More Than Human Rights

An Ecology of Law, Thought and Narrative for Earthly Flourishing

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Can the Rights of Nature Transform the Way Rights Are Conceptualized in International Law?

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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).