Rights of Nature: Institutions, Law, and Policy for Sustainable Development

Craig M. Kauffman

The Oxford Handbook of Comparative Environmental Politics
Edited by Jeannie Sowers, Stacy D. VanDeveer, and Erika Weinthal

Subject: Political Science, Comparative Politics Online Publication Date: Jul 2021
DOI: 10.1093/oxfordhb/9780197515037.013.19

Abstract and Keywords

With the onset of climate change, the prospect of mass extinction, and the closing window of opportunity to take meaningful action, a growing number of activists, lawyers, scientists, policy-makers, and everyday people are calling for Rights of Nature (RoN) to be legally recognized as a way to transform human legal and governance systems to prioritize ecological sustainability. Over the past decade, RoN has gone from being a radical idea espoused only by a handful of marginalized actors to a legal strategy seriously considered in a wide variety of domestic and international policy arenas. In January 2021, at least 185 legal provisions recognizing RoN existed in 17 countries spanning five continents, and 50 more RoN laws were pending in a dozen other countries. RoN is also recognized in numerous international policy documents. After defining RoN, this chapter examines how different kinds of actors have organized in global networks to advance RoN in different policy arenas through distinct pathways. This has caused RoN to be structured and implemented differently in distinct contexts. The chapter examines this variation, comparing cases from around the world. It highlights the implications of structuring RoN as a set of unique substantive rights for ecosystems versus extending legal personhood (a set of rights designed for humans). It concludes by examining the relationship between RoN and human rights—including environmental rights, Indigenous rights, and economic rights—and the implications for reconceptualizing sustainable development to prioritize ecological sustainability.

Keywords: rights of nature, Earth jurisprudence, Earth law, ecological law, harmony with nature

In 2018, a community of Cofán Indigenous peoples in Ecuador’s Amazonian province of Sucumbios sued Ecuador’s Ministry of Mining, the Ministry of Environment, and other government agencies for issuing gold mining concessions in their ancestral territory. They argued that the resulting damage to the Aguarico River Basin violated the community’s rights to prior consultation, clean water, and a healthy environment. They also said it violated the Rights of Nature (RoN) recognized in Ecuador’s 2008 constitution, specifically the Aguarico River’s rights to exist, maintain its natural cycles, and be re-

stored when damaged. When the Cofán won in lower court, the government appealed to the Sucumbios Provincial Court.

Ecuador's Sucumbios Provincial Court also ruled in the Cofán's favor. The court rejected the government's argument that prior consultation was not necessary because the mining activity did not take place within Cofán territory. The court emphasized that whether or not the mining occurred in a government-recognized protected area was irrelevant since Ecuador's constitution recognizes all Nature as having rights. The constitution also recognizes the interdependence of all living things, making human well-being dependent on the health of the ecosystems on which humans depend for life. Consequently, the negative effects of gold mining on the Aguarico River's basin directly threatened not just the Cofán's right to water, but the rights of all the riverside communities in the Aguarico Basin. Furthermore, the court ruled that constitutionally protected rights, like the right to a dignified life, required guaranteeing a healthy, biodiverse environment where the Cofán could sustain itself according to custom.

Consequently, the court ruled that the gold mining violated not just the Cofán's community rights, but also the RoN, and Ecuador's government had an obligation to protect these areas by prohibiting the exploration, exploitation, and marketing of gold. To this end, the court cancelled all 52 mining concessions that had been granted or were being processed for the 125 square miles of Cofán territory, and it prohibited the granting of new mining concessions. Moreover, the court ordered the government to repair the environmental damage caused by the mining operations (Sucumbios Provincial Court of Justice 2018). Ecuador's government appealed to the Constitutional Court, but the mining ban remained while the country awaited the ruling, still pending at the time of writing.

The Cofán case illustrates how laws recognizing ecosystems as subjects with rights are increasingly being used to fight environmentally destructive behaviors. With the onset of climate change, the prospect of mass extinction, and the closing window of opportunity to take meaningful action, a growing number of communities, organizations, and governments around the world are calling for RoN to be legally recognized to help transform human systems (legal, political, economic, etc.) into ones that are ecologically sustainable. RoN advocates argue that conventional environmental laws (like the Clean Air Act and Endangered Species Act) are unable to bring the necessary transformation because they legalize the destructive behaviors producing the problems, thereby obstructing efforts to prevent ecosystem collapse (Margil 2017). Instead, these advocates are creating new laws that recognize ecosystems as subjects with inherent rights that cannot be violated and appealing to communities, government agencies, and courts to protect those rights.

Since 2006, when the first RoN law was adopted in Tamaqua Borough, Pennsylvania, RoN has gone from being a radical idea espoused only by a handful of marginalized actors to a legal strategy seriously considered in a wide variety of domestic and international policy arenas. In January 2021, at least 185 legal provisions (e.g., constitutions, laws, regulatory policies, and court rulings) recognizing RoN existed in 17 countries spanning five continents, and 50 more RoN laws were pending in a dozen other countries.[1] RoN is supported

in UN Secretary General reports and General Assembly resolutions,[2] by environmental nongovernmental organizations (NGOs) like the International Union for Conservation of Nature (IUCN) (2016) and by moral leaders like Pope Francis (2015). It is recognized by the Inter-American Court of Human Rights (2017) and acknowledged by the UN Agenda 2030 (United Nations 2015), the Convention on Biological Diversity (COP 11 Decision XI/22), and other international texts related to sustainable development.

After defining RoN, this chapter examines aspects of RoN relevant to comparative environmental politics, including the types of actors advancing RoN, the governance structures and pathways used to adopt RoN laws, and the implications of structuring RoN laws as unique substantive rights for ecosystems versus extending legal personhood (a set of rights designed for humans). I conclude by examining the relationship between RoN and human rights, including environmental rights, Indigenous rights, and economic rights like property rights.

What Are Rights of Nature?

In practice, people use the term “rights of nature” to refer to two things that are conceptually different: (1) a legal philosophy and (2) legal provisions that codify this philosophy by recognizing ecosystems as subjects with rights (also see Gellers and Jeffords chapter, this volume). It is important to distinguish between these two meanings in order to understand debates regarding how to structure the RoN laws discussed later.

Often, “RoN” is used to refer to a legal philosophy known as *Earth jurisprudence* (Berry 1999; Burdon 2011). Earth jurisprudence asserts there is a lawful order to the universe that maintains a “web of life” (Hosken 2019). All elements of Nature, including humans, are inextricably connected into this order and linked to one another through interdependent relationships. Consequently, human well-being depends on the well-being of the ecosystems that sustain all life. Earth jurisprudence argues that “humans must adapt their legal, political, economic, and social systems to be consistent with” the way the natural world actually works rather than fighting against this lawful order and trying to force Nature to conform to human will (Cullinan 2011, p. 13). This is the fundamental transformation in systems and paradigms that RoN advocates believe is necessary to address looming climate and biodiversity crises.

Western law largely pretends that the laws of physics, chemistry, and biology do not apply. David Boyd notes that this produces “outcomes that are at odds with reality. For example, any biologist will tell you that humans are animals. But the law disagrees” (Boyd 2017, p. xxv). One problem is that the law has not evolved to keep pace with scientific advancements. Today’s legal system is based on a mechanistic view of the world that emerged during the scientific revolution of the sixteenth and seventeenth centuries, which views Nature as a machine composed of fragmented, independent parts. At that time, lawyers “fragmented the legal order from a holistic system of customary laws adapted to the practical requirements of human relationships into an aggregate of component parts” (Ito 2020, pp. 321–322). The previous view of the world as a living organism was

replaced with a new view of the world as stocks of independent resources to be extracted to produce economic wealth.

Scientists now understand that the world is not a collection of discrete parts, but rather "a dynamic and fluid interconnected community of life best understood in terms of patterns and relationships. Science also acknowledges that Nature sustains life through ecological principles that are generative rather than extractive" (Ito 2020, p. 9). If the law is to help solve the problems of climate change and mass extinction, legal systems need to be restructured to reflect the fact that Nature is comprised of holistic, dynamic, multidimensional, complex adaptive systems, and that human societies are among these systems (i.e., human societies are a subset of Nature) (Ito 2020, p. 315). The law must value Nature (understood as nested systems) primarily for its ability to generate the conditions for life, rather than providing stocks of resources to be extracted.

According to Boyd (2017, p. xxii–xxiii), the disconnect between Western law (including environmental law) and the laws governing the natural world stems from three related ideas.

> The first is anthropocentrism—the widespread human belief that we are separate from, and superior to, the rest of the natural world…. The second is that everything in Nature, animate and inanimate, constitutes our property, which we have the right to use as we see fit. The third idea is that we can and should pursue limitless economic growth as the paramount objective of modern society.

Earth jurisprudence scholars argue that the embedding of these ideas into human governance systems (including environmental law) has caused the systematic destruction of ecosystems needed to sustain life. For a time, human societies simply moved on to other ecosystems. The problem is that this destruction is now happening at a planetary scale. As the saying goes, there is no Planet B.

Earth jurisprudence aims to fundamentally transform legal, socio-economic, and governance systems, replacing these three destructive ideas with a different paradigm that prioritizes sustaining ecosystem functioning. Iorns Magallanes and Sheehan (2017, pp. 74–75) summarize the fundamental principles of this paradigm, developed by Thomas Berry (1999), as follows:

> The universe is the primary source of law; human laws and legal and governance systems are only derivative. Berry describes the universe as a "communion of subjects" rather than a "collection of objects", and argues that Nature has inherent value and an inherent right to exist.… [H]umans must live in accordance with the relationship and principles that constitute the Earth community, and human governance systems at all times must take account of the interests of the whole Earth community.… Implications of these fundamental principles include requirements that humans must:
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> • Determine the lawfulness of human conduct by whether or not it strengthens or weakens the relationship that constitute the Earth community;
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> • Maintain a dynamic balance between the rights of humans and those of other members of the Earth community on the basis of what is best for the Earth as a whole.

More than rights, Earth jurisprudence stresses the responsibilities that humans have toward other members of the ecosystems where they live—what ecological scientists call "biotic communities" (Mucina 2019)—due to the fact that all members are tied together through interdependent, reciprocal relationships. Rather than exponential growth in consumption and production, Earth jurisprudence prioritizes maintaining balance and a dynamic equilibrium within healthy ecosystems, encapsulated by the catchphrase "living in harmony with Nature." Recognizing that human well-being depends on the well-being of ecosystems that provide the conditions for life, Earth jurisprudence places the well-being of all members of the biotic community (including humans) ahead of human self-interest alone. Part of the paradigm change is this reconceptualization of human self-interest.

Western Earth jurisprudence scholars acknowledge that this paradigm is not really new. It is informed not only by ecological science and environmental ethics, but also by Indigenous knowledge and cultural systems dating back millennia (Berry 1999; Iorns Magallanes and Sheehan 2017, p. 74). Indeed, Indigenous movements like the Indigenous Environmental Network have been a driving force propelling the rise of RoN laws as well as the global RoN movement. While Indigenous RoN activists acknowledge that "rights" is a Western framing that historically has been used as a tool for colonial oppression, many see Earth jurisprudence as expressing their peoples' cosmovision regarding the human–Nature relationship and see RoN laws as a way to incorporate Indigenous values into Western law. For example, Casey Camp Horinek, a leader of both the Ponca Nation in Oklahoma and the global RoN movement, argues that "In passing the Rights of Nature into Ponca tribal law, for the first time we saw our Indigenous values and rights reflected in Western law. We are not people protecting Nature, we are Nature protecting itself. This is a powerful way to create system change."[3] Camp Horinek's comments mirror those of other Indigenous leaders who talk about RoN as a way to change Western paradigms to be more consistent with the cosmovisions traditionally held by their peoples, which see

humans as part of Nature, inextricably linked to the rest of the natural world through interdependent and reciprocal relationships (e.g., Pacari 2009; Goldtooth 2017).

Legal provisions recognizing ecosystems as subjects with rights is the second way the term “RoN” is used. RoN legal provisions are not the only way to codify Earth jurisprudence principles, but they are the most common way of doing so in Western legal systems.

I emphasize the distinction between RoN as legal philosophy (Earth jurisprudence) and RoN as legal provision to highlight that the ultimate goal of the RoN movement is normative paradigm change: changing the way that people understand humans’ relationship with Nature and their responsibility toward it in order to inspire more ecologically sustainable behaviors. RoN legal provisions are seen as a tool to achieve this goal; they are not themselves the ultimate goal. As Thiel and Hallgren (2018, p. 64) write, “laws are not just passive reflections [of societal values], but themselves have a profound impact on morals, values and belief systems, the sense of right and wrong…. Law in this view is central to the project of changing society; only by transforming law will we be able to transform society.”

Actors, Networks, and Pathways

The explosion of RoN legal provisions around the world is facilitated by transnational RoN networks like the Global Alliance for the Rights of Nature (GARN).[4] GARN is a global hub connecting networks of Indigenous movements, environmental and human rights activists, community rights activists, lawyers, scientists, business leaders, and government leaders from more than 100 countries, all dedicated to advancing Earth jurisprudence by incorporating RoN into law and policy at all levels of governance around the world. Another key hub is the UN Harmony with Nature Program, which connects hundreds of RoN experts and provides a platform for integrating Earth jurisprudence into the UN system. The Ecological Law and Governance Association was formed by members of the IUCN’s World Commission on Environmental Law and has become an important hub connecting lawyers and academics. These and other global hubs connect many more regional and domestic RoN networks, creating a rapidly growing networked governance structure for advancing RoN (Kauffman 2020b).

RoN laws have emerged through many different pathways owing to the distinct political conditions in different countries (Kauffman and Martin 2018, 2021). Early RoN laws in Ecuador, Bolivia, and New Zealand were created through unique and contingent processes that opened a window of opportunity for codifying Indigenous views of humans’ relationship to Nature in Western law (i.e., writing new constitutions in Ecuador and Bolivia; treaty settlements with Maori in New Zealand; see Kauffman and Martin 2018). These rare events are not easily replicated. However, this has not stopped the rise of RoN legal provisions around the world, which have largely emerged through pathways other than national legislatures.

One pathway common in the United States is the ballot initiative. Lawyers from the Community Environmental Legal Defense Fund (CELDF), the Earth Law Center, and other organizations have trained and activated a national network of community activists who are advancing ballot initiatives across the country to create local ordinances recognizing RoN. Believing that the political opportunity structures in both national and state legislatures are closed, US RoN advocates are instead appealing directly to voters. By January 2021, at least 100 such ballot measures had passed.

Outside the United States, RoN advocates have had more success cultivating allies in national and subnational legislatures and working with them to draft RoN laws. The work of Ugandan NGO Advocates for Natural Resources and Development, supported by the Gaia Foundation and others, led Uganda's 2019 National Environment Law to recognize RoN. The Earth Law Center helped legislators in the Mexican state of Colima draft a RoN constitutional amendment, adopted in 2019. Mexico City did the same in 2017. As a result of similar efforts by RoN advocates, municipal and state governments in 14 countries have recognized RoN in their constitutions or regulations.

Tribal nations in North America have recognized RoN in tribal law as a tool for fighting against environmental degradation caused by fracking, mining, oil transport, and industrial agriculture. By January 2021, seven tribes—the Ho-Chunk Nation, Ponca Nation, the White Earth Band of Ojibwe, the ?Esdilagh First Nation of Canada, and the Yurok, Nez Perce, and Menominee Tribes—had amended their constitutions or passed laws recognizing RoN.

An alternative to working with legislatures is to activate networks of executive branch bureaucrats with the authority to recognize RoN in public policy even without creating a new law. For example, lawyers from the Earth Law Center worked with Santa Monica city officials to incorporate RoN into their Sustainable City Plan (City of Santa Monica 2013). The Australian Earth Law Alliance similarly works with local officials to incorporate RoN into policy.

The courts offer yet another pathway. Since 2016, a number of courts have issued rulings recognizing RoN even though their countries have no laws explicitly recognizing RoN. For example, Colombia's Constitutional Court recognized the Atrato River as a legal person with rights, while the country's Supreme Court did the same for the Amazon rainforest. Bangladesh's High Court similarly recognized the rights of all Bangladeshi rivers. Indian courts have recognized the Ganga and Yamuna Rivers, the Himalayan mountains and glaciers, and the watersheds these glaciers feed as legal persons with rights. Kauffman and Martin (2019, 2021) show how judges are strategically interpreting existing laws to justify recognizing RoN, causing the legal doctrines supporting RoN to evolve, in particular by grafting it onto human rights, a topic I return to later. Courts' growing recognition of RoN illustrates the power of training judges in Earth jurisprudence, as the Earth Law Center and others have done.

Comparing Rights of Nature Laws: Two Models

Because RoN legal provisions have arisen through different pathways under distinct domestic conditions, RoN is constructed differently in different places. Kauffman and Martin (2018, 2021) present a framework for comparing RoN legal provisions and identify two ideal models. The “Nature’s Rights” model is illustrated by early RoN laws in Ecuador, Bolivia, and the United States. Here, all of Nature (within the legal jurisdiction) is recognized as having rights. Most importantly, these laws recognize unique substantive rights, including ecosystems’ right to exist, to maintain the integrity and functioning of their cycles, and the right to evolve naturally and be restored when damaged—what Thomas Berry calls “the right to fulfill [their] role in the ever-renewing processes of the Earth community” (Berry 2001, p. 1). In addition, these early laws empowered any person to speak on behalf of Nature to defend Nature’s rights. Consequently, the model tends to address RoN reactively, with people seeking to defend Nature’s rights in court when violations are imminent or have already occurred.

By contrast, the “Legal Personhood” model (illustrated by legal provisions in New Zealand, Colombia, India, and elsewhere) recognizes particular ecosystems as legal persons. Legal personhood does not recognize unique substantive rights for ecosystems but merely grants ecosystems the same rights and liabilities held by humans and corporations, including the right to own property, incur debts, petition the courts and administrative agencies, and receive reparations for damages should a court rule in their favor. These laws do not guarantee ecosystems’ right to maintain their integrity or be restored. However, specific guardians are not only appointed to speak on behalf of an ecosystem, but they are obliged to do so in both legal and policy arenas. Often, these guardians are embedded in new governance institutions charged with managing the ecosystem in a way that ensures the health and well-being of the ecosystem. This gives the ecosystem a voice (via its guardians) in decision-making processes regarding the management of the ecosystem, allowing RoN to be protected proactively, thus reducing the need to turn to the courts.

Due to space constraints, I address the implication of recognizing unique substantive rights versus extending legal personhood to ecosystems, noting that Kauffman and Martin (2019, 2021) analyze the impacts of guardianship arrangements and other structural differences. It is worth considering how the legal personhood model emerged. New Zealand’s pioneering legal personhood provisions were modeled on the concept of “legal fiction”—the practice of legally treating non-human entities (e.g., corporations) as if they were human (i.e., extending human rights to non-human entities).[5] Following the New Zealand laws, courts in Colombia, India, and Bangladesh issued rulings recognizing various ecosystems (e.g., rivers, the Amazon Basin, the Himalaya mountain range) as legal persons, despite the fact that these countries had no RoN laws. Citing the New Zealand laws, these courts interpreted existing laws regarding environmental protection and human rights to justify extending legal personhood to ecosystems (Kauffman and Martin 2019).

The important point here is that, in the absence of laws recognizing distinct substantive rights for ecosystems, the courts simply extended the same rights possessed by humans to ecosystems, fitting RoN into the existing anthropocentric legal framework. This has caused the jurisprudence underlying RoN to evolve in a way that many scholars and advocates find problematic (e.g., Grear 2019; O'Donnell 2019; Margil 2019).

The Problem with Structuring RoN as Legal Personhood

Because legal personhood is already established in law and has a long history of being applied to non-human entities, it is more easily transferable from one legal system to another. This no doubt facilitated the rapid proliferation of RoN legal provisions. However, legal personhood establishes RoN stripped of Earth jurisprudence content. I argue that this is problematic and potentially counterproductive, both for achieving RoN advocates' goal of transforming paradigms and systems and for environmental protection more generally.

First, the language and conceptual framing of legal personhood distorts the relationship between humans and other members of biotic communities identified by Earth jurisprudence and ecological science. It anthropomorphizes ecosystems in a way that reproduces the disconnect between human law and the laws governing the natural world, recreating the problems that plague conventional environmental law. This can be seen through the Indian court ruling granting legal personhood to the Ganga and Yamuna Rivers.

On March 20, 2017, the High Court in the Indian State of Uttarakhand declared the Ganga and Yamuna Rivers to be "juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve [the] river[s] Ganga and Yamuna" (Salim v. State of Uttarakhand 2017, p. 11). Noting that the rivers' well-being is threatened due to neglect, the Uttarakhand High Court invoked the legal doctrine *in loco parentis* (Latin for "in the place of a parent") to make a set of government bodies and officers responsible for acting on behalf of the rivers for their protection and conservation. Courts commonly use this legal principle to appoint guardians for children or incapacitated people who cannot defend themselves. Adopting the same logic, the court appointed Uttarakhand's Chief Secretary, the Advocate General of Uttarakhand, and the Director of Namami Gange (the central government initiative to clean up the river) as guardians.

While no doubt well-intentioned, the use of *in loco parentis* illustrates the problems of inserting RoN into existing anthropocentric legal frameworks. It frames humans as the powerful parent while Nature is the helpless child. This notion of legal guardianship is appropriate among humans but violates fundamental Earth jurisprudence principles when applied to the human–Nature relationship. Nature knows better than humans how its ecosystems should function and evolve. And given that Nature provides the conditions

needed to sustain human life, Nature is better understood as the parent in the human–Nature relationship.

From the Earth jurisprudence perspective, guardianship is not about managing Nature like a parent would manage a child, but rather guarding the relationship between humans and other members of the biotic community.[6] The goal is managing human behavior to maintain balance so that the ecosystem on which all members (including humans) rely for their well-being continues to function. By distorting this understanding of what guardianship is about, legal personhood undermines the goal of normative and system transformation at the heart of the RoN project.

A second problem with legal personhood is that it creates legal liabilities for ecosystems. This has already produced perverse incentives, including in the Uttarakhand High Court ruling. The *in loco parentis* doctrine requires guardians to assume the liabilities of their charges. The Uttarakhand authorities appointed as guardians recognized that this is problematic when applied to the human–Nature relationship. They filed a petition with India's Supreme Court to overturn the Uttarakhand High Court ruling. Among other concerns, the petition complains that if the rivers flood and someone dies (as regularly happens), victims' families could potentially sue for damages against the Chief Secretary. The petition asks the Supreme Court to determine whether the state government (as the rivers' "legal parents") would be liable to bear the financial burden of harms caused to humans by the river flooding as part of the natural water cycle (State of Uttarakhand v. Salim 2017).

The idea that ecosystems have the same responsibilities to humans that humans have toward each other is absurd. We cannot hold a river liable for flooding or hold the climate accountable for damage caused by sea level rise. The idea of holding ecosystems accountable to human law merely reproduces the misguided idea that humans can bend the laws of Nature to their will. But as Bill McKibben (2017) notes, "physics doesn't do compromise."

The fact that ecosystems do not bear human responsibilities does not mean that ecosystems should not have rights. It just means we should not extend human rights to Nature. Because each member of a biotic community plays a unique role in maintaining the functioning of an ecosystem, each member has unique responsibilities to the whole community and, in turn, unique rights. Consequently, RoN laws should be structured in a way that recognizes different elements of Nature as having distinct substantive rights. To paraphrase Christopher Stone (1972) and Thomas Berry (2001), trees should have tree rights, rivers should have river rights, fish should have fish rights, humans should have human rights, and ecosystems should have ecosystem rights. "The difference is qualitative, not quantitative" (Berry 2001, p. 1).

Beyond philosophical arguments, there is evidence that granting legal personhood to ecosystems without recognizing their own substantive rights can undermine societal values favoring environmental protection. Erin O'Donnell (2019) examines the historical performance of Environmental Water Managers (EWMs), created in the mid-1990s, as a

proxy for studying the effect of legal personhood for rivers. EWMs are organizations with legal personhood status that manage water for environmental benefit. They have essentially the same legal form as rivers with legal personhood status, represented by human guardians. She finds that in many cases EWMs created new cultural narratives that framed river ecosystems as just another water user competing with other water users for water resources—"a mere participant in the water market" (O'Donnell 2019, p. 7). Legal personhood anthropomorphized ecosystems in a way that stripped them of their status as worthy of protection. Framed as a competitor in water markets, humans began to see Nature as a legal entity that could (and should) protect itself and so no longer required human protection. O'Donnell shows that in some cases this produced a weakening of statutory environmental protections.

Legal Personhood in Indigenous Societies

O'Donnell acknowledges that legal personhood has worked better in places like New Zealand, where ecosystems (represented by their guardians) are inserted into collaborative integrated ecosystem management bodies that operate according to Indigenous cultural values rather than the logic of market competition. I argue that the reason legal personhood is less problematic in New Zealand is because Earth jurisprudence is incorporated into New Zealand's RoN laws via provisions that recognize Maori conceptions of the human–Nature relationship and that allow the recovery of Indigenous customary governance systems that are consistent with Earth jurisprudence. This suggests that the purpose of RoN legal provisions may be different in Indigenous and non-Indigenous societies. In non-Indigenous societies, RoN legal provisions are seen as a tool for inserting Earth jurisprudence into legal, socio-economic, and governance systems. But for some Indigenous peoples, the utility is merely to remove legal obstacles to recovering ancestral knowledge and practices that are consistent with Earth jurisprudence. In these cases, legal personhood provisions may be less problematic because they play a distinct role in advancing Earth jurisprudence.

New Zealand's Te Urewera Act illustrates what this looks like in practice (see Kauffman 2020a for detailed analysis). New Zealand's 2014 Te Urewera Act gained international attention because it was the first national law to recognize an ecosystem, outside of the Andes, as a legal subject with rights (showing that RoN was more than a regional oddity). This law emerged from treaty settlement negotiations resolving historical Treaty of Waitangi claims of the Tūhoe Iwi (tribe) in relation to the forest Te Urewera, the Tūhoe homeland. The act removed Te Urewera's status as a national park and recognized the forest as a legal person with "all the rights, powers, duties, and liabilities of a legal person" (s 11(1)). The Tūhoe never advocated for this RoN provision. It was proposed by government negotiators as a strategy for overcoming an obstacle in the treaty negotiations regarding ownership of the land (Kauffman and Martin 2018, pp. 57–58). In hindsight, Tūhoe leaders now see the law's RoN provision as important not because it grants rights to the forest (allowing it to own itself), but because it removed the preexisting legal

framework, providing space for the Tūhoe to create a new governance system rooted in Tūhoe culture (and Earth jurisprudence).[7]

Kirsti Luke, CEO of Te Uru Taumatua (the Tūhoe tribal governance body), explains the purpose and impact of the legal personhood provision in this way:

> Our reason for enabling a legal personality to apply to land was to withdraw the law—to filter out the motives, the agendas, the objectives that have been created by somebody else's law…. This legal personality is a piece of law to remove human transactions, human thinking, human self-interest from land in order that our Indigenous beliefs, the care, the kinship, the connectedness, the want to share things with each other, to hold things in common, to be concerned to build a future made up of strong, giving people. Strong humans are the things that manage excessive lifestyles. Technology does not…. And we have seen no other way than to step into somebody else's courtroom, and ask that court to remove their rules in order that mine can apply. So Te Urewera is not property. An ownership situation can only ever see Mother Earth as property, and property is something that is human made. Te Urewera is not property. Te Urewera is not real estate. Te Urewera is my mother. She gives me life and continues to. She is the thing that gives me enjoyment. She reminds me that I am connected to these plants and other creatures, and that I love them, and that they love me. These are things that humans are forgetting how to do.
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> (Luke 2018)

The Te Urewera case illustrates how RoN laws can be compatible with Indigenous rights, like self-determination and preservation of culture, when they are used to create legal space for recovering Indigenous customs and values consistent with Earth jurisprudence. The Te Urewera Act empowered the Tūhoe to retake their traditional place as *kaitiaki*, or guardians of Te Urewera (Kauffman 2020a). By delisting Te Urewera as a national park, removing it from the existing environmental management legal system, and empowering the Tūhoe to serve as Te Urewera's guardians, the act created a legal space for the Tūhoe to restore their self-determination (*mana motuhake*) and begin the long process of recovering ancestral knowledge, customs, and practices to reconnect their people to the land.

The Tūhoe's management plan for Te Urewera (*Te Kawa o Te Urewera*) shows how the governance system based on Tūhoe values contains Earth jurisprudence principles. The plan emphasizes that Te Urewera is not a set of discrete resources to be managed and used but a "living system [whose] balance and a rhythm that is mysterious and imperceptible to human senses" (Te Urewera Board 2017, p. 37). The plan's central principle is that "Te Kawa is about the management of people for the benefit of the land—it is not about land management" (Te Urewera Board 2017, p. 1). It recognizes that humans cannot control Nature but instead have an interest in managing their own behaviors in a way that maintains balance and order in the ecosystems on which they depend for life.

This principle reverses the National Parks Act's focus on managing land "for the benefit, use, and enjoyment of the public" (s 4). Consequently, the criteria used to make decisions in Te Urewera differs in subtle but important ways from the approach taken by New Zealand's Department of Conservation (DOC) when Te Urewera was a national park (detailed in Kauffman 2020a). Before an action is taken, the Tūhoe ask whether the purpose is to benefit Te Urewera or people. Actions to benefit Te Urewera are generally taken. Actions to benefit people will only be taken if the impact on Te Urewera is limited and does not upset balance in the ecosystem.[8]

Dealing with the forest's possum population provides one example of how governance has changed. DOC considered possums to be the main "pest" in Te Urewera. Possums were introduced to New Zealand in 1858 to establish a fur trapping trade. Because possums have no natural predators in Te Urewera (besides humans), their population skyrocketed, threatening native bird and plant species. DOC approached this as a "pest control" problem and employed aerial spraying of 1080 (a poison: a synthetic form of sodium fluoroacetate). Although extremely harmful to the environment (and human health), DOC sprayed 1080 because it was the cheapest approach.

The Tūhoe view toward possums is more complicated. On one hand, humility toward Nature makes many Tūhoe uncomfortable with treating animals as "pests." As Kirsti Luke notes,

> Because I'm a human I take responsibility for causing all of this development and pushing all of these animals into a corner. Everybody now calls them pests. Because I took this land around here where ordinarily they could have lived in balance because there was enough land to go around. I took and ate up all of the land to put my houses on and my farms and now I've got the cheek to turn around and call that possum a pest.… We do not manage the land. So our business—our number one pest control intent is to make harder, stronger, responsible humans.
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> (Quoted in Crimmel and Goeckeritz 2020, p. 567)

On the other hand, there is a recognition that because possums have no other natural predators in Te Urewera, their rapid population growth could threaten the forest ecosystem if left unchecked. Possums, as well as rats and stoats, eat regenerating growth in the forest and eat the eggs of native bird species at a level that could lead to extinction. By killing birds that normally spread seeds that help the forest regenerate, possums have a system-wide impact.

Consequently, the Tūhoe do work to limit the possum population, but through trapping and hunting. While this is extremely labor-intensive, cost is not an issue because hunting possum provides a sustainable livelihood for many Tūhoe families. Tūhoe consume the meat and sell the fur to make blankets, hats, and other goods. My interviews with possum hunters suggest that possum hunting is not seen as a pest eradication exercise in the same way that DOC conceptualized it. But it also is not an economic exercise that might incentivize Tūhoe to boost possum populations to maximize profits. Rather, Tūhoe hunters

expressed a duty to help maintain the possum population at a level that will not overwhelm the ecosystem and cause other important species to go extinct. They emphasized that the Tūhoe are also part of the forest ecosystem and must live off the land, and they are the only natural predator of the possum. My impression is that the Tūhoe play a natural role in the forest's food web so that the forest ecosystem can sustain itself, much like the role wolves play in Yellowstone park when they hunt deer. Importantly, they do so by minimizing their ecological impact (see Kauffman 2020a for examples).

Controlling possum populations through hunting shows how the Tūhoe are reviving traditional practices of sustainably living off the land, which allows them to conduct ecologically sustainable practices rejected by DOC as too expensive. But it also illustrates the difference between policies that prioritize human benefits (e.g., minimizing economic costs) and those that prioritize ecosystem functioning.

The point from the India and New Zealand comparison worth emphasizing here is that if the goal is transforming systems to be more ecologically sustainable—changing the paradigm undergirding Western legal systems and societies—then it is essential that RoN laws not be stripped of Earth jurisprudence content, as happened in India. The reason New Zealand does not fit O'Donnell's cautionary tale is that Earth jurisprudence was inserted into New Zealand's RoN laws via provisions recognizing Maori cosmovision and authorizing the recovery of traditional guardianship arrangements. Legal personhood for ecosystems is less problematic when accompanied by new governance institutions that manage ecosystems according to Indigenous cultural values consistent with Earth jurisprudence, as happened in Colombia and New Zealand (Kauffman and Martin 2019).

But what about non-Indigenous societies, where implementing Earth jurisprudence does not involve recovering ancestral knowledge but instead is about radically transforming systems according to a fundamentally different paradigm? Here, legal personhood simply adapts RoN legal provisions to fit within existing anthropocentric legal and socio-economic systems. This will at best be meaningless and at worst produce perverse outcomes. In these cases, the transformative potential of RoN likely requires legal provisions recognizing Nature as possessing unique substantive rights and humans as possessing responsibilities toward Nature.

What Is the Relationship Between Rights of Nature and Human Rights?

As the number of RoN laws increases, the question of what is the relationship between human rights and RoN is gaining practical importance. It also matters for how we understand sustainable development.

The current sustainable development model portrays the environmental, social, and economic spheres as distinct and able to operate independently, represented by a Venn diagram with sustainability marked by the tiny area where the three spheres overlap (see

Figure 1). This reproduces the mistaken mechanistic worldview reflected in Western legal systems. Mumta Ito (2020, p. 324) notes that "in reality the only circle that can operate independently is Nature, as the others are dependent on Nature for their existence." Human societies cannot exist without Nature providing the conditions for life. Economic systems are social constructions and cannot exist without functioning societies. Consequently, a more accurate portrayal of the relationship between Nature, human society, and the economy is one of nested systems with a natural hierarchy (Ito 2020, p. 324).

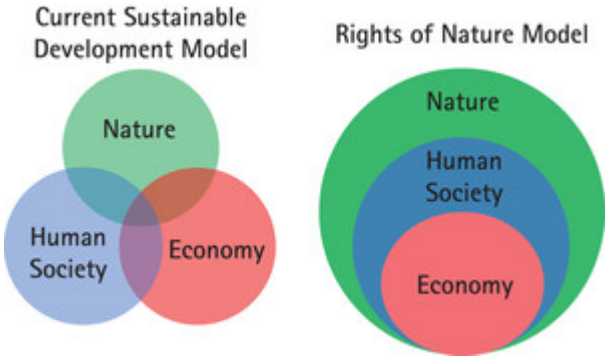

Figure 1 Relationship among natural, human, and economic systems.

Source: Adapted from Mumta Ito 2020, p. 324.

From the Earth jurisprudence perspective, this natural hierarchy of systems suggests a natural hierarchy of rights (Figure 2). According to Mumta Ito (2020, p. 325)

> The rights operate in synergy with each other, as competing rights would undermine the wellbeing and integrity of the whole. This model of nested rights brings a unifying overarching framework to the balancing of interests and weighing of divergent values, overcoming the existing fragmentation and imbalance. Economic rights that currently undermine human rights and Nature's rights destabilize the whole system, and would no longer be in the public interest.

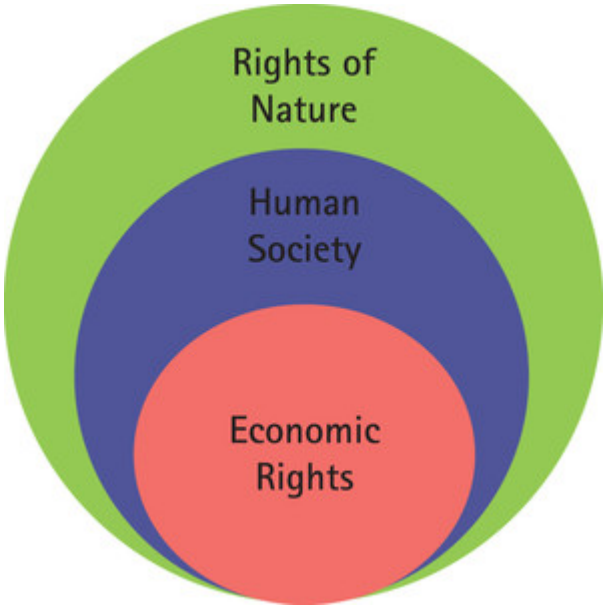

Figure 2 Hierarchy of rights.

Source: Adapted from Mumta Ito 2020, p. 325.

The implication is that achieving ecologically sustainable development ("development" that sustains ecosystem functioning) requires transforming legal, socio-economic, and governance systems to reflect a hierarchy of rights that reflects the natural order of the world. Recent court rulings provide some signs that this hierarchy of rights associated with the RoN paradigm may be taking root in some legal systems, providing tentative evidence of potential early normative change.

A few courts are recognizing that RoN is a necessary precondition for protecting human environmental rights. In 2018, 25 Colombian young people sued the Colombian government to stop deforestation in the Amazon that was contributing to climate change. They argued that this deforestation violated their rights to a healthy environment, life, health, food, and water. The case made it to Colombia's Supreme Court, which issued a groundbreaking ruling. Commenting that environmental degradation—not just in the Amazon but worldwide—is so significant that it threatens "human existence," the court declared the Colombian Amazon a "subject of rights" and ordered the government to develop an action plan to reduce deforestation to zero, with measurable strategies, and to restore the forest (Supreme Court of Colombia 2018). Similar rulings were made by Colombia's Constitutional Court (2016), Ecuadorian courts (e.g., Sucumbios Provincial Court of Justice 2018), and the Inter-American Court of Human Rights (2017, pp. 28—29), which recognized that protecting RoN is important not only for protecting the Earth's biodiversity, but also for protecting the human right to a healthy environment.

The Cofán case described in the chapter's introduction is but one example of how Indigenous groups have begun to link RoN and Indigenous rights in lawsuits, which has facilitated the evolution of jurisprudence that sees RoN, environmental rights, and socio-cultural rights as intertwined to form a set of "bio-cultural rights" (Kauffman and Martin

2019, 2021). Biocultural rights arguments have been used to support RoN by several courts in Ecuador and Colombia, as well as by tribal nations in the United States (Kauffman and Martin 2021).

The relationship between RoN and economic rights is perhaps the most contentious issue and lays bare the difference between the conventional sustainable development paradigm and Earth jurisprudence paradigm. To date, this has only been addressed by Ecuadorian courts, which have ruled that RoN take precedence over economic rights like property rights and that procedural compliance with environmental impact assessments and environmental licenses are not necessarily sufficient to avoid RoN violations (Kauffman and Martin 2021). Ecuador's Constitutional Court has a number of cases pending at the time of writing in which it plans to set binding jurisprudence on these matters. By contrast, Bolivia subsumes RoN under economic rights (Kauffman and Martin 2021).

The argument that ecosystems should not be conceptualized as property has led some people to question whether RoN is compatible with the existence of markets and property rights. I argue that the failure to address this question poses an important obstacle to the system transformation RoN advocates are seeking. Confusion over this issue makes it hard for people who might be sympathetic to RoN to envision what an economic system based on Earth jurisprudence would look like. For this reason, I conclude with some thoughts on why I believe RoN does not mean an end to markets or property rights, as some critics fear.

Are Markets and Property Rights Compatible with RoN?

Figure 2 suggests that implementing RoN does not mean an end to economic rights like property rights or markets to exchange commodities. It just means that economic rights are bound by higher order social rights and RoN. Not everything in Nature would be privatized and commodified, and people would no longer have the right to destroy ecosystems. But property rights and market exchange would continue.

The main difference is that the subjects of market transactions and their relationships would change. People would still take from Nature things they need to live (e.g., air, water, food, energy, medicine, building materials, etc.). However, Earth jurisprudence sees this as one part of a reciprocal transaction between humans and ecosystems as equal legal subjects. Since Nature provides the conditions for life, the reciprocal relationship that comes with RoN means that people have obligations to Nature as part of this transaction. They must restore any damage done to the ecosystem as part of the market transaction (ecosystems don't accept cash payment). And people cannot exploit the ecosystem to the point that it is permanently damaged or altered.

The fact that existing RoN laws, like New Zealand's Te Awa Tupua Act, recognize ecosystems as being able to possess property shows that RoN does not make property obsolete.

While it may sound odd to think of rivers (understood as watershed ecosystems) holding water rights and selling water as property, this is conceptually no different than people selling their blood to blood banks. Legally, people are individuals. But people's bodies are actually a collection of 11 interdependent systems (e.g., skeletal, muscular, nervous, etc.). People are more than the sum of their parts; all the body's systems must be functioning together for a person to live. In this sense people are very much like ecosystems. A blood bank may withdraw a limited amount of blood from a person's system and buy it to use as they wish. In this instance, the blood is treated as property that is bought and sold (much like a river's water might be). The blood (water) is not the legal person; the human being (river ecosystem) is. The human being is more than just his or her blood, just as a river ecosystem is more than just its water.

Because people are legal persons with rights, there is a limit to how much of a person's blood a blood bank can withdraw. It cannot withdraw so much that the person's systems stop functioning, causing death. If this happened, representatives of the blood bank would likely be charged with murder. Moreover, blood banks will typically give donors a glass of orange juice or something else rich in folic acid to replenish fluids and create new red blood cells in the body. There is a recognition of the obligation to help restore the person's systems after inflicting some harm. The same logic applies in the case of ecosystems like rivers. RoN does not mean that humans cannot still benefit from ecosystems, including by impacting them in ways that inflict limited harm. It means that humans have the obligation to restore the health of the ecosystem, and people would be legally prohibited from inflicting such harm that it prevents the ecosystem from functioning and regenerating.

In sum, there is plenty of space for economic activity and markets within a RoN framework. But it would look more like a circular economy (Schroeder et al. 2018) rooted in zero-growth economics (Farley 2012) than today's economy based on infinite exponential growth in consumption and production.

Conclusion

The politics of RoN is fundamentally about normative change. To be sure, RoN remains a weak counter-norm, and it is unclear whether it will ever be fully adopted. Enforcement of RoN laws is imperfect, at times overwhelmed by larger anthropocentric systems. But since the goal of RoN laws is to facilitate system transformation through normative change, universal enforcement in the short term is probably not the best metric for measuring success, particularly at this early stage in RoN's norm cycle. Human rights norms have existed for a century, but violations remain frequent. System transformation is a long, complex process, and RoN laws are merely one tool. Nevertheless, support for RoN has grown tremendously over the past decade and produced some results that were considered unthinkable only a few years ago—from the banning of mining and oil concessions in Ecuador to New Zealand's removal of Te Urewera from the registry of national parks.

This chapter summarized how thousands of different kinds of actors have organized in global networks to advance RoN in different policy arenas through distinct pathways. The dramatic increase in the number of RoN laws adopted around the world, as well as courts' willingness to recognize RoN as necessary for protecting human rights, provides tentative evidence that the RoN paradigm is gaining support. With the increase in cases, one emerging lesson is that RoN laws can only have the intended transformative effect to the extent that they embed Earth jurisprudence principles into legal and governance systems. I argue this is generally most effective when Nature is recognized as having rights and responsibilities distinct from those of humans. Structuring RoN laws in terms of legal personhood risks reproducing the anthropocentric paradigm that RoN advocates say is responsible for current environmental crises. However, this risk is lessened when legal personhood for Nature is combined with other provisions recognizing Earth jurisprudence, expressed, for example, through Indigenous values and practices, and used as a tool for removing anthropocentric systems to make room for new governance systems rooted in Earth jurisprudence.

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Notes:

(1.) All data on the number of RoN legal provisions throughout this paper come from an original dataset compiled by Craig Kauffman and Pamela Martin with the help of Alex Putzer and several research assistants, funded by the Rockefeller Brothers Fund.

(2.) Those regarding RoN are available at http://www.harmonywithNatureun.org/unDocs/

(3.) https://winewaterwatch.org/2020/07/movement-rights-join-us-live-indigenous-rights-cosmology-and-rights-of-Nature/

(4.) See Kauffman and Martin (2021) for the formation of RoN networks and a network analysis.

(5.) Ambassador John Wood, chief Crown negotiator for the Te Awa Tupua and Te Urewera treaty settlements, interview with the author, Wellington, New Zealand, August 10, 2016.

(6.) I am indebted to Kirsti Luke and Tamati Kruger, both of the Tuhoe Iwi in Te Urewera, New Zealand, for this insight.

(7.) Kirsti Luke, CEO of Te Uru Taumatua, interview by author, Whakatane, New Zealand, June 1, 2019.

(8.) Leader of Te Uru Taumatua operations team in Waikaremoana, interview by author, Waikaremoana, New Zealand, May 30, 2019.

Craig M. Kauffman

Department of Political Science, University of Oregon