FROM PROPERTY TO PERSONHOOD [working title/subtitle]

Animal Rights, Nature's Rights, and the Law

Potential Other Titles

Animals, Nature, and the Law: The Search for Rights

Redefining Justice: The Search for Legal Recognition of Animal Rights and Nature's Rights

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Exploring the Intersection of Animal Rights, Nature's Rights, and the Law

Legal Frameworks for Advancing Animal Rights and Nature's Rights: An In-depth Analysis

The Complex Nexus of Animal Rights, Nature's Rights, and the Law: An Analytical Perspective

Contributors

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Preface [to come]

Introduction

About This Paper

For two centuries, campaigners in the United States and Europe have organized, petitioned, and lobbied for legislation to improve the welfare of animals used by human beings for food, labor, clothing, sport, entertainment, or in scientific experimentation. Over the same period, activists have advocated for laws to preserve wilderness, clean up and prevent pollution, lessen environmental degradation, bring about restoration, and protect endangered species, both on land and in bodies of water.

These struggles on behalf of animal welfare and environmental protection or remediation have met with mixed success. Some species have been preserved or brought back from extinction; others have been lost forever or are still exploited. Some land has been set aside, and some destructive chemicals and harmful practices banned. But agricultural runoff continues to pollute waterways;[1] aquifers are being drawn down;[2] background extinction rates for animals are hundreds, perhaps thousands, times greater than the natural baseline;[3] and farmed animals (particularly chickens)[4] continue to be killed in staggering numbers to satisfy human appetites.[5]

Since 1970, reports the World Wildlife Fund, wildlife populations have fallen by almost 70 percent crucial habitat has been lost,[6] and a 2022 U.S. Department of Agriculture census shows that since 2002, the number of animals living in Concentrated Animal Feeding Operations (CAFOs), a.k.a. factory farms, in the U.S. has increased by 47 percent to 1.7 billion,[7] in a global population of 23 billion.[8]

From Property to Personhood explores how animal rights and rights of Nature theories complement and differ from one another, and details how legal advocacy on behalf of animals and Nature have affected courts, constitutions, and municipalities around the world. The paper also presents selected case studies from a variety of nations, jurisdictions, and institutions to highlight their convergent or divergent theoretical and legal foundations.

The paper concludes with an assessment of issues where the rights of Nature and rights of animals intersect and that could—and should—be the subject of legal advocacy now and into the future. The analysis and ideas in this paper are presented in the crucial context of accelerating climate and biodiversity crises, ongoing and new violations of the rights of human communities,

the origins and consequences of the COVID-19 pandemic, and scientific and ethical research that demonstrates the essential entanglement of humans with the nonhuman world.

While the writers of *From Property to Personhood* recognize the ongoing need to improve animal welfare and lessen or reverse multiple environmental harms, their paper does *not* concern itself with the development of animal welfare legislation in recent centuries.[9] Nor does it explore the use of direct referenda (such as ballot initiatives) to ban animal exploitation in some industries,[10] or general attempts to make, for instance, mining less destructive or reduce the amount of water used in fracking.[11] Instead, *From Property to Personhood* concentrates on how rights language, principles, and precedents have been enshrined in court rulings and legislation, thereby seeking to provide a detailed primer on a still nascent and radical approach to solving multiple challenges facing the planet.

With this paper, Brighter Green is continuing our work to provide a bridge that spans policy-making at the intersection of environmental and animal protection (a founding principle). Through *From Property to Personhood*, we seek to offer a resource that expands dialogue and cooperation between the theory and praxis of the rights of Nature and the rights of animals.

As radical as some of the shifts that could stem from a rights-based approach may appear, it is the paper's contention that biodiversity loss, a recent and possible future pandemic, the intensifying climate crisis, growing disruption to human and nonhuman societies due to an extractivist model of economic development[12] require just such a radical rethinking of our exploitation of animals and Nature, as much as for the continuation of civilization as for the survival of life on Earth.

Indigenous Cosmologies

In addition to examining how animal rights and the rights of Nature are reflected in, or remain distinct from, one another, *From Property to Personhood* also describes how they are different from or similar to Indigenous cosmologies, which are discussed throughout, as well as other legal and social approaches that offer an alternative vision of our obligations to, and ties within, the other-than-human world.

In framing the discussion about Indigenous cosmologies and their conceptions of human obligations to preserve this planet, the writers wish to emphasize that Indigenous peoples possess a wide variety of beliefs about animals and the natural world. Their cosmologies may involve

Earth-identified deities (such as “Pacha mama,” “Mother Earth,” “Mother Nature,” or “Father Sun”) or animals as ancestors or kinfolk of people.

As the paper demonstrates, Indigenous worldviews, beliefs, and activism are central to many contemporary rights of Nature struggles and ideas about our responsibilities toward other animals. This is the case even though Indigenous visions of humans’ relationship of mutuality or kinship with animals and Nature predate by centuries the movements for Nature’s rights and animal rights. Some Indigenous cosmologies may not be fully compatible with a Western rights-based legal approach toward, for instance, personhood, and may be tempered or distorted by being processed through Western legal systems and language.

Nonetheless, aspects of these cosmologies and belief systems have been incorporated into a number of national constitutions and legal structures.[13] Indeed, Indigenous peoples (particularly in Ecuador, Peru, and Bolivia) are increasingly included in and recognized by local, regional, and national politics and policy-making, adding a pluralistic, environmental consciousness to Left–Right political divides regarding access to natural resources, an understanding of wealth, and what is meant by sustainability, development, or justice.[14]

The writers of *From Property to Personhood* argue that Indigenous cosmologies and contemporary environmental and animal rights theories are more aligned than not. This acknowledgement, the writers hope, should encourage additional scholarly, jurisprudential, and political cooperation securing the rights of Indigenous communities’ and nonhumans right wherever common objectives are shared. This cooperation could include campaigns to protect critical species, habitats, and natural resources like water; and end destructive practices such as industrial animal farming (on land and in marine environments) and the wildlife trade. Ultimately, although divergences will exist, all can converge on an Earth jurisprudence that reshapes governance structures to honor the realities, values, and interests of marginalized and threatened human societies.

The Question of Standing

Within the last six decades, and informed and catalyzed by the expansion and extension of human rights over that same two-hundred-year span, legal theorists have argued for a change to the status of animals and Nature within courts of law, legislation, policy, and regulation. One area of central concern is “standing.”

Locus standi or "standing" is defined in Black's Law Dictionary's as "a right of people to challenge the conduct of another person in a court." Because, as this paper will demonstrate, within the Western philosophy and jurisprudence, natural entities and nonhuman animals are not considered persons, but property, they therefore lack the standing to have a court case brought on their behalf. Not only are natural entities and nonhuman animals, therefore, denied any right to have court cases brought on their behalf, but they lack *any* rights independent of their utility to human beings. It is these two conditions for justice under the law—legal standing and intrinsic rights—that many environmental and animal rights theorists seek to establish.

Terminology Used and the Scope of This Paper

The authors of *From Property to Personhood* concentrate on recent developments in the rights of Nature and animal rights movements, as they appear in modern-day legal systems. The paper generally refers to "nonhuman animals" as "animals" for ease of reading. Following the protocol established by the United Nations' Harmony with Nature process and resolutions, "Nature" has been intentionally capitalized to illustrate that it, too, is a rights holder and not an object.[15]

The paper was drafted over several years and completed in August 2024. As of the end of 2023, more than thirty-five countries have either made legal advances toward rights of Nature legislation or have projects associated with it—with many more municipalities and districts doing the same. Therefore, given the fast-evolving developments surrounding new cases and campaigns for both the rights of Nature and animals, *From Property to Personhood* should be read as introductory and non-exhaustive. It is intended for discussion and advancing conversations and collaborations. The authors welcome comments, corrections, additions, and other inputs.

PART 1

ANIMALS AND NATURE

Chapter 1

Different Vantage Point, Similar Goals

Over the last sixty years, growing numbers of activists, academics, lawyers, and judges have begun to trace common threads among the rights of animals, humans, and Nature. Laws already exist that aim to regulate the treatment or suffering of animals or to reduce ecological harms, while accepting that it is legally and morally appropriate for humans to exploit animals and natural systems for their own benefit—even if, for instance, the animal is killed or the stand of trees is logged. These laws fall under the rubric of animal welfare or environmental protection, and are not the focus of this paper.

The rights-based approach articulated by the stakeholders above extends the protection of flora and fauna beyond their perceived instrumental utility to humans. It argues that natural entities—including individual animals, individual ecosystems or features in them, like a river, entire species, and ecosystems, as well as the communities protecting and representing them—should be accorded respect and relevant and/or comparable rights to those currently possessed by individual humans and corporations within formalized municipal, state, federal, or international legal systems. Scholars and advocates envision that by providing Nature and animals with a "voice" in a court of law or in legislation or a policy provision, Nature and animals' interests would (at the least) be acknowledged and, ultimately, harm to them would be reduced or stopped altogether.

Continuities and Discontinuities

The histories of environmental and animal advocacy over two centuries remain beyond the scope of this paper. Although there have always been overlaps between these movements, the milieus and accompanying epistemologies of each have long differed, and even opposed, one another. On the whole, environmentalists privilege preserving wildlife over the concerns of domesticated animals (whether pets or livestock); species preservation over individual animal suffering; hunting as a tool of conservation versus hunting as barbaric; and raising animals used as food in regenerative or agro-ecological farming systems rather than veganism as a response to the wide-ranging negative effects of industrial agriculture.[16] Even gender has tended to define each

movement: women make up the majority of those working on behalf of animals;[17] men the majority of environmentalists.[18]

Amid these oppositional binaries, recurring patterns have asserted themselves. Both philosophical traditions and movements have conservative and radical strains, and both strike moralistic overtones: with cruelty to individual animals being, at least to the eighteenth century British satirist William Hogarth, a sign of civic and psychological degeneration, as well as a degradation of manliness.[19] Within the transcendentalist traditions of nineteenth-century American environmentalism, the great outdoors were viewed as offering moral uplift.[20] For Theodore Roosevelt and others, the outdoorsman was the definition of health, manliness, and the epitome of democracy.[21] Both movements remain overwhelmingly white and middle-class; this is particularly the case for those who are considered the writers of the founding texts or who became their influential figures.[22] And, beginning in the 1960s, both evolved a set of ideas that were intended to ignite and support more radical and systemic opposition to the continued exploitation of animals and Nature.

Chapter 2

The Movement for Nature's Rights

The publication of the book *Silent Spring* by Rachel Carson in 1963 is often cited as the birth of modern environmentalism in the U.S.[23] Astronaut William Anders' "Earthrise" photo taken from Apollo VIII in December 1968[24] was among the inspirations for the first Earth Day, which took place in the United States on April 22 1970.[25] This in turn led to a raft of environmental measures signed into law by President Richard Nixon: the National Environmental Policy Act (January 1970); the Clean Air Act (December 1970); the Legacy of Parks Program (August 1971); the Clean Water Act; the Marine Mammal Protection Act; the Marine Protection, Research, and Sanctuaries Act (all October 1972); and the Endangered Species Act (December 1973). To oversee implementation and enforcement of these new laws, a new department of the U.S. government was established, the Environmental Protection Agency (December 1972).

These legislative advances reflected growing international concern over unfolding environmental devastation around the world. March 1972 saw the publication of the book *The Limits to Growth,* by a team of researchers at the Massachusetts Institute of Technology in the United States. The book's lead author was Donella H. Meadows and she and her co-authors argued that humankind could create "a society in which he [*sic*] can live indefinitely on earth if he imposes limits on himself and his production of material goods to achieve a state of global equilibrium with population and production in carefully selected balance."[26]

In June of 1972, the United Nations held the first Conference on the Human Environment in Stockholm,[27] which issued a landmark declaration calling for the preservation of the environment for future generations . . . of humans.[28] The conference led to the founding of the United Nations Environment Programme (UNEP), located in Nairobi, Kenya.

Should Trees Have Standing?

It was in this global context that Christopher Stone, a professor of law at the University of Southern California in the U.S., published a law review article, "Should Trees Have Standing? Toward Legal Rights for Natural Objects."[29] Stone's article is considered a major text whose concepts and arguments informed the creation of a movement in support of the rights of Nature

(or environmental rights, earth rights, and wild law, among other names). It also offers striking observations on the rights of animals within natural settings.

Stone's essay also arose amid several legal challenges filed in U.S. courts on behalf of Nature. These included the case *Sierra Club v. Morton*, which sought to enjoin the Walt Disney Company from building a ski resort inside the Sequoia National Forest in California. The Sierra Club, an environmental organization, argued that the size and building of the resort would damage part of the forest. A district court issued an injunction against the development, which an appeals court overturned on the grounds that the Sierra Club had not demonstrated that it or its members would be directly affected by the development. In other words, the Sierra Club did not have legal standing to bring the lawsuit, and so lost the case.

The Sierra Club appealed and the case reached the U.S. Supreme Court. There, in 1972, the justices found 4–3 against the organization, agreeing with the decision of the appellate court (only seven votes were cast, since Justices Lewis Powell, Jr. and William Rehnquist recused themselves). In a dissenting opinion, Justice Harry Blackmun wrote that the Sierra Club should be allowed to amend its complaint so it fit within the standing doctrine; otherwise, he added, courts should expand the standing doctrine. Justice William Brennan, Jr. agreed with Blackmun's legal view.

In his own dissent, Justice William O. Douglas, who had read Stone's essay, was bolder in calling for an evolution in U.S. jurisprudence. His dissent was read widely in U.S. legal and environmental communities and has informed some of the subsequent theories of how to protect nature in courts of law. Given its seminal nature, we explore the paper in some detail here.

Stone asserted that natural resources, through human representation, should have standing to sue for their protection:

> The critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage.[30]

He added: "Those who have that intimate relation with the inanimate object about to be injured, polluted, or otherwise despoiled are its legitimate spokesmen."[31] The reason was clear:

> Then there will be assurances that all of the forms of life which [the ecosystem] represents will stand before the court—the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams. Those inarticulate members of the ecological group cannot speak. But those people who have so frequented the place as to know its values and wonders will be able to speak for the entire ecological community.[32]

In "Should Trees Have Standing?", Stone argues along lines that will be familiar to scholars of other struggles for rights—including those of animals. He observes that, among human beings, who possesses legal rights has changed over time as women and the formerly enslaved fought to claim them. He states that persons (such as infants or those are mentally impaired or comatose) who cannot claim legal rights for themselves have nonetheless been endowed with them; and he reminds readers that *legal* rights have been conferred on nonhumans (such as trusts, corporations, and seafaring vessels).[33]

Stone acknowledges that at each stage of this extension, rights have appeared (and continue to appear) "unthinkable" to some:

> The fact is, that each time there is a movement to confer rights onto some new "entity," the proposal is bound to sound odd or frightening or laughable. This is partly because until the rightless thing receives its rights, we cannot see it as anything but a thing for the use of "us"—those who are holding rights at the time.

He recognizes this resistance is partly a consequence of most human societies' interests in reframing the assumptions not only about what the object without rights *is*, but what or who that object is *for*:

> There is something of a seamless web involved: there will be resistance to giving the thing "rights" until it can be seen and valued for itself; yet, it is hard to see it

> and value it for itself until we can bring ourselves to give it "rights"—which is almost inevitably going to sound inconceivable to a large group of people.

Stone goes on to say that conferring rights on Nature doesn't mean enabling a tree to vote, or that humans can never be allowed to utilize natural resources. Instead, he claims, the rights should satisfy three features:

> [F]irst, that the thing can institute legal actions *at its behest*; second, that in determining the granting of legal relief, the court must take *injury to it* into account; and, third, that relief must run to the *benefit of it*. (Italics in the original)

Stone admits that these three facets might sound strange. A standard lawsuit regarding, say, the pollution of a stream, he adds, would focus on one set of rights-holders (i.e., humans) who were affected downstream by the actions of another set of rights-holders (i.e., humans) upstream. "What does not weigh in the balance," he writes, "is the damage to the stream, its fish and turtles and 'lower' life. So long as the natural environment itself is rightless," he continues, "these are not matters for judicial cognizance." In other words, without rights, the stream and the biota dependent on it are incidental to the legal case being brought, and therefore to its outcome.

As a remedy, Stone proposes a legal guardian for the "natural object." In the case of a lake, for instance, that guardian would gather evidence of the pollution, and make arguments that elucidate the immediate wrong and the broader services provided by the lake—not only for those immediately affected, whether human or otherwise, but for future generations, whether human or otherwise. Nor should those injuries be confined to material losses, Stone argues, but the social, ecological, aesthetic, and losses intrinsic to the lake *itself*:

> The guardian would urge before the court injuries not presently cognizable—the death of eagles and inedible crabs, the suffering of sea lions, the loss from the face of the earth of species of commercially valueless birds, the disappearance of a wilderness area.

By way of reparation, Stone suggests the convicted entity would pay to make the lake whole, or (if no longer possible) protect an equivalent area elsewhere. Money could be set aside in a trust to repair or conserve the ecosystem, and prior or further harm could be prevented through assessments of potential environmental damage.

Stone accepts that it is entirely possible for the law to take into consideration harm to Nature without conferring rights upon it. However, he states, conferring rights would lead to a significant rhetorical and conceptual shift, even if those "rights" may be ill-defined. Judges would be more inclined, he observes, "to interpret rules such as those of burden of proof far more liberally from the point of the environment." New ways of thinking and "new insights [would] come to be explored and developed." A "viable body of law" could emerge, and the public would be more likely to support legislation that protected the environment.

A further reason to consider the value of legal standing for Nature, Stone adds, in a section entitled "The Psychic and Socio-Psychic Aspects," is more speculative. It may be prudential to protect Nature now, he says, since it may prove valuable to us—indeed, existentially so—in the future:

> The earth's very atmosphere is threatened with frightening possibilities: absorption of sunlight, upon which the entire life cycle depends, may be diminished; the oceans may warm (increasing the "greenhouse effect" of the atmosphere), melting the polar ice caps, and destroying our great coastal cities; the portion of the atmosphere that shields us from dangerous radiation may be destroyed.

The far-reaching social changes of climate change should, Stone evaluates, "involve us in a serious reconsideration of our consciousness towards the environment." They will require, he notes, policies that reduce over-consumption and (in an argument reflective of the concerns of the times[34]) human overpopulation. More, he concludes, they will require "a myth that can fit our growing body of knowledge of geophysics, biology and the cosmos."

As laid out by Stone, and evident from the excerpts from his essay quoted here, the rights of Nature extend to individual animals as well as biomes and ecosystems that contain many species, even though they may not constitute "animal rights" as articulated by Tom Regan in that

they are not "subjects of a life." (These ideas will be discussed in the next chapter.) That said, as Stone makes clear through his examples and Douglas observes in his dissent in *Sierra Club v. Morton*, the rights of Nature subsume animal rights as a function of the embeddedness of the animal within the ecosystem.

This vision of animals' rights within an ecosystem was articulated three decades later by South African legal scholar Cormac Cullinan in his book, *Wild Law: A Manifesto for Earth*: "The rights of each being are limited by the rights of other beings to the extent necessary to maintain the integrity, balance, and health of the communities within which it exists."[35]

As Cullinan's argument suggests, conflicts regarding rights may arise when an animal's right to exist clashes with that of the ecosystem as a whole, and/or other animals in that ecosystem. This is especially the case when the presence of non-native or domesticated livestock threaten the presumed wildness or integrity of that ecosystem. These conflicts are discussed in [SECTION XX] of *From Property to Personhood*.

Chapter 3

Animal Sentience and Welfare

In order to consider whether animals possess rights that may legally protect them from harm at human hands, it is necessary to do two things. First, to acknowledge that animals have the capacity to feel pain or undergo suffering: that they are, indeed, sentient (from the Latin *sentire*, to feel or perceive). Secondly, it is necessary to determine the extent of the harm. In both instances, the results of human inquiry have thrown up mixed results for animals.

Sentience

Since antiquity, philosophers have acknowledged that at least some animals are sentient, and these ideas have been echoed or drawn from various texts: such as proscriptions in the Hebrew scriptures[36] and the Hindu Vedas,[37] Buddhist emperor Ashoka's commandments for animal protection.[38]

In the last several decades, scientists have begun to observe sentience in a wider variety of animals, and to extend its scope beyond simple pain or pleasure. Indeed, D. M. Broom, writing in the *Encyclopedia of Animal Behavior*, defines sentience as meaning an individual's "capacity to experience one or more of the various states we call feelings," which include "awareness and cognitive ability."

However, the French philosopher and mathematician René Descartes (1596–1650) famously declared animals' reactions to stimuli no more reflective of an actual state of consciousness than automata.[39] And, during the twentieth century, according to Ian Duncan, a scholar of animal welfare, behavioral psychologists ("behaviorists") such as J. B. Watson and B. F. Skinner, considered internal states of mind or sensation to be impossible to measure or quantify—unless there was clear evidence of it through behavior. Thus, according to Watson, they dropped from their scientific vocabulary subjective terms such as *sensation*, *perception*, *image*, *desire*, and even *thinking* and *emotion*, with hugely adverse consequences for nonhuman animals.

Duncan observes that the behaviorists' very parsimonious estimation of how pain or pleasure could manifest itself in humans influenced ethologists, who "restricted their considerations [of animals] to observable behaviour" and avoided assigning emotions or feelings

to it.[40] The inevitable result was a downgrading of sentience as a measurable, let alone a genuine expression of an animal's well-being.

By the mid-1970s, Duncan's scholarship shows, field science in animals began to question the behaviorist model as a means of assessing interior experiences. Following the publication of Donald Griffin's *The Question of Animal Awareness* in 1976, and undoubtedly influenced by the research of primatologists such as Jane Goodall, Roger and Deborah Fouts, and many other researchers' observations of additional species of animals, science began to take seriously animals' inner lives. Scholars and researchers now widely (if not universally) recognize sentience in an expanding number of animal species.[41]

The recognition that animals are sentient has made its way into the language used by jurisdictions in regard to animal protection. Countries such as Lithuania, Malta, Aotearoa New Zealand, and Colombia, among states and cities, have acknowledged that animals are sentient. Other jurisdictions, such as Germany, Austria, the Netherlands, Switzerland, and the Czech Republic have stated in their laws that animals are not things. And, according to lawyer Amy P. Wilson, co-founder of Animal Law Reform South Africa, in her 2021 article "Inter-Earth Rights," some countries, such as Portugal, Slovakia, Turkey, and Spain, "have accorded the status of 'living creatures' or 'beings' to non-human animals or similar such terms."[42]

Animal Welfare in Law

Within what would become the United States, the first written law determining animal welfare was Commonwealth of Massachusetts' 1641 "body of liberties," which orders that "no man shall exercise any tyranny or cruelty towards any brute creatures which are usually kept for man's use."[43] The first piece of modern animal welfare legislation the Cruel Treatment of Cattle Act, was passed in 1822 by the British parliament, and the first Society for the Prevention of Cruelty to Animals (SPCA) was set up in the U.K. in 1825 to prosecute those who violated the Act's provisions.

As the word "use" in the "body of liberties," and the title and preamble to the 1822 legislation suggest, these laws assume that humans can use these animals and that there is an *appropriate* treatment for them, whatever that might mean to whomever wishes to prosecute or defend that treatment. (The term frequently applied within much other animal welfare legislation

is "unnecessary suffering,")[44] By man's "use" it is assumed that it is appropriate to exploit cattle for labor and the provision of milk and butter, and to eat their flesh and skin them for leather.

Given those inherent ambiguities within animal welfare legislation, the use of legislation and the courts by those seeking protections for animals has not been without risk. Legal judgments, maintain some scholars, as well as the legislation from which the courts derive those judgments, can entrench a particular use of animals as normative or customary. This contravenes the larger goal of enacting the regulation, or constraining, let alone abolishing, an industry or a practice that inflicts regular *and* irregular harms against nonhuman animals.

A recent example of this jeopardy in action is where undercover activists have documented animal abuse in factory farms, stockyards, and slaughterhouses. Many individual offenders, usually low-wage workers, have been successfully prosecuted. But the industry's "standard practices," which involve systemic cruelty, not only continue, but may in fact be reinforced, precisely because, unlike the actions that *have* been prosecuted, they are not, by definition, exceptional or egregious.[45]

Since in the Western legal tradition, nonhuman animals have generally been considered property, legal redress involving an animal has often, until recently, taken the form of compensating the animal's "owner" for material, physical, or psychological harm done by, or to, that animal.

That distinction is now breaking down, as courts in North America and elsewhere begin to recognize that, while not exactly the same as humans, animals are neither pieces of furniture nor corporations. For instance, the family dog's interests may now be considered in the case of a divorce settlement; animals can now be provided for in trusts and wills, with the will's executor legally obligated to carry out the wishes of the testator; and courts can now order the protection of an animal in situations of domestic abuse.[46]

Nonetheless, as will be noted in the next chapter, the protection from "unnecessary cruelty" and the extension of certain protections to companion animals do not go as far as required of animal rights.

Chapter 4

Towards Animal Rights

The exact origin of the term "animal rights" is unknown, but a salient early use of the word "rights" can be found in a satirical pamphlet by British philosopher Thomas Taylor (a pseudonym) published in the revolutionary year of 1792 and entitled *A Vindication of the Rights of Brutes*. Taylor wrote the work in reaction to evolving calls for an expansion of human rights, embodied in writing by British feminist philosopher Mary Wollstonecraft's *A Vindication of the Rights of Women* (1792), which was a follow-up both to her *A Vindication of the Rights of Man* (1790), and the British political theorist Thomas Paine's *The Rights of Man* (1791).

Taylor's aim was to protect aristocratic male privilege, especially in the wake of the upheavals to the established order caused by the French and American revolutions. In his pamphlet, Taylor suggested that if you considered the capabilities of women to be on a par with men, then logic demanded extending rights to animals—since animals could also reason, communicate, and experience pain. It is ironic that one of the most forceful defenses for the rights of animals sought not to advance those rights, but to attack an idea as manifestly ridiculous as extending rights to women.

Other eighteenth-century writers who explored on humans' relationships with nonhuman animals were influenced by German philosopher Immanuel Kant's observation that harm to animals was wrong because it tended to coarsen human behavior toward their own species. American priest Herman Daggett employed such reasoning in his book *The Rights of Animals* (1792), arguing that humans should be kind to animals if they cared about their own morality.[47]

According to U.S. historian Bernard Unti, animal advocates have employed the word "rights" over three centuries to mean, interchangeably, both the right for an animal "not to be abused" and the right "not to be used."[48] For instance, British author William Drummond's *The Rights of Animals, and Man's Obligation to Treat Them with Humanity* (1838) called for restricting live experimentation on animals, but justified meat-eating and hunting. Evoking parallels with Wollstonecraft's and Paine's ideas, British author and Egyptologist Henry Salt's *Animals' Rights Considered in Relation to Social Progress* (1892) argued that animal rights were an extension of the "great liberating movements" that had occurred a hundred years prior to his

book's publication (e.g., the French Revolution). Turning Taylor's ideas on their head, Salt wrote that the "main principle" was clear:

> If "rights" exist at all—and both feeling and usage indubitably prove that they do exist—they cannot be consistently awarded to men and denied to animals, since the same sense of justice and compassion apply in both cases.
>
> This statement, continued Salt, presented a manifest commitment to justice:
>
> It is of little use to claim "rights" for animals in a vague general way, if with the same breath we explicitly show our determination to subordinate those rights to anything and everything that can be construed into a human "want."[49]

Some seventy years later after Salt's book was published, at a period of revolutionary social change like that of the 1780s and 1790s, the animal protection movement rediscovered animal rights. The shift was partly initiated by Rachel Carson, who in 1964, a year after the publication of *Silent Spring*, contributed a foreword to *Animal Machines: The New Factory Farming Industry* by British writer Ruth Harrison. *Animal Machines* was the first book to draw attention to the increasing industrialization and intensification of the farming of animals and its consequences. The following year, British novelist Brigid Brophy wrote an essay for the London *Times* called "The Rights of Animals," in which she observed: "Only in relation to the next animal can civilised humans persuade themselves that they have absolute and arbitrary rights—that they may do anything whatever that they can get away with."

Five years later, the British psychologist Richard Ryder coined the term *speciesism* to describe discrimination against nonhuman animals solely on the basis they do not belong to our species. A year after that, in 1971, an anthology of essays on the philosophical underpinnings of ethical concern for animals, *Animals, Men and Morals: An Inquiry into the Maltreatment of Non-Humans,* edited by philosophers Roslind and Stanley Godlovitch with John Harris, was published in the U.K., to little interest and few sales. Ryder and the Godlovitches were members of the small, Ryder-titled "Oxford Group" of post-graduates studying at the University of Oxford who shared an interest in human (mal)treatment of animals and remedies for it.[50]

Also studying at Oxford at the time was Peter Singer, an Australian moral philosopher and friend of the Godlovitches, who wrote a review of *Animals, Men and Morals*, which was published in the *New York Review of Books* in May 1973. That review formed the basis of Singer's groundbreaking book *Animal Liberation* (1975), which drew readers' attention to the cruelty toward animals and the scale of their exploitation and suffering in scientific experiments and on factory farms (as Harrison had done a decade earlier). Singer's approach echoed the utilitarian philosophy of Jeremy Bentham (1748–1832), who had written in *Introduction to the Principles of Morals and Legislation* (1780/1789):

> It may come one day to be recognized, that the number of legs, the villosity of the skin, or the termination of the os sacrum, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or perhaps, the faculty for discourse? . . . The question is not, Can they reason? nor, Can they talk? but, Can they suffer? Why should the law refuse its protection to any sensitive being?

The most substantive contemporary case for animals' possessing rights—in terms of the "right not to be used"—was elaborated by American moral philosopher Tom Regan. Singer and Regan collaborated to edit an anthology, *Animal Rights and Human Obligations*, published in 1976. The following year, a group of philosophers and activists gathered in Cambridge, England, for the first Conference on Animal Rights. In 1983, Regan published his full-length work called *The Case for Animal Rights*, which elucidated the concept of animal rights and the obligations that recognizing those rights put on human societies. These obligations included not consuming animals for food or for their fur, not using them in scientific experimentation, and not hunting or trapping them.

Case argues that certain nonhuman animals, particularly mammals over a year in age,[51] are what Regan calls "subjects of a life." He writes:

> Individuals are subjects of a life if they are able to perceive and remember; if they have beliefs, desires, and preferences; if they are able to act intentionally in pursuit of their desires or goals; if they are sentient and have an emotional life; if

> they have a sense of the future, including a sense of their own future; if they have a psychophysical identity over time; and if they have an individual experiential welfare that is logically independent of their utility for, and the interests of, others.[52]

As such, Regan states, animals are entitled to have their natural rights honored: to thrive, live among conspecifics, and not to be tortured or killed irrespective of their utility or lack thereof to others. Far from concerning ourselves with a weighing-up of our interests against theirs, or assessing relative capacities to suffer, Regan suggests that an individual's inherent value should not, *pace* Cormac Cullinan and unless absolutely necessary, be sacrificed for the well-being of the biota as a whole.

Both Singer and Regan[53] and many subsequent moral and legal animal theorists writing in the twentieth and twenty-first centuries use arguments familiar from Stone's essay: that the ability to use language, to express preferences, or even to be a human person are *not* intrinsic to having interests or being a rights-holder. They also draw upon new discoveries by ethologists and animal psychologists who have observed ever-increasing number of species, including fish and cephalopods, engaging in complex social behaviors; demonstrating wide-ranging and advanced states of cognition and consciousness; and possessing the ability to plan and deceive, as well as shape and adapt to their environments.

Also significantly, given how Stone argues for the expansion of legal rights for Nature within the construct of the expansion of rights for marginalized people and women, Singer declares speciesism as illogical and morally objectionable as a reason for discrimination as are racism and sexism. Regan, echoing Henry Salt's idea of animal rights as a marker and function of social progress, makes a similar claim:

> The case for animal rights shows that the animal rights movement is a part of, not antagonistic to, the human rights movement. The theory that rationally grounds the rights of animals also grounds the rights of humans. Thus those involved in the animal rights movement are partners in the struggle to secure respect for human rights—the rights of women, for example, or minorities, or workers.[54]

In the ensuing decades, Regan's work has been built upon and contested as it informs and influences a range of philosophers, ethicists, legal scholars, political theorists, and advocates working globally in a variety of disciplines, including animal sentience, animal dignity, animal justice, and rights in multispecies communities, among many others. How the theoretical vision of animal rights has fared in courts of law, in legislation, as well as objections to a rights-based approach from within philosophical and legal scholarship on and advocacy for animals, will be discussed in the next part.

PART 2

ANIMAL RIGHTS AND THE LAW

Chapter 5

Property and the Campaign for Nonhuman Personhood: Lessons from the United States

Theories of Jurisprudence

When deciding how or whether to bring a case to court, lawyers are necessarily constrained by the structure of the legal system in the jurisdictions within which they operate, as well as the jurisprudential theories or predispositions of the judges or courts within which their case will be tried. As the following chapters will demonstrate, which cases under which system of law and in which jurisdiction around the world may determine very different outcomes for animals.

For instance, the effect of a court ruling may differ significantly based on whether the jurisdiction uses a common law or a civil law system. The former, which is dominant in Anglophone countries or countries that have inherited British legal codes from the colonial era, mainly relies on case law, which is derived from published judicial opinions from higher courts. Civil law jurisdictions, by contrast, which are found in most European countries and in South America, rely predominantly on codified statutes, i.e. laws passed by a legislative body.

Some jurisdictions combine systems, and may include customary, religious, and Indigenous law, among others, that inform and impact governance decisions. For example, countries like South Africa have a mixed common law and civil law system, as well as customary law. India mixes common law with religious and customary law; China mixes common law along with religious and customary law.[55]

Another necessary consideration to bringing a case is what the judge's jurisprudential philosophy is. Some judges, in making their decisions about the rights of animals, respond more to precedent while others consider a range of factors—such as tradition, their society's sacred scriptures, or even how much they are predisposed to consider animals as beings rather than as legal "objects." Generally speaking, the term *legal formalism* speaks to the former; *legal realism* to the latter.

Advocates and scholars who consider themselves "legal realists" argue that the personal values, social context, and presumed repercussions influence judges' decisions. This may be more inherent in systems of laws where rules may be vague, ambiguous, or even contradictory, or a judge is given latitude to exercise discretion. "Legal formalists," by contrast, prefer or

require judges to apply specifically defined concepts or precise readings of statutes, and to come to conclusions through a logical and objective process of deduction.[56]

Within courts of law, the opinions of legal realist judges may attempt to align regularity and predictability on the one hand with the promotion of justice and social welfare on the other.[57] This approach may vary significantly based on the social context and the judge's values, knowledge, and perspectives. Nonetheless, legal realism can help predict whether in cases where a common law ruling from a high court may significantly affect animals, courts may refrain from issuing drastic rulings so as to conform with overarching values. These could include prudence and stability, or prevailing views of animals' subordinate status in human societies. This distinction may explain why many noteworthy rulings for animal rights have occurred in civil law jurisdictions and municipal and state courts.

Legal realism is often caricatured by the saying that "justice is what the judge ate for breakfast," implying that subliminal factors, temperament, and mood may influence a decision in material ways. In the animal rights context, as Matthew Liebman, Associate Professor and Chair of the Justice for Animals Program at the University of San Francisco, notes, the situation may be more accurately rendered as "justice is *who* the judge ate for breakfast."[58] Whether they are a legal realist or legal formalist, a judge may have baked-in suppositions of not only what certain animals are *for*, but that "unnecessary suffering" is the only frame of reference for a decision, rather than any abstract right. Indeed, whether the judge thinks of an animal as a "who" (i.e. an individual, sentient being) and not an "it" (i.e. a piece of property) may also factor into their decision-making.

Predicting how a judge will rule, therefore, requires understanding that, for all their claims of impartiality and logical analysis, judges are subject to paradigms, values, pressures, and norms. These may weigh heavily against paradigm-shifting approaches to law such as those proposed by advocates for animal rights and Nature's rights. At the same time, a small but growing number of judges seem, based on recent rulings or dissents (some discussed here), open to considering extending rights to nonhuman animals and entities like rivers, forests, and even Nature as a whole.

On Property and Personhood

Since the early 1990s, lawyers and legal scholars have explored different theoretical foundations for how the rights of animals could be reflected in modern law. These include the approach of Steven Wise of the Nonhuman Rights Project to attaining full personhood for certain animals[59] and the efforts of law professor Gary Francione of Rutgers University to end the prevailing property status of nonhuman animals.[60] Francione is blunt on the issue:

> As long as animals are human property, the principle of equal consideration can never apply to them (just as it could not apply to slaves), and animals will necessarily remain as nothing more than things that possess no morally significant interests.[61]

Cass Sunstein, professor at Harvard Law School in the U.S., is less emphatic. He posits that if we "understand 'rights' to be legal protection against harm, then many animals already do have rights, and the idea of animal rights is not terribly controversial." The challenge, he notes, is that various anti-cruelty statutes in state and federal law (in the U.S.) are unevenly enforced—in that it is impermissible to do to a companion animal, for instance, what is routinely done to farmed animals.[62],[63] Furthermore, as legal scholars Marianne Sullivan and David Wolfson have catalogued, industrial animal farming routinely avoids criminal prosecution for animal cruelty by claiming their activities are "customary," "common," "normal," or "accepted." Or they ensure that, in the case of their slaughter, poultry (which constitute over 95 percent of all animals raised for food in the U.S.) are exempt from federal anti-cruelty legislation.[64] In essence, these animals are not considered animals.

It is partly out of concern to destabilize assumptions about the property status of animals, and their still prevalent legal designation as a "thing" under the law, that some legal experts are arguing for the personhood of the animal under the law. They have reason to query this notion since "things" have been granted legal personhood. The U.S. Supreme Court ruled in 1886 that corporations were "persons" entitled to the equal protections, as spelled out in the 14th Amendment to the Constitution.[65] Ships were granted such status not merely because they sailed between jurisdictions, but according to Bryant Smith writing in the *Yale Law Journal* in January 1928, because

> the ship, a kind of a man, takes on a personality, acquires volition, power to contract, sue and be sued. If it must have some of the qualities of human beings to adapt itself to the novel situation and avoid embarrassment both to itself and to the court, the law can readily bestow them by the simple process of attribution.[66]

Achieving such personhood status for animals was the goal of the late lawyer Steven Wise, who in 1996 founded the Center for Expansion of Fundamental Rights, which was renamed the Nonhuman Rights Project (NhRP) in 2012.[67]

NhRP has filed a number of cases in U.S. courts on individual animals' behalf. These lawsuits have two main purposes: to seek redress for harms done to the animals themselves and to test how ready courts are to apply legal principles to animals that have applied only to humans, corporations, ships, and (in India) idols.[68]

Rather than enforcing the nonhuman animal's interest through a human with standing to bring a legal case, the NhRP approach attempts to confer legal personhood to the nonhuman animal through habeas corpus lawsuits, several of which are described here. These cases demonstrate the difficulty of protecting nonhuman animals through a rights-based approach.

In 2013, NhRP filed an initial petition to the New York State Supreme Court in Suffolk County for a common law writ of habeas corpus on behalf of Hercules and Leo, two chimpanzees used for research by the New Iberia Research Center (NIRC) at the University of Louisiana, Lafayette. Hercules and Leo were then being "leased" from the NIRC by the Department of Anatomical Sciences of Stony Brook University, part of the New York state university system. *Habeas corpus* (in the original Latin, "you shall have the body") requires someone under arrest to appear in court or in front of a judge and prosecutors to submit evidence that would justify their continued detention. If these conditions are insufficient, the prisoner should be released—exactly the legal argument NhRP was making.

Initially, the NhRP's case was dismissed, but after they filed an appeal, in 2015, Justice Barbara Jaffe issued a writ of habeas corpus and ordered New York's Attorney General's office to defend Stony Brook University's right to detain the two chimps. This court decision, granting a hearing to determine the lawfulness of a nonhuman animal's detainment, was the first of its kind in the U.S.[69]

A few days after her initial ruling, Justice Jaffe removed the language granting a writ of habeas corpus to Hercules and Leo, but required the hearing to go ahead—another first in a U.S. courtroom. Ultimately, Justice Jaffe denied the petition, but noted in her ruling that, "The similarities between chimpanzees and humans inspire the empathy felt for a beloved pet. Efforts to extend legal rights to chimpanzees are thus understandable—someday they may even succeed. Courts, however, are slow to embrace change, and occasionally seem reluctant to engage in broader, more inclusive interpretations of the law."

Then, quoting former U.S. Supreme Court Justice Anthony Kennedy, she added: "Times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress."[70] Justice Jaffe's ruling also affirmed that a person or a corporation (in this case, the NhRP), did have standing to bring a legal case on behalf of an animal and did not have to claim or prove an injury to human interests to do so.[71]

Although the case on behalf of Hercules and Leo failed, the chimpanzees received a modicum of justice and their detention was ended. Soon after the ruling, Stony Brook University announced it would stop using Hercules and Leo in research and, after several years of extensive advocacy by NhRP and its partners, Hercules and Leo were transferred to the Project Chimps sanctuary in Morganton, Georgia.

NhRP's first petition for a common law writ of habeas corpus for an animal was also filed in 2013 in New York state court, on behalf of two privately owned chimpanzees named Tommy and Kiko. Tommy lived alone in a cage on a used trailer lot, and Kiko inhabited a storefront cage. Although the case drew considerable media attention and some sympathy from the presiding New York State Supreme Court judge, he denied the habeas petition. After several more years of litigation, the New York State Court of Appeals denied NhRP's motion to appeal. This was a precedent Justice Jaffe cited in her ruling (above). Kiko died in 2016, followed by Tommy in 2022; both were still held in captivity.[72]

Securing legal rights for an individual animal can be stymied by existing animal welfare statutes, as was the case in another habeas corpus challenge brought by NhRP. In 2018, NhRP sought a writ of habeas corpus in New York State Supreme Court for Happy, a wild-born Asian elephant living alone in an enclosure at the Bronx Zoo in New York City. The court rejected the petition. Its judgment rested partially on the grounds that current state and federal legal protections *should* have been enough to provide for the elephant's welfare. In other words, the

existence of welfare laws (minimal as they were) served to prove that whether Happy had rights or not was immaterial to her ultimate well-being.[73]

After NhRP sought a temporary restraining order to prevent the zoo from removing Happy from New York state, and therefore the court's jurisdiction, state Supreme Court hearings were held on the case in 2019 and 2020. However, in a 2020 ruling rejecting the habeas corpus petition by five votes to two, Justice Alison Tuitt wrote for the majority that the law and precedent constrained the remedy:

> Regrettably, . . . this court is bound by the legal precedent set by the Appellate Division when it held that animals are not "persons" entitled to rights and protections afforded by the writ of habeas corpus."[74]

The NhRP then appealed to the state's highest court, the Court of Appeals, the first U.S. state high court to hear an animal rights case. In 2022, the Court, in a 5–2 decision, denied the appeal. On behalf of the majority, then Chief Judge Janet DiFiore wrote:

> While no one disputes the impressive capabilities of elephants, we reject petitioner's arguments that it is entitled to seek the remedy of habeas corpus on Happy's behalf. Habeas corpus is a procedural vehicle intended to secure the liberty rights of human beings who are unlawfully restrained, not nonhuman animals.[75]

A motion to reargue the case was denied and Happy remains in the Bronx Zoo, the only elephant still held captive there. Although none of these habeas corpus challenges brought in U.S. courts on behalf of an animal have yet been successful, much as with U.S. Supreme Court Justice Douglas's dissent in *Sierra Club v. Morton*, the dissenting judgments offer insight into the potential direction of travel for the legal status of at least some animals.

In the case of Happy, the second judge to dissent was Rowan D. Wilson, who in 2023 was appointed Chief Judge of the New York Court of Appeals, succeeding Judge Janet DiFiore. Wilson wrote that the Court of Appeals should have recognized "Happy's right to petition for her

liberty, not because she is a wild animal who is not meant to be caged and displayed, but because the rights we confer on others define who we are as a society."[76]

In the case of the chimpanzees Tommy and Kiko, Eugene M. Fahey, Associate Judge of the New York Court of Appeals, pointed to an attitude shift toward nonhuman animals. Fahey argued that the question of an animal's non-legal personhood posed "a deep dilemma of ethics and policy that demands our attention." Referencing Regan's *Case for Animal Rights* (pp. 248–250), he continued:

> To treat a chimpanzee as if he or she had no right to liberty protected by habeas corpus is to regard the chimpanzee as entirely lacking independent worth, as a mere resource for human use, a thing the value of which consists exclusively in its usefulness to others. Instead, we should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect.

He added that it was only a matter of time before a writ of habeas would be granted to a nonhuman animal and he seemed to welcome that likely future when he wrote the following in his dissent:

> The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it. While it may be arguable that a chimpanzee is not a "person," there is no doubt that it is not merely a thing.[77]

In 2022, the NhRP filed a lawsuit for habeas corpus relief on behalf of three elephants—Amahle, Nolwazi, and Mabu—at the Fresno Zoo in California. On December 13, 2023, the California Supreme Court denied the petition.[78] Nonetheless, in September 2023, the city of Ojai, California, became the first municipality to recognize the habeas corpus rights of a nonhuman species—in this case, elephants.[79]

Chapter 6

The Campaign for Legal Rights for Animals: Lessons from Latin America and Asia

Courts and legislatures in non-Western countries, particularly those in the global South, have been more sympathetic to animals' independent rights to seek redress, including involving habeas corpus. A number of these cases, one of which was adjudicated nearly two decades ago, are described below.[80] Nearly all had as plaintiffs either primates, wild cats, or elephants—all large, charismatic mammals for whom humans from many societies hold a strong affinity.

Latin America

In 2005, a writ of habeas corpus was filed on behalf of Suíca, a chimpanzee who was confined in a cage at the municipal zoo in the city of Salvador, Brazil. The judge accepted the case in order to provoke debate about whether an animal could be illegally detained, but did not grant habeas corpus, since the chimpanzee died during the hearing.[81]

Some Brazilian legal scholars see considerable potential for advancing animals' rights in the Brazilian constitution, particularly due to Article 225, para 1, item VII. This article "mandates that all practices, which represent a risk to the ecological function, cause the extinction of species or subject animals to cruelty shall be prohibited by law." According to Brazilian legal scholar and advocate Carolina Maciel, the provisions in Article 225 allow for animal abuse or harm to be challenged through criminal, administrative, and/or civil proceedings.[82]

In 2017, the Argentine Association of Professional Lawyers for Animal Rights (AFADA), which models itself on the Nonhuman Rights Project (NhRP), filed a petition for habeas corpus that succeeded in legally recognizing the personhood of Cecilia, a chimpanzee held in captivity in the Mendoza Zoo. Cecilia became the first nonhuman animal to be considered a legal person with rights.[83] She now resides at the Great Ape Project Brazil's Sanctuário de Sorocaba.[84]

Also in Argentina, a constitutional action was brought against the government of the city of Buenos Aires and the Zoo of Buenos Aires on behalf of Sandra, an orangutan, to release her to a sanctuary. The court found that "it is necessary to recognize the animal as a subject of rights," and Justice Elena Amanda Liberatori told the Associated Press that "the first right that [animals]

have is our obligation to respect them."[85] Sandra was subsequently moved to a sanctuary in the U.S. state of Florida.[86] However, when in 2017 the Colombia Supreme Court of Justice ruled in favor of Chucho, a 22-year-old spectacled bear, after attorney Luis Domingo Maldonado filed a habeas corpus brief to have Chucho removed from semi-captivity to a nature reserve, the Supreme Court's Civil Chamber (which is the ultimate legal authority in Colombia) reversed the decision.[87]

South Asia

India's courts have issued a number of seminal rulings pertaining to the rights of animals. India's constitution provides the legal basis for a variety of challenges to animals' status, the circumstances of captivity, and their habitats. Among other provisions, the Indian Constitution's Article 51A places a duty on every citizen to "protect and improve the natural environment, including forests, lakes, rivers and wild life, and to have compassion for living creatures."

In 2000, the Kerala High Court in South India considered a case that challenged the validity of a notification (a formal legal notice)[88] banning the training and exhibiting of five species (tigers, monkeys, bears, panthers, and dogs). In its petition, the Indian Circus Federation claimed[89] that the notification was unconstitutional since it impeded the Federation members' fundamental right to their occupation as guaranteed under Article 19(1)(g) of the Indian constitution. This argument was significant in that it pitted a protective measure relating to animals against a protected human right.

The court found against the Federation. It stated that the words "trade" or "business" as used in the article did "not permit [the] carrying on of an activity whether commercial or otherwise, if it results in infliction of unnecessary pain and suffering on the specified animals." The animals' rights were judged in this context to outweigh a perceived human right to a livelihood. The court continued, making clear its rationale without equivocation:

> No person has any right, much less a fundamental right, to carry on a trade or business which results in infliction of unnecessary pain or suffering. . . . [T]he said trade is of such an obnoxious and pernicious activity geared towards mere entertainment which cannot be taken in the interest of general public to be a trade

> or business in the sense in which it is used in Article 19(1)(g) of the Constitution of India.

In 2014, an application was filed to stop the practice of jallikattu, a "sport" that involves "bulltaming" and is part of a harvest festival in Tamil Nadu.[90] As with the 2000 Kerala case, this case dealt with a conflict between a recognized human right and animal rights. The court found that jallikattu violated the relevant cruelty law. The court extended Article 21 of the Indian Constitution to animals, conferring upon them the right to have a life of intrinsic worth, honor, and dignity. It wrote:

> When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. [An] animal has also honour and dignity which it cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

The decision was appealed, and in May 2023, jallikattu was deemed legal, albeit with stricter animal welfare safeguards, based on 2017 animal welfare legislation.[91]

Courts in India have also extended rights to non-mammalian species. In 2015, the Delhi High Court (the highest court in the state of Delhi, India's capital) ruled that the practice of trading caged exotic birds violated their rights: "Birds have fundamental rights," the court observed, "including the right to live with dignity and they cannot be subjected to cruelty by anyone, including claim made by the respondent. . . . [A]ll the birds have fundamental rights to fly in the sky and all human beings have no right to keep them in small cages for the purposes of their business or otherwise.[92]

Despite the sweeping judgment, indigenous and other birds continue to be trapped and sold in cages in Delhi markets and along the roadside. Advocates note the public's lack of awareness of either the court's ruling or the provisions of the Wildlife Protection Act of 1972. Moreover, government authorities have not made enforcement a priority, allowing the trade to continue mostly unhindered, despite its illegality.[93]

In 2018, the High Court in Uttarakhand, a state in northern India, issued a comprehensive judgment on nonhuman personhood and legal rights for animals, writing: "The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Uttarakhand are hereby declared persons in loco parentis as the human face for the welfare/protection of animals."[94] This order was, however, set aside by India's Supreme Court after it was challenged by the Uttarakhand government, which argued that the order would open the floodgates to further litigation.

In 2019, the Punjab and Haryana High Court ruled on a 2004 case relating to the transportation of cows.[95] In its ruling, it quoted the Uttarakhand High Court's text verbatim, substituting "Haryana" for "Uttarakhand." The court's extended judgment brought together several arguments for and against the expansion of rights and legal personhood for animals, while referencing examples of nonhuman persons as divine figures and characters in sacred texts.

The Uttarakhand and Haryana cases led the People's Charioteer Organization, an Indian NGO that campaigns for civil rights, health, and environmental issues to file a public interest lawsuit in 2020 with India's Supreme Court to make a formal declaration that the country's entire animal population were legal persons that required all citizens to stand as their legal guardians to protect them from cruelty and promote their welfare.[96] The potentially groundbreaking case, perhaps not surprisingly, was dismissed by the Court.

Yet, nearly a decade earlier, in 2013, the federal government in India recognized dolphins as nonhuman persons with their own specific rights, and as a result, required state governments to ban dolphinariums and any capture or confinement of dolphins and orcas (also known killer whales).[97]

In neighboring Pakistan, in July 2020, the Islamabad High Court issued a ruling affirming the rights of nonhuman animals, and ordered the release of Kavaan, an Asian elephant held in captivity at Islamabad's Marghazar Zoo.[98] Unlike the New York State justices in the case of Happy, Chief Justice Athar Minallah was in no doubt as to the legal status of animals: "Do the animals have legal rights?" he asked. "The answer to this question, without any hesitation, is in the affirmative." He continued, in a robust and wide-ranging decision widely quoted by lawyers outside of Pakistan seeking to advance legal rights for animals, that:

> An animal undoubtedly is a sentient being. It has emotions and can feel pain or joy. By nature, each species has its own natural habitat. They require distinct facilities and environments for their behavioral, social, and physiological needs. This is how they have been created. It is unnatural for a lion to be kept in captivity in a restricted area. To separate an elephant from the herd and keep it in isolation is not what has been contemplated by nature. Like humans, animals also have natural rights which ought to be recognized. It is a right of each animal, a living being, to live in an environment that meets the latter's behavioral, social, and physiological needs.[99]

Justice Minallah also noted the interdependence of living beings and the need to restore balance in Nature.[100] In July 2023, Kavaan was released to a wildlife sanctuary in Cambodia, the most tangible outcome of the judgment to date.[101]

Chapter 7

Animal Rights, Law, and Politics

Constitutions, the most fundamental embodiment of public law,[102] hold the potential to enshrine the highest level of legal rights for animals. Whereas many countries have protections within their legal systems against cruelty toward animals, at the time of writing only eight countries have written *constitutional* provisions that treat animals with what Jessica Eisen, a professor of political science and human rights, at the University of Alberta in Canada terms "intrinsic constitutional concern." These are (with year of adoption): Switzerland (1973), India (1976), Brazil (1988), Slovenia (1991), Germany (2002), Luxembourg (2007), Austria (2013), and Egypt (2014). According to Eisen, each of these eight countries applies one or several philosophical orientations, from those that are religious (invoking Christian, Muslim, or Hindu values) to situating animal rights within the rights humans have to a healthy environment, now and in the future.[103]

Of course, having "intrinsic constitutional concern" doesn't *per se* mean better policies and structures for animal protection. The World Animal Protection (WAP) Animal Protection Index has analyzed animal protection laws and policies, as well as supportive government bodies and recognition of animal sentience, for farmed, companion, and wild animals, and animals in labs and entertainment, across six of the nations mentioned above. WAP graded Austria and Switzerland at a B (with A the highest and G the lowest). India and Germany received a C, Brazil a D, and Egypt an F.[104]

Such constitutional provisions raise two perhaps unanswerable (at least to date) questions: Does the provision itself lead to the protection of the animals, or does a nation that would craft such a provision have a culture and value system specifically conducive to animal protection? These and other considerations require an analysis of the connection between laws as they are written and their enforcement, considered in the "Legal Realism vs Legal Formalism" section below.

Some constitutional protections have resulted in unexpected outcomes, as sociopolitical realities intrude on what might have been humane intentions. For example, in 2002 Germany altered the existing environmental clause (Article 20a) of its constitution,[105] to include animals, as follows: "[T]he state protects, in the interest of future generations, the natural basis of life, *and*

the animals, within the structure of constitutional laws and through the making of laws and in accordance with ordinances and through judicial decision" (italics added).

Almost immediately, this provision was embroiled in controversy when it was used to prosecute a Muslim *halal* butcher of Turkish descent.[106] The prosecution's line of argument uncomfortably evoked Germany in the 1930s, when the genocidal, anti-Semitic Nazi government banned *kosher* slaughter, arguing that the practice was cruel to animals.[107]

In India, too, legal protections for animals have been used to persecute people. Cows are considered sacred by Hindus, even though India has become a significant global producer of meat from buffaloes and cows, as well as dairy products. The "protection" of "Mother Cow" has become a rallying call for Hindu nationalists, who have attacked and even killed Muslims, Adivasi (Indigenous groups), and Dalits (low-caste Hindus)[108] whom they perceive to be disrespecting Hindu traditions by trading cattle or slaughtering cows.[109] The result of religio-nationalists claiming the mantle of animal protectionism has been that some progressive individuals and organizations, as well as Brahmin Hindus, who might otherwise have practiced vegetarianism, have begun to eat beef to protest *hindutva* political violence.[110]

Even though there is no evidence that German or Indian animal advocates as a whole exploit ethnoreligious tension to further animal welfare or enforce (some) animals' rights not to be killed or traded, Erin Evans, a sociologist at the University of California Irvine, writes that "[t]he intentions of activists can easily be subsumed by the context."[111] Context may include not only a politicized ethno-chauvinist identity, but a jurisdiction's history, culture, resources, laws, government structures, market incentives, media priorities, and the strength of social movements.

Clearly, the questions of which animals have rights or whether they have rights at all, and if the latter, how those rights delimit what humans can do to them, are subject to larger political and social forces that affect the contexts and outcomes of the legal rulings. The same questions and contexts apply in rights of Nature rulings (discussed in detail below).

The animals whose rights have been adjudicated have tended to be those who are considered intrinsically "wild," like chimpanzees, elephants, and indigenous birds, even if they have been domesticated or confined for most of their lives. So far, the evidence suggests that when legal judgments or reforms or even constitutional provisions in favor of animals interfere directly or indirectly with human interests, the human interest usually wins out.

For instance, in 2022, Chileans rejected a new, progressive constitution that would have recognized the rights of both Nature and animals,[112] when rising inflation and the economic downturn caused by the COVID pandemic caused the vote to become a referendum on the current government rather than a relatively non-partisan exercise. In 2023, another constitutional draft was put to a referendum, this time drafted by a coalition of right-wing parties.

Although the second draft was also rejected by Chilean voters, it contained some provisions on the rights of Nature and also animals. The inclusion of animals happened as a result of private lobbying and public meetings between the politicians drafting of the text and Macarena Montes Francheshini, a Chilean lawyer, author of the book *Animal Law in Chile*, and a Harvard Law School fellow (more about her work, below). The term *sentience*, however, was omitted. Still, as Montes Francheshini notes, despite this omission, "it was still a victory for the movement. We can now argue that animals are relevant to both the left and the right."[113]

In February 2022, three-quarters of the electorate in the canton of Basel, Switzerland, decided not to enshrine the basic rights of all nonhuman primates in the constitution. Opponents argued that the constitutional change "would dilute our fundamental and human rights and blur the line between humans and animals. The initiative also sends out a signal that could increasingly question the keeping of animals." [114]

This fear of humans' rights to "keep" animals and the opening of potential "floodgates" that could fundamentally shift the position of animals in human societies has been noted in courts' rulings against the habeas corpus petitions filed by the NhRP. In a public statement urging the New York Supreme Court to reject the appeal for Happy the elephant's release, the Bronx Zoo warned that:

> Changing this most fundamental of legal concepts [habeas corpus] has implications not just for zoos, but for pet owners, farmers, academic and hospital-based researchers and, most critically, every human who might seek or need access to the judicial system."[115]

Beyond the Rights Framework

As the above demonstrates, legal theories regarding nonhuman personhood and establishing (some) animals' rights in a court of law, have met with very limited success over the last three

decades, especially in the United States. During that time, some scholars have been reconsidering rights narratives and arguing that rights or sentience paradigms are inadequate as a means of addressing our obligations to nonhuman animals. Instead, they are asking whether there may be alternative philosophical, social, and political structures that might offer a more secure way to obtain justice for nonhuman animals.

Both Peter Singer and Tom Regan in their writings emphasized the need to establish a case for animal protection and rights on the grounds of reason and science. This was, they acknowledged, partly a strategic reaction to perceptions of animals as dumb, unfeeling "brutes," and of animal advocates as sentimental or unscientific, which is, given the make-up of the animal advocacy movement, a deeply gendered characterization.

Ecofeminist philosophers, such as Lori Gruen, a scholar in Animal Studies and Feminist Philosophy at Wesleyan University in the U.S., and Josephine Donovan and Carol Adams, the editors of *Beyond Animal Rights: A Feminist Caring Ethic for the Treatment of Animals*,[116] have critiqued the over-privileging of abstract argument in considering animals' rights. Instead, they contend that the inherent dignity of the animal, and individual entangled relationships between, among, and within species, including our own, provide a valuable empathic structure for humans to exercise our obligations and responsibilities toward other animals appropriately.

For Gruen, the goal should not necessarily be to include more beings or Nature within the privileged space of rights-holders, but to reframe the current order and "see how the very process of inclusion and exclusion is part of our problem."

She adds:

> Our way of valuing is the issue. It's actually a process: we have to engage in conversations and research and discussions about how we're connected to these other things, including the climate, including future generations. That's the important part: not that there is some sort of extrinsic or external way of noticing *intrinsic* value, but rather that we're in this process of valuing, and relating.[117]

The late scholar Marti Kheel echoes this perspective in her 2007 book *Nature Ethics: An Ecofeminist Perspective.* Ecofeminists, she writes, "focus on the importance of relationships, particularly those based on care. Rather than ranking other animals by means of abstract

constructs they are thought to share with humans, ecofeminist theorists focus on both commonalities and differences."[118]

Through her scholarly and advocative writing, pattrice jones has extended this ecofeminist critique to explore multispecies communities and multispecies politics at VINE, the sanctuary for farmed animals she helps run in the U.S. state of Vermont. At VINE, jones has observed animals as agents of their own communities—making choices, asserting preferences, resolving conflicts, and determining interfamilial and interspecies arrangements that revise customary language around animals as either victims, aggressors, or dependents.[119] The growing scholarly literature on animal resistance—when animals escape confinement, elude capture, or stymie efforts to slaughter them—serves likewise to suggest that animals, in some circumstances, assert their natural rights even when denied any legal rights.[120]

The American philosopher Martha Nussbaum rejects a one-size-fits-all Kantian abstract rights or utilitarian expression of preferences, favoring the valorization of an animal's capabilities and needs based on their "species norm."[121] The ten capabilities Nussbaum has identified are "life, bodily health, bodily integrity, senses, imagination and thought, emotions, practical reason, affiliation, other species, play, and control over one's environment."[122] She argues that: "Each individual animal of each kind should have a decent shot at living a life that's characteristic of that creature."[123] It should be noted that the "capabilities approach" supports legal rights for animals. As Nussbaum writes: "It matters that animals have a political say, which means, I believe, legal standing."

Canadian political theorists Sue Donaldson and Will Kymlicka recognize how necessary it has been for philosophers and other theorists to posit "negative" rights for nonhuman animals (i.e., a right not to be harmed). But in their 2011 book *Zoopolis: A Political Theory of Animal Rights*, they advocate a focus on advancing more positive rights, "involved in the sorts of relationships with animals that might generate relational duties of care, accommodation, or reciprocity."[124] Donaldson and Kymlicka present a theory of citizenship for animals, in which animals possess certain rights commensurate with their biological and social niche, just as people within a nation-state are considered citizens, denizens, or sovereign nations.[125]

Under this theoretical framework, Donaldson and Kymlicka advance the notion that domesticated animals (e.g. dogs and cows) would be citizens of an expanded polity and receive the benefits human beings have, while adjusting for obvious differences and interests. Animals

who live amid human society but are not domesticated (such as urban wildlife, a.k.a. denizens) would obtain protections associated with their interactions with human society. And wild animals would be considered sovereign nations, by which they would have the right to self-organize and determine their lives to enable the flourishing of their community. Therefore, Donaldson and Kymlicka add, wild places therefore should be "free both from colonization, invasion, and exploitation on the one hand, and also from external paternalistic management on the other."[126]

Other theorists explore the rights certain animals might obtain if considered through Indigenous legal systems. Angela Fernandez, who teaches law and history at the University of Toronto in Canada, argues that under such systems, "there's no question that non-human animals are persons. They are teachers; they are kin, or relatives." She suggests resisting the binary that an animal is either a person or property under the law. Instead, she argues for using the terms *quasi-property* or *quasi-personhood* as a more flexible (and currently more socially acceptable) marker of difference—one that could encourage human understanding of nonhuman animals to achieve shifts in societal and legal conceptions of animals away from property and toward personhood.[127]

Maneesha Deckha, Lansdowne Chair in Law at the University of Victoria, Canada, reasons that seeking personhood for animals will fail because "personhood was reserved for an elite sector of humanity: white, able-bodied, cisgender heterosexual men of property," and that "[e]fforts to personify some animals will thus necessarily accent the *thing*ness of other beings . . . pushing them deeper into the realm of property/thing."

Moreover, Deckha finds the NhRP's efforts to obtain legal standing for great apes, cetaceans, and elephants limiting, since concentrating on these animals "inevitably highlights the differences and putative inferiority of the excluded animals . . . as well as the included animals[']. . . residual embodied non-humanness."[128]

Like Fernandez, Deckha notes that Indigenous legal systems—particularly in a country like Canada, with its federalized judicial structures sitting alongside Indigenous self-governance—present challenges and opportunities for the rights of animals. Statutes that emerge from provincial or federal parliaments in Canada, she notes, "would need to grapple with the fact that there are other legal systems in the nation as a whole that don't see animals just as property or just presume that they're just mere resources all the time."[129]

In questioning the political and racial dimensions of Aristotle's *scala naturae* or "great chain of being" that places humans at the top of a natural hierarchy, above all other animals, Deckha's scholarship aligns with U.S. Black vegan theorists Syl Ko and Aph Ko. They argue that animal liberation will not be obtained unless the racialized, gendered, and animalized hierarchies and binaries of who is conferred rights and by whom are acknowledged and then dismantled. In their work, they underscore that such hierarchies and binaries have characterized Western intellectual and political discourse from Ancient Greece through the Enlightenment to today. As such, the point is not finally to move (some) animals a few rungs up the ladder of rights-holders, but to dismantle the ladder entirely.[130]

These varied lines of thinking and scholarship have enhanced discussion about animals and human obligations, and have enriched and complicated the language of animal rights. In Part 3, they are both reinforced and complicated in further analysis of arguments for the rights of Nature.

PART 3

NATURE'S RIGHTS

Chapter 8

Theoretical and Legal Foundations and Approaches

For centuries, the Western attitude toward animals and Nature has combined the Judeo-Christian notion of dominion over other animals expressed in Genesis 1:28 and 9:2–4, Aristotle's *scala naturae*, and Cartesian arguments that only humans have a soul and consciousness that animals and Nature (or "matter") lack.[131] Over the last two centuries, an evolving body of science has revealed not only animals' and humans' common biotic origins, but the vital services the natural world provides; the complexity, interconnectedness, and fragility of these ecosystems; and the environmental, climatic, social, and political stressors that a global community of nearly ten billion humans will both face and place further pressure on by 2050.[132]

Indigenous Nature

Conceptions of and legal scholarship and advocacy for the rights of Nature are grounded in a long-held belief, particularly among Indigenous peoples, that the natural world is neither inert matter nor property to own and exploit but is instead a network of kinships among species.

This distinction is expressed most fundamentally in what professor and author Robin Wall Kimmerer of the Potawatomi Nation of Oklahoma calls the "grammar of animacy": "Of an inanimate being, like a table, we say, '*What* is it?' And we answer *Dopwen yewe*. Table it is. But of an apple, we must say, '*Who* is that being?' And reply *Mshimin yawe*. Apple that being is."[133]

Kimmerer's observation extends beyond simply applying appropriate pronouns to recognizing interdependence with Nature in every aspect of our lives. For example, at the 2014 Rights of Nature Tribunal, organized by the Global Alliance for the Rights of Nature (GARN), in Quito, Peru, Casey Camp-Horinek of the Ponca Nation of Oklahoma remarked:

> I would remind you of a very simple thing: If you drank water this morning or liquids, if you ate of the hooded nations or the four legged; if you breathe; if your body became warm from the fires of the Earth, then you must recognize and understand that there is no separation between humans and Earth and all that are [are] relatives of Earth and the cosmos, because you live in relationship with her as a result of being one with her and there is no separation.[134]

The Waikato Regional Council of Aotearoa New Zealand express a similar worldview:

> Māori have strong spiritual bonds to the land, Papatūānuku, the Earth Mother. She provides unity and identity to her people and sustains them. . . . Māori consider that Papatūānuku sustains all life, and that they are spiritually connected to her.[135]

Likewise, Elouise Wilson, Mary R. Benally, Ahjani Yepa, and Cynthia Wilson of the Diné, Nuche, and Pueblo Nations near Bears Ears National Monument in the western U.S. have written:

> Our histories run deep. We relate to these lands who are alive. We know the names of the mountains, plants and animals who teach us everything we need to know to survive. . . . Indigenous women worldwide know where the sacred springs are; where the plants necessary for food and medicines are found; and the animals who instruct us.[136]

And lawyer Thomas Linzey, who co-founded the Community Environment Legal Defense Fund (CELDF) in 1995, and the Center for Democratic and Environmental Rights (CEDR) in 2019, along with Mari Margil, who also helped found CELDF, notes:

> Indigenous communities have always thought about Nature differently. In Western society, it's treated as property and, basically, it's inanimate. So, a forest exists for us to cut down, and we call plots of land that don't have human buildings on them "undeveloped," even though they've developed over the past billions of years to be an intact ecosystem. Indigenous communities understand Nature as animated. They understand Nature as a relative or as a living being.

This foundational Indigenous wisdom is, according to Linzey, "the ground spring for . . . the rights of Nature." He adds: "There's a huge disconnect between that worldview and the Western

worldview, which basically treats nature as just something to be used and something to be owned."

Linzey founded CELDF to instantiate his conception of community rights by compelling the enforcement of already existing national laws, such as the Clean Air Act and the Clean Water Act. However, Linzey realized that after ten years of fighting landfills, toxic dumps, factory farms, and fracking on behalf of local communities, CELDF's role consisted mainly of forcing offending companies to correct the omissions or irregularities in their permits. Once they complied with existing regulations, the corporations mostly continued loading the landfills, dumping waste, building factory farms, and fracking.[137]

As such, CELDF's struggles reflected the reality that current remedies for a wrong committed against nonhuman entities tend to provide compensation for damages, rather than protection from initial harm. Similarly, just as the property status of animals codifies "acceptable" practices in order to differentiate them from "cruel" or "unnecessary" ones, the property status of nonhuman entities codifies *how much* destruction is permissible rather than whether we have a right to harm or even use the entity at all.

Linzey and Margil left CELDF to start CEDR because they wanted to, quoting CEDR's mission statement, "to work with governments, tribal nations, Indigenous communities, civil society, and grassroots activists to protect the human right to a healthy environment and establish the rights of the environment itself—the rights of Nature."[138]

A Community of Interdependent Subjects

Indigenous cosmologies have had an influence on, or have been paralleled by, other philosophical considerations of our relationship with Nature: such as Arne Naess's deep ecology,[139] James Lovelock's Gaia hypothesis,[140] biocentrism,[141] and the argument by the late geologist and ecotheologian Thomas Berry that Earth is not comprised of a collection of objects but rather a community of subjects.[142] Berry called for "a jurisprudence that would provide for the legal rights of geological and biological as well as human components of the Earth community" and argued in his 2001 book, *The Origin, Differentiation and Role of Rights*, that all members of the "Earth community" have inherent rights.

In 2002, South African environmental attorney Cormac Cullinan published *Wild Law: A Manifesto for Earth Justice*, which was, in part, a response to Berry's call for a new philosophy

of law (the book's foreword was written by Berry). Cullinan, who is a founder of the Global Alliance for the Rights of Nature (GARN) and was instrumental in the drafting of the Universal Declaration on the Rights of Mother Earth (more below), called this Earth jurisprudence. He defined it as a philosophy of law "based on recognizing the importance of the Earth community as a whole, and not just the human community . . . so under a philosophy of Earth jurisprudence, human laws would be designed to ensure that humans act as responsible members of the Earth community."[143] Ecosystems would receive rights, he argued, similar to legal "persons."

The concepts informing Earth jurisprudence also derive from Christopher Stone's "Should Trees Have Standing?" and other influences. Although a modern term, its ancient underpinnings are evident in its vision of a world where the needs and rights of natural entities such as ecosystems are respected and integrated within legislation and public policies that protect the planet for current and future generations of as many species as possible. However, given the confines of modern legal systems, the rights of Nature movement essentially aims to utilize the tools of Western legal systems to elevate a non-Western paradigm.

Who Speaks for Nature?

As with questions about whether rights language is best suited to protecting animals, so one question posed to advocates of Nature's rights in an anthropocentric legal system is: *Who speaks for Nature?* This question reflects not merely how authority is obtained or vested. It also critiques whether by reducing Nature to a series of laws; assigning Nature's value socially, culturally, or economically; and placing it on a level with a human constitutional system, human society is attempting to manage something it is neither entitled to, nor capable of, controlling. Indeed, constraining Nature within the legal system may lead to its devaluation in ways even more detrimental than are currently the case.

Perhaps, therefore, suggests lawyer and activist Amy P. Wilson, the question should not be "Who speaks for Nature?" but "When Nature speaks in its own language, who can translate?" Part of that "translation" might recognize that Nature is already "speaking" to us; and that the compromised waterways, toxic air, extinction crisis, COVID-19 pandemic (a virus that spread from animals to humans), the desiccation of the Amazon rain forest,[144] and the ongoing climate crisis, form Nature's message to us that we must change our ways.[145]

Animals may also be "speaking" to us through changing bird migration routes,[146] altered spawning grounds,[147] the spread of ticks and zoonotic diseases,[148] and the collapse of biodiversity, to name a few potential "tipping points." An interdisciplinary group of scientists and conservationists, Project CETI, is actively trying to decode the communication patterns or language of sperm whales in the Caribbean. One of the researchers, Robert Wood, a professor of engineering and applied sciences at Harvard University, asks: "If we knew what the whales were saying, what would we say?"[149] One might add, if we knew, what then would we *do*?

The MOTH (more than human rights) Project at New York University Law School is collaborating with Project CETI to explore the legal and ethical implications, and risks, of the AI-assisted translations of whale vocalizations, interspecies communication, and the opportunities that could emerge to advance legal claims for nonhuman animals.[150]

César Rodríguez-Garavito, the founder of the MOTH Project, acknowledges that the intersections of human rights theories and practice with the theories and practice of Nature's rights require new ways of thinking, litigating, collaborating, seeing, and listening. In a 2024 book he edited on MOTH rights, Rodríguez-Garavito argues that:

> Instead of taking for granted the current shape of legal norms for recognizing and exercising rights—from legal personhood to individual property to voting—MOTH rights invite us to explore variations of those norms as well as wholly new ones that take seriously the interests and well-being of nonhumans.

He adds that arriving at these re-imagined and new norms is essential for human societies, too. "If the human rights project is to remain relevant in the Anthropocene," he writes, "it needs to take into consideration the rights of nonhumans."[151]

One challenge in protecting natural entities and objects is assessing their interests or purpose. Unlike with an animal, whose rights may be best served by being returned to Nature, sheltered at a sanctuary, or remaining with a caregiver, what does it mean to protect the interests and purpose of a river, especially when considering the interests of humans as part of Nature?

These challenges, while substantial, should not, as Christopher Stone noted, prove insuperable within a legal setting. As has been noted, many "non-speaking" entities are represented in courts, and mechanisms do exist for lawyers and others to represent and "speak

for" them. As will be explored in Part 4, further criticisms of rights of Nature language pose more challenging problems. Nonetheless, the next chapter details some of the many and varied ways that rights of Nature have been argued for and implemented over the last two decades.

Chapter 9

Legitimacy for Nature's Rights—Latin America

The rights of Nature have been recognized in different ways by numerous communities—from local municipalities to state governments to Indigenous nations—in dozens of countries across Europe, the Americas, Africa, Asia, and Australasia.[152] Some cases or recognitions—which take the form of legislation, court rulings, agreements, declarations, community ordinances, and/or bills of rights—have been symbolic; others have created enforceable means of protection. In some instances, these rights have fared well when adjudicated against the rights of corporations or individual complainants; in others, they have been struck down or reversed.

The following chapters include a range of case studies where legal personhood was granted to Nature broadly and to specific ecosystems, waterways, and plants—and, instructively, to animals. A number of these have taken place in Latin America, where amendments to constitutions based on Indigenous precepts have been most numerous and most successful. Some of the most far-reaching legal protections have been realized in countries, like Ecuador and Brazil, with significant Indigenous populations and where Indigenous cosmologies are understood and respected (to varying degrees) by non-Indigenous people and governance bodies.

Ecuador: New Constitution, New Rights, New Challenges

In 2008, Ecuador became the first country in the world to recognize the rights of Nature in its constitution and to offer Nature legally binding protections. According to the text in the constitution, "Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes."[153] The constitution added rights of enforcement: "All persons, communities, peoples, and nations can call upon public authorities to enforce the rights of Nature. To enforce and interpret these rights, the principles set forth in the constitution shall be observed, as appropriate."

The principles enumerated in Ecuador's rights of Nature provision set out a mandate of intergenerational responsibility, according to which the satisfaction of the needs of the present generation cannot compromise "the capacity of future generations to satisfy their own." Under the principle of ecological development, for example, "the use of the elements of Nature under

no circumstances can put at risk its existence and the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes."[154] In codifying Nature's inherent value, Ecuador's constitution implies that Nature possesses intrinsic rights that are not conditional on whether humans benefit or not, either now or in the future.[155]

A test of this new constitutional provision occurred in Ecuador March 2011, when an appellate judge in a provincial court agreed with human plaintiffs acting on behalf of the Vilcabamba River to stop a road-widening project that was dumping rocks and other detritus into the river.[156] The decision, which drew on the constitution's rights of Nature provisions, in essence placed the river's rights above the government's interest in improving a highway for the general human population. The ruling also imposed the burden of proof on the government to demonstrate that the road-widening would not negatively affect the environment.[157] (It should be noted that the practical effects on the river's rights have been relatively limited. By 2018, the court ruled that its order had been complied with.[158] However, according to the Atlas of Environmental Justice, "while the road construction was stopped, the damage to the river has never been fully repaired.")[159]

Another example from Ecuador offers some salutary lessons on the collision between the law, politics, and economic policies and perceived interests. Launched in 2007, the Yasuní ITT Initiative aimed to protect Indigenous lands, conserve biodiversity, and slow greenhouse emissions by leaving untapped the oil reserves of the Ishpingo-Tambococha-Tiputini (ITT) oil field in Yasuní National Park. In exchange for foregoing the proceeds from the oil's extraction, the Ecuadorian government, then led by President Rafael Correa, would recoup this "lost income through funding from industrialized countries seeking to lowering their emissions of carbon dioxide.[160]

Ecuador asked for approximately $3.6 billion in international support over twelve years. However, by August 2013, only $200 million had been pledged, and only $13 million actually donated. Correa declared the project a failure: "It was not charity that we sought from the international community," he said, "but co-responsibility in the face of climate change."[161]

In 2016, despite polls showing large majorities of Ecuadorians were against drilling for oil within Yasuní National Park, Correa authorized drilling in Tiputini, one of the park's three oil fields. He claimed that the funds generated from oil revenue were needed to relieve poverty.[162] Drilling began in the Tambococha oil field in 2018; a year later, drilling was approved in the

Ishpingo oil field, which overlaps with the ZITT, otherwise known as the Intangible Zone, home to at least two uncontacted Indigenous peoples, the Tagaeri and Taromenane. The government had promised not to allow drilling here.

In May 2019, then President Lenin Moreno, Correa's successor, signed Decree 751, which allowed oil platforms to be built in the ZITT's buffer zone, one of the last protected areas of the Yasuní ITT.[163] In August 2023, another survey showed that 60 percent of Ecuadorians rejected drilling in Yasuní National Park.[164]

Despite the repeated affirmations of Ecuadorians' wish to protect the area, politics and debt likely had roles in stymieing the Yasuní ITT Initiative. Alberto Acosta, one of the drafters of Ecuador's 2008 constitution, warned that the infrastructure to exploit the oil was in place when Correa made his pledge, and that Correa was "preparing to blame rich nations for not giving enough [money] to make it work."[165] (Ecuador's debt to China likely also figured in the decision, with the *Guardian* reporting in February 2014 that the Ecuadorian government had been negotiating with China for a $1 billion drilling deal.)[166]

Whatever the proximate cause, the failure to protect the Yasuní ITT speaks to the reality that national and even international business and political interests shape the context of legal protections and jurisdiction, even with, as in Ecuador, the existence of strong constitutional protections for the rights of Nature.[167]

Struggles to shield the Yasuní ITT region have not been entirely fruitless. In January 2018, the Cofán people of Sinangoe filed a lawsuit against illegal mining in their territory in the Cayambe Coca National Park, located near the Yasuní ITT. They argued that the mining violated the Cofán's right to a healthy environment as well as the park's own rights, and that the government had failed to consult them properly during the initial stages of the extraction process. In July 2018, the provincial court of Sucumbíos sided with the Cofán.

Following an appeal, the ruling was upheld in October 2018. The provincial judge halted mining projects across 324 square kilometers (125 square miles) of Cofán land and requested that the Cofán receive reparations for the damage already done. Notably, the judge's final statement explicitly referenced rights of Nature and the communities' rights to a healthy environment.[168]

In April 2019, the Waorani people of Pastaza—an Indigenous nation in Ecuador numbering roughly two thousand people—also won their case, this time in the Pastaza provincial

court. They secured the protection of half a million acres of their land that had been designated Oil Block 22. The ruling also disrupted the proposed auction of sixteen additional oil blocks in the southern Ecuadorian Amazon, home to six neighboring Indigenous nations.[169] The landmark court case recognized the Waorani's right to self-determination and self-governance and, simultaneously, evoked the concept of Nature's rights for the national park.[170] The government appealed the decision but, in July 2019, the judge upheld the ruling.[171]

Since 2021, Ecuador has experienced political instability and violence fueled by the drugs trade. Its economy has plummeted[172] and emigration has surged.[173] In this context, both the Cofán[174] and the Waorani[175] have struggled to protect their lands from incursions by oil companies, the government, and people set on plunder. At the same time, the legal victories have fortified their resistance,[176] and cases are ongoing.

In a new case, in December 2021, the seven justices of the Ecuadorian Constitutional Court found that activities pursued by a state mining company and its Canadian partner threatened the Los Cedros Biological Reserve's right to exist and flourish.[177] Mining licenses were revoked and extractive activities within the reserve prohibited. The MOTH Rights Project assessed the impacts of the court's ruling and found, in a report published in June 2024, that mining operations had ended, and no mining infrastructure was evident. However, it observed

> implementation gaps associated with the Ecuadorian government's actions and omissions, threats to the forest stemming from mining activities in surrounding areas, and insufficient support for the scientists and community members who have dedicated their work and life to the protection of the forest.[178]

Although Ecuador's ambitious constitution has yielded mixed results so far for Nature's rights, it represents a promising platform for the paradigm shift in legal systems sought by rights of Nature advocates, along with a number of precedent-setting case studies for the movement. In March 2022, the Constitutional Court broke new ground, applying the constitution's Nature's rights provisions to recognize the legal rights of nonhuman animals in the *Estrellita* case (more below). Significantly, in this ruling, the court required new legislation to be drafted to protect the rights of animals.[179]

Bolivia: "The Law of Mother Earth"

With an Indigenous population of over 40 percent,[180] Bolivia has been active in promoting Nature's rights and has established some of the strongest national protections, at least on paper. On December 21, 2010, the legislature passed "Ley de Derechos de Madre Tierra" ("Law of Mother Earth"), which granted rights similar to those in Ecuador's constitution.[181] The term "Madre Tierra," or "Mother Earth," reflected both a reverence for and familial connection to the natural world. The Universal Declaration of the Rights of Mother Earth[182] was created at the 2010 World People's Conference on Climate Change and the Rights of Mother Earth, which took place in the city of Cochabamba and was hosted by the Bolivian government (more below). Two years later, in 2012, Bolivia's legislature enacted the "Framework Law of Mother Earth and Integral Development for Living Well."

An opportunity to use the Law of Mother Earth surfaced almost immediately. In 2011, protests erupted over a controversial highway that was slated to run through the Isiboro Sécure National Park and Indigenous Territory (TIPNIS), which would potentially open it up to development and despoliation.[183] In keeping with the Law of Mother Earth, then-president Evo Morales suspended the construction of the highway. However, six years later, the government approved plans to begin road construction, with Morales signing a new law that ended the protected status of TIPNIS. In justifying his reversal of policy, Morales disparaged industrialized countries' "colonial environmentalism," which, he said, sought to deny Indigenous communities health care, roads, electrification, and other infrastructure.[184]

Later in 2017, representatives of TIPNIS presented their case at the 4th International Rights of Nature Tribunal in Bonn, Germany, held during with the 23rd United Nations Framework Convention on Climate Change (UNFCCC) Conference of Parties (COP23). Coordinated by the Global Alliance for the Rights of Nature (GARN), the tribunals (or courts of justice) draw attention to potential violations of the rights of Nature that center Indigenous peoples; they also serve to educate and conscientize governments and global civil society. The tribunals are modeled on the International War Crimes Tribunal and the Permanent Peoples' Tribunal. The larger goal is to "foster international rights of nature law."[185]

The 2017 tribunal subsequently sent an international observer commission to Bolivia to investigate the case further. It concluded that the Bolivian government had "violated the rights of Nature and of Indigenous peoples as defenders of Mother Earth and [had] failed to comply with

its obligation to respect, protect, and guarantee the rights of Mother Earth as established under national legislation and relevant international regulations."[186]

Although construction of the highway remains stalled as of 2022,[187] the TIPNIS case illustrates how a constitutional provision can be held hostage to switching political allegiances and perceived conflicts between economic development and protecting the environment. Threats to the integrity and rights of Bolivia's ecosystems are posed by many industries, including agribusiness, which is clearing forests rapidly to secure more land to graze cattle and cultivate commodity crops, particularly soybeans. A crucial driver of the forest loss is a desire to access export markets for beef and soybeans (including China's), which are a prime ingredient in feed fed to factory farmed animals around the world.[188]

Pablo Solón, one of the founders of GARN and a former Bolivian diplomat, laments the devastation of fires in Brazil in 2019 that consumed 957,000 hectares (3,700 square miles) of land. This is an area nearly equivalent to the size of the TIPNIS. "Every year," he writes in his essay "The Sloth and the Bonfire," published as the fires raged, "there is chaqueo—slashing-and-burning [to clear land]—but this time it has been multiplied a thousand-fold by the government's call to expand the agricultural frontier." Solón calls out Bolivia for seeming to be following in the path of neighboring Paraguay, which "devastated their forests to feed cattle."

Solón points out the tragic irony of the massive fires occurring despite the existence in Bolivia of "a law [of Mother Earth] that says forests, rivers, and sloths have the right to life and to 'maintain the integrity of the life systems and natural processes which sustain them.'" Toward the end of his essay, Solon concludes his case: "Nature should not be burned at the stake, legally or illegally." He adds, mordantly, that Bolivia's politicians, engaged in national elections, will, as the smoke clears, resume campaigning, "some to challenge totalitarianism and others to camouflage it, but none to denounce the anthropocentric totalitarianism we carry inside."[189]

Colombia: Not Just Hippos

Colombian courts have also adjudicated on a handful of nature's rights cases. In 2016, Colombia's constitutional court ordered that the Atrato River, its basin, and tributaries be considered "an entity subject to rights of protection, conservation, maintenance, and restoration by the State and ethnic communities."[190] Subsequent rulings have recognized legal rights for additional rivers, basins, and their tributaries, including the Cauca (2019) and the Magdalena

(2020). Courts have also recognized as a subject of rights the Colombian Amazon (2018); Páramo in Pisba, a high-altitude Andean ecosystem (2018); and Los Nevados National Natural Park (2020).

In an intriguing development, in 2021 a U.S. federal court ruled that the hippos imported to Colombia from the U.S. by deceased drug lord Pablo Escobar, could be recognized as "interested persons" (or people) with legal rights. The hippos had become feral after escaping from Escobar's zoo after his arrest and. As their numbers increased, the Colombian government defined the hippos as an "invasive species" (they are not native to Colombia) that posed threats to ecosystems and should be culled.

The U.S.-based Animal Legal Defense Fund brought a lawsuit to prevent the cull in favor of a program of sterilization to prevent further growth in the hippos' population. While the U.S. court ruling did not have the force of law in Colombia, it did lead to a specific legal outcome: requiring that depositions be taken with experts in the sterilization of wild animals.

Since U.S. courts have not granted rights to nonhuman animals, the judgment could be seen as a legal breakthrough, albeit a narrow one.[191] The ruling did have a material effect on the hippos' lives, if not their rights. As of late 2023, the Colombian government committed to a strategy of sterilizing, relocating (potentially to sanctuaries outside of the country), and in some cases, euthanizing, the approximately 170 hippos concerned—all descended from the originally imported four. Colombia's environment minister said an "ethical euthanasia" protocol would be developed.[192] The case also exemplifies a tension between advocates for animal rights and rights of nature when "invasive species" are involved (more below).

Chapter 10

Legitimacy for Nature's Rights—From New Zealand to Asia, Africa, and Europe

Aotearoa New Zealand: Rights of the Whanganui River

Aotearoa ("land of the long white cloud," or the Maori language's name for New Zealand) became the first country in the world to grant legal personhood to a part of nature in 2014 when Parliament passed the Te Urewera Act. This vested a former national park and its lakes, forests, trails, and existing structures (Te Urewara) as its own legal entity and is now recognized in Aotearoa New Zealand law as a "living person."[193] According to the legislation, Te Urewera will own itself in perpetuity, with a board that will "act on behalf of, and in the name of, Te Urewera," and "provide governance for Te Urewera in accordance with this Act."[194]

The act came about after a preliminary agreement was struck in 2012 between the government of Aotearoa New Zealand and the Whanganui River *iwi*, or Maori nation, to grant legal personhood to the Whanganui River. In March 2017, this agreement became law with the passage of the Whanganui River Claims Settlement Act (also known as the Te Awa Tupua Act). The Act identified the river, which is sacred to the *iwi*, and all of its tributaries, as one legal entity: Te Awa Tupua. Te Awa Tupua is endowed with rights to, interests in, and the ownership of, its own riverbed.[195]

The Whanganui River people had been urging the river's legal protection since the late nineteenth century. While groundbreaking, the agreement differs significantly from rights of Nature provisions in Ecuador and Bolivia. The Te Urewera Act does not recognize the rights of all of Nature or natural entities; it only specifies one particular entity, a waterway, as a nonhuman person with rights.

The Whanganui River case has been one of the most successful applications of Nature's rights to date. The river has two appointed guardians—one from the Whanganui River people and one from the government—along with money to develop a legal framework.[196] Beyond symbolically vesting the Whanganui with rights, the river's "personhood" is actively supported. Funding is stable: the "Te Korotete o Te Awa Tupua" is a NZ$30 million fund granted to the river via the government as well as investment from a variety of stakeholders, including the federal and local government, tourism representatives, and hydropower operators.[197] The case could be seen to exemplify legal realist thinking: the successful application of the law required

resources and stakeholders; passage of the legislation and mechanisms for its enforcement required a political and cultural context that enabled this.

Perhaps most significantly, the Te Awa Tupua Act legally binds the river to the Whanganui *iwi*; in other words, harming the river is now automatically equated with harming the Whanganui *iwi*.[198] The legislation centers the perspective and beliefs of the Whanganui River people: "Ko au te awa, ko te awa ko au" ("I am the river, and the river is me"). The case is also part of a larger movement among the Maori to secure personhood for a variety of natural entities across Aotearoa New Zealand. Successes include the Te Urewera Park (in 2014), the ancestral home of the Tuhoe people, and Mount Taranaki (2018), a sacred stratovolcano (steep and cone-shaped), and all land owned by the British crown within the Taranaki Maunga or Egmont National Park (2017).[199]

As of writing, no lawsuits have been filed on behalf of the Whanganui River. And, as with the TIPNIS case, a change in national leadership, in this case the election of a conservative coalition in New Zealand in late 2023, may pose challenges that may not affect the Whanganui River decision directly but could potentially threaten Aotearoa New Zealand's continued commitment to far-reaching environmental policies and protections as well as Nature's rights.[200]

Nonetheless, the legislation already has been significant in changing the river's status and its relationship to human communities. According to Christopher Finlayson, the former attorney general in charge of negotiations with the *iwi* over the river, a local district council voluntarily reached out to the Whanganui river guardians before finalizing a plan to build a bike path that would run across the river.[201]

The success in Aotearoa New Zealand has paralleled movements to grant personhood to rivers elsewhere—most notably, the Ganges and Yamuna, which were granted personhood only a few days after the Whanganui received its legal rights (below).[202]

India and Bangladesh: The Rights of the Ganges, Yamuna, and Turag Rivers

In April 2017, the High Court in the northern Indian state of Uttarakhand, acting in response to a case brought by the National Ganga Rights Movement working with the U.S.-based Community Environment Legal Defense Fund (CELDF),[203] declared that the Ganges and Yamuna rivers, the Gangotri and Yamunotri glaciers, and all "streams, rivulets, lakes, air, meadows, dales, jungles,

forests, wetlands, grasslands, springs, and waterfalls" in Uttarakhand were legal entities, thus essentially bestowing personhood on entire ecosystems.[204]

The High Court stated that it hoped its ruling would help prevent illegal construction on the banks of the rivers and solve complex water distribution issues between Uttarakhand and the nearby state of Uttar Pradesh. A few months later, however, the Uttarakhand state government appealed the ruling to the Supreme Court of India, arguing that the rivers extended far beyond the state's jurisdictional responsibilities. In July 2017, the Supreme Court reversed the High Court's ruling.[205]

Legal standing *qua* legal standing may not have been the state court's point, as Erin L. O'Donnell of the Melbourne Law School in Australia and Julia Talbot-Jones of the School of Government at Victoria University in New Zealand observe. "The granting of legal standing to the Ganges and Yamuna rivers was not explicitly designed to be integrated with existing legislative frameworks," they write, "and [was] instead meant to provide a substantive shift in the way that the rivers are managed and protected in law."[206]

A notable exception to the judicial reversal in India is a ruling from the High Court in neighboring Bangladesh, which in 2019 accorded the Turag River the status of "legal person." It also declared that this status would apply for all rivers across the country, a decision that was subsequently upheld by the Supreme Court. The National River Conservation Commission, established in 2014 following an order of Bangladesh's High Court in 2009, was charged with serving as the Turag's legal guardian.[207]

Despite its legal status as a person, the river continues to face many challenges, including serious pollution. [208] Also still to be navigated are long-term strategies for balancing the river's rights with the needs of various constituencies that use the river. These include including farmers, hydropower projects, and communities located along its banks that are affected by riverbank erosion and flooding.[209]

Africa: Nigeria and Uganda

Sub-Saharan Africa, too, has enacted Nature's rights provisions. In 2018, the River Ethiope in Delta State, Nigeria, secured recognition of its rights. This was the result of efforts by a partnership between the River Ethiope Trust Foundation, a local organization, and the U.S.-based Earth Law Centre (ELC). It is the first waterway in Africa to be accorded rights.[210] In 2019,

Uganda updated its 25-year-old environmental laws in the National Environment Act to declare that "Nature has the right to exist, persist, maintain, and regenerate its vital cycles, structure, functions, and its process in evolution."[211]

GARN has set up an African "hub" to promote and secure the rights of Nature and expand Earth jurisprudence across the continent through training, movement-building, advocacy, and awareness-raising.[212]

Europe: The Mar Menor

In 2022, the Mar Menor ecosystem in Spain was granted the right "to exist as an ecosystem" and legal personhood. This was the first such rights of Nature legislation in Spain and the first law of its kind in Europe.[213] Mar Menor contains the largest saltwater lagoon in Europe, which is threatened by pollution from agricultural runoff and accelerating tourist infrastructure, including hotels and marinas. Teresa Vicente, a professor of the philosophy of law at the University of Murcia in Spain, along with some of her students, developed a plan to protect the lagoon through Spain's popular legislative initiative (ILP). This allows new legislation to be proposed directly to Spain's parliament.

To support the draft law to grant the Mar Menor ecosystem legal rights, 500,000 signatures had to be gathered from Spaniards, during the COVID-19 pandemic. Thousands of volunteers gathered more than enough signatures and in April 2022, the law was presented to and approved by the lower house of parliament. In September of that year, the Senate voted the bill into law.[214]

The legislation grants the Mar Menor and its basin "the right to conservation of its species and habitats, protection against harmful activities, and remediation of environmental damage." It also establishes three new legislative bodies to ensure enforcement of the ecosystem's rights, comprised of government representatives, scientists, and citizens. Vicente was awarded the 2024 Goldman Environmental Prize for her role in achieving legal rights for Mar Manor.[215]

Chapter 11

Nature's Rights in Towns and Municipalities and Among Native Peoples

Cities and municipalities have been at the forefront of recognizing the rights of nature, often through local ordinances voted into law by citizens and city councils. And Native Americans have used rights of Nature legislation and cases to reclaim ownership over their ancestral territories and ways of life.

The U.S.A.

Many of the rights of Nature campaigns in the U.S., starting with the first one in 2006 in the state of Pennsylvania (below), have been initiated or assisted by lawyers at the Community Environmental Legal Defense Fund (CELDF). Some have withstood legal challenges; others haven't. But the experience offers insight and lessons for future efforts to promote rights of Nature.

In February 2019, the citizens of Toledo, Ohio, passed the Lake Erie Bill of Rights with support from CELDF. This law allowed citizens to file lawsuits on behalf of Lake Erie, which is contaminated by large algal blooms, caused mainly by agricultural runoff, that have negatively affected the community's drinking water.[216] Shortly after the passage of the Lake Erie Bill of Rights, local farmer Mark Drewes filed a suit over the city's action.

He argued that the legislation was unconstitutional, since Lake Erie is overseen by multiple jurisdictions (an echo of the Ganges and Yamuna case in India); it violated federal constitutional rights, including equal protection and freedom of speech; and it was too imprecise to enforce.[217] In February 2020, a federal judge overturned the legislation, claiming it was "unconstitutionally vague."[218] The City of Toledo appealed the case in late March 2020 but dropped the appeal a few months later due to financial constraints.[219]

Although the effort to protect and potentially restore Lake Erie by endowing it with legal rights failed, dozens of municipalities and cities have enshrined the rights of Nature in law over the past nearly two decades, and some have succeeded and endured. A few representative cases are explored here.

In 2006, Tamaqua Borough, Pennsylvania (population 6,688) became the first municipality to recognize the rights of Nature when it passed an ordinance banning corporations

from dumping toxic sewage sludge in the community. The ordinance stated that, "Borough residents, natural communities, and ecosystems shall be considered to be 'persons' for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems."[220]

In 2010, Pittsburgh, Pennsylvania (about 260 miles west of Tamaqua) became the first major city in the U.S. to codify legally enforceable rights of Nature as part of an effort to ban fracking.[221] In 2013, Santa Monica, California passed the Sustainability Rights Ordinance, which recognized "the rights of people, natural communities, and ecosystems to exist, regenerate, and flourish" within the City.[222] And in 2020, Orange County in the state of Florida became the biggest municipality in the U.S. to adopt a rights of Nature amendment to the country's charter,[223] affording lakes, streams, and wetlands the right to exist and flow, thereby granting them protections from pollution. Agriculture and development have been major drivers of water pollution and draining of wetlands in the county.

In 2021, a lawsuit was brought against a developer on behalf of Lake Mary Jane, Crosby Island Marsh, and other waterways in Orange County to stop a commercial and residential project that would have led to the draining and filling in of wetlands.[224] In 2022, a judge ruled in favor of the developer, concluding that the charter amendment was preempted by state law.[225]

Some backlash to rights of nature local ordinances at higher levels of governance has begun. In one example, in 2024, the governor of Utah banned the state and local governments from granting legal personhood to plants, animals, or ecosystems like the state's Great Salt Lake, which is shrinking precipitously due to overuse, principally by agriculture.[226]

Outside the U.S.A.

Outside of the U.S., a growing number of cities and municipalities have succeeded in establishing rights of Nature ordinances or granting forms of personhood to nonhuman life. In 2017, Mexico City passed a new constitution that included a rights of Nature provision;[227] in 2018, Brazil's Municipality of Paudalho, in Pernambuco State, enacted a rights of Nature law;[228] and in 2020 the Blue Mountain Council of New South Wales, Australia, resolved to integrate the rights of Nature into its municipal planning and operation.[229]

Curridabat, a suburb of San José, the capital of Costa Rica, in 2020 decided to recognize bats, bees, and butterflies as "citizens," along with trees and native plants. This recognition was

part of a years-long attempt to reimagine the urban environment around its nonhuman inhabitants, as well as center the needs of the elderly and children to have available to them the natural cooling capacity and recreation possibilities that open, green space provides.[230]

Although the content and scope of these and other rights statutes may differ greatly, as do their enforcement mechanisms, they have in common a recognition of the need for a fundamental shift in humans' relationship with, and obligations to, natural ecosystems. They also offer new avenues for legal cases to be brought and adjudicated by courts that affect the rights of Nature materially in local and state-level governance structures.

Native Peoples and the Rights of Nature

Indigenous communities in Latin America and Aotearoa New Zealand have used constitutions or legislation to enshrine the rights of Nature to further their community rights, acknowledge kinship beliefs, and enhance their authority and agency in determining the use of and protections for natural resources.

Over the last decade, Native American nations in North America have adopted constitutional amendments and resolutions that acknowledge the rights of Nature, individual ecosystems, rivers, and plants, in order to offer redress to Nature and respite from extraction and exploitation. Several of the following examples demonstrate how Indigenous nations are utilizing Western legal structures to advance long-held, bedrock values and reclaim alienated rights. As Native American lawyer and CDER staff member Frank Bibeau's says, "We are using the tools that are used against us."[231]

In 2016, the Ho-Chunk Nation in the U.S. state of Wisconsin became the first in the country to recognize and protect the rights of Nature through an amendment to its tribal constitution.[232] In 2017, the Ponca Nation in Oklahoma, with support from the women- and Indigenous-led non-governmental organization Movement Rights, passed a customary law doing the same.[233] This law established a right to clean air and water, and a habitable climate without pollutants, contaminants, and radioactive or toxic waste.

In the Pacific Northwest of the U.S., four hydroelectric dams along the Snake River have depleted salmon populations by denying them the ability to swim freely upriver to their spawning grounds.[234] Increasingly hot temperatures in the Columbia and Snake rivers have also led to sockeye salmon die-offs.[235] In 2020, the Menominee Indian Tribe of Wisconsin issued

resolutions recognizing the rights of the Menominee River, and the Nez Perce Tribal General Council did the same with the Snake River.[236,237] In January 2022, the Sauk Seattle Tribe brought a suit that asserted the rights of the salmon in the Skagit River.

Jack Fiander, the attorney for the Sauk-Seattle, stated:

> The Sahkuméhu have witnessed the decline of Tsuladxw [salmon] for a century. The salmon are their relatives, a gift of the Creator. The Creator's gift is being taken from them. It is time that the salmon's voices are not only heard, but that their rights are protected against human actions which prevent their survival."[238]

The suit was settled in May 2023 with the city of Seattle committing to creating passageways for the salmon to avoid the Skagit River dams.[239] In December of that year, the city of Port Townsend in Washington State declared inherent rights for endangered orcas that swim in the Salish Sea.[240]

In 2018, the White Earth Ojibwe band of the Chippewa Nation in the state of Minnesota employed an existing piece of legislation to bring an innovative lawsuit to stop extractive industries from damaging a traditional crop and the larger ecosystems on which it—and the Nation—depend. The suit sought to protect wild rice, or *manoomin*, which is considered sacred in the White Earth's Ojibwe culture. Their 1837 treaty with the U.S. government guaranteed the Nation the rights to hunt, fish, and gather on ceded territory.[241] Because wild rice was explicitly mentioned in the treaty, the White Earth argued that securing its protection and legal personhood was a right afforded by the treaty.

Joining with Thomas Linzey of CDER and Ojibwe activist Winona LaDuke, Chippewa Nation enrolled member and lawyer Frank Bibeau wrote a resolution granting legal personhood to *manoomin.* The resolution, which the White Earth passed in December 2018, stated: "These rights [*of manoomin*] include, but are not limited to, the right to pure water and freshwater habitat; the right to a healthy climate system and a natural environment free from human-caused global warming impacts and emissions."[242]

According to Bibeau, who directs the Tribal rights of Nature program of the CDER, acknowledging the rights of *manoomin* in White Earth law "basically gives us a tool that is

recognized as like any law, it's just Indian law. That means . . . if we need to, if there's a challenge in tribal court, we can use this law as a protection mechanism."[243]

The resolution proved timely. In August 2021, the White Earth filed a lawsuit in which *manoomin* was the lead plaintiff against the state of Minnesota's Department of Natural Resources. The suit contended that by issuing permits to Canadian energy company Enbridge allowing construction of the Line 3 Tar Sands Oil Pipeline,[244] the state agency put at risk *manoomin*'s "legal rights to exist, flourish, regenerate, and evolve."[245] Enbridge, the owner of Line 3, had abandoned an old, leaking pipeline to build a new one through territory ceded to the tribe by a 1855 treaty with the U.S. government.[246] Construction of the replacement pipeline, the White Earth argued. could damage or pollute existing water systems, essential to wild fish, production of maple syrup, as well as cultivation of *manoomin*. *Manoomin* was also at risk from effects of climate change like higher temperatures and more erratic weather.

In March 2022, the White Earth Court of Appeals ruled against the Tribal court and the lead plaintiff *manoomin* on grounds of lack of jurisdiction and past precedent.[247] Despite this outcome, legal scholars Elizabeth Kronk Warner and Jensen Lillquist argue that "rights of Nature provisions adopted by Tribes stand a greater chance of withstanding legal challenge than provisions adopted by municipalities." They add: "Accordingly, environmental reform can benefit from the collaboration and experimentation of Tribes."[248] In April 2022, Bibeau and another attorney for the White Earth filed a legal brief April requesting that the court reverse its ruling.[249]

Other Native American nations have written the rights of Nature into law. In 2019, the Yurok Tribal Council established through a resolution the legal personhood of the Klamath River, which flows through the states of Oregon and California, to "exist, flourish, and naturally evolve to have a clean and healthy environment free from pollutants."[250] This made the Klamath the first river in North America to be acknowledged as rights-bearing.[251]

Chapter 12

"Hard Law," "Soft Law," and International Agreements

The rights referred to in this paper are generally legally enforceable rights or "hard law." However, as noted earlier, the interests of economic development and conservation, as well as multiple jurisdictions and stakeholders, coupled with changes in governments and different policy priorities, can make it very difficult for legislatures and judiciaries to apply "hard laws" consistently and effectively.

"Soft law" offers an alternative means to advance the rights of Nature. Soft law refers to "rules that are neither strictly binding in Nature nor completely lacking legal significance." Soft law encompasses instruments such as guidelines, policy declarations, and codes of conduct. Resolutions of the UN General Assembly are also an example of soft law.[252] Advocates for the Nature's rights and the rights of animals can leverage both "soft" and "hard" law approaches simultaneously and in mutually reinforcing ways.

The following are some relevant examples of soft law.

Harmony with Nature

The United Nations General Assembly's 2010 Resolution 65/164 on "Harmony with Nature" opened the door for ongoing dialogue among member states on the rights of Nature in UN settings.[253] The intent of the subsequent Harmony of Nature resolutions, passed by the General Assembly, was to construct "a new, non-anthropocentric paradigm in which the fundamental basis for right and wrong action concerning the environment is grounded not solely in human concerns."[254]

The UN's 2022 *Harmony with Nature* report explicitly recognized evolving concepts of Nature's rights, citing and welcoming

> the advances in Earth jurisprudence, in particular through the rights of Nature and ecological economics, and joint efforts by Member States to create a new narrative for a regenerative world in which human rights go hand in hand with the rights of Nature, and sustainable development is reframed to ensure planetary health and the well-being of future generations.[255]

An evolving list of advances in Nature's rights laws and policies is available on the Harmony with Nature website (http://www.harmonywithnatureun.org/rightsOfNature/).

Also in 2022, the UN Biodiversity Conference of Parties (COP15) biannual meeting in Montreal, Canada, reached an agreement to guide global action on Nature through 2030. The final text, agreed to by nearly two hundred governments, includes language on the rights of Nature. It states:

> Nature embodies different concepts for different people, including biodiversity, ecosystems, Mother Earth, and systems of life. . . . The framework recognizes and considers these diverse value systems and concepts, including, for those countries that recognize them, rights of Nature and rights of Mother Earth, as being an integral part of its successful implementation.[256]

In spite of the fine words, the agreement is non-binding and its implementation relies on national policy-making, legislation, regulations, and institutions to ensure compliance and progress. As assessed by a UN report, governments have made limited progress on meeting the goals of the previous ten-year global biodiversity framework, and not a single goal agreed to be achieved by 2020 has been fully met.[257]

Ecocide

Legal scholars and advocates have attempted to adapt the "hard law" approach to prosecuting crimes against humanity to an environmental context, by attempting to include the crime of "ecocide" within the mandate of the International Criminal Court. If the effort is successful, ecocide will join genocide, crimes against humanity, war crimes, and crimes of aggression as the fifth crime that could be prosecuted under the Rome Statute of the International Criminal Court (ICC). It would thus become "hard law."[258]

The late British barrister Polly Higgins developed the legal definition of ecocide: "Ecocide is extensive loss, damage, or destruction of ecosystems of a given territory(ies) . . . such that the peaceful enjoyment of the inhabitants has been or will be similarly diminished." It is worth pointing out that the word "inhabitants" doesn't refer only to human beings, but also other animals that live within and therefore rely on an ecosystem(s).

Higgins presented the initial concept of ecocide to the UN Law Commission in 2010 and urged that it be considered a crime against humanity. (Making destruction of the environment an international crime had been mooted earlier, including by former Swedish prime minister Olav Palme at the UN's first global environmental conference in Stockholm in 1972.)[259]

The text of the ecocide law to be included in the ICC was unveiled in June 2021 by a group of international legal experts. This definition reads as follows: "Ecocide is unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and widespread or long-term damage to the environment being caused by those acts."[260] Stop Ecocide International is now a global network of civil society organizations, lawyers, and diplomats headquartered in the U.K.[261]

Since 2021, lawmakers in a number of countries, including Mexico, the Netherlands, Italy, Belgium, and Brazil, have discussed national ecocide laws and drafting or introducing relevant legislation.[262] France has an ecocide law, although, according to the *Guardian* newspaper, the language isn't as strong as advocates sought.[263] And Vietnam, Russia, and Ukraine have made ecocide a crime, although this hasn't prevented Russia's war in Ukraine from causing severe environmental damage.

In 2023, after Russia's invasion, Kiev began to build an ecocide case against Moscow for the deaths of more than 900 porpoises and dolphins in the Black Sea due to the Russian fleet's acoustic sonar signals, rockets, and explosions interfering with the cetaceans' echolocation and fuel leaks poisoning the waters. The Ukrainians have also included the Russian sabotage of the Kakhovka dam in the ecocide case, since its destruction resulted in major flooding and widespread environmental damage.[264]

The Earth Charter

The Earth Charter, an international "declaration of fundamental ethical principles for building a just, sustainable, and peaceful global society in the 21st century," was drafted between 2000 and 2005, after the UN World Commission on Environment and Development requested a document to guide sustainable development policies.[265] The Earth Charter Initiative attempts to raise awareness of the Charter, and popularize its use as soft law.[266]

The Charter recognizes that "all beings are interdependent and every form of life has value regardless of its worth to human beings." Although few governments have endorsed the

Charter, the number of partner and affiliated organizations is substantial.[267] Notably, the Charter makes achieving sustainable development conditional on the humane treatment of individual animals, one of the first global environmental sets of principles to include a reference to animals *qua* animals, and not only as "species."[268]

The Universal Declaration of the Rights of Mother Earth

The Universal Declaration of the Rights of Mother Earth[269] was made public at the April 2010 World People's Conference on Climate Change and the Rights of Mother Earth held in Cochabamba, Bolivia with support from the Bolivian government. (Brighter Green participated in the conference and made a presentation on a panel as part of the civil society forum.)

Another example of soft law, the Declaration states that:

> Mother Earth is a living being…and all beings are entitled to the inherent rights recognized in this Declaration without distinction of any kind, such as may be made between organic and inorganic beings, species, origin, use to human beings, or any other status.

It further acknowledges that "just as human beings have human rights, all other beings also have rights which are specific to their species or kind and appropriate for their role and function within the communities within which they exist." And it declares that "Every human being is responsible for respecting and living in harmony with Mother Earth" and lists many specific ways that governments, institutions both public and private, and economic systems should defend, protect, and conserve the rights of Mother Earth. The text of the Declaration also includes a call for its adoption by the UN General Assembly "as a common standard of achievement for all peoples and all nations of the world…."[270]

The Declaration has been popularized by civil society organizations in countries around the world, and has informed and accelerated varied means of securing Nature's rights in laws, constitutions, court rulings, and in practical actions. In a legal case in support of the declaration by *Wild Law* author Cormac Cullinan, he asserts that, in representing the legal approach of "earth jurisprudence" the declaration uses the language of international law to offer a radically different and necessary approach and worldview:

> This worldview understands human beings as members of a great community of life and as having distinct responsibilities to that community and to other beings within it. This understanding is not only reflected in the cosmologies of Indigenous peoples throughout the world, is also consistent with contemporary scientific understandings regarding the interrelated nature of the cosmos and the functioning of natural systems.

Codifying in laws the tenets of the Declaration would, of course, necessitate a fundamental shift in human systems of governance, economics, and law. "Implementing the Declaration," Cullinan writes, "would require legal systems to balance the rights of humans and other beings."[271]

Interestingly, nowhere in the Declaration do the words *animal* or *nonhuman animal* appear, although the text in Article 2.3 implies an application to animals. It reads: "Every being has the right to wellbeing and to live free from torture or cruel treatment by human beings." Some advocates for animal rights have queried the Declaration's absence of an explicit reference to animals. Was it an oversight, or an intentional exclusion of animal rights discourse, aims, and proponents? Or, was it a case of embedding animals in terms like *beings* and *species*?

Some critics have observed that by not specifically including *animals*, the Declaration risks making them seem separate from Nature, which contradicts the vision of comprehensive rights for "all beings" on Earth. Another question that arises is this: Did the Declaration forestall or slow down more active collaboration between theorists and advocates for the rights of nature and the rights of animals as proposed by the authors of this paper?

In a communication with Brighter Green, Cullinan explained the rationale for the textual decisions made by the Declaration's working group (about 400 people gathered in Cochabamba, Bolivia). Whereas earlier drafts had specific references to animals in some of the Declaration's articles, the group ultimately judged that animals shouldn't be separate from Nature or singled out for special treatment, since a majority of the rights applied to all beings. Giving further context to this decision, Cullinan wrote:

> One of the main arguments advanced for dropping [the previous articles] was that life permeates everything [and] everything is part of the world and the Declaration should not perpetuate the belief that there is a radical discontinuity between animate beings (like animals) and inanimate beings (like rivers and mountains). From an Indigenous perspective this is a false dichotomy which obscures the interconnectedness and interrelationships between all (sometimes referred to as "inter-being").[272]

Global Alliance for the Rights of Nature and Rights of Nature Tribunals

A few months after the Declaration of the Rights of Mother Earth was issued, the Global Alliance for the Rights of Nature (GARN) was formed in June 2010. GARN's goal is advancing the project of securing rights of Nature legislation and constitutional inclusion of Nature's rights protections. (Some of GARN's founding organizations and individuals had participated in the conference in Cochabamba.) GARN is a global network, not a formal non-governmental organization, and now has members in more than one hundred countries. These members include scientists, activists, Indigenous leaders, politicians, and students, among others, with a shared commitment to "universal adoption and implementation of legal systems that recognize, respect, and enforce 'Rights of Nature'."[273]

GARN has created and is the secretariat for both local and international Rights of Nature "tribunals" as a way for citizens to investigate and publicize abuses against the rights of Nature, with a focus on Indigenous communities.[274] In June 2024, the 12th local tribunal for the Rights of Nature was held at Haw River State Park in the U.S. state of North Carolina, to draw attention to the impacts of a natural gas pipeline slated to run from northwestern West Virginia to southern Virginia. At the tribunal, evidence was presented that construction of the Mountain Valley Pipeline would negatively affect the rights of the region's rivers.[275]

As of writing, many International Rights of Nature Tribunals have been held, including five the annual Conference of the Parties (COP) to the UN Framework Convention on Climate Change. The fourth such tribunal resulted in the delegation to Bolivia to investigate the road construction through TIPNIS, described above. So far, it does not appear that concrete action in a legal sense has been taken due to one of the tribunals. However, the intent is for the tribunal's adjudicators to "recommend actions for reparation, mitigation, restoration, and prevention of

further damages and harm."[276] As is often the case with "soft law," the point of the structure is to bring attention and pressure to an issue when there is no legally binding entity on which to depend. Further, it is a permanent body,[277] and GARN accepts submissions of potential cases for future rights of Nature tribunals through its website. Nature's rights advocates see the tribunals as an important facet of the movement's future.[278]

PART 4

NATURE'S RIGHTS AND ANIMAL RIGHTS

Commonalities and Critiques

Chapter 13

Animals Protected within Rights of Nature Frameworks

Species Protections and the Rights of Nature

As was evident in the previous chapters, wild animals have also been protected by rights of Nature provisions, or by "soft law" equivalents, and many efforts have been undertaken or are underway to link species protection to conservation of ecosystems, in ways that intersect with rights claims. This is less controversial than it may at first seem: Many wild animals, including great apes, cetaceans,[279,280] and pollinators (such as bees, among others) have been shown to provide essential services not only to the ecosystems they inhabit,[281] but are increasingly recognized as "sentinel species," or indicators of the health of the environment as a whole.[282]

Apes have been the subject of initial campaigns to secure individual rights as persons for nonhuman animals,[283] *and* within the rights of Nature: making their rights and well-being a natural point of convergence for the two movements. The Great Apes Survival Partnership (GRASP) is a UN-led partnership founded in 2001. GRASP strives to conserve wild great ape populations throughout twenty-three nations in Africa and Asia[284] by improving the health of their ecosystems and leaving them free and unharmed by humans in their natural habitats. GRASP recognizes that great apes are "key indicator species for endangered ecosystems," and crucial to "maintaining the health and diversity of tropical forests, by dispersing seeds and creating light gaps in the forest canopy which allow seedlings to grow and replenish the ecosystem."[285]

Similar efforts have been undertaken to protect cetaceans, both as individuals and as essential to the health and sustainability of marine ecosystems. Conservative estimates of the value of the average great whale, based on their roles in storing carbon in their bodies, and encouraging the growth of phytoplankton, which also capture carbon, range from $US2 million per animal to more than $US1 trillion for the current population of great whales.[286] In May 2010, a conference of scientists, ethicists, and legal scholars, was held in Helsinki, Finland, and subsequently issued a *Declaration of Rights for Cetaceans: Whales and Dolphins on Behalf of the Helsinki Group*. It states that "every individual cetacean has the right to life" and not to "be held in captivity or servitude; be subject to cruel treatment; or be removed from their natural environment."[287]

The Helsinki Group, comprised of signatories to the Declaration, was the brainchild of philosopher Paola Cavalieri, who was instrumental in setting up the Great Ape Project (GAP). GAP began in 1994 to advocate for a UN Declaration of the Rights of Great Apes following the publication *The Great Ape Project* by Cavalieri and philosopher Peter Singer.[288] The aim was to highlight the conditions for, and urge the protection of, wild and captured great apes, all species closely related to human beings. Subsequent to GAP's founding, the use of great apes in animal testing and research was banned in the United Kingdom in 1986 and in New Zealand in 1999.[289] In 2013, the European Union banned research on great apes.[290]

The lives of pollinators, and insects in general, are becoming increasingly valued, not only because of their complex social lives[291] and for the essential role they play in food systems,[292] but also because of the dramatic decline in many species' populations due to climate change, pollution, insecticides, and habitat loss.[293] In one example, Manitou Pollinators of Manitou Springs, Colorado are joining with the Center for Democratic and Environmental Rights **(**CDER) to establish the first rights of pollinators ordinance for their county, using a rights of Nature framework.[294]

As was described in the previous chapter, Native peoples are playing a significant role in advancing rights for nature and animals. In March 2024, for example, Indigenous leaders in Tahiti, the Cook Islands, and Aotearoa New Zealand signed a treaty that recognizes whales as legal persons. Many of the Indigenous communities of this and other regions of the world acknowledge whales as ancestors. The expectation is that the treaty will lead to new Pacific government protections to safeguard whales, including from vessel strikes and entanglements with fishing gear, as well as legally enforceable penalties for any harms committed.[295]

When Panama passed a rights of Nature law in 2023 to protect leatherback turtles from drowning in fishing nets or their eggs being poached, the law's implementation involved the leadership of the Guna people. As Ignacio Crespo, founder of Fundación Yaug Gulu, and a Guna himself, told the *Washington Post:* "The Gunas always say that the turtles were once human beings. They are our brothers and sisters that live in an immense mysterious ocean."[296]

Estrellita

A seminal decision from the Constitutional Court of Ecuador provides an excellent example of how the rights of Nature and animals can converge through the law.

In 2022, the Court heard the case of Ana Beatriz Burbano Proaño, a woman who had filed an action for habeas corpus on behalf of Estrellita, a *chorongo* monkey who had lived with her for eighteen years, after she had purchased the monkey at a wildlife market.[297]

Authorities had seized Estrellita from Burbano Proaño on the grounds that possessing a wild animal is illegal in Ecuador. That prohibition stemmed from Ecuador's rights of Nature provision (see Part 3) and the *Estrellita* case presented the first time the court would determine whether the provisions of the rights of Nature applied to an individual animal, not a species or a natural feature, like a river.

The court selected the case for two reasons. The first was to examine the scope of the rights of Nature and assess whether it would cover the protection of a specific wild animal—one under human control. The second was to review whether, in the initial abduction of Estrellita from the wild, the rights of Nature had been violated, and if the case could lead to the development of guidelines for how constitutional guarantees might be applied in favor of wild animals such as Estrellita.

Recognizing the potential precedents the case could set, lawyers and legal scholars who work to advance the rights of animals sought to have their perspectives inform the judicial process by filing amicus briefs with the court. In their brief, lawyers from the Nonhuman Rights Project argued that Estrellita's habeas corpus rights had been violated.

In their own amicus brief, scholars from the Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School in the U.S. argued for Estrellita's rights under rights of Nature provisions in the Ecuadorian constitution. The Harvard Law School brief made legal arguments that not only reflect the ideas that animate this paper, but also demonstrate where language and legal precedents for the rights of Nature and those of animals can be developed in the future.[298]

In summary, nonhuman animals, NhRP and the Harvard scholars argued, could be subjects of rights; writs of habeas corpus, considered suitable only for human beings, could be appropriate for animals; and animals could be designated subjects of rights protected by the rights of Nature.

In its decision, issued in February 2022, the Constitutional Court found for Estrellita by a vote of 7–2. The court's ruling noted that the preamble to the 2008 Ecuadorian constitution acknowledges Nature, or Pacha Mama, "of which we are a part and which is vital to our

existence," in establishing a "new form of citizen coexistence, in diversity and harmony with nature, to achieve a good way of living, the *sumac kawsay*" (a Quechua expression that roughly means "good living").[299] Further, the court stated, the constitution established a duty upon all Ecuadorians to "respect the rights of Nature, preserve a healthy environment, and use natural resources in a rational, sustainable, and ecological manner."

The court concluded that the scope of the rights of Nature included animals. Therefore, animals were the subject of rights, and a wild animal such as the *chorongo* monkey could be protected by the rights of Nature constitutional provisions: their life and integrity could be seriously injured if they were confined as a pet; if their habitat was interfered with or they were removed from that habitat; or if the animal was categorized as endangered or vulnerable.

The court also enumerated a robust range of other rights for animals, such as: the right to exist; the right not to be hunted, fished, captured, collected, extracted, kept, detained, trafficked, traded, or exchanged; the right to the free development of their animal behavior; the right to freedom and good living; the right to food according to the species' nutritional requirements; the right to live in harmony; the right to health and a habitat; the right to demand their rights from the competent authorities; the right to physical, mental, and sexual integrity; the right to live in an environment suitable for each species, with adequate shelter and resting conditions; and, ultimately, the right to life.

The habeas corpus statute was unavailable to Estrellita, since she had died within a month of being taken from Ana and relocated to a zoo (which was the precipitating reason for the case). Nonetheless, the court indicated that habeas corpus *could* be an appropriate action for animals and that they may possess rights that derive from other sources in addition to the constitution. To that end, the court explored the "Interspecies Principle," which it said allows for rights that can only be guaranteed in relation to unique or exclusive properties of a species, for example, the right to respect and the right to have areas of distribution and migratory routes conserved.

In its ruling, the court recognized multiple violations of Estrellita's bodily and mental integrity. First, Ana *had* committed a crime by keeping a wild animal in her home. Secondly, although it was *not* in the species' interest to be removed from her natural habitat, it may have been in Estrellita's interests to remain in Ana's home, where she was cared for as a pet tends to be, as opposed to experiencing the shock of being removed to a zoo, which was the third violation.[300]

Even though the court agreed, not surprisingly, that animals were not equal with human beings, that did not mean, they stated, that they were not subjects of rights. Rather, the court continued, their rights should be observed as a specific dimension of the rights of Nature, albeit with their own particularities. The court argued that the main right of wild animal species is the right to exist, and not to be rendered extinct through human endeavors. A wild animal's rights to life, freedom, and integrity, among others, the court explicated, must be protected regardless of the claims, intentions, or desires of third parties.

If, judges determined, "the deprivation or restriction of the freedom of a wild animal" was unlawful, the environmental authority in Ecuador had to provide "the most suitable alternative for the preservation of the life, freedom, integrity, and other related rights of the victim." By confining Estrellita in a zoo, the court said, the environmental authority had failed to meet this requirement, since it was possible that the conditions in the zoo had contributed to the monkey's death.

This failure was the reason why, in its ruling, the Constitutional Court ordered the Ministry of Environment to develop a protocol to assess the circumstances and needs of captive wild animals to guarantee their protection. The court also ordered Congress and the Ombudsman (a national office with a mandate to protect human rights and resolve conflicts that is independent from other state institutions) to prepare and approve a bill on the rights of animals, based on the rights and principles developed in the ruling.

As Peruvian legal scholar Marcia Condoy Truyenque has argued in the *Animal & Natural Resources Law Review*, the sweeping rights enumerated for animals by the court do not, pointedly, extend to *all* animals. The court made clear that "as human beings are predators, and being omnivorous by Nature, their right to feed on other animals cannot be forbidden."[301] Condoy Truyenque continues:

> The Court declared that domesticated animals can be used for transportation, clothing, footwear, and even recreation and leisure. Wild animals can be captured for *ex situ* conservation; that is, they can be placed in zoos, severely restricting their right to freedom. Invasive species can be exterminated in the name of ecosystem balance, which means a restriction on their right to life, their physical

integrity or right to exist, as well as their right to live in harmony and their right to habitat.

While welcoming the decision, Canadian political philosopher Will Kymlika has questioned whether it represents a convergence of Nature's rights with animal rights. He notes that by excluding domesticated animals, specifically those used as food, the court tacitly acknowledges that the "confinement, genetic manipulation, and killing of domesticated animals for the convenience and benefit of humans is permissible and, indeed, a constitutionally guaranteed right." Writing in an anthology on concepts of more-than-human rights, published in 2024 by the MOTH Project at New York University Law School, Kymlika argues that this is not a quirk of the Ecuadorean court's worldview. Rather, it represents a line that has separated movements for rights of Nature and rights of animals in the past, and continues to do so.

Eliminating this division could—and should—be a joint project of the two movements, Kymlika concludes:

> The instrumentalization and commodification of domesticated animals has always been the lynchpin of ideologies of human supremacism and, so long as it remains untouched, modern societies, cultures, and economies will continue to be defined and shaped by supremacist beliefs. MOTH rights will only be secure when this foundation of human supremacism is exposed and questioned. And that is a task that I believe requires the shared labor of both animal advocates and MOTH advocates.[302]

The Constitutional Court's judgment also does not offer an assessment of the rights of "liminal" animals—those who exist on the peripheries of, or within, human societies (such as squirrels, feral cats and dogs)—whose status the judges did not determine. Nonetheless, Condoy Truyenque observes, the application of the language of rights for *individual* wild animals (and the enumeration of prohibitions applied by the court) within the context of natural systems,

> is an achievement for animals given the strong symbolic value that the language of rights has in Western political culture. To recognize animals as legal subjects

and rights-holders is powerful as a political declaration that can lead to the recognition of animal rights by their own value, independently from the Rights of Nature framework.

Because the Court has allowed standing to such animals, she continues, they thereby possess the rights to seek redress for harms and demand enforcement *on their own terms*. Furthermore, as Condoy Truyenque notes in her article, "a future recognition of rights for animals based on sentience, intrinsic value, dignity, or another legal foundation different from the Rights of Nature framework could overcome the aforementioned defects" of the judgment.

The potential for the Constitutional Court's judgment to lead to cases being brought on behalf of and rulings in favor of other animals is clear, argue Harvard Law School's Macarena Montes Francheshini and Kristen Stilt, who wrote the amicus brief: "We believe it is just a matter of time before the rights of Nature are used to argue against the exploitation of an even broader range of animals."[303]

The Blue-Fronted Parrot

Another case, also from South America, has served as a similar example of an individual animal protected by rights of Nature statutes. This concerned a woman, M.A., who, according to the state of São Paolo in Brazil, which brought a case against her, kept a single blue-fronted Amazon, also known as the blue-fronted parrot (*Amazona aestiva*), in inadequate living conditions for several decades. In 2019, the Superior Court of Justice in Brazil ruled that the parrot should be given provisional protection based on the fact that the bird's confinement infringed upon the right to an "ecologically balanced environment" as laid out in Article 225 of Brazil's constitution.

In its judgment, the court called for rethinking normative judicial reasoning based on what it called the "Kantian, anthropocentric and individualistic concept of human dignity." Instead, the court exemplified Earth jurisprudence by tying together animal rights and Nature's rights frameworks, stating that the "view of Nature as an expression of life in its entirety enables the Constitutional Law and other areas of law to recognize the environment and non-human animals as beings of their own value, therefore deserving respect and care, so that the legal system grants them the ownership of rights and dignity."[304]

In its decision, the court included animal protection language from both the German and Swiss constitution, as well as the rights of Nature language from the Ecuadorean constitution and the Bolivian Law on the Rights of Mother Earth.[305]

Ultimately, despite the court's important ruling, the parrot was returned to its initial guardian because the court deemed the bird's reintegration into a natural habitat was potentially more harmful to the bird than the alternative (as was likely the situation with Estrellita). However, the court mandated biannual visits by a veterinarian trained in wild animal welfare as well as annual inspections of the bird's living conditions.

In a more recent ruling in a case concerning animals living with humans, in 2021, a justice tribunal in the Brazilian state of Paraná overturned a lower court ruling and affirmed the legal standing of animals in the context of a case brought on behalf of two dogs, Spike and Rambo. In her opinion, the presiding judge referred to the 2005 case in which a writ of habeas corpus was filed for Suica, a chimpanzee in a Brazilian zoo (discussed above). The court ruled that the dogs could sue their human guardians (charges included neglect), and that under Brazil's 1988 constitution "every holder of substantive rights can be a party to a judicial proceeded." Therefore, the dogs could be plaintiffs as long as they were "duly represented." An NGO acted to assist the dogs in legal proceedings.[306]

Chapter 14

Rights of Nature and Animal Rights: Critiques and Challenges

Unsurprisingly, the language and effect of rights of Nature statutes, provisions, and declarations have been criticized by some legal and environmental ethics scholars, who cite a varied range of concerns and counterarguments. Some of these critiques are explored here.

One critique is that rights language cannot apply in legal situations as neither Nature nor animals can be violators of others' rights. Apart from human beings, runs such an argument, no other living entity understands rights or comprehends what it means to be a rights-holder or has obligations to respect the rights of others.[307]

Other critiques of rights of Nature theories and legal cases have taken different forms—from those who think they are not radical enough, to those who consider them impracticable, lacking in merit, or even nonsensical.

"I don't think I want a redwood grove to have rights," Canadian environmental philosopher John Livingston has stated. "Rights are political instruments—legal tools." He continues:

> We hear a lot of talk about "extending" rights to nature. How bloody patronizing! How patriarchal for that matter. How imperialistic. To extend or bestow or recognise rights in nature would be, in effect, to domesticate all of nature—to subsume it into the human political apparatus.[308]

Similar sentiments are expressed by political scientists Craig Kauffman and Pamela Martin. Referencing comments made by Erin O'Donnell's *Legal Rights for Rivers: Competition, Collaboration and Water Governance* (Routledge, 2019), Kauffman and Martin observe there is the possibility that providing natural entities (such as the Wanganui River) with a legal guardian in fact may lessen their environmental protection. The guardian renders the natural entity just another competitor for access to the resource, and the river's independent status as a common

good is lessened. Indeed, note Kauffman and Martin, a river could theoretically be sued for the damage caused by flooding.[309]

Fundamentally, they observe, by centering the natural entity in an inherently anthropocentric legal structure, "the guardianship mechanism . . . frames humans as the powerful parent and Nature as the helpless child." This "violates fundamental Earth jurisprudence principles when applied to the human–Nature relationship." What is required, they continue, is that legal personhood and the courts fit within the larger commitment to Earth justice, and not the other way round: "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."[310]

For Mauricio Grim, professor of law at Instituto Tecnológico Autónomo de México and Michael Livermore, professor of law at the University of Virginia in the U.S., codifying rights of Nature language fails to grasp an ecosystem's shifting, interconnected, plural identities, arising from the multiple species of flora and fauna that may exist within "them." They argue in a *Virginia Law Review* article that interventions to protect a particular landscape, for instance, may be at once arbitrary and indeterminate (both spatially and temporally). They add that the varied, and perhaps opposed, interests of human stakeholders may prove hard to ascertain to anyone's satisfaction. Grim and Livermore also ask what should happen if two different parties claim to "speak" for Nature? Much more preferable, they suggest, would be to enact ordinances and laws to protect environmental activists as they advocate for laws already on the statute books.[311]

For Noah Sachs, a professor at the University of Richmond School of Law, writing in the *Georgetown Environmental Law Review*, rights of Nature statutes are too vague. Bestowing a legally enforceable right of Nature to "exist" or "flourish" begs the questions of how you calculate what level of existence might constitute "flourishing," and who would decide whether an ecosystem or other natural entity has met that level. He suggests that judges lack the expertise that would allow them to arbitrate complex and multivalent environmental harms, including those caused by climate change and the loss of biodiversity.

Sachs argues that, instead, the interlocking ecological crises need specific pieces of legislation—which take into account human interests in using ecosystems—or they risk not only being impractical but also counterproductive. Would, he asks, the logical extension of a right of Nature mean that no one could harvest crops, or use rivers for irrigation or be able to dredge

them, or allow for the removal of invasive species or the pulling up of weeds? Sachs writes that far from establishing a genuinely non-anthropocentric view of the natural world, rights of Nature language actually reinforces it:

> Given that there are trillions of other non-sentient objects on earth, there is no limiting principle when it comes to non-living things: it is not clear why legal rights should attach to "the river" rather than to other objects, such as pebbles on a beach or copper in a mine. The only plausible reason for conferring enforceable legal rights on "the river" is that rivers have more subjective value to humans.[312]

Nature's Rights and Animal Rights in Conflict

Concepts embedded in rights of Nature statutes and language are, say some observers, potentially problematic for advancing the rights of animals. Conflict between environmental activists and animal advocates may be inherent because of their different worldviews, argued Marc Sagoff, the late U.S. philosopher of environmental ethics. Sagoff observed that for those concerned with the suffering of individual beings, logic would suggest that the natural world—where tens of millions of wild animals suffer on a daily basis from predators (wild and human), hunger, thirst, habitat loss, extreme weather—*should be* interfered with, even if that involves removing predators from the ecosystem or altering it substantially.[313]

These essential conflicts of worldviews remain four decades on. Granting fundamental rights to certain animal and plant species could have enormous repercussions for how humans eat, clothe, and entertain ourselves. Such rights could impinge on the rights of nonhuman predators and the religious or cultural rights of Indigenous communities: such as the Makah Nation's hunting of whales,[314] or the Dakota Nation's raising of buffalo for slaughter.[315]

Meanwhile, rights of Nature mandates could curtail the rights of "invasive" species to "flourish": such as feral pigs in the United States,[316] lionfish in the Caribbean,[317] or spotted lanternfly in the U.S.[318] After all, these animals, precisely *because* they are flourishing, may compromise the integrity of ecosystems *and* negatively impact native animal species in those ecosystems.

One active example of these rights in conflict is in Aotearoa New Zealand. Although, as has been detailed in the paper, the country has established rights of Nature for the Whanganui

River, its government has set out to eradicate all invasive species—including rats, opossums, and stoats—from the island nation by 2050.[319] (Feral cats are also being targeted through culling "contests.")[320] The government's argument is that by removing non-native predators, native species of birds, reptiles, and invertebrates will be protected.[321] Maori communities have been involved in this endeavor;[322] and some animal advocates have protested, arguing for a less absolute approach.[323]

Yet neither the government nor rights of nature advocates (at least yet) are calling for the eradication of domesticated sheep, which number 25 million in Aotearoa New Zealand and are non-native, even though they are second only to cows in per capita greenhouse gas emissions among livestock,[324] and are responsible for the destruction or degradation of habitats for many species of plants and animals.[325,326]

Such an approach begs a larger question that lurks behind both rights of Nature provisions and animal standing in a court of law: What is "Nature" and what is "natural"? Grim and Livermore critique rights of Nature statutes because, as they see it, Nature isn't static or monolithic. Profoundly complex interactions among species, tidal and weather patterns, and natural events (such as wildfires, earthquakes, and volcanic eruptions) mean nature is in a state of constant flux.

Moreover, apart from the five great extinctions that proceeded the Anthropocene's sixth, *homo sapiens* has been eradicating species (including *homo Neanderthalensis*) ever since the Holocene, domesticating and dramatically altering some animals and plants, and reshaping ecosystems. Humans have also transported animals and seeds, whether knowingly or not, in their travels across the globe and continue to do so.[327,328] One estimate assesses the cost of invasive species to the global economy to be $423 billion a year.[329]

At the same time, (some) species (including our own) have flourished in the wake of human settlements, agriculture, and urbanization. Even when there is conflict between native and non-native species, Nature complicates the supposed binaries. Feral pigs are boosting crocodile populations in Australia, and becoming a valuable food source for the Florida panther. Nutria (an invasive species) are doing the same for alligators along the Gulf Coast of the United States. Florida's snail kites are eating the invasive island apple snail,[330] and Spain's migratory wetland birds are consuming the non-native crayfish.[331] To that extent, ecosystems *and* animals are constantly reconfiguring themselves.

As some animal rights advocates and some environmentalists would add, cows, sheep, horses, rats, and human settlers were, and remain, "invasive species." They have drastically altered entire continents, forcing many civilizations and cultures, Indigenous and non-, to change and adapt in order to survive. This need for that adaptability will only become starker, as Nature becomes more stressed, diseases spread, and more people move within nations, into cities, and across borders and oceans due to the climate crisis.

Domesticated Versus Wild: Which Animals Belong to Us and Which to Nature?

A challenge to deeper cooperation between the movements for Nature's rights and rights of animals exists in the assigning of rights in the first place. In lawsuits brought on behalf of animals—whether in habeas corpus or in rights of Nature cases—the capacities of the animal in question (including, as with Estrellita and the blue-fronted parrot, their bond with a human) have played a role in determining how far the case proceeds. It also has determined whether the case was brought at all.

Cetaceans, great apes, elephants, and companion animals possess a charisma or a sociality with us that enables humans to relate to them, and to accept their sentience without argument. Scientific studies over the last half-century have affirmed their capacities—intelligence, problem-solving, emotional connection to each other and humans, among many more—in ways that have suggested their similarity to us and thereby (anthropocentrically) their inherent value, apart from their use to human societies.[332]

Clearly there is a strategic advantage, given the current anthropocentric nature of courts of law and current systems of jurisprudence to bring legal cases on behalf of animals who typically *are* considered members of human families, who look or act like humans, or possess qualities humans consider admirable or sophisticated, in a manner we can appreciate. Recall Judge Jaffe's statement in her judgment on Hercules and Leo's habeas corpus petition: "The similarities between chimpanzees and humans inspire the empathy felt for a beloved pet."

In its filing for habeas corpus on behalf of Tommy—confined in a small concrete "jungle" in a roadside zoo—the Nonhuman Rights Project described the chimpanzee as possessing "such complex cognitive abilities as autonomy, self-determination, self-consciousness, awareness of the past, anticipation of the future, and the ability to make choices."

Tommy, the legal filing continued, also displayed "complex emotions such as empathy; and [could] construct diverse cultures."[333]

Yet, for all the rhetorical and evidentiary power of such cases, the stark sociopolitical realities for advocates of nonhuman animals remains. NhRP was at pains to state in its legal filings that there were no larger legal or policy ramifications beyond their wish to free *individual* animals from their *particular* situations. Indeed, it was inadmissible in these court cases to make sweeping claims that could, in theory and practice, grant rights to other animals.

Nonetheless, despite what *wasn't* written in the documents, namely the possible setting of a legal precedent of an extension of core rights to a nonhuman animal, the implications of NhRP's petitions were clearly not lost on the industries who profit from animals' confinement. (Nor were they lost on supporters of animal rights.) To admit that one mammal or one cetacean possesses nonhuman personhood based on "complex cognitive abilities" is to open the possibility of bringing cases for the species as a whole, and then beyond that to other species who might have similar abilities and still are widely viewed around the world as "food," such as cows or pigs or chickens or octopuses or salmon.

One philosophical divide that may hold back collaboration between advocates for the rights of animals and advocates for the rights of Nature, therefore, is that those animals who are "wild" by nature (whether chimps, elephants, bees, or whales) will receive ever greater protections, while livestock and their feral cousins, will not. This isn't only because the latter are categorized as domesticated (and therefore "unnatural") but because *all* societies (whether Indigenous or industrialized) remain committed to farming or eating them.

How to extend rights to animals who do not possess traits humans find admirable or even measurable, let alone who are useful to us by becoming food or clothing, is a much harder task.

Here, again, the Constitutional court's judgment in the Estrellita case is instructive. As Condoy Truyenque observed, the court stated that human beings "are predators, and . . . omnivorous by Nature," which meant "their right to feed on other animals cannot be forbidden." This declaration makes several assumptions about human identity: that we have a natural *animal* expression ("predators") that ties our human rights "to feed on other animals" to the proper order of things—the *scala naturae*, if you will. Here, legal "rights" that had previously excluded nonhuman animals are *naturalized* to reflect the exalted status of predatory omnivores, whether human or not. In addition, the decision's statement that this right "cannot be forbidden" is not

only a jurisprudential fiat but an ontological claim: basically, that it is biologically impossible to prevent humans from eating animals because to do so would be to foist an unnatural state upon Man the Natural Animal.

Yet the court's claim that humans are "omnivorous by Nature" is contestable, on the grounds of biology as well as ethics. Human societies have long separated ourselves from Nature: whether through cooking, domesticating animals, codifying taboos surrounding food choices, practicing agriculture, and codifying "natural" senses of right and wrong in the law itself. In fact, for a human to be considered an "animal" is inherently to be dehumanized and therefore automatically denied the "natural" rights that belong to the human species.

A 2019 lawsuit brought by the Animal Legal Defense Fund sought to embed humans within the "natural world" and protect the interests of each by asserting an individual's right to wilderness, connected to their right to liberty, and defined as the right to be left alone, "free from human influence in wilderness." In the case *Animal Legal Defense Fund v United States*, the plaintiffs (future generations and a group of individuals ranging from Nature enthusiasts to scientists to wildlife advocates) called for a dramatic shift in policies and practices to secure this right, in the context of the accelerating climate crisis. Specifically, the lawsuit demanded that the federal government

> phase out commercial logging of old-growth forests, animal agriculture, and fossil fuel development and extraction in order to draw down greenhouse gases until the climate system has stabilized for the protection of wilderness on which plaintiffs now and in the future will depend for the exercise of their fundamental autonomy and privacy rights.[334]

Although the claim cited did not arise from a direct right of Nature or animals, the case rests on the interconnectedness of those rights with human rights as they are recognized in the U.S. constitution. The legal strategy, however, was not successful. A district in the state of Oregon dismissed the case, ruling that the Animal Legal Defense Fund (ALDF) lacked standing and that a plaintiff cannot suffer a specific injury due to climate change.[335]

In 2021, ALDF appealed the ruling to the U.S. Ninth Circuit Court. Brighter Green and several other organizations joined an amicus brief in support. Subsequently, however, ALDF

withdrew the appeal, concluding that while the Ninth Circuit is known as a "liberal" court, the risk of an unfavorable ruling, which could hobble similar litigation in the future, was too great.

Seeking Common Ground

Nonetheless, there *are* major points or areas of connection that provide both a pragmatic and strategic approach to advancing the rights of Nature *and* animal rights—as well as the ordinary rights of humans. *Estrellita* and blue-fronted parrot cases illustrate this. Of course, inherent contradictions remain in such cases, including the questionable "pet-keeping" of the monkey and parrot's "owners." Still these two cases (among others discussed in this paper) represent important precedents and offer a pathway for collaborative legal advances for both the rights of Nature and the rights of animals—at least for (some) wild animals.

Kristen Stilt and Macarena Montes Franceschini, who argued on behalf of Estrellita in an amicus brief, admit that rights of Nature judgments may be vague, lack clear limits, and be hard to implement. [336] The legal mandates may, they acknowledge, be guilty of not telling people how they should behave or comply, and the appointed guardians who may "speak for" Nature may, indeed, be biased, and their criteria opaque. Nonetheless, as Stilt suggests:

> Rights of nature approaches are instructive to the cause of animal rights, intellectually and practically. They do not offer a model to be copied wholesale, but instead call for careful study of the parallels and points of disconnection, of the commonalities and the conflicts, with the potential for significant results.[337]

Therefore, argue Stilt and Montes Franceschini, animal advocates would be well-advised to "get in the debate" with rights of Nature advocates. By becoming increasingly mainstream, they suggest, the rights of Nature can not only promote animal rights within legal decisions (as in *Estrellita*), but also allow for individual animals, and not only species, to be acknowledged within environmental law.

Furthermore, in its essential role in setting and reflecting societal norms and establishing new paradigms, within and outside of judicial and legislative contexts, such laws have merit, as Condoy Truyenque notes. Likewise, César Rodríguez-Garavito, founding director of the MOTH Rights Project, writes that the lack of strong "monitoring and enforcement mechanisms" means

that "recognition of rights of nature has been more symbolic than instrumental thus far." However, this is not "inconsequential," he argues, given that "the social function of law and rights is as much about reframing moral and political issues as it is about attaining tangible changes on the ground."

Therefore, Rodríguez-Garavito continues, the power of the law:

> lies in its singular capacity to tell stories that are coated in the mantle of authority. Its magic lies in its ability to cast a spell on reality. When it works, the spell can transform perceptions and facts.
>
> MOTH rights are as much a legal proposition as they are a story about our relationship with the more-than-human world.[338]

Finally, there is something to be said for new coalitions and alliances among lawyers with different worldviews, who nonetheless share a common goal of preserving natural systems and protecting wild animals. Rights of Nature lawyer Thomas Linzey, reflecting on potential and actual collaboration between advocates for rights of Nature and rights of animals, suggests he seeks a common ground with animal advocates: "We talk mostly about rights of systems—forests, rivers—and include animals within the definition of ecosystems." Linzey notes he has spoken on panels with staff of NhRP:

> We're basically supportive of each other. [The late NhRP founder] Steve Wise [has said] nice things about the rights of Nature, we say nice things about them. I think they're heroes . . . just [working] from a slightly different vantage point.[339]

PART 5

TOWARDS INCLUSIVE, RIGHTS-BASED PROTECTIONS FOR ANIMALS AND NATURE

PART 5

Towards an Inclusive, Rights-Based Approach for Animals and Nature

The preceding chapters, which span law, philosophy, worldview, strategy, coalitions, and advocacy, have thrown a light on some of the very real difficulties in applying a Nature's rights lens to animal rights, and vice versa. *From Property to Personhood* has sought to identify those cases, such as *Estrellita* and the blue-fronted parrot, where the movements and leaders within each have worked together in service of their larger, often intersecting goals. Part 5 posits other areas where scholars, lawyers, theorists, and advocates could—and should—communicate and collaborate to address some of the many challenges posed *right now* to animals and Nature. These are:

- Land-based industrial animal agriculture
- Industrial fishing and aquaculture
- Preventing pandemics and zoonoses, and protecting human–nonhuman habitat boundaries
- The trade in wildlife (illegal and legal)
- Establishing personhood for wild individuals and ecosystems while ending the captivity of keystone species

At the heart of all these areas are human communities, with their own struggles for their rights to be acknowledged.

Industrial Animal Agriculture

As a consequence of raising, slaughtering, and consuming more than 73 billion land animals for food globally each year[340]—and growing crops like maize (corn) and soybeans to feed them—industrialized animal agriculture is a significant contributor to global greenhouse gas emissions.[341] It also consumes vast amounts of potable water[342] and uses 77 percent of Earth's arable land.[343] The clearing and burning of intact forests for grazing and growing animal feed crops has resulted in considerable biodiversity loss,[344] degraded vital carbon sinks,[345] devastating

forest fires,[346] and the "grabbing" (through pressure, intimidation, and sometimes active violence) of the land and territory of local communities and Indigenous nations.[347,348]

Globally, for every one farmed animal who is raised outdoors and experiences a modicum of fresh air, movement, and life in a herd, three live on factory farms or CAFOs (or concentrated animal feeding operations, the industry's apt and unsettling term) where they are densely packed, in sheds, crates, or cages, and denied any freedom.[349] Aquaculture does the same for sea animals grown to be eaten. (See "Industrial Fishing and Aquaculture," below.)

Factory farms also cause localized environmental damage and injustice. Vast amounts of animal excrement—laden with antibiotic residues and other chemicals—are stored in large "lagoons," which can leak or overtop in storms, and pollute waterways, wells, and rivers.[350] Liquid manure is often sprayed onto fields, and plumes of airborne fecal matter drift onto other properties. Communities living near CAFOs, which usually possess little economic or political power, experience a range of negative impacts from these plumes, such as fly infestation and foul odors that often force homeowners to remain indoors."[351] Families who live downwind or downstream of these facilities experience respiratory and skin ailments and their property values are greatly reduced.[352]

Slaughterhouses are dangerous places to work, with high rates of injury and illness. Annual job turnover sometimes exceeds one hundred percent, and the physical and psychological toll on workers can be devastating to them, their families, and their communities.[353] At the height of the COVID-19 pandemic, slaughterhouses in the U.S., Brazil, Germany, and elsewhere, were loci of infections. By October 2021, the five major meatpacking plants in the U.S. reported nearly 60,000 COVID-19 cases and 269 deaths.[354]

The meat and dairy industries also routinely add antibiotics to animals' feed to try to prevent diseases occurring and spreading in the crowded, unsanitary conditions in which factory farmed animals live. So extensive is this use—a 2017 study estimated that 73 percent of all antimicrobials sold around the world are used for farmed animals[355]—that the World Health Organization (WHO) has warned of a rise in anti-microbial resistance (AMR). Humans and animals are at risk from drug-resistant pathogens.[356,357]

In addition, the livestock industry drives government and private (usually illegal) efforts to "control" wild predators like large cats, wolves, bears, and smaller mammals, through killing or relocation. In Brazil's Cerrado region, jaguars are resituated to make way for soybean fields or

cattle grazing; some are also shot by ranchers and farm operators. (Mortality rates for relocated animals can be very high.) In 2021, the U.S. Wildlife Services office, a division within the Department of Agriculture, killed more than 1.75 million animals by gassing dens and trapping and shooting—mostly to protect ranching and farming interests. Among the slaughtered were 64,000 coyotes, 24,687 beavers, 433 black bears, 324 gray wolves, and 200 mountain lions.[358]

Given its multivalent harms, it is clear that industrial animal agriculture (and the monocultures and governmental policies that support it) violates simultaneously the rights of ecosystems; natural entities like rivers; the rights of billions of animals, both domesticated and wild; and the rights of humans to a healthy and safe environment in which to work and live.[359]

Industrial Fishing and Aquaculture

Although in many ways similar to land-based industrial animal agriculture, industrial fishing and aquaculture offer distinct circumstances where animal rights and rights of Nature advocates could work together to secure protections and stave off future harms.

Many philosophers and ethologists are comfortable assigning consciousness and sentience to mammals and (some) birds. Fish and other marine life, such as bivalves,[360] remain more contested. Cephalopods,[361,362] sharks,[363] and many species of fish have now been studied and have demonstrated that they experience pain, express desires, and even possess culture.[364] From an environmental perspective, increased awareness of the essential role that phytoplankton play as the base of the marine food chain and in storing carbon,[365] or the importance of tuna as top-chain predators in the oceanic trophic cascade,[366] is forcing a reappraisal of the oceans' value to the planet. Scientists, policy makers, and others are now recognizing Earth's oceans not mainly as bottomless repositories of renewable animal protein but as essential carbon sinks,[367] critical climate regulators, and complex and interconnected homes for invaluable biodiversity.[368]

Nonetheless, exploitation of these vast and still not-well-understood ecosystems, and the animals who live in them, is rife. Oceans and their fauna are polluted with toxic chemicals: runoff from agricultural pesticides and fertilizer, as well as microplastics.[369] Thirty-five percent of all fish-stocks are overfished,[370] and industrial fishing is often indiscriminate. The UN Food and Agriculture Organization (FAO) estimates that 500,000 marine mammals are caught and killed as fishing industry "bycatch" each year.[371] This may be a significant undercount since, as

the World Bank notes, commercial ocean fishing can be "illegal, unreported, unregulated, and destructive."[372]

It's also polluting in and of itself. For, in addition to the emissions from fossil fuel–powered vessels, "more than 640,000 tonnes of nets, lines, pots and traps used in commercial fishing are dumped and discarded in the sea every year," according to Greenpeace.[373] The endangered North Atlantic Right whale is on the verge of extinction due to their becoming entangled in fishing gear and colliding with ships.[374]

Human rights are also routinely violated. Forced labor, kidnapping, and human trafficking are, according to the International Labor Organization, "a severe problem,"[375] in the fishing industry. Violence is shockingly common. An estimated 100,000 people employed in the fishing industry may die each year at sea, with some murdered and their bodies thrown overboard.[376]

As such, therefore, aquaculture—whether at sea or inland—might seem to offer a more controlled environment, with no bycatch, less piracy,[377] and fewer consequences for endangered species. The industry is expanding rapidly. Aquaculture is now responsible for over half of all the "seafood" that humans eat.[378] In 2021, aquaculture produced 90.9 million tonnes of aquatic animals, as well as 35.2 million tonnes of algae.[379] At least five hundred and fifty species, from bivalves to blue fin tuna, are now farmed.[380]

Intensive aquaculture, however, like its terrestrial equivalent, is dependent on antibiotics to keep densely packed fish at least moderately healthy. Routine overcrowding can result in pollution, diseases that affect farmed *and* wild fish, and mass die-offs[381]—as well as poor welfare for individual fish. About 70 percent of salmon consumed around the world are raised on farms, where mass mortality events are not uncommon. For instance, according to a recent study, in the decade between 2012 and 2022 an estimated 865 million farmed salmon died before reaching slaughter age (or weight).[382]

Of course, aquaculture-raised fish need to be fed. Currently, they consume almost 60 percent of all fish meal and four-fifths of fish oil produced.[383] According to the U.S. National Oceanic and Atmospheric Administration (NOAA), 70 percent of fish meal and oil come from pelagic (open ocean) fish.[384] At least 30 percent of pelagic fish are used to feed pigs, chickens, and other fish (although this percentage may be declining.)[385] Those not being fed with animal byproducts are, like land animals, eating soybean meal.[386]

As with land-based industrial animal agriculture, large-scale fishing has disproportionate effects on marginalized and vulnerable communities, with their own small-scale fishing industries. Fish stocks and livelihoods off the coast of West Africa, for example, are collapsing as trawlers from other nations remove fish from local waters, process them into fish feed, livestock feed, or fish oil supplements, and ship them overseas.[387] In a cruel irony, some of that foreign aquaculture fish, fed with fish from West Africa, are sold back to those West African communities, at a higher price.[388]

The aquaculture industry is expanding. Despite a growing consensus among researchers and ethicists that octopuses are sentient, experimental commercial octopus farming is underway in Europe, Latin America, Asia and the Pacific—although it is generating a strong backlash. Scientists, ethicists, and environmental and animal advocates argue that not only would mass-producing octopuses be cruel, but the "farms," like other industrial aquaculture facilities, would be polluting, at risk of disease outbreaks and die-offs, and consume significant numbers of other marine lives to feed the octopuses, who are carnivorous.[389]

Another new threat to ocean environments and the billions of beings who live in them is growing corporate interest in capturing lifeforms (including microorganisms, crustaceans, and krill) inhabiting the "twilight zone." These are deep ocean waters where sunlight doesn't penetrate. The marine organisms would be processed into fish meal for farmed fish, pet food, or human vitamin supplements. Fishing fleets from Norway and Japan are already harvesting organisms that travel to the ocean surface at night. More countries are seeking licenses to fish in the twilight zone, and little regulation of open-water fishing is in place.[390]

The twilight zone's denizens also store significant amounts of carbon dioxide, drawn from the atmosphere. If and as they are extracted that carbon capture cycle will be disrupted, or, potentially, ruptured entirely with dire consequences for planetary warming.[391]

Neither industrial fishing and aquaculture are answers to the issues of food security. They also violate human rights, due to piracy, abduction, exploitation, murder, and the theft of resources for local communities. They violate the rights of Nature by polluting the environment and interrupting species' lifecycles. And they violate the rights of wild marine animals and the farmed fish themselves to swim freely and not be caught as bycatch.

Preventing Pandemics and Zoonoses, and Protecting Human–Nonhuman Habitat Boundaries

As of this writing, the COVID-2019 (SARS-CoV-2) pandemic has resulted in more than 775 million cases of infection and the deaths of more than seven million people.[392] The pandemic tested economies and livelihoods, caused massive disruptions to global supply-chains, and increased costs of living and national debt to a degree that continues to challenge governments around the world. Although exactly how the virus emerged remains unknown, a March 2023 study concluded, as early reports had indicated, that a market in Wuhan, China was an early locus of transmission, and the raccoon dogs, who had been on sale there, were the likely vector species.[393]

COVID-19 demonstrated more starkly than any other recent event how much human societies can be upended when animals and Nature are disturbed and commodified. Overwhelming evidence shows that when humans put wild and domesticated animals in close proximity to one another (in often stressful conditions,[394] as was the case in the Wuhan market), diseases can spread much more easily among animals and subsequently to humans. As an article published in the September 2020 issue of the *International Journal of Surgery* observed: "Active [animal] markets may provide ideal conditions for the amplification, recombination, and transmission of the human coronaviruses to human hosts.[395]

Approximately two-thirds of infectious diseases in humans come from animals, and 70 percent of those originate in wildlife.[396] Zoonoses, which are bacteria, parasites, or viruses that jump from an animal to a human,[397] are also transmitted among other animals. African swine fever (ASF)[398] and avian flu (H5N1)[399] have infected farmed animals of the same species. By May 2024, avian flu was affecting the U.S. food supply, and had spread to cows used in the dairy industry as well as domestic cats, sea lions, and several species of seals.[400] Mortality for these marine mammals has been high: at least twenty thousand sea lions in Peru and Chile; thousands of elephant seals in Argentina; and more than 300 seals on the U.S. east and west coasts have died.[401]

U.S. evolutionary biologist Rob Wallace, summarizing the economic and ecological drivers of zoonotic disease transmission, notes:

> You have a widening circuit of agricultural production and trade that extends increasingly deeper into forest and back out into the city. And you also have a change in the ecologies of the host species that were typically confined to the

deepest forest, and are now being increasingly bumped up against peri-urban regions in which humans are concentrated.[402]

Preventing the Next Pandemic, published in July 2020 with the UN Environment Programme (UNEP) as lead author, concluded that, despite the shock of COVID-19, its emergence wasn't really a surprise. The report stated: "Pandemics such as the COVID-19 outbreak are a predictable and predicted outcome of how people source and grow food, trade and consume animals, and alter environments."

UNEP and the collaborating UN agencies urged comprehensive changes in policy and practice post pandemic. These included: phasing out unsustainable agricultural practices; strengthening animal health (including health services for wild animals); improving health governance; and mainstreaming and implementing One Health approaches, which consider and respond to the interconnections among human, environmental, and animal health.[403]

If only for a concern over public health among humans and to prevent the next pandemic from spreading even more easily and being more lethal, the incursion into and exploitation of ecosystems, the mixing of wild and domesticated animals in food markets, and intensive animal agricultural practices have to be curtailed or, preferably, ended. Unless humans acknowledge and respect the rights of Nature and animals, and the natural boundaries between us, disease outbreaks among both humans and animals will become more frequent and more catastrophic.

The Trade in Wildlife (Illegal and Legal)

The wildlife trade, both illegal and legal, is another major cause of zoonoses and potential pandemics. Both trades present major threats to species and individual animals; they also threaten their habitats, their social structures, and even their continued existence. Whether legal or illegal, on land or in oceans, the removal of animals from the wild is risky and cruel.

Mortality rates during capture, transport, and sale are high. The animals' rights are violated, their species community is disrupted by the removal of each individual, and ecosystems are depleted and biological processes interrupted.[404]

Human communities are also put at serious risk. Hunters, poachers, or traffickers encroach into wildlife habitats, which may have been opened up for mineral or timber extraction or agriculture.[405] They then capture and ship animals to urban centers for trading. The result of

both activities is the spread of disease. Scientists believe the wildlife trade to be the cause of the HIV virus[406] and Ebola.[407] These, as well as other zoonotic diseases,[408] have killed millions of people over the last four decades. And, as was noted above, the trade in wild animals for human consumption or, possibly, the "farming" of wild species and their sale in a public market is also the likely origin for COVID-19.

The wildlife trade, whether legal or illegal, is not adequately policed. The trade continues either because economic, logistical, medicinal, nutritional, and cultural reasons keep it from being banned, or existing laws are not enforced or unenforceable. What is required is a rights framework that includes the rights of animals *and* Nature and forms the basis of policies and policing that addresses the drivers of wildlife exploitation. Stopping the trade in wildlife and protecting forests, grasslands, and other terrestrial and marine ecosystems supports the rights of Nature, animal rights, and the human right to health—both locally, where communities are immediately affected, and internationally when diseases spread.

Establishing Personhood for Wild Individuals and Ecosystems While Ending the Captivity of Keystone Species

Keystone species are those with a disproportionate impact on an ecosystem, such that if they were absent or removed, the ecosystem would change in significant ways. These animals also have complex societies, and the loss of an individual(s) has an effect on the whole community. Yet, throughout the world, many of these species and the habitats they live in are threatened by agricultural expansion, the activity of extractive industries, poaching, trafficking, hunting and wildlife "control" programs, and the impacts of the climate crisis (including extreme weather and temperatures, shifting seasons, and changes in the availability of food sources).

At the same time, many of these species—elephants, great apes and other primates, big cats, bears, whales, and dolphins—are held in captivity. Tens of thousands of these large mammals (like Estrellita) populate zoos, aquariums, wildlife and marine "parks," private menageries, and circuses. As many as 50 million parrots (like the blue-fronted one), also keystone species, live in captivity globally, most in situations that cannot meet their needs or serve their interests. That's about equal to the wild parrot population.[409]

Most animal rights proponents would term these animals and birds captives, living in unnatural and often cruel, isolating conditions where their physical, psychological, social,

cultural, and emotional needs and choices can never be met adequately; as such, they should be freed, ideally to their original homes or as close to them as possible. If not, as would be the case with Happy the elephant, they should be able to inhabit well-run sanctuaries that provide them with as many of the features of their "natural" lives as possible, with no obligation to offer their human caregivers anything in return (like a performance or access to the spaces they inhabit).

Rights of nature advocates believe that the rights and integrity of an ecosystem or natural entity extend to the flora and fauna who live there, or should. One area of potential intersection between the two movements could be extending rights of nature for ecosystems and the species within them beyond a location? Securing nonhuman personhood for ecosystems, species, and individual wild animals, would break down the artificial distinction between a wild animal and a wild animal living under human control.

This would mean that, for example, all great apes and their habitats were protected *wherever* their habitat is. It would require all captive individual great apes, and individuals of each included species, be released, and that no new members of their species (caught in the wild or born in captivity) would be subject to a life in captivity.

Such efforts could build on the groundwork laid by the Great Ape Project, the legal theories of personhood that underlie the Nonhuman Rights Project's habeas corpus challenges, and many cases whereby natural features have been granted personhood and rights, through legal challenges and constitutional provisions.

Securing personhood status for aquatic mammals such as dolphins and whales, whether wild or captive, offers another opportunity for collaboration between Nature's rights and animal rights advocates. Over 20 percent of cetacean species are considered "threatened" or worse, with nine species considered "endangered" and four species considered "critically endangered."[410] One species, the Yangtze River dolphin, may already be extinct.[411] And a wide variety of human impacts on the environment impact cetaceans.[412]

Yet, whales[413] and dolphins[414] are extremely important to ecosystems. Whales play a part in nutrient cycling and replenishing nitrogen through the "whale pump,"[415] and their large bodies provide nutrients to marine life after they die.[416] Dolphins also are both predators and prey, helping keep marine ecosystems in balance.[417] Advocates point, in part, to various cognitive abilities, such as self-recognition, as reasons for rights.[418] There is precedent here. In India's 2013 banning of cetaceans from entertainment the animals were viewed as nonhuman persons

with rights.[419] Several other countries have banned cetacean captivity, though so far, all without recognition of cetaceans as nonhuman persons.[420]

Even in the twenty-first century, members of orca pods have been captured from their ocean habitats and dolphins still routinely are, to supply aquariums and marine "parks." More than 3,600 whales and dolphins currently live in de-natured captivity, according to the U.S.-based organization Whale and Dolphin Conservation.[421] Advancing personhood for whales and dolphins could build on the 2010 Declaration of Rights for Cetaceans and the more recent treaty agreement by Indigenous leaders in Pacific nations to acknowledge whales as legal persons.

Conclusion

As *From Property to Personhood* demonstrates, efforts to further the rights of Nature and the rights of animals are subject to political pressures, current and future economic anxieties, fear of loss of access to resources, and the demands of those who worry that extending legal protections for animals and Nature will further limit their human or property rights. In fact, the inherent anthropocentricity of the law may beg the question whether, instead of generating attitudinal change, the law is mainly the codification of an idea that has broad acceptance within society.

In such challenging circumstances, it's tempting for campaigners for the environment or animals to retreat from advocacy, policy, or coalition-building and cultivate their own garden, as Voltaire famously wrote in *Candide*, or place their hopes in technological breakthroughs, consumer choices shifting, or in saving a few species in a few pristine landscapes. Such a wish to retreat might be enhanced by the genuine differences in ideology and focus between some environmentalists and some animal rights advocates.

The writers of *From Property to Personhood* urge against a retreat from the mutual struggle for the rights of Nature and animal rights, just as we urge against the "comfort" of arguing among ourselves rather than directing our efforts toward ending the despoliation of vital ecosystems and the massive machinery of death that literally grinds its way through billions upon billions of nonhuman animals each year.

As we hope has been demonstrated in this paper, there's plenty the movements can—and must —work on together. If Rachel Carson and Ruth Harrison could team up for *Animal Factories*, then we could do the same. If Christopher Stone could evoke the rights of the turtles, birds, and fish in an intact ecosystem, then surely we could do the same for the turtles in the tiny

terrarium in the shopping mall, the birds in the cages in a zoo, and the fish in the industrial aquaculture facility. And if we advocate for honoring of the rights of all species as members of the extended community of beings, then why would we exclude cows, sheep, pigs, and chickens?

Finally, all human legal, economic, and governance structures are subject to the immutable laws of Nature. The ongoing climate catastrophe, the waves of zoonoses, and instability and inequality are straining these structures to breaking point. Unless we cease our heedless exploitation of animals and Nature, those legal, economic and governance structures will collapse. Ironically, over the long term, the only beneficiaries of the mass suffering that would occur may be Nature and the animals themselves. But that is not a pathway most of us would choose.

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