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LOUGH NEAGH: A CASE STUDY IN ENVIRONMENTAL INJUSTICE

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Cover: Protestors appeared to vomit green sludge in a dramatic protest in August 2024. Photograph: John McLoughlin



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'Save Lough Neagh' Illustration: V'cenza Cirefice

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Summary

1. **Tackling the ecological crisis that has emerged at Lough Neagh requires a suite of urgent interventions.**
2. **Viewing Lough Neagh through an environmental justice lens may help enhance our understanding of the challenges that face Lough Neagh and inform decision-making to address these challenges**
3. **Environmental justice requires consideration of distributive justice, procedural justice and 'recognition' issues.** In the context of Lough Neagh these issues include:
 - **Distributive:** ownership and problematic environmental governance;
 - **Procedural:** ownership and management, accountability gaps, conflicts of interest, an absence of all-island/cross border cooperation on shared environmental challenges and inadequate public participation in decision-making processes; and
 - **Recognition:** confronting the legacy of colonial dispossession.
4. **In the context of Lough Neagh, seven essential aspects of a just and sustainable solution for Lough Neagh can be identified by applying an environmental justice lens:**
 - Removal of accountability gaps
 - Removal of conflicts of interest
 - Strengthened regulation and enforcement
 - Enhanced cross-border environmental co-operation
 - Prioritisation of community wealth and decision-making
 - Effective and stable management structures
 - Addressing colonial dispossession through re-connecting people and place
5. **Initiatives designed to 'save Lough Neagh' must include steps to address the issues identified above, or risk failing to address the root causes of environmental injustice.** This will require consideration of the ownership issues and the environmental issues in tandem. The initiatives themselves should be co-designed by the communities they are designed to serve, including through meaningful public participation and transparency in decision-making processes.

Background

“Environmental justice is, importantly, a movement, which means that it starts and lives with the people: in the communities that are experiencing the harms and in the challenges environmental injustices enact in the places where community members live, work, and play.”¹

At one hundred and fifty square miles, *Loch nEachach* (Lough Neagh) is the largest freshwater lake in Britain or Ireland. In an impressive mythological origin story,² the lough was formed when legendary Irish giant, Finn McCool, scooped up a mound of earth and hurled it across the sea towards a rival giant in Scotland. As the story goes, the hole left in the ground filled with water, creating an expansive inland sea. Finn McCool is a central figure in Irish mythology, whose stories are embedded deep within the landscape of the island and the connection made with Lough Neagh reflects the literal and figurative reality that the lough occupies a central location in the ancient province of Ulster and the modern polity of Northern Ireland (NI). However, the lough has also taken on an almost totemic significance as both a symbol of colonial dispossession, and as a symbol of governance failures in this jurisdiction.

The controversy surrounding the lough encompasses specific concerns related to the lough’s ownership by an English aristocrat, and to its’ degraded ecological condition, which became acutely visible in Summer 2023 with the proliferation of vast blue-green algal blooms

both within the Lough and its tributaries.³ These devastating algal blooms reappeared and intensified in 2024. This ecological crisis has attracted significant media and public attention, reflecting significant concerns about not only the obviously troubled environmental status of this massive water body, but also the potential impact of the obviously polluted water on human and animal health.

The Lough Neagh Report⁴, published by the Department of Agriculture, Environment and Rural Affairs (DAERA) in July 2024, has provided some clarity around how the devolved government intends to tackle this ecological catastrophe. The plan for improving the situation (the Lough Neagh Action Plan, LNAP) centres around four key areas: education; investment; regulation and enforcement and includes specific action points that seek primarily to tackle the sources of nutrient overload in the lough (namely, agricultural run-off and wastewater pollution). As some [commentary](#) has highlighted, however, there is room for more ambitious action, not least the establishment of an independent environmental protection agency which is widely considered a critical step in enhancing overall environmental governance in this jurisdiction.⁵ In addition, the LNAP does not address the crucial question of the lough’s ownership.

¹ Esme G Murdock, ‘A History of Environmental Justice: Foundations, Narratives and Perspectives’ in Brendan Coolsaet (ed), *Environmental Justice: Key Issues* (Routledge 2021) 9.

² See also, Eóin Mac Néill, ‘The Mythology of Lough Neagh’ (1929) 2 *Béalóideas* 115.

³ For example, see Department of Agriculture, Environment and Rural Affairs, ‘Blue-Green Algae: Latest News,’ (Department of Agriculture, Environment and Rural Affairs) <<https://www.daera-ni.gov.uk/page/blue-green-algae>> accessed 18th April 2024. The issue has also been widely reported in the local and national media, see Michelle Weir, ‘Lough Neagh Water safe to consume, but algae plague expected to return this summer,’ *Belfast Telegraph* (29th February 2024) <[Lough Neagh water safe to consume, but algae plague expected to return this summer](https://www.belfasttelegraph.co.uk/news/ireland/lough-neagh-water-safe-to-consume-but-algae-plague-expected-to-return-this-summer) | [BelfastTelegraph.co.uk](https://www.belfasttelegraph.co.uk)> accessed 18th April 2024;

Pádraig Hoare, ‘Michaél Martin: Lough Neagh disaster should incentivise northern parties to get back to work,’ *Irish Examiner* (3rd January 2024) <[Micheál Martin: Lough Neagh disaster should incentivise Northern parties to get back to work](https://www.irishexaminer.com/news/northern-ireland/michael-martin-lough-neagh-disaster-should-incentivise-northern-parties-to-get-back-to-work) (irishexaminer.com)> accessed 18th April 2024; Tommy Greene, ‘Lough Neagh ‘dying in plain sight’ due to vast algal blooms’ *The Guardian* (23rd August 2023) <[Lough Neagh ‘dying in plain sight’ due to vast algal blooms](https://www.theguardian.com/northern-ireland/2023/aug/23/lough-neagh-dying-in-plain-sight-due-to-vast-algal-blooms) | Northern Ireland | *The Guardian*> accessed 18th April 2024.

⁴ Available [here](#).

⁵ Ciara Brennan, Ray Purdy and Peter Hjerp, ‘Political, Economic and Environmental Crisis in Northern Ireland: The True Cost of Environmental Governance Failures and Opportunities for Reform’ (2017) *Northern Ireland Legal Quarterly* 68(2) 123-157.



Blue-green algae visible in Lough Neagh in summer 2023. Photograph: Colette Stewart/Friends of the Earth Northern Ireland.

Who owns Lough Neagh?

Legal title to Lough Neagh is held by a registered company called the Shaftesbury Estate of Lough Neagh Ltd. The company forms part of a large estate, which was inherited in 2005 by Nicholas Ashley-Cooper, alongside the Shaftesbury title. The Shaftesbury family seat is St Giles House, which is located in East Dorset. As the 12th and current Earl of Shaftesbury, Nicholas Ashley-Cooper 'owns' the bed and soil of the lough, whilst the fishing rights are held separately on a long lease by the Lough Neagh Fishermen's Co-operative Society Ltd.⁶ As will be explained

below, legal wrangling over Lough Neagh's fishing rights led to a high-profile and controversial case at the beginning of the twentieth century,⁷ and it was this case that was seen to 'confirm' the Shaftesbury title to the bed and soil of the lough, eclipsing what many viewed as the customary rights of the local fishing industry.⁸ Currently, there are a number of other stakeholders with proprietary interests in the bed of the lough and the foreshore, including private owners as well as public bodies such as Northern Ireland Water.⁹

Although the current ownership of Lough Neagh can be considered relatively settled, this should

⁶ The fishing rights had initially been leased for five thousand years by the Shaftesbury estate in 1905. By 1959, the fishing rights were held by a company called Toome Eel Fishery (NI) Ltd. Over the course of the 1960s, the Lough Neagh Fishermen's Co-operative Society gradually acquired all of the shares in this company, eventually attaining outright control in 1972. See Submission by Pat Close 'Written evidence submitted by the Lough Neagh Fishermen's Co-operative Society Ltd. (NIP0013);' Northern Ireland Affairs Committee (3rd March 2021) <<https://committees.parliament.uk/writtenevidence/23301/pdf/>> accessed 27th March 2024.

⁷ *Johnston v O'Neill* [1911] UKHL 638.

⁸ It should be noted that this decision was unsuccessfully challenged in the NI High Court in 1963, see *Toome Eel Fishery (Northern Ireland) Ltd. v Cardwell and Others* [1963] NI 92.

⁹ Some private riparian owners have acquired small sections of the bed of the lough from the Shaftesbury estate as the water level has been lowered a number of times over recent years. In addition, Northern Ireland Water has acquired such areas of the lough bed that are necessary to carry out its functions. See Lough Neagh Cross Departmental Working Group, 'Potential for bringing Lough Neagh into public ownership: A scoping study,' (February 2014).

not eclipse the contentious history of the ownership debate. Over the course of the eighteenth and nineteenth centuries, a series of cases considering the title to Lough Neagh made their way through the Irish courts.¹⁰ However, the Shaftesbury claim to the title was ultimately confirmed in 1911 by the House of Lords in *Johnston v O'Neill*.¹¹ These cases were primarily concerned not with the ownership of the lough itself, but with the right to fish. In *Johnston*, the plaintiffs claimed to have taken a long lease of the eel fishing rights 'over the whole of Lough Neagh,'¹² from the Shaftesbury estate. There is considerable attention paid in the judgement to tracing the documentary title¹³ back to a Crown grant dating from 1661.¹⁴ At that time, Charles II granted the title to the fisheries of Lough Neagh and the River Bann to Lord Chichester, Earl of Donegall.¹⁵ For almost 250 years, the fishing rights were variously negotiated through a series of leases and sub leases, with ultimate title remaining with the Donegall family until 1883, when title passed through inheritance to the Shaftesbury estate.¹⁶ In 1905, Lord Shaftesbury granted a 5000 year lease of the eel fishing rights to O'Neill, the claimants in the 1911 case. The claimants successfully established that they had the exclusive right to fish in the lough and obtained an injunction to prevent public fishing. Title to the bed and soil of the lough was viewed almost as a corollary of these extensive fishing rights. In short, once the title to the fishing rights was deemed to be established, then, by implication, the title to the bed and soil of the lough was established.¹⁷ As will be explored below, ownership of Lough Neagh is controversial primarily due to the links this has to the legacy of colonial dispossession on the island of Ireland. However, as this paper will discuss, it can also be argued that private ownership itself is fundamentally unsuited to Lough Neagh because it has caused community interests to be deprioritised, it has generated a gap in

responsibility and accountability, and it creates uncertainty as to the permanence and stability of governance structures that relate to the lough.

In an [online communication](#) posted in June 2024, the lough's current owner indicated a willingness to see the lough transferred to a community ownership model, making specific mention of the potential of a rights of nature approach in this context. Agriculture and Environment minister Andrew Muir has also [expressed a preference](#) for community ownership, though has not (to date) publicly mirrored the current owner's focus on exploring some iteration of a rights of nature approach [citing resource and time constraints](#) in the current mandate. There has, however, been discussions across multiple initiatives about what these kinds of approaches may look like in the context of Lough Neagh, and we discuss this in more detail later.

Environmental issues at Lough Neagh

Alongside the ongoing debate regarding the lough's ownership, water quality at Lough Neagh has been a subject of significant concern for decades, with periodic water quality assessments indicating that the lough has been assessed as having 'bad' ecological status (the worst status possible).¹⁸ In summary, it is broadly understood that there are a range of drivers for this decline in water quality, with the main sources being water pollution from agricultural activity and pollution resulting from poor waste water treatment facilities. There are also additional concerns around pollution from other sources such as illegal dumping.¹⁹ The overall ecological health of the lough has also been impacted by rising temperatures due to climate change, with a record high temperature in the lough being recorded in June 2023.²⁰ Higher temperatures

¹⁰ Previous cases on the matter include: *Donegall v Hamilton* (1795, 3 Ridgeway 267); *Bristow v Cormican* (1876) 3 App. Ca. 641; *Bloomfield v Johnston*, 8. I. R. C. L. 68; *O'Neill v Johnston* [1909] I. R. 237.

¹¹ *Johnston* (n 7).

¹² *Ibid*, 638.

¹³ The judgement refers to this as the 'Chichester title'.

¹⁴ The plaintiffs submitted a series of documents and legal instruments as evidence to support the documentary title back to 1605, when King James purportedly granted the title to fisheries in the Bann and Lough Neagh to Arthur Chichester. There is some discussion in the judgement of inconsistencies and difficulties with the timeline surrounding the title in the first half of the Seventeenth Century, but the HL in *Johnston* relies on the documentary

title established by the Irish Court of Appeal in *Bristow v Cormican* (n 10).

¹⁵ In 1660, Charles II had granted a ninety nine-year lease of the fisheries to Sir John Clotworthy, granting the reversion to Lord Chichester, Earl of Donegall the following year.

¹⁶ The title had been inherited by the Shaftesbury family after the death of George Chichester, 3rd Marquis of Donegall in 1883.

¹⁷ *Johnston* (n 7), 639.

can potentially contribute to proliferation of cyanobacteria, visible as extensive surface blooms of 'blue-green algae'. The potential impact of this highly visible pollution has created public alarm given that the Lough is the source of drinking water for 750,000 people and that this type of algal bloom can produce toxins which are harmful to the health of humans and other animals.²¹

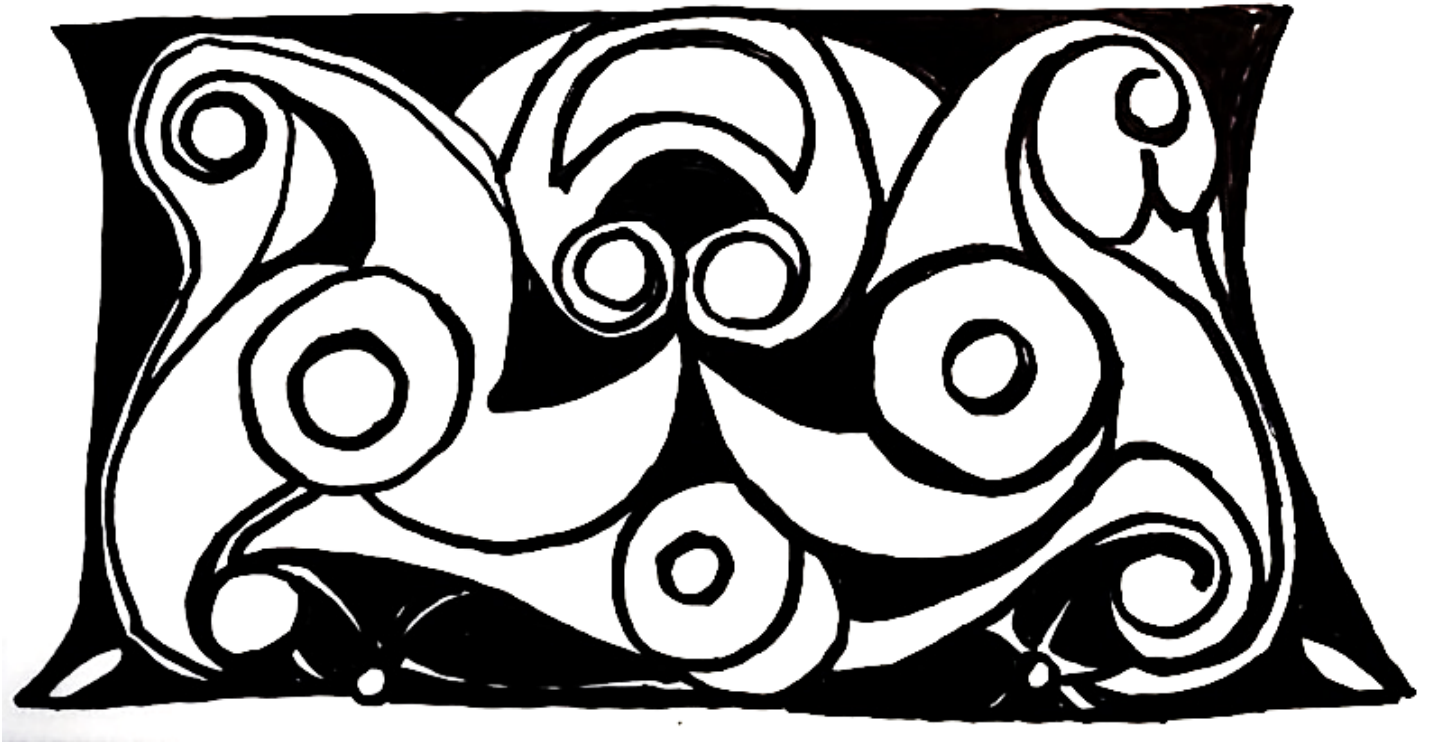
In addition to concerns about water quality, there is also evidence of dramatic biodiversity loss—with bird and fish populations at the lough plummeting in recent years.²² This biodiversity loss has been compounded by the colonisation of the lough by the invasive Zebra Mussel, which has had a profound impact on existing ecological systems.²³ The extent of the biodiversity crisis at Lough Neagh is of particular concern given the range of long-standing statutory protections (under both domestic and international environmental law) that have been afforded to Lough Neagh because of its internationally significant ecological value.²⁴

Concerns about declining water quality and biodiversity loss have also been heightened given the potential for post-Brexit divergence of environmental standards on the island of Ireland and the increased recognition that pollution of this extent (bearing in mind that 13% of Lough Neagh's catchment is south of the border) is a shared challenge to which the governments of Ireland, NI and the UK must respond together.²⁵

Lough Neagh as a case study in environmental injustice

This research paper argues that the ecological crisis at Lough Neagh represents a case study in environmental injustice. It concludes that any proposed solutions must address all of the dimensions of an environmental justice framework, which challenges both the governance failures and the issues around ownership, both of which are rooted in the history of colonial dispossession on the island of Ireland. As the paper will explain, developing solutions in this context is inherently complex, requiring acknowledgement of the link between

property, place and protection of the environment. However, although the analysis demonstrates the complex nature of the Lough Neagh crisis, the paper ultimately concludes that complexity should not be a barrier to urgently needed action. The paper should therefore be understood as setting the scene for action-orientated discussions about how to deliver the specific legal and policy mechanisms that might be employed to address the ecological catastrophe at Lough Neagh, and concludes by offering some possibilities for what these solutions might look like.



Panel from the Clonmore Shrine, 7th Century AD. Visible in the Ulster Museum, the shrine came to light in the early 1990s after being found by local people in river dredgings from the River Blackwater which runs along the Armagh-Tyrone border to Lough Neagh. It is made of copper alloy and intricately decorated with motifs of birds and waves. Illustration and description: Emma Julie Brennan.

Viewing Lough Neagh through an environmental justice lens

Defining Environmental Justice

There is extensive literature exploring the concept of environmental justice, which is generally understood to incorporate concerns around the just distribution of environmental harm, about the extent to which the public can participate in environmental decision-making, and about the meaningful recognition of the unique and crucial relationships that local communities have with the landscapes that surround them. These three elements can be summarized as relating to:

- Distributive justice
- Procedural justice
- Recognition

In other words, environmental justice consists of three, at times overlapping, sets of concerns, which will be specific to context. Using this kind of framework to view environmental issues is helpful, because articulating the nature of the injustices being suffered can help to shed light on the actions necessary to address these and, in turn, inform the design of future legal or governance frameworks.

Distributive justice

*'There is no "we." "We" are not in this together.'*²⁶

At its core, environmental justice is concerned with equality and inequality. Both the causes and the effects of our current global environmental crises are diverse, and it is undeniable that some people are more impacted than others. Environmental justice demands that this inequality is corrected and that, 'no one should be subject to more harms than anyone else... disparate impacts are presumptively unjust.'²⁷ It follows that, from a distributive justice perspective, environmental benefits should also be equally distributed. In the context of Lough Neagh, both the ownership of the lough and the wider problems with environmental governance raise distributive justice concerns.

Private ownership and the distribution of environmental harms and benefits

Lough Neagh's owner is entitled to benefit financially from licensing recreational activities such as wildfowling, as well as from industrial sand dredging.²⁸ Although sand dredging has been carried out at the lough for generations, this has intensified over the course of the Twentieth century. Research indicates that one family in particular began trading as Lough Neagh sand merchants in 1935, originally operating by shovelling sand 'onto the back of a lorry.'²⁹ By 1998 however, the business had grown to such an extent that it was sold for over two million pounds.³⁰ Sand from Lough Neagh is used widely in infrastructure projects in Ireland and further afield³¹ but, until 2021, the sand dredging taking place at the lough was effectively unregulated.³² Following a protracted legal process, DFI granted planning permission for

²⁶ Stacia Ryder and others (eds), *Environmental Justice in the Anthropocene: From* (1st edition, Routledge 2021). (Foreword xix)

²⁷ Alice Kaswan, 'Distributive Environmental Justice' in Brendan Coolsaet (ed), *Environmental Justice: Key Issues* (Routledge 2021). 22.

²⁸ This issue has been covered extensively by investigative journalist Tommy Greene, who has published widely in the media on the sand dredging operations at Lough Neagh. See Tommy Greene, 'Lough Neagh: Sand dredging must be better monitored, UN experts warn,' (24th January 2023) *The Detail* < [Lough Neagh: Sand dredging must be better monitored, UN experts warn - Investigations & Analysis - Northern Ireland from The Detail](#) > accessed 2nd May 2024, Tommy Greene, 'Lough Neagh: Scars from dredging will take 'decades if not centuries to recover,' (20th December 2022) *The Irish Times* < [Lough Neagh: Scars from dredging](#)

[will take 'decades if not centuries' to recover - The Irish Times](#) > accessed 2nd May 2024.

²⁹ *P & J McCann (Toomebridge) Ltd v Revenue and Customs* [2013] UKFTT 204 (TC), [9].

³⁰ *Ibid* [31].

³¹ Tommy Greene, 'Lough Neagh sand being used at GAA grounds across the country,' *The Journal* (24th September 2023) < [Lough Neagh sand being used at GAA grounds across the country \(thejournal.ie\)](#) > accessed 2nd May 2024.

³² 'Unregulated' here means without planning permission. It might also be noted that it wasn't until 1965 that the Shaftesbury estate sought to establish a licensing system with sand traders, seeking payment of royalties in exchange for permission to extract sand. See *P & J McCann* (n 30) [10]. The nature of the rights acquired under these licensing agreements has been the subject of some dispute, with the Shaftesbury estate recently claiming that

sand dredging at the lough in 2021, allowing some firms to extract up to 1.5 million tonnes of sand annually from the lough bed, with the Lough's owner earning an undisclosed amount of royalties from this activity.³³ A 2013 case indicates that there has been a series of successive licensing agreements between the Shaftesbury estate and sand trading firms, beginning in 1965.³⁴ The most recent of these appears to have been agreed in 1998, and is effective from 1st November 1997 for a period of forty nine years. Under the terms of this licence, the amount owed to the Shaftesbury estate in royalties was to be agreed between the parties.³⁵

Sand is recognised internationally as the second most used commodity, and its mining and dredging is widespread in Ireland.³⁶ However, over the past ten years there has been increasing global recognition of the potentially harmful impacts of industrial sand dredging on sensitive habitats, and acknowledgement of the need to improve the governance of this finite resource.³⁷ The proliferation of extractive industries in Ireland and the broader debate about neoliberalism and nature has been considered in detail elsewhere,³⁸ and this article does not seek to replicate that work. However, the ecological crisis that has unfolded at Lough Neagh can and should be understood as being located within this wider context. Ultimately, although intrinsically difficult to quantify, extractive

activities can have devastating impacts on local communities. For instance, extracting economic and natural wealth from the local area will have inevitable effects on local livelihoods, which will in turn impact local populations.³⁹ More than this, however, extractivism may have profound impacts on local knowledge and traditions – those components that encompass the concept of 'place'.⁴⁰ There are indications that these negative effects are already being felt at Lough Neagh.⁴¹ In addition, Lough Neagh has become an important site for tourism, recreational (e.g. water-sports) and related economic activities. Damage to, or restrictions on these activities will have a disproportionate impact on local businesses.

Fishing, and eel fishing in particular, is also a key industry at Lough Neagh. As indicated above, the right to fish in the lough has long been tied up with difficult and controversial questions about ownership rights, but the local fishing industry has persisted⁴² and Lough Neagh eels are exported worldwide, enjoying EU 'Protected Geographical Indication' (PGI) status.⁴³ Recent ecological developments at the lough have, however, threatened the fishing industry, which is of enormous concern to local communities,⁴⁴ and another demonstration of the inequality in the distribution of environmental harms and benefits

they effectively have no control over these 'historic licences,' see Shauna Corr, 'Lough Neagh activists take fight to 'save' UK's largest freshwater lake to bed-owner Lord Shaftesbury's Dorset estate,' *Belfast Live* (7th May 2024) < https://www.belfastlive.co.uk/news/northern-ireland/lough-neagh-activists-take-fight-28999774?utm_source=app > accessed 17th May 2024. In *P & J McCann*, it was established that the licences had not given rise to a proprietary interest through the operation of proprietary estoppel, or estoppel by convention, so it seems likely that the sand traders each hold a licence coupled with an interest.

³³ Tommy Greene, 'Lough Neagh: New research reveals scarring caused by sand dredging,' *The Detail* (20th December 2022) <https://thedetail.tv/articles/lough-neagh-new-research-reveals-deep-cavities-caused-by-sand-dredging> accessed 16th November 2023.

³⁴ P & J McCann (n 30).

³⁵ Ibid [22].

³⁶ See 'Inside the high-tech effort to save the world's dwindling sand reserves,' *United Nations Environment Programme* (6th February 2024) < <https://www.unep.org/news-and-stories/story/inside-high-tech-effort-save-worlds-dwindling-sand-reserves> > accessed 19th April 2024.

³⁷ Pascal Peduzzi and others, *Sand and Sustainability: 10 Strategic Recommendations to Avert a Crisis* (UN Environment Programme, Geneva, 2022).

³⁸ Patrick Bresnihan and Patrick Brodie, 'New Extractive Frontiers in Ireland and the Moebius Strip of Wind/Data'

(2021) 4 *Environment and Planning E: Nature and Space* 1645; Sharae Deckard, 'World-Ecology and Ireland: The Neoliberal Ecological Regime' (2016) 22 *Journal of World-Systems Research* 145.

³⁹ Maria Ehrnström-Fuentes, 'Confronting Extractivism – the Role of Local Struggles in the (Un)Making of Place' (2019) 18 *critical perspectives on international business* 50.

⁴⁰ Arturo Escobar, *Territories of Difference: Place, Movement, Life, Redes* (Duke University Press, 2008).

⁴¹ Tommy Greene, 'Like the flip of a switch, it's gone': has the ecosystem of the UK's largest lake collapsed? *The Guardian*, 19th February 2024, <https://www.theguardian.com/environment/2024/feb/19/like-the-flip-of-a-switch-its-gone-has-the-ecosystem-of-the-uk-largest-lake-collapsed-aoe> Last accessed 7th March 2024.

⁴² For a detailed account of the fishing industry at Lough Neagh, see Daniel J Donnelly, *On Lough Neagh's Shores: A Study of the Lough Neagh Fishing Community*.

⁴³ Department for the Environment, Food and Rural Affairs (2021) 'Protected Geographical Food and Drink Names: Lough Neagh Eel' < [Lough Neagh Eel - GOV.UK \(www.gov.uk\)](https://www.gov.uk/lough-neagh-eel) > accessed 1st May 2024.

⁴⁴ See Tommy Greene, 'Disappearing eels and the fight for a centuries-old livelihood,' *Aljazeera* (18th February 2024) < <https://www.aljazeera.com/features/2024/2/18/disappearing-eels-and-the-fight-for-a-centuries-old-livelihood> > accessed 19th April 2024.

that has been generated by the current ownership regime.

Problematic environmental governance

Lough Neagh is emblematic of the systemic failure of environmental governance in Northern Ireland.⁴⁵ From a distributive justice perspective, problems have arisen due to the ongoing issue of substandard environmental regulation.

The nature and scale of the problems with the delivery of environmental regulation in Northern Ireland has been covered extensively elsewhere.⁴⁶ The connected failure of the planning system as it has pertained to [unauthorised sand extraction](#) at Lough Neagh has also been covered in detail, and has been the subject of high profile litigation by environmental NGOs, as described above.⁴⁷ However, Lough Neagh presents a case study which demonstrates the distributive justice implications of the entire suite of regulatory failures as they operate in practice. Two central issues will be highlighted for the present purposes.

Firstly, and perhaps most obviously, the degraded water quality present in the Lough is a direct consequence of decades of substandard regulation of water pollution – and in particular the failure to address pollution from agriculture and sewage.⁴⁸ Regulating the diffuse pollution from agricultural sources across the Lough's catchment (which drains 43% of the entire area of Northern Ireland⁴⁹) has been a challenge beyond what current regulatory structures and

approaches have been able to deal with. The implementation of agricultural policies which fail to consider the environmental impact of increasingly intensive farming have enhanced an already challenging context.⁵⁰ However, these recent policies have simply exacerbated the legacy of a failure to properly enforce both domestic and (pre-Brexit) EU water law for decades.⁵¹ Pollution from sewage is also a significant issue – with blame often placed on an antiquated water and sewage infrastructure.⁵² Increasing concern also surrounds the unknown amount of illegal waste suspected to be buried within the Lough's catchment area given Northern Ireland's well-documented problems with regulating this type of serious environmental crime.⁵³

The specific problems identified by numerous scrutiny reports stretching back decades with enforcement of water pollution law⁵⁴ include: the lack of a detailed enforcement policy; the inconsistent application of internal enforcement policy; unsatisfactory approaches to monitoring; failure to generate compliance statistics; an ineffective approach to enforcement; inequitable treatment of polluters; significant accountability issues and a persistent failure to respond to external criticism.⁵⁵ There has also been significant dissatisfaction with the level of fines imposed by the courts.⁵⁶ These failures have generated serious problems for loughshore communities from public health, recreational and economic perspectives.

⁴⁵ See Brennan, Purdy and Hjerp (n 5). See also Ciara Brennan, Mary Dobbs and Viviane Gravey, 'Out of the Frying Pan, Into the Fire: Environmental Governance Vulnerabilities in Post-Brexit Northern Ireland' *Environmental Law Review* 21(2) 84-110.

⁴⁶ See Ciara Brennan, 'The Enforcement of Environmental Regulation in Northern Ireland: A Story of Politics, Penalties and Paradigm Shifts?' (PhD thesis, Queen's University Belfast 2013).

⁴⁷ For example, see *Re Friends of the Earth Ltd's Application for Judicial Review* [2017] NICA 41. See also, Conor Macauley, 'Lough Neagh sand dredging to continue,' *BBC News* (22nd November 2017)

<<https://www.bbc.co.uk/news/uk-northern-ireland-42083632>> accessed 2nd May 2024.

⁴⁸ Under the terms of the Water (NI) Order 1999 and the Control of Pollution (Oil Storage) Regulations (NI) 2010, the Northern Ireland Environment Agency is responsible for preventing or minimising the effects of pollution entering our waterways and for managing the risk of a polluting discharge from occurring.

⁴⁹ See (n 46).

⁵⁰ Ekaterina Gladkova, 'Farming intensification and environmental justice in Northern Ireland,' (2020) *Critical Criminology* 28(3) 445-461.

⁵¹ Ciara Brennan (n 47).

⁵² For example, see NI Assembly Research and Library Services, 'An Investigation into the use of septic tanks in Northern Ireland,' (Briefing Note 103/09, November 2009), 4.

⁵³ Ciara Brennan, 'The Enforcement of Waste Regulation in Northern Ireland: Deterrence, Dumping and the Dynamics of Devolution' (2016) *Journal of Environmental Law* (28)3, 471-496.

⁵⁴ Under the Water (Northern Ireland) Order 1999, it is an offence to cause pollution of a waterway or groundwater. Article 7 (1) of the Order deals with the main pollution offence, which is: 'a person commits an offence if, whether knowingly or otherwise, that person discharges or deposits any poisonous, noxious or polluting matter so that it enters a waterway or water contained in an underground strata' and in terms of penalties, that 'A person guilty of an offence under this Article is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both'.

⁵⁵ Brennan, Purdy and Hjerp (n 5).

⁵⁶ See Garrett Hargan, 'NI Water fined just £170k after dumping 70m tonnes of sewage over the last decade,' *Belfast Telegraph* (12th September 2023) <<https://www.belfasttelegraph.co.uk/news/environment/ni-water-fined-just-170k-after-dumping-70m-tonnes-of-sewage-over-the-last-decade/a2051851079.html>> accessed 2nd May 2024.

Secondly, in Northern Ireland there has been a profound failure to undertake enforcement action against breaches of nature conservation law, despite the extensive network of nature conservation designations (both domestic and international) which have been applied to ensure that the most ecologically significant features of our nature heritage are adequately protected. Lough Neagh is, for example an Area of Special Scientific Interest (ASSI), a Special Protection Area (SPA) and a RAMSAR site,⁵⁷ but despite the very clear damage being caused to the ecological integrity of the Lough and its waterways, and the enforcement powers held by NIEA to ensure compliance with the requirements of its multiple overlapping designations, there has been little enforcement action aimed at tackling the root causes of the damage.⁵⁸

A graphic (albeit historical) example of the consequences of 'inadequate monitoring of designated sites and delayed, or weak enforcement action' was reported in the Northern Ireland Audit Office (NIAO)'s investigation into ASSIs in 2003.⁵⁹ This example involved damage (caused by substantial construction work) caused to part of Lough Neagh between 1997 and 2000 after it had been designated as an ASSI and SPA.⁶⁰ After a report from the Royal Society for the Protection of Birds (RSPB), the Environment and Heritage Service (EHS, the predecessor of the Northern Ireland Environment Agency, NIEA) reported the case to the Planning Service (which was located within the old Department of the Environment prior to planning functions transferring to local councils in 2015) as no permission had been sought for the construction works and advised the owner that his activities breached domestic and EU law. Despite the request for restoration of the land by EHS, the owner considered that restoring the land would be impossible and stated that he would 'deal with court action when it materialises'.⁶¹ Despite EHS indications that civil action might be undertaken to achieve full site restoration, in 2000 a decision was made not to pursue the matter and EHS instructed the

Planning Service not to take forward any action on their behalf.

The NIAO's analysis of this case study was highly critical of the approach to enforcement, raising issues both with monitoring and process. This analysis was reaffirmed in an internal NIEA review of compliance undertaken years later in 2011.⁶² This later review also found that certain sites, Lough Neagh in particular, had a high number of damage reports attributed to them, and in the case of Lough Neagh this was despite the fact that landowners and managers were written to in 2008 to remind them of their responsibilities in terms of the ASSI designation.⁶³

In recent years, the ecological condition of Lough Neagh has declined further (as discussed above) – however enforcement action has not shown any significant increase in the same period.⁶⁴ This ultimately demonstrates that the system of site designation is not functioning to protect significant natural features, including Lough Neagh. The serious harm caused by the loss of, and damage to, our most important conservation sites is extensive. For instance, local communities lose treasured connections to the natural world, which may have cultural and spiritual value. Perhaps in more tangible terms, damage to important natural features may have economic implications, or physical impacts (such as flood defence). The harms suffered by loughshore communities as a result of regulatory failure leading to the deterioration or destruction of important sites is a clear example of environmental injustice.

⁵⁷ A wetland of international significance.

⁵⁸ Ciara Brennan (n 54).

⁵⁹ Northern Ireland Audit Office, 'Areas of Special Scientific Interest,' (Session 2003-04, HC 499), discussed in detail in Ciara Brennan (n 47), 29-36.

⁶⁰ Ciara Brennan (n 47) 33.

⁶¹ Northern Ireland Audit Office (n 60), Ibid.

⁶² NIEA, 'Internal Review of NIEA CDP Compliance Policy to align with the NIEA Enforcement Policy and Designated

Site Management - Prevention is better than cure - Proactive Compliance and Better Regulation' (FOI response received by Dr Ciara Brennan from NIEA, 18th June 2012).

⁶³ Ibid.

⁶⁴ Evidenced in an FOI request to DAERA from the authors (May 2024)



'Mourne Forest' Illustration: V'Cenza Cirefice

Procedural justice

As the previous section demonstrated, there are clear distributive issues around Lough Neagh and the harms being suffered by local communities. Procedural justice, which relates to the procedures through which decisions are made about environmental issues, has also emerged as a key consideration.⁶⁵ Procedural justice demands that communities can participate meaningfully in environmental decision-making that impacts upon them, that decision-making processes are transparent, and that there is scope for decision-making to be challenged. There are a number of issues that arise in relation to Lough Neagh that invoke procedural justice concerns. As with the distributive justice issues identified above, these relate to both the existing ownership and management regime, and to the broader problems with environmental governance in NI.

Ownership and management

Ownership matters because it gives shape to the power to use, make decisions about, and benefit from a thing. Indeed, private property has been described as 'a position of agenda-setting authority.'⁶⁶ On this view, private property prioritises the interests of the owner and privileges their motivations for making decisions about the way in which the object of ownership is to be used.⁶⁷ As such, this orthodox understanding of private property implicitly deprioritises the interests of communities, or non-owners.⁶⁸ Sometimes, this is relatively uncontroversial. Indeed, in some circumstances, this feature of private property is critically important.⁶⁹ However, there are questions to be raised about the ownership of significant natural

features, such as Lough Neagh, and whether private ownership is the most appropriate model in this context. In short, different factual circumstances may require different models of ownership. As Ellickson observes, in practice, '...a private property regime is not always best.'⁷⁰ A whole range of factors, such as social context, must be considered in determining which model of ownership is best suited to particular circumstances.⁷¹ Fundamentally, property involves choices about whose interests are weighed more heavily than others,⁷² and these choices have important practical implications.

At Lough Neagh, the existing private property regime has channelled decision-making power away from an extremely large and diverse group of community stakeholders, towards a single individual. This problematic situation has become particularly stark at Lough Neagh in the context of responses to the algal blooms of Summer 2023. The ecological crisis mobilised a large number of grassroots, locally organised groups to stage protests and convene public meetings in an effort to provoke action to address the problems,⁷³ demonstrating the strength of feeling amongst local people. However, in the time since then, there has been a frustrating lack of opportunity for local input into decision-making processes concerning Lough Neagh, and we say more about this below.

Regarding management, there is no single body with overall responsibility for Lough Neagh, nor does the lough currently have a navigation authority. In 1994, a body called the Lough Neagh Advisory Committee (LNAC) was established to advise government departments on issues related to the lough's strategic management. However, this organisation ran aground in 2010 when funding that had been

⁶⁵ Murdock (n 1). 11.

⁶⁶ Larissa Katz, 'Exclusion and Exclusivity in Property Law' (2008) 58 University of Toronto Law Journal 275.

⁶⁷ Thomas W Merrill, 'Property and the Right to Exclude' (1998) 77 Nebraska Law Review 730.

⁶⁸ Richard Barnes, *Property Rights and Natural Resources* (1st edition, Hart Publishing 2009). As Barnes explains, although there is broad consensus that property has a social function, this is often marginalised or ignored.

⁶⁹ Joseph William Singer, 'Property as the Law of Democracy' (2013) 63 Duke Law Journal 1287.

⁷⁰ Robert C Ellickson, 'Property in Land' (1992) 102 Yale Law Journal 1315, 1398.

⁷¹ It should be noted that the orthodox understanding of private property has been increasingly challenged. Perhaps most notably, progressive property theorists propose a different characterisation of property's function and suggest that property should be underpinned by broader

social values, with owners sometimes owing duties to non-owners by virtue of their embeddedness within communities. See Gregory S Alexander and others, 'A Statement of Progressive Property' (2008) 94 Cornell Law Review 743; Jane B Baron, 'The Contested Commitments of Property' (2009) 61 Hastings Law Journal 917.

⁷² Jessica Shoemaker, 'Re-Placing Property' (2024) University of Chicago Law Review 91(3), 811.

⁷³ See 'Lough Neagh: Environmentalists hold 'wake' after algal blooms,' BBC News (17th September 2023)

<https://www.bbc.co.uk/news/uk-northern-ireland-66835897> accessed 2nd May 2024; 'Protectors' of Lough Neagh stage demonstration in Belfast to save lake,' *Irish Times* (21st October 2023)

<https://www.irishtimes.com/environment/climate-crisis/2023/10/21/protectors-of-lough-neagh-stage-demonstration-in-belfast-to-save-lake/> last accessed 2nd May 2024.

provided by both central government and local councils was discontinued.⁷⁴

Currently, the Lough Neagh Partnership (LNP) perhaps comes closest to representing a 'management body' for the lough, and has described itself as the 'de facto management body for Lough Neagh'.⁷⁵ This organisation was established in 2003, initially to administer funding under NI's Rural Development Programme.⁷⁶ The LNP's role has expanded since its inception, and as well as obtaining and administering funding for a range of projects connected to the lough,⁷⁷ the partnership also undertakes government lobbying and community engagement activities.

The LNP is a non-profit organisation, whose board represents some stakeholders, and the group has driven forward a number of important initiatives to benefit the lough and surrounding communities.⁷⁸ However, the LNP has no statutory basis, and no overall statutory obligations or responsibilities to coordinate what happens on the lough, which leaves something of a gap in terms of the decision-making related to the lough's overall management, and accountability for its delivery. The organisation relies on the acquisition of project funding to carry out specific work in and around the lough, which has created obstacles to future planning and development. The LNP has identified a need to build resilience and financial independence for the organisation, which would allow a greater degree of long-term planning than is currently possible.⁷⁹ In addition, issues related to the permanence and stability of governance arrangements for the lough are of key concern in building a sustainable future, and a review of current management structures will therefore be necessary.

The current owner of the lough has evidently been willing to participate in previous exercises to design a more sustainable future for the lough,⁸⁰ is represented on the board of the LNP,⁸¹ and has repeatedly communicated a commitment to 'doing what is right' for people in NI. However, there is no evidence that an agreement has been reached between the current owner and any other party that the lough will not be sold on the open market in the future, and no guarantee that a future private owner would either engage with relevant stakeholders in the same way, or refrain from further exploitation of the lough to the detriment of communities and ecosystems. A public ownership model presents the same issue in terms of lacking permanence and stability. However, other ownership models may have the potential to provide a more stable basis for future management and governance frameworks, which will help to secure the positive effects of these arrangements over the long term. For instance, an ownership model in which decision-making, including the decision to sell the lough, is distributed over a larger number of stakeholders, would have clear benefits in this respect.⁸²

Conflicts of interest

There are at least three potential conflicts of interest that raise procedural justice issues in the context of Lough Neagh. Firstly, the obvious governance problems created with the merger of the environment and agriculture portfolios as part of the redesign of the power-sharing arrangements in 2016. This involved the merging of the DOE (Department of the Environment) with DARD (Department of Agriculture and rural development) to create DAERA (Department of Agriculture and Rural Development).⁸³ This

⁷⁴ See NI Assembly Press Release, 'Assembly Committee Calls on Minister to Reinstate Crucial Funding,' 11th February 2010, ENV/06/09/10 available here https://archive.niassembly.gov.uk/environment/2007mandate/press/2009/EN_06_09_10.htm#:~:text=The%20Lough%20Neagh%20and%20Lower%20Bann%20Advisory%20Committees%20were%20established,land%20and%20water%20based%20recreation. Last accessed 16th April 2024.

⁷⁵ See 'Presentation to ABC Councillors Sep 22', available here

⁷⁶ Helen Keys, 'Lough Neagh Partnership: Independent Strategic Review and Plan for 2023 - 2028' (2022) 8 <<https://loughneaghpartnership.org/wp-content/uploads/2023/08/FINAL-LOUGH-NEAGH-INDEPENDENT-STRATEGIC-REVIEW-DOCUMENT-2023-28-1.pdf>> accessed 21 March 2024.

⁷⁷ For instance, the LNP has managed infrastructure, environmental and tourism projects.

⁷⁸ These projects include those of environmental benefit, such as the 'Lough Neagh Environmental Group Farm Scheme Project' and the 'Lough Neagh Shoreline Plan.' More details on these and other initiatives are available on the website of the LNP <https://loughneaghpartnership.org/lnp-projects/> accessed 19th April 2024.

⁷⁹ Keys (n 77) 7.

⁸⁰ Paul Donaldson and Charlie Fisher, 'The Future of Lough Neagh: Investigation to Explore and Establish the Case for the Setting up of a Lough Neagh Development Trust to Acquire and Strategically Manage and Operate Lough Neagh' (Development Trusts NI, 2016).

⁸¹ See <https://loughneaghpartnership.org/lough-neagh-partnership-board/> Last accessed 21st March 2024.

⁸² For example, see Donaldson and Fisher (n 81).

⁸³ The Departments Act (Northern Ireland) 2016 reduced the number of government departments from 12 to 9. See

created an inherent conflict of interest at Departmental level because the same minister is now simultaneously responsible for development of policy around both protecting the environment and protecting agricultural interests, a serious problem when agriculture represents one of the most polluting industries in Northern Ireland – and one of the biggest sources of pollution specifically at Lough Neagh.⁸⁴

Secondly, the location of the environmental regulator within DAERA also creates a conflict of interest at regulatory level because the body responsible for the enforcement of environmental law is under the control of the minister responsible for supporting the agricultural industry.⁸⁵ This arrangement has been the subject of significant criticism, with multiple scrutiny reports and commentators highlighting that credible environmental regulation requires the externalisation of responsibility for this function to an independent environmental protection agency (IEPA).⁸⁶ Despite political and broad civil society support for establishing an IEPA from almost all political parties (including a political commitment in the 2020 ‘New decade, New approach’ political agreement and in a May 2024 Northern Ireland Assembly motion⁸⁷) an independent environmental protection agency thus far remains elusive. Finally, NGOs have also pointed to a perceived conflict of interest created by the Department of Infrastructure’s role as a major developer (e.g. of roads) and thus an indirect ‘buyer’ of sand and its role as the body responsible for regulating sand extraction at the lough.⁸⁸

Accountability gaps

Accountability and scrutiny mechanisms are critical features of any effective environmental governance system because the landscape of implementing bodies is complex, the law is constantly evolving and there has been

(especially in Northern Ireland) a long history of government failure (both direct rule and devolved government) to actually deliver anything resembling good environmental governance. Having structures and mechanisms in place to scrutinize developments and ensure that implementing bodies are doing what they are supposed to be doing is therefore crucial. However, the current system is characterised by important accountability gaps both internally (i.e. deficiencies in the accountability mechanisms established as part of the devolved governance of Northern Ireland) and externally (i.e. mechanisms beyond the devolved government designed to scrutinise the performance of the government as a whole).⁸⁹

Internally, the issue is not an absence of scrutiny and oversight, but rather that some bodies that exist depend on a functioning government (e.g. the Northern Ireland Assembly Public Accounts Committee, the Committee for Agriculture, Environment and Rural Affairs or the Northern-South Ministerial Council) and that the analysis of other bodies (e.g. the Criminal Justice Inspectorate, Northern Ireland Audit Office) is not implemented when it comes to recommendations for governance reform.⁹⁰ Internal scrutiny is further diminished because a key voice (i.e. that of an independent environmental regulator) is, as discussed above, completely missing. A more fundamental issue also exists because in the absence of devolved ministers during periods when the devolved government is in a period of collapse (which has been for almost half of its entire existence) unelected civil servants are essentially responsible for decision-making, with some limited input from the UK Secretary of State.⁹¹

The outworking of these issues means that key internal accountability levers cannot function as they should because decision-making (to the extent that it occurs) during periods of

Ray McCaffery, ‘The Executive Departments (NI) Bill,’ (NI Assembly Research and Information Service Bill Paper, Paper 134/15, December 2015)
<<https://niopa.qub.ac.uk/bitstream/NIOPA/3647/1/13415.pdf>> accessed 2nd May 2024.

⁸⁴ Ray Purdy and Peter Hjerp, ‘Environmental Governance In Northern Ireland: Identifying the Drivers for Change and Considering Solutions,’ (Report commissioned by a coalition of NI environmental NGOs, London, 2016)
<<https://ejni.net/wp-content/uploads/2019/06/ECocentric-Report-Final-NI-26-1-2016-1.pdf>> accessed 2nd May 2024.

⁸⁵ A clear manifestation of this was played out in practice when SDLP Minister for the Environment, Mark Durkan, halted prior negotiations surrounding a Memorandum of Understanding (MOU) between the NIEA and the Ulster Farmers Union (UFU) due to concerns that it would force

the NIEA to treat agricultural polluters with more leniency than other industries. This decision was reversed when the DUP Minister Michelle McIlveen took over the running of the Department in May 2016.

⁸⁶ Turner and Brennan (n 48).

⁸⁷ See NI Assembly Deb 13 May 2024.

⁸⁸ Tommy Greene, ‘Lough Neagh sand a ‘diminishing resource’ experts warn,’ *The Detail* (5th December 2022)
<<https://www.thedetail.tv/articles/lough-neagh-sand-a-diminishing-resource-experts-warn>> accessed 2nd May 2024.

⁸⁹ Brennan, Dobbs and Gravey (n 46).

⁹⁰ See Brennan, Purdy and Hjerp (n 5), outlining the litany of ignored scrutiny reports.

⁹¹ *Re Buick’s Application for Judicial Review* [2018] NIQB 43.

government collapse goes on without the proper scrutiny that a functioning assembly should deliver, and is essentially taking place 'behind closed doors' rather than by a Minister who must (at least in principle) answer to not only to the Executive, but to the wider assembly and indeed the voting public.⁹² In an environmental context, the problem with this unstable system of governance was clearly illustrated when the production of the crucial environmental improvement plan was delayed by three years because of the collapse of Stormont in 2020.⁹³ This plan alone would have introduced important reforms, but the chief executive of the DAERA was not equipped with the power to actually sign off on the plan – leaving it in a period of stasis until government returned in January 2024.⁹⁴ The 'internal' accountability gaps in the context of the environment are therefore predominantly a direct function of the febrile nature of the power-sharing arrangements that exist in Northern Ireland. For Lough Neagh, this meant that any emergency or urgent political action was prevented by the continued state of collapse of the devolved government in Northern Ireland until it reformed in February 2024.

Externally, Brexit has created an accountability gap with the loss of the oversight and scrutiny functions previously delivered by the EU Commission.⁹⁶ Although recognised as slow-moving and imperfect, the scrutiny function of the Commission in conjunction with its powers to impose extremely onerous financial penalties in the face of persistent infraction was enough to force the devolved government to undertake what Turner has described as a 'remarkable process of law and policy renewal' in the early 2000s.⁹⁷ Explicit threats of infraction proceedings

against both the UK and Ireland were also enough to force both governments to deal with illegal transfrontier shipment and dumping of waste across the border in Ireland in the mid-2000s.⁹⁸ By the time Brexit arrived, there were multiple ongoing infraction proceedings underway against the UK because of serious breaches of EU environmental law in Northern Ireland – including complaints regarding enforcement of environmental law in general and a specific complaint regarding the failure to protect Lough Neagh. These complaints – which had the potential to lead to infraction proceedings against the UK as a whole – were quietly discontinued in the post-Brexit era, without any of the issues being resolved.⁹⁹

In response to the accountability gaps left in the wake of Brexit, the UK has established the Office of Environmental Protection (OEP), designed to replace the oversight function of the EU Commission. Initially, there existed concerns that the body would be 'toothless' and unable to actually force any change in the face of serious environmental governance issues.¹⁰⁰ There have however been positive developments in recent years, with the OEP signalling that it has the capacity to play a more substantial oversight role. Recent communications regarding missing statutory deadlines have indicated that the OEP is paying close attention to environmental policy developments (or lack thereof) in Northern Ireland even when the devolved a government was not in place.¹⁰¹ Further, the OEP are clearly also prepared to undertake legal action in response to persistent failures, with a judicial review pre-action letter sent in September 2023 by the body to DAERA and to the NIEA requesting that they 'immediately cease' relying

⁹² Ciara Brennan, Mary Dobbs, 'Reality bites: The implications of scrutiny-free environmental law reform in Northern Ireland after Brexit' *Brexit & Environment* (March, 2019) <<https://www.brexitenvironment.co.uk/2019/03/12/scrutiny-free-environmental-law-northern-ireland/>> accessed 2nd May 2024.

⁹³ The OEP sent a letter to DAERA in July 2023, indicating that the failure to publish the Environmental Improvement Plan by the statutory deadline was 'deeply regrettable' and that efforts should be made to minimise the delay. See 'OEP letter to DAERA Permanent Secretary Katrina Godfrey, 26 July 2023,' <<https://www.theoep.org.uk/report/failure-meet-ni-eip-deadline-deeply-regrettable>> accessed 2nd May 2024.

⁹⁴ Ibid.

⁹⁶ Brennan, Dobbs and Gravey (n 46).

⁹⁷ Sharon Turner, 'Transforming Environmental Governance in Northern Ireland: Part One: The Process of Policy Renewal' (2006a) 18 *Journal of Environmental Law* 55.

⁹⁸ Ciara Brennan (n 54).

⁹⁹ For example, a letter from the EU Commission to the River Faughan Anglers in January 2022 explained that EU Pilot investigation (2015)7640 (regarding enforcement of EU environmental law in Northern Ireland) which was commenced in June 2015 was being closed. The Commission explained that 'Given the United Kingdom's departure from the European Union, the Commission uses its discretionary power to pursue only complaints that point to a serious breach of EU law by the United Kingdom that could jeopardise specific EU interests, notably in connection with the interpretation and application of the Withdrawal Agreement.'

¹⁰⁰ See Public Law Project, 'The enforcement provisions of the Environment Bill,' (PLP Briefing for House of Lords Committee Stage, 29th June 2021).

¹⁰¹ See 'OEP Letter to First Minister Michelle O'Neill and Deputy First Minister Emma Little-Pengelly' (7th February 2023) <<https://www.theoep.org.uk/report/oep-urges-restored-northern-ireland-executive-act-over-failure-meet-statutory-deadlines>>

on the highly problematic 'Operational Protocol' guidance regarding ammonia emissions as a source of advice to planning authorities.¹⁰² This indicates that the OEP certainly has intentions to provide robust scrutiny of the implementation of environmental law in Northern Ireland, but whether it has the enforcement powers necessary to push for meaningful change remains to be seen. Regarding Lough Neagh, in addition to [confirmation of continued breaches of the Water Framework Directive in Northern Ireland](#), the OEP recently announced that it is investigating DAERA for failure to protect SPAs, of which the Lough Neagh and Lough Beg SPA is the biggest in Northern Ireland.¹⁰³

Underdeveloped all-island cooperation

The presence of an international border on the island of Ireland does not detract from the fact that shared landscapes, river basins and ecosystems amount to a single bio-epidemiological and bio-geographic unit, which requires a cooperative approach to management and regulation of harmful activities to ensure effective protection. To date this cooperation has been under-developed and as a consequence the environment has not been adequately protected in either NI or Ireland.¹⁰⁴ In fact, the border and differing regulatory arrangements on either side of it have actually been the source of environmental challenges, such as cross border illegal dumping. This invokes serious procedural justice concerns, as the lack of cross-border cooperation undermines the ability of communities in both jurisdictions – in particular those located in border areas or transboundary river basins – to be included in environmental decision-making. Jurisdictional boundaries in this context may also hinder transparency and accountability.

The logic of cooperation on the environment across the island of Ireland has been accepted on a policy level, stretching back to the 1998 Belfast Agreement, which explicitly provided for cooperation in Strand 2 and continuing through recent initiatives such reports from Ireland's National Economic and Social Council (NESC)

which is part of a wider body of work undertaken on a Shared Island for Ireland's Department of the Taoiseach. NGOs and civil society have also recognised the need for all-island collaboration, with a major civil society report on 'Linking the Irish Environment' published in 2023 highlighting the importance of boosting cooperation (at political, and also NGO level) across the border.¹⁰⁵

In the context of Lough Neagh, cooperation across the border is crucial for a number of reasons. About 9% of Lough Neagh's drainage basin is in Ireland, and multiple river catchment areas associated with the Lough are cross-border in nature. This means that polluting activities on either side of the border have transboundary implications on an all-island scale – creating potential liability for both the UK and Ireland for failure to prevent transboundary pollution. There are also requirements under international law (including under the [Aarhus](#) and Espoo Conventions) for consultation across the border on strategic plans and policies impacting Lough Neagh.¹⁰⁶

Public participation

As mentioned, delivering procedural justice requires effective public participation. Beyond the requirements of environmental justice, the ability of citizens to contribute meaningfully to decision-making that affects them is a cornerstone of a democratic society. For this reason, the democratic legitimacy of any proposed model or solution for Lough Neagh depends on how effectively this is delivered. *New Decade New Approach* includes reference to the importance of citizen engagement and co-design in shaping the future Programme for Government in NI. [Research](#) has indicated that, 'Involving the public in decision-making processes is widely believed to improve the quality of the resulting decisions and to strengthen the credibility of the decision-making process and its outcome.' Previous [research](#) on community engagement relating to planning and development in NI has suggested the value of 'active' engagement tools, at the earliest possible

¹⁰² <https://www.endsreport.com/article/1851699/northern-ireland-bins-its-ammonia-advice-legal-threat-oep> > accessed 2nd May 2024.

¹⁰³ 'OEP Investigates DAERA over Special Protection Areas for Wild Birds,' *The Office for Environmental Protection* (18th March 2024) < <https://www.theoep.org.uk/news/oep-investigates-daera-over-special-protection-areas-wild-birds> > accessed 2nd May 2024.

¹⁰⁴ Alison Hough, 'The Potential of the Good Friday Agreement to Enhance post-Brexit Environmental

Governance on the island of Ireland' (2019) *Irish Planning and Environmental Law Journal* (2), 55-65.

¹⁰⁵ Ciara Brennan and others, 'Linking the Irish Environment: Final Report' (Environmental Justice Network Ireland Research Report, June 2023). Available [here](#).

¹⁰⁶ Alison Hough, 'Synthesis Report: All-Island Implementation of the Aarhus Convention,' (Report produced as part of the Irish Research Council Project 'Finding Common Ground: Towards all-island implementation of the Aarhus Convention,' 2022).

stage (i.e. before any major decisions are made or finalized). [Guidance](#) from the Scottish government on engaging communities in decisions relating to land agrees that early engagement is crucial, explaining that this civic empowerment generates trust between local communities and those making decisions about how land is being used. The guidance also explains that community engagement isn't just about asking communities a specific question, but can also function to identify what the issues actually are. This links to another dimension of procedural justice – that community knowledge is valued and necessary in decision-making processes. There are many examples of best practice guidance for engagement and consultation with communities specifically on

environmental matters. For example, in 2015 SWAN published [guidance](#) on delivering meaningful public participation in water governance and WFD implementation, arguing that 'good' public participation involves the public having the genuine ability to influence outcomes. In 2024, Confor published [this guide](#), emphasizing the need for a range of different approaches to be used to maximise inclusivity in the process.

In addition, procedural justice rights are enshrined in law by the Aarhus Convention, which grants the public the right to participate in environmental decision-making, and also requires transparency and the availability of clear and accessible information.



Campaigners demanding action to save Lough Neagh in November 2024. Photograph: Páidí McNicholl, Save Lough Neagh.

Recognition and environmental justice

The concept of recognition as a facet of environmental justice has been less extensively analysed than either distributive or procedural issues. This may, in part, be because there is no consensus on what justice or injustice would look like or involve in this respect, and it is perhaps more difficult to use it as a clear route to addressing environmental harms. Recognition involves an acknowledgement of the validity of different ways of being or relating to places - which means it is necessarily context-specific. Recognition may include distributive concerns (particularly in a colonial context), in that people may rely on places or the ecosystems found there for economic subsistence.¹⁰⁷ However, recognition is also about acknowledging cultural or spiritual attachments to place, which are less capable of being quantified or even articulated.

There is also an inherent danger of misrecognition even in actions or approaches designed to address the problems.¹⁰⁸ For this reason, recognition in the context of environmental justice is linked inherently to property norms, and the ways in which private property can obscure and erase other kinds of relationships with land.¹⁰⁹ In the context of Lough Neagh, the link between recognition, the exercise of colonial power and environmental justice for communities highlights the importance of addressing the question of ownership, because the colonial underpinnings of the lough's ownership story reveal problems with recognition, which create and perpetuate environmental injustice.

Confronting the legacy of colonial dispossession

Although the 1911 judgement in *Johnston* effectively ended generations of disagreement over the ownership of the lough and its fisheries, the decision made by the House of Lords was by no means clear cut, or entirely unproblematic.

Judicial opinion in the case was sharply divided, and some of the dissenting opinions articulate a number of specific concerns with the potential claim. For instance, there were a number of questions raised about the validity of the claim itself, in terms of the documentary evidence produced to support it,¹¹⁰ as well as in relation to the nature and geographical extent of the rights claimed by the plaintiff.¹¹¹ In addition, the dissenting opinions articulated some concerns about the effect that the establishment of an exclusive fishery in the lough may have on surrounding communities, who had since time immemorial relied on the lough as a source of sustenance and as a highway (which itself raises distributive issues, as described above).¹¹²

The decision also attracts a large degree of socio-political significance when considered against the backdrop of fairly radical redistributive land reform that occurred across the island of Ireland at the end of the nineteenth and beginning of the twentieth century. This land reform project was designed specifically to address the issue of absentee landlords disenfranchising local people and communities in Ireland, which had caused significant unrest across the island throughout the nineteenth century.¹¹³ Notably, *Johnston* was just one of a spate of cases about public fishing rights in Ireland at this time.¹¹⁴ Hamill argues that claims around the public right to fish are, in fact, rooted in latent tensions arising from colonial dispossession. As Hamill observes, 'the public right to fish was set up as an *Irish* right, claimed against *English* landowners...the fisheries question took on a markedly nationalist air.'¹¹⁵ Significantly, as Hamill highlights, specific legislation that provided for a public right to fish in non-tidal waters - the Fisheries Act 1842 - was disregarded in *Johnston*. The rule in *Johnston*, 'emerged not out of longstanding legal doctrine consistently applied but out of political attempts to shape the law.'¹¹⁶ The reasoning relied on by the majority in *Johnston*, particularly the notion that the lough had to have an owner, certainly has echoes of a *terra nullius*-type reasoning - the proposition that the land was somehow empty, or

¹⁰⁷ Brendan Coolsaet and Pierre-Yves Néron, 'Recognition and Environmental Justice', *Environmental Justice: Key Issues* (Routledge 2021)

¹⁰⁸ Coolsaet and Néron (n108)

¹⁰⁹ Margaret Davies, Lee Godden and Nicole Graham, 'Situating Property within Habitat: Reintegrating Place, People, and Law' (2021) 6 *Journal of Law, Property, and Society* 1.

¹¹⁰ *Johnston* (n 7), 644.

¹¹¹ *Ibid*, 644, 647, 655.

¹¹² *Ibid*, 657.

¹¹³ For a good overview, which also provides detail of the social context in which the process of land reform took place, see generally Rachael Walsh and Lorna Fox O'Mahony, 'Land Law, Property Ideologies and the British-Irish Relationship' (2018) *Common Law World Review* 7.

¹¹⁴ For a good summary, see Sarah E Hamill, 'The Public Right to Fish and the Triumph of Colonial Dispossession in Ireland and Canada' (2017) 50 *U.B.C. Law Review* 53.

¹¹⁵ *Ibid*, 66.

¹¹⁶ *Ibid*, 85.

owned by no one. This is despite the accepted evidence that the lough had been used since time immemorial by local communities.

Although the decision in *Johnston* was, on the face of it, a decision about public fishing rights, it was more specifically and significantly a decision about property rights, and the colonial processes that are enacted through property mechanisms. Property is immensely powerful in that it characterises the relationship between people and place.¹¹⁷ Colonialism generates and perpetuates environmental injustice by impoverishing communities, both economically and culturally, and disconnecting people from the landscapes around them.¹¹⁸ In seeking to solve the ecological crisis that has unfolded at Lough Neagh, it is imperative to acknowledge that these issues have, in part, been generated by property choices.

Thinking about this as a property problem allows us to challenge assumptions made about maintaining the status quo and to look, 'with fresh eyes and clearer standards,' at some of the issues that can arise through the operation of property, which include, 'sustainability, access, and even inequality.'¹¹⁹ To continue to allow the lough to remain in private ownership is to continue to replicate those property choices, which are rooted in systems of dispossession, extractivism and exploitation. Recognising the legacy of colonial dispossession inherent in Lough Neagh's current ownership status allows the opportunity to reckon with it. Critically, however, countering a legacy of dispossession is not, and should not be, based on a drive only towards repossession.¹²⁰ In other words, it is about more than distributive issues - countering dispossession should also aim at fostering meaningful place attachment amongst communities. This implicitly involves an improved connection to nature, and acceptance that human beings are not separate from nature, but in fact are deeply embedded within it.¹²¹ This builds on the necessary foundational principle that property does not, and cannot, exist in a vacuum. In other words, it is impossible to

separate people, place and property.¹²² Going further, recognizing these complex relationships creates scope for also recognizing other communities - such as non-human communities - as subjects of justice.

¹¹⁷ Nicole Graham, *Lawscape: Property, Environment, Law* (1st edition, Routledge-Cavendish 2010).

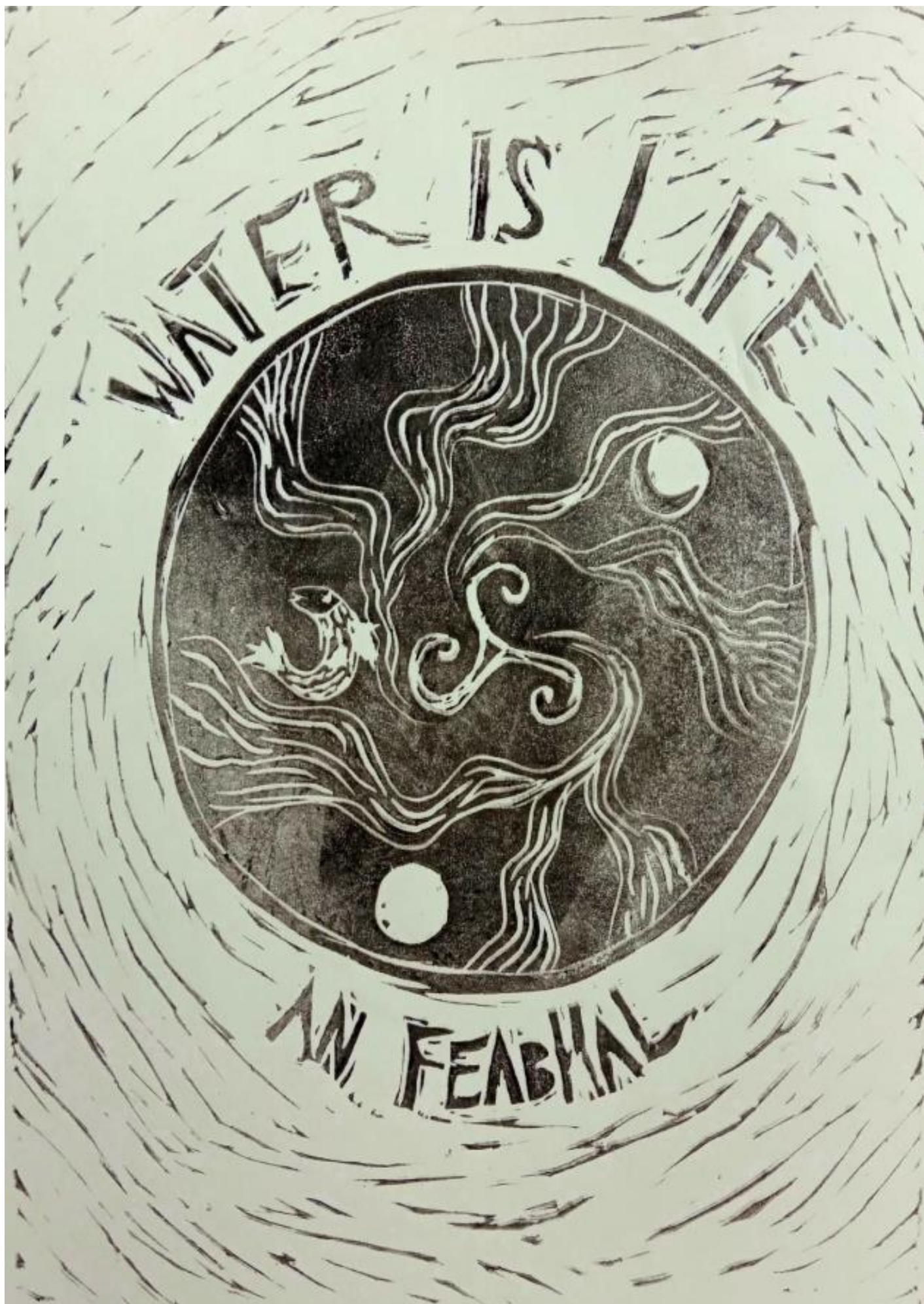
¹¹⁸ For example, see Iokiñe Rodríguez, 'Latin American Decolonial Environmental Justice,' in Brendan Coolsaet (ed), *Environmental Justice: Key Issues* (Routledge, 2021), 80.

¹¹⁹ Jessica Shoemaker (n 73), 9.

¹²⁰ Heather Dorries, 'What Is Planning without Property? Relational Practices of Being and Belonging' (2022) 40 *Environment and Planning D: Society and Space* 306.

¹²¹ Helena R. Howe, 'Making Wild Law Work - the role of 'connection with nature' and education in developing an ecocentric property law' (2017) *Journal of Environmental Law* 29, 19-45.

¹²² Sarah Blandy, Susan Bright and Sarah Nield, 'The Dynamics of Enduring Property Relationships in Land' (2018) 81 *The Modern Law Review* 85. 89.



'Water is life' Illustration: V'cenza Cirefice

Developing an environmental justice framework for Lough Neagh

There is clear evidence of environmental governance deficits impacting Lough Neagh, including accountability gaps, conflicts of interest, a lack of regulation and weak enforcement, and underdeveloped all-island cooperation. There are also observations to be made about the difficulties that have been caused by the current private ownership regime, including the deprioritisation of community interests; ineffective and unstable governance and management; and the legacy of colonial dispossession. These myriad concerns are intrinsically linked by the concept of environmental justice, and this article has sought to demonstrate that each of these issues has created and perpetuated the current crisis at the lough.

To address these issues and deliver environmental justice for Lough Neagh, it is critical to appreciate that a failure to address the environmental governance issues will undermine any attempts to address the ownership issues. Similarly, attempts to tackle the environmental governance issues without also seeking to address the ownership question will fail to confront the full spectrum of problems faced by the lough, and will inevitably generate future problems.

As this article has demonstrated, Lough Neagh can be considered emblematic of some of the most pervasive environmental challenges faced by contemporary society, and the factors that have contributed to these: ineffective environmental law and governance; and a rigid commitment to the orthodox view of private ownership. More than this, however, the crisis at the lough is a case study in the relationship between environmental law and property law,

and the social-ecological impacts that flow from this. Strategic, long-term solutions to ongoing environmental issues must address, and synthesise, concerns about environmental law and questions about ownership. Solutions located at the juncture of environmental law and property rights are inevitably complex, but also reflect the practical reality that these areas of law are intrinsically linked and therefore hold enormous potential to improve environmental outcomes.¹²³

Based on the foregoing analysis, delivering environmental justice at Lough Neagh will encompass seven desired outcomes. These are:

- Removal of accountability gaps
- Removal of conflicts of interest
- Strengthened regulation and enforcement
- Enhanced cross-border environmental co-operation
- Prioritisation of community wealth and decision-making
- Effective and stable management structures
- Re-connecting people and place

Taken together, these components (set out below in Table 1) can act as an analytical framework to inform possible legal, policy and wider governance pathways to address the crisis at Lough Neagh and to evaluate political, policy and stakeholder solutions, plans and packages as they emerge. It is clear that none of these actions can be taken in isolation. An effective solution will therefore involve a constellation of actions that need to happen, either concurrently or sequentially, to address the problems discussed in the foregoing analysis.

¹²³ David Grinlinton, 'The Intersection of Property Rights and Environmental Law,' (2023) *Environmental Law Review* 25(3).

Table 1: An environmental justice framework to inform strategic decision-making at Lough Neagh

Desired Outcome	Potential Actions	Aspect of Environmental Justice Addressed
Remove the accountability gaps	<p>Strengthening of the OEP's powers</p> <p>Enhanced reporting obligations subsequent to scrutiny reports</p> <p>Establishment of a cross-departmental Environment Commissioner/Ombudsman</p> <p>Enhanced roles for 1998 Agreement institutions</p>	Procedural justice
Remove the conflicts of interest	<p>Reorganisation of government departments (i.e. separation of Agri and Environment aspects)</p> <p>Independent Environmental Protection Agency</p> <p>Removal of any memorandums of understanding with polluting industries</p>	Procedural justice
Strengthen regulation and enforcement	<p>Independent Environmental Protection Agency</p> <p>New powers for regulators</p> <p>More robust enforcement policy including more certainty about the potential for imposition of sanctions</p> <p>Enhanced environmental monitoring including more severe sanctions for breaches</p> <p>Moratorium on/reduction of planning permissions for polluting/extractive industries</p>	Distributive justice
Enhance cross-border cooperation	<p>All-island oversight body</p> <p>Enhanced roles for 1998 Agreement institutions</p> <p>Enhanced consultation on transboundary pollution and strategic plans and policies (including those relevant to land use and the environment)</p> <p>Publication of the final version of the third River Basin Management Plan (which specifically requires cross border collaboration)</p>	<p>Procedural justice</p> <p>Distributive justice</p>
<p>Prioritise community interests</p> <p>Enhance management structures</p> <p>Reconnect people and place</p>	<p>Engage deliberative democracy mechanisms</p> <p>State acquisition - negotiated sale or compulsory purchase¹²⁵</p> <p>Community ownership</p> <p>Rights of Nature approach</p> <p>Designation as a national park/ heritage park</p> <p>Strategic review of land use (including land ownership)</p> <p>A Citizen's Assembly on Lough Neagh</p>	<p>Procedural justice</p> <p>Distributive justice</p> <p>Recognition</p>

¹²⁵ This approach would be subject to further research to establish the precise nature of the range of third party interests existing over the lough, such as those held by sand trading companies, see (n 31).

It is challenging to accurately represent the complexity of the issues in visual form, but the table above gives some indication of the range of potential solutions that are available, and anchors these within the analysis offered in this article. It is important to recognise that the potential solutions outlined above are not always mutually exclusive. For example, state acquisition of the lough may be seen as a necessary first step in moving the lough out of private ownership,¹²⁶ which could feasibly be followed by the establishment of a community ownership model, a rights of nature approach, designation as some form of national or heritage park – with an appropriate independent management body – or a combination of these.

The implementation of these potential solutions would require further research and consultation to determine questions of sequencing, overlap or combination, and consider any unintended consequences that may arise. All of these potential solutions must also be underpinned by a renewed emphasis within policy-making on environmental and social justice outcomes, across all areas. This could include, for example, re-thinking the ‘Going for Growth’ strategy, re-evaluating the need to modernise and invest in wastewater infrastructure, and adjusting economic policy to ensure support for local businesses.

It should also be mentioned that the possibilities indicated in the table are by no means the only available solutions. The authors have selected those approaches they are good examples of potential actions that represent the full range of legal or policy mechanisms that might be leveraged in solving the Lough Neagh crisis, and that are targeted most specifically at solving the challenges identified. Finally, these solutions should be considered as those that might shape strategic decision-making at the lough and this decision-making must be supported by robust

and meaningful consultation with relevant stakeholders.

In addition to longer term strategic solutions, there are also a range of immediate short-term emergency measures that should be taken by relevant government departments to address the ongoing catastrophe. These should be evidence-based and could include actions such as a halt on sand dredging in Lough Neagh until the ecological impacts are more fully understood and a moratorium on permission for new intensive agricultural activity until pollution levels fall within acceptable levels. To generate political support for moving away from damaging activities, these actions would likely require financial support for impacted industries which would need to form part of a wider societal discussion about sustainable development and a just transition in Northern Ireland.

¹²⁶ As discussed in Section 1, the possibility of public ownership has gained traction in public discourse around the lough’s future, and in political debate. The possibility of public ownership was previously considered – and rejected – by a cross-departmental working group. See Lough Neagh Cross Departmental Working Group, ‘Potential for Bringing Lough Neagh into Public Ownership – A Scoping Study’ (February 2014) (n 9). The report concluded that the transfer of the lough from private to public ownership was perceived to be unnecessary, and to involve high costs and

high levels of complexity. In drawing this conclusion, the report did not consider the social and environmental justice issues of continuing private ownership of such an important natural feature. In addition, the factual scenario surrounding the lough has now changed to such an extent that the arguments against a change in ownership that are presented in the report are no longer applicable. In other words, the parameters of the debate have shifted, and it is now clear that the current ownership status of Lough Neagh is untenable.

Conclusions

A complex political context has delayed and impacted the development of meaningful solutions to the ecological collapse at Lough Neagh.

The risk to human and animal health caused by the toxins associated with algal blooms catapulted the longstanding disputes around ownership and the problematic governance of Lough Neagh into the public eye in the summer of 2023, and provoked extensive local and international media coverage.¹²⁷ As the extent of the problems became clear, the mobilisation of new and existing grassroots community groups and calls for urgent action from NGOs and elected representatives from across the political spectrum swiftly followed. However, despite council level concern,¹²⁸ any immediate or urgent political action was prevented by the continued state of collapse of the devolved government in Northern Ireland.¹²⁹

After a long period of political wrangling, the devolved government was restored in February 2024. MLAs from across all parties expressed a clear intention to tackle the problems at the lough during an assembly debate in February 2024, albeit with varying political interpretations of what the problems and priorities are.¹³⁰ The Minister for Agriculture, Environment and Rural Affairs Andrew Muir has committed to urgent action, but has also recognised that the root causes of the problems at Lough Neagh are multifaceted and that any solutions will take decades to implement.¹³¹ However, the

unprecedented level of political interest on the issue of environmental governance in NI in the wake of the Lough Neagh crisis, could prove to be a unique moment in time to address the pervasive problems related to failing environmental governance more generally that has contributed to causing catastrophic damage to this culturally, socially, environmentally and economically significant natural feature. The fact that addressing the Lough Neagh crisis has been included in the Programme for Government, published in 2024, adds weight to this view.

A further politically significant point to note is that as part of the catchment area of Lough Neagh is located across the border between Northern Ireland and Ireland,¹³² the question of a solution to the current ecological crisis is also transboundary in nature and will require input from, as well as consultation and cooperation with the Irish government, regulatory bodies, and cross-border stakeholders (including with citizens).

Looking at the challenge of 'saving Lough Neagh' through an environmental justice lens reveals a range of issues which must be addressed.

Environmental justice perspectives are about power relations and understanding systems of power and oppression at the roots of the crises we face, including colonialism, extractivism, neoliberal capitalism, and when we use this lens we understand the only solutions (that aren't false solutions like technofixes or market based solutions) must be systemic and are achieved through collectivising and grassroots democracy. Viewing the Lough Neagh crisis as an

¹²⁷ See Louise Cullen, 'Lough Neagh: the year the UK's largest lake turned green,' *BBC News* (2nd January 2024) <<https://www.bbc.co.uk/news/uk-northern-ireland-67717507#:~:text=In%20Lough%20Neagh%2C%20multiple%20factors,them%20it%20is%20extremely%20toxic>> accessed 2nd May 2024, David Blevins, 'Lough Neagh: Largest lake in UK and Ireland being poisoned by toxic algae,' *Sky News* (16th September 2023) <[Lough Neagh: Largest lake in UK and Ireland being poisoned by toxic algae | UK News | Sky News](https://www.sky.com/news/uk-news/lough-neagh-largest-lake-in-uk-and-ireland-being-poisoned-by-toxic-algae)> accessed 2nd May 2024.

¹²⁸ For example, Belfast City Council passed a motion on 4th September 2023 that expressly articulated the deep concern felt by local government about the deteriorating water quality at the lough. See 'Future Management Structures at Lough Neagh' (4th September 2024) available <<https://minutes.belfastcity.gov.uk/ieListDocuments.aspx?CId=164&MID=11300#A174128>> accessed 2nd May 2024.

¹²⁹ C. R. G. Murray, 'Northern Ireland's Post-Brexit Governance Crisis: What to do when the Post-1998 Centre

Cannot Hold' (2024) *Northern Ireland Legal Quarterly* <<http://dx.doi.org/10.2139/ssrn.4692752>> Accessed 2nd May 2024.

¹³⁰ See NI Assembly Deb 13th February 2024 (n 3).

¹³¹ Ibid.

¹³² 'The total catchment area draining into Lough Neagh is 4,450 km², (which amounts to about 43% of The North of Ireland), plus a small area in the Republic of Ireland (390km²).' Department of Agriculture, Environment and Rural Affairs, 'Lough Neagh Fishery Management Plan,' (25th July 2022) <[Lough Neagh Fishery Management Plan | Department of Agriculture, Environment and Rural Affairs \(daera-ni.gov.uk\)](https://daera-ni.gov.uk/Lough-Neagh-Fishery-Management-Plan)> accessed 2nd May 2024. See also The Rivers Trust, 'Lough Neagh: The Perfect Storm Creating an Ecological Disaster,' (Briefing document by The Rivers Trust, September 2023) <[RT-Lough-Neagh-Briefing-Sept-23.pdf](https://www.rivers-trust.org.uk/Lough-Neagh-Briefing-Sept-23.pdf)> accessed 2nd May 2024.

environmental justice issue demonstrates the complex landscape of legal and governance failings that have contributed to the problems. These failings have generated distributive and procedural justice concerns, as well as creating barriers to the recognition of the diverse relationships that exist between the lough and local communities. Articulating the problems in this way helps to inform the design of more effective solutions, which can be shaped to tackle the challenge strategically and democratically, rather than in a piecemeal fashion without input from those most impacted by the issues.

'The crises that have converged at Lough Neagh demonstrate that we need much better, more democratic, systems of environmental stewardship. Decisions about land and water need to be made collectively, inclusively, and transparently, and need to involve diverse publics rather than just those who have a vested interest in the lough as a resource. Deliberative democracy provides a model for this. Not only does it allow for collective intelligence, informed public judgement, and consensus decision making, but deliberative processes can incorporate more-than-human voices as well as the needs of future generations in a way that other forms of policy-making can struggle to do. These methods are being embraced elsewhere and are long overdue here in NI.'

Rebekah McCabe, Involve NI

A holistic and sustainable solution requires both the ownership and environmental governance issues to be addressed in tandem.

One of the outworkings of using an environmental justice lens to view the Lough Neagh crisis is the acknowledgement that the issues around ownership must be addressed alongside the issues with environmental governance, as part of a holistic and strategic solution.

The private ownership of the lough matters in that it has impacted on the way in which private and community interests have been balanced in this context, with the prioritisation of private interests leading to the drain of community

wealth and decision-making. The ownership regime has also shaped the way in which the lough is currently managed, generating a responsibility vacuum and contributing to instability in management and governance structures. Finally, the article argues that the lough's ownership must be viewed within the broader context of colonial dispossession on the island of Ireland, and that this has had a profound impact on people and place-making, fostering a disconnection from nature that has contributed to the environmental issues facing the lough. These problems generate clear environmental justice issues. However, the ongoing systemic failures of environmental governance in NI, including problems with regulation and enforcement, accountability gaps, and conflicts of interest have also contributed to environmental injustice in this context. In practice, the various issues identified, and the injustices they generate, interact together to perpetuate and intensify the problem.

'Extractivism is not only about physically removing materials from the earth, it is a way of relating, that treats communities as disposable and sacrificial. Extractivism as a system promotes top-down approaches that erases local people, their knowledge, bodies and voices. To challenge this, we need different ways of relating to each other and the Earth. This involves relationships based on care, reciprocity, solidarity and respect for both Lough Neagh's ecology and frontline communities who live, work and love there. True environmental justice rejects extractive logics and insists that local communities are the experts and have the solutions.'

V'cenza Cirefice, CAIM, Communities Against the Injustice of Mining

Current initiatives and proposed solutions should be evaluated on the basis of the extent to which they address environmental injustice.

An action plan for Lough Neagh was published by DAERA in July 2024, setting out a range of activities aimed primarily at reducing pollution in the short, medium and long term. The DAERA minister Andrew Muir has indicated that he sees

the ownership and management of the lough as a 'long term issue,' and that any responses in this area will be informed by ongoing research.¹³³ Whilst successful delivery of the actions proposed in the Lough Neagh Action Plan will make some improvements to some aspects of the crisis, there are significant gaps from an environmental justice perspective. Specifically, the plan does not deal with the procedural justice issues that are at play here: a lack of community decision-making; a responsibility vacuum caused by a lack of effective management of the lough; inherent conflicts of interest; accountability gaps; a lack of cross-border co-operation on environmental matters; and a lack of transparency in decision-making. In addition, the plan does not address the concerns around recognition, as a component of environmental injustice – generated and perpetuated by the legacy of colonial dispossession.

'It is critical that in all discussions about the future of Lough Neagh (particularly in relation to the Rights of Nature and potentially awarding legal personhood to the Lough) local communities who have a relationship with the Lough rooted in interdependency and care over exploitation and profit are leading the discussions.

Any discussion about future ownership of Lough Neagh that does not incorporate an anti-colonial lens and a strong critique of unregulated global capitalism risks replicating patterns of colonialism.

Future models for ownership and governance of Lough Neagh must ensure substantial and enforceable limitations on the ability to extract profitable resources from the Lough by either Government or private interests.

Eliza Browning, Committee on the Administration of Justice

Other initiatives are also underway, including those stemming from the [Lough Neagh Partnership](#),¹³⁴ [Queens University Belfast School of Law](#), and a 'Roadmap to Recovery' for Lough Neagh that the National Trust is co-developing alongside officials from the Department of Agriculture, the Environment and Rural Affairs (DAERA). It is as yet unclear the extent to which these initiatives (themselves or in combination) can help resolve the environmental justice issues at Lough Neagh. What can be said, is that any solutions that are proposed must effectively contend with the complexity of the problem. The foregoing analysis indicates that there are at least seven core challenges which must be overcome to secure a complete and sustainable future governance framework for the lough. and that there are a range of possible ownership options and legal and policy mechanisms and pathways that may be implemented in this context. All of these options will require careful analysis and extensive public consultation and engagement with stakeholders to ensure public and political buy in. However, while further research and consultation is required on the exact next steps and as myriad initiatives, plans and possible solutions emerge, the urgency of political action to begin to undo what has been termed as an '[ecocide](#)' at Lough Neagh has never been more clear.¹³⁵ Equally, the real political test will come in whether the devolved government can agree¹³⁶ on what will inherently be a contentious suite of legal and policy reforms required to address the root causes of the pollution and the intrinsically linked problems associated with Lough Neagh's contentious ownership.

Transparency and meaningful public participation in decision-making are vital and gaps in the current response are undermining public confidence in proposed solutions.

Finally, although there is a proliferation of initiatives relating to a 'solution' for Lough Neagh,

¹³³ Such as the Lough Neagh Heritage Resilience Consultation carried out over May 2024 by the Lough Neagh Partnership. Responses to this are part of a larger project, funded by the Heritage Lottery Fund, to collate a 'Ten Year Lough Neagh Resilience Plan.' For more information see the LNP [website](#).

¹³⁴ Including a webinar in July 2024, available here: <https://loughneaghpартnership.org/consultation-webinar/>

¹³⁵ Juneso Hwang, 'Implementation of Ecocide Legislation on the Island of Ireland,' (EJNI, May 2024) < https://ejni.net/wp-content/uploads/2024/05/EJNI_all-island-ecocide-May-2024.pdf> accessed 17th May 2024.

¹³⁶ See John Barry, 'Opinion: Lough Neagh ecocide indicts misgovernance,' RICS Land Journal (3rd May 2024) < <https://ww3.rics.org/uk/en/journals/land-journal/lough-neagh-eco-disaster.html>> accessed 17th May 2024.

concerns have expressed around the exclusion of communities and a perceived lack of transparency in how these initiatives have been developed and funded. There are also questions about and whether, or the extent to which, vested or conflicted interests are involved in some of the ongoing efforts.

*'The Lough is increasingly being defined as a body of water surrounded by **secrecy** and each day we see further consolidation of corporate, academic, ngo, extractive industries and state interests.'*

James Orr, Director of Friends of the Earth NI

The foregoing analysis indicates that in order to truly address the environmental injustices present at Lough Neagh, transparent decision making processes which involve local people and communities in the decision making processes about the Lough's future in a meaningful way are an essential feature of a sustainable and just solution.

"Without a deliberate and conscious effort to maximise both democratic engagement and ownership of responsibility to protect and sustain a recovery of the Lough which also sustains the life dependent on her, including human life, rather than exclusively prioritising human narrow interest, there can be no environmental justice, and no future sustainability for the Lough or her people. Yet, not only is this what is missing from all plans currently on the table, there has been passive but sustained resistance to any meaningful participatory democratic process in the recovery process.'

Bernadette McAliskey, Civil rights campaigner