over those resources and the way humans understand their entitlement to them." ²⁷

Various Components of Nedelsky's approach

Let's now take a look in more detail at Nedelsky's relational approach. As was stated above, she is not making the argument that we should invest more in personal relationships but that we must understand that people are relationally constituted, that society is a web of nested and interwoven relations, and that this is a better way of thinking about values such as autonomy and about law.

The Relational Self

The core of the relational self is that each person does not exist as an entity separate to the world they live in but is instead interwoven with it.

²⁶ Nedelsky (n 2) 12.

²⁷ Nedelsky (n 2) 22.

“Another way of understanding what I mean by relational selves is to see the fundamental interconnectedness among human beings.”²⁸

One thing to establish from the outset is that this relational approach is not against individuality. As described above, this is different to the value choice between individual and collective. There is nothing in this relational approach which goes against the individual: it is against the way of understanding the human world as only fundamentally composed of freestanding individuals.

“this relational approach does not stand in opposition to the importance of individuality; it is an account of what makes it possible.”²⁹

So, it is our relationships - social interrelations - which make our lives possible. This is not quite universally true: some people can live as Robinson Crusoe in isolation on an island, as hermits away from others or a life of social isolation. But with this very limited exception, human life is a social life. It happens with others, and these relationships are vital to each person’s life. What is meant by this is more than just the fact of the occasional interactions of freestanding individuals but that there is more relationality in our lives and selves than there is independence.

“All political and legal theorists, and every institution of law and government, recognize that human beings live together. But a relational approach to human life is something more than the recognition of this fact. In my version of a relational approach (feminists have generated many), the human subjects of law and government are not best thought of as freestanding individuals who need protection from one another. People’s interactions with one another matter not simply because their interests may collide. In my view, each individual is in basic ways constituted by networks of relationships of which they are a part—networks that range from intimate relations with parents, friends, or lovers to relations between student and teacher, welfare recipient and caseworker, citizen and state, to being participants in a global economy, migrants in a world of gross economic inequality, inhabitants of a world shaped by global warming.”³⁰

Note to self: Below quote has been added but the text is not rewritten. Add something like: Nedelsky describes a discussion she had with a liberal theorist which captures this difference.

“This difference is nicely captured by a comment I once heard from an (otherwise thoughtful) liberal theorist. He was dismissing, with exasperation, the critique that liberal theory fails to take seriously the social nature of human beings. ‘Of course it recognizes their social nature’, he said. ‘Liberal theory is all about the proper rules governing the interaction among people, so of course it recognizes their social nature’. This observation misses the point. Drawing boundaries around the sphere of individual rights to protect those individuals from the intrusion of others (individuals or the state) takes for granted the existence and interaction of independent (potentially threatening) others. Such an assumption, however, has little more in common with the claim that every person is in significant part constituted by her interactions with others. The fact of social encounters entails no more than a plurality of individuals whose nature need owe nothing to relations with others. ... On a

²⁸ Nedelsky (n 2) 22.

²⁹ Nedelsky (n 2) 26.

³⁰ Nedelsky (n 2) 19.

relational view, the persons whose rights and well-being are at stake are constituted by their relationships such that it is only in the context of those relationships that one can understand how to foster their capacities, define and protect their rights, or promote their well-being. This is a very different starting point from simple plurality of independent beings whose inherent rights and obligations mediate their encounters with each other.”³¹

Instead:

What matters here is fully integrating the centrality of relationship into the sense of “self” that underlies mainstream thinking about legal and political institutions. What too often happens is that examples such as those I have sketched are seen as a kind of commonsense matter of sociological influence, which somehow remains distinct from the core of the separate, autonomous self who is the proper subject of law and politics. These social dimensions can then be hived off from ideas, such as basic rights, and the institutions that will protect them. I want to show the importance of making them central and integral—for rights, for law, for basic inquiries of legal and political theory.”³²

Note: maybe add something about this ‘the importance of making them central and integral for rights and law’ - or perhaps this should move to the Project section earlier?

Let’s now turn to the consideration of what sort of relationships are meant. As was stated earlier, this is relationships broadly understood, not only close friends, family and intimate relationships.

Nedelsky describes how everyone begins life as a child who depends on others for their care, upbringing, education and socialisation, and that it is widely recognised that these relations are formative in the type of adult one becomes. Yet *“This widespread recognition of the constitutive nature of relationships somehow seems to disappear for people over the age of twenty-one. It is as though once people are “formed,” once they emerge as “rational agents,” relationships are things they simply have or choose.”*³³. We are not fixed selves once we become adults, but rather, relationships remain significant in our lives - and we must bear in mind that this does not just mean close personal relationships but all relationships and social relations.

Nedelsky gives other examples:

“Teachers and mentors are common examples. Relations with fellow students in university and professional schools are another. Indeed, people sometimes choose a university or law school because of its relational norms: they think they will thrive best in an atmosphere of high-level competition, or mutual support and cooperative exploration, or relations characterized by diversity or homogeneity. Neighborhood relations may shape the kinds of employment opportunities young adults are able to envision and access. Relational norms at a workplace—hierarchy, arbitrary authority, cooperation, autonomy, trust, consultation, prejudice—may shape how one sees the world. And all of these relations, and their formative effects, are often affected by larger structures of economic relations, such as high unemployment and the power of employers to fire at will. Many people will see their personal relations with friends and intimate partners as formative. These

³¹ Nedelsky (n 2) 121.

³² Nedelsky (n 2) 38.

³³ Nedelsky (n 2) 19.

relations, in turn, will be shaped by wider patterns of relationship, such as heterosexual norms, gender norms, and gendered division of caretaking work. Many people can see how these relational patterns have shaped the persons they have become.”³⁴

Another part of Nedelsky's framework is the recognition that relationships are nested within broader relations. This is comparable to saying that, in simplification, families are in neighbourhoods, neighbourhoods in communities, communities in cities, cities in regions, and regions in nations - except that it must be remembered that these are interwoven.

Nested:

“Once people begin to make a habit of relational thinking, of seeing how both personal relationships and personal choices are inevitably shaped by wider relationships, they can see how these relationships intersect with institutions, such as family law (which defines marriage and stipulates spousal and parental obligations), a market economy, the presence or absence of state-supported child care, the presence or absence of a “family wage” (and thus norms of one or both parents in the paid labor force). These national (or regional) institutions, in turn, interact with global markets and institutions, such as the World Bank, as well as with relations of economic and political power generated over centuries.”³⁵

The fact of relationality does not mean there is no individuality, and nor does it mean that these relations are deterministic or one-directional. Each person is a free agent, and in our subjectivity we shape the relationships we are in, and to some extent, the social relations. Social relations continue because individuals reproduce them, and they change because people change them.

So, we can therefore understand the human (social) condition of being one of dependence and interdependence.

“We are dependent on others for the social world that enables us to develop all of our core capacities—for love, for play, for reason, for creativity, for autonomy, among others. We are usually dependent on particular others and always dependent on the webs of relations of which we are a part. Our fundamentally social, relational nature—and thus our dependency—cannot be set to one side when we think of any of the core puzzles of law or politics, such as justice, mutual obligation, or the good life.”³⁶

“Human dependence on others, and the collective interdependence that follows, are central features of my version of a relational conception of human selves. Many feminist theorists, particularly care theorists, emphasize the basic fact of human dependence. And increasingly other theorists have taken up their arguments that a true recognition of this fact changes how one does political theory.”³⁷

The liberal tradition - and, more broadly, western thinking in general, including economics and public policy -

³⁴ Nedelsky (n 2) 20.

³⁵ Nedelsky (n 2) 21.

³⁶ Nedelsky (n 2) 28.

³⁷ Nedelsky (n 2) 27.

is predominantly based on the idea of a freestanding individual. Yet this is hugely flawed. As Nedelsky describes, the recognition of our independence must be part of our theory, not just put to the side.

As we will come onto later, dependence is not a bad thing (and, as we will come onto later, it is not opposed to freedom and autonomy): the whole is greater than the sum of its parts. Interdependence could also be termed collaboration, and through collective social life, we can experience things which are far more than if we each lived isolated lives.

This is the core of the critique of the individualism of liberalism:

“the rights-bearing individual may be said to be the basic subject of liberal political thought. What is wrong with this individualism is that it fails to account for the ways in which our essential humanity is neither possible nor comprehensible without the network of relationships of which it is a part. Most conventional liberal rights theories do not make relationships central to their understanding of the human subject. Mediating conflict is the focus, not mutual self-creation and sustenance. The selves to be protected by rights are seen as essentially separate and not creatures whose interests, needs, and capacities are mutually constitutive.”³⁸

So, we live in a socially networked world. Yet there are two levels to Nedelsky’s relational conception of self. The first is that each person lives in a network of relationships, as has been described. The second goes further and says that there is no discrete individual, with each person ‘constituted’ by their relationships. These are linked claims, and although even the first is an inversion of the normal individualised way of thinking, it is an even deeper and more radical claim.

“Relations (at all levels) are then not just the “conditions” under which a freestanding self emerges. It is the very nature of human selves to be in interaction with others. In important ways, they do not exist apart from these relations.”³⁹

There is not a separated, discrete self which exists apart from the world and then interacts with it. There was never a separate self in the first place. The development of (almost) every person happened relationally, formed in interaction with the world around it, before our minds were developed enough to have a sense of self. Of course, this is not a totality, not that the entirety of our self is absorbed relationally from the world around us. There is individuality in our genetics and biology, and in our thinking, self-reflection and the development of our personality. But this individual ‘self’ never existed separate from the relational world around it, it developed relationally with it.

The following passage, which Nedelsky quotes Anna Yeatman, who comes at the relational approach from the angle of disability, perhaps ties all of these points together:

“No one can participate in the conduct of their life except as they are invited by relevant others to so participate. Put differently, this is the proposition that being and becoming an individual depends not just on the desire and capacity of a person to be so individualized. It depends also on the skills and willingness of others to respond to this person in ways that enable him or her to have a say in what

³⁸ Nedelsky (n 2) 248-49.

³⁹ Nedelsky (n 2) 55.

happens in his or her life. The dependence of individual participation, of an individual getting to be and become an individual, on specific forms of social assistance is [...] perforce emphasized in disability led conceptions of participation. [...] To become an effective individual in one's social world means that an individual is invited to be his or her own person. [...] Autonomous individuality is possible only to the extent that the social world of individuals is mediated by their participation. Persons are invited to be/become individuals by being invited to participate in the conduct of their lives.”⁴⁰

Perhaps that quote is the one which encapsulates the idea of the core idea of self as relational. Our sense of identity, of self, are personal characteristics, are all fundamentally in relation with others. Even if I think of myself as a person who is sometimes funny, or unreliable, or hard-working, or kind, these are characteristics which are predominantly in relation to others. Everything we think of in terms of ‘autonomy’, of directing one’s own life, is in relation with others.

Note: This is hard to pin down exactly. Of course someone who lived in isolation would not lose any personality or identity or the ability to reflect on who they are as a person and have a sense of self. But nonetheless most of what we think about ourselves is in a social context.

Picking up on a thread left off earlier, that adults are not static beings. We live in a dynamic, moving, ever-changing flowing world, not a static one, and so each individual being is a being in a given moment but, in the flow of time, is a becoming.

“Human beings are in a constant process of becoming, in interaction with the many layers of relationship in which they are embedded.”⁴¹

“At the same time, I do not envision a fixed, “true” self that can be uncovered. The creation of oneself is a lifelong process. What enables autonomy are processes and dynamic, constructive relations that enable those processes. Neither the self nor autonomy is static; it is never simply arrived at or achieved. So a protected, bounded sphere cannot be an optimal metaphor for the enhancement of either. The long-standing association in the liberal tradition between private property and autonomy. is replaced in my approach by dynamic processes and interactive relations. ... The central questions are the kinds of relationships within which these processes thrive.”⁴²

Recognising a dynamic self in the process of becoming, which is interdependent, formed and constituted in relation with others, we can see that Nedelsky has the same idea of co-becoming that we saw from Harraway and Davies in *Ecolaw*, though she does not quite use that term.

Nedelsky spends Chapter 2 of *Law’s Relations* discussing the problem of the boundary metaphor, which she describes as “a picture of human beings that envisions their freedom and security as bounded spheres.”, which she also terms the ‘bounded self’. She describes boundaries as “destructive as a central metaphor for addressing the real problems of human autonomy”⁴³. This metaphor is a fundamental component of the

⁴⁰ Quote from - Anna Yeatman, ‘What Can Disability Tell Us about Participation?’ (Law in Context 17 (2) 2000) 181-202. - appears in - Nedelsky (n 2) 26.

⁴¹ Nedelsky (n 2) 38.

⁴² Nedelsky (n 2) 50.

⁴³ Nedelsky (n 2) 92. (Both quotes)

dominant conception of law and rights - yet it is flawed. I won't reproduce that section here, as it would stray too far from my focus on conception of self and society, but it is certainly worth noting as a linked point to the conception of relational self.

Note to self: Consider adding more about boundedness.

"on a flawed conception of the individual, a concept captured, amplified, and entrenched by its association with property. The boundaries central to American constitutionalism are those necessary to protect a bounded or "separative" self: the boundaries around selves form the boundaries to state power. Now, the boundedness of selves may seem to be a self-evident truth, but I think it is a wrongheaded and destructive way of conceiving of the human creatures for whom law and government are created."

Something about how this is creating or defending an idea of the individual as separate from society, the collective to be kept out. But this is nonsense when we see that the individual is constituted by relations, interdependent, benefiting from them. [...] "the most perfectly autonomous man is the most perfectly isolated."

"A boundary is always, in essence, somewhat arbitrary and false: an island of separation carved out of the rippling whole." ⁴⁴

Note: this is the end of new quotes dumped in but not woven into the writing for this section.

One thing that is absent from her conception of the relational self is that she does include consideration of the 'internal' mind or self of each person as relational. There are developments in philosophy, psychology and neuroscience that understand the mind - or properly, the mindbody system - either as relational or a relational system. (See, for example Joe Gough's, 'The Embodied, Relational Self'⁴⁵) That the brain functions as a network is undeniable, but this way of thinking has not been the dominant way of thinking about the rational individual. This is sometimes described as the 'extended, embedded and embodied' view of the mind: embodied in a physical body which it is not separate from; embedded in social relations; and extended because perhaps the mind is not *only* inside the human body but includes in some way relations with 'objects'. None of this has particular bearing for the implications of Nedelsky's scholarship, but I thought it was worth mentioning.

Nedelsky does say that her focus on the relational aspect of the individual is not meant to suggest that it is *only* the relational aspect which needs adding to or changing about the dominant conception:

"By focusing on the relational dimension of human beings, I do not mean to suggest that that is the only, or the most, important dimension of us or even the one most in need of additional attention. In chapter 3 I talk about the fully human self as embodied, affective, and relational. An optimal conception of human selves would integrate all three." ⁴⁶.

⁴⁴ Nedelsky (n 2) 103.

⁴⁵ Joe Gough, 'The Embodied, Relational Self: Extending or Rejecting the Mind?' (Taylor and Francis Group 2022) 0 Inquiry 1.

⁴⁶ Nedelsky (n 2) 33.

I will stick to Nedelsky's conception instead of trying to build towards an optimal conception, and leave my thinking with this weakness in it. Although - as part of the embodied (and embedded) conception, the ecological component could be further expanded.

Relational Thinking

Having established the conception of the individual human subject, and that society is a relational network instead of simply an aggregated mass of freestanding individuals, let's consider Nedelsky's thoughts about relationships and relational thinking.

Note to self: Consider rephrasing to something like - Once we have this relational understanding of the individual, this changes how we approach things.

The point of the relational approach is that our attention should be on the relations, not the individual.

Once we recognise the fundamentally relational dimension of the human experience, it means that we should be thinking about the relations. Thinking only at the individual level is blind to how they live. As with Capra's description, it means thinking at the level of the system, not the unit within the system. If a floor is covered in broken glass, instead of giving each person appropriate footwear, the floor could be cleaned. If the air is of a poor quality, instead of giving each person their own tank and mask, an air filter could be installed (if indoors) or the source of the pollution addressed (if outdoors). When the individual is interacting with a system, things must be addressed and understood systemically. A housing shortage, for example, cannot be fixed by giving each person an individual right to housing (or a right to be housed to prevent homelessness) but must be addressed at the level of the housing system.

This is an inversion, of sorts, as radical as it was to say that the Earth is not the centre of the universe. It is a fundamental challenge to individualistic thinking, and most people have to learn this different mode. As we will come onto, the implications for how we think about freedom and how law and rights should be conceptualised are massive. Autonomy and other values are realised in the relational network each individual is in, as we will come onto in the next subsection; law must be minded to the relations and relational dynamic instead of individualised right.

Nedelsky reminds us that this is not about changing relationships or changing what law does as such - the relationships are already there and law is already involved in them. It is about thinking relationally.

"A relational approach directs our attention to such structuring of power relations. ... A relational approach to both autonomy and law helps to figure out what constructive forms of power relations would look like."⁴⁷

"In any case, my own project is not focused on maintaining existing relationships, but evaluating them—particularly with respect to whether they support or undermine core values, such as

⁴⁷ Nedelsky (n 2) 64.

autonomy. My project aims at evaluation and transformation.”⁴⁸

So, the relational approach is to think about what relations are in play, and how they should be transformed for the desired outcome. Relationships can be positive or negative, constructive or destructive, empowering or exploitative.

“My claim that relationships are constitutive of who people are and become does not, of course, mean that all relationships are good. Part of the point of a relational approach is to understand what kinds of relationships foster - and which undermine - core values, such as autonomy, dignity, or security. (The next step is to examine what kinds of laws and norms help structure constructive relationships and which have helped generate the problems people are trying to solve.) My version of the relational project (and all other versions that I know of) is intrinsically evaluative and aimed at transformation. It is not, therefore (as people sometimes wrongly say of care theory), about *maintaining* existing relationships.”⁴⁹

Autonomy

Nedelsky looks at various liberal values, and autonomy in particular, as part of showing what it means to understand these relationally. This has two levels: that achieving a particular outcome requires transforming things at the systemic level, as described above; and that the best way to understand the concept itself is in a relational manner.

Before we get into autonomy, it should be made clear that this approach is for all values:

“The first point I want to make is that the relational approach I develop here can be applied to any value, not just to autonomy. All core values, such as security, dignity, equality, liberty, freedom of speech, are made possible by (or undermined by) structures of relationships. In some cases, such as equality and perhaps dignity, it makes sense to say that the value is itself a relationship.”⁵⁰

She gives two reasons for the focus on autonomy. The first is that it is particularly individualistic, so makes for a strong and effective example. The second is that not only is it central to Anglo-American legal and political thought, but that it has an “iconic value” in the culture, that “everyone should aspire to be independent and in control of his life”⁵¹. Yet the dominant individualistic conception is flawed, described by Nedelsky as “distorted in ways that virtually guarantee the inequality of its enjoyment and that undermine everyone's ability to understand what would promote it.”⁵²

This is not in any way against the idea of autonomy: saying that an individualistic conception of autonomy is a flawed conception is not saying that an individual should not experience autonomy.

“I share the widely held belief in the capacity for autonomy and its value. But I do so in a way that

⁴⁸ Nedelsky (n 2) 87.

⁴⁹ Nedelsky (n 2) 31.

⁵⁰ Nedelsky (n 2) 41.

⁵¹ Nedelsky (n 2) 42.

⁵² Nedelsky (n 2) 42.

does not embrace a picture of a sovereign self that can simply be presumed to be autonomous.”⁵³

As was said above, Nedelsky’s relational approach is a value neutral approach: those who wish to realise individualistic values will still do better to use a relational approach, and ask what relational structures are best to realise self-interested independent individuals. This is a key and clever part of Nedelsky’s argument: that even people who have different values to her would do better to use her relational approach than an individualistic one. The outcome is distinct from the process (though of course, not without any link!). An individualistic conception of autonomy will not be the best way to realise what it seeks to realise, because it is based on a flawed understanding of the world that does not recognise relational dimensions.

The essence of Nedelsky’s approach is captured in this quote:

“[...] a relational approach to autonomy can be extremely important to thinking about how to structure such relations so that they foster autonomy rather than undermine it.”⁵⁴

Another related quote:

“[...] the relational approach shifts the focus from protection against others to structuring relationships so that they foster autonomy. Interdependence becomes the central fact of political life, not an issue to be shunted to the periphery in the basic question of how to ensure individual autonomy in the inevitable face of collective power.”⁵⁵

The argument is that autonomy is heavily affected by the person’s relational network and context, not by things in their individual control. We are interdependent and interconnected; we do not live our lives as freestanding autonomous individuals but our experience of life depends heavily on the relations we live in. In Nedelsky’s words: “my central claim [is] that autonomy is made possible by constructive relationships (or undermined by destructive relationships).”⁵⁶ Therefore realising the autonomous individual requires relations for the individual to be in which provide them conditions in which they can exercise autonomy.

“I think the best language to capture this focus is “relations of autonomy.” I prefer this language to “conditions” for autonomy because I think the language of relations of autonomy highlights the dynamic, interactive quality of autonomy - in contrast to a picture of it as a strictly internal state of mind that comes into being when certain - separable - conditions are in place. The functioning of the capacity for autonomy is highly fluid; it varies across time and spheres of our lives. Autonomy exists on a continuum. As we act (usually partially) autonomously, we are always in interaction with the relationships (intimate and social-structural) that enable our autonomy. Relations are then constitutive of autonomy rather than conditions for it.”⁵⁷

In this subsection I will not get into how we define autonomy, which flavour Nedelsky prefers, how we should understand freedom and the relationship between autonomy and freedom. That is beyond the scope of this project. My task at hand here is about the relational understanding, which applies the same whichever

⁵³ Nedelsky (n 2) 46.

⁵⁴ Nedelsky (n 2) 64.

⁵⁵ Nedelsky (n 2) 245.

⁵⁶ Nedelsky (n 2) 39.

⁵⁷ Nedelsky (n 2) 46.

particular type of autonomy or freedom we seek to realise, and using autonomy as an example for thinking in a relational way - to which I add ecological dimensions to Nedelsky's framework.

That said, autonomy should be thought of not as a binary value or characteristic which someone either is or is not, but something on a spectrum which expands outwards from 'zero autonomy', being a question of the extent or expanse of autonomy a person has. The point is that autonomy is not a given but something which must be created. Of course, we all start our lives as children, and there is a question of development, of education, socialisation and the conditions and opportunities children have to develop, which lead to the type of adult they become. Yet still, this is not a distinction between children and adults. Adults are not 'autonomous' as a given, but have to become autonomous, or better, develop the capacity for autonomy. Just as we are dynamic and not static beings, this is an ongoing co-becoming between the individual and their interrelations which reproduces autonomy (or does not). 'Autonomous' is not a characteristic which well-developed adults simply are. An adult must have a certain capacity for autonomy, but being autonomous is more about a (dynamic) state of being, about the capacities someone has at a particular time, based more on relational conditions than individual capacity.

Nedelsky points out that it is flawed to think of 'autonomy' as about independence or control.

"Because we are always dependent on others for the possibility of autonomy, it follows that autonomy cannot mean independence (chapter 2). I also reject another commonplace synonym for autonomy: control (chapter 7). Even thoughtful theorists invoke that language."⁵⁸

Traditional liberal thinking tends to think of autonomy (and freedom) as an independence, that someone is free and autonomous because they do not rely on anyone else but are free to act as they wish. This goes back to early liberal thinking, and Nedelsky briefly describes the situation at the time of the founding of the USA's constitution, where individual independence was posed as an opposite to state oppression and control. The individual is posed against the collective, the private against the public. As she describes, "The dichotomies of state-individual, public-private, politics-market, legislation-common law were always illusory."⁵⁹ The thinking of autonomy as independence is, at its best, based either on a flawed understanding of the world which does not recognise the fundamental fact of interconnectedness.

Nedelsky goes into further depth on this point than is relevant for my current writing. To give a flavour:

"The American political tradition has virtually identified freedom and autonomy with the private sphere and posed them in opposition to the public sphere of state power. (Here, again, the American tradition provides a particularly stark version of characteristics shared in the broader Anglo-American tradition of legal and political thought.)"⁶⁰

In short, the whole idea of our property rights is based on this separation between the private sphere, which is my property (and civil and political personal rights) for the state to keep their hands off, and the public sphere, where we exercise politics. The idea of autonomy as independence, and of course freedom as (negative) liberty, is at the core of this political thinking, The relational framework is value neutral, but it is a far

⁵⁸ Nedelsky (n 2) 46.

⁵⁹ Nedelsky (n 2) 129.

⁶⁰ Nedelsky (n 2) 127.

better model of the world than atomised individualistic society: as has been said before, if the aim is really to reproduce an individualistic society, this would be better done through a relational analysis. That said, recognising the relational reality of our current social order shows much of the dominant way of thinking to be flawed, and makes it easier to see that we should be trying to reproduce a different society, that freedom is something we create together through positive social relations.

“If we ask ourselves what actually enables people to be autonomous, the answer is not isolation, but relationships [...] that provide the support and guidance necessary for the development and experience of autonomy [...] We see that relatedness, even dependency, is not, as the Anglo-American theoretical tradition teaches, the antithesis of autonomy, but a literal precondition of autonomy and that interdependence is a constant component of autonomy.”⁶¹

In the relational view, dependence and independence are recognised as inherent aspects of human life - at least, any human life experienced collectively, exceptional hermits aside. Autonomy is made possible by constructive relationships, or prevented by destructive ones.

Dependence, in dominant liberal thought, is often thought of as being incompatible with autonomy. Nedelsky discusses at length examples of people receiving social security, and judgments in which this dependence is described as negative. This remains the current political discourse, with politicians and commentators talking about getting people ‘off benefits’ not only because *they are lazy people wasting our hard-earned taxpayer money* but also because it's better for those people. Yet, using the counter-example of publicly funded tenured academics, she shows that it is nonsense that dependence cannot coexist with autonomy: for academics, this dependence is what gives the autonomy. For people receiving social security, this could of course be celebrated that we are able, as a collective, to support people in need of help. As we will come onto shortly, it comes down to how the relationship of dependence is structured.

The direction which the individualistic independence idea of autonomy takes us in is towards controlling others. Having autonomy in this model means having power over others so as to control them. Historically - at the time of real existing liberalism a couple of centuries past - some of the most autonomous people were the wealthy (male) property owners. Owners of large estates with land, business and workers; owners of factories in the industrial revolution; plantation owners with either slaves or cheap wage labour: these had this type of autonomy, the ‘independence’ to do as they wish, due to having power and control. Yet, even they do not actually have independence: Nedelsky points out that they are still relying on a relational web for their autonomy.

There is an interesting observation which Nedelsky makes, focused in particular on property rights, that autonomy as independence made more sense when many people owned their own means of production. Peasants or farmers who owned their land, and artisans and craftspeople running what we would now call small businesses or being contractors, relied on having this property protected to be able to work, exercising autonomy through a relational web. Yet the shift in modern capitalist societies means that most people are wage labourers no longer owning their own land or tools, and this ‘independence’ is neither particularly relevant or realistic. Though we still see the contemporary version of this in hustle culture and ‘entrepreneurship’ type things, even people who have an online ‘dropshipping’ business, own property to

⁶¹ Nedelsky (n 2) 124. (Second half)

receive rent or own financial assets which return dividends or interest are still very much involved in a relational web, perhaps a more complex and entangled one than there used to be.⁶²

As Nedelsky points out: this type of autonomy through power comes at the cost of the autonomy of others, that “The effort at control almost always involves some form of domination.”⁶³ This control becomes more obvious in the relational lens, because it interrogates the relational structure beneath the individualist tip of the iceberg.

Refocusing: Once we recognise autonomy as created and nurtured by a relational web each individual lives within, this turns the question of ‘how do we realise autonomy for each person’ as being about the relational structure and what ought to be changed about it. As a reminder: this is true for all values, not only autonomy.

“My main point above has been that autonomy is made possible by constructive relationships, not my independence. Dependence and interdependence are inherent parts of human life. They need, however, to be structured so that they foster autonomy.”⁶⁴

The relational lens, therefore, directs us to asking how the relations should best be structured. As we will come onto shortly, this has huge ramifications for thinking about law. As quoted previously, Nedelsky describes this approach as being about evaluation and transformation.

“A relational approach directs our attention to such structuring of power relations. ... A relational approach to both autonomy and law helps to figure out what constructive forms of power relations would look like.”⁶⁵

To repeat some points made above, this is not necessarily about different values between the individual and collective, but nor are the individual and collective in opposition. The collective is a relational network of individuals which the individuals live within, changing the collective changes things for individuals, and vice versa.

“The collective is not simply a potential threat to individuals; it is constitutive of them, and thus, a source of their autonomy as well as a danger to it.”⁶⁶

Yet while the collective is not to be treated as a threat to individuals, and the relational shift moves us away from individualistic thinking, Nedelsky warns that nor should “community” be romanticised as something inherently positive. Historically, ‘community’ values are often ideas of ‘tradition’ which oppress, or (?) linked to fascist calls to strengthen our community against some other.

It should be clear that the relational approach is a framework for understanding things, and does not contain the solutions in itself. Social relations can oppress or nurture, destroy or construct, undermine or facilitate, dominate or empower. Domination, oppression and exploitation happen through social structures and interpersonal relations. Freedom, liberation and equality likewise require the transformation of both social

⁶² Nedelsky (n 2) 130.

⁶³ Nedelsky (n 2) 46.

⁶⁴ Nedelsky (n 2) 152.

⁶⁵ Nedelsky (n 2) 64.

⁶⁶ Nedelsky (n 2) 132.

structures and interpersonal relations.

“ [...] social relations provide both the potential for oppression and the nurture necessary for autonomy ... feminists are particularly unlikely to romanticize ‘community’ or relationships as such. Social relations that undermine rather than foster women’s autonomy are all too common a reality throughout the world.”⁶⁷

Nedelsky gives some examples in her book, including social security, support for disabled people, property relations, employment and economic relations, to show how thinking relationally about autonomy, and changing various social structures, changes the autonomy available to each individual. I haven’t included them here because that seems like too much detail for this writing.

What Nedelsky’s Approach Means for Law

Finally, having covered the relational worldview, what that means for self and for values such as autonomy, we turn to thinking about law. Here is what Nedelsky has to say about what her relational approach means for law:

“The core of my claim about a relational approach to law and rights is twofold:

1. Questions of rights (and law more generally) are best analyzed in terms of how they structure relations. Doing so can make a difference in how people understand the issues at stake and the kinds of judgment they exercise.
2. What rights and law actually *do*, right now, is structure relations, which, in turn, promote or undermine core values, such as autonomy. This is why a relational approach can, and should be (and sometimes is) used in current legal systems. While a relational approach may, in the long run, invite changes in legal systems, it need not await any such change.”⁶⁸

In my untangling of this, I think I structure things differently.

(1) There is a claim about what law does: it structures relations. This is the first sentence of Nedelsky’s second point, but I think it makes more sense to have this as a precursor to her first point. This is perhaps an underappreciated jurisprudential insight in Nedelsky’s work.

This recognition about law follows from the recognition that society is made of relations, therefore law structures them. As Nedelsky says clearly, her claim is not that law *should* do this, but that law is already doing this in its function and nature. This is therefore a change in how we think about law and how we understand it, a revelation about its nature. In some senses, perhaps it is not a revelation: we can think back to the point Nedelsky recognises that all liberal theory and all law is about managing interactions between people. Yet it is still a significant change: it is not managing interactions between discrete, freestanding individuals but structuring relations in which people live, and which constitute the individual.

⁶⁷ Nedelsky (n 2) 122.

⁶⁸ Nedelsky (n 2) 65.

I think the default mode, or dominant way, of thinking about law is individualistic. Law is typically thought of as rules which each individual must follow or norms for each person, that they apply to apply to themselves (or, which they are meant to apply to themselves, voluntarily or due to coercion, legal or social). Although this is not a complex point, it is nonetheless a significant shift for thinking about law. Instead of governing the individual and realising particular outcomes for the individual, it can be thought of in terms of its effect on the relational network. To be clear, it is not to say that it should *only* be thought of in this way. The relational approach does not displace the outcomes for the individual, as these are not opposed.

This is seismic for thinking about rights. Nedelsky talks about rights in much more detail, but the core point is that “what rights in fact do and have always done is construct relationships.”⁶⁹ Nedelsky’s detail - which includes her book *Private Property and the Limits of American Constitutionalism* (University of Chicago Press, 1990) - points out how the liberal approach to rights is rooted in a conception of property rights about protecting an individual’s existing property from ‘interference’ from the state. This was partly due to the wealth inequality which was sought to be protected in the initial US Constitution, and a recognition that democracy could mean that the many who were not wealthy might democratically decide for a fairer distribution of property. The justice of this aside, this model of the bounded self with rights as boundaries to keep others (and the state) out is the core model of rights and our legal system. Nedelsky discusses this in detail in Chapter 2 of *Law’s Relations*, ‘Law, Boundaries and the Bounded Self’. Yet if humans are as social as we are individual, interdependent not independent, this boundaries approach cannot work.

Instead, as Nedelsky says, we should think about how law and rights structures relations, which is the second claim here.

(2) We can use a relational lens to analyse how law and rights structure relations.

To me, even though Nedelsky lists this first, it seems to me that the foundation is needed that law structures relations before we then analyse how law structures relations.

This is not a change to the legal system as such, just a change to how we think about it. Law - and rights - are already structuring relations, so this strand is just using this lens in analysis.

One of the examples she gives is landlord and tenant rights. Even though this is obviously a relationship, the dominant language and understanding is about rights. Nedelsky describes how understanding the relationship between landlord and tenant is a better way of understanding the legal positions than just their respective rights. I would add, rights feel more static in nature, whereas relationships are more dynamic. This also helps to give the wider realistic context. In UK property law, even if a tenant has rights such as peaceful enjoyment of the property or that the landlord provides certain things and repairs them if needed, because the landlord has the right to repossess the property (without any fault or reason, section 21 reference — though perhaps this being reformed), the reality is that if the tenant enforces legal rights in a way which annoy the landlord too much, they can be evicted.

Another interesting example she gives is divorce law and the possibility of no fault divorces. The legal structure changes relationships between married individuals, by making it easier for one partner to end the marriage, which results in various interpersonal and social changes.

⁶⁹ Nedelsky (n 2) 249.

This relational lens is better than the individualistic one for thinking about what law is doing and how it might be changed for different results. Nedelsky describes this process:

“My argument is that these inevitable debates are best carried on in the following relational terms. First, one should ask how existing laws and rights have helped to construct the problem being addressed. What patterns and structures of relations have shaped it, and how has law helped shape those relations? The next questions are what values are at stake in the problem and what kinds of relations promote such values. In particular, what kind of shift in the existing relations would enhance rather than undermine the values at stake? There may, of course, be more than one value at stake, and they may compete with one another. For example, the relations that enhance the freedom and autonomy of the renter may decrease the security and freedom of the landlord. What interpretation or change in the existing law would help restructure the relations in the ways that would promote a given value?”⁷⁰

(3) The final strand is that law and legal thinking can take on a relational approach. This is the second part of Nedelsky’s second point, that a “relational approach can, and should be (and sometimes is) used in current legal systems”.

In case it wasn’t clear, the previous point was about using a relational lens to analyse how law is structuring relations. This point is about law (or legal thinking) itself being done in a relational manner. It is not an unrelated point to the previous one - thinking in a relational way about how law is influencing social relations flows into thinking about law itself being in a relational mode.

So, the point here is that law would internalise the relational worldview, treating individuals as fundamentally relational and consciously acting to influence relations (instead of incidentally influencing relations while trying to act in an individualistic mode). ‘Law’ here is meant as a metaphor of sorts: it means the particular laws, the legal system in how it functions, the way judges interpret and make law, and how they decide cases, and how people use law for policy.

What does this mean though? Nedelsky does not say much, because, for the most part, this is beyond Nedelsky’s horizon. And also beyond mine. The relational approach is a framework for thinking about things, not a normative vision for how society - and therefore law - should be.

Nonetheless, there will be some ‘neutral’ aspects to law being relational. This isn’t the place to go into detail about this - because it’s a literature review section instead of about positing new ideas.

- It means that law would be thinking about the relations it structures, intentionally structuring something
- It would mean attention to the qualities of relationships, instead of just rights for the individual. Rights do not need to be abolished. But perhaps there is more about a fairness or ‘balance’ in certain relationships - such as contracts, maybe in particular employment contracts, instead of just ‘rights’

⁷⁰ Nedelsky (n 2) 74.

each party has. (and contract law does often think in these more relational ways)

- Law would have to recognise both its limits and its blending with other things. For example, if the purpose of particular laws or state action is to keep people safe from being attacked by others, then instead of just making such action a crime, it moves to what is commonly known as a 'public health' approach. Positive duties on public authorities to create safe spaces (this is not novel - it is just recognising that this is a relational way of doing things.)

But, for the most part, the relational approach is just a framework for thinking about things. There can be different relational structures, different values, different outcomes, which people seek to realise in a relational way - and as discussed earlier, Nedelsky is mostly agnostic about this, saying that all political traditions would benefit from a relational approach, including traditional Catholics. There is a relationship between framework and values, and the social forms people wish to create: the dimensions which are hidden in individualistic approaches, such as power, are brought into the open, as is the idea that things could be different. So, my hope - as Nedelsky's - is that a relational way of thinking brings about more just visions of society. Yet the point is still that the relational framework is primarily a way of understanding the world, and law in it, instead of a particular vision of what social world we should create (at least for this section).

Offcuts:

Draft intro summary para for this section: As was just covered, the relational lens is useful for analysing how to think about the relational structure of things (and then how to transform it). This lens can be turned to law to think about how to analyse legal situations (and then how to transform them). Similarly, it can be turned to law itself, to think about what law is and what law does, and to question jurisprudential questions about the nature of law.

"Rights structure relations of power, trust, responsibility, and care. This is as true of property and contract rights as it is of rights created under family law. All claims of rights involve interpretations and contestation. My argument is that these inevitable debates are best carried on in the following relational terms. First, one should ask how existing laws and rights have helped to construct the problem being addressed. What patterns and structures of relations have shaped it, and how has law helped shape those relations? The next questions are what values are at stake in the problem and what kinds of relations promote such values. In particular, what kind of shift in the existing relations would enhance rather than undermine the values at stake? There may, of course, be more than one value at stake, and they may compete with one another. For example, the relations that enhance the freedom and autonomy of the renter may decrease the security and freedom of the landlord. What interpretation or change in the existing law would help restructure the relations in the ways that would promote a given value?"⁷¹

"As can be seen in my phrasing of the questions above, I make a distinction between rights and

⁷¹ Nedelsky (n 2) 74.

values.”⁷²

Includes rights:

“Comparativists and those who work within the civil law tradition will notice that I have kept almost all of my examples to those arising in common law contexts, and most of them are drawn from North America. I have done this so that I can be as familiar as possible with the examples I use. It is Anglo–American liberalism that I have in mind when I speak about traditional liberalism. My claims about how the relational approach can work are addressed to an Anglo–American audience.

Nevertheless, I think that this relational approach should work in very similar ways in civil law contexts. I think the basic structure of rights structuring relationships which in turn foster core values should translate easily—even though the legal institutions, legal concepts, and conventions about legal argument are different.”⁷³

Possible addition:

Perhaps add something about what the relational lens says about law? That law is about mediating, structuring, and reproducing relations. And law as social reproduction? There is also a care aspect worth exploring.

When one takes dependence seriously one must also take care seriously. The failure of both the tradition of Western political thought and Western political institutions to do either has meant that the responsibilities, burdens, and benefits of caretaking have been distributed grossly unequally. It is important to remember here my point above that not just human physical needs require care, but also the development and nurture of the less tangible capacities, such as love or autonomy. And, again, (as we shall see more fully with respect to autonomy) these needs are not restricted to children.”⁷⁴

Note: Assess whether this claim is too strong? Is there supporting evidence anywhere else?

Adding the Ecological Dimension

Note: this also serves to bridge into ecological and earth jurisprudence.

As discussed earlier, one of the limits to Nedelsky’s work is that the ecological dimension is not developed (the second is that the focus is on the conception of self, instead of asking more directly what understanding law in a relational worldview means, which is my research question - of course, I can only do that because the relational worldview and self is developed, it is on her shoulders I stand).

⁷² Nedelsky (n 2) 74

⁷³ Nedelsky (n 2) 11-12.

⁷⁴ Nedelsky (n 2) 28-29.

The relational framework, as described so far, has been predominantly about social relations (in the sense of human-only). Nedelsky does recognise that “In an optimal relational approach, our place in the ecology of earth would be recognized as a relationship that shapes and is shaped by all others.”⁷⁵, and there are various mentions of ecological relations in various places in *Law’s Relations*. So, **while she gives pointers and attachment points, her relational approach is lacking an ecological dimension** and ecological thinking is not woven into her conception of the relational self.

Structurally, the (inter-human) relational approach is the same as the (nonhuman) ecological approach: ecology is fundamentally about relationships. As discussed in an earlier section, to use Capra’s language, both are ‘systemic’ approaches which challenge ‘reductionist’ thinking. The liberal legal paradigm conceives of each individual as a freestanding sovereign subject without recognising the interconnected reality of inter-humans and (nonhuman) ecological relations. Nedelsky’s relational thinking moves us to thinking about relationships between individuals at both the interpersonal scale and the more collective social relations - interactions between parts, in Capra’s framework. Ecological thinking, as described earlier, recognises the relations which humans have with nonhuman beings and nonalive flows and matter. Again, this is at both the interpersonal scale - each individual needing a healthy environment for breathing, water, food, etc - and at the collective scale, that human communities and societies are entangled in a complex ecological web. In the next section, we will come onto ecological approaches to law.

Nedelsky’s conception of autonomy can be further developed by recognising that ecological relations are part of the constructive relations which are the conditions within which individuals experience autonomy (or the capacity for autonomy). *Memeing* from a common environmental slogan: *no autonomy on a dead planet!* If the conditions of life aren’t met, there is, of course, no capacity for autonomy. If there is a food shortage and people are malnourished, or if food is polluted and contains harmful (but not deadly) contaminants, then people have less autonomy. This only makes sense when we have a relational conception of autonomy, and one based on capability, because of course being short on food does not stop each person from having agency to make a choice, it only affects our ability to do things. Perhaps an easier example is temperature: if it is too hot or too cold, we are less well able to function, though of course this also depends on our technological adaptations (warm clothes, air conditioning, insulation, and so on). We could similarly think in terms of security, as individual security and safety requires particular ecological relations. And, again, we must recognise that an approach based on ‘control’ of the natural world is doomed to failure due to the scale of complexity. Similarly, ‘independence’ from the natural world is impossible, and I hope it isn’t necessary for me to spell out why.

A quick language note: Nedelsky’s ‘relational’ means inter-human relational. Similarly, ‘ecological’ is generally understood to mean non-human relations. In my thinking, I actually think that ‘relational’ should cover *both* inter-human and non-human relations. Further, as we will come onto later, ‘social’ and ‘ecological’ are not two separate domains: interhuman relations are also ecological, and relations with the rest of nature are not separate from social relations. While I may still use the shorthand of ‘social’ and ‘ecological’ to emphasise interhuman and non-human relations, I use these terms inclusively, not dichotomously.

Adding this into law, well, that is the next section, Earth Jurisprudence is about the relationships between

⁷⁵ Nedelsky (n 2) 34.

humans and nonhuman nature, as structured, mediated and facilitated by law. In that, we will see the reverse, that Earth Jurisprudence and other ecological approaches to law do not generally include the inter-human social dimension.

Note: I guess I have to refer to Niklas Luhmann and the concept of law as a social system at some point.

Part 3. Normative Legal Theory

3a. General Legal Theory – Interconnected Law

This layer builds on the one before (descriptive legal theory), and is where certain values are blended into the legal theory. A vision for law necessarily includes (whether explicitly or subconsciously) ideas about politics, society and individual ethics. Liberal legal theory, including positivist legal theory, includes various normative values even when it claims to be value neutral (and the theorists may well believe this!). This is the difference between a legal theory which is in a relational paradigm and my particular one, Interconnected Law: that it is an approach which is socio-ecologically holistic which contains a particular set of political values. I think it is better - both methodologically and as a transparency to the reader - to be clear about these, which will be in the next section.

To be clear, Interconnected Law is not a full political vision. My aim is only to provide a legal theory. Of course, I have my own political views and thoughts on how society should be, but I seek to contain myself in this thesis by sticking to legal theory. There are values, political or otherwise, which are kneaded and baked into the legal theory, and it therefore contains this normativity.

Further, it is for a particular group of people at a particular moment in history. It is generally known that various indigenous people around the world live fairly harmoniously in their environment, with reverence for the natural world and cosmologies which see themselves as part of it. We could describe them as living in an ecologically sustainable way. It would be possible to attempt to impose such a cosmology on us, living in a western liberal capitalist democracy (with all of the social injustices and oppressions which are part of that). Of course, there is not one homogeneous indigenous way of life, there are many, though it happens that many of them have similarities. But the point is, this is not about imposing an external worldview on our society. Instead, **Interconnected Law is about a development from within, recognising our cultural and historical development and moving from where we are now into a better tomorrow.** It draws out of the existing developments, such as developments from science, queer and feminist theories, political currents and romantic approaches to nature which are all within our culture. In short: it is neither a universal idea about law nor a vision of the final goal of law, but one for western liberal capitalist societies (or at least, specifically the UK and USA) at this moment in our history for the near future.

Values

In brief, here are the values which are involved in Interconnected Law: autonomy, equality, democracy, human wellbeing, earth values.

Value	Description
Autonomy	People should have control over their own lives and decision-making, including the positive freedom to live their lives as they wish and the negative freedom to not be hindered or harmed by others in doing so. I'll stay out of the details for now (maybe entirely? Because I don't want to get bogged down in political/moral theory).
Equality	Every person is of equal value, regardless of characteristics such as gender, sex, ethnicity, sexuality, nationality, and such. (Also staying out of the mud of how we define this exactly.)
Democracy	<p>We should collectively have control over our collective lives. The version of democracy I believe in goes further than liberal representative democracy. Democracy should be more than just occasionally voting for who leads top-down, but it should be participatory and bottom-up. There should be democracy at all levels, not only the national level of government and parliament but regional, municipal, and neighbourhood. This is the principle of subsidiarity, or a 'holonic' approach (see 'Holonic Thinking' section), to say that collective power should be exercised at the most appropriate scale: national issues at national levels and local issues at local levels.</p> <p>I believe that all aspects of social life should be democratic, including economic activity. The division of 'public' and 'private' which includes economic and corporate activity as private is wrong and rooted in wealthy estates and keeping 'the state' out of the property of wealthy landowners and businessmen. Economic activity is a significant part of human social life and should be democratically governed, not left to whoever happens to have accumulated the most wealth in the past. Finally, the spatial dimension of where we spend our lives, physically and digitally, should be democratically governed. There must also be a significant measure of equality of some form here: for democracy to be meaningful it is not just that a vote is counted equally but that power should be distributed, not concentrated.</p> <p>Note: An element about private property could be here. The sentiment, '<i>abolish landlords</i>' isn't hidden but isn't stated. Consider whether that message can be extrapolated by those who read it closely enough or if it needs to be made more.</p>

Human Wellbeing	Human wellbeing matters, there is a baseline which should be achieved (or achievable) for every person, and in general increasing human wellbeing is good. This is almost a given, far from unique to Interconnected Law, but worth mentioning for completeness.
Earth Values	<p>It would be possible to have a relational approach to law which includes relations with the environment, recognising that humans are ecological beings which depend on various relations with our environment to survive and thrive, yet which nonetheless is totally anthropocentric in value and reduces the natural world to existing to serve humans. Rights of Nature can be justified here as being necessary to secure human flourishing, because ecosystems and planetary systems must have integrity for humans to survive.</p> <p>Interconnected Law - as with (and drawing from) Earth Jurisprudence and Earth Democracy - takes the position that nonhuman nature (possibly including non-alive things such as water, stable atmosphere which are inseparable from the beings) has inherent value in itself. We should have respect for things which do not benefit us (and even which may harm us!). The ecosystems we live in are worth far more than just that they are good for us. An island uninhabited by humans which other beings live on is valuable even if its existence is irrelevant for humans (even though it cannot be completely irrelevant; the point is that it is not predicated on human benefit). Even animals which harm us - "wild" animals which could attack humans - are worthy of respect.</p>

Nedelsky Quotes for the theme of individual versus collective values, and the idea that freedom needs relationships:

“To say that relationships are fundamental to who and how human beings are is not to say that the collective powers (of government or community) that shape those relationships should take primacy over individual values. **The values that matter to individuals, such as freedom and autonomy, cannot exist without supporting relationships.** Collectives should, therefore, make their decisions in light of the ways their laws or norms will structure relationships that will foster such values.”

“Of course, individual rights and values can conflict with one another and with collective goods, such as sustaining the environment. **Some values are best thought of as both individual and collective values and, thus, as public goods.** For example, this is true of the environment and of free speech. Freedom, too—while of course a value for individuals—is best understood as “relations of freedom,” as Linda Zerilli puts it.”⁷⁶

Note: add something equivalent to what Jennifer Nedelsky says about liberal values - it isn't rejecting them but saying that liberalism does a poor job at meeting them.

⁷⁶ Nedelsky (n 2) 33.

Note: Expand on the question of whether this an anarchist approach to Law? Insofar as it values (democratising power, autonomy and equality) yes. Beyond that, no. Explore whether this is a Marxist approach to law? In some senses, yes, as it is about social relations, but it is not rooted in any of the strands of Marxist or post-Marxist theory. Consider the claim that ‘there is no such thing as Marxism’. I am not a dogmatic Marxist, so otherwise, no. Consider and weigh in with the extent to which Murray Bookchin is a Marxist or post-Marxist.

Ecological approaches to law

Note: *this section is shorter because I haven't fleshed it out, added quotes or re-read things yet; I was more trying to sketch out the structure and content. So, read it with that in mind - this is just about the structure and core ideas! Although perhaps it's also the case that the other sections should be more concise.*

In this section we will now turn to consider ecological thinking about law. That is, ideas about law based in a worldview which recognises humans as living in a broader ecological network. Earth Jurisprudence is the most developed ecological approach to law, though it is not the only one. While some others *might* be covered, they are not so key to my project. As the most developed, Earth Jurisprudence is the best one for me to draw from in developing my socio-ecologically holistic approach to law.

Whereas Nedelsky's relational approach was only about interhuman social relations - though, as mentioned, recognises the link into ecological thinking - earth jurisprudence is predominantly about relations between humans and the rest of nature. This means, in the inverse, that the interhuman social dimension is generally missing from consideration. One other diagonally opposite pairing is that Nedelsky's focus is on the conception of the individual, whereas Earth Jurisprudence focuses more generally on law.

Earth Jurisprudence Introduction and Paradigm

Earth Jurisprudence looks at the relationship(s) between humans and the rest of Nature, what law's role is in these relations, and how law should change, both jurisprudentially and in practice.

It recognises the scale of ecological destruction - which is now widely recognised through various scientific reports, in the public consciousness and in legal scholarship - and argues that we need radical change in our legal and governance systems so that our legal system moves us towards living harmoniously with the rest of nature.

This includes an analysis that our current law is part of the problem of ecological destruction. There is an obvious critique that current environmental law has failed to prevent ecological destruction and degradation. Earth Jurisprudence goes beyond this, saying that actually, law facilitates the destruction. **Ecological destruction is not just an economic, political or cultural problem with law as a neutral medium, but current legal norms, legal system design and jurisprudence are part of the problem of ecological destruction.** In Cullinan's words: "one of the primary causes of environmental destruction is the fact that our

governance systems are designed to perpetuate human domination of Nature, instead of fostering mutually beneficial relationships between humans and the other members of the Earth community.”⁷⁷

These legal norms are within a broader cultural-spiritual worldview. As Cormac Cullinan says in the founding text *Wild Law: A Manifesto for Earth Justice* (2002): the “perceived separation between nature and human beings is a fundamental cause of the current environmental crisis”⁷⁸ [Note: maybe find a more original Wild Law quote] The idea that humans are separate from nature - the dichotomy between ‘humans’ and ‘nature’ - as a cultural belief is a precondition for the domination of nature and ecological destruction. This is both in the ‘anthropocentric’ sense that it means that we fail to recognise that ecological relations provide us with conditions we need to sustain our own life, and are undermining our own environmental basis, and in the ‘ecocentric’ sense that we are not considering non-human nature as having inherent value, instead merely objects and a physical world which is for human benefit.

An Ecologically Holistic Paradigm

Earth Jurisprudence is therefore rooted in this different worldview, usually termed ‘ecocentric’ - although worth noting that other ecological theorists sometimes use other terms (such as biocentric). (For my part, I think that ‘ecologically holistic’ might make more sense, because the shift is away from the notion of there being a ‘centre’ at all.) Earth Jurisprudence posits humans as part of a Whole Earth Community - recognising both that humans are in no way a ‘centre’ and adding to the idea of ecological interconnection that other members of the community are active subjects.

Note: Integrate supporting quotes.

From this recognition, that our cultural relationships about nature need to change, it says that our political, governance and legal systems must also be different. Thomas Berry is the thinker who Earth Jurisprudence credits as being the founder: he was a theologian and philosopher who recognised and wrote about the shift that was needed. A handful of legal thinkers took this idea about law, recognising law as within broader domains or systems of governance and politics, and Earth Jurisprudence is now a significant (though still early stages) body of scholarship, and the Rights of Nature movement is very much taking off. Yet ideas of ‘earth governance’ or ‘earth democracy’ are much less developed⁷⁹.

Having established this paradigm shift, Earth Jurisprudence then has various suggestions about how law should be different: how our legal systems should work towards human relationships with the rest of nature. (This will be in the section below about the different components.)

Earth Jurisprudence is therefore clearly positing a shift both in the worldview and the particular paradigm for legal thinking, to one that they term ‘ecocentric’. It could just as easily be termed an ‘ecological’ paradigm - and it is also fundamentally relational - but the term ecocentric was chosen to posit how things should be, the normative vision, whereas ‘ecological’ is more of a neutral descriptor.

⁷⁷ Cormac Cullinan, ‘A History of Wild Law’ in Peter Burdon, *Exploring Wild Law* (Wakefield Press 2011) 13.

⁷⁸ From the Declaration by the 2009 Wild Law Conference (Australia) reproduced in Peter Burdon, ‘Wild Law: The Philosophy of Earth Jurisprudence’ (Alternative Law Journal 2010). 62.

⁷⁹ Vandana Shiva, *Earth Democracy: Justice, Sustainability, and Peace* (North Atlantic Books, 2015)

Spiritual Dimension

It is worth mentioning that this normativity includes a spiritual element. British Rights of Nature campaigner Paul Powlesland often describes Rights of Nature thinking in this way: it is a way of bringing this idea of nonhuman nature as 'sacred' into western culture and legal thinking. Many of the court cases - Colombia, India, Bangladesh - have talked in this way. Dominant western culture does not have a reverence for nonhuman nature, while this legal shift is based on a worldview which does and is part of bringing about a wider cultural transformation.

Note: develop and integrate the following thoughts on Earth Jurisprudence and Indigenous People

- That EJ draws seeks to be a blend of indigenous cosmologies and western science/philosophy
- That often 'environmental' and 'conservation' approaches to nonhuman nature follow imperialist lines, dispossession, etc.
- That there is often an alliance between indigenous rights and rights of nature
- What does indigenous mean? (a) pre-imperial, (b) living closely with the land. The latter we can try to recreate in modern western societies.
- That our social change must dialectically come from within, in some way - or at least, you can't adopt outside values into a culture, the UK could not just take on indigenous values. We can be inspired by them. Margaret Davies Ecolaw does this well.

Distinction from Environmental Law

Ecological approaches to law are a different thing to environmental law - the same way relational approach to law isn't about human rights law.

This critique can be made from different viewpoints, including Deep Ecology, Social Ecology, ecofeminism, and of course, Earth Jurisprudence. The essence of the critique is broadly the same across these, and as this is not core to my thesis, I will simplify these and lump them together. All that I am seeking to do here is distinguish ecological approaches to law, Earth Jurisprudence, and my socio-ecologically holistic approach as being distinct from environmental law.

Note: This is not a full paper on the theme, just a summary. These are left undeveloped because each could be a whole work in itself.

- Ecological approaches are a critique of the paradigm, a theoretical challenge. Environmental law is a body of law. Ecological approaches are about the whole legal system, environmental law just one part of it.

- Within the domain of 'environmental' there are a range of things. Some things are resource management. Some things relate to the environment, e.g. regulating pollutants. Some things are about human public health, like air quality,

- Lots of the models are about decision makers taking things into account instead of substantive ecological principles

Other Ecological Approaches to Law

Note: This is meant as a brief literature overview of what exists - within environmental law, which is a fair bit, and legal theory as a whole, which is not much. In hindsight, the structure maybe needs to be different - potentially keeping the detail of earth jurisprudence with the introduction, instead of segmenting the non-EJ ecological stuff in the middle

This section will start by setting out the methodological and normative dimensions of 'ecological approaches', then cover Deep Ecology as an ecological approach *in general*, before surveying different ecological approaches to law. Earth Jurisprudence is not the only ecological approach to law; however, it is the most developed.

First let's briefly cover different ecological approaches before coming onto ecological approaches to law. Broadly speaking [and probably as discussed earlier] there are two dimensions of an ecological approach. One is the framework, or paradigm: is it about the relations and flows between things. Specifically, as previously discussed, it should be about relations between nonhuman things - despite etymology, this is what is usually understood by 'ecology' and 'ecosystem'. In this sense, an 'ecological' approach is a relational approach which includes nonhuman dimensions.

There can be ecological approaches which are neutral, containing only the framework. In the same way that an authoritarian regime can take a holistic or relational approach to a reign of terror, so could a destructive extractivist economic system use an 'ecological' approach to think about how best to extract 'resources' from an ecosystem, or industrial agriculture use 'ecological' thinking for animal or crop yields. The mode of thinking is not the same as the use of that thinking - though of course, there is not a complete separation either, this is only pointing out that, broadly speaking, approaches which fit inside the 'ecological' umbrella can have a range to them. The second dimension is the values: that ecological approaches have some form of value for things extrinsic to humans. This is where a particular approach has developed substance beyond the lens, an output of the analysis instead of just a tool for analysis.

Deep Ecology

In the normative aspect of an ecological approach, the classic distinction is between 'shallow' and 'deep' ecology: 'shallow' ecology cares about 'the environment' because of the values it serves to humans; 'deep' ecology recognises nonhuman nature as having intrinsic value.

Note: Add an introduction to Arne Naess with a brief history of Deep Ecology and references.

It must be recognised that this distinction was created by the 'deep ecologists' as a way to critique the softer environmentalism and differentiate themselves from it: they coined the term 'shallow' to critique the anthropocentric approaches to the environment which they were opposing. This distinction could be applied to schools of thought which are not Deep Ecology in the strict sense, but do take a 'deep' approach to ecological thinking. To distinguish, I will capitalise the phrase Deep Ecology when referring to this particular school of thought.

Note: add further quotes and substance

On this note, there is a question of the extent to which social ecology has the same deep reverence of the nonhuman natural world, or whether it is a rigorous approach to human politics toward ecological sustainability for the benefit of humans. At this stage, it should also be noted Social Ecology and Deep Ecology were rivals - and remain rival - schools of thought which had famous disputes in the USA green movements in the 70s and 80s. This disagreement will be returned to below.

To be clear, this isn't to say that the shallow approach is wrong in and of itself, but that it is 'wrong' for being inadequate: nonhuman nature can have value *both* for the instrumental value it provides to humans and for a deeper intrinsic value. The important part of deep ecology is to give this deeper intrinsic value its proper value, and for good balancing between the intrinsic value of nonhuman nature and the instrumental value for humans which does not allow the instrumental value to dominate.

There could, of course, be misanthropic ecological approaches, which recognise only intrinsic value. There have been criticisms of deep ecology and related people for describing humans as 'parasites' on the Earth or wanting to go back to 'primitive' ways of living. Further, speculatively, there could also be misanthropic ecological approaches which reject the value of humanity coming from other intelligent species. We don't know the extent to which other beings understand the world and can theorise, but there are clearly other animals which take issue with human activity. Whether their conceptualisations include 'ecological' value in the round, instead of simply defending their particular interests, autonomy and habitats, I don't think we will know anytime soon. Nonetheless, a recognition of a non-human anti-human ecological approach is conceptually possible.

Deep ecology is probably the most significant school of thought in English language ecological thinking. Much of current 'green' politics is rooted in this thinking, and Fritjof Capra was inspired by it too

Note: make a cross-reference to sections on his work, *Systems View*, *Ecology of Law* and at any points his politics is written about.

It should be noted, though, that it is far from the only tradition which recognise intrinsic value to nonhuman nature. There are many traditions, worldviews, religions, cosmologies, etc, which also value nonhuman nature, though the other major ones I can think of are not in the Global North. These include indigenous cosmologies, which will be returned to later.

Social Ecology

Social Ecology is, of course, another ecological way of thinking. (as mentioned in the introduction, the next section enters into more detail) It is not a traditional ecological approach because of the way it is both social and ecological together, whereas most ecological approaches tend not to include this social dimension. Deep Ecology, and mainstream green politics, tend not to have a full social and political critique - or at least, from a critical perspective, these are absent; those with green politics who reject left-wing politics have their own reasons for doing so. Yet fundamentally, they do not include significant social critique, otherwise definitionally they would be both critical and somewhere on the left, and there are, of course, green political approaches which are critical and left-wing.

Although Social Ecology is going to be properly covered in the next section, it is worth mentioning here that it had a famous dispute with deep ecology, the core of the critique being (i) that deep ecology failed to have a meaningful political and social analysis of the underlying social causes of ecological destruction, making it lacking in substance and meaning that it will fail to achieve social transformation, (ii) deep ecology often had an anti-human element, treating humans as parasites, which (iib) sometimes had a tendency towards ecofascism, such as ideas and politics around reducing human populations.

Note: add quotes, references, and further substance.

Surveying the Landscape of Ecological Approaches to Law

So having set out ecological thinking in general let's turn to law and see what ecological approaches exist in law.

Note: The bullet points below map out various thinkers and their ecological approaches to law. The list is written informally, and has been retained in this archival document to demonstrate the breadth and depth of research and thought behind the Interconnected Law approach.

- Of course, there are many ecological approaches to environmental law - Bosselmann 2017, Law and Ecology, Andreas Philippopoulos-Mihalopoulos 2011, From Environmental to Ecological Law, 2020 - Some of these are broader than 'environmental law' but some are about ecologising environmental law. None are particularly a whole legal theory. Maybe once I reread them properly there will be more elements in this specific vein.
- Margaret Davies' Ecolaw establishes humans as within a wider ecological world, and sets law within this socio-ecological context. Davies' combines social and ecological, and does so enmeshed, not separate domains, and is the only other legal theory work I have come across which does this.
- Fritjof Capra and Ugo Mattei - Note: summarise here but mention that this will be covered in its own section later.
- Possibly also mention the 'Remaking Appalachia' book by Nicholas F. Stump - though that isn't an ecological approach to law as such. It isn't so much about nonhuman nature, but a political economy critique of law and environmental law. Whilst it is very good - it is just a different thing. Maybe add more about that in a later section too.
- Earth Systems Governance. Louis Kotzé's article. Have read it but need to add back in something about working at the scale of the whole planet and rethinking (environmental? Did it have a socio-political dimension?) in this context. I think primarily about international law/scale. This is a good addition to the mix but weirdly doesn't engage with Ecological Jurisprudence.
- Klaus Bosselmann's 'Ecological Approaches to Environmental Law.'
- 'Landscape' by Nicole Graham
- *The book that Jodie sent round just before wild law weekend*
- Is there any 'new materialism' in law?
- Indigenous worldviews - mention that will be in this section as relevant to Ecological Jurisprudence

Note: Do I still need to complete a survey for what else exists? Then decide whether the point of this section is either to justify why I'm only really talking about Ecological Jurisprudence, or to say what else exists that can be drawn from. Also, a refined version would need more precise referencing to relevant sections.

Earth Jurisprudence History and the Rights of Nature Movement

The starting point of Earth Jurisprudence and the Rights of Nature movement - which are distinct, as I will come onto - is the early 2000s. Theologian and philosopher Thomas Berry had been working on ideas of reverence for the natural world and how humans could live in harmony with nature, most notably in his book 'The Great Work'⁸⁰. He coined the phrase 'Earth Jurisprudence' and the idea that all beings have inherent rights. A 2001 conference organised by the Gaia Foundation brought various people working in this area together, and out of this came Cormac Cullinan's book *Wild Law*⁸¹. Also of note in the canon was one work which preceded this - which Berry, Cullinan and many others were inspired by: Christopher Stone's article and subsequent book 'Should Trees Have Standing?'⁸².

In the UK, there was a flurry of activity in the subsequent years, with a couple of conferences and events, and a 2009 report by UKELA (the UK Environmental Law Association). However, things were relatively quiet for subsequent years. The idea of 'Ecocide' was slowly growing, but in the mid-2010s there was only relatively minor activity by a Wild Law group within UKELA. From around 2018 onwards, though, the idea has received much more take-up and interest, and there are now a few dozen academics and campaigners working on the topic.

In various other places in the world there has been much greater take-up of the ideas: The Community Environmental Defence Fund (CELDF) in the USA, Australia, Bolivia, Ecuador, various places on the African Continent... Which we will come back to shortly.

At this stage, it is prudent to distinguish between Earth Jurisprudence and the Rights of Nature movement. From my perspective, and that of Earth Jurisprudence, Earth Jurisprudence is an overall legal theory and body of work which includes ideas such as rights of nature, with rights of nature being just one component of the legal transformation which is needed.

Yet the idea of 'Rights of Nature' has grown outside of the bounds of this specific scholarship, and there can be recognised a looser 'Rights of Nature movement', covering any initiatives or ideas around nonhuman aspects of nature having legal rights. Some recent campaigns and scholarship talk primarily of 'Rights of Nature' without mentioning 'Earth Jurisprudence' (or 'Wild Law'). For example, Gilbert et al talk of the 'transnational rights of nature movement' with only one mention of Earth Jurisprudence in a footnote⁸³. This distinction can be seen, for example, in a report by Jan Darpö⁸⁴ for a committee of the European Parliament,

⁸⁰ Thomas Berry, *The Great Work: Our Way into the Future* (Harmony/Bell Tower 1999)

⁸¹ Cormac Cullinan, *Wild Law* (Siberink London 2002)

⁸² Christopher Stone, *Should Trees Have Standing? : Toward Legal Rights for Natural Objects* (Tioga Pub Co 1972)

⁸³ Jeremie Gilbert et al, 'The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's 'Greening' Agenda' in *Netherlands Yearbook of International Law 2021: A Greener International Law—International Legal Responses to the Global Environmental Crisis* (Daniëlla Dam-de Jong and Fabian Amtenbrink eds) (T.M.C. Asser Press The Hague 2023)

⁸⁴ Jan Darpö, *CAN NATURE GET IT RIGHT? A Study on Rights of Nature in the European Context*, for JURI committee of the European Parliament (European Union 2021)

which is a study critical of the idea of 'Rights of Nature'. This separates out different strands of the Rights of Nature school of thought: legal-philosophical, environmental constitutionalism, legal personhood, and in relation to indigenous people. This is helpful for showing that there is a broader 'rights of nature' movement which is separate from Earth Jurisprudence, and that someone can support 'rights of nature' without being committed to other aspects of Earth Jurisprudence.

There are, of course, benefits and drawbacks of each way of thinking. Cutting 'Rights of Nature' loose from Earth Jurisprudence makes it more adaptable than the specific work of Earth Jurisprudence, which is within and responding to Western society. An indigenous mode of governance might wish to adopt and campaign for the legal mechanism of 'rights of nature' without wanting to adopt 'Earth Jurisprudence' because they are rooted in a different worldview, which may in many ways be similar to Earth Jurisprudence but is a different substance. Yet in other contexts - primarily adoption in western capitalist liberal democracies - this 'adaptation' is a weakness, taking one idea from a broader approach and shedding the conceptual foundations. Rights of Nature can be used as a tool of something else, or without the stronger critique and drive for transformation of the fundamental values of both the legal system and the social order. Rights of Nature without Earth Jurisprudence typically lacks theoretical coherence and intellectual rigour. Recently, for example, we can see the 'More Than Human Rights' (MOTH) project out of NYU School of Law, which does not have a completely clear lineage with Earth Jurisprudence.

Implementation in Practice

Note: maybe add a diagram here to map out different types of legal change.

So, various rights of nature proposals have been made and implemented around the world. Ecuador and Bolivia, which both have significant indigenous populations and movements, were forerunners, with Ecuador adopting a constitutional provision in 2008 which granted and recognised rights of nature and Bolivia introducing a legislative framework and institutional for rights of nature (Law 71 of 2010 and Law 300 of 2012, Bolivia). Bolivia also led the development of the Universal Declaration of the Rights of Mother Earth in 2010. However, political follow-up was lacking and both are still relatively undeveloped, with only a handful of subsequent cases in Ecuador.

The other significant rights of nature development was in New Zealand, where two different nature areas were granted legal personhood as part of a settlement between the colonial New Zealand state and indigenous people in those areas. This is often hailed by proponents as a landmark development - yet it was specifically a designation of these areas as part of settling the historic relationship between the state and the indigenous peoples. While it did draw on some Earth Jurisprudence ideas, this also made it distinct and not "pure" Earth Jurisprudence. This is only meant as a distinction, not a criticism - it is for the indigenous people to decide if the settlement works for them and for experts and stakeholders to say whether it works for the ecological entities. It was a culturally specific adoption and adaptation of the idea, not one which can be universalised.

Note: add elements about socio-historic continuity of ideas and indigenous relations.

From the beginning of Earth Jurisprudence it has always been linked to indigenous thinking. This is often an uneasy relationship. It works well in countries with significant indigenous communities, who, if their worldview

and politics matches, can effectively adopt Earth Jurisprudence ideas. Yet the straightforward adoption of indigenous ideas to western liberal capitalist societies does not work, and ideas are better developed from within than without, although inspiration can of course be taken. Margaret Davies' approach, which is rooted in science theory and in queer feminist theory, while being inspired by indigenous thinking and recognising similarities, I think is good. More about this in another section.

In the 2010s, however, Earth Jurisprudence and rights of nature had gone relatively dormant in the UK and Europe. There was significant activity on the African continent (see Gaia Foundation), the CELDF kept things moving in the USA, a couple of international organisations kept chipping away, and in Australia, again noting the link with indigenous people, a few organisations and people kept working on it. Peter Burdon notably undertook research on Earth Jurisprudence, producing a monograph and two edited collections. It was only towards the end of the decade and the early 2020s that the seeds started to sprout in Europe, with various citizen initiatives, research projects and campaigns. Examples include the Mar Menor Lagoon in Spain ... *various rivers... probably more in the UK by the time this gets published...*

For a more up to date look at the UK Rights of Nature Landscape - see Alex May and Paul Powlesland's 2025 article 'The UK Rights of Nature Movement' in the Heinrich-Böll-Stiftung Dossier ⁸⁵.

To recap, Earth Jurisprudence posits an ecocentric worldview in which humans are part of a Whole Earth Community, identifies our current legal system as an active part of the problem which needs transforming, says that the core problem is a cultural vision in which we see humans as separate from nature, and says that law should instead be transformed so that it works towards sustainable relationships with the rest of nature. Now, let's take a look at it in more detail.

Elements of Earth Jurisprudence

(Ecocentric Worldview and Values; Critical Legal Theory; Positive Vision for Law)

In this section my aim is to map out the different principles of Earth Jurisprudence. For completeness, I will repeat things previously contained in earlier parts of this section.

- Ecocentric Worldview and Values

Earth Jurisprudence rejects the dominant 'anthropocentric' thinking which sees humans as the centre of the world, and the rest of the world as existing for our benefit. It instead posits an 'ecocentric' approach about the Whole Earth Community of which humans are just one part. There is a dense and complex web of life (and nonlife) of which we are part, instead of humans being of higher status or masters of everything that isn't human.

Note: Of course, there is a long-running discussion about the extent to which 'anthropocentric' or 'Anthropocene' are useful terms and the limits of the social order they describe. Some critique this

⁸⁵ May A and Powlesland P, 'The UK Rights of Nature Movement | Heinrich Böll Stiftung' (*Heinrich Böll Stiftung*2025) <<https://www.boell.de/en/2025/02/04/uk-rights-nature-movement>>

term because it homogenises the whole human social order(s) into one simplified 'anthro', instead of recognising that there are particular human social orders which are driving ecological destruction, and that these are fundamentally hierarchical and oppressive. Alternatives, such as capitalocene and cthulucene, have been proposed. On my part, I think it is about when each term is most helpful, and I will continue to use 'anthropocentric' and 'ecocentric' when I consider these to be the best terms. When discussing from an ecological or 'more than human' frame, there is a need to distinguish between human supremacy and ecologically holistic approaches. When discussing human social orders, we must be more nuanced. Yet at the same time, there is a use for a term to cover multiple different human supremacist social orders: there are anthropocentric worldviews which are not capitalist, and capitalist social orders are not the only ones which are a problem. Fundamentally, this comes to taking a social ecology approach which recognises that social and ecological relations are one and the same.

The use of the word 'community' signifies that other members of the community are active subjects with agency instead of mere objects, and that we share the Earth in common with other agents.

Beyond this ecological lens, or recognising the form, the 'ecocentric' worldview of Earth Jurisprudence also recognises that other members of the community have inherent value. Humans and human social orders are currently causing huge damage and harm to many aspects of the natural world, which is a moral wrong because of the harm to these other aspects of the world. It is also a moral wrong because of the harm it causes to humans, the effects on currently alive people and people to come in the future who are not yet born. The point is that in taking an ecocentric approach, the focus is on the bigger picture of ecological harm: the instrumental value of the natural world is a human-centred way of viewing it. Environmental sustainability for human benefit is still a human supremacist approach, which the distinction between shallow and deep ecology is useful for recognising. That isn't to deny this value but to place it appropriately within a holistic ecological approach: that anthropological ecological destruction is bad for many members of the Whole Earth Community, including humans, and a respect for ecological integrity is beneficial for all members of the Whole Earth Community, including humans.

In rights language - which is not necessarily the best way of expressing these ideas, but it is the dominant mode of general thought and legal systems - this means that they have the rights to be and exist and the right to 'play their role in the earth community' (which is an abstract way of doing whatever it is they do: to develop as a plant, live as an animal, be a geological process, flow, and so on). In a way, this mirrors the human values of negative liberty and positive autonomy: to be uninhibited by others and be able to do things which we should do.

Earth Jurisprudence, following some indigenous worldviews (and developments in new materialism?), does not limit this agency just to sentient animals but includes trees, rivers, mountains and ecosystems (instead of just individual animals). In some views, it could include the whole Earth, either as a 'Mother Earth' sort of cosmology or a less spiritual 'Gaia' system (whether as a metaphor or actual being).

There is not a clear division in the scholarship of what is or is not a member of this community. At the fringe could be questions like: should a boulder or cloud have rights? Whereas rivers having rights can serve as a proxy of sorts for the river ecosystem, clouds are just water at a particular stage of the water cycle. This fringe discussion need not concern us here; yet the point is worth making that it does not actually matter.

Instead of humans being free to act unless constrained by particular rights or obligations, as is the case in liberalism, or thinking based on liberty which takes as a starting point that humans should be free to act, this ecocentric approach includes an ethic of care and responsibility, and ecological integrity as a core principle. Whether a boulder has rights or value is less important than saying: perhaps we should not interfere with the boulder's existence unless there is a good reason for doing so which overrides the idea of leaving the boulder alone. Giving a boulder 'rights' is just how we get to that idea in our current rights-based framework (both in general thought and in a legal system).

This 'ecocentric' approach is a way of seeing the world and a cultural critique which our governance, political and legal systems ought to be based on. Not only are nonhuman members of the Whole Earth Community agential subjects with inherent value, but Earth Jurisprudence posits that they should be subjects with rights in our legal system based on this. More on that to come.

- Critical Legal Theory

Critique and positive vision and what is and isn't involved.

Earth Jurisprudence is a critique of anthropocentrism as a worldview, a cultural value, with regards to law. And it has a positive vision of what law should be like instead, which we will come onto momentarily. Yet as a critique, it is predominantly about the relationships between humans and the rest of nature.

The strands relating to (inter-human) social relations are undeveloped, and it is lacking in its social and political dimensions. It is a social critique with regards to anthropocentrism, but this is primarily about the relations between humans and the rest of nature, absent a consideration of social and political relations which covers this. It says that the human domination of nature is wrong, but does not particularly link this to oppressive human social relations. This seems to me to be a mixture of a blind spot and a tactical choice, and it mirrors much of green politics which is not left wing, a deep ecology type of thinking.

My primary engagement with Earth Jurisprudence in this thesis is to develop these dimensions: using Social Ecology to understand that the relations between humans and the rest of nature are rooted in social relations; that actually, social and ecological relations are not separate but either the very same or closely intertwined; and that just and harmonious relations with the rest of nature also require some level of transformation of social relations. More on that to come; here, the point is just to recognise the shortcoming.

Note: of course quotes, substance, references need adding.

Although Earth Jurisprudence is a *critical theory*, it is not 'critical theory'. It is a radical challenge to the current state of things, but it would not be described as 'left wing' politically. The implications might be aligned with some left wing approaches, and many proponents are probably sympathetic to those ideas, but it is not left wing. Of course, the left/right spectrum is inadequate to capture every idea - the division on the left authoritarian versus anti-hierarchical is just one example. But 'green' elements can happen anywhere on the political spectrum, from eco-anarchism through to green conservatism and eco-fascism. In the centre is where mainstream green politics typically is.

Anyway the point was: Earth Jurisprudence is not rooted in the canon of 'critical theory', the various traditions and strands of radical social theory which trace back to Marx in one way or another.

Note: The undeveloped social dimension of Earth Jurisprudence is a weakness, in my view, hence my project to develop it. Yet there is a benefit to this as well: it does not fall into the pitfall of only critiquing capitalism. And, I can't figure out how to word this, but there is something about the way it also serves to critique many political ideas... instead of tied to just one. Maybe it's the same point.

While this is a weakness, there is a benefit to this: it does not fall into the trap of saying that the only problem is capitalism. Capitalism does have a worldview in which humans are separate from nature, and this is part of the ideological apparatus for justifying its domination of, extraction from and degradation of the natural world (and of course the social world too). Yet it is not the only form of social order or ideological apparatus which does this: many animals were driven extinct, many forests destroyed, before capitalism developed in the West, as well as outside the West. So, while this lack of political critique is a shortcoming, there is something useful about this broader cultural critique of a separation of humans from the rest of nature which does capture something which more specific political critiques tend to miss.

Earth Jurisprudence recognises law as within our broader political and governance systems, and as such, sees the transformation of the legal system as part of a broader ecocentric shift which is necessary in society as a whole. A couple of the early writings referenced an idea of 'Earth Governance', though this has not been developed, as well as 'Earth Democracy' (though whether the same thing is meant by this as Vandana Shiva's book I am not sure).

Also worth noting is that as a legal theory, much of Earth Jurisprudence - though not necessarily every proponent - views it as a sort of 'natural law', in a similar vein to Aquinas. (ecological principles/great law/etc). I will return to this point later, in the critical analysis subsection.

Note: consider adding AHRC and the european critique here or later.

- Positive Vision for Law

Let's turn then to what Earth Jurisprudence does say about law. Of course, there is not one clear policy platform. Cullinan's *Wild Law* does set out some principles, yet this was the foundational text two decades ago, simply reproducing these would be inadequate.

Notes: I haven't read a few of the recent books yet. Add a brief survey of different sets of principles.

Rights of nature - aspects of nature as legal subjects

(What Should Have Rights? ; From Rights to Relationship Responsibilities; Normative Relational Commitments)

As discussed above [Note: refine to avoid duplication], Rights of Nature is one significant component of Earth Jurisprudence. This follows from the worldview shift that humans are only part of a wider Earth Community, with various other aspects of nature as active participants. The argument of Earth Jurisprudence is that other

aspects of nature have intrinsic value, moral rights which should be reflected and protected in our legal systems. Being active participants, in our legal system too (as well as politics and governance systems) they should be subjects. Subjecthood and rights are closely intertwined, perhaps two sides of the same coin, perhaps some distinction, I'm not entirely sure... for something to be a legal subject it must have some sort of rights it can actively exercise; for something to have rights it must have the subjecthood to act to safeguard or exercise these rights.

Of course, this is not actually possible: perhaps a few other animals have the cognitive capabilities of making arguments about how they should be treated by humans, but most cannot actually participate in our legal system. Instead, it is subject by human proxy, some sort of representative or guardianship.

This is still radical: it is not conserving aspects of nature so that we can use them sustainably as natural resources, or for scientific possibilities, or so that humans can enjoy nature. Rather, it is safeguarding nature's own integrity and existence in its own right. Christopher Stone's 1972 essay, 'Should Trees Have Standing?'⁸⁶, makes this clear: [find the actual quote] the legal benefit is on behalf of the nature thing and runs to the benefit of the nature thing itself...

- What should have rights?

For Earth Jurisprudence, to finally come onto why this holonic thinking is relevant: it is about how we understand 'nature' and what aspects of nature we recognise as having rights (morally) and what aspects of nature we grant legal rights to. This holonic approach helps disentangle the web of life (and nonlife) in the natural world. Should an individual fish or tree have rights? Or is the important scale the collective level - a community of a particular animal in an area? One level higher, should we only think in terms of habitats and protect those? Or, should we instead think in terms of ecosystems?

In law, rights of nature work better at the collective level - much as, actually, human law should, as we saw from Nedelsky's relational approach showing that it is in the relational context that we must act, not primarily the scale of the individual. So, if ecosystems are safeguarded, ecological integrity of the ecosystem, then this provides the conditions for each being to live, and, fundamentally, means that (nonhuman) 'nature' can find its own balance and interactions instead of anthropological destabilisation. Yet if ecological integrity is protected only at the level of the ecosystem, then this would miss out on aspects of protection which might be needed at the level of the species.

In short - there must be protection at all levels.

- **Ecosystem integrity as a whole** - most practical scale, and safeguards the habitats in general. This might also include other systems e.g. rivers as rivers, not as ecosystems, the river to flow freely and determine its own course. The atmosphere. Nutrient cycle.
- **Species level** - safeguards the needs of each species. For example, particular species needing particular interventions. Especially when this is about restoration. Maybe some birds need a particular bird box, maybe something needs a particular food source in the short term due to a

⁸⁶ Christopher Stone, *Should Trees Have Standing? : Toward Legal Rights for Natural Objects* (Tioga Pub Co 1972)

missing link in the chain, etc. Existing environmental protection of endangered species is an example of this too.

- **Individual level** - individual animals still need rights, for when the collective protection isn't adequate.

Notes to be developed: *The same core rights; but also, bird rights for birds, mountain rights for mountains, ecosystem rights for ecosystems, species rights for species, individual rights for individual animals - both vertical holonic scale different rights and also the variety of different beings and their rights...*

What rights exactly and what does this mean? Undeveloped. But, to be fair, human rights documents were also undeveloped, so let's not put too much stock in this criticism...

Fundamentally, the core idea is ecological integrity: that there is an ecological order which humans should stay out of. Except that we are part of the ecological world, so we cannot 'stay out', but we should be in right relation to it, playing only our fair role and not more than this. We are but a member, and should be a respectful member, not a supremacist one.

There is a tricky question, a quasi-paradox, about active human intervention for ecological benefit. When should humans intervene to impose a particular order instead of the natural one - what about 'invasive species' or fungal infections which are making certain tree species extinct? That is a difficult question which is not for me to attempt to answer here. There is a tension between leaving an ecosystem alone to find a new equilibrium and intervening to attempt to provide a more 'natural' balance, and no easy way to resolve this tension. The key point, though, is that in this way we are acting for the benefit of nonhuman nature, not humans.

Fundamentally, rights of nature must be about changing the dynamic between humans and the rest of nature. In other words: limiting human activity. Currently, human supremacy coupled with liberty means that humans are free (and empowered) to treat nonhuman nature as our property to use as we wish. Recognising the core of right to ecological integrity means limiting human activity. Sometimes Earth Jurisprudence sneaks this under the radar a bit: there is a common sense argument that nonhuman nature should have its integrity safeguarded, and that our current paradigm is wrong; then what follows from this is a total transformation of our whole economic, social, political and legal system. The legal rights are the 'form' with the aim of a substantive change to harmonious relations and sustainability; the aim is not rights of themselves.

Of course, there is a danger that these rights become formalised in law but with little effect. This has been the case of many rights: it is not a magic given that granting legal rights will realise the world which is being sought to be achieved. Yet it is also not pointless: it is about recognising the role of law holistically, within the broader social change and social relations.

Rights of Nature could be granted and then undermined or hijacked: the biggest pitfall would be that these rights are granted, but can then be overruled by human interests - human legal rights - which justify the infringement on rights of nature based on pressing human social needs. This has happened to many human rights, and there is an understanding of human rights law that all it does is legally institutionalise the social trade-offs which are happening. (*Note: expand - perhaps reference Kumm, right to justification*). This is why separating the form from the substance - the legal tool from the underlying value system - is dangerous. The

aim is not to transform the legal system, but to transform society, using the legal system as a means for doing so. (Remembering that law already structures social relations, this is not a new role.)

There is a grey area which I have sometimes gone into, which is the idea that the principle of protecting ecological integrity can be justified for anthropocentric reasons: that ecological integrity is good for humans. We live in an ecological world in which various things are necessary for our survival, and we should not pollute ecosystems because we are also part of these ecosystems, and pollution is therefore bad for us as well. This runs close to saying that we should protect nonhuman nature for our benefit, but taking a different course: it is the hard principle of ecological integrity which should be protected, not only making specific protections when there is a human benefit for them. Part of this is about limiting human hubris: there are many times in recent history in the West when humans have acted in short-sighted, ignorant or reckless ways, either not being aware or not even caring about the effects of something. A new, useful technology is developed, and it turns out to be harmful, whether that's using lead, burning fuels, introducing a species to a new ecosystem so that we can eat it, using 'formula' milk for babies without realising that it does not include everything that a human parent's milk contains, and so on.

Short-term trade-off calculations only work if we know everything that is being traded off. The presumption is that we should act, unless there is a reason not to: liberty is the default. Instead, a cautious ethic says that we should only act if we are completely sure that no harm will come of it: the onus is reversed. Safeguarding ecological integrity therefore protects ecological integrity in the long-term, instead of allowing for short-term trade-offs. Ecological degradation happens quickly and is restored very slowly. Therefore, hard protection for ecological integrity is of benefit to humans by protecting us from bad short-sighted decisions.

Rights of Nature can therefore be cast as something which is beneficial for humans, a way of legally protecting long-term ecological protection over short-term destruction. This argument is valid, yet of course goes less far. Whether it only goes halfway, or whether it covers about 80% of the effect, I can't say. Nonetheless, the better argument is that nonhuman nature ought to be protected for its own sake, not ours. We can point out that ecological integrity is good for humans, but this must be secondary to the fact that the natural world is not for us to destroy.

- From rights to relationships responsibilities

These relationships, linking rights and responsibilities, must embody 'the central importance of balance' and 'the principle of reciprocity': the 'greater the rights or privileges, the greater the responsibilities that ought do with them' Another strand of Earth Jurisprudence is the idea of moving to a system based on relationships and responsibilities, not rights. Cormac Cullinan describes that "rights are expressed in relationships with other members".

Following in the liberal tradition, Earth Jurisprudence advocates often describe how legal rights used to only be for a fraction of the human population and have been expanded to include people of all ethnicities, women, children, and to some degree, animals. Expanding rights to nonhuman aspects of nature is a logical continuation, as we recognise that nonhuman nature is agents and has inherent worth. Sometimes Peter Singer's idea of expanding the circle of moral concern is referenced.

Yet Earth Jurisprudence is developed beyond this, being critical of this approach to rights even as it advocates for the recognition or granting of Rights of Nature. Rights are a useful tool, using the current liberal legal system's main instrument of rights, but to get to a different end goal: a social order and legal system which is more about relationships and responsibilities.

This contains different strands. The first is a critique of the current approach to rights and freedom as being about entitlement and responsibility: that the current approach is flawed. The second strand is a shift in legal form, both for the function of the legal system and how we think about it, to be more about relationships. This is far less developed than Nedelsky's approach, but is very much in the same direction. Law should be thinking about the relationships instead of about the rights.

Note: add supporting quotes and expand on them.

In a structural sense, the shift to relational focus instead of rights will necessarily follow from the expansion of the rights franchise to nonhuman constituents of nature. Whereas previously these were subject-object relations, with rights mediating the relations between humans in relation to their rights over objects (rights in rem), now much of the relations with constituents of nature (in particular land, but other 'natural' property which are not objects extracted from a 'natural' ecological order) will be subject-subject relations. In other words, it will be about relationships between rights-holders who have competing rights instead of rights over others.

This is a shift which has already happened with the expansion of human rights, which is now often about rights-conflicts which are resolved through 'balancing' the different values, which is fundamentally relational.

- Normative Relational Commitments

There are also substantive normative commitments to relationships: responsibilities. This is both a moral/ethical position and an argument about what law should be doing: that humans should care for the natural world, that we have care responsibilities to nonhuman nature.

Note: Perhaps reference Aldo Leopold's 'Land Ethic' here?

Cormac Cullinan describes that the relationships, linking rights and responsibilities, must embody "the central importance of balance" and "the principle of reciprocity": the "greater the rights or privileges, the greater the responsibilities that ought do with them".

This again synergises very well with Nedelsky. Though she was clear to say that her relational conception was primarily a lens or methodology, there are passages in *Law's Relations* that this lens would make us value care relations more, and her personal values include a stronger care ethic.

Of course, Earth Jurisprudence is primarily talking about care for the nonhuman natural world; there is little about the social dimensions, that we should also care for other humans both personally and in the form of our social order. This is a shortcoming of existing Earth Jurisprudence approaches, but the parallels are very much there and it is not too difficult to make a link between care for nonhuman nature and care for other humans, at least at this more abstract level.

There are other normative relational values in the mix of Earth Jurisprudence. These include balance, harmony and sustainability. These are relational because they are about the relationships between humans and the rest of nature: whether they are 'taking out' more than is replenished, whether each side of the relationship is equal, and whether there is a just relation between each of these. These are all closely related values but each is slightly different: 'sustainability' is a more factual question, generally capable of scientific analysis; balance is about both sides being 'equal', which is a question of value; harmony is perhaps a question of justice, or right relation, whether the relationship is just.

Note: add further references, quotes, and refine

The final value listed was 'integrity'. Integrity is not commonly understood as a relational value: the usual idea is about non-interference, about allowing an ecological process or system to unfold in its own way without a human being involved. This is a typical 'boundary' metaphor, and it isn't necessarily always wrong. Yet, as Nedelsky argues in *Law's Relations* (discussed in previous section), we are usually better served to replace boundary metaphors with relational reconceptions.

Firstly, a respect for (ecological) integrity is fundamentally relational, about how someone thinks or acts in regards to something else. So, even when something does have a firm boundary of exclusion, this is a fundamentally relational notion.

Secondly, the boundary approach points to only one solution for respecting integrity: exclusion. This thinking means that the only way ecological integrity can be respected is if humans are not involved. 'Physical' spatial separation between ecological areas, non-human zones such as conservation areas in which humans are generally not permitted to be, is the only solution posited here. This is a common approach with conservation areas which humans are not permitted to enter, and it is sometimes also used to remove people from certain places in some form of land grab. My objection here isn't that this is impractical or unjust, because these are a separate stage of consideration than the question of how we conceptualise respect for integrity. Rather, it is that this is a nonsense understanding of integrity. It brings back a division of 'humans' or 'society' from nature, the dichotomy which is already being rejected by a holistic mode of thinking. It suggests that where humans are, ecological integrity is not possible, leading to a way of thinking which would abandon 'nature' in areas in which humans are. And it ignores the reality that it is very much possible for humans to live in and interact with a wider ecological world in ways which do respect its integrity.

Thirdly, this is flawed because ecology is more about relations and interactions than about spatial boundaries. We could ask what interferences such as pollutants, noise or light into an ecosystem might be understood by a boundary approach. These can be accommodated by extending the metaphor and saying that a person or collective are responsible for the substance or effect crossing the boundary, as is common in tracing legal causation and responsibility. If we engage with the boundary metaphor further, though, it unravels. How about if a person keeps a particular pet, or introduces a plant into their garden which turns out to be an "invasive species", and these have knock-on effects into the local ecosystem? Perhaps the pet roams free and hunts, perhaps the plant has seeds which spread and it begins to grow in that area.

There might still be a human causal link, and something physical which crossed the boundary, but clearly we are now talking about a relational chain as well as something crossing a boundary. Yet what about the other direction: things inside the spatial boundary of an ecosystem which interact with things outside it. Perhaps

humans with gardens around a conservation area change the plants in their gardens so that animals which are not bound to that ecosystem lose an extension of their habitat. Migratory birds are an easy example, as they spend part of their life in one place, part of it in another, and of course a lot travelling between the two. If the other habitat is detrimentally affected, or something introduced which interferes with their journey, then the other ecosystem is affected if the birds return in smaller numbers (or not at all). This could also go the other way: perhaps if the birds are artificially well fed and have a population boom, then upon arrival at the other habitat they would affect the balance of that ecosystem. Finally, the easiest example which I saved for last is upstream abstraction from a river which has a downstream effect on an ecosystem. The ecosystem is interfered with not because something transgressed a boundary but because the usual flow of water was withheld from entering the ecosystem. In these examples, we see that ecology is about relations and interactions, not sanctity and spatial exclusion.

We must, therefore, understand ecological integrity relationally. Of course, ecology itself is relational, being about the interactions, dynamics and relations between life and nonliving substances. Nonetheless, a 'boundary' approach to ecological thinking is common, which thinks in terms of exclusion of humans as the normal way to respect ecological integrity. Hopefully this has explained why we must think relationally about respecting ecological integrity. It isn't to say that the boundary metaphor never has any utility, but that it is inadequate and better used within a broader relational approach.

These different **relational norms in Earth Jurisprudence - responsibility, harmony, balance, sustainability and (respect for) integrity** - are about how law should function. They are about the ends which law should work towards, as an instrument. They can also be specifically about what law should be doing, in a way which challenges the dominant liberal rights-based approach. There are also implications for how law functions - which will be returned to later as part of a discussion on what a relational approach to law means for law.

In short: a liberal rights-based approach to law uses law as a relatively mechanical instrument for 'static' outcomes. A subject's rights have various duties and obligations attached to them, and if these are not met or the rights otherwise infringed, then the handle of legal process can be turned to achieve a particular outcome. Law is meant to achieve these rights, not primarily about relationships.

Earth Jurisprudence's focus on relationship instead asks more direct questions of justice, based on these values. It says that **law should ask whether a particular relationship is sustainable, balanced or harmonious**, instead of whether a particular right is wrongly infringed.

There is perhaps an apparent tension here between Earth Jurisprudence's idea of Rights of Nature and these relational norms. In short, given that rights are already about relationships, as discussed in the previous Nedelsky section, the tension is more apparent than real. Nonetheless, keeping this explanation brief, this is part of the shift described above of a shift to legal relationships instead of legal rights (with, of course, the rights as part of the relationship). These norms therefore serve best as values for resolving the relationships between rights holders, shifting them to an ecological ethic instead of the traditional cost-benefit analysis or justification which could continue to reproduce the status quo as justifications of interferences with Rights of Nature.

Note: reference / expand on human rights as adjudication.

This might also receive opposition from traditional liberal legal thinking, such as 'legal certainty' and law as the application of rules and norms. Instead, it posits that law is about mediating the relations. This means that law is directly applying normative political principles, instead of applying rules. Of course, this is quite normal for common law, just sometimes not properly recognised. Certainly, it is a shift to the power dynamic by saying that law is meant to protect Rights of Nature from human interferences (which aren't legally justified), and saying that these justifications must align with ecological values instead of following the current human domination power dynamics.

Notes:

- This is a way of thinking, normative ideas within particular relationships (at least as vehicle concepts), and the general purpose of a legal system
- Sustainability and ecological integrity as core principles
- Keeping this here as a placeholder because there is perhaps something about this being core legal values (golden thread or something?) which is distinct from relational values between rights holders.
- Relation to Klaus Bosselmann and environmental constitutionalism
- Add something on the possibility of using normative theory to resolve rights-conflict. That may go somewhere above.

Community Ecological Governance and Earth Democracy

This is about culture shift, rebuilding those relations, it works for indigenous people and people who live closely with land; is both pragmatic (immediate benefit and political movement) and normative (about how we should live and how 'governance' should work).

Another strand of Earth Jurisprudence is Community Ecological Governance: a relationship of care between local people and local ecosystems (or other elements of nature). This isn't purely about the legal system, though the legal system would be very much implicated.

This is primarily suggesting that the best way that an element of nature can be cared for is by the people who are spatially and/or relationally closest to it: that those who are connected will do a better job than managers upon high. It follows the principle of subsidiarity, the idea of power and action going down to the smallest scale at which it works best. Secondly, it is also about being part of a cultural shift of people being connected to the natural world around them.

This is something we already see in the world. The way that many indigenous peoples - at least those still living on their ancestral land, instead of displaced peoples or descendents no longer living in their pre-colonial (or otherwise) social orders - are connected to 'their land' is widely recognised and discussed. Often such people are heralded as 'leading the way' or being 'the solution' to loss of biodiversity. This recognition is often problematic - (1) because sometimes it imposes or facilitates a Western 'ownership' model of relating to the land, where indigenous cosmovisions often see themselves as part of it but not in a position of authority over it, and (2) because of the way that such discourse often takes some of the onus off global north countries, whose activity and social orders are typically driving such destruction (but not exclusively, it is of course more complicated).

To be clear, it is not that the idea itself is problematic, only that problematic variants exist. There is a straightforward recognition that there are many people who live closely with the natural world where they live, and that this includes indigenous people. Once we understand it this way, it focuses on people who live closely with the ecology in which they live (or, with the 'land', but this reductive approach does a disservice to our thinking). This 'closeness', however, isn't about scale but about the quality of the relationship: whether it seeks to be a harmonious relationship of ecological care, or whether it is a relationship of abuse, extraction and domination. Small scale farmers, fishers and loggers can be small-scale and 'close' to the land, but in an anthropocentric and extractive way.

So, in global north countries, it is about recognising, fostering and developing these practices of people living 'with' their local ecological network. Ideas of rewilding, agroecology and permaculture are these types of relations. This means fostering these ideas where they already exist, and it also means working to shift the social relations which are not of this manner - that is, most of them and the mainstream way of doing things - so that they are more like this. It therefore functions as a driver of social and cultural change: how to bring about relations where people are more connected and caring of their local place.

The principle of Community Ecological Governance is therefore both about the local scale and relations which are based on care and living in harmony with nonhuman nature. This is a version of grassroots democracy which is bottom-up and small scale, while also being about relations which recognises nonhuman members of the Earth Community as having value. It is in opposition to top-down impositions, large bureaucratic institutions and domination which are part of the current mode of human to nonhuman ecological relations, which are often not even recognised as such (meaning the way that 'environmental law' is often seen as a particular narrow box, instead of any aspect of law which relates to any nonhuman ecology, which includes almost every aspect of human life and area of law. This is a critique of sorts of the dichotomy of 'environment' and 'environmental thinking' that instead posits this social ecology 'everything is ecological relations' approach.

What is law's role in this mode?

Well, that is exactly the question! Our current legal systems primarily function in a top-down coercive way, and seek national consistency. The regulatory systems traditionally are command and control. Earth Jurisprudence is instead thinking about law much more like a gardener seeking to cultivate a garden - although actually, that metaphor is a misleading one, because that garden is typically for human benefit, whether aesthetics or produce. How about: like a steward or warden of a nature conservation zone. Certain things are encouraged, others are discouraged in the ecosystem. Some things are planted, watered, nourished; other things are prevented, pruned, rebalanced, excluded. (maybe I need to reference some sort of stewards handbook thing here!) This is why Cullinan's seminal book is actually entitled 'Wild Law', to get this sort of idea across of a totally different nature of legal system, although 'Earth Jurisprudence' and 'Rights of Nature' are the elements which have most taken off.

This links into the idea of Earth Democracy: that our democratic institutions should be based on a democracy which represents the Whole Earth Community, not only humans. This is an idea which is often mentioned in Cullinan's Wild Law, but remains relatively undeveloped.

This approach also synergises well with Murray Bookchin's thinking about how we should organise: at the small scale of human communities and at the ecological scale of bioregions.

Notes:

- These threads of course needs referencing
- Democratic instead of top-down or bureaucratic
- Links: social ecology, Bookchin posits human organisational scale at the ecosystem-regional scale; indigenous influence; democratic values (social ecology or general)

Earth Jurisprudence as Natural Law

Note: This is quickly drafted to match the structure but needs further development. re-read some of the source materials and also bring in Margaret Davies'

As legal theory, doctrinal Earth Jurisprudence is based on natural law theory, following Aquinas. Thomas Berry, the theologian and philosopher who inspired Cullinan, was based his thinking on Aquinas' natural law but expanded to be based on 'nature'.

Note: add quotes about "The great law" or "higher laws" or "ecological laws".

Cullinan does not talk about God, but nonetheless, the idea is that there are "laws" in nature which we should be guided by. There is this idea that 'an unjust law is not a law', based on ecological principles which can be divined.

Natural, of course, has two meanings: being about nature; and a second meaning about what something's essence is and what is normal. In legal theory, 'natural' law is a normative jurisprudence based on the idea of certain things being 'natural', rooted in values

Note: refer to Ecolaw here to quote some things, as a touchstone.

Earth Jurisprudence blends moral and legal rights: 'Rights of Nature' are recognised, not given. I think this is dangerous, or at least, there should be a clear distinction between moral rights - which might be 'inherent' but are at least pre-legal - and a design for law which seeks certain outcomes. This is largely to remove the fixation on rights as such: the aim is to produce certain outcomes, certain socio-ecological relations. Rights are a vehicle to support this, but they are not necessarily necessary. (*Rights of Nature without Rights?*) For example: indigenous people who live harmoniously in their ecological world do not necessarily have 'rights'. At this stage in socio-historical development in Western societies, rights are the language and the tool, but they do not need to be. I disagree with the idea of a 'greater law' in the universe which we should follow.

Note: Maybe quote Bookchin's criticism of the mysticism of this type of thinking, as law is human made, it is posited not divined, rational. We can be inspired, but our moral and political theories come from within society, not without. This is perhaps a break between my approach and Earth Jurisprudence scholars.

Drafting this briefly I kind of agree but think this needs to be made 'rational'. The principles are there - harmony, sustainability, balance - but there is not enough information that we can always apply these, we need human layers and moral theories and social understandings. Nonetheless: there are higher normative principles of inherent value of nonhuman and human members of the Whole Earth Community, sustainability, and living harmoniously with the rest of nature. These are 'higher' than law, and our legal system should further these.

Because the social and ecological are intertwined, we also need social theories of justice. I believe law should work towards just social relations, but these cannot simply be divined from nature. Instead, we need philosophy and political theory and so on. We must instead think about the type of society we must create... social relations. This is the shortcoming of Earth Jurisprudence which I will come onto in a moment: we cannot decide how to order our societies by divining this from nature, and this thinking is dangerous. Nonetheless, there are these 'ecological' principles which should be respected.

My approach to law is, therefore, normative. Yet, while I have my personal views, in my legal theory I am staying away from a detailed theory of justice. Law should work towards just and harmonious relations, and I have some ideas of what counts as justice (see earlier section covering my values) but I am not here to pin myself to one particular political approach. Or at least, I hope my legal theory to be relevant for a variety of different schools of political thought.

'Rights of Nature' as an approach can be untethered from Earth Jurisprudence, of course, and not have this view. For example, it is a consistent position to support Rights of Nature as a legal instrument which is necessary to secure ecological integrity for human flourishing, without needing to be committed to the inherent moral value of the nonhuman natural world. The particular design or implementation of what this would look like will differ if the aim is to secure ecological systems for human benefit, but if this is understood in a precautionary way, that ecological systems should not be disturbed by default with a strong threshold to cross to do so, the effect would be very close in practice.

Critical Appraisal - Lack of Social Dimension

- Conceptual Critique of Ecological Jurisprudence

Earth Jurisprudence is about the relationships between humans and the rest of nature, and law's role in these. What is lacking is an inter-human social dimension. This means that it is only partial.

When I first encountered it, I was inspired by the ideas, but kept thinking: *what does this mean for the whole legal system?* That question is wrongly phrased, because Earth Jurisprudence does have implications for the *whole* legal system in the sense that every area of law is affected. It is not like environmental law, a separate area of law to do with 'the environment', but has relevance for all parts of the legal system, as discussed above. However, Earth Jurisprudence is only in relation to nonhuman elements of nature, and has little to say about the human subject (when not in relation to nonhuman elements).

Reading Earth Jurisprudence literature, the paradigm shift being described can be summarised as 'being interconnected with a whole ecological world', without mention or discussion of 'being interconnected with other humans'. Of course, both of these are true; hence the need for the recognition of an interconnected socio-ecological web in which each person is enmeshed (dependent on, constituted by) in a relational network of human and non-human elements. The lack of social dimension is also why I term my approach socio-ecologically holistic, with the word 'ecological' referring to Earth Jurisprudence (and possibly other ecological approaches too), yet the 'social' needs adding and it needs to be holistic in terms of covering the entirety of human activities and our legal systems (as well as referring to Capra's meta-paradigm).

Further: we must approach ecological relations as also being social relations. This is an absent dichotomy in Earth Jurisprudence: while there is not an explicit dichotomy between humans and nature (rather, the opposite, it recognises humans as part of nature instead of separating the two), the absence of consideration of social factors of ecological relations means that the ecological is cleaved from social politics.

This is the Social Ecology critique applied to Earth Jurisprudence. The Social Ecology critique is:

- Humans and society exist within a broader ecological world
- Social relations are therefore inherently ecological relations. We should understand 'social relations' or 'interhuman relations' as a subset of ecological relations. Yet these interhuman relations are not distinct from ecological relations, because this would be to create a false dichotomy between humans and nonhuman nature. Interhuman social relations almost always are interwoven with ecological relations with nonhuman elements.
- For example, how we use land affects other things on that land; what we eat existed in an ecological world before entering the human food system, so cultural interests in (eg) almonds and avocados have direct ecological effects; anything relating to use of water affects everything else interacting with that part of the water cycle; everything that we pollute, from packaging to clothing to chemicals to food waste, has ecological effects; and so on.
- From the other end of the stick, relations with nonhuman ecological elements are usually contingent on or interwoven with interhuman social relations.
- Any attempt at nature 'conservation' has human impacts, such as making people homeless or destroying their way of life. Another example is the way that global trade, such as the shift in manufacturing from developed to developing countries, has various ecological impacts which are obviously directly based in social relations (global supply chains). The core point of social ecology is that ecological domination is rooted in social domination, and addressing ecological issues means addressing the social causes of these. While this appears obvious, it is not the mainstream way of addressing these problems, such as the reduction to one particular issue or individual behaviour change instead of a systemic approach (though, thankfully, there has long been a counter-current of systemic approaches). One example is the way that consumer product manufacturers are incentivised by the profit motive to make things difficult to repair and not durable, because it is profit-seeking behaviour to make repair only possible in-house or to have a product only last a short amount of time so that the customer will purchase a replacement.
- Bringing the point to Earth Jurisprudence: it must recognise that human relations with nonhuman 'members of the Whole Earth Community' are rooted in social relations. In other words, harmonious

relations with the rest of nature usually also require (to some degree) harmonious relations within human social orders.

Responding to the social ecology critique applied to Earth Jurisprudence:

- This is not strictly true: it is very much possible to have a small community, a particular people who live in their place, living harmoniously in their ecosystem, yet nonetheless have a violent and oppressive social order, perhaps based on minority rule, gender oppression or social classes. There could also be a bureaucratic highly-regulated society which lives sustainably, setting general rules about ecological impacts but with unfair distributions within it. Eco-primitivism might also be possible, and of course, eco-fascism. So, perhaps what I mean is, this is the best pathway or something... from western capitalist liberal democracies, ecological harmony and social harmony together is the best (morally speaking) and most realistic (pragmatic politics) pathway.
- So, why is it true? Psychological need fulfillment? Capitalism? Extraction of surplus from nature? Extraction of capital from nature?
- This is why Bookchin's politics is both about ecological sustainability and social justice.

Earth Jurisprudence is relatively apolitical, sort of. Of course we should think of relations with the rest of nature as political, and the relations with nonhuman elements of nature are political, if we expand the field of view of who are participants in 'politics'. What is lacking is the interhuman political dimension.

Earth Jurisprudence tends not to have much to say about interhuman social relations. The 'problem' is seen to be a cultural worldview about the separation of humans from nature, without any further analysis of ideologies or social relations. This can be contrasted, for example, with what Moore and Patel say in *The History of the World in Seven Cheap Things*⁸⁷, where they recognise the worldview of separating humans from the rest of nature as part of the ideological apparatus of imperialist and capitalist economic modes, needing to recognise nonhuman nature as something 'other' so that it can be plundered (and they make similar points about oppressed cultures, social groups, women - they are also seen both as 'other' to make their exploitation easier, and as part of this, closer to 'nature' in the way of being lower than a higher superior human status).

Earth Jurisprudence does not say much about changing our social order, or even the need for economic transformation. In this way it is actually weaker than Capra's approach (discussed in part 1), which does recognise a need for economic change even without a more complete political analysis. In some ways this doesn't add much to the previous point: if Earth Jurisprudence does not recognise that social relations are interwoven with ecological relations, of course it does not recognise there is a politics at play here. Yet it is nonetheless worth stating - repeating the point above - that Earth Jurisprudence is a critical legal theory, it is not rooted in existing critical theories (which are based in some form of political critique).

This is similar to much environmental or 'green' politics, which tends to care about environmental issues without caring much about social issues. Perhaps this is simply a mathematical reality: that some proportion of people care about one type of issue, some proportion care about another type of issue, and therefore the overlap which cares about both is much smaller.

⁸⁷ Jason W Moore and Raj Patel, *History of the World in Seven Cheap Things: A Guide to Capitalism, Nature, and the Future of the Planet*. (Verso Books 2017)

While this is primarily a shortcoming of the scholarship, there is a benefit of this approach: it avoids being a narrow critique of a particular political ideology, social order or economic mode. It would be a mistake for a critique to only be of capitalism, for example, as if capitalism were the only social form which involved the domination of the rest of nature. Nonetheless, it should be possible to have an ecological political critique which is broader than just problematising one particular social form.

- Practical-Strategic Critique of EJ

What was described so far is a conceptual critique of Earth Jurisprudence as a framework: that it is partial, not holistic, because of the absence of inter-human social relations; that this is also not a full recognition of ecological relations *as social relations*; and that it is lacking a political dimension (with relation to inter-human politics). It is also worth mentioning that there is a related practical-strategic critique, distinct but of course related: that to succeed, political movements about nonhuman nature should also show how they improve people's social condition. Earth Jurisprudence has an element of this in terms of connecting people with their place, strengthening both psychological and practical attachment to the ecosystems and localities people are part of. For Rights of Nature campaigns to be successful, however, it is important that they both show people and work to realise improved social outcomes. Instead of ending in an adversarial dynamic which pits 'planet' against people, they should both show how improvements for nonhuman nature are also good for humans and be part of broader social movements which work towards social justice. The principle of Community Ecological Governance shows that the two should be in harmony, avoiding the 'conservation' dynamic based on boundaries and nature as the exclusion of humans which is often used to remove people embedded in a place from that place.

Finally, there is a question of whether Earth Jurisprudence is universal. As a 'movement' - the Rights of Nature movement - it claims changes from all around the world. (Note: I need to check whether Earth Jurisprudence in general claims to be universal or claims to be just about western societies?) Yet this sort of cultural worldview, or 'development' in terms of paradigms and social change, must be socio-historically specific. Does Earth Jurisprudence claim to be the 'right' approach - whether as a next step in an ongoing historical unfolding or a claimed end state - for the whole world? Presumably it isn't telling indigenous people who do live harmoniously with nature that they should adopt an Earth Jurisprudence approach. Yet the changes in Latin America, while they might have taken significant inspiration from Earth Jurisprudence and on some occasions worked with organisations in the USA to do so, are culturally different to those which would happen in western capitalist liberal democracies. (Note: Mihnea Tănăsescu's writing will be brought in here in the next draft).

The Relationship of My Project with Earth Jurisprudence

I will conclude this section by describing the relationship between my project and Earth Jurisprudence.

Having set out the core ideas of Earth Jurisprudence and analysed and critiqued its shortcomings, it follows I must talk about my dialectical moving forward. It is not only that encountering Earth Jurisprudence is part of my personal story: I think there is much to draw from in it, even as I believe that the Earth Jurisprudence which is needed is quite different from the Earth Jurisprudence which currently exists.

To repeat the core essence of my argument and development: Earth Jurisprudence is only partial, being about the relationships between humans and nonhuman nature while not having interhuman social relations in its scope. A holistic approach to law and social change is needed, which recognises that society is within nature and that transforming our ecological relations must, conceptually and practically, also mean transforming our social relations. Earth Jurisprudence needs Social Ecology, which will be covered in the next section of this Literature Review.

Things I take into a socio-ecologically holistic approach and Interconnected Law:

- An ecological worldview which places humans as within a broader ecological world of active subjects (normative-neutral) which have inherent moral value (normative-normative)
- Rights of Nature and legal subjecthood for elements of nature which are nonhuman (normative-normative)
- The aim of seeking harmonious relations with the rest of nature, both as a broad objective and in concrete social reality at local scales (normative-normative)
- Ecological principles (normative-normative), such as ecological integrity, sustainability, care ethic, and a legal system which includes these principles
- The relational lens (though in EJ this is only between humans and the rest of nature)
- Relational norms, such as a care ethic, responsibilities, and law based on relational responsibilities

Things I do not take:

- Possibly some of Aquinas' natural law' elements
- Note: is there anything more that I wish to leave behind?

Then, to this I will be adding more: Earth Jurisprudence needs to include the 'other half' of interhuman social relations, and go through a Social Ecology transformation such that these are not two separate halves in which the 'social' and 'ecological' are different, but rather which means that these 'social' and 'ecological' are one unified approach, that the human world is one of socio-ecological relations.

Let's now turn to Social Ecology.

Note: Integrate concepts of "multispecies justice", "more than human", and "posthumanism" - also reference these as part of inherent moral value of nonhuman nature. Integrate green political theory e.g. Robyn Eckersley's work and Biocentrism. This possibly sits in earlier sections with ecocentrism and ecological thinking. Not hugely significant for my legal theory which is not pinning things as detailed as that.

Social Ecology: Recap So Far

Note: This is being written more as a structure summary.

This literature review section began with the idea of worldviews and paradigms, with specific focus on the idea of a 'holistic' paradigm which is about relations between things instead of reducing the world to discrete things. This holistic or relational worldview was then established - sticking to that language for that time being

because 'ecological' has a connotation of referring to non-human nature which we couldn't cross until we got to this section.

The second Part of the section then looked at legal scholarship within this paradigm. It found that so far - in law, as in much of our political discourse - the 'social' ideas were separate to the (nonhuman) ecological. It then looked at approaches to legal scholarship which are in this paradigm, finding that so far, there are inter-human relational approaches (primarily Nedelsky's Law's Relations) and relational approaches with regards to human relations with non-human elements of nature, also known as 'ecological' approaches. Earth Jurisprudence is the most developed of these, and spawned the 'Rights of Nature movement'. ("Environmental" as a lens was jettisoned because as an approach it both refers to the human environment as separate from humans and looks at "the" environment as existing primarily for human uses - the ECHR jurisprudence on "environmental" human rights cases serving as a great example of this.) The finding is that, so far, these have been kept as separate strands. The thinkers about society and social justice have not turned their attention to the ecological reality of our world (or "environmental issues" in the common understanding), and environmental thinkers do not have an adequate social dimension. This has been generally true in political theory, legal scholarship and in real world politics - though there are of course countercurrents and exceptions. In political theory, Murray Bookchin is, of course, the main exception, and it is to his work we now turn.

The void between thinking about social issues and thinking about ecological issues is part of the very problem which Bookchin is addressing in his work - by bringing these together. Bookchin's Social Ecology goes deeper and makes clear that the social and ecological were never separate. Humans and human society is recognised as part of Nature, such that the social is ecological, and the ecological - where humans are involved, at least - is also social. This is the essence of what I will be drawing from in Bookchin, in using his work as part of the foundation for my work: how we conceptualise humans and nature and the relationship between them. "The social can no longer be separated from the ecological, any more than humanity can be separated from nature."⁸⁸

And this separation between the thinking about these issues is rooted in the idea that there is a separation between humans and nature (ie, the rest of nature): in other words, it is because these are thought of as separate that the thinking about each domain is separate. So, my point - following Bookchin - is not to say that we need to join these two strands of thinking to have an approach which covers both. Rather, it is that once we recognise this is a false separation we can take a properly holistic approach which includes social thinking within its proper ecological context, and have a socio-ecologically holistic approach. This would then fold both the existing relational social legal theory and the existing ecological legal theory into it as a dialectical synthesis of sorts instead of as an umbrella or bridge.

Note: assess and be sure 'dialectical' is the right word to use.

Bookchin points out that in " [...] almost every period since the Renaissance, a very close link has existed between radical advances in the natural sciences and upheavals in social thought."⁸⁹ As discussed earlier,

⁸⁸ Bookchin (n 1) 25.

⁸⁹ Murray Bookchin, *The Ecology of Freedom : The Emergence and Dissolution of Hierarchy* (Black Rose Books 1991) 20.

natural sciences has recently developed to relational approaches, with ecological thinking normal within many domains, while legal theory, political theory, and politics in practice have been lagging behind (although, politics in practice has been addressing these issues because they are real issues, so there is a latent socio-ecologically holistic approach in the reality of the problems which lies just beneath the surface and not properly recognised). Bookchin says:

“our own era needs a more sweeping and insightful body of knowledge — scientific as well as social — to deal with our problems... [building on existing] scientific and social theories, we must develop a more rounded critical analysis of our relationship with the natural world. We must seek the foundations for a more reconstructive approach to the grave problems posed by the apparent ‘contradictions’ between nature and society.”

“... [we must move beyond the traditional approach to] dissect phenomena and examine their fragments. We must combine them, relate them, and see them in their totality as well as their specificity.”

“In response to these needs, we have formulated a discipline unique to our age: social ecology.”⁹⁰

What Bookchin says is needed is:

“the reconciliation of nature and human society in a new ecological sensibility and a new ecological society — a reharmonization of nature and humanity through a reharmonization of human with human.”⁹¹

This is the core of Bookchin’s political thinking. That we need to reconcile nature and human society, but that because society is nature and our ecological relations are inseparable from social ones, a ‘reharmonisation’ of nature-society relations requires a reharmonisation of inter-human social relations.

At this point, it is worth mentioning that in my legal theory, I am only taking some of Bookchin’s thinking with me. Bookchin’s thinking includes the various (interwoven) lawyers of: an analysis of existing problems in society; a critique of existing philosophy (or more generally, conceptual thinking); a conceptual framework for thinking about these issues; a normative positive vision for society; and political strategy for how we get there. As discussed, my aim is to provide a framework for legal theory which is socio-ecologically holistic, and not a legal theory which is wedded to and contains a particular political theory and vision of society. I am therefore looking to take Bookchin’s analysis, critique and conceptual framework of social ecology, but not the political vision and strategy. I will come back to this in the section below ‘Social Ecology, Narrow and Broad’ - but having covered the essence first, let’s take a step back and get an overview.

A Short History of Murray Bookchin and Overview of his work

Murray Bookchin was a social theorist, political philosopher and activist in the USA. He was self-taught, thinking and writing outside the academy, and published his main writings between 1962 and 1995. He was

⁹⁰ Bookchin (n 89) 20

⁹¹ Bookchin (n 89) 14

an activist and organiser as well as a theorist, writing as part of the movement. His first political involvement was as a teenager, when he was involved in a Stalinist group. As the USSR developed, he shifted to being a Trotskyist as a young adult, but then broke from this to establish his own theoretical approach from a synthesis of Marxism, anarchism and syndicalism. He came to view that strand of Marxism as reductive, viewing the hierarchical approach which sought to replace the ruling class with one which represented workers as inherently flawed. Bookchin instead widened his view from a reductive economic class-based approach to recognise that domination and exploitation take many forms: social classes, economic exploitation, gender exploitation, age-based hierarchies, and others, are all part of one common rubric.

The blend of anarchism and communism, critique of social relations and vision of a free society which Bookchin developed is of huge significance and makes him a leading political thinker of the modern era. Yet his work has not gained the following I feel they merit. While his political approach is valuable in its own right, what is most significant is the ecological dimension he developed: he was among the first in the English-speaking world to think about 'environmental' issues from a left-wing perspective. Histories of environmental issues in politics and the environmental movement often point to Rachel Carson's 1962 book *Silent Spring*⁹² as bringing a more mainstream attention to environmental issues. Bookchin's book on the same topic, *Our Synthetic Environment*, was published in 1962 and predates Carson's by a matter of months, though it did not gain mainstream attention.

Bookchin was perhaps the most significant political ecological thinker of the 20th century, and he perhaps remains the most significant one, as neither mainstream political movements nor the mainstream environmental movement have fully caught up with his ideas.

Bookchin's writing is wide-ranging, and a brief overview will help to show the range of his thought (of course not every essay or book will be included). In the early 1960s he published two significant essays: 'Ecology and Revolutionary Thought', which was the first manifesto of his political ecology and identified revolutionary social change as needed to respond to the ecological crisis; and 'Toward a Liberatory Technology', which took forward Marxist ideas about the relationship between technology and social relations and argued that modern technological developments should be paired with decentralised and communal social relations such that technological advances can actually realise a more free society. Sadly, in our world we see how technological advances have primarily remained bound up with existing power relations and not achieved this. To again make the point about how ahead of the time he was in his ecological thinking: in 'Ecology and Revolutionary Thought' he issued a warning about greenhouse gases and climate change⁹³.

His work included analysis of problems in our world, (*Our Synthetic Environment* 1962, *Crisis in Our Cities* 1965, *The Modern Crisis* 1986), a positive political vision of how society should be structured and how to get there (*Towards an Ecological Society*, 1980 and *Remaking Society: Pathways to a Green Future* 1990), and more philosophical writings (*The Ecology of Freedom* 1982 and *The Philosophy of Social Ecology* 1995). Of course, this is a simplification of each book to show the core thrust and the range of his work, and many books contain interwoven strands.) His 1971 *Post-Scarcity Anarchism* was an essay collection including the two previously mentioned essays and essays on Marxism. The 1980 book *Towards an Ecological Society* sets out the foundations of social ecology - that social and ecological relations are inseparable - and his

⁹² Rachel Carson, *Silent Spring* (Penguin Books 1962)

⁹³ Murray Bookchin, 'Ecology and Revolutionary Thought' [1965] *Anarchy Magazine* 5

vision of a cooperative and communal society which realises human freedom and ecological sustainability: "that to harmonize our relationship with the natural world presupposes the harmonization of the social world." [Ref: Bookchin, Towards an Ecological Society, in the Chapter 'Toward an Ecological Society'.] His 1982 book *The Ecology of Freedom* is an historical and anthropological account (though he accepts it may not be entirely accurate and is slightly allegorical) of how hierarchy and domination developed and were institutionalised into our social orders alongside what he called 'the legacy of freedom'. His 1989 Book *Remaking Society* is a re-summary of his ideas with more focus on the political movement and form which is needed, around what an anarchist society should look like, a topic covered by other publications too. Finally, the 1995 revised edition of *The Philosophy of Social Ecology*, is a collection of five of his philosophical essays, the most focused philosophical work which he regarded (at least at one point) as his most important work.

Bookchin was involved in significant arguments within the USA Green movement in the 1970s and 1980s. The main one was with the Deep Ecology movement. The thrust of Bookchin's critique was that Deep Ecology fails to have a meaningful political analysis (and therefore also fails to propose adequate political solutions). In his own words:

"Let us face these differences bluntly: deep ecology, despite all its social rhetoric, has virtually no real sense that our ecological problems have their ultimate roots in society and in social problems. It preaches a gospel of a kind of "original sin" that accuses a vague species called humanity---as though people of color were equatable with whites, women with men, the Third World with the First, the poor with the rich, and the exploited with their exploiters."

"Deep ecologists see this vague and undifferentiated humanity essentially as an ugly "anthropocentric" thing---presumably a malignant product of natural evolution---that is "overpopulating" the planet, "devouring" its resources, and destroying its wildlife and the biosphere---as though some vague domain of "nature" stands opposed to a constellation of nonnatural human beings, with their technology, minds, society, etc."

Of course, this should be read as his perspective and not necessarily a correct interpretation of Deep Ecology. Nonetheless, in general, I agree that Deep Ecology lacks robust political analysis. This includes Fritjof Capra, who I have drawn from in the idea of a 'holistic' meta-paradigm, who is against any sort of left-wing politics. Bookchin also had scathing critique of these "new age" physics movements [Note: maybe develop this further and add more references], including Capra specifically.

Ultimately, though, 'deep ecology' thinking won over the radical left tendency in the green movement, and this same flavour of politics has flown into the present day. This is probably better understood not that social ecology lost the argument but that it failed to win enough people to it. As environmentalists develop out of the mainstream, it is easier to get people to care about the environment than it is to develop a radical left politics.

Similarly, most of the radical left did not care about ecological issues until the latter part of the 2010s, so 'green' politics has tended to not be adequately radical left. Environmental politics to this day would therefore still benefit significantly from Bookchin's thinking, for example, the way that the Extinction Rebellion

movement explicitly sought to be “Beyond Politics” (though has developed better political thinking in recent years than its origins) and various Green parties (which tend to be left of centre but not go far enough in the need to transform the social order to achieve ecological harmony).

One more thing which is significant to note: Bookchin’s ideas have had significant influence in one area of the world, the majority Kurdish area in North-East Syria (and, to some extent, the Kurdish people in Turkey, Iraq and Iran). It helped inspire an incredible revolutionary society in the Middle East which is partly based on Bookchin’s work, in the Kurdish area of Syria.⁹⁴

I will attempt to keep the historical circumstances brief. The Kurdish people and their homelands are divided between the state borders of Turkey, Syria, Iran and Iraq. In Turkey, there has been a long-running liberation struggle against the Turkish state in which the main tendency was a Marxist-Leninist national liberation movement (though there are also other Kurdish political movements). The party leader, Abdullah Öcalan, was imprisoned by Turkey (and it seems the main reason he was not executed was because this would cause greater friction in Turkey’s relations with the EU). In prison, among other post-Marxist writings, he read Bookchin’s work, and these ideas formed a large part of the new vision of democratic confederalism. (Though this was largely from the top, there was also a large feminist influence both from a long-running Kurdish feminist movement and theoretically top-down from Öcalan.)

An opportunity to begin to realise these visions came through the collapse of the Syrian state, which both allowed and required the Kurdish people to govern themselves autonomously and fight for their lives. The geopolitical interventions in Syria through the 2010s, against the Assad regime, then against Daesh (more often known by a shortening of the translation of the name the group called themselves, Islamic State) meant that the Assad Syrian government lost control of the north-east of Syria, the Kurdish region of the country. The Kurds in Syria to self-govern, led by the PYD (Democratic Union Party). They took inspiration from Öcalan’s newer vision and established a way of life based on democratic confederalism, based on social ecology, decentralised direct democracy and feminism. Notably, their vision is not of an ethnic nation state (nor even a nation state!), so is better known as the Autonomous Administration of North and East Syria (AANES), even though it is still primarily known colloquially as ‘Rojava’, based on the Kurdish word for the area. In the words of David Graeber, renowned anarchist anthropologist:

“this is one of the most exciting political experiments really since the anarchists in Spain in the 1930s, one of the few occasions when people have actually had an extensive stretch of territory in which to try to see if libertarian socialist ideas can really be put into practice and actually work on the ground, with a lot of startling success.”

“... the more I learned, the more I was really struck by how profound a political experiment it really was.”⁹⁵

⁹⁴ Cihad Hammy and Thomas Miley, ‘Lessons from Rojava for the Paradigm of Social Ecology’ (2022) 3 *Frontiers in Political Science*

⁹⁵ Novara Media, ‘David Graeber: Why Rojava Matters’ (*YouTube* 17 October 2019) <<https://www.youtube.com/watch?v=ovfw6BJ3OLM>> accessed 11 January 2026

Delineating Different Uses of the Term

One of the initial confusions is that the phrase ‘social ecology’ can have a range of meanings. Let’s delineate.

As an umbrella term: At one end of the spectrum, it means an approach to ecology which includes society. In this sense, ‘social ecology’ is a broader term than just Bookchin’s work. ‘Social ecology’ has been used in ecological thinking in ways unrelated to Bookchin’s work to mean the interaction of social and ecological relations, recognising that these are intertwined or even the same system instead of different systems. ‘Social ecology’ can therefore be an umbrella term for any socio-ecological approach and include other thinkers beyond Bookchin, having a ‘structural’ sort of meaning for thinking about society and ecology together. Bookchin quotes the 1953 book *Community and environment: a discourse on social ecology* by E.A. Gutkind: though he is the most prominent person associated with it, it is not his term. Bookchin seemed to use the term in this broader way in his early work:

“As both worlds interact with each other through highly complex phases of evolution, it has become as important to speak of a social ecology as to speak of a natural ecology.”⁹⁶

Bookchin’s 1964 essay ‘Ecology and Revolutionary Thought’ uses the phrase ‘social ecology’ twice in a more general sense that predates his own development of the phrase.

In his 1982 book *The Ecology of Freedom*, he talks of “the need for a consistently radical social ecology” and, describing the development his thought, that “Environmental issues had developed in my mind as social issues, and problems of natural ecology had become problems of social ecology — an expression hardly in use at the time.” He continues to talk of his development of “a new form of libertarian social ecology”. This usage suggests that he views his theory as a theory of social ecology, as opposed to the theory of social ecology (all quotes from p6)⁹⁷. He describes social ecology as ‘a discipline’, saying: “In response to these needs, we have formulated a discipline unique to our age: social ecology.”⁹⁸.

Relatedly, it is worth noting the term and approach of ‘political ecology’, which is structurally very similar.

“Political ecology is a critical research field within anthropology, geography, and related disciplines that has become well known for its analyses of how and why structural forces, such as capitalist economic processes and power relations, drive environmental change in an increasingly interconnected world.”⁹⁹

In this way of using the term, Political Ecology could perhaps be thought of as a version of a social ecology. Perhaps this could be thought of as ‘an’ approach to social ecology, given that it thinks about structural social forces and environmental change. Or, alternatively, it might be that for something to be ‘social ecology’ it has to be rooted in an understanding of society within nature. If someone is thinking about the interactions between society and nature in a way that conceptualises them as separate and dualistic, instead of society

⁹⁶ Bookchin (n 89) 21; emphasis mine

⁹⁷ Bookchin (n 89) 6.

⁹⁸ Bookchin (n 89) 20.

⁹⁹ Jason Roberts, ‘Political Ecology’ [2020] Cambridge Encyclopedia of Anthropology <<https://www.anthroencyclopedia.com/entry/political-ecology>>

within a broader nature, it could be argued that this wouldn't be social ecology. Or perhaps it could be social ecology but would be argued to be not very good social ecology!

I will leave these as open questions, because whether 'social ecology' can be an umbrella structural term that could include different approaches is something of an academic question.

While Bookchin highlighted the need for a social ecology, or socio-ecological thinking (Note: use my language to help clarify), he was then the main person thinking about social ecology such that the term has become synonymous with his thinking. Of course, there are many other social ecologists - and I consider myself one - but this would be in the way that Marxists are people who follow Marx (or as a category of ideas which can be traced back to Marxist thinking even if they have forked off in some way). Social Ecology is synonymous with Bookchin's thought. It is for this reason that I am using the phrase 'socio-ecological', to use the same conceptual framework while avoiding using a term so closely associated with Bookchin.

Note: consider whether to capitalise 'Social Ecology'

Narrow and Broad Social Ecology

Either way, this wider question is an academic one, because in my work I am specifically drawing on Bookchin's social ecology.

Yet within Bookchin's work, there is still a distinction to be made between 'narrow' and 'broad' social ecology. This is a distinction I am making, not something Bookchin explicitly makes. The purpose is both to clarify Bookchin's work and to tease apart which things I am taking from Bookchin to be foundational in my project and which things I see as political commitments beyond my legal theory.

As stated above, Bookchin's work includes an analysis of existing problems in society; a critique of existing philosophy (or more generally, conceptual thinking); a conceptual framework for thinking about these issues; a normative positive vision for society; and political strategy for how we get there. I want to specifically take the conceptual framework and the critique of existing philosophy, while not taking the political analysis, positive social vision and political strategy.

Note: The one complication, which I will resolve in the future, is around the extent to which being pro- freedom and anti-oppression are in my legal theory - Nedelsky's is relatively value neutral. Is mine?

I will therefore delineate these between 'narrow' and 'broad' Social Ecology. As a term, it contains a range of scopes of meaning, from the (literal) understanding of society and ecology through to the full political project which Bookchin roots in this. To be clear, this is a distinction which I am creating, using 'narrow social ecology' as shorthand for the philosophy of nature and conceptual framework of Bookchin's which I am using, and am not saying this is a normal way of using the term.

To show that this variety of uses exists:

For example, Bookchin's use:

"Social ecology is an appeal not only for moral regeneration but, and above all, for social reconstruction along ecological lines."¹⁰⁰

And a one-line summary by a commentator:

"The basic promise of social ecology is to re-harmonize the relationship between society and nature, and to create a rational, ecological society."¹⁰¹

This usage is one of many examples of the broad use of the term. The re-harmonisation described is both philosophical and social, a conceptual foundation and a political project. This passage from Janet Biehl from the introduction of *The Murray Bookchin Reader*, who worked closely with Bookchin, shows this tension:

"Social ecology, drawing on multiple domains of knowledge, traces the roots of the ecological crisis to dislocations in society. As Bookchin put it in "Ecology and Revolutionary Thought": "The imbalances man has produced in the natural world are caused by the imbalances he has produced in the social world." This inextricable relation between society and ecology remains a pillar of social ecology.

But social ecology has not only a critical dimension but a reconstructive one as well. Since the causes of the ecological crisis are social in nature, we can avert the present danger of ecological disaster only by fundamentally transforming the present society into a rational and ecological one."¹⁰²

Biehl is describing how there is both a 'critical' dimension and a 'reconstructive' one — the two-sided nature of much (but not all) critical theory. We might be tempted to understand the first paragraph, the 'critical' dimension, as being 'narrow' Social Ecology, while the second one, the 'reconstructive' dimension of transforming society, as being 'broad' social ecology. Yet this is not what I mean.

The distinction which I wish to make is that 'narrow' social ecology is the conceptual framework for understanding the relationship between society and ecology, humans and nature, whereas the 'broad' social ecology includes Bookchin's political project of what to do about this. To use book titles, more the *Philosophy of Social Ecology* than *Remaking Society* and *Towards an Ecological Society*. The distinction is between Social Ecology and Communalism - the title of his 2006 book, which seems to use 'social ecology' in the narrower meaning. Bookchin uses terms for his political project which are not social ecology: initially he talks of 'post-scarcity anarchism' (1971 book title), then of 'libertarian municipalism' (eg in his 1990 book *Remaking Society*), then, later, of 'communalism' (as he also notably dropped the term anarchist due to both its baggage and the difference between his thinking and differences with the dominant strain of anarchism).

¹⁰⁰ Murray Bookchin, 'What Is Social Ecology' in *Social Ecology and Communism* (2006), introductory section.

¹⁰¹ Eirik Eiglad, 'An Introduction to Social Ecology and Communalism' in Bookchin, *Social Ecology and Communism* (2006).

¹⁰² Murray Bookchin and Janet Biehl, *The Murray Bookchin Reader* (Black Rose Books 1999), introductory section.

The distinction could, for example, be taken from the contents page of Bookchin's 1990 book *Remaking Society*, which he describes as "a compact book that would dearly summarize my views on "remaking society" from an ecological view" point. The first chapter is entitled 'Society and Ecology' with section headings 'The Relationship of Society to Nature' and 'Social Ecology'. The subsequent chapters are on the topics of hierarchies, history, freedom, the revolutionary project and 'From Here To There'. Roughly speaking, the 'narrow social ecology' which I am using as my foundation is the theme of this first chapter, not the rest.

Can this separation be made? I'm not entirely sure. I think it is possible to take the conceptual foundations of a project without taking the spires that the thinker builds on those foundations. Ultimately, though, this question becomes less about whether the conceptual foundations of Bookchin's work can be taken and used while leaving his political project behind, and more about whether any neutral' positivist project or a theory of law which is not wedded to a political theory.

To put things otherwise: my legal theory project here is not necessarily to take a social ecology project to law, but rather to develop a socio-ecologically holistic approach to legal theory. My project is distinct from that of Bookchin's. My project needs a conceptual foundation, a theory of nature and society, and Bookchin's is the foundation I use from which to think about law.

Narrow Social Ecology (My Main Substantive Foundation)

"What is nature? What is humanity's place in nature? And what is the relationship of society to the natural world? In an era of ecological breakdown, answering these questions has become of momentous importance for our everyday lives and for the future that we and other life- forms face."

¹⁰³

The core of the framework of social ecology is the answer to these questions, a conceptualisation of nature and society as within nature. The short of it is that nature is everything, the world is ecological, and society (/societies) has developed within this world.

The main ways of understanding the world - in Western societies, common to the judeo-christian tradition, enlightenment science, liberalist political theory, marxism and capitalist economics - is the idea of humans as separate from nature (and superior to it). This has perpetuated a situation in which Western societies extract 'natural resources' from the natural world and give pollution in various forms back into it. This mode of relating to the natural world is bad both because it harms and degrades things which are valuable in themselves (whether we place that value in sentient animals, various living beings, or an ecological order which deserves to develop in its own way), and because it undermines the conditions for human life and flourishing. Strikingly, this dualistic way of thinking blinded us to the reality that we live in an ecological world and various ecological relations are important to us. A quintessential excellent example of this is in the domain of human rights: the original treaties have only the barest traces of the notion that humans live an ecological life, and human rights theorists have no mention of this either. It is only from the second half of the 2010s that it began to be acknowledged that the right to a healthy environment is or should be recognised as a human right, and human rights theory is yet to go through the necessary transformation. Sadly, this

¹⁰³ Bookchin (n 1) 10.

change has not happened because the warning signs (such as from scientists) or theoretical arguments (such as from the environmental movement) were won, but because there are finally social effects on people with power such that it can no longer be denied.

So, the essential conceptual critique that social ecology makes is of this dualistic way of thinking...

“But social ecology provides more than a critique of the split between humanity and nature; it also poses the need to heal them.”¹⁰⁴

... and its essence is the conception of humanity within nature, of social ecology. (Note: move this part elsewhere, maybe the latter section) Bookchin is critical of other approaches, most notably deep ecology. This is particularly notable here because lots of Western Earth Jurisprudence is based on deep ecology thinking, though also being inspired by indigenous cosmologies which are socio-ecologically holistic.

“attempts to bridge the gulf between the natural and social worlds that are premised on a mechanical dualism between nature and society can indirectly preserve this dualism even as they seek to overcome it”¹⁰⁵

Perhaps this paragraph covers the essence of Social Ecology in the narrow sense:

“The fact that first and second nature exist and can never be dualized into “parallels” or simplistically reduced to each other accounts, in great part, for my phrase social ecology. Additionally, social ecology has the special meaning that the ecological crisis that beleaguers us stems from a social crisis, a crisis that the crude biologism of “deep ecology” generally ignores. Still further, that the resolution of this social crisis can only be achieved by reorganizing society along rational lines, imbued with an ecological philosophy and sensibility.”¹⁰⁶

What is Nature?

Defining nature is difficult. As Bookchin says,

“The fact is that wide philosophical differences have existed for centuries in the West over the very definition of the word nature. These differences remain unresolved to this day, even as nature is making headlines in environmental issues that are of enormous importance for the future of nearly all life-forms.”¹⁰⁷

It's a word that doesn't have a difference in usage in everyday communication, but does contain differences with the ideology that underlies them. Bookchin's approach is coming from the fringe against the mainstream, and although it might initially seem like including humans within nature isn't that big a deal - it is scientifically obvious - it does turn things on their head. “At first glance, everybody “knows” what nature is. It is that which is all around us - trees, animals, rocks, and the like. It is that which “humanity” is destroying and

¹⁰⁴ Bookchin (n 89) 21.

¹⁰⁵ Bookchin (n 1)) 43.

¹⁰⁶ Bookchin (n 1) 66.

¹⁰⁷ Bookchin (n 1) 10.

coating with petroleum. But such prima facie definitions fall apart when we examine them with some care. If nature is indeed what is all around us, we may reasonably ask, then is a carefully manicured suburban lawn not nature? Is the split-level house it surrounds not nature? Are its furnishings not natural?" Today, this sort of question is likely to elicit a heated avowal that only "wild," "primordial," or even nonhuman nature is authentically "natural."

This is the 'romantic' view of nature as the unspoiled wilderness that is 'out there'. This has had a cultural resurgence over the last fifteen years, in my anecdotal experience. Whereas people used to say they like 'the outdoors', now people say they like 'being in nature'. Groups I am in will talk about spending time 'in nature' to recover, and sometimes we are asked about a recent 'nature moment' we had.

We know that it is 'bad' when a forest is destroyed or an oil spill causes damage and harm, and it is easy to attach this 'bad' feeling to it being against nature. Yet, this disguises a poor conception of nature. If only that which is 'wild', with humans excluded from it, is nature, then there is no way for humans to live in harmony with nature. Following this dualistic logic, the 'solutions' are either for humans to be eradicated, or for a division between human areas and non-human areas which has some sort of 'fair balance'. Neither of these are appealing pathways, and the latter also runs into difficulty around the reality that the humans in their segment are still part of the same global ecological systems (such as the climate and freshwater) and still need a certain environment to live (such as food).

"Defining nature becomes an even more complex task when we include the human species as part of it. Is human society with its ensemble of technologies and artifacts--not to speak of such ineffable features as its conflicting social interests and institutions--any less part of nature than nonhuman animals? And if human beings are part of nature, are they merely one life-form among many others, or are they unique in ways that place major responsibilities on them with respect to the rest of the world of life, responsibilities that no other species shares or is even capable of sharing?"

Recognising humans as part of nature makes it harder to define. If humans are part of nature, then what is 'unnatural' about our colonisation of the planet and destruction of other life. Do not all beings seek to take as much as they can to reproduce and maximise our ability to live? Humans stand apart from other species because through our intelligence we have developed technologies which mean that we have a massive impact on nature as a whole, as well as an awareness of what we are doing. Of course, it may be that nothing is unnatural about it but it is bad for other reasons - that we recognise it as *wrong* and assign that wrongness to the idea of being 'unnatural', with an idea that 'natural' is inherently good. Before resolving this question, let's move onto how Bookchin does define nature.

"Nature properly encompasses everything around us, from the organic beings that we normally designate as "natural" to the lifeless moon that appears on relatively cloudless nights — that is, the totality of Being." ¹⁰⁸

"Nature is not simply the landscape we see from behind a picture window, in a moment disconnected from those that preceded and will follow it; nor is it a vista from a lofty mountain peak (as I point out in my essay "Thinking Ecologically," also herein). Nature is certainly all of these things

¹⁰⁸ Bookchin (n 1) 5.

— but it is significantly more. Biological nature is above all the cumulative evolution of ever-differentiating and increasingly complex life-forms with a vibrant and interactive inorganic world.”

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So... this recognises nature as everything, material and immaterial. But, crucially, it isn't simply the collection of everything: it is the relations and interactions between them and the dynamic process of it. Nature is alive, not simply materials.

In this approach, it is not necessarily 'not natural' for humans to destroy mountains to remove fuel from the ground, to destroy habitats and use land for our purposes at the cost of many other living beings who would have liked to be in those places. It is flawed to take such an idyllic or romantic view of nature - it typically eliminates humans, and it can often be anthropocentric, and it just doesn't make good philosophical sense. Instead, the thing we recognise as 'unnatural' because it is a bad developmental pathway - it is a less well realised nature. Although there can be gains in terms of human technological evolution - though there are not always gains as such - there is a loss for other life-forms and the possible developments that may have continued in nature had human intervention not occurred. (It can also be morally or ethically bad because of harms done to things which have moral value, separate to the question of whether it is or is *not* natural.) Strictly speaking, it is not the case that they are not natural, but that they are much further away from what nature could be. This ties into Bookchin's idea of an ecological civilisation as being a transcendence, or synthesis, of the tension between what he terms 'first nature' and 'second nature' (human societies). Bookchin terms this idea 'dialectical naturalism', which we will come to next. I am staying out of the weeds of whether for certain human technological developments, such as the industrial revolution and modern technology that can result from this, it was necessary for certain destructions of nature and human exploitation to have happened, save only to say that it seems silly to suggest there was only one possible development pathway.

Note: integrate the idea of variety and diversity and that *being is becoming*.

Bookchin also cautions that the term 'nature' is sufficiently confusing that it should be used in a qualified manner:

“However, if we are to use the word Nature in any more specific sense, we should use an adjective before it to describe what aspect of “nature” we are talking about — something that I often did not do in these essays, owing to the time period in which they were written.”¹¹⁰

This is good advice. Any term with murkiness or ideological baggage can obfuscate and confuse more than it elucidates, and 'nature' is certainly such a term.

The Relationship Between Humans and Nature

“What is nature? What is humanity's place in nature? And what is the relationship of society to the natural world?”¹¹¹

¹⁰⁹ Bookchin (n 1) 23.

¹¹⁰ Bookchin (n 1) 5.

¹¹¹ Bookchin (n 1) 10.

Having covered how we understand nature, let's now turn to how humans fit within it. Bookchin rightly describes this as one of the foundational questions, and this relationship is indeed at the root of how we understand humans and the natural world in general, fundamental to society, ethics, and law.

Bookchin rejects the dualism which separates humans and nature, yet at the same time rejects a monism that flattens humans into simply being part of nature. (This latter point is usually part of a critique aimed at deep ecologists and similar, whose approach of 'biocentrism' Bookchin takes issue with.) Instead, social ecology is a holistic approach which recognises humans as part of nature as a whole, but with particularities due to the complexity and significance of our social orders:

"social evolution is grounded in, indeed phases out of, organic evolution, it is also profoundly different from organic evolution" ¹¹²

The approach to society and nature advanced by social ecology may seem more intellectually demanding, but it avoids the simplicities of dualism and the crudities of reductionism. Social ecology tries to show how nature slowly phases into society without ignoring the differences between society and nature on the one hand, as well as the extent to which they merge with each other on the other. ¹¹³

Bookchin typically uses the terms 'first nature' and 'second nature', which map onto the typical idea of "nature" and "society". He prefers this terminology because using "nature" to mean non-human nature misses the point; and because it contains in it the idea that human social orders are within and emerged from wider 'nature'. 'Second nature' is that which is particular to human collectives, ie, culture, social norms, social structures, and so on. This terminology is used by Marx (I think) but goes back even further, with Bookchin referencing Cicero at one point. ¹¹⁴

"Social ecology calls upon us to see that nature and society are interlinked by evolution into one nature that consists of two differentiations: first or biotic nature, and second or human nature." ¹¹⁵

Human beings always remain rooted in their biological evolutionary history, which we may call "first Nature," but they produce a characteristically human social nature of their own which we may call "second nature." ¹¹⁶

The reminder that humans evolved and developed out of first nature is, on the surface, obvious and may seem banal. But at a deeper level, it makes obvious that there is and never was a separation of humans from the rest of nature. This conceptual separation, this worldview, which is present in all different strains of social thought (and therefore also legal theory), is fundamentally flawed. Humans were not created by a

¹¹² Bookchin (n 1) 24.

¹¹³ Murray Bookchin, 'Society and Ecology' essay 9

<<https://theanarchistlibrary.org/library/murray-bookchin-society-and-ecology>> accessed 11 January 2026

¹¹⁴ Murray Bookchin, 'Society and Ecology' essay 7

<<https://theanarchistlibrary.org/library/murray-bookchin-society-and-ecology>> accessed 11 January 2026

¹¹⁵ Murray Bookchin, 'What Is Social Ecology?, Nature and Society Section' (*The Anarchist Library* 1993)

<<https://theanarchistlibrary.org/library/murray-bookchin-what-is-social-ecology>>

¹¹⁶ Bookchin (n 115)

metaphysical entity as separate from other animals, and nor have our cognitive abilities and technological development mean that we have transcended the reality of living as part of a natural world. Perhaps, if we manage to plug our brains directly into a digital matrix or succeed in establishing a space colony on another planet which has no existing life to speak of, this may happen (though it seems unlikely these would manage to be a closed system aside from solar power). Save that eventuality, the reality we must recognise is that we live in an ecological world.

We are biological animals with hunger, emotional responses, temperatures, and so on, even though since the Enlightenment, and thinkers such as Descartes and Kant, we think of ourselves primarily as rational beings with our minds and souls distinct from the physical world. It should not have taken various ecological crises and natural disasters to make this problem mainstream — and of course counter-cultural thinkers and practices have always been talking about embodiment and relationships.

“...we never cease to be mammals who still have primal natural urges, but we institutionalize these urges and their satisfaction in a wide variety of social forms. Hence, the social and the natural continually permeate each other in the most ordinary activities of daily life without losing their identity in a shared process of interaction, indeed, of interactivity.”¹¹⁷

This is, of course, not only as individuals. We are not individuals in an ecological world, but individuals entangled in a socio-ecological world. We live in communities, cultures and societies. These should not be flattened to some abstracted homogenised theoretical idea, but understood in their socio-historical variety:

“...social ecology is also obliged to show how society, too, undergoes differentiation and elaboration. In doing so, social ecology must examine those junctures in social evolution where splits occurred which slowly brought society into opposition to the natural world.”¹¹⁸

“...we are not any less animals than other mammals, but we are more than herds that browse on the African plains. The way in which we are more — namely, the kinds of societies that we form and how we are divided against each other into hierarchies and classes — profoundly affects our behaviour and our effects on the natural world.”¹¹⁹

3b. Interconnected Law, in Specific Areas

Interconnected Law’s socio-ecological legal paradigm can be applied in myriad policy areas and legal domains. The approach could be used by anyone, including activists, policy makers, campaigners, politicians, and other change-seekers in any area. The legal paradigm is a neutral framework, how law works and how to better use law, with their normative values and goals.

¹¹⁷Bookchin (n 113)

¹¹⁸ Murray Bookchin, *Remaking Society* (South End Books 1990) 20
<<https://theanarchistlibrary.org/library/murray-bookchin-remaking-society>>

¹¹⁹ Murray Bookchin, ‘Society and Ecology’ essay 5
<<https://theanarchistlibrary.org/library/murray-bookchin-society-and-ecology>> accessed 11 January 2026

Note: the following text was originally published in a blog for Open Democracy ¹²⁰ as this part of the schema was relatively less developed in Alex's draft PhD texts

What Might Interconnected Law Look Like?

Interconnected Law is still in its early stage, existing primarily as a conceptualisation of law's role in our society and how it should be instead. While it is not a detailed blueprint, it will be helpful to share a few sketches of how things might be in a legal system based on this paradigm.

The core of the interconnected approach to law is seeing the interconnected web of relations that we live in. Instead of focusing on abstracted individuals, law should focus on the relationships that are the context and conditions within which individuals act. The aim is not to abolish individual rights, but to contextualise them in this relational web and have that be the focus instead.

For any particular domain, this means understanding the current conditions and relations, mapping out how they should be transformed to realise just, balanced and harmonious relationships, and finding how law can be part of this. These transformations will usually also require changes to political power, social relations and cultural norms, instead of a simple legal change, but we should look at law as both a catalyst for changing this and something which itself must be changed as part of this shift.

In general, law's goal should be looking to improve the web of relations we live in to realise whatever is trying to be realised, instead of trying to achieve this via individual rights.

Relational Values

When we want to realise freedom, for example, we should be looking to create and cultivate relations that empower people and foster freedom. Freedom should be talked about in terms of conditions and relations of freedom, within which individual people are able to be free, instead of trying to crudely manifest freedom in an individualistic way. In some ways, this is the legal parallel of focusing on public infrastructure instead of private luxuries concentrated in the hands of a minority.

Similarly, sustainability is a relational value: when we talk about ecological sustainability, that is a relational question between actors and Nature, whether it's about a particular ecosystem or a planetary system. Sustainability must be addressed at all levels: individuals, corporations, geographic areas, communities, nations and economic systems. Looking only at individual activity without a systemic approach is doomed to fail, as is only setting top-down 'legally binding' targets and duties on nation states or governments.

¹²⁰ May (n 22)

Typically, liberal rights give power without any responsibility: by default there is freedom unless there is a legal limit. Property rights, for example, give an owner total control over property - whether that is a house, a forest or a large amount of money - without any corresponding obligation or responsibility. As well as the legal power to do as they wish, this means that the idea that a person should have total control over something without any social or ecological responsibility is reinforced and reproduced.

Property Law

For property law, an interconnected approach would be to find the relational context of the property and to see what it would mean for these relationships to be just. For many things, such as ecosystems, ownership would be transformed to something more akin to 'stewardship', with responsibilities attached to the power of ownership. Ownership of land which contains a habitat could have the legal responsibility to ensure that ecological health is maintained, for example. Perhaps someone who owns a house could have a responsibility to the local community and society that the house be used in the public interest, which could be determined by a democratically-created policy similar to a council's housing strategy.

This might require a landlord to rent to a family instead of converting their property into flats to rent to 'young professionals', or it could mean that somebody has to sell their second home to somebody in need of a first home. The aim of Interconnected Law is not a totalising one, that every relationship should be controlled by law.

It should first be recognised that law is already involved in the relationships that make up our society and our world, though there are still ways in which Interconnected Law does seek to expand law's domain. The vision is instead for law to be involved in the manner of a gardener or a mentor: it intervenes when intervention is necessary, tries to set something on the right path, and then steps back. Law should be used with a goal in mind, but once the work is done it should step back and shed its power, aiming towards a utopia where it is not necessary.

Ecological Law

The ecological part of an interconnected approach to law has been fairly well mapped out in Earth Jurisprudence, one of the works of scholarship which Interconnected Law is based on. To summarise the coverage of EJ in section 3a - We should understand that we are part of the community of all living things and natural systems. Law currently facilitates our domination and destruction of Nature, and our approach to environmental law is a piecemeal afterthought which can do little to actually achieve sustainability.

Earth Jurisprudence gives a vision for how law could be part of creating a harmonious relationship with the rest of Nature, preventing further destruction, restoring damaged ecosystems and working to harmonious relationships with Nature in which we respect it properly and receive what we need to survive, whether that's fresh water, food to wear, places to live or temperatures that we can live in. Part of this vision is that Nature should be able to play an equal role in our legal system, and have legal rights as part of this.

Whereas environmental law usually protects the environment indirectly, by limiting human activity, rights for Nature would allow Nature to participate in our legal system and defend itself, via human intermediaries and representatives. In the interconnected web of life and systems, rights would have to exist at all levels. While individual animals should have rights, more important would be collective animal rights, the rights of ecosystems, and the rights of planetary systems.

One example of this could be to give the climate rights to defend itself. The current law around the climate is strange, with international targets or obligations for states, and domestic government regulation over particular economic activity. In this framework, climate litigation has to be brought innovatively through mechanisms like constitutional duties to future generations. Instead, situating climate law in the relationship with the climate itself would be a better framework to challenge unsustainable emissions and pollutions directly, at every level.

Rights of Nature is not just an abstract idea - it has been implemented in a handful of cases around the world. Ecuador introduced the idea into its constitution and Bolivia introduced legislation to give Nature rights, an idea that fits well with their indigenous people's ideas of Pachamama. In New Zealand, a particular river system was given legal personhood, and in Colombia and India courts have developed rights for particular ecosystems. In the USA, CELDF have been working on rights of Nature at local levels.

The end goal is not simply for Nature to have rights - this is just a necessary part of transforming law to look at the relationships. As rights of Nature would frequently conflict with existing rights and human rights, law would be about the relationship between rights-bearers. If Nature had rights, it could protect itself from various human (or corporate) activities, make specific claims against communities and individuals, and challenge our ideas of economic growth and development. Beyond just protection, it could also demand things from us, such as restoration, care and nurture.

As with the general Interconnected approach, the legal system will be much more about the relationships between rights holders than about rights themselves. As a reminder, the idea is not that a change in our legal system would, of itself, be enough to make the necessary change. It would be an easy change in name only, as has been the case with many legal declarations. Legal transformation will only realise justice with broader political change, but the broader political change requires legal transformation as part of it.

Corporate Law

Corporate law has the same fundamental problem as our general approach to liberty: it creates power without responsibilities. Regulation of corporate activity currently has piecemeal limitations around the edges of what corporations do, such as specific pollution control regimes or a requirement to publish a statement about addressing modern slavery. An interconnected approach would be more transformative, seeking to change this fundamental dynamic. Corporate law could be approached by mapping out the different relationships and impacts that corporations have and seeing what legal change would be needed for these relationships to be just. So far, there does not seem to have been much in the way of radical legal thinking about corporations. The only things I have come across are the Sustainable Companies Project, which looked at integrating environmental concerns into corporate decision-making, and the Treaty Alliance, which rightly argues that the current Guiding Principles on Business and Human Rights do not go far enough in addressing corporate human rights abuses.

Current UK corporate law gives directors of a company the legal duty of promoting the success of the company for the benefit of its shareholders. Though this is broader than the common myth that directors are legally required to 'maximise shareholder value', it means that any ideas of sustainability are more of an afterthought. The idea of a 'triple bottom line', where a company measures social and environmental performance as well as financial performance, could become a legal framework instead of an approach which corporations can use voluntarily. This would turn the different impacts that businesses can have into legal duties that would be parameters for legitimate business activity.

A company could be required to be beneficial to the society it is in, and to communities impacted by its operations. It could be required to be responsible for respecting and realising human rights in its supply chain; being fair to its employees; and having a positive impact on other aspects of Nature. This would be comparable to the 'duty of care' that exists in tort law, but as well as being broader for who is owed such a duty, it would also go beyond negative responsibility to avoid or compensate for certain harms and includes positive responsibilities too.

Some of these obligations should be easy to meet: companies should be beneficial to societies and communities through the goods or service they provide, employing people and paying tax. When there is instead poor employment practices, shoddy products and tax avoidance, these are not just bad actions by a company, but relational injustices which should be addressed. This approach might seem onerous - but then why should companies be able to make a profit while destroying the natural world?

Criminal Law

Criminal law is an area which already has ideas in the 'relational' or 'interconnected' paradigm which could be brought into the Interconnected Law approach. The liberal approach to crime sees only an individual who has committed a bad act and who needs to be punished and rehabilitated. It does not consider any relational context, and therefore focuses on policing crime in an abstracted way. Instead, we should situate the 'crime', the perpetrator and the harm caused in its relational context.

Looking at socio-economic causes of crime and the 'public health' approach is part of a relational approach to the context of why people commit crimes. The 'public health' description is often described as 'treating violence like an infectious disease', but it could be described as being about circumstances and relationships which cause or reproduce violence. This looks at changing outcomes instead of catching criminals, and makes more obvious behaviours which should be dealt with by means other than criminalisation, such as recreational drug use and rough sleeping.

Grounding the discussion of crime in interconnection helps remind us to focus on what we are trying to achieve. We should not be aiming to catch criminals, or even for there to be an absence of crime, but to realise security and wellbeing. These are values which are best understood and realised relationally: security is not about protecting 'good people' from 'bad people' but about relationships of security which provide conditions in which people are safe.

Restorative justice and transformative justice are both relational approaches to criminal justice, shifting the focus away from an individual's actions to instead look at relationships. Restorative justice focuses on the

harm caused by particular behaviour(s) and tries to repair this damage, involving the perpetrator in a process which hopes to be positive for them too, as well as restoring the relationships with and in the community. Transformative justice is about changing the conditions which cause crime, rooted in transforming community infrastructure and relations into ones which produce safety and care instead of harm and isolation, and seeking to avoid reproducing violence and harm in this response. These ideas are an example of the sorts of ideas which already exist in the relational or interconnected paradigm, which can be brought into the overall Interconnected Law approach.

The Legal Process

In a transformed legal system, the legal process would itself also be different. From the current vantage point, I only have a vague sense of how this might be. It is already the case that law often seeks to resolve conflicts without the need for a judge to adjudicate: many people will follow the law to avoid any involvement with the law, and legal disputes are frequently resolved informally, with pre-action letters, through litigation and settlement and arbitration, and it is only when this fails that something ends up in court. This could be taken further, though, as the legal process itself should be part of the endeavour of realising better relationships.

Instead of pitting people against one another as adversaries who are encouraged to care only about their own best interests, law could work to encourage people to cooperate in resolving conflicts. This could include using community engagement in early stages of dispute resolution, seeing if a dispute can be resolved by a mediator or community institution, and having decisions approved or made by citizens assemblies and juries where possible. It would also look more towards proactive transformations than simply dispute resolution. The recent Citizens Assembly on achieving net-zero which was established by Parliament is just the beginning of what this might look like in terms of policy-making.

Conclusion

Interconnected Law is a vision for how our legal systems could be, and for how law itself should be transformed as part of addressing injustices in our current society and around the world. The core critique is that law should look not at individuals and individual freedom but at the network of relationships we live in, and work to make these relations ones which nurture and empower instead of which harm, limit or exploit.

The argument is certainly not that law should be the main way we try to change society. It is that law must itself be part of the broader political and social transformation we need, and a part which has been somewhat overlooked so far. I hope that the Interconnected Law approach will be useful to a range of social movements and political tendencies as we seek to realise better worlds. This is a radical approach to law, and I anticipate that many will respond by saying 'it's a nice idea, but that isn't what law is'. The response to that is: this is what law could be, and radical is what is needed.

Editor's note

This Archive of Alex May's PhD Draft Notes is the final part of a 3-piece release of updated materials on Interconnected Law. These materials were prepared by research assistant Lucy Gavaghan working with a mix of Alex's past publications, draft writing, presentations, and the guide schema. The impetus for the release, and the requirement for assistance, stems from Alex's medical retirement. In his own words:

'Two years ago, the mild and manageable illness I had of post-acute covid syndrome (including ME/CFS) became severe and I became almost totally incapacitated. Since then, I've been working in small amounts as I've been able to tie off and publish my two main research projects: my general legal theory work on 'Interconnected Law' and my work on Rights of Nature. While they aren't as developed as I had been working towards, I'm glad that they are now out in the world in some form, and I hope they will be useful. Publishing these pieces of work completes a path I've been following since university.'

More detail on the newly released materials:

- ★ [An Overview of Interconnected Law](#) follows the schema of Interconnected Law produced by Alex May, to break down the approach's parts (Worldview and Paradigm, Descriptive Legal Theory, and Normative Legal Theory). The article details how they connect and gives some sketches of possible applications. Engagement time is approximately 20 - 30 minutes.
- ★ [A Very Short Introduction to Interconnected Law](#) is a condensed version of the overview, designed for a wide readership as a first point of contact with the approach, and to seed further reading. Engagement time is approximately 5 - 10 minutes.

Alex's note on the dissemination, and further development, of these materials:

'My own dissemination of this research will be very limited, so please do assist in sharing it around if you agree. Further, anyone who wishes to work with it is more than welcome to do so (with appropriate acknowledgement or credit), whether in blog posts, articles, chapters or in presentations. It is published under a Creative Commons licence.

Although a good recovery remains possible such that at some point I am able to do some work at this level again, and I hope for this, it is definitely not a certainty or expectation – and having missed at least three years I would no longer be current or at the cutting edge.

In love, rage, care and solidarity, Alex.'

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