More Than Human Rights

An Ecology of Law, Thought and Narrative for Earthly Flourishing

César Rodríguez-Garavito (ed.)

NYU | LAW

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Contributors

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Craig Kauffman is Professor of Political Science at the University of Oregon. He is the author of various articles and two books on environmental politics, ecological law, rights of nature, and sustainable development, including *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (MIT 2021, with Pamela Martin). Kauffman also created and manages the Eco Jurisprudence Monitor, an interactive, online platform that tracks ecological law initiatives globally and provides related resources for researchers, lawyers, policymakers, and activists, funded by the Rockefeller Brothers Fund and Environment Now. Kauffman is also an active member of the United Nations Knowledge Network on Harmony with Nature.

Will Kymlicka is the Canada Research Chair in Political Philosophy in the Philosophy Department at Queen's University in Kingston, Canada, where he has taught since 1998. He is the co-author with Sue Donaldson of *Zoopolis*: *A Political Theory of Animal Rights*, published by Oxford University Press in 2011, and now translated into ten languages. He directs the Animals in Philosophy, Politics, Law and Ethics research group at Queen's University, including its postdoctoral fellowship program, and teaches courses in animals and political theory and in animals and the law.

Robert Macfarlane's books include *Underland* (2019), *Landmarks* (2015), *The Old Ways* (2012) and *Mountains of the Mind* (2003). His current book, *Is a River Alive?* (forthcoming, spring 2025) explores the global Rights of Nature movement. His books have been translated into thirty languages, won prizes around the world, and been widely adapted for music, film, television, radio, and theatre. He has also written operas, plays, albums—and films including *River* (2022) and *Mountain* (2017), both narrated by Willem Dafoe. He is a Fellow of Emmanuel College and a Professor of Literature and Environmental Humanities at the University of Cambridge.

César Rodríguez-Garavito is the founding director of the NYU More Than Human Rights (MOTH) Project. He is a Professor of Clinical Law and Chair of the Center for Human Rights and Global Justice at NYU School of Law. His current scholarship and legal practice focus on the intersection of climate change, biodiversity, rights of nature and human rights. César has been a member of the Science Panel for the Amazon, an expert witness of Inter-American Court of Human Rights, an Adjunct Judge of the Constitutional Court of Colombia, and a lead litigator in climate change and Indigenous rights cases.

Merlin Sheldrake is a biologist and author of *Entangled Life: How Fungi Make Our Worlds, Change Our Minds, and Shape Our Futures*, a New York Times and Sunday Times bestseller and winner of the Royal Society Book Prize and the Wainwright Prize. Merlin is a research associate of the Vrije University Amsterdam and works with the Society for the Protection of Underground Networks and the Fungi Foundation. A keen brewer and fermenter, he is fascinated by the relationships that arise between humans and more-than-human organisms.

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Andrea Wulf is an award-winning author of several books, including the international bestseller *The Invention of Nature. Alexander von Humboldt's New World,* which has been published in twenty-seven languages. A New York Times bestseller, it also won fifteen international literary awards, including the Royal Society Science Book Prize, Costa Biography Award and the LA Times Book Prize, as well as awards in Germany, China, France and Italy. Her latest book *Magnificent Rebels: The First Romantics and the Invention of Self* was published under great acclaim in 2022. Andrea is a member of PEN American Center and a Fellow of the Royal Society of Literature.

Introduction

César Rodríguez-Garavito

Debates and initiatives on the rights of the more-than-human world are here to stay. Recent developments in the natural sciences, moral philosophy, and politics have fundamentally questioned the categorical distinction between human and nonhuman forms of life that is at the core of modern law and human rights thought and practice. From biologists' new findings on the profound similarities and interconnections between humans and other species to moral philosophers' recent work on justice for animals and other kingdoms of life to the increasing influence of ecocentric social movements, the traditionally rigid boundaries between humans and nature have become increasingly blurry.

However, legal thought and practice, including human rights, remain largely anthropocentric. Although the rights of animals, rivers, and forests have been recognized in several lawsuits and legal

actions and Indigenous peoples from around the world have long advocated for treating nature on par with humanity as subjects worthy of moral and legal consideration, mainstream legal approaches continue to view the rights of nature with indifference at best and suspicion at worst.

The premise of this book is that a fruitful discussion of the rights of nature—or, as I propose to call them, more-than-human (MOTH) rights—needs to consider a broad range of knowledges and practices. To this end, since 2022, the More Than Human Rights (MOTH) Project based at New York University School of Law has convened a growing community of prominent scientists, philosophers, lawyers, Indigenous leaders, advocates, and journalists from around the world who are actively working on this topic. Through an annual gathering, a yearly course, and a series of practical initiatives that I describe in Chapter 1, the MOTH Project promotes reflection on the profound intertwinement of the human and the more-than-human worlds and its implications for human rights in the Anthropocene. With this grounding, the Project also spurs experimentation on the creative and interdisciplinary efforts needed to integrate law, thought, and practice with the more-than-human world.

Like moths to the light, the authors of this book, the students in the course, and the participants in our gatherings and practical initiatives have been attracted by the little flame we lit and the intriguing possibilities opened by taking MOTH rights seriously at a time of ecological and social emergencies. If human disconnection from nature is at the root of our individual and collective malaise, what type of institutions and narratives might become imaginable if we push the boundaries of legal imagination to include the breathing Earth? What would happen if the ecological turn that is evident in other fields took root in law and human rights?

As the subtitle of this book suggests, the Project tackles these and other questions through an interdisciplinary, global dialogue that weaves together law, thought, and narrative. The volume's

structure follows the threads of this multicolor fabric. In Part I, I frame the conversation by fleshing out the concept of MOTH rights as well as its conceptual and practical foundations and implications. In Part II, philosophers Will Kymlicka, Danielle Celermajer, Anna Sturman, and Dale Jamieson examine the theoretical underpinnings and challenges of MOTH rights. Part III moves to narrative and includes essays by and dialogues among José Gualinga, Carlos Andrés Baquero-Díaz, Robert Macfarlane, Merlin Sheldrake, David Abram, and Andrea Wulf. In Part IV, legal scholars, judges, and social scientists—including Craig M. Kauffman, Emily Jones, Agustín Grijalva Jiménez, Ramiro Ávila Santamaría and Catalina Vallejo Piedrahíta—discuss the legal practice of MOTH rights. The volume closes with an epilogue by David Abram on the origin of the term "more-than-human."

The MOTH Project's contributions, including this volume, are meant to serve as pollinators. As a result, the Project has grown organically through expanding circles of cross-fertilization and collaboration. I first want to acknowledge the core team at NYU's Center for Human Rights and Global Justice (CHRGJ). My colleagues Carlos Andrés Baquero-Díaz and Jacqueline Gallant believed in the idea from the beginning and became my co-creators with their unique mix of intelligence, generosity, and open-heartedness. Thanks largely to Jackie and Carlos Andrés, we were able to reach out and connect other pollinators whose work has deeply influenced my own and has served as an inspiration for my thinking on MOTH rights. Among the early members of the collective, I am particularly grateful to Merlin Sheldrake, Robert Macfarlane, Giuliana Furci, Cosmo Sheldrake, Patricia Gualinga, and José Gualinga, who went out of their way to contribute ideas, make introductions, and become friends and co-conspirators in many of the initiatives of the Project. A year into the Project, I had the fortune of meeting David Abram, David Gruber, and Danielle Celermajer, who also became close collaborators.

I want to close by thanking colleagues who have been essential to our regular events and activities. Ariel Sim's professional and gentle facilitation allowed us to run gatherings in nature that have nurtured deep collaboration and connection. Agustín Grijalva and Ramiro Ávila's generous partnership allowed us to take the MOTH course from New York to Quito, as we oscillated between venues at NYU and the Andean University of Quito. Elena Landinez's designs have become an essential part of the MOTH Project's identity, not only in terms of our visual style but also in terms of the integration of the arts as a core component of the Project. At NYU, Youssef Farhat and Henessa Gumiran skillfully carried out the myriad of operations that a project of this sort entails. Tom Kruse at Rockefeller Brothers Fund and Darius Cuplinskas at Open Society Foundations trusted the intuition behind the Project since its inception and have supported it in more ways than one. And this book would not have been possible without Jacqueline Gallant's thoughtfulness and wizardry with words. To all of them, my heartfelt gratitude.

PART I

FRAME

More-Than-Human Rights: Law, Science, and Storytelling Beyond Anthropocentrism

César Rodríguez-Garavito

Into the Forest: The Idea and the Questions of More-Than-Human Rights

On a starlit evening in October 2022, I found myself sitting by the fire in the high camp of Los Cedros, a nearly intact forest in Northern Ecuador that sits at the juncture of the Andes and the Chocó region, one of the most biodiverse areas in the world. I had come to Los Cedros with writer Robert Macfarlane, musician Cosmo Sheldrake, and mycologist Giuliana Furci. The forest beckoned each of us with a different call. Rob was on the first of three expeditions for his forthcoming book on the rights of nature. He was following

the calls of the cedars that lend the forest its name and that the Ecuadorian Constitutional Court protected as subjects of rights in a landmark ruling. Cosmo had been summoned by the songs of the toucans, the cries of the howler monkeys, the rustling of the pumpwood trees, the quiet drumming of the mycelial networks, and the melodic explosion of the 358 known species of birds in the reserve. We spent days eavesdropping on this polyphony of life with the aid of special equipment Cosmo uses to record and make music from the sounds of nature. Giuliana was chasing rumors—crystal clear to her but imperceptible to the rest of us—of two new species of psilocybin mushrooms that another mycologist had documented but that needed a second, independent sampling before they could be welcomed into the small cohort of species of the fungal kingdom that is known to Western science.

I arrived in Los Cedros under the spell of the moths. About a year earlier, I had founded the initiative that inspired this book, which I called the More-Than-Human Rights (MOTH) Project. Co-organized with colleagues at New York University's School of Law, the MOTH Project brings together lawyers, scientists, Indigenous leaders, artists, writers, advocates, judges, journalists, philosophers, and other thinkers and doers from around the world who work together to advance ideas and practices that support the rights and well-being of nonhumans. Just as the light of the soft backlit screen we set up some nights at Los Cedros would attract moths of all possible colors, the small flame that we lit with the MOTH Project had attracted my travel companions and a growing community of human pollinators like them, including mycologist-writer Merlin Sheldrake, Sarayaku Indigenous leaders Patricia and José Gualinga, and ecophilosopher David Abram, whose work was an inspiration for the launch of the collective and who have since become core members. This volume is our first collective publication. In this chapter, I lay out the conceptual foundations of MOTH rights as well as the questions and the ongoing work of the project.

For me, the trek from the tropical forest in the low camp to the cloud forest in the high camp of Los Cedros was as much a journey into the past as into the future. I first heard about the Indigenous origins of the idea of rights of nature from the Sarayaku people of the Ecuadorian Amazon when I visited their territory in 2012. Wearing my human rights researcher-advocate hat, I was on a mission to document the origins and impact of the provision of the 2008 Ecuadorian Constitution that, for the first time anywhere in the world, recognized Mother Nature (*Pachamama*) as a subject of rights. After meeting with José Gualinga, then the political leader of the Sarayaku, I was given the opportunity to interview his father, Don Sabino, the shaman (*yachak*) of the community. We sat down to chat by the Bobonaza river only a few days before the Inter-American Court of Human Rights ruled in favor of the Sarayaku in what is widely viewed as the most important international court decision on Indigenous rights, which capped a two-decade legal and political campaign that the Sarayaku successfully led to resist oil drilling in their territory.[1]

Yet Don Sabino did not speak of rights, but of life. "The forest is alive, there are spirits in the forest, they are the real rulers of the forest," he told me in a voice so quiet that it felt like an invitation to listen intently to the sounds all around us. While the Inter-American Court concluded that the Ecuadorian government had breached its duty to consult and seek the consent of the Sarayaku people before authorizing oil exploration in their territory, the Sarayaku insisted that all the other beings and spirits of the forest needed to be consulted as well. If the forest is alive—if the animals, the plants, the fungi, the river, the air, and the rocks are all animate beings—then we need to find ways to hear their voices and spirits. The rights of

1 Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Ser. C., No. 245 (Inter-Am. Ct. H. R. June 27, 2012), https://corteidh.or.cr/docs/casos/articulos/resumen_245_ing.pdf.

nature paradigm included in the Ecuadorian Constitution, which is now incorporated into laws and court rulings around the world, is the Western legal translation of the more fundamental notion that everything is alive, that all beings speak in their own ways—and that law, science, and spirituality are not mutually exclusive but rather participants in a growing conversation about what human rights mean in the Anthropocene.

When Don Sabino died in early 2022—at the age of 97 or 103, depending on whether one believes the state or the church registry—I remembered how puzzled and challenged I had felt by his words a decade earlier. Back then, I was a card-carrying member of the human rights profession. I would often find myself in places teeming with nonhuman life—canoeing down the Xingú river in the Brazilian Amazon, trekking the Sierra Nevada de Santa Marta in Northern Colombia, traveling to faraway villages in Madhya Pradesh in India or driving through the mountains around Nairobi—but nature felt only like the backdrop to the real work at hand: documenting human rights abuses in Indigenous territories and war zones, contributing to litigation against government-sanctioned economic inequalities, and training young legal practitioners and newly appointed judges in the tools of the trade.

However, the seed had been planted in those conversations with the Sarayaku. Soon, the anthropocentrism of human rights felt to me increasingly at odds with the realities of the Anthropocene, from the climate emergency to the sixth mass extinction of species to the crossing of most planetary boundaries. I was far from alone, and relatively late to come to this realization. Since 2006 (and as of January 1, 2024), a total of 493 initiatives recognizing rights of nature—including constitutional provisions, national or local laws, policy instruments, court decisions, and nonbinding declarations—have been pursued in forty-four countries and international venues like the United Nations, according to the Eco Jurisprudence

Monitor.[2] Roughly three-fourths have been approved. Initiatives of this sort doubled between 2011 and 2016 and then again between 2016 and 2021.[3] A dynamic network of organizations and individuals—the Global Alliance for the Rights of Nature—has been at work to advance such initiatives for over a decade.

However, the idea of rights of nature has yet to make a serious dent in the Western legal canon, including human rights circles. Moving it from the periphery to the core of legal thought and practice entails addressing complex questions. Who counts as a subject of rights? If rights are to be extended to nonhumans, should the new line be drawn at sentient animals, as some animal rights theorists and practitioners would suggest? Or should it be pushed further to include plants and fungi and even rivers and mountains? Should entire ecosystems like the Los Cedros Forest be treated as subjects of rights or should this status be reserved for individuals or species? How can the interests and voices of animals and other beings be incorporated into political and legal processes? What kind of new legal institutions would be needed for rights of nature to be effectively enforced? More broadly, how can we conceive of human rights without human supremacism, as philosopher Will Kymlicka provocatively asks in his chapter in this volume?

One potentially transformative way to address these questions would be to establish a deeper dialogue between law and the sciences that have trained their sights on deep time and the unity of the web of life. To use novelist Richard Powers's apt term, these "humbling sciences"—ecology, botany, ethology, mycology, microbiology, geology, chemistry, and other natural sciences—are effectively blurring the categorical distinction between humans and nonhumans, as well as challenging the anthropocentrism that has dominated fields

2 Craig Kauffman et al., Eco Jurisprudence Tracker, 2022, distributed by the Eco Jurisprudence Monitor, https://ecojurisprudence.org/.

3 See Craig Kauffman's chapter in this volume.

like human rights.[4] In so doing, they are joining the much older claims of Indigenous cultures that are based on the inseparability of humans and nature and are couched—as Robin Wall Kimmerer has written—in a "grammar of animacy" that recognizes human and nonhuman life and agency alike.[5]

Unbeknownst to human rights thinkers and practitioners who view the idea of rights of nature with deep skepticism, the concept of "earth rights" can be seen as a restoration of the long-forgotten meaning of "human rights." The word "human" (and its cognate words, "humbling," "humility," and "humus") all derive from the Proto-Indo-European root that means "earth." Human rights mean, quite literally, earthlings' rights.

In this chapter and the broader MOTH Project, I propose the term more-than-human (MOTH) rights. In doing so, I do not mean to pick an unnecessary terminological fight with those who prefer the more well-established language of rights of nature, which I also use. As someone who spends most of his time in legal academia and practice, I am painfully aware of the trappings of lawyerly rabbit holes. Linguistic preferences aside, my point in speaking of MOTH rights is a substantive one. MOTH rights are meant to serve as a clarifying and provocative supplement—a way to call our attention to the separation between humanity and nature that is implicit in our use of rights-of-nature language. Indeed, the term "more-than-human" was introduced by David Abram to refer to the whole of the biosphere in a way that avoids the conventional separation between humans and their "environment," between humanity and nature. As

4 "Transcript: Ezra Klein Interviews Richard Powers," *New York Times*, September 28, 2021, https://www.nytimes.com/2021/09/28/podcasts/transcript-ezra-klein-interviews-richard-powers.html.

5 Robin Wall Kimmerer, *Braiding Sweetgrass: Indigenous Wisdom, Scientific Knowledge, and the Teachings of Plants* (Minneapolis: Milkweed Editions, 2013).

Abram explains in the epilogue to this volume, the human world is not separate but rather embedded in the more-than-human world. By extending this notion to the realm of law, I suggest that the rights of nature are neither separate nor derivative from human rights. To the contrary: if humans are nested in the more-than-human world, then the rights of human beings are intrinsically entangled with the rights of nonhumans and embedded within the rights of nature. From a moral and legal perspective that emphasizes reciprocity and interdependence, human rights also entail responsibilities toward the more-than-human world that constitutes and sustains us.

The shift of perspective that MOTH rights entails does not make the answers to these questions any easier. But I would argue that it does provide a generative framework where new questions and potential responses become imaginable and intelligible. Instead of taking for granted the current shape of legal norms for recognizing and exercising rights—from legal personhood to individual property to voting—MOTH rights invite us to explore variations of those norms as well as wholly new ones that take seriously the interests and well-being of nonhumans. Some of those legal innovations may look exotic and feel uncomfortable. But we have been there before. Indeed, past proposals to extend the protection of rights to new subjects—children in Rome, formerly enslaved humans throughout history, corporations in the nineteenth century, women who were barred from voting well into the twentieth century—were met with skepticism at best and derision at worst. And yet legal institutions evolved to keep up with our widening circles of moral concern.[6]

Like life itself, law evolves through continuous experimentation. Lawyers, judges, activists, scientists, Indigenous leaders, artists, and many others are busy trying out new ideas, rules, and procedures on rights of nature. Ecuador is widely recognized as the

6 See Christopher D. Stone, "Should Trees Have Standing?—Toward Legal Rights for Natural Objects," *Southern California Law Review* 45 (1972): 450.

headquarters of this global legal laboratory. Especially since 2019, when an entirely new bench of the Constitutional Court was appointed in the wake of a national referendum, several rulings on the rights of animals and ecosystems like mangroves, rivers, and forests have offered some of the most illuminating answers to key questions on MOTH rights.[7]

This was my own reason for joining the expedition to Los Cedros, which Rob organized. In 2021, the Court handed down what is perhaps the most sophisticated ruling on rights of nature anywhere in the world.[8] After hearing from scientists, government officials, environmentalists, artists-activists, and community leaders, the Court established that the government's authorization of mining concessions in the forest violated not only local communities' rights to water and a clean environment, but also the rights of the forest itself. Invoking the precautionary principle that advises restraint in the face of the unpredictable effects of mining on the forest's web of life, it revoked mining permits and banned any future mining activities in the Los Cedros Reserve.

One evening, I sat down to chat with José DeCoux, the longtime protector of the Los Cedros Reserve who hired the lawyer that litigated the case. We were joined by Agustín Grijalva and Ramiro Ávila, two prominent legal scholars who have served as Constitutional Court judges and authored some of the Court's key decisions

7 For a helpful compilation of Court's jurisprudence on rights of nature, see Bryon Villagómez Moncayo et al., *Guía de Jurisprudencia Constitucional: Derechos de la Naturaleza,* Corte Constitucional & Centro de Estudios y Difusión del Derecho Constitucional (Feb. 2023) http://bivicce.corteconstitucional.gob.ec/bases/biblo/texto/Guia-DN-2023/GuiaDN-2023.pdf.

8 Constitutional Court of Ecuador (rapporteur judge Agustín Grijalva Jiménez), Judgment for case no. 1149–19-JP/20, Constitutional Court of Ecuador, Quito D.M., November 10, 2021, http://celdf.org/wp-content/uploads/2015/08/Los-Cedros-Decision-ENGLISH-Final.pdf.

on environmental matters.[9] I had invited Agustín and Ramiro to join the MOTH Project, as they had authored landmark rulings on MOTH rights—including, in Agustín's case, the Court's opinion in *Los Cedros*. We spoke of the continuing threats from mining operations in areas right outside the forest. We debated well into the night how to monitor the implementation of the ruling and how to attract international attention to it. As Agustín and Ramiro returned to Quito the next morning and as the rest of us began the trek up to the cloud forest, I felt that it might be possible to untether human rights from human supremacism. Perhaps the beings of the forest, as Don Sabino Gualinga had said, would help us see how.

Out of the Weeds of Anthropocentrism: The Ecological Turn

The human rights project's life span overlaps almost perfectly with that of the Anthropocene, the period when humans became a dominant planetary force. In the contemporary understanding of human rights—as a global legal project embodied in international treaties and national constitutions and promoted by transnational advocacy networks—they are a product of the second half of the twentieth century, a response to the atrocities of World War II and the post-war global order. Starting with the 1948 UN Universal Declaration of Human Rights and the American Declaration of Rights and Duties of Men, the actors, norms, and causes of the human rights project proliferated throughout the remainder of the century.[10]

Just like any other human artifact, the human rights project is a product of its time. In the seventy-five years since the adoption of

9 See Ramiro Ávila's and Agustín Grijalva's chapters in this volume.

10 See, among others, Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton, NJ: Princeton University Press, 2017).

the UN Universal Declaration, it has represented some of humankind's most noble aspirations and saved countless lives. It has also provided a shared language for emancipatory social movements as well as a moral and legal framework for the radical proposition that all human beings deserve to be free from coercion and want. But it also partakes in the blind spots of the Anthropocene, including the faith in unlimited growth and the instrumental view of nature that underlay the Great Acceleration of economic output, population growth, and "fossil capitalism" since the mid-twentieth century. Its logic is one of floors as opposed to ceilings. Blind as it was to planetary boundaries—the maximum levels of carbon emissions, pesticide use, land conversion, ocean acidification, and other forms of ecosystem interference that the Earth can sustain—it has focused on defending the minimum levels of civil and political freedoms and material well-being that are deemed to be compatible with a dignified human life.[11] This helps explain why human rights organizations and institutions have been painfully slow to take up environmental issues. While civil, political, and socioeconomic rights were incorporated into international treaties in the 1960s, the right to a healthy environment was recognized by the UN General Assembly only in 2022, and only in a nonbinding resolution.

As Yuval Harari writes, "while human rights movements have developed a very impressive arsenal of arguments and defense against religious biases and human tyrants, this arsenal hardly protects us against consumerist excesses and technological utopias."[12] I would add that, in its current incarnation, it hardly protects

11 César Rodríguez-Garavito, "Climatizing Human Rights: Economic and Social Rights for the Anthropocene," in *The Oxford Handbook of Economic and Social Rights,* eds. Malcolm Langford and Katherine Young (Oxford: Oxford University Press, 2022), from which this section is partially taken.

12 Yuval Noah Harari, *21 Lessons for the 21st Century* (New York: Random House, 2018), 215.

us and our nonhuman brethren against global warming, massive species extinction, pollution, and other ecological threats of the Anthropocene.[13]

In order to address those existential challenges, our best hope lies in forms of knowledge and practice capable of overturning the anthropocentrism that is evident in the very name of this epoch. In the same vein, if the human rights project is to remain relevant in the Anthropocene, it needs to take into consideration the rights of nonhumans.

The growing interest in MOTH rights is not an isolated trend. On the contrary, it is part of a broader concern for a new relationship with nature that is evident in many fields, from the sciences to the humanities, from arts and culture to spirituality. Increasingly, contributions in all of these fields are taking an ecological turn toward a recognition of the relationships, dependencies, and similarities among the parts of a whole. This ecological view is centered on symbiosis, on the close ties of collaboration and competition that constitute the parts of a whole—be they organisms in an ecosystem or members of different human groups.

Evidence of the ubiquity of the interrelationships that characterize the more-than-human world is proliferating apace. Equipped with sensors and artificial intelligence (AI) technologies, scientists like David Gruber eavesdrop on conversations among whales, birds, bats, and mole rats in order to decipher and translate their languages. Botanists cleverly catch the messages that trees send to each other through mycelial networks. Microbiologists are busy tracking the multitudes we contain—the microbes that inhabit our guts, skin, and scalp and that outnumber our "human" cells. Mycological missions like those led by the Society for the Protection of Underground

13 César Rodríguez-Garavito, "Human Rights 2030," in *The Struggle for Human Rights: Essays in Honour of Philip Alston*, eds. Nehal Bhuta et al. (Oxford: Oxford University Press, 2021), 328.

Networks (SPUN) have embarked on a new global cartographic mission to map fungal communities. Scientists concoct ingenious devices to peer into other animals' worldviews—their perceptual horizon, the *Umwelt* (a term adopted by ethnologists to denote an organism's unique sensory world) that they experience with their senses and that is just as partial as ours, as Ed Yong has documented in a brilliant book.[14]

The ecological turn in the sciences and other fields goes further: it does not limit itself to highlighting the connections among individuals but postulates their deep entanglement, to the point of blurring the boundaries between individuals and their surroundings. These are the "entangled lives" that Merlin Sheldrake has written about to capture the interpenetration between plants and fungi, or between the algae and fungi that make up lichens, or between human cells and the countless microbes that inhabit us. "We are ecosystems, composed of—and decomposed by—an ecology of microbes," he concludes. "Symbiosis is a ubiquitous feature of life."[15]

If biology has become ecology, if individuals are ecosystems, where does that leave human rights, which arose to protect individual *Homo sapiens*? What novelties and what surprises would this turn toward ecological thinking bring to human rights? The ecological turn would require concepts and metaphors different from those that have dominated human rights discourse. When the 1789 French Declaration of the Rights of Man and the Citizen stated that "the end in view of every political association is the preservation of the natural and imprescriptible rights of man," it affirmed a triple cleavage: between self-contained (human) individuals, between

14 Ed Yong, *An Immense World: How Animal Senses Reveal the Hidden Realms Around Us* (New York: Random House, 2022).

15 Merlin Sheldrake, *Entangled Lives: How Fungi Make Our Worlds, Change Our Minds, and Shape Our Futures* (New York: Random House, 2020). See also Merlin Sheldrake's and David Abram's chapter in this volume.

human nature and the rest of nature, and between the rights of men and women. Since then, the concepts and metaphors of the human rights field have not come from biology, let alone ecology. The language of rights has been that of liberal philosophy and jurisprudence, where rights are seen as individual entitlements that protect specifically human interests against abuses by governments and other individuals.

From the traditional perspective of human rights—the *Umwelt* of the field's professionals—recent judgments and legislation on MOTH rights, such as the ruling that gave rights-bearing status to Los Cedros, are incomprehensible. Yet, from a symbiotic perspective that characterizes individuals as ecosystems enmeshed within a great web of life, all subjects of rights (from people to animals to forests) are ecosystems.

Another conceptual foundation of human rights that is being shaken up is the hierarchical order that places humans above nonhumans. From the Greeks to the present day, through the Cartesian view of animals as machines incapable of thinking or feeling, the emphasis of anthropocentric thinking has been on the differences between humans and nonhumans that purportedly lend themselves to hierarchy. Capabilities such as intelligence, learning, consciousness, sentience, and language have been invariably defined in terms of their human manifestations and used to reaffirm a hierarchy of life with *Homo sapiens* at the top, followed by primates, then by other animals, and down to plants, fungi, and the rest of nature. As this great chain of being descends, the moral consideration given to occupants of each echelon steadily decreases.

Traditionally, the human rights project has implicitly or explicitly held tight to this great chain of being and the human supremacism that it entails. But in recent decades, animal rights theorists and advocates have mounted a powerful challenge against human

supremacism, thus crucially pushing down the scope of moral consideration and rights protection a couple of notches.[16]

The ecological turn in Western science and other fields provides a wealth of evidence in support of this move. We have seen how studies on animal communication and perception have questioned humanity's monopoly over intelligence, consciousness, language, and other capabilities. Botanists, mycologists, and other scientists are busy documenting how organisms such as plants, fungi, and slime molds solve problems, learn, and communicate with each other and the external world. Whether those skills qualify as intelligence depends on how one defines intelligence, a category that is now being actively debated.

As Merlin Sheldrake asks in *Entangled Life*, "Biological realities are never black-and-white. Why should the stories and metaphors we use to make sense of the world—our investigative tools—be so?"[17] In the same vein, why should the concepts that we use to draw the line between rights-holders and the rest of nature follow the problematic binaries that separate humans and animals, higher animals and other animals, and animals and the rest of nature? This is the challenge that MOTH rights raise.

Human Rights Without Human Supremacism

The convergence of the humbling sciences and Indigenous knowledge over the entanglement of humans and nonhumans helps explain why the idea of MOTH rights is gaining momentum in environmental, scientific, and some human rights circles. Indeed, both have bolstered the case for broadening the community of moral

16 See Dale Jamieson's and Danielle Celermajer's chapters in this volume.

17 Sheldrake, *Entangled Lives*, 46.

concern and rights-holders to include not only animals but also other organisms and ecosystems. They have redefined the conventional understanding of the criteria that have been used to distinguish rights-holders, including intelligence, agency, sentience, and awareness. And they have contributed to markedly raising the salience and sense of urgency around protecting nonhumans as a means to avert the worst scenarios of the climate, biodiversity, and pollution crises.

As it turns out, these are the two constitutive elements of rights claims: the existence of a morally or legally relevant criterion about certain types of subjects that offers compelling reasons to grant them rights (e.g., a subject's interest, capability, or another trait, depending on the preferred theory of rights) and the special importance that a political community recognizes in such subjects and criterion.[18]

Even before rights-of-nature legal initiatives took off in the mid-2000s, theories of rights were already moving in the direction of foundational criteria that lent themselves to expanding the community of rights-holders. Moral philosophers like Martha Nussbaum, Bryan Turner, and Judith Butler formulated new theories of rights that are grounded on subjects' capabilities, vulnerability or precariousness, respectively.[19] These criteria can be readily applied both to humans and animals, as demonstrated by Nussbaum in *Justice for Animals*.

18 See Amartya Sen, "Human Rights and the Limits of Law," *Cardozo Law Review* 27 (2006): 2913–2927.

19 See Martha Nussbaum, *Justice for Animals: Our Collective Responsibility* (New York: Simon & Schuster, 2022); see also Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (New York: Verso, 2006); see also Bryan Turner, *Vulnerability and Human Rights* (University Park: Penn State Press, 2006).

For the MOTH rights project that I am putting forth, two approaches are particularly promising: First, grounding rights claims on the intertwinement of human and nonhuman entities. This relational approach posits that interdependence is, in and of itself, a basis for giving moral consideration to all parties entangled in earthly relationships, as Indigenous peoples like the Sarayaku and authors like Thomas Berry have argued.[20] Second, offering a new way of conceiving rights that focuses on the continuity of sensory experience among humans and nonhumans. Some philosophers like Lisa Guenther offer moral theories grounded on corporeal and intercorporeal needs explicitly meant to cover humans and animals.[21] Both perspectives are a better fit than conventional theories with recent findings of the natural sciences as well as Indigenous and other forms of knowledge that are rooted in a deep observation of the natural world. As David Abram has written in *The Spell of the Sensuous*, the commonality of breath and sensory experience in the more-than-human world is likely to also ground a different moral relation between humans and nonhumans—and not only animals but also other organisms and ecosystems that have corporeal and intercorporeal needs and vulnerabilities.[22]

These theories challenge species hierarchy in general, and human supremacism in particular, in ways that hold promise for MOTH

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20 See Carlos Andrés Baquero-Díaz, "José Gualinga Montalvo: 'The jungle is a living, intelligent and conscious being,'" *Sumaúma*, January 5, 2024, https://sumauma.com/en/jose-gualinga-montalvo-a-floresta-e-um-ser-vivo-inteligente-e-consciente/; see also Thomas Berry, *Evening Thoughts: Reflecting on Earth as Sacred Community* (San Francisco: Sierra Club Books, 2006).

21 Lisa Guenther, "Beyond Dehumanization: A Post-Humanist Critique of Solitary Confinement," *Journal for Critical Animal Studies* 10 (2012): 47–68.

22 David Abram, *The Spell of the Sensuous: Perception and Language in a More Than Human World* (New York: Vintage Books, 1996).

rights. They also do not undermine the grounds and effectiveness of the rights of vulnerable human populations. For instance, studies show that a concern for the suffering of nonhumans is correlated with a concern for human suffering. The relevance of the human rights project hinges on its ability to capture this continuity at a time when ecological emergencies remind us that the flourishing (and the decline) of humans and nonhumans are intertwined.

MOTH Rights' Legal Ecosystem

MOTH rights are part of a larger family of rights-based legal efforts to protect the nonhuman world. The first two approaches are decisively anthropocentric: the "greening of human rights" and the right to a healthy environment.[23] The "greening of human rights" refers to the protection of the rights of humans—to life, health, physical integrity, etc.—against environmental harms (e.g., pollution). The right to a healthy environment is a more recent development, comprising specific provisions in international and national laws that entitle humans to a "clean, healthy and sustainable environment," in the language of the UN General Assembly Resolution that recognized it as an international right in mid-2022.[24]

Both approaches have a rich history and have given rise to thousands of legal initiatives and cases. They are now firmly rooted in international and national law.[25] Given that neither of them will be replaced by the recognition of nonhumans' rights, any legal discussion on the latter needs to address the relationships and potential

23 See John H. Knox, "Constructing the Right to a Healthy Environment," *Annual Review of Law and Social Science* 16 (2020): 79.

24 See UNGA Resolution 76/300, "The Human Right to a Clean, Healthy and Sustainable Environment," July 28, 2022, UN Doc. A/RES/76/300 (2022), https://undocs.org/A/RES/76300.

25 See Emily Jones's chapter in this volume.

contradictions between the different approaches. In practice, how can anthropocentric and ecocentric rights claims be bridged? What is the specific contribution of the recognition and implementation of MOTH rights to the repertoire of rights-based tools for protecting nature?

Tensions and contradictions between different rights claims are pervasive in legal thought and practice. Pro-environment or pro-nature rights routinely clash with other rights, such as corporations' property rights to exploit the natural "resources" that they own. The enforcement of rights oftentimes entails a balancing act between opposing rights claims; the question is which right is given greater importance under specific circumstances.

As Christopher Stone noted in a pioneering article making the legal case for the rights of nature, anthropocentric and ecocentric approaches tend to lead to different balancing processes and outcomes.[26] Whereas anthropocentric approaches—be it in the form of the right to a healthy environment or the application of conventional rights to environmental protection—offer protection to nonhumans (e.g., a river) only to the extent that it is necessary to redress harms to individual human beings (e.g., farmers affected by river pollution), ecocentric understandings of rights aim to protect and redress harms to nonhumans themselves, above and beyond the associated harms to humans.

In practice, both approaches will continue to coexist. As John Knox has noted, one way to shrink the gap between them is "to interpret the right of humans to live in a healthy environment to include the right of the environment itself to be healthy."[27] The clearest authoritative articulation of this view can be found in the Inter-American Court of Human Rights' 2017 advisory opinion on

26 See Christopher D. Stone, "Should Trees Have Standing?—Toward Legal Rights for Natural Objects."

27 John H. Knox, "Constructing the Right to a Healthy Environment," 95.

the environment and human rights. According to the court, the right to a healthy environment "protects the components of the environment, such as forests, rivers, seas and others, as legal interests in themselves, even in the absence of certainty or evidence about the risk to individual persons."[28]

Another way to bridge anthropocentric and ecocentric approaches is the one that I have proposed for the MOTH rights project and for this book: relaxing the legal frontier between human and MOTH subjectivities. Courts in countries such as Ecuador, India, and Colombia have recognized rivers, animals, and ecosystems as subjects of rights.[29] Moreover, the Bolivian constitution formally recognizes nature as a subject of rights.[30] In New Zealand, an act of parliament granted legal personhood to the Whanganui River as an indivisible and living nonhuman being.[31] And the Colombian Special Tribunal for Peace recognized Indigenous territories as victims—and thus as subjects of rights and reparations—in the context of the country's

28 The Environment & Human Rights, Advisory Opinion OC-23/ 17, Ser. A, No. 23, paragraph 62, n. 63 (Inter-Am. Ct. H. R. November 15, 2017), http://www.corteidh.or.cr/docs/opiniones/seriea_23_ esp.pdf.

29 See, e.g., Sala de Sexta de Revisión, M.P.: Jorge Iván Palacio Palacio, Expediente T-5.016.242 (Colom.) (Corte Suprema de Justicia [C.C.] [Constitutional Court], Nov. 10, 2016) (unofficial translation) at 98 (translation by Thomas Swan, Erin Daly, & James R. May), http://files.harmonywithnatureun.org/uploads/upload838.pdf; see also Sentencia N.˚012–18-SIS-CC, Caso N.˚0032–12-IS (Ecuador) (Corte Constitucional, Mar. 28, 2018), https://www.derechosdelanaturaleza.org.ec/wp-content/uploads/2018/04/CUMPLIMIENTO-R%C3%8DO-VILCABAMBA.pdf; see also Narayan Dutt Bhatt v. Union of India, Writ Petition (PIL) No. 43 of 2014 (High Court of Uttarkhand at Nainital, June 13, 2018).

30 See Liliana Estupiñán Achury et al., eds., *La Naturaleza como sujeto de derechos en el constitucionalismo democrático* (Bogotá: Universidad Libre, 2019).

31 See Te Awa Tupua (Whanganui River Claims Settlement), NZ, 2017, at 14, paragraph 12.

transitional justice process in the aftermath of its decades-old civil war.[32]

Conflicts among rights are inevitable, as are conflicts between rights and other social goals, such as economic growth or national security. It will behoove litigants and courts to develop legal doctrines that strike a balance between human and nonhuman rights, as well as between different understandings of the latter. To that end, they will need to add MOTH rights to the legal edifice of rights, which is already occupied by civil, political, and socioeconomic rights.

What would the expanded edifice look like? I have argued elsewhere that the human rights project in the Anthropocene needs to be concerned as much with human flourishing as with the conditions for a livable Earth system.[33] Its goal is equitable "human prosperity in a flourishing web of life" not only for people alive today but also for future generations and the nonhuman world, as economist Kate Raworth and others have argued.[34] In addition to a concern with guaranteeing at least a minimum level of freedoms, material welfare, and equity compatible with a dignified human life, this goal requires protecting the planetary boundaries (on climate, biodiversity, air quality, etc.) that make life on Earth possible—and thus a concern with limits to human activity.

In Raworth's useful image, the satisfaction of human needs and the Earth's boundaries can be seen as the inner and outer edges of an economic "doughnut," where human and planetary nourishment occupies the space in the middle. The inner edge of the

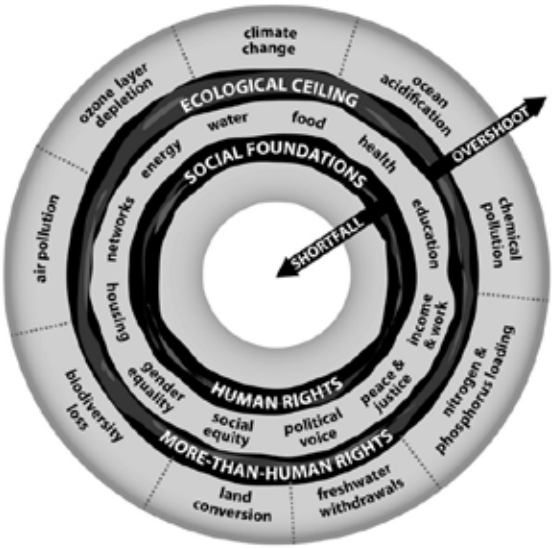
32 See Catalina Vallejo Piedrahíta's chapter in this volume.

33 César Rodríguez-Garavito, "Climatizing Human Rights," from which this section is partially drawn.

34 Kate Raworth, "What on Earth is the Doughnut?," Kate Raworth: Exploring Doughnut Economics, last accessed Feb. 5, 2024, https://www.kateraworth.com/doughnut/.

doughnut comprises the social foundations of human well-being as determined by civil, political, and socioeconomic rights. The outer edge is made up of the maximum levels of pressure that Earth's life systems can bear, from the climate to the oceans and forests to the nitrogen cycle to the air that we breathe. Earth scientists have quantified the nine key planetary boundaries condensed in figure 1.[35] Remaining within these limits entails a concern not only with the rights of people alive today but also those of nonhumans and future generations. The latter is the layer of MOTH rights.

Figure 1. Human Rights and MOTH Rights.



Adapted from Kate Raworth, www.kateraworth.com.

35 See Johan Rockström, "A Safe Operating Space for Humanity," *Nature* 461 (2009): 472–75.

This view entails extending the scope of the classic argument about the invisibility of rights—which holds that civil, political, and socioeconomic rights are mutually constitutive and have the same status—to include the protection of nature in the indivisible whole of rights. Insights from life and health sciences, which are increasingly focused on the similarities between and interdependence of the human and the nonhuman worlds, provide a promising path forward for this approach. Following in the footsteps of Indigenous knowledge, ecology, and other holistic worldviews,[36] life and health scientists and practitioners are developing such frameworks as One Health, which stresses the indivisibility of human health and ecosystems' health and has been embraced by the World Health Organization.[37] As shown by the twin health emergencies (and persistent threat) of climate change and global pandemics stemming from the destruction of ecosystems, the right to health depends on measures to protect the health of nature.

Unleashing New Experiments and Stories on MOTH Rights

To my surprise, some of the most enthusiastic and thoughtful participants in the MOTH Project and the rights of nature movement are not lawyers or judges, but rather natural scientists and artists. I probably learned more about the rights of nature by listening to my human and nonhuman fellow travelers during the week at Los Cedros than in a lifetime of legal practice. It didn't hurt that, barely one day into the expedition, Giuliana spotted in an improbable corner of the vast forest one of the diminutive psilocybin mushrooms she was hoping to encounter. It also helped

36 See Robin Wall Kimmerer, *Braiding Sweetgrass.*

37 See, e.g., "One Health," World Health Organization, September 27, 2017, https://www.who.int/news-room/q-a-detail/one-health.

that Rob's uncanny ability with words made his brilliant ideas and questions on the rights of nature sound like impromptu poems and songs. And it most certainly helped that Cosmo would pass around his headphones so that we could all listen to the amplified sounds of the ants, the bats, the howler monkeys, and the morning birds. As we wove together our own life stories, the beings of the forest became co-creators of our friendship.

Perhaps it was this realization that inspired us to ask whether there could be a way to give credit to the generative force of the forest in our own creations. Cosmo had long acknowledged the key role of nonhumans in his songs and was keen to give back to them. Music is an extractive industry and copyright law has traditionally recognized only the role of human authors. Initiatives like Brian Eno's EarthPercent have made some progress by channeling a small percentage of musicians' incomes to environmental organizations. But, to my knowledge, there are no legal initiatives that grant co-authorship to other forms of life whose sounds and songs feature, sometimes prominently, in human-made songs.

Once we set up camp in the cloud forest, Cosmo and Rob got to work on co-creating a song with the beings of Los Cedros. It was a multispecies jamming session. Sitting by the fire, Rob composed lyrics that riffed on the name of Humbaba, the spirit of the forest in the *Epic of Gilgamesh*, the oldest written narrative poem. Recording on his smart phone, Cosmo put voice and instruments to it, while Giuliana added verses in Spanish and I very occasionally chipped in. Cosmo later mixed in additional sounds he recorded at Los Cedros and professionally produced the tune. Thus *The Song of the Cedars* was born. As part of the MOTH Project's initiatives, we are exploring legal avenues to copyright the song (or, as we like to say, copygreen) as a co-creation of the humans and the nonhumans who were present that night. If Los Cedros is already recognized as a subject of rights, why can't it be recognized as a copyright co-holder?

There are, of course, many legal and practical obstacles to the copygreen idea. In addition to contributing to the preservation of Los Cedros and the visibility of the ruling that protects it, our goal is to push the boundaries of legal imagination and ask questions that perhaps others will be able to answer more adequately. The rights we will seek for the forest and for ourselves are moral rights—that is, recognition of co-authorship—as opposed to economic rights over royalties. After Cosmo performs the song at a concert in Quito, we will release it into the commons and not expect to receive any income from it. Ultimately, we want to make a case for an ecocentric approach to creativity and authorship at a time when the loudest voices calling for the expansion of copyright protection represent very different interests and have very different nonhumans in mind, as recent lawsuits seeking to recognize computer models as authors of AI-generated images show.

Above and beyond copygreen or any other initiative, the MOTH Project's goal is to serve as a convener, connector, and incubator for ecocentric experiments.[38] As we expand the project, I am reminded of a line in a poem by Rumi: "judge the moth by the beauty of its flame." Rather than a top-down structure or a conventional network, the project's logic (and, I would like to think, its beauty) is mycelial in nature: we probe and experiment in different directions and choose to reinforce and go deeper into initiatives and collaborations that seem most fruitful or where our collective could make the most contribution. In addition to the annual gatherings of the collective (the first two took place in Tarrytown, New York and Curarrehue, Chile), we hold an annual one-week course on MOTH rights for lawyers, advocates, judges, scientists, communicators, artists, and

38 For a journalistic account of the MOTH Project and its place in the rights-of-nature field, see Jonathan Watts, "Could 2024 be the year nature rights enters the political mainstream?," *The Guardian*, January 1, 2024, https://www.theguardian.com/environment/2024/jan/01/could-2024-be-the-year-nature-rights-enter-the-political-mainstream.

other practitioners and researchers. Among our current efforts, we are partnering with Project CETI on the legal opportunities and risks of AI-assisted translations of the language of whales and other species; establishing a collaboration between mycologists and the Sarayaku people to jointly study the fungal communities in their territory; co-publishing a monthly, tri-lingual series of articles and op-eds on MOTH rights with the environmental journalism outlet *Sumaúma;*[39] and supporting the implementation of the Los Cedros ruling and other landmark court decisions on the rights of nature.

Ecuador is far from the only country where legislators and courts have embraced an ecocentric approach to rights. As noted, court rulings in jurisdictions such as India and Colombia have extended the protection of rights to rivers, animals, and whole ecosystems.

The key challenge for MOTH rights rulings and norms is implementation. Hence our visit to Los Cedros and our ongoing collaborations with Ecuadorian scholars and activists who have kept the pressure on the government to comply with the Court's decision and put together an action plan for the conservation of the forest, which the government published in mid-2023.

Still, given the dearth of monitoring and enforcement mechanisms, the effect of the recognition of rights of nature has been more symbolic than instrumental thus far. In other words, it has had a clear impact in questioning the categorical separation between humans and nonhumans in the public sphere, even if it has yet to make a clear difference for the protection of some of the forests and rivers in question.

By saying that the impact of MOTH rights thus far has been more symbolic than material, I do not mean to suggest that it has been inconsequential. After all, the social function of law and rights

39 For an introduction to the series, see Eliane Brum and César Rodríguez-Garavito, "For a more than human world," *Sumaúma*, November 13, 2023, https://sumauma.com/en/por-um-mundo-mais-que-humano/.

is as much about reframing moral and political issues as it is about attaining tangible changes on the ground. Law's power lies in its singular capacity to tell stories that are coated in the mantle of authority. Its magic lies in its ability to cast a spell on reality. When it works, the spell can transform perceptions and facts.

MOTH rights are as much a legal proposition as they are a story about our relationship with the more-than-human world. To my mind, this is why the idea of rights of nature is resonating strongly beyond legal circles. It is also the reason why storytellers and creatives—be they writers, poets, artists, or journalists—are key participants in the MOTH Project.[40]

The story of MOTH rights is one of reconnection. At a time when so many of us are feeling the deep loneliness of the human condition in the Anthropocene, speaking about nature in the moral language of rights is an attempt to respectfully reconnect with the living and breathing Earth. The discourse of rights is by no means the only or the most appropriate language for building that bridge. But it is one of the most compelling narratives about connection that we have at our disposal. Human rights remind us that, despite all our differences, we are all fundamentally deserving of respect and consideration. The problem with the traditional human rights story is that, in our effort to connect with each other, we saw it necessary to disconnect from the web of life that sustains us. We anointed ourselves as the sole citizens of the Earth, proclaimed all other beings as aliens with no rights, and erected moral and legal walls to keep them out.

The walls are crumbling under the pressure of old and new narratives that storytellers of all kinds are concocting about the embeddedness of humans in the more-than-human world, which feel even more urgent as new technologies force us to reexamine what is distinct about us. "As A.I. continues to blow past us in benchmark

40 See the chapters by Robert Macfarlane and Andrea Wulf in this volume.

after benchmark of higher cognition," notes Meghan O'Gieblyn, "we quell our anxiety by insisting that what distinguishes true consciousness is emotions, perception, the ability to experience and feel: the qualities, in other words, that we share with animals."[41] The MOTH rights story is about regrounding ourselves in the animal and sensory world of which we have always been part.[42]

It is also a story about justice. The categorical exclusion of nonhumans is one of the defining inequities of liberal modernity's social contract. Working for the recognition of MOTH rights, therefore, entails challenging this fundamental form of discrimination. Indeed, when I work with animal rights advocates campaigning against industrial farming or mycologists forcefully denouncing the exclusion of fungi from conservation frameworks that protect animals and plants, I recognize the moral indignation that fuels human rights activists' struggles against laws and practices that discriminate against vulnerable human populations. MOTH rights' narrative about nonhuman species claims that "they are not brethren, they are not underlings; they are other nations, caught with ourselves in the net of life and time, fellow prisoners of the splendor and travail of the earth," as American naturalist Henry Beston wrote of animals.[43] Just as international law deals with justice among nations, MOTH rights will require legal frameworks and stories that embody multispecies justice.

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41 Meghan O'Gieblyn, *God, Human, Animal, Machine: Technology, Metaphor, and the Search for Meaning* (New York: Penguin Random House, 2021).

42 For a shorter and narrative version of this chapter that focuses on the storytelling aspect of MOTH rights, see César Rodríguez-Garavito, "MOTH: Pushing the Boundaries of Legal Imagination," *Emergence Magazine* (2024), March 6, 2024, https://emergencemagazine.org/op_ed/more-than-human-rights/

43 Henry Beston, *The Outermost House: A Year of Life on the Great Beach of Cape Cod* (New York: Doubleday, 1928).

PART II

CONCEPTS

Rethinking Human Rights for a More-Than-Human World

Will Kymlicka

One task facing defenders of more-than-human rights (hereafter MOTH rights) is to change public attitudes toward animals and nature, so that people come to understand and appreciate the value, significance, potentialities, and needs of the more-than-human world. But this task may be impossible if we do not simultaneously change people's attitudes toward the *human*.[1] Many commentators have argued that the denigration and exploitation of the nonhuman world is intimately tied up with a particular image of humanity as separate from and superior to the nonhuman world. To be fully

1 Sections of this chapter draw on Will Kymlicka, "Human Rights without Human Supremacism," Canadian Journal of Philosophy 48, no. 6 (December 2018), updated and revised for the MOTH Project.

human, in this view, is to rise above mere animality and nature, and to assert our categorical difference from and superiority to other animals and nature. These ideas of human exceptionalism and human supremacism are deeply embedded in Western societies and cultures, which are grounded in both religious and secular worldviews. Where people define their humanity in this way—as categorically different from and superior to other animals and nature—it may be very difficult to generate support for MOTH rights.

This suggests that any project to defend MOTH rights must offer not only alternative images of the more-than-human world but also of the *human*. This will require rethinking many humanist concepts: human nature, the human condition, human dignity, among others. In this chapter, I want to focus on one specific dimension which is of particular relevance to the MOTH Project: namely, the idea of human rights (hereafter HR). All too often, the theory and practice of HR has been grounded in ideas of human supremacism and has thereby been complicit in many of the harms and injustices done to the more-than-human world. To make room for MOTH rights, I believe it is essential to sever HR from human supremacism. This is a challenge, given the historic links between HR and human supremacism, but one that is not insurmountable, and I will argue that a nonsupremacist conception of HR may be better for humans as well as for the more-than-human world.

This chapter will focus primarily on the way HR have been defended on the backs of animals, and why I think this is a mistake. Of course, the more-than-human world includes more than animals, and rethinking the human/animal divide is only one part of the MOTH Project. Indeed, some commentators have argued that there may be a conflict between *animal rights* narrowly conceived and the *rights of nature* more generally. I will conclude by briefly considering the prospects for reconciling HR, animal rights, and MOTH rights.

Species Hierarchy in the HR Tradition

The link between HR and human supremacism is visible at the very origins of the Universal Declaration of Human Rights (UDHR, 1948). One of its theoreticians, Jacques Maritain, explained that the purpose of HR was to insist on "the radical distinction between persons and all other beings," to elevate humanity above "animality," and to liberate humanity from the "animality which enslaves him."[2] For Maritain, the duty to treat someone as an end in themselves and not as a means is grounded precisely in this distinction/distance between humanity and animality.

This basic idea is repeated by more recent HR theories. Catherine Dupré summarizes the contemporary European jurisprudence on HR this way: "The legal system of human rights protection in Europe (and more generally in the West) rests on the assumption that, as human beings, we are born with the unique quality of dignity that distinguishes us from other beings (primarily animals), justifying and explaining the special protection of our rights."[3] She notes that the core of HR jurisprudence is a principle of noninstrumentalization, rooted in the idea that humans should be treated as an end in themselves and not simply as resources or means, and she ties this explicitly to species hierarchy: "We are here at the philosophical roots of the constitutional concept of human dignity as it is largely understood today, namely a concept that is exclusive to human beings, so that it can be used to distinguish them from other beings, which do not have dignity but a relative worth . . . dignity is used to define humanity not with

2 Jacques Maritain, *Christianity and Democracy* (San Francisco: Ignatius Press, 2012), 37, 66, 101.

3 Catherine Dupré, *The Age of Dignity: Human Rights and Constitutionalism in Europe* (Oxford, UK: Hart, 2015), 28.

reference to God, but by distinction from other beings which only have a 'relative worth,' namely animals or things."[4]

We see here the clear link between HR and human supremacism. For Maritain and Dupré, the task of HR is not just to protect the rights of humans but also to elevate us over animals and nature. This is the heart of human supremacism. As Angus Taylor puts it, advocates of human supremacism "cannot countenance just any ethical view that protects humans, for it is not enough to include all humans within the moral community—one must simultaneously exclude all nonhumans. And this is crucial: *human exceptionalism is at least as much about whom we are determined to exclude from the moral community as about whom we wish to include within it*."[5] Maritain and Dupré are supremacist in this specific sense: their aim is not just to protect the rights of humans but to do so in a way that exalts humans over animals and nature, and that preserves "the Kantian distinction between value or market price that can be attributed to things and animals, and dignity or intrinsic worth which is an exclusively human quality."[6]

Insofar as the theory and practice of HR rests on these supremacist views, it is in clear tension with the project of MOTH rights, which rejects the idea that intrinsic value is an exclusively human quality. Below, I will explore nonsupremacist ways of defending HR, but we need first to understand why these supremacist ideas are so strong in the HR tradition.

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4 Dupré, *The Age of Dignity*, 34–35.

5 Angus Taylor, "Review of Wesley J. Smith's 'A Rat Is a Pig Is a Dog Is a Boy,'" *Between the Species* 10 (August 2010): 228, emphasis in original.

6 Dupré, *The Age of Dignity*, 124.

Intrinsic versus Strategic Species Hierarchy

While human supremacism lies deep in the jurisprudence of HR, it is useful to distinguish two different rationales for invoking species hierarchy, which we might call *intrinsic* and *strategic*. In some of the passages quoted above, species hierarchy is defended for its own sake, as the right and proper way of acknowledging the differential moral worth of different lives and different bodies. This is true of Maritain, a proponent of Catholic social thought who believed that humans alone were made in the image of God, that humans alone had an immortal soul, that God created animals to serve us, and that we therefore have a religious obligation to elevate and exalt humans above animals. Dupré offers a secularized version of this idea of a great chain of being.

Critics have called this intrinsic version of species hierarchy a form of "species aristocracy"[7] or "species narcissism"[8] and have discussed how it is complicit in the ongoing moral catastrophe of our relations with the more-than-human world. As Rossello puts it, theories of HR grounded in species aristocracy "risk turning the human family into new Bourbons or Tudors, at the expense of the underdog of other forms of life."[9] Any project of MOTH rights needs to challenge this sort of species aristocracy.

However, it's important to note that species hierarchy is sometimes defended by HR theorists and practitioners not as an intrinsic principle but as a strategic resource. Even those who do not have an intrinsic commitment to species hierarchy may believe that it has strategic value in battling prejudice and discrimination against

7 Diego Rossello, "All in the (Human) Family? Species Aristocratism in the Return of Human Dignity," *Political Theory* 45, no. 6 (December 2017): 749.

8 Ted Benton, "Humanism = Speciesism? Marx on Humans and Animals," *Radical Philosophy* 50 (Autumn 1988): 7.

9 Rossello, "All in the (Human) Family?," 765.

marginalized groups, including racialized groups, women, the poor, immigrants, Indigenous peoples, and people with disabilities. Why might asserting species hierarchy combat the mistreatment of these groups? Because one of the central features of these status hierarchies is *dehumanization*: that is, treating members of these groups as less than fully human. Of course few people today deny that members of these groups belong to the human species. Dehumanization is not literally a matter of denying that someone is *Homo sapiens*. Rather, dehumanization involves viewing others in ways that denies them what are seen as distinctively human qualities. Animals are widely seen as sharing certain basic emotions or traits with us, such as happiness, fear, or nervousness, but as lacking more refined emotions and traits, such as guilt or embarrassment, curiosity or self-restraint. The members of dehumanized groups are seen as lacking these (supposedly) distinctly human qualities and as driven by the more basic impulses we share with animals. Social science research has repeatedly shown that dominant groups do indeed view outgroups in this dehumanized way and that dehumanization in this sense results, not just in prejudice or stereotypes, but in deeply pernicious forms of discrimination, even violence.[10] After all, if members of these groups lack refined sentiments and capacities for self-regulation based on those sentiments, then it seems that they can only be governed by force. As a recent summary of the dehumanization literature puts it: "Viewing others as lacking core human capacities and likening them to animals or objects may reduce perceptions of their capacity for intentional action, but it may also make them appear less sensitive to pain, more dangerous and uncontrollable, and thus more needful of severe and coercive forms

10 Brock Bastian, Jolanda Jetten, and Nick Haslam, "An Interpersonal Perspective on Dehumanization," in *Humanness and Dehumanization*, ed. Paul Bain, Jeroen Vaes, and Jacques-Philippe Leyens (Abingdon, UK: Routledge, 2014), 212.

of punishment."[11] Dehumanization, therefore, is a profound threat to HR, and combating dehumanization must be one of the central tasks of the HR movement.

But how should defenders of HR combat dehumanization? Many people assume that the best way to do so is to reinscribe a sharp hierarchy between humans and animals, and to emphasize that the good of a human life is radically discontinuous with and superior to that of animals, and that therefore we must not treat any humans as if they were animals. On this view, a steep moral hierarchy between humans and animals is a crucial resource and effective tool for subaltern groups. Such groups can best assert their right to a dignified existence by emphasizing the moral significance of their humanity, and their categorical discontinuity with, and superiority to, animality. By sacralizing "the human" and instrumentalizing "the animal," we provide a clear and secure foundation for protecting the rights of all humans, including vulnerable racial groups.

Claire Jean Kim calls this the "sanctification of species difference" and notes that the African American civil rights movement invested heavily in this strategy to combat dehumanization.[12] Defenders of this strategy may not be philosophically committed to species hierarchy—in fact, in their own theoretical reflections, many Black intellectuals have articulated a more "fugitive" humanism that does not involve a sharp separation from animals or nature.[13] However, when engaged in legal advocacy, the civil rights movement has

11 Bastian, Jetten, and Haslam, "An Interpersonal Perspective on Dehumanization," 212.

12 Claire Jean Kim, "Moral Extensionism or Racist Exploitation? The Use of Holocaust and Slavery Analogies in the Animal Liberation Movement," *New Political Science* 33, no. 3 (September 2011).

13 Lindgren Johnson, *Race Matters, Animal Matters: Fugitive Humanism in African America, 1840–1930* (Abingdon, UK: Routledge, 2017); Zakiyyah Jackson, "Review: *Animal: New Directions in the Theorization of Race and Posthumanism*," *Feminist Studies* 39, no. 3 (2013).

often upheld the species aristocracy view as a strategic tool. The fear is that if the line between human and animal is blurred, then vulnerable human groups will be the ones whose humanity will be put into question, relegating them to some subhuman or dehumanized status. Species hierarchy is seen as an essential guardrail against their dehumanization.

A similar strategic appeal to species hierarchy can be seen among other disadvantaged groups. Many Indigenous worldviews, for example, do not draw a sharp distinction between humans and the rest of nature.[14] Yet when engaged in legal advocacy for their HR, they too may strategically invoke tropes about the intrinsic value of humans and the instrumental value of animals.[15] As Vanessa Watts notes, the strategic requirement to invoke human supremacist ideologies to fight dehumanization, while simultaneously fighting to sustain cultures and worldviews that are built upon kinship with animals, puts Indigenous peoples in a double bind: "In the context of settler colonialism, Indigenous peoples are confronted with paradoxes of being: we must fight against being animalized! We must fight for our animality! We are not subhuman! Our beingness is intimately tied to animality!"[16] In short, human supremacism has a double function in HR theory and practice: originally, it reflected an intrinsic commitment to species hierarchy, but this

14 Margaret Robinson, "Animal Personhood in Mi'kmaq Perspective," *Societies* 4, no. 4 (December 2014).

15 Fiona Probyn-Rapsey and Lynette Russell, "Indigenous, Settler, Animal; a Triadic Approach," *Animal Studies Journal* 11, no. 2 (2022); Constance MacIntosh, "Indigenous Rights and Relations with Animals: Seeing Beyond Canadian Law," in *Canadian Perspectives on Animals and the Law* (Toronto: Irwin, 2015).

16 Vanessa Watts, "Growling Ontologies: Indigeneity, Becoming Souls and Settler Colonial Inaccessibility," in *Colonialism and Non-Human Animality: Anti-Colonial Perspectives in Critical Animal Studies*, ed. Kelly Struthers-Montford and Chloë Taylor (Abingdon, UK: Routledge, 2020), 119.

has been supplemented by a more instrumental belief that species hierarchy is a necessary tool to combat the dehumanization of particular subgroups.

This dual function puts defenders of MOTH rights in a potential bind. Defenders of MOTH rights clearly need to challenge the intrinsic commitment to species narcissism and species entitlement, given their role in legitimizing the exploitation of animals and nature, but it is less clear how we should respond to the strategic argument. If sanctifying species is in fact an effective strategy to fight dehumanization, then defenders of MOTH rights face a genuine dilemma. It would imply, in Alison Suen's words, that there is no way to "curb racism without throwing the animal under the bus"[17] or, conversely, no way to defend MOTH rights without throwing racialized minorities under the bus.

To grapple with this potential dilemma, it is important to know whether species hierarchy is, in fact, effective in fighting dehumanization. This is obviously an empirical question and, as I read the evidence, the answer is clear: this strategy is neither necessary nor effective in fighting dehumanization. On the contrary, the evidence shows that the more sharply people distinguish between humans and animals, the *more* likely they are to dehumanize other humans, such as women and immigrants.[18] Belief in human superiority over

17 Alison Suen, *The Speaking Animal: Ethics, Language and the Human-Animal Divide* (Lanham, UK: Rowman and Littlefield, 2015), 99.

18 Petra Veser, Kathy Taylor, and Susanne Singer, "Diet, Authoritarianism, Social Dominance Orientation, and Predisposition to Prejudice," *British Food Journal* 117, no. 7 (July 2015); Christina Roylance, Andrew Abeyta, and Clay Routledge, "I Am Not an Animal but I Am a Sexist: Human Distinctiveness, Sexist Attitudes towards Women, and Perceptions of Meaning in Life," *Feminism & Psychology* 26, no. 3 (August 2016); Catherine Amiot and Brock Bastian, "Solidarity with Animals: Assessing a Relevant Dimension of Social Identification with Animals," *PloS one* 12, no. 1 (January 2017): e0168184; Kristof Dhont et al., "Social Dominance Orientation Connects Prejudicial Human–Human and Human–Animal

animals is not only empirically correlated with but also causally connected to the dehumanization of human outgroups. Social psychologists have shown that inculcating attitudes of human superiority over other animals worsens, rather than alleviates, the dehumanization of minorities, immigrants, and other outgroups. For instance, when participants in studies are given a newspaper story reporting on evidence for human superiority over animals, the outcome is the expression of greater prejudice against human outgroups. By contrast, those who are given a newspaper story reporting on evidence that animals are continuous with humans in the possession of valued traits and emotions become more likely to accord equality to human outgroups. Reducing the status divide between humans and animals helps to reduce prejudice and to strengthen belief in equality among human groups.[19] Multiple psychological mechanisms link negative attitudes toward animals to the dehumanization of human outgroups.[20]

Relations," *Personality and Individual Differences* 61 (April 2014); Ashley Allcorn and Shirley Ogletree, "Linked Oppression: Connecting Animal and Gender Attitudes," *Feminism & Psychology* 28, no. 4 (November 2018); Yon Soo Park and Benjamin Valentino, "Animals Are People Too: Explaining Variation in Respect for Animal Rights," *Human Rights Quarterly* 41, no. 2 (February 2019); Lynne Jackson, "Speciesism Predicts Prejudice against Low-Status and Hierarchy-Attenuating Human Groups," *Anthrozoös* 32, no. 4 (July 2019).

19 Kimberly Costello and Gordon Hodson, "Exploring the Roots of Dehumanization: The Role of Human-Animal Similarity in Promoting Immigrant Humanization," *Group Processes and Intergroup Relations* 13, no. 1 (January 2010); Kimberly Costello and Gordon Hodson, "Lay Beliefs about the Causes of and Solutions to Dehumanization and Prejudice: Do Nonexperts Recognize the Role of Human–Animal Relations?," *Journal of Applied Social Psychology* 44, no. 4 (April 2014).

20 Brock Bastian et al., "When Closing the Human–Animal Divide Expands Moral Concern," *Social Psychological and Personality Science* 3, no. 4 (July 2012); Dhont et al., "Social Dominance Orientation"; Kristof Dhont, Gordon Hodson, and Ana Leite, "Common Ideological Roots of Speciesism and Generalized Ethnic Prejudice," *European Journal of Personality* 30, no. 6 (November 2016).

This finding—known in the literature as the "interspecies model of prejudice"—has now been widely replicated, including among children. The more children are taught to place the human above the animal, the more they dehumanize racial minorities.[21] Conversely, humane education regarding animals—emphasizing interspecies affinities and solidarities—is known to encourage greater empathy and prosocial attitudes toward other humans.[22] As Gordon Hodson, Cara MacInnis, and Kimberly Costello summarize the evidence: "overvaluing humans, relative to nonhumans, lies at the heart of problems not only for animals but also for humans. . . . We may collectively need to face an inconvenient truth: The premium placed on humans over animals—overvaluing humans as an unchallenged truism—fuels some forms of human dehumanization."[23] This suggests that the instrumental argument for species hierarchy is overstated and may indeed be counterproductive. Challenging ideas of species aristocracy need not undermine the fight against dehumanization and may indeed assist it. Both subaltern human groups and the more-than-human world could benefit from articulating a nonsupremacist account of HR.

21 Kimberly Costello and Gordon Hodson, "Explaining Dehumanization among Children: The Interspecies Model of Prejudice," *British Journal of Social Psychology* 53, no. 1 (March 2014).

22 Kelly Thompson and Eleonora Gullone, "Promotion of Empathy and Prosocial Behaviour in Children through Humane Education," *Australian Psychologist* 38, no. 3 (November 2003).

23 Gordon Hodson, Cara MacInnis, and Kimberly Costello, "(Over)Valuing 'Humanness' as an Aggravator of Intergroup Prejudices and Discrimination," in *Humanness and Dehumanization*, ed. Paul Bain et al. (Abingdon, UK: Routledge, 2014), 106.

Nonsupremacist Approaches to HR

What would such a nonsupremacist account of HR look like? I've already mentioned that many subaltern groups have their own intellectual traditions of "fugitive humanism" that do not rest on ideas of species hierarchy. Mainstream HR theories have much to learn from these traditions for rethinking HR in a more-than-human world, as other contributions to this volume discuss.

But even within the mainstream Western legal tradition, there are alternative ways of thinking about HR. It is worth recalling that Maritain was writing in the 1940s, before the rise of the contemporary animal rights and environmental movements in the West. So when he grounded HR in species hierarchy, he was simply reproducing what was taken for granted by most participants drafting the UDHR. By the 1980s, however, theorists of HR were aware that assumptions of species hierarchy could no longer be treated as the self-evident grounds for HR. With the rise of an animal rights movement challenging the assumption that animals are resources rather than ends in themselves, any appeal to species hierarchy would need to be explicitly defended. And a careful read of the mainstream HR literature from the 1980s to 2000s suggests that many theorists were reluctant to take on this task. There are a variety of arguments in the Western canon defending species hierarchy—appealing to divine providence, reason, language, moral autonomy, potentiality, and so on—but by the 1980s, all of them had been systematically critiqued, in dozens of articles and books, and many HR theorists were unsure how best to counter these critiques. I also suspect that many HR theorists were unsure whether they even *wanted* to defend human supremacism. Many philosophers—and indeed many citizens—are unsure what to think about MOTH rights and have conflicting and evolving intuitions on the issue. Insofar as their motivation for writing on HR was to promote greater equality among

humans, not to defend inequality between humans and animals, they saw no need to embed the former in the latter.

As a result, many HR theorists in this period distanced themselves from Maritain's position and looked for ways of defending HR that did not depend on controversial assumptions about species hierarchy. We can see a marked ratcheting down of human supremacism in the HR literature. Consider two of the first and most influential discussions of the theoretical foundations of HR, by Henry Shue (1980) and James Nickel (1987).[24] Drawing on Joel Feinberg's influential account of the triadic structure of "rights,"[25] both developed theories of HR that were grounded in assumptions about (a) *basic interests* (e.g., in security, subsistence, liberty); (b) *standard threats* to those interests; and (c) *collective/institutional duties* to refrain from or prevent those threats. Neither Shue nor Nickel makes any appeal to the idea of species hierarchy: they make no reference to, or assumptions about, the relative moral status or significance of "humanity" and "animality."

Of course, this way of grounding HR raises the question whether animals might not also be entitled to basic rights, since they too have basic interests that are subject to standard threats from public institutions. Several animal rights theorists have argued that the logic of the Feinberg theory of rights applies naturally to animals.[26]

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24 Henry Shue, *Basic Rights* (Princeton, NJ: Princeton University Press, 1980); James Nickel, *Making Sense of Human Rights* (Berkeley: University of California Press, 1987).

25 Joel Feinberg, "The Nature and Value of Rights," *Journal of Value Inquiry* 4 (December 1970).

26 For example, Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983); Paola Cavalieri, *The Animal Question: Why Nonhuman Animals Deserve Human Rights* (Oxford, UK: Oxford University Press, 2001); Alasdair Cochrane, "From Human Rights to Sentient Rights," *Critical Review of International Social and Political Philosophy* 16, no. 5 (December 2013).

And indeed both Feinberg and Nickel acknowledge this possibility. Feinberg wrote an article defending the conceptual possibility of animal rights, and Nickel has a brief footnote in which he too acknowledges that possibility.[27] Neither actually endorsed animal rights—they simply left it as an open question. But, and this is the key point, neither viewed it as an objection to their account of rights that it might support rights for animals. And this is because, unlike Maritain, they did not see the purpose of HR as the defense of species hierarchy. Their aim was to identify compelling reasons why public institutions have a duty to protect individuals from standard threats to their basic interests, and they left it as an open question whether, or under what conditions, those reasons might also apply to animals.

This trend continued through the 1990s into the early 2000s. In this period, several exciting new approaches to theorizing HR emerged. For example, Bryan Turner argued that HR should be grounded in respect for people as "vulnerable subjects," an idea also defended by Martha Fineman.[28] Amartya Sen and Martha Nussbaum developed capability-based theories of HR, Fiona Robinson elaborated a care-ethics approach to HR, and Judith Butler appealed to "precarious life" as the basis for HR.[29]

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27 Joel Feinberg, "The Rights of Animals and Unborn Generations," in *Philosophy and Environmental Crisis*, ed. William Blackstone (Athens: University of Georgia Press, 1974); Nickel, *Making Sense of Human Rights*, 45.

28 Bryan Turner, *Vulnerability and Human Rights* (University Park, PA: Penn State Press, 2006); Martha Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition," *Yale JL & Feminism* 20, no. 1 (2008): 1.

29 Amartya Sen, "Human Rights and Capabilities," *Journal of Human Development* 6, no. 2 (July 2005); Martha Nussbaum, "Human Rights and Human Capabilities," *Harvard Human Rights Journal* 20 (Spring 2007): 21; Fiona Robinson, "Human Rights and the Global Politics of Resistance: Feminist Perspectives," *Review of International Studies* 29, no. S1 (December 2003); Judith Butler, *Precarious Life* (New York: Verso, 2006).

These theories have significantly enriched our moral vocabulary for discussing HR, adding ideas of vulnerability, precarity, capability, and care to the earlier, more Spartan vocabulary of needs and interests. And all of these approaches, I would argue, share with Shue and Nickel a nonsupremacist logic. When arguing that vulnerability or capabilities illuminate the basis and requirements of HR, these theorists did not take it as necessary that these ideas must also ground species hierarchy. Whether and how they might apply to animals was left as an open question.

Unsurprisingly, animal rights theorists quickly took up this open question and argued that these new accounts of HR do, indeed, push us toward the recognition of animal rights. Ani Satz and Maneesha Deckha, for example, argue that Fineman's account of the ethical significance of vulnerable subjectivity extends naturally to animals.[30] Similarly, the ethical significance of capabilities or care seems to extend naturally to animals, and so recent animal rights theorists have applied capability-based[31] and care-based[32] theories to animal rights. And everything in Butler's account about why we must nurture an ethic of respect for precarious life and challenge the denigration of some lives as ungrievable extends to animals, as animal rights theorists have shown.[33] A growing number of theorists

30 Ani Satz, "Animals as Vulnerable Subjects," *Animal Law* 16, no. 1 (2009): 65; Maneesha Deckha, *Animals as Legal Beings* (Toronto: University of Toronto Press, 2021), 131–32.

31 Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard University Press, 2006); Anders Schinkel, "Martha Nussbaum on Animal Rights," *Ethics & the Environment* 13, no. 1 (April 2008).

32 Josephine Donovan and Carol Adams, *The Feminist Care Tradition in Animal Ethics* (New York: Columbia University Press, 2007).

33 Chloë Taylor, "The Precarious Lives of Animals: Butler, Coetzee, and Animal Ethics," *Philosophy Today* 52, no. 1 (February 2008); James Stanescu, "Species Trouble: Judith Butler, Mourning, and the Precarious Lives of Animals," *Hypatia* 27, no. 3 (Summer 2012).

defend the essential continuities and interdependencies of HR and animal rights.[34]

In short, from the 1980s to the mid-2000s, the trend was to defend HR in a way that does not rest on species hierarchy, and the defense of HR was not seen as essentially tied to the assertion of superiority over animals. And this opened up space for a growing literature that attempted to integrate HR and MOTH rights and to explore their interconnections.

The Counterreaction: The New Dignitarian HR

I hope and expect that this trend will continue. However, in the past fifteen years, there has been a striking—and in my view disturbing—movement in the opposite direction, toward reasserting species hierarchy as the basis for HR. There are different versions of this reaction, but I will focus on the new wave of "dignitarian" writings within Anglo-American legal and political philosophy. These "new dignitarians," as Fassel calls them,[35] make two core claims: (1) that protection of, or respect for, human dignity is the basis of HR; and (2) that a core component of human dignity is our radical difference from, and superiority over, animals. In this way, the new dignitarians seek to reinscribe species hierarchy at the heart of HR theory. This new dignitarianism is visible in Dupré's statement, quoted earlier, that: "The legal system of human rights protection in Europe (and more generally in the West) rests on the assumption that, as human beings, we are born with the unique quality of dignity that distinguishes us from other beings (primarily animals), justifying and

34 Saskia Stucki, *One Rights: Human and Animal Rights in the Anthropocene* (New York: Springer, 2023).

35 Raffael Fasel, "The Old 'New' Dignitarianism," *Res Publica* 25, no. 4 (November 2019).

explaining the special protection of our rights."[36] There are many other recent examples. George Kateb, for example, argues that "the core idea of human dignity is that on earth, humanity is the greatest type of being—and that every member deserves to be treated in a manner consistent with the high worth of the species."[37] He goes on to say that "the two basic propositions" underlying HR are that "all individuals are equal: no other species is equal to humanity."[38]

We can see the same idea in Jeremy Waldron's influential account of human dignity as a high rank.[39] In some passages, he illustrates this idea by referencing the historic difference in rank between aristocrats and peasants, suggesting that HR involve attributing to all humans the high rank previously attributed only to aristocrats. But, in other passages, he makes clear that this rank is also high in relation to animals. In a world that respects HR, he says, the law may force people to do things, "but even when this happens, they are not herded like cattle, broken like horses, beaten like dumb animals, or reduced to a quivering mass of 'bestial desperate terror.'"[40] This means that governing humans with dignity "is quite different from (say) herding cows with a cattle prod," since the latter is a system of rule that works "by manipulating, terrorizing or galvanizing behaviour."[41] He sums up his theory this way: while some people say that "if we abolish distinctions of rank, we will end up treating

36 Dupré, *The Age of Dignity*, 28.

37 George Kateb, *Human Dignity* (Cambridge, MA: Harvard University Press, 2011), 3–4.

38 Kateb, *Human Dignity*, 6.

39 Jeremy Waldron, *Dignity, Rank and Rights* (Oxford, UK: Oxford University Press, 2012).

40 Waldron, *Dignity, Rank and Rights*, 64.

41 Waldron, *Dignity, Rank and Rights*, 52.

everyone like an animal . . . the ethos of human dignity reminds us that there is an alternative."[42]

In short, for Waldron, Kateb and Dupré—and many other writers in the past decade—the defense of HR is explicitly tied to species hierarchy: HR are intended to elevate us above animals, to sharply separate humans who are owed respect and dignity from animals who can be instrumentalized, manipulated, and terrorized.

Not all theorists who talk about "human dignity" endorse human exceptionalism or human supremacism. There are many different intellectual traditions for thinking about dignity, some of which extend ideas of dignity to the MOTH world. However, while human supremacism is not inherent in the concept of human dignity, I would also suggest that it is no accident that the word *dignity* is the vehicle for recent supremacist theories. In the midst of this "age of dignity" in which talk of dignity is "ubiquitous"[43] and "omnipresent,"[44] it is worth recalling that there are, in fact, many other moral concepts that are available to discuss ethical and legal obligations in general, and HR in particular. I noted above that HR theory from the 1980s to the 2000s generated a rich moral vocabulary, not only of interests and needs, but also respect for subjectivity, vulnerability, grievability, capabilities, and flourishing, all of which have been productively used to illuminate an ethics of HR. Dignity was just one of many concepts that were being proposed and tested as the ethical grounds for HR, by no means the only or even most prominent option. Why then, out of this varied moral toolbox, have so many theorists in the past ten years zeroed in on dignity as the core concept?

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42 Waldron, *Dignity, Rank and Rights*, 69.

43 Dupré, *The Age of Dignity*, 1.

44 Christopher McCrudden, "In Pursuit of Human Dignity: An Introduction to Current Debates," in *Understanding Human Dignity*, ed. Christopher McCrudden (Oxford, UK: Oxford University Press, 2013), 1.

There are many factors at play, but I would suggest that one reason is that ideas of *dignity* do not easily or naturally extend to animals or nature. As I've noted, virtually all of the other concepts standardly used to discuss and defend HR—interests, needs, well-being, capabilities, flourishing, vulnerability, subjectivity, care, justice—lead naturally to the recognition of animal rights, since animals are continuous with humans in all of these respects. The one concept in the moral toolbox that many people find more awkward or unnatural to apply to animals is *dignity*. If someone terrorizes a cow with a cattle prod, there is no question that this harms her basic interests and her well-being, assaults her subjectivity, exploits her vulnerability, renders her precarious, instrumentalizes her, and undermines her capabilities and flourishing. Insofar as any of these considerations ground the human right not to be terrorized, so too they would seem to ground a right of animals not to be terrorized. But does the routinized violence of factory farming violate cows' dignity? This is less clear. While there are compelling accounts of how humans routinely violate the dignity of animals,[45] they tend to focus on specific contexts of public/visible degradation (such as circuses and zoos) rather than the often-hidden structures of exploitation on farms or labs that are the heart of animal oppression in modern societies. While some defenders of animal rights argue that dignity can operate as the general grounding for animal rights,[46] others argue that it is not a helpful register for grounding basic

45 Sue Cataldi, "Animals and the Concept of Dignity" *Ethics & the Environment* 7, no. 2 (October 2002); Lori Gruen, "Dignity, Captivity, and an Ethics of Sight," in *The Ethics of Captivity*, ed. Lori Gruen (Oxford, UK: Oxford University Press, 2014); Rebekah Humphreys, "Dignity and Its Violation Examined within the Context of Animal Ethics," *Ethics & the Environment* 21, no. 2 (October 2016); Reed Elizabeth Loder, "Animal Dignity," *Animal Law* 23, no. 1 (2016).

46 David Bilchitz, "Moving beyond Arbitrariness: The Legal Personhood and Dignity of Non-Human Animals," *South African Journal on Human Rights* 25, no. 1 (January 2009).

animal rights,[47] if only because dignity talk is saturated with the idea that dignity involves not being treated as an animal. In any event, dignity is not the natural language of animal rights theory.

And so, for anyone who wants to defend species hierarchy and to resist the extension of rights to animals, one option is to shift away from vulnerable subjectivity, care, capability, or precarious life to instead ground rights on dignity. And, indeed, Kateb is quite explicit that this is his motivation in appealing to human dignity. He notes the tendency I have just described to recognize continuities between humans and animals—as he puts it, the tendency to "picture humanity as just another animal species among other animal species, with some particularities, even uniqueness, but none so commendable as to elevate humanity above the rest"—but he objects that this "unnecessarily tarnish[es] human dignity by taking away commendable uniqueness from it." And to combat this tendency, he says, we need to emphasize human dignity: "These days, the notion of human stature is directed in part against these reductions, in the name of human dignity."[48] Whereas other moral concepts seem to lead to the recognition of interspecies continuities and the flattening of species hierarchies, a central virtue of the concept of dignity for Kateb is precisely its ability to reassert a species hierarchy.

Thomas Williams, too, invokes human dignity to counteract the tendency of "the experimental and human sciences" to "ever more emphasize the continuity between man and other creatures" and to invoke that continuity as a basis for animal rights.[49] Con-

47 Federico Zuolo, "Dignity and Animals," *Ethical Theory and Moral Practice* 19, no. 5 (November 2016).

48 Kateb, *Human Dignity*, 128.

49 Thomas Williams, *Who Is My Neighbor? Personalism and the Foundation of Human Rights* (Washington, DC: Catholic University of America Press, 2005), 207, 133–34, 271–72.

fronted with growing evidence that animals are continuous with humans in their morally significant traits and hence their potential rights claims, dignity is invoked by both Kateb and Williams to rescue human supremacy and to exclude animals from the sphere of rights.

I hasten to add again that I do not claim that all people who appeal to human dignity in their account of HR share Kateb's and Williams's supremacist aims. I simply note that the privileging of dignity over other moral concepts may have the effect of inhibiting efforts to reduce species hierarchy and that, for some theorists, this was precisely the intention of invoking dignity.

Paths Forward

If the analysis is correct, we are at an important crossroads in the relationship between HR and MOTH rights. More so than at any time since 1948, the HR movement is being invited today to recommit itself to species hierarchy. As I noted above, while previous HR theories did not necessarily embrace MOTH rights, they at least did not build human supremacism into the premises of their theories and did not view the possibility that their arguments for HR might apply to animals as grounds for rejecting their theories. They simply aimed to identify compelling moral reasons why there are obligations to protect the rights of others, and if some of the reasons also apply to animals, so be it. By contrast, the new dignitarians are supremacists in the sense defined earlier: their aim is to ensure not just that all humans are protected but that animals are not.

The return of supremacist thinking to HR theory is a striking development, and one with potentially profound consequences for both humans and animals. As Michael Meyer noted, "it would be a cruel irony indeed" if the idea of human dignity became "a source

for rationalizing harm toward nonhuman animals."[50] However, it is not just animals who are at risk from this new dignitarian politics. I have suggested that this trend is likely to set off a cascading set of negative effects on the rights of humans as well. There is strong evidence that this sort of new dignitarian thinking may exacerbate racism, sexism, and other forms of dehumanization, deaden ethical sensibilities, and marginalize vulnerable human groups.

Against this supremacist trend, I have argued for the development of alternative moral vocabularies that reject species hierarchy and that acknowledge human kinship and reciprocity with the more-than-human world. Fortunately, as other chapters in this volume show, a rich array of these alternative vocabularies are already being formulated and articulated in struggles for MOTH rights around the world, drawing on diverse legal, cultural, and scientific traditions. I suspect we are in for a period of intense intellectual fermentation and experimentation in this respect, and it is too early to draw definitive conclusions about which of these vocabularies will prove most fertile and in which contexts.

In conclusion, however, I would flag what seems to me a potential blind spot in some of the emerging discourses of MOTH rights, which is precisely on the animal question. Most discussions of the rights of nature specifically include animals as part of nature and, hence, the rights of nature encompass the rights of animals. As I mentioned in the introduction, however, there is a widespread perception that the rights of nature framework is not only different from, but also incompatible with, many influential accounts of animal rights, and that theorists must therefore choose between them. This perception reflects a long history of strained relationships between the environmental movement and the animal advocacy movement.

50 Michael Meyer, "The Simple Dignity of Sentient Life: Speciesism and Human Dignity," *Journal of Social Philosophy* 32, no. 2 (2001): 115.

Commentators have offered various diagnoses of this tension, but I would highlight two areas where MOTH rights and animal rights are often said to diverge. The first concerns the relationship between the individual and the species; the second concerns the relationship between "wild" animals and "domesticated" animals. In my view, recent work on MOTH rights is making important contributions to the first issue but is moving backward on the second issue.

Regarding the first issue, it is widely assumed that existing theories of animal rights are primarily concerned with protecting *individual* animals from harm, whereas the MOTH framework is primarily concerned with the protection of animal *species* and their ecosystem habitats. Where the killing of individual wild animals (e.g., in sport hunting) or the capturing of individual animals (e.g., for display in zoos or for medical experimentation) does not threaten the flourishing of the species or the integrity of their habitat, ecologists have often raised no objection. (Indeed they have often enthusiastically embraced sports hunting and fishing as a way for humans to "reconnect" with nature.) Animal rights advocates have long seen this indifference to the suffering of individual animals as a fundamental inadequacy of MOTH frameworks.

However, recent work has shown that MOTH frameworks can encompass concern for the rights of individual animals. In its recent *Estrellita* judgment, the Ecuadorian Constitutional Court ruled that the "rights of nature" provision of the constitution extends rights to animals both as species and as individuals, and therefore sets limits on how humans treat individual captive wild animals, such as Estrellita, a chorongo monkey. According to the court, individual animals like Estrellita have a right to "the free development of their animal behavior," which includes "the right to behave according to their instinct, the innate behaviors of their species, and those learned and transmitted among the members of their population"; the right to "to freely develop their biological cycles, processes and

interactions"; and the right not to be forced to "assimilating characteristics different from those naturally possessed by their species, for the convenience or benefit of human beings."[51] Even if Estrellita's confinement and captivity does not threaten the species' viability or habitat, she has an individual right not to be oppressed or manipulated by humans.

Not surprisingly, the *Estrellita* judgment has been widely hailed by animal advocates as heralding a convergence or synthesis of animal rights and the rights of nature.[52] Indeed, the judgment eloquently expresses many of the ideas I discussed earlier about the importance of embodied vulnerability and capabilities in grounding a nonsupremacist conception of rights.

However, a closer reading makes it clear that the court only accords these rights to wild animals, while explicitly and emphatically denying these rights to domesticated animals. The court says that because humans are "heterotrophs" who "cannot form their own food," therefore it is right and proper that humans engage in animal agriculture, and that "the domestication of animals has served to enable humans to respond to threats to their physical integrity and the security of their possessions; to control pests that can endanger livestock, crops and human health; to provide transportation, help in work, for clothing and footwear; and even for recreation and leisure," and that all of these human uses of domesticated animals "constitute forms through which individuals, communities, peoples and nationalities exercise their [constitutional] right to benefit from the environment and natural resources that allow them to live

51 Caso Mona Estrellita Final Judgment No. 253–20-JH22 (Corte Constitucional del Ecuador 2022), para. 112–15.

52 For example, "A Landmark Ruling for Animal Rights in Ecuador," *Nonhuman Rights Blog*, Nonhuman Rights Project, March 23, 2022, https://www.nonhumanrights.org/blog/landmark-ruling-animal-rights-ecuador/.

well."[53] In short, the court argues that, while it is wrong to confine, manipulate, or oppress wild animals for "the convenience or benefit of human beings," the confinement, genetic manipulation, and killing of domesticated animals for the convenience and benefit of humans is permissible and, indeed, a constitutionally guaranteed right.

From an animal ethics perspective, this is a puzzling and disturbing position.[54] The court says that preventing animals from expressing their innate behaviors and developing their social relationships is wrong but then endorses an institution of animal agriculture that is built upon precisely these activities (forced breeding and reproduction, forced separation of mothers and offspring, forced bodily manipulations, etc.). In regard to wild animals, the court offers a progressive vision of human relations with the more-than-human world; in regard to domesticated animals, it reaffirms the worst ideologies of human entitlement.

Nor is this just an idiosyncrasy of the *Estrellita* judgment. There is a long tradition in environmental thought of denigrating domesticated animals and consigning them to an abject legal status. Whereas wild animals are to be protected and valorized, domesticated animals are instrumentalized. This implicit or explicit legitimation of the instrumentalization of domesticated animals can be

53 Estrellita, para. 109–10.

54 As Michael Gold notes, the *Estrellita* judgment literally naturalizes the instrumentalization of domesticated animals: it suggests that this relationship is not something that humans choose but it somehow inheres in the very essence or nature of our being. Humans are just the kinds of beings who use domesticated animals, and domesticated animals are just the kinds of beings who exist to be used. The judgment not only encourages us to view our relations with wild animals as a moral and political choice that we need to critically reexamine, but it also presents our relations with domesticated animals as predetermined by our "heterotrophic" nature. Michael Gold, "The Ubiquitous Acceptance of an Exterminatory Legality: Rights, Framing, and Legal Opposition to Animal Farming" (LLM diss., University of Toronto, 2022), 7–8.

found in a wide range of recent theorizing about "earth jurisprudence," "the rights of nature," or "wild law," and this is increasingly noted as the central dividing line between MOTH theories and animal rights theories.[55]

I have argued elsewhere that there is no ethical or scientific justification for this double standard, and I won't repeat those arguments here.[56] I would just add that this position is not only philosophically arbitrary but also counterproductive. Defenders of MOTH rights emphasize that humans have not always or everywhere viewed animals and nature as resources to be exploited, and that the Western tradition needs to learn from other traditions that are built upon kinship with the more-than-human world. I fully agree. But this raises the questions: Where and when did these ideologies of human supremacism and human entitlement arise? When did humans stop viewing relations with animals and nature as relations of kinship or reciprocity and start viewing animals and nature as resources and property? The answer, most historians would say, is precisely when humans started domesticating animals: this was the moment when earlier relations of kinship and respect were replaced with ideologies of use and extraction.[57] The instrumentalization and commodification of domesticated animals has always been the lynchpin of ideologies of human supremacism and, so long as it remains untouched,

55 Glenn Wright, "Animal Law and Earth Jurisprudence: A Comparative Analysis of the Status of Animals in Two Emerging Critical Legal Theories," *Australian Animal Protection Law Journal* 9 (2013); Steven White, "Wild Law and Animal Law: Some Commonalities and Differences," in *Wild Law—In Practice*, ed. Michelle Maloney and Peter Burdon (Abingdon, UK: Routledge, 2014).

56 Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford, UK: Oxford University Press, 2011).

57 For example, David Nibert, *Animal Oppression and Human Violence: Domesecration, Capitalism, and Global Conflict* (New York: Columbia University Press, 2013).

modern societies, cultures, and economies will continue to be defined and shaped by supremacist beliefs. MOTH rights will only be secure when this foundation of human supremacism is exposed and questioned. And that is a task that I believe requires the shared labor of both animal advocates and MOTH advocates.[58]

58 Strategically, it might make sense in certain contexts to say that the rights of nature framework only applies to wild animals, and that some other moral and legal framework is required for thinking about the rights of domesticated animals. Since domesticated animals have (by definition) been brought into human society, we might think that the rights of domesticated animals are best theorized as rights of membership in a shared society, rather than as *rights of nature*. (For one version of this membership approach, see Donaldson and Kymlicka, *Zoopolis*). But whether domesticated animals fall inside or outside any specific version of a rights of nature provision, a crucial task is to ensure that the MOTH framework does not naturalize their instrumentalization and commodification.

Recasting Interspecies Care and Solidarity as Emergent Anti-Capitalist Politics

Professor Danielle Celermajer
and Dr. Anna Sturman

1. Another Story of the Black Summer Fires

When catastrophic fires ravaged the east coast of Australia from the end of the winter of 2019 through the summer of 2020, they held Australians—and people around the planet—in captivated horror. A few short weeks after they ended, however, we experienced the first wave of a global pandemic and the first torrential rains of an extreme La Niña event that washed away entire towns up north and brought the wooded sides of hills down onto roads in the south-east. These other manifestations of ecological destabilization and

multispecies violence, coming with increasing rapidity, seemed to bury the terror, grief, and rage of the five long months of fire that devastated communities, destroyed ecological systems, and killed billions of animals.

In mid-2023, as people gathered in a community hall overlooking the bend in the great river that winds through this part of the land, memories and the emotions that twisted around and through them grew intensely present. As distinct from most of the other gatherings that the state, charities, and NGOs had sponsored to help communities "recover" from the fires, these had a specific and unusual focus: the people who had come together to rescue, care for, and sometimes help the animals who found themselves on the frontline of fires die, and on how to better support these human and animal communities in a future that will surely bring more—and worse—conflagrations. For them, there had been a double silencing: the first resulting from the turn of attention to the pandemic and floods; the second from a more structural silence about the reality and ethical and political significance of their multispecies solidarity.

In the preceding months, members of our team sat down to learn about the experiences of some of the people who came to the workshops. We heard stories about a woman bound at home looking after family members with disabilities, watching the calamity unfolding for animals as people sought support systems that did not exist, and decided to set up a social media–based animal rescue network. It connected people with large animals living on lands where the fires were rapidly approaching with others who had floats that could transport them, skills to calm terrified animals, and safe land where they could stay, resulting in hundreds of horses, donkeys, alpacas, goats, and others being brought to safety.

People who had accessed those networks described the hopelessness and rage they felt when they turned to official agencies for information, advice, or help, only to be told they had come to the wrong place or that, as private property, animals were their

individual responsibility. Some were told no, there was nowhere to evacuate them. Others received a positive response but then learned they would have to remain with the animals day and night, an impossible task for people whose homes and larger families and communities were also under direct threat. Some spoke about their grief at not being able to reach animals who remained on properties they had fled or left to go to work or to help someone else—animals now stuck on the wrong side—the fire side—of police barriers. Others recounted the profound sense of relief, solidarity, and even empowerment they experienced as their collective actions revealed the presence of an interspecies community of care, concern, and commitment.

Then there were the people whose horrified witness of the mass killing of wild animals and destruction of their habitats, food, and water sources impelled them to create new informal organizations that built, distributed, and monitored feeding and water stations in the charred bush where surviving animals might remain, now starving and exposed. Starting with a social media post calling a meeting at the local pub, hundreds of people, most of whom had no formal experience caring for wild animals, soon formed themselves into local chapters and networks of action. Some collected and sorted the mountains of food or money that poured in as donations from people whose more remote witness of the mass killing had moved them to act as they could. Others researched and then built feeding and watering stations that would be as safe and effective as possible for the diverse range of surviving animals—from reptiles to small and large marsupials and macropods, to a vast range of often-displaced birds. Others drove the provisions and equipment out and walked into the blackened, ravaged bushland, sometimes deciding to break the laws forbidding them from entering private property or national parks to reach (nonhuman) animals. They knew that by doing so, they might provide anyone who was left with nourishment that would keep them alive.

All of this occurred under conditions of emergency and in scorching temperatures when many of the volunteers were protecting their own homes and human and animal families. Further, they were faced with insufficient information and a dearth of existing research about how people can or should support wild animals in such extreme anthropogenic disasters, and against the background of a state that did not deem these battered animal lives as meriting an official emergency response. People again spoke to us of the strange mix of grief, desperation, and interspecies solidarity they felt, but also about the conflicts that arose among them because of the enormous pressure under which they were working, the lack of agreed practices or reliable information, and the complete absence of any preparation by or support from the organs of the state.

When people who had shared their stories looked across the circle and listened to one another during the community gatherings we facilitated, it was not only the unfathomable suffering of animals nor the vast trauma of what they had been through that once again became starkly apparent; it was that in the face of the extensive and unjust institutional neglect of the violence that climate-driven disasters wrought on other animals, they had created a counter reality. In their utopian vision of a *zoopolis*, Sue Donaldson and Will Kymlicka delineate the contours and principles of a political community that would formally recognize other animals as political subjects and subjects of justice.[1] The world we could discern in that room fell well short of a political utopia for people or animals; nevertheless, it represented a prefiguration of such a world. Already here, and in sharp contradistinction to the formal institutional structure of the state, were the foundations of an alternative set of norms, institutions, and practices.

1 Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (New York: Oxford University Press, 2011).

The state and its "official story" of justice and the community to whom it has obligations and is answerable systematically excludes animals from the care it aspires (though always fails) to afford those impacted by climate-driven disasters. But the fragile norms and institutions at play here recognized and honored the reality that humans' lives are bound with those of the other beings with whom they live—sometimes in close proximity, sometimes at a physical distance, but always with a type of intimacy of care, concern, and even obligation that had, under the pressure of mass killing, come into sharp relief.

When people speak about the Black Summer, the story they habitually (and rightly) tell is about the unprecedented intensity and reach of the fires—across 80,000 hectares—and their devastating impacts on more-than-human beings and worlds. Those stories recount how the fires further destabilized complex and unique ecological systems that deforestation, climate change, extraction, and overdevelopment had already left precarious; that they killed billions or trillions of animals (depending on who and how you count)[2]; that as the world approaches the sixth mass extinction, and with Australia having the highest rate of mammalian extinction on the planet, they pushed endangered and threatened species several

2 The widely cited figure from Chris Dickman's study (Christopher R. Dickman, "Ecological Consequences of Australia's 'Black Summer' Bushfires: Managing for Recovery," *Integrated environmental assessment and management* 17, no. 6 (2021): 1162–1167), based on estimates of the number of animals in fire-affected areas, is 3 billion vertebrates. However, the team has recently clarified that they were referring to the number of vertebrates affected, many of whom would certainly have died given the intensity and reach of the fires. There was no count of the farmed, domesticated, and companion animals killed, and the figure of up to 120 trillion invertebrates is rarely cited. See Heloise Gibb and Nick Porch, "More than 60 billion leaf litter invertebrates died in the Black Summer fires. Here's what that did to ecosystems," *The Conversation*, June 7, 2023, https://theconversation.com/more-than-60-billion-leaf-litter-invertebrates-died-in-the-black-summer-fires-heres-what-that-did-to-ecosystems-207032.

steps closer to their permanent disappearance. Sometimes, they tell one to two of the myriad stories of individual devastation, death, and violence that the macro stories of more-than-human violence, injustice, and loss almost always conceal.[3]

In this chapter, we tell another story—a story about how, as the impacts of climate change and ecological devastation are intensifying, communities are enacting forms of interspecies care and solidarity that defy the normalized neglect and injustice of the state. As they do so, they are prefiguring radically different norms, institutions, and practices of community. They are, we argue, invitations to a re-articulation of the state whereby the more-than-human would be included within the reach of its obligations of care in a climate-changing world.[4]

In telling this story, we are not claiming that these incipient practices already constitute a present threat to dominant institutions: the flows of power, the distributions of resources, and the hold that capitalist forms of life still have on the "meaning" and possibilities of animals' (and humans') lives and relationships are still organized and fortified so as to deprive these alternatives of the legitimacy and nourishment they will need to thrive. Nevertheless, they signal waves of resistance to the pathological logics and practices of dominant institutions, and they refuse the invisibilization of the growing numbers, determination, and organization of people who, as the violence, neglect, and injustice of those logics and institutions

3 Danielle Celermajer, *Summertime* (Sydney: Penguin Random House, 2021).

4 We note here that the transformation of the capitalist state in the ways we discuss—effectively, through ongoing crisis—toward non-capitalist states requires varying forms of contestation in, against, and beyond the spheres of production and reproduction. Our concern in this chapter is to focus on one emerging area of contestation: the claims multispecies solidarities might make upon the state and how these might contribute to this broader project.

become ever more evident, are refusing to step into line. Making them visible as existing alternatives and naming them as institutional forms and practices of justice and politics—as distinct from dismissing them as privatized, sentimentalized, feminized forms of "care"—is the first step in augmenting them. The next steps, which we signal here but do not elaborate on in this chapter, will be to transform the flows of resources and power and to build forms of solidarity between these emergent forms of multispecies justice and the other movements seeking to support entangled human—more-than-human life and justice in capitalist ruins.

In telling this story, we want to make clear that First Nations peoples of Australia, like Indigenous peoples across the world, have long, consistently, and creatively resisted the logics and institutional arrangements of the colonial-capitalist state and how it views, treats, commodifies, and extracts their more-than-human kin. Some of the people with whom we spoke in our project are Aboriginal, and many who are not nevertheless referenced Indigenous forms of care for Country as inspirational in their own orientations and practices. The forms of resistance and counter-institutional prefiguration we document here, however, largely emerged from and were sustained by non-Indigenous Australians. We see this as important because it signals that the extractivist and commodifying logics supposed to organize the colonial-capitalist state and its people are not ubiquitous; instead, the hegemonic aspirations of dominant discourses about the forms and functions of the state are only ever partially successful.

Of course, we know that capitalism requires forms of labor and solidarity that it officially forecloses to sustain itself. Using the terminology of materialist ecofeminism,[5] "free" socio-ecological reproduction of the conditions of production for capital (and the

5 See for example Mary Mellor, *Feminism and Ecology* (Cambridge: Polity Press, 1997); Ariel Salleh (ed.), *Eco-Sufficiency & Global Justice: Women Write Political Ecology* (London, New York: Pluto Press, 2009).

conditions of life for everyone else) is always performed by humans and the rest of nature in, against, and beyond capital. When it is opportune or profitable, capitalist systems may assimilate such reproductive labor into their own logics and systems for stability. In this regard, the forms and functions of any "state" represent the iterative crystallizations of battles over when and where to assert collective responsibility for maintaining particular forms of social and ecological reproduction. The trick here will be to uphold and increase the radical counter-logic of interspecies care and justice these practices foreshadow.

2. A State of Injustice

As estimates of the number of animals killed during the Black Summer fires escalated to a point that defied imagination, the word *tragedy* became a common trope. The word perhaps captures some of the emotions the suffering and dying provoked. Nevertheless, it is critical to understand both why what happened to those animals must not be called a tragedy and why, in the context of the dominant ethical, discursive, political, and legal systems, it was precisely this word that was produced and circulated.

It is now well documented that while bushfires are intrinsic to Australian ecosystems, the intensity and scale of the 2019–2020 fires were the outcome of a range of human interventions, as was the mass killing of animals and the destruction of ecosystems.[6] The most obvious contributor was anthropogenic climate change, driven by extracting and burning fossil fuel, massive deforestation, and industrial-scale animal agriculture, all of which the Australian colonial-capitalist state has excelled at creating permissive conditions for, and sustaining. Leading up to 2019, Australia had suffered several

6 Peter Christoff, *The Fires Next Time: Understanding Australia's Black Summer* (Melbourne: Melbourne University Publishing, 2023).

years of extreme drought, and in 2019, when the temperatures exceeded all previous records, the east coast was a tinder box ready to go up. Looking back further, over 200 years of colonization, intensively extractive land use practices had gravely undermined ecological integrity, damaged river systems and aquifers, depleted soils, razed and fragmented forests, and prevented First Nations peoples from practicing the forms of care for Country that had supported flourishing human—more-than-human worlds for tens of thousands of years. The intensity and range of the fires were a product of capitalism and colonialism, and responsibility for them lies with the people who have driven and benefited from these organizations of life.

Moving from the fires to the animals they killed and displaced, the impact of disasters on other animals is always (as it is for humans) a function of existing vulnerabilities.[7] For the most part, when analyzing species' vulnerability to climate change, "assessments . . . consider exposure, sensitivity and adaptability . . . [where] exposure is the magnitude of climatic variation in the areas occupied by the species . . . sensitivity . . . determined by traits that are intrinsic to species, is the ability to tolerate climatic variations, while adaptability is the inherent capacity of species to adjust to those changes."[8] What is missing from this analytic frame is the larger set of human interventions beyond climate change that heighten animals' sensitivity and diminish their adaptability. Wild animals confronted with catastrophic fires had already long faced the transformation—destruction, fragmentation, and damage—of their habitat, including

7 Terry Cannon, "Vulnerability Analysis and the Explanation of 'Natural' Disasters," in Ann Valery (ed.) *Disasters, Development and Environment* (Chichester; New York: J. Wiley, 1994): 13–30; Kimberley Thomas, et al., "Explaining Differential Vulnerability to Climate Change: A Social Science Review," *Wiley Interdisciplinary Reviews: Climate Change* 10, no. 2 (2019): e565.

8 Michela Pacifici, et al., "Assessing Species Vulnerability to Climate Change," *Nature Climate Change* 5, no. 3 (2015): 215.

fences, roads, and other human infrastructure cutting across their territories. When the fires came, they had to shrink their range even further, constraining their options for escape or for finding alternative habitats and food sources once their already diminished territories had burned. For domesticated animals, literal external fences and the long-term erosion of capacities or knowledge about how to navigate extreme events combined to heighten their vulnerability.

In other words, humans' contributions to climate change as well as the larger vectors of ecological damage that contributed to the severity of the fire and to animals' vulnerability to climate-driven disasters' impacts, all have to be factored into the causal story of animals' deaths. When we use the word tragedy, however, it may seem we are talking about terrible events fated by some transcendent source beyond human control. To call the killing of the billions of animals during the Black Summer a tragedy is to erase the human responsibility for their deaths. Indeed, this linguistic erasure compounds the injustice of their killing.

Why, then, was it this term that fell so easily into circulation? The answer is familiar to the more-than-human rights project: within dominant ethical, legal, and political understandings, animals are not the types of beings who can be subjects in terms of justice or injustice. Indeed, with the exception of certain (and generally defeasible) protections for those native animals that are attributed particular cultural or biodiversity value, even their direct killing (let alone killing that comes at the end of a complex causal chain) is of no ethical, legal or political consequence.

Depending on the "classification" they fall into—companion, domesticated, farmed, wild, native, feral—animals may be, variously, private property; different types of commodities, whose value may derive from the market value of their flesh, milk, or coats, or the market value they have for tourism; outside exchange-value altogether; or appear as costs—to be removed in order for profit creation to proceed. Unlike (at least certain) humans, they are

attributed neither "intrinsic" value nor value derived from their citizenship or legal personhood, which would (at least formally) place on the state certain obligations of protection and prohibitions of harm. When entire herds of cows died from asphyxiation caused by the fires, what the state registered was a financial loss for the farmer. When billions of wild animals were killed when their forest homes burned, what the state registered was an impact on biodiversity. When dogs or horses were left on properties and could not be reached before they died, it was a private loss for their "owners."[9] Within this frame, the state has responsibility for neither animals' lives nor their deaths, no obligation to seek to prevent their deaths, and no reason to name those deaths, however many and however they came about, as anything other than a tragedy.

And yet, this state erasure of their deaths from within the realms of human responsibility did not and will never occupy the full field of meaning nor of experience. For the many people who dedicated their time, energy, and resources to the lives and deaths of animals during Black Summer, other animals showed up as both members of their communities of care and obligation and as subjects of justice. In their descriptions and actions, and indeed sometimes in their direct defiance of the directives of the state to leave animals to "their fate," animals' exposure to the fires and abandonment by the state showed up as wrongs they were obliged to prevent and resist.

3. Interspecies Solidarities and Counter-legitimacies

It would be a mistake to relegate the alternative understandings (and treatment) of other animals and their value that showed up under conditions of emergency as exceptions produced by the extremity of the situation and the emotions it provoked. They were, instead,

9 Moreover, when people tried to reach animals on the wrong side of legally enforced barriers, they were subject to the carceral logic of the state.

heightened examples of the marginalized truth that many people habitually understand and relate to other animals in ways that do not conform with—and indeed defy—the rigid demarcations stabilized in the forms and functions of the state, which are maintained and reproduced through a range of material and ideological positions. For these people, as we repeatedly heard and witnessed, other animals are members of their communities, with whom they experience bonds of care and obligation. Moreover, other animals, whether companion, domesticated, or wild, people told us, are not only recipients of their care but beings who variously care for them, infuse their lives with meaning and value, and co-create the worlds that they call community and home.

The problem is that, within the dominant logics of capitalism, such bonds of solidarity must not be cast within political terms or the terms of justice or in any terms that directly challenge the constitutive devaluation of animal life and, thus, the maximization of profit. Indeed, to sustain the logics of capitalism, they have to be discursively delegitimated or permitted to show up only as (private, individual, and feminized) "love," "sentimentality," and forms of extra-political, voluntary affection. In this sense, the first step in fortifying these alternative logics and growing the institutions they subtend is to challenge this depoliticizing framing and lend them political legitimacy.

Once one resists the frames that privatize and feminize these relationships, and allows that the understandings and relationships practiced during the fires were indicative of a counter-political logic, they reveal a political contestation from within society of the institutional logics and practices stabilized through the state in its current form. For whereas through the latter, the commodification, historical discounting, and invisibilization of animals from the realms of politics and justice has been normalized, in the worlds substantiated by the counter-practices we documented, animals are (and, thus, ought to be understood and treated as) fellow living beings, subjects

of justice and political right, whose lives must be supported. The value of crises, and indeed what will become increasingly evident as crises intensify and multiply, is that they reveal the contingency of who is counted and supported through the forms and functions of the state. The state is not a black box nor a unitary actor but an array of socio-ecological relations constantly contested and iterated across time, and crises excel at revealing this fungibility.[10] While existing arrangements (in this case, the exclusion of other animals) have been so normalized as to naturalize the existing state of affairs, what we can see is that there remains serious contestation and a live aspiration for and commitment to a political geography of justice that includes other animals.

Still, even if one acknowledges that the forms of interspecies solidarity that emerged and multiplied during the Black Summer fires constitute a form of serious political contestation (and not admirable charity) and, thereby, lends them legitimacy, this is only the first step in the larger project of their accumulating sufficient power to challenge existing state forms and logics—thus creating strategic shifts within the broader society that constitutes the state. Hence, the question that must be answered is, "How do these forms of prefigurative politics become political movements of sufficient strength to actually contest existing logics?" Given that existing logics are normalized, legitimated, authorized, enforced, and policed by all sorts of institutional forms—from language to law to markets to infrastructure, displacing them will require significant organization. Here, we have two strategic suggestions.

The first is to insist that the state has an obligation to lend its support, through redirecting its resources and institutional

10 Anna Sturman, "Capital, the State and Climate Change in Aotearoa New Zealand" (PhD diss., University of Sydney, 2021); James O'Connor, *Natural Causes: Essays in Ecological Marxism* (New York; London: The Guildford Press, 1998).

enablement, to the movements and networks dedicated to the protection of animal life, both those that emerged during the Black Summer fires and those that exist, albeit in a highly marginalized form, beyond emergencies. Doing so, critically, is not simply a matter of directing resources to "volunteer animal groups," easing the burden that volunteers carry, or recognizing the value of their labor. Rather, and from a formal and constitutive perspective, facilitating the flow of public resources—and hence collective responsibility—to multispecies communities effectively starts to rearticulate the state toward the recognition of other animals as subjects of justice and more expansive forms of socio-ecological reproduction.

Again, it is critical to situate this redirection within the language of justice and legitimacy. More specifically, the legitimacy of liberal democratic states rests on the twin claims of ensuring security for those to whom it acknowledges it has such obligations and affording them justice.[11] Yet, as is evident if one thinks about the expansion of the franchise or the recognition (in some states at least) of the entitlement to paid parental leave, the question of who falls within this circle of obligation—and what types of obligations are owed—is a historically contingent and contested matter. Previously disenfranchised groups, or groups whose specific claims have been historically neglected, won their political battles, in part, by insisting that they and their claims rightly fell within the shadow of obligation cast by the state's claim to legitimacy. By the same token, the argument here needs to be that denying other animals security in the face of climate-driven disasters and excluding them from the reach of the state's protective resources calls into question its claim to legitimacy as the guarantor of security and justice. In adopting this framing, one is thus also prosecuting the larger project

11 Critically, we are not arguing that any state actually affords security or justice to all of its citizens or that the affordance of security and justice is ever equal. We are speaking about the *claim* to legitimacy.

of rearticulating the boundaries of obligation and justice in the direction of more-than-human rights.

The second strategic suggestion involves going beyond direct advocacy concerning the political status of animals and more-than-human rights and thinking about how this particular project could be joined up with other social movements contesting the existing articulation of the state through ongoing climate crises. For, as we have argued, the exclusion of other animals as lives that merit the concern of the state—and the exclusion of the forms of social reproduction in which multispecies communities are involved—belong to a larger class of exclusions, a range of forms of social reproduction, and, for that matter, a range of forms of production. Animals and the people who already experience them as members of their communities of care and obligation are a subset of a larger class of groups experiencing different dimensions of exclusion, invisibilization, and neglect (as well as violence), for whom the promises of security and justice that ground the state's claim to legitimacy are clearly being broken. The success of their individual and collective contestation of the legitimacy of the state will rest, in part, on their capacity to weave their claims together as part of a larger contestation of the apparently normalized and naturalized forms of state obligation.

4. Concluding Thoughts

Climate change, on its own terms and as an accelerator of myriad other crises wracking our world, portends a full-system meltdown for the capitalist state as the mediator of increasing and conflicting demands from all quarters. The state will have to be radically reworked to underwrite the conditions for whatever comes next—whether the possibility of more extraction, death, and depravity for profit or the harder work of building systems of collective rejuvenation

and reproduction that genuinely sustain life. In the face of massive and escalating violence against the more-than-human, it is difficult not to train one's strategic attention exclusively on the institutions and logics that perpetuate, normalize, and legitimate violence and extractivist logics and to seek a fight on the terrain of the state on these terms. This work is critical.

Yet, in attending only to the pathological institutions and logics, there is a danger of—paradoxically—fortifying them by confirming the ubiquity that is so crucial to their claim to legitimacy and necessity. Such logics may dominate, but they are neither ubiquitous nor necessary. In this sense, noticing counter-hegemonic understandings and practices, where human communities are practicing forms of interspecies solidarity and care, as they did during the Black Summer fires, is a critical first step. Instituting these as forms of political contestation is the next. For them to pose a genuine challenge to the existing, well-fortified forms and functions of the state, however, will require redirecting the flow of collective resources toward them, insisting that affording security, care, and justice to more-than-human forms of life and social reproduction is a necessary condition for the state's claim to legitimacy. It is imperative to build new forms of solidarity among the many groups, human and more-than-human, whom that current, naturalized form of the state neglects, lets die, or kills.

The Rights of Nature: Philosophical Challenges and Pragmatic Opportunities

Dale Jamieson

In this chapter I focus on conceptual challenges involved in creating an actionable rights-of-nature (RoN) framework that can meaningfully contribute to protecting both humans and the nonhuman world. I begin with an origin story, in which some of these challenges are implicit. I then sketch what I take to be three sources of the current interest in RoN, highlighting some of the opportunities and obstacles they bring to the fore. This chapter asks more questions than provides answers, though I end by gesturing in the direction of a path forward.

Origin stories about rights can be told from the perspectives of different cultures and traditions. I focus on the ancient Greek philosophical tradition and the way that it developed in Western

(especially Anglophone) law and philosophy. In telling this story, I take liberties with nuance and interpretation.

There is no single word in classical Greek that translates as the English word *rights*. Yet it is obvious that the ancient Greeks believed in rights in the sense that individuals had legal protections and prerogatives that were protected by law (e.g., rights to property and citizenship).[1] However, reflecting on and theorizing about these protections and prerogatives was relatively rare.

Stoic philosophy, according to many commentators, is an important source for contemporary ideas of rights through its influence on the development of Christianity and on subsequent Enlightenment thinkers.[2] As Pierre Hadot, the distinguished French classicist, wrote, "It is too often forgotten, and cannot be repeated too much, that Stoicism is the origin of the modern notion of 'human right.'"[3] According to the Stoic-inspired account, rights are founded in a universal human nature by virtue of which we are fellow citizens in a universal cosmopolis. Our universal nature consists in reason, which humans share with the gods but not with other animals. Stoic term for *reason* (*logos*), as it was the used around

1 Miles F. Burnyeat, "Did the Ancient Greeks Have the Concept of Human Rights?," *Polis* 13, no. 1–2 (January 1994): 1–11.

2 Alejandra Mancilla reminds me that the Spanish scholastics (especially the Salamanca school) and early modern natural law theorists such as Grotius and Pufendorf were important way stations between the Stoics and the Enlightenment. For a discussion, see Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law 1150–1625* (Grand Rapids, MI: Wm. B. Eerdmans Publishing Co., 1997).

3 Pierre Hadot, *The Inner Citadel: The Meditations of Marcus Aurelius*, trans. Michael Chase (Cambridge, MA: Harvard University Press, 1998), 311. For an influential recent treatment, see Philip Mitsis, "The Stoic Origin of Natural Rights," *Philosophical Inquiry* 28, nos. 1–2 (Winter/Spring 2006): 159–78; for a somewhat contrary view, see Richard Bett, "Did the Stoics Invent Human Rights?," in *Virtue and Happiness: Essays in Honour of Julia Annas*, ed. Rachana Kamtekar (New York: Oxford University Press, 2012), 149–69.

300 BCE by Zeno, was already associated with language.[4] Stoicism was an important source for the view, dominant in the West, that rights, thought, and language are bound together in an unbreakable package, characteristic of human beings and not found in the rest of nature.

There were dissonant voices in the ancient Greek philosophical world. In the third century CE, Porphyry argued against animal sacrifice and in favor of moral vegetarianism. His treatise, *On Abstinence from Killing Animals*, was reprinted as recently as 2014 and remains a valuable contribution to the literature. Although he himself was a Neo-Platonist, Porphyry argues within a broadly Stoic framework: we owe duties of justice to animals because they are rational beings like us. Centuries before, the fifth century BCE philosopher Empedocles had taught that it was unjust to kill animals for food or sacrifice, and that this was "the law for all."[5]

These accounts give ready answers to two important questions about rights: the Question of Ground and the Question of Identification. The Question of Ground asks in virtue of what an entity has rights. The Question of Identification asks which entities are bearers of rights. On the grounding question, both Porphyry and the Stoics agreed that reason is the ground of rights. On the identification question, Porphyry and Empedocles agreed that both humans and nonhumans are bearers of rights, while the Stoics held that only humans are rights-holders.

There are further questions about rights that did not seem to figure importantly in ancient Greek discussion. One is the Question of Scope: How extensive is a system of rights, and what exactly are the protections and prerogatives afforded by having a right? Another is the Question of Conflict: Can rights or rights-holders come into

4 Zeno is usually regarded as the founder of Stoicism.

5 As quoted in Burnyeat, "Ancient Greeks," 4. Empedocles wrote in verse and only a few fragments survive.

conflict and, if so, how are conflicts resolved? These questions may not have arisen because the ancient Greek discussion was centered specifically on animal sacrifice, with some concern about using animals for food. Other questions that are important to contemporary discussions that did not get much treatment in the ancient Greek tradition are the Question of Function—What exactly is a system of rights supposed to do?—and the Epistemological Question—How do we know which entities have rights? The latter question may not have received much attention from the Stoics or in much of the subsequent tradition because it was widely supposed that having language was the mark of reason and therefore the ground for having rights, and whether or not a creature used language was regarded as an obvious fact.[6]

Other topics of contemporary concern received only marginal attention or were ignored altogether in the ancient Greek philosophical tradition. While the fifth century BCE philosopher Protagoras held what we might think of as a conventionalist view of rights (that rights are socially constructed), such views were largely ignored in the wake of Plato's final dialogue, *The Laws* (written around 375 BCE), which focuses on natural rights. The idea that there could be a system of purely (or almost purely) conventional rights of the sort envisioned by Thomas Hobbes, David Hume, and Jeremy Bentham in the modern world does not seem to have been seriously considered in most of the ancient Greek and medieval traditions. Nor do the ancient Greeks seem to have considered an interest theory of rights of the sort defended by Bentham and John Stuart Mill, and in recent years by Joseph Raz and Michael Kramer.[7]

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6 For some complications, see Katarzyna Kleczkowska, "Those Who Cannot Speak: Animals as Others in Ancient Greek Thought," *Maska* 24 (2014): 97–108.

7 Interest theorists hold that rights are associated with what promotes the interests of rights-holders. See Joseph Raz, *The Morality of Freedom* (New

Porphyry's case for vegetarianism rests on the cognitive and intellectual abilities of animals, and he says very little about their interest in avoiding suffering.

These largely ignored topics in the ancient Greek philosophical tradition are closely related to the question of the function of rights. Early Greek ruminations on what can be regarded as rights, like most Greek reflection on ethical concepts, engage ideas of virtue, community, and human flourishing. By contrast, contemporary discussions of the functions of rights center on the interests or autonomy of individual rights-holders.[8] The contemporary deontological tradition, for example, typically thinks of rights as providing protection against laws, acts, or policies that would maximize the overall good at the expense of rights-holders. Classical utilitarians, such as Bentham and Mill, saw rights as contributing to the overall good. Some recent utilitarians, such as R.M. Hare and Peter Singer, have been skeptical about rights, since they have seen them generally as obstacles to maximizing the overall good.[9]

While controversies remain around these questions and others, there is no denying that powerful theories of rights have developed over the centuries and are now incarnate in a human rights movement of great breadth and power. How should we locate RoN in relation to this movement, and how can we contextualize it in the history that I have been narrating? In some ways RoN seem to extend

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York: Oxford University Press, 1986), and Kramer's contribution, "Rights without Trimmings," in *A Debate Over Rights*, eds. Matthew Kramer, Nigel Simmonds, and Hillel Steiner (New York: Oxford University Press, 1998), 7–112.

8 For further discussion (and a somewhat different perspective), see Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (New York: Oxford University Press, 1995).

9 For a discussion of some of the issues, see R. G. Frey, ed., *Utility and Rights* (Minneapolis: University of Minnesota Press, 1984).

this project, but in other ways it seems to fly in the face of it.[10] One way of approaching this question is by examining the sources of the recent interest in RoN.

One source is baldly pragmatic. We are losing what we value in nature and risk losing ourselves in the process. Prevailing theories of rights are inadequate to end the carnage. We need to try something different.[11]

Consider an analogy: Suppose artworks are valuable and that, in addition, a world without artworks would not be conducive to human survival and flourishing. Suppose further that our prevailing system of law does not prevent the massive destruction of artworks. In such a world, someone might argue that we should adopt rights of artworks (RoA), in the hope that this would provide legal remedies that would help stem the destruction and thus also be conducive to human survival and flourishing. The rights granted to artworks could be like those granted to corporations (legal fictions), or they could be grounded in values that we hold dear and take to be true. The mantra of this view is "whatever works." This, I think, is the most powerful source for RoN, and one to which I will return.

A second source is extensionism.[12] On this view, whatever properties we take to ground rights are manifest in the more-than-human

10 For example, "new dignitarians," such as Jeremy Waldron (see Waldron, *Dignity, Rank and Rights* (New York: Oxford University Press, 2012)), think that human rights can only be protected by narrowing the domain of rights-holders, in effect circling the wagons around our own species. The extent to which this is an empirical or normative claim is not always easy to tell.

11 Pragmatism, as I am using the term, is consequentialist but need not be utilitarian. Ascribing rights to nature, it might be thought, may save us from the worst even if it does not achieve the best. For a similar claim about ascribing virtues and vices to agents, see Dale Jamieson, "When Utilitarians Should Be Virtue Theorists," *Utilitas* 19, no. 2 (June 2007): 160–83.

12 While *extensionism* is the usual term for the view that I am describing, it conflates an important distinction. In some cases, rights are extended (e.g.,

world. When, for example, forests or animals are destroyed, this is unjust for the same reasons that it is unjust to destroy humans. These views reject the Stoic view of how rights are grounded and their bearers identified.

Extensionism has been important in the animal protection movement. In 1975 Singer argued that any plausible criterion for moral standing would either exclude some humans or include many animals.[13] He identified sentience as the most plausible criterion and concluded that we should include many animals in our moral universe.[14] However, as noted earlier, Singer was hostile to the idea of rights. Will Kymlicka rightly observes that "it is a source of endless confusion that, for many people, their prime example of an 'animal rights' theorist is someone who explicitly rejects AR [animal rights]."[15] However, in 1983 Tom Regan mobilized similar considerations to mobilize a theory of animal rights, though he was primarily concerned with moral rather than legal rights.[16]

In a remarkable 1972 law review paper, Christopher Stone used an extensionist approach to argue for legal rights for natural

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corporations) and, in other cases, rights are finally recognized that existed all along (e.g., enslaved people). To some extent this distinction is bound up with the distinction between moral and legal rights. See Joel Feinberg, *Freedom and Fulfillment: Philosophical Essays* (Princeton: Princeton University Press, 1992), chapter 8.

13 Peter Singer, *Animal Liberation* (New York: New York Review of Books, 1975), published in a new, revised edition as Peter Singer, *Animal Liberation Now* (New York: Harper Perennial, 2023).

14 Many, not most, since bacteria are the most abundant animal and Singer does not consider them to be sentient.

15 Will Kymlicka, "Human Rights without Human Supremacism," *Canadian Journal of Philosophy* 48, no. 6 (December 2018): 782.

16 Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983). My main focus in this chapter is on legal rights, but I move between legal and moral rights when it seems illuminating to do so.

objects.[17] Appealing to the idea of an historically expanding circle of the recognition of rights, Stone writes, "I am quite seriously proposing that we give legal rights to forests, oceans, rivers and other so-called 'natural objects' in the environment—indeed, to the natural environment as a whole."[18] He argues against language as the answer to the epistemological question of how to identify which entities have rights and addressed the Question of Ground, but in an indirect and incomplete way. Stone asserts that calculations of damage to natural objects can be made independent of human interests in those objects and that this shows that natural objects have interests that can and should provide the ground for rights. In a long footnote, he addresses the Question of Identification, appealing to "what aboutism" and the possibility of changing perspectives. This optimistic conclusion obviously leaves a lot of work to be done.

> The problems of selecting an appropriate ontology are problems of all language—not merely of the language of legal concepts, but of ordinary language as well . . . In different legal systems at different times, there have been many shifts in the entity deemed "responsible" for harmful acts . . . I do not see why, in principle, the task of working out a legal ontology of natural objects (and "qualities," e.g., climatic warmth) should be any more unmanageable.[19]

In his 1986 book *Respect for Nature*, the philosopher Paul Taylor worked through some of the problems facing extensionism. Going further than Singer but stopping short of Stone, Taylor argues that

17 Christopher Stone, "Should Trees Have Standing?: Towards Legal Rights for Natural Objects," *Southern California Law Review* 45 (Spring 1972): 450–501.

18 Stone, "Should Trees Have Standing?," 456.

19 Stone, "Should Trees Have Standing?," 456, 457

we should adopt a "biocentric outlook" that involves seeing "oneself as a member of Earth's Community of Life."[20] From this perspective, all living things are of equal inherent value and "the attitude of respect . . . [is] the only suitable or morally fitting attitude to have towards the Earth's wild creatures."[21] This attitude of respect entails duties toward the Earth's "community of life," including individual plants as well as animals.

Taylor does not shrink from the inevitable conflicts; indeed, he specifically addresses cutting down a woodland to build a medical center, replacing a stretch of cactus desert with a suburban housing development, and plowing up a prairie to plant fields of wheat and corn.[22] He develops principles for resolving these conflicts that appeal to such notions as self-defense, proportionality, minimum harm, distributive justice, and restitutive justice. The resulting ethic is extremely demanding, perhaps even unlivable.

An expanded version of Stone's essay was published as a book in 1974, a year before Singer's *Animal Liberation*.[23] Reviewing both books together, John Rodman articulated a third source of the contemporary interest in RoN: the metaphysical critique.[24] Rodman begins by pointing out the way rights figure in our outrage about the destruction of nature. Our first thought when confronted by, say, a mine that destroys a forest is that "they have no right to do this,"

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20 Paul Taylor, *Respect for Nature* (Princeton: Princeton University Press, 1986), 44.

21 Taylor, *Respect for Nature*, 46.

22 Taylor, *Respect for Nature*, 256.

23 Christopher Stone, *Should Trees Have Standing?: Towards Legal Rights for Natural Objects* (Los Altos, CA: William Kaufmann, Inc., 1974).

24 John Rodman, "The Liberation of Nature," *Inquiry* 20, nos. 1–4 (1977): 83–131; Rodman's immediate sources for this critique are Darwin and Leopold.

rather than that the forest has rights that are being violated. Rodman writes that:

> I confess that I sometimes have a similar impression of the logical gymnastics of moral and legal philosophers, who sound as if they want to say something less moralistic, less reasonable, more expressive of their total sensibility, but are afraid of seeming subjective, sentimental, or something that's somehow not quite respectable. . . . it is curious how little appreciation there has been of the limitations of the moral/legal stage of consciousness. If an existing system of moral and legal coercion does not suffice, our tendency is to assume that the solution lies in more of the same, in "greatly extending the laws and rules which already are beginning to govern our treatment of nature."[25]

He writes specifically about Stone that he fails:

> to confront the implicit tension between a rights model and an ecological model of nature, and [he fails] to see that his ultimate vision of the human/nature relationship is probably incompatible with a legal system that operates in terms of objects, interests, property rights, compensable damages, and National Forests.[26]

He concludes that "we may need to become less moralistic and less legalistic, or at least to become less fixated at the moral/legal stage of consciousness."[27]

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25 Rodman, "The Liberation of Nature," 84.

26 Rodman, "The Liberation of Nature," 86.

27 Rodman, "The Liberation of Nature," 103.

In its baldest form, the metaphysical critique can be thought of as saying that our prevailing system of rights rests on a worldview that misunderstands us and our place in nature. We see ourselves as individual atoms, distinct from nature, interacting with each other and the world through a billiard ball model of causation. What we learn from modern science and Indigenous worldviews is that we are necessarily relational beings. We are involved in dynamic systems and communities that our legal systems do not adequately reflect. Trying to protect the more-than-human world with traditional Anglo-American law is like trying to do brain surgery with a chisel. It is no wonder that we are failing. Craig Kauffman and Pamela Martin write that "law has not evolved to keep pace with scientific advancements. Today's legal system is based on a mechanistic view of the world that emerged during the scientific revolution of the sixteenth and seventeenth centuries, one that sees Nature as a machine composed of fragmented, independent parts."[28]

The metaphysical critique sweeps out the old, but it is far from clear what it brings in as the new.[29] At one extreme this critique seems to suggest transcending entirely what Rodman calls the "moral/legal stage of consciousness." If we follow Alexander von Humboldt and some Indigenous traditions in holding that the Earth is a single living system of which we are part, it is difficult to see how the concept of rights can have any traction.[30] Rights typically have

28 Craig M. Kauffman and Pamela L. Martin, *The Politics of the Rights of Nature: Strategies for Building a More Sustainable Future* (Cambridge, MA: The MIT Press, 2021), 4. See also Fritjof Capra and Ugo Mattei, *The Ecology of Law: Towards a Legal System in Tune with Nature and Community* (Oakland, CA: Barrett-Koehler Publishers, Inc., 2015).

29 This point is powerfully made by Ramiro Ávila Santamaría in his contribution to this volume.

30 On Humboldt, see Andrea Wulf's contribution to this volume; for Indigenous views see the contributions of Craig Kauffman and Emily Jones to this volume. A view similar to these is expressed by William Faulkner's

addressees on whom they impose duties, but on this view the bearer of rights does not seem distinct from that to whom it owes duties.[31] Can nature be unjust to itself? It might seem that the separation between ourselves and nature that is required for duties of justice to obtain cannot plausibly be maintained when everything is one.[32]

Kaufman and Martin distinguish two approaches for structuring RoN laws that in some ways reflect what I am calling extensionism and the metaphysical critique: what they call the "Nature's Rights Model" (e.g., Bolivia, Ecuador, and the United States) and the "Legal Personhood Model" (e.g., Colombia, India, and New Zealand). But the metaphysical critique, as I have been describing it, threatens to overthrow the entire juridical perspective, which RoN in their very name seem to accept. Moreover the alterity of their metaphysical claims threatens to make the Question of Identification even more difficult to answer.

Consider, for example, the status of ecosystems, which are often highlighted as potential rights-holders in the RoN literature. The very notion of an ecosystem is an ill-defined concept that first explicitly appeared in 1935 in the work of the British botanist Sir Arthur Tansley.[33] Not until the 1940s did it begin to figure prominently in scientific thinking. An ecosystem, in the broadest sense,

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character, Isaac ("Ike") McCaslin in the fourth section of "The Bear," reprinted in Malcolm Cowley, ed., *The Portable Faulkner* (New York: Penguin, 2003).

31 For a discussion, visit James Nickel, "Human Rights," *The Stanford Encyclopedia of Philosophy* (Fall 2021 Edition), ed. Edward N. Zalta, https://plato.stanford.edu/entries/rights-human/#GeneIdeaHumaRigh.

32 Dale Jamieson, "Justice: The Heart of Environmentalism," in *Environmental Justice and Environmentalism: The Social Justice Challenge to the Environmental Movement*, eds. Ronald Sandler and Phaedra C. Pezzullo (Cambridge, MA: The MIT Press, 2007), 85–101.

33 Arthur Tansley, "The Use and Abuse of Vegetational Concepts and Terms," *Ecology* 16, no. 3 (July 1935): 284–307.

can be thought of as an assemblage of organisms together with its environment. Exactly which organisms and what elements of the environment count as elements of a particular ecosystem are matters of dispute. There is no consensus when it comes to precisely defining ecosystems or telling us where one stops and another begins. This may not be a problem for doing science, but it is a problem for identifying the bearers of rights.

Some would deny that ecosystems exist independently of the elements that constitute them. Such skeptics say that talking about an ecosystem is simply a way of conceptualizing a collection of individual organisms and features of their environment. On this view, ecosystems are like constellations, while organisms and features of their environment are like stars. Talking about ecosystems (like talking about constellations) is a way of talking about other things (e.g., stars). It may be useful to do so, but we should not think that the world responds to every useful turn of phrase by manufacturing an entity. It might be useful to talk about the average Australian, but do not expect to meet them and their 2.5 children. More problematic is how we can tell where one ecosystem begins and another ends. This problem arises on both temporal and spatial dimensions. Grasslands turn to shrubs and small trees, and then to forests. Presumably these are different ecosystems successively inhabiting the same space. What happens on the temporal borders of succession? Do we have a little of one and a little of another? When it comes to space, the problems become even more difficult. It makes sense to say that a little ecosystem has emerged on the north side of the large rock in my garden. But it also makes sense to say that my garden is an ecosystem, and so is the valley in which I live, and so on. All of this is immensely more difficult in the Anthropocene, when all ecosystems are rapidly becoming "novel" ecosystems. Even if they are not directly touched by bulldozers and chainsaws, they are profoundly affected by carbon emissions.

These remarks are not meant to cast shade on the metaphysical critique, with which I have a great deal of sympathy. The challenge is how to move from this critique to actionable RoN that will protect humans and nature. In particular, it is difficult to see how an alternative systems-oriented metaphysics can answer the Question of Identification in a principled way. The extensionist view is more promising in this respect, but questions about the scope of rights and how to resolve conflicts between them seem difficult to overcome.

In the end, I believe, we are thrown back on to pragmatism: we should pursue extensionism while trying to make the metaphysical critique actionable. Knowledge and empathy often grow together and, as we learn more about the natural world, our systems of protection often become more inclusive.[34] Entities whose ontological status would seem to disqualify them from legal protection are gaining advocates, legal standing, and even winning cases in some jurisdictions.[35] In addition, we should not overlook the dynamism and possibility of change within existing legal doctrines and structures.[36]

Consider, for example, climate change, which threatens catastrophe, but seems resistant to doctrinal legal remedies. In 2014 I argued that one reason for this is that climate change confounds traditional causal notions that are foundational to generally accepted notions of liability.[37] Now, nearly a decade later, the evidentiary gap

34 Dale Jamieson et al., *The Role of Agency, Sentience, and Cognition in the Protection of Aquatic Animals* (New York: Center for Environmental and Animal Protection, New York University, 2023), available at https://wp.nyu.edu/ceap/research/aquatic-animals-report-2023/.

35 See Agustín Grijalva's discussion of the Los Cedros case in this volume.

36 Douglas Kysar, "What Climate Change Can Do About Tort Law," *Environmental Law* 41, no. 1 (Winter 2011): 1–71.

37 Dale Jamieson, *Reason in a Dark Time: Why the Struggle to Stop Climate*

appears to be closing with the rise of "attribution science," an area of research that seeks to link climate change with specific extreme events.[38] This development has implications, not only for tort law but also for other areas of law, perhaps even criminal law.[39]

Doctrines can change, but so can concepts, and words can shift meanings while leaving doctrines intact. What appear to be sober causal claims are especially flexible and contextual, and open to multiple interpretations and descriptions, since they often express views about moral responsibility.[40] As Bernard Williams pointed out, "There is not, and there never could be . . . just one correct conception of responsibility. . . [W]e ourselves, in various circumstances, need different conceptions of it."[41] When faced with climate disaster, canonical notions of causation, which can seem glacial in their solidity and stolidity, may melt into air.

In this chapter I have tried to identify some philosophical challenges to RoN, as well as some pragmatic opportunities. RoN may be part of an extensionist project that will expand the domain of rights-holders, or part of an entire revisioning of the way that we

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Change Failed—and What It Means for Our Future (New York: Oxford University Press, 2014).

38 See Rupert F. Stuart-Smith et al., "Filling the Evidentiary Gap in Climate Litigation," *Nature Climate Change* 11 (June 2021): 651–55; see also John C. Dernbach and Patrick Parenteau, *Judicial Remedies for Climate Disruption: A Preliminary Analysis* (Washington, DC: Environmental Law Institute, 2023), https://www.eli.org/sites/default/files/files-pdf/Judicial%20Remedies%20for%20Climate%20Disruption_FINAL%20WORD_formatted.pdf.

39 David Arkush and Donal Braman, "Climate Homicide: Prosecuting Big Oil for Climate Deaths," *Harvard Environmental Law Review* 48, no. 1 (forthcoming 2024).

40 Christopher Hitchcock and Joshua Knobe, "Cause and Norm," *Journal of Philosophy* 106 (November 2009): 587–612.

41 Bernard Williams, *Shame and Necessity* (Berkeley: University of California Press, 1993), 5.

think about ourselves and nature. More modestly, RoN may inform and inflect existing legal doctrines in ways that provide greater protection for nature. These are early days, and there may be possibilities I have not envisioned. "Let a hundred flowers bloom!"[42]

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42 Thanks to the participants at the More-than-Human Rights Conference in Tarrytown, New York, in September 2022 (MOTH 22); Alejandra Mancilla and Christopher Shields for written comments on an earlier draft; and Douglas Kysar for helpful discussion. I have also benefited from comments by Patrik Baard whose work on this topic I have not been able to fully take on board.

PART III

SCIENCE AND STORYTELLING

"The Jungle is a Living, Intelligent, and Conscious Being"[1]:

A Conversation between
José Gualinga Montalvo and
Carlos Andrés Baquero-Díaz

The Sarayaku people of the Ecuadorian Amazon propose that human societies govern themselves according to the concept of *kawsak sacha*, or "living forest," in order to change the destructive relationships that have led the planet to climate collapse.

1 The original version of this interview was published at Sumaúma, as part of the More Than Humans Project coordinated by MOTH and Sumaúma. To learn more about this project, visit: https://sumauma.com/category/mais-que-humanes/. The interview was conducted in Spanish, and the translation into English was done by Charlotte Coombe.

I. Introduction

The Sarayaku people live in the heart of the Ecuadorian Amazon[2] on the banks of the Bobonaza River. From the forest, they have historically fought to protect their territory. As part of their actions in defense of life, they succeeded in having the Inter-American Court of Human Rights condemn the Ecuadorian state for allowing the exploration of oil without consultation in their territory and for the violation of their rights.[3] With this precedent, the Sarayaku people became an example for other Indigenous people who oppose extractive industries and the violent intrusion of extractors into their territories and their life plans.[4]

However, the fight did not end with the court decision. Since 2012, they have expanded their strategies to ensure their principles are respected by states and private actors who ignore Indigenous authorities and view their territory as a commodity.

One of these proposals is the *kawsak sacha* (living forest), a transversal axis in the struggle to defend the lives and existence of human and nonhuman beings in the Ecuadorian Amazon. The concept is part of the ancestral knowledge of the Sarayaku people and many other Amazonian peoples who have mobilized to maintain the interconnection between humans and nonhumans. Using multiple political, spiritual, cultural, and legal tools, the Sarayaku

2 "Pueblo Originario Kichwa de Sarayaku," Sarayaku, accessed March 18, 2024, https://sarayaku.org/tayjasaruta/pueblo-originario-kichwa/.

3 Povo Indígena Kichwa de Sarayaku vs. Ecuador, Inter-American Court of Human Rights (2012), https://www.cnj.jus.br/wp-content/uploads/2016/04/dd8acea6c7256808b84889d6499e6aaa.pdf.

4 To find more information about this ruling, see CEJIL, press release, "Historic Decision in Favor of the Sarayaku People Orders Definitive Deadline to Comply with IACHR Ruling," January 18, 2024, https://cejil.org/en/press-releases/historic-decision-in-favor-of-the-sarayaku-people-orders-definitive-deadline-to-comply-with-iachr-ruling/.

people want the Ecuadorian state to recognize their territory as a living being and guarantee the sovereignty of Indigenous people based on the balance that exists between humans and nonhumans.[5]

In this conversation, José Gualinga Montalvo—also known as Angun—a current advisor to the Tayjasaruta (Sarayaku Governing Council) and its former *Tayak Apu* (president), explains one of the most powerful proposals to put nature back into the center, a strategic move to confront the climate emergency that is now accelerating.

II. Conversation

Carlos Andrés Baquero Díaz (CA): What is the concept behind the *kawsak sacha* proposal?

José Gualinga Montalvo (JG): We have grown up with our grandparents, our parents, and the community, and in this process of life, our parents have always instilled in us that the forest is a living being—it is alive, and they always considered it as such. The forest and life depend on this connection; the existence of all of us depends on it. My ancestors had respect and procedures and rituals to be able to enter the jungle, to walk in this forest; that is how we grew up.

CA: How was the *kawsak sacha* proposal created?

JG: The proposal for the *kawsak sacha* declaration was created in 1986. When I was very young, I was walking with a group of people that included my dad, the wise Sabino Gualinga. We walked through the forest for eight days. And in that process, my dad was explaining to us the importance of the lagoons, the wetlands, the trees, and the mountains.

5 To learn more about this initiative, see https://kawsaksacha.org/.

There, he explained to us where they lived, where the beings were—*the Amazanga, Sacharuna,* and *Yashingu,* who are protective beings. During that walk and exchange, the concept of the *sisa ñampi,* also known as the *living path of flowers* or *border of life*, was born.

CA: What is *sisa ñampi*?

JG: *Sisa ñampi*, the *living path of flowers* or *border of life*, is an idea that was born with the objective of showing part of what our grandparents and great-great-grandparents had taught us and society in general, in Ecuador and internationally, through the action of planting flower trees to surround our territory. The border of life is a symbol of flowers, an invisible border between life and death, a symbol of life.

After many years, we had another deep expedition. We were carrying out our ancestral practices, such as hunting. I was with several of my brothers and other friends in the sacred areas of the black lagoons, in a retreat zone. On this journey, each one of us was located at a different point in order to hunt some guans[6] for our families.

At that moment, it was my turn to go back, back to where we came from. For us, going back is negative energy and it is a bit worrying and frightening. However, I was the leader of the group at the time, so I was the person who had to risk going back. The rest walked forward at the important points where the guans were singing. That was in the early morning, about 4:00 a.m.

Then, at dawn, around 5:30 a.m., the first breezes started to appear. I had caught four guans; everything was very quiet and calm—only the songs of eagles, crickets, frogs, and night monkeys could be heard. Suddenly, at that moment, I heard

6 Guans are a bird genus that live in the Ecuadorian Amazon, among many other regions.

a thunderous noise—a noise that surprised me because it was not a normal, simple sound but that of a drum. It sounded like a giant drum with a heavy vibration. It sounded very close, about 100 feet (30 meters) away. The noise began to rumble all around. Then there was no longer just one, there were more than 100 coming from different places, then about 1,000. And the sound began to surround us on all sides.

At that moment, I was afraid—I was worried because the daytime had not yet arrived, it was dark because the treetops were still blocking the light. I wanted the sun to rise. So I tied the four guans up with a vine. However, because I was nervous, I tied them wrong, and when I started to walk, the four birds broke free. After a few minutes, I managed to tie the birds correctly and continued walking towards the other people, but panicking, I lost the small trail. And I was getting more and more desperate! Sometime later, I found our trail again.

In the group there, we had a wise man with us. I found him first and asked if he had heard that sound. He responded that we had to get out of there quickly. I went out and met my brothers and the rest of the group.

When I returned to the center of the territory, I began to wonder about this noise. How to go deeper into the concept of the *kawsak sacha* [living forest]. I understood the existence of *kawsak sacha*, and the whole mystery began to revolve around this amazing and incredible sound. That was when I started researching and writing about *kawsak sacha*.

CA: And what are the concepts you wrote?

JG: Talking with the elders, with my father, in the ayahuasca ceremonies and walking in the jungle, I asked about the life of *kawsak sacha*; I was curious to discover what that mysterious and phenomenal sound was. After a while, I put everything together, and that is when the proposal of *kawsak sacha*, living

forest, the jungle of the protective beings, came about. That was my first writing on the subject. I spent more than ten years studying it.

Later, at the first Congress of the Original Kichwa people of Sarayaku, following the fight against the oil company, after we had already gone to the Inter-American Court of Human Rights, I proposed that the Assembly of the People take up the *kawsak sacha* proposal. This is one of the avant-garde proposals regarding the resistance of the Sarayaku people, in which we seek to have our territory declared a living being. And we are making progress.

After many trips, for example, to Brussels and Paris, we published the first statement in 2012. The statement proposes that our territory is alive. In 2018, for the first time, we made the statement public.

In the declaration, we explain that the forest is alive—it is a living, intelligent, and conscious being. We presented that statement in the city of Quito, and it was one of our first major events. This is a proposal for the vindication of territorial rights; it also offers a transformation and an inner change for human beings.

CA: What are these changes you are referring to?

JG: What we propose to humanity, to citizens, is to understand that we are nature—nature itself is alive and is part of us, and we are part of it. Everything we call nature, the lagoons, the trees, the marshes, the dens and burrows, everything is interconnected. And we are interconnected, our ancestors, our parents, our grandparents—we are all interconnected. This is the *kawsak sacha*—it is the jungle, the forest that is alive.

CA: Could you say a little more about the idea of interconnection?

JG: Yes, in our language, in our communication, firstly through dream visions, we communicate with the protective beings, with the *kawsak sacha*. In that form of communication, it is language between humans, between women, men, children—it is a communication that also connects with the jungle. Communication in dreams is with plants, with trees. This can be with the tree itself; it can be with the jaguar itself; and it can be the forest itself with the sacred lagoons. This is the first form of communication.

The second form of communication is through the ayahuasca rituals, the reality of the living beings—of the Indigenous peoples. There, we learn that the Sarayaku people are one inhabitant but that there are also others—we see that peoples similar to us live in the lagoons. We make friends with them—we communicate with the *Kuracas*, with the chiefs.

In that process, we find interconnectivity, and so we have made friends, and we live through that energy and that strength. That is more or less our idea.

Is our connection made through communication? Not alone—it is not simply about saying that the forest is a living being but also that it is similar to us—it is equal, and it is greater. And so with all beings, like the anaconda, for example, it is a being just like us. And, well, when do you want that communication to happen? When you come across the anaconda.

Do humans represent this being, or might it be the other way around? Yes. You can also dream of having the vision of communication with the anaconda, and you can also meet a second being at any time—for example, when a new person arrives in the community.

So we understand, for example, if a person is spiritually powerful and has positive energy. Sometimes, they bring communication with the anaconda—the message of the connection

of that anaconda is also the energy of a person and the jungle. And it is the same with the jaguar.

This is the way we coexist and connect to understand how we are—in other words, coexisting with the world, with the territory.

CA: What are the changes you seek by promoting the *kawsak sacha* proposal?

JG: With the proposal, we seek the recognition and legitimization of Indigenous governance in the territories of life/*kawsak sacha*. We seek the creation of a special category that recognizes our governance in Indigenous territories to protect our autonomy and self-government.

We also seek the recognition of the territory as a living, conscious, and intelligent being. We are looking for a special title—something that represents to us that this territory is sacred, where there is life, where there are lagoons, waterfalls, mountains, marshes, and huge trees, and where we coexist with protective beings.

This recognition of the living forest is truly the space that guarantees the intrinsic relationship we have with the non-visible world that, in our philosophy and worldview, is living territory.

In addition, this recognition allows us to possess and manage national and international funds directly to implement our life plans according to our worldview. This space is where we shape our own solutions and also develop the *sumak kawsay* [good living], finding solutions for health, education, and economic problems and for basic needs that are not being met. In other words, we seek to generate a model of community—a model of society with a high cultural level—so that our history and existence will continue.

We also seek that, within the forest, within the jungle, there is a different form of settlement: an urban development that is different from the big cities and protected beneath the canopy of trees, where roads, bridges, social life, communication, and technology are present and well developed. And our main goal is the conservation of the territory, the conservation of the living forest.

This is what we are putting forward in our proposal to legitimize the recognition of the Sarayaku territory as *kawsak sacha*. And it is also what we propose to other peoples who do not yet understand that the *kawsak sacha* proposal is a universal vindication of the territorial rights of Indigenous peoples and a transformative proposal to coexist with nature.

CA: One of the elements you have mentioned is self-governance and the connection with the *kawsak sacha*. Could you tell us about this?

JG: We have been working to generate a new model of governance, a new way of managing the territory, in which we are conscious that the territory is everything, is living. The territorial being defines governance and ways of implementing life plans and conserving the territory.

Self-governance lies in strengthening our wisdom, knowledge, practices, ancestral techniques, and so on.

In order for this proposal to be legitimized before the state, some type of law must be passed. Will it be a ministerial decree or an ordinance? We have to recognize this territory as a living territory, *kawsak sacha*. We do not want the forest to be classified within protected areas or protective forest areas or within the legal structures that already exist, such as natural parks. No, we do not want to fit into the categories that are already in use. We explicitly want the territories to be declared living forest territories, sacred territory—a living and conscious being. In

this context, we propose that our territory is a living being, and we must exercise governance according to our worldview.

Our government project includes autonomy and self-government. We are putting forward this proposal to strengthen the *kawsak sacha*, the *sumak kawsay*—the good living linked to the conservation and preservation of biodiversity, history, and the culture of all beings that inhabit the forest and life.

CA: What is the relationship of the *kawsak sacha* proposal with other Amazonian peoples?

JG: As Sarayaku people, we have promoted actions to share our experiences in the defense of our territory, as well as the proposals we have been putting together, above all, with the mission to ensure that all territories of Indigenous nationalities in the Amazon are recognized under the category of *kawsak sacha*. Many brothers and sisters have already come to Sarayaku to learn about these experiences.

We are also currently working on a proposal to present to the new government, requesting that our governance be respected as legitimate. We will continue with our efforts so that, throughout the Amazonian territory of Ecuador, all our brothers and sisters have the same strength and energy we have been building.

To be able to exist as an Indigenous people, to be able to respond to the adversities of globalization, to the financial policies of extractivist megaprojects that threaten our territories. For us, *kawsak sacha* is a proposal for peaceful resistance, and it is also a political, legal, and scientific strategy.

CA: What kind of relationships have you established with non-Indigenous sciences?

JG: Lately, in the context of this climate and the social and political crisis we are going through globally, some very interesting

things have been happening. Today, let's say, science is getting closer. We have also grown closer with scientists so that they can learn from ancestral knowledge, that we can listen and share—to tell them about our wisdom and knowledge.

Our aim is to achieve a link between scientific knowledge and Indigenous wisdom. We have been making progress in this; we are very interested in how we can share our wisdom on the philosophy that the forest, the Pachamama, is a living being and how this can be understood within the framework of non-Indigenous science.

We want not only to reach academia but also for our knowledge to be seen as a contribution to the fight against the climate crisis we are experiencing. We want to achieve a significant convergence between science and ancestral knowledge.

CA: You have already won a case in the Inter-American system and are now litigating a case before the Constitutional Court of Ecuador, precisely on these issues. In this process, what is the role of law?

JG: In the case that we brought before the Inter-American Court of Human Rights, one of the significant and compelling arguments was the *kawsak sacha* proposal. The relationship, connection, and coexistence that the Sarayaku people have with the territory—with the living jungle. This was one of the most important arguments when it came to the court considering our case and recognizing the rights violations we had suffered due to the interference of the state and the CGC oil company in our territory without consultation. And it condemned Ecuador as a violator of collective rights.

However, part of the international judgment has not been followed. Therefore, we have filed a non-compliance lawsuit before the Constitutional Court of Ecuador, and we have already had a first hearing.

We are waiting for the government to comply with the ruling of the IACHR, especially the removal and neutralization of the 1,400 kg of explosives that are still in our territory and that were placed there for the purposes of exploration without consultation. We also seek compliance with the measures of non-repetition ruled by the court.

There are still many oil blocks affecting parts of the Sarayaku territory. When there are concessions or bidding actions to tender these oil blocks, territories are affected, and non-repetition measures are violated.

Also, free, prior, and informed consent should be protected. We want the court to recognize that our territory is a living forest: it is sacred, it is a living being, and it is being affected by the violations that have been made against it, for example, with the planting of explosives.

CA: How might other people get involved with the *kawsak sacha* case?

JG: Our proposal as Sarayaku has always been aimed at joint action. We have designed a strategy—a platform to share with other peoples—not only in Ecuador, not only in Latin America but throughout the continent—on all continents where Indigenous and non-Indigenous peoples live.

We want to, and want others to, bring this proposal that our territories are subject to rights—that they are intelligent and conscious from a spiritual, philosophical, and scientific point of view. And to protect this balance, we call for models of governance, autonomy, and self-determination in which Indigenous peoples and their authorities play a fundamental role.

It is vital to unite under the platform of the idea of the *kawsak sacha* philosophy so that we can all take action: call for the various governments in office and authorities, ministries,

and multilateral organizations to recognize that our territories are living beings.

I believe that this platform—this unity—will give us strength in the struggle that all Indigenous peoples are facing. This is my call to unity, to consolidate the thousand-year-old vision that does not belong solely to the Sarayaku people but to all peoples. In other languages, in other Indigenous languages, I know that there is this philosophy of a living, conscious, and intelligent being that is the *kawsak sacha*.

We, as Sarayaku, have decided that this is the beginning of all things, that all the programs and projects and the entire vision must be framed within the global platform of the *kawsak sacha* philosophy. In this process, extractivism is excluded, and we seek other alternatives inspired by the life of the *kawsak sacha*, the living forest.

Journey to the Cedar Wood

Robert Macfarlane

The best arguments in the world won't change a person's mind. The only thing that can do that is a good story.

—Richard Powers, *The Overstory*, 2018

Because I am, I suppose, a storyteller as well as a scholar, I want to begin this chapter with a story. One of the oldest of stories, in fact, which I hope might offer a valuably long view of several of the issues close to the heart of the contemporary rights of nature field. The story comes from the *Epic of Gilgamesh*, the earliest written narrative poem in world literature, which was first set down in the Sumerian language as cuneiform script on baked-clay tablets,

the oldest of which have now been dated to around 2200 BCE. Central to the Sumerian *Gilgamesh*, and indeed to all subsequent versions—including the Standard Babylonian version, upon which most modern translations of *Gilgamesh* are chiefly based—is an episode known variously as "The Cedar Forest" or "The Cedar Wood."

"The Cedar Wood" describes how the god-king Gilgamesh and his wild friend Enkidu set out on foot to a distant forest of cedars in an expedition that, at least at first, has the feel of a military raid, a test of masculinity, and a devotional ritual, all at once. Before Gilgamesh and Enkidu reach it, the Cedar Wood is a sacred and sentient place. In language unusually ornate for Akkadian poetry, the epic underscores the forest's harmony and beauty: the call-and-answer of birdsong "fill[s] the forest with resounding joy," in Sophus Helle's recent translation.[1] Andrew George and Farouk Al-Rawi note that the Cedar Wood episode contains "one of the rare passages of Babylonian narrative poetry that is given over to the description of nature"[2]: it has, therefore, a strong claim to being the earliest known passage of nature writing in any language. In the Standard Babylonian version, the Cedar Wood is specifically characterized in animist terms; it possesses agency, voice, and awareness. It "exults" (George's translation),[3] it has a "mind" (Helle's translation)—the "mind of the forest."[4]

Protecting the wood is a guardian forest spirit called Humbaba. Humbaba is a shape-shifting being—only described in the poem by means of metaphor rather than denotative language—whose seven

1 Sophus Helle, *Gilgamesh* (New Haven, CT: Yale University Press, 2021), 43.

2 Andrew George and Farouk Al-Rawi, "Back to the Cedar Forest: The Beginning and End of Tablet V of the Standard Babylonian Epic of Gilgamesh," *Journal of Cuneiform Studies* 66 (2014): 69.

3 Andrew George, *The Epic of Gilgamesh* (London: Penguin, 2019), 37.

4 Helle, *Gilgamesh*, 190.

magical auras give him the power to exclude those who would harm the forest's heart. He is, explicitly, a manifestation of the Cedar Wood's ancient life and liveliness. He also, of course, represents the Indigenous human presence in the forest.

After many days' travel, Enkidu and Gilgamesh reach the Cedar Wood's brink, armed with huge swords and with axes weighing 120 pounds each. There, on the edge of the forest—in a resonantly dramatic pause—they hesitate, struck into awed silence by what lies before them, "marvelling . . . at the lofty cedars."[5] This moment of mute hesitation is, we might say, the instant in which post-Mesolithic human history trembles on the brink of a new, maximally extractive-destructive relationship with nature. There is still time to step back, to turn away, and to leave the forest undesecrated.

This does not happen. Gilgamesh and Enkidu cross the threshold and devastate the forest. "Destroy Humbaba, the guardian of the cedars," cries Enkidu to Gilgamesh, "Destroy him, kill him! Crush his mind!"[6] First—in a preperformance of colonialism's treatment of countless Indigenous communities—they systematically strip Humbaba of his protective auras, rendering him helpless and hopeless. Humbaba begs for mercy and offers an annual tithe of lumber in return: a tenancy relationship with these new masters. Enkidu and Gilgamesh ignore his pleas and, in a shocking spree of violence, cut off his head with their axes, tear the tusks from his jaws, and then slice out his lungs, which Enkidu grips by the windpipe and holds aloft.

Once Humbaba is dead, the two raiders turn their axes upon the trees themselves. They transform "the forest into a wasteland."[7] Gilgamesh cuts down the trees as far as the bank of the Euphrates,

5 Helle, *Gilgamesh*, 43.

6 Helle, *Gilgamesh*, 49.

7 Helle, *Gilgamesh*, 53.

while Enkidu locates the best timber from the felled cedars. The tallest of the trees is felled to fashion a temple door. They craft a raft from trunks and branches, load it with cedarwood and (probably—the text is unclear on this) the head of Humbaba, and set sail on it for their home city of Uruk. Uruk gives its name to modern-day Iraq, but we might also think of it as the *ur*-city, symbolically assuming an exploitative posture toward the wild periphery or nature.

As a result of Enkidu and Gilgamesh's actions in the Cedar Wood and afterward, disaster ensues: in the Seventh Tablet of *Gilgamesh*, we learn that the gods are so appalled by Humbaba's murder and the gratuitous devastation of the Cedar Wood that they avenge these acts, sending a sickness to slay Enkidu. Enkidu's death in turn raises a storm of grief in Gilgamesh that maddens him, driving him far from his city and his people.

"The Cedar Wood" episode is an astonishing story—an epic within the epic. In terms of genre convention, it fulfills the need for a testing journey in which the heroes can prove their might. Historically viewed, it is a military raid targeting the timber-rich resources of a neighboring realm—probably what is now Lebanon, where cedars grew in abundance—in order to plunder building materials for the timber-poor Mesopotamian region. It is also a warning that rings eerily clear—at least to my ear—across four millennia. For, in a chillingly specific way, Enkidu's death from a punitive disease following his devastation of the cedars is premonitory of the zoonotic spillover diseases (COVID-19 among them) that have arisen with such consequence from modern practices of deforestation and habitat destruction.

Intention is hard to reconstruct in a twenty-first-century poem, let alone one first set down more than four thousand years ago, but there are also strong signs that "The Cedar Wood" episode is intended as a parable of environmental mismanagement. Helle suggests that "Gilgamesh's crime," as judged by the gods, "is not that he defeats Humbaba, but that he turns down Humbaba's offer

to remain in the Cedar Forest and act as his vassal."[8] I read the episode differently, agreeing more with Helle's later point that the contrast between the lushly detailed living forest, and the bluntly razed "wasteland," is "the closest Babylonian literature comes to an ecological critique."[9]

Thought of in terms of the contemporary rights of nature movement, "The Cedar Wood" episode of *Gilgamesh* openly offers a critique of the processes of de-animation and exploitation so often directed at earth entities, such as forests, rivers, and mountains, as well as the peoples who dwell with and within such entities, and recognizes their inherent animacy. The causal sequence runs as follows: at first the Cedar Wood is complexly, beautifully alive—*vivid* in the old sense of the word. Once its animacy has been violently suppressed, the wood may be rendered into pure resource, ready for extraction and conversion into goods. The cedars are wantonly felled, the forest razed into a wasteland—and calamity follows, in the form of disease, grief, and the destabilization of the governmental systems that enabled and encouraged the journey in the first place.

De-animation, exploitation, immiseration, global precarity: so the history of extractivist relations with the living world has proceeded in the four thousand years since *Gilgamesh*, bringing millions of people unimaginable affluence and material ease, immiserating billions more, and pushing the planet to the crumbling ecological edge upon which we presently stand. Uncanny, brutal, and catastrophic, "The Cedar Wood" episode is, we could say, the first of the tellings of all of the fellings.

8 Helle, *Gilgamesh*, 206.

9 Helle, *Gilgamesh*, 206.

Ecuador's Modern-Day Cedar Wood

I have recounted and analyzed this episode in *Gilgamesh* in detail partly because I am fascinated by it; partly because—as I'll discuss below—there is a contemporary "Cedar Wood" that is currently threatened by destruction, which has recently being partially protected by a powerful rights-of-nature ruling; and partly because one way to characterize the rights-of-nature field is as a powerful and growing counterforce that seeks to reverse the processes of de-animation, destruction, and extraction first dramatized in *Gilgamesh*. Across diverse landscapes and lawscapes, rights-of-nature declarations often name their subjects (rivers, forests, mountains, etc.) first as animate (from the Latin *anima*, meaning "spirit" or "life"), and then by extension as rights-bearing juristic "persons." As the Indian rights-of-nature thought-leader and activist Shrishtee Bajpai has put it: "a series of events by courts or governments across the world has made the beginning of a radical shift from an extractive mindset to one where nature is being understood as a living being."[10]

A version of the Cedar Wood of *Gilgamesh* exists in Ecuador. Northwest of Quito, eighty miles or so south of the Colombian border, is a 4,800-hectare area of cloud forest and premontane tropical forest known as Los Cedros—the Cedars. An exceptional 85 percent of Los Cedros is still primary forest (i.e., it has never been disturbed at scale), and the forest is contained within the Chocó phytogeographical region, one of the most biologically diverse and endemic habitats on Earth. Los Cedros is currently home to around two hundred species at high risk of extinction, five of which are on

10 Shrishtee Bajpai, "A Living Hill: Reflections on Animistic Worldviews, Stories, Resistance and Hope," Heinrich Böll Stiftung, September 10, 2020, https://in.boell.org/en/2020/09/10/living-hill-reflections-animistic-worldviews-stories-resistance-and-hope.

the Ecuadorean government's "critically endangered" list.[11] It also protects the headwaters of four major river watersheds and the populations (human and other-than-human) who thrive on those rivers downstream. There are more than four hundred bird species at Los Cedros, including more than a dozen species of glittering hummingbirds, as well as six species of cats, including ocelot, puma, and jaguar. The invertebrate population is beyond expression: hundreds of species of moth and butterfly, countless bees, beetles, and flies, many as yet unrecorded by scientists. Research by mycologists have identified 727 unique species of fungi in the Los Cedros Reserve, representing 229 genera, 101 families, forty orders, and seventeen classes in four different phyla.[12]

In 2017 the Ecuadorian government announced hundreds of new concessions for mining exploration, spread over 2.9 million hectares of the nation.[13] Many of those concessions overlapped with protected forests (so-called *Bosques Protectores*, of which Los Cedros is one; the designation is relatively weak in terms of protection and conservation), Indigenous territories, headwater ecosystems, and biodiversity hotspots, in direct violation of Ecuador's globally famous 2008 constitutional guarantee to recognize and respect the rights of nature. Two of those concessions were granted within the bounds of Los Cedros. A small Canadian mining company, Cornerstone Capital Resources (CCR; since absorbed by a much larger

11 "Ecuador: Los Cedros Reserve," Rainforest Concern, accessed July 12, 2023, https://www.rainforestconcern.org/projects/los-cedros#:~:text=Los%20Cedros%20Reserve%20protects%20over,government%20(*Roy%20et%20al.

12 R. Vandegrift, D.S. Newman, and B.T.M. Dentinger et al., "Richer than Gold: The Fungal Biodiversity of Reserva Los Cedros, a Threatened Andean Cloud Forest," *Botanical Studies* 64, no. 17 (2023), https://doi.org/10.1186/s40529-023-00390-z.

13 "Los Cedros and the Rights of Nature," Los Cedros Reserve, accessed July 12, 2023, https://loscedrosreserve.org.

Australian mining conglomerate), was given a permit for gold and copper exploration in cooperation with the Ecuadorian state mining body, ENAMI—despite the Ministry of Environment's own specification of Los Cedros as among its "Areas of Priority for the Conservation of Biodiversity in Ecuador."[14]

A protracted legal battle to protect Los Cedros was subsequently initiated by the reserve's founder and former owner, Josef DeCoux, who felt that conventional forms of protest against the concessions had reached the end of the road and that the courts were the only recourse left to him to protect Los Cedros. Working with a criminal (rather than constitutional) lawyer, DeCoux brought a case that slowly moved upward from the provincial courts all the way to the Constitutional Court of Ecuador. On November 10, 2021, to worldwide interest, and to the surprise of many in Ecuador, the constitutional court ruled that the Los Cedros Reserve should be protected from activities that threaten the natural rights of the forest. This case for the first time explicitly applied Ecuador's constitutionally guaranteed rights of nature to legally titled "protected forests"—and its force was considerable. ENAMI and CCR were compelled to suspend their activities in the area and to evacuate their machinery and infrastructure. The ruling was described as the "case of the century" in respect of the precedent it sets for future comparable actions in other jurisdictions where the rights of nature are guaranteed at constitutional level, as well as the precedent of support it provides for other Ecuadorian communities and ecosystems threatened by large-scale extractivism.[15]

Eight months after the ruling was handed down, I cointerviewed two of the key actors in the case: DeCoux and Justice

14 "Los Cedros and the Rights of Nature."

15 Rebekah Hayden, "Saving Los Cedros Is 'Case of the Century,'" *The Ecologist*, November 26, 2020, https://theecologist.org/2020/nov/26/saving-los-cedros-case-century.

Agustín Grijalva Jiménez, the judge and academic who handed down the 124-page ruling on the case. These conversations with DeCoux and Grijalva Jiménez were revealing of the complexities surrounding the ruling's derivation, implementation, and consequences.[16] Until the November ruling, Grijalva Jiménez explained, the constitutional articles guaranteeing the rights of nature in Ecuador had rarely been given force through legal expression, though a number of courageous rulings by lower-court judges had used the constitutional articles concerning rights of nature to delay, if not to evict, mining activity elsewhere in Ecuador. "We tried to go beyond what these judges had contributed," Grijalva Jiménez said, and to "understand that the rights of nature is a worldview in which natural living *systems* are holders of rights." The constitutional guarantee of Pachamama/Mother Nature's "right to existence and its right to re-generation," he said, gave him vital legal "leverage"; "Our huge advantage was that [rights of nature] is in the constitution!"

When I asked Grijalva Jiménez about the definition of *life* that he and his team had arrived at concerning Los Cedros (i.e., the nature of *aliveness* or beinghood inherent in the forest, of which the ruling protected the rights), he said that "the forest helped us": an openly animist phrase that recalls the reference in *Gilgamesh* to the forest's "mind." Grijalva Jiménez principally meant that Los Cedros's astonishing abundance and diversity of life—as recorded in the substantial body of published scientific papers concerning floral-faunal-fungal-invertebrate life in the region, many of which were submitted as evidence in the case—offered considerable cumulative testimony to what was at stake in terms of the preservation of "life" in the reserve, or the prevention of its flourishing. By contrast, Grijalva Jiménez said he was taken aback at how little

16 All subsequent quotations from DeCoux and Grijalva Jiménez, personal interviews with the author and César Rodríguez-Garavito, June 24, 2022, and June 17, 2022.

scientific-biological evidence the mining companies and the state were able to provide concerning the territory under threat of exploitation. "It shows how the state in Ecuador doesn't really have [a] scientific basis on which to apply environmental regulations," he said; "as a judge, this helped me in the argument."

In other phrases that were strikingly animist in tone, Grijalva Jiménez told us in the interview that "the strong voice of life" (i.e., of the forest) had proved "stronger than even the legalistic framework" and that he and his fellow justices had all felt "the call of life" in and from Los Cedros. He praised the important roles played by writers, artists, photographers, and filmmakers, as well as scientists, in evoking the uniqueness of Los Cedros to the judges; he also drew attention to the testimony of Indigenous people of the region, among them the mayor of Cotacachi, who spoke in Kichwa at the opening of the hearing, developing what Grijalva Jiménez described as "the Indigenous view of Nature as Mother." By testifying evocatively to Los Cedros's aliveness, Grijalva Jiménez said, these various contributions helped "make sensible to the judges" something of the irreplaceable uniqueness of the habitat: "If you see all that beauty, all that biodiversity, all that *life*, emotions play a role." Toward the end of our interview, he said that in his ruling he had tried to use "language with aesthetic and emotional dimension" and that he was glad that some ecologists had described parts of his ruling as "like poetry." The Ecuadorian constitutional commitment to the rights of nature, Grijalva Jiménez declared in the text of his ruling, "is not rhetorical lyricism, but a transcendent statement and a historic commitment, which, according to the constitution, calls for 'a new way of living together as citizens, in diversity and harmony with nature.'"[17]

17 Agustín Grijalva Jiménez, Judgment for CASE No. 1149–19-JP/20, Corte constitucional del Ecuador, Quito D.M. November 10, 2021, 31, 10. Translated by DeepL from Spanish into English; italics present in the original.

The interview with DeCoux revolved more around the on-the-ground consequences of the ruling and the considerable challenges of its implementation. On the positive side, DeCoux confirmed that the mining companies had entirely pulled out their operations from Los Cedros. However, local opinion in several of the communities that border Los Cedros has been shifted against the reserve and DeCoux. "You have to understand that this area [has become] totally controlled by mining company interests," DeCoux told us, describing how mining companies had pursued a "socialization" process of creating animosity toward the reserve and weaning people off farming livelihoods and onto mining company money. Over time, this had "turn[ed] us," DeCoux said, "into the villains of the place." Following the November ruling, the mining companies gathered their local workforce in three of the communities and fired around forty people. "I had the communities on my side," DeCoux told us, "but today they're after my throat." Furthermore, though the companies have pulled out on the ground, the footprint of their leases has not yet been removed from the Ecuadorian government's master map of mining concessions. DeCoux calculates that this removal will require further legal action and, until it does, the Cedar Forest's staggeringly abundant life remains under threat. "Nobody trusts the . . . government not to reissue the mining concessions," said DeCoux. "We still have mining concessions on top of us, which are going to be hellish hard to move."

Versions of Personhood

Though the cases of these two Cedar Woods are separated by more than four thousand years, clear elective affinities exist between them—and both also provoke certain questions that are central to broader modern rights-of-nature thinking; questions that I would like to conclude this essay by exploring a little further. Three issues in particular declare themselves. The first concerns the causes, risks, and

gains of the common conceptual slippage in rights-of-nature discourse between the categories of what might be called (Western) "legal personhood" and (animist/Indigenous) "ancestral personhood", as assigned to rivers, mountains, forests, and other earth entities. The second, relatedly, concerns the definitions of *aliveness*, *being*, or *life* in respect of such earth entities. The third concerns the roles of art in shaping and communicating rights-of-nature thought and rulings.

Turning in more detail to the first and second of these issues: these two broad categories of "legal" and "ancestral" personhood are often either collapsed into one another in rights-of-nature discussions or required to impersonate one another—while in fact remaining distinct entities. One aspect of this category confusion concerns the well-known problem of corporations or limited-liability companies already possessing legal personhood in the eyes of national and international law. How is it possible to recognize the rights-bearing beinghood of a river or forest in ways that are philosophically and legally category-distinct from "other-than-human" entities or systems, such as corporations, that function in blind fealty to fiduciary duty and are frequently the means of bringing destruction to rivers and forests? The confusion of legal and ancestral personhoods can also bring considerable risk of colonization by stealth of Indigenous law and ontology as they become entangled with liberal-legal conceptions of personhood and rights.

For example, as discussed in their excellent recent article on riverine rights, Elizabeth McPherson and Rahul Ranjan et al. note that the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 in Aotearoa/New Zealand has been criticized by Indigenous scholars such as Carwyn Jones for failing to recognize the key discrepancy that exists in the act between "legal personality" as understood within Western rights law and the "Māori worldview that natural landscape

features have their own *mauri* (or life force)."[18] Contrastingly, Alessandro Pelizzon and Anne Poelina et al., in their work on the Martuwarra River in Western Australia (and other riverine cases, including the Whanganui and the Atrato), find that rights-of-nature rulings—precisely *because* they are required to accommodate spiritual, ancestral, and sacred visions of rivers, forests, and mountains—are already disrupting the "materialist ontology" of traditional legal personhood into/toward "a pluralist, ecological and integrated worldview."[19] They note, among other examples, that the Waitingi Tribunal, which laid the groundwork for the Te Awa Tupua Act, characterized the river "in language that reflects the living, sacred and ancestral elements as well as the idea of voice," and they conclude that many of the riverine rights judgments are, in fact, and excitingly, "gesturing toward an even more distinct category of personhood, one in which the plurality of worldview often demonstrated by the many Indigenous peoples involved is reconciled in novel terms."[20]

One of the distinctions between legal and ancestral personhood relates to the conception of *life* that inheres in these categories. Broadly put, the animist recognition of *personhood* in a forest, river, or mountain seeks to name and honor the compound, interdependent more-than-human life present in that earth entity and often also seeks to name and honor the reciprocity of that life with human

18 Elizabeth Macpherson, Axel Borchgrevink, Rahul Ranjan, and Catalina Vallejo Piedrahíta, "Where Ordinary Laws Fall Short: 'Riverine Rights' and Constitutionalism," *Griffith Law Review* 30, no. 3 (2021): 461.

19 Alessandro Pelizzon, Anne Poelina, Afshin Akhtar-Khavari, Cristy Clark, Sarah Laborde, Elizabeth Macpherson, Katie O'Bryan, Erin O'Donnell, and John Page, "Yoongoorrookoo: The Emergence of Ancestral Personhood; Martuwarra River of Life," *Griffith Law Review* 30, no. 3 (2021): 514, 516.

20 Alessandro Pelizzon, Anne Poelina, Afshin Akhtar-Khavari, Cristy Clark, Sarah Laborde, Elizabeth Macpherson, Katie O'Bryan, Erin O'Donnell, and John Page, "Yoongoorrookoo: The Emergence of Ancestral Personhood; Martuwarra River of Life," *Griffith Law Review* 30, no. 3 (2021): 515.

forms of well-beinghood. But how is this life to be recognized or measured? Is it in some way quantitative and transferable? Is it a site-specific biocultural property, differently textured and manifested across human and more-than-human geographies? Is it a force, indefinable in language but unmistakable in encounter?

The "new animisms" of which I, Amitav Ghosh, and Graham Harvey, among others, have written speak to the diverse contemporary ways in which forms of life are being recognized in places and earth-beings who have historically been placed, at least in Western post-Cartesian worldviews, as beyond the shifting frontier that separates "life" from "not-life." One of the issues under dispute in the Los Cedros judgment was that of the "liveliness" or "aliveness" of the forest. This was demonstrated to Grijalva Jiménez and his team principally by scientific research papers but also in nonquantitative, holistic, even mystical ways that have left their residue both in the formal language of Grijalva Jiménez's judgment and in his accounts of how "the forest . . . spoke" to him and his colleagues.

New-old animisms are invigorating many forms of environmental activism and protest at the moment, within and beyond the rights of nature field. In April 2021, for instance, a group of Indigenous women wrote to President Joe Biden to seek his protection of their sacred lands of Bears Ears, the desert region that then president Trump, with the connivance of Ryan Zink, had attempted to delist as a scheduled ancient monument, in order to issue mining permits for the area. "Our histories run deep," the open letter from the women to Biden began: "We relate to these lands who are alive. We know the names of the mountains, plants and animals who teach us everything we need to know to survive."[21] Note the use of *who*, here, rather than *that*: "these lands *who* are alive . . . the mountains

21 Elouise Wilson, Mary R. Benally, Ahjani Yepa, and Cynthia Wilson, "Women of Bears Ears Are Asking You to Help Save It," *New York Times*, April 25, 2021.

who teach us." This is the "grammar of animacy" at work, to borrow Robin Wall Kimmerer's memorable phrase for language use that recognizes aliveness and reciprocity in the other-than-human world.[22]

Comparably, during the Standing Rock protests of 2016, a central premise of the resistance movement was that the Missouri River was *alive*. "When we cross the river, we pray to the river. We have a connection to the river," said LaDonna Brave Bull Allard, tribal historian and cofounder of the water protector camps at Standing Rock, "The river is a living being and water is the first medicine of the world."[23] This belief in a sacred, living river helped forge transnational connections between Indigenous and non-Indigenous groups from around the world; many who came to the protest site brought bottles of water from their own rivers and emptied them into the Missouri, symbolically creating a global confluence of living waters. *Underland*, my last book, was about the deep-time ethical and political imperative to "be good ancestors."[24] Compellingly, at least to me, many Indigenous-led rights-of-nature campaigns recognize rivers, mountains, and forests explicitly as both "ancestors" *and* "inheritors." That is to say, they complicate the time-flow of ethical responsibility and ask us to be good ancestors *to our ancestors*—for our river-ancestors will, in time, become our river-descendants; we have a responsibility both upstream and downstream in time to them.

For some time now I have been recording signs of a surging and widespread *public* (and non-Indigenous) animism, flourishing in surprising places and, particularly, as a response to contemporary ecological damage and climate grief. In July 2019, for instance, a funeral service was held for the Okjökull (OK) glacier in Iceland,

22 Robin Wall Kimmerer, "Speaking of Nature," *Orion Magazine*, June 14, 2017.

23 Quoted in Bajpai, "A Living Hill," 2020.

24 Robert Macfarlane, *Underland*: *A Deep Time Journey* (New York: W.W. Norton, 2019).

the first glacier to "die" from climate change. More than a hundred mourners attended, including Iceland's prime minister, Katrín Jakobsdóttir, and former UN human rights commissioner Mary Robinson. *Glacier death* is a term used by glaciologists to designate the point where a glacier is diminished to the extent that its movement is stilled; it ceases to be a glacier and instead becomes a snow field. Coverage of the funeral service went globally viral; the event seemingly keying into a shared sense that we live upon an Earth increasingly stricken by the "double death" identified by the anthropologist Deborah Bird Rose—the doubleness, that is, of life being lost in the moment and with it the possibility of future flourishing, of life to come, thus also being diminished.[25] In 2020, after the Clark Glacier in Oregon was declared dead, the Oregon Glacier Institute organized both a funeral and a vigil for the ice; last year the death of the Basòdino Glacier in Switzerland resulted in a funeral so well attended that shuttle buses had to be hired to transport mourners to and from the site. Even if, in many of these cases, people have not truly believed that the glacier or river in question is a living or dead being, they have thought and behaved *as if* it were alive or were dead, and this *as-if* animism is, it seems to me, increasingly proving a force in its own right, as a catalyst for environmental activism generally, and for rights-of-nature campaigns specifically—including the young but vigorous campaign to assert the rights of my home river, the River Cam (which gives its name to Cambridge).[26]

I turn finally to the third question raised by comparison of the two Cedar Wood cases: that of the roles of art in rights-of-nature discourse and ruling. In Grijalva Jiménez's interview with us—and

25 Deborah Bird Rose, "Multispecies Knots of Ethical Time," *Environmental Philosophy* 9, no. 1, Special Issue: Temporal Environments: Rethinking Time and Ecology (Spring 2012): 127–40.

26 Lottie Limb, "River Cam Becomes First UK River to Have Its Rights Declared," *Cambridge News*, June 22, 2021.

subsequently in conversation at Los Cedros itself, which Grijalva Jiménez and I visited together, along with other field biologists, artists, activists, and lawyers in October–November 2022—he discussed how important various artistic testimonies to Los Cedros had been during the judicial process in shaping and influencing his and his colleagues' judgment. He also noted, with quiet and rightful pride, the "poetic" aspects of the language he had used in formulating his ruling. Similarly, the two rights-of-nature rulings handed down by the Uttarakhand High Court in 2017 were also both experimental in terms of what might be called their "creative writing," drawing as they did upon literary, legal, and devotional sources (the sacred ecologies of Hinduism) in articulating their arguments and conclusions.[27]

Here and elsewhere, I think, we are seeing examples of the disruptive power of rights-of-nature thought not only upon existing legal structures but also upon legal language, whereby efforts to give voice and representation to relational understandings of "beinghood" in respect of rivers, forests, and mountains are bringing about hopeful and long-overdue metamorphoses of the lawscape. As Ghosh writes, the emerging rights-of-nature field is "a profoundly hopeful development, because it indicates that even courtrooms, which are among the most redoubtable citadels of official modernity, are increasingly susceptible to the influence of that subterranean river of vitalism, which, after having been driven underground for centuries, is now once again rising powerfully to the surface around the world."[28]

More widely in the rights-of-nature field, literature and art are also often offering ways to see through and around what Rachele

27 Lalit Miglani v. State of Uttarakhand and Others, WPPIL 140/2015 (High Court of Uttarakhand 2017); Mohd Salim v. State of Uttarakhand and Others, WPPIL 126/2014 (High Court of Uttarakhand 2017).

28 Amitav Ghosh, *The Nutmeg's Curse: Parables for a Planet in Crisis* (London: John Murray, 2021), 238.

Dini has called the "regimes of perceptibility" concerning environmental damage—that is to say, the systematic means used by state and corporate power to render invisible the slow violence of pollution and degradation that almost always arises from large-scale extractivist projects.[29] Fiction, poetry, nonfiction, music, film, and numerous other art forms, including oral storytelling and song, are proving surprisingly, even uniquely, capable of detecting, reckoning with, and conveying the human and more-than-human fallouts of ecological damage, in ways that exceed the capacities of other forms of discourse and representation (e.g., judicial, journalistic, regulatory).

In keeping with this idea, I end this essay with a section from Stephen Mitchell's translation of the *Epic of Gilgamesh*, where Enkidu and Gilgamesh arrive at the Cedar Wood:

> They had reached the edge of the Cedar Forest.
>
> . . . They stood and listened. A moment passed.
> Then, from heaven, the voice of the god
> called to Gilgamesh: "Hurry, attack,
> attack Humbaba while the time is right,
> before he enters the depths of the forest,
> before he can hide there and wrap himself
> in his seven auras with their paralysing glare.
> He is wearing just one now. Attack him! Now!"
> They stood at the edge of the Cedar Forest,
> gazing, silent. There was nothing to say."[30]

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29 Rachele Dini, "'Resurrected from Its Own Sewers': Waste, Landscape and the Environment in J. G. Ballard's 1960s Climate Fiction," *ISLE: Interdisciplinary Studies in Literature and Environment* vol. 28 issue 1 (Spring 2021): 212. I'm grateful to Dr. Rob Newton for directing me toward Dini's work.

30 Stephen Mitchell, *Gilgamesh: A New English Version* (New York: Free Press, 2004), 116–17.

Honoring the Wild Proliferation of Earthly Perspectives: A Conversation

Merlin Sheldrake and David Abram

A few weeks after the inaugural More Than Human Rights (MOTH) symposium, which happened in upstate New York in late September 2022, Merlin Sheldrake and David Abram sat down for an informal conversation sparked by various interactions and topics that arose at the gathering.

David Abram: The symposium was for me an eye-opening encounter with courageous judges, lawyers, philosophers, scientists, and legal scholars from different lands, all of whom are in heartfelt service to something much larger than ourselves—larger than our individual and egoic concerns, larger even than the

well-being of our particular species. We were all drawn together by our bodacious love and concern for the wider and much wilder community of earthly agencies, for the whole cantankerous collective of what you so aptly call "entangled life." And this made for a very convivial gathering indeed, surging with reflective insights and conundrums, but one that also held space for grief—the grief that most of us were carrying in relation to the vast and unprecedented losses in the human and more-than-human community—and also for some music-making. Each of these are necessary ingredients for any sort of wisdom—for thinking, that is, not just with our abstract intellects, but with the whole of our creaturely selves, reflecting with the entirety of our feelingful, intelligent organisms. Our sensate bodies, after all, provide our sole access to all these other animals, to the plants and the fungi, to the rainforests, the rivers, the surging winds and the gathering storms.

Merlin Sheldrake: I found this convergence enormously inspiring. I was left with a sense that interdisciplinarity is a superpower. This is a recurring theme in the history of life: by coming together, radically different organisms can extend their reach and achieve things that none of the individual players—whether bacterium, alga, fungus, animal, plant—could achieve by themselves. Lichens are wonderful examples of this. When a volcano creates a new island in the middle of the Pacific Ocean, the first things to grow on the bare rock are lichens, which arrive as spores or fragments carried by the wind or birds—likewise when a glacier retreats. Whenever it was that lichens occurred for the first time, their very existence implies that life outside the lichen was less bearable. Viewed in this way, lichens' *extremophilia*, their ability to live life on the edge, is as old as lichens themselves, and a direct consequence of their symbiotic way of life. I had the sense that one of the things we were doing was exploring

ways to form a lichen that could rise to the many challenges of reimagining legal frameworks in our times.

From my perspective as a biologist, interdisciplinarity is satisfying for other reasons. What we call arts and sciences both arise from our faculties of imagination, wonder, and curiosity—regarding the phenomena unfolding around us and regarding our own ability to meaningfully experience these phenomena. The bifurcation between the "sciences" and the "arts"—itself founded on a centuries-old bifurcation of the world into "primary" *quantities* and "secondary" *qualities*—has erected all sorts of confusing boundaries that we stumble over, mistaking them for natural features of our minds. Scientists, lawyers, judges, artists, and philosophers are—and have always been—emotional, creative, and intuitive, whole human beings, navigating worlds that were never made to be cataloged and systematized. All have to interpret and communicate their insights, often ambiguous, uncertain, and contradictory, using imaginative language composed of metaphor and analogy. I think we'd all have much more fun if we could dispel the delusion that these activities belong in entirely different departments of human life.

David: I completely agree with you; interdisciplinarity is a superpower. Many of the matters that snagged my attention at our gathering had to do with language—with how we choose to articulate certain conundrums, with the words and phrases that we deploy in order to make sense of things. Obviously, this has particular import when we're speaking of the law, where phrases are codified in a manner that will inform legal cases sometimes far into the future. And the ways that we speak profoundly influence our sensory experience. Words have this remarkable efficacy, a kind of dangerous but splendid magic: they transform the world by altering our *perception* of the world. Words

can enliven our senses, opening a wild and luminous vibrance in things we earlier took for granted—the soil underfoot, for instance, or a river, or even the wind blustering its way through the city streets. But words can also stop up our ears and cloud our eyes, stifling our spontaneous somatic empathy with other beings and with the animate landscape surging and gesticulating all around us.

One topic that came up over and again at our gathering had to do with the question of how we refer to those more-than-human entities to which—or to *whom*—we accord rights. Such entities may be entire species of animals or plants or fungi, or particular populations, or individual organisms. More commonly they might be ecosystems: river systems or forests or wetlands or particular mountains. But in order to ensure that an entity has legal standing, that an ecosystem has or holds inherent rights that can be defended in a court of law—the right to flourish, for example, and to cyclically replenish itself without disruption by excessive dumping of human-generated toxins—many insist that such entities be recognized as "legal persons." In order to have legal standing, they say, a threatened wetland should be accorded "legal personhood."

Clearly, this is a result of the circumstance that, until recently, human persons (and human organizations) were the sole holders of rights—as in the inalienable rights to "Life, Liberty, and the pursuit of Happiness" enshrined in the US Declaration of Independence, or those articulated in the splendid Universal Declaration of Human Rights, adopted unanimously by the United Nations in 1948. These landmark documents mark luminous moments in our collective ethical unfoldment as a species. Yet it feels sad to see that now, when we seek to affirm the inherent right to flourish of *other* organisms and ecosystems, we can do so only by viewing them as though they were human beings, as persons.

Obviously, it's an understandable move, especially since those seeking to advance the legal protections and powers of corporations established the doctrine of "corporate personhood." By this doctrine, powerful economic interests are now accorded many of the rights that individual persons hold under the law, even though the purely profit-based interests of most corporations often conflict with the life-based interests of human beings. But do we really feel that rainforests or mountains or river systems are honored by according them the same status as corporations and business interests, which are, after all, purely human creations? Do we really feel that the interests of a mountain lion or a cloud forest are being respected if and when they are considered as persons?

Merlin: I was fascinated to learn, at the symposium, about little-discussed areas of the law that can shed light on how normalized legal terms like "personhood" have become. For instance, someone explained to me that, in shipping law, a ship can often be represented in court as a legal person. Of course, corporations are given personhood when they are formed into a body in the process of incorporation. When we assign personhood within existing legal frameworks, we assume that we are empowered to do so. But who really gets to decide what counts as a person—what counts as a *who*? Many of these legal frameworks arose at a time when whole groups of humans were routinely denied personhood.

I wonder about the first time in the history of legal practice when personhood was granted to a corporation or a ship. Did this seem far-fetched to the decision makers of that time and place? There seems to be some absurdity here—the stuff of comedy. Perhaps someone should write an opera about the wranglings that must have ensued. An attorney singing an aria on behalf of a ship, represented in court for the first time.

Perhaps law would start to look more like a theater for creative thinking if we spent time in the drama of these historical shifts in the theory and philosophy of law.

This makes me think about the way that legal frameworks have evolved. Perhaps one can think of them using the metaphor of a city like London. Much of modern law is like the once-Roman city that became a medieval city, much of which burned down in the seventeenth century, was rebuilt in the eighteenth, and bombed and rebuilt again in the twentieth, and so on. Perhaps bringing more-than-humans into the theory and philosophy of law is like trying to rewild a metropolis, to remember that humans have only ever been a small fraction of the city's inhabitants.

David: I love your metaphor of the city that's slowly built and rebuilt upon itself, layer upon layer, in different eras, while whole swaths are sometimes destroyed and restructured—and now wild creatures are beginning to roam the streets of this palimpsest metropolis! That's a powerful image by which to think about this process of opening up the edifice of law to include other animals, plants, fungi, and ultimately the interlaced ecosystems that surround and support our settlements.

But the English word *person* has been almost exclusively associated with *human beings* for an exceedingly long time. Hence, according *personhood* to a woodland, a wetland, or a wolf seems to imply that only those entities who are sufficiently like us to be construed as persons are worthy of holding rights. Just as the doctrine of corporate personhood seems not to discern that the exclusively profit-based interests of corporate shareholders are often very different from the varied interests of most persons (in friendship, say, or in community, or in beauty), so the affirmation of legal personhood for an elk herd or a mountain seems hardly to notice the unique intelligence of

these entities, the myriad ways in which their interests may radically differ from our own.

Nonetheless, some may feel that legal personhood converges neatly with Indigenous, animistic lifeways, with First Nations understandings that all things are (at least potentially) alive and expressive, such that the surrounding terrain is experienced as a dynamic field of intertwined and actively intertwining agencies. Drawing upon Irving Hallowell's anthropological research among the Ojibwe, at least one contemporary scholar of religion, Graham Harvey, interprets animism as a belief "that the world is full of persons, only some of whom are human."[1] After decades of petitioning by the Māori people, the granting of legal personhood to the Whanganui River by the New Zealand government in 2017—making the river a legal person in the eyes of the law[2]—would seem to follow this logic: assuming that legal personhood rhymes with the Indigenous respect for the river as an animate presence radiant with powers that nourish and sustain the human community. And we can only applaud such fine breakthroughs!

Still, I can't help but feel cautious, concerned that the Indigenous, deeply oral tradition of respect for the spiritual power and personality of a river may easily be distorted from its traditional meaning by conflating it, for legal reasons, with settler notions of being a person. I worry that the inevitable association with *human* persons may *keep the river's perspective from overflowing the banks of our more limited and shortsighted human concerns*. The long-standing acknowledgment of corporate personhood by many countries makes this a real concern, somewhat blunting the hopefulness I feel in having legislatures acknowledge the personhood of rivers or forests.

Merlin: Yes, not to mention the fact that defining a *person* is far from straightforward when one takes a biological perspective. Life is

a story of wild intimacies and relationships, and any sustained look at the living world reveals that individual organisms aren't so much natural facts as categories that depend on our point of view. For instance, a substantial proportion of our genome has been acquired from viruses, and we carry around more foreign bacteria than cells of our own, without which we would not grow and behave as we do. Our microbial relationships are about as intimate as any can be, but we are not a special case. Bacteria host smaller bacteria and viruses within them. The intricacy of these webs of relation raises interesting questions. What are you calling an individual person? You have to enclose and define your subject matter somehow; otherwise systematic investigation would be impossible. So the question of where you draw the line becomes a question rather than an answer known in advance. In addressing these questions, there are some basic guidelines that can help us avoid the worst pitfalls of reductive thinking. We might emphasize the importance of context, lean into ambiguity without forcing a resolution one way or another, and focus on relationships between entities as much as the entities doing the relating.

Many of our concepts—from time to chemical bonds to genes to species—lack stable definitions but remain helpful categories to think with. Individuality is another such category, and it certainly does useful work for us. But it evidently leads us into trouble. Our individualism shapes the way we form connections with each other and affects the distribution of resources and responsibilities. By imagining ourselves as neatly separable—from one another and the ecosystems that sustain us—we are able to justify both the exploitation and oppression of other humans, and ecological devastation.

David: Another problem rests in the fact that when a river system (or other natural entity) is accorded legal personhood, then that

river might also be brought to court *and sued for damages* when and if farms lose their croplands or companies lose their electricity due to the river's flooding.

In recognition of these and other problems, some at the gathering floated other possible designations for natural entities as legal rights-bearers. One term proposed as an alternative to personhood was *beinghood*. This would avoid the overly *human* associations with personhood, since all things or entities are already beings by definition. *Beinghood* merely acknowledges that their being is noticed and affirmed; we recognize that they have rights simply by virtue of existing. Yet that might appear a somewhat flimsy support on which to hang rights. One feels that rights accrue to a subject, to an agential presence with a perspective, not merely to something passively floating in being.

Rob Macfarlane's suggestion was perhaps the most interesting: he spoke of "ancestral beinghood." I took his idea to mean that something has natural rights if it is affirmed not just as a being, but as an *ancestral being*—as a presence, like a great river or a mountain, that has preexisted and will (hopefully) outlast our most immediate human lives and concerns, an elemental power whose long-standing presence has nourished, informed, and offered tacit guidance to generations of humans and other animals, and to myriad other beings who dwell in its vicinity.

Yet not all more-than-human entities whose rights we might wish to protect are ancestral in this sense. Certainly a species, like polar bears, or a population, like boreal woodland caribou, would be an ancestral power relative to various communities in the far north, yet an individual caribou or polar bear would not likely qualify as an ancestor. A long-standing glacier might invite that designation, while a newly formed mountain lake fed by the melting of that glacier might not.

And there are many places and presences that might not have caught the attention of human communities at all—particular caves, old factory chimneys that now serve as communal roosts for many thousands of swifts, haul-out sites for sea lions in the North Atlantic that were not noticed by humans until recently, and so might not be considered ancestral powers from our perspective but that nonetheless deserve our utmost care and protection.

Merlin: Of course.

David: I wonder if a more useful juridical designation for rights-holders—one that sidesteps the human-centered associations of *personhood* and the overly passive and floating sense of *beinghood*—might be *selfhood*. Having or being a *self*, in common parlance, signifies something rather more focused and agential than simply having being; a *self* is the sort of subject-like presence that one would readily associate with having rights. Selfhood implies the capacity to act, and to experience, to feel and to suffer and to enjoy as well. Selfhood conveys just what many folks seem to want to convey by using *personhood*, but without the human-centered overtones. And yet *self* remains a remarkably open and democratic notion, a quality accessible to any and all things, since—at least in English—we can affirm of anything (woodland, wetland, toad, boulder, compost heap, beehive, or eroding mountain) that it manifestly *is itself*, or *its self*.

The notion of self, in other words, is rather subversively animistic. The English language reflexively attributes a kind of self to all things, even to rocks and to words and to cumulous clouds—"the darkening sky feels ominous, today, but that cloud *itself* has a beguiling shape"—yet as soon as we stop to consider the term, we realize that selves are *feelingful*, qualitative presences. All things and beings are selves, yet by adding

the suffix-*hood*—by affirming a river's or an ecosystem's *self-hood*—the legislature of a country would be picking out a particular self and honoring it, underscoring its inherent rights in order to protect it from undue and unnecessary harm.

Merlin: This terminology could include nested selves, webs of selves, composite selves, fluidly intermingled selves, and all the rest. I find it a helpful term partly because it puts us in mind of the point of view of the self in question.

David: Precisely!

Merlin: I think of selves as loci of experience. *Selfhood*, as a term, serves to remind us that the self in question has a perspective, no matter how inscrutable to a modern human, and so can perhaps help us break through the subject–object duality that continues to vex all sorts of discourse. For instance, the fact that we are having a conversation about MOTH rights in the first place is evidence of the fact that the world has already been sorted into living entities capable of subjective experience and those which are nonexperiencing *objects* unworthy of rights or equivalent legal protections. The term *selfhood* can perhaps steer us toward the core of this issue by restoring subjectivity to entities denied a point of view by this unfortunate ontological bifurcation.

David: Beautifully stated! Now, some sort of distinction might still need to be drawn between the "born" and the "made"—that is, between earthborn selves and those that have been fashioned (out of earthborn materials) by human beings to serve exclusively human purposes. 'Cause at this historical juncture it's not so much human-made artifacts and technologies that need our

protection, but rather earthborn powers and places that deserve our utmost attention and care.

It's worth acknowledging, too, that *selfhood* is far from static; an oak or a forest remains itself even as the character of that tree, or the composition of that woodland, is steadily shifting—just as I, too, am an ongoing process of evolution and metamorphosis. A self is not a determinate, fixed identity, but a way of unfolding, a process, a style of changing to meet the ever-shifting circumstances. And it bears mentioning that selves are constituted by their relationships to others. A self or subject is not an enclosed being, but rather a nexus of relations to other selves. Just as I, or myself, am informed and composed by the myriad relations I sustain with other people and other beings (a beloved piano, some Lyme spirochetes, the coyotes whose collective howls wake me up most nights) and with the places that enfold me, so natural selves, too, are relational—informed and constituted by their relations with other selves.

Merlin: Quite so. We are multitudes, composed of and decomposed by the vast populations of microbes that live in and on us. And, of course, we are all embedded within and constituted by constant fluid interchange with our surroundings, through our breath and numberless other thermodynamic fluxes. The matter that makes up your body today is different from the matter that will make up your body in a few years. Your self is not a stable *thing* but rather a field of stability through which matter is passing—much like a river, a whirlpool, or a weather system.

I find it helpful to take this perspective when we start to wrestle with some of the questions about the rights of ecosystems, including rivers and watersheds. We are all ecosystems composed of nested ecosystems. We are also rivers of matter and energy flowing through time. Thus we know that assigning protection to ecosystems is possible because existing human

rights frameworks are already in the business of protecting the rights of complex entities made up of multiple organisms. This means that ontological questions about selfhood and individuality are not only confusing but also reassuring. If we are already fluxing multitudes then we have proof of concept that legal frameworks can be designed to handle more complex fluxing multitudes like forests.

David: Wow. That's quite a mischievous notion, eloquently articulated. And it's true.

One of the most promising consequences of using the terminology of *selfhood*, rather than *legal personhood*, might be the way that considering the selfhood of a wetland or a forest or a high desert canyon immediately jibes with the old folk tradition sense of a *genius loci*, of a spirit power or intelligence that watches over, or inhabits, or simply *is* the collective mind of that very place—its unique sentience or self. This harmonizes well with the experiential understanding common to many traditional peoples—and which was powerfully articulated at our gathering by Kichwa spokesperson Patricia Gualinga[3]—that the forest is looked after and permeated by a spiritual power, or presence, that humans must honor if they wish to enter and interact with the forest. Obviously, this could also be true of an active or even a dormant volcano, a cloud forest, a coral reef, or a river estuary.

There are abundant traces of this old, oral form of deference toward the larger-than-human powers of place in ancient literatures from around the world. In the *Gilgamesh* epic, which Rob Macfarlane gracefully called our attention to at the MOTH symposium, Gilgamesh and Enkidu set out to destroy the great cedar forest, cutting it down for wood. Yet to do so, they must first beguile and slay Humbaba—the wild guardian spirit of that forest, the shapeshifting sentience of that ancient

ecosystem. A thousand miles to the west and a thousand years later, another epic tells of how half-drowned Odysseus, exhausted after eighteen days drifting on a makeshift raft that was then wrecked by Poseidon's fury, catches sight of the island of Scheria. Trying to keep his head above water, Odysseus spies a small river mouth and prays to the spirit of that river that it might allow him to swim safely to the island's shore without being dashed on the rocks—and straightaway the river takes him in. Places have power; the dynamic mix of plants, animals, fungi, and minerals that compose any habitat, interacting with the waters and weather patterns that circulate through that place, ensures that there's a unique intelligence to each ecosystem, a specific sentience with its own calms and turbulences, its own moods that affect and alter *our* moods whenever we're in that place. Maybe it's this that we seek to respect, however obliquely, when we speak of the selfhood of a place.

Merlin: And, of course, the individuality of places is no less problematic than the individuality of organisms. Your body is a planet with regard to your resident populations of microbes. Fungi are planets with regard to their resident populations of bacteria, and so on. The Amazon and tropical forests in Central and South America are fertilized by the dust that blows over from the Sahara. And the rivers of water vapor that flow in the sky from the Amazon irrigate North America. The planet is crisscrossed by flows and cycles. This is another example of the trouble that we encounter when we try to isolate one entity from another. The question becomes one of how you choose to divide up intermingling fluid flows and where you draw the line between these entities. Ecosystem, river, organism, watershed—these are categories that depend on our point of view. So what is our point of view, then, when we are imagining these new ontological and legal frameworks?

David: Right. Once we acknowledge the wider, place-based self-at-large—the distributed intelligence of a wetland, say, or the genius loci of a high mountain pass—we still need to acknowledge that no earthly ecosystem or bioregion is closed in on itself. Each ecology is in dynamic and open-ended exchange and interplay with the other ecosystems that bound it. Ultimately there's no purely self-subsistent subject or ecosystem or self (or person), but only the interlaced lattice or webwork of dynamically unfolding bodies, a lattice that—considered in its broadest sense—has a roughly spherical shape, composing as it does the outermost layers of our planet. So ultimately, we might want to (quietly) admit that *the only real self or fully coherent subjectivity here is really the vast biosphere itself*—this immense spherical metabolism—and that your and my apparently separate selves, like those of a river system or a storm cell, are just internal expressions of the wider self of the biosphere, of the *anima mundi*. Each of us—you, me, and the *Amanita muscaria*—is an embodied expression, or avatar, of the animate Earth.

From this Gaian perspective, wherein we recognize the whirling planet as our larger body, each relatively coherent bioregion, or ecosystem, might be considered a unique tissue or organ of the larger metabolic entity, an *organ* of the breathing Earth. Clearly the Amazonian rainforest, with its outrageous biodiversity, has long played a unique role in the planetary metabolism—stabilizing the climate, releasing vast amounts of water into the atmosphere every day, modulating the carbon cycle and water cycles. But analogous roles are played by every bioregion—mountain ranges conjuring clouds out of the fathomless blue, oceans with their tides flushing nutrients and their currents modulating climatic patterns, temperate forests, ice-bound regions in the far north and south. Desert biomes,

too, likely play multiple roles crucial to the health of the wider biosphere. And each bioregion invites (and likely requires) a unique modality of human culture, particular styles of human association and exchange. The ever-spreading human monoculture fostered by capitalism (with a Starbucks on every street corner, and an Apple superstore in every downtown) seems fairly toxic to the exquisitely differentiated ways of Earth's metabolic organs or ecosystems, and hence *deadly* to the exuberant flourishing of this polyrhythmic biosphere!

I suppose this brings us far afield from thinking about rights, about the rights of a wetland or a fungal-infused woodland, or a river valley. Because a living body needs *all* its organs to flourish, and so we would not assert that a nose or a heart or a lung has rights over any other part of the body. Rather, it's the whole body that is struggling to breathe! In this sense, it surely seems that a discourse of *responsibilities* would serve us better than a discourse of *rights* when speaking of the more-than-human natural world. Shouldn't human communities, like human corporations, and countries too, have legal *responsibilities* to promote and safeguard the healthy flourishing of the ecosystems that they interact with (the organs and tissues of our wider planetary flesh)? Shouldn't corporations be liable—shouldn't they be held accountable—if they neglect those inherent responsibilities? If they greatly harm another species or inflict lasting damage upon the lands that they inhabit, the waters and winds that they interact with?

Merlin: There is indeed something odd about us humans extending rights to the rest of nature, given that all our human rights depend upon and take for granted the ongoing flourishing of the earthly biosphere.

David: So perhaps our human rights tacitly derive from the more-than-human earthly world, rather than the other way around.

Another thought worth mentioning regarding this animistic propensity that's happily creeping into our legal discourse: it's mighty gratifying that legislatures are beginning to honor the rights not just of other species but of rivers and mountains and elemental powers that have for so long been viewed as inert. Indeed, it feels especially important that we accord some kind of agency not just to the overtly biological aspects of our world but also to the rocky substrate of things, and to the waters and the weather—to those parts of the world that have heretofore been considered utterly inanimate. Because as long as we assume that there is some basic layer of the world that is definitively inert, without any agency or dynamism whatsoever, then it is likely—inevitable, I think—that we'll continue to conceptualize the world in a hierarchical manner, as a "ladder" or a "great chain of being," wherein a purely passive and inanimate layer of matter provides the foundation upon which we set certain "lower" organisms—those ostensibly exhibiting a very minimal amount of "life" (lichens are sometimes forced into this role). Above those we situate other organisms that we think have a bit more vitality, erecting a conceptual pyramid wherein plants are positioned above lichens but underneath certain "lower" animals (like barnacles), themselves arrayed beneath more ambulatory animals with successively "higher" degrees of life, with humankind of course positioned at or near the top, just under the angels and the pure, bodiless freedom of God.

And then, inevitably, even within humankind such a way of thinking will construe certain groups as closer to the inertness of matter, or as "closer to the animals" —i.e., women, people of color, the Indigenous—while exalting one's own kind as closer to pure spirit.

I think that any such hierarchical framing of the wild, polymorphic proliferation of styles of existence is a kind of madness—driven by a terror of ambiguity, and a consequent craving for rational order and control at all costs. It's a madness that has underwritten the reckless exploitation of the living land and its many denizens for purely human benefit, even as it has licensed the horrific exploitation and enslavement of some (ostensibly "lower") humans by other (presumably "higher") humans. *If, however, we affirm that matter is animate or self-organizing from the get-go, then we pull the rug out from under any and all such pyramidal and self-serving hierarchies.* Because there's no longer any inanimate foundation upon which to erect such conceptual (and societal) hierarchies.

But this does not mean that we cannot draw distinctions! On the contrary, it is that dualistic bifurcation of the world into *inanimate* stuff, on the one hand, and *animate* stuff, on the other, that precludes a recognition of the outrageous diversity and anarchic multiplicity of the Real, obscuring the subtle and resplendent differences between beings!

Merlin: It's a perspective that reminds us of how difficult it is to draw a clean line between *life* and *nonlife*. The scholar Jack Forbes has a wonderful passage where he explains that one could cut off his arms and he would live, likewise, cut off his ears or his nose and he would still live. But take away the air he needs to breathe and he would die. Take away the water he needs to drink and he would die.[4]

The conventional subject matter of physics and chemistry, commonly referred to as strictly "physical processes"—fluid dynamics, melting, freezing, chemical reactions, flows of energy, etc.—determine the possibilities and evolution of living organisms. Living organisms then feed back biological information into these same "physical processes," determining new climatic

and geological possibilities. The rules determine the game and the game determines the rules. Biological organisms in a sense domesticate physical processes. Our bones, like the shells of tortoises, are domesticated minerals. And, yet, a large proportion of the mineral mass in the biosphere was originally created by living organisms. Our bodies are full of tides and weather systems, chemical weather systems, flow systems, vortices. Life fades into nonlife so gradually that it's actually hard to locate a border, let alone police one.

David: So we need a much broader, more expansive sense of *life*—perhaps a more playful and mischievous sense of vitality.

This brings me to think of the more fluid manner in which verbal language is used among traditionally Indigenous cultures. The vital importance of stories, and storytelling, came up at various points during our gathering, especially at those many junctures where the participants affirmed the importance of adopting and even incorporating Indigenous perspectives regarding the more-than-human world. Indigenous, place-based cultures tend to be traditionally *oral* cultures—that is, cultures that developed and flourished, generation after generation, millennium after millennium, without any highly formalized system of writing. Such deeply oral cultures are, necessarily, cultures of story. In the absence of a formal writing system, all of the ancestrally gathered information, regarding how to live well with one another, and with the other creatures, plants, and powers in a particular terrain, must be carried in stories—information regarding, for instance, how to fashion a canoe from tree-bark, or which plants are good for healing particular ailments, or how to detoxify certain fungi when preparing them as foods. All such knowledge accumulated by one's ancestors must be encoded and held in the layers and intersecting threads

of the tales that are told and retold, generation after generation, within any oral culture.

It is a stupendous thing—really a wonderful circumstance!—that Indigenous, oral wisdom is finally and increasingly being heard, attended to, and valued within courts of law in various countries. Yet I've noticed that highly literate persons with elaborate graduate degrees often misconstrue the storied knowledge that circulates within traditionally oral, Indigenous communities. For instance, as persons from literate and urbanized societies begin to value the insights carried by oral peoples, we have a tendency to assume that Indigenous peoples understand *in a literal fashion* the teachings that are expressed within their traditionally oral stories. Yet, from my field research in Southeast Asia and the Americas, I simply do not think that oral peoples take their stories literally. *Literal truth, as the word itself suggests, is an artifact of literacy*. It originally meant "being true to the letter of the law"—that is, "to the letter of scripture." For something to be literally true meant that it matched what was written down in the sacred texts. Gradually, over the centuries, alphabetic civilization transferred the apparent fixity of the written-down text to our literate sense of the ostensibly fixed, factual nature of the world at large. And so, today, after I give a talk, someone might say to me: "David, you spoke of slipping into conversation with a lichen-encrusted boulder. But c'mon, really: Is it *literally true* that the rock spoke to you?"

To which I would have to answer "No. It is not literally true. And yet it surely *did* speak to me." For I am trying to articulate a truth that is much older, and deeper, than literal truth.

I think that this is how it is with much of the storied knowledge, or wisdom, of oral-tradition peoples. They are often using language in a manner somewhat different from the way we've become accustomed to wielding words in our highly

alphabetized culture. For deeply oral cultures, each perceived thing has its unique dynamism and agency, and all things are expressive—all have the potential for meaningful speech—although most things do not speak in words.

Merlin: There are many ways to communicate, yes, and words are just one medium in which to do so.

David: And hence orality and literacy yield very different ways of speaking, indeed very different notions of what language is, and what it is good for. Literate folks spend a great deal of time talking *about* the world—about the weather, about that mountain over there, etc. Traditionally oral peoples spend just as much time talking *to* the world—to the winds, to the forests—and then listening for the reply of those beings. Our Indigenous allies are wielding their words in a more participatory manner, more deeply and playfully than most of us overeducated persons tend to wield our words. So as we begin to incorporate Indigenous insights and ways of understanding in courts of law, I reckon it's really important to stay attuned to and to distinguish between these very different ways of speaking and not assume, or pretend, that they articulate reality from the same vantage. One is much older—and it invokes a vastly different experience, a more full-bodied and more participatory engagement with the more-than-human natural world—than the literate, *literal* way of wielding our words.

Of course, laws, constitutions, statutes, rulings—these are manifestly written-down things; indeed, the whole body of the law, as practiced today, seems to be born of the written word. Hence, opening up the highly literate world of jurisprudence to the necessary and profound wisdom carried by Indigenous, oral cultures is hardly a simple endeavor. It takes enormous subtlety and skill, since oral wisdom subverts—even upends—many

long-standing assumptions undergirding the conventional practice of jurisprudence.

Merlin: I find musical polyphony a helpful metaphor to think about the ways that different voices—or different ways of knowing and observing—might interact with each other in generative ways. Polyphonic music involves voicing more than one part or telling more than one story at the same time. In polyphonic music, melodies intertwine without ceasing to be many. Voices flow around other voices, twisting into and beside one another. And, yet, when listening to polyphonic music several streams of consciousness commingle in the mind and a multitude of parts can coalesce into a single piece of music that doesn't exist in any one of the parts alone. The living world is polyphonic, full of unknowably large multitudes of selves improvising their way through time. I'm excited to imagine legal systems that more fully acknowledge the ways in which humans participate and communicate in this wet wildness.

"This great chain of causes and effects"—Alexander von Humboldt's View of Nature

Andrea Wulf

I'm not a lawyer, activist, or a scientist. I can't answer questions about legal approaches to the rights of nature and I don't know much about the moral or ethical implications that come with the rights of animals, plants, rivers, or other nonhuman entities. I'm not a biologist who can reveal discoveries that blur the boundaries between humans and nonhumans, nor do I know enough about the subject matter of nonhuman rights to point out its limitations. I'm a historian and what I can contribute to this debate is a window into the past. I write history books to try to understand why we are who we are. I look at the past to make sense of the present. Often the past can elucidate current issues or at least give us a different perspective.

I'm interested in the history of the relationship between humankind and nature in order to understand why we've destroyed so much of our magnificent blue planet. This led me to write *The Invention of Nature: Alexander von Humboldt's New World*, a book about Alexander von Humboldt, a visionary scientist and explorer who shaped our concept of nature today.[1] Humboldt saw connections everywhere. Nothing, not even the tiniest organism, was looked at on its own. "In this great chain of causes and effects," Humboldt said, "no single fact can be considered in isolation."[3] He explained that the natural world was a living organism where everything was interconnected, from the smallest insect to the largest trees—an argument that is at the nexus of the discussion of the rights of nature.

Humboldt's revolutionary insights, I believe, can provide some of the philosophical and scientific underpinning to the discussions of this conference. In this essay, I want introduce Humboldt and his ideas to our debate. He might have not talked about any legal implications, nor was he an activist, but he popularized the concept of the web of life when he described nature as "a wonderful web of organic life."[4]

So, who was this man? Born into a wealthy aristocratic Prussian family in Berlin in 1769, Humboldt discarded a life of privilege and spent his substantial inheritance on a daring five-year exploration of Latin America in 1799–1804. This expedition took him from the tropical rainforest at the Orinoco to the icy peaks of the Andes, from the magnificent Inca ruins in Peru into the deepest shafts in Mexico's silver mines. He met scientists, plantation

1 Andrea Wulf, *The Invention of Nature: Alexander von Humboldt's New World* (New York: Knopf, 2015).

3 Alexander von Humboldt, *Essay on Plant Geography*, ed. Stephen T. Jackson (Chicago: Chicago University Press, 2009), 79.

4 Alexander von Humboldt, *Kosmos. Entwurf einer physischen Weltbeschreibung* (Stuttgart: J. G. Cotta'schen Buchhandlungen, 1845), vol. 1, 21.

owners, and many Indigenous peoples across the South American continent. It was a voyage that shaped his life and his thinking, and made him legendary across the world. Ralph Waldo Emerson declared the "Age of Humboldt"[5] and thought the Prussian scientist to be "one of those wonders of the world."[6] Thomas Jefferson called him "one of the greatest ornaments of the age"[7] and Henry David Thoreau filled his journal with remarks such as "Humboldt says" or "Humboldt has written."[8] Humboldt was instrumental for John Muir's ecological thinking and ideas of forest preservation and Charles Darwin said that the explorer was the reason why he boarded the *Beagle*.[9]

Humboldt is the forgotten father of environmentalism because he warned of the destruction caused by monoculture, deforestation, and irrigation. He was the first to define global climate and vegetation zones at a time when other scientists focused on classification. He understood the idea of a keystone species two hundred years before the concept was named and, more than a century before scientists began to discuss shifting tectonic plates, Humboldt talked about an ancient connection between Africa and South America.[10]

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5 *Boston Daily Advertiser*, May 19, 1859.

6 Ralph Waldo Emerson (1869) quoted in *The Journals and Miscellaneous Notebooks of Ralph Waldo Emerson*, ed. William H. Gilman et al. (Cambridge: Harvard University Press, 1960–92), 16:160.

7 Thomas Jefferson to Carlo de Vidua, August 6, 1825, in Ingo Schwarz, ed., *Alexander von Humboldt und die Vereinigten Staaten von Amerika. Briefwechsel* (Berlin: Akademie Verlag, 2004), 171.

8 Henry David Thoreau, April 1, 1850, May 12, 1850, October 27, 1853, in *The Writings of Henry D. Thoreau: Journal*, ed. Robert Sattelmeyer et al. (Princeton, NJ: Princeton University Press, 1981–2002), 3:52, 3:67–68, 7:119.

9 Charles Darwin to D.T. Gardner, August 1874, published in *New York Times*, September 15, 1874; Darwin's annotated Humboldt books are held today at Cambridge University Library.

10 Humboldt, *Essay on Plant Geography*, 67.

But, most importantly, Humboldt returned from his expedition with a new concept of nature that still colors our ideas today. Nature was interconnected and alive, Humboldt explained, "animated by one breath—from pole to pole, one life is poured on rocks, plants, animals, and even into the swelling breast of man."[11] The emphasis here is on "*one* life." This was not a divinely ordained universe with humans as the masters of nature. Humboldt turned away from the human-centered perspective that had ruled humankind's approach to nature for millennia: from Aristotle, who had written that "nature has made all things specifically for the sake of man"[12] to botanist Carl Linnaeus who had still echoed the same sentiment more than two thousand years later, in 1749, when he insisted that "all things are made for the sake of man."[13]

One of the most important moments in the shaping of this new concept of nature was Humboldt's ascent of Chimborazo, a volcano some one hundred miles south of Quito, in 1802.[14] At almost twenty-one thousand feet, Chimborazo was then believed to be the highest mountain in the world; it was a difficult climb. Dizzy, half-frozen and struggling to breathe in the thin air, Humboldt and his small team had to crawl on their hands and knees along steep ridges and razor-sharp rocks. A huge crevasse stopped them at 19,413 feet, just one thousand feet below the peak.[15] And, though

11 Alexander von Humboldt to Caroline von Wolzogen, May 14, 1806, in *Goethe's Briefwechsel mit den Gebrüdern von Humboldt*, ed. F. Th. Bratranek (Leipzig: Brockhaus, 1876), 407.

12 Aristotle, *Politics*, 1.8.

13 Carl Linnaeus quoted in Donald Worster, *Nature's Economy: The Roots of Ecology* (San Francisco: Sierra Club Books, 1977), 37.

14 Wulf, *The Invention of Nature*, 85–88; Alexander von Humboldt, diary, June 23, 1802, in Alexander von Humboldt, *Reise auf dem Río Magdalena, durch die Anden und Mexico*, ed. Margot Faak (Berlin: Akademie Verlag, 2003), 2:100–109.

15 Alexander von Humboldt, diary, June 23, 1802, in Humboldt, *Reise auf*

they couldn't make it to the summit, it still felt like being on top of the world. No one had ever come this high—not even the early balloonists in Europe.

As Humboldt looked down upon the mountain ranges beneath him, he began to see the world differently. Everything that he had seen in the previous years came together. His brother Wilhelm had long believed that Alexander's mind was made "to connect ideas, to detect chains of things."[16] For Humboldt, the days they had spent traveling from Quito and then climbing up Chimborazo had been like a botanical journey from the equator toward the poles—with the whole plant world seemingly stacked on top of each other as the vegetation zones ascended the mountain—from tropical species in the valleys to the last bit of lichens just below the snow line. He also realized that many of the plants were similar to those he had seen elsewhere—in the Alps, the Pyrenees, and on the mountain slopes in Tenerife. He was struck, he said, by this "resemblance which we trace in climates most distant from each other."[16] No one had looked at plants like this before. Where other scientists saw categories of classification, Humboldt viewed nature as a global force with corresponding climate and vegetation zones across continents. He was, a colleague later said, the first to understand that everything was interwoven as with "a thousand threads."[17]

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dem Río Magdalena, 2:106.

16 Wilhelm von Humboldt to Karl Gustav von Brinkmann, March 18, 1793, quoted in Ulrich von Heinz, "Die Brüder Wilhelm und Alexander von Humboldt," in *Alexander von Humboldt in Berlin. Sein Einfluß auf die Entwicklung der Wissenschaften*, ed. Jürgen Hamel, Eberhard Knobloch, and Herbert Pieper (Augsburg: Erwin Rauner Verlag, 2003), 19.

16 Alexander von Humboldt, *Personal Narrative of Travels to the Equinoctial Regions of the New Continent during the Years 1799–1804*, trans. Helen Maria Williams (London: Longman, Hurst, Rees, Orme, Brown and John Murray, 1814–29), 3:160.

17 Georg Gerland, 1869, quoted in Ilse Jahn, "Vater einer großen

As he traveled through Latin America, Humboldt's ideas of nature clarified. At Lake Valencia in today's Venezuela in 1800, for example, he saw the devastating environmental effects of colonial plantations.[18] As the plantation owners had wrested fields from the wilderness, they had destroyed large swathes of ancient forests. The land had become barren, the water levels of the lakes were falling, and, with the disappearance of brushwood, torrential rains had washed away the soils on the surrounding mountain slopes. Seeing this destruction, Humboldt was the first to explain the fundamental function of the forest for the ecosystem. He wrote about the forest's ability to enrich the atmosphere with moisture and its cooling effect, as well as its importance for water retention and protection against soil erosion. It's worth quoting him at length:

> When forests are destroyed, as they are everywhere in America by the European planters with an imprudent precipitation, the springs are entirely dried up, or become less abundant. The beds of the rivers, remaining dry during a part of the year, are converted into torrents, whenever great rains fall on the heights. The sward and moss disappearing with the brush-wood from the sides of the mountains, the waters falling in rain are no longer impeded in their course: and instead of slowly augmenting the level of the rivers by progressive filtrations, they furrow during heavy showers the sides of the hills, bear down the loosened soil, and form those sudden inundations, that devastate the country.[19]

Nachkommenschaft von Forschungsreisenden . . . : Ehrungen Alexander von Humboldts im Jahre 1869," *HiN* 8 (2004): 19.

18 Humboldt, *Personal Narrative of Travels*, 4:140–49.

19 Humboldt, *Personal Narrative of Travels*, 4:143–44.

It was here, at Lake Valencia, that Humboldt developed his idea of human-induced climate change. The action of humankind across the globe, he warned, could affect "future generations."[20] Humboldt would see again and again how humankind unsettled the balance of nature. When nature is perceived as a web, its vulnerability also becomes obvious. Everything hangs together. If one thread is pulled, the whole tapestry may unravel. "Everything is interaction and reciprocal,"[21] Humboldt noted in his diary in 1803. He later warned that "the restless activity of large communities of men gradually despoil the face of the earth."[22]

Wherever he went, Humboldt remarked on this destruction. At the Venezuelan coast he noted how unchecked pearl fishing had completely depleted the oyster stocks; in the forests of Loja in today's Ecuador he saw how the Spanish had destroyed huge areas of cinchona forest by stripping the trees' bark for quinine (which was used to treat malaria).[23] In Mexico he said that humankind was "raping nature"[24] and later in his life he prophetically warned about deleterious gas emissions at industrial centers.[25]

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20 Humboldt, *Personal Narrative of Travels*, 4:143.

21 Alexander von Humboldt, diary, August 2–5, 1803, in Humboldt, *Reise auf dem Río Magdalena*, 2:258.

22 Alexander von Humboldt, *Aspects of Nature, in Different Lands and Different Climates, with Scientific Elucidations,* trans. Elizabeth J. L. Sabine (London: Longman, Brown, Green and John Murray, 1849), 2:11.

23 Humboldt, *Personal Narrative of Travels*, 2:147; Humboldt, *Aspects of Nature*, 2:268; Alexander von Humboldt, diary, July 23–28, 1802, in Humboldt, *Reise auf dem Río Magdalena*, 2:126–30.

24 Alexander von Humboldt, diary, April 12, 1803–January 20, 1804, in Humboldt, *Reise auf dem Río Magdalena*, 2:219.

25 Alexander von Humboldt, *Untersuchungen über die Gebirgsketten und die vergleichende Klimatologie* (Berlin: Carl J. Klemann, 1844), 2:214.

He and his traveling companion, French botanist Aimé Bonpland, also traveled along Orinoco and its surrounding river network. For seventy-five grueling days and almost 1,500 miles, Humboldt and Bonpland paddled along the rivers. As they ventured deep into the rainforest, a new world unfolded. Humboldt was captivated by the jungle. The forest teemed with life. There are "many voices proclaiming to us that all nature breathes,"[26] Humboldt wrote. This was the most magnificent web of life on earth, a world of "organic activity and life,"[27] as he later described it. Enthralled, he pursued every thread. One night, when he was yet again woken by a piercing orchestra of animal screams, he unpeeled the chain of reaction. Jaguars were hunting in the night, chasing tapirs who escaped noisily through the dense undergrowth, which in turn scared the monkeys sleeping in the treetops above. As the monkeys then began to cry out, their clamor woke the birds and thus the whole animal world. Life stirred in every bush, in the cracked bark of trees and in the soil. The whole commotion, Humboldt said, was the result of "a long-extended and ever-amplifying battle of the animals."[28] This was a web of life in a relentless and bloody battle—a description that Darwin would later underline in his copies of Humboldt's books and that would become an elemental part of his concept of natural selection. "What hourly carnage in the magnificent calm picture of Tropical forests," Darwin scribbled in the margins of Humboldt's book *Personal Narrative*, and "to show how animals prey on each other—what a 'positive' check."[29]

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26 Humboldt, *Personal Narrative of Travels*, 4:505.

27 Humboldt, *Aspects of Nature*, 1:272.

28 Humboldt, *Aspects of Nature*, 1:270. I used the translation in Alexander von Humboldt, *Views of Nature*, ed. Stephen T. Jackson and Laura Dassow Walls, trans. Mark W. Person (Chicago: Chicago University Press, 2014), 146. See also Humboldt, *Personal Narrative of Travels*, 2:15 and 4:437.

29 Darwin's copy of Humboldt's *Personal Narrative of Travels*, 5:590; see also

Humboldt's concept of nature as a living organism was radically different from what scientists had believed until then. For centuries the Western world had been dominated by the idea that nature functioned like a complex apparatus—a "great and complicated Machine of the Universe,"[30] as one scientist had said. If humans could make intricate clocks and automata, then what great things could God create? According to seventeenth-century French philosopher René Descartes and his followers, God had given this mechanical world its initial push, while Isaac Newton regarded the universe more like a divine clockwork, with God as the maker continuing to intervene. It was against this mechanistic model of the world that we have to understand Humboldt's revolutionary ideas.

Humboldt had developed his ideas during his five-year expedition through South America, but a philosophical explanation can also be found in Friedrich Schelling's so-called *Naturphilosophie* (philosophy of nature). Schelling was a young philosopher who began teaching in 1798 at the University of Jena, a small town in Germany some 150 miles southwest of Berlin.[31] At twenty-three he was the youngest professor at the university but had already written three important philosophy books, which had made him famous and secured him the position in Jena. He was a popular teacher and his students described his lectures as an almost religious experience or epiphany.[32] He electrified his students and contemporaries with his philosophy of unity.

4:437, Scientific Manuscripts Collections, Department of Manuscripts & University Archives, Cambridge University Library, Cambridge.

30 George Cheyne, in Donald Worster, *Nature's Economy: The Roots of Ecology* (San Francisco: Sierra Club Books, 1977), 40.

31 Just before Schelling arrived in Jena, Humboldt had also spent several months in Jena.

32 Henrik Steffens, *Was ich erlebte: Aus der Erinnerung niedergeschrieben* (Breslau: Verlag Josef Mar & Komp., 1841), 4:76.

There is a "secret bond connecting our mind with nature,"[33] Schelling told his students. Instead of dividing the world into mind and matter, as philosophers had for centuries—most famously Descartes—Schelling insisted that everything was one. He believed that the self and nature were identical. The living and nonliving worlds, he said, were ruled by the same underlying principles. Everything—from lizards to trees, stones to plants, mountains to humans—he said, was "linked together, forming one universal organism."[34] Like Humboldt, Schelling questioned the mechanical models of nature and, as one of the students recalled, his new world was filled with a "new, warm, glowing life."[35] This was the opposite of Newton's automata-like universe that was ruled by natural laws. "Philosophy applied to nature,"[36] Schelling stated, "has to raise it up out of the dead mechanistic world it appears to be caught in." The natural world was no longer God's well-ordered clockwork or a piece of divine artistry—it was alive.

Naturphilosophie was a philosophical system that was based on the idea of oneness, and Schelling called for "the necessity to grasp nature in her unity."[37] He was mainly concerned with the unity between the internal and external worlds, between humans and nature, but he moved in a similar direction as Humboldt. Both men believed that the concept of an "organism" was the founding principle or essence of nature. Instead of regarding nature as a mechanical system, it should

33 Friedrich W. J. Schelling, "Ideen zu einer Philosophie der Natur" (1797), in Friedrich W. J. Schelling, *Sämmtliche Werke*, ed. K. F. A. Schelling (Stuttgart: J. G. Cotta'sche Buchhandlung, 1856–61), 2:55.

34 Friedrich W. J. Schelling, "Von der Weltseele," 1798, in Schelling, *Sämmtliche Werke*, 2:569. See also Robert J. Richards, *The Romantic Conception of Life: Science and Philosophy in the Age of Goethe* (Chicago: University of Chicago Press, 2002), 129ff.

35 Steffens, *Was ich erlebte*, 4:128.

36 Friedrich W. J. Schelling, "Erster Entwurf eines Systems der Naturphilosophie" (1799), in Schelling, *Sämmtliche Werke*, 3:13.

37 Henrik Steffens (1798), quoted in Richards, *The Romantic Conception of Life*, 151.

be seen as a living organism. The difference was like that between a clock and an animal. Whereas a clock consisted of parts that could be dismantled and then reassembled, an animal couldn't—nature was a unified whole, an organism in which the parts only worked in relation to each other. In a letter to Schelling after his return from South America, Humboldt wrote that he believed that Naturphilosophie was nothing less than a "revolution" in the sciences, a rejection of the "dry compilation of facts" and "crude empiricism."[38]

For the rest of his life, Humboldt tried to synthesize where others divided. In 1845 he published the first volume of his bestselling *Cosmos*—a book that made him famous across the world. In *Cosmos* Humboldt took his readers on a journey from Earth to distant nebulae, from botany and geography to poetry and landscape painting. He discussed comets and the solar system as well as terrestrial magnetism, volcanoes and the snow line of mountains. He wrote about the migration of the human species, about the northern lights and the microscopic organisms that live in stagnant water or on the weathered surface of rocks. But *Cosmos* was more than just a collection of facts and knowledge; Humboldt was interested in connections. Take his discussion of climate, for example: other scientists focused only on meteorological data, such as temperature and weather, but Humboldt was the first to understand climate as a system of complex correlations between the atmosphere, oceans, and landmasses. In *Cosmos* he wrote of the "perpetual interrelationship"[39] between air, winds, ocean currents, elevation, and the density of plant cover on land.

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38 Alexander von Humboldt to Friedrich W. J. Schelling, February 1, 1805, in *Aus Schellings Leben: In Briefen*, ed. Gustav L. Plitt (Leipzig: R. Hirzel, 1869–70), 2:49; Alexander von Humboldt to C. C. J. Bunsen, March 22, 1835, in *Briefe von Alexander von Humboldt und Christian Carl Josias Bunsen*, ed. Ingo Schwarz (Berlin: Rohrwall Verlag, 2006), 29.

39 Humboldt, *Kosmos*, 1:304.

At a time when other scientists crawled into the ever-narrowing disciplines, Humboldt wrote a book that did exactly the opposite. As science moved away from nature into laboratories and universities, separating itself off into distinct disciplines, Humboldt created a work that brought together all that professional science was trying to keep apart. The most important part of *Cosmos* was the long introduction of almost one hundred pages. Here Humboldt spelled out his vision of a world that pulsated with life. Everything was part of this "never-ending activity of the animated forces,"[40] Humboldt wrote. Nature was a "living whole"[41] where organisms were bound together in a "net-like intricate fabric."[42]

Humboldt's *Cosmos* was translated in a dozen languages and shaped two generations of scientists, artists, writers, and poets in the United States. "The wonderful Humboldt," Emerson jotted in his journal, "with his extended centre & expanded wings, marches like an army, gathering all things as he goes."[43] Thoreau read Humboldt's books and was deeply influenced by this new concept of nature as an interconnected whole. "Am I not partly leaves and vegetable mould myself?"[44] Thoreau asked in *Walden*.

The Earth was "living poetry,"[45] he wrote after reading Humboldt's books *Cosmos* and *Aspects of Nature*, "not a fossil earth—but a living specimen." Similarly, John Muir, the father of the

40 Humboldt, *Kosmos*, 1:21.

41 Humboldt, *Kosmos*, 1:39.

42 Humboldt, *Kosmos*, 1:33.

43 Ralph Waldo Emerson, 1845, in *The Journals and Miscellaneous Notebooks of Ralph Waldo Emerson*, ed. William H. Gilman et al. (Cambridge: Harvard University Press, 1960–92), 9:270.

44 Henry David Thoreau, *Walden* (New York: Thomas Y. Crowell & Co., 1910), 182.

45 Henry David Thoreau, February 5, 1854, in *The Writings of Henry D. Thoreau*, 7:268; and Thoreau, *Walden*, 408.

National Parks in the US, studied Humboldt's books intensely—with pen in hand, underlining and scribbling into the margins as he went along. He highlighted most of the sections where Humboldt mentioned deforestation and the destructive force of agriculture. He also marked lines such as the "unity of all the vital forces of nature" and Humboldt's remark that "nature is indeed a reflex of the whole."[46]

Muir saw nature with Humboldt's eyes. Muir's famous sentence—"When we try to pick out anything by itself, we find it hitched to everything else in the universe"[47]—owes a great deal to Humboldt. Muir often returned to this idea. As he wrote of "a thousand invisible cords" and "innumerable unbreakable cords," he mulled over a concept of nature where everything was connected.[48] Every tree, flower, insect, bird, stream, or lake seemed to invite him "to learn something of its history and relationship."[49] His greatest achievements of his first summer in Yosemite, Muir said, were "lessons of unity and inter-relation."[50] Like Humboldt, Muir began to see nature as a web of life. "The cosmos," Muir said, using Humboldt's term, would be incomplete without humans but equally without "the smallest transmicroscopic creature."[51]

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46 Muir's copy of Humboldt's *Views of Nature* (1896), xi, 346, and Humboldt's *Cosmos* (1878), 2:438, Holt-Atherton Special Collections, University of the Pacific Library, Stockton, California.

47 John Muir, *My First Summer in the Sierra* (Boston: Houghton Mifflin Company, 1911), 211.

48 John Muir, Journal "Sierra," summer 1869 (1887), Holt-Atherton Special Collections, University of the Pacific Library, Stockton, California.

49 Muir, *My First Summer in the Sierra*, 322.

50 Muir, *My First Summer in the Sierra*, 321.

51 John Muir, *A Thousand-Mile Walk to the Gulf*, ed. William Frederic Badè (Boston: Houghton Mifflin Company, 1916), 139.

More than a century after Muir arrived in the Yosemite in the late 1860s, ecologists, environmentalists, and nature writers continued to rely on Humboldt's vision, although most did so unknowingly. Rachel Carson's *Silent Spring* (1962) is based on Humboldt's concept of interconnectedness, and scientist James Lovelock's visionary Gaia theory of the earth as a living organism bears remarkable similarities. When Humboldt described the Earth as "a natural whole animated and moved by inward forces,"[52] he predated Lovelock's ideas by more than 150 years. Amazingly, Humboldt had initially considered the title "Gäa" for his book *Cosmos*.[53]

Humboldt was undoubtedly one of the most important thinkers in the Western world and his ideas shaped our thinking about nature. I hope that this glimpse back into the past illustrates how long thinkers, writers, and scientists have believed in nature as an interconnected living organism rather than a binary construct with humans on one side and the rest of nature on the other side. Humboldt, and those who followed him, made it very clear that we're part of nature and that nature is alive. This was not a hierarchical model with the human species wearing a crown but an entangled web of life. Nature had not been "created" by God for the enjoyment and profit of humankind. We're not the "lords and possessors of nature,"[54] as Descartes had written in the seventeenth century; we're just one part of the natural world.

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52 Alexander von Humboldt, *Cosmos: Sketch of a Physical Description of the Universe*, trans. Elizabeth J. L. Sabine (London: Longman, Brown, Green and Longmans, and John Murray, 1845), 1:45.

53 Alexander von Humboldt to K. A. Varnhagen, October 24, 1834, in *Letters of Alexander von Humboldt to Varnhagen von Ense,* ed. Ludmilla Assing (London: Trübner & Co., 1860), 18.

54 René Descartes quoted in Keith Thomas, *Man and the Natural World: Changing Attitudes in England 1500–1800* (London: Penguin Books, 1984), 33.

PART IV

LAW

Global Patterns and Trends in Rights of Nature Legal Provisions: Insights from the Eco Jurisprudence Monitor

Craig M. Kauffman

Since the mid-2000s, the number of legal provisions recognizing the rights of nature (RoN) has risen dramatically around the world. This reflects the broader development of ecological jurisprudence, a contemporary legal philosophy that rejects the long-standing anthropocentrism of the law. While RoN is one of many forms that ecological jurisprudence can take—other approaches emphasize human responsibilities rather than RoN—it is among the most common and fastest growing.

This chapter analyzes global patterns in RoN legal provisions using data from the Eco Jurisprudence Monitor, an open access online platform that compiles ecological jurisprudence initiatives globally, as well as related resources for researchers, lawyers, policymakers, and activists.[1] The Eco Jurisprudence Monitor was produced in 2021–22 by an international team of researchers associated with the Academic Hub of the Global Alliance for the Rights of Nature and the United Nations (UN) Harmony with Nature Expert Network, with funding from the Rockefeller Brothers Fund.[2] While the Eco Jurisprudence Monitor's dataset includes many different legal and cultural expressions of ecological jurisprudence besides RoN, this chapter only addresses RoN initiatives. After analyzing global patterns in RoN initiatives over time, the chapter compares different approaches to conceptualizing nature as a legal entity.

Global Growth in RoN Legal Initiatives

While RoN have existed as an idea for many decades, if not centuries (some Indigenous peoples point to RoN principles in their natural and first laws), the legal codification of this idea is a relatively recent phenomenon. Only initiatives for legal provisions with some level of formal authority are included in the Eco Jurisprudence Monitor's dataset—for instance, constitutions, national and local laws, court rulings, government policy and declarations, international agreements concluded by countries, and documents produced by inter-governmental organizations (IGOs) like the UN

1 Craig Kauffman et al., Eco Jurisprudence Tracker, 2022, distributed by the Eco Jurisprudence Monitor, https://ecojurisprudence.org.

2 The author is Project Lead and Principal Investigator for the Eco Jurisprudence Monitor grant project. Shrishtee Bajpai, Kelsey Leonard, Elizabeth McPherson, Pamela Martin, Alessandro Pelizzon, Alex Putzer, and Linda Sheehan participated in the Monitor's design. Research support was provided by Alexis Weisend, Cat Haas, Italo Saco, and Cole Jensen.

or European Union.[3] The two exceptions are rulings by citizen tribunals and civil society–developed soft law (defined below), which are included because of the important role they play in stimulating the development of domestic and international law. The Eco Jurisprudence Monitor does not include general statements in support of RoN by civil society or political party platforms, public protests, conferences, or the like.

The Eco Jurisprudence Monitor does include RoN initiatives by Indigenous peoples even if their authority is not recognized by governments in the Westphalian state system. Under customary international law, any entity that identifies as Indigenous peoples is presumed to have a right to self-determination to execute their own legal initiatives.[4]

The Eco Jurisprudence Monitor defines RoN legal provisions as those that explicitly recognize a nonhuman natural entity (e.g., ecosystems, plant species, animals and animal species) or nature in general as a subject with rights. As of August 1, 2023, the Eco Jurisprudence Monitor had documented 353 RoN initiatives across thirty-one countries as well as at the international level. Table 1 gives a sense of the size of global RoN movements, as well as their relative strength and impact. RoN legal provisions have been adopted in twenty-four countries and twenty-six international policy documents, and submitted for consideration in five additional countries (with no decision made at the time of writing). Two countries (Romania and Chile) rejected the only RoN initiatives submitted there to date.

3 The Eco Jurisprudence Monitor team is developing a process for including Indigenous and other forms of customary law based on Oral Knowledge to combat colonial bias; however, at the time of writing, this system was not yet implemented.

4 See, for example, UN General Assembly, United Nations Declaration on the Rights of Indigenous peoples, A/RES/61/295, September 13, 2007, particularly articles 3–5.

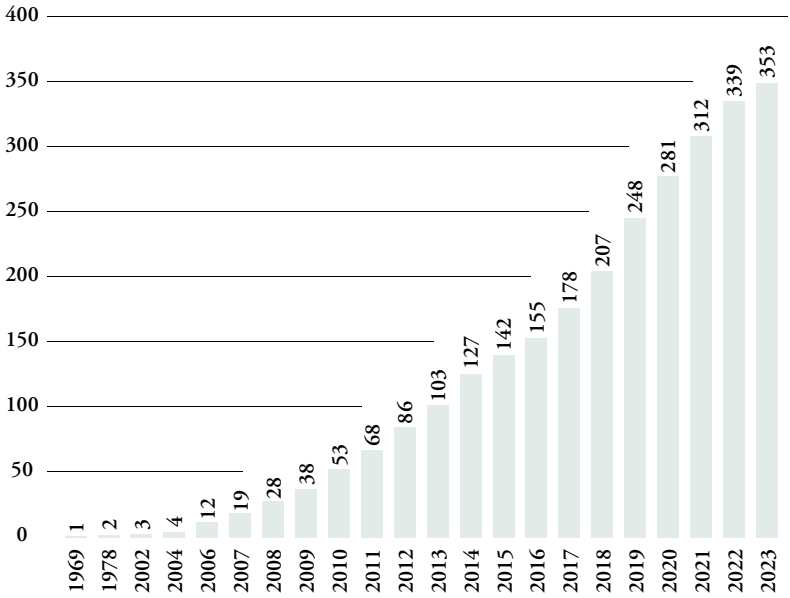
Table 1: RoN Initiatives by Country and Status

Country	Approved	Drafted/ Submitted	Overturned/ Rejected	Total
Argentina	3	7		10
Australia	6	3		9
Bangladesh	1			1
Bolivia	3	1		4
Brazil	10			10
Canada	2	2		4
Chile			2	2
Colombia	17		1	18
Ecuador	48	1	16	65
El Salvador		3		3
France	3			3
Germany		4		4
India	10	2		12
Ireland	3	1		4
Mexico	4	4	1	9
Netherlands	1	1		2
New Caledonia	1			1
New Zealand	3			3
Pakistan	2			2
Panama	1			1
Peru	2	2		4
Philippines	1	1		2
Poland		1		1
Romania			1	1
Spain	1			1
Sweden		1		1
Switzerland		1		1
Uganda	1			1
UK	4		1	5
US	75	17	46	138
Vatican	1			1
International	26	4		30
Grand Total	**229**	**56**	**68**	**353**

Source: Kauffman et al., Eco Jurisprudence Tracker, 2022.

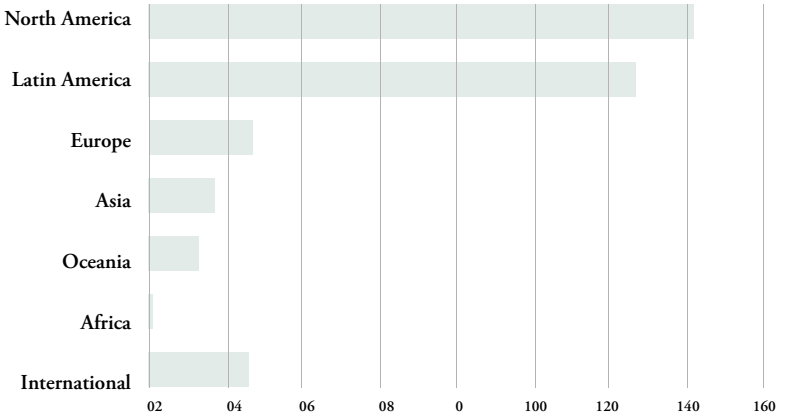
Since the mid-2000s, the number of RoN initiatives has increased exponentially, doubling between 2011 and 2016, and again between 2016 and 2021. And, importantly, RoN jurisprudence has been steadily accumulating within legal systems globally: among those initiatives where a decision was rendered, 77 percent (229 of 297) were approved.

Figure 1: Cumulative Number of RoN Initiatives over Time



Source: Kauffman et al., Eco Jurisprudence Tracker, 2022.

Figure 2: Where Are RoN Initiatives Happening?



Source: Kauffman et al., Eco Jurisprudence Tracker, 2022.

Most RoN initiatives exist in the Western Hemisphere. Data from the Eco Jurisprudence Monitor shows that in the Eastern Hemisphere, ecological jurisprudence is often expressed through non-rights-based framings. For example, ecological jurisprudence initiatives in Europe and Asia often center on the responsibility to ensure that ecological systems can function and prevent actions that threaten this ability. These initiatives tend to frame nature as a community of life. They emphasize ecological science, the need to live within ecosystem/planetary boundaries, the responsibility of individuals and/or states to ensure the functioning of ecological systems, and the importance of social justice. Non-rights-based initiatives include the Earth Charter, ecocide laws, and initiatives espousing ecological civilization and Earth democracy.

In addition, many ecological jurisprudence models draw on Indigenous knowledge and customary law, as well as the local

ecological knowledge of non-Indigenous communities. These initiatives span the globe, but are particularly prevalent in Africa, Oceania, and Asia. For example, a number of African initiatives focus on recognizing key ecosystems as sacred natural sites and authorizing local communities to protect and govern them. One example is Benin's 2012 Interministerial Order No. 0121, which recognizes some protected areas as sacred forests and authorizes local communities to govern them as custodians.[5]

Of course, interest in RoN is not exclusive to Western legal systems rooted in a Western conception of rights. As I show below, RoN legal provisions are being adopted in a growing number of non-Western countries. These initiatives draw on a wide variety of RoN approaches, including those rooted in non-Western conceptions of rights and the relationship between humans and the rest of the natural world. Before analyzing these different conceptions of RoN, I address why so many initiatives exist in North America and Latin America, focusing on the legal tools used to recognize RoN.

What Legal Tools Are Being Used to Recognize RoN?

RoN advocates use many different pathways and legal tools for recognizing RoN based on their legal and political context, as Pamela Martin and I have detailed.[6]

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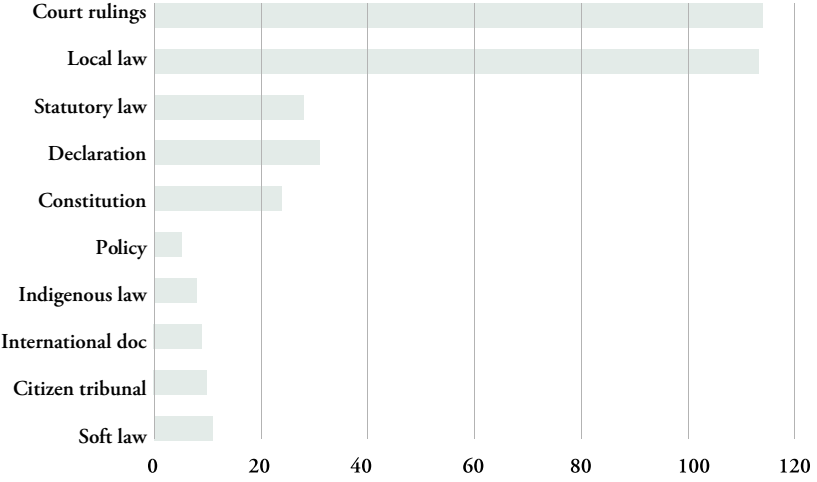
5 Minister of Environment, Housing and Town Planning and the Minister of Decentralization, Local Governance, Administration, and Country Planning, Republic of Benin, Interministerial Order No. 121: Setting the Conditions for the Sustainable Management of Sacred Forests in the Republic of Benin, www.silene.ong/en/documentation-centre/legal-documents/benin-law-recognizing-sacred-forests-and-their-custodian-communities#Benin_law_recognizing_sacred_forests_eng.pdf.

6 Craig Kauffman and Pamela Martin, "Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand," *Global Environmental*

Figure 3: Number of RoN Initiatives by Type of Legal Provision



Source: Kauffman et al., Eco Jurisprudence Tracker, 2022.

Constitutions

Arguably the most famous RoN legal provision is Ecuador's 2008 constitution. To date, Ecuador remains the only country to recognize RoN in its national constitution. Chilean voters rejected the proposed national constitution recognizing RoN in September 2022. In 2021, members of the Swiss National Council submitted

Politics 18, no. 4 (November 2018); Craig Kauffman and Pamela Martin, *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (Cambridge, MA: MIT Press, 2021).

an initiative to the Swiss parliament for a constitutional amendment recognizing RoN (this process was ongoing at the time of writing). There are also proposals to recognize RoN in the constitutions of Sweden, Ireland, and El Salvador. The remaining sixteen constitutional initiatives in figure 3 refer to efforts to recognize RoN in subnational state constitutions in the US, Germany, and various Latin American countries (for example, the Mexican states of Mexico City and Guerrero recognize RoN in their constitutions).

Local Law

There are four times more initiatives to recognize RoN in local laws than in national statutory law. This statistic can be misleading, as 81 percent of the local law initiatives (ninety-one of 113) are in the US. The prevalence of local RoN laws in the US results from the extreme partisan divisions that have caused gridlock in national and state legislatures. Many RoN advocates therefore have appealed directly to voters through ballot initiatives for local ordinances.

This strategy seems sensible, given that ballot initiatives can be framed around local environmental issues that matter to voters. However, the US's federal system makes these local laws weak in terms of enforcement.[7] Local ordinances may be preempted by state or federal law, giving opponents of RoN legal leverage to overturn them. Nearly all instances in which RoN initiatives were overturned by courts (ten of twelve) occurred in the US. To date, no US court has upheld an RoN law when it was challenged using arguments of preemption. This problem is driving efforts to secure recognition for RoN in state constitutions.

7 Kauffman and Martin, "Constructing Rights of Nature Norms," 50–51.

National Statutory Law

While local RoN laws outnumber national RoN laws, more countries are seeking to recognize RoN in national statutory law than through any other type of legal provision (see fig. 4). Enshrining RoN in national laws with strong legal standing (i.e., not subject to preemption) can help ensure that RoN are implemented in practice.[8] Importantly, countries in every world region have initiatives to recognize RoN in national statutory law. These countries are likely to have fewer RoN initiatives overall; numerous local RoN laws become less necessary with national laws in place. The US's focus on local initiatives, then, explains the high number of RoN initiatives in North America as a matter of political strategy rather than an inherent "fit" between RoN and North American legal and environmental values.

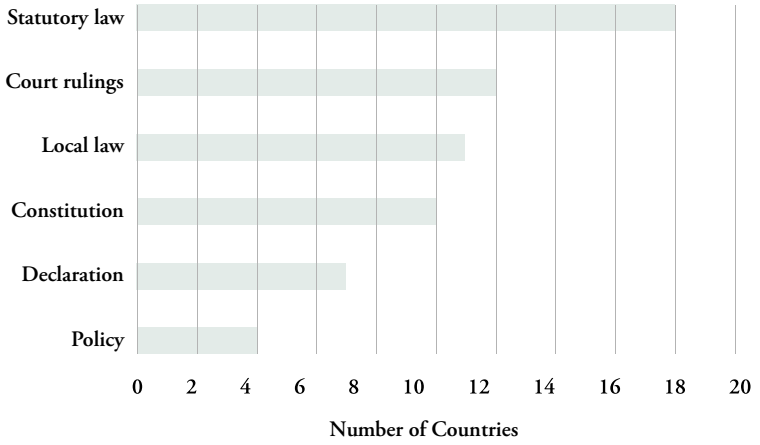
Case Law

By contrast, the large number of initiatives in Latin America is driven by the rapid growth in case law (court rulings) that followed the recognition of RoN in Ecuador's constitution and several subnational state constitutions, as well as statutory and local laws across the region. Some 75 percent of court rulings on RoN globally are issued by Latin American courts (eighty-five of 114). Moreover, court rulings account for two-thirds of all RoN legal provisions in Latin America (eighty-five of 127). This suggests that Latin America's large number of RoN legal provisions stems from the courts providing a viable pathway for legally recognizing RoN, due to political context, rather than an inherent "fit" between RoN and Latin American legal and environmental values. This, together with

8 Kauffman and Martin, "Constructing Rights of Nature Norms," 50.

the North American data, suggests that the large number of RoN initiatives in the Western Hemisphere results more from political conditions rather than an inherent "fit" between RoN and Western legal norms, as some scholars have suggested.[9]

Figure 4: Number of Countries Pursuing Types of RoN Legal Provisions



Source: Kauffman et al., Eco Jurisprudence Tracker, 2022.

The high volume of RoN case law in Latin America is primarily driven by Ecuadorian courts, which are responding to lawsuits invoking the country's constitutional RoN.[10] Ecuador accounts for

9 See, for example, Ariel Rawson, Ariel Janaye, and Becky Mansfield, "Producing Juridical Knowledge: 'Rights of Nature' or the Naturalization of Rights?," *Environment and Planning E: Nature and Space* 1, nos. 1–2 (March 2018).

10 Kauffman and Martin, *The Politics of Rights of Nature*, 79–116.

68 percent (fifty-eight of eighty-five) of the RoN court rulings in Latin America. The country illustrates the power of establishing RoN as constitutional rights, which have maximum enforceability. Since 2019, Ecuador's Constitutional Court has established binding jurisprudence in a number of cases, clarifying aspects of RoN and linking it with other constitutional rights. In doing so, the court is moving RoN from a vague, abstract concept to a set of specific standards for how to balance RoN with various human rights and existing environmental law—ultimately enabling sustainable development through holistic means.[11]

Ecuador's Constitutional Court, as Martin and I show, has clarified the specific rights of various natural entities, from rivers and forest ecosystems to biodiversity habitats to individual animals.[12] Moreover, it has established frameworks with specific criteria for determining rights violations of different kinds of ecosystems. It has also set forth procedures and rules that the state must follow to protect and enforce RoN. For example, governments must adopt the precautionary principle amid scientific uncertainty. Environmental impact assessments and permitting by state authorities are no longer considered sufficient to protect RoN; the government, corporations, and citizens must go further by showing that their behaviors do not threaten the ability of ecosystems to exist, maintain their cycles, and evolve naturally. Perhaps most important, it is no longer acceptable to sacrifice RoN for the sake of economic development. The two must be balanced in a way that allows nature's life-giving cycles to continue functioning. Those that violate these rules, including government authorities, are being sanctioned through fines,

11 Craig Kauffman and Pamela Martin, "How Ecuador's Courts are Giving Form and Force to Rights of Nature Norms," *Transnational Environmental Law* 12, no. 2 (July 2023), doi:10.1017/S2047102523000080.

12 Kauffman and Martin, "Ecuador's Courts."

the cancellation of mining concessions, orders to pay to restore ecosystems, and even criminal prosecution.

Ecuador is not alone: eleven other countries are working to develop RoN case law. The fact that roughly a third of global RoN legal provisions involve case law (114 of 353) illustrates the importance of courts as a pathway for recognizing and enforcing RoN, as well as the power of training judges in RoN jurisprudence. Since 2016, judges in various countries have interpreted existing laws to justify the legal recognition of RoN even though their countries have no laws explicitly recognizing these rights.[13] For example, the Constitutional Court of Colombia recognized the Atrato River as a legal person with rights, while the Supreme Court of Justice of Colombia did the same for the Amazon rainforest. Bangladesh's Supreme Court similarly recognized the rights of the Turag River. Courts in India have recognized the Ganga and Yamuna rivers, the Himalayan mountains and glaciers, and the watersheds that these glaciers feed as subjects with rights.

Indigenous Law, Declarations, and Other Initiatives

Some Native American and First Nation tribes in the United States and Canada have pursued a different pathway. These communities have recognized RoN in tribal law as a tool to fight environmental degradation caused by fracking, mining, oil transport, and industrial agriculture. As of August 2023, at least ten tribes—the ʔEsdilagh First Nation and the Innus of Ekuanitshit in Canada, and the Ho-Chunk Nation, the Menominee Indian Tribe, the Navajo Nation, the Nez Perce Tribe, the Ponca Nation, the Tohono O'odham Nation, the White Earth Band of Ojibwe, and the Yurok Tribe in the US—recognized RoN in their constitutions or tribal law. In June

13 Kauffman and Martin, *The Politics of Rights of Nature*, 189–210.

2022, the National Congress of American Indians, the largest and oldest American Indian and Alaska Native organization, adopted a resolution stating that "the National Congress of American Indians (NCAI) supports the rights of nature legal framework and the efforts of Tribal Nations to recognize and enforce these rights within tribal law and governance."[14]

Often, these Indigenous groups frame the recognition of RoN in tribal law as codifying principles from their customary first law, traditionally held as oral knowledge. For example, in 2002 the Diné (Navajo Nation) updated the Navajo Nation Code to include the Fundamental Laws of the Diné (i.e., Diné Natural and First Law). The code recognizes that "All creation, from Mother Earth and Father Sky to the animals, those who live in water, those who fly and plant life have their own laws and have rights and freedoms to exist." Importantly, these RoN are seen as natural rights, originating in natural laws that predate humans, not rights granted by people or human law. It is also worth noting that this recognition of RoN in the Navajo Nation Code predates the 2006 Tamaqua Borough, Pennsylvania, ordinance that is frequently cited as the world's first RoN law.

Indigenous peoples in the US and Canada can recognize RoN in tribal law because these countries recognize them as sovereign nations. In countries that do not extend this recognition, some Indigenous groups are using declarations as a legal tool for asserting their authority, including to recognize RoN. Declarations do not ensure legal enforcement, but they do provide a mechanism under

14 CDER, "Press Release: National Congress of American Indians Adopts Rights of Nature Resolution," June 28, 2022, www.centerforenvironmentalrights.org/news/press-release-national-congress-of-american-indians-adopts-rights-of-nature-resolution?mc_cid=b6b2a2122d&mc_eid=714d7f924e.

customary international law through which Indigenous peoples can assert their self-determination and authority.[15]

One example is the Fitzroy River Declaration, adopted in 2016 by Martuwarra Nations (First Nations in Western Australia). The declaration states that "the Fitzroy River is a living ancestral being and has a right to life. It must be protected for current and future generations, and managed jointly by the Traditional Owners of the river."[16] According to Anne Poelina, a Nyikina Warrwa traditional Indigenous custodian of the river, the declaration is an expression of Aboriginal First Law, which "promotes the holistic natural laws for managing the balance of life."[17]

Similarly, in October 2019 an alliance of more than thirty Indigenous peoples and nationalities from the Ecuadorian and Peruvian Amazon released the Declaration for the Protection of the Amazon Sacred Headwaters. Seeking support for efforts to protect seventy-four million acres of tropical rainforests in the headwaters of the Amazon River from destructive extractive practices, the declaration calls for "recognition and respect for Indigenous peoples' rights, the rights of nature, and the pursuit of collective wellbeing" and urges a "just transition to a postextractive, pluri-national, intercultural, and ecological civilization."[18]

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15 For example, the United Nations Declaration on the Rights of Indigenous Peoples.

16 Martuwarra First Nations, Fitzroy River Declaration, November 16, 2016, https://ecojurisprudence.org/wp-content/uploads/2022/07/fitzroy-river-declaration.pdf.

17 Anne Poelina, Kathrine Taylor, and Ian Perdrisat, "Martuwarra Fitzroy River Council: An Indigenous Cultural Approach to Collaborative Water Governance," *Australasian Journal of Environmental Management* 26, no. 3 (August 2019): 236–37, https://doi.org/10.1080/14486563.2019.1651226.

18 Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE), Inter-Ethnic Association of the Peruvian Amazon (AIDESEP), Regional Organization of the Indigenous Peoples of the Oriente, Peru (ORPIO), the Autonomous Territorial Government of the

Indigenous peoples are also working to advance RoN within the legal systems of the countries where they live, and they are utilizing the full range of legal tools available. According to the Eco Jurisprudence Monitor, fifty-seven of the identified 353 RoN legal initiatives were initiated by Indigenous peoples—often in the form of lawsuits that invoke RoN to protect Indigenous cultural rights and territories. In some cases, Indigenous groups work with local governments to recognize RoN in local law. For example, in 2021 the Innu Council of Ekuanitshit worked with the Minganie Regional County Municipality in Canada to adopt a resolution recognizing the Magpie River (Muteshekau Shipu in the Innu language) as a legal entity with rights. Other times, Indigenous groups work to recognize RoN in national law; Bolivia's 2010 Law of the Rights of Mother Earth is one example. And sometimes Indigenous groups work with executive agencies to enshrine RoN in regulatory policy, as the First Nations in the Martuwarra Fitzroy River Council in Australia have done with their Martuwarra Management Plan, submitted to the Western Australian government.[19]

Policy

The Martuwarra Management Plan is one example of a regulatory, rather than legislative, approach to advancing RoN. Some RoN advocates have worked to activate networks of executive branch

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Wampis Nation, Peru (GTAN Wampis), and Coordinator of the Indigenous Organizations of the Amazon Basin (COICA), Declaration for the Protection of the Amazon Sacred Headwaters, October 2019, https://ecojurisprudence.org/wp-content/uploads/2022/08/Final-Declaration-Amazon-Sacred-Headwaters.pdf.

19 Martuwarra RiverofLife, Anne Poelina, Jason Alexandra, and Nadeem Samnakay, *A Conservation and Management Plan for the National Heritage Listed Fitzroy River Catchment Estate* (No.1), Nulungu Reports 1, October 2020, https://doi.org/10.32613/nrp/2020.4.

bureaucrats with the authority to recognize RoN in public policy, even without creating a new law. Lawyers from the Earth Law Center trained city officials in Santa Monica, California, on Earth jurisprudence and its applications, resulting in the incorporation of RoN into Santa Monica's Sustainable City Plan. The Australian Earth Law Alliance works with local officials in Australia, prompting the Blue Mountains City Council to adopt RoN principles in its operations and practices in 2021.

International Documents, Soft Law, and Citizen Tribunals

At the international level, RoN is still extremely weak. The Eco Jurisprudence Monitor identifies thirty international documents that acknowledge RoN, many of them UN General Assembly resolutions and UN Secretary General reports. In 2020, the European Parliament passed a resolution addressing deforestation that stated that "ancient and primary forests should be considered and protected as global commons and that their ecosystems should be granted a legal status."[20] A 2022 report of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services considers the RoN and nature's intrinsic value independent of its utility to humans as necessary considerations in environmental public policymaking.[21]

20 European Parliament, Resolution P9_TA(2020)0285: Deforestation, October 22, 2020, 19, https://ecojurisprudence.org/wp-content/uploads/2022/02/International_European-Union-Parliament-legal-status-of-ecosystems_212.pdf.

21 Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, Summary for Policymakers of the Methodological Assessment Regarding the Diverse Conceptualization of Multiple Values of Nature and its Benefits, Including Biodiversity and Ecosystem Functions and Services (Assessment of the Diverse Values and Valuation of Nature), IPBES/9/L.13, July 9, 2022, https://ecojurisprudence.org/wp-content/uploads/2022/07/Summary_IPBES_SPM_ValuesAssessment_11Jul2022.pdf.

Despite these efforts, RoN remains underdeveloped in international law. In response, civil society organizations are drafting proposed international RoN law to stimulate and guide its continued development. These initiatives are grouped under soft law by the Eco Jurisprudence Monitor. A leading example is the Universal Declaration of the Rights of Mother Earth, which was adopted at the 2010 World People's Conference on Climate Change and the Rights of Mother Earth, held in Cochabamba, Bolivia, and attended by over 35,000 people from 140 nations.

To support their efforts in establishing global RoN norms, the Global Alliance for the Rights of Nature created a new international governing institution: the International Tribunal for the Rights of Nature. This is not a formal court, but a "people's tribunal" that investigates, tries, and decides cases involving alleged violations of the Universal Declaration of the Rights of Mother Earth.[22] The idea was inspired by the International War Crimes Tribunal and the Permanent Peoples' Tribunal, established by citizens in the 1960s and 1970s, respectively, to strengthen international human rights law. The tribunal's purpose is to educate people about what RoN would look like in practice if it were incorporated into formal legal systems—to make it seem less abstract, more realistic, and consequently less scary, thereby helping to build normative support and political pressure. According to the Eco Jurisprudence Monitor, ten citizen tribunals have been convened at the time of writing.

How Is Nature Defined in RoN Law?

There are major differences among RoN legal provisions, a crucial one being whether they recognize RoN in general, however defined, or whether they recognize rights for a specific ecosystem, plant or

22 See Rights of Nature Tribunal, accessed August 23, 2023, https://www.rightsofnaturetribunal.org/.

animal species, or individual animal. This distinction is not just important for conceptual reasons; it has practical implications. It may partially determine who can speak for nature in human decision-making institutions. When RoN legal provisions apply to specific entities, like a river or forest, it is relatively easy to identify local stakeholders who can serve as custodians or caretakers and who may be obliged to represent the natural entity's needs and interests. These custodians may then be incorporated into new, holistic, integrated governance institutions charged with managing human behaviors in a way that maintains the health and well-being of the natural entity, as has happened in New Zealand.[23]

When specific ecosystems or species are identified as subjects with rights, these tend to be freshwater ecosystems like rivers, lakes, and wetlands. This is likely because most communities directly experience the effects of climate change and other forms of environmental degradation through their access to clean water. There are sixty-four such initiatives. Forty-one initiatives focus specifically on animal rights, and smaller numbers of initiatives focus on other types of ecosystems, as well as one relating to outer space—the proposed Universal Declaration on the Rights of the Moon.[24]

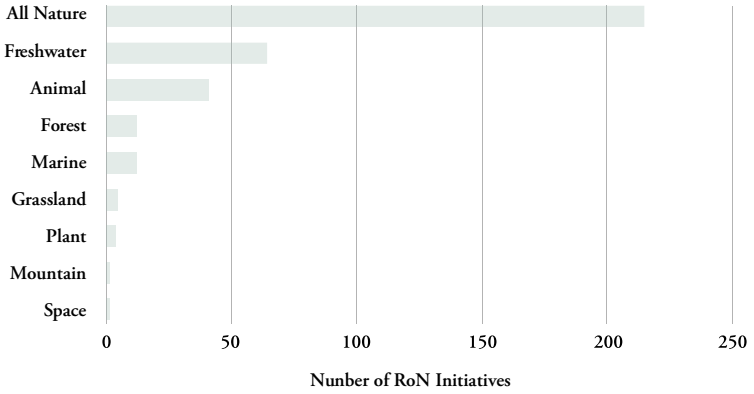
However, a more common approach is to address all of nature in general (see fig. 5). With this approach, identifying specific custodians to represent the interests of nature becomes more complicated. Laws that address nature in the abstract either ignore the question of who speaks for nature or tend to empower any person to do so. Such a role is voluntary in these cases; no person is obligated

23 Craig Kauffman and Pamela Martin, "How Courts Are Developing River Rights Jurisprudence: Comparing Guardianship in New Zealand, Colombia, and India," *Vermont Journal of Environmental Law* 20, no. 3 (Winter 2019): 260–89.

24 "Declaration of the Rights of the Moon," Draft declaration circulated by the Australian Earth Law Alliance, February 11, 2021, https://www.earthlaws.org.au/moon-declaration/.

to speak for nature. Consequently, the model is a reactive one: people seek to defend nature's rights in court only when violations are imminent or have occurred. This approach is costly, creating a collective action dilemma.[25]

Figure 5: What Kind of Nature Is Recognized as Having Rights?



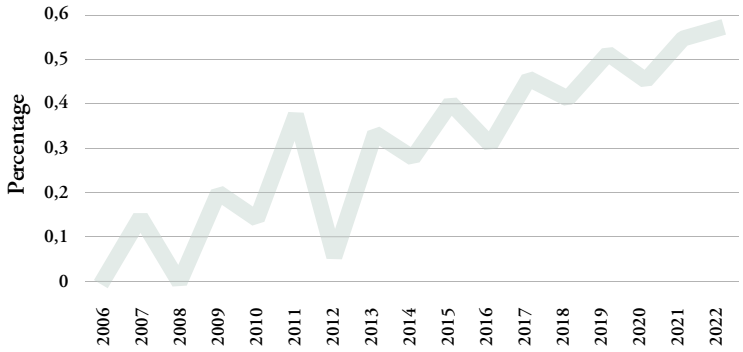
Source: Kauffman et al., Eco Jurisprudence Tracker, 2022.

There has been a steady increase over time in the percentage of RoN initiatives that address specific natural entities rather than defining nature generally (see fig. 6). In recent years, these have constituted a majority of initiatives each year. I suspect RoN advocates have learned that it is easier to mobilize public and political support behind RoN when they are framed in terms of protecting a beloved ecosystem or species whose importance is obvious to local

25 Kauffman and Martin, "Constructing Rights of Nature Norms."

community members. The RoN paradigm is so different from the current dominant paradigm that it is difficult for many people to comprehend in the abstract. It is much easier for people to understand their own connections to other natural entities when they think about this in the context of a local river, lake, forest, or plant or animal species that they depend on daily for their well-being.

Figure 6: Percent of RoN Initiatives Identifying a Specific Natural Entity



Source: Kauffman et al., Eco Jurisprudence Tracker, 2022.

Differences in How RoN Are Conceptualized

To conclude, I would like to reflect on the different ways that RoN are conceptualized, comparing the hundreds of RoN legal provisions contained in the Eco Jurisprudence Monitor. These initiatives take many different approaches, but they can be grouped into at least three broad categories that follow distinct logics: (1) the legal personhood approach, (2) a properties-based approach, and (3) a relational approach. Interestingly, these are illustrated by the three

earliest initiatives documented in the Eco Jurisprudence Monitor (shown in fig. 1).

The "legal personhood approach" draws on the ethics of deep ecology in the US and a Western conception of rights, particularly as expressed in the writings of Christopher Stone.[26] This approach conceptualizes nature as a juridical (legal) person with the same rights as other juridical persons, like corporations. Comparing nature to human groups who were once considered objects but later recognized as legal persons (e.g., slaves, women), this approach focuses on legal standing for nature and views this as the logical next step in a "historical progression from human-centeredness to the inclusion of more and more potential subjects."[27]

This approach is illustrated by the 1969 opinion written by US Supreme Court Justice William O. Douglas in *Sierra Club v. Morton*. Justice Douglas, drawing on the writings of Christopher Stone and Aldo Leopold, argued that "the Mineral King Valley and other elements of nature ought to have certain legal rights, including standing."[28] Justice Douglas was unable to persuade his colleagues on the Supreme Court (the Monitor codes this initiative as rejected). But it illustrates the conceptualization of RoN common in the US (outside of Indigenous initiatives), particularly in the local ordinances advanced by the Community Environmental Legal Defense Fund and the Center for Democratic and Environmental Rights.

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26 Roderick Frazier Nash, *The Rights of Nature: A History of Environmental Ethics* (Madison: University of Wisconsin Press, 1989); Christopher Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects* (Los Angeles: University of Southern California Press, 1972).

27 Mihnea Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," *Transnational Environmental Law* 9, no. 3 (August 2020): 435–36.

28 David Boyd, The Rights of Nature: A Legal Revolution That Could Save the Planet (Toronto: ECW, 2017), 105.

Critics of this approach argue that it is problematic to model nature as "people" and use "human rights to capture the interests of the nonhuman"; this creates the risk of "only having respect for things insofar as they resemble human experience and characteristics."[29] A similar critique could be levied against many animal rights initiatives, like the Universal Declaration of Animal Rights, proclaimed by UNESCO in 1978. In general, the animal rights movement draws on a different logic of rights than the global RoN movement, which tends to focus on ecosystems and species rather than individual animals. Most animal rights advocates adopt what Joshua Gellers calls a "properties-based" approach.[30] This approach argues that animals should be granted moral status and rights because they possess many of the same attributes as humans, like sentience (the ability to experience suffering and happiness), desire, intentionality, or memory.[31] As with legal personhood, humanity provides the model and benchmark for determining whether other entities should have moral, and therefore legal, status.

This properties-based approach contrasts with the relational approach commonly adopted by the global RoN movement. RoN initiatives that draw on the philosophy of Earth jurisprudence or "wild law" assert that all entities of nature—living and nonliving alike—are worthy of moral consideration, and consequently rights, because they are tied together through interdependent, reciprocal

29 Anna Grear, "It's Wrongheaded to Protect Nature with Human-Style Rights," *Aeon*, March 19, 2019, 1–2, https://aeon.co/ideas/its-wrongheaded-to-protect-nature-with-human-style-rights. See also Tănăsescu, "Rights of Nature."

30 Joshua Gellers, *Rights for Robots: Artificial Intelligence, Animal and Environmental Law* (New York: Routledge, 2021), 66.

31 Peter Singer, "All Animals Are Equal," *Philosophic Exchange* 5, no. 1 (Summer 1974): 103–16; Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press, 1983).

relationships.[32] This is why RoN tend to be applied to ecosystems, defined as communities of human and more-than-human entities, or to nature in general, which is conceptualized as systems (communities) nested within systems (communities). This logic is summarized by Thomas Berry, considered a founder of the modern RoN movement, in one of his Ten Principles of Jurisprudence:

> [RoN] as presented here are based on the intrinsic relations that the various components of Earth have to each other. The planet Earth is a single community bound together with interdependent relationships. No living being nourishes itself. Each component of the Earth community is immediately or mediately dependent on every other member of the community for the nourishment and assistance it needs for its own survival.[33]

Yet despite the relational approach's focus on natural communities, it is compatible with animal rights' concern for individual animals. Another of Berry's Ten Principles of Jurisprudence states that "since species exist only in the form of individuals, rights refer to individuals, not simply in a general way."[34] Similarly, in January 2022, Ecuador's Constitutional Court issued a ruling affirming that the country's constitutional RoN provisions apply to individual animals. While Ecuador's constitution recognizes RoN as a whole, the court defined nature as including all living beings, both human and nonhuman. It determined that individual animals, as part of nature,

32 Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (White River Junction, VT: Chelsea Green, 2011); Peter Burdon, ed., *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Kent Town, Australia: Wakefield, 2011).

33 Thomas Berry, *Evening Thoughts: Reflecting on Earth as Sacred Community*, ed. Mary Evelyn Tucker (San Francisco: Sierra Club Books, 2006), 110.

34 Berry, *Evening Thoughts*, 110.

have rights.[35] The court's reasoning in the ruling demonstrates a systems-level approach to evaluating the interrelationships among elements in nature.

Indigenous philosophies and ontologies tend to be relational.[36] Consequently, Indigenous RoN initiatives typically adopt this relational approach and emphasize the close ties and mutual dependencies between their people and the rest of the natural world. The 2002 Navajo Nation Code amendments and the Fitzroy River Declaration discussed above are but two examples. These initiatives often portray RoN and Indigenous cultural rights as entwined in a set of "biocultural rights."[37] Another example is a successful 2019 lawsuit filed by a Waorani Indigenous group in Ecuador's Amazonian basin; the suit combined Indigenous rights and RoN arguments to prohibit oil extraction in Waorani territory.[38]

There are several important differences between the Western legal personhood approach and Indigenous relational approaches, particularly those rooted in first law. Poelina explains that first law principles are not applied through rules, policies, and procedures where punitive measures influence individual and societal behavior. Instead, "First Law is applied through multilayered stories that impart values and ethics." These constitute "a comprehensive ethical framework that defines the codes of conduct necessary for maintaining a peaceful, thriving, and co-operative society grounded in

35 Rights of Nature and Animals as Subjects of Rights (Monkey Estrellita), No. 253-20-JH, Constitutional Court of Ecuador, January 27, 2022, 19–20.

36 Tănăsescu, "Rights of Nature," 437.

37 Cher Weixia Chen and Michael Gilmore, "Biocultural Rights: A New Paradigm for Protecting Natural and Cultural Resources of Indigenous Communities," *International Indigenous Policy Journal* 6, no. 3 (June 2015), https://ojs.lib.uwo.ca/index.php/iipj/article/view/7466/6110.

38 Omaca Huiña et al. v. Procuraduría General del Estado et al., No. 16171201900001, Provincial Court of Pastaza (Ecuador), May 9, 2019.

love and reciprocity."[39] References to nature as a living or ancestral being are thus different from "legal personhood" in that nature's rights are based on natural laws that predate humans; they are neither granted by humans nor rooted in human law. "As the River is already an entity, it should not have to depend on the specific actions of settler law to achieve this status."[40]

Mihnea Tănăsescu critiques the legal personhood approach for portraying "a totalizing, universal nature . . . that is worshipped as an unchangeable form" due to its basis in Western notions of rights and what he calls a "modernist ecocentric philosophy."[41] By contrast, the relational approach recognizes that natural systems are constantly changing and evolving, and interactions between humans and more-than-human members of nature are dynamic. Consequently, RoN must be understood in terms of "ecological relations modelled on a particular natural entity itself" rather than modelled on humans. "In relational ontologies it is this land, here and now, specific to a location and a people, that acts and is therefore given voice through particular partnerships with particular people, who themselves take their character from the land."[42]

Outside the US, the relational approach to RoN is common. The RoN provisions in Uganda's 2019 Environmental Act, for instance, resulted from three years of advocacy by the Ugandan NGO Advocates for Natural Resources and Development (ANARDE).[43]

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39 Nicole Redvers et al., "Indigenous Natural and First Law in Planetary Health," *Challenges* 11, no. 29 (October 2020): 4, doi:10.3390/challe11020029.

40 Redvers et al., "Indigenous Natural and First Law," 3.

41 Tănăsescu, "Rights of Nature," 451.

42 Tănăsescu, "Rights of Nature," 451.

43 ANARDE, "Rights of Nature Gaining Ground in Uganda's Legal System: National Environment Act 2019," press release, February 4, 2019, www.gaiafoundation.org/rights-of-nature-gain-ground-in-ugandas-legal-system/.

ANARDE describes its relational approach to RoN as rooted in both the customary laws of local African communities and the Earth jurisprudence of Berry, noting that "human beings and nature are interdependent and people cannot survive without Nature."[44]

In addition to adopting a relational approach, newer RoN laws are beginning to address critiques of early RoN laws. For example, many recent RoN laws recognize natural entities as possessing the right not only to exist (i.e., to maintain the functioning of their natural cycles) and to be restored when damaged, but also to evolve naturally. In doing so, they avoid a totalizing approach, instead recognizing that nature's form is dynamic and evolves according to natural laws that are independent from human law and must be respected.

In conclusion, I argue that the relational approach provides the strongest basis for synthesizing more-than-human rights and human rights into a coherent framework. Because humans are recognized as part of nature, they are afforded rights and moral value just like all other elements of nature. At the same time, the relational approach does not hold up humans as the model and benchmark for determining rights and also recognizes that more-than-human rights do not originate from human law. It therefore provides the strongest basis for transitioning away from the current anthropocentric paradigm—a step that is desperately needed in order to address the environmental crises we face.

44 ANARDE, "Rights of Nature Gaining Ground."

Can the Rights of Nature Transform the Way Rights Are Conceptualized in International Law?

Emily Jones

In the face of climate change and environmental degradation, states across the globe have begun to recognize nature as a rights-holder. From New Zealand/Aotearoa to Bangladesh, Spain to the United States, Ecuador to Colombia, more-than-human (MOTH) rights have been established through rights-of-nature (RoN) frameworks that challenge the anthropocentrism of the law. However, while RoN have been recognized in domestic laws, little attention has been given to their application in international law.[1]

1 Literature on RoN and international law is, however, beginning to emerge. See Harriet Harden-Davies et al., "Rights of Nature: Perspectives for Global Ocean Stewardship," *Marine Policy* 1, no. 122 (December 2020); E. Jones, "Posthuman International Law and the Rights of Nature," *Journal of Human Rights and the Environment* 12, (December 2021); Jérémie Gilbert et al., "The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's 'Greening' Agenda," in *Netherlands Yearbook of International Law*, eds. Daniëlla Dam-de Jong and Fabian Amtenbrink (The Hague: T. M. C. Asser Press, 2021).

This chapter asks whether recognizing RoN may help transform how rights are conceptualized in international law, ultimately advancing MOTH interests. I begin by outlining some of the core critiques of rights in international law, drawing on feminist, postcolonial, and other critical scholarship to highlight the gendered, racialized, anthropocentric, and (neo)liberal logic that underpins international human rights law (IHRL). I then turn to Indigenous contestations over the use of rights in certain contexts where RoN provisions have been applied.

The chapter considers whether the potential recognition of RoN in international law inevitably runs up against the limits of rights discourse, or whether RoN can be used to transform dominant concepts of rights. Here, I identify two ways that RoN could be used to transform how rights are conceived in international law, both of which draw upon framings of RoN in domestic contexts. The first entails viewing rights as relationships; the second is the emerging right of nature to flourish. I conclude by reflecting on long-standing critiques of rights as embedded within gendered, racialized, classed, anthropocentric, and Eurocentric structures of power. Given these critiques, the chapter asks whether rights discourse is the best model to rely on, or if those seeking to advance MOTH interests should look elsewhere.

RoN in International Law

RoN laws have been "emerging in response to extreme pressure on ecosystems, and on communities that live and rely on them."[2] As Craig Kauffman outlines in his chapter in this volume, over

2 Craig M. Kauffman and Linda Sheehan, "The Rights of Nature: Guiding our Responsibilities through Standards," in *Environmental Rights: The Development of Standards*, eds. Stephen Turner et al. (Cambridge: Cambridge University Press, 2019), 343.

thirty countries on all continents have recognized nature as having rights.[3] While RoN have yet to be adopted within international law,[4] today there is more interest than ever in recognizing these rights globally.[5]

The closest international law has come to recognizing RoN was in 2022, when a nonbinding agreement was adopted at the fifteenth meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD). This nonbinding agreement was signed by over two hundred states and "recognizes and considers . . . for those countries that recognize them, rights of nature and rights of Mother Earth."[6] The language used here is by no means new: the original proposal was made in the zero draft of the post-2020 Global Biodiversity Framework, released in August 2020, which states the need to "consider and recognize, where appropriate, the rights of nature" and the need to focus on the rights of "mother earth."[7] However, the language of the zero draft was not adopted in the final post-2020 Global Biodiversity Framework,[8] which in the end dropped

3 See Craig M. Kauffman, "Global Patterns and Trends in Rights of Nature Legal Provisions: Insights from the Eco Jurisprudence Monitor", in this volume.

4 See Harden-Davies et al., "Rights of Nature"; Gilbert et al., "The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's 'Greening' Agenda."

5 For an overview of calls for RoN to be recognized in international law, alongside a discussion of potentials and limitations, see Gilbert et al., "The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's 'Greening' Agenda," 55-67.

6 Convention on Biological Diversity, December 18, 2022, CBD/COP/15/L.25, paragraph 9, https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf.

7 Convention on Biological Diversity, Update of the Zero Draft of the Post-2020 Global Biodiversity Framework, CBD/POST2020/PREP/2/1 (August 17, 2020).

8 Convention on Biological Diversity, Open Ended Working Group on the

the language of RoN and calls for a focus on "harmony with nature,"[9] a reference to the United Nations' (UN) Harmony with Nature initiative led by Bolivia. While the use of RoN language in the final 2023 CBD agreement is clearly to be applauded, it is worth noting the insertion of the phrase "for those countries that recognize them"—wording that ensures that the agreement falls short of a global recognition of RoN.

Some states, though, have begun to push for the international recognition of RoN. In 2009, Bolivian President Evo Morales called on the UN General Assembly (UNGA) to adopt a Universal Declaration of the Rights of Mother Earth (UDRME).[10] In 2010, Bolivia hosted the World People's Conference on Climate Change and the Rights of Mother Earth, where around thirty-five thousand people from over 140 countries wrote the citizens' UDRME.[11] The text asserts the RoN, outlining the role of humans and focusing in particular on the multiple power dynamics that structure the climate change debate.[12]

Post-2020 Global Biodiversity Framework, CBD/WG2020/3/L.2 (March 29, 2020).

9 Convention on Biological Diversity, Open Ended Working Group on the Post-2020 Global Biodiversity Framework, Second Meeting, CBD/WG2020/2/3 (January 6, 2020).

10 Evo Morales, "Address by H. E. Mr. Evo Morales Ayma, the President of the Plurinational State of Bolivia," September 23, 2009, 64th Session of the General Assembly of the United Nations, https://www.un.org/en/ga/64/generaldebate/pdf/BO_en.pdf.

11 Statistics on delegates from Kauffman and Sheehan, "The Rights of Nature," 347. World People's Conference on Climate Change and the Rights of Mother Earth, April 22, 2010, Bolivia, People's Agreement, https://gadebate.un.org/sites/default/files/archivos/2017/11/decreto_229_nuevo_mandato_20171029124337.pdf.

12 World People's Conference on Climate Change. For a wider history of the UDRME, see Paola Villavicencio and Louis J. Kotzé, "Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in

The UN has held annual intergovernmental negotiations since 2009 on constructing a nonanthropocentric understanding of sustainable development. Several UNGA Resolutions and UN Secretary General Reports have now called for the recognition of RoN.[13] A series of UNGA Interactive Dialogues have also been held on Harmony with Nature.[14] In 2015, the UNGA called for the creation of an expert report on Earth jurisprudence, establishing a global network of experts.[15] The report, released in 2016,[16] recognizes the "fundamental legal rights of ecosystems and species to exist, thrive and regenerate."[17] In 2017, the UNGA Dialogue focused on applying Earth jurisprudence to the sustainable development goals.[18]

Despite these developments, RoN have yet to be fully recognized within international law. While interest in this paradigm shift has grown, rights already hold a very particular meaning in international law. This chapter seeks to understand how RoN, if recognized in international law, may interact with and either shape or be shaped by existing concepts of rights in international law, namely in IHRL.

IHRL has been widely critiqued, including by feminist and postcolonial theorists and scholars of political economy. These scholars challenge the limited conceptualization of rights in this body of law, arguing that the rights upheld by and through IHRL largely represent the needs of a white, male, European elite. In the

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Bolivia," *Transnational Environmental Law* 7 no. 3 (2018): 397–424.

13 For a full list of these, see UN Harmony with Nature, UN Documents on Harmony with Nature, http://harmonywithnatureun.org/unDocs/.

14 UN Harmony with Nature, Interactive Dialogues of the General Assembly, http://www.harmonywithnatureun.org/dialogues/.

15 United Nations, Resolution A/RES/70/208 (2015), paragraph 3–4.

16 United Nations, Resolution A/71/266 (2016).

17 A/71/266, paragraph 7.

18 UN General Assembly, Report of the Secretary-General on UN Harmony with Nature, A/72/175 (July 19, 2017).

meantime, others have critiqued IHRL for being anthropocentric. I discuss these critiques in more detail below.

Critical scholars of human rights are not the only people to have questioned the framing of rights—some Indigenous groups have also challenged a rights-based framing for nature. Indigenous legalities have been central in recasting legal concepts in ways that have enabled the recognition of RoN.[19] Indigenous theories and practices are, however, multiple and differing. While some Indigenous peoples in, for example, Ecuador and Bolivia have favored a rights-based model, Australian Nations have rejected the approach, calling instead for stronger Indigenous environmental governance through "caring for country."[20]

A similar critique emerged in Indigenous discussions in New Zealand/Aotearoa, where the legal personality of a forest and a river was recognized in 2014 and 2017, respectively.[21] This model was adopted following agreements between the Indigenous *iwi* and the state of New Zealand/Aotearoa, because it was deemed to better fit the worldview of the iwi. The iwi do not emphasize the concept of rights

19 See Erin O'Donnell et al., "Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature," *Transnational Environmental Law* 9, no. 3 (October 2020): 403–27.

20 Virginia Marshall, "Removing the Veil from the 'Rights of Nature': The Dichotomy between First Nations Customary Rights and Environmental Legal Personhood," *Australian Feminist Law Journal* 45, no. 2 (September 2019): 233–48. It is also important to note that caring for country is a rich and complex concept. Deborah Bird Rose's work on the many meanings of country exemplifies this well. See Deborah Bird Rose, "Country," in *Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness*, ed. Deborah Bird Rose (Canberra: Australian Heritage Commission, 1996), 6. Pelizzon and Kennedy also discuss the many meanings of country. See Alessandro Pelizzon and Jade Kennedy, "Welcome to Country: Legal Meanings and Cultural Implications," *Australian Indigenous Law Review* 16, no. 2 (January 2012): 58–69, 65–66.

21 Te Awa Tupua (Whanganui River Claims Settlement), New Zealand, March 20, 2017; Te Urewera Act, New Zealand, July 27, 2014.

because, to iwi, nature is not property but rather a living, "spiritual" entity as well as a "physical entity"[22]—an ancestor.[23] Accordingly, the concept of guardianship was agreed upon by both the state and the iwi negotiators, the aim being to reflect Māori understandings of the link between people and place. However, it is key to note that a legal personality model was adopted to "best" recognize Māori worldviews while still allowing integration into New Zealand's settler-colonial legal system. This form of recognition is a far cry from recognizing Māori jurisprudence throughout New Zealand/Aotearoa.

Taking stock of these critiques, this chapter unpacks some of the tensions around rights discourse in international law, evaluating whether RoN may be used to transform the concept of rights in international law or whether, instead, a different model may be needed to express MOTH legal interests.

Human Rights as a Tool for Governance: Gender, Colonialism, and Political Economy

The discourse of human rights is considered emancipatory by many, but scholars across disciplines have critiqued this framework. In his contribution to this volume, for instance, Will Kymlicka outlines how a distinction between humans and animals undergirds human rights, situating humans in hierarchical supremacy above all other beings.[24] In this section, I explore another set of critiques: that hu-

22 Te Awa Tupua, Article 13(a).

23 Craig M. Kauffman, "Managing People for the Benefit of the Land: Practicing Earth Jurisprudence in Te Urewera, New Zealand/Aotearoa," *ISLE: Interdisciplinary Studies in Literature and Environment* 27, no. 1 (September 2020): 578–95.

24 See Will Kymlicka, "Rethinking Human Rights for a More-Than-Human World," in this publication.

man rights, specifically IHRL, upholds problematic gendered, colonial, and neoliberal norms. These critics argue that IHRL is used as a governance tool to determine which subjects deserve rights and which do not, a determination shaped by gender, race, and class. They assert that IHRL has operated to sideline questions around structural forms of oppression, such as patriarchy, capitalism, anthropocentrism, and colonialism, in favor of a liberal model of rights redress.

Feminist legal scholars have argued that the subject of IHRL is male, white, heterosexual, able-bodied, and middle class, concluding that IHRL was primarily set up to protect elite male interests defined as rights.[25] Feminist scholars have long shown how harm is experienced differently across gender.[26] Accordingly, IHRL took a long time to begin to recognize women's rights. This is reflected in the legal battles that were fought over domestic violence. The right to be free from inhumane and degrading treatment and torture was originally envisaged as protecting victims from state acts of violence. Feminist legal scholars critiqued this stance, arguing that

25 See Hilary Charlesworth, "Human Rights as Men's Rights," in *Women's Rights, Human Rights: International Feminist Perspectives*, eds. J. S. Peters and Andrea Wolper (London: Routledge, 1995), 103–13; Charlotte Bunch, "Women's Rights as Human Rights: Toward a Revision of Rights," *Human Rights Quarterly* 12, no. 4 (1990): 486–500; Elisabeth Jay Friedman, "Bringing Women to International Human Rights," *Peace Review: A Journal of Social Justice*, no. 18 (2006): 479–84.

26 See Rebecca J. Cook, "Women's International Human Rights Law: The Way Forward," *Human Rights Quarterly* 15, no. 230 (1993); Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester, UK: Manchester University Press, 2000); Judith Gardham, "Woman and the Law of Armed Conflict: Why the Silence?," *International & Comparative Law Quarterly* 46, no. 1 (1997): 55; Rashida Manjoo and Calleigh McRaith, "Gender-Based Violence and Justice in Conflict and Post-Conflict Areas," *Cornell International Law Journal* 11 (2011); Donna Sullivan, "The Public/Private Distinction in International Human Rights Law," in Peters and Wolper, *Women's Rights, Human Rights,* 126–34.

state violence is the violence men most fear,[27] whereas the torture and inhumane and degrading treatment women most fear occurs in the home. Domestic violence, however, was deemed beyond the remit of IHRL due to the focus in IHRL on state acts. It took decades of litigation to ensure that domestic violence could be considered in IHRL under the remit of due diligence.[28] This battle was eventually won, but feminist scholars have continued to draw attention to the ways that IHRL primarily represents elite male interests.[29]

In a similar vein, scholars of political economy have critiqued IHRL for promoting certain ideas of what constitutes rights over others. Consider, for instance, how civil and political rights are prioritized over economic and social rights. While formal UN doctrine declares that all rights are equally important and indivisible,[30] in

27 Rhonda Copelon, "Intimate Terror: Understanding Domestic Violence as Torture," in *Human Rights of Women: National and International Perspectives*, ed. Rebecca Cook (Philadelphia: University of Pennsylvania Press, 1994), 116–54.

28 The Committee on the Elimination of Discrimination against Women, General Recommendation 19, paragraph 9; The UN General Assembly Declaration on the Elimination of Violence against Women, March 11, 1992, Article 4; Maria da Penha Fernandes v. Brazil, Case 12.051, Inter-Am Comm'n H.R., Report No. 54/01, OEA/Ser.L./III.111, doc. 20, 2000; Opuz v. Turkey, Application no. 33401/02, European Crt. H. R. (2009). The idea of due diligence was first applied in Velasquez Rodriguez v. Honduras, Inter-Am.Ct.H. R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACrtHR), 1988.

29 Jill Steans, "Debating Women's Human Rights as a Universal Feminist Project: Defending Women's Human Rights as a Political Tool," *Review of International Studies* 33, no. 1 (2007): 11–27; Jill Steans and Vafa Ahmadi, "Negotiating the Politics of Gender and Rights: Some Reflections on the Status of Women's Human Rights at 'Beijing Plus Ten,'" *Global Society* 19, no. 3 (2005): 227–45.

30 See, for example, UN Office of the High Commissioner for Human Rights, Vienna Declaration and Programme of Action (June 25, 1993), https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action.

reality, civil and political rights are generally enforced with much more strength than economic, social, and cultural rights. Furthermore, rights are framed in the International Covenant on Civil and Political Rights (ICCPR) either as absolute, meaning that no derogation is allowed,[31] or as enforceable with some limited derogations.[32] This strong wording starkly contrasts with article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which says that states "must take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means."[33] While ICCPR rights are to be enforced strictly, ICESCR rights are considered aspirational.[34]

Susan Marks argues that the prioritization of civil and political rights over economic and social rights has worked to push aside other structural issues in international law, such as global inequalities

31 See, for example, the right to life.

32 See, for example, the right to freedom of expression.

33 United Nations General Assembly, International Covenant on Economic, Social, and Cultural Rights, Treaty Series vol. 993 (December 16, 1966), Article 2, paragraph 1.

34 It is interesting to note, however, that some of the strongest jurisprudence on economic and social rights comes from cases heard under the remit of the inter-American and African regional human rights systems, this being telling in terms of how rights that, as discussed in more detail below, have arguably been largely defined by the Global North, are then reimagined and reinterpreted by the Global South in far more progressive ways. For instance, the IACtHR has extended civil and political to include economic and social rights e.g., Street Children Case/Villagran Morales v. Guatemala, (19 Nov. 1999 IACtHR); Bosica v. Dominican Republic (8 Sept. 2005 IACtHR). The same can also be said of the African Charter; see, e.g., The Social and Economic Rights Center and the Center for Economic, Social and Cultural Rights v. Nigeria, Communication 155/96 Fifteenth Annual Activity Report of the African Commission 2001–2002; Free Legal Assistance Group v. Zaire Purohit v. The Gambia, Communication 25/89,47/90, 56/91, 100/93 (1995).

and the exploitation of resources by capitalist states and corporations.[35] While civil and political rights are important, protecting rights such as freedom of expression and freedom of assembly, they are also limited. Being able to protest and express yourself is vital, but if you have no food or money, your priorities may well be placed elsewhere. Robert Knox thereby concludes that "the 'practical' focus on human rights is profoundly *depoliticizing*," silencing broader, structural critiques of the law by containing such critique within a fundamentally liberal discourse.[36] These frameworks help to conceal global inequalities, including those produced by neoliberalism.[37] Therefore, while human rights are emancipatory for some, IHRL also works to "engender and sustain" the global status quo by refusing to intervene in structures of oppression, such as neoliberalism, patriarchy, or, as I will discuss next, colonialism.

Similarly, scholars of Third World Approaches to International Law (TWAIL) have also critiqued rights. These scholars draw on

35 Susan Marks, "Human Rights and Root Causes," *Modern Law Review* 74, no. 1 (January 2011): 74.

36 Emphasis in original. Robert Knox, "Marxist Approaches to International Law," in *The Oxford Handbook of the Theory of International Law*, eds. Anne Orford and Florian Hoffmann (Oxford: Oxford University Press, 2016), 321. This is a point Knox has also made elsewhere in relation to wider engagements with international law (not just human rights). See Robert Knox, "Strategy and Tactics," *Finnish Yearbook of International Law* 21, no. 1 (2010): 193. In a related yet different vein, the edited collection *Contingency in International Law* seeks to reimagine international law as if it had been different, providing insight into the possibility of alternative legal pasts and thereby of transformative futures. See Ingo Venzke and Kevin Jon Heller, eds., *Contingency in International Law: On the Possibility of Different Legal Histories* (Oxford: Oxford University Press, 2021).

37 See Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge: Cambridge University Press, 2020); Jason Beckett, "Creating Poverty," in *The Oxford Handbook of the Theory of International Law,* eds. Anne Orford and Florian Hoffmann (Oxford: Oxford University Press, 2016), 985–1010; Anne Orford, "Theorizing Free Trade," in Orford and Hoffman, *The Oxford Handbook of the Theory of International Law,* 701–37.

critical legal scholarship on IHRL that argues that human rights are the product of a "particular movement and place. Post-Enlightenment, nationalist, secular, Western, modern, capitalist."[38] Expanding upon this, Makau Mutua states that "human rights norms seek to impose an orthodoxy that would wipe out cultural milieus that are not consonant with liberalism and Eurocentrism."[39] In short, TWAIL scholars argue that the universal discourse of human rights imposes a largely Western-led and Western-constructed episteme on the rest of the world, framing European values as universal while erasing local knowledge and alternative understandings of freedom.[40]

Another central TWAIL critique of IHRL challenges the white savior complex that has become an all too familiar part of human rights discourse. The white savior narrative has a long history in which brutal colonial interventions were justified under the guise of "charity" and "philanthropy."[41] TWAIL scholars argue that IHRL replicates this logic in the present day; human rights are often deployed to "save brown people," or, in the context of women's rights, "white men" (and, I would add, white women) deploy human rights to save "brown women from brown men."[42] Postcolonial

38 David Kennedy, "The International Human Rights Movement: Part of the Problem?," *Harvard Human Rights Journal* 15, no. 1 (2002): 114.

39 Makau Mutua, "The Transformation of Africa: A Critique of Rights Discourse," in *Human Rights and Diversity: International Human Rights Law in a Global Context*, eds. Felipe Gomez Isa and Koen de Feyter (Bilbao, Spain: University of Deusto, 2009), 899.

40 Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Cheltenham, UK: Edward Elgar Publishing, 2020).

41 See Ayça Çubukçu, "Thinking Against Humanity," *London Review of International Law* 5, no. 2 (July 2017): 251–52.

42 Gayatri Spivak, "Can the Subaltern Speak?," in *Marxism and the Interpretation of Culture*, eds. Cary Nelson and Lawrence Grossberg (London: Macmillan, 1988), 297.

feminist scholar Ratna Kapur has argued that "rights interventions occur within and against already established normative and material frameworks, namely, conventional racial, cultural, sexual and civilizational arrangements that inform both the ideology and apparatus of human rights."[43] Human rights, Kapur argues, foster a system in which "the entitled subject, the rights-seeking subject" is held up at the expense of other freedom-seeking subjects.[44]

One example of how human rights create a legitimate subject at the cost of excluding the other is the debate over the veil. Many feminists have advocated banning the veil (or what is more commonly, though not always accurately, described as the hijab),[45] arguing that this piece of clothing is a symbol of women's oppression. Legal bans of the veil followed. Cases questioning these bans came before the European Court of Human Rights, which upheld these bans.[46] The legal sanction against this piece of clothing is often articulated in terms of women's rights, but this so-called feminist perspective ignores that the veil has many meanings. While, indeed, the veil can be imposed as a form of oppression, many also wear it by choice.[47] These debates reflect how human rights, despite claim-

43 Kapur, *Gender, Alterity and Human Rights*, 15.

44 Kapur, *Gender, Alterity and Human Rights*, 15.

45 As Kapur states, "I use the term 'veil' as a generic category that includes its various manifestations—the hijab, jilbab, abaya, niqab, burqa and chador—each version of the garment encoded with particular meaning for its adherents, proponents and opponents, and serving as both topos and target of national and regional socio-politics as well as global geo-politics." *Gender, Alterity and Human Rights*, 120.

46 See Dakir v. Belgium, Appl. No. 4619/12 (European Ct. H. R. July 11, 2017); Sahin v. Turkey, Appl. no. 4474/98 (November 10, 2005); S. A. S. v. France, Appl. no. 4835/11 (European Ct. H. R. July 1, 2014). For an analysis of these cases, see Kapur, "Alterity, Gender Equality and the Veil," in *Gender, Alterity and Human Rights*, 120–50.

47 Saba Mahmood, *The Politics of Piety* (Princeton, NJ: Princeton University Press, 2011).

ing to promote the universal human rights of all, are deeply political in terms of who is included and excluded. In this instance, a colonial gaze clearly underlies the argument that a particular piece of clothing inherently restrains a woman's freedom.[48] "Muslims," Kapur notes, "continue to be conceptualized as the embodiment of a threatening alterity, and always as incommensurable with the liberal values which are the substrate of human rights discourse."[49] Unveiling therefore becomes a form of governance,[50] excluding some from the universal humanity human rights claims to promote while forcing others to submit in order to access the "freedom" human rights prescribes them.[51]

It is clear from this example that human rights law, while claiming to provide a universal framework of freedom for all, is in fact a deeply political governance tool. The problem with human rights, however, is not only their use as a tool for governance but also their claim to universality. Human rights have become one of the most dominant accounts of freedom in the global order over the past century. Yet, as Kapur notes, this framework has worked to restrict the very idea of what freedom is and can be to its definition within human rights alone.[52]

Given this range of critiques, RoN will have to navigate a complex legal terrain if they are to be recognized in international

48 Kapur, *Gender, Alterity and Human Rights.*

49 Kapur, *Gender, Alterity and Human Rights*, 132.

50 Kapur, *Gender, Alterity and Human Rights*, 130.

51 Of course, "humanity" has only ever been ascribed to some in international law. See Kojo Koram, "'Satan is Black'—Frantz Fanon's Juridio-Theology of Racialisation and Damnation," *Law, Culture and the Humanities* 18, no. 1 (November 2017); Ayça Çubukçu, "Thinking Against Humanity," *London Review International Law* 5, no. 2 (2017): 251; Antony Anghie, "Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law," *Harvard International Law Journal* 40, no. 1 (Winter 1999).

52 Kapur, *Gender, Alterity and Human Rights*, 120.

law—to either work within or depart from existing conceptions of rights. However, and perhaps more directly relevant to RoN, IHRL has been critiqued not only in terms of which human subjects are included and excluded but also for its focus on the human at the expense of the nonhuman. The next section explores this argument.

Human Rights as Anthropocentric

International law has been critiqued by environmental lawyers for upholding a subject/object binary. In this framework, the environment is rendered an object, an economic resource to be exploited.[53] The same critique has been made of the subfield of human rights and the environment: IHRL ultimately protects *human* rights. IHRL's relevance to environmental issues has so far only been considered in terms of the impact on human lives.

The intersections between human rights and the environment are wide ranging, from the issue of environmental refugees to the environmental impacts of conflict.[54] One of the most promising

53 Usha Natarajan and Kishan Khody, "Locating Nature: Making and Unmaking International Law," *Leiden Journal of International Law* 27, no. 3 (September 2014): 573–93; Sundhya Pahuja, "Conserving the World's Resources?," in *The Cambridge Companion to International Law,* eds. James Crawford and Martti Koskenniemi (Cambridge: Cambridge University Press, 2015), 398–420; Jones, "Posthuman International Law and the Rights of Nature"; Julia Dehm, *Reconsidering REDD+: Authority, Power and Law in the Green Economy* (Cambridge: Cambridge University Press, 2021); Anna Grear, "Human Rights and New Horizons? Thoughts toward a New Juridical Ontology," *Science, Technology and Human Values* 43, no. 1 (2018): 129–45.

54 The relationship between the enjoyment of rights and the quality of the human environment was first recognized in 1968. See UN General Assembly, Resolution 2398, Problems of the Human Environment, A/RES/2398 p. 2–3 XXII (December 3, 1968), https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/243/58/PDF/NR024358.pdf?OpenElement. On environmental refugees, see UN High Commissioner for Refugees, Climate Change and Disaster Displacement, accessed July 11, 2022,

and rapidly developing convergences is the right to a healthy environment. The human right to a healthy, clean, and sustainable environment was recognized at the global level for the first time by the Human Rights Council in October 2021;[55] the right was then subsequently recognized by the UNGA in July 2022.[56] The Human Rights Council and the UNGA did not define the right. However, the UN special rapporteur on human rights and the environment, noting how the right has been defined regionally and domestically, has said that the right to a healthy environment covers many elements, including "the right to breathe clean air, [and to have] access to clean water and adequate sanitation, healthy and sustainable food, a safe climate, and healthy biodiversity and ecosystems."[57]

The right to a healthy environment is potentially transformative, providing a more integrated means by which a locality and its overall "health" can be protected. Yet the right remains limited in its framing. Ultimately, the right protects *human* rights to *live* within a healthy environment. It does not protect the rights of animals to live in a healthy environment, nor the rights of the environment to

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https://www.unhcr.org/uk/climate-change-and-disasters.html. On the environmental impacts of conflict, see Eliana Cusato, "International Law, the Paradox of Plenty and the Making of Resource-Driven Conflict," *Leiden Journal of International Law* 33, no. 3 (June 2020): 649–66; Karen Hulme, *War Torn Environment: Interpreting the Legal Threshold* (Leiden, Netherlands: Brill, 2004).

55 UN General Assembly, Resolution 48/13, Human Rights Council on the Human Rights to a Clean, Healthy and Sustainable Environment, A/HRC/48/13 (October 8, 2021), https://digitallibrary.un.org/record/3945636.

56 UN General Assembly, Resolution 76/L.75, The Human Right to a Clean, Healthy and Sustainable Environment, A/76/L.75 (July 26, 2022), https://digitallibrary.un.org/record/3983329.

57 Report of the Special Rapporteur on Human Rights and the Environment, "Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment," Human Rights Council, 2019, A/HRC/40/55, paragraph 17, https://digitallibrary.un.org/record/1639368.

its own health. This means that environmental damage that does not (at first glance) affect humans but may, for example, affect other species, or that occurs a long way from human occupants (such as in the high seas), is not addressed by the right in its current framing.[58] Yet, while at the global level, the right to a healthy environment has generally been framed in an anthropocentric way, there is one exception to this tendency. The Inter-American Court of Human Rights (IACtHR) has argued that the right should also be used to protect the rights of "forests, river and seas," meaning that "it protects nature and the environment, not only because of the benefits they provide to humanity . . . but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right."[59]

This provides a central example of human rights law being shaped in ever more transformative ways by courts and institutions in the Global South, demonstrating what can happen when Eurocentric visions of human rights are rethought. Overall, however, the IACtHR jurisprudence is an exception. The field of human rights and the environment is primarily set up in a way that protects human interests in relation to their environments. Therefore, while this field is indeed one of the most promising areas of global environmental protection, it, like international environmental law more broadly, continues mostly to promote human interests and is marked by the deep anthropocentrism that pervades international

58 This is a point Neimanis has raised, albeit in relation to the right to water. See Astrida Neimanis, "Bodies of Water, Human Rights and the Hydrocommons," *TOPIA: Canadian Journal of Cultural Studies* 21 (Spring 2009): 161, 173.

59 See Colombia Advisory Opinion, A.23 OC-23/17 (Inter-Am Ct. H. R. November 15, 2017), at paragraph 62. This approach was later confirmed in the 2020 case concerning the Indigenous Communities Members of the Lhaka Honhat Association v. Argentina. Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina, (IACrtHR February 6, 2020).

law.[60] This is precisely why the recognition of RoN and the innovative approach they offer are so needed.

Can RoN Transform the Concept of Rights in International Law?

One way to rethink the anthropocentric nature of human rights would be to recognize MOTH rights, allowing a wider array of human and nonhuman interests to be more adequately considered by the law. However, as discussed above, rights have been critiqued in international legal scholarship for being gendered, colonial, Eurocentric, and anthropocentric, and for upholding a particular model of political economy. As calls to recognize MOTH rights through RoN increase, will RoN be inserted into existing frames of rights in international law that similarly limit their application? Or can RoN advocates adopt an approach that would transform the concept of rights in international law?

To begin to answer these questions, we need to understand some of the transformative ways that RoN could be applied in international law. In this section, I turn to existing applications of RoN in domestic contexts. Within these contexts, the definition and scope of RoN provisions can differ from case to case. One key difference involves, on the one hand, framing in terms of rights—as in, for example, Ecuador—and, on the other, legal personality, which establishes the legal personhood of a particular entity, such as the Whanganui River and the Te Urewera forest in New Zealand/Aotearoa.[61] Recognizing rights means that the scope of those rights must be defined. Rights are then routinely balanced by courts

60 For a wider discussion of the anthropocentrism of human rights, see Grear, "Human Rights and New Horizons?," 129–45.

61 Te Awa Tupua Act; Te Urewera Act.

against the rights of other rights-holders. This differs from the recognition of legal personality, which gives the entity in question procedural access to a legal system and, therefore, the ability to petition the court or sue another legal person (which may be an actual person or another legal entity, such as a corporation or an institution). This model does not give special rights per se. The different models thereby yield different legal procedures.

There is, however, one key limitation to the legal personality model if transposed to international law: the only full legal subject in international law is the state. Other entities, such as international organizations, have some limited personality in international law,[62] but this personality is derived from state consent. IHRL is similar: human rights law, and other areas of international law such as international criminal law, grants some legal personality to individuals, but only so much as allowed under, for example, IHRL treaties.[63] Individuals therefore do not have full personality in international law, meaning that they cannot, for instance, sign an international treaty. Given how international law operates, therefore, the most likely model to be adopted would be a rights-based model. In the following discussion, I focus primarily on rights-based domestic RoN provisions, drawing on legal personality models only when the

62 Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Rep 174, ICGJ 232 (ICJ April 11, 1949).

63 Individual legal personality has a long and potted history. It was, however, recognized explicitly in the Toyko and Nuremburg tribunals. See, for example, Trial of Major War Criminals Before the International Military Tribunal, Judgement: The Law of the Charter, International Military Tribunal for Germany (Nuremburg International Military Tribunal October 1, 1946), citing ex parte Quirin, as well as the Permanent Court of International Justice in 1928: see Jurisdiction of the Courts of Danzig, Advisory Opinion, Ser B, No 15, at 17–18, (PCIJ 1928). Individuals, however, now gain competence through a wide array of sources, including, of course, international human rights instruments. See Robert McCorquodale, "The Individual and the International Legal System," in *International Law,* 5th ed., ed. Malcolm Evans (Oxford: Oxford University Press, 2018), 259–88.

insights from such models could be easily imported into a rights-based approach.

One core theme that emerges across a range of different RoN provisions is the link between the health and well-being of the environment and that of the people who live there, a connection that enables people to bring legal claims on behalf of nature. RoN provisions differ in this way from human rights, where humans bring claims on behalf of themselves or, in some limited cases, other humans. Unlike human rights, RoN provisions always require humans to represent the interests of nature on nature's behalf. This difference has been written directly into many RoN laws. For example, the Constitution of Ecuador states that humans are an inherent part of nature, linking RoN to the right to a healthy environment.[64] Article 71 of the constitution states that all "persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature."[65] In the United States, where over forty state-based (regional) level RoN laws have been adopted,[66] RoN provisions link local communities to nature. RoN in the United States tend to be linked to community rights, framing nature as integral to human welfare.[67]

Consequently, RoN are framed not as individual struggles, but as collective struggles. In IHRL, which primarily focuses on

64 Constitution of the Republic of Ecuador, Preamble, October 20, 2008, Georgetown University Political Database of the Americas, https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html.

65 Constitution of the Republic of Ecuador, Article 71.

66 By mid-2017, at least forty-three US local governments had adopted some form of RoN ordinances. Craig Kauffman and Pamela Martin compiled data on these cases. See Kauffman and Sheehan, "The Rights of Nature," 343.

67 See, for example, Marcellus Shale Natural Gas Drilling Ordinance, City of Pittsburgh, Code of Ordinances, Ord. No. 37-2010, § 1 (Municicode Library) (passed December 1, 2010). For more on this, see Kauffman and Sheehan, "The Rights of Nature," 346–47.

individual as opposed to collective or group rights, the victim is divorced from their environment and the wider context in which they live. As discussed above, this means that IHRL fails to comprehend the structural forces of oppression that often permeate a case, including political economic structures, colonialism, and patriarchy.[68] RoN, however, framed as community rights, recognize the links between humans and nature. Of course, it is no coincidence that RoN recognize rights in a more relational way, given that Indigenous peoples, many of whom have more relational understandings of the law and of the world, have played such a critical part in RoN movements globally.[69]

RoN therefore have the potential to challenge how rights are conceptualized in international law precisely because RoN provisions have begun to frame rights, in Iván Darío Vargas-Roncancio's words, "as relationships."[70] Rights are currently framed in a way that seeks to balance the rights of two individual subjects, be they human or nonhuman (i.e., a corporation), against one another, a

68 See Emily Jones, "Gender and Reparations: Seeking Transformative Justice," in *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making*, eds. Carla Ferstman and Mariana Goetz (Leiden, Netherlands: Brill, 2020), 86–118.

69 Martuwarra RiverOfLife et al., "Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being," *Transnational Environmental Law* 9, no. 3 (2020): 541; Linda Te Aho, "Indigenous Challenges to Enhance Freshwater Governance and Management in Aotearoa New Zealand—The Waikato River Settlement," *Journal of Water Law* 20, nos. 5–6 (2009): 285; Vanessa Watts, "Indigenous Place-Thought & Agency Amongst Humans and Non-Humans (First Woman and Sky Woman Go on a European World Tour!)," *Decolonization: Indigeneity, Education & Society* 2, no. 1 (2013): 20; Annie Milgin et al., "Sustainability Crises Are Crises of Relationship: Learning from Nyikina Ecology and Ethics," *People and Nature* 2, no. 4 (2020): 1210; Anne Salmond, *Tears of Rangi: Experiments across Worlds* (Auckland, NZ: Auckland University Press, 2017).

70 Iván Darío Vargas-Roncancio, "Conjuring Sentiment Beings and Relations in Law," in *From Environmental to Ecological Law,* eds. Kirsten Anker et al. (New York: Routledge, 2021), 122.

framing that for RoN could "essentially equip . . . nature for battle with other rights holders."[71] This is concerning. We have already seen instances where RoN have been pitched against the rights of a corporation.[72] Such a framing, whereby corporate interests are balanced against nature's, asks the wrong question. MOTH rights cannot merely focus on balancing these rights against the rights of others. Rather, an entire cultural and legal shift is required—one that understands the central importance of nature's ability to thrive for the well-being of all human and nonhuman life.

In short, if rights are granted to relationships, the framing shifts. RoN have the potential to transform the entire way that law is currently understood, from an individualized framework to a holistic one.[73] RoN cases would not position nature as merely one rights-holder among many; rather, nature would be seen as an integral part of human life.

A relational understanding of rights could also open up a number of issues that structure any rights claim, whether that claim is coming from a human or nonhuman subject. Envisioning rights as a collective struggle would allow, for instance, a case of femicide

71 Geoffrey Garver, "Are Rights of Nature Radical Enough for Ecological Law?," in Anker et al., *From Environmental to Ecological Law,* 91.

72 For more on the balance to be struck between the interests of nature and economic interests in RoN, see Paola Villavicencio and Louis J. Kotzé, "Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia," *Transnational Environmental Law* 7, no. 3 (2018): 397–424; Jones, "Posthuman International Law and the Rights of Nature."

73 Youfatt makes a similar argument, noting the need to emphasize the connections between the human and nonhuman. Youfatt, however, calls for legal personhood to be considered, not rights, suggesting that legal personhood has a stronger potential to recognize such connections. However, if rights are framed in relation, it seems rights framings could indeed fit Youfatt's framing too. See Rafi Youfatt, "Personhood and the Rights of Nature: The New Subjects of Contemporary Earth Politics," *International Political Sociology* 11, no. 1 (2017): 1–16.

to be seen and addressed as part of wider patterns of male oppression and violence. Indeed, the IACtHR has already begun to take such steps through its application of transformative reparations,[74] providing an alternative vision to the dominant Eurocentric liberal account of IHRL. Similarly, a case on poverty may address the unequal global order that fosters the conditions of poverty in the first place. A case on nature's rights, under a relational framing, may allow for a full consideration of the wider community's best interests, including the human interests of the people who live there and the interests of the environment and of the nonhuman species affected. It would still be necessary to balance these sometimes-competing interests, but without a baseline assumption that these interests exist in atomistic competition. A new starting point will be needed—one that does not inherently prioritize human interests, including elite human interests in, for example, corporate form.[75] We would need to understand humans and nonhumans as equal, albeit differing subjects.

Another way that RoN are being envisaged in domestic contexts is the growing recognition of the right of nature to flourish. This is a RoN standard that has been emerging in the United States,[76] a standard that has the potential to switch "the empha-

74 See González et al. ("Cotton Field") v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Ser. C No 205 (IACtHR November 16, 2009). For discussion of this case and of gender and transformative reparations, see Emily Jones, "Gender and Reparations: Seeking Transformative Justice," in Ferstman and Goetz, *Reparations for Victims of Genocide*, 86–118.

75 For a discussion of how international law continually protects human interests, even through nonhuman legal personhood, see Emily Jones, "International Law and the Nonhuman," in Emily Jones, *Feminist Theory and International Law: Posthuman Perspectives* (New York: Routledge, 2023), 128–52.

76 Kauffman and Sheehan, "The Rights of Nature," 347. See, for example, Ordinance of the City Council of Santa Monica Establishing Sustainability Rights, 2421 (passed March 12, 2012), https://www.smgov.net/

sis from preventing permanent damage to ensuring some level of well-being for an ecosystem."[77] Rights in IHRL are used to address a specifically defined harm that has already occurred,[78] and states are often allowed to limit the scope of certain rights, whether through, for example, the margin of appreciation, derogations, or tests of proportionality. However, a right to flourish goes beyond this traditional framing. The right to flourish is inherently expansive, asking not whether an individual's specifically defined rights have been violated, but instead whether the subject in question is being allowed to be the best that it can.

This right is not only unlimited but also, compared to existing IHRL framings, proposes a different relationship to time: it asks the ongoing question of whether an entity is flourishing or not, irrespective of whether that entity has been subjected to a particular rights violation in a particular moment. The right to flourish therefore does not necessarily only apply after a specific violation has occurred but, rather, can be used to continually question whether an entity is flourishing. This framing can allow for the meaning of flourishing to change over time, as new factors come into play or as new understandings of what it means for an environment to flourish come to the fore. In this sense, the right to flourish does not ask whether the subject in question is a victim but rather frames that subject as a full agent, situating them within their potential to thrive.[79]

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departments/council/agendas/2013/20130312/s2013031207-C-1.htm.

77 Kauffman and Sheehan, "The Rights of Nature," 347.

78 Recent calls for the rights of future generations have, however, begun to challenge this temporal limitation.

79 There are some echoes in this call for a recognition of the right to flourish and what is known as the "life projects" work put forward by the IACtHR. There, the court seeks to ask what damage has been done by the rights violation to the victim's ability to "live her calling in life." However, this application does still require a specific existing rights violation first and, therefore, is temporally based on responding to that violation. It therefore

The right to flourish could therefore be a step toward recognizing nature's full agency. Furthermore, the right to flourish, like relational understandings of rights and perhaps best in conjunction with them, could be used to challenge powerful structures and interests, including economic interests. For example, IHRL currently focuses on individual rights without seeing that individual as connected to the world around them, failing, as noted above, to understand the victim as situated within wider structures of patriarchy, colonialism, and political economy. Applying a right to flourish could challenge that framing, calling into question the account of freedom promoted by current IHRL and putting forward an alternative vision of a "good life." This right, as applied to all subjects, human and nonhuman alike, may allow for historically oppressed human groups to call for a wider understanding of emancipation through, for example, a focus on the need to address the economic imbalances created by colonialism.

Applying the right to flourish to nature also drastically changes current framings of nature in international law. Nature, under this framing, cannot merely be reduced to an instrument of human interests, as current international environmental law defines it. Rather, nature can be seen as a full agent—as a being that has the capacity to thrive. The law then becomes a tool to support that flourishing as opposed to a tool to render nature into an object, as it predominantly is now. The right to flourish could thereby challenge dominant conceptions of rights in international law—an approach

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differs significantly to how I have sought to envisage a right to flourish here. The "life project" was first recognized in 1998 by the court, which defined the idea as "the full self-actualisation of the person concerned and takes account of her calling in life, her particular circumstances, her potentialities, and her ambitions, thus permitting her to set for herself, in a reasonable manner, specific goals, and to attain those goals." Loayza-Tamayo v. Peru, Judgment of Reparations and Costs, Series C No. 42, at paragraph 147 (IACtHR November 27, 1998).

that could be transferred to human rights. Human and nonhuman subjects alike could flourish in a way that seems nearly impossible in the gendered, racialized, anthropocentric, and hypercapitalist global order of the present.

Conclusion

Feminist, TWAIL, and political economy scholars have critiqued IHRL as a tool for governance, emphasizing how its focus on the individual sideline issues of structural oppression. Some Indigenous peoples have also critiqued the Eurocentric terminology of rights and, although RoN were an initially Indigenous instigated movement, some have questioned whether RoN are the best framework for understanding and promoting nature's interests.

RoN have the potential to reconfigure and even transform how rights are conceived in international law. Analyzing domestic applications of RoN, this chapter identified two key trends in domestic RoN applications that could be applied at the international level in the aim of avoiding the pitfalls identified with existing framings of rights. The first was the recognition of rights as relationships. IHRL is based upon a Eurocentric model of liberal Enlightenment, and rights are currently viewed as primarily applying to an individual. RoN have the potential to challenge this understanding, calling for rights to be recognized, instead, as relationships. This potential is reflected in the way RoN have been framed, in domestic contexts, as linked to community rights. This view of rights as relationships might be used not only to transform international law's view of nature as an object distinct from humans and an economic resource to be exploited, but also to foster a rethinking of IHRL, allowing for legal consideration of a wider array of relationships between human and nonhuman subjects and their whole environments.

The second way that RoN could be used to transform the concept of rights in international law is through the recognition of a

right to flourish. This framework, again, could transform how international law currently conceptualizes the environment; nature would be seen not as an object but as a subject that has a right to do well. Furthermore, IHRL could then be reframed to posit an alternative register of freedom or what is deemed to be a "good life," fostering a stronger sense of the agency of all subjects in IHRL. This would require a temporal shift, so that the right to flourish is applied not retrospectively to a past moment of rights violation (as IHRL is generally applied now) but continually. Such a framing would ensure a constant questioning of whether a subject—be they human or nonhuman—is being allowed the best chance of their best life.

RoN, as applied to international law, do indeed hold the potential to transform not only dominant understandings of nature in international law but also the conceptualization of rights, including in IHRL. However, this does not mean that they will or should. Here, we can turn to women's rights once again to examine some of the tensions present in the legal recognition of a new subject.

Feminist approaches to international law have been successful in adding women's concerns to existing international legal frames, such as within IHRL, rendering women, finally, as a subject of IHRL. Yet feminist scholars have argued that this recognition has come at a cost. Some feminist scholars have pointed out that, in the focus on the inclusion of women, some of the more transformative elements of feminist approaches that seek, for example, to challenge the gendered foundations of the international legal system itself have been left behind.[80] In other words, by calling for inclusion without a wider paradigm shift, we risk adopting an approach that merely adds women and stirs. A related concern regarding the inclusion of animals as legal subjects is raised by Rosi Braidotti, who argues that

80 Hilary Charlesworth, Gina Heathcote, and Emily Jones, "Feminist Scholarship on International Law in the 1990s and Today: An Inter-Generational Conversation," *Feminist Legal Studies* 27, no. 1 (2019): 79–93.

"humanism is actually being reinstated uncritically under the aegis of species [and materialist] egalitarianism."[81] The recognition of RoN in international law poses a similar challenge. While RoN may indeed be used to transform the concept of rights in international law, RoN could equally be transformed themselves into a "strange shadowy version" or an "uncanny double" of the original.[82]

Advocates of RoN must ensure that we do not just add nature and stir. Tentative and astute engagements with how RoN are framed, how the language of RoN is drafted, and how RoN are applied will be needed on the part of the RoN community to ensure that nature is not merely added as a rights holding subject, extending the liberal paradigm without actually changing it. Rather, the momentum around RoN must be used to transform international law into a legal system that is better able to address not only environmental issues but also wider concerns of justice and structural oppression.

Finally, a question remains about whether rights should be used at all. As detailed above, some Indigenous people, primarily groups in Australia and New Zealand/Aotearoa, have challenged rights-based framings, arguing that rights are an unhelpfully Eurocentric concept. At the same time, RoN as a movement was instigated and originally framed by other Indigenous groups, particularly peoples in South America. This contestation over the use of the term rights raises a critical question: Can RoN transform the concept of rights enough to move beyond these Eurocentric tendencies or is an entirely different model needed?

It is clear that the terminology of rights comes with gendered, Eurocentric baggage that will be hard to leave behind. Given the millennia of knowledge that Indigenous peoples have, including in addressing complex legal questions and in conceptualizing

81 Rosi Braidotti, *The Posthuman* (Cambridge, UK: Polity Press, 2013), 78–79.

82 Nancy Fraser, "Feminism, Capitalism, and the Cunning of History," *New Left Review* 56, March/April 2009, 114.

human-nature relationships in ways that are considerably more sustainable than Western models, there is clearly a great need to listen and genuinely learn from this body of knowledge. Violent Western colonialism has long silenced these voices through genocide, acts of everyday violence, and political and epistemological erasure. It is clear that the same body of Western thought that committed and justified such atrocious acts—and that has created a violent, colonial, exploitative capitalist world order and its attendant environmental challenges—cannot resolve the problems it has created in its current form. International law is likewise a Eurocentric legal framework that justified colonialism and logics of extraction and exploitation, and has played a central role in creating the world we live in today; it cannot, as it is, get us out of the environmental crisis we are in.

Of course, Indigenous knowledge has a long history, providing a set of complex, nuanced, and often differing ideas between different peoples—as exemplified by the diversity of opinions that various groups hold about the concept of "rights." Any attempt to center Indigenous voices must be taken with care, acknowledging the histories of violence that permeate any discussion while also recognizing that there are elements of Indigenous knowledge that are so complex, that come from such a long history of thought, that we, or rather I, as a white European, cannot ever begin to fully comprehend. It is thereby to deep listening that we must turn in seeking to understand these far more complex knowledges of the law and of the world.[83] Through these processes of deep listening, the law itself may be imaged otherwise, [84] in more-than-human ways.

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83 On understanding and listening to multiple Indigenous ways of legal knowing, see Jill Stauffer, "'You People Talk from Paper': Indigenous Law, Western Legalism, and the Cultural Viability of Law's Materials," *Law, Text, Culture* 23, no. 4 (2019): 40–57.

84 Donna Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (Durham, NC: Duke University Press, 2016).

Los Cedros Case: Social Movements, Judges, and the Rights of Nature

Agustín Grijalva Jiménez

Human rights has traditionally centered on human subjects. Today, social movements, policymakers, judges, and other actors are disrupting human rights' anthropocentric framework and institutional architecture, bringing the rights of nature to the fore. In this chapter, I will reflect on these efforts, drawing on my experience as a judge in the Ecuadorian Constitutional Court's *Los Cedros* case.[1]

1 Constitutional Court of Ecuador (rapporteur judge Agustín Grijalva Jiménez), Judgment for case no. 1149–19-JP/20, Constitutional Court of Ecuador, Quito D.M., November 10, 2021, http://celdf.org/wp-content/uploads/2015/08/Los-Cedros-Decision-ENGLISH-Final.pdf.

To begin, we must understand the rights of nature to be multidimensional rights. This means that they are intercultural, interdisciplinary, and systemic, and that they have the potential to intersect with and transform the field of human rights.

In this chapter I focus on this relationship between rights of nature and human rights, a relationship embodied in a convergence of support for rights of nature by diverse groups of participants. I will examine the biocentric understandings and actions of these participants, whose ranks include social movements and organizations, Indigenous peoples, farmers, scientists, local governments, artists, and others.[2] The *Los Cedros* case provides an instance of this convergence of diverse actors, who in this case contributed to the constitutional judges' deliberation on protecting the rights of nature.

Facts and Rights in the Case

The *Los Cedros* case has attracted a good deal of attention in Ecuador and worldwide for several years, as it embodies some of the major contradictions and tensions between biodiversity and extractive activities, specifically large-scale metals mining. The case resulted in the declaration of the rights of Los Cedros, a cloud forest in Ecuador.

In the Ecuadorian Constitution, nature has rights. A forest, a river, a mangrove, a lagoon, a moor are ecosystems, and the constitution recognizes their rights to preserve their existence and their structure, to reproduce their natural cycles and functions, and to conserve their plant and animal life as well as their biotic and abiotic components.

2 Sussex Sustainability Research Program, "Paraecologists for the Rights of Nature," August 30, 2022, YouTube video, https://www.youtube.com/watch?v=XSdRFXTGrC4.

In the case of Los Cedros Forest, the Ecuadorian Constitutional Court disallowed large-scale mining concessions granted in 2017 by the Ecuadorian government to the National Mining Company (Empresa Nacional Minera, or ENAMI), a public mining company, and Cornerstone, a private Canadian mining company, for violating the rights of nature. Specifically, the court found that the companies violated the cloud forest's rights, as well as the right to water, the human right to a healthy environment, and the surrounding communities' right to environmental consultation.

Such is the biodiversity of Los Cedros Forest that there is still no complete scientific knowledge of all of its species. The cloud forest is located at the confluence of the tropical Andes and the Andean Chocó in the northern highlands of Ecuador. Los Cedros is a megadiverse area inhabited by at least 178 different species of animals and plants at high risk of extinction, including the spectacled bear; the spider monkey, one of the world's rarest primates; and glass frogs, whose transparent skin allows you to see the inside of their bodies.[3] In addition, Los Cedros, by its cloud character, is the source of four rivers that provide clean water for human consumption, crops, and livestock for the farmers living near the forest.

The initial mining concessions overlapped 68 percent of the forest area. In August 2019, a letter to the Ecuadorian state signed by 1,200 scientists from around the world highlighted the biological

3 Constitutional Court of Ecuador (rapporteur judge Agustín Grijalva Jiménez), Judgment for case no. 1149–19-JP/20, paragraph 117. Aurélie Chopard and William Sacher, "Megaminería y agua en Íntag: una evaluación independiente. Análisis preliminar de los potenciales impactos en el agua por la explotación de cobre a cielo abierto en Junín, zona de íntag, Ecuador," DECOIN, June 2017, DOI: 10.13140/RG.2.2.32663.27043. See also "Los Cedros Documentary," D. N., posted June 21, 2020, YouTube video, https://www.youtube.com/watch?v=1Kd5ukLuyL4&t=45s; and Los Cedros's website, https://reservaloscedros.org/.

richness of Los Cedros and requested its protection.[4] In November 2018, Cotacachi, a town municipality close to the forest, sued the Ministry of Environment for violating the rights of nature as well as the rights to a healthy environment, water, and environmental consultation by granting permission for the initial mining exploration. A first judge denied the action; then in June 2019, a court of appeals, the Imbabura Provincial Court, accepted the lawsuit because the farmers who would be affected by the mining activity had not been asked, a violation of their constitutional right to consultation.[5]

Since the provincial court did not rule on the violations of nature's rights established in the Ecuadorian Constitution and raised in the lawsuit, the Constitutional Court in May 2020 selected the case to issue binding jurisprudence on nature's rights. The constitutional court issued its ruling on November 10, 2012.[6]

The court's ruling declares that no permits can be granted to mining or any other extractive activity in this fragile ecosystem, as this would violate the rights of nature and, therefore, this forest and numerous endangered endemic species. The ruling recognizes this ecosystem and these species as inherently valuable and therefore that they deserve constitutional protection.

The *Los Cedros* ruling also highlights that nature's rights (including the right to a healthy environment and specifically to water) and the human right to participation (as with environmental consultation) are related and complementary. As the case illustrates, the preservation of an ecosystem directly affects people's water supply

4 Marianne Brooker, "Scientists back protection of Los Cedros Reserve," Ecologist, August 24, 2020, https://theecologist.org/2020/aug/24/scientists-back-protection-los-cedros-reserve.

5 Constitutional Court of Ecuador (rapporteur judge Agustín Grijalva Jiménez), Judgment for case no. 1149–19-JP/20, paragraphs 17 to 20.

6 Constitutional Court of Ecuador (rapporteur judge Agustín Grijalva Jiménez), Judgment for case no. 1149–19-JP/20.

and the agricultural work of human communities that depend on this water source.

Additionally, this ruling applies the precautionary principle, established in article 73 of the Ecuadorian Constitution in the section on the rights of nature. According to this principle, extractive activities in Los Cedros Forest must be prohibited as a proportionate and appropriate measurement, considering the high risk of serious and irreversible damage that could lead to the extinction of species and the destruction of the ecosystem.

In summary, in this ruling, the constitutional court upholds the position of Cotacachi's mayor's office, numerous biologists from Ecuador and worldwide, Ecuadorian and international ecological organizations, farmers' organizations, artists, and opinion leaders, who for about twenty years have defended this forest as a site of immense biodiversity and a water source for surrounding communities.

The *Los Cedros* case has since then been invoked as a precedent in subsequent anti-mining lawsuits. The forest is located in the Intag Valley, where other species of animals and plants at risk of extinction have been found—including unknown or new species, such as the frogs *arlequín hocicuda* and *cohete confusa*. These species were believed to be extinct and were rediscovered in the area in September 2020, just as another anti-mining lawsuit was taking place.[7] However, other mining concessions have been granted in the area, permitting activity that would destroy the habitat of these species and therefore the species themselves. In response to this situation, ecological and human rights organizations have submitted constitutional lawsuits drawing upon the precedent of *Los Cedros* case.[8]

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7 "International and Local Conservation Groups Condemn Ecuadorian Court's Decision to Allow Copper Mining in Intag Valley Cloud Forests," Amphibian Survival Alliance, March 22, 2022, https://www.amphibians.org/news/intag-valley-harlequin-toad-rocket-frog/.

8 See, for example, Lena Koehn, "Judicial Backlash against the Rights of

The Role of Local Communities

The Intag Valley is located in northwestern Ecuador and covers an area of 1,489 square kilometers with altitudes ranging from four hundred to three thousand meters, providing great biodiversity and numerous water sources. The valley is inhabited by small and medium-sized farmers and ranchers who have formed numerous producers' organizations. The Intag Valley has a long history of social struggle dating back thirty years against medium- and large-scale mining concessions granted to transnational companies. The rural communities here, including those closest to Los Cedros, have been defending the remnants of cloud forest in this valley for many years. Through their community practices and drawing on their relationship with nature, these farmers and villagers have redefined several human rights, questioning their anthropocentric basis.

Further, by asserting the rights of nature through social protest and judicial actions, these communities have redefined the very notion of nature, as well as the human right to a healthy environment. In these ways, they have also developed an ecologically centered vision of other human rights, such as the rights to water, health, work, and participation. Initially, in the 1960s and 1970s, the Intag Valley was a colonization zone for agricultural settlers seeking their own land. At this time, national policies and legislation demanded the deforestation of the forests in order for settlers to occupy them and integrate them into agricultural production. When mining exploration first began in the Intag Valley in the 1990s, these activities were rejected by many local farmers. They decried the potential

Nature in Ecuador," Verfassungsblog on Matters Constitutional, April 27, 2023, https://verfassungsblog.de/judicial-backlash-against-the-rights-of-nature-in-ecuador/; and Karina Sotalin, "Íntag apelará fallo que negó acción para consulta minera," *El Comercio* (Quito), February 14, 2022, https://www.elcomercio.com/actualidad/politica/intag-fallo-consulta-mineria-corte.html.

damage mining could cause: the possible contamination of water, soil erosion, and the displacement of entire communities from their territories.

It should be pointed out that the farmers' resistance in Intag Valley has entailed not only opposition to mining but also proposals for productive and employment alternatives for those who live in the area, as well as forest restoration activities. It was during the initial process of resistance to mining by the valley's farmers in the 1990s that local ecological organizations emerged. These groups, in partnership with national and international organizations, proposed productive projects adapted to Intag Valley's ecosystems, including agroecological initiatives, particularly coffee and bean production, cattle raising, ecotourism, and handicrafts. All these activities are tailored to the area's ecosystems and are perceived by most of the inhabitants as imperiled by mining development and resulting deforestation and water contamination. Local organizations have also developed environmental education processes, as well as social movements and legal actions against the mining concessions.

Several studies in anthropology and political ecology have analyzed how many Intag Valley farmers have transformed their views and practices—originally grounded in the deforestation of the valley's forests—and adopted a focus on agroecology and other biocentric practices. Conservation has become part of Intag Valley's tradition and culture, as some generations have learned from others both to restore nature and to mobilize to defend it. It is remarkable that farmers who a few years ago deforested to build their farms now protect and plant trees to help restore native species and protect the area's ecosystems.

Despite being one of the most isolated areas in the Intag Valley, Los Cedros Forest had to endure problems of deforestation and illegal logging even after being declared a protected forest in 1994. But socioenvironmental conflicts became even more acute in 2017 with the granting of mining concessions and environmental permits

precisely over most of the cloud forest area. For this reason, as stated above, the mayor's office of Cotacachi submitted in 2018 an action, known as "acción de protección," to local judges against the Ministry of Environment and mining companies alleging violation of nature, environmental, water, and participation rights.

The constant and active participation of Intag Valley's communities and organizations over the years and before the different judges who heard this and other constitutional action should be highlighted. Their mobilizations were crucial to making the constitutional litigation visible, first to the Provincial Court of Imbabura and then to the Ecuadorian Constitutional Court.

This process, however, was not free of tensions and conflicts. As in Intag Valley, in other areas of Ecuador, the granting of mining concessions has led to the splitting of local communities, their organizations, and even entire families. While some inhabitants oppose mining, other local people support it because mining companies employ some members of the community, including some community leaders, and provide some services or social assistance programs.

This polarization escalated in the case of another mining concession in Intag Valley, close to those granted in Los Cedros. This is the case of Llurimagua, a mining concession of large copper reserves granted to the companies Copper National Corporation of Chile (CODELCO) and ENAMI, which is in an advanced exploration phase and proximate to the Junín Community Reserve, which would imply the opening of a large-scale open-pit mine. Llurimagua was granted in concession in the 1990s to several foreign companies.[9] These companies have since been forced to abandon the concession because of opposition from the majority of Intag Valley's

9 Carlos Zorrilla, "Ecuador's Ecuador's Problematic Llurimagua Mining Project," DECOIN, April 12, 2021, https://www.decoin.org/2021/04/ecuadors-ecuadors-problematic-llurimagua-mining-project/.

residents. The current concession holder is the Chilean company CODELCO and the public company ENAMI.

The Llurimagua project has led to confrontations, including violent ones; criminalization of social protest; and serious irregularities in the environmental impact study that have been observed by the Comptroller General of the State. Additionally, environmental consultation with potentially affected communities has not been adequately carried out, as mandated by the Constitution and Ecuadorian law.

The experience of Intag Valley demonstrates that, in rural areas, human communities can develop a nonutilitarian experience and view of nature. Such a framework requires a shift from an anthropocentric approach to a biocentric one in which communities see themselves as part of, and integrated into, the ecosystems in which they live. From this perspective, their forms of economic organization not only provide human sustenance, but they also simultaneously respect and adapt to the cycles and processes of nature. The forms of economic organization mentioned above explain how it has been possible for these communities to resist the offers of an accelerated and intense "development" by the state and the mining companies, particularly as these companies have even provided some jobs and services to some residents.

More importantly, however, for these communities, the protection of nature is not a matter of altruism; it is linked to the protection of their own lifestyle, their economic activities, and their physical and mental health. They therefore consider metallic mining a serious threat. These communities have proposed an alternative to development understood as mere economic growth: good living, which requires the search for harmony between human beings and nature, so that human rights and the rights of nature converge in a complementary relationship.

Local Organizations' and Local Governments' Role

Intag Valley has a dense and strong network of community organizations. The Toisan Corporation, for example, brings together eleven community organizations of small and medium-sized farmers who live in the valley and are associated in each case as organizations of producers of coffee, honey, milk, beans, and other products, as well as economic initiatives of women and people dedicated to ecotourism or agroecology. This network of organizations has been able to communicate with parish councils, water boards, and other local governments, which, because of their proximity to the communities and the ecosystems at risk or affected, generally have greater knowledge, interest, sensitivity, and environmental commitment than the national authorities.

In Los Cedros, these community organizations actively supported the constitutional lawsuit filed by the mayor's office of Cotacachi in 2008 against the Ministry of Environment and the mining companies, which resulted in the constitutional court's ruling. Cotacachi is the closest town to Los Cedros Forest and is an intercultural community known for its important experiences in community organization and for being home to a number of Indigenous authorities. In 2008 the municipality of Cotacachi declared the Intag Valley a natural reserve, recognizing its biodiversity and hydric value. This area was expanded on April 18, 2019, institutionalizing a network of water management boards that extends over 129,967 hectares.[10]

It should be noted that this convergence of social organizations and public institutions at the local level has also received support

10 "Área de Conservación y Uso Sustentable - Municipal Íntag Toisán (ACUS - MIT)," ACUSMIT, accessed September 11, 2023, https://acusmit.wixsite.com/acusmit.

from national and international environmental and human rights organizations. For instance, in the case of *Los Cedros*, the entire process was supported by numerous nongovernmental organizations, which made the conflict visible in Ecuador and at the international level. This campaign was also carried out through the media and social networks, both locally and internationally.

The presence of endangered species in Los Cedros undoubtedly helped to garner the support of this coalition of national and international organizations, making it possible to widely divulge the risks of mining concessions, scientific information, the position of the affected communities and of the government and mining companies, and the legal proceedings underway. During the court hearing, public participation was allowed and different positions on the issue were presented.

In its arguments, the mining industry emphasized legal certainty, the particular nature of Los Cedros, and the absence of a precedent in the constitutional court's ruling; the environmental organizations, on the other hand, compared Los Cedros not only with other protected forests in the Intag Valley but also with protected forests throughout the country, in many of which there are currently overlapping mining concessions.

It should be noted that the central government's position, in the *Los Cedros* case as in other mining conflicts in Intag Valley, was contradictory in many respects. First, and paradoxically, the Ministry of Environment itself, whose official aim is to protect biodiversity, does not acknowledge the importance of the biodiversity present in Los Cedros and other protected forests and limits itself to reproducing the arguments of the mining companies: that they have complied with all legal and regulatory requirements and procedures, and therefore stopping the mining activity would be a violation of legal certainty. The central government is simply ignoring nature in order to formulate a discourse on social rights, in particular the right to have a job, devoid of any ecological concern. In this process,

it also ignores productive alternatives, the social consequences of mining, and their relationship with human rights.

Secondly, the central state is failing to meet its obligations to guarantee the rights of nature and water, as well as the right to a healthy environment and to environmental consultation. This situation is especially alarming because, according to the Ecuadorian Constitution, the state is obliged to respect and enforce the rights enshrined in it, including the rights of nature.

A final serious outcome to consider is the potential delegitimization of the state resulting from its inaction or complicity in rights violations. The disruption or destruction of ecosystems demonstrates a clear lack of state control over the territory—a violation of the rights of nature that also contributes, as I have argued in this chapter, to the violation of related human rights.

The Role of Scientists

From an orthodox legal and scientific perspective, the rights of nature have been criticized as a sort of throwback, a primitive and animist view of nature, a view incompatible with modern Western science and rational thinking. One reason for this probably is the high ontological and cognitive value that rights of nature give to Indigenous peoples' knowledge about nature. In fact, the rights of nature implies an intercultural perspective in the sense that it includes not only Western perspectives of nature but also the views of Indigenous and traditional communities around the world.

In contrast to the view of rights of nature as a sort of throwback, I argue that the rights of nature constitute, in fact, a more updated legal paradigm that draws on the most advanced developments in ecology, different branches of biology, critical geography, and several fields of social sciences and humanities. This interdisciplinary approach can greatly enhance our grasp of the relational

character of the human being, along with the systemic character of diverse natural phenomena. Nature's rights necessarily require a convergence of disciplines, enabling a more comprehensive understanding of ecosystems and processes.

The *Los Cedros* ruling clearly demonstrates both the contribution and the limits of Western science when it comes to knowledge and protection of ecosystems, as well as its role concerning public policies and judicial decisions. Western science has made a valuable legal contribution through its recognition of the complexity, richness, fragility, and nonnegotiable value of certain ecosystems, and of life in general. But the *Los Cedros* ruling also states, through the application of the precautionary principle to biodiversity, the limits of this knowledge. The ruling speaks to our ignorance about unknown species and highly complex biological processes in fragile ecosystems, as well as the risk of serious and irreversible damage as a result of uninformed extractive activities in this kind of ecosystem.

Yet *Los Cedros* also demonstrates that the defense of nature's rights requires scientists to play an active role in the courts, and in general, in order to provide information and analysis on biodiversity or species at risk—to judges and other public authorities, but also to the inhabitants, grassroots social organizations, companies, and the general public. Dozens of specialized scientists from several countries who over the years had conducted research in Los Cedros contributed to this case; their testimony allowed the court to understand the enormous biological richness of this forest, its species, and the systemic relationships that they maintain.[11] Additionally, 1,200 scientists from around the world signed a letter addressed to the

11 See for instance reaction of world-known biologist Jane Goodall about Los Cedros ruling: Jane Goodall, "Jane Goodall Speaks in Support of the Los Cedros Protected Forest in Ecuador," Global Alliance for the Rights of Nature - GARN, posted December 15, 2021, YouTube video, https://www.youtube.com/watch?v=i8rCvQs5GL4&t=4s.

Ecuadorian Constitutional Court supporting the conservation of Los Cedros Forest stopping mining concessions.[12]

The role of the scientific community in the case of *Los Cedros*, in fact, partly compensated for the absence of objective technical information from a public government entity. It became evident that the Ministry of the Environment, as a body dependent on the executive branch, did not have biological information on Los Cedros or did not want to present it before the Court. Several judges noted their surprise that this ministry (and certainly the mining companies) did not say a word about the biological diversity of this forest. This serious deficiency shows the institutional need for independent and technical public environmental agencies to provide objective and sufficient information on the biological biodiversity at risk from extractive activities.

Thanks to this contribution from the scientific community in *Los Cedros*, the court had no doubts as to the high intrinsic value of the biodiversity of this protected forest. This scientific information substantiated the claim that the rights of species and ecosystems to live and maintain their cycles had been violated. The court was therefore able to issue a ruling that developed the content of these rights of nature.

However, the value and necessity of scientific information on specific ecosystems also implies a challenge and even a limitation for local communities and organizations that do not have it or cannot obtain it. It should be considered, for example, that many constitutional actions do not have the wide scientific support that was available in *Los Cedros*. In fact, just a few months after the *Los Cedros* ruling, a judge in the southern province of Loja denied a constitutional action filed by members of the Gualel community against four mining concessions, arguing that the appellants had

12 See The Ecologist, 24 August 2020: https://theecologist.org/2020/aug/24/scientists-back-protection-los-cedros-reserve

not demonstrated that endemic or endangered species existed in the corresponding area.[13]

The scientific community must therefore develop strategies to provide this information to local and environmental communities, Indigenous groups, and human rights organizations that seek to protect the rights of nature. Public institutions also need to be able to provide this independent scientific information.

In fact, a major problem in socioenvironmental conflicts, and when these conflicts are brought before the court, is the generation of biased scientific information by the state and mining companies. In Ecuador, for example, many environmental impact studies of mining projects in more advanced stages than those in Los Cedros do not achieve minimum technical standards and serve to legitimize mining activity rather than provide accurate information on its effects.[14]

Therefore, it is also necessary to recognize the limits of scientific knowledge since it is not inherently neutral. There are also other types of know-how that are very important in the protection of nature, such as the knowledge, practices, and values of Indigenous peoples, peasants, fishermen, and ancestral communities. In the *Los Cedros* ruling, scientific knowledge was treated as complementary to these other types of knowledge. The ruling includes and analyzes the knowledge of researchers and academics, especially biologists, as well as those of the people living near the forest.

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13 Doménica Montaño, "El caso Fierro Urco, explicado," GK, June 2, 2022, https://gk.city/2022/06/02/caso-fierro-urco-explicado-estrella-hidrica-sur-mineria/.

14 See for instance Francisco Miguel dos Santos Venes, "Revisión crítica del Estudio de Impacto Ambiental para la fase de exploración avanzada del proyecto de minería metálica Llurimagua" (master's thesis, Flacso Ecuador, Quito, Ecuador, 2014), https://www.flacsoandes.edu.ec/sites/default/files/%25f/agora/files/francisco_dos_santos_venes_-_revision_critica_eia_llurimagua.pdf.

In fact, the appreciation of this community knowledge is one of the several reasons to consult, and not only to inform those communities that may be affected by the environmental impacts of productive projects. It is these communities, due to their daily coexistence with the ecosystems, who can and should also provide input on the needs, possible damages, adaptations, regulations, and prohibitions associated with productive projects in these ecosystems.

In summary, the role of science in nature's rights contains several tensions. On the one hand, the contribution of scientists is fundamental and necessary, since these rights require an interdisciplinary approach. On the other hand, contrary to what happened in Los Cedros, there is often a lack of or a bias in the scientific information, due to the absence of truly independent public institutions to generate it. Finally, scientific knowledge must be complemented by that of the communities involved, and environmental consultation is one important form their participation can take.

Role of the Artists

Art played an important role in both the constitutional process and the social process of the *Los Cedros* case. Due to the COVID-19 pandemic, the judges of the Ecuadorian Constitutional Court were not able to visit the forest in person in order to have a hearing with the surrounding communities and directly observe the biodiversity of the forest, as the Provincial Court of Imbabura had previously done. Artists were the ones who, through their creativity and intense activity on social networks, generated various means of representing the ecosystem and raising awareness of the dangers of extractive activities.

The artists showed the biodiversity of the place and its unique character not only to the judges but also to Ecuador and the world. Musicians, filmmakers, photographers, poets, and theater artists

were the eyes that allowed us to see, feel, and gain a better understanding of what was at risk.[15] In fact, this artistic dimension of the campaign for Los Cedros began long before the pandemic and had developed over several years. But its contribution at a moment when nearly the entire jurisdictional process was carried out virtually was remarkable.

Further, these artistic interventions vividly illustrated the confluence of the rights of nature and the human right to a healthy environment. They were able to display both the inherent value of the forest and its species, and the importance of the forest and water to neighboring rural communities. Since Los Cedros is the headwaters of four rivers whose water is vital for the surrounding communities, water constitutes a fundamental link between the forest and the people. Water is a human right as well as a key element in natural cycles, and therefore in the rights of ecosystems. For this reason, the social organizations proposed that "water *is more valuable than gold*." Artistic interventions constantly highlighted this idea.

Although the sentence in the *Los Cedros* case has already been issued by the Court, the artists are today still contributing to its symbolic projection, transcending borders between countries, disciplines, and cultures. There are currently several documentary projects and theatrical and literary performances taking place in different countries, such as a new book by Robert Macfarlane in the United Kingdom, or its inclusion in a piece by the Theatre of the Anthropocene in Germany.[16]

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15 See, for example, "Yupaychani," Observatorio Ecuador, posted October 18, 2020, YouTube video, https://www.youtube.com/watch?v=i-mGbJNSdv0.

16 "Robert MacFarlane, Author of *The Lost Words*, Visits Los Cedros Reserve," Rainforest Concern, February 2, 2023, https://www.rainforestconcern.org/news/robert-macfarlane-author-of-the-lost-words-visits-los-cedros-reserve. See also the Theatre of the Anthropocene, https://xn--theater-des-anthropozn-l5b.de/en/the-theatre/.

The Convergence of Knowledge and Actions

In conclusion, the *Los Cedros* case shows how the rights of nature and the right to a healthy environment and other human rights are different but complementary. This complementarity is evident in encounters between the knowledge and community practices of Intag Valley's farmers and those of scientific researchers, environmental and human rights organizations, and local public institutions.

From the perspective of Intag Valley's farmers, it is necessary to ensure nature's rights in order to be able to live in a healthy environment. It is impossible to obtain one without the other. In other words, the health of nature, the balance of its ecosystems, the functioning of its processes, and the survival of its species are essential in order for human beings to have a healthy environment.

Yet human benefit is not the only objective of ecosystem equilibrium. On the contrary, ecological balance can only be obtained when we have a more-than-human perspective, when we go beyond this utilitarian anthropocentrism and understand human beings in a different relationship with nature. That is, humans need a different vision and praxis in relation to themselves. This new ontology therefore also results in a new anthropology. When nature is healthy, human beings can develop productive, sustainable processes that genuinely contribute to the exercise of human rights. This vision ultimately implies a new kind of equality between human beings and nature, equality in which the two are viewed in an integrated and therefore integral way—where human beings rediscover themselves and take responsibility as part of a whole of which they have always been a part.

The Systemic Theory of Law in the Jurisprudence of Nature in Ecuador: From the Machine to the Web of Life

Ramiro Ávila Santamaría

For the first time in global constitutionalism, the 2008 Constitution of Ecuador recognized nature as a subject with specific rights.[1] Yet,

1 Constitution of Ecuador (2008), art. 71: "Nature or Pacha Mama, where life is reproduced and realized, has the right to full respect for its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes. Any person, community, people or nationality may demand from the public authority the fulfillment of the rights of nature. In order to apply and interpret these rights, the principles established in the Constitution shall be observed, as applicable. The State shall encourage natural and legal persons, and collectives, to protect nature, and shall promote respect for all the elements that make up an ecosystem." (Translation by the author.)

as is often the case with innovative rights, the current legal culture worldwide lacks the theoretical basis to apply them adequately; indeed, in 2008, no legal theory was available to help understand the scope of this recognition and develop its content. Normative recognition alone is not enough. Often, a significant cultural change must occur for jurisprudence to adequately develop. Effectively recognizing the rights of nature will—as recognizing the rights of women and people of African descent did previously—require a paradigm change.

There have been important reflections on the value of nature within the sciences and in the ancestral knowledge of Indigenous peoples, suggesting that all beings that inhabit the planet are connected. In the nineteenth century, the naturalist and explorer Alexander von Humboldt challenged the mechanical view of nature, showing that it is a living organism interconnected with all the elements that compose it.[2] The Inuit and Yupik peoples call the wind *Sila*—akin to the conscience of the world, the source of each breath, which allows us to share the same influence with other beings that feel the wind, such as animals, plants, and mountains.[3] The Sarayaku people of Ecuador consider the forest a living, conscious being endowed with spirituality and comprised of all the beings that inhabit it.[4]

Law is no stranger to these reflections either. A notable contribution was the pioneering discussion on the ability of nature,

2 See Andrea Wulf, *The Invention of Nature: Alexander von Humboldt's New World* (Madrid: Taurus, 2017); see also Andrea Wulf, "'This great chain of causes and effects"—Alexander von Humboldt's View of Nature,' in this volume.

3 See David Abram, "On the Origin of the Phrase 'More than Human,'" in this volume.

4 See *Kawsak Sacha* (last visited Oct. 18, 2023), available at: https://kawsak-sacha.org/.

particularly forests, to appear in court.[5] At the level of international law, the Stockholm Declaration (1972), the Río Declaration (1992), and the Paris Agreement (2016) have been issued. However, the view in those documents conveys that the environment must be preserved for the survival of human beings. The exception is the dialogues that have taken place in a United Nations proposal called "Harmony with Nature," centering nature and not only human interest as worthy of legal protection and expressing Earth jurisprudence and sustainable development objectives.[6] For the most part, laws regarding nature did not affect the foundations of the liberal theory of law, which is based on the notion that nature is individually appropriable (as explained below).

An alternative notion has recently taken hold: nature should be protected not only for its "usefulness" or "effects" on human beings "but for its importance for the other living organisms with whom the planet is shared." This idea was developed in 2017 in the Inter-American system for the protection of rights, specifically in the advisory opinion on environment and human rights by the Inter-American Court on Human Rights (IACHR Court)[7] and in the 2021 resolution on the climate emergency and human rights prepared by the Inter-American Commission on Human Rights (IACHR) and the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA).[8] Three

5 Christopher Stone, *Should Trees Have Standing?: Law, Morality, and the Environment* (New York: Oxford University Press, 2010).

6 Emily Jones, "Can the Rights of Nature Transform the Way Rights Are Conceptualized in International Law?," in this volume.

7 Environment and Human Rights, Advisory Opinion OC-23/17, Inter-American Court of Human Rights (hereafter Inter-Am. Ct. H. R.), paragraphs 59, 62, and 64 (November 15, 2017).

8 IACHR and REDESCA, *Climate Emergency. Scope and Inter-American Human Rights Obligations: Resolution 3/2021* (Washington, DC: IACHR-REDESCA, 2021).

years later, the IACHR Court recognized the right to a healthy environment at the level of jurisprudence. The court ruled that this right is governed by the obligation of states to achieve the "integral development" of their peoples, which arises from other rights.[9]

Despite these slow and timid advances in rights, the current and hegemonic legal theory continues to be one based on market freedom and the free transfer of ownership of goods and services. In this theory, nature remains an object that can be acquired, transferred, and exploited indiscriminately.

Nevertheless, there are many possible ways to develop a theory of nature as a rights holder. The first part of this chapter reviews three theoretical approaches to nature: the pure-liberal theory of law, the theory of environmentalism, and systemic theory. In the second part, I examine the jurisprudence of the Constitutional Court of Ecuador. In the third part, I discuss how a systemic theory of law can shed light on the jurisprudential developments of the Ecuadorian Constitutional Court.

Theories of Law and Nature

Several theoretical perspectives with multiple interpretations have defined nature within the law.[10] While any classification criterion is incomplete and arbitrary, my specific aim is to find a possible explanation for the law's longstanding consideration of nature as

9 Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H. R. (ser. C) no. 400, paragraphs 202 and 207 (Feb. 6, 2020).

10 This volume includes additional theoretical approaches to acknowledge the relationship between nature and the human species: the moral superiority of the human species, with nature as a machine to be mastered; nature as a postmodern dispositive. See, for example, Catalina Vallejo Piedrahíta, "Making Peace with the Rights of Nature: New Tools for Conflict Transformation in the Anthropocene," in this volume.

an object and its transition toward considering nature as a subject. To this end, I will distinguish three legal theories: (1) mechanistic theory, (2) environmentalist theory, and (3) systemic theory.

The Mechanical Theory of Law

The view that nature is an object dates from the seventeenth century. René Descartes writes that nature is like a clock and the body like a ship—as nature is a machine, "the rules of mechanics are the same as those of Nature."[11] Just like a watch, nature is made up of wheels and springs, which can be detached, replaced, and used. Starting with Descartes, scientific positivism, like modern and classical science, separated and established clear boundaries between disciplines. Traditional science left to each distinct discipline the definition of its object of study, the method to analyze it, and the determination of its truths. Thus, for example, physics describes the functioning of the atom, chemistry the composition of elements in an atom, and biology life from the cell.

When nature is seen as divisible, the human being is considered severable from it. First, we are separated from animals: human beings are the only ones who possess rights, and this quality is "the only thing that makes us men and distinguishes us from the beasts."[12] However, it does not stop there. The human being is also divisible: "The soul, by which I am what I am, is entirely distinct from the body."[13] Once we are not the same as nature, animals, and our own bodies, hierarchy is the next step.

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11 René Descartes, *Discourse on the Method* (Barcelona: Ediciones Orbis, 1983), 91.

12 Descartes, *Discourse on the Method*, 44.

13 Descartes, *Discourse on the Method*, 72.

Kymlicka argues that the hierarchy created by human beings (a narcissistic or aristocratic species, believing themselves to be the most intelligent and better than the rest) has had two major consequences. First, it has endowed the human species with intrinsic value so that humans have been, through the current discourse of human rights, the only species to enjoy legal protection. The other consequence is that all other beings, including animals and nature, have been objectified, relegated to a subordinate status, instrumentalized, and assigned exchange value in the marketplace.[14]

By and large, legal theorists have adopted the postulates of scientific positivism, starting with the name legal positivism. This theory was developed by the Austrian jurist Hans Kelsen in *Pure Theory of Law*.[15] Kelsen set out to "elaborate a theory purified of all political ideology and of all elements of the sciences of nature . . . and to have an object governed by laws that are proper to it."[16] The result was a theory of law as a science with all the characteristics of a scientific discipline. Although its object is to establish norms, these norms could not be the laws of nature or social or moral norms.

Therefore, law had to have its own object, method, and truth. The object of the law was the rule issued by the state in accordance with its constitution; the method was to recognize that valid rule, describe it, and apply it (the legal syllogism); and the "truth" in legal terms was the connection of a rule to a concrete case (once the judge adjudicates a legal rule to a case, that solution is considered to be a kind of "truth"). In an effort to achieve a pure science, practitioners and theorists decided that law should not have any relationship with politics, culture, or nature (i.e., natural sciences).

14 Will Kymlicka, "Rethinking Human Rights for a More-than-Human World," in this publication.

15 Hans Kelsen, *Teoría pura del derecho* (Buenos Aires: Eudeba, 1960), 11.

16 Kelsen, *Teoría pura del derecho*, 112.

Consequently, the law takes no interest in the political process by which a norm is established. From the purely positive legal perspective, it is irrelevant whether the norm comes from a progressive or conservative constitution or whether the state belongs to a liberal, fascist, or socialist regime. Once the rule has been issued in compliance with constitutional procedures, it must be complied with—even if it is unjust.

The pure theory of law aligns with the liberal system of philosophy, politics, and economics. Philosophical liberalism asserts the existence of the autonomous individual, who is endowed with dignity and the freedom to make decisions. Political liberalism postulates the need for a democratic republic based on the division of powers and the recognition of citizens who will advocate for themselves publicly through their votes. Economic liberalism advocates for the existence of a market, the engine of the capitalist system, in which goods and services are exchanged for money.

At the heart of both liberal theory and legal positivism is the view of nature as a machine. Two concepts are key to this instrumentalization of nature: private property and state sovereignty. Through the regulation of property in private legislation (civil code), nature is regarded as an object available for appropriation that can be used and abused; the human owner is the only rights-holder. The concept of sovereignty then allows the state to own what individuals cannot appropriate, such as natural resources in the subsoil, the atmosphere, the sea, the beaches, and other goods that the state considers public.

In this understanding of law, therefore, nature cannot be the subject of rights. However, the concept of property and sovereignty is no longer absolute. It has recognizable limits that originate in the abuse of nature and an understanding that we need to conserve it. Environmental law, the branch of law that deals with the degradation of nature, has best expressed these limits through the human right to a healthy environment.

Legal Environmentalism

The theory of law has been substantially influenced by human rights law. From laws based on a notion of horizontal relations between private subjects who demand guarantees from the state for the fulfillment of their will and whose object is property, we have moved toward a theory of law that engages with the notion of power. Relationships between the state and individuals are now understood as vertical, and human rights recognize that the state exercises power and that people are in a situation of vulnerability or subordination.

The subject matter of the law changes at both the national and international levels. In terms of nature considered as private property, the judicial branch protects different rights and interests from the traditional legal perspective (exclusively private property). Issues such as agrarian reform, labor laws, the legal regime of social security, public health, and education allow the emergence of other subjects of law, as well as a more flexible theory of law.

In the Western legal world, rights are progressively being recognized in national constitutions. Many are related to social demands and struggles, for example, the recognition of women's right to vote, the right to a minimum wage and a limited workday, and the right to have schools and to learn to read and write.

At the international level, the concept of sovereignty was altered when the International Covenant on Civil and Political Rights entered into force in 1976. Subsequently, a person was considered a legal actor for the first time in public international law and, in certain situations, could sue the state for violating rights recognized by a state before the international community. Therefore, sovereignty is not absolute: the state is now accountable for the way it treats the people living in its territory.

Knowledge and awareness of the environment have been incorporated into legal and political debates since 1972 when the United Nations adopted the "Stockholm Declaration on the Environment."

The Stockholm Declaration considers a healthy environment essential for the well-being of human beings and their development. There is already data on environmental damage—such as pollution of water, air, land, and living beings—and evidence of its impact on humans. The declaration refers, for example, to "major disruptions of the ecological balance of the biosphere; destruction and depletion of irreplaceable resources and serious deficiencies, harmful to the physical, mental and social health of man, in the environment created by him."[17] The right to the environment has developed hand in hand with administrative law. Over time, issues such as the need for environmental impact reports, environmental monitoring, environmental control agencies, and restrictions on productive activities that could cause irreversible damage to the environment and human health have been established.

Undoubtedly, this constituted a step forward from a legal regime grounded in an absolute right to property. Limits to property and obligations increased (such as the collection of taxes, the expropriation of property for public utility, or the obligation to remediate environmentally if damage is caused), and the environment emerged in the law. Yet the Stockholm Declaration's solution to the problem of environmental damage was to avoid or mitigate it—aiming not to damage the environment less or differently but to prevent the damage from affecting the sustainability of the planet for human life. Property remains the main object of law and state institutionality, with two important qualifiers: property is limited by social and environmental responsibility. Through the criterion of social responsibility, the state can expropriate property and charge taxes on the transfer of property. Through environmental responsibility,

17 Stockholm Declaration on the Human Environment, in *Report of the United Nations Conference on the Human Environment*, UN Doc.A/CONF.48/14, at 2 and Corr.1 (1972), paragraph 3.

the state can obligate any person or legal entity to maintain green spaces, declare reserves, or not use certain polluting products.

Overall, the right to a healthy environment also has substantive limitations. At the international level, it has not resulted in direct and decisive protection.[18] The theory of positive law has remained practically untouched. The notorious separations achieved by positive-liberal law are still largely in place: the human being is not nature; the law has no relationship with the laws of nature; and the human being is subject and nature object. Consequently, the values of the political, economic, and legal systems (individualism, property, competition, infinite natural resources) continue to be promoted by states, human beings, and international corporations. In this environmentalist paradigm, nature remains an object and is functional to the needs of the human species.

A different view, in which nature is regarded as part of a web of life with its own value, could be termed "systemic."

The Systemic Theory of Law

Ecuador was the first country to recognize nature as a subject of rights. The idea that nature has a life that deserves to be protected beyond the interests and conceptual frameworks of human beings was an unprecedented seismic shock. The impact this recognition could have on the notion of nature as a resource to be economically exploited is akin to a Copernican revolution.

If the rights of nature were fully in force, then the civil code that establishes that nature is an object that can be discarded, the administrative law that regulates nature as the inalienable property of the state, and the rights of Indigenous peoples to collective

18 See César Rodríguez-Garavito, ed., *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (New York: Cambridge University Press, 2022).

ownership of a territory would have to be repealed or seriously limited. Such a recognition would be a total paradigm shift.

We are undoubtedly in a paradigmatic transition. The 2008 Constitution of Ecuador recognizes all these evidently contradictory legal situations: private, public, and collective property; simultaneously, nature is recognized as a subject of rights that, theoretically, could not be appropriated (the "commons"). The best way to understand and overcome these legal contradictions is by adopting a theory of law that can appreciate the complex phenomenon of law and nature.

The systemic approach to law has already attracted the attention of jurists, thinkers, and activists. Today, this approach is developing relatively quickly.[19] In the logic of a system, everything is connected and functions as a network. The individual is understood in the "whole": in processes, within contexts, and holistically.

A wide gulf separates systemic law from positivist law. I will outline some key differences:

1. The separation between human beings and nature is a characteristic of positivism. In contrast, in systemic theory, the human being is like any other being, indissolubly

19 The inspirations for the systemic approach presented here are based on several texts, the most important of which are Fritjof Capra and Pier Luigi Luisi, *The Systems View of Life: A Unifying Vision* (Cambridge: Cambridge University Press, 2014); Fritjof Capra and Ugo Mattei, *The Ecology of Law: Toward a Legal System in Tune with Nature and Community* (New York: Berret-Koehler Publishers Inc., 2015); Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Quito, Ecuador: Huaponi/UASB-E, 2019). Other texts provide holistic views of nature, including Germana de Oliveira Moraes, Martonio Mont'Alverne Barreto Lima, and Thaynara Andressa Frota Araripe, *Direitos de Pachamama e Direitos Humanos* (Fortaleza, Brazil: Editora Mucuripe, 2018); Ramiro Ávila Santamaría and Agustín Grijalva, *Derechos de la naturaleza* (Quito, Ecuador: Ecuador Debate N. 116, August 2022); Esperanza Martínez and Adolfo Maldonado, eds., *Una década de derechos de la naturaleza* (Quito, Ecuador: Abya Yala, 2019).

interrelated with nature. Likewise, the jurist cannot be alien to nature or to other knowledge.

2. In positive law, the only valid norm is that of the state, and only when issued in accordance with the procedures established in the constitution. However, systemic law embraces legal pluralism, where several normative systems coexist and have different forms of recognition. Among these systems are those that govern the behavior of persons belonging to an Indigenous community and the "norms" that regulate the behavior of nature.
3. The source of legitimacy of positive law is respect for the constitution. In systemic law, each normative system has its own source of legitimacy. In the relationship between human legal systems and the laws of nature, human norms are legitimate if they respect the natural cycles, structure, functioning, and evolutionary processes of nature.[20]
4. The "truth" in positive law is the valid norm, whether general and abstract or that which is produced in a concrete case by a competent authority through legal adjudication (e.g., legislator, president, judge). On the other hand, systemic law is based on principles and the infinite possibilities that derive from them—there is no single or general truth.
5. Positive law is indifferent to "reality." Its object of study is the valid state norm. To be considered by law, "reality" must be adapted to the normative hypotheses created by humans with authority. In systemic law, norm and reality interact. When reality violates rights, it must be modified. The law is flexible, understanding and adapting to the changing and emerging needs of people and ecosystems.

20 See Cullinan, *Wild Law*.

6. Pure positive law isolates the jurist from other disciplines, and legal knowledge is specialized and professionalized, with marked boundaries. Systemic law is interdisciplinary. It humbly recognizes that it is a partial and incomplete knowledge, and in order to fulfill its mission, it must understand nature and complement itself with what is known as natural and social sciences, in addition to the knowledge that comes from the culture and practices of Indigenous peoples.
7. The jurist in positive law objectively analyzes the valid state norm. They must be distanced from politics, morality, religion, and other disciplines. The jurist in systemic law is committed to the rights and care of the planet, interrelated with all knowledge and practices of care, protection, and regeneration of nature, particularly those from Indigenous peoples.
8. In short, systemic law shifts the conception of nature as an object and regulation as property, which empowers human beings to use, abuse, and dispose of nature, to one in which nature is a subject because it has life and deserves to be respected outside the concept of property. This framework grants responsibilities to human beings to use when necessary and to take care of nature.

Adopting these theoretical approaches, the jurisprudence of the Constitutional Court of Ecuador is an example of a court applying and moving toward a systemic theory of law.

The Jurisprudence of the Constitutional Court Regarding Nature

Since the 2008 constitution was issued, the constitutional court has slowly developed its jurisprudence to give content to the rights of nature,[21] and Ecuador has the largest number of rights of nature cases in litigation globally.[22] Yet despite these legal advantages, the court still faces significant challenges that can be illuminated through a close look at several groups of rulings.

One group of rulings can be called the *jurisprudence of denial and lost opportunities*. From 2008 until 2015, there was little interest in or knowledge of the rights of nature. Therefore, nature was simply not considered—or not considered to have rights recognized by the constitution—even when it was directly related to the subject matter of the case (e.g., contamination of a stream and a lagoon, deforestation of a mangrove swamp, an order to kill a dog that was considered dangerous, mining, diversion of a riverbed).[23] Throughout this period, the court exclusively applied the property rights regime to resolve these cases.

In another group of rulings, the court has used the tools of environmental law and assumes that nature is protected once the

21 Justice Antonio Herman Benjamin, "Beyond Human Rights: A Judge's Perspective on Right of Nature and the Environmental Rule of Law," Working Paper for the 2022 More Than Human Rights Conference (on file with conference organizers) argues that judges are sometimes trapped in the legal theories they learned during their university career. However, he also recognizes the important role that courts play in making legal innovations.

22 See Craig M. Kauffman, "Global Patterns and Trends in Rights of Nature Legal Provisions: Insights from the Eco Jurisprudence Monitor," in this volume.

23 See, for example, Constitutional Court of Ecuador, Judgment nos. 0008-09-IN and 0011-09-IN, March 18, 2010; case nos. 0011-10-EE, July 8, 2010; no. 0008-09-EE, March 25, 2010; no. 0005-11-EE, March 31, 2015; no. 0796-12-EP, October 15, 2014; no. 1281-12-EP, July 9, 2015.

administrative requirements of environmental regulations (e.g., impact reports and authorizations by environmental agencies) are fulfilled. This jurisprudence could be called *environmental jurisprudence and the invisibilization of nature* as a subject of rights.

There are strong links between the rights of nature on the one hand and environmental law and the law of the healthy environment on the other. Both legal branches take nature as their object. Nevertheless, they are not the same. The starting point and aim of environmental law is human welfare, and in the right to a healthy environment, the human being is the rights-holder, while the state is responsible for guaranteeing such rights. In the rights of nature, nature has a value in itself. All the elements that compose nature—humans included but not exclusively—are rights-holders. The objective is ecological balance, and the responsibility lies with the state and the human species.

It is tempting to say that the well-being of nature is inextricably bound to the well-being of the human species. However, we should avoid romanticizing this relationship. Human beings—with our ways of producing food, consuming energy, and inhabiting the world—are primarily responsible for crises like environmental degradation and climate change. Depending on the circumstances, the rights of nature may prevail over certain rights that humans have attributed to ourselves. We can see these tensions at play in cases when the constitutional court resorted to environmental law. The court assumed that if there is an environmental impact report or authorization from the ministry in charge of the environment, then the rights of nature are automatically guaranteed.

Nothing could be further from the truth. In the era of economic globalization, the state has acted as a facilitator and ally of the extractive activities of transnational corporations.[24] When a

24 See, for example, David Korten, *When Corporations Rule the World* (San Francisco: Berret-Koehler Publishers, Inc., 2016); Naomi Klein, *The Shock*

government inserts extractive policies into its economic agenda, the ministry in charge of environmental affairs produces the necessary environmental impact reports and authorizes extractive activities. Without the necessary resources, experts, impartiality, and independence, a government agency cannot be expected to protect the rights of nature. Yet, in some cases, without reasoning or acknowledgment of the rights of nature, the court argued that the existence of an environmental report or a governmental authorization provided sufficient protection.

In 2014, for instance, the court resolved a case regarding an extractive activity when a community (Comuna El Verdum) filed a legal action against a shrimp businessman for impeding access to and destroying a mangrove swamp. The constitutional court argued that the species that inhabit a mangrove forest are of public interest and "belong" to the state; that the Ministry of Environment is in charge of verifying, conserving, protecting, replenishing, prohibiting, and/or delimiting mangrove forests in the country; and that those with permits from the state are allowed to exploit the mangrove forest.[25] In other words, the court assumed that as long as there is an environmental permit, nature is protected.

In the last grouping of rulings, the constitutional court takes the rights of nature seriously, recognizing nature as a subject, alive, with history, with context, with rights, with the possibility of having its rights violated—and that, when violated, nature must be fully repaired. In order to arrive at these considerations, the court developed a systemic theoretical approach to the cases.

Doctrine: The Rise of Disaster Capitalism (New York: Picador, 2008); Joseph Stiglitz, *The Price of Inequality* (New York: W. W. Norton & Company, 2012).

25 Case no. 0796-12-EP, Transitional Constitutional Court of Ecuador, 19–20.

Between 2021 and 2022, the court issued several rulings to protect two ecosystems, two rivers, and a wild animal, declaring that they are subjects of rights. In 2021, the court recognized the mangrove as an ecosystem for the first time—a part of nature and subject of rights. In one case, several civil society organizations had argued the unconstitutionality of several rules of the law and regulations governing the environment for allowing the construction of infrastructure and monoculture plantations in mangroves. The court issued a declaration establishing the unconstitutionality of monocultures and of legal and regulatory language allowing unsustainable activities; it permitted productive activities to be carried out only if they would not interrupt the vital cycles, structure, functions, and evolutionary processes of the mangrove.[26]

Ultimately, this ruling established a rich set of recognitions: mangroves are highly valuable for the planet, surrounding communities, and the mitigation of climate change;[27] they therefore need special protection based on the rights of nature;[28] nature is not an abstract or inert entity, but a complex subject that requires a systemic perspective;[29] the content and scope of the rights of nature depend on the role of each element of an ecosystem,[30] meaning each element that makes up nature must be protected;[31] the state can recognize the rights of an ecosystem or other elements of nature, which could help determine the obligations linked to ownership

26 Case no. 22-18-IN/21, Decision of Judge Ramiro Ávila Santamaría, Constitutional Court of Ecuador (September 8, 2021).

27 Case no. 22-18-IN/21, paragraph 18.

28 Case no. 22-18-IN/21, paragraph 22.

29 Case no. 22-18-IN/21, paragraph 26.

30 Case no. 22-18-IN/21, paragraph 29.

31 Case no. 22-18-IN/21, paragraph 34.

of rights;[32] the elements that make up the mangrove ecosystem are part of a larger whole, which participates in more complex exchanges of nutrients and energy on a regional or even global scale;[33] unsustainable activities in mangrove forests—such as the intensive exploitation of timber, animal species, or water—put the ecosystem at indefinite risk and are prohibited;[34] the ecological, cultural, and economic value of conserving mangrove ecosystems is much higher than that of their land or timber;[35] and the regeneration of mangrove forests will require the diversification of plant and animal species, not monoculture, which generates an imbalance that could lead to their total destruction.[36]

Two months later, the court resolved one of the most emblematic cases in which it developed the content of the rights of nature and the systemic perspective of law: the *Los Cedros* protective forest case, widely considered the "case of the century," and which demonstrates the complex and asymmetrical relationship between transnational mining companies and community resistance.[37] In 2017, the Ministry of Mining granted metallic mineral concessions in the Los Cedros protective forest, and the Ministry of Environment approved the environmental registration for the initial exploration phase of the mining concessions, which were located in Imbabura

32 Case no. 22-18-IN/21, paragraphs 35–37.

33 Case no. 22-18-IN/21, paragraphs 39–40.

34 Case no. 22-18-IN/21, paragraphs 60–61.

35 Case no. 22-18-IN/21, paragraph 68.

36 Case no. 22-18-IN/21, paragraph 103.

37 See Robert Macfarlane's wonderful essay, "Journey to the Cedar Wood," in this volume, in which he uses the Gilgamesh epic as a metaphor; on this case and the relationship with art and social movements, see also Agustín Grijalva, "*Los Cedros* Case: Social Movements, Judges, and the Rights of Nature," in this volume.

province. Legal action was filed claiming that the mining activity violated the rights of nature, among other rights.

In 2021, the court ratified the sentence that accepted the violation of rights, declared that the rights of nature were violated, and ordered reparations.[38] The court affirmed that the recognition of the rights of nature is not a rhetorical lyricism but a transcendent statement and a historical commitment. According to the preamble of the constitution, recognition of the rights of nature demands "a new form of civic coexistence, in diversity and harmony with nature."[39] This recognition has full normative force and constitutes a set of legal mandates, directly applicable and with their own principles for application and interpretation[40]—such as pro natura, the obligation of judges to carry out a careful examination when invoked; the systemic perspective;[41] the principle of tolerance;[42] intrinsic valuation;[43] complementarity between humans, other species, and ecosystems;[44] human adaptation to natural processes;[45] the precautionary principle in the absence of scientific evidence;[46] and biodiversity and endemism.[47]

38 Case no. 1149-19-JP/20, Decision of Judge Agustín Grijalva, Constitutional Court of Ecuador (November 10, 2021), http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUnLCB1dWlkOic2MmE3MmIxNy1hMzE4LTQyZmMtYjJkOS1mYzYzNWE5ZTAwNGYucGRmJ30=.

39 Case no. 1149-19-JP/20, paragraph 31.

40 Case no. 1149-19-JP/20, paragraphs 35–36.

41 Case no. 1149-19-JP/20, paragraph 43.

42 Case no. 1149-19-JP/20, paragraph 44.

43 Case no. 1149-19-JP/20, paragraph 47.

44 Case no. 1149-19-JP/20, paragraph 50.

45 Case no. 1149-19-JP/20, paragraph 52.

46 Case no. 1149-19-JP/20, paragraph 55.

47 Case no. 1149-19-JP/20, paragraphs 76–83.

The conclusion of the ruling is blunt: mining activity in Los Cedros would lead to the extinction of species in the forest, diminishing its biodiversity and, consequently, violating nature's right to maintain and regenerate its life cycles, structure, functions, and evolutionary processes.[48] The ruling also re-envisions the role of the environmental control body. Merely granting a permit or license does not replace the obligation to carry out technical and independent environmental studies that guarantee the rights of nature.[49] Before issuing the environmental registration, the environmental authority must examine the biological value of an ecosystem, the rights of the forest and the species that inhabit it, and observe the principles that apply to the case, such as the precautionary principle.[50] Based on the ruling, granting a mining right without environmental certification based on a technical study would be incompatible with guaranteeing the right to water and the rights of nature.[51]

Finally, this ruling also establishes the relationship between the right to a healthy environment and the rights of nature: "The right to a healthy environment is not only a function of human beings but also reaches the elements of nature, as such."[52] This language rejects the anthropocentric notion of the right to the environment. Although the ruling recognizes the impact of the environment on human beings, it does not neglect other factors, such as health, balance, environmental sustainability, and the intrinsic value of nature.[53]

48 Case no. 1149-19-JP/20, paragraphs 116, 120, 124.

49 Case no. 1149-19-JP/20, paragraph 132.

50 Case no. 1149-19-JP/20, paragraph 146.

51 Case no. 1149-19-JP/20, paragraph 226.

52 Case no. 1149-19-JP/20, paragraph 242.

53 Case no. 1149-19-JP/20, paragraph 243.

In 2021, the court also declared a river subject to rights for the first time. In 2015, the state entity in charge of water management authorized the use of water from the Aquepi River (Santo Domingo de los Tsáchilas) to build and implement a community irrigation system for small and medium-sized producers in the sector. The local government received authorization in 2017 to use water for tourism purposes and for the use of a business consortium. Locals opposed the project, arguing that there was sufficient flow for human consumption and irrigation, protesting and filing a lawsuit for violation of the rights of nature in addition to other rights.

The court recognized the Aquepi River as a subject entitled to rights, including the right to respect its structure and functioning when its flow is affected by human activity. The secretariat in charge of water was found to have violated the river's right to the preservation of its ecological flow, and the local government was found to have violated the right of the inhabitants around the river to an environmental consultation.[54]

Other determinations in this ruling included that the river is an element of nature that is part of a larger ecosystem, which can be identified as a watershed; it has functions that enable and sustain the life of humans and other species and vegetation; these functions include the provision of water for humans, self-purification, flood and drought control, maintenance of habitat for fish, birds, and other wildlife, and maintenance of sediment flows, nutrients, and salinity of estuaries;[55] and impacts on a river also affect an entire ecosystem. The ruling recognized that the river needs to achieve

54 Case no. 1185-20-JP/21, Judge Ramiro Ávila Santamaría, Constitutional Court of Ecuador (December 15, 2021), http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUnLCB1dWlkOidlMGJiN2I1NC04NjM5LTQ1ZmItYjc4OS0yNTFlNTFhZWI2YTEucGRmJ30=.

55 Case no. 1185-20-JP/21, paragraph 47.

harmony, that is, balance in the ecosystem;[56] is violated in its vital cycle when not allowed to have its natural structure and when its functions are impeded and its evolutionary process disrespected;[57] and has a flow that defines its morphology, biological diversity, and ecosystemic processes—and therefore an infrastructure work that affects the flow could break the connectivity between the elements and biodiversity, violating the rights of nature.[58]

The ruling also established that being a subject of rights allows the determination of the particularities of a natural entity or an ecosystem that has suffered a violation of its rights, such as the identification of its name, location, history, vital cycle, structure, functions, evolutionary processes, and damage that may occur to it. To be a subject of rights means that the state has specific obligations with respect to these elements. The ruling also established the most appropriate reparation measures from a systemic perspective. It recognized that the river, as an element of nature, can appear so that judges can receive claims on its behalf.[59]

In another case, the court heard arguments related to the Monjas River, located northwest of the capital city, Quito. There, in addition to declaring the river a subject of rights, the court invoked the right to have the city provide a comprehensive solution to the problem.

As a result of the construction of a water collector that was discharging industrial, domestic, and rainwater waste, as well as the waterproofing of the soil due to urban growth, the Monjas River is polluted and has widened its flow, eroding the banks of the creek at an accelerated rate. Further, because of its proximity to the Monjas River, the Casa Hacienda Carcelén, which belonged to the

56 Case no. 1185-20-JP/21, paragraph 60.

57 Case no. 1185-20-JP/21, paragraph 65.

58 Case no. 1185-20-JP/21, paragraph 69.

59 Case no. 1185-20-JP/21, paragraphs 54–55.

Marquesa de Solanda and is part of Quito's inventory of heritage sites, has cracked walls and is at very high risk of collapse. The owners of the house filed a lawsuit against the Municipality of Quito and other municipal companies for violating, among other things, their right to live in a healthy, ecologically balanced, and pollution-free environment.

The court declared in 2022 that the municipality violated the rights to the city (recognized in the Ecuadorian Constitution as a right in article 31), to the Monjas River, and to a healthy environment; it also recognized the river as a subject of rights and ordered measures of integral reparation.[60] The court argued that the municipality should have refrained from discharging water that caused erosion and should have taken positive measures to decontaminate the water. By these omissions and actions, the municipality created an unsafe habitat and potential risks for the houses on the banks of the stream;[61] caused an imbalance in the ecosystem of the river; modified the composition of the water; and exceeded the capacity of the river flow, altered its bed, eroded its walls, and accelerated the erosive process.[62] The municipality was ordered to guarantee the balance of the watershed ecosystems, water quality, preservation of the river's functions, and the sustainability of the watershed.[63]

The court applied the right to the city and developed its content. The right to the city includes a range of elements, including economic (fair spatial distribution of resources to ensure good living

60 Case no. 2167-21-EP, Decision of Judge Ramiro Ávila Santamaría, Constitutional Court of Ecuador (January 19, 2022), http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUnLCB1dWlkOic5OWVmN2EyZC1kM2I5LTQwOWQtOWY4ZS1jMDc3YzYxYWQ2ZGMucGRmJ30=.

61 Case no. 2167-21-EP, paragraph 79.

62 Case no. 2167-21-EP, paragraph 88.

63 Case no. 2167-21-EP, paragraphs 89, 95.

conditions for the entire population), political (democratic management of the city), cultural (social, economic, and cultural diversity) and natural (harmony with nature).[64] In the last element, urban planning (settlements and urbanization) must aim to establish the conditions for cities to maintain and regenerate the vital cycles of nature.[65] Through its connections, a river affects an entire ecosystem. Like other elements of nature, then, the river should be valued both in itself and in terms of what it contributes to the life of biotic communities, including the human species, and to the abiotic elements along its banks.[66]

"The Monjas River is sick," the court affirmed, "it has lost its ecological balance and requires restoration."[67] Human works and human settlements had broken its connectivity, and the impact on the water and flow seriously affected its biodiversity and ecological functioning.[68] The court ordered short-, medium-, and long-term restoration measures to return the river, to the extent possible, to its former condition.

Finally, in 2022, the so-called *Mona Estrellita* case systematized the jurisprudence on the rights of nature, enunciated animal rights, extended the scope of protection of habeas corpus, and developed the content delineating the rights of nature. In 2018, the Environmental Protection Unit (Ministerio de Medio Ambiente) of Tungurahua received a complaint about the possession of wildlife—a chorongo monkey—in a house. In 2019, a rescue was ordered. The unit raided the home; as reported, they verified that the monkey, named Estrellita, was malnourished and kept in conditions that

64 Case no. 2167-21-EP, paragraphs 101–103.

65 Case no. 2167-21-EP, paragraph 106.

66 Case no. 2167-21-EP, paragraph 121.

67 Case no. 2167-21-EP, paragraph 127.

68 Case no. 2167-21-EP, paragraph 133.

made it difficult for it to consume solid food that is part of its nutritional diet. The animal's keeper was sanctioned, a fine was imposed, and Estrellita was transferred to a zoo. The sanctioned person filed a habeas corpus, alleged that she had lived with Estrellita for eighteen years, and asked for the animal to be reintegrated into her "home." During the trial, Estrellita died of pathologies related to her isolation. The lawsuit in favor of Estrellita was denied in two instances.

The court declared the violation of the rights of nature and of the monkey Estrellita.[69] Its ruling developed several law principles related to the rights of nature, among them the principle of sustainability,[70] interspecies rights (landing to each species)[71], ecological interpretation (according to this principle, the law must observe biological interactions)[72], the principle of conservation, and the principle of intrinsic and systemic valuation[73] (not comparable to human rights)[74]. Adopting a comprehensive view, the protection of nature includes biotic beings and abiotic factors at all levels of ecological organization.[75] The animal is a basic unit of ecological organization, an element of nature, and protected by the rights recognized in the constitution.[76]

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69 Case no. 253-20-JH, Decision of Judge Teresa Nuques, Constitutional Court of Ecuador (January 27, 2022), http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUnLCB-1dWlkOic3ZmMxMjVmMi1iMzZkLTRkZDQtYTM2NC1kOGNiMWI-wYWViMWMucGRmJ30=.

70 Case no. 253-20-JH, paragraphs 97–98.

71 Case no. 253-20-JH, paragraphs 97–98.

72 Case no. 253-20-JH, paragraphs 100–104.

73 Case no. 253-20-JH, paragraphs 77–79.

74 Case no. 253-20-JH, paragraphs 60–63, 66.

75 Case no. 253-20-JH, paragraph 70.

76 Case no. 253-20-JH, paragraph 73.

While the court affirmed that the rights of nature are not exhaustive, it recognized all those rights that are suitable for the protection of nature.[77] These include the right to exist; to life in its positive and negative dimensions;[78] to integrity (conservation of the body);[79] to not be extinguished for unnatural or anthropic reasons;[80] to not be collected, extracted, retained, trafficked, domesticated, or forced to assimilate human characteristics or appearances;[81] to free animal behavior; to the behavior of wild animals according to their instinct; and for nature to freely develop its cycles, processes, and biological interactions.[82] If they are outside their habitat, animals must have access to water and adequate food to maintain their health and vigor; the environment in which they live must be adequate for each species; and they must be allowed freedom of movement, adequate sanitary conditions to protect their health and physical integrity, space to ensure the possibility of the free development of their animal behavior, and an environment free of violence and disproportionate cruelty, fear, and anguish.[83]

Wild animals that are domesticated suffer direct violations of their rights to freedom and good living, and their rights to food following the nutritional requirements of their species, to live in harmony with their environment, to health, to habitat, and to the free development of their animal behavior are often affected.[84] Animal rights also have broader implications for the rights of nature.

77 Case no. 253-20-JH, paragraph 96.

78 Case no. 253-20-JH, paragraph 132.

79 Case no. 253-20-JH, paragraph 134.

80 Case no. 253-20-JH, paragraph 111.

81 Case no. 253-20-JH, paragraph 112.

82 Case no. 253-20-JH, paragraphs 113–114.

83 Case no. 253-20-JH, paragraph 137.

84 Case no. 253-20-JH, paragraph 119.

The domestication and humanization of wild animals affect the maintenance of ecosystems and the balance of nature, cause the progressive decline of animal populations, and increase their risk of vulnerability and danger of extinction.[85]

According to the court's ruling, the authority should have evaluated whether it was appropriate to return the species to its natural habitat or another conservation regime, considering a transition period for such purposes.[86] Estrellita did not have the specialized care and assistance she required,[87] and the Environmental Protection Unit limited her freedom without motivation or proportionality, did not comprehensively assess the individual circumstances and physical condition of the animal, and did not engage in other suitable measures.[88] Further, depending on the circumstances, habeas corpus also protects the rights of nature.[89]

In each of these cases, the court has applied principles of systemic theory, overcoming the theoretical and legal approach of legal positivism.

From the Positive Theory to the Systemic Theory of Law in the Court's Jurisprudence: A Conclusion

Each of the theoretical views described above—legal liberal theory, human rights theory, and the systemic theory of law—gives us insight into the jurisprudence of the Constitutional Court of Ecuador. When the legal framework centers the object governed by

85 Case no. 253-20-JH, paragraph 116.

86 Case no. 253-20-JH, paragraph 140.

87 Case no. 253-20-JH, paragraph 144.

88 Case no. 253-20-JH, paragraph 148.

89 Case no. 253-20-JH, paragraph 166.

the right to property, the court simply denies the rights of nature. When the perspective is from the human right to the environment, nature was not valued for its own sake but for the well-being of the human species. Only the final kind of jurisprudence takes the rights of nature seriously and, using a systemic theory of law, develops its content and scope.

Since 2021, the shift in which the court has embraced principles drawing on the systemic theory of law has brought about a number of advances in Ecuadorian jurisprudence:

The court recognizes as evidence the data that comes from the practices and beliefs of Indigenous peoples, as well as from scientific research. This data displays the abundant and marvelous diversity of natural life, including plants, animals, and rare and endangered species.[90]

The rights of nature challenge traditional law.[91] Nature is a complex subject that must be viewed from a systemic perspective. It is not an object, an abstract entity, or inert.[92] Unlike in positive law, the human being in this framework is neither the sole subject nor the center.[93] Nature and its constituent elements have intrinsic value.[94]

90 Judgment no. 1149-19-JP/21 (Los Cedros), Constitutional Court of Ecuador, paragraphs 73–110; judgment no. 22-18-IN/21 (Manglares), Constitutional Court of Ecuador, paragraphs 11–21; judgment no. 1185-20-JP/21 (Río Aquepi), Constitutional Court of Ecuador, paragraph 56; judgment no. 253-20-JH/22 (Mona Estrellita), Constitutional Court of Ecuador, paragraph 26; judgment no. 2167-21-EP/21, Constitutional Court of Ecuador, paragraphs 29–32.

91 Judgment no. 1149-19-JP/21 (Los Cedros), paragraph 49.

92 Judgment no. 22-18-IN/21 (Manglares), paragraph 26.

93 Judgment no. 1149-19-JP/21 (Los Cedros), paragraph 50.

94 Judgment no. 1149-19-JP/21 (Los Cedros), paragraph 43; judgment no. 253-20-JH/22 (Mona Estrellita), paragraph 57.

1. The court applies the theory of fundamental rights to the content of the rights of nature. First, it discusses the implications of declaring an individual subject of rights and the practical reasons for such recognition.[95] In human rights, every human individual has the right to life and integrity. Secondly, it places the determination of the subject—natural entity or ecosystem—within a historical and ecological context.
2. In order to develop the rights of nature, the court addresses the structure of rights, including the subject, person, or entity obligated and the specific content of the rights.[96] When a subject's rights are violated, the court recognizes the possibility of declaring the violation and providing for full reparation, as for any subject of rights.
3. The specific rights that nature has will depend on each subject, ecosystem, element, or entity of nature. For example, it could be said that the river has the right to the riverbed, while wild animals have the right not to be hunted and to behave according to their instincts.[97]
4. The law cannot conceive of nature as individual and isolated. Nature must be understood as an interrelated, interdependent, and indivisible set of biotic and abiotic entities.[98] Each element has a role, and when one element is affected, the system is altered, and rights are violated.[99] Similarly, from a historical and biological perspective, nature has a

95 Judgment no. 2167-21-EP/21 (Río Monjas), paragraph 122.

96 Judgment no. 1185-20-JP/21 (Río Aquepi), paragraphs 54–60.

97 Judgment no. 253-20-JH/22 (Mona Estrellita), paragraphs 112–13.

98 Judgment no. 1185-20-JP/21 (Río Aquepi), paragraph 44; judgment no. 253-20-JH/22 (Mona Estrellita), paragraph 64.

99 Judgment no. 22-18-IN/21 (Manglares), paragraph 29.

long evolutionary and adaptation process, and if this process is broken, rights are violated.[100] Finally, nature as a subject of rights is interrelated with a healthy environment and the right to participation.[101]

5. When the court recognizes that ecosystems and the elements that compose them are dynamic and interrelated,[102] it is undoubtedly taking a systemic view that is alien to the traditional vision.
6. Among other principles of the systemic theory, we find diversity, self-regulation, and interrelation among beings in the jurisprudence of the constitutional court.[103] In its ruling on the mangrove case, for instance, the court determined that monoculture accelerates degradation.[104] In other words, a monoculture violates the principles that govern nature: it is contrary to diversity; it prevents self-regulation, which depends on human activity; and it reduces ecosystems to a single use—so that a mangrove could be either a shrimp farm or an African palm plantation.
7. Nature is the basis for the existence of other subjects. Human beings are part of nature and in a collaborative relationship with it.[105]
8. Other systemic principles are the ecological principle and the principle of tolerance. According to the ecosystemic principle, nature is a community of species; according to the principle of tolerance, there are limits to the use of

100 Judgment no. 22-18-IN/21 (Manglares), paragraph 32.

101 Judgment no. 1149-19-JP/21 (Los Cedros), paragraphs 207, 211, 213, 242.

102 Judgment no. 1185-20-JP/21 (Río Aquepi), paragraphs 48–50.

103 Judgment no. 22-18-IN/21 (Manglares), paragraph 103.

104 Judgment no. 22-18-IN/21 (Manglares), paragraph 121.

105 Judgment no. 253-20-JH/22 (Mona Estrellita), paragraph 60.

nature, and beyond those limits, nature is prevented from fulfilling its cycles and functions.[106]

9. In terms of the law of nature, the precautionary principle obliges us to protect nature when there is scientific uncertainty and risk of serious damage.[107]

Finally, the court's rulings include words without legal resonance in traditional doctrines, such as natural cycle, function, structure, or evolutionary process.[108] These words have stronger resonance in scientific fields such as biology, geology, and hydrology.

In the case of the chorongo monkey, the court makes legal use of new biological categories, such as the position of animals within the species that are part of the eukaryote, the wild animal, the food chain, and predation.[109]

In one of the cases decided by the court on a river, the structure of the river is related to morphology, the riverbed, the sediments, the flow, and the composition of the water.[110] The function of a river is to provide water, to purify it, to be a medium through which various beings pass, to connect the river with the surrounding ecosystem, and to satisfy the vital needs of various species.[111] The course of a river, as we know it now, results from a long and slow historical process, reflecting millions of years of evolution of the Earth and the beings that inhabit it.

106 Judgment no. 1149-19-JP/21 (Los Cedros), paragraphs 44–45.

107 Judgment no. 1149-19-JP/21 (Los Cedros), paragraph 60.

108 Constitution of Ecuador (2008), art. 71.

109 Judgment no. 253-20-JH/22 (Mona Estrellita), paragraphs 72, 102, 107.

110 Judgment no. 1185-20-JP/21 (Río Aquepi), paragraph 61; judgment no. 2167-21-EP/21 (Río Monjas), paragraph 120.

111 Judgment no. 1185-20-JP/21 (Río Aquepi), paragraph 62.

In another, on a river that crosses the city of Quito, the Monjas River, the court, invoking the rights to the city, systemically analyzes the rights to water, to a healthy environment, to a safe habitat, to sustainable development, and allows it to address the complexity of the problems as well as the possible solutions.[112] The court affirms that the right to the city has four components: economic, political, cultural, and ecological. In this way, the court can take a systemic approach to the case.[113]

These cases demonstrate that a transition is taking place from a legal conception of property—individual, as a resource to be exploited—to an emerging form of the "commons"—interrelated and as a subject with life. In following this trajectory, the Constitutional Court of Ecuador has taken very important steps. Yet, these are still insufficient to fully transcend a legal, economic, and political model based on the indiscriminate exploitation of nature, a model that has produced multiple forms of violence.

112 Judgment no. 2167-21-EP/21 (Río Monjas).

113 Judgment no. 2167-21-EP/21 (Río Monjas), paragraphs 100–106.

Making Peace with the Rights of Nature: New Tools for Conflict Transformation in the Anthropocene

Catalina Vallejo Piedrahíta

Amid global ecological imbalance and "ecological bankruptcy,"[1] new understandings of the relationship between humans and nature have emerged within Western law.[2] Through the notion of rights of nature (RoN), we have begun to move away from legal systems

1 *Ecological bankruptcy* is defined as a situation where natural resources are used at a faster rate than the same resources can regenerate. See Anthony Kadoma, "Living in an Era of Ecological Bankruptcy," *Sustainable Futures in Africa*, October 1, 2020, https://www.sustainablefuturesinafrica.com/2020/10/01/living-in-an-era-of-ecological-bankruptcy.

2 Kristina Lyons, "Mejorar los conflictos: derechos de la Amazonía en mundos cosmopolíticos," *Revista de Antropología y Sociología: Virajes* 23 (2021): 105–39.

that objectify nature as either property or a provider of ecosystem services. Ecosystems have gained legal recognition as subjects with intrinsic value and rights of their own, a new step in environmental constitutionalism.[3] Worldwide, RoN exist in at least forty countries, where they are recognized in the form of constitutional provisions, treaty agreements, statutes, local ordinances, or court decisions.[4] But the very idea of RoN and their theoretical foundation have also received criticism. This chapter looks into some of those critical aspects from an interdisciplinary perspective, combining the fields of Law with Peace and Conflict Studies (PCS). I reflect on possible ways to "make peace" with RoN in two senses: by applying RoN to enable peaceful relations with nature and by addressing some of RoN's contradictions.

As RoN gain in prominence, some salient critiques have emerged. Some have pointed out that RoN are sometimes recognized before necessary reforms in civil and procedural law. These may include legal changes that would allow natural entities to stand in court or determine who will speak on their behalf, among other considerations.[5] Further, RoN advocates emphasize the alignment between Indigenous worldviews and their ecocentric approaches, but support for RoN among Indigenous groups varies. Indeed, different groups have highlighted both the value and the problematic

3 Elizabeth Macpherson et al., "Where Ordinary Laws Fall Short: 'Riverine Rights' and Constitutionalism," *Griffith Law Review* 30 (2021): 438–73.

4 Alex Putzer, Tineke Lambooy, Ronald Jeurissen, and Eunsu Kim, "Putting the Rights of Nature on the Map: A Quantitative Analysis of Rights of Nature Initiatives across the World," *Journal of Maps* 18, no. 1 (June 13, 2022): 1–8, https://doi.org/10.1080/17445647.2022.2079432.

5 Alejandra Molano Bustacara and Diana Murcia Riaño, "Nuevos sujetos de derecho: un estudio de las decisiones judiciales más relevantes," *Revista Colombiana de Bioética* 13 (2018): 82–103, https://doi.org/10.18270/rcb.v13i1.2218; Jan Darpö, *Can Nature Get It Right? A Study on Rights of Nature in the European Context* (Brussels: European Parliament), https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2021)689328, March 2021.

aspects of Western RoN theory and practice:[6] the subjectivity of nature and the human duty to respect and protect it are central to Indigenous environmental management, but the notion of *rights* of nature has Western and non-Indigenous origins "and can at times exist in detriment of Indigenous agency and difference."[7] For example, nature preservation policies based on a radical understanding of RoN could be used to expel Indigenous and other rural peoples from forests and other protected ecosystems in order to prevent negative environmental impacts—a violation of the hard-earned ethnic and territorial rights of Indigenous peoples.

Another concern is that legal argumentation of RoN based on religious foundations may not translate to the wider context of secular political constitutions. This issue is illustrated by the example of the Ganga and Yamuna rivers in India, where the historical Hindu belief in rivers as goddesses and deities as entities endowed with forms of legal personality constitutes the foundation for RoN. This religious context, while driving environmental protection efforts, has the potential to be weaponized against religious minorities like Indian Muslims, particularly during periods of persecution based on religious difference.[8]

To understand the potential social effects of legal innovations in RoN, we need to gather insight from other academic disciplines. Most interdisciplinary work on RoN in the humanities draws on anthropology and political science. In this chapter I explore findings from the field of PCS and the implications for this emerging framework. While PCS have dealt with the environmental triggers of

6 Erin O'Donnell et al., "Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature," *Transnational Environmental Law* 9 (2020): 403–27.

7 Macpherson et al., "Where Ordinary Laws," 446. See further O'Donnell et al., "Stop Burying the Lede."

8 Macpherson et al., "Where Ordinary Laws," 452ff.

social conflict and the environment's potential for peacemaking,[9] I ask what potential RoN have to transform our conflicts with nature itself. Is it worth creating new rights for mountains and rivers, or for nature as a whole, as means of conflict transformation? RoN are thus altering fundamental concepts—or ontological categories—and, with them, the dominant way of thinking about essential entities in the modern Western world. RoN treat natural entities as subjects with agency, inherent dignity, and a capacity for being in relationship with others. This understanding may allow us to approach our relationships with nature through the lens of peace and conflict.

Law and PCS are intimately connected. The law is an instrument for conflict resolution and peace-building; its aim is to find just solutions to interpersonal and structural social conflicts, facilitating social peace through institutions and norms.[10] In my research on the

9 Various approaches explore the connection between PCS and the environment. *Environmental security* refers to the link between the scarcity of environmental resources and regional violence (i.e., the environmental triggers of conflict). See Thomas Homer-Dixon and Jessica Blitt, *Ecoviolence: Links among Environment, Population and Security* (Lanham, MD: Rowman & Littlefield, 1998). And international *environmental peacemaking* explores the role of the environment to unite otherwise divided national and international actors around a common cause. See Ken Conca and Geoffrey D. Dabelko, *Environmental Peacemaking* (Washington, DC: Woodrow Wilson Center Press, 2002). And *peace ecology* explores the peace-building potential of the environment beyond environmental problems. See Christos N. Kyrou, "Peace Ecology: An Emerging Paradigm in Peace Studies," *International Journal of Peace Studies* 12 (2007): 73–92.

10 Johan Galtung highlighted the importance of transdisciplinarity in peace studies. He referred to the contributions and limits of law and other disciplines to achieve peace through their own methods only. See Johan Galtung, "Peace Studies and Conflict Resolution: The Need for Transdisciplinarity," *Transcultural Psychiatry* 47 (2010): 20–32, https://doi.org/10.1177/1363461510362041. Together with colleagues from the UNESCO chair for peace studies at the University of Innsbruck, I have explored this transdisciplinary approach to law and peace studies. See Catalina Vallejo Piedrahíta, *Plurality of Peaces in Legal Action: Analyzing Constitutional Objections to Military Service in Colombia* (Vienna: LIT Verlag,

rights of rivers in Colombia, India, and New Zealand, I have seen how seemingly similar legal cases have such different contexts that the potential of RoN to transform these conflicts varies. As we explore PCS literature and its implications for RoN, we should examine not only the potential but also the challenges to successful conflict work with attention to the context and specificities of each RoN case. A clear understanding of these possibilities will allow us to imagine better ways to prevent violence in our relationships with nature as we create, recognize, and advance rights for nature around the world.

Peace scholars have offered various critiques of the law as a tool for addressing social conflicts. By its nature, the law divides the world into binary categories—right/wrong, good/bad, legal/illegal, moral/immoral, right/duty, anthropocentric/ecocentric, and human/nature—and then acts to suppress or eliminate conflict in order to secure social peace.[11] Behavior considered immoral in a certain time and place becomes legally forbidden and subject to sanction. But embracing these dominant frameworks does not

2012); Florencia Benitez-Schaefer, "Iustitia's Healing: On the Potential of Synergies between Law and Elicitive Conflict Transformation," in *Transrational Resonances: Echoes to the Many Peaces*, eds. Josefina Echavarría Alvarez, Daniela Ingruber, Norbert Koppensteiner (Cham: Springer, 2018), 303–24.

11 See Wolfgang Dietrich and Wolfgang Sützl, "A Call for Many Peaces," in *Key Texts of Peace Studies*, eds. Wolfgang Dietrich, Norbert Koppensteiner, Josefina Echavarría Alvarez (Vienna: Münster, 2006) 435–55; Wolfgang Dietrich, *Interpretations of Peace in History and Culture* (Cham: Springer, 2012). For Galtung, law, international law, and human rights serve peace because they are powerful ways of projecting images of peaceful societies and worlds onto the canvas of the future, raising fundamental questions about basic needs, deep cultures, and structures, and challenging the status quo. But law's approach can also be reductionistic. Galtung argued that the local protection of human rights is neither necessary nor sufficient for global peace, as states' protection of rights may come at the cost of asking for extreme human duties, including giving one's life for the state. Conflict transformation is needed and does not come automatically with the currently dominant understanding of human rights. Galtung, "Peace Studies," 25–26.

necessarily lead to conflict transformation.[12] Critics argue that the law separates the inseparable, seeing the coin from only one of its sides. Strategic peace-building and conflict transformation, on the other hand, focus on integration rather than separation, on relationships beyond individual actors, and on creatively dealing with opposites, rather than eliminating one of them.[13]

In this chapter I approach rights as tools for conflict transformation in the Anthropocene. Drawing on Wolfgang Dietrich's study of different historical and cultural understandings of peace, I also examine three RoN paradigms that could be unfruitful.[14] These approaches mirror similarly problematic approaches in conflict resolution, namely the moral, modern, and postmodern perspectives.[15] The first problematic use of RoN, then, would be to advance these rights as an expression of *moral* superiority, that is, to use RoN to separate "good-willed" protectors of nature from the "ill will" of others who supposedly threaten an ideal environmental peace. The second is to use them as a *modern* technology to fix nature, like a machine that humans must master. The third is to use RoN as a *postmodern* device to merely "tolerate"—rather than respect—Indigenous and other ethnic peoples' cosmovisions.[16]

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12 Galtung, "Peace Studies," 26.

13 On strategic peace-building, see John Paul Lederach and R. Scott Appleby, "Strategic Peacebuilding: An Overview," in *Strategies of Peace: Transforming Conflict in a Violent World,* eds. Daniel Philpott and Gerard Powers (Oxford: Oxford University Press, 2010), 19–44.

14 Dietrich and Sützl, "A Call for Many Peaces"; Dietrich, *Interpretations of Peace.* See further Josefina Echavarría Alvarez and Norbert Koppensteiner, "On Resonances: An Introduction to the Transrational Peace Philosophy and Elicitive Conflict Transformation," in *Transrational Resonances* (Cham: Springer, 2018), 1–19.

15 See Dietrich and Sützl, "A Call for Many Peaces."

16 I use Dietrich's differentiation between tolerance and respect, according to which respect contains the insight that recognizing the otherness of others

According to PCS literature, these kinds of approaches to conflict resolution often fail to restore human relationships broken or affected by violence. In this chapter I argue that making peace with the RoN would involve changing how *violence*, *conflict*, and *peace* are understood by legal practitioners. I bring a key insight from PCS scholarship to bear on the sociolegal debate on RoN: conflict is an ever-present part of human life—different from violence—and it has proven more useful to learn from conflicts than to avoid or suppress them. Underlying causes tend to reappear and cause distress if they are not properly seen and transformed. To achieve peace with the natural world, then, we must better understand the inner, interpersonal, and political conflicts that characterize our relationship with nature.

This chapter has two main parts. In the first, I explain why I frame environmental degradation as a conflict and unpack the notions of peace and violence. I contend that RoN are a legal tool for conflict transformation, and therefore that RoN advocates need to pay attention to insights from the field of PCS and avoid contributing to new forms of structural violence. In the second part, I examine different historical and cultural interpretations of peace and how they influence the way rights are used to build peaceful relationships. I argue that approaching RoN through the moral, modern,

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is a principle for peace and human dignity. It implies treating "others" like members of one's own kinship with no intention to adapt them to one's own standards, nor are they simply tolerated as "the losers in a strange world." In this way of thinking, respect instead of either tolerance or assimilation is a constituent element of dignity, from where it is possible to derive human rights as one among many possible expressions of this dignity. Conversely, tolerance and assimilation are the first steps toward violent conflict, which can even escalate to "purification," ethnic "cleansing" and genocide. Tolerance may help to avoid the extermination of the others, but it "includes the prejudice of the superiority of one's own beliefs over the truths of the others." Wolfgang Dietrich, "A Structural-Cyclic Model of Developments in Human Rights: An Alternative Chronosophy as Base for the Formal Reconstruction of Human Rights," in *Human Rights Working Papers* 6 (Denver: University of Denver, 2000), 14.

and postmodern perspectives on peace can lead to violence—to seeking peace by violent means.[17] Lastly, I draw on the PCS concept of "moral imagination"[18] to create a framework for using RoN as a tool for conflict transformation.

Peace, Violence, and Conflicts with Nature

A common definition of peace is the absence of violence. But spotting violence is not always a straightforward affair. Destructive and alienating situations result not only from direct physical hostility, but from structural and cultural factors as well.[19] These factors are especially difficult to acknowledge and resist, even when they cause cycles of direct violence, as they are often normalized by institutions. While direct violence refers to verbal or physical aggression harming the body, mind, or spirit of others or the self, structural violence refers to systems of political repression and economic exploitation that predominantly affect marginalized people. Cultural violence refers to aspects of culture—such as religion, ideology, language, art, and science—that can be used to justify or legitimize direct or structural violence by way of stereotypes, myths, and discriminatory beliefs.[20] Examples of cultural violence have been unveiled by Toni Morrison, Chinua Achebe, and Velia Vidal in their critiques of racism in literary works.[21] It is imperative to ask ourselves how RoN may act as

17 Rather than peace by peaceful means, as famously coined by Johan Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization* (Oslo: Sage, 1996).

18 John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxford: Oxford University Press, 2005).

19 Johan Galtung, "Cultural Violence," *Journal of Peace Research* 27 (1990): 291–305.

20 Galtung, "Cultural Violence."

21 In her 1993 Nobel Prize acceptance speech, Morrison said: "oppressive

concrete limits to direct, structural, and cultural violence and enable peaceful relationships between humans and nature.

But what are we looking for when we think of those peaceful relationships? What do peaceful relationships with nature look like? On the one hand, as I mention above, peace can refer to the *absence* of open direct aggression (negative peace); on the other hand, it may indicate the *presence* of harmonious relationships (positive peace). The pursuit of negative peace involves the suppression of aggressive energy in societies; this may involve threatening people with prison and other forms of sanction and social exclusion. Efforts to achieve negative peace emphasize managing conflict to control, contain, and reduce actual and potential violence.[22] Ceasefires are examples of negative peace in armed conflicts. Adding environmental crimes to penal codes and establishing administrative sanctions for pollution are examples of negative peace in environmental conflicts.

Beyond the enforced absence of aggression, peace can also indicate the presence of conditions for a fully expressed human life in dynamic balance. Johan Galtung sees the presence of positive peace in actions or experiences like kindness and goodness to the body, mind, and spirit of the self and others; in freedom of expression, dialogue, integration, participation, and solidarity; and in the legitimation of cultures of peace via religion, law, ideology, language, art, science, and media. The impetus behind positive peace is to open up human potential and capabilities rather than repress them.[23]

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language does more than represent violence; it is violence." Toni Morrison, "Nobel Lecture" (speech), December 7, 1993, transcript and audio, https://www.nobelprize.org/prizes/literature/1993/morrison/lecture. See also Velia Vidal Romero, "El Racismo en 'Esta Herida Llena de Peces,' August 13, 2021, in *Cerosetenta*, podcast, transcript and MP3 audio, 1:11:36, https://cerosetenta.uniandes.edu.co/el-racismo-en-esta-herida-llena-de-peces.

22 Galtung, *Peace by Peaceful Means*. Here negative and positive refer to absence or presence and not to value judgment of good and bad.

23 Galtung, *Peace by Peaceful Means*, 32.

Many people worldwide work hard to develop more harmonious relationships, as in the field of human (and more-than-human) rights. It is no secret that we find ourselves in conflicts all the time—conflict with our inner selves, with our family members, friends, and colleagues, and in the realm of politics. An imagined state of perfection with no conflict of any kind is likely unattainable, and thus the modern idea of peace may only lead to frustration.[24] Peace scholar Francisco Muñoz asserted that modernism, in its pursuit of states of purity, necessarily resorts to violent means to achieve its idea of peace. Thus, he proposed a "conflictive" or "unfinished" understanding of peace—*paz imperfecta*—one in permanent construction, a continuous process beyond the antagonistic dualism of pacifist/violent, good/evil. Muñoz's concept of peace embraces the fertility of the many situations that lie between those dual categories.[25] In this line of thought, conflict and violence need to be differentiated. While conflict is ever present in the life of all living beings—both as an unavoidable fate and, at its best, as a creative energy for life and transformation—violence is but one of the possible forms conflict might take.[26] Galtung famously argued that peace is "what we have when creative conflict transformation takes place nonviolently."[27]

In essence, RoN stand as a catalyst for a comprehensive and holistic approach to peace—one that traverses both negative and positive realms. As legal practitioners explore the integration of RoN into legal systems and society at large, they embark on a journey

24 Francisco A. Muñoz, "La paz imperfecta [Imperfect Peace]," unpublished, updated manuscript version of "La paz imperfecta en un universo en conflicto [An Imperfect Peace in a Universe in Conflict]," in *La paz imperfecta*, ed. Francisco A. Muñoz (Granada, Spain: University of Granada), 21–66, https://www.ugr.es/~fmunoz/documentos/pimunozespa%C3%B1ol.pdf.

25 Muñoz, "La paz imperfecta."

26 Galtung, *Peace by Peaceful Means.*

27 Galtung, P*eace by Peaceful Means,* 265.

that not only establishes limits to violence against nature—through environmental crimes, administrative sanctions, and other prohibitions—but also nurtures a deeper understanding of humanity's intricate relationship with nature.[28] Through this exploration, the potential for a transformative and sustainable response to the challenges of our time comes into view, ultimately positioning RoN as crucial to shaping the trajectory toward more harmonious relations between humans and the environment.

Table 1. Galtung's dimensions of positive peace

Direct positive peace	Structural positive peace	Cultural positive peace
Verbal and physical kindness, good to the body, mind, and spirit of Self and Other; addressed to all basic needs, survival, well-being, freedom, and identity. Love is the epitome: a union of bodies, minds, and spirits.	Substitutes freedom for repression and equity for exploitation and then reinforces this with dialogue instead of imposition, integration instead of segmentation, solidarity instead of fragmentation, and participation instead of marginalization. This also holds for inner peace: the task is to bring about the harmony of body, mind, and spirit. Key: outer and inner dialogue with oneself.	Substitutes legitimation of peace for the legitimation of violence; in religion, law, and ideology; in language; in art and science; in schools, universities, and the media; building a positive peace culture. In the inner space of the Self, this means to open for several human inclinations and capabilities, not repressing.

Source: Adapted by the author from Galtung, *Peace by Peaceful Means*, 32.

28 Elizabeth Macpherson, "Can Western Water Law Become More 'Relational'? A Survey of Comparative Laws Affecting Water across Australasia and the Americas," *Journal of the Royal Society of New Zealand* 53, no. 3 (November 2022), https://doi.org/10.1080/03036758.2022.2143383.

Transrational Peace Research and RoN: Fostering Harmonious Relationships in an Evolving Academic Landscape

International PCS as an academic discipline emerged from the painful violence of World War I. At the Paris Peace Conference of 1919, the British and US American delegations decided to establish an academic research institute on international relations with the aim of rectifying world violence. But what followed was World War II and its aftermath, as well as the "shocking insight that this century did not bring a system of one/universal peace, but an escalation of violence and destruction unprecedented in human history."[29] The realization that achieving an ideal peace had become one more justification for violence led to critical PCS, focusing not only on violence but on understanding peace as experience and social phenomenon.[30]

In contrast to Galtung's structuralist approach in Europe, US schools of PCS have proposed a system theory approach. The founding authors of this approach were trained in different scientific disciplines. Ludwig von Bertalanffy, a biologist, founder of the general system theory,[31] and of PCS in the US, was a key contributor. Von Bertalanffy collaborated with another biologist, Anatol Rapoport, and with economist Kenneth Boulding, who wrote the essay "The Economics of the Coming Spaceship Earth" in 1966.[32]

29 Dietrich and Sützl, "A Call for Many Peaces," 292.

30 Francisco Muñoz argues for the need to bring more attention to the peace in peace studies. See Muñoz, "La paz imperfecta."

31 Ludwig von Bertalanffy, "An Outline of General System Theory," *British Journal for the Philosophy of Science* 1 (1950): 134–65, https://doi.org/10.1093/bjps/I.2.134.

32 Kenneth E. Boulding, "The Economics of the Coming Spaceship Earth," in *Environmental Quality in a Growing Economy: Essays from the Sixth*

Other notable proponents of the systems approach include figures in the field of ecology and environmental science. Zoologist Gregory Bateson, recognized for his pioneering work in cybernetics and the study of communication within systems, contributed to the lineage of thought that underpins the systems approach within PCS. Furthermore, the work of Lynn Margulis and James Lovelock has left an indelible mark on our understanding of the interconnectedness of Earth's ecosystems. Their seminal project, Gaia, first introduced in 1974, presented a groundbreaking hypothesis that the Earth functions as a self-regulating and self-sustaining entity.[33] Margulis, a distinguished biologist known for her significant contributions to the endosymbiotic theory, and Lovelock, a renowned atmospheric chemist, together proposed a conceptual framework that aligns with the systems approach in PCS. The work of these authors on systems theory was crucial in opening the door for postmodern and transrational peace research.

Through the influence of Adam Curle,[34] the systemic approach in PCS reached John Paul Lederach,[35] whose contributions significantly enriched and further shaped the idea of imperfect peace,[36] *filosofía para hacer las paces* (peace philosophy),[37] and transrational

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RFF Forum, ed. Henry Jarrett (Baltimore: John Hopkins University Press, 1966), 3–14.

33 James E. Lovelock and Lynn Margulis, "Atmospheric Homeostasis by and for the Biosphere: The Gaia Hypothesis," *Tellus* 26 (1974): 2–10.

34 On the work of Curle, see Tom Woodhouse, "Adam Curle: Radical Peacemaker and Pioneer of Peace Studies," *Journal of Conflictology* 1, no. 1 (2010): 1–7.

35 See for example Lederach, *The Moral Imagination*; John Paul Lederach, *Preparing for Peace: Conflict Transformation across Cultures* (Syracuse: Syracuse University Press, 1995).

36 Muñoz, "La paz imperfecta."

37 Vicent Guzmán Martínez, *Filosofía para hacer las paces* (Barcelona: Icaria, 2009).

peace research in Europe.[38] The growing systems approach in legal scholarship also stems from these system theory and peace scholars' work.[39] Imperfect and transrational peace research developed in the early 2000s in Spain and Austria. Scandinavian and British scholars had been involved in a similar task.[40] From this intent came an inquiry into different historical and cultural perceptions and interpretations of peace.[41] Based on his research, Dietrich categorized four interpretations of peace, which he called the energetic, the moral, the modern, and the postmodern peace families.

Each of the peace families or types circulates around a specific key value: (1) *Energetic* peace emphasizes harmony and engaging with opposite forces in life. It is present prominently but not exclusively in Indigenous and Native cultures and traditions. (2) *Moral* interpretations of peace emphasize justice; this family of peace involves separating opposite forces, as expressed, for instance, in monotheistic religions: "Peace on Earth for those of *good* will." Its beauty lies in a sense of sacredness and pursuit of benevolence, and its risk in its proximity to an idea of superiority over "otherness." (3) *Modern* understandings call for security; they center on the rational capability of humans to fix problems, as seen, for instance, in the nation-state as institution or in the more positivist aspects of science. Their potential has to do with organization and creating the foundations for safety and welfare. Their risk lies in confusing reason with mere calculation and in overshadowing the human

38 Wolfgang Dietrich, "A Brief Introduction to Transrational Peace Research and Elicitive Conflict Transformation," *Journal of Conflictology* 5, no. 2 (2014): 6.

39 See, for example, Fridjof Capra and Hugo Mattei, *The Ecology of Law: Toward a Legal System in Tune with Nature and Community* (Oakland, CA: Berrett-Koehler Publishers, 2015).

40 Muñoz, "La paz imperfecta."

41 Dietrich, *Interpretations of Peace.*

capacities for empathy, reverence, and imagination. (4) *Postmodern* approaches to peace deal with the question of truth(s). They arise from a feeling of disillusionment with the modern project and its reduced version of a truth that runs counter to the experience of the marginalized and oppressed. These approaches may take the form of decolonial activism and truth commissions in transitional justice contexts. Their potential has to do with their deep respect for diversity beyond mere tolerance. Their risk lies in the difficulty, or perhaps impossibility, of uniting or integrating what is diverse.

None of the former values appears isolated in social life; they are four aspects of a larger concept of peace that varies across contexts.[42] Dietrich called this larger concept of peace "transrational" because it appreciates and applies the rationality of modern science, human rights charters, and much needed institutions, while at the same time transgressing the limits of rationality and embracing holistically all aspects of human nature. Along with rationality, this concept of peace embraces empathy and the capacity to be *with* others—to be individuals *and* community at the same time. To be more than human, as we relate to—and are—nature.

This multidimensional understanding of peace integrated Lederach's "elicitive conflict transformation"[43] and his notion of "strategic peace building."[44] Lederach notes that all actors in a conflicting system interact across social strata, from the grassroots to the middle range of regional experts and leaders to heads of state, and that they all are relevant to the process of transformation following

42 Wolfgang Dietrich, "Imperfect and Transrational Interpretations of Peace(s)," *Prospectiva* no. 26, (July–December 2018): 195–210, https://doi.org/10.25100/prts.v0i26.6623.

43 Lederach, *Preparing for Peace.*

44 Lederach, *Preparing for Peace*; John Paul Lederach, *Little Book of Conflict Transformation: Clear Articulation of the Guiding Principles by a Pioneer in the Field* (New York: Simon and Schuster, 2015); Lederach and Appleby, "Strategic Peacebuilding."

experiences of violence. Therefore, in peace-building processes all actors must be included and addressed in a way that honors their own context. Lederach's systemic approach shifted the attention in PCS from the individual or the group to the *relation* as the key factor of conflict work.[45]

RoN would allow us to start conceiving ecosystems and nature as actors in conflicting systems where legal rights are used for conflict work. The law, however, tends not to embrace systemic thinking. Legal norms and methods focus primarily on the individual or group, not on the relation. The law's structurally imposed reductionist bias—there is a plaintiff and a defendant—removes the case from the systemic web of relations. Further, there are instances where the law can co-opt relationships by excessively formalizing them and institutionalizing them in the frame of the nation-state. RoN, if implemented, should thus return the focus to relationships.[46]

Some interpretations of RoN would be futile as peacemaking tools. Interpretations that seek to preserve nature in pristine conditions at the cost of cutting its relationships with humans (assuming that humans are separate from nature) are problematic. So are interpretations of RoN that do not come from the culture of the human communities that exist in relation to a landscape or ecosystem, or that are imposed on them through law. For example, are RoN equally useful when applied to modern urban communities who do not perceive a river or forest as living entities or as subjects? If our aim is an imperfect peace that consists not just in eliminating physical harm to the "other," in this case nature, but also in enabling inclusion, participation, and the flourishing of potential for more-than-human harmonious relationships, then these approaches are problematic at best. To protect nature from human-made

45 Dietrich, "Imperfect and Transrational Interpretations."

46 See, for example, Macpherson, "Can Western Water Law Become More 'Relational'?."

destruction, creating RoN with power beyond limiting harm would be ideal, as "positive peace is the best protection against violence."[47] RoN would need to help strengthen the rights to self-determination, other ethnic and territorial rights, and the collective right to a healthy environment instead of competing with these rights or working as a separate category.

The coin flips, and we are alive and dynamic rather than static: nature's rights need humans, and human rights need nature. Anthropocentric and ecocentric rights are but two sides of the same coin.[48] Rights are only possible in relationship. According to Galtung, "Violence and war, conflict and peace, all have one thing in common: they are relational."[49] Peace, then, can only be achieved through conflictive relationships that move continuously toward a dynamic balance by nonviolent means. When we pursue exclusion, elimination, and suppression of the "other" in the hope of achieving a supposedly perfect future peace, we cultivate more forms of violence. Peace, from this point of view, is only possible when the needs of all parties in relationship are met, at least to some extent.

Certainly, the distinct nature of human-nature relationships varies greatly based on the particular ecosystem, landscape, and human communities at play. It becomes imperative for rights-based environmental governance to be intricately attuned to the specific needs and dynamics of the actor(s) involved, whether it be a degraded river, a mountain, or a sea, all striving to regain a harmonious equilibrium. However, a risk emerges when we contemplate the creation of abstract rights—particularly when such rights are

47 Galtung, *Peace by Peaceful Mean*s, 32.

48 Mihnea Tănăsescu, "The Rights of Nature as Politics," *in Rights of Nature: A Re-Examination,* eds. Daniel P. Corrigan, Markku Oksanen (London: Routledge, 2021), 69–84; Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (Bielefeld, Germany: Transcript Verlag, 2022).

49 Galtung, "Peace Studies," 21.

formulated in a generalized manner, devoid of a thorough consideration of the intricate requirements of nature and the entities that influence its functioning. The potential pitfall lies in the assumption that these abstract rights can be universally applied to all of nature,[50] or to rivers in general, without accounting for the nuanced societal perspectives and interpretations that must arise from direct interactions with these ecosystems. Peace scholars have identified how the pursuit of peace ideals, when rooted in a notion of general perfection or purity, can inadvertently propagate structural and cultural violence. In the context of environmental and nature rights, a similar dynamic can emerge if we adopt an abstract, one-size-fits-all approach without a genuine engagement with the complexities of each unique socioecological context. Thus, as we venture forward with the use of RoN as instruments for constructing positive peace in the Anthropocene, it is crucial to heed this caveat and ensure that our efforts are firmly grounded in the nuanced and dynamic realities of the ecosystems we seek to protect and nurture.

Concluding Thoughts: RoN as Tools for Conflict Transformation in the Anthropocene

As we face the destruction of the natural environment—and with it our own—creating or recognizing RoN as means to transform our more-than-human conflicts is an encouraging idea. Through insights from PCS, we see that using RoN to transform conflicts with nature presents both opportunities and risks. Among the opportunities is the possibility of including ecosystems as actors in conflicting systems where legal rights are used. In this way nature gains a voice in legally oriented conversations and can be included

50 See further Tănăsescu, *Understanding the Rights*.

in conflict mapping and strategic peace-building work. Among the risks is the use of RoN as an expression of shadow aspects of the *moral*, *modern*, and *postmodern* interpretations of peace.

A shadow aspect of moral peace approaches would be to advance RoN with a sense of moral superiority, for example, in the form of charity toward the rights-bearers. A shadow aspect of the modern approaches would be to engineer our way out of conflicts with nature, using solely technocratic approaches and conceiving them as problems of calculation only, with no ethical and political implications. The postmodern approaches to peace might involve using RoN as a tool for the superficial inclusion of "others," to emptily "tolerate" the cosmovisions of communities who have a closer relationship with nature and a sense of reverence toward it.

These interpretations focus on division and separation rather than on integration. They are based on a single ideal of peace that can supposedly be achieved when problematic aspects or actors are eliminated. Although RoN give recognition to new actors within conflictive systems—a crucial aim in the Anthropocene—they risk doing so with a focus on individuality that fails to restore or create harmonious relationships with other members of a system. A greater emphasis on the *ecocentric* and on *rights* could make it difficult to see the other side of the RoN coin: the *anthropos* and *duties* toward both nature and humans. Harms to nature come with inevitable harms to humans and all hard-won human rights.

Finally, another perspective arises—the reminder that every coin has two sides. Within the context of this exploration, I cautiously conclude that RoN hold potential for conflict transformation. They push us beyond radical nature preservation, encouraging us to view RoN as a catalyst for positive peace on the direct, structural, and cultural levels. To embed RoN with meaning, we embark on a quest to understand nature's essence, its needs, and the factors shaping its definition in every single case. RoN emerge as a tool shaping human-nature relationships free from exploitation

and domination, a bridge amplifying voices in environmental governance, and a tapestry woven with norms fostering harmonious coexistence. In their final role, RoN become guardians, bolstering the self-determination of peoples in environmental governance while preserving the integrity of our interconnected existence.

EPILOGUE

On the Origin of the Phrase "More-Than-Human"

David Abram

It may be useful for readers to know something of the philosophical origin and reason for the phrase "more-than-human rights." I originally coined this odd phrase by which to speak of nature—the *more-than-human world*—back in the early 1990s, when I was writing my first book, *The Spell of the Sensuous: Perception and Language in a More-than-Human World*.[1] At that time, I found myself stymied by a lack of precise words and phrases by which to articulate the real relation between our species and the countless other shapes of sensitivity and sentience with whom our lives are entangled. There were all too few terms by which to speak of the outrageously

1 David Abram, *The Spell of the Sensuous: Perception and Language in a More-than-Human World* (New York: Pantheon Books, 1996).

multiform exuberance of nature—to acknowledge the upwelling and many-voiced creativity that steadily surges all around us and even *through* us as we go about our days. I was especially frustrated by the conceptual gulf between humankind and the rest of animate nature tacitly implied by the use of conventional terms like the *environment* (which conceptually flattens all other species into the passive backdrop of human life) and even the rich and still lovely word *nature* itself (which is so often habitually contrasted with *culture*, as though there were a neat divide between the two, as though human culture was not entirely a part of this breathing biosphere).

After stumbling around for a while in the tangled thickets of English, I finally concocted a new phrase—the *more-than-human world*—by which to articulate the broad commonwealth of earthly life as a realm that manifestly includes human culture, with all our creativity, our arts, and our technology, but which also (necessarily) *exceeds* human culture. The phrase was intended, first and foremost, to indicate that the realm of humankind (with our culture and technology) is a subset within a larger set—that the *human world* is necessarily embedded within, permeated by, and indeed dependent upon the *more-than-human world* that exceeds it. Yet by this new phrase I also meant to encourage a new humility on the part of humankind, since the "*more*" could be taken not just in a quantitative but also in a qualitative sense.

Of course, the recognition of our human embedment within a more-than-human biosphere brimming with its own intelligence is hardly a new insight. On the contrary, this understanding has been common to Indigenous or First Nations peoples on every inhabited continent and archipelago for numberless generations.

After I introduced the *more-than-human world* as a central notion throughout *The Spell of the Sensuous*, the phrase was slowly adopted by other theorists and activists, and within a decade-and-a-half had become part of the lingua franca of the worldwide movement for ecological sanity, informing work in the natural sciences,

in philosophy, in the arts, and in activist politics. And now it is heartening to watch as the phrase is taken up by legal scholars and jurists as a fresh way to extend the notion of *rights* beyond the strictly human estate.[2]

As far as I can tell, the notion of *more-than-human rights* is being deployed in this legal context as a clarifying alternative, or supplement, to the older discourse of *rights of nature*. The older formulation lends itself easily to the sense that earth jurisprudence is a separate domain neatly distinguishable from human jurisprudence: *human rights* are applicable to the clearly bounded realm of human concerns, while *rights of nature* deal with that other, different realm of nature, set apart from the first. *Rights of nature* is hardly a terrible formulation, and it has done good work in the world. Yet it tacitly underscores and deepens the bifurcation between humankind and the rest of the biosphere. Humans are one sort of thing, nature is something else. Humans are individuals, and they each have rights, while everything else is best thought of en masse (as an assemblage of beings, elements, and processes), an immense block of hard-to-distinguish powers that should also be accorded some (other) kind of rights.

The notion of *more-than-human rights* gently undermines this all-too-facile bifurcation, by nesting human rights *within* the wider array and purview of these elemental biotic, ecosystemic, and biospheric rights. At the very least, it implies a much more interesting relation between these, suggesting that human rights ultimately derive from (or emerge out of) that wider field of elemental, earthly integrities. If humankind is fully a part of the animate earth that we're finally coming to recognize in all its audacious and wild

2 See César Rodríguez-Garavito, "More-Than-Human Rights: Law, Science, and Storytelling Beyond Anthropocentrism," Chapter 1, p. 20– 21 in this volume (proposing the term "more-than-human rights" and mapping its foundations and its implications for legal thought and practice).

creativity—if the delicately interlaced biosphere that sustains us displays its own ongoing and improvisational sentience, in which our human intelligence is thoroughly entangled—then human rights must ultimately be rooted in more-than-human rights. And, hence, developments and breakthroughs in earthly jurisprudence must feed back into and transform human jurisprudence.

Of Hubris and Humility

The recognition of a more-than-human world contrasts markedly with another recently minted term used by many scholars today. The *Anthropocene* is the word by which many persons refer to the geological epoch now upon us: the epoch in which humankind and its activities have become a large-scale, geological force affecting the atmosphere, the oceans, and the terrestrial ecosystems of this planet. The term has generated a great deal of excitement not only among geologists and biologists, but also among a wide array of theorists in the humanities and social sciences.

Like the *more-than-human world*, Anthropocene discourse undoes the neat bifurcation between culture and nature. Yet the Anthropocene does this not by nesting the human world within a wider, more-than-human world, but by simply dissolving any boundary between the human world and the biosphere. More precisely, the discourse of the Anthropocene neatly negates the possibility of a more-than-human world, since the name explicitly asserts that the human—the *anthropos*—is now coextensive with earthly reality. Within the Anthropocene, there is nothing outside the human estate—there is nothing of this world that exceeds the reach of human agency, no reality beyond the anthropos-scene. Despite the numberless other organisms that still inhabit and exert their influence upon the planet (many of whom are still unknown to us), the Earth is now—and for the long-term future—to be understood as a human world.

This is, I think, exceedingly problematic, and dangerously so. The problem is that Anthropocene discourse precludes any possibility of a turn away from such hubris. By asserting humankind as the preeminent power afoot in the world (and by proclaiming that prominence for thousands of years to come), such discourse forecloses any turn toward humility. It forecloses any gesture of restraint in relation to the wild-flourishing otherness of a world that greatly exceeds us. It also inhibits, or shoves deeper into unconsciousness, those moments of imaginative overwhelm wherein we lose ourselves in the fathomless weirdness of a thunderstorm, or in the graceful, collective swerves of a flock of starlings, or while watching a spider spinning its web (the spider's rapid, spiraling movements drawing us down and down into another scale of experience as she sets the radiating spokes and then dances between them, gradually weaving our focus into each knot within the web, until we're abruptly overcome by the uncanny sensation that we are witnessing the galaxy itself being born out of the spider's abdomen…). Such are moments when we're humbled by the strangeness of a world that vastly exceeds all our knowing.

In truth, the Anthropocene has already become an aspirational term for many persons, corporations, and technological initiatives. Having pushed beyond so many limits, having inadvertently destroyed so many of the Earth's autopoietic, self-replenishing powers, many theorists assert that it now falls to humankind to take full charge of the biosphere, to engineer and steer it for the good of humankind. This, of course, is the precise logic of the storekeeper's dictum: "You broke it? You own it!" Having broken the biosphere, it is now ours to own and to do with what we choose.

Of course there have been various other terms suggested for the name of this epoch—some of them serious, some tongue in cheek: the *Capitalocene*, the *Plantationocene*, the *Chthulucene*. But my colleagues in the Earth sciences say that these all miss the mark. They insist that what's important is to underscore the centrality of our

singular species in transforming the Earth's atmosphere and oceans, in altering the carbon cycle and the hydrological cycle, in destabilizing the seasonal round.

Well then. If we seek a title for this new epoch, one that emphasizes our species' responsibility in the creation of this catastrophic set of affairs, while holding open the possibility—indeed the necessity—of an ethical turn, then instead of relying upon the term *anthropos,* why not draw upon the etymology of the word *human* (an etymology that César beautifully invokes in his introduction to this volume)?[3] The term *human* (derived from the Latin *humanus*) is cognate with the Latin word *humus*, which signifies the earth underfoot, the ground or soil, and hence is intimately bound to the term *humility,* the quality that holds us close to that earthly soil.[4]

Perhaps, then, a more appropriate title for the geological epoch now upon us would be the *Humilocene—the Age of Humility.*

Yet some scholars might object that the *Humilocene* sounds too awkward, too much like *"humiliation*." I would suggest, however, that this vaguely felt echo is entirely appropriate. Should we not feel some shame, should we not feel *humiliated* by the realization of our culpability in the callous wreckage of so many ecosystems, in the loss of so many other species, in the obliteration of so much earthly beauty? If geological epochs last thousands of years—and if any members of our clever species manage to survive the next few centuries—would it not be important that our descendants actually *remember* the horrific consequences of our arrogance? Would it not

3 César Rodríguez-Garavito, "More-Than-Human Rights: Law, Science, and Storytelling Beyond Anthropocentrism," Chapter 1 in this volume.

4 The hypothesized Proto-Indo-European root word is $d^{h}ǵ^{h}ōm$, which likely signified *earthly ground* and *soil,* and is where the Latin *homo, humanus, humus,* and *humble* all have their origins. The word human probably originally meant something like "earthling." Analogously, the Hebrew word for man, *adam*, derives from the Hebrew word *adamah*, meaning ground or soil. Hence, in Hebrew, too, *human* equates to *earthling*.

be important that *they not forget*—because it is too darn painful to remember—that they not *repress or pave over* the memory of the innumerable other animals and plants and places, the countless other shapes of vibrant intelligence that were lost in this era as a result of our callous disregard? That our descendants vividly remember that it was not a result of chance, but rather our own human obliviousness, and recklessness, that drove the steadily accelerating holocaust of species, ensuring the devastation that will likely mark our home planet for many, many long centuries to come?

For that is what an appropriate title for this geological epoch could do for our kind. It could help us to remember, and so perhaps to avoid repeating the same monstrous mistake. The *Humilocene*, the Age of Humility. And perhaps this initial, transitional phase that we're now living through—the dawn of the Humilocene—might yet come be known, in oral tradition, as *the Humbling*.[5]

In any case, the origin and intention of that other, simple phrase—the *more-than-human world*—is to remind us of our embedment in an earthly cosmos that we humans did not create, that we do not control, and that necessarily exceeds all our knowing.

5 The *Humbling* is a term suggested by my ally Dougald Hine, cofounder of the Dark Mountain Project.

The More Than Human Rights (MOTH) Project, based at New York University School of Law, is a legal and interdisciplinary initiative that advances rights and protections for non-humans and the web of life that sustains us all, while also promoting legal principles and ethical frameworks that integrate human rights and human activity into a broader concern for the welfare of the biosphere. Taking a page from nature, the MOTH Project embodies diversity, collaboration, and bold experimentation in action. This includes close work with key partners from around the world in diverse backgrounds like legal practice, social activism, Indigenous rights advocacy, biological sciences, storytelling and the visual arts, philosophy and beyond.

In addition to its work within the realms of law, science, and the arts, the MOTH Project produces and publishes multimedia publications meant to engage a wider audience on the various topics at the heart of more-than-human rights. This includes articles, educational videos, and books, like *More Than Human Rights*.

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