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The Politics of Rights of Nature Strategies for Building a More Sustainable Future

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7

EXPERIMENTATION AND ADAPTATION AT THE LOCAL LEVEL IN THE UNITED STATES

The United States is a center of global rights of Nature (RoN) activity; in January 2021 there were at least eighty-seven instances in which RoN was recognized in local and tribal law. This chapter analyzes the politics of RoN in the United States, which differs from the politics surrounding national-level laws like those in Ecuador, Bolivia, and New Zealand (see chapters 4–6) in important ways. The structure of the US federal system, combined with the politicization of environmental issues and partisan gridlock in the US Congress, has spurred RoN advocates to instead focus on persuading local communities and municipal officials to use RoN to promote more ecologically sustainable development (see chapter 3). The US cases highlight the challenges of promoting RoN through local laws, particularly within a federal structure, but also new pathways for institutionalizing RoN through municipal regulatory policy. These cases also illustrate the application of RoN within a Western legal context not heavily influenced by Indigenous cosmivision. The US tribal nation cases demonstrate how RoN in tribal law is a way to translate Indigenous understandings of humans' relationship with and responsibility to Nature into a Western legal framework, both to help them combat threats to their ecosystems and to educate non-Indigenous audiences about their paradigm.

Because of the decentralized approach to implementing RoN in the United States, we see many different pathways being pursued in varied

contexts, producing distinct institutional and legal frameworks for implementing RoN. This chapter examines three: (1) local ordinances meant to protect RoN from imminent harm through the courts; (2) the insertion of RoN into the municipal-level regulatory planning process regarding sustainability; and (3) US tribal nations' insertion of RoN into tribal law. Each of these pathways illustrates different kinds of legal provisions for implementing RoN, as well as its evolution in response to local contexts, contestation, learning from other cases, and experimentation.

This experimentation is producing models that blend elements of the Nature's rights and legal personhood models presented in previous chapters. For example, Toledo, Ohio's Lake Erie Bill of Rights (City of Toledo 2019) applies the rights and guardianship mechanism associated with the Nature's rights model to a specific ecosystem. Santa Monica, California's Sustainable City Plan applies them proactively through decision-making institutions as is done in the legal personhood model. These and other adaptations partly stem from the work of transnational activist networks that facilitate the sharing of lessons and knowledge from activists in one part of the world to another.

The US cases also demonstrate how RoN is transcending traditional political divides, traveling from small, conservative rural communities in Pennsylvania to more urban, progressive communities in California and to tribal communities in the Midwest.¹ In each case, communities are responding to an overarching call to transform a legal system that fails to protect their ecosystems, ways of life, and health for present and future generations.

LOCAL STRATEGIES FOR PROTECTING RIGHTS OF NATURE THROUGH THE COURTS

Chapter 3 describes how the first RoN legal provision emerged in Pennsylvania through the work of environmental lawyers from the Community Environmental Legal Defense Fund (CELDF) who advocated RoN as a legal tool for helping local communities fight back against the environmental and health problems created by extractive industries. Notably, they framed RoN advocacy as an expression of community rights and

democratic principles of local self-government. Supported by CELDF, a number of Pennsylvania communities passed ballot initiatives creating local ordinances that established community rights. In these initiatives *community* is defined as including both human and natural communities (i.e., all members of ecosystems). In order to protect community rights and RoN, these ordinances also limited corporate rights and banned corporate practices harming their communities. This section examines the politics surrounding such ordinances in Grant and Highland Townships to illustrate the challenges of using them to protect RoN through the courts, as well as adaptation and experimentation with home rule charters as a tool to overcome these challenges.

Grant and Highland Townships in Pennsylvania are examples of the growing number of US communities adopting RoN ordinances to prevent environmental damage caused by hydraulic fracturing, or fracking. Concerned that fracking would contaminate its water supply, the Highland Township Municipal Authority spearheaded the drafting of a community bill of rights ordinance in 2012. A local group, Citizens Advocating a Clean Healthy Environment (CACHE) and CELDF assisted in the drafting (Nicholson 2016). Passed in 2013, the Highland Township Community Rights and Protection from Injection Wells Ordinance expanded community rights, gave ecosystems in the county the right to exist and flourish, and banned all activities of natural gas and fossil fuel extraction and wastewater injection (Highland Township 2013).

Similar action was taken in Grant Township—which, like Highland Township, relies entirely on private wells and springs for its drinking water. After Pennsylvania General Energy (PGE) filed for a permit to inject wastewater into one of its unused wells in the township, residents began to worry the injected wastewater would leak into their drinking water sources (Pryts 2016). While PGE has seven other wells, this was the first wastewater injection well for the township. In response to what the community perceived as a threat to its natural environment and their families' health, on June 3, 2014, Grant Township adopted its Community Bill of Rights Ordinance (created with CELDF support) that recognized RoN and prohibited depositing oil and gas waste materials in the township (Grant Township 2014).

GRANT TOWNSHIP, PENNSYLVANIA

On August 14, 2014, PGE filed a lawsuit challenging the constitutionality, validity, and enforceability of Grant Township's Community Bill of Rights Ordinance, *Pennsylvania General Energy Company, LLC, v. Grant Township* (US District Court for the Western District of Pennsylvania 2015a). PGE claimed preemption, arguing that the ordinance conflicted with several state statutes (the Oil and Gas Act, the Limited Liability Companies Law, and the Sunshine Act) that took precedence over the township ordinance due to the Pennsylvania Second Class Township Code, which requires townships to align their laws with the Constitution of the Commonwealth of Pennsylvania and follow the state code (Commonwealth of Pennsylvania 1933). PGE also argued that the township illegally discriminated against it by singling the utility company out as a corporation, which PGE noted has personhood status under the US Constitution.² PGE's lawsuit sought declaratory judgments and injunctive relief from Grant Township.

Grant Township filed a counterclaim alleging that by challenging the ordinance PGE was violating the inalienable rights of the township's people. The township submitted a brief in opposition to summary judgment, arguing that local communities have a right to self-government and have "legitimate reasons to be concerned about corporate activities causing environmental contamination and public health hazards, coupled with inadequate federal and state oversight" (Grant Township 2016a). Moreover, the township's brief expanded the concept of community rights to also include "environmental rights," including a "constitutional right to clean air, water, and a safe environment" (Grant Township 2016a).

In response to PGE legal actions and the threat of wastewater injection into the well water and natural springs on which they depend, a group of concerned citizens formed the East Run Hellbenders Society, intervening in the PGE lawsuit and issuing a brief on behalf of the Little Mahoning Watershed on which local residents depend. In their brief, the Hellbenders claimed to legally represent the Little Mahoning Watershed, citing as justification legal systems around the world that recognize "rights of ecosystems," including Ecuador's 2008 constitution. The brief noted that "Grant Township law recognizes the rights of ecosystems" and cited the case of *Cetacean Community v. Bush* (US Ninth Circuit Court of Appeals 2004) to argue that natural communities like the Little Mahoning Watershed can

have standing in court when written into the law (US District Court of Western District of Pennsylvania 2014).³

Judge Susan Paradise Baxter of the Western District Court of Pennsylvania found that the ordinance did overstep the legislative boundaries of a second-class township like Grant. Further, Judge Baxter argued that the Hellbenders and the watershed had no standing in courts because the municipality represented their interests and CELDF was representing all parties. This meant that the ecosystem and the community members were not underrepresented in the suit.

Undeterred, residents experimented with a new legal provision to codify RoN. On November 3, 2015, Grant Township adopted a home rule charter. Legal tools applicable in forty-three US states, including Pennsylvania, home rule charters are local municipal constitutions that override the second-class status of a municipality to a US state (Russell and Bostrom 2016). Inspired by the court's rejection of its RoN ordinance, Grant Township passed the home rule charter to circumvent the preemptive nature of state constitutions over municipalities.

When adopting the charter, Grant Township repealed its Bill of Rights Ordinance so that it could not be held liable for any damages to PGE resulting from the court decision. The charter created a new, stronger legal pathway for invoking RoN to prohibit PGE from wastewater injection within the township; it declares that its residents, and "all natural communities and ecosystems within the township, possess the right to clean air, water, and soil." Section 106 states that "natural communities and ecosystems within Grant Township, including, but not limited to, rivers, streams, and aquifers, possess the right to exist, flourish, and naturally evolve," and section 105 explicitly states Nature's right to be free from damaging activities, including "waste from oil and gas extraction" (Grant Township 2016b, secs. 104–106).

HIGHLAND TOWNSHIP, PENNSYLVANIA

Like Grant Township, Highland is a small, second-class township that passed an ordinance (Highland Township 2013). In addition to community rights, the ordinance gave ecosystems the right to exist and flourish in the township and banned all activities of natural gas and fossil fuel extraction and

wastewater injection. The 2013 Highland Township Community Rights and Protection from Injection Wells Ordinance was passed in response to plans by the gas drilling company Seneca Resources to place a wastewater injection well within a half mile of the township's water source, known as the Crystal Spring Ecosystem. On February 18, 2015, Seneca Resources filed a lawsuit challenging the ordinance's legal standing, *Seneca Resources v. Highland Township* (US District Court for the Western District of Pennsylvania 2015b). CACHE filed to intervene in the suit on behalf of the Crystal Spring Ecosystem. In March 2016, Judge Baxter denied the request, reasoning that the township adequately represented the ecosystem (US District Court for the Western District of Pennsylvania 2016).

This process mimicked that of Grant Township, and Highland Township's local supervisors knew the outcome of PGE's challenges to Grant's ordinance. Reportedly fearing costs to the county from a lawsuit and the possibility that they might be held personally liable, on August 11, 2016, Highland's supervisors filed a "consent decree" with Seneca, removing local obstacles to the dumping of Seneca's waste. The next day a federal judge accepted the settlement and refused to allow township residents to intervene in the proceedings.

Community residents were furious and committed themselves to further action. As Sue Swanson, a resident who also serves on the Highland Township Municipal Authority, lamented, "We've been working tirelessly to protect our rights and our water for three years, only to find that we've been shut out at every level of government. What a farce" (quoted in Nicholson 2016). Marsha Buhl, president of CACHE, stated, "When did it become 'illegal' to protect our water and our rights? And when did it become 'legal' for a polluting corporation, with a history of permit violations, to dump toxic waste into our Township? It's a sad day to be a resident in Highland Township. We are fighting on. Stay tuned for Home Rule" (quoted in Nicholson 2016).

Aware of how Grant Township adapted its RoN law through the adoption of a home rule charter, Highland's residents pressed for similar action. Concerned, the Highland Township Board of Supervisors unsuccessfully tried to remove the home rule charter ballot from the November 2016 election. But the ballot passed, and Seneca Resources immediately filed a complaint against it, claiming that the charter overstepped its state

constitutional boundaries by granting standing to ecosystems. It further challenged the township's right to remove the personhood status of corporations and further argued that the Pennsylvania Oil and Gas Act and the Safe Drinking Water Act both have provisions for the disposal of brine in fracking wastewater.

On January 17, 2017, CACHE and the Crystal Spring Ecosystem filed for intervenor status in the complaint against Highland Township. In this motion, CACHE argued that residents have a unique right to local, community self-government and a right to enforce the rights of the Crystal Spring Ecosystem, per sections 105 and 407 of the home rule charter, which include the rights "to flourish and exist." The Highland Township Board of Supervisors did not support the ordinance and was unsupportive of the home rule charter. Thus, the intervention brief asserted that, unlike Grant Township, the Highland Township Board of Supervisors could not adequately represent CACHE and the ecosystem (Citizens Advocating a Clean Health Environment 2017). This is important because Judge Baxter denied the 2015 motion that said the municipal authority represented the citizens and ecosystem of Highland Township. Since the 2017 motion does not include the municipal authority, it presents a new question to the courts regarding whether CACHE and the ecosystem are adequately represented in the original complaint.

Unlike the Grant Township case, Highland Township's lawsuit addresses the home rule charter status, not an ordinance. Additionally, as the municipality was not asking for intervenor status, the question of ecosystem standing in the court was addressed, whereas it had not been addressed directly in the previous 2016 suit or in Grant Township. Thus, the Highland Township lawsuit had the potential to construct new RoN legal frameworks, including home rule charters and recognition of ecosystems' legal standing in US courts. This did not come to fruition, however.

PERSEVERANCE AGAINST PREEMPTION

To date, the RoN provisions in Grant and Highland Townships' home rule charters have been challenged in court not only by PGE and Seneca Resources but also by the Pennsylvania Department of Environmental Protection (DEP). Additionally, the US District Court deemed Highland

Township's waste disposal sections in the charter "invalid, unenforceable, and unconstitutional" (US District Court for the Western District of Pennsylvania 2016). In the case of Highland Township, the Board of Supervisors settled the lawsuit with the DEP and conceded that the clause on the ban of disposal wells was unconstitutional. While CACHE residents did not agree with town board, they were left with little choice for moving forward legally. After this settlement the DEP issued a disposal well permit for Highland Township, the township's second, and only a half mile away from the first one (Legere 2017).

Grant Township, however, continues to contest community rights and RoN with the distinct advantage of having a board of supervisors that supports the ban on wastewater injection wells. Yet the road has not been smooth. In January 2018, CELDF attorneys who were working with Grant Township residents were fined \$52,000 in the US District Court as part of a sanctions motion filed by PGE to cover legal fees for "frivolous, unfounded, and harassing pleadings" in *Pennsylvania General Energy Company, LLC, v. Grant Township*. Grant Township was fined over \$102,000. Judge Baxter found that CELDF had a fifteen-year history of "setting aside historically well-settled legal precepts," clearly rejecting community rights and RoN arguments (US District Court for the Western District of Pennsylvania 2018). The court's decision and CELDF's and Grant Township's defiant response point clearly to norm contestation over RoN and one state's struggle to guarantee corporate rights in the face of citizen demands for community rights, including the right to clean water. By November 2019, Grant and CELDF had settled out of court for fines of \$75,000, none of which will be paid by the small township, but by CELDF (Community Environmental Legal Defense Fund 2019).

Yet Grant Township maintains strong community support for its home rule charter, and has received some legal victories as well. On October 4, 2019, supporters of the township packed a courtroom in Pittsburgh to hear arguments for the continuance of the DEP lawsuit and to "show the state that people are paying attention."⁴ In early 2020 the Commonwealth Court of Pennsylvania denied the DEP's request for preemptory judgment and granted the township authority to pursue oral arguments against wastewater injection wells as an exercise of its constitutional

rights under the Environmental Rights Amendment of Pennsylvania's constitution (Commonwealth of Pennsylvania 1971, art. 1, sec. 27; Commonwealth of Pennsylvania 2020). Additionally, the DEP rescinded the permit it issued PGE in 2017 for the Yanity wastewater injection well, noting that "the home rule charter remains in effect" (Legere 2020). In response, PGE is appealing the DEP decision to rescind the wastewater injection well permit and it filed suit against Grant Township in December 2020 seeking to overturn the township's ban on wastewater injection wells (Hess 2020).

Grant Township has the opportunity to persuade the Commonwealth Court that it can provide a legal framework for challenging state statutes under the Environmental Rights Amendment. Grant Township is carrying the development of RoN to the next level in the United States, and this case will create important precedent for other communities in Pennsylvania, Ohio, and elsewhere who are opposing fracking and wastewater injection wells.

Highland and Grant Townships' charters provide a model for other communities in home rule charter states and/or those with state oil and gas laws that may preempt municipal laws. Yet these cases also highlight the significant limitations of local laws meant to protect RoN through the courts, standing in stark contrast to Ecuador's constitutional authority, which facilitated the strengthening of RoN jurisprudence there. In addition to relatively weak legal standing, local ordinances must also overcome the allure of corporate profits and local jobs, as well as the historical institutions in place to support extractive industries, which similarly remain in Ecuador. Still, community members—from Grant Township to the Cofán and Waorani peoples of Ecuador—are continuing their struggle by adapting their legal arguments, and they are making small gains in the process. We believe this shows that RoN and Earth jurisprudence norms are becoming more salient, and a social movement is rising to challenge the dominant norm of development through unlimited extractivism. While preemption laws pose real hurdles, there is some initial evidence that local activists may have more success by proactively incorporating RoN into municipal regulatory policy.

RIGHTS OF NATURE THROUGH SUSTAINABILITY POLICY IN SANTA MONICA, CALIFORNIA

Many US RoN laws, like those in Pennsylvania, are reactive in that they were created to respond to specific, dire, existing environmental threats. By contrast, Santa Monica, California's sustainability rights ordinance and related sustainability plan illustrate the proactive creation of an ordinance to prevent future harms and promote sustainable development (City of Santa Monica 2013; City of Santa Monica 2014). They show how RoN can be particularly powerful when incorporated into the decision-making process regarding sustainability policy and how RoN norms continuously travel across global and local networks to influence local laws within US municipalities. Principle 6 of Santa Monica's Sustainability Plan "recognizes its linkages with the regional, national, and global community," emphasizing that "local environmental, economic, and social issues cannot be separated from their broader context" (City of Santa Monica 2014).

Following the Global Alliance for the Rights of Nature's (GARN's) first meeting in Ecuador in 2010, Pittsburgh became the first major US city to pass (in November of that same year) an ordinance recognizing RoN and banning shale gas drilling and fracking. Energized by the momentum, GARN cofounders Shannon Biggs (then of Global Exchange) and Linda Sheehan (then the executive director of the Earth Law Center) began working with Santa Monica city officials to craft a sustainability rights ordinance. They enlisted attorneys from CELDF to assist in the wording of the ordinance and to sponsor a three-day Democracy School workshop on community rights and RoN to strengthen local democratic governance (Biggs 2013). Three years later, in April 2013, the ordinance passed.

Unlike the Pennsylvania ordinances discussed herein, Santa Monica's RoN ordinance did not respond to an immediate environmental threat but rather grew out of a local movement that had initiated a sustainable city plan in 1994 and had revised it over the years. Given the window of opportunity created by the city plan, and support within society, Shannon Biggs, Mark Gold (then chair of the Santa Monica Task Force on the Environment), and Linda Sheehan drafted various versions of an ordinance and presented them to community members and the Santa

Monica City Council in 2012. Throughout the year, multiple drafts were edited to accommodate various community concerns, showing how contestation and adaptation are part of the policy process even when there is support for RoN.⁵ Ultimately, the version that unanimously passed in April 2013 was drafted in coordination with a multitude of stakeholders, including a significant role by city attorney Marsha Jones Moutrie.⁶

Santa Monica's ordinance acknowledges the influence of RoN and Earth jurisprudence norms diffusing through transnational networks. It highlights this "new paradigm that recognizes the rights of the natural world to exist, thrive and evolve" (City of Santa Monica 2013). It cites as justification precedents like the 2008 Constitution of the Republic of Ecuador and the December 2010 City of Pittsburgh Community Bill of Rights (which bans natural gas drilling within the city limits) and "elevates the rights of people, the community and nature over corporate rights" (City of Santa Monica 2013). Similarly, it notes other legislation emerging around the United States (e.g., in Maine, New Mexico, New York, Ohio, Pennsylvania, and Virginia) that recognizes the rights of natural communities and subordinates corporate rights to local sustainability efforts.

After delineating a number of human environmental rights, section 4.75.040 of the ordinance states, "Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City of Santa Monica. To effectuate those rights on behalf of the environment, residents of the City may bring actions to protect these natural communities and ecosystems, defined as: groundwater aquifers, atmospheric systems, marine waters, and native species within the boundaries of the City" (City of Santa Monica 2013).

Recognizing that RoN challenges vested corporate interests, and taking into account the inherent weakness of local legal provisions, the ordinance roots its RoN declaration within democratic principles of community self-determination, stating, "All residents of Santa Monica possess the right to self-governance and to a municipal government which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities, and their directors and managers, do not enjoy special privileges or powers under the law that subordinate the community's rights to their private interests" (City of Santa Monica 2013).

In chapter 1 we discussed how RoN is framed differently as it is applied in particular contexts, producing distinct institutional expressions. In Santa Monica, RoN is framed as a tool for implementing a more ecologically sustainable municipal development policy. For this reason it differs from the other US ordinances in this book in several key ways that blend elements of the Nature's rights model (e.g., recognizing unique rights for all ecosystems) with the legal personhood model (e.g., addressing RoN proactively by embedding it within an ecosystem management decision-making process).

Santa Monica's ordinance takes a proactive approach, providing a model for sustainable development to work proactively toward, rather than reacting to a specific threat such as sewage sludge or fracking. More important, because the ordinance incorporates RoN into municipal-level sustainability policy, it creates a process for defining it through specific and measurable indicators regarding ecosystem sustainability that are regularly reported and verified. Noting inadequacies in existing national and state environmental laws, the Sustainable City Plan and its oversight bodies created scientifically based indicators to measure the implementation of RoN based on their goal areas of resource conservation, environmental and public health, economic development, housing, human dignity, open space and land use, community education and civic participation, arts and culture, and transportation. Within each goal area, measurable indicators are identified and reported on every twenty-four months, as mandated in the sustainability ordinance, with public hearings "to ensure compliance" (City of Santa Monica 2013). This process is one of the first experiments with creating standards for measuring the protection (and violation) of RoN within regulatory policy, and provides one example of what implementation can look like in a Western legal context without Indigenous influence.

Santa Monica's RoN leaders report that codifying measurable indicators has been important for identifying specific rights and whether they are being protected. When visiting the Santa Monica Sustainable City Plan website, one can view dashboards of indicators to gauge whether or not the city is on track. The city employs two types of indicators: (1) system-level indicators to measure the condition of a goal area (e.g., environmental and public health) and (2) program-level indicators to measure performance of

a program or actions taken by the city or community stakeholders (City of Santa Monica, n.d.). For example, because of cited inadequacies of the Clean Air and Clean Water Acts, the resource conservation goal includes indicators for water use, with a 2020 target of 123 gallons per capita while limiting increased use to one hundred local sources; 72 percent of the water used is sourced locally (as of 2019) and that figure falls short of the 100 percent goal. Under the environmental and public health goals, marine debris is an indicator, and the 2020 target is zero trash from plastics, packaging, cigarettes, and other forms of refuse. The health of Santa Monica Bay also needs improvement, according to the 2020 targets; in 2019 there were 170 warnings or beach closures due to poor water quality from bacterial contamination (one example of municipal action taken in response to violations of RoN).⁷

The city's Sustainable Groundwater Management Plan, created to implement the Sustainability Rights Ordinance, provides another example of how RoN is institutionalized through regulatory policy. It states, "This groundwater ordinance is adopted to effectuate the Sustainability Rights Ordinance, the SGMA [the Sustainable Groundwater Management Act], and to protect the health, safety, and general welfare of the residents of the City and its natural communities and ecosystems by ensuring groundwater extracted within the City and water wells located within the City will not cause or contribute to the overdraft of the City's underlying aquifers or to their pollution or contamination, or lead to subsidence of land within the City" (City of Santa Monica 2019). This subsequent application of RoN not only illustrates the strengthening of Earth jurisprudence norms regarding humans' relationship with Nature but also RoN's impact on sustainable development policy regarding groundwater management.

While the court cases discussed throughout this book outline the damages inflicted on the natural world and communities by extractive industries, the Santa Monica case highlights a pathway toward curbing such atrocities before they reach irreparable levels. The sustainability ordinance cites Santa Monica's commitment to "restoring, protecting, and preserving the natural environment" and includes specifically "air, water, soil, climate, among other living things" (City of Santa Monica 2013, sec. 4.75.030). The dashboards on its website illustrate how indicators of RoN violations might be measured in a Western legal context, and also provide a transparent

framework for community members to measure their rights. This innovative adaptation provides an important tool for protecting RoN in a proactive manner and mandating the responsibility for protecting Nature. While Santa Monica is similar to Ecuador in its conception of rights-bearing Nature and the rights recognized, it differs from Ecuador in its proactive approach to implementation of RoN through data-driven regulatory policy supported by standards. Additionally, while Ecuador and New Zealand illustrate the use of RoN to pursue an approach to sustainable development rooted in Indigenous cosmologies, Santa Monica demonstrates a Western application of RoN to achieve sustainable development.

Notably, Santa Monica has not experienced the legal challenges that have plagued many other US RoN ordinances, particularly early cases in Pennsylvania. That may be because of its proactive approach of embedding RoN within decision-making policy rather than challenging existing behaviors through the courts.

RIGHTS OF NATURE IN US TRIBAL NATIONS

While most of the RoN laws in the United States are emerging in non-Indigenous communities, it is important to note that a growing number of US tribal nations are recognizing RoN in tribal law.⁸ Here we discuss four examples to highlight additional legal pathways through which RoN is being codified in the United States and to show how the legal provisions chosen evolve in response to local context, adaptation, and experimentation. US tribal communities have employed unique local tools given their status as sovereign nations within the US federal structure. They have employed aspects of legal personhood provisions from the cases in New Zealand (see chapter 6) and Colombia (see chapter 8). These efforts have been supported, in part, by a global network of RoN lawyers and activists from CELDF, the Earth Law Center, and Movement Rights, three RoN organizations that have been represented on the board of GARN and who participate in the United Nations (UN) Harmony with Nature Programme (detailed in chapter 2).

Federally recognized tribes and Alaska Native villages are organized under the oldest agency in the US Department of the Interior, the Bureau of Indian Affairs, which administers services to 573 tribes, fifty-five million

surface acres (and fifty-seven million subsurface acres), and 1.9 million American Indian and Alaska Natives (Bureau of Indian Affairs, n.d.). Given the US's federal structure and the sovereign status of Indigenous nations, each tribal nation (recognized by the US government) has its own constitution and governance structure. For that reason, tribal nations in the United States have unique opportunities and challenges when implementing RoN.

Because of their sovereign status in the country, tribal nations have the right to self-determination, giving them some advantage over communities like Grant and Highland Townships in Pennsylvania. The US government also has a responsibility to uphold its treaties with the nations and to protect tribal rights, assets, lands, and resources. Differences arise, however, when mineral leasing agreements conflict with tribal sovereign rights. While the Indian Mineral Leasing Act of 1938 strengthens tribal nation self-determination over mineral leases, the Bureau of Land Management and the Bureau of Indian Affairs also supervise and approve many oil and gas leases in tribal lands. This complex structure, along with the federal government's authority to approve lease agreements and approve tribal nation constitutions and constitutional amendments, pose obstacles to tribal nations' efforts to strengthen Earth jurisprudence norms and Indigenous cosmologies of harmony with Nature within the strictures of the Western legal system. Nevertheless, we examine several attempts to do just that in the sections that follow. In this way, the case studies show how tribal nations are contributing to the evolution of RoN jurisprudence by using RoN to translate Indigenous understandings of humans' relationship to Nature into Western law.

THE HO-CHUNK NATION

In 2018, the Ho-Chunk Nation of Wisconsin became the first Native American nation in the United States to amend its tribal constitution to recognize RoN. This effort was led by Bill Greendeer, a Ho-Chunk member who studied law to be able to translate Ho-Chunk values and cosmology into Western law in order to protect his tribal lands from tar sand oil developments and the Enbridge pipeline that is planned to enter Ho-Chunk territory from Western Canada through Lake Superior and down through Wisconsin to

Illinois. Greendeer had a long history of allying with Viterbo University professor Julie de la Terre, neighboring tribes in Minnesota, and the environmental group Honor the Earth (led by Winona LaDuke) to protest multiple oil pipelines. The tribal protestors call themselves “water protectors” and employ slogans like “Water Is Sacred” (Kaeding 2018). The Ho-Chunk Nation’s constitutional recognition of RoN marks a new legal strategy in its long battle to protect its homeland. At its root, the strategy is to use RoN to codify Ho-Chunk values and cosmology into Western law in order to force non-Indigenous actors to recognize these values—and, ideally, to facilitate a paradigm change.

Bill Greendeer relayed his story at the Rights of Nature Symposium at Tulane Law School in New Orleans in October 2017. He told conference members that far from being a new concept, RoN “has been around for thousands of years. For Ho-Chunk, rights of nature has always been around.” The Ho-Chunk believe that people’s connection with Nature emanates from their heart and is innate, causing us to all be “in this together” (Greendeer 2017). The tar sands mines that are in his tribe’s territory were leveling the forests, disturbing the animals, and contaminating the waters. Greendeer explained that for Ho-Chunk people “the tar sands, the water, the forests are sacred, like altars” (Greendeer 2017). Mining was tearing apart what his tribe held sacred.

Around 2014, Greendeer began studying law, attending lectures at the University of Wisconsin and CELDF workshops, supplementing the education he received by protesting. Explaining his motivation, he noted, “I want to know about laws and use white man’s system to be able to protect nature. It means something to learn. I don’t know about this, but I know about nature and sacred. I talk to animals and to plants; to protect sacred medicine plants, I dissect and learn; learn about law and the constitution. That’s where I really thought that was something we could really use. The resolution for the constitution for rights of nature just verbiage, laws is just verbiage” (Greendeer 2017).

Greendeer is expressing a sentiment shared by Kirsti Luke of New Zealand, a Māori leader and negotiator for the rights of the forest Te Urewera (see chapter 6): that even though the notion of rights is a Western legal construct foreign to many Indigenous peoples, RoN laws can constitute Western legal tools for protecting and strengthening peoples’ deep spiritual

connection to their land and instill a responsibility to protect it. The formal RoN laws that are crafted are mere words that reflect much deeper understandings, meanings, and responsibilities. In other words, RoN legal provisions are merely a tool for transforming human systems to be consistent with Earth jurisprudence.

For this purpose, in 2015, Bill Greendeer and Julie de la Terre presented a RoN amendment to the Ho-Chunk Nation through its General Counsel. It passed in 2016, but was rescinded and rewritten by Greendeer in 2017 to fix a procedural requirement needed to amend the constitution. The vote to continue the process passed by over one thousand votes. In December 2019, the Ho-Chunk were preparing to send ballots to all tribal members for a second vote, as required for constitutional amendments. But in order for a new constitutional amendment to pass, the US secretary of the interior must approve it, a factor that often dissuades tribal nations from pursuing constitutional changes. At the time of this writing, the constitutional amendment was awaiting approval by the Bureau of Indian Affairs—a process that will provide lessons for other tribal communities considering RoN amendments in tribal constitutions (Greendeer 2017).

THE PONCA NATION

RoN networks fostered new laws in the Ponca Nation as well. Around 2015, Bill Greendeer traveled to Oklahoma to meet with the Ponca, a tribal community of about four thousand members headquartered in White Eagle, Oklahoma, to discuss RoN. During the same time period, Casey Camp-Horinek, Ponca tribal leader and member of the Ponca Business Committee (the seven-member, elected, governing body), traveled to Hawaii for a conference on women and RoN with Osprey Orielle Lake, director of the Women's Earth and Climate Action Network, as well as Shannon Biggs and Penny Opal Plant of Movement Rights, a nongovernmental organization dedicated to RoN advocacy (Greendeer 2017). These network connections planted the seed of RoN as a tool to express the Ponca Nation's deeply held belief system within a Western legal framework.

Camp-Horinek admits that when presented with the idea of RoN, she did not like it. "It didn't feel right," she explains; "I thought that no law should be created around Nature. Nature is not law. It was like building

cages to put ourselves in this. Over time, I realized that colonists need to understand [our way of life and cosmology] and that was to create a right of nature law in the Ponca Nation.” Creating RoN laws, she notes, is “reacting and becoming responsible to our mothers, grandmothers” (Camp-Horinek 2018). She and the Ponca viewed RoN as a codification of their responsibilities to previous and future generations.

Camp-Horinek’s distrust of the US legal system is echoed by other Indigenous leaders due to their centuries-long experience of US law being used as a tool of oppression. The infusion of both RoN legal provisions and tribal norms and beliefs into a Ponca Nation statutory law is illustrative of the mutual learning between Western and non-Western systems, as well as the contributions of Indigenous wisdom and epistemology in Western legal structures. Such learning was fostered by network connections with RoN activists in Movement Rights and other Indigenous leaders like Bill Greendeer and those in Ecuador and New Zealand. When discussing Indigenous peoples’ efforts to incorporate their wisdom regarding humans’ relationship to Nature into Western law, Camp-Horinek (2018) notes that “the eagle and the condor are coming together. Red nations from the north to the south will rise and teach how to live in harmony with all that is.”

Camp-Horinek explains that RoN is a form of “reviving sacred natural sites. We didn’t choose the sites; they chose us” (2018). The Ponca sacred sites are threatened by a Philips 66 refinery and the Keystone pipeline that is scheduled to traverse their territory. Camp-Horinek claims that oil wells in the territory, and more recently hydraulic fracturing and injection well sites, have caused between six hundred and eight hundred cancer and autoimmune diseases, over ten thousand earthquakes, and numerous methane leaks. Given these threats to her community, Camp-Horinek held community meetings and, in January 2019, the Resolution Recognizing the Immutable Ponca Tribal Rights of Nature was passed by the Ponca Business Council. This is now a statute, and tribal members are considering how and when to enforce it to protect themselves from oil pipelines and further fracking and wastewater injection wells.

Unlike the Ho-Chunk, the Ponca Nation elected not to work at the constitutional level in order to move quickly. Camp-Horinek explains

that the resolution and statute were more feasible tools for their nation, since a constitutional amendment would have taken too long and would need to be approved by the Bureau of Indian Affairs. By contrast, the resolution gives the Ponca Tribal Court the power to enforce penalties for crimes against Nature, punishable by up to one year in prison and \$5,000 for each day of each offense. If a crime against Nature is committed by a corporate entity, the resolution states that the chairman of the board of the corporation should be held personally responsible for the crime (Ponca Tribe of Oklahoma 2018). Secondary laws establishing indicators for these crimes have yet to be developed.

The Ponca RoN resolution contains several sections that illustrate the consistency between Ponca cosmovision and Earth jurisprudence. For example, it recognizes natural laws that predate human laws and apply to all beings. It recognizes that Nature “gives sustenance and the opportunity for all people for all intellectual, moral, social, and spiritual growth,” and states that the well-being of all “people throughout the world” depends on the protection of Nature. Like New Zealand’s RoN laws, the Ponca resolution establishes a duty and responsibility “to not harm all things in Nature which are related to us and are a part of us.” It is based on the Ponca belief of original instructions from Wakanda that “human beings are a part of Nature; that water is the container of all life, and that all life is the container of water.” Unlike New Zealand’s RoN laws, however, the Ponca law does not specify new governance structures to enforce these rights. Rather, it leaves enforcement responsibility to the Ponca Tribal Court and prosecutor for charges of crimes against nature (Ponca Tribe of Oklahoma 2018).

THE CHIPPEWA AND OJIBWE NATIONS

Neighbors of the Ho-Chunk, the Chippewa of Minnesota are similarly fighting the Line 3 oil pipeline through their territory, as well as new copper and nickel mines in the region. In response to a rollback of environmental protections for *manoomin* (wild rice) in Chippewa and Ojibwe territory, the Governor Mark Dayton of Minnesota created the Task Force on Wild Rice. Just before he left office in 2018, Dayton removed all but two Indigenous representatives from the Task Force. To secure better tribal participation,

the Minnesota Chippewa Tribe (which makes up six of the seven Ojibwe bands in Minnesota) established its own Tribal Wild Rice Task Force with representatives from eleven of the state's Chippewa bands and Dakota communities (*Indian Country News* 2019). After extensive community discussions and evaluation of different models of RoN legislation (e.g., in the Ho-Chunk and Ponca nations and in Bolivia, Ecuador, and New Zealand), the White Earth Band of Ojibwe and the 1855 Treaty Authority passed laws recognizing the rights of *manoomin* for today and for future generations.

The Resolution Establishing Rights of Manoomin emphasizes the linkages between RoN and Indigenous cultural rights, echoing arguments about biocultural rights developing in Ecuadorian and Colombian courts (see chapters 4 and 8). It cites *manoomin* as a “gift to the Anishinaabe people from the Creator or Great Spirit and an important staple of their diets for generations,” and notes the “central element of *manoomin* for Anishinaabe culture, heritage, and history, as well as the integral part of the wetland ecosystems and natural communities of their traditional lands” (1855 Treaty Authority 2018).⁹

The resolution echoes rights in Ecuador's constitution, recognizing the right of *manoomin* to “exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation.” The resolution reserves members' right to harvest *manoomin* and guarantees their right of sovereignty in doing so. The 1855 Treaty Authority reserves the right to enforce the protections of *manoomin* and cites the Clean Water Act, sections 401 and 404, as mechanisms that permit the collective rights of water, “the ecosystem that supports our way of life and because water is life and supports our primary foods of wild rice, fish, and game.” The resolution sets punishment for harm to *manoomin* as the maximum fine allowed under tribal law (1855 Treaty Authority 2018).

By framing the rights of *manoomin* as a supplement to the Clean Water Act, the resolution provides a new pathway for infusing tribal norms and cosmology into Western legal traditions. The Chippewa resolution also illustrates yet another adaptation of RoN in response to learning from other Indigenous cases globally (cited in the resolution and in supplementary documents), as well as from the Ho-Chunk and the Ponca.

THE YUOK TRIBE

Having for centuries lived off the Klamath River and claiming sacred places along it, the Yurok Tribe in May 2019 passed the Resolution Establishing the Rights of the Klamath River, which reflects a growing recognition among US tribes that their laws need to explicitly reflect their values as a community, including their relationship to Nature (Yurok Tribal Council 2019).

The Yurok are the largest tribe in California, numbering about fifty-six hundred members. They signed a treaty with the United States in 1851 but were not recognized by Congress until 1887, when their land was divided into parcels for each tribal member, with surplus lands given to non-Native homesteaders (Smith 2018). The forcible movement of the Yurok to smaller areas of lands along the Klamath impacted their way of life as fishers and their ability to visit their sacred places.

This impact rose to the Supreme Court in 1973 after Raymond Mattz (great-uncle of Amy Cordalis, the legal counsel who helped craft the RoN resolution) was arrested for fishing along the Klamath with friends. Five of their gill nets were taken. Mattz sued the state, arguing that their limitation of land and the inability to gillnet fish no longer fit in with the legal definition of what constitutes Indian Country (the name for Indian lands). Ultimately, the case went to the US Supreme Court, which ruled that the Yurok Tribe was part of Indian Country and that treaty rights to fish by traditional means had to be recognized (US Supreme Court 1973; see also Smith 2018).

This early conflict cemented Yurok Indian territory and was the first of many conflicts over fishing rights between the tribal nation, the state, agricultural communities, and non-Native fishers. Bill Bowers, Yurok Tribe member and father to tribal attorney Amy Cordalis, remembers the phrase “Can an Indian, save a fish,” which characterized the acrimony between tribal and nontribal fishers during the 1970s and 1980s. But by 2006 the Klamath Hydroelectric Project and its eight dams were lessening the flow of the river to the point that over four hundred miles of it were closed to fishing (Smith 2018). Four of these dams were scheduled to close by 2020, but the Klamath still contains seven hundred miles of canals and twenty-eight pumping stations for the Klamath Irrigation Project, which can drain nearly half the river’s water each year (Nascimento, n.d.).

Another threat that inspired the current RoN resolution was the dying off of over sixty thousand salmon in 2002, followed by years of drought. Additionally, 2014 saw 81 percent of juvenile salmon infected with *Ceratonova shasta*, a deadly parasite that thrives when water flows are low. The percentage increased to 91 in 2015. In *Yurok Tribe et al. v. US Bureau of Reclamation et al.*, the US Ninth Circuit Court ruled in favor of the tribe, empowering them to restore fisheries that were “staggering” and “unlawfully long overdue” for restoration (Smith 2018). In April 2018, under appeal by the Klamath Irrigation Project (composed of Klamath basin farmers), the court ruled again in favor of the Yurok Tribe.

It was against this backdrop that the tribe wrote and adopted its RoN resolution in 2019. Mirroring the cosmology of other Indigenous groups, the Yurok resolution links RoN with Indigenous cultural rights. It recognizes rights for the “whole land” of the Yurok territory, “to include the river, the trees, the salmon, elk, deer,” and other forms of life. It also recognizes that “all native species within and dependent on the Klamath River ecosystem are vital to the cultural, legal, subsistence, and economic interests” of the tribe (Yurok Tribal Council 2019). Further, the Yurok weave in the UN Declaration of the Rights of Indigenous Peoples, articles 26 and 29, to sustainably harvest plants and fish and to conserve and protect territory. In this way the Yurok resolution frames RoN as part of a set of biocultural rights that include Indigenous rights, similar to the biocultural rights expressed in Ecuador’s court rulings relating to the Cofán and Waorani nations (see chapter 4) and Colombia’s Constitutional Court ruling for the Atrato River (see chapter 8).

Like the Māori of New Zealand, the Yurok view the protection of the Klamath as their “sacred responsibility . . . and essential to their survival.” Yet the Yurok resolution does not form a guardian council for its protection, common in legal personhood model laws, instead favoring the Nature’s rights model approach of granting all Yurok people the right to protect the Klamath River in court (Yurok Tribal Council 2019). The RoN norm underlying the Klamath River’s right to “exist, flourish, and naturally evolve” similarly draws on developments in Nature’s rights model countries. Thus, the Yurok RoN resolution demonstrates how the translation of Indigenous cosmology into Western legal codes within a sovereign tribal system continues to prompt the evolution of RoN legal frameworks.

CHAPTER SUMMARY

These US cases differ in many respects from those covered in previous chapters, but they continue to tell a common overall story. Local communities increasingly concerned with the degradation of local ecosystems searched for new legal tools to expand their authority to protect the ecosystems on which they depend. Chapter 3 showed how early RoN laws in the United States, Ecuador, and New Zealand emerged through parallel and largely independent processes, producing distinct models for institutionalizing RoN and Earth jurisprudence norms. This chapter shows how transnational networks that were subsequently formed facilitated new RoN legal provisions within the United States that adapted the Nature's rights model, causing it to evolve. Members of RoN networks helped diffuse the idea of RoN to various localities, educating and mobilizing communities, sharing lessons learned about implementing RoN and the implications for designing new laws, providing legal representation, and advising governing bodies and communities. Yet RoN was given different institutional expression in each case due to the need to adapt to unique local circumstances and challenges.

The Grant Township, Highland Township, and Santa Monica cases provide examples of what RoN can look like when implemented in a Western legal context not influenced by Indigenous cosmovision. These ordinances root RoN within traditional US values about the right of communities to self-determination. The concept of "community" is expanded to include both human and "natural communities," the latter having the right to "exist, flourish, and naturally evolve" (Grant Township 2014; Highland Township 2013).

The ordinances also illustrate various pathways for pursuing RoN at the local level and the challenges this poses. Because of the US federal structure and political paralysis in Congress, activists have focused instead on mobilizing local community support in order to codify RoN through local ballot initiatives rather than stronger national laws. While this pathway is understandable, the subordinate status of local ordinances presents an obstacle to the implementation of RoN. The efforts in Grant and Highland Townships exemplify municipal-level attempts across the United States to implement RoN through dedicated community organization and mobilization.

While they show growing social support for RoN and Earth jurisprudence norms, the cases also illustrate the limitations of trying to enforce local legal provisions through the courts. We argue, however, that these local ordinances nonetheless constitute significant tools in norm contests not because they have proven effective in court but because they are raising the salience of RoN within the United States and helping to mobilize social support for normative change. The perseverance of Grant Township shows how powerful it can be to organize and activate a social movement; its experimentation with the use of a home rule charter and the Environmental Rights Amendment of the Pennsylvania constitution shows that the norm contest is far from over.

The Santa Monica case suggests that it may be more influential to persuade city officials to incorporate RoN into their policy planning process for sustainable development. Rather than challenging violations in court, this strategy incorporates RoN into the principles guiding planning for the city's long-term goals. This allows regulatory standards and benchmarks to be linked to RoN proactively. Perhaps Santa Monica's most important adaptation is the development of quantifiable metrics for measuring the well-being of ecosystems, which serve as a set of standards for protecting RoN (and human environmental rights). These metrics are placed on a website and publicly reported every twenty-four months. One indicator of the strength of Santa Monica's Sustainability Rights Ordinance is the subsequent Sustainable Groundwater Management Plan (City of Santa Monica 2019), which cites the ordinance as grounds for managing groundwater in an ecologically sustainable manner. As of this writing, residents have not challenged any part of the ordinance.

Each of the three municipal cases studied provide lessons for incorporating RoN into sustainable community planning. Santa Monica is moving forward on metrics and standards that clearly define RoN. Highland Township demonstrates the need for both municipal supervisor and citizen support for continued implementation of RoN in a community, showing that both structure and mobilization matter. Finally, Grant Township shows that it is problematic to use procedural requirements like conventional environmental assessments as a metric for sustainability, not to mention grounds for dismissing RoN. We address this issue in more detail in chapter 8.

Each of these communities is acutely aware that it is on the front lines of a normative battle to redefine what sustainable development means by reconceptualizing humans' relationship with Nature. US tribal communities are also working to facilitate this paradigm shift. Even though the rights framing is foreign to many, a growing number of tribal nations are adopting RoN legal provisions in order to translate Indigenous understandings of humans' relationship and responsibility toward Nature into legal provisions that are more easily understood by non-Indigenous audiences. In addition to enhancing their ability to protect their ecosystems, the hope is that these RoN laws can also help non-Indigenous audiences to understand their paradigms.

Unlike in the US municipal cases, tribal nations are unique, sovereign entities with the capacity to amend their constitutions. Each has its distinct governing system, and each has pursued a different pathway for institutionalizing RoN in the face of challenges, illustrating the kinds of strategic decisions that must be made and the need to adapt to local context.

In each case the US tribes have established unique institutional structures for recognizing the rights of their ecosystems within a sovereign tribal governance system. Notably, the Yurok Tribe cites the UN Declaration on the Rights of Indigenous Peoples and their right to sustainably harvest and fish in their territory. This shows how RoN norm construction in the United States, while grounded within municipalities and tribal nations, interacts with broader global normative developments and treaties that relate to sustainable development.

While the seventeen UN Sustainable Development Goals are neatly boxed and divided into social, economic, and environmental areas, the UN's 2030 Agenda for Sustainable Development clearly speaks to integrated and coexisting principles "in harmony with Nature and all living beings" (United Nations General Assembly, 2015b). The tribal RoN legal provisions model an approach that integrates not only these three areas but also Indigenous and Western epistemologies and legal systems. Consequently, they provide a model for a more holistic approach to sustainable development. The same can be true at the global level: Indigenous knowledge and cosmology, as evidenced by various cases in this book, provide a systems-level approach that can be applied to new ways of thinking about sustainable development. They show how a recognition that human well-being is

tied to the health of the ecosystems that provide the conditions for all life may be incorporated into Western legal frameworks.

The Grant Township, Highland Township, and Santa Monica cases show that a similar systems-level approach can be advanced in non-Indigenous societies by expanding the notion of community to include all members of the biotic community. The important point is that RoN only contributes to a more ecologically sustainable approach to development to the extent that it is used as a legal tool for implementing new systems based on Earth jurisprudence principles, regardless of whether these principles come through Indigenous knowledge or understandings of community rooted in ecological science and environmental ethics. Chapter 8 shows how RoN legal provisions that are divorced from Earth jurisprudence principles can prove ineffective or even produce perverse outcomes.