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SELLING THE PLANET TO SAVE IT: THE FAILURES OF GREEN NEOLIBERALISM

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Neoliberalism is a nebulous concept and one that is often hard to define. It has been the ruling political and economic ideology of the late 20th and early 21st centuries. In this note, I will define neoliberalism, examine neoliberal environmental management, and a newer wrinkle to neoliberalism — “green” neoliberalism. I will then examine the effects, mostly negative, that neoliberal environmental management and green neoliberalism has had on workers, property rights of natural resources, and combating environmental degradation and catastrophic climate change through multiple case studies.

I. Introduction	164
II. Defining and Explaining Neoliberalism	166
III. Global Neoliberalism and Green Neoliberalism	169
IV. Country-Specific Case Studies of Green Neoliberalism	173
A. South Africa	173
B. Mexico	175
C. Bolivia	176
D. Chile	177
E. The Philippines	179
F. Indonesia	181
V. Carbon Markets	183
VI. Conclusion	185

I. Introduction

In 2018, the United Nations Intergovernmental Panel on Climate Change (IPCC) published a report warning of the dire consequences that could occur if global temperatures continued to rise

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at their current rates through 2100.¹ The report stated that the 2017 global temperatures were one degree Celsius above pre-industrial levels.² The global average rose at 0.2 degrees per decade.³ They remark on the differences to climate that would occur if the global temperatures were to increase by 1.5 or two degrees Celsius over pre-industrial levels.⁴ Some effects of the increase would be droughts, ocean acidification, floods, heatwaves, and agricultural degradation.⁵ While the 1.5 degree increase would be incredibly devastating, the projections that come with a two degree increase would be near apocalyptic.⁶ The ramifications of these events will be disproportionately placed upon those in poverty and in the global south.⁷ The IPCC wrote that there is no documented historical precedent for the actions that we need to take to prevent these cataclysmic events.⁸ To reach this level, they recommend that global greenhouse gas emissions must drop below 45 percent of the 2010 levels by 2030 and that they must reach net zero by 2050.⁹ While it would not be an “existential threat” in the most literal sense of the term to the entirety of the human race in the near future, it would be cataclysmic, alter the way the entire human race lives, and felt more seriously by poorer and members of the global south.

Neoliberalism is a term that is difficult to describe and hard to define, so difficult that some political economists have considered abandoning the term altogether.¹⁰ This is because neoliberalism takes multiple different forms and most do not utilize the term.¹¹ Short of a few places like North Korea, all countries have been touched by neoliberalism.¹² The term was originally coined at a meeting in Paris in-between World War I and World War II, by two figures in attendance who would come to define the ideology.¹³ These two were Frederick von Hayek and Milton Friedman, and like many neoliberals they often did not use the term to describe themselves or their ideology.¹⁴ Neither Hayek nor Friedman had much to say about environmental issues or resource management.¹⁵ In the decades that followed, through large transnational organizations such as the World Bank, the International Monetary Fund, and multi-nation treaties, neoliberalism and environmentalism became intertwined.¹⁶ While neoliberalism floated around for years, it did not truly take off until the global economic downturns of the 1970s and the electoral victories of

¹ V. MASSON-DELMOTTE ET AL., UNITED NATIONS INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, GLOBAL WARMING OF 1.5°C: AN IPCC SPECIAL REPORT ON THE IMPACTS OF GLOBAL WARMING OF 1.5°C ABOVE PRE-INDUSTRIAL LEVELS AND RELATED GLOBAL GREENHOUSE GAS EMISSION PATHWAYS, IN THE CONTEXT OF STRENGTHENING THE GLOBAL RESPONSE TO THE THREAT OF CLIMATE CHANGE, SUSTAINABLE DEVELOPMENT, AND EFFORTS TO ERADICATE POVERTY (Oct. 6, 2018).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Noel Castree, *Neoliberalism and Biophysical Features*, 1 ENV'T AND SOC'Y: ADVANCES IN RESEARCH 8 (2010).

¹¹ *Id.*

¹² *Id.* at 12.

¹³ George Monbiot, *Neoliberalism-The Ideology at the Root of All Our Problems*, THE GUARDIAN (Apr. 15, 2016), <https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot>.

¹⁴ Castree, *supra* note 10, at 8.

¹⁵ *Id.* at 6.

¹⁶ Michael Goldman, *The Birth of a Discipline: Producing Authoritative Green Knowledge*, *World Bank-Style*, 2 ETHNOGRAPHY 193 (2001).

Margaret Thatcher in the United Kingdom and Ronald Reagan in the United States.¹⁷ In the decades that followed, neoliberalism overtook environmental and resource management policies and, in an effort to expand markets, more recently has also offered solutions to the coming climate catastrophe and solutions to the degradation of “natural capital.” These attempts at neoliberal environmental management have been mixed to catastrophic and have left a negative impact upon the usually poor populations that they are foisted upon.

II. Defining and Explaining Neoliberalism

Before reaching the environmental aspects of neoliberalism it is important to define and discuss neoliberalism as a basic ideological concept. Neoliberalism is an ideological branch of free market capitalism. It is different from Fordism, classical liberalism, or Keynesian economics. On its face, it is about creating a new liberalism. There are three main types of neoliberalism.¹⁸ They are philosophical, programmatic, and practical.¹⁹ First is philosophical neoliberalism, which can also be described as neoliberalism as a worldview, as articulated in works such as Hayek's *The Road to Serfdom* and *The Constitution of Liberty*, and Friedman's *Capitalism and Freedom*.²⁰ The main tenets of this philosophy are that the government should not be involved in collective action, but should instead put an emphasis on individual rights.²¹ As you will see later, the philosophical underpinnings that are put forward and are public facing are not the same as the philosophical underpinnings that guide the practice. Neoliberalism also believes that money-mediated markets are the best mechanism for coordinating among the diverse needs and wants of ostensibly free people.²² This ideology was formed in opposition to totalitarianism, communism, and Keynesian economics.²³ In this philosophical version of neoliberalism, the focus will always be individual rights and markets.²⁴

The second type of neoliberalism is programmatic.²⁵ This stage is about the development of theory and plans to put those tenants into practice.²⁶ This stage took hold following the 1973 Chilean coup, where right wing forces backed by the United States overthrew the democratically elected socialist President, Salvador Allende. Following the coup, Augusto Pinochet was looking for a way to reshape the economy of the country to benefit the coup's wealthy and powerful backers.²⁷ He needed to strip away any remnants of his predecessor's socialist politics and hand economic power over to private parties.²⁸ The brutal military dictatorship that crushed individual rights followed, while stripping away of government regulatory power does not seem to be the most logical fit based on the tenets laid out in philosophical neoliberalism. But through

¹⁷ Harold Perkins, *Neoliberalism and the Environment*, INT'L ENCYCLOPEDIA OF GEOGRAPHY: PEOPLE, THE EARTH, ENV'T AND TECH. 5 (2017).

¹⁸ Castree, *supra* note 10, at 9.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 10

²⁷ *Id.*

²⁸ Tomás Undurraga, *Neoliberalism in Argentina and Chile: Common antecedents, divergent paths*, 23 REV. DE SOCIOLOGIA E POLÍTICA 11, 15 (Sept. 2015).

neoliberalism, the military dictatorship found a working and highly compatible partnership.²⁹ For this project, students of Milton Friedman at the University of Chicago were recruited. This collective became known as the Chicago Boys.³⁰ The Chicago Boys were not alone at this time—many academics and organizations such as the Mont Pelerinians Society were producing theory and laying the groundwork for the implementation—they were just the first group to get to test out their theories.³¹ While Chile was the initial testing grounds for a programmatic neoliberal economy, within the next two decades the practice expanded to other countries, including the United Kingdom, the United States, New Zealand, other South American countries, and the former Soviet Bloc following the collapse of the USSR in 1991.³² Generally, theory and implementation includes seven stages of neoliberalization.³³ They are: privatization; marketization; deregulation; re-regulation; implementation of market proxies; creation of flanking mechanisms; and the creation of free, self-sufficient, and self-governing individuals and communities.³⁴ This was a massive project that would transform the way people would view their relationship with the government.³⁵

In the privatization stage, neoliberal policies assign clear, legally enforceable private property rights to hitherto unowned, state-owned, community-owned aspects of the social, cultural, or natural worlds.³⁶ Marketization means transferring things that were not previously in the market into the market; they want these previous non-commodities to be guided by market logic as they believe that this will allow them to be properly and efficiently utilized.³⁷ The next stage is one of deregulation and state rollback. The logic behind this move is to “shrink” the state in order to enable firms, individuals, and consumers to exercise “freedom of choice” through creating a new quasi-state or state-sanctioned non-political actors to take on functions that states themselves could, in theory or in practice, otherwise perform, and contracting private or third-sector bodies to deliver some state services through a process or competitive bidding.³⁸ Then comes market friendly re-regulations where the state transforms from a provider to a market manager.³⁹ In this scenario neoliberals no longer see the state as part of the economy but as a separate actor that protects the economy.⁴⁰ This new state regulation entails fiscal discipline, a focus on supply side investments, entrepreneurial and consumer friendly tax policies, business friendly labor policies, and the free moment of money capital as well as other commodities.⁴¹

Then neoliberals believe in creating market proxies in the residual state sector, thus the remaining state processes should be transformed into more market-like institutions.⁴² The state institutions that remain create internal markets, focus on cost recovery, and implement budget capping.⁴³ The goal is to ingrain the state with an ethos of commercialization. The next step is to

²⁹ *Id.* at 15–16.

³⁰ Castree, *supra* note 10, at 10.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 10–11.

³⁵ Perkins, *supra* note 17, at 5.

³⁶ Castree, *supra* note 10, at 10.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 11.

strongly encourage the use of flanking mechanisms in civil society.⁴⁴ This is done to promote the growth of informal and social economies through the establishment and promotion of charities and nonprofits that support social and environmental domains.⁴⁵ Neoliberalism believes that this will lead to the creation of free, self-sufficient, and self-governing individuals and communities.⁴⁶ This is the endgame, and the population will now be made up of “free peoples.”⁴⁷ Neoliberal theory is very much a utopian ideology.⁴⁸ As it is a utopian ideology, according to many of its proponents, it has not reached this final stage.⁴⁹

The final type of neoliberalism is neoliberalism in practice.⁵⁰ Neoliberalism in practice can be broadly seen as an attempt by governments to make a government more efficient and cost less.⁵¹ As neoliberalism is so wide ranging and ambitious, it fits into a number of specific policies.⁵² The first one to be discussed is macro-economic policies such as: placing controls on government borrowing, keeping inflation low, placing constraints on domestic money supplies, keeping taxes low, allowing the exchange rate to float, and allowing interest rates to be determined by the market.⁵³ Neoliberal industrial and business policies include removing select subsidies; trade, investment, and ownership barriers, and incentivizing innovation, competition, and entrepreneurial risk taking.⁵⁴ This is all in the name of increasing commercial competition.⁵⁵ Interestingly, neoliberalism, despite this stated belief in commercial competition, is also opposed to strong antitrust actions and allows and encourages monopolies.

The labor market policies under neoliberal regimes are uniformly anti-labor union and collective action power as they believe strong unions weaken capital efficiency.⁵⁶ Tied into their labor policies is their educational and training policies, which are supply side based. They want workers to be adaptable and committed to life-long learning.⁵⁷ An example of this can be found in the common policy statement of teaching former coal miners to code.⁵⁸ This is done to keep a large supply of underemployed workers with a wide array of skills, thus they have less bargaining power as workers are less specialized and can be plugged into new industries more easily.⁵⁹ This then leads to the state implementing managing, monitoring, and auditing measures—a cooperation between private and state management.⁶⁰ This is said to be done in the name of rewarding success, punishing failure, implementing new public management, utilizing transactional cost theory, and aiming for capital to be as productive as possible.⁶¹ Another aspect is moving away from welfare

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 12.

⁴⁹ *Id.*

⁵⁰ *Id.* at 11.

⁵¹ Exec. Order No. 12,866 58 Fed. Reg. 190 (Sept. 30, 1993).

⁵² Castree, *supra* note 10, at 11.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Erica Peterson, *From Coal to Code: A New Path for Laid-Off Miners in Kentucky*, NPR (May 6, 2016).

⁵⁹ Ben Tarnoff, *Tech's Push to teach coding isn't about kids' success- it's about cutting wages*, THE GUARDIAN (Sept. 21, 2017).

⁶⁰ Castree, *supra* note 10, at 11.

⁶¹ *Id.*

and instead focusing on workfare.⁶² Thus, the state supports only the very needy or the chronically disadvantaged in an attempt at re-moralizing the poor through work incentivization.⁶³ Built into this is neoliberal social policy which is a semi-contradictory take on law and order policies and civil rights.⁶⁴ Under neoliberalism civil rights are encouraged but laws are firm and to be followed, when laws are broken they take an often uncompromising approach to those who transgress.⁶⁵ Through this necessity of strong law and order policies to uphold the economic system, it becomes apparent how this ideology allegedly built upon a belief in individual rights could easily support a brutal dictator like Augusto Pinochet.

III. Global Neoliberalism and Green Neoliberalism

Neoliberalism went global in the 1980s.⁶⁶ This globalized neoliberalism was not equally distributed around the world as some states were more quickly built into neoliberal states.⁶⁷ Some who study neoliberalism have compared it to a parasite.⁶⁸ Others see it as comparable to the mutating alien from John Carpenter's *The Thing*.⁶⁹ The ideology moves from host country to host country adapting to the country's specific material and social characteristics. Neoliberals worked with the situations that they were given and modified their approaches based on critiques, prior failures, and opposition to their policies.⁷⁰ This is the process of neoliberalization.⁷¹ During this period, the environmental concerns and ideologies of the 1960s and 1970s blended with expanding neoliberal order in the Anglo-American world through organizations such as the International Monetary Fund (IMF) and the World Trade Organization (WTO), and expanded to the rest of the world.⁷²

This shotgun wedding between environmentalism and neoliberalism was an awkward alliance. It led to the development of an international policy of green development during the 1980s.⁷³ These policies viewed the global south as severely under-utilized.⁷⁴ They believed that, if properly utilized, the natural resources of the global south could support the global markets and, simultaneously, the development of the global south.⁷⁵ Or, at least, this is what they argued in public. In the Anglo-American world, green-neoliberalism was born out of think tanks responding to the environmental movement and the outgrowth of natural resource management in response to the post-war world without using command and control methods.⁷⁶ Many of these advocates of free trade argued that the "trickle down" effect of economic growth will improve environmental

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 12.

⁶⁷ *Id.*

⁶⁸ *Id.* at 13.

⁶⁹ Mark Gibson, *Growing Up, THE NEXT US* (Apr. 19, 2019), <https://thenext-us.com/2019/04/growing-up/>.

⁷⁰ Geoffrey Schneider, *Neoliberalism and Economic Justice in South Africa: Revisiting the debate on Economic Apartheid*, 61 REV. OF SOC. ECON. 35, 35-36 (2003).

⁷¹ Castree, *supra* note 10, at 12.

⁷² *Id.* at 14.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 14.

conditions.⁷⁷ They used various methods to support their positions, some environmental and some commerce oriented.⁷⁸

The most well-known examples of free trade mashing up with environmental concerns would be the North American Free Trade Agreement (NAFTA) that the United States, Canada, and Mexico entered into in 1994.⁷⁹ Of the 15 preambular statements, three relate to the environment or sustainable development.⁸⁰ In addition to the preamble statements, four other provisions of NAFTA have environmental stipulations.⁸¹ These include Article 104 and Annex 104.1 which lays out five specific international environmental agreements that prevail over NAFTA and the nation states must still comply with.⁸² In addition to the articles in NAFTA, the signatory nations also signed the North American Agreement on Environmental Cooperation (NAAEC).⁸³ This was an independent document that attempted to address the interrelationship between trade and the environment.⁸⁴ If the goal was to protect the environment, there were major flaws in the plan from the start that made this goal impossible.

There were no protective measures or environmental standards in the NAAEC, instead it created a mechanism to deal with the environmental problems that would arise from the existing policies of the member nations and the problems that arise due to NAFTA.⁸⁵ It was an attempt to harmonize economic growth with the protection of the environment.⁸⁶ NAFTA did not have a mechanism to redress environmental complaints.⁸⁷ Though the NAAEC created a dispute resolution mechanism called the North American Commission on Environmental Cooperation (CEC), which is endowed with a mandate that allows it to extend beyond NAFTA and liberalized trade.⁸⁸ The CEC has a three part structure: it consists of a Council, an independent Secretariat, and a Joint Advisory Committee.⁸⁹ Under the redress system of the CEC, a private person or NGO in any of the member states may bring a claim that a state is not enforcing an environmental policy to the Secretariat.⁹⁰ Then the Secretariat either does or does not deem a complaint receivable. If the complaint is receivable, the state in question that is allegedly not in compliance may respond and provide information and clarification regarding its enforcement of the law at issue.⁹¹ Then, if there is still a controversy the Secretariat may recommend that a factual record be produced, then it moves onto the Council to vote to authorize the Secretariat to produce the factual record.⁹² The purpose of the factual record is to provide an objective presentation of the facts relevant to the alleged failure to enforce the appropriate environmental laws.⁹³ There are no enforceable sanctions

⁷⁷ Bradley Mall, *The Effect of NAFTA's Environmental Provisions on Mexican and Chilean Policy*, 32 THE INT'L LAWYER 153 (1998).

⁷⁸ Castree, *supra* note 10, at 15.

⁷⁹ Mall, *supra* note 77, at 155.

⁸⁰ *Id.*

⁸¹ *Id.* at 156.

⁸² North American Free Trade Agreement art. 104, Jan. 1, 1994.

⁸³ Mall, *supra* note 77, at 157.

⁸⁴ *Id.*

⁸⁵ *Id.* at 158.

⁸⁶ *Id.*

⁸⁷ Anne-Catherine Boucher, *The Fate of the North American Commission for Environmental Cooperation in the Context of the NAFTA Renegotiations*, THE AM. BAR ASS'N (May 1, 2018).

⁸⁸ Mall, *supra* note 77, at 158.

⁸⁹ *Id.* at 159.

⁹⁰ Boucher, *supra* note 87.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

in the CEC's process, it is used to spotlight a failure on the part of one of the member states and theoretically induce action through that public exposure.⁹⁴ As this mechanism could not be punitive and the focus was upon promoting commerce and environmentalism at the same time, it has not been effective.

Often the proponents of environmental neoliberalism argued that they wanted to avoid the tragedy of the commons.⁹⁵ They followed the ideological underpinnings of two theorists who did not call themselves neoliberals but still made arguments that would now be considered neoliberal, H. Scott Gordon and Garrett Hardin.⁹⁶ H. Scott Gordon wrote that when there is individualist competition and common ownership, there will often be a degradation of the natural resources.⁹⁷ Garret Hardin, based on an incorrect reading of the historical record, wrote that because resources are finite they will be depleted if left to the common community to divide amongst themselves and caps must be placed on common usage.⁹⁸ These ideals had a major impact on American environmental policy.⁹⁹ Their proponents often argued that by putting an individual and private body in charge of the management of the resources they would better managed due to the competition and profits at stake.¹⁰⁰ Some even argued that if there was a price increase along with privatization, there would be substantial benefits as that would put a barrier on the overuse of the resource, thus allegedly cutting waste on the end of the consumer.¹⁰¹ They also argued that profits could be derived from previously unowned or unpriced portions of the biophysical world and, without the utilization, these resources become lost income and create a commodity from what was once not a commodity.¹⁰² The argument goes that the private sector would be better at bringing value from these resources than the government through creativity or efficiency.¹⁰³ Some reformers and moderate neoliberals even believed that the markets would be the best redistributive strategy to make up for past societal ills because of how efficient the markets can be.¹⁰⁴ These arguments can be boiled down with the rosy acronym GEDDS, which stands for Growth, Efficiency, Development, Democracy, and Sustainability.¹⁰⁵

In examining neoliberalism some have argued that despite its ideological origins and professed tenants, neoliberalism actually involves either more or, at least, as much government intervention as previous systems.¹⁰⁶ Instead of direct command and control it uses the power of government to format social and economic norms that guide the process.¹⁰⁷ Thus protecting the levers of the economy from actual democratic and worker control through many layers of governmental intervention and collaboration with business and industry. This occurs through the process of re-regulation.¹⁰⁸ The way the previously mentioned seven stages of neoliberalism

⁹⁴ *Id.*

⁹⁵ Castree, *supra* note 10, at 15.

⁹⁶ *Id.* at 14–15.

⁹⁷ H. Scott Gordon, *The Economic Theory of a Common Property Resource: The Fishery*, 62 J. OF POL. ECON. 141 (1954).

⁹⁸ Garrett Hardin, *Tragedy of the Commons*, 162 SCI. 1247 (1968).

⁹⁹ Castree, *supra* note 10, at 15.

¹⁰⁰ *Id.*

¹⁰¹ William Finnegan, *Leasing the Rain*, THE NEW YORKER (Mar. 31, 2002).

¹⁰² Castree, *supra* note 10, at 15.

¹⁰³ *Id.*

¹⁰⁴ Schneider, *supra* note 70, at 32.

¹⁰⁵ Castree, *supra* note 10, at 14.

¹⁰⁶ *Id.* at 16.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 18.

impacts environmental policy has a unique flavor.¹⁰⁹ During the privatization stage, assigning ownership rights in or for the use of the biophysical world can occur in three situations.¹¹⁰ The first situation is where the state bodies relinquish or loan out their sovereign rights to private institutions.¹¹¹ An example of this is when Argentina in the post-Pinochet years privatized their water and sewage management.¹¹² Aguas Argentina controlled the water rights in Argentina—this was a multi-national private consortium of private European water companies formed with the help of the World Bank.¹¹³ The World Bank's involvement in pushing through privatization of public resources in exchange for desperately needed loans is quite common.¹¹⁴ Through the 1980s and 1990s many international organizations pushed for recognizing water as an economic good, and thus a commodity.¹¹⁵ Essentially, turning locally held resources over to private, usually multinational enterprises, over the protests of local peoples. The second situation is where there are recognized or established rights regimes outside of the state realm of control that are later altered by policy makers.¹¹⁶ The third scheme is when no recognized or enforceable rights exist but are then established.¹¹⁷ An example of this can be found in the United States beginning in the 1990s with Wetland Banking and Water Quality Credit Markets.¹¹⁸ This scheme created the right to destroy and create wetlands and the right to produce dirty or clean water, these are rights that did not previously exist.¹¹⁹ Through this system the proponents of neoliberalism viewed success on a flexible financial and ecological basis.¹²⁰

Next is a turn to the marketization of biophysical resources, goods, and services.¹²¹ The governments have created this commodity and now they must sell it. The rights of ownership and the use of nature do not necessitate the marketization of biophysical resources, services, or assets under neoliberalism but the two are umbilically connected.¹²² When property rights are assigned and legally real, the assets that are owned or accessed by individuals, they should generate a stream of revenue.¹²³ In the neoliberal natures, this means putting price tags on non-human nature.¹²⁴

The third step is deregulation.¹²⁵ The movement towards deregulation has not been uniform as some countries have had stronger prior regulations than others.¹²⁶ One form of deregulation is austerity, where the state cuts previous ecological support structures and

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Andrés Olleta, *The World Bank's Influence on Water Privatization in Argentina*, INT'L. ENVTL. L. RES. CTR. 3 (2011), <http://www.ielrc.org/content/w0702.pdf>.

¹¹⁵ *Id.* at 4.

¹¹⁶ Castree, *supra* note 10, at 18.

¹¹⁷ *Id.* at 18–19.

¹¹⁸ *Id.* at 19.

¹¹⁹ *Id.*

¹²⁰ ENV'T L. INSTITUTE, NATIONAL WETLAND MITIGATION BANKING STUDY 12–13 (1994) <https://www.iwr.usace.army.mil/Portals/70/docs/iwrreports/94-WMB-6.pdf>.

¹²¹ Castree, *supra* note 10, at 19.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Patrick Bigger et. al., *Reflecting on Neoliberal Natures: An Exchange*, ENV'T. & PLAN. E: NATURE & SPACE 5 (2018).

¹²⁵ Castree, *supra* note 10, at 19.

¹²⁶ *Id.* at 19-20.

environmental protections.¹²⁷ This is important for the creation of the markets as it creates capital for the investments and a need for their services.¹²⁸ An example of this can be seen in Milwaukee, Wisconsin in the 1990s and early 2000s; when environmental services were cut and de-regulated, they were replaced with a market.¹²⁹

Then comes the fourth step of market friendly re-regulation.¹³⁰ Here, every player is actively affected, not just by the creation of new markets but also by altering existing ones.¹³¹ The markets and privatization does not mean that the government no longer plays a role; the regulation shifts, and instead of being a player in a system, the government acts as more of a referee.¹³² They turn away from government to governance at the behest of the private sector's power players.¹³³ Other attempts include Natural Capital Accounting (NCA), which is a process that utilizes market instruments for environmental management. These include eco-tourism, payments for environmental services, and carbon markets.¹³⁴ Essentially preserving the natural landscape only if it generates enough profits after being commodified.

Then comes the fifth step of using market proxies to fill in the gaps in the social safety net that did not exist before.¹³⁵ Under this green neoliberalism, efficiency is king, and the state begins to act like a private firm in a competitive environment, as they are no longer the biggest player when it comes to providing services.¹³⁶

Then comes the sixth step of flanking—in flanking, civil-society groups, such as Non-Governmental Organizations, pick up the pieces and provide some of the social services that are not profitable or done by the government in the new market-based economy.¹³⁷ Some examples would be environmental justice communities in the United States or private sector voluntary regulations, such as voluntary food labels.¹³⁸

Finally, we reach the seventh step. In theory, the process would lead to free, self-sufficient, self-governing and entrepreneurial individuals.¹³⁹ Skepticism towards this claim is warranted after running through the previous six steps.

IV. Country-Specific Case Studies of Green Neoliberalism

A. South Africa

The process of neoliberalization began in South Africa prior to the end of Apartheid and it continued after Nelson Mandela became president, despite his commitment to socialism, due in part to reformists and political moderates who held a lot of political sway and capital.¹⁴⁰ This

¹²⁷ Bigger et al., *supra* note 124, at 31.

¹²⁸ *Id.*

¹²⁹ Castree, *supra* note 10, at 20.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 21.

¹³⁴ Robert Fletcher, et al., *Natural Capital Must Be Defended: Green Growth as Neoliberal Biopolitics*, 46 THE J. OF PEASANT STUD. 1068, 1069 (2018).

¹³⁵ Castree, *supra* note 10, at 21.

¹³⁶ *Id.*

¹³⁷ *Id.* at 22.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Schneider, *supra* note 70, at 32.

country's process of neoliberalization is important to examine because it shows the flexibility of the process and the forward-facing reasoning put forward by proponents of neoliberalism. The reasoning behind this process can be boiled down to seven core beliefs.¹⁴¹ The first belief was that markets are efficient; the reformers wanted to preserve markets even in a democratic socialist African National Congress government, and they stated that markets would be the most efficient strategy at redistribution.¹⁴² The second belief was that free markets would inhibit racism and help blacks.¹⁴³ Third, that the state is an instrument used to benefit the small group that controls it.¹⁴⁴ Fourth, growth undermines racial discrimination, stating that growth would lead to a demand for more black labor and lead to increased opportunities for blacks.¹⁴⁵ Fifth, economic factors would outweigh racism and security.¹⁴⁶ The neoliberals falsely stated that apartheid was discarded because it "lowered prosperity."¹⁴⁷ Sixth, they argued that some apartheid measures were based upon good intentions.¹⁴⁸ Finally, they argued that most businesses did not support apartheid and were not primarily responsible for its installation and thus they could be used to combat economic disparity and economic injustice.¹⁴⁹ These reformists did believe in limited redistribution after criticism from neo marxists and the ANC.¹⁵⁰ Though this belief in redistribution would be weighed against economic efficiency and economic efficiency would weigh heavier than economic justice.¹⁵¹ As with all neoliberal regimes, the market comes first. This belief system extended to environmental regulations as well.¹⁵² The system used by the South African government was called Payments for Environmental Services (PES).¹⁵³ In the Maloti-Drakensberg Transfrontier Conservation and Development Project, this form of privatizing conservation occurred.¹⁵⁴ The focus of the development was in the tourism sector.¹⁵⁵ They also attempted to place economic value upon biodiversity to promote their attempts at conservation.¹⁵⁶ Attempts were made to incentivize local people to change their communal grazing and farming practices.¹⁵⁷ This was due to the belief that their farming and grazing practices degraded the local environment.¹⁵⁸ The goal was to turn them into better managers of the local water markets.¹⁵⁹ But for many this process of neoliberalization, which appears to be continuing to this day, has just become a massive barrier to accessing basic necessities like water. This method also has not even staved off drought. Instead, it has been a boon for large multinational businesses.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Schneider, *supra* note 70, at 32.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 34.

¹⁴⁸ *Id.* at 32.

¹⁴⁹ *Id.*

¹⁵⁰ Schneider, *supra* note 70, at 37.

¹⁵¹ *Id.* at 37–38.

¹⁵² Sophie Didier, et al., *The Adaptive Nature of Neoliberalism at the Local scale: Fifteen Years of City Improvement Districts in Cape Town and Johannesburg*, 45 *ANTIPODE* 1, 3–4 (2013).

¹⁵³ Bram Büscher, *Payments for Ecosystem Services as Neoliberal Conservation: (Re)interpreting Evidence from the Maloti-Drakensberg, South Africa*, 10 *CONSERVATION & SOC'Y*. 29 (2012).

¹⁵⁴ *Id.* at 31.

¹⁵⁵ *Id.* at 32.

¹⁵⁶ *Id.* at 34.

¹⁵⁷ *Id.* at 36.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

B. Mexico

Mexico's neoliberalization of the environment began in full in the 1990s.¹⁶⁰ These were due to the passage of Article 27 of the Mexican Forest Laws in 1992 and the signing of the North American Free Trade Agreement in 1994.¹⁶¹ In November of 1993, Bill Clinton was attempting to gain support for NAFTA in Congress; one of his main arguments was acknowledging that there were serious ecological issues on the United States-Mexico border and that the most appropriate forum for combating these issues was through expanded trade.¹⁶² These trade practices outlined in NAFTA led to a massive increase in the production of wood products in Mexico, specifically in the northern state of Chihuahua.¹⁶³ These new and reformed policies led to the privatization of commonly held ejidos, which are commonly owned land for the production of agriculture.¹⁶⁴

Theoretically, this move would make production more efficient and move their agricultural production away from corn and grain as they could not compete in the international market with United States and Canadian productions.¹⁶⁵ At the same time, formerly communal water rights were privatized in Mexico.¹⁶⁶

As a result of NAFTA removing import tariffs and quotas, United States and Canadian wood products also flowed into Mexico.¹⁶⁷ A reduction in prices in Mexico followed, and this was followed by a promotion of cheap labor, reduced regulations, and clear-cutting practices.¹⁶⁸ These practices would buoy the profit margins of Mexican businesses. The small scale agricultural farms were not able to keep up with the larger firms as they could not access the same credit, water rights, or technical expertise.¹⁶⁹ The shift from bread wheat to durum (pasta) wheat in northern Mexico is linked to a 50 percent reduction in water tables in the Yaqui Valley and an increase in the use of fertilizers.¹⁷⁰ The increased exportation of fruits and vegetables, which had a larger return for the businesses, led to an 80 percent increase in agricultural chemicals, which causes pollution and health risks for agricultural workers.¹⁷¹ Due to pesticide drift, the family members of the agriculture workers also experience detrimental health effects.¹⁷² Monocultures began to develop, due to having to focus upon growing cash crops; monocultures can be dangerous as they deplete the soil and can leave vegetation susceptible to disease.¹⁷³ As a result of water privatization, water prices increased and poorer and indigenous farmers were less likely to be able to afford access.¹⁷⁴

¹⁶⁰ Diana Liverman, et al., *Neoliberalism and the Environment in Latin America*, 31 ANN. REV. OF ENV'T. & RES. 327, 346 (2006).

¹⁶¹ *Id.*

¹⁶² Mall, *supra* note 77, at 154.

¹⁶³ Liverman et al., *supra* note 160, at 346.

¹⁶⁴ *Id.* at 349.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 341.

¹⁶⁷ *Id.* at 346.

¹⁶⁸ Liverman et al., *supra* note 160, at 346.

¹⁶⁹ *Id.* at 349.

¹⁷⁰ *Id.* at 350.

¹⁷¹ *Id.* at 350–51.

¹⁷² Stuart Shalat, et al., *Nondietary ingestion of pesticides by children in an agricultural community on the US/Mexico border: Preliminary results*, 13 J. OF EXPOSURE ANALYSIS & ENVTL. EPIDEMIOLOGY 42, 44 (2003).

¹⁷³ Liverman, *supra* note 160, at 351.

¹⁷⁴ *Id.* at 341.

C. Bolivia

Bolivia is generally thought of as one of the more disastrous attempts at a neoliberal environmental policy.¹⁷⁵ Specifically the attempt at the neoliberalization of water rights, where government powers attempted to transform a communal and, in many cases, free resource into a private commodity.¹⁷⁶ The right wing government of the former dictator Hugo Balzar passed a water law in 1999 that would have turned the water rights over to private conglomerates in the city of Cochabamba.¹⁷⁷ Cochabamba suffers from a chronic lack of water sources, those that existed no longer supplied enough water for the growing population and the infrastructure was not adequate either.¹⁷⁸ Fifty-five percent of the population of Cochabamba was served by the governmental service SEMAPA and the remaining population's needs were met by community safe drinking water systems.¹⁷⁹ The main company leading the charge on privatization, Bechtel, was an American company.¹⁸⁰

The private company's actions lead to a competition between the city of Cochabamba and rural farmers and a payment rate hike of 150 percent to provide private capital and a guaranteed 15 percent profit for the company.¹⁸¹ These proponents argued that the rational and efficient use of water that was geared toward large scale multinational agricultural production to the detriment of traditional peasant agriculture would be better for the water supplies.¹⁸² Some found themselves paying 20 percent of their monthly income for water, four times more than the limit recommended by the Pan American Health Organization.¹⁸³ The contract signed by the company required the government to turn over their system and also the community safe drinking water systems.¹⁸⁴ The terms of the contract even included a provision that granted the company the right to charge for rainwater collection from rooftop cisterns.¹⁸⁵ The law also transferred control of the neighborhood-based water collectives that were not even owned or operated by the state over to the private company.¹⁸⁶ This birthed massive protests in 2000, known as the Cochabamba Water War.¹⁸⁷ The protesters argued that water should not be mediated by the markets, but rather by membership in a community.¹⁸⁸ This led the government to reverse course and cancel privatization in Cochabamba, which was in turn followed up by the ownership group filing a lawsuit against the government for 25 million.¹⁸⁹

¹⁷⁵ *Id.* at 343.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Olleta, *supra* note 114, at 12.

¹⁷⁹ *Id.* at 19.

¹⁸⁰ Leasing the Rain

¹⁸¹ Liverman et al., *supra* note 160, at 343.

¹⁸² Olleta, *supra* note 114, at 15.

¹⁸³ Roots of Resistance to Water Privatization in Bolivia, 16

¹⁸⁴ Olleta, *supra* note 114, at 19.

¹⁸⁵ Thomas Perreault, *Assessing the Limits of Neoliberal Environmental Governance in Bolivia*, in BEYOND NEOLIBERALISM IN LATIN AMERICA? SOCIETIES AND POLITICS AT THE CROSSROADS 135, 145 (John Burdick et al. eds., 2009).

¹⁸⁶ *Id.*

¹⁸⁷ See *Bolivia: The Water War to Resist Privatization of Water in Cochabamba*, GLOBAL WATER PARTNERSHIP, https://www.gwp.org/en/learn/KNOWLEDGE_RESOURCES/Case_Studies/Americas--Caribbean/bolivia-the-water-war-to-resist-privatisation-of-water-in-cochabamba-157/ (last edited Jan. 25, 2017).

¹⁸⁸ Perreault, *supra* note 185, at 146.

¹⁸⁹ Liverman et al., *supra* note 160, at 343.

The success of the protests in Cochabamba led the protesters to turn their attention to La Paz and El Alto where the neo liberalization of water had already occurred.¹⁹⁰ El Alto is a satellite city of La Paz, the poorest city in Bolivia, and the most indigenous by percentage of population.¹⁹¹ The main proponents of privatization were the World Bank, who made water privatization an explicit condition of aid in the 1990s. They argued that the local government was too corrupt to properly manage the water efficiently and that the best utilization will be through private channels.¹⁹² The privatization of the water in La Paz and El Alto was nominally backed by workers; the workers were promised shares in the new private company.¹⁹³ The resistance was led by neighborhood movements who were distrusting of the labor unions.¹⁹⁴ Eventually the workers who originally marginally backed the privatization of the water supplies turned against the company, as the shares that they were promised amounted to less than one dollar USD a year and one-third of all workers were laid off within the first four years of the deal in violation of a promise made to them by the company.¹⁹⁵ They were replaced by subcontractors.¹⁹⁶ The citizens of these cities also fought back and regained community-based control of their drinking water supplies in 2005.¹⁹⁷ Bolivia throughout the 1980s and up until the early 2000s followed the dictates of the World Bank and the IMF, but did not have anything to show for it, as poverty never reduced and the prosperity promised along with neoliberalism never materialized.¹⁹⁸ In Bolivia the process of neoliberalization of water never fully materialized; it appears to have stopped before it got beyond early stages of privatization and marketization.

D. Chile

As previously mentioned, Chile has been on the forefront of neoliberalization since the 1970s.¹⁹⁹ In 1981 a new water code was passed with the support of the World Bank.²⁰⁰ The proponents argued that privatization would be a solution to inefficient government management of water resources.²⁰¹ Those with the capital resources to purchase water could do so and then sell water that they did not need, and thus the market would be an efficient regulator of this commodity.²⁰² The water code separated the rights of water from land and community and made it freely tradeable.²⁰³ It became a constitutionally protected civil property right.²⁰⁴ The

¹⁹⁰ Perreault, *supra* note 185, at 147.

¹⁹¹ Susan Spronk, *Roots of Resistance to Urban Water Privatization in Bolivia: The "New Working Class," the Crisis of Neoliberalism, and Public Services*, 71 INT'L LAB. & WORKING-CLASS HIST. 8, 18 (2007).

¹⁹² Jim Schultz, *The Politics of Water in Bolivia*, THE NATION (Jan. 28, 2005), <https://www.thenation.com/article/archive/politics-water-bolivia/>.

¹⁹³ Spronk, *supra* note 191, at 20.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 20–21.

¹⁹⁶ *Id.* at 21.

¹⁹⁷ Perreault, *supra* note 185, at 152.

¹⁹⁸ William Finnegan, *Leasing the Rain*, THE NEW YORKER (Apr. 8, 2002), <https://www.newyorker.com/magazine/2002/04/08/leasing-the-rain>.

¹⁹⁹ Noel Castree, *Neoliberalism and the Biophysical Environment*, 4 GEOGRAPHY COMPASS 1725, 1727 (2014).

²⁰⁰ Liverman et al, *supra* note 160, at 340.

²⁰¹ Madeline Baer, *Private Water, Public Good: Water Privatization and State Capacity in Chile*, 49 STUD. COMP. INT'L DEV. 141, 141 (2014).

²⁰² Jessica Budds, *Water, Power, and Production of Neoliberalism in Chile, 1973-2005*, 31 EPD: SOC'Y & SPACE 301, 301 (2013).

²⁰³ *Id.* at 306.

²⁰⁴ *Id.*

privatization and marketization of water rights became an important piece in the development of Chile's major natural resource industries.²⁰⁵ Water rights could be acquired permanently at no cost, were protected by constitutional law, were capital assets, and were untaxed in this new system.²⁰⁶ This was crucial to the prosperity of the business conglomerates.²⁰⁷ Many of the privatized companies were in natural resource industries, such as mining, chemical, and electrical that were heavily reliant upon this newly and cheaply privatized and marketized water.²⁰⁸

Broadly, the modern water system in Chile does meet the narrow standards of access, quality, and affordability.²⁰⁹ This cannot be attributed to privatization or neoliberalization, but a rejection of those features and a success story of a public sector combating the negative effects of privatization.²¹⁰ The private water system in Chile led to a crisis where poorer farmers could not get enough water to grow their crops and a loss of water supply to their natural ecosystems.²¹¹ The system allowed for stronger, wealthier players to steal from weaker players which led to unequal access to water in Chile.²¹² The promise of efficiency was not achieved under the 1980 water code, as it allowed for water speculation.²¹³ This led to speculators hoarding water in an attempt to turn a massive profit.²¹⁴

Under Pinochet there was a rush to cut down old growth forests and enter the wood products into the international market.²¹⁵ The value of preserving rain forests was seen as minimal by the private firms and thus not worth managing.²¹⁶ This led to clear cutting and over-chipping of these forests without planning for regeneration, the plan also pushed for converting natural forests into plantations which would produce much more valuable commodities for the market.²¹⁷ Forty percent of all natural forest loss in Chile was from the conversion to plantations—these plantations deplete nutrients and moisture from the soil and replace diverse ecosystems with monocultures.²¹⁸ The Pinochet government seized and privatized land previously occupied communally by indigenous communities following Decree Law 701 in 1974.²¹⁹ On the formerly indigenous lands, plantations were established which the government would subsidize up to 75 percent, and while the rate of planting increased substantially the percentage of reforestation fell from 91 percent to zero percent.²²⁰ The objective of these policies was to sell the land at a price high enough that it would not remain in the hands of Chilean citizens but move to large-scale corporate purchases.²²¹

²⁰⁵ *Id.* at 308.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 309.

²⁰⁹ Baer, *supra* note 201, at 142.

²¹⁰ *Id.*

²¹¹ Liverman et al., *supra* note 160, at 340.

²¹² *Id.* at 341.

²¹³ Budds, *supra* note 202, at 310.

²¹⁴ *Id.*

²¹⁵ Liverman et al., *supra* note 160, at 344-45.

²¹⁶ *Id.* at 345.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ Catherine Schmidt & Jeff Rose, *Environmental and Cultural Changes Under Chilean Neoliberalism: an Ethnography of Forestry and the Mapuche in Valle Elicura*, 22 LOCAL ENV'T 1019, 1022 (2017).

²²⁰ *Id.*

²²¹ *Id.*

International and Chilean lumber companies owned three times more land in ancestral Mapuche, an indigenous group in Chile, than the Mapuche people.²²² The timber industry represented the second highest contributor to the Chilean economy in 2008, bringing in 5.5 billion dollars.²²³ Fourteen percent of all forested land in Chile, 2.3 million hectares, is occupied by plantations.²²⁴ These plantations have a negative environmental effect, native forests provide a forest floor made up of leaves, twigs, and other vegetation whereas plantations do not, thus when the rains fall the plantations absorb the water and deplete natural bodies of water.²²⁵ This causes some extreme hardships for the poorer and indigenous farmers, requiring additional labor and capital to achieve the same results as previous yields.²²⁶ The Mapuche people also describe how their property rights have not been respected by the lumber companies; the companies would trespass upon sacred lands without consulting with the Mapuche people and without compensating them either.²²⁷ The hill known as Treng Treng is a sacred place that is important in many religious and cultural narratives, it was excavated to create tunnels for the logging companies and it was completely deforested.²²⁸ This hill was a place of safety for the Mapuche people as well; they utilized it as a safe haven during storms and earthquakes.²²⁹ The privatization and neoliberalization of the lumber industry threatens the cultural practices of indigenous peoples.²³⁰ Over the course of a century native Chilean forests decreased from 30 million hectares to 15 million hectares.²³¹ The expansion of pine and eucalyptus plantations did not reduce poverty or unemployment, and it did not have a positive effect on the environment.²³² Thus, the promises of green neoliberal did not come to fruition, but the negative externalities did. The testing ground of neoliberalism lays out the major flaws and negative effects on the environment and the people that come with this ideology.

E. The Philippines

In the Philippines there are multiple examples of efforts to protect natural capital. NGOs, government organizations, and private donors worked with local communities to create different plans to preserve natural resources against natural resource extractivism and clear cutting.²³³ The goal was to show the local communities that a tree left standing has more value than a tree felled.²³⁴ The village of Marcunan is surrounded by swidden fields, fallow lands, and old growth forests.²³⁵ Swidden is a term for clear cutting and burning swaths of forest for the benefit of subsistence farming.²³⁶ Conservation efforts were undertaken to protect the old growth forests.²³⁷ These

²²² *Id.* at 1023.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.* at 1027.

²²⁶ *Id.*

²²⁷ *Id.* at 1031.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.* at 1032.

²³³ Robert Fletcher et al., *supra* note 134, at 1077.

²³⁴ *Id.* at 1076.

²³⁵ *Id.* at 1077.

²³⁶ *Id.* at 1075.

²³⁷ *Id.* at 1077.

efforts were conducted by negotiating with local tribal councils and bringing members of the local farmer community together to become community rangers who would monitor the old growth forests to make sure that they were not cleared out for farming.²³⁸ They were coupled with education programs and programs for sustainable farming.²³⁹ The community members would be paid 1,000 pesos, or 22 USD a month for protecting the land and planting more valuable crops on the land that they had already cleared out.²⁴⁰ The term that they used for this was Community Conservation Agreements (CCA).²⁴¹

The multinational groups that organized the planned CCAs claimed that they were successful.²⁴² The locals felt differently; they felt like the multinational organizations were not fulfilling their end of the deal.²⁴³ They were originally paid for their labor and could thus exchange the payments for food and goods.²⁴⁴ After a few months the payments stopped and the locals were left in a bad place.²⁴⁵ They were unable to draw income from the environmental protection and they could not early on utilize the fields for subsistence farming.²⁴⁶ The locals believed that they were materially better off before the CCAs and green neoliberals.²⁴⁷ On the environmental end, the planned sustainable planting of high value trees, such as mangos and jackfruits for export, had a negative impact as well.²⁴⁸ In planting these high value trees in their swiddens they had to burn brushland and grounds further away for fear of destroying the saplings of the cash crops.²⁴⁹ They needed to clear and burn older growth forests for their starchy staples like rice and cassava.²⁵⁰ As more land was devoted to the production of the cash crops, less land was allowed to properly regenerate and heal.²⁵¹ The forests were depleted and the soil was degraded.²⁵² The sustainable planting and crop rotation that the CCAs promised also did not continue as the payments stopped.²⁵³ The attempt to merely incentivize behavioral changes through market-based approaches to facilitate stewardship amongst farmers who depend on clearing and burning forests for survival is fundamentally misaligned and incompatible with local realities.²⁵⁴ In fact, it is very possible that the attempt to implement the program actually accelerated the issues that it was attempting to combat.²⁵⁵

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.* at 1079.

²⁴¹ *Id.* at 1077.

²⁴² *Id.* at 1078.

²⁴³ *Id.* at 1079.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 1079–80.

²⁴⁸ *Id.* at 1080.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

F. Indonesia

Indonesia also had a similar system to the Philippines set up in Berau, East Kalimantan on the Island of Borneo.²⁵⁶ The area had a history of extractive industries like logging and mining—but it was still very biodiverse.²⁵⁷ The population of the region grew as migrants came into the area and were employed in forestry, plantations, and mining operations.²⁵⁸ In 2015, the 32 locations in the region had been issued licenses for palm oil plantations.²⁵⁹ They covered 30,000 hectares and contributed to the loss of 24,000 ha of forest each year.²⁶⁰ This had a significant impact on the livelihood of local populations and the integrity of the forest.²⁶¹ Then this area was selected by international NGOs, donors, and state parties to practice green capital development.²⁶² The European Commission's Berau Forest Management Project brought more than 14 million euros into the district in their attempt to support sustainable forest management and conservation.²⁶³ Following that, many projects have followed suit.²⁶⁴ The major non-governmental organization working in the region has been The Nature Conservancy (TNC).²⁶⁵

Together, these actors have attempted to manage Berau's forests while protecting their unique biodiversity, supporting local development, and allowing large-scale resource extraction to continue.²⁶⁶ Like the communities in the Philippines, the Berau locals found themselves in a tough position.²⁶⁷ They were stuck between programs that support traditional livelihoods but offer little in the way of tangible material development and the money offered by oil palm companies which came with mass destruction of their natural surroundings.²⁶⁸ Berau locals were also given a deal like in the Philippines: they were given \$50 million for these green capital programs.²⁶⁹ The programs include improving forest governance by assessing and defending natural capital, which were built upon the idea of access to existing and new markets for ecosystem services like carbon and water, and other sources of green revenue like ecotourism and support for low-emission development.²⁷⁰ Thus, the local communities were made stewards of natural capital through incentives to shift their practices away from swidden farming to modern farming and value-added productions.²⁷¹

A major flaw came with this approach, the main drivers of deforestation in Berau were oil palm and timber plantations, commercial logging, coal mining activities, and swidden farming—but until recently there were not any plans to combat the industries outside of swidden farming.²⁷² The local governments are heavily invested in the larger industries, both legally and illegally, and

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 1081.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.* at 1081–82.

²⁶³ *Id.*

²⁶⁴ *Id.* at 1082.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.* at 1083.

²⁷⁰ *Id.* at 1082.

²⁷¹ *Id.*

²⁷² *Id.* at 1083.

mining and oil palm are major sources of economic development in the region.²⁷³ If these partnerships do not combat these industries and all of the land that could be allocated to oil palm plantations is conceded to them, then the oil palm plantations could emit 206 million tons of CO₂ into the atmosphere and set back Indonesia's climate change goals by five years.²⁷⁴ Thus, the plan attempts to implement eco-rationalism based on external market incentives.²⁷⁵ But an issue arises when they do not combat the major industries who produce the CO₂ and deforest the land; they were not successful in their stated goals and instead focused on smaller producers. On top of being unsuccessful in combating CO₂ production, the plan is also paternalistic and unfair to smaller and less powerful groups.

Gunung Madu, also in Indonesia, is very similar to East Kalimantan. The area possesses a significant population of migrants and practices swidden farming.²⁷⁶ The villagers practiced swidden farming to produce rice for subsistence.²⁷⁷ The village's wages had been growing in recent years due to mining and timber and oil palm plantations.²⁷⁸ In 2013, the local government and TNC signed an agreement that committed them to protecting the forest and promoting environmentally friendly livelihood activities through the market.²⁷⁹ In 2015, Gunung Madu was granted a 35-year management authority over an 8245 hectare community forest.²⁸⁰ This allowed the community to sustainably manage and utilize the village forest for farming, ecotourism, and other minimally impactful activities.²⁸¹ This program relies upon influential community members and facilitators of the TNC to act as brokers between NGOs and various governments.²⁸² The agreement provided conditional payments to the local communities for forgoing lucrative but destructive forms of land use, such as oil palm cultivation and even swidden farming practices, and instead focus on activities that reduce green-house gas emissions and conserve the forest land.²⁸³ The agreements also plan on the creation of village-owned alternative businesses, such as honey collecting and ecotourism; these aspects are pinned on the belief that markets for these commodities will come to fruition following the development of the village's ability to produce the products.²⁸⁴ These plans are means-tested, if the villages fail to adhere to the agreement then the village can face sanctions and decreased financial support.²⁸⁵ The financial support provided to the villages before reductions is currently set at 20,000 USD per year.²⁸⁶ This reduction in financial support and means testing, like most forms of means testing, leaves the villages in a precarious position and often overcomplicates the system without producing the promised results.

As with other plans for natural capital, the local people are not happy with the way the system has been turning out.²⁸⁷ The local people tended to participate in the belief that their

²⁷³ *Id.* at 1083–84.

²⁷⁴ LEX HOVANI ET AL., JURISDICTIONAL APPROACHES TO SUSTAINABLE LANDSCAPES 9 (2018).

²⁷⁵ Fletcher et al., *supra* note 134, at 1084.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.* at 1084–85.

²⁸⁰ *Id.* at 1084.

²⁸¹ *Id.*

²⁸² *Id.* at 1085.

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

material well-being would be enhanced.²⁸⁸ Many of the villagers stated that the benefits were not equally distributed amongst the population and it has created a class system.²⁸⁹ The livestock that they were provided mostly died, and the cash crops that they were supposed to grow—rubber—was a slow process and the market for rubber was volatile.²⁹⁰ The villagers had expenses to pay and could no longer rely upon their old ways to earn money and subsistence, they were reliant upon the lofty promises of the agreement.²⁹¹ They also questioned the logic of ecotourism. Ecotourism had not materialized; people were not visiting these villages, and many villagers were hesitant to bring tourists in in the first place as they called themselves private people.²⁹² This green growth through cultivating natural capital promised by the NGOs and government has not materialized and the villagers still view working with the oil palm industry as the best way to develop themselves economically.²⁹³ In fact as other villages have not joined the pack, they are still able to work with the oil palm industries and there is a fear that they might get their land swiped out from under them unless they can show development on and ownership of the land.²⁹⁴

The villagers still want to protect the forests but they also need food, roads, health care, schools, and they want to protect the territorial integrity of the village, all of which they believe would be more readily available if they worked with the oil palm plantations.²⁹⁵ Once again the NGOs, foreign, and local governments publicly believed that they had a resounding success on their hands, pointing to the education and some of the visitor logs.²⁹⁶ Behind the scenes they are less confident and they are worried about the long term success of this program.²⁹⁷ They believed that they could provide sustainable forest governance but that they did not believe that they could also develop the local villages and that eventually they will turn back to oil palm plantations as they are a known quantity that leads to development.²⁹⁸

V. Carbon Markets

A discussion of how many countries attempted to combat greenhouse gas emissions through carbon trading markets, or “cap and trade,” following the ratification of the Kyoto Protocols is a must. In 1997, the Kyoto Protocol was adopted by the United Nations, and in 2005 it went into effect in over 190 countries.²⁹⁹ The Protocol offered three mechanisms to combat global warming through market-based systems.³⁰⁰ One is emission trading which transforms greenhouse gas into a commodity which can then be traded amongst parties.³⁰¹ These parties can

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.* at 1085–86.

²⁹¹ *Id.*

²⁹² *Id.* at 1086.

²⁹³ *Id.*

²⁹⁴ *Id.* at 1087.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 1087–88.

²⁹⁸ *Id.* at 1088.

²⁹⁹ *What is the Kyoto Protocol?*, UNITED NATIONS CLIMATE CHANGE, https://unfccc.int/kyoto_protocol (last visited May 5, 2021).

³⁰⁰ *Id.*

³⁰¹ *Emissions Trading*, UNITED NATIONS CLIMATE CHANGE, <https://unfccc.int/process/the-kyoto-protocol/mechanisms/emissions-trading> (last visited May 5, 2021).

be state or private actors.³⁰² The scheme for state actors is that countries are given a cap on what they can emit in carbon, and if they have surplus of carbon that they can emit left over at a period of time then they are able to sell it on the open market to other actors.³⁰³ The European Union emissions trade scheme is the largest in operation, currently.³⁰⁴ The same scheme applies to private actors.³⁰⁵ Currently, about 40 countries and 20 states, provinces, and cities utilize carbon pricing.³⁰⁶ Companies are either given or purchase carbon permits by the government which allocates them a carbon limit.³⁰⁷ If a company exceeds their emission allotment then they must either curb their emissions or buy more permits off of the market.³⁰⁸ This scheme has support from across the spectrum of actors: Greenpeace, ExxonMobil, Democrats, Republicans, the IMF, the UN, and the World Bank.³⁰⁹ They believe that the best approach for combating GHGs—as Christine Lagardem, the managing director of the IMF, said—is to “[p]rice it right, tax it smart, do it now.”³¹⁰ This market-based approach is supposed to incentivize cutting harmful emissions in a cost-effective manner through private capital and market choices.³¹¹

There are a number of flaws with this approach. Those flaws come from many different areas; they include the prices for carbon being too low, selective enforcement of certain industries while others get lax treatment, and those sectors where enforcement would be impactful if regulators and governments do not have the drive to regulate.³¹² As of 2019, only 20 percent of all emissions are covered by cap and trade.³¹³ That would be wildly short of the 50 percent of all emissions that the World Bank said needs to be covered within a decade in order to meet the global goals set forth in the Paris Climate accords.³¹⁴ Nor is cap and trade successful in reducing emissions from buildings and transportation, which account for 20 percent of all global emissions.³¹⁵ For carbon prices to be effective deterrents, the prices would have to be set between \$40 and \$80 per metric ton.³¹⁶ According to the World Bank, only seven carbon pricing schemes are at or above that level.³¹⁷ Most are between one dollar and \$25 per metric ton.³¹⁸ This comes out to about five percent of all carbon pricing initiatives.³¹⁹ On the bright side this is an

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Pricing Carbon*, THE WORLD BANK, <https://www.worldbank.org/en/programs/pricing-carbon> (last visited May 5, 2021).

³⁰⁷ Jeffrey Ball, *Why Carbon Pricing Isn't Working*, FOREIGN AFFAIRS (July/Aug. 2018), <https://www.foreignaffairs.com/articles/world/2018-06-14/why-carbon-pricing-isnt-working>.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ Tao Zhang, International Monetary Fund, *Adapting to Climate Change: Pricing Right, Taxing Smart, and Acting Now* (Jan. 31, 2018), <https://www.imf.org/en/News/Articles/2018/01/31/sp013118-adapting-to-climate-change-pricing-right-taxing-smart-and-acting-now>.

³¹¹ *How Cap and Trade Works*, ENVTL. DEF. FUND, <https://www.edf.org/climate/how-cap-and-trade-works> (last visited May 5, 2021).

³¹² Ball, *supra* note 307.

³¹³ STATE AND TRENDS OF CARBON PRICING 2019, WORLD BANK GRP. 3 (June 2019).

³¹⁴ Ball, *supra* note 307.

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ STATE AND TRENDS OF CARBON PRICING 2019, *supra* note 313, at 15.

³¹⁸ *Id.*

³¹⁹ *Id.* at 22.

improvement from the rate of one percent in 2018.³²⁰ Private businesses are also getting involved in carbon pricing through voluntary investments.³²¹ Though these results have likewise been underwhelming, as the total investment in low carbon technologies would need to increase by \$700 billion to reach the necessary levels.³²²

These carbon pricing strategies have thus far been ineffective. These soft attempts at incentivizing behavior do not work. The incentives are too small to correct behavior, especially when the detrimental behavior produces massive profits. As a result, schemes such as carbon pricing are too little and too late. The issue comes down to the philosophy of weighing efficiency as the highest good.

VI. Conclusion

As it currently stands there are not many solutions that use the mechanism of neoliberalization that are successful in managing the environment or combatting climate change. Currently, the best solution under neoliberal schemes is cap and trade and it appears to be woefully unsuccessful thus far. It could do a better job at combating climate change, but it would need to challenge capital more forcefully. As it stands, the focus on maintaining efficiency and profit have weakened cap and trade attempts thus making their attempts mostly moot. Other attempts at neoliberal environmental management and green neoliberalism are not successful either ecologically or are beneficial for the local populations. Neoliberalization does not bring the success to local populations like they are promised by NGOs and business organization, the extractivist policies lead to local's resources being stripped from them, the natural capital no longer remaining in the native communities, their land being degraded and poisoned, and their livelihoods depending upon the multinational corporations. The attempts to use environmentally friendly attempts at integrating local populations into the free market are also unsuccessful. The attempts are either underfunded and the locals are not able to provide a livelihood through these means, or the attempts by NGOs at conservation leave the local populations vulnerable to land theft by logging and mining companies.

To many locals, these top-down approaches by the WTO, the IMF, NGOs and like trade organizations do not feel like a new world of environmental policy. To them it feels like the old world and the previous eras of imperialism and colonialism, but with a new name and a few new mechanisms. Under the guise of environmentalism and conservation, the exploitation continues.

³²⁰ Ball, *supra* note 307.

³²¹ *Id.*

³²² *Id.*