More Than Human Rights

An Ecology of Law, Thought and Narrative for Earthly Flourishing

César Rodríguez-Garavito (ed.)

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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.

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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.

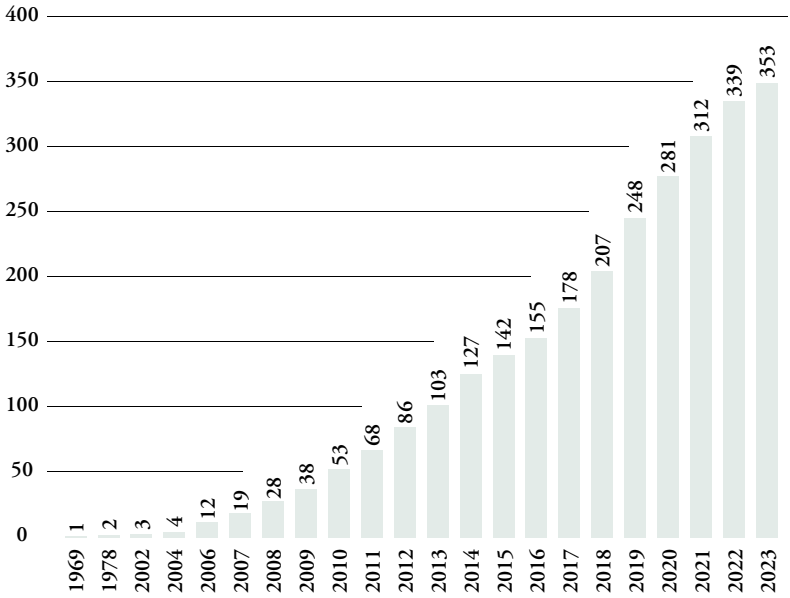
Table 1: RoN Initiatives by Country and Status

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.

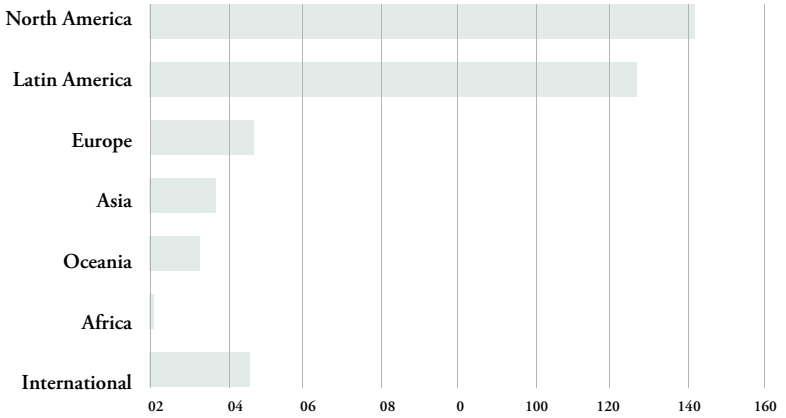
Since the mid-2000s, the number of RoN initiatives has increased exponentially, doubling between 2011 and 2016, and again between 2016 and 2021. And, importantly, RoN jurisprudence has been steadily accumulating within legal systems globally: among those initiatives where a decision was rendered, 77 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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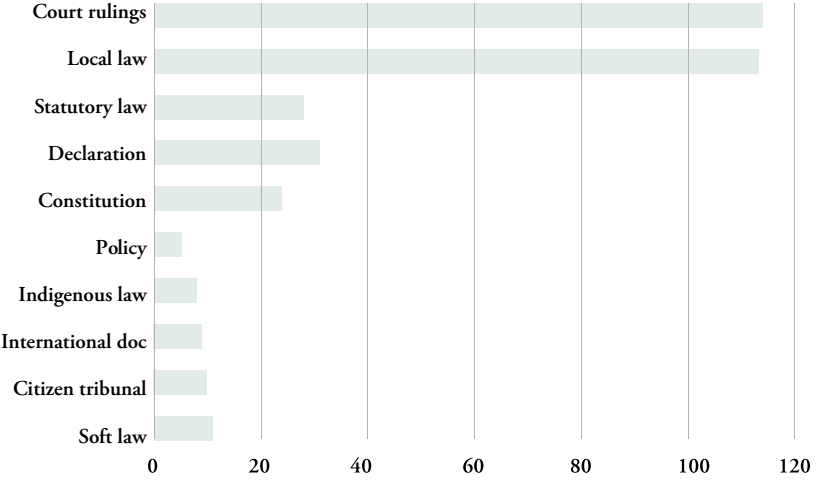
5 Minister of Environment, Housing and Town Planning and the Minister of Decentralization, Local Governance, Administration, and Country Planning, Republic of Benin, Interministerial Order No. 121: Setting the Conditions for the Sustainable Management of Sacred Forests in the Republic of Benin, www.silene.ong/en/documentation-centre/legal-documents/benin-law-recognizing-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.

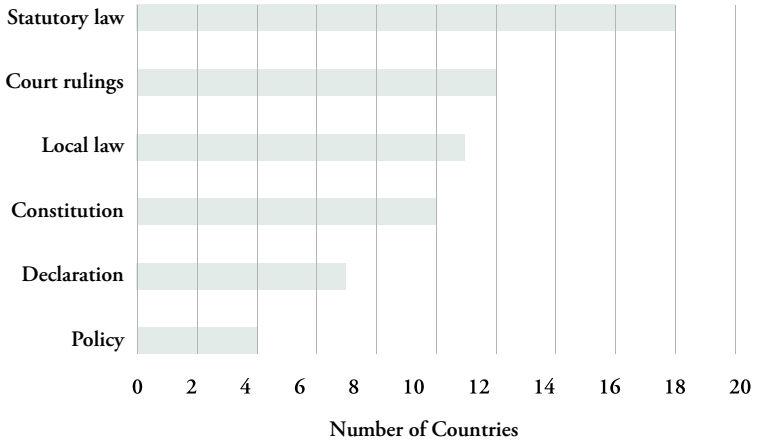
Case Law

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]

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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]

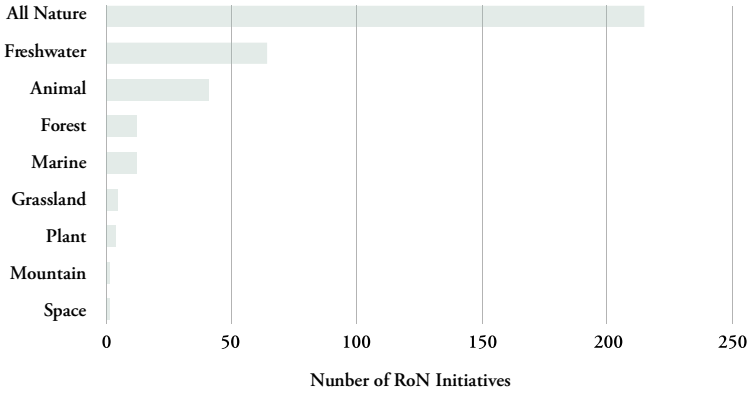
However, a more common approach is to address all of nature in general (see fig. 5). With this approach, identifying specific custodians to represent the interests of nature becomes more complicated. Laws that address nature in the abstract either ignore the question of who speaks for nature or tend 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?



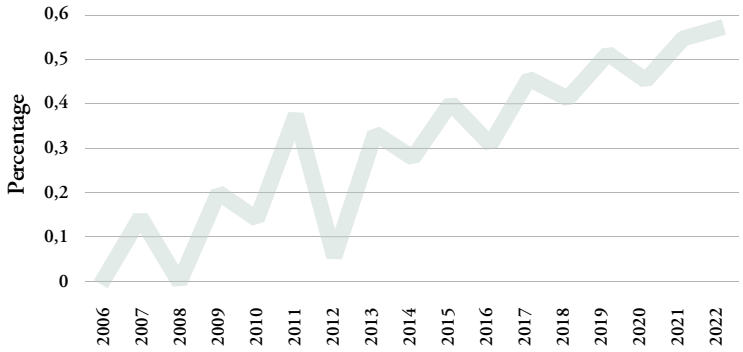
Source: Kauffman et al., Eco Jurisprudence Tracker, 2022.

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,

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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."