The Politics of Rights of Nature

Strategies for Building a More Sustainable Future

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CONCLUSION: EARTH JURISPRUDENCE FOR A SUSTAINABLE FUTURE FOR ALL

As we write in September 2020, the entire Western US is being ravaged by catastrophic wildfires. This comes mere months after fires burned more than 38,000 sq mi in Australia, covering virtually all parts of the continent. While bush fires are common each year, scientists with the Australian Bureau of Meteorology say the blazes are fueled by warmer temperatures associated with climate change, "increasing the amount of fuel (dried vegetation) available and reducing water availability because of higher evaporation" (Rice 2020). California and Southern Australia have been particularly hard hit, and this is no coincidence: both have already warmed at least 1.5 degrees Celsius in the last century, the level of warming at which climate scientists have long said we should expect to see more destructive effects of climate change (Intergovernmental Panel on Climate Change 2018; Rice 2020).

With average global warming already surpassing 1 degree Celsius above preindustrial levels, scientific reports documenting the onset of climate change and extreme biodiversity loss have become almost routine. They regularly call for a rapid transformation of human economic, energy, legal, and governance systems to avoid environmental, economic, and social crises that will undoubtedly threaten human well-being if left unchecked (see, e.g., Díaz et al. 2019; and Intergovernmental Panel on Climate Change 2018). This is the context for the United Nations (UN)

General Assembly Resolution A/RES/70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, which calls for "bold and transformative steps that are urgently needed to shift the world to a sustainable and resilient path" (United Nations General Assembly 2015b, 1).

The chapters in this book have shown how people from all walks of life—community and Indigenous activists, lawyers, scientists, government officials, and everyday mothers and fathers concerned about their children's well-being—are working to make the necessary bold transformations where they live. Drawing on Indigenous knowledge, ecological science, or both, the people in our book recognized that a transformation to ecologically sustainable development would require adjusting human systems to be consistent with the scientific laws governing how natural ecosystems function—that is, to live in harmony with Nature rather than constantly battling it and trying to dominate it. This includes changing legal systems to recognize that humans are part of the ecosystems that provide the conditions for human well-being rather than treating humans as separate and distinct from Nature. From Santa Monica, California, to New Zealand, to Zimbabwe, communities are transforming governance systems to manage ecosystems in an integrated fashion, prioritizing continued ecosystem functioning and long-term human well-being over maximizing short-term consumption or profit. Legal systems across the world are being transformed to prohibit activities that would destroy ecosystems' ability to function and to require ecosystems to be restored when damaged so that humans and other species can continue to benefit from them. These people are experimenting with new ways to institutionalize Earth jurisprudence to produce a more ecologically sustainable development.

Throughout the book we have shown how people took inspiration from a relatively vague Earth jurisprudence norm circulating internationally in the early 2000s. The resulting Rights of Nature (RoN) legal provisions emerged through very different pathways, however, owing to different local conditions (as detailed in chapter 3). Consequently, they produced very different models of what RoN looks like in practice. But this is not a simple story of local adaptation of global metanorms; it is a story of how a global RoN norm is being constructed through practice, contestation, and adaptation at the local, national, and international levels, with events at each level

informing those at other levels through a process of multidirectional influence. Together they are shaping the global construction of RoN and, more important, global contestation over how sustainable development should be conceptualized and practiced.

THE UNIQUE TRAJECTORY OF RON AND EARTH JURISPRUDENCE NORMS

The saliency of RoN and Earth jurisprudence norms has increased dramatically over the last fifteen years. By January 2021 there were at least 215 existing or pending RoN legal provisions in twenty-seven countries. A growing number of courts are recognizing RoN, as are international treaty documents. Most recently, the "Zero Draft of the Post-2020 Global Biodiversity Framework," created for the 2020 Conference of Parties of the UN Convention on Biological Diversity, calls for members to "consider and recognize, where appropriate, the rights of Nature" (United Nations Environment Program 2020). To be sure, RoN remains a relatively weak norm. Nevertheless, it has emerged as a salient counternorm to the dominant development norm that views humans as separate from Nature, views everything in Nature as human property that people can use as they wish, and sees the paramount goal of society as limitless growth in consumption and production.

In terms of theory, the rise of RoN is interesting because it follows a different trajectory from other norms, particularly neoliberal norms like human rights. Unlike traditional models of norm diffusion (see chapter 1), RoN and Earth jurisprudence norms challenge the dominant paradigm of powerful Western states and advocate an alternative paradigm that decenters the state. RoN's rise started as a bottom-up process with characteristics of convergent evolution (as discussed in chapter 1) and has gained saliency internationally due to the formation of a large transnational network that is simultaneously advocating for RoN in a wide variety of policy arenas at different levels of government (local, national, and international). This has produced a multidirectional process of norm construction.

Ecuador's experience is illustrative. RoN has advanced more rapidly in Ecuador than in other countries or in international forums. Strong

international RoN laws and norms are not yet available to domestic activists seeking to pressure the state to abandon its extractivist development agenda through the classic "boomerang" approach (Risse, Ropp, and Sikkink 1999). As we discuss in chapter 5, this is a key reason Bolivian RoN activists chose to instead frame their struggle in terms of Indigenous rights, which have the force of international law. This is also why Ecuadorian RoN activists are at the forefront of global efforts to establish RoN in international law. Ecuadorian activists are in the unique situation of using RoN as a tool domestically and advancing it as an emerging norm globally. This book has shown that they have had some limited success in both areas.

Together the book's cases demonstrate a dynamic process of interaction and experimentation with applying a nascent global RoN norm to distinct contexts and within unique structures at differing governing levels. As Global Alliance for the Rights of Nature members work with allies and constituents across the world—as the Earth Law Center is doing in Santa Monica, El Salvador, and elsewhere; as the Community Environmental Legal Defense Fund is doing with dozens of US communities; as the Gaia Foundation is doing with local members of the African Earth Jurisprudence Network; as Movement Rights is doing with the Ponca Nation and others; and as Nature's Rights is doing with partners in the European Union—they gather lessons from local experiments and share information and strategies at the global level. Strategies for successful implementation in varying local contexts have been critical learning tools. This is illustrated by the way Grant Township, Pennsylvania's move to adopt a home rule charter influenced the strategies of RoN activists in nearby Highland Township, and how the Whanganui River settlement process in New Zealand influenced Indigenous RoN legal provisions in the United States, as well as court rulings in Bangladesh, Colombia, and India.

The normative content of RoN is simultaneously being constructed differently as it is applied in practice in distinct contexts. In part this is due to the distinct kinds of legal provisions being created based on the different legal pathways available to RoN advocates: a constitutional convention in Ecuador, treaty settlements in New Zealand, national legislative debates in Bolivia and Uganda, local ballot initiatives in the United States, tutelae in Colombia,[1] public interest litigation in India, and meetings to persuade officials to incorporate RoN directly into policy, as has

occurred in Santa Monica, California, and Blue Mountain, Australia. This shows that there is no single best pathway for institutionalizing RoN. Rather, activists use the pathway that presents the best opportunity given local legal and political structures.

Courts have been particularly influential in stimulating the evolution of RoN jurisprudence, and consequently norm construction, particularly when RoN laws are absent. Laws are always subject to interpretation, and the logic judges use to justify their interpretations provides an indirect measure of the saliency of social norms. The fact that judges in multiple countries are interpreting existing laws in new ways to justify recognizing RoN, despite the absence of laws explicitly recognizing it, shows the increased saliency of RoN norms in various countries. But it also partly explains how the normative content of RoN is evolving, as RoN jurisprudence established by courts increasingly combines elements of existing human-centered law with Earth jurisprudence principles. In this Conclusion we discuss in more detail how this is shaping normative debates over how RoN should be structured.

RoN is also being constructed differently because different cultural framings are used to mobilize support in different contexts. Differences are particularly notable between applications in Indigenous and non-Indigenous contexts. RoN framings are also being shaped by the weakness of RoN as an international norm. This helps explain why RoN is increasingly being constructed in a way that frames it as interconnected with human rights, including Indigenous rights, both domestically and internationally. Chapters 4 and 8 show how constitutional courts in Ecuador and Colombia have not only recognized RoN but strengthened its enforcement capacity by using the concept of biocultural rights to frame RoN as necessary in the protection and enforcement of human rights that are recognized domestically and internationally. Chapter 7 shows how tribal nations in North America are making similar arguments about biocultural rights when recognizing RoN in tribal law.

As the number of RoN legal provisions grow and inform one another, this has fueled normative debates at the international level over how RoN should be constructed. One goal of this book is to show what this norm construction process looks like in practice. In this Conclusion we will weigh in on several debates currently facing the global RoN movement

and policy makers, as well as offer initial lessons regarding implementation, based on our observation of RoN in practice to date.

WHY ARE WE TALKING ABOUT LAWS?

In September 2018 the Global Alliance for the Rights of Nature hosted the International Rights of Nature Symposium in Quito, Ecuador, to commemorate the tenth anniversary of the enactment of the 2008 Constitution of Ecuador, the first constitution in the world to recognize RoN. Hundreds of movement leaders from around the world attended to take stock of the movement, address current debates, and plan next steps. We spoke on a panel that discussed the different ways RoN laws are being structured and offered initial lessons. During the question period, a visibly frustrated Ecuadorian Indigenous leader asked, "Why are we sitting here talking about laws? When is the Western world going to start doing its share to protect Nature?" Noting that 80 percent of the world's remaining biodiversity lies in Indigenous-controlled territory (Raygorodetsky 2018), the man argued that the entire burden cannot be shouldered by Indigenous peoples alone; non-Indigenous peoples need to do their fair share.

We believe the man's second question essentially answers his first. It is precisely because non-Indigenous societies need to significantly change their behaviors that so many environmental lawyers at the symposium were talking about RoN laws. Cormac Cullinan describes law as the DNA of a society. Law determines how societies "define, structure, organize, and reproduce themselves" (2011b, 56). It does this primarily by defining relationships within a society. Laws reflect and reproduce the worldviews, values, and behaviors that societies see as appropriate. Yet, as Pella Thiel and Henrik Hallgren write, "laws are not just passive reflections, but themselves have a profound impact on morals, values and belief systems, the sense of right and wrong. . . . Law in this view is central to the project of changing society; only by transforming law will we be able to transform society" (2018, 64).

Nevertheless, it is worth reflecting on the motivation behind the Indigenous man's question. We have attended dozens of presentations on RoN, and hardly one goes by without an Indigenous person asking why

we are talking about laws. We understand that while many Indigenous peoples are sympathetic to the goal of transforming human systems to be consistent with Earth jurisprudence, many are skeptical of Western law's ability to bring this transformation. European-based legal systems have been a tool for exploiting Indigenous peoples for centuries, and many Indigenous peoples are understandably skeptical about lawyers' plans to codify Earth jurisprudence principles by enshrining new rights within Western legal systems. The concept of "rights" is a Western legal construct that creates entitlements that have also been used to marginalize Indigenous peoples in the past.

As we emphasized in chapter 1, RoN laws are not themselves the ultimate goal but rather are meant to be a tool for achieving systemic transformation according to Earth jurisprudence principles. When Indigenous people ask "Why are you talking about laws?" they are essentially asking, "If you want to change your systems, why don't you just go ahead and change your systems?" Their concerns are well founded, and they raise another question: Could Earth jurisprudence be put into practice without RoN laws?

CAN EARTH JURISPRUDENCE BE IMPLEMENTED WITHOUT RIGHTS OF NATURE?

The answer is yes, at least in Indigenous societies whose traditional knowledge and practices are consistent with Earth jurisprudence. For these societies, Earth jurisprudence can be implemented by restoring ancestral knowledge and practices. Indigenous customary law and practices are important not just because of cultural tradition but because they have evolved over centuries to effectively maintain human communities' proper role in the interconnected web of life that constitutes the local ecosystems generating the conditions for well-being. They provide examples of what Earth jurisprudence governance systems might look like.

Consequently, some RoN organizations are working to help Indigenous societies restore ancestral knowledge and practices by providing financial, legal, and administrative support and also by working to remove legal obstacles. Not all of these efforts involve creating RoN legal provisions. For example, the Gaia Foundation works with members of the

African Earth Jurisprudence Network to secure legal protection for sacred natural sites and territories, and the right of Indigenous communities to serve as "custodians" by governing the territory according to customary governance systems (Gaia Foundation, n.d.-c). The first such law in Africa was achieved in Benin in 2012. Benin's Sacred Forest Law empowers Indigenous communities to govern forests they consider sacred according to "customary governance systems, based on Earth's laws, as part of Africa's plural legal systems" (Gaia Foundation, n.d.-a).

The point is that when implementing Earth jurisprudence is seen as recovering Indigenous customary governance systems, an important piece of this process is providing legal protection for these governance systems—removing the existing Western legal and governance systems to make space for the restoration of ancestral knowledge and practices consistent with Earth jurisprudence. One way to do this is to recognize RoN in law, as was done in New Zealand's 2014 Te Urewera Act and Uganda's 2019 National Environment Act. But another way is to pass laws that directly protect ancestral customary law, like Benin's 2012 Sacred Forest Law.

WHAT IS THE PURPOSE OF RECOGNIZING RIGHTS OF NATURE IN LAW?

The foregoing discussion suggests that the purpose of RoN legal provisions may be different in Indigenous and non-Indigenous societies. RoN legal provisions are meant to be a tool for transforming paradigms (and consequently legal, socioeconomic, and governance systems), particularly in non-Indigenous societies. But for some Indigenous peoples, the utility is merely to remove legal obstacles to recovering ancestral knowledge and practices. While RoN is a foreign concept to many Indigenous groups, the Te Urewera case illustrates how RoN laws can be compatible with Indigenous rights, like self-determination and preservation of culture, when they are used to create legal space for recovering Indigenous customs and values consistent with the principles of Earth jurisprudence. By removing Te Urewera from the existing environmental management legal system and empowering the Tūhoe iwi to retake their traditional place as *kaitiaki*, or Te Urewera's guardians, the Te Urewera Act created a legal space for the

Tūhoe to restore their self-determination (*mana motuhake*) and begin the long process of recovering ancestral knowledge, customs, and practices to reconnect their people to the land.

But what is the purpose of RoN laws in non-Indigenous societies, where implementing Earth jurisprudence does not involve recovering ancestral knowledge but instead radically transforming systems according to a fundamentally different paradigm? If law is the DNA of these societies, the idea is to "reprogram" the societies to operate according to the new paradigm. Existing law operates as "a system of relationships among sovereign individuals who exercise their sovereignty over private property, which is seen as an extension of themselves" (Ito 2019, 22). Legally, this sovereignty can only be limited by other subjects with similar formal rights. Consequently, the strategy is to recognize ecosystems as subjects with rights, forcing economic rights to be balanced against ecosystems' rights to exist and function, and in the process transforming the law's paradigm regarding humans' relationship to Nature.

Assuming this strategy is possible, how should RoN laws be structured to best achieve this paradigm transformation? This is currently an important debate within the RoN movement. It tends to be framed in terms of the pros and cons of legal personhood for Nature.

THE PROBLEM WITH STRUCTURING RIGHTS OF NATURE AS LEGAL PERSONHOOD

Arguably the most important difference between the Nature's rights model and legal personhood model is that the former recognizes ecosystems as possessing unique rights, while the latter extends human rights to ecosystems. It is worth reiterating how these differences emerged. New Zealand's pioneering legal personhood provisions were modeled on the concept of "legal fiction"—the practice of legally treating nonhuman entities as if they were human (i.e., extending human rights to nonhuman entities). Following the New Zealand laws, courts in Bangladesh, Colombia, and India issued rulings recognizing various ecosystems (e.g., rivers, the Amazon basin, the Himalayan mountain range) as legal persons despite the fact that these countries had no RoN laws. Citing the New Zealand laws, these courts

interpreted existing laws regarding environmental protection and human rights to justify extending legal personhood to ecosystems.

In the absence of laws recognizing distinct substantive rights for ecosystems, the courts simply extended some of the same rights possessed by human beings (legal personhood) to ecosystems, fitting RoN into the existing human-centered legal framework. This has caused the jurisprudence underlying RoN to evolve in a way that many scholars and advocates find problematic (see, e.g., Grear 2019; Margil 2019; and O'Donnell 2019).

Because legal personhood is already established in law, and has a long history of being applied to nonhuman entities, like corporations and ships, it is more easily transferable from one legal system to another. This has no doubt facilitated the rapid proliferation of RoN legal provisions. But legal personhood establishes RoN stripped of Earth jurisprudence content. We argue that this is problematic, and potentially counterproductive, both for achieving RoN advocates' goal of system transformation and for environmental protection more generally.

First, the language and conceptual framing of legal personhood distorts the relationship between humans and other members of biotic communities identified by Earth jurisprudence and ecological science. It anthropomorphizes ecosystems in a way that reproduces the disconnect between human law and the laws governing the natural world, re-creating the problems that plague conventional environmental law (as discussed in chapter 1). This can be seen through the Indian court ruling granting legal personhood to the Ganga (or Ganges) and Yamuna Rivers (as detailed in chapter 8).

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

From the Earth jurisprudence perspective, guardianship is not about managing Nature like a parent would manage a child but rather about guarding the relationship between humans and other members of the biotic community.[2] The goal is managing human behavior to maintain balance so that the ecosystem on which all members (including humans) rely for their well-being continues to function. The Santa Monica and Te Urewera cases provide examples of what this looks like in Indigenous and non-Indigenous contexts. By distorting this understanding of what guardianship is about, legal personhood undermines the goal of normative and system transformation at the heart of the RoN project.

A second problem with legal personhood is that it creates legal liabilities for ecosystems. This has already produced perverse incentives, including those in the Indian court rulings outlined in chapter 8. The idea that ecosystems have the same responsibilities to humans that humans have toward each other is absurd. We cannot hold a river liable for flooding, or hold the climate accountable for damage caused by sea level rise. Holding ecosystems accountable to human law merely reproduces the misguided idea that humans can bend the laws of Nature to their will. But as Bill McKibben (2017) notes, "physics doesn't do compromise."

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

Beyond philosophical arguments, there is evidence that granting legal personhood to ecosystems without recognizing their own substantive rights can undermine societal values favoring environmental protection. Erin O'Donnell (2019) examines the historical performance of

environmental water managers (EWMs), created in the mid-1990s, as a proxy for studying the effect of legal personhood for rivers. EWMs are organizations with legal personhood status that manage water for environmental benefit. They have essentially the same legal form as rivers with legal personhood status represented by human guardians. O'Donnell finds that in many cases EWMs created new cultural narratives that framed river ecosystems as just another water user competing with other water users for water resources—"a mere participant in the water market" (2019, 7). Legal personhood anthropomorphized ecosystems in a way that stripped them of their status as worthy of protection. Framed as a competitor in water markets, humans began to see Nature as a legal entity that could (and should) protect itself and thus no longer required human protection. O'Donnell shows that in some cases this produced a weakening of statutory environmental protections.

O'Donnell (2019) acknowledges that legal personhood has worked better in places like New Zealand, where ecosystems (represented by their guardians) are inserted into collaborative integrated ecosystem management bodies that operate according to Indigenous cultural values rather than the logic of market competition. Regardless, her study provides a cautionary tale of the perverse outcomes that are often produced by recognizing RoN in the form of legal personhood divorced from Earth jurisprudence.

The key point is that if the goal is transforming systems to be more ecologically sustainable—changing the DNA of Western legal systems and society—then it is essential that RoN not be stripped of Earth jurisprudence content. Adapting RoN legal provisions to fit within existing anthropocentric legal and socioeconomic systems will at best be meaningless and will at worst produce perverse outcomes. Legal personhood for ecosystems might work when this is accompanied by new governance institutions that manage ecosystems according to Indigenous cultural values or other principles that are consistent with Earth jurisprudence, as happened in Colombia and New Zealand. But otherwise, the transformative potential of RoN likely requires legal provisions recognizing Nature as possessing unique substantive rights, and humans possessing responsibilities toward Nature.

EARTH JURISPRUDENCE AND CHANGING CONCEPTIONS OF SUSTAINABLE DEVELOPMENT

Increasing recognition of RoN (and Earth jurisprudence generally) in multiple domestic and international policy arenas is combining with growing awareness of the twin crises of climate change and biodiversity loss to reshape debates about how sustainable development should be conceptualized and practiced. While the term sustainable development has been used for about fifty years, its meaning has changed, particularly with the advent of the UN's Agenda 2030 and scientific understandings of the Anthropocene era.

The 1972 UN Conference on the Human Environment in Stockholm acknowledged the interlinking of economic growth and development, emphasizing the human centrality of our system. That same year, the book *Limits to Growth* (Meadows, et al 1972) introduced our world to systems-level thinking and highlighted the vast interconnectedness of our planetary limits, our economic system, and our societal way of life. Following that, in 1987, the Brundtland Commission coined the term *sustainable development* and entered it into our international vernacular and policy frameworks. The definition of the term then was "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (Brundtland 1987, 41).

The urgency of recent intergovernmental scientific reports showing the onset of climate change and mass extinction through biodiversity loss (e.g., Díaz et al. 2019; and Intergovernmental Panel on Climate Change 2018) and scientists' collective recognition of those impacts on a new era—the Anthropocene—have moved the international community away from a definition centered on human systems and exponential economic growth to one that recognizes an integrated set of "three pillars" of sustainable development (economic, social, and environmental) in the Agenda 2030 resolution (UN General Assembly 2015b). This shift began in 2002 at the UN World Summit on Sustainable Development in Johannesburg and expanded at the UN Conference on Sustainable Development (Rio+20), resulting in the *Resolution Adopted by the General Assembly on 27 July 2012: The Future We Want*. Built on knowledge of our changing planet and a systems-based holistic view of our future, the Rio +20 document expands

the meaning of sustainable development to "promoting sustained, inclusive and equitable economic growth, creating greater opportunities for all, reducing inequalities, raising basic standards of living; fostering equitable social development and inclusion; and promoting integrated and sustainable management of natural resources and ecosystems that supports inter alia economic, social and human development, while facilitating ecosystem conservation, regeneration, and restoration and resilience in the face of new and emerging challenges" (UN General Assembly 2012b, para. 4).

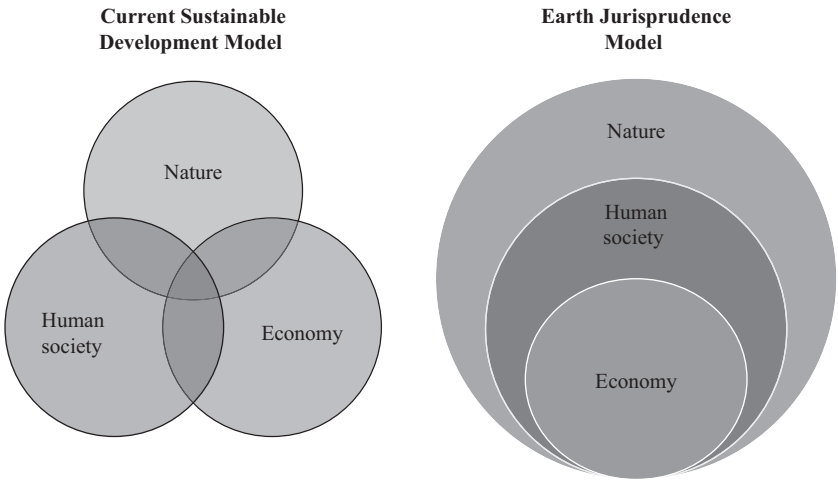
Given the complexity of global environmental challenges like climate change and sustainable development, scholars and policy makers are increasingly calling for governance systems to be transformed to manage people and natural resources in an integrated way, recognizing the interlinkages among all elements of ecosystems, including human communities (Bleischwitz et al. 2018). Jeffrey Sachs notes that in addition to the social, economic, and environmental interlinkages, good governance—defined as "the rules of behavior"—is the foundation for sustainable development, and critical for achieving the UN's Sustainable Development Goals (Sacha 2015, 7, 502). Herein lies the importance of Earth jurisprudence; it encompasses the two key elements of sustainable development that Sachs outlines: (1) the normative and ethical, as well as (2) the scientific and analytical (Sachs 2015, preface). It provides a holistic framework for creating rules systems that integrate the social, economic, and environmental elements of the planet while balancing these three areas in a way that is better positioned to achieve ecological sustainability—that is, sustainable development in harmony with Nature.

Sachs further notes that one size doesn't fit all in governance types. We, too, have found that Earth jurisprudence through RoN legal provisions comes in all shapes and sizes as a result of adaptation and experimentation. This book's cases identify multiple pathways for institutionalizing RoN and Earth jurisprudence systems that move the planet toward new forms of holistic governance for sustainable development capable of meeting the 2030 goals.

The need to create legal and governance systems that account for the interlinkages among the economic, social, and environmental spheres highlights the importance of not only recognizing RoN but embedding

it in new, integrated ecosystem-level governance bodies. We argue that this book's case studies suggest it is much more efficient and effective to enforce RoN proactively by integrating RoN and Earth jurisprudence principles into decision-making processes rather than trying to protect them retroactively through the courts.

If true sustainability requires integrated governance that recognizes social, economic, and environmental interlinkages, and we take Earth jurisprudence seriously, then we need to reconceptualize the sustainable development model. The current sustainable development model views the three pillars of sustainability as distinct spheres that operate independently, represented by a Venn diagram with sustainability marked by the tiny area where the three spheres overlap (see figure 9.1). This reproduces the mistaken mechanistic worldview reflected in Western legal systems (discussed in chapter 1). Mumta Ito notes that "in reality the only circle that can operate independently is Nature, as the others are dependent on Nature for their existence" (2020, 324). Human societies cannot exist without Nature providing the conditions for life. Economic systems are social constructions and cannot exist without functioning societies. Consequently, a more accurate portrayal of the relationship linking Nature,

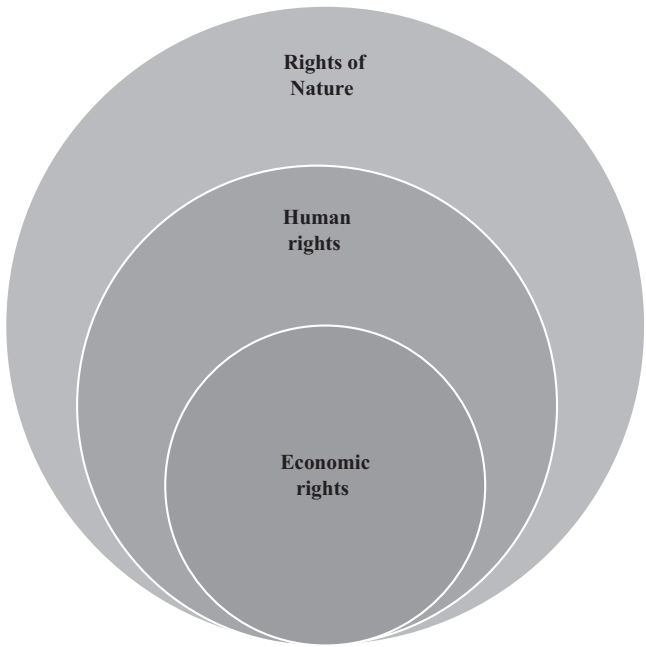


9.1 The relationship of natural, human, and economic systems.
Source: Adapted from Ito 2020, 324.

human society, and the economy is one of nested systems with a natural hierarchy (Ito 2020, 324).

THE RELATIONSHIPS AMONG RIGHTS OF NATURE, HUMAN RIGHTS, AND ECONOMIC RIGHTS

From the Earth jurisprudence perspective, this natural hierarchy of systems requires rethinking the relationship among the pillars of sustainable development in a way that suggests a natural hierarchy of rights (see figure 9.2). As Ito notes, "The rights operate in synergy with each other, as competing rights would undermine the well-being and integrity of the whole. This model of nested rights brings a unifying overarching framework to the balancing of interests and weighing of divergent values, overcoming the existing fragmentation and imbalance. Economic rights that currently undermine human rights and Nature's rights destabilize the



9.2 The hierarchy of rights.
Source: Adapted from Ito 2020, 325.

whole system, and would no longer be in the public interest" (2020, 325). The implication is that achieving ecologically sustainable development requires transforming legal, socioeconomic, and governance systems to reflect a hierarchy of rights that reflects the natural order of the world.

A small but growing number of domestic and international courts are beginning to address the relationship between RoN and human rights, with rulings recognizing the Earth jurisprudence paradigm shown in figure 9.1. When thinking about the relationship between RoN and human rights, it is useful to distinguish between three kinds of human rights: environmental rights, sociocultural rights (such as Indigenous rights), and economic rights.

Regarding environmental rights, chapter 1 describes the Supreme Court of Justice of Colombia's decision recognizing the rights of Colombia's Amazon rain forest as a necessary step to protect human environmental and intergenerational rights. This idea is also reflected in court rulings recognizing the rights of rivers in Bangladesh and India, as well as dozens of RoN laws around the world.

The Inter-American Court of Human Rights similarly issued a finding recognizing that protecting RoN is important not only for protecting the Earth's biodiversity but also for protecting the human right to a healthy environment. Acknowledging "the existence of an irrefutable relationship between the protection of the environment and the realization of other human rights," the court emphasized "the interdependence and indivisibility between human rights, the environment and sustainable development, since the full enjoyment of all human rights depends on a favorable environment." Acknowledging the Earth jurisprudence paradigm, the court further stressed that "the right to a healthy environment . . . concerns protecting Nature and the environment not only in connection to their usefulness to human beings or due to the effects that their degradation may have on the rights of persons . . . but because of their importance to all other living organisms with whom the planet is shared, and who merit protection in their own right. In this regard, the Court notes a tendency to recognize legal personhood and, therefore, rights for Nature not only in judicial sentences but even in constitutional systems" (Inter-American Court of Human Rights 2017b).

As we have acknowledged, the relationship between RoN and Indigenous rights is complicated. Nevertheless, Indigenous groups across Europe, Latin America, North America, and New Zealand have used RoN to insert their traditional worldviews regarding the human-Nature relationship into Western legal frameworks.[3] Chapter 4 describes how several Ecuadorian Indigenous groups have begun to link RoN and Indigenous rights in lawsuits and how this has facilitated the evolution of jurisprudence seeing RoN, environmental rights, and sociocultural rights as intertwined to form a set of biocultural rights. Biocultural rights arguments have been used to support RoN by courts in Ecuador (chapter 4) and Colombia (chapter 8), as well as by tribal nations in the United States (chapter 7).

The relationship between RoN and economic rights is perhaps the most contentious issue, and lays bare the difference between the conventional sustainable development paradigm and one based on Earth jurisprudence. To date, this has only been initially addressed by Ecuadorian courts, and solely within Ecuador. Lower-level courts have ruled that RoN take precedence over economic rights, but the Constitutional Court of Ecuador has a number of cases pending at the time of this writing in which it plans to set jurisprudence on this matter. Meanwhile, other countries, like Bolivia, are subsuming RoN under economic rights.

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

ARE MARKETS AND PROPERTY RIGHTS COMPATIBLE WITH RIGHTS OF NATURE?

As figure 9.2 suggests, implementing RoN does not mean an end to economic rights (such as property rights) or markets in which to exchange

commodities. It just means economic rights are bound by higher-order social rights and RoN. Not everything in Nature would be privatized and commodified, and people would no longer have the right to destroy ecosystems, but property rights and market exchange would continue.

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

The fact that existing RoN laws recognize ecosystems as being able to possess property shows that RoN does not make property obsolete. While it may sound odd to think of rivers (understood as watershed ecosystems) holding water rights and selling water as property, this is conceptually no different from people selling their blood to blood banks. Legally, people are individuals. We recognize that people's bodies are not simply stocks of individual resources, but rather a collection of eleven interdependent systems. People are more than the sum of their parts; all of the body's systems must be functioning together for a person to live. In this sense people are very much like ecosystems. A blood bank may withdraw a limited amount of blood from a person's system and buy it to use as it wishes. In this instance, the blood is treated as property that is bought and sold (much like a river's water might be). The blood (water) is not the legal person; the human being (river ecosystem) is. The human being is more than just his or her blood, just as a river ecosystem is more than just its water.

Because people are legal persons with rights, there is a limit to how much of a person's blood a blood bank can withdraw. It cannot withdraw so much that the person's systems stop functioning, causing death. If this happened, representatives of the blood bank would likely be charged with

murder. Moreover, most blood banks will typically give blood donors a glass of orange juice or something else rich in folic acid to replenish fluids and create new red blood cells in the body. There is a recognition of the obligation to help restore the donors' systems after inflicting some harm. The same logic applies in the case of ecosystems like rivers. RoN does not mean that humans cannot still benefit from ecosystems, including impacting them in ways that inflict limited harm. It means that humans have the obligation to restore the health of the ecosystem, and people would be legally prohibited from inflicting such harm that it prevents the ecosystem's systems from functioning and regenerating. This is what it means to recognize that economic systems are embedded in human social systems, which are embedded in ecosystems.

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

STRATEGIES FOR IMPLEMENTING EARTH JURISPRUDENCE TO MEET THE 2030 SUSTAINABLE DEVELOPMENT GOALS

While the number of RoN legal provisions is steadily increasing, and RoN norms are becoming more salient in international policy arenas, Earth jurisprudence is not yet strongly incorporated into international law. This raises the question of how Earth jurisprudence generally (and RoN specifically) might be incorporated into international legal frameworks regarding sustainable development.

We argue that it will likely be easier to incorporate Earth jurisprudence into existing international legal frameworks rather than to create fundamentally new ones. If so, we believe existing international legal frameworks linking Indigenous rights, the environment, and development provide a pathway for doing so. This is true for several reasons. First, as noted throughout this book, Indigenous and environmental rights are being linked to RoN through the concept of biocultural rights in both domestic and international law. Second, Indigenous knowledge and governance models recognizing humans as part of Nature have been

fundamental in recent efforts to expand the concept of rights beyond humans to include all living things. Third, just as Indigenous movements have successfully bridged local struggles for rights in their own countries with global struggles for those rights, RoN activists need to bridge local struggles with an international effort capable of tackling global environmental threats. For all these reasons we argue that recognition of Indigenous knowledge and practices in international law may provide a pathway for strengthening Earth jurisprudence within the international system, particularly regarding the UN's Agenda 2030, just as biocultural rights arguments have done in domestic law.

The UN Declaration on the Rights of Indigenous Peoples, for example, recognizes a "respect for Indigenous knowledge, cultures, and traditional practices [that] contribute to sustainable and equitable development and proper management of the environment." It also recognizes that rights are not just held by individuals, but rather communities possess collective rights that "are indispensable for their existence, well-being and integral development as peoples" (United Nations General Assembly 2007, 2, 3). This is relevant to Earth jurisprudence because RoN is similarly a form of collective rights, possessed by communities of all beings (including humans) united by their interdependence as members of a common ecosystem (sometimes referred to as biotic communities).

Earth jurisprudence principles are similarly reflected in Agenda 2030, which recognizes the interlinkages of living beings and our ecosystems. For example, the agenda defines prosperity as: "ensur[ing] that all human beings can enjoy prosperous and fulfilling lives and that economic, social and technological progress occurs in harmony with Nature" (United Nations General Assembly. 2015b, 2). Agenda 2030 mentions the significance of Indigenous peoples various times and includes a section on recognizing their contributions within state and subnational systems. To achieve a prosperous future in harmony with Nature, RoN advocates may learn from Indigenous peoples who provide models for bridging the local-global and Nature-human gaps in our legal and governance systems.

Article 31 of the Declaration on the Rights of Indigenous Peoples states that Indigenous peoples "have the right to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions" (United Nations General Assembly 2007, 9).

The guarantor of these rights should be states, and this illustrates the legal link between Indigenous peoples and states. One challenge facing Indigenous peoples is the need to work both within and outside the state system and to work fluidly across global, national, and local governance platforms to promote policies rooted in traditional wisdom, culture, and their spiritual bonds with their territories. RoN activists face a similar challenge and have much to learn from the experience of Indigenous rights.

The Sarayaku community in Ecuador illustrates how Indigenous peoples engage in multilevel policy making and advocacy called *kawsak sacha* (living forest) that is rooted in their cosmovision regarding their forest territory in the Ecuadorian Amazon. For the Sarayaku, this deep understanding of their relationship to the forest stems from a recognition of the "equality among living things and [a notion of] wealth that is signified by clean air and water, rather than GDP [gross domestic product], cars, and houses" (Santi 2018). The Sarayaku have struggled against oil extraction in their territory at both the local and global levels. They have participated in international forums, such as the International Rights of Nature Symposium in September 2018. They have organized within their tribal communities and with other Indigenous groups in Ecuador.

For decades, Indigenous leaders, like those among the Sarayaku, have exerted agency across local, national, and global levels and worked both inside and outside the system of state sovereignty to assert their rights. Indigenous movements exist "outside of and prior to stateness," and yet use state institutions to gain more authority and sovereignty at national and global levels (Picq 2018a, 123). The same is arguably true for RoN advocates seeking to strengthen Earth jurisprudence.

The very notion of taking tribal understandings of collective rights within biocultural frameworks and transposing these to the global level challenges the basic principles of rational state sovereignty in international relations (Picq 2018a). Notably, this challenge is not unique to Indigenous communities. The same struggle is present in Grant and Highland Townships in Pennsylvania, where citizens adopted home rule charters asserting their community rights (including the rights of communities of Nature) to prevent environmentally destructive activities that threaten their health and well-being. Their assertions of community rights were challenged by the

Pennsylvania State Department of Environmental Protection, which argues that the state's and corporations' rights to inject wastewater from hydraulic fracturing into the groundwater wells preempts the home rule charters recognizing RoN, and also the townspeople's rights to self-determination.

The pressure on communities to protect the ecosystems on which their well-being depends is pushing them to challenge sovereign state (and subnational) boundaries and to create new legal tools that better reflect the community of Earth. In so doing they are moving toward the goals of Agenda 2030.

CHAPTER SUMMARY

The 2019 UN's Interactive Dialogue of the General Assembly on Harmony with Nature demonstrates a perceptible shift toward recognizing Earth jurisprudence (including RoN) as a pathway toward sustainable development. Members noted the expansion of RoN laws and policies at local and national levels around the world, as well as the myriad civil society and nongovernmental organizations that are advocating RoN and training lawyers and policy makers to implement it (UN General Assembly 2019, 4). Dialogue members discussed new cases of RoN laws and policies from multiple continents—Africa, Europe, and North and South America—and emphasized the significant contributions that these laws play in providing models for holistic approaches to sustainable development within the Western legal system. Commemorating the expansion of RoN over ten years, David Boyd, the UN special rapporteur on human rights and the environment, recommended "three steps to accelerate progress towards a sustainable future: teaching ecological literacy, promoting the right to live in a healthy and sustainable environment, and recognizing the rights of Nature" (United Nations General Assembly 2019, 3–4).

We agree with Boyd and suggest that RoN is not only a tool for implementing ecologically sustainable development but a siren call for all of us—citizens, activists, scholars, policy makers, and business leaders alike. Current science is clear about the serious impacts humans have caused on the planet. Our intellectual history of detaching humans from the ecosystems we need to survive has created siloed disciplines, laws, and policies that encourage an unsustainable future. Our hope is that this book not

only provides a glimpse of what a world with ecologically sustainable governance systems might look like but shows various pathways through which it can be created.

We also hope that scholars will continue this Earth-centered approach in their disciplines, work across department silos, and venture into communities (as many already do) while encouraging students to do the same. It is with this hopeful sentiment that we seek to help push those boundaries toward an ecologically sustainable development agenda for all living beings and provide new ways of envisioning international relations for all on the planet.