

# MORE THAN HUMAN RIGHTS

An Ecology of Law, Thought and  
Narrative for Earthly Flourishing

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

César Rodríguez-Garavito

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

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

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

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

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

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

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1 Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Ser. C., No. 245 (Inter-Am. Ct. H. R. June 27, 2012), [https://corteidh.or.cr/docs/casos/articulos/resumen\\_245\\_ing.pdf](https://corteidh.or.cr/docs/casos/articulos/resumen_245_ing.pdf).

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

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

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

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

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

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

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

3 See Craig Kauffman’s chapter in this volume.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

## **Out of the Weeds of Anthropocentrism: The Ecological Turn**

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

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

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

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

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

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

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

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

us and our nonhuman brethren against global warming, massive species extinction, pollution, and other ecological threats of the Anthropocene.<sup>13</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

supremacism, thus crucially pushing down the scope of moral consideration and rights protection a couple of notches.<sup>16</sup>

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

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

## Human Rights Without Human Supremacism

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

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

17 Sheldrake, *Entangled Lives*, 46.



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

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

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

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

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

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

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

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

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

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

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

## MOTH Rights' Legal Ecosystem

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

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

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

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

25 See Emily Jones's chapter in this volume.

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

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

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

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

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

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

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

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

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28 The Environment & Human Rights, Advisory Opinion OC-23/ 17, Ser. A, No. 23, paragraph 62, n. 63 (Inter-Am. Ct. H. R. November 15, 2017), [http://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf).

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

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

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

transitional justice process in the aftermath of its decades-old civil war.<sup>32</sup>

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

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

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

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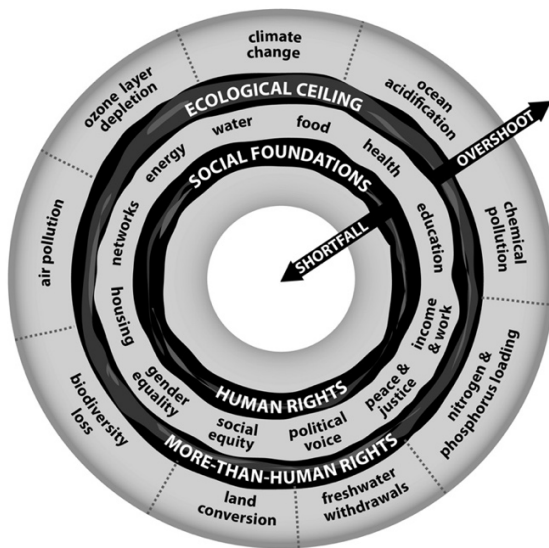
32 See Catalina Vallejo Piedrahíta’s chapter in this volume.

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

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

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

Figure 1. Human Rights and MOTH Rights.



Adapted from Kate Raworth, [www.kateraworth.com](http://www.kateraworth.com).

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

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

## **Unleashing New Experiments and Stories on MOTH Rights**

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

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36 See Robin Wall Kimmerer, *Braiding Sweetgrass*.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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