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RIGHTS OF NATURE FOR 2030 AND BEYOND

"Water is life." It gives life for all of us: humans, fish, trees, deer—indeed, all living beings. Yet the totality of this statement and the deep understanding of our connection to the planet gets lost in everyday life—in city planning, economic development, and the choices we make as individuals, governments, and communities to allow our natural world to be depleted and destroyed. In 2019, the United Nations (UN) scientific body charged with studying Earth's biodiversity and ecosystems, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), issued a report concluding that human activity is driving the mass extinction of animal and plant species at a greater rate than ever before in human history (Díaz et al. 2019, 3). Existing environmental and human rights laws are clearly unable to provide for ecologically sustainable development or the health and well-being of many communities (Hadden and Seybert 2016). The IPBES report notes that "goals for . . . achieving sustainability cannot be met by current trajectories, and goals for 2030 and beyond may only be achieved through transformative change across economic, social, political, and technological factors"; it defines the needed change as "a fundamental, system-wide reorganization across technological, economic and social factors, including paradigms, goals and values" (Díaz et al. 2019, 5).

With the onset of climate change, prospect of mass extinction, and the closing window of opportunity to take meaningful action, a growing coalition of activists, scientists, lawyers, policymakers, and everyday people from around the world are calling for Rights of Nature (RoN) to be legally recognized in order to stimulate and guide this transformative systemic change. They are creating new laws that recognize natural ecosystems as subjects with inherent rights (implying humans' responsibility to provide for their well-being) and are appealing to courts to protect those rights. By January 2021 at least 178 legal provisions recognizing RoN (e.g., constitutions, laws, regulatory policies, and court rulings) existed in seventeen countries spanning five continents, and thirty-seven more legal provisions were pending in ten other countries.

Initiatives also exist to recognize RoN in international law, including the UN's Harmony with Nature Programme and the proposed Universal Declaration of the Rights of Mother Earth (Global Alliance for the Rights of Nature 2010). RoN is supported in UN reports and General Assembly resolutions,[1] in Pope Francis's (2015a) encyclical letter *Laudato si'*, and in the policy of the International Union for Conservation of Nature (2016). It is recognized by the Inter-American Court of Human Rights (2017) and acknowledged by the UN's 2030 Agenda for Sustainable Development (United Nations General Assembly 2015b), the Convention on Biological Diversity (Conference of the Parties to the Convention on Biological Diversity 2012), and other international texts related to sustainable development. In fifteen years, 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.

Children and young people are a major part of the struggle to prevent ecosystem destruction, and they represent a hopeful future. In 2018, twenty-five Colombian young people, ages nine through twenty-five, sued the Colombian government to stop deforestation in the Amazon rain forest that was contributing to climate change, arguing that this violated their rights to a healthy environment, life, health, food, and water. The case made it to the Supreme Court of Justice of Colombia, 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 (Corte Suprema de Justicia de Colombia 2018). Like water, the forest is life.

Colombia's court ruling reflects a growing recognition that human rights, like the right to a healthy environment—which is recognized by more than ninety countries—are dependent on the well-being of ecosystems that provide the conditions for life. For this reason, the Inter-American Court of Human Rights (2017, 28–29) recognized that protecting RoN is important for protecting not only the Earth's biodiversity but also the human right to a healthy environment.

Much is written on the philosophy and legal doctrine behind RoN, but few studies analyze the politics behind its creation and implementation or its effects on the politics of sustainable development. This book seeks to fill that gap. It tells the story of how community activists, lawyers, judges, scientists, government leaders, and ordinary citizens from around the world formed a global movement to advance RoN as a solution to the environmental crises facing the planet. It analyzes their efforts to use RoN as a tool for constructing a more ecocentric sustainable development paradigm capable of achieving the UN's 2030 Agenda for Sustainable Development "in harmony with nature" (United Nations General Assembly 2015b). This book tells the story of RoN not only as a transformational norm that goes beyond traditional human rights, like the right to live in a clean environment, but also its influence on new governance models that recognize a needed shift in institutional organization and laws in order to live in harmony with Nature.

We dedicate this book to those RoN defenders, advocates, scholars, and citizen participants who are creating transformational normative and institutional change at local and global levels. Such transformation weaves Western and non-Western (including Indigenous) ways of thinking and being into legal frameworks to lead sustainable change. We hope that our in-depth analysis of RoN laws, activist networks, and policy and governance outcomes provides a platform from which to engage serious discussions on aligning our legal and governmental institutions with our planetary needs and provides pathways for communities who are or will be organizing around such norms and legal provisions.

WHAT DOES "RIGHTS OF NATURE" MEAN?

In practice, people use the term *Rights of Nature* to refer to two things that are related but conceptually different: (1) a legal philosophy and (2) legal provisions that codify this philosophy by recognizing ecosystems as subjects with rights. Failing to distinguish between these two meanings has led to some confusion, and some current debates, which we discuss in this book, have to do with whether these two concepts should be combined and, if so, how.

EARTH JURISPRUDENCE: THE RIGHTS OF NATURE APPROACH

Often, RoN is used to refer to a legal philosophy known as Earth Jurisprudence (Berry 1999; Burdon 2011; Cullinan 2011b). Efforts to implement this legal philosophy are sometimes referred to as taking a RoN approach even if they do not include RoN legal provisions. Earth Jurisprudence asserts that 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 is dependent on the well-being of the ecosystems that sustain all life. As Liz Hosken (2019) notes, "Earth is the 'Primary Text,' the source of the laws that govern all life, including our own." 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 2011a, 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" (2017, 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, one that sees 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 2019, 321–322). The previous view of the world as a living organism was replaced with a new view of it 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" (Ito 2019, 9). Far from being individual stocks of resources, Nature comprises complex, nested, living ecosystems whose parts are all interconnected in ways that humans do not fully comprehend. Consequently, it is folly to think that intensively extracting one element of an ecosystem (like water or fossil fuels) will not impact the rest of it. We are learning the hard way that doing so produces unanticipated, and often devastating, results for people.

As Mumta Ito notes, "Science also acknowledges that Nature sustains life through ecological principles that are generative rather than extractive" (2019, 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 comprises holistic, dynamic, multidimensional, complex adaptive systems and that human societies are among these systems (i.e., human societies are a subset of Nature; Ito 2019, 315). The law must value Nature (understood as nested systems) primarily for its ability to generate the conditions for life rather than for providing stocks of resources to be extracted.

According to Boyd, the disconnect between Western 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" (2017, xxii–xxiii).

These three ideas provide the foundation of today's dominant development paradigm (Kauffman and Martin 2014; Price 2019). Earth Jurisprudence

scholars argue that the embedding of these ideas into human governance systems 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, socioeconomic, and governance systems, replacing these three destructive ideas with a different paradigm that prioritizes sustaining ecosystem functioning. Catherine Iorns Magallanes and Linda Sheehan 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;
> - 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. (Magallanes and Sheehan 2017, 74–75)

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 is dependent 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.

RIGHTS OF NATURE LEGAL PROVISIONS

Legal provisions recognizing ecosystems as subjects with rights is the second way in which RoN is used. As we discuss in chapter 6, 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, both nationally and internationally. This is why we focus on RoN laws in this book. Before discussing RoN legal provisions below, we want to highlight three points regarding the distinction between RoN as legal philosophy (Earth Jurisprudence) and RoN as legal provision.

First, the ultimate goal of the RoN movement is a paradigm shift: to change the way people understand humans' relationship with Nature, change their behaviors in a way that is more ecologically sustainable, and change formal and informal rules to reinforce these behaviors. RoN legal provisions are seen as a tool to achieve this goal of systemic transformation; they are not themselves the ultimate goal.

Second, it is this different paradigm regarding humans' relationship to Nature that most distinguishes RoN legal provisions from conventional environmental law. Many environmental lawyers note that much law recognizes ecosystems as complex systems rather than individual stocks of resources, and that it thus is meant to protect healthy ecosystem functioning and promote restoration when damaged. They argue that RoN legal provisions do not add anything new and are unnecessary (for critiques by environmental lawyers, see Houck 2017). This may be true in a narrow sense, but RoN advocates argue that environmental law has proven ineffective at stopping the widespread destruction of ecosystems (indeed, it often legalizes it) precisely because it is based on a paradigm that is out of sync with the laws governing the natural world. Environmental law views ecosystems (and all their nonhuman elements) as legal objects (property). Moreover, it is embedded in legal systems that privilege property rights (including the right to destroy one's property) and socioeconomic systems that prioritize limitless economic growth despite finite natural resources. By failing to recognize ecosystem's rights, conventional environmental law places environmental interests "in a conceptual hole," perceiving legal disputes "as a conflict between two (often imbalanced) human interests," thereby leaving "the most fundamental interest" missing (Houck 2017, 26).

Third, because this book is in part a study of efforts to change societal norms underlying sustainable development, it is important to distinguish between the Earth Jurisprudence norm and the RoN norm. As discussed above, the Earth Jurisprudence norm says human systems should be constructed to coincide with the natural laws governing ecosystem functioning. The RoN norm says that ecosystems should be recognized as legal subjects with rights and legal standing, and that Nature's rights should be incorporated into a broader rights framework for governing the planet sustainably. These are related—but distinct—norms. As we show in this book, they are often combined, but sometimes not. The book examines how different constructions of RoN legal provisions are shaping normative debates about what RoN is, how it should be implemented, and the implications for sustainable development.

We argue that the transformative power of RoN laws lies in their ability to insert Earth Jurisprudence throughout human legal, socioeconomic, and governance systems. RoN laws that do this set the stage for transformational change toward systems in harmony with Nature. When RoN laws are stripped of Earth Jurisprudence normative content, they can be counterproductive to the goals of the RoN movement.

THE ORIGIN OF EARTH JURISPRUDENCE AND RIGHTS OF NATURE NORMS

The normative foundations of Earth Jurisprudence and RoN have developed independently over centuries in both Western and non-Western cultures and have been discussed by writers on every continent. In Western societies the idea of extending rights to Nature emerged gradually within the field of environmental ethics (Nash 1989). In 1972, US lawyer Christopher Stone (1972) argued that natural ecosystems should have rights in courts of law, drawing from previous legal developments that had expanded the community of rights holders to include children, former slaves, endangered species, and various minorities. In the 1990s and early 2000s, scholars like Thomas Berry (1999) and Cormac Cullinan (2011b) developed ideas circulating within environmental ethics and legal communities into a coherent Earth Jurisprudence paradigm. Scholars from

around the globe subsequently developed the normative foundations of what we now call Earth Jurisprudence, or the RoN approach.[2]

Earth Jurisprudence scholars acknowledge, however, that this paradigm is not really new. It is informed not only by ecological science and environmental ethics, but also Indigenous knowledge and cultural systems dating back millennia (Berry 1999; Iorns Magallanes and Sheehan 2017, 74). Catherine Iorns Magallanes (2014, 182) notes that originally all human societies were based on hunting and gathering, so they had a keen awareness that they depended on the ecosystems where they lived. To survive, early societies had to develop extensive knowledge about local ecosystems, and they developed complex governance systems and social rules designed to ensure that their communities lived according to the natural laws governing how those ecosystems functioned. Societies that failed to do this typically perished. Often these social rules were reinforced by "spiritual or religious beliefs linking humans to their environment and venerating Nature" (Iorns Magallanes 2014, 182).

The invention of agriculture and domestication of animals prompted a cultural shift in how some societies constructed humans' relationship with Nature, leading them to see humans as separate from Nature and adopting the three destructive ideas discussed above (Oelshlaeger 1991). The law shifted further during the scientific revolution and industrialization. But some societies maintained their original construction of the human-Nature relationship. Today, people typically call these Indigenous societies.

While the concept of rights is foreign to many Indigenous cultures, this compatibility in worldview between Earth Jurisprudence and many Indigenous cosmologies prompted some Indigenous groups to endorse a RoN approach. Indeed, Indigenous peoples have been a leading force in the global RoN movement. In 2016, the Ponca Nation of Oklahoma became the first in the United States to recognize RoN in tribal law as a strategy for stopping fossil fuel projects near tribal land. As Casey Camp-Horinek, a Ponca leader who led the effort, notes, "In passing the RoN 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 are consistent with those of other Indigenous leaders who talk about RoN as a way to make Western paradigms be more consistent with the cosmology traditionally held by their peoples, which often overlap with Earth Jurisprudence philosophy (Goldtooth 2017; Pacari 2009). According to Ecuadorian Indigenous leader and former Minister of Foreign Affairs Nina Pacari (2009, 35), the Indigenous *cosmovisión* that surrounds the concept of *buen vivir* (good living) and RoN in the 2008 Constitution of the Republic of Ecuador and in Bolivian laws is a natural outgrowth of the relationship of humans to Mother Earth.[4]

THE POLITICS OF RIGHTS OF NATURE

Reforming legal, governance, and economic systems to conform to the principles of Earth Jurisprudence would entail significant transformations to these systems. "Zero-growth" economic systems, designed by ecological economists, would keep consumption levels within the carrying capacity of ecosystems (Farley 2012). Energy systems would be transformed to rely on 100 percent renewable sources. Agricultural systems would be transformed to restore organic matter to soil rather than starving soil through a reliance on chemical fertilizers. Governance systems would be transformed to manage ecosystems in an integrated fashion. Legal systems would be transformed to prohibit activities that would destroy ecosystems' ability to function, and would require ecosystems to be restored when damaged, so that humans and other species can continue to benefit from them.

This kind of structural, transformative change inevitably produces opposition by those with vested interests in the status quo. Increasingly, communities' efforts to protect the ecosystems on which they depend put them into conflict with corporations and governments that overexploit natural resources for economic gain (Broad and Cavanaugh 2020). Over the last decade, hundreds of people have been killed for defending local ecosystems, "often, it appears, with direct or indirect government involvement" (Sheehan and Wilson 2015, 33). Many more are sued in court, harassed, attacked, and imprisoned. A UN report blames this "disturbing trend" on "intensified competition for natural resources over the last decades," noting that "in a globalized world, the quest for economic

growth has resulted in a neo-colonial environment that exacerbates conflicts between communities and business actors" (United Nations General Assembly 2016, 5, 24). This book uses RoN laws as a lens for examining the politics of system transformation in the face of extreme environmental crises.

THE GOALS OF THIS BOOK

We examine the politics of RoN by addressing four sets of questions. First, why did RoN laws suddenly emerge in different countries from 2006 through 2020? RoN and Earth Jurisprudence have existed as ideas for decades, if not centuries, in both Western and non-Western societies. But until 2006, RoN remained just a philosophy discussed by people on the margins of law and policy. What explains the timing of RoN's rise as a salient international norm and its institutionalization through law and policy?

Second, the emergence of RoN laws reflecting the Earth Jurisprudence norm is surprising because they challenge dominant development norms held by powerful Western countries and economic interests. Consequently, they provide an interesting case for studying norm emergence and contestation, as well as successful strategies for framing RoN laws and institutionalizing them. How did the world move from philosophical discussions to the recognition of RoN in nearly 140 legal provisions? What are the governance structures, pathways, and strategies that created RoN laws and increased the saliency of RoN and Earth Jurisprudence as international norms? And, what does this say about how we create a new path of sustainable development in light of the UN's 2030 Agenda?

Third, the first countries to adopt RoN legal provisions did so in rapid succession (the United States in 2006; Ecuador in 2008; Bolivia in 2010; and New Zealand in 2012).[5] The common timing and normative underpinnings of early RoN legal provisions suggest that policy and norm diffusion are at work. Yet early RoN laws differ in key ways, including their definition of Nature, the rights granted, enforcement provisions, and their institutional structure. This variation contradicts predominant models of policy and norm diffusion, which predict policy convergence (Berry and Berry 2007). In fact, there are numerous reasons, discussed in this book, for why predominant models of norm diffusion cannot account for either

the origin of early RoN laws or the differences in their content and design. Why do early RoN laws look so different from each other, and how do these competing RoN constructions impact international norm contestation over how to define and implement RoN and sustainable development?

Fourth, RoN laws are challenged once adopted. Why are RoN legal provisions upheld and implemented in some cases but not others? What are the main obstacles to implementing RoN laws, and what strategies are being employed to overcome these obstacles?

By answering these questions this book addresses policy debates over how to construct a new sustainable development paradigm capable of achieving the UN 2030 Sustainable Development Goals (developed in 2012 at the United Nations Conference on Sustainable Development and passed by the UN General Assembly in 2015) in harmony with Nature. It reveals the multiple pathways and strategies for implementing Earth Jurisprudence, analyzes new governance institutions forging these pathways, and shows how structure and strategy interact to produce success or failure.

From a theoretical standpoint, the book contributes to the norm construction literature by showing how distinct processes of norm construction in different countries imbue RoN with different content, fueling international contestation. This book adds to the growing body of literature that challenges conventional portrayals of norm diffusion characterized by unidirectional flows of influence, whether from international to local, North to South, or South to South (Jinnah 2017; Job and Shesternina 2014; Picq 2018a). It shows how norm construction occurs simultaneously at the domestic and international levels, with influence moving in multiple directions. Moreover, it shows how these norm construction and diffusion processes are producing transformational changes in the legal structures of communities around the globe in order to change the way they practice sustainable development.

OUR RESEARCH DESIGN AND METHODOLOGY

To answer the above research questions, we compare successful and failed attempts to implement Earth Jurisprudence at various levels of government in six different countries: Bolivia, Colombia, Ecuador, India, New

Zealand, and the US. We examine these countries because they not only vary in terms of their level of economic development, political and legal systems, demographics, geography, and culture but also because they include places where RoN has been implemented the most and places where attempts at implementation have been less successful. They also allow for a series of comparisons of stronger and weaker cases (e.g., Bolivia versus Ecuador; India versus New Zealand; Grant Township, Pennsylvania, versus Santa Monica, California), providing us greater analytical leverage. Together these cases illustrate the evolution of RoN as both a norm and legal strategy through experimentation and adaptation within distinct institutional environments.

Each case study includes process tracing that weaves together rich narratives and brings to life the stories of individual communities and ecosystems in their own words. Our case studies are based on hundreds of interviews and on-the-ground observation conducted over several years of fieldwork in Bolivia (2017); Ecuador (2014–2015, 2018–2019); India (2017); New Zealand (2016, 2019) and the United States (2014–2019). We conducted additional interviews by phone and at international conferences. We also gathered hundreds of primary documents from government archives, including court documents related to lawsuits, as well as from the archives of organizations who fought to implement RoN and also those who fought against such laws. Using this information we employ comparative historical analysis and process tracing to identify key factors that caused domestic norm construction processes to evolve along distinct paths, producing distinct institutional expressions of RoN and varying levels of implementation.

The book also examines the politics of RoN at the international level. We use social network analysis to study the structure of transnational RoN networks and how this has shaped both the diffusion of rival RoN models and the global debates over sustainable development. Our analysis highlights the importance of interactions between actors at the international and domestic levels. Transnational networks like the Ecological Law and Governance Association, the Global Alliance for the Rights of Nature, and the UN's Harmony with Nature Programme link domestic actors with international institutional leaders, enhancing their ability to promote change at both levels simultaneously.

Using our original data set of transnational RoN network ties developed through a global survey of RoN organizations, we conduct social network analysis in chapter 2 to understand the structure of global RoN networks and how it shapes the flow of ideas and resources across these network ties, as well as the power relations among organizations. From this we compare how various network activation strategies are employed by different actors in domestic and international policy arenas. This analysis is supported by participant observation research we conducted at UN meetings,[6] international RoN tribunals, and other global, national, and local activists' network strategy sessions.

COMPARING RIGHTS OF NATURE LAWS: TWO MODELS

While norm entrepreneurs were building the foundations of a global Earth Jurisprudence norm in the early 2000s (see chapter 2), domestic processes were already underway that would give rise to the first RoN laws.[7] The world's first RoN law was a municipal ordinance adopted in Tamaqua Borough, Pennsylvania, in 2006. In 2008, Ecuador recognized RoN in its constitution, and Bolivia passed a national law recognizing RoN in 2010. In 2012, the New Zealand government reached a treaty settlement with the Māori Tuhoe iwi that recognized RoN (adopted as an act of the New Zealand Parliament in 2014).

These early RoN laws share many features reflecting both RoN and Earth Jurisprudence norms but, as we show in chapter 3, they were created through mostly independent processes. To illustrate this, chapter 3 compares the processes producing RoN laws in the United States, Ecuador, and New Zealand. Because these laws were produced through independent processes in distinct domestic environments, they vary in important ways that shape how RoN is practiced and thus constructed. They answer key normative questions differently, such as which elements of Nature have rights, what rights should be recognized, who can speak for Nature, and whether someone should be obligated to protect Nature's rights.

To compare RoN laws (and thus the normative construction of RoN), we developed a framework that analyzes RoN laws along two conceptual axes: scope and strength (see chapter 3). *Scope* refers to the range of rights afforded and how broadly these rights are applied; this has

normative implications regarding how Nature is conceptualized and defined in practice. *Strength* refers to enforcement capacity expressed through laws' formal authority and individuals' capacity and responsibility to enforce Nature's rights. Chapter 3 presents this framework in detail, comparing the laws in the United States, Ecuador, and New Zealand along these two conceptual axes and explaining the origin of their distinct structures.

From our comparison of these and other cases, we identify two ideal models of how RoN legal provisions are constructed (see table 1.1). The Nature's rights model is illustrated by RoN laws in Bolivia, Ecuador, and the United States. Here, rights-bearing Nature is defined extremely broadly: all of Nature (within the legal jurisdiction) is recognized as having rights. Most important, these laws recognize unique substantive rights, including the right to exist, to maintain the functioning of ecosystem cycles, and to be restored when damaged, among others. Procedurally, these laws empower any person to speak for Nature, but doing so is voluntary; no person is obligated to so speak. Consequently, the model tends to address RoN reactively, with people seeking to defend Nature's rights in court when violations are imminent or have occurred.

We call the second model the legal personhood model, and it is illustrated by legal provisions in Colombia, India, and New Zealand, among other places. In this model, particular ecosystems are recognized as legal

Table 1.1 Two models for structuring Rights of Nature laws

The Nature's Rights Model (e.g., Bolivia, Ecuador, and the United States)	**The Legal Personhood Model (e.g., Colombia, India, and New Zealand)**
All Nature (within legal jurisdiction) has rights	Rights of a particular ecosystem are recognized
Unique rights for ecosystems are recognized	Human rights (legal personhood) are extended to ecosystems
Anyone can speak for Nature, but is not obliged to	Specific guardians are obliged to represent the ecosystem at all times
RoN is protected when violations are reported and upheld (reactive)	Guardians are embedded in integrated ecosystem management institutions; RoN is reflected in decision making (proactive)

persons (rather than recognizing rights for all of Nature). Most important, legal personhood does not recognize unique substantive rights for ecosystems but merely extends human rights to them.[8] Legal personhood grants ecosystems the same rights and liabilities held by all legal persons (e.g., people 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. Specific guardians are, however, not only appointed to speak on behalf of an ecosystem but are obliged to do so in both legal and policy arenas. Moreover, these guardians are often embedded in new governance institutions charged with managing an ecosystem in a way that ensures its health and well-being. This gives the ecosystem a voice (via its guardians) in decision-making processes regarding its management, allowing RoN to be protected proactively, reducing the need to turn to the courts. The implications of different models will be examined throughout the book.

It is important to note that, beyond the differences in these two ideal types of models, countries vary in the legal provisions they use to recognize RoN. Ecuador recognizes RoN in its 2008 constitution. In the United States at least seventy-one legal provisions (e.g., ordinances and home rule charters) recognizing RoN have been adopted by local governments and tribal authorities. Local government ordinances and resolutions similarly exist in Argentina, Brazil, Colombia, France's Loyalty Islands, India, Italy, Mexico, and the Netherlands. Bolivia, New Zealand, and Uganda all have national laws recognizing RoN. Other cases recognize RoN through local and national court rulings (e.g., Bangladesh, Colombia, and India), regulatory policy (e.g., Santa Monica, California), and tribal law (e.g., the Ho-Chunk and Ponca Nations in the United States).

As we discuss in chapter 3, these institutional differences matter because they affect the strength of laws in terms of their ability to put RoN into practice. But the point we want to emphasize here is that these different legal provisions show the variety of pathways advocates are using to incorporate RoN and Earth Jurisprudence norms into law. Some people contest these norms in national legislatures or municipal councils, others do so through the courts, and still others work directly with bureaucrats to shape regulatory policy. These multiple pathways illustrate how the different structures

of RoN legal provisions result from variation in the domestic factors shaping contestation over RoN in each case.

THE SIMULTANEOUS, INDEPENDENT EMERGENCE OF EARLY RIGHTS OF NATURE LAWS

Since the idea of RoN has existed for decades, why did RoN legal provisions not appear until 2006? And since RoN and Earth Jurisprudence norms were being developed internationally, why do the world's early RoN laws look so different from each other? The nearly simultaneous emergence of laws institutionalizing RoN norms in such dramatically different ways is interesting because it cannot be explained by predominant models of policy and norm diffusion (Berry and Berry 2007; Jinnah and Lindsay 2016; Krook and True 2012). These models generally seek to explain why policies look the same across countries. Norm diffusion models that tend to view norm content as "static and unitary" explain the clustering of norm adoption as the result of top-down processes by which established international norms diffuse to the local level (Krook and True 2012, 106–108). These studies cannot explain the unique construction of RoN at local levels and simultaneous norm development and adoption at global levels.

While some studies differentiate norm adoption at local levels, such as in the case of marine protected areas (Alger and Dauvergne 2017) or changes in whaling policies (Block 2008), they focus on adoption at the state level. Amitav Acharya's work on norm subsidiarity argues that local actors create rules to "preserve their autonomy from dominance" (2011, 96). This bottom-up approach provides the tools to analyze grassroots RoN developments, and especially those that challenge Western-dominated, neoliberal normative conceptions of development. Yet our analysis goes a step further by teasing out (1) how norm construction is driven by interaction among simultaneous processes of norm institutionalization at subnational, national, and global levels that include actors from Western and non-Western cultures; (2) the strategies and pathways for institutionalizing emerging counternorms; and (3) the processes through which the content of new norms evolves through contestation, experimentation, and adaptation.

The world polity model, for example, explains countries' simultaneous adoption of similar policies and institutions due to their embeddedness in world society, which promotes cultural processes of isomorphism through identity construction, learning, and imitation. International norms are treated as "exogenous models" that are "not strongly anchored in local circumstances" (Meyer et al. 1997, 156). Norm diffusion literature explains the clustering of norm adoption as resulting from either the bandwagoning of states that imitate influential states (Finnemore and Sikkink 1998, 893) or from the pressure and persuasion exerted by transnational activist networks of norm entrepreneurs (Keck and Sikkink 1998; Stone 2019), epistemic communities (Haas 1992), states (Jinnah and Lindsay 2016), or intergovernmental organizations (Flockhart 2005).

Constructivist scholars who emphasize the role of norms in international relations focus on the state. For example, Joshua Gellers (2017) argues that new constitutional environmental rights strengthen both the role of the state in the international system and the power of norms to impact state preferences. While building on the legal rights approach, our study is different in that RoN is not an extension of the neoliberal system or simply adding another right to the human rights framework. Rather, RoN is a transformative norm that codifies a new paradigm for the world system—one that embeds human societies (and consequently states) within ecosystems. Moreover, much of the work of RoN activists takes place below and above the state level. The laws that result from their agency do not reify the state in international relations. RoN laws rooted in Earth Jurisprudence situate states within larger biotic communities that extend from species the human eye cannot see to the entire planet. They establish all members of biotic communities as subjects with rights and create obligations for the state to care for them. While RoN laws are embedded within the state system, the Earth Jurisprudence philosophy on which they are based does not neatly fit within the confines of the state, just as ecosystems do not fit neatly within political boundaries or operate according to human laws; both are universal.

Although diffusion mechanisms are evident with more recent RoN laws (e.g., in Bangladesh, Brazil, Colombia, India, Mexico, and Uganda), they were absent in the world's earliest RoN laws, established in Ecuador, New Zealand, and the United States. Chapter 3 presents our explanation for this

puzzle, showing how early RoN laws emerged from independent processes underway in between 2006 and 2012. Some of the actors involved in each case were aware of the RoN discourse emerging internationally, yet each country's process was propelled by domestic actors with distinct motives working within distinct local contexts.

Our explanation for the simultaneous emergence of normatively similar but structurally distinct RoN laws borrows insights from convergent evolution theory in evolutionary biology, as well as research on norm construction and pragmatist theories of institution building. Convergent evolution theory argues that species from different lineages independently develop features that are functionally similar because they evolve in response to similar functional needs, but the features look different because the evolution takes place in different contexts (Conway Morris 2009, Raval et al. 2015). Likewise, we argue that functionally similar RoN laws (i.e., those reflecting common underlying principles of Earth Jurisprudence) emerged independently in response to common environmental pressures.

Part of the story is that science has evolved regarding our understanding of the natural world and the many ways ecosystems impact our quality of life—indeed, our very existence. Hence, legal norms are catching up to what scientists have been reporting for quite some time and to what Indigenous communities have known for millennia (Boyd 2017; Chapron, Epstein, and López-Bao 2019). But the sheer magnitude of environmental pressure has also changed. Intergovernmental and nongovernmental organizations have documented an increase in extreme pressure on ecosystems over the last two decades, which is causing increased conflicts between corporations seeking to exploit natural resources and communities seeking to defend the ecosystems on which they depend (Sheehan and Wilson 2015; United Nations General Assembly 2016).

In Mora County, New Mexico, for example, citizens worked with the Community Environmental Legal Defense Fund (CELDF) to pass the local Community Water Rights and Local Self-Government Ordinance in 2013 (Price 2019). This protected the community's right to clean water and healthy ecosystems over the right of hydraulic fracturing, or fracking, companies to both take and pollute their water. While the federal district court ruled in favor of the corporations, this experience helped CELDF learn and

build new RoN legal tools to aid communities (human and natural) in their struggle against corporations seeking to use their natural environments.

Like Mora County, communities around the world have mobilized to defend their families. They quickly learn, however, that existing laws do not help them, prompting a search for new legal tools. Often these are people who do not consider themselves environmentalists and who were not previously politically active. This includes the community activists of Grant Township, Pennsylvania, who want to prevent oil companies from injecting fracking waste into their only source of drinking water. Other communities represent long active groups, such as Ecuadorian Indigenous groups and the Māori iwi in New Zealand, who experimented with new legal tools to advance long-standing struggles to protect their territorial homelands.

Increasing violent attacks on citizens defending their right to live in clean ecosystems revealed the failure of human rights norms and laws to adequately address pressures from and on the environment, which human beings depend on for survival (United Nations General Assembly 2016, 4). These pressures also highlight conflicts between human rights norms and dominant neoliberal development norms, as many significant pressures come from market dynamics that open new spaces for extraction, mining, big agriculture, and industrialization. In response, communities and governments around the world have sought to strengthen their positions by adopting new Earth-centered legal provisions that prevent extreme harm to Nature rather than merely mitigating harm (which over time legalizes extreme damage). This book focuses on one type: legal provisions recognizing RoN.

The global phenomenon of unprecedented pressure being placed on ecosystems, and the resulting conflict as communities push back, explains why multiple RoN laws emerged for the first time between 2006 and 2012 through independent processes. Facing common pressures, communities in distinct parts of the world began experimenting with new environmental laws that are functionally similar in that they share a common norm regarding humans' relationship to Nature and their responsibility toward it (i.e., Earth Jurisprudence). Yet communities constructed RoN laws differently because they resulted from independent processes of norm contestation shaped by distinct political, institutional, and cultural contexts.

NORM CONSTRUCTION IN UNIQUE ENVIRONMENTS

To understand why the world's early RoN laws look so different from each other, we use pragmatist theories of institution building to build on recent norm construction research that examines processes of contestation, experimentation, adaptation, and learning (Krook and True 2012; Sandholtz 2008; Van Kersbergen and Verbeek 2007; Wiener 2004). As Mona Krook and Jacqui True note, "the norms that spread across the international system tend to be vague, enabling their content to be filled in many ways and thereby to be appropriated for a variety of different purposes" (2012, 104). This is consistent with pragmatist theories of institution building, which explain how institutional designs evolve through contestation, experimentation, adaptation, and learning, thus causing institutions to reflect the outcomes of experimentation in distinct contexts (Abers and Keck 2013; Berk and Galvan 2013; Kauffman 2017).

In our case comparisons, we identify three important contextual differences. First, national political opportunity structures can be relatively open or closed, influencing the type of legal provision adopted. As chapter 3 shows, windows of opportunity for strong national laws opened through the writing of a new constitution in Ecuador and New Zealand's treaty settlements with Māori iwi. By contrast, the US's closed opportunity structure required RoN advocates to pursue local ordinances with questionable legal standing.

Second, different types of organizations advocate for RoN laws to achieve distinct motivations and goals, and they develop different coalitions based on their position in larger sociopolitical alliance structures. Third, contestation is shaped by cultural context, which influences the kind of frames used to mobilize support. Together these factors shape how RoN is framed, contested, and expressed institutionally.

In the United States, environmental lawyers seeking stronger environmental laws allied with community activists seeking to challenge corporate exploitation of local ecosystems. This led RoN to be framed as an expression of community rights and a tool for strengthening democracy. In Ecuador, by contrast, coalitions of environmental movements, Indigenous movements, and leftist political movements framed RoN as a tool for achieving a post-neoliberal development model infused with Indigenous concepts.

New Zealand's laws emerged through bargaining between Māori iwi and New Zealand's government over natural resource management. They consequently emphasize Māori understandings of ecosystems as living ancestors and the responsibility of guardianship.

These differences matter because they fuel contestation at the international level over important normative questions like what rights should be recognized for Nature, how guardianship should be constructed, and what the relationship is between RoN and human rights.

THE POLITICS OF IMPLEMENTING RIGHTS OF NATURE

Because emerging norms, like RoN, are imbued with meaning through their application in specific cases, it is important to understand how politics shapes the implementation of new RoN laws. It is one thing to draft a law recognizing RoN, but quite another to put Earth Jurisprudence into practice. In chapters 4–6 we analyze the implementation of early RoN laws in three countries: Ecuador, Bolivia, and New Zealand. We focus on these countries for three reasons: first, they are the only countries whose laws have existed long enough to evaluate implementation; second, they highlight how implementation looks different in countries that adopt the Nature's rights model (e.g., Ecuador and Bolivia) versus countries that adopt the legal personhood model (New Zealand); and third, they allow a comparison of countries where Earth Jurisprudence has strengthened through implementation (e.g., Ecuador and New Zealand) with one where implementation has been less successful (Bolivia).

The question of why RoN laws get implemented in some instances and not others has relevance for larger questions about how new norms strengthen in a society. The literature on norm emergence and development emphasizes institutionalization as an important mechanism (Finnemore and Sikkink, 1998, 900), and many studies examine how new norms get institutionalized in domestic and international laws (Carpenter, 2007; Risse, Ropp, & Sikkink, 1999; Sikkink, 2011). But in the early stages of a norm's life cycle, when the norm is highly contested, laws often are not applied in ways that support the norm. For example, the adoption of human rights laws cannot fully explain the pattern of human rights

prosecutions. The effects of human rights laws are conditional on bottom-up legal mobilization over time (Dancy and Michel, 2016, 173). Yet few studies examine the pathways and strategies that norm entrepreneurs (and their opponents) use to build (and counter) momentum behind judicial processes meant to buttress the enforcement of emerging counternorms.

To fill this gap, we compare contestation over RoN in Ecuador (chapter 4) and Bolivia (chapter 5). Ecuador and Bolivia provide a rare opportunity to study the implementation of RoN laws in two very similar cases. Besides sharing many similarities in terms of geography, demographics, history, politics, and economic development, they are the first two countries in the world to adopt national laws recognizing Nature as a subject with rights, in Ecuador's 2008 constitution and Bolivia's 2010 Law of the Rights of Mother Earth (upgraded in 2012 as the Framework Law of Mother Earth and Integral Development for Living Well). On paper these are among the strongest RoN legal provisions in the world. The laws are extremely similar and follow the Nature's rights model, as described above. These similarities are not coincidental. Both laws grew out of simultaneous processes to rewrite constitutions propelled by new alliances between socialist and populist political groups with Indigenous movements aligned over their common desire to oust neoliberal elites and create a post-neoliberal development agenda. Despite these similarities, however, Earth Jurisprudence gradually strengthened in Ecuador over the last decade but did not do so in Bolivia.

Chapter 4 analyzes the strengthening of Earth Jurisprudence in Ecuador by comparing lawsuits invoking constitutional RoN provisions. While early court rulings failed to uphold RoN, later lawsuits succeeded, and the courts have gradually strengthened Earth Jurisprudence in Ecuadorian law. To explain this phenomenon, we analyze the pathways and strategies that RoN advocates (and their opponents) used to build (and counter) momentum behind judicial processes meant to buttress the enforcement of contested RoN norms. Ecuador's cases demonstrate how "weak" RoN laws can strengthen, providing important insight into the global contestation over sustainable development and the strategies and legal tools being used to advance a post-neoliberal development agenda rooted in harmony with Nature.

Chapter 5 asks what happened to Bolivia. The absence of the factors explaining the strengthening of Earth Jurisprudence in Ecuador can also explain the lack of strengthening in Bolivia. This variation can largely be explained by (1) differences in how the two countries' RoN laws situate RoN in relation to competing economic rights; (2) variation in Bolivia's and Ecuador's civil society structures (particularly regarding the cohesiveness of highland and lowland Indigenous groups, the strength of environmental movements, and the presence of legal communities trained in RoN jurisprudence); and (3) each government's strategy for responding to the tension between RoN and the government's development agenda.

Chapter 6 examines what Earth Jurisprudence looks like in practice when RoN is structured according to the legal personhood model. It analyzes implementation of New Zealand's laws recognizing the Te Urewera forest as a legal person with rights. In contrast to countries that follow the Nature's rights model, implementation of Earth Jurisprudence in New Zealand has not happened through lawsuits. Rather, it has happened by creating new institutions that manage ecosystems in an integrated way according to Māori traditional knowledge and customs, which are consistent with Earth Jurisprudence. Guardianship bodies obliged to represent the interests of the ecosystems are embedded in collaborative, integrated ecosystem management bodies, giving the ecosystem a voice in the decision-making processes governing it.

MULTIPLE PATHWAYS AND THE EVOLUTION OF EARTH JURISPRUDENCE

Following the emergence of these early RoN laws, activists formed transnational networks to promote RoN in different policy arenas (see chapter 2). Consequently, there has been an explosion of RoN legal provisions that look different, in part because they emerged through distinct pathways. Relatively few countries have followed the path of Bolivia, Ecuador, and New Zealand, which adopted national RoN laws.[9] These laws 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 Bolivia and Ecuador, and treaty settlements with Māori in New Zealand). These rare

events are not easily replicated. Yet 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. CELDF has worked tirelessly over the last decade to train and activate a national network of community activists who are advancing ballot initiatives across the country to create local ordinances recognizing RoN. Believing that political opportunity structures in both the national and state legislatures are closed, CELDF has chosen to instead appeal directly to voters. At the time of this writing, seventy-five such ballot measures had passed, most recently one in Orange County Florida recognizing the right to clean water (Smith 2020).

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 the Ugandan organization Advocates for Natural Resources and Development, supported by the Gaia Foundation and others, led Uganda's 2019 National Environment Act to recognize RoN. The Earth Law Center helped legislators in the Mexican state of Colima to draft a RoN constitutional amendment that was adopted in 2019; Mexico City had drafted one in 2017. As a result of similar efforts by RoN advocates, various municipal and state governments in Brazil, Colombia, and Mexico have recognized RoN in their constitutions or regulations.

Another pathway pursued by some Native American tribes in the United States and Canada has been to recognize RoN in tribal law as a tool for fighting against environmental degradation caused by fracking, mining, oil transport, and industrial agriculture. By January 2021, eight tribes— the ?Esdilagh First Nation of Canada, the Ho-Chunk Nation, the Menominee Tribe, the Navajo Nation, the Nez Perce Tribe, the Ponca Nation, the White Earth Band of Ojibwe, and the Yurok Tribe—recognized RoN in their constitutions or tribal law.

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 city officials in Santa Monica, California, on Earth Jurisprudence and its applications, leading them to incorporate RoN into Santa Monica's Sustainable City Plan. The Australian Earth

Law Alliance similarly works with local officials in Australia to incorporate RoN into policy. In Ecuador, environmental lawyer Hugo Echeverria trained Galapagos National Park guards, judges, and provincial officials on RoN and its applications to species protections.

The courts offer yet another pathway and illustrate the power of training judges in Earth Jurisprudence. Since 2016, a number of courts have issued rulings recognizing RoN even though their countries have no laws explicitly recognizing it. For example, the Constitutional Court of Colombia recognized the Atrato River as a legal person with rights, while the Supreme Court of Justice of Colombia did the same for the Amazon rain forest. Bangladesh's Supreme Court similarly recognized the rights of the Turag River. Courts in India have recognized the Ganga (or Ganges) and Yamuna Rivers, the Himalayan mountains and glaciers, and the watersheds these glaciers feed as legal persons with rights.

Chapters 7 and 8 analyze how RoN advocates have experimented with these and other pathways in response to obstacles presented by opponents of RoN. The chapters show that RoN is being implemented through these multiple pathways and examine the changing strategies advocates and opponents use as RoN is contested and constructed. Moreover, the chapters show how this contestation fuels experimentation and adaptation with hybrid RoN legal provisions that combine elements of the Nature's rights and legal personhood models. Chapter 7 focuses on experimentation and adaptation with the Nature's rights model through local governments, while Chapter 8 examines adaptation of the legal personhood model through the courts.

The rise of different types of RoN legal provisions through multiple pathways is important because it produces an evolution in the legal principles underlying RoN and, consequently, the global RoN norm. This is particularly true of RoN legal provisions developed by the courts. When countries lack laws recognizing RoN, judges must strategically interpret existing laws to justify it. This has caused the legal doctrines supporting RoN to evolve. Chapter 8 explores the effects of RoN court rulings on normative questions: What is the relationship between RoN and human rights, including Indigenous rights? Do ecosystems or their guardians have liabilities as well as rights? What is the relationship between ecosystems and their human guardians?

In the book's Conclusion, we address several current debates that have emerged from experimentation with RoN. We also evaluate Earth Jurisprudence's ability to serve as a legal pathway and foundation for implementing the UN's 2030 Agenda and 2030 Sustainable Development Goals. Throughout this book, we examine the struggles, cases, policies, ordinances, and new governing bodies that institutionalize RoN and embed it in new ways of living, thinking, acting, and governing. Given the urgency of the present climate and biodiversity crises and the need to transform our ways of living, we offer a hopeful account of one way to craft a new international relations capable of allowing all living beings on the planet to flourish and regenerate now and into the future.

The Politics of Rights of Nature

Strategies for Building a More Sustainable Future

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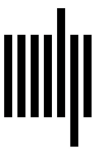

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