The Politics of Rights of Nature

Strategies for Building a More Sustainable Future

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WINDOWS OF OPPORTUNITY, MULTIPLE PATHS, AND RIVAL MODELS

The earliest Rights of Nature (RoN) laws emerged through parallel processes before the transnational network construction discussed in chapter 2 took off. This chapter explains the origins of these early laws and the puzzle of why they look so different from each other.[1] It examines the divergent institutional expressions of early RoN laws and the implications for global normative development. Chapter 1 presented our theoretical explanation, which borrows insights from convergent evolution theory in evolutionary biology and research on norm construction. To illustrate the convergent evolution of functionally similar but institutionally different RoN laws, this chapter compares their emergence in three countries: the United States, Ecuador, and New Zealand. We chose these countries because they were early adopters of RoN and they present three very different models for how to institutionalize RoN.

In our case comparisons, we highlight three important contextual differences that caused RoN laws in these countries to evolve in different institutional forms. First, national political opportunity structures can be relatively open or closed, influencing the type of legal provision adopted. As we will show in this chapter, 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 has caused 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.

To more effectively analyze the emergence of competing RoN models, we present a conceptual framework for comparing RoN laws along two axes: scope and strength. We then trace the origin of RoN laws in each country, showing how each emerged independently in response to local manifestations of macrolevel pressures and how variation in the local conditions explain key institutional differences. Together the case comparisons show how the legal tools and collective action strategies employed may differ based on local context and opportunity, causing a nascent RoN norm to be constructed and institutionalized differently.

COMPARING RIGHTS OF NATURE LAWS

Owing to the unique origins in each country, RoN in the United States, Ecuador, and New Zealand are enshrined in three different types of legal provisions. In Ecuador, RoN are recognized by the 2008 Constitution of the Republic of Ecuador. New Zealand has two acts of parliament recognizing RoN, both resulting from earlier treaty agreements signed with Māori iwi: the 2014 Te Urewera Act and the 2017 Te Awa Tupua Act. On December 20, 2017, New Zealand's government signed a Record of Understanding with

the Taranaki iwi to similarly recognize Mount Taranaki as a legal person. This will likely be formalized through an act of parliament in the coming years. In the United States, at least eighty-seven legal provisions recognizing RoN have been adopted by local governments and tribal authorities. The first was in Tamaqua Borough, Pennsylvania, in 2006.

These RoN laws share general normative beliefs consistent with Earth Jurisprudence. Yet they vary in important ways that shape how the RoN norm is practiced and thus constructed. We compare these laws using indicators of two concepts: scope and strength (see table 3.1). *Scope* refers

Table 3.1 Indicators of scope and strength of Rights of Nature laws

		Ecuador	United States*	New Zealand
Scope	How is Nature defined (framed)?	All of Nature; Pachamama (Mother Earth)	Ecosystems in municipalities (natural communities)	The Whanganui River and the forest Te Urewera (living spiritual beings)
	Which rights?	To exist and maintain ecosystem integrity; restored when damaged	To exist and "flourish"	Legal personhood status
Strength	Type of law / legal standing	Constitution (maximum legal standing)	Municipal ordinances (subordinate to state and federal law); home rule charters (legal standing unclear)	Acts of Parliament (parliamentary supremacy)
	Hierarchy of rights	RoN declared transversal	Places RoN over corporate rights	Not explicitly addressed
	Who represents Nature?	Everyone	City/municipal citizens	Appointed guardians
	Mandated responsibility for protecting Nature?	No	No	Yes

Note: *We acknowledge some variation in US RoN laws; this table presents the most common characteristics.

to the range of rights afforded and how broadly these rights are applied. This has normative implications regarding how Nature is conceptualized and how its rights are defined in practice. *Strength* refers to enforcement capacity expressed through laws' formal authority and individuals' capacity and responsibility to enforce Nature's rights. In the sections that follow, we compare the laws in our sample along these two conceptual axes.

SCOPE: DEFINING RIGHTS-BEARING NATURE

All RoN laws treat Nature as a legal subject with rights. In all cases, Nature is conceptualized at the ecosystem level rather than at the level of individual flora and fauna. The laws at least implicitly recognize that humans are part of these ecosystems, but they vary in how expansive the boundaries of rights-bearing Nature are.

Ecuador's constitution is the most expansive; its preamble defines Nature as the Andean Indigenous deity "Pachamama, where life is reproduced and occurs" (Republic of Ecuador 2008). Pachamama is often translated as Mother Earth in English. No other definition is offered, purposefully leaving the term expansive. Interviews with people who crafted Ecuador's RoN provisions show they intended to portray Nature's rights as being inherent to all of the Earth's ecosystems, including those beyond Ecuador's borders. This is evidenced by the fact that in 2010 Ecuadorian RoN activists submitted a lawsuit to the Constitutional Court of Ecuador, invoking universal jurisdiction to sue British Petroleum for environmental damage resulting from its 2010 oil spill in the Gulf of Mexico. While the court declined to hear the suit, the expansive definition of Nature remains in the constitution.

On the other extreme are the two New Zealand laws. These laws do not grant rights to all of Nature, but only to particular ecosystems: the Whanganui River watershed (in the Te Awa Tupua Act) and the forest Te Urewera (in the Te Urewera Act). The laws define the boundaries of these ecosystems and restrict legal personhood to them. Like Ecuador's constitution, New Zealand's RoN laws recognize the ecosystems as living spiritual beings (for details, see chapter 6). As we explain herein, this similarity results from the fact that both countries' RoN laws emerged from efforts to codify Indigenous peoples' non-Western understandings of humans' relationship to Nature within a Western legal framework.

One consequence is that elements considered to be nonliving in Western science (e.g., rocks, soil, and water) are legally defined as both living and having metaphysical characteristics that make them deserving of moral consideration. This normative framework has important practical implications.

By contrast, US RoN ordinances do not frame ecosystems as living spiritual beings, but rather as sets of "natural communities" whose welfare is necessary for the well-being of human communities. Most US ordinances define Nature as some combination of wetlands, streams, rivers, aquifers, soil, and native species of flora and fauna. The US laws restrict rights to ecosystems within the municipal boundaries, and unlike those of Ecuador do not recognize RoN beyond local ecosystems.

SCOPE: WHICH RIGHTS ARE GRANTED?

Most important from a norm construction perspective is that early RoN laws vary in the specific rights recognized. Ecuador's constitution reflects a holistic approach to conceptualizing Nature's intrinsic value and an emphasis on maintaining balance within natural systems. Title II, chapter 7, of the constitution recognizes Nature's rights to exist, to maintain its integrity as an ecosystem, and to regenerate "its life cycles, structure, functions and evolutionary processes." Articles 71–72 dictate that Nature also has the right to be restored if injured, independent of human claims for compensation.

Many US RoN ordinances go a step further and also recognize ecosystems' right to "flourish." This distinction has important implications for determining violations of RoN (and thus which actions humans are obliged to prevent). Humans invariably impact the ecosystems they live in. Under Ecuador's constitution, human impacts do not violate Nature's rights so long as they do not irreparably damage the integrity of an ecosystem to the point at which it cannot regenerate itself. One author of Ecuador's RoN provisions likened the distinction to the difference between breaking your arm (a temporary damage that will heal naturally) and the permanent damage of cutting off your arm (Greene 2015). By contrast, the right to flourish switches the emphasis from preventing permanent damage to ensuring some level of well-being for an

ecosystem. US ordinances do not define what it means to flourish, but they open the possibility of a much more restrictive definition of which human impacts are acceptable. Metrics that regulators could use to measure ecosystem flourishing are currently being constructed (Kauffman and Sheehan 2019).

By comparison, New Zealand's two laws do not recognize ecosystems as having unique, intrinsic rights, but rather extend human rights associated with legal personhood to the ecosystems. Te Awa Tupua (the Whanganui River watershed) and Te Urewera (the forest) are simply declared to be legal persons, with "all the rights, powers, duties, and liabilities of a legal person" (New Zealand Parliamentary Counsel Office 2014a, art. 11; New Zealand Parliamentary Counsel Office 2017, clause 14). Legal personhood grants procedural access to New Zealand's political and legal systems. For example, these ecosystems can own property, incur debts, petition the courts and administrative agencies, and receive reparations for damages should a court rule in their favor. Yet the laws do not guarantee the ecosystems' right to maintain their integrity or to be restored, much less to flourish.

STRENGTH: TYPE OF LAW AND LEGAL STANDING

RoN laws challenge the interests of powerful economic actors who themselves have legally recognized property rights. Consequently, RoN are often challenged in court. One measure of strength is whether RoN norms are enshrined in laws that have strong legal standing within a country's political system. Formally, Ecuador's constitutional RoN provisions are extremely strong; they have the highest legal standing, although they can conflict with other constitutional rights. Because New Zealand's political system recognizes parliamentary supremacy, national acts have superior legal standing. By contrast, US municipal ordinances may be preempted by state constitutions and/or the US Constitution.

These institutional differences matter because it is one thing to institutionalize a new norm into law but quite another to strengthen emerging norms through practice. In the early stages of a norm's life cycle, when the norm remains highly contested, laws are often not applied in ways that support the norm (Dancy and Michel 2016). For this reason,

an important informal measure of strength is whether RoN laws have been challenged in court and, if so, if the laws have been upheld and applied in practice. This is affected by RoN laws' position in the larger legal structure.

RoN jurisprudence (the legal reasoning undergirding RoN and its support within the legal system) has developed the furthest in Ecuador. This is unsurprising given its constitutional protections and the nation's status as an early adopter of RoN laws. Between 2008 and 2020 there were thirty-four lawsuits involving RoN. In twenty-seven cases, the courts upheld the RoN. In chapter 4 we document these lawsuits and explain why RoN were upheld in some cases and not others.

By contrast, US RoN ordinances have yet to be upheld by a court; at least three lawsuits are ongoing. For example, ordinances invoking RoN to ban hydraulic fracturing, or fracking, in Grant and Highland Townships, Pennsylvania, have been challenged in court by affected energy corporations.[2] In the Grant Township case, the judge ruled that the ordinance overstepped the legislative boundaries of a municipality. Undeterred, residents experimented with a new institutional expression of RoN—a home rule charter. Legal tools applicable in forty-three US states, home rule charters are municipal constitutions that override a municipality's second-class status in relation to the state (Russell and Bostrom 2016). In 2015, Grant Township passed its home rule charter to circumvent the preemptive nature of state constitutions over municipalities. Highland Township soon followed suit. While ongoing in the courts, US cases illustrate (1) the relative weakness of local RoN laws within the US federal system; (2) how RoN laws are evolving through contestation, experimentation, and learning; and (3) how RoN institutionalization can affect the prospects for using law to strengthen RoN and Earth Jurisprudence norms over time.

The New Zealand RoN laws remain untested in the courts. This is largely because the laws are structured in a way that allows RoN to be protected proactively within decision-making bodies rather than retroactively through the courts (see the discussions of the Nature's rights model versus the legal personhood model in chapter 1). Appointed guardians that speak for an ecosystem are embedded in new governance institutions charged with managing the ecosystem in an integrated way that ensures its health and

well-being. This gives the ecosystem a voice in decision-making processes regarding its management. Conflicts over competing interests and rights can be addressed proactively in the decision-making process, reducing the need to turn to the courts. Chapter 6 examines how this model functions in Te Urewera, New Zealand.

It is possible that lawsuits may arise in the coming years. Regardless, since New Zealand's laws do not recognize specific rights beyond legal standing, much of the content of RoN norms in New Zealand will be constructed through efforts to put RoN into practice. Resulting conflict will need to be resolved either through new ecosystem governance institutions or the courts.

STRENGTH: RESPONSIBILITY FOR DEFENDING NATURE

RoN laws also vary in who can legally represent Nature to protect its rights—and whether anyone is obligated to do so. Theoretically, when authority to represent Nature is distributed broadly, the barriers to defending Nature's rights are lower. Ecuador's constitution grants legal representation most broadly; article 71 states that "all persons, communities, peoples and nations can call upon public authorities to enforce the rights of Nature" (Republic of Ecuador 2008). Anyone, Ecuadorian citizen or not, can bring suit to defend the RoN. US ordinances are somewhat more restrictive, limiting legal representation to citizens of the city or township.

New Zealand's laws take a very different approach. These laws emphasize the concept of responsibility rather than rights, and create statutory guardians charged with promoting and protecting the interests, health, and well-being of Te Awa Tupua and Te Urewera. While this legal design limits who can represent Nature, advocates argue that the guardianship model is stronger because it appoints representatives who are legally mandated to advocate for Nature's interests and protect its rights, not only in courts but also in policy and social forums. As Catherine Iorns Magallanes notes, New Zealand's model "ensures that all activities affecting [these ecosystems] are monitored, and . . . [their interests] are upheld by a body appointed to do solely that. It doesn't leave the protection of these interests to the chance that a person might want to take a role as guardian on

behalf of the river. . . . It requires the exercise of this role at all times and allows it to be exercised in other fora, not solely court" (2017, 1).

While Ecuadorian and US laws provide few barriers to protecting Nature, responsibility to do so is not legislatively mandated. This may weaken them compared to New Zealand's laws, since the ability to sue in court does not necessarily mean any particular person will take up this responsibility of protection. Ecuador's model is more subject to collective action problems.

STRENGTH: HIERARCHY OF RIGHTS

Laws often recognize multiple rights that at times come into conflict. Another measure of strength is the degree to which RoN laws establish a hierarchy of rights and define the relationship between RoN and other types of rights—particularly property rights. The US ordinances are the strongest in this respect. For reasons discussed below, most US RoN ordinances explicitly limit the rights of corporations and financial interests and subordinate these to the RoN recognized by the ordinances.

In Ecuador judicial rulings are establishing the principle that RoN are transversal, meaning that they are connected to and impacted by all other elements of the legal order and therefore are more fundamental than other rights, such as property rights (see chapter 4). In 2015 this principle was upheld by the Constitutional Court of Ecuador. Citing articles 83 and 395 of Ecuador's constitution, the court determined that "all the actions of the State, as well as of individuals, must observe and be in accordance with the rights of Nature" (Corte Constitucional del Ecuador 2015). Based on this reasoning, the court rejected arguments that private property rights trump RoN.

The hierarchy of rights in New Zealand's Te Awa Tupua Act is less clear. On one hand, part 2, clause 16 states that the act does not limit private property rights. On the other hand, the act establishes legal weighting provisions specifying that any actor whose actions affect the river must "have particular regard to" the interests of the river and "recognize and provide for" the river's status as an indivisible, living, whole spiritual being (New Zealand Parliamentary Counsel Office 2017). Moreover,

resource use in Te Awa Tupua is subject to the Resource Management Act, which balances ecocentric values against more anthropocentric concerns (Barraclough 2013). In sum, the Te Awa Tupua Act grants the river (via its guardians) the ability to defend its interests by invoking various ecocentric elements of the Resource Management Act. Nevertheless, the Resource Management Act also recognizes anthropocentric concerns, and specific conflicts would ultimately have to be resolved through the Environment Court of New Zealand.

The hierarchy of rights is handled somewhat differently in the Te Urewera Act. Te Urewera is not subject to the Resource Management Act because it was formerly a national park governed by special Department of Conservation provisions. For the same reason, there is no private property within Te Urewera. Consequently, the Te Urewera Board has full authority to determine management of the forest and is charged with doing so according to ecocentric principles and the interests of Te Urewera as a living, spiritual being (see chapter 6). It is this autonomy of the board, along with the charge of managing in the interests of Te Urewera, that makes the Te Urewera Act stronger than the Te Awa Tupua Act in terms of prioritizing Nature's rights.

INDEPENDENT EVOLUTION OF RIGHTS OF NATURE LAWS

Why is RoN constructed and institutionalized so differently? In this section we trace the independent origin of early RoN laws, highlighting how differences in local context shaped their expression. We focus on three key contextual differences: (1) the types of organizations advocating RoN laws, their position in larger sociopolitical alliance structures, and their motivations/goals; (2) the national political opportunity structure; and (3) cultural context.

THE FIRST US RIGHTS OF NATURE LAW

The first US RoN ordinance has its roots in the work of the Community Environmental Legal Defense Fund (CELDF), which was formed in 1995 by environmental lawyers who concluded that existing environmental laws were inadequate. These lawyers advocated new laws that prevented

environmental harm (rather than merely mitigating it) and strengthened the rights of communities to protect themselves from environmental degradation caused by industrial activity. Recognizing that partisan gridlock made it extremely difficult to pass new national environmental laws, and having lost faith in conventional regulatory organizing, CELDF established a new approach to grassroots organizing centered on its Democracy Schools, which trained community residents "to confront the usurpation by corporations of the rights of communities, people, and earth" (Community Environmental Legal Defense Fund 2015a).

CELDF began helping communities develop community bills of rights that could provide a legal basis for residents to defend their interests against corporations that invoked property rights to justify environmentally destructive behavior. The strategy is to train "residents and activists how to reframe exhausting and often discouraging single issue work (such as opposing fracking, pipelines, GMOs, etc.) in a way that can confront corporate control and state preemption on a powerful single front: people's inalienable rights" (Community Environmental Legal Defense Fund 2015a). Framing RoN in terms of community rights and democracy was effective because of its cultural resonance in the United States. Notably, it resonates not only in liberal communities known for environmental activism but also in conservative communities like Tamaqua Borough, Pennsylvania.

In 2006 Cathy Miorelli, a local supervisor for Tamaqua Borough, attended one of CELDF's Democracy Schools. Miorelli was concerned about a planned new sewage sludge deposit facility in the borough. A nurse, Miorelli had been studying the increasing incidences of cancer in her vicinity with a doctor from a neighboring town; they had gathered evidence of a cancer linked to industrial toxins like benzene. Since their communities bordered three US Environmental Protection Agency Superfund sites, the two worried that contamination by yet another facility would put residents at even more risk. Inspired to take action, Miorelli ran for and won a seat as a local supervisor and attended CELDF's Democracy School.

After the experience, Miorelli said, "I realized that we could act on what we wanted most and put together an ordinance that would prevent contaminants from coming into our town" (Community Environmental Legal Defense Fund 2015b). She arranged for CELDF representatives

to meet with the Tamaqua Borough Council various times. Miorelli, the mayor, and the council's supervisors held several town meetings to educate the public and mobilize popular support. Despite the threat of lawsuits against the town and individual supervisors, the borough passed the world's first RoN ordinance in 2006 (Tamaqua Borough 2006).

The Tamaqua Borough Sewage Sludge Ordinance was novel at the time in that it considers natural communities and ecosystems to be legal "persons" and explicitly denies the same recognition to corporations. This is to limit corporations' rights to interfere "with the existence and flourishing of natural communities or ecosystems" (Tamaqua Borough 2006, sec. 7.6). The ordinance treats RoN as a tool for strengthening community rights vis-à-vis corporate property rights. Because it is easier to legally prove harm to an ecosystem than to the health of a particular person, RoN provisions theoretically make it easier for citizens to challenge corporations in court.

CELDF has since worked with communities across the United States to pass similar ordinances (discussed in chapter 7). Many of these are designed to prevent environmental damage caused by fracking. CELDF's approach is novel because it takes environmental protection out of the regulatory realm and moves it to the legal realm, where fracking can be banned as a violation of the rights of communities and Nature. It remains unclear, however, as to whether the legal standing of local RoN ordinances will be recognized by the courts. By 2019, three ecosystems had taken legal action to protect themselves, and all were challenged (Jamail 2017).

ECUADOR'S RIGHTS OF NATURE LAWS

Ecuador's constitutional RoN provisions resulted from changes in the political opportunity structure created in 2006 when Rafael Correa was elected president. After a decade of extreme political and economic instability, Correa rose to power on the promise to fundamentally remake Ecuador's political and economic system. He was supported by a loose collection of leftist academics, Indigenous people, and other social movement activists united by their opposition to neoliberal economics and seeking to implement a post-neoliberal development approach (Becker

2013, Radcliffe 2012). A key step was rewriting the country's constitution in 2007.

The process of writing Ecuador's new constitution was remarkably participatory. Civil society submitted over three thousand proposals, which were considered by the Constituent Assembly of Ecuador (Greene 2015). This process provided a window of opportunity for Indigenous, campesino, and environmental groups who had long fought to protect their communities from the environmental damage caused by industrial extractivism and other neoliberal economic policies. Within the Constituent Assembly they sought to ban extractivism and replace it with an alternative development approach that recognized the intrinsic value of Nature and provided for human well-being by ensuring the well-being of the larger biotic community. To this end, various lawyers, activists, and scholars proposed recognizing RoN.

Due to their place in Correa's coalition, Ecuadorian Indigenous movements had a substantial influence on the constitution and shaped the framing of RoN (Becker 2013). Ecuador's constitution pledges to build a new form of sustainable development based on the Andean Indigenous concept of *sumak kawsay* (translated into Spanish as *buen vivir*, "good living"), which is rooted in the idea of living in harmony with Nature (Chuji 2014, Eisenstadt and West 2019; Oviedo 2014).

Consequently, the preamble defines Nature as Pachamama and presents a guiding principle for the new development approach: that humans are part of Nature, and thus Nature is a vital part of human existence. Ecuador's constitution presents *buen vivir* as a set of rights for humans, communities, and Nature, and portrays RoN as a tool for achieving a post-neoliberal development model rooted in the concept of *sumak kawsay*. This framing explains the expansive definition of Nature, the focus on maintaining balance and equilibrium within the larger biotic community, the recognition of human impacts on Nature, and the obligation to offset human impacts through restoration.

RoN have been recognized in a number of court cases and secondary laws, including the 2014 Ecuadorian Penal Code (see chapter 4). While constitutional RoN provisions have not ended extractivism in the country, RoN jurisprudence has gradually strengthened over the last decade and RoN has been invoked successfully to prevent specific instances of

mining, protect endangered species, and force some development projects to be more ecologically sustainable (see chapter 4). Ecuador illustrates the outcome of years of norm development and a distinct application at the national level forged through contestation, adaptation, and evolution through court rulings.

NEW ZEALAND'S RIGHTS OF NATURE LAWS

New Zealand demonstrates a third, distinct path to institutionalizing RoN. New Zealand's RoN laws emerged through the process of resolving longstanding treaty disputes between New Zealand's Crown government and Māori iwi. In 1840, New Zealand's government signed the Treaty of Waitangi with about five hundred Māori chiefs from the North Island to establish British sovereignty over the island. Over succeeding decades, Māori iwi lost control of much of their lands and were subjected to extremely unfair treatment. During the 1960s and 1970s, New Zealand underwent a "Māori renaissance," including a strong Māori protest movement demanding redress for treaty violations and the ability for Māori iwi to protect and manage their ancestral territories. In the 1990s the government began negotiating settlements of historical claims with individual iwi.

Treaty settlements opened a window of opportunity for codifying Māori conceptions of Nature, which are consistent with Earth Jurisprudence principles, into New Zealand law. Iwi trace their ancestral lineage to a common ecosystem, which they view as a living, spiritual being. Māori generally do not emphasize the concept of rights, since they do not conceptualize Nature as property. Rather, they emphasize the concept of guardianship resulting from their duty to care for their ancestor. Consequently, both the substance and framing of New Zealand's RoN laws are different from those in Ecuador and the United States.

New Zealand's two existing RoN laws resulted from treaty settlements with two iwi: the Whanganui iwi, regarding Te Awa Tupua, and the Tūhoe iwi, regarding Te Urewera. The same Crown negotiators and lawyers worked on both settlement processes simultaneously (an unusual circumstance), which allowed learning and the diffusion of ideas across the two negotiations. In both cases, granting Nature legal personhood

was conceived as a strategic tool for overcoming unique obstacles that had caused negotiations to break down. Because RoN is based on Earth Jurisprudence principles (as described in chapter 1), and Earth Jurisprudence is consistent with Māori conceptions of humans' relationship with Nature, RoN was seen as an acceptable, if not ideal, legal mechanism for translating Māori concepts into Western law. Chapter 6 shows what this looks like in practice.

The idea to grant Nature legal personhood arose first in the Whanganui negotiations.[3] After talks stalled in 2004, Whanganui negotiators decided on a new approach: rather than demanding ownership, the iwi agreed that its main goal was to have the Crown recognize and treat Te Awa Tupua according to the Māori view—as a whole, living, spiritual being.[4] Among other things, this required treating the river at a catchment-wide level, but this conflicted with the Crown's fragmented regulatory framework under the Resource Management Act. Moreover, since the health and well-being of the river was not good, the outcome also had to provide a way to improve it.[5]

In thinking about how to resolve this dilemma, Ambassador John Wood, the chief Crown negotiator for the Te Awa Tupua and Te Urewera settlements, was inspired by the writings of nineteenth-century New Zealand constitutional scholar Sir John Salmond on the concept of legal fiction.[6] While Salmond applied the concept of legal fiction to corporations (i.e., treating corporations as if they were persons), Wood and other members of the Crown negotiating team began thinking about how to creatively apply the concept to an ecosystem like a forest. Because some Crown lawyers working on the settlements specialized in biodiversity law, they were familiar with writings on RoN by Christopher Stone and other US legal scholars. According to Minister for Treaty of Waitangi Negotiations Christopher Finlayson, these writings helped shape the eventual solution.[7]

The Crown negotiating team realized that granting the river legal personhood might provide a legal mechanism for meeting the Whanganui iwi's desire to recognize the river as a whole, living, spiritual being. The river, like any person, could then be legally required to follow the Resource Management Act. In this way, legal personhood could provide a way to meet both sides' seemingly contradictory bottom lines.

As this idea was germinating, the Tūhoe settlement process progressed more rapidly, and the Crown negotiating team imported its ideas about legal personhood to the treaty negotiations. We provide more detailed analysis of the Tūhoe process and settlement in chapter 6, but the important point here is that the negotiations had initially dealt with the Tūhoe demand for return of Te Urewera, which the Crown interpreted as a conflict over title and ownership. Te Urewera's status as a national park greatly complicated the settlement process. Non-Māori New Zealanders (Pākehā) are famously proud and protective of their national parks, and for a time the government took negotiation of national park land off the table.

A breakthrough came in 2011 when Crown negotiators realized that the Tūhoe iwi's demand for the return of Te Urewera did not necessarily mean the Tūhoe needed to legally own it (i.e., have title). In the Tūhoe worldview, one cannot truly own Nature, and the iwi never specifically asked for ownership. Rather, it asked for the return of the land, which Tūhoe do not equate with ownership.[8] Ambassador Wood realized a political solution would require that neither the Crown nor the Tūhoe own the land. If Te Urewera was granted legal personhood, ownership of the land could be vested in Te Urewera itself. Then the Crown could say it was not transferring ownership to the Māori, and the Māori could say the Crown did not own the land. Tūhoe negotiators accepted legal personhood for Te Urewera as an imperfect approximation of recognizing the forest as a whole, living, spiritual being, but likely the best possibility within a European legal framework.

According to Wood, "Once we accepted the idea of Te Urewera owning itself, [the next issue in the negotiations] was how do we exercise responsibility toward it. How is it going to be governed? Who is going to speak for it? Its rights and responsibilities as a legal person—these are things to be negotiated."[9] These negotiations opened a window of opportunity for codifying Māori conceptions of Nature, and humans' responsibility to it, into New Zealand law.

The Tūhoe and Whanganui iwi, like all Māori, trace their ancestral lineage to a common ecosystem, which they view as a living, spiritual being. Māori do not emphasize the rights of Nature concept, since "rights" is a foreign concept stemming from the European legal system. Rather, Māori iwi emphasize their responsibility of guardianship (*kaitiakitanga*) for the

land to which their iwi has kinship ties.[10] Their focus is their responsibility to care for their ancestor in order to maintain their ties to it.

For this reason, both Māori and Crown negotiators assert that the most important parts of the Te Urewera Act and Te Awa Tupua Act are not the legal personhood provisions but the related guardianship and governance arrangements. For example, Te Awa Tupua's guardian body is composed of one Whanganui iwi representative and one Crown representative. Notably, guardians must secure Te Awa Tupua's spiritual and cultural rights, not simply its physical and ecological rights. An advisory group, Te Karewao, was created to provide advice and administrative support to the guardians (New Zealand Parliamentary Counsel Office 2017, secs. 27–28). This advisory group comprises three people appointed by groups with interests in the river other than the Whanganui iwi (e.g., the local government and other iwi).

A key feature of Te Awa Tupua's guardianship-based approach is that it embeds the guardians within a new, collaborative, integrated watershed management body, Te Kōpuka nā Te Awa Tupua, comprising various stakeholders with interests in the river, including multiple iwi, central and local governments, commercial actors, recreational users, and environmental groups. It is charged with developing an integrated watershed management strategy to ensure the environmental, social, cultural, and economic health and well-being of Te Awa Tupua. The group is also responsible for monitoring the management plan's implementation and providing a forum for discussing issues related to the health and well-being of the river.

From the perspective of protecting RoN, this management body is arguably the most important element of the Te Awa Tupua Act. As a legal person, the river itself is a member of the integrated watershed management body (via its guardians), and thus participates directly in watershed management decisions. Moreover, the body is obliged to make decisions with "particular regard to the Te Awa Tupua status" and its intrinsic values (New Zealand Parliamentary Counsel Office 2017, sec. 30, clause 3).

The fact that New Zealand's legal personhood provisions emerged as a tool to satisfy the contradictory interests of Māori iwi and New Zealand government explains why the legal sections recognizing legal personhood do not elaborate specific rights but rather emphasize the river's physical and metaphysical characteristics. The definition of the river ecosystem is

also consistent with the scientific understanding of ecosystems as biotic communities that include humans. For example, sections 12 and 13 of the Te Awa Tupua Act state that

> Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements. . . .
>
> Te Awa Tupua is a spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and well-being of the iwi, hapū, and other communities of the River. . . .
>
> The iwi and hapū of the Whanganui River have an inalienable connection with, and responsibility to, Te Awa Tupua and its health and well-being. . . .
>
> Te Awa Tupua is a singular entity comprised of many elements and communities, working collaboratively for the common purpose of the health and well-being of Te Awa Tupua. (New Zealand Parliamentary Counsel Office 2017)

In both of the New Zealand acts, the legal personhood language is expressly intended to overcome contentious issues of ownership and reflect the Māori iwi view that their respective ecosystems are living entities with intrinsic value that are incapable of being "owned" in an absolute sense. Because of this Māori framing, the emphasis is on responsibility through guardianship rather than rights.

CHAPTER SUMMARY

This chapter highlights a puzzle discussed in chapter 1 that is presented by these early RoN cases: Given the similar timing of early RoN laws (which usually suggests diffusion of a common model), why do they express RoN so differently? The United States, Ecuadorian, and New Zealand cases tell a common overall story. Indigenous and non-Indigenous local communities, concerned with the degradation of local ecosystems on which they depend, searched for new legal tools to expand their authority to protect these ecosystems. Given the inadequacy of existing legal frameworks, these communities sought new laws that strengthened their legal standing to protect Nature, ultimately producing RoN laws. Through accumulation, individual community efforts to address unique local problems regarding natural resource management contributed to the emergence of nascent RoN and Earth Jurisprudence norms circulating globally.

Yet despite the existence of such nascent global RoN and Earth Jurisprudence norms, early RoN laws emerged from independent processes

strongly rooted in domestic conditions. The need to adapt to local contexts explains why RoN was framed and constructed differently in various countries. We identify three important domestic contextual differences: (1) the openness of national political opportunity structures (which explains the type of legal provision adopted); (2) the types of organizations and sociopolitical alliance structures driving the process, and (3) the belief systems determining which cultural framings were most salient and effective for mobilizing support. Together these factors shaped how RoN was contested and expressed institutionally.

In the United States, a closed opportunity structure forced advocates to pursue relatively weak local ordinances. RoN is linked to the concepts of community rights and democracy, and is seen as a tool that communities can use to protect themselves from the vagaries of corporate property rights. In Ecuador, the writing of a new constitution and Indigenous groups' membership in the governing coalition provided an opportunity to create strong RoN laws that are framed as a tool for realizing a postneoliberal development model rooted in the Andean Indigenous concept *sumak kawsay*. In New Zealand, the treaty settlement process created an opportunity to codify Māori concepts of humans' relationship to Nature, which is consistent with Earth Jurisprudence. Consequently, the concept of rights is downplayed in favor of the Māori concepts of guardianship and responsibility to care for natural entities (*kaitiakitanga*). One lesson from these cases is that there is no single best pathway or model for legally recognizing RoN. The best path and model is determined by local context and realized through experimentation, contestation, learning, and adaptation.

Finally, our chapter explains why early RoN laws differ on fundamental normative questions like how Nature is defined, which rights should be recognized, when human activities constitute violations of Nature's rights, and whether to prioritize rights or responsibilities. In so doing it contributes to the literature on norm construction. The chapter shows how distinct processes of norm construction in different countries imbue emerging norms with different content, setting the stage for international norm contestation. The next five chapters continue our analysis of norm construction by examining how these RoN laws are being put into practice, and in so doing how they shape the evolution of RoN jurisprudence.