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**NO SYSTEM BUT THE ECOSYSTEM: DISMANTLING
THE DOMINANT MODEL WITH ECOFEMINIST
LINGUISTICS**

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Extract

This paper employs an ecofeminist lens to analyse how the language used in multilateral environmental agreements reinforces traditional power structures. I then apply this framework of analysis to the Paris Agreement. The way our law is constructed affects the outcomes of the law. This is fundamental in environmental law because of the life-or-death consequences from Earth's degradation, loss of ecosystems, and biodiversity. International environmental law is not constructed neutrally and rationally. It is influenced by the societal norms inherent in law as an institution. This framework provides a deeper understanding of the power of language in multilateral environmental agreements from an ecofeminist perspective. It reveals how the dominant values of international environmental law, patriarchy, capitalism, and colonialism, are perpetuated, and maintained linguistically. These values are embedded in multilateral environmental agreements, which are currently insufficient to meet the needs of the climate crisis. This paper contrasts these values with ecofeminist values pertaining to interconnectedness, valuing the emotional and spiritual and taking responsibility. By applying this ecofeminist linguistics framework to the Paris Agreement, I demonstrate how the phrases 'natural resources', 'vulnerable', and 'threat of climate change' are problematic.

Keywords

"Ecofeminism", "linguistics", "Dominant Model", "multilateral environmental agreements", "MEAs", "This Paris Agreement", "climate derangement"

At this historical moment we may use law as a critical tool with which to dismantle the structure of capitalist patriarchy and at least construct a scaffolding upon which to hang the fabric of a healthier earth house.¹

— Chaone Mallory

He wahine he whenua i mate ai te tangata – without women and without land mankind would die.²

— Waerete Norman (*Ngāti Kuri, Ngāti Rehia*)

I Introduction*

The language of our law matters. Particularly in environmental law, where the consequences from Earth's degradation and loss of ecosystems and biodiversity are fatal. International environmental law can create equitable and life-saving outcomes for people and the Earth, but it is currently failing.³ This paper uses an ecofeminist lens to analyse whether the language used in multilateral environmental agreements (MEAs) reinforces or disrupts traditional power structures preventing the success of international environmental law. To achieve this, I create an ecofeminist framework for thinking about the language of MEAs. I then apply this framework to the Paris Agreement. The paper argues that MEAs, including the Paris Agreement, are not achieving their established goals.

Given that these goals are imperative to the survival of humans and the Earth, we need to understand why. This paper proposes that international environmental law needs to

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1 Chaone Mallory "Toward an Ecofeminist Environmental Jurisprudence: Nature, Law, and Gender" (MA Thesis, University of North Texas, 1999) at 4.

2 Waerete Norman "He Aha Te Mea Nui?" Leonie Pihama and others (eds) in *Mana Wahine Reader A Collection of Writings 1987-1998 Volume 1* (Te Kotahi Research Institute, Hamilton, Aotearoa/New Zealand, 2019) 13 at 18.

3 *Nationally Determined Contributions under the Paris Agreement* UN Doc FCCC/PA/CMA/2021/8 (17 September 2021); and "Climate Commitments Not On Track to Meet Paris Agreement Goals" as NDC Synthesis Report is Published" (26 February 2021) United Nations Climate Change < <https://unfccc.int/news/climate-commitments-not-on-track-to-meet-paris-agreement-goals-as-ndc-synthesis-report-is-published>>.

be ecocentric rather than anthropocentric. Ecofeminism, as an ecocentric approach, provides a valuable lens to reveal how the current system is not ecocentric. This framework will provide a deeper understanding of the power of language in MEAs and an avenue for dismantling the anthropocentric power structures disabling effective climate action.

The paper is structured as follows. Section II explains why this approach is necessary for the current ecological crisis and the definitions and justifications for the language I use throughout the paper. Section III explores the power of language in law and international environmental law. Section IV places ecofeminism within environmental jurisprudence and identifies the values underlying the dominant social paradigm in international law called the ‘Dominant Model’.⁴ Section IV then builds the framework for a feminist linguistics analysis of the Paris Agreement. Section V analyses the language used in the Paris Agreement using the framework developed in section IV. I assess ‘natural resources’, ‘vulnerable’, ‘threat of climate change’, and ‘Mother Earth’. Section VI then grapples with some of the criticisms of an ecofeminist approach, justifying why it is helpful and necessary in the current crisis.

II Justifying an Ecofeminist Approach

This paper adopts an interdisciplinary approach that is grounded in international environmental law. It is primarily concerned with how international environmental law affects the climate crisis and draws from linguistics, science, and politics. This approach, in itself, represents how the law does not exist in a silo. International environmental law is even more so. International environmental law is a complex field that is currently addressing a ‘super wicked’ problem.⁵ Therefore it does an injustice to academic attempts to identify problems and provide solutions without an interdisciplinary approach. The findings of academics and researchers in those fields enrich this analysis. Michelle Lazar, as a critical discourse analyst, notes that collaboration “is

4 Kate Wilkinson “Is This the Future We Want? An Ecofeminist Comment on the UN Conference on Sustainable Development Outcome Document” in Kim Rubenstein and Katharine G Young (eds) *The Public Law of Gender: From the Local to the Global* (Cambridge University Press, Cambridge, 2016) 538 at 552.

5 Jutta Brunnée “The Rule of International (Environmental) Law and Complex Problems” in Heike Krieger, Georg Nolte, and Andreas Zimmermann (eds) *The International Rule of Law: Rise or Decline?* (Oxford University Press, Oxford, 2019) 211 at 221.

necessary among... researchers from many other disciplines such as sociology, economics, anthropology, political science, and law” because only when “working together can parts of the complex problem be understood and considered interventions proposed”.⁶

The current outcomes from MEAs are not sufficient for long-lasting positive change to the Earth’s ability to sustain life.⁷ With this in mind, women, children, and Indigenous Peoples are among the worst affected groups from climate derangement. Activities that contribute to the climate crisis, including “[o]ver-extraction, deforestation and unsustainable consumption and production patterns can jeopardise women’s and girls’ food security, livelihoods and health, further exacerbating gender inequalities and discrimination.”⁸ This affects “[w]omen, in many guises, including as farmers, mothers, workers and members of indigenous communities.”⁹ They are “among the most seriously affected in social and economic terms by environmental degradation”.¹⁰ Employing an ecofeminist analysis will reveal how MEAs perpetuate power structures that contribute to this inequality.

MEAs are not constructed in a vacuum. It is not ‘states’ as agents, but individuals who represent those states and the institutions they are part of, constructing and writing MEAs. These agents are also subject to the internalised power structures of those institutions. Identifying these internalised power dynamics is essential because “the language and imagery of the law underscore its maleness”.¹¹

White feminist scholarship holds a vast array of differing opinions - it was only in 1993 at the Vienna World conference that equal rights for women became embedded in the

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- 6 Michelle M Lazar “Feminist Critical Discourse Analysis” in *The Handbook of Language, Gender, and Sexuality* Susan Ehrlich, Miriam Meyerhoff and Janet Holmes (eds) (2nd ed, Wiley Blackwell, 2017) 180 at 183.
 - 7 *UNEP Environmental Rule of Law: First Global Report* (2019) at viii.
 - 8 UN Women, UN Environment and UN Habitat *Report and Recommendation of the Expert Group Meeting on “Building sustainable and resilient societies through the gender-responsive implementation of the 2030 Agenda for Sustainable Development”* (June 2018) at 2.
 - 9 Karen Morrow “Ecofeminism and the Environment: International Law and Climate Change” in Margaret Davies and Vanessa E Munro (eds) *The Ashgate Research Companion to Feminist Legal Theory* (Routledge, New York, 2016) 377 at 376.
 - 10 Morrow, above n 9, at 376.
 - 11 Hilary Charlesworth “The Hidden Gender of International Law” (2002) 16(1) *Temple International & Comparative Law Journal* 93 at 96.

international community.¹² That is less than thirty years ago at the time of writing. While the mainstream hegemonic powers may respond to the feminist voice (with its many colours, identities, and experiences) “we get it”, “we hear you”,¹³ the power structures they set up are still embedded in our institutions. They are embedded in our norms and, more insidiously, ourselves in a continuous process of self-suppression. The Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) recognised in 1993 that “that violence against women “is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women.”¹⁴ However, ‘recognising’ is different to detangling, disintegrating, and reimagining those power relations. That is an ongoing mission. A mission that women must lead; while amplifying the voices of indigenous women, women of colour, queer women, and disabled women.

We live in the Anthropocene, a new era in scientific understanding of where “human beings are unique and have become a force of nature that is able to influence the geological development of the Earth system”.¹⁵ The Anthropocene necessitates confronting that “humans are now so fundamentally interfering with the biological, geological and chemical systems of our planet, that the effects of these interventions are going to be felt for centuries to come”.¹⁶ As humans have such control in shifting the natural processes on Earth, we must accept the responsibility with humility. It is not a question of how we use our power; but how we restore it to Earth. We must actively play a role in disempowering ourselves.

Given it has (only) been the last 5000 years of Earth’s history that the “male” has dominated the “female... [m]any ecofeminists believe the planet at this point needs

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- 12 Ratna Kapur “The Tragedy of Victimization Rhetoric: Resurrecting the ‘Native’ Subject in International/Post-Colonial Feminist Legal Politics” (2002) 15 *Harvard Human Rights Law Journal* 1 at 3.
- 13 Kate Ogg and Susan Harris Rimmer note that there have been suggestions that international lawyers “take a break from feminism” in *Research Handbook on Feminist Engagement with International Law* (Edward Elgar Publishing, Cheltenham (UK), 2019) 1 at 2.
- 14 Kapur, above n 12, at 3.
- 15 Peter D Burdon “Ecological law in the Anthropocene” (2020) 11 *Transnational Legal Theory* 33 at 34.
- 16 Emily Webster and Laura Mai “Transnational Environmental Law in the Anthropocene” (2020) 11 *Transnational Legal Theory* 1 at 2.

massive infusions of female energy to regain balance”.¹⁷ My paper hopes to contribute to this project. An ecofeminist approach tips the balance back toward “a profound societal re-ordering”, which would dismantle “the ideology and structures of patriarchy and the dualism on which it is founded” and replace them “with ideology and structures based on egalitarianism which can accommodate both non-gendered humanity and nature”.¹⁸

I have chosen to analyse the language used in the Paris Agreement as the agreement, which “represents a significant departure from the regulatory approach of the Kyoto Protocol and the beginning of a new phase in international climate politics”.¹⁹ Robert Falkner argues that the Paris Agreement promised “a more realistic path towards globally coordinated emissions reductions”.²⁰ However, as Adrian Macey points out, there are “many shortcomings in the text, which have been amply highlighted by commentators”, and it “was never a realistic hope that the result would ensure that global warming was limited to 2°”.²¹ Despite the many shortcomings that have been identified with the Paris Agreement, the scope of this paper will remain narrow on how particular language perpetuates and maintains the power structures of the dominant paradigms in international environmental law. The Climate Change Response Act 2002 incorporates the Paris Agreement into New Zealand’s domestic legislation.²² Therefore, the words used in the English version of the Paris Agreement directly bear on the consequences of the Act in Aotearoa and its effective or ineffective response to the climate crisis.

17 Cathleen McGuire and Colleen McGuire “What is Ecofeminism Anyway?” (2003) The Feminist eZine <www.feministezine.com/feminist/ecofeminism/What-is-Ecofeminism-Anyway.html>.

18 Morrow, above n 9, at 380.

19 Robert Falkner “The Paris Agreement and the New Logic of International Climate Politics” (2016) 92(5) *International Affairs* 1108 at 1118.

20 At 1119.

21 Adrian Macey “The Paris Climate Change Agreement text and contexts” (2016) 12(1) *Policy Quarterly* 77 at 78-79.

22 Climate Change Response Act 2002, Schedule 2A.

A *Definitions and Justifications*

This section provides brief justifications and definitions for the language I use throughout this paper.

(a) The personal voice

Radical feminist scholarship seeks to dismantle its existing structures, including male scholarship's objective and impartial voice. In this paper, I will follow on from the example set by Patricia Williams, and other feminist scholars, in placing themselves within their scholarly writing.²³ Subject positioning is crucial in Williams' legal analysis. When engaging in academic writing, "to adhere to the convention is to uphold a male standard of rationality that militates against women's being recognized as culturally legitimate sources of knowledge".²⁴ Fleischman noted, in 1998, increasing momentum in "professional women turning toward a kind of writing that acknowledges the person behind it, that articulates "the personal" and "the positional" together".²⁵ In this paper, I use the personal voice because "[t]his writing often has the effect of upsetting readers' expectations of professional discourse... a sign that the writing is working".²⁶

(b) An English analysis

This paper creates a framework to analyse international law from an ecofeminist linguistics perspective. The main instruments I focus on are multilateral environmental agreements. As we are assessing the power of language, it is important to limit the discussion to English. This paper only critiques and analyses the English version of the Paris Agreement. A body of thought in linguistics studies uses the concept of hegemony to show how British and American English have become the "common sense" language

23 Patricia J Williams "On Being the Object of Property" (1988) 14(1) *Signs* 5. See a more recent example of this in Ali Young and Scott Taylor "Organizing and managing ecofeminism" in Mary Phillips and Nick Rumens *Contemporary Perspectives on Ecofeminism* (Routledge, London, 2015) 210 at 211-212.

24 Suzanne Fleischman "Gender, the Personal, and the Voice of Scholarship: A Viewpoint" (1998) 23(4) *Signs* 975 at 989.

25 Fleischman, above n 24, at 991. Citations removed.

26 Fleischman, above n 24, at 991.

used, which is an exercise of power.²⁷ This is not the focus of my paper — I employ an English analysis merely because I am an English speaker. However, similar frameworks could be created to assess other languages from an ecofeminist perspective as it is primarily a values-based analysis. The language used is important because of the societal understandings and underpinnings — this could be extended into all other languages used in MEAs.

(c) Climate Derangement and the Crisis

I will not use the terms ‘climate change’ and ‘global warning’ in this paper. These terms remove the actor from the action. Ecosystems and life on Earth are being deranged and driven to extinction due to human activities. “Climate derangement” better represents the role human beings have played in this monumental change. The framing of an issue is essential. Frames enable us to communicate “why an issue might be a problem, who or what might be responsible for it, and what should be done about it.”²⁸ Importantly, framing something “links two concepts” and after this linkage, “the intended audience now accepts the concepts’ connection”.²⁹ Climate change does not go far enough to link extreme and unprecedented changes to Earth’s ecosystems and biodiversity to the anthropocentric behaviour of humans. Climate derangement better indicates that *something* is causing it, and *we* are responsible for doing something about it. As this paper explores and critiques specific phrases used in the Paris Agreement, the terminology used in the analysis must be intentional. The paper also refers to the ‘climate crisis’ and ‘environmental degradation’. We must remember at every moment that we are causing this derangement. *Change* is necessary and natural, but derangement is insanity.

(d) ‘The Dominant Model’

My paper frequently refers to the dominant value system that underpins international law and the Western frameworks of thinking present in these institutions. I refer to this

27 Mary Talbot, Karen Atkinson, and David Atkinson *Language and Power in the Modern World* (Edinburgh University Press, Edinburgh, 2003) at 2.

28 Matthew C Nisbet “Communicating Climate Change: Why Frames Matter for Public Engagement (2009) 51(2) *Environment: Science and Policy for Sustainable Development* 12 at 15.

29 Nisbet, above n 28, at 17.

value system as the ‘Dominant Model’.³⁰ The Dominant Model of Western rationality is based on dualism and promotes the ‘othering’ of groups to maintain and exert social power. It is the system that allows patriarchal values to continue influencing our society and institutions, and it is the basis upon which capitalism is built. The Dominant Model also reflects the values that contributed to colonisation and enable resistance to effective decolonisation (or re-indigenisation) of systems and ways of thinking. Radical feminism, including ecofeminism, seeks to dismantle the Dominant Model.

B Theoretical Backdrop: Ecofeminism

The landscape of feminist thought is vast and complex. It is non-homogenous and in constant evolution. No feminist can represent all feminist ideas and ideals, so this paper openly presents itself as one idea is feminism’s assemblage. This paper focuses on the values of ecofeminism. Which “is not simply a subset of feminism or ecology” but is more accurately described as “a meta-feminism... offering a distinct and broadened methodology of understanding the world”.³¹ Nature has been and continues to be dominated and exploited for human needs. The core concept of ecofeminism is that “the domination of women and domination of nature are fundamentally connected”.³² Ecofeminism goes further than feminist theory and “includes a prepatriarchal historical analysis, an embracement of spirituality, and a commitment to challenging racism, classism, imperialism, heterosexism, ageism, ableism, anthropocentrism (i.e., human supremacism), speciesism and other forms of oppression”.³³ While there is no one ‘ecofeminism’, as value-set it may better represent elements of oppression that certain variations of feminism fail to account for. Ecofeminism seeks to “to deconstruct human-centredness and interrogate structures of exploitation embedded within human society”.³⁴

I recognise that certain groups experience compounding effects of discrimination due to climate derangement. However, I am not an indigenous person or a woman of colour.

30 Wilkinson, above n 4, at 547. This framework of thinking has also been called the ‘dominant social paradigm’ in Wilkinson, above n 4, at 552.

31 McGuire and McGuire, above n 17.

32 McGuire and McGuire, above n 17.

33 McGuire and McGuire, above n 17.

34 Phillipa Norman “Surfacing the Silent Others: Women and the Environment” (2015) 19 NZ J Env’tl L 1 at 5.

Therefore, this paper attempts to provide an intersectional theoretical analysis that accounts for indigenous feminism and scholarship by women of colour. This paper draws from indigenous environmental and feminist scholarship because although indigenous environmental justice is not the same as ecofeminist environmental justice, there are multiple overlaps in the strive toward environmental justice. McGregor, Whitaker and Sritharan note that “[f]rom an indigenous point of view, environmental injustices, including the climate crisis, are therefore inevitably tied to, and symptomatic of, ongoing processes of colonialism, dispossession, capitalism, imperialism/globalization and patriarchy”.³⁵ Once again, these systems and structures are built into the Dominant Model referred to throughout this paper.

III The Power of Language

It is well established that language is powerful.³⁶ The power of words is relevant in multiple disciplines. This paper seeks to understand the context of the power of language in international environmental law and how MEAs are curated with influences of the power dynamics in the Dominant Model. Stating that law “is a construct of language...implies that language is that through which our claims to know reality can be stated and carried”.³⁷ This section will demonstrate the essential nature of understanding the power of language in MEA. It will firstly assess the power of language in critical language study. It then moves to the power of language in the legal discipline, specifically international environmental law.

35 Deborah McGregor, Steven Whitaker and Mahisha Sritharan “Indigenous Environmental Justice and Sustainability” (2020) 43 *Current Opinion in Environmental Sustainability* 35 at 36.

36 Norman Fairclough *Language and Power* (2nd ed, Routledge, New York 2013); Brigitte Nerlich, Nelya Koteyko and Brian Brown “Theory and Language of Climate Change Communication” (2010) 1 *WIREs Climate Change* 97; Kjersti Fløttum “Linguistic Analysis in Climate Change Communication” (31 August 2016) *Oxford Research Encyclopedia of Climate Science* <<https://oxfordre.com/climatescience/view/10.1093/acrefore/9780190228620.001.0001>>; and Timothy Reagan “The Explanatory Power of Critical Language Studies: Linguistics with an Attitude” (2006) 3(1) *Critical Inquiry in Language Studies* 1.

37 Mallory, above n 1, at 61.

A *Critical Language Studies*

Norman Fairclough claims that “[n]obody who has an interest in relations of power in modern society can afford to ignore language”.³⁸ Language is fundamental in creating political, social, and legal power. Not only is language our framework for understanding and communicating, but it “contributes to the domination of some people by others”.³⁹ Fairclough is a prominent researcher in critical language discourse (CLS). His book *Language and Power* founds and adopts a “critical language study” where “critical is used in the special sense of aiming to show up connections which may be hidden from people – such as the connections between language, power and ideology”.⁴⁰ Fairclough developed CLS to address the limitations in various other approaches to the study of language. CLS, therefore, incorporates elements of “linguistics, sociolinguistics, pragmatics, cognitive psychology and artificial intelligence, conversation and discourse analysis”.⁴¹ As the focus of this paper is the legal ramifications of the use of language and terminology, I also draw from legal linguistics studies. I will more generally refer to the analysis here as a critical ecofeminist linguistic analysis.

Linguistics studies each have diverse and intricate approaches. There are also multiple categories of analysis. This paper will not look into “grammatical structure to convey semantic information”,⁴² nor will it look at oral language use. The primary undertaking here is a critical analysis of words and short phrases used in the Paris Agreement and their context in international law. It assesses how they construct power dynamics from an ecofeminist perspective. Wodak views the “discursive construction of ‘us’ and ‘them’ as the basic fundamentals of discourses of identity and difference”.⁴³ This means explicitly paying attention to the way women and Nature are included in the process of writing and referred to in the language of MEAs.

38 Fairclough, above n, 36 at 3.

39 Fairclough, above n 36, at 3.

40 At 4. Original emphasis.

41 At 5.

42 Elizabeth Mertz “Legal Language: Pragmatics, Poetics, and Social Power” (1994) 23 Annual Review of Anthropology 435 at 438.

43 Ruth Wodak “Critical Discourse Analysis” in Clive Seale, Giampietro Gobo, Jaber F Gubrium and David Silverman (eds) *Qualitative Research Practice* (SAGE Publications, London, 2004) 186 at 195.

Michael Foucault's conceptualisation of how power is employed and exercised through language has been highly influential in this area of scholarship across disciplines.⁴⁴ Talbot, Atkinson and Atkinson recognise that in the modern world, language studies help us to "recognise that language use is not simply characterised by free, equal parties engaging in discourse on some sort of level playing field".⁴⁵ An ecofeminist approach to this study will help understand who is on the playing field and how they are engaging with other actors. To achieve this, Talbot, Atkinson and Atkinson find "it is necessary to go beyond the texts themselves and also take into account aspects of social conditions in which language is produced and interpreted".⁴⁶ As this study centralises an ecofeminist approach, these social conditions necessarily will concern how international environmental law under the Dominant Model conceptualise women, indigenous women, feminism, and the Earth.

Reagan contends that a study of language and awareness of its capabilities is essential to understanding the "social, political, economic, historical, and ideological contexts in which language is used, and in which language is metalinguistically and metacognitively understood".⁴⁷ Reagan provides a powerful example of critical discourse analysis conducted by Victor Klemperer in 1930-40s Germany.⁴⁸ Klemperer developed a research methodology that analysed state use of language as a political and ideological tool in Nazi Germany. "[C]omparable studies of state language use and misuse with respect to... policy in our own time and societies could also prove immensely empowering".⁴⁹ Although Reagan's paper is specifically concerned with the language of education or social policy, this contention can be extrapolated and applied to MEAs and the legal and environmental policy that results domestically in Aotearoa.

Feminist Critical Discourse Analysis is a subset of CLS.⁵⁰ It "examines the complex, subtle, and sometimes not so subtle ways in which... gendered assumptions and power asymmetries get discursively produced, sustained, negotiated, and contested in specific

44 See Talbot, Atkinson and Atkinson, above n 27, at 2; Lazar, above n 6, at 183; and Fairclough, above n 36, at 10.

45 Talbot, Atkinson and Atkinson, above n 27, at 4.

46 Talbot, Atkinson and Atkinson, above n 27, at 4.

47 Reagan, above n 36, at 3.

48 Reagan, above n, 36 at 4.

49 Reagan, above n 36, at 4.

50 Lazar, above n 6, at 182.

communities and discourse contexts”.⁵¹ Because I am applying an ecofeminist lens to this analysis, it is not necessary to remain strictly within Feminist Critical Discourse Analysis — but I have introduced it here to establish the existing methodologies that pertain to this area of analysis.

B Power of Language in Law

Linguistics studies and discourse analysis arguably take on further importance in the legal realm. “The law, among other things, is a narrative. As such, it can enhance or hinder the promotion of ecological and non-sexist ideas in society”.⁵² Law not only consists of unique language in and of itself with jargon and legalise that takes professional training to understand, but the Law is also made up solely of language and how lawyers, judges, policymakers and politicians interpret it. “Law is in a full sense a language, for it is a way of reading, writing and speaking and, in doing these things it is a way of maintaining a culture”.⁵³ Language study is “vital to develop a thorough analysis of the linguistic channeling and structuring of social life”.⁵⁴ Elizabeth Mertz points out that this is “particularly important in the domain of law, which is so often (particularly in Western capitalist societies) a key locus of institutionalized linguistic channeling of social power”.⁵⁵

Stephane Beaulac’ research analyses the use of the term ‘sovereignty’ in International Law. Beaulac contends that⁵⁶

it is not enough to condemn such words as ‘sovereignty’... or even ‘law’ and ‘international law’, as essentially illusion, fiction, or mythology, if we understand the profound significance of the products of our richly creative minds as they participate in the continuous self-constituting of human societies.

51 Lazar, above n 6, at 182.

52 Mallory, above n 1, at 57.

53 James Boyd White “Law as Language: Reading Law and Reading Literature” (1982) 60(3) Texas Law Review 415 at 415.

54 Mertz, above n 42, at 435.

55 Mertz, above n 42, at 435. Citations removed.

56 Stephane Beaulac and Philip Allott *Power of Language in the Making of International Law: The Word “Sovereignty” in Bodin and Vattel and the Myth of Westphalia* (Brill, Leiden, 2004) at viii. See also Hilary Charlesworth and Christine Chinkin *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, Manchester, 2000).

Beaulac here is instructing us not to simply denounce terms and the structures behind them as socially constructed. Instead, we are invited to go deeper into our contextual and social understandings of those terms and how we can create entire lexical worlds as human beings and human societies. As Schuppert argues, “there is no such pure observation of international reality as law-as-fact lawyers assume”.⁵⁷ If the Dominant Model, as a Western framework, functions as the norm through which “one perceives reality” then the Law (which perpetuates these frameworks) also limits how things can be challenged using the law.⁵⁸

C Language in International Law

In 1995, the United Nations held a conference in New York to celebrate the organisation’s fiftieth anniversary.⁵⁹ The conference brought together legal representatives from 125 countries to discuss international law and challenges for the international community. The name of the conference was ‘*International Law as a Language for International Relations*’. This title suggests that international law is an effective (if not the only) tool to foster positive international relations. The ability for international law to successfully promote peaceful relations and cooperation in the international community presupposes its inclusivity and applicability for nations, regions, and communities globally. International law is not representative of diverse opinions simply because 125 members states are present at a conference, “international law was, and still is, a project based on Western conceptions and categorizations of the world, inseparably connected with the history of European imperialism and of empire”.⁶⁰

Nevertheless, the crafting of international law has implications for domestic law and is interpreted directly by judges both internationally and domestically. Its content is determined by individual actors representing states, not states representing individuals.

57 Gunnar Folke Schuppert *A Global History of Ideas in the Language of Law* (Max Planck Institute for Legal History and Legal Theory, Germany, 2021) at 146-147.

58 Wilkinson, above n 4, at 545.

59 United Nations “International Law as a Language for International Relations” (Kluwer Law International, New York, 1996).

60 Marcus M Payk and Kim Christian Priemel “Introduction: Thinking Law, Talking Law, Doing Law: How Lawyers Craft(ed) the International Order” in Marcus M Payk and Kim Christian Priemel (eds) *Crafting the International Order: Practitioners and Practices of International Law since c.1800* (Oxford University Press, Oxford, 2021) 1 at 7-8.

Payk and Priemel note that “[h]ighlighting individual agency rather than focusing on abstract agents such as ‘states’ or ‘governments’” demonstrates how “all contributions share an interest in the very tangible actions of international politics’ foot soldiers.”⁶¹ These tangible actions are also driven by the political climate domestically (and internationally), including domestic political electoral cycles. Although the outcome of international negotiations and agreements may seem impartial, “law as social action is determined by its setting and situation at least as much as by its inner logic”.⁶²

When considering the impacts of international law on individuals, it is easier to think immediately of laws relating to armed conflict and human rights.⁶³ As Antonio Cassese, first President of the International Criminal Tribunal for the former Yugoslavia, noted, the human dimension in these areas of law is self-evident.⁶⁴ However, this human being’s survival creates this link between individuals and international environmental law.

Environmental law is unique and delicate. However, it is currently insufficient, as the law governing “the vital link between humans and the environment that supports human life and society, as well as life on the planet”.⁶⁵ How the law addresses the environment in international issues creates our relationship with the environment and situates us within nature. “[I]t also attempts to tell us of our relationship with other things, other processes, and about our scientific conception of nature, dialectically weaving a story in which we must then dwell”.⁶⁶ Due to the power of legal discourse in shaping society’s structure,⁶⁷ it is difficult to see past and break through the illusions of the logic of international environmental law.

(a) The agents behind the law

61 Payk and Priemel, above n 60, at 14.

62 Payk and Priemel, above n 60, at 9.

63 Antonion Cassese, Paola Gaeta and Salvatore Zappalà *The Human Dimension of International Law: Selected Papers of Antonio Cassese* (Oxford Scholarship Online, March 2012); Andrew Clapham “The Role of the Individual in International Law” (2010) 21(1) *European Journal of International Law* 25; and Alexander Orakhelashvili “The Position of the Individual in International Law” (2001) 31(2) *California Western International Law Journal* 241.

64 Cassese, Greata and Zappalà, above n 63.

65 UNEP, above n 7, 8.

66 Mallory, above n 1, at 57.

67 Mallory, above n 1, at 61.

This paper demonstrates how the language used in MEA *creates* agents and can define or limit their role in international environmental law. Because it has this power, we must look critically at who creates and whom it affects. It is simpler to claim that the language in international law is powerful than identifying who is wielding that power accurately. The latter is the project undertaken in an ecofeminist approach to linguistics. MEAs are negotiated by ‘states’ as agents centring on the interests of negotiators representative countries. The scholarship around these negotiations often focuses on the states and other recognised actors in international relations, such as non-governmental organisations.⁶⁸ As well as national interests, there will be a plethora of conflicting and diverse interests from various sectors domestically, including indigenous communities, the private sector, and grassroots movements.⁶⁹ These interests are supposedly then funnelled into the representatives at the negotiation tables.

Agents in the making of international law can include politicians, diplomats, legal advisors, arbitrators, military officers, intelligence agencies, among others.⁷⁰ Payk and Priemal note that the role of lawyers has generally been minimised in scholarship to “mere technicians who ‘have no special ability or authority to decide whether any such solutions are or are not acceptable’ — that is left to politicians, businessmen [sic], or the military”.⁷¹ However, lawyers are not “the ‘neutral translators’... but authors, writers, editors, and readers of the vast text that is law”.⁷² They also have a primary role in “interpreting, applying, and reconfiguring legal information vis-à-vis the realm of international policy-making.”⁷³ Brian Gareau argues that in “the global arena, actors — state and non-state, public and private — ‘act’ in ways that become normalised by the institutional rules of” global environmental governance.⁷⁴ Gareau further notes that with “neoliberalism being the dominant overriding political discourse, or discursive frame, its tenets of free markets, individualism, and the protection of market forces from

68 See Lawrence E Susskind and Saleem H Ali *Environmental Diplomacy: Negotiating More Effective Global Agreements* (2nd ed, Oxford Scholarship Online, November 2014).

69 Susskind and Ali, above n 68, at 2.

70 Payk and Priemal, above n 60, at 5.

71 At 5.

72 Payk and Priemal, above n 60, at 6.

73 Payk and Priemal, above n 60, at 7.

74 Brian J Gareau “The limited influence of global civil society: international environmental non-governmental organisations and the Methyl Bromide Controversy in the Montreal Protocol” (2012) 21(1) *Environmental Politics* 88 at 92.

politics act as principal threads guiding self-management”.⁷⁵ The role of legal interpretation of MEAs, and the norms underpinning this role, cannot be underestimated in how those MEAs affect policy and law domestically.

(b) Where are the women?

Although a range of professionals conducts these negotiations, the Conference of the Parties (COP) held in Paris was famously attended by 150 heads of state and government.⁷⁶ Of the 150 representatives, 12 were female. MacGregor notes that men “dominate in the global climate policy arena and as prominent spokespeople whose world views and vested interests serve to construct the issue in stereotypically masculinized ways”.⁷⁷ Whilst this analysis seeks to go deeper than the representative statistics of gender in leadership, it remains a foundational base in feminist and ecofeminist analysis.⁷⁸ “One major strand in feminist scholarship has been concerned with the involvement of women in the development of international law, documenting the absence and exclusion of women from law-making fora”.⁷⁹

The absence of women is connected with a lack of focus on areas of international law. Charlesworth gives the examples of “illiteracy, development, and sexual violence” being dealt with in ‘soft law’ but not “addressed as legally binding norms”.⁸⁰ Admittedly, negotiating and creating international agreements is not an easy task.⁸¹ It is, however, essential to draw attention to where this imposed ‘rational’ standard creates problematic language from a critical theory perspective. In addition to the underrepresentation of women and women of colour, the institutional systems and knowledge of the Dominant Model favour the male perspective. This occurs even where women are represented. This analysis will be expanded on in the following section.

75 Gareau, above n 74, at 92.

76 Macey, above n 21, at 77.

77 Sherilyn MacGregor “Only Resist: Feminist Ecological Citizenship and the Post-Politics of Climate Change” (2014) 29(3) *Hypatia* 617 at 626.

78 For further reading on this level of analysis see Hilary Charlesworth and Christine Chinkin *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, Manchester, 2000).

79 Hilary Charlesworth “The Women Question in International Law” (2011) 1 *Asian Journal of International Law* 33 at 33.

80 Charlesworth, above n 79, at 33.

81 Susskind and Ali, above n 68, at 4.

Dismantling the Dominant Model requires, or benefits from, using an ecofeminist environmental jurisprudential lens.

IV Ecofeminist Environmental Jurisprudence

An analysis driven by an ecofeminist framework is ultimately drawn from ecofeminist environmental jurisprudence.⁸² The framework seeks to understand better how the language used in MEAs reinforces the dominant male and anthropocentric worldview present in international institutions. I call this worldview the Dominant Model. Chaone Mallory highlights this connection and the similarities between androcentrism and anthropocentrism, noting that eradicating “structures of oppression requires that a jurisprudence be constructed which addresses gender and environmental issues simultaneously”.⁸³ Ecofeminism also challenges Cartesian mind/body dualism, which claims a separation between humans and nature and allows humans to use and exploit the Earth.⁸⁴ Dualism is a philosophical separation of entities such as man/woman, human/nature, mind/body, and reason/emotion.⁸⁵ These separations then give rise to hierarchy and control. Ruth Wodak considers that the pervasive influence of this “philosophical dualism” in Western thought enables patriarchy to take root.⁸⁶ “Patriarchy tells us... that humans can control nature from our position of cultural superiority”.⁸⁷ Ecofeminist analysis is a tool that can help legal sources to remove oppression in the way they are structured and prevent ‘othering’ – of women, women of colour, indigenous peoples and of Nature.⁸⁸

An ecofeminist perspective considers that the goals of feminism and environmentalism are inextricably linked. Accordingly, either movement that does not address the other will be a shallow attempt to curtail sexism or environmental degradation. Victoria Davion notes that “those fighting to save the environment should, as a matter of consistency, be working to overthrow patriarchy” because “a movement that is not

82 Mallory, above n 1, at 6.

83 Mallory, above n 1, at 10.

84 Val Plumwood *Feminism and the Mastery of Nature* (Taylor & Francis Group, 1994) at 74.

85 Robyn Eckersley *Environmentalism and Political Theory: Toward an Ecocentric Approach* (State University Press of New York, Albany, 1992) at 69; and Plumwood, above n 84.

86 Eckersley, above n 85, at 69.

87 Elaine L Hughes “Fishwives and Other Tails: Ecofeminism and Environmental Law” (1995) 8 CJWL/RFD 502.

88 Wilkinson, above n 4, at 545-546.

feminist will yield at best a superficial understanding of the domination of nature” and vice versa.⁸⁹

A *Building the Framework*

This section explores the kinds of questions that need to be asked to build an ecofeminist environmental jurisprudence framework assessing the language of MEA. Analysing international law, Charlesworth draws three kinds of ‘feminist’ questions: liberal, cultural, and postmodern.⁹⁰ Postmodernism includes radical, indigenous and ecofeminist thought.⁹¹ The cultural and postmodern questions posed are helpful in this context. Cultural feminists ask, “[w]hat types of values are woven into the fabric of international law?”⁹² This question will help to reveal the values underpinning the Dominant Model in the context of international environmental law. Whereas “[p]ost-modern feminists have paid particular attention to language and the way that it filters our experiences and our understanding”.⁹³ This analysis will also use a post-modern framework, as it considers law as a narrative or “a carrier of cultural stories which, although perhaps never “true” in an absolute sense, become the texts upon which we must rely to interpret and interact with the world”.⁹⁴

Liberal feminists’ primary goal, on the other hand, is to gain equality with their male counterparts within the current system.⁹⁵ In the environmental preservation project, Elaine Hughes points out that this means “joining in the “cultural project” of dominating, devaluing, and controlling nature”.⁹⁶ A project which is “anathema” to cultural and postmodern feminism.⁹⁷ Graycar and Morgan write that if “law is inherently masculinist, or has been implicated in the oppression of women, to use the

89 Victoria Davion “Is Ecofeminism Feminist?” in Karen Warren (ed) *Ecological Feminism* (Routledge, London, 1994) 9 at 11.

90 Charlesworth, above n 11, at 95-97

91 Charlesworth, above n 11, at 95-97.

92 Charlesworth, above n 11, at 95.

93 Charlesworth, above n 11, at 97.

94 Mallory, above n 1, at 4.

95 Wilkinson, above n 4, at 547.

96 Hughes, above n 87, at 509.

97 Hughes, above n 87, at 509. Contrast Young and Taylor, above n 23, at 11-12.

famous phrase of Audre Lord, ‘the master’s tools can never dismantle the master’s house’”.⁹⁸

Hughes quotes Ynestra King in saying, “what is the point of partaking equally in a system that is killing us all?”⁹⁹ Nevertheless, in drawing this conclusion, Hughes acknowledges she “dug her own grave” as participating in the academic cannon on environmental law operates within our current framework’s patriarchal limits.¹⁰⁰ She caveats this by noting “a transition must begin somewhere” and “[e]cofeminism offers, at a minimum, a rich source of ideas about how one might “re-vision” the entire framework of environmental law”.¹⁰¹ Consistently with Hughes, I recognise the irony of participating in academia within the framework of international law. However, I also recognise that this analysis is necessary to begin revisioning how international environmental law might look outside of the Dominant Model.

Ruth Wodak has identified five core questions that constitute a critical discourse analysis. Three of these questions are relevant to this context. I will then supplement these three questions. The three questions are:

*How are persons named and referred to linguistically?*¹⁰²

*What traits, characteristics, qualities, and features are attributed to them?*¹⁰³

*From what perspective or point of view are these labels, attributions and arguments expressed?*¹⁰⁴

The primary ‘persons’ (hereafter ‘subjects’) these questions will address are nature, ‘vulnerable’ populations, and ‘climate change’.¹⁰⁵ In order to apply this critical

98 Reg Graycar and Jenny Morgan “Law Reform: What’s in it for Women?” (2005) 23 Windsor Yrbk Acc Jus 393 at 396.

99 Hughes, above n 87, at 510. See Irene Diamond and Gloria Orenstein (ed) *Reweaving the World: The Emergence of Ecofeminism* (Sierra Club Books, San Francisco, 1990) at 106.

100 At 510.

101 Hughes, above n 87, at 511.

102 Wodak, above n 43, at 194.

103 Wodak, above n 43, at 194.

104 Wodak, above n 43, at 194.

105 This is also a small group of identities who may experience oppression in linguistic framing. Further analysis could also include reference to ‘developing’ countries as an ‘othered’ groups including addressing Indigenous Peoples specifically however this paper does not have scope for such an analysis. For more on these approaches see Deborah McGregor, Steven Whitaker

discourse approach to an ecofeminist analysis of international environmental law, I have integrated further questions. Following Charlesworth's cultural feminist approach, I will establish the values of international environmental law, identifying the base assumptions from which institutions and actors in international environmental law operate. I will then use Elaine Hughes reimagined ecofeminist values to understand how examples from the Paris Agreement may better accommodate these values.¹⁰⁶ Identifying ecofeminist values reveals how they are missing in the current norms of the Dominant Model in international environmental law. Wodak's three questions will then help to reveal how those norms are maintained linguistically in MEAs, such as the Paris Agreement.

Following this, I draw from Kate Wilkinson's work and ask whether the language of the Paris Agreement creates pathways for subjects to participate in established governance structures (liberal feminism) or whether it challenges the Dominant Model (radical feminism) in references to and understandings of women and Nature?¹⁰⁷ This question is not directly posed in Wilkinson's work but is drawn from the ecofeminist analysis of the Outcome Document from the UN Conference on Sustainable Development (UNCSD) in 2012. The Outcome Document had a focus on 'green economy' and 'sustainable development'. Wilkinson questioned whether the processes followed and the document that resulted reaffirmed or questioned the "dominant social paradigm that devalues and subordinates traditionally excluded groups, such as women".¹⁰⁸ In this context, the question will reveal how the Dominant Model dictates how and to what extent 'othered' grounds participate in established structures.

(a) Values of international environmental law: the Dominant Model

This section identifies what values are woven into international environmental law. International environmental law can be drawn from treaties and conventions (including MEA), international customs, general principles, judicial decisions, and arguably

and Mahisha Sritharan "Indigenous environmental justice and sustainability" (2020) 43 *Current Opinion in Environmental Sustainability* 35; and Annette Sykes "Constitutional Reform and Mana Wahine" in Leonie Pihama and others (eds) *Mana Wahine Reader A Collection of Writings 1999-2019 Volume II* (Te Kotahi Research Institute, Hamilton, Aotearoa/New Zealand) 19.

106 Hughes, above n 87, at 517.

107 Wilkinson, above n 4, at 552.

108 At 558.

scholarly publications.¹⁰⁹ The restrictions around what can be included as a ‘source’ of international law and what is required to be included are a construct of international law and restricted by the norms already present in the Dominant Model. In other words, “our conventional ways of speaking about international relations and international law seem to determine what we can believe to take place in international life”.¹¹⁰

Since CEDAW was signed in 1979 by the UN General Assembly, issues relating to gender have been a greater focus in the international arena.¹¹¹ “Initiatives for ‘gender mainstreaming’ and ‘women’s empowerment’ have — at least formally — occupied international organisations since 1995”.¹¹² Influential movements under the Third World Approaches to International Law jurisprudence have advanced issues confronted by Black women, women of colour and indigenous women.¹¹³ Although these conferences, treaties, and conventions are “attempts to create an institution with a gender focus”, they operate within the norms associated with the Dominant Model.¹¹⁴ Contrary to the radical change these movements encourage, “treaties are often not enforced... institutions have limited effect and [they] resist gender mainstreaming.”¹¹⁵

In the “subfield” of international institutions, “elite men have historically dominated... and the ‘universal’ values developed reflect their views, often ignoring gender perspectives”.¹¹⁶ Linking back to Hughes, feminist movements that operate within the prevailing system of norms are an antithesis to the project of radical feminism.¹¹⁷ Assimilation to the goals and paradigms set by institutions lacking voices from specific

109 Hugh W A Thirlway *The Sources of International Law* (2nd edition, Oxford University Press, Oxford, 2019) at 10-1. See Thirlway for more on the hierarchy of these sources. This paper does not have the scope for a thorough analysis of the scholarship relating to the sources on international law. See generally Jean D’Aspremont, and Samantha Besson *The Oxford Handbook on the Sources of International Law* (Oxford University Press, Oxford, 2017).

110 Schuppert, above n 57, at 146-147.

111 Adrien K Wing “International Law and Feminism” In *Research Handbook on Feminist Jurisprudence* (Edward Elgar Publishing, 2019) 468 at 468.

112 Kim Rubenstein and Katharine G Young (eds) *The Public Law of Gender: From the Local to the Global* (Cambridge University Press, Cambridge, 2016).

113 Wing, above n 111, at 480.

114 Wing, above n 111, at 473.

115 Wing, above n 111, at 484.

116 Wing, above n 111, at 473.

117 Hughes, above n 87, at 16.

social groups would fail to critically examine “how [those] paradigm[s] maintain... the subordination of th[o]se social groups”.¹¹⁸

If Western paradigms dominate the undercurrents of international institutions, what kinds of norms are being perpetuated? Kate Wilkinson reiterates the argument that the “dominant social paradigm includes a belief that the primary goal for governments, after national defence, is to create conditions that increase commodity production and satisfy the materialist needs of citizens”.¹¹⁹ Read: capitalism. The dominant capitalist belief in endless economic growth “shapes the ways in which the international community responds to global concerns such as environmental degradation”.¹²⁰ I would argue it *limits* the possible responses deemed ‘rational’ or even ‘possible’ by the international community. Therefore, patrolling the parameters of which solutions have merit in terms of furthering these primary goals. Wilkinson argues this “undervalues the (non)economic contributions by women by prioritising ‘what men value and what men do’”.¹²¹

To conclude, the Dominant Model perpetuates Western, rational, and capitalist values. Charlesworth notes that “law privileges a male view of the universe and the law”.¹²² Law and international law maintain a level of ‘objectivity’ and claim “rationality, objectiveness, and abstraction, characteristics traditionally associated with Western masculinity”.¹²³ These values are “defined in contrast to emotion, subjectivity, and contextualized thinking by applying dualistic paradigms present in the Dominant Model”.¹²⁴ The perceived rationality “disguises its gendered character”.¹²⁵

Other values of international law include goals such as peacebuilding and cooperation. Various principles now well established in international environmental law include state sovereignty over resources and responsibility to avoid transboundary damage, preventative action, sustainable development, the precautionary principle, polluter pays

118 Wilkinson, above n 4, at 543.

119 Wilkinson, above n 4, at 541-542.

120 Wilkinson, above n 4, at 542.

121 Wilkinson, above n 4, at 546.

122 Charlesworth, above n 11, at 96.

123 Charlesworth, above n 79, at 34.

124 Charlesworth, above n 79, at 34. See also Mallory, above n 1; and Wilkinson, above n 4, at 545.

125 Charlesworth, above n 79, at 34.

and common but differentiated responsibilities.¹²⁶ ‘Sovereignty’ is a principle in international environmental law that has attracted substantial scholarship and criticism.¹²⁷ This paper does not have scope to access the underlying tones behind these values and their perpetuation of the Dominant Model.

We must critically challenge the Dominant Model. Wing noted, in 2019, that although there has been significant feminist scholarship on a range of areas in international law (including human rights and development), there remains “a clear need for more feminist analysis that challenges existing frameworks” in international environmental law.¹²⁸

(b) Ecofeminist values in international environmental law

This section explores what ecofeminist values would look like in international environmental law. In 1995 Elaine Hughes wrote a reimagined version of the Canadian Fisheries Act with ecofeminist principles. Her model incorporated fundamental principles of ecofeminism that she identified, including “kinship, interconnection, cyclic patterns, use of emotion, and responsibility”.¹²⁹ To incorporate these principles effectively, Hughes found that the legislation required far greater “participatory democracy, risk-aversiveness, environmental reclamation, and accountability than one ever finds in existing environmental law”.¹³⁰ This paper does not have the scope to provide a thorough restatement of the values and actions which must be taken under each value Hughes identifies. I recommend the reader refer to the original article. However, I will draw on interconnection, use of emotion and responsibility. This framework offers a clear improvement in how humans can approach the Natural environment and a de-anthropocentric view, which would have positive results for the environment and human beings. Despite this, it is difficult to see these values incorporated in the MEAs states seek guidance and leadership from on environmental issues.

126 Philippe Sands *Principles of International Environmental Law* (2nd ed, Cambridge University Press, 2003) at 321; and United Nations “United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992” United Nations <www.un.org>.

127 Beaulac and Allott, above n 56.

128 Wing, above n 111, at 473.

129 Hughes, above n 87, at 526.

130 At 526.

I draw on three of Hughes' values interconnectedness, emotion and spirituality, and responsibility. I understand these values to be notably absent in the framing and drafting of the Paris Agreement. Here I will explain what these values would look like in international environmental law. In section V, I then apply this analysis to the Paris Agreement.

(i) Interconnectedness

A primary understanding urged under an ecofeminist view is how human beings are interconnected with Nature. This means that we “are completely dependent on, and participate within, the cycles of nature”.¹³¹ Hughes stresses here that we, human beings, “depend on non-human nature – air, water, plants, animals, minerals, and more – for our very existence”.¹³² Nature could live (and in fact would thrive) without us, “[w]e could not live without the rest of nature”.¹³³

As the Dominant Model persists in dualistic ways of thinking, its dominance in international law perpetuates the separation of humans from nature. Not only are the two presented as binary, but they are presented in a hierarchy. Human beings are more significant than and have power over nature. While remembering our interconnectedness with nature,¹³⁴ that we are a part of nature, not apart from nature, we must also remember Nature's power and force. Isabella Stengers notes that “[t]his is perhaps what is most difficult to conceptualize: no future can be foreseen in which she [Nature] will give us back the liberty of ignoring her”.¹³⁵ We must wield power in our potential to help regenerate the Earth whilst recognising our insignificance.

Interconnection feeds into elements of tikanga Māori, which have been integrated as a strand of the Common Law and exist as a unique legal and belief system.¹³⁶ Interconnectedness is woven into multiple concepts in tikanga. Eddie Durie notes that

131 Hughes, above n 87, at 519.

132 Hughes, above n 87, at 519.

133 Hughes, above n 87, at 519.

134 Carin Lesley Cross “Ecofeminism and an ethic of care: Developing an eco-jurisprudence” 1 (2018) *Acta Academica* 28 at 34.

135 Burdon, above n 15, at 40. See Isabelle Stengers *In Catastrophic Times: Resisting the Coming Barbarism* (Open Humanities Press, 2015) at 47.

136 *Ellis v R* [2020] NZSC 89.

“whakapapa was the basis... for establishing that all Māori are related, and for demonstrating the connection of Māori to elements of the universe”.¹³⁷ The term ‘whenua’ (land) also carries the meaning of “‘altogether’ or ‘entirely’”.¹³⁸ Whenua also means placenta and thus “sustains life and the connection between the foetus and the placenta is through the umbilical cord”. As the placenta is returned to the Earth, there is a deep connection between “whenua as placenta, whenua as ground and whenua as land”. The concept of interconnection also appears in kaitiakitanga. Kaitiakitanga is often translated as guardianship and refers to caring for and having trusteeship often over the natural world.¹³⁹ Kaitiakitanga also speaks to the principle of responsibility.

(ii) The emotional and spiritual

Another core concept in an ecofeminist approach is valuing the emotion and spirituality in our relationship with Nature. Hughes recognises the necessity of humans having compassion and respect for Nature and others.¹⁴⁰ She notes that emotion needs to be separated from rationality as an “either/or”.¹⁴¹ Instead, we must “integrate the concepts of emotion and reason, and make our decisions about our relations to our kin by “thinking feelingly”.”¹⁴² As previously noted, the binary between rationality and emotion is deeply embedded in the Dominant Model through the pervasive influence of Cartesian dualism. Firstly, the binary needs to be challenged. Secondly, the concept that women are more in touch with their emotions, therefore with nature, needs to be challenged.¹⁴³

The Dominant Model affects all human’s relationships with Nature (whether man, woman, non-binary or non-gender conforming). Carin Lesley Cross argues that the dominating ‘Masculine’ thought has “supressed and subdued any connection humanity has with the natural or the feminine”.¹⁴⁴ Plumwood argues that the “capacity to care, to

137 Eddie Durie “Will the settlers settle” 8(4) Otago Law Review 449 at 455.

138 Hirini Mead *Tikanga Maori (Revised Edition) Living By Maori Values* (Huia (NZ), Wellington, 2016) at 208.

139 Elisabeth McDonald, Rhonda Powell, Māmari Stephens and Rosemary Hunter (eds) *Feminist Judgments of Aotearoa New Zealand: Te Rino: a Two-Stranded Rope* (Bloomsbury Publishing Plc, London, 2017) at 17.

140 At 522.

141 At 522.

142 Hughes, above n 87, at 522.

143 This concept is addressed again on page 29 and page 45.

144 Cross, above n 134, at 29.

experience empathy and understanding of the sensitivity of a situation is part of our moral compass.¹⁴⁵ The Dominant Model contributes to suppressing all human relationships with nature, resulting in legal instruments, MEAs and international environmental law generally missing this vital quality. “Ecofeminism aims to promote healthy relationships with nature rooted in the value of care to remove the patriarchal legacy of domination”.¹⁴⁶

Inherent in the Dominant Model is the de-valuing of the feminine and things associated with ‘woman’. This includes what Rosary Ruether defines as the “cultural-symbolic level of domination” that “defines the women as closer to nature by assimilating the body and sexuality of women with the Earth as being weak and “sin-prone” in direct comparison to the masculine identity”.¹⁴⁷ This domination enables the “unfettered exploitation of women and nature” and prevents the connection between the masculine and Nature. Feminist thought contains diverse opinions around whether women are more connected with nature due to the dominant ability to birth life. I do not intend to go into this debate. The primary issue I identify using the ecofeminist lens is the devaluing of emotional and spiritual connections to Nature, regardless of gender. The rationality and objectivity of law and legal instruments prevents the negotiators and writers from connecting to this inherent emotional and spiritual connection. Donovan argues this can be achieved “if humanity no longer imposes its voice on to nature”.¹⁴⁸ It necessitates “the recognition that nature has its own voice, which both needs to be heard and with which we encourage all to enter into conversation”.¹⁴⁹

(iii) Responsibility

Interconnectedness and an emotional and spiritual connection with Nature are tied together by valuing a sense of responsibility. Hughes notes that this “requirement – that we take responsibility for our conduct – must govern our relations with all “others”,

145 Cross, above n 134, at 33. See Val Plumwood “Nature, self and gender: Feminism, environmental philosophy and the critique of rationalism” (1991) 6(1) *Hypatia* 3.

146 Cross, above n 134, at 35.

147 Cross, above n 134, at 35.

148 Cross, above n 134, at 38. See Josephine Donovan “Attention to suffering” in Josephine Donovan and Carol Adams (eds) *The Feminist Care Tradition in Animal Ethics* (Columbia University Press, New York, 2007) 173.

149 Cross, above n 134, at 38. See Donovan, above n 147.

including women, people of colour, non-human nature, and future generations”.¹⁵⁰ Responsibility also speaks to the principle of focusing on preventative actions, not relying merely on remedial action.¹⁵¹

Burton notes that the Anthropocene has rendered the “paradigms that begin from, centre upon, or are ordered around Homo sapiens/’the human’” an “objective fact”.¹⁵² If “human beings have become a geological force, capable of altering the Earth system as a whole”, then how we respond to this responsibility determines our species survival.¹⁵³ Burdon notes that accepting this fact does not necessitate an “arrogant and hubristic” response. Nevertheless, by placing humans at the centre of the Earth system, this possibility is a real risk.¹⁵⁴

Taking responsibility means realising that the Dominant Model prioritises economic and development interests over “equality, democracy, morality, sustainability, consensus, respect, flexibility, inclusiveness, diversity, and compassion”.¹⁵⁵ These values need to be reinfused in international environmental law if we hope to make any real difference to the current crisis and state of environmental degradation.

(c) Existing avenues for these values

These ecofeminist values share common ideas with many other value and belief systems, or ways of life, globally. In addition to Te Ao Māori, various Indigenous Peoples and grassroots movements hold similar values and beliefs that have been recognised in international law.

The United Nations Declaration on the Rights of Indigenous Peoples takes a first step towards incorporating these values. Albeit from a rights-based approach that does not outwardly incorporate the ecofeminist values as stated above. Article 25 does recognise¹⁵⁶

150 Hughes, above n 87, at 523.

151 Hughes, above n 87, at 523.

152 Burdon, above n 15, at 38-39.

153 Burdon, above n 15, at 39.

154 Burdon, above n 15, at 40.

155 Hughes, above n 87, at 523.

156 United Nations Declaration on the Rights of Indigenous Peoples A RES 61/295 (2007), art 25.

the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

The language used here is fairly rigid when compared to the Proposal for a Universal Declaration on the Rights of Mother Earth, drafted by various Indigenous Peoples, grassroots movements and non-governmental organisations in 2010 at the World's Peoples Conference on Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia.¹⁵⁷ The Declaration begins with “considering that we are all part of Mother Earth, an indivisible, living community of interrelated and interdependent beings with a common destiny”¹⁵⁸ The Declaration further recognizes that “the capitalist system and all forms of depredation, exploitation, abuse and contamination have caused great destruction, degradation and disruption of Mother Earth”.¹⁵⁹ Article one recognises that “Mother Earth is a living being”, and article three establishes that “[e]very human being is responsible for respecting and living in harmony with Mother Earth”.¹⁶⁰ These values, which share a voice with ecofeminism, are shared across many communities. The Ecuadorian and Bolivian governments are among the only to have recognized the rights of Mother Earth constitutionally.¹⁶¹ Both are countries in the Andean region of South America, home to the Andean peoples.¹⁶²

The Andean peoples of the central Andes in South America understand that all life (“including the hills, rivers, air, rocks, glaciers and oceans”) are part of “a larger living organism that is Pacha Mama or Mother Earth.”¹⁶³ Acosta and Abarca note that the concept of *buen vivir* underpins these constitutional changes,¹⁶⁴ and is “inspired by the

157 Pablo Sólón “The Rights of Mother Earth” in Vishwas Satgar (ed) *The Climate Crisis* (Wits University Press, 2018) 107 at 122; and “Partners” (14 June 2010) World People’s Conference on Climate Change and the Rights of Mother Earth <<https://pwccc.wordpress.com>>.

158 “Universal Declaration of the Rights of Mother Earth” (22 April 2010) World People’s Conference on Climate Change and the Rights of Mother Earth, preamble [“Universal Declaration”].

159 “Universal Declaration”, above n, preamble.

160 The Paris Agreement (opened for signature 22 April 2016, entered into force 4 November 2016), art 1 and art 3.

161 Sólón, above n 157, at 108.

162 Sólón, above n 157, at 108-109.

163 Sólón, above n 157, at 109.

164 Alberto Acosta and Mateo Martínez Abarca “Buen Vivir: an Alternative Perspective from the Peoples of the Global South to the Crisis of Capitalist Modernity” in Vishwas Satgar (ed) *The*

experience and practice of *Sumak Kawsay* (a life of fullness) by the Andean indigenous peoples”.¹⁶⁵ *Buen vivir*, directly translated as “living well” has many layers of meaning and “provides a unique opportunity to devise new ways of living collectively” to disrupt the dominant paradigm of development.¹⁶⁶ There are “many similar notions among diverse indigenous people, such as the Mapuche (Chile and Argentina), the Guarani (Paraguay, Brazil, Argentina and Bolivia) and the Kuna (Panama and Colombia)”.¹⁶⁷ Acosta and Abarca also note this world view in indigenous groups in Guatemala, Mexico and Africa.¹⁶⁸ This shows that the values underpinning an ecofeminist approach are already being recognised and slowly integrated into environmental law domestically and internationally. However, they are being recognised within the confines of the Dominant Model.

B *The Ecofeminist Framework Recap*

To summarise this section so far, following Charlesworth’s cultural feminist approach, I have recognised the values of international environmental law, identifying the base assumptions within which institutions and actors in international environmental law operate. Following this, I drew ecofeminist values from Hughes’ work to recognise how these values are missing from the current model.¹⁶⁹ From there, I have drawn from Wilkinson’s work to ask whether the language of the MEAs creates pathways for subjects to participate in established governance structures or whether it challenges the Dominant Model in references to and understandings of women and Nature.¹⁷⁰

V *Applying the Framework to the Paris Agreement*

This framework will provide a comprehensive understanding of how words and phrases used in MEAs perpetuate the Dominant Model in international environmental law and

Climate Crisis: South African and Global Democratic Eco-Socialist Alternatives (Wits University Press, Johannesburg, 2018) 131 at 133.

165 Unai Vallalba “*Buen Vivir* vs Development: a paradigm shift in the Andes?” (2013) 24(8) *Third World Quarterly* 1427 at 1428.

166 Acosta and Abarca, above n 164, at 133.

167 Acosta and Abarca, above n 164, at 132.

168 Acosta and Abarca, above n 164, at 132.

169 Hughes, above n 87, at 517.

170 Wilkinson, above n 4, at 552.

prevent the genuine valuing of othered groups such as women and Nature. In this section, I apply these questions to the language used in the Paris Agreement.

1. What is the subject being referred to?
2. How are they named and referred to linguistically?¹⁷¹
3. What traits, characteristics, qualities, and features are attributed to them?¹⁷²
4. From what perspective or point of view are these labels, attributions and arguments expressed and which values does this perspective perpetuate?¹⁷³
5. Does the MEA in question create pathways for subjects to participate in established governance structures, or does it challenge the Dominant Model?¹⁷⁴

A *Purpose and Goals*

The Paris Agreement is currently heralded as the primary MEA to reduce states contribution to the climate crisis and climate derangement. Annalisa Savaresi describes the Agreement as having “undoubtedly restored faith in international climate governance and in multilateralism, creating the premises for a process to address climate change in the long term”.¹⁷⁵ Although not to be mistaken as a “miraculous cure for all the maladies of the climate regime”, it did renew hope.¹⁷⁶ Robert Falkner’s reminds us too that “[a]ny expectation... that a single international summit or treaty could provide the breakthrough solution, was always illusory”.¹⁷⁷ However, Falkner also highlights that the real question is not whether Paris provides the single solution for the climate crisis but how its “robust” framework can be adapted to develop and sustain “longterm political commitment to an effective global response”.¹⁷⁸

The goal of the Paris Agreement, as an international treaty, is to keep increases in global temperatures to “well below 2°C above pre-industrial levels while pursuing efforts to

171 Wodak, above n 43, at 194.

172 Wodak, above n 43, at 194.

173 Wodak, above n 43, at 194.

174 Wilkinson, above n 4, at 552.

175 Annalisa Savaresi “The Paris Agreement: a new beginning?” (2016) 34(1) *Journal of Energy & Natural Resources Law* 16 at 26.

176 Savaresi, above n 175, at 26.

177 Falkner, above n 19, at 1119.

178 Falkner, above n 19, at 1119.

limit the temperature increase to 1.5°C”.¹⁷⁹ This paper will not go into detail on the mechanisms Paris creates to achieve this goal. The focus will be on the choice of language in both the opening to the Agreement and the articles.

The analysis focuses on three core word choices followed by criticism on how the Earth is referred to linguistically. The following sections will analyse the terms ‘resources’, ‘vulnerable’, and ‘threat’ and ‘Mother Earth’ against the framework.

B ‘Natural Resources’

The first subject to assess is how the Paris Agreement refers to Earth or the natural environment. The primary goal of the Paris Agreement is to protect the Earth from further damage from anthropocentric activities. We know that how the Earth is linguistically referred to creates links and forms humans’ relationship with Nature. Therefore, how Paris linguistically creates our relationship with Nature is essential.¹⁸⁰

The Paris Agreement does not refer to ‘the Earth’, ‘Nature’ or ‘the Environment’. ‘Ecosystems’ and ‘ecological systems’ are referred to, and Paris Agreement notes “the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth”.¹⁸¹ The reference to Mother Earth will be analysed below.¹⁸² The environment is, however, referred to for its “natural resources”.¹⁸³ Article 7(9)(e) describes Parties implementation of adaption planning processes, which may include “[b]uilding the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of *natural resources*”.¹⁸⁴ The phrasing of nature as providing ‘resources’ will be the main focus of this section.

The Oxford English Dictionary defines ‘resources’ in its everyday use as part of ‘natural resources’.¹⁸⁵ Resources are defined as “[t]he collective means possessed by a country or region for its own support, enrichment, or defence”. An alternative definition

179 The Paris Agreement, above n 160, art 2(a).

180 UNEP, above n 7, at 8.

181 The Paris Agreement, above n 160.

182 See page 42.

183 The Paris Agreement, above n 160, art 7(9)(e).

184 The Paris Agreement, above n 160, art 7(9)(e). My emphasis.

185 Oxford English Dictionary “*resource*, *n.*” (Oxford University Press)
<<http://www.oed.com/view/Entry/163768>>.

provided is “[s]tocks or reserves of money, materials, people, or some other asset, which can be drawn on when necessary”.

Both definitions contain elements of materialism and possession. The first definition notes that resources are ‘possessed’ by a country. Ecofeminism takes issue with countries or regions possessing parts of Nature. In criticising this predominant perspective, Malloy compares the exploitation of animals to the jurisprudence around rape. She writes¹⁸⁶

when women (animals) are viewed as the rightful possession of men (human beings), it is difficult for a patriarchal society such as our own to understand what the harm is when they are exploited, or to even know that they are.

The same comparison can be made here with ‘natural resources’ and human exploitation. Under the Dominant Model, it is rational and reasonable to use Nature to benefit human beings “for [our] own support, enrichment, or defence” because these are the values of a patriarchal society.¹⁸⁷ To combat this widely accepted norm, Nature needs to be seen not as a resource to use and exploit but recognise instead that “[w]e depend on non-human nature – air, water, plants, animals, minerals, and more – for our very existence” in a relationship of reciprocity.¹⁸⁸ Reciprocity means we cannot take without giving back.¹⁸⁹ We must cease our one sided relationship with nature.

The Paris Agreement addresses sustainable management of ‘natural resources’ in the context of broader goals for sustainable development. Sumudu Atapattu analyses the three pillars of sustainable development: economic development, environmental protection and social development.¹⁹⁰ The New Delhi Declaration of Principles of International Law Relating to Sustainable Development suggests that the weight of “all aspects of sustainable development should be [equal], including the rights of future

186 Mallory, above n 1, at 28.

187 Oxford English Dictionary “*resource, n.*” (Oxford University Press)
<<http://www.oed.com/view/Entry/163768>>.

188 Hughes, above n 87, at 519.

189 Hughes, above n 87, at 518.

190 Sumudu Atapattu “The Paris Agreement and human rights: is sustainable development the ‘new human right’?” (2018) 9(1) *Journal of Human Rights and the Environment* 68 at 75-76.

generations”.¹⁹¹ However, Atapattu notes that this “is quite a challenge as the current economic model still rewards unsustainable exploitation and consumption of resources”.¹⁹² Although the use of ‘natural resources’ is signalled as being based on sustainable development, the Dominant Model and its economic focus underpin these foundations.

Wilkinson argues that “sustainable developing is founded on the assumption of humanity’s domination of nature and legitimates the ‘sustainable’ exploitation of the environment”.¹⁹³ Despite a focus on sustainable development, our conceptualisation of Nature as a ‘resource’ perpetuates the idea that nature is “a sink of resources existing for the purpose of satisfying then ever-increasing material demands of human culture — a culture dominated by men and the values of the patriarchy”.¹⁹⁴ Mallory argues that human behaviour based on the model that nature exists to meet our needs contributes to the “unsustainability of the earth’s life-processes, endangering our own selves, and immorally contributing to the demise of others”.¹⁹⁵

Despite purporting for sustainable use of ‘natural resources’, the Paris Agreement perpetuates the Dominant Model’s values in international law, that places humans’ exploitation of Nature above the recognition of Nature as an autonomous being, worthy of protection in its own right. International environmental law *must* adapt to an ecocentric approach, which ecofeminism offers. In the Dominant Model of environmental law, “the entire approach is based upon setting up a hierarchy of degradation of (violence against) nature”.¹⁹⁶ Rather than seeking “to protect nature from all harm, because of its inherent value... we seek to regulate how much harm is done, stopping short only when we harm our own self-interests”.¹⁹⁷

The reference to Nature as a ‘resource’ also operates concurrently with the dominant social paradigm that women’s bodies exist for use and exploitation by men. The values of the Dominant Model are maintained by the “masculine domination and exploitation

191 Atapattu, above n 190, at 76-77.

192 Atapattu, above n 190, at 77.

193 Wilkinson, above n 4, at 547.

194 Mallory, above n 1, at 28.

195 Mallory, above n 1, at 30.

196 Hughes, above n 87, at 514.

197 Hughes, above n 87, at 514.

of the female body and female labour directly interconnected with the utilisation of nature through the exploitation of water, animals and land”.¹⁹⁸ The understanding, therefore, that Nature exists for the use of humans is inextricably linked with laws about women’s bodies such as abortion, rape, sexual assault and marriage.

The final question of the framework asks whether the Paris Agreement enables Nature to participate in established governance structures or whether it challenges the power structures of the Dominant Model in a more radical way.¹⁹⁹ The way the Earth is referred to does neither. Although it may seem strange to assess whether an MEA enables Nature to participate in global governance, the question can be assessed slightly differently. It is helpful instead to ask whether Nature is recognised as having intrinsic power and value. MEAs could draw from the precedent set by Aotearoa (New Zealand), Colombia and India, where legal personhood and rights are being conferred to natural bodies.²⁰⁰ Alternatively, the examples set by Ecuador and Bolivia where the rights of ‘Mother Earth’ or the natural environment are recognised.²⁰¹ These legal instruments demonstrate that Nature can be referred to in a radically different way than a resource for humans to exploit and use for development. The Paris Agreement does not recognise that the Earth is of inherent value, aside from human use and consumption. Recognition of this would begin to break away from the Dominant Model — and catalyse the recognition in MEAs that humans are a part of Nature, not apart from it.

C ‘Vulnerable’

The second subject I will assess is how the Paris Agreement refers to those populations that suffer most from the effects of anthropogenic climate derangement. As previously discussed, that includes women, children, Indigenous peoples, and some populations in developing nations. This section will focus on the use of the term ‘vulnerable’ in the Paris Agreement.

198 Cross, above n 134, at 35.

199 Wilkinson, above n 4, at 552.

200 Te Urewera Act, No. 51, 2014 (New Zealand); Te Awa Tupua Act (Whanganui River Claims Settlement), No. 7, 2017 (New Zealand); Erin O'Donnell & Julia Talbot-Jones “Legal Rights for Rivers: What Does This Actually Mean?” (2017) 32(6) Australian Environment Review 159; and Erin O'Donnell “At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India” (2017) 30(1) Journal of Environmental Law 135.

201 Mihnea Tănăsescu “Rights of Nature, Legal Personality, and Indigenous Philosophies” (2020) 9(3) Transnational Environmental Law 429 at 429.

The Paris Agreement refers to ‘vulnerable’ people multiple times in the following ways²⁰²

Also recognizing the specific needs and special circumstances of developing country Parties, especially those that are particularly *vulnerable* to the adverse effects of climate change, as provided for in the Convention.

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on... the rights of... people in *vulnerable* situations

[T]o assist developing country Parties that are particularly *vulnerable* to the adverse effects of climate change to meet the costs of adaptation.

Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration *vulnerable* groups, communities and ecosystems.²⁰³

The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account *vulnerable* people, places and ecosystems.

If these populations will suffer the most from anthropogenic climate derangement, then what is the issue with referring to those populations as vulnerable in the Paris Agreement? Talbot, Atkinson and Atkinson, drawing from Fairclough, argue that “[i]n our daily lives we are constrained by ‘subject positions’... our social roles are created for us through language.”²⁰⁴ Bourdieu calls this the power of ‘worldmaking’.²⁰⁵ The social role that is attributed to the groups described as ‘vulnerable’ is essentially the victim. These are the groups that the Dominant Model has labelled as the most victimised by “the adverse effects of climate change”.²⁰⁶ Kapur argues that “[t]he victim subject has invited a protectionist response from the state”.²⁰⁷ Therefore, the subject is

202 The Paris Agreement, above n 160, art 6(6), 7(2), 7(5), 7(9)(c), 9(4) and 11(1). My emphasis.

203 Article 7(5).

204 Talbot, Atkinson and Atkinson, above n 27, at 6.

205 Talbot, Atkinson and Atkinson, above n 27, at 74.

206 The Paris Agreement, above n 160.

207 Kapur, above n 12, at 6.

set up as “thoroughly disempowered and helpless” without protection from the state.²⁰⁸ While these groups *do* need particular heightened attention, the way there are referred to linguistically is problematic.

The criticism of ‘vulnerability’ narratives in the Dominant Model is underdeveloped in scholarship. However, it is emerging in the feminist and ecofeminist spheres.²⁰⁹ The question that arises is what are they vulnerable to, and how are they protected? Using this narrative in the Paris Agreement disconnects the perpetrator behind the circumstances which have caused the vulnerability. Subjects are said to be “vulnerable to the adverse effects of climate change”. This sentence removes who is responsible for those adverse impacts. It removes culpability on behalf of states and corporations with high emissions and environmentally degrading development practices. Populations most vulnerable in the environmental crisis are not vulnerable to climate change; they are vulnerable to the continued pollution and degradation of the natural environment *caused by* states and corporations. Therefore, the Paris Agreement creates the social role for ‘vulnerable’ communities (women, children, racialised communities, Indigenous Peoples and developing nations) without self-imposing the identity of culpability. However, Talbot, Atkinson and Atkinson argue that though social roles can be maintained through language, “this does not mean that we are automatons or passive dupes”.²¹⁰ These “imposed identities and statuses can be and constantly are discursively negotiated, contested and resisted”.²¹¹

The second question pertains to who is responsible for protecting the ‘vulnerable’ communities. Placing these communities as vulnerable maintains the power of the Dominant Model to provide protection and assistance and keep those communities in subjugation. Kapur argues that in the discourse around human rights and women in developing countries, “the assumption of a common international women’s victimhood operates to keep women in their place by presenting them as both vulnerable and

208 Kapur, above n 12, at 10.

209 “Confronting the Climate Crisis: Feminist Pathways to Just and Sustainable Futures” (7-9 October 2020) Consortium on Gender, Security & Human Rights
<https://genderandsecurity.org/events-news/confronting-climate-crisis-feminist-pathways-just-and-sustainable-futures>.

210 At 6.

211 At 6.

ignorant”.²¹² Similarly, I argue that in the international environmental discourse categorising the ‘vulnerable’ and ‘non-vulnerable’ keeps these communities subjugated and ignores their self-determination in addressing climate issues in their region. Ultimately this continues the culture of colonisation. It “masks alternative voices that fundamentally challenge Western ways of knowing, being, and doing”,²¹³ ignoring the value and power of Indigenous and local knowledge and practices.

Additionally, the Paris Agreement may fall into the trap of placing vulnerable populations as a critical focus for adaption and mitigation rather than addressing the inherent value of Nature. MacGregor argues that in “much of the gender-focused work on climate change, it often seems that the main reason given for mitigation is the fact that women and other vulnerable people will be hurt”.²¹⁴ This narrative ignores “an ethical stance against the exploitation of the planet by humans and for its protection as indivisible from human life”.²¹⁵ Mallory argues that when the law “speaks like this, it promotes the interests of individuals and groups privileged through systems of capitalist patriarchy, and effaces the voice of those marginalized and oppressed”.²¹⁶

Article 7(5) of the Paris Agreement does, however, acknowledge that in formulating adaptation action, Parties should be guided by “traditional knowledge, knowledge of indigenous peoples and local knowledge systems”.²¹⁷ This statement is qualified twice with “where appropriate” and “as appropriate”. This exemplifies the language of the Paris Agreement, acknowledging the existence of alternative knowledge systems but only to the extent that the Dominant Model allows.

This argument does not diminish the fact that women, children, racialised population, Indigenous Peoples and developing nations are among those who suffer most from environmental degradation caused by anthropogenic climate derangement. However, linguistics refers to these subjects both removes the culpability of the human beings responsible for this crisis and ignores the self-determination and strength of these communities to survive without intrusive colonial practices. Therefore, the social role

212 Charlesworth, above n 79, at 35.

213 MacGregor, above n 77, at 626.

214 MacGregor, above n 77, at 628.

215 MacGregor, above n 77, at 628.

216 Mallory, above n 1, at 58.

217 Article 7(5).

created for these groups through the Paris Agreement creates very narrow pathways for subjects to participate in established governance structures but does nothing to challenge the Dominant Model.

D ‘Threat of Climate Change’

The third subject of analysis is how ‘climate change’ is characterised. The Paris Agreement uses the phrase ‘the threat of climate change’. As I have already addressed the issue by calling it ‘climate change’ in Section II(c), I will focus on the word ‘threat’.

MacGregor notes that Professor Eric Swyngedouw “argues that nature is increasingly presented as a threat and a force to be feared”.²¹⁸ Piotr Cap argues that “threat construction in climate change discourse possesses a strategic character, constituting a prerequisite for legitimization of environmental policies”.²¹⁹ Cap draws analogies between references to the threat of climate change by NATO Secretary-General Anders Fogh Rasmussen in 2009 to a speech that could belong in the Iraq war.²²⁰ He notes, “Rasmussen’s speech is an exemplary case of proximization rhetoric, bearing much similarity to the proximization discourse of anti-terrorism and military intervention”.²²¹ Climate derangement is not comparable to the threats of terrorism and war. Climate derangement involves natural phenomena far outside the control of war generals and the state military. However, Cap notes that “[w]hile the impact of natural phenomena can be perceived as physical and tangible, the ‘impact’ of environmental inaction is in comparison intangible — though it is, somewhat paradoxically, equally cumulative”.²²² The reference to ‘climate change’ as a ‘threat’ evokes fear of the tangible phenomena that are natural disasters. Whilst somewhat concealing the intangible yet extremely dangerous inaction of states, governments, and corporations in the climate crisis.

Once again, the dualism of the Dominant Model works to separate and create power dynamics between humans and Nature. Norman argues that the “debate around climate change has successfully “othered” the environment into an external “threat” [and]

218 MacGregor, above n 77, at 628.

219 Piotr Cap *The Language of Fear: Communicating Threat in Public Discourse* (Palgrave Macmillan, London, 2017) at 41-42.

220 Cap, above n 219, at 44.

221 Cap, above n 219, at 44.

222 Cap, above n 219, at 51-52.

homogenised humanity into an undifferentiated “victim” group”.²²³ This discourse, perpetuated by the Dominant Model through MEAs such as the Paris Agreement, is familiar and provoking but ineffective in turning culpability back toward anthropocentric activities.

The reference to the ‘threat of climate change’ also propagates that Nature has no intrinsic value. “The dominant climate narrative now implies that radical action is needed because environmental change is threatening human life, not because human actions are changing an intrinsically valuable nature”.²²⁴ ‘Threat’ therefore entrenches the values of the Dominant Model by separating humans from Nature and reduces the splendour and wondrousness of the natural world to a threat to be terminated.

Using language around the ‘threat’ of natural events has a further complication under an ecofeminist analysis. Ecofeminists argue that the devaluing of women in patriarchal society also results in the devaluing of Nature, as women/the feminine are aligned with the natural world. Cross argues that although this “domination appears to be natural and inevitable” in the worldview of the Dominant Model, it has “only come about through the unfettered exploitation of women and nature resulting in a constant cycle of the inferiorisation of women and non-human nature”.²²⁵ The feminine and Nature are not only understood as inferior but characterised as “a disobedient ‘other’ in need of control”.²²⁶ Nature, therefore, continues to be “cast as threatening or monstrous” so long as it “remains largely feminized in the popular imaginary”.²²⁷ Rather than challenging the Dominant Model, these characterisations linguistically maintain the status quo of men’s domination of women and humans domination of nature.

E ‘Mother Earth’

The Paris Agreement contains a single reference to the term ‘Mother Earth’. The Parties note “the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth”.²²⁸

223 Norman, above n 34, at 4.

224 MacGregor, above n 34, at 628.

225 Cross, above n 134, at 35-36.

226 Cross, above n 134, at 36.

227 MacGregor, above n 77, at 628.

228 The Paris Agreement, above n 160.

Although this is a specific recognition that the Earth is seen as a spiritual entity by some cultures, it is not unproblematic. It is stripped of all ecocentric values compared to the Proposal's language for a Universal Declaration on the Rights of Mother Earth.²²⁹

The reference presents a further issue when using an ecofeminist lens. Some ecofeminists have argued that reference to 'Mother Nature' and 'Mother Earth' enable patriarchal de-valuing of the female and feminine to project onto nature. Norman contends that many feminists have rejected "the metaphor of Mother Nature [because it] reinforces problematic stereotypes [and] involves projecting human categories onto nature, thereby preventing nature from showing itself to us in its own terms".²³⁰ Some scholars argue that this language, in the hands of the Dominant Model, allows the continues belief "that "she" (nature) can be "mastered, conquered, controlled, penetrated, subdued, and mined by men".²³¹ However, this criticism could also ignore and erase important spiritual connections between Nature and those cultures that refer to the natural world as 'Mother Earth', 'Pachu Mama' or 'Papatūanuku'.²³²

VI *The Criticisms of Ecofeminism*

Ecofeminism as a term, a movement, or an ideology is not without its critiques. Ecofeminism refuses to fit into the homogenised boxes of other theories dominant in Western academia. Due to its claim of non-essentialism, it has been the subject of criticism that it has fallen into its own trap and become more essentialist. Niamh Moore offers a compelling analysis of the genealogy of the term 'ecofeminism' and a critique of its claim to nonessentialism.²³³ I wish, however, to offer an alternative view. Moore's critique focuses solely on ecofeminist critiques of other ecofeminists. I see this as inherently problematic. Fractions of feminism are pitted against one another. Feminists and all other non-dominant ways of thinking are in competition with one another for

229 See the discussion at page 32.

230 Norman, above n 34, at 6.

231 Norman, above n 34, at 6. See also Mallory, above n 1, at 29.

232 This paper does not have the scope to analyse this criticism further however for more on this subject from an indigenous perspective see Sólón, above n 156. See also Jessica Hutchings "Claiming out Ethical Space: A Mana Wahine Conceptual Framework for Discussing Genetic Modification" in Leonie Pihama and others (eds) *Mana Wahine Reader A Collection of Writings 1999-2019 Volume II* (Te Kotahi Research Institute, Hamilton, Aotearoa/New Zealand, 2019) 25 at 32.

233 Niamh Moore "Eco/feminist genealogies" in Mary Phillips and Nick Rumens *Contemporary Perspectives on Ecofeminism* (Routledge, London, 2015).

the attention of the Dominant Model. Nevertheless, it is in the interest of the dominating social paradigm for feminist and ecofeminist movements to turn on each other rather than challenging it.

The origins of ‘ecofeminism’ have been blurred and debated. Whether the term in academia came from a French woman, Francoise D’eaubonne, or the women’s Chipko movement in India, in a way does not matter.²³⁴ The term has been adopted and championed by thousands of women and movements across the globe in varying fields from academia to art. I suggest we allow the term to unify multiplicities of views rather than dissenting over its origins and definition. Rather than critically focusing inward, we must direct our attention to dismantling the Dominant Model.

I also recognise the genuine criticisms that much Western feminist thought has been subject to in arguing this point. These include that Western feminism has not accounted for the intersectional experiences of women of colour and indigenous women.²³⁵ In addition, the framing of women as perpetual victims of men’s domination, unable to escape the inevitability of their oppression.²³⁶ While ecofeminism continues to expand, it will more likely continue to become less homogenous than more homogenous. My challenge to readers who are used to seeing international environmental law through the dominant perspective is to sit with the criticism ecofeminism has of the Dominant Model more readily than jumping at the internal inconsistencies of various accounts of ecofeminism.

Further criticism of ecofeminism asserts that ecofeminists claim women are closer to nature than men; therefore, women must be the ones to implement effective environmental law and policy.²³⁷ This paper does not adopt such an approach. This

234 Morrow, above n 9, at 778; Moore, above n 233, at 25.

235 Winifred Woodhull “Global Feminisms, Transnational Political Economies, Third World Cultural Production” in Stacey Gillis, Gillian Howie and Rebecca Munford (eds) *Third Wave Feminism* (Palgrave Macmillan, Hampshire, 2004) 252; Leonie Pihama and others *Mana Wahine Reader A Collection of Writings 1987-1998 Volume I* (Te Kotahi Research Institute, Hamilton, Aotearoa/New Zealand, 2019); and Leonie Pihama and others *Mana Wahine Reader A Collection of Writings 1999-2019 Volume II* (Te Kotahi Research Institute, Hamilton, Aotearoa/New Zealand, 2019).

236 Vanessa E Munro “Violence Against Women, ‘Victimhood’ and the (Neo)Liberal State” in Margaret Davies and Vanessa E Munro (eds) *The Ashgate Research Companion to Feminist Legal Theory* (Routledge, New York, 2016) 233 at 238.

237 Lucy Sargisson “What’s Wrong with Ecofeminism” (2001) 10(1) *Environmental Politics* 52 at 52.

criticism falls into the patriarchal trap that aligns women with nature to preserve the domination of both. The binary separations between man/women and human/nature are used to understand how the dominant approach to humans' relationship with the Earth is problematic. Further, this paper demonstrates how the deconstruction of these binary paradigms will produce better relationships with Nature for all human beings. Therefore, the ecofeminist lens used in this paper asserts that all humans are closer with Nature than the Dominant Model allows. That is not a relationship preserved only for women.

VII Conclusion

In this paper, I have used the values of an ecofeminist approach to criticise the social paradigm dominant in our legal institutions, including international environmental law and the construction of multilateral environmental agreements. I have drawn from linguistics and ecofeminists to build a framework for analysing the language in multilateral environmental agreements that dismantles the values of the Dominant Model, which persist in underpinning these agreements both in process and substance.

My paper has argued that legal institutions, including international environmental law, operate with the constraints of the prevailing social paradigm: the Dominant Model. This model is built on values of capitalism, patriarchy, and colonialism. These values are embedded in multilateral environmental agreements, which are currently insufficient to meet the needs of the climate crisis. Through applying this ecofeminist linguistics framework to the Paris Agreement, I have demonstrated how the phrases 'natural resources', 'vulnerable', and the 'threat of climate change' are problematic in the context of the Dominant Model. As well as briefly noting the inconsistencies in ecofeminism around the term 'Mother Earth'.

I hope that an ecological approach, such as ecofeminism, can help in reconnecting all humans to their spiritual and emotional interconnection with Nature. The capitalist priorities which currently underpin our international environmental law only contribute to the persistent exploitation and degradation of the natural world. We continue to build a world that will result in its own self-destruction.

This framework aims to provide an essential and valuable tool in our joint, human efforts to create environmental law that better serves its purpose of protecting the natural world. The framework helps identify the shortcomings in our current multilateral environmental agreements and environmental law more broadly. It can be used to interrogate whether our behaviour towards the earth and certain ‘othered’ groups is why we are currently failing to meet the goals set in MEAs. The framework points to the values beneath these agreements, which may not be obvious to the untrained observer who is used to viewing international environmental law from the dominant perspective. The framework can help us understand why specific priorities are weighed more critical than others and offer insight into why these priorities need to be re-evaluated for both Nature and ‘othered’ groups.

I will close this paper with the words of feminist professor Elizabeth Grosz²³⁸

Feminists are not faced with pure and impure options. All options are in their various ways bound by the constraints of patriarchal power. The crucial political question is which commitments remain, in spite of their patriarchal alignments, of use to feminists in their political struggles? What kinds of feminist strategy do they make possible or hinder?

Despite the criticisms of an ecofeminist approach, every ecofeminist is attempting to shift the ineffective status quo in international environmental law within the constraints of the Dominant Model. I hope this paper can prove helpful to feminists in their political struggles against and within the constraints of patriarchal power.

238 Elizabeth Grosz “A note on essentialism and difference” in Sneja Gunew (ed) *Feminist Knowledge: critique and construct* (Routledge, London, 1990) 332 at 342-343.

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The text of this paper (excluding table of contents, non-substantive footnotes, and bibliography) comprises approximately 12,019 words.

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