MARKUS G. PUDER*

Convivencia of the Third Kind: The Rise of Rights of Nature and Life Balance Under the Cupola Called Earth

* Dr. jur. Markus G. Puder, The Honorable Herbert W. Christenberry Professor of Law and Faculty Director of LL.M. Programs, Loyola University New Orleans College of Law. First Legal State Examination, Ludwig Maximilian University, Munich, Germany; Second Legal State Examination, Munich Upper Court of Appeals; LL.M., Georgetown University Law Center; Ph.D. in Law, Ludwig Maximilian University. Member of the New York State Bar (inactive) and the U.S. Supreme Court Bar. The views advanced in this Article are strictly mine. I wish to express my gratitude to Professor Aniceto Masferrer and the "Alan Watson Group: The Making of Western Law" (Westlaw) for hosting the colloquium "The Rights of Nature" at the University of Valencia Faculty of Law on May 20, 2024. The many insightful contributions offered by participants helped me greatly to finalize this manuscript.

I
CONVIVENCIA INTRODUCED

Convivencia—a composite of "experience"[1] and "with,"[2] which translates to "living together,"[3]—is a colorful concept. The Canadian legal comparativist H. Patrick Glenn has leveraged the notion to develop a cosmopolitan jurisprudence that is purposed to transcend the envelope of the nation state in the pursuit of ensuring humanity's survival. According to Glenn, "It may take a longer period of time to teach that it is rather 'convivencia' which is the natural condition of humanity and that various forms of paraconsistent thought are necessary to ensure its survival."[4]

An earlier version of Convivencia was invoked by the Spanish philologist Américo Castro, who used the notion to describe an unprecedented era of cultural flourishing in law, science, philosophy, and architecture in the Iberian space. According to Castro, this golden age was a consequence of the three monotheist religions having coexisted in relative peace for almost eight centuries—from the

1 LAROUSSE, LAROUSSE DICCIONARIO COMPACT ESPAÑOL-INGLÉS, INGLÉS-ESPAÑOL: LAROUSSE CONCISE DICTIONARY SPANISH-ENGLISH, ENGLISH-SPANISH 550 (2004).

2 *Id.* at 124.

3 *Id.* at 136.

4 H. Patrick Glenn, *Differential Cosmopolitanism*, 7 TRANSNAT'L LEGAL THEORY 57, 59 (2016). *See also* Thomas Duve, *Legal Traditions: A Dialogue Between Comparative Law and Comparative Legal History*, 6 COMPAR. LEGAL HIST. 15, 15–33 (2018) (discussing the significance of Glenn's conceptualization of the term "legal tradition" for legal-historical analysis).

Umayyad conquest in the early eighth century until the expulsion of the Jews at the end of the fifteenth century.[5]

This Article explores a third kind of Convivencia—one that is embodied by the debate about Rights of Nature when it comes to the future of our common home.[6] Recognizing that nature is the indispensable enabler of life on the planet, the conferral of subjective rights upon nature at large or specific ecosystems promises a new jurisprudential paradigm for the protection, conservation, and recovery of all life systems. According to Rights of Nature advocates, the primacy of anthropocentrism—which sees nature merely as the object of human exploitation for the benefit of humanity's economic development and technological progress—is woefully outdated when it comes to confronting the interlocking planetary crises embodied by climate change and species loss.[7] These voices therefore urge jurisdictions across the world to shift the focus from human-nature binaries toward a more ecocentric world picture—one that has been associated with nature-rich locales and indigenous peoples' spiritual concepts about the universe.[8]

While Rights of Nature have offered tailored solutions for specific locations and particular communities across the world, these rights may not necessarily be a good fit for Western liberal democracies with human rights and the dignity of human nature at their core.[9] This conclusion is based not only on foundational philosophical theories

---

5 AMÉRICO CASTRO, LOS ESPAÑOLES: CÓMO LLEGARON A SERLO (1965). *See* Maya Soifer, *Beyond Convivencia: Critical Reflections on the Historiography of Interfaith Relations in Christian Spain*, 1 J. MEDIEVAL IBERIAN STUD. 19, 19–35 (2009) (offering a critical appraisal of Convivencia's "problematic legacy" as an impediment in the field of medieval Iberian studies).

6 U.N. Secretary-General, *Rep. of the World Comm. on Env't and Dev.*, U.N. Doc. A/42/427 (Aug. 4, 1987).

7 Lieselotte Viaene, *Can Rights of Nature Save Us from the Anthropocene Catastrophe? Some Critical Reflections from the Field*, 9 ASIAN J.L. & SOC'Y 187, 187–206 (2022); Louis J. Kotzé & Wendy Muzangaza, *Constitutional International Environmental Law for the Anthropocene?*, 27 REV. EUR., COMPAR. & INT'L ENV'T L. 278, 278–92 (2018).

8 Samantha Franks, *The Trees Speak for Themselves: Nature's Rights Under International Law*, 42 MICH. J. INT'L L. 633, 648–49 (2021).

9 *See* Aniceto Masferrer, *Taking Human Dignity More Humanely: A Historical Contribution to the Ethical Foundations of Constitutional Democracy*, *in* HUMAN DIGNITY OF THE VULNERABLE IN THE AGE OF RIGHTS: INTERDISCIPLINARY PERSPECTIVES 221 (Aniceto Masferrer & Emilio García-Sánchez eds., 2016) (arguing for a more nuanced and "humanely" applied understanding of human dignity). For a discussion of this topic from a historical perspective, see ANICETO MASFERRER, THE MAKING OF DIGNITY AND HUMAN RIGHTS IN THE WESTERN TRADITION: A RETROSPECTIVE ANALYSIS (2023).

undergirding the rise of subjective rights but also the availability of protective vehicles already in place. In this light, Western liberal democracies may want to resist the temptation of hastily taking refuge in what the Spanish legal historian Aniceto Masferrer has characterized as "desire rights" (*derechos-deseo*)—postmodern rights claimed from the government for purposes of satisfying random wishes for personal development.[10]

II
HOW THE DESIGNS FOR NOVEL RIGHTS OF NATURE DIFFER ACROSS THE WORLD

After recalling the appearance of Rights of Nature in the scholarly literature and judicial opinions offered at the beginning of the 1970s, the remainder of this section will explore the two principal models for the formulation of Rights of Nature in different parts of the world as well as more recent forays into Western liberal democracies.

A. The Early 1970s: Discussions in the United States

The 1970s have deservedly been dubbed the "environmental decade" in the United States,[11] with a federal awakening that ushered in powerful environmental study and public participation requirements that have gone around the world[12] as well as a series of environmental media protection laws.[13] Against this backdrop, the late University of Southern California law professor Christopher D. Stone published "Should Trees Have Standing? Toward Legal Rights for Natural Objects."[14] In his law review article, Professor Stone argued that forests, oceans, rivers, and other features of nature should have the rights enjoyed by human beings—rights that could be vindicated in court.[15]

---

10 Aniceto Masferrer, *El Surgimiento de los Derechos-Deseo en La Cultura Posmoderna*, 35 CUADERNOS DE BIOÉTICA 41, 41 (2024).

11 Kathryn A. Kahler, *Environmental Awakening: First Earth Day Aimed to Stem the Tide of Degradation*, WIS. NAT. RES. MAG., Spring 2020, https://dnr.wisconsin.gov/wnrmag/2020/Spring/Awakening [https://perma.cc/3B2G-VVH9].

12 Tseming Yang, *NEPA's Conquest of the World*, 37 NAT. RES. & ENV'T 1, 1 (2023).

13 *Cf.* Richard J. Lazarus, *The Greening of America and the Graying of United States Environmental Law: Reflections on Environmental Law's First Three Decades in the United States*, 20 VA. ENV'T L.J. 75 (2001).

14 Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

15 *Id.*

Professor Stone's piece was later quoted in the U.S. Supreme Court's famous *Sierra Club v. Morton* decision.[16] In that case, Sierra Club, a membership corporation with "a special interest in the conservation and sound maintenance of the national parks, game refuges, and forests of the country," had brought a lawsuit to restrain federal officials from approving an extensive skiing development in the Mineral King Valley in the Sequoia National Forest.[17] A plurality of justices on the U.S. Supreme Court dismissed the case, finding that the club had not alleged an injury and, therefore, lacked the requisite standing to be in the federal courtroom.[18] Registering his disagreement with the plurality, Justice William O. Douglas wrote:

> The voice of the inanimate object . . . should not be stilled. That does not mean that the judiciary takes over the managerial functions from the federal agency. It merely means that before these priceless bits of Americana (such as a valley, an alpine meadow, a river, or a lake) are forever lost . . . , the voice of the existing beneficiaries of these environmental wonders should be heard. . . . [And that the] environmental issues should be tendered by the inanimate object itself.[19]

Five decades later, it appears that Justice Douglas's words have made a powerful comeback as laws consecrating Rights of Nature have popped up around the globe, with the number of countries that have issued court decisions, enacted statutes, or amended constitutions recognizing such rights having steadily grown.

B. Design Patterns: Nature Rights Model and Legal Personhood Model

Looking across the four corners of the world, two principal designs for the formulation of the Rights of Nature can be distinguished. These include the Nature Rights Model and the Legal Personhood Model.[20]

1. The Nature Rights Model

Pursuant to the Nature Rights Model, nature inherently enjoys its own subjective rights. Nature is conceived broadly as the amorphous

---

16 Sierra Club v. Morton, 405 U.S. 727 (1972).

17 *Id.* at 730.

18 *Id.* at 731–41.

19 *Id.* at 749–52.

20 Matthew Doncel, *The Rights of Nature: Developments and Implications for the Governance of Nature Markets*, NATURE FIN. 9 (Dec. 2022), https://www.naturefinance.net/wp-content/uploads/2023/03/TheRightsOfNature.pdf [https://perma.cc/3DQT-PKMY].

and all-encompassing environment, with the right to bring a case on behalf of nature being made available to virtually all citizens.[21] The Nature Rights Model is prevalent in the Americas.[22] Ecuador, Bolivia, Panama, and Colombia have been trailblazers in this vein, but have differed with regard to the ways of entrenching these rights in their legal systems.

a. Ecuador: Constitutional Anchor

In Ecuador, which has been credited with initiating the Latin American wave, nature rights debuted in 2008 by way of constitutional amendments. These have yielded a rich body of case law. Ecuador's political constitution advances a uniquely Ecuadorian concept of citizen coexistence in harmony with nature (*Pacha Mama*) so as to achieve "the good way of living" (*el buen vivir*), which corresponds to Andean traditions of harmony with nature to achieve wellbeing for all (*sumac kawsay*).[23] Nature is widely conceived as the enabler of all life and, therefore, "has the right to full respect for its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes."[24] These dispositions are flanked by a constitutional duty for all Ecuadorians to respect nature's rights, preserve a healthy environment, and use natural resources sustainably.[25]

Similarly wide is the circle of entrusted actors with locus standi: "Any person, community, people or nationality may demand from the governing authorities the fulfillment of the rights of nature."[26] In 2015, Ecuador's legislature responded by enacting the General Organic Code of Processes,[27] which invests the newly established national Ombudsman's office, alongside any natural or juridical person, with the authority to act without being prompted.[28] The legislation also

21 *Id.*

22 *Id.* at 9, 12–13.

23 Constitución de la República del Ecuador, pmbl.; *id.* tit. 1, art. 14.

24 *Id.* tit. 1, art. 71, cl. 1 ("La naturaleza o Pacha Mama, donde se reproduce y realiza la vida, tiene derecho a que se respete integralmente su existencia y el mantenimiento y regeneración de sus ciclos vitales, estructura, funciones y procesos evolutivos.").

25 *Id.* tit. 1, arts. 14, 83.

26 *Id.* tit. 1, art. 71, cl. 2 ("Toda persona, comunidad, pueblo o nacionalidad podrá exigir a la autoridad pública el cumplimiento de los derechos de la naturaleza.").

27 Código Orgánico General de Procesos (COGEP), Suplemento del Registro Oficial No. 506 (May 22, 2015) (Ecuador).

28 *Id.* tit. 3, ch. 2. art. 38 (Defensor del Pueblo).

insulates nature from being sued in court or reprimanded.[29] Double dipping under the rights of nature and other purportedly applicable laws is generally barred, unless the public authorities assume the responsibility of reparation or the public authorities have been sentenced to make the reparation.[30]

Since their constitutional debut, nature rights have been the subject of extensive litigation in Ecuador. As early as 2011, the Provincial Court of Loja spoke of the "democracy of the earth" where ecosystems enjoy an "inalienable right to exist and flourish."[31] In the case before it, the court ruled that the Provincial Government's dumping of rocks and excavation materials from road widening into the Vilcabamba River violated nature rights.[32] But rather than halting the activities, the court avoided a collision between nature rights and development rights by deciding that the contractor was bound to follow the recommendations and guidelines previously issued by the Ministry of the Environment with regard to prior complaints.[33] However, two more recent decisions handed down by the Constitutional Court of Ecuador have moved the needle significantly toward a more biocentric vision of nature rights.[34]

In 2021, the Constitutional Court of Ecuador decided a case, which had been initiated by the Decentralized Autonomous Government of Cotacachi, in favor of the protected cloud forest in Los Cedros. According to the Constitutional Court of Ecuador, the National Mining Company's project to mine for copper and gold under concession from the Ministry of Mining ran afoul of Los Cedros' nature rights.[35] According to the Constitutional Court of Ecuador, these rights, which are designed to protect ecosystems and natural processes for their intrinsic value, are fully justiciable in courts of law, while being flanked by nature-friendly interpretive defaults such as *in dubio pro natura*.[36]

---

29 *Id.* tit. 3, ch. 2. art. 38, cl. 2.

30 *Id.* tit. 3, ch. 2, art. 40, cls. 1, 2.

31 Sala Penal de la Corte Provincial de Justicia de Loja, Juicio No. 11121-2011-0010 Casillero No. 826 (Mar. 30, 2011) 3 ("la democracia de la Tierra") (Ecuador).

32 *Id.* at 4.

33 *Id.* at 5–6; Catherine Iorns Magallanes, *From Rights to Responsibilities Using Legal Personhood and Guardianship for Rivers*, *in* RESPONSABILITY: LAW AND GOVERNANCE FOR LIVING WELL WITH THE EARTH 216, 220–22 (Betsan Martin et al. eds., 2019).

34 Doncel, *supra* note 20, at 11.

35 Corte Constitucional del Ecuador [Constitutional Court of Ecuador], Sentencia No. 1149-19-JP/21 (Nov. 10, 2021) [hereinafter Sentencia No. 1149-19-JP/21].

36 *Id.* ¶¶ 23–41.

The Constitutional Court of Ecuador leveraged the principle of precaution as a crucial pillar of its decision.[37] Judges, said the Constitutional Court of Ecuador, must take into consideration (1) the risk of serious or irreversible damages to nature, (2) species and ecological resources, (3) the degree of scientific uncertainty, and (4) the suitability of protective measures deployed by the State.[38] In the reparations portion of its judgment, the Constitutional Court of Ecuador ordered the cessation of activities that threatened nature rights within the ecosystem of Los Cedros, tasked the community stakeholders with the development of a management plan for Los Cedros, and imposed guarantees of no repetition to be secured proactively by the Ministry of the Environment, Water and Ecological Transition.[39] Nature, with biodiversity hitched to a particular place (*endemismo*)[40] acting as a safeguard for the ecosystem,[41] embodies an intrinsic value, which must be mirrored by the recognition of rights with full normative force.[42]

Another landmark decision handed down by the Constitutional Court of Ecuador—"Mona Estrellita"—arrived in 2022.[43] The case centered around a woolly monkey named Estrellita who had forcibly been seized by the authorities from her owner on the grounds that the possession of wild animals was prohibited by law.[44] Her "mother" and "caretaker" brought a habeas corpus petition on behalf of Estrellita, arguing that, in the wake of her relocation to a zoo, she was caged and surrounded by her species for the first time in her life.[45] Estrellita passed away shortly after she had been seized.[46]

The Constitutional Court of Ecuador declared that the events leading to Estrellita's death amounted to a violation of nature rights.[47] According to the Constitutional Court of Ecuador, these rights, which

37 Constitución de la República del Ecuador, tit. 7, art. 396 ("En caso de duda sobre el impacto ambiental de alguna acción u omisión, el Estado adopte medidas protectoras, eficaces y oportunas, aunque no exista evidencia científica del daño" [In case of doubt about the environmental impact stemming from an act or omission, the State shall adopt effective and timely measures of protection, even if there is no scientific evidence of the damage].).

38 Sentencia No. 1149-19-JP/21, *supra* note 35, ¶¶ 62–67.

39 *Id.* ¶¶ 341–46.

40 *Id.* ¶ 76.

41 *Id.* ¶ 47.

42 *Id.* ¶ 337.

43 Corte Constitucional del Ecuador [Constitutional Court of Ecuador], Sentencia No. 253-20-JH/22 (Jan. 27, 2022) [hereinafter Sentencia No. 253-20-JH/22].

44 *Id.* ¶¶ 27–34.

45 *Id.* ¶¶ 24–26, 38.

46 *Id.* ¶¶ 35–37.

47 *Id.* ¶¶ 122–56.

comprise a host of elements,[48] form an integral part of the country's constitutional fabric.[49] The Constitutional Court of Ecuador explained that animals are legal subjects,[50] albeit distinct from human beings.[51] As such, animal rights are a specific expression of the rights of nature.[52] The court declared that the domestication and humanization of wild animals violated these rights.[53] With regard to Estrellita, the Constitutional Court of Ecuador found that the rights of nature were infringed upon not only by her confiscation at the hands of the authorities[54] and her placement into a zoo,[55] but also earlier when, at the age of one month, she was removed from her natural habitat.[56] The decision thus elevates the legal status of nonhuman animals under Ecuador's constitutional rights of nature. Moreover, the court specifically calls for new legislation tailored to protecting the rights of animals.[57] Finally, the Constitutional Court of Ecuador shows its linguistic knack for alliterations when coupling the two similar-sounding terms (*sustentable y sostenible*)[58] to describe processes and activities affecting the environment and natural resources.

Literature has suggested that Ecuador's system of ecological justice is a system that relies on volunteerism yet does not resolve the question of costs possibly incurred by those assuming the mantle of guardianship.[59] The Constitutional Court of Ecuador's "Mona Estrellita" decision further stands out because of its innovative invocation of Convivencia (*convivencia*)[60] and Sentience (*sintiencia*).[61] Convivencia embodies both font and process in Ecuador's societal

48 *Id.* ¶¶ 64–70.

49 *Id.* ¶¶ 52–63.

50 *Id.* ¶¶ 71–79.

51 *Id.* ¶¶ 80–83.

52 *Id.* ¶¶ 90–105.

53 *Id.* ¶¶ 106–10.

54 *Id.* ¶¶ 139–50.

55 *Id.* ¶¶ 151–56.

56 *Id.* ¶¶ 123–37.

57 *Id.* ¶ 183.

58 Sentencia No. 253-20-JH/22, *supra* note 43, ¶ 60.

59 Craig M. Kauffman, *Guardianship Arrangements in Rights of Nature Legal Provisions*, *in* EARTH LAW: EMERGING ECOCENTRIC LAW—A GUIDE FOR PRACTITIONERS 161, 165 (2020), https://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=6460079#goto_toc [https://perma.cc/D28E-FRED].

60 Sentencia No. 253-20-JH/22, *supra* note 43, ¶ 53.

61 *Id.* ¶¶ 84–89.

project of creating a citizenry in diversity, balance, and harmony.[62] The multidimensional subjective phenomenon of Sentience[63] is creatively leveraged to express that animals are equipped with self-awareness and metacognition that gives them the capacity to experience emotions and feelings.[64]

It remains to be seen how these decisions by Ecuador's highest court will entrench the rights of nature in the legal community. Lawsuits are certainly continuing. A relatively recent student survey conducted a couple of years ago, while "Mona Estrellita" was pending, under the auspices of the Regional Autonomous University of the Andes (Uniandes), however, reported that all the lawyers who responded did not consider nature in general and animals in particular a legal subject (*sujeto de derecho*).[65]

In contrast to Ecuador, which amended its constitution, Bolivia and Panama enacted specific statutes to introduce nature rights into their legal systems. Bolivia was the first country to usher in the statutory approach for entrenching its nature rights model.

b. Bolivia and Panama: Statutory Schemes

In 2010, the Plurinational Legislative Assembly of Bolivia enacted the Law of the Rights of Mother Earth (La Ley de Derechos de la Madre Tierra).[66] In addition to offering a statutory definition of *Mother Earth*,[67] the law lists seven specific rights enjoyed by Mother Earth.[68] The law defines Mother Earth as "a dynamic living system comprising an indivisible community of all loving systems and living organisms, interrelated, interdependent and complimentary, which share a common destiny."[69] Mother Earth, which is considered a sacred being,

---

62 Lucy Alcira Montoya Párraga et al., *La Convivencia Ciudadana y Los Comportamientos Sociales, Responsabilidad Individual y Colectiva*, 11 HUM. REV. 2, 2 (2022).

63 Donald M. Broom, *Sentience*, *in* ENCYCLOPEDIA OF ANIMAL BEHAVIOR 131, 131–133 (2d ed. 2019).

64 *See* NICHOLAS HUMPHREY, SENTIENCE: THE INVENTION OF CONSCIOUSNESS 1–3 (2023).

65 Guaman Calderon & Veronica Fernanda, Análisis del Caso Estrellita Nro. 253-20-JH de la Corte Constitucional: Los Animales como Sujetos de Derecho (May 2022) (Bachelor Thesis, Universidad Regional Autónoma de los Andes), 55–56, 60–61.

66 Ley Nº 071, Law of Dec. 21, 2010 (Bol.).

67 *Id.* art. 3.

68 *Id.* art. 7.

69 *Id.* art. 3 ("La Madre Tierra es el sistema viviente dinámico conformado por la comunidad indivisible de todos los sistemas de vida y los seres vivos, interrelacionados, interdependientes y complementarios, que comparten un destino común").

enjoys the right to life, to the diversity of life, to water, to clean air, to equilibrium, to restoration, and to pollution-free living.[70] These rights translate into concomitant duties imposed on the state, natural persons, and public and private legal entities.[71] Additionally, the law calls for the establishment of a Mother Earth Ombudsman's Office.[72]

In 2012, the Plurinational Legislative Assembly of Bolivia enacted the Framework Law of Mother Earth and Integral Development for Living Well,[73] which not only broadens and structures the outline offered by the earlier legislation but also shifts the visor to achieving the good way of living (*sumaj kamaña, sumaj kausay, yaiko kavi päve*) through a different thought paradigm—achieving consonance with ancestral cosmovision in departure from anthropocentric and capitalist design approaches.[74] The Plurinational Mother Earth Authority contemplated by the law has meanwhile come online.[75] Notably, Bolivia's framework law accords the mitigation of and adaptation to climate change a prominent role in the pursuit of its trajectory toward living well[76]—a linkage already made by the World Peoples Conference on Climate Change and the Rights of Mother Earth.[77] That summit gave rise to the Universal Declaration on the Rights of Mother Earth.[78]

---

70 *Id.* art. 7.

71 *Id.* arts. 8, 9.

72 *Id.* art. 10.

73 Ley Nº 300, Law of Oct. 15, 2012 (Bol.) (Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien).

74 *Id.* art. 5, § 2.

75 Decreto Supremo Nº 1696, Supreme Decree of Aug. 14, 2013 (Bol.). *Cf.* Ley Nº 300, art. 53.

76 Ley Nº 300, arts. 17, 32.

77 Aissa Dearing, *Cochabamba People's Agreement: Annotated*, JSTOR DAILY (Sept. 1, 2023), https://daily.jstor.org/cochabamba-peoples-agreement-annotated/ [https://perma.cc/45PW-RFV8].

78 Universal Declaration of the Rights of Mother Earth, Apr. 22, 2010, International Rights of Nature Tribunal, https://www.rightsofnaturetribunal.org/wp-content/uploads/2018/04/ENG-Universal-Declaration-of-the-Rights-of-Mother-Earth.pdf [https://perma.cc/Y6XF-XWG7]. *See also* Claudia Brindis, *A 12 Años de la Declaración Universal de los Derechos de la Madre Tierra y los Avances Jurídicos en México*, 13 REVISTA CATALANA DE DRET AMBIENTAL 1 (2022) (focusing on progress and challenges in Mexico 12 years after the Universal Declaration came online).

In contrast to the legislation enacted by Bolivia, which is steeped in the ideal of social progressivism,[79] Panama's more recent 2022 law[80] exhibits a far more circumscribed, less emotive posture. In comparison to Bolivia's Mother Earth, the Panamanian statute speaks of Nature (*la Naturaleza*), which is defined in a less emotional tone as a "collective, indivisible and self-regulating entity."[81] The law focuses on recognizing Nature as a legal subject.[82] Drawing on forward-leaning principles already leveraged in the Constitutional Court of Ecuador's Los Cedros decision such as *in dubio pro natura* and precaution,[83] the legislation declares that Nature enjoys a floor of rights, which include the right to exist, to persist and regenerate its lifecycles, and to preserve its biodiversity.[84] Significantly, however, the State may authorize the use of elements of Nature, but only when deemed sustainable.[85] Finally, the law closes by identifying obligations on the part of the State that mirror the rights of Nature.[86]

c. Colombia: Judicial Decisions

Absent specific and explicit constitutional or statutory authorities in Colombia, the courts and the judges have taken it upon themselves to declare rights of nature. This trajectory started in 2016, when the Sixth Chamber of Review of the Constitutional Court of Colombia decided Tierra Digna's plea for protection (*acción de tutela*)[87] in favor of the Afro-descendant and indigenous peoples that inhabit the basin of the

79 *See* DERRICK HINDERY, FROM ENRON TO EVO: PIPELINE POLITICS, GLOBAL ENVIRONMENTALISM, AND INDIGENOUS RIGHTS IN BOLIVIA (2014) (offering that the Morales administration has engaged in much pro-environment rhetoric, while pursuing an extractivist and developmentalist agenda).

80 Ley Nº 287, Law of Feb. 24, 2022, Gazeta Oficial, Año CXXI, Nº 29484-A (Pan.).

81 *Id.* art. 3, ¶ 2 ("Para los efectos de esta Ley, La Naturaleza es un ente colectivo, indivisible y autoregulado y conformado por sus elementos, biodiversidad y ecosistemas interrelacionados entre sí.").

82 *Id.* art. 1.

83 *Id.* art. 8.

84 *Id.* art. 6.

85 *Id.* art. 13.

86 *Id.* art. 16.

87 CONST. COLOM. art. 86, ¶ 1 (Colom.). *See* Patrick Delaney, *Legislating for Equality in Colombia: Constitutional Jurisprudence, Tutelas, and Social Reform*, 1 EQUAL RTS. REV. 50 (2008) (emphasizing the ready access to the preferential and summary proceeding as a lever of citizen empowerment to secure the immediate protection of their human rights against acts or omissions of public authorities).

Atrato River and its tributaries.[88] According to the Constitutional Court of Colombia, the illegal mining activities in the Chocó,[89] which had harmed those communities and were attributed to the Colombian State, violated a slew of fundamental rights—the right to life, the right to health, the right to water, the right to nutrition security, the right to a healthful environment, the right to culture, and the right to territory.[90] Furthermore, the Constitutional Court of Colombia inaugurated the notion of bio-cultural rights, which are designed to recognize the unity between nature and the cultures and practices of indigenous peoples and ethnic communities.[91] In its landmark ruling, the Constitutional Court of Colombia gave recognition to the Rio Atrato, its basin and its tributaries as a fully-fledged "entity subject" (*entidad sujeto*) with rights to "protection, conservation, maintenance and, in this case, restoration" guaranteed by the State and the ethnic communities.[92] In the operative portion of its judgment, the Constitutional Court of Colombia directed the Colombian Government to form a Commission of Guardians (*commissión de guardianes*) consisting of a government representative and a representative of the ethnic communities.[93] Notwithstanding the envisaged new body, the Constitutional Court of Colombia also gave an advisory role to a new panel of experts charged with the responsibility to oversee compliance with the judgment.[94] In addition, the Constitutional Court of Colombia ordered the development and implementation of various action plans that contemplate intergenerational horizons to resolve what it described as the humanitarian, social, and environmental crises plaguing the Rio Atrato, its tributaries, and its communities.[95] In 2017, Colombia's president designated the Ministry of Environment as the government representative on the Commission of Guardians, which was formed in

88 Corte Constitucional de Colombia [Constitutional Court of Colombia], Sentencia T-622/16, Exp. T-5.016.242, M.P. Jorge Ivan Palacio, Bogotá D.C., Nov. 10, 2016 (Colom.) [hereinafter Sentencia T-622/16].

89 *Id.*

90 *Id.* §§ IV(10.2)(1), at 153, V(decision, fourth), at 158.

91 *Id.* § IV(5.11)–(5.18), at 43–48, (9.28), at 137, (9.32), at 138–40.

92 *Id.* §§ IV(9.25), at 134, (9.32), at 140, (10.2)(1), at 153, V(decision, fourth), at 158.

93 *Id.* §§ IV(9.32), at 140, (10.2)(1), at 154, V(decision, third), at 158–59.

94 *Id.* § V(decision, third), at 159.

95 *Id.* §§ IV(10.2)(4), at 155, V(decision, sixth), at 160.

2018.[96] Literature has noted that the case dossier was well received despite persistent implementation delays and funding challenges.[97]

Since then, the judicial recognition of rights of nature in Colombia has spread to additional rivers, special ecosystems, and island national parks.[98] For example, in 2018, the Civil Cassation Chamber of the Colombian Supreme Court echoed the Constitutional Court of Colombia when it recognized the Colombian Amazon as an entity subject and holder of rights in the wake of a plea for protection initiated by several youths and directed against various Amazonian environmental authorities and territorial entities against the backdrop of the alarming extent of deforestation in the Amazonian basin.[99] According to the Colombian Supreme Court, "The conservation of the Amazon is a national and global obligation, dealing with the main environmental axis existing on the planet, which, for this reason, has been catalogued as 'the lung of the world.'"[100] The Colombian Supreme Court cast a wide net as to the scope of environmental rights when it observed that "the ambit sphere of protection of fundamental legal precepts is each person, but also the 'other' [and t]he 'fellow person' is otherness."[101] This conception, said the Colombian Supreme Court, enveloped in essence all other beings that inhabit the planet—whether alive or not yet born and whether human or nonhuman.[102] In

96 *Comisión de Guardianes del río Atrato*, MINISTERIO DE AMBIENTE Y DESARROLLO SOSTENIBLE, https://atrato.minambiente.gov.co/index.php/comision-de-guardianes-del-rio-atrato/ [https://perma.cc/F7NR-LWBA] (last visited May 18, 2025).

97 Kauffman, *supra* note 59, at 11–12; Magallanes, *supra* note 33, at 18.

98 Ángela María Amaya Arias & Lisneider Hinestroza Cuesta, *El reconocimiento de los recursos naturales como sujetos de derechos. Análisis crítico sobre los fundamentos y efectividad de la sentencia del río Atrato*, *in* RECONOCIMIENTO DE LA NATURALEZA Y DE SUS COMPONENTES COMO SUJETOS DE DERECHOS 22 (2020).

99 Corte Suprema de Justicia de Colombia [Supreme Court of Colombia], STC4360-2018, M.P. Luis Armando Toloso Villabona, Bogotá D.C., Apr. 5, 2018 (Colom.). *See also* Diego Felipe Olaya López, *La Amazonía colombiana como sujeto de derechos – Un Caso de Justicia Ambiental* [*The Colombian Amazon as a Subject of Rights – An Environmental Justice Case*] 16 REVISTA IUS 223 (2023); Claudia Fonseca, *Corte Suprema Ordena Protección Inmediata de la Amazonia Colombiana*, CORTE SUPREMA DE JUSTICIA DE COLOMBIA (Apr. 5, 2018), https://cortesuprema.gov.co/corte/index.php/2018/04/05/corte-suprema-ordena-proteccion-inmediata-de-la-amazonia-colombiana/ [https://perma.cc/WV2H-PSU3].

100 Corte Suprema de Justicia de Colombia [Supreme Court of Colombia], STC4360-2018 ¶ 10 ("La conservación de la Amazonía es una obligación nacional y global, se trata del principal eje ambiental existente en el planeta, por tal motivo se le ha catalogado como el '*pulmón del mundo . . .*'").

101 *Id.* ¶ 5.2. ("[E]l ámbito de protección de los preceptos *iusfundamentales* es cada persona, pero también el "'*otro*'" [y e]l "'prójimo'", es alteridad . . .").

102 *Id.*

addition to prescribing action plans, the Colombian Supreme Court ordered the formulation of an Intergenerational Covenant for the Life of the Colombian Amazonas.[103]

Colombia's system of ecological justice is, in essence, judge-made, which appears to be atypical for code-based civil law systems. The decisions stand out for how they anchor the rights of nature in the legal order. While the term "otherness" suggests accommodating nature alongside the human being, the rights of nature are looped back to a new species of rights that appears to be hitched to human beings—"biocultural rights." In addition, the use of time-honored principles such as precaution appears to link back to the familiar.[104]

2. The Legal Personhood Model

Compared to the Rights of Nature model, the Legal Personhood model deploys a fiction in law to liken nature to a corporate actor, thereby allowing nature to engage with the legal system.[105] Unlike the Rights of Nature model, the Legal Personhood looks to specifically designated and geographically circumscribed ecosystems for purposes of enforcing their rights.[106] Moreover, pursuant to the Legal Personhood model, only certain communities and government agencies are eligible to serve as guardians or trustees and take up cases on behalf of a natural resource or feature.[107] The Legal Personhood model is principally found in Oceania and South Asia.[108]

a. New Zealand: Settlement Treaties

In New Zealand, the rise of Rights of Nature is inextricably linked to the political settlement process between the Māori, who are indigenous Polynesian peoples of mainland New Zealand (Aotearoa),

---

103 *Id.* ¶ 14 (Pacto Intergeneracional por la Vida del Amazonas Colombiano).

104 María del Pilar García Pachón, *La Corte Suprema de Justicia Reconoce Como Sujeto de Derechos a la Amazonia Colombiana*, UNIVERSIDAD EXTERNADO DE COLOMBIA: DEPARTAMENTO DE DERECHO DEL MEDIO AMBIENTE (Apr. 12, 2018), https://medioambiente.uexternado.edu.co/la-corte-suprema-de-justicia-reconoce-como-sujeto-de-derechos-a-la-amazonia-colombiana/ [https://perma.cc/A9JJ-276B] (observing that in the Amazonia case, the Colombian Supreme Court relied on the principle of precaution, which requires scientific uncertainty, although, according to these voices, the science record was clear as to the risks associated with deforestation, which, in turn, might have called for invoking the principle of prevention).

105 Doncel, *supra* note 20, at 9.

106 *Id.*

107 *Id.*

108 *Id.*

and the British Crown. Settlement through treaties has offered the policy mechanism deployed by the British Crown since 1992 to resolve Māori claims to lands, estates, forests, and fisheries within the framework of the Treaty of Waitangi of 1840. This treaty between the Crown and 540 Māori chiefs (*rangatira*) is considered New Zealand's founding document.[109] Differences between the English and the Māori language versions, however, created different understandings of the political compact. The English language version describes the exchange as one involving the cessation by the tribes of "Sovereignty" to the Crown[110] and the receipt by the tribes of guarantees from the Crown with regard to "the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess."[111] But the Māori believed that in Māori terms they had only surrendered governance (*Kawanatanga*),[112] while retaining full authority (*tino rangatiratanga*) over what they considered treasures.[113] Based on their understanding of the Treaty of Waitangi, the Māori continued to mount challenges against the Crown before the Waitangi Tribunal (Te Rōpū Whakamana i te Tiriti o Waitangi)—the permanent commission of inquiry established by legislation—the Treaty of Waitangi Act of 1975.

In 2017, the New Zealand Parliament passed the Te Awa Tupua (Whanganui River Claims Settlement) Act[114] (the 2017 Act) giving the terms of a settlement reached in 2012 and finalized in 2014 the force of national law.[115] The settlement, which has been viewed as archetypal for effectuating nature rights, resolved longstanding grievances of the Whanhanui Iwi—a tribal collective that includes the iwi, hapū, and tūpuna rohe groups. In particular, the Whanhanui Iwi had claimed that they were still the rightful guardians (*kaitaki*) of the Whanganui River, that they had the right to control its management, and that the Crown's

109 Margaret Mutu, *The Treaty Claims Settlement Process in New Zealand and Its Impact on Māori*, 8 LAND 152, 155 (2019) (offering a critical appraisal of the Crown's treaty claims settlement policy on Māori in New Zealand); Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court*, 7 RESOURCES 13, 19 (2018).

110 *Treaty of Waitangi, art. 1*, NEW ZEALAND HISTORY (NGA KORERO A IPURANGI O AOTEAROA), https://nzhistory.govt.nz/politics/treaty/read-the-treaty/english-text [https://perma.cc/S49T-9537] (last visited May 18, 2025).

111 *Id.* art. 2.

112 *Id.* art 1 (Ko te tuatahi).

113 *Id.* art. 2 (Ko te tuaria).

114 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, Pub. Act 2017 No. 7 (N.Z.) [hereinafter 2017 Act].

115 Pecharroman, *supra* note 109, at 19.

riverbed works, gravel extraction activities, and water diversion projects breached their property rights and conflicted with their notions and values of cosmology.[116] The Whanhanui Iwi regard the river as their ancestor (*tupuna*).[117]

The 2017 Act creates a new legal entity for the river in and of itself by declaring the Whanganui River—New Zealand's third longest river—to be "a legal person" with "all the rights, powers, duties, and liabilities of a legal person."[118] The Whanganui River is New Zealand's third longest river.[119] Legal personhood status incorporates the view of the Whanhanui Iwi that the river is insusceptible of being "propertized" in an absolute sense. This is why the 2017 Act vests fee simple title to the Crown-owned parts of the river "bed" or "bottom" in the river itself.[120] Literature has, in this context, observed that, while the water is not included in this part of the settlement, the whole catchment is used in the definition of Te Awa Tupua and for purposes of management.[121] Moreover, while the common law concept of title does not neatly fit with Māori notions of responsibility and control, it embodies the next best approach to ensuring that the river remains "beyond possession."[122]

Under the 2017 Act, the Office of Guardianship, which is called Te Pou Tupua,[123] becomes the human face and voice of the Whanganui River in the exercise of river rights, powers, duties, and liabilities. Embracing a model of co-governance,[124] Te Pou Tupua consists of two guardians—one from the Crown and the other from the Whanganui Iwi.[125] The guardians receive support from advisors (Te Karewao) and strategists (Te Kōpuka).[126] In addition to providing for a Whole River

116 Magallanes, *supra* note 33, at 7.

117 *Id.* at 8.

118 2017 Act § 14(1).

119 Julia Hollingsworth, *This River in New Zealand Is Legally a Person. Here's How It Happened*, CNN (Dec. 11, 2020, 9:43 PM), https://www.cnn.com/2020/12/11/asia/whanganui-river-new-zealand-intl-hnk-dst/index.html [https://perma.cc/UAC7-ZHRS].

120 2017 Act §§ 10(f), 7, 39.

121 Magallanes, *supra* note 33, at 8.

122 *Id.*

123 2017 Act § 14(2).

124 Magallanes, *supra* note 33, at 9.

125 2017 Act §§ 18–20.

126 Magallanes, *supra* note 33, at 7–8.

Strategy (Te Heke Ngahuro), the 2017 Act creates a River Fund (Te Karotete o Te Awa Tupua).[127]

Crucially, the 2017 Act bolsters the standing of Whanhanui Iwi. In addition to recognizing the unique relationship of the Whanhanui Iwi with the supernatural river they view as a living whole that is inexorably linked up with their life system, the 2017 Act declares that the trustees of Ngā Tāngata Tiaki o Whanganui are "entitled to lodge submissions on a[ny] matter . . . affecting the Whanganui River"[128] and that they are "recognised as having an interest . . . greater than any interest in common with the public generally" for the purposes of New Zealand's Resources Management Act (RMA) of 1991.[129] In New Zealand, the RMA has replaced a patchwork of stovepiped laws with a streamlined and integrated approach to stakeholder participation, land-use planning, and environmental management.[130]

The 2017 Act, however, stops short of conferring legal personhood on additional or all rivers in New Zealand.[131] Earlier legislation on the books, however, speaks to an ecological resource other than a river. In 2014, the New Zealand Parliament passed the Te Urewera Act.[132] Beyond clothing the settlement between the Tūhoe people and the government over their land sovereignty dispute into legislated law, the legislation declares the Te Urewera—a former national park measuring more than 2,000 square kilometers—to be "a legal entity."[133] The Te Urewera Board is designated as the fiduciary entrusted with exercising the rights, powers, duties, and liabilities of Te Urewera.[134]

Finally, the 2017 Act reflects deference to Māori traditional spirituality and good practices that are associated with their deep connection to the land and the natural world. The Māori commune with the environment by adjusting their activities based on the interactions

127 *Id.* at 9.

128 2017 Act § 72(b).

129 *Id.* § 72(d).

130 RES. MGMT. REV. PANEL, N.Z. MINISTRY FOR THE ENV'T, TRANSFORMING THE RESOURCE MANAGEMENT SYSTEM: OPPORTUNITIES FOR CHANGE (2019), https://environment.govt.nz/assets/Publications/Files/comprehensive-review-of-the-resource-management-system-opportunities-for-change-issues-and-options-paper.pdf [https://perma.cc/Y5RL-VNCN].

131 Magallanes, *supra* note 33, at 9.

132 Te Urewera Act 2014, Pub. Act 2014 No 51 (N.Z.).

133 *Id.* § 11(1).

134 *Id.* § 11(2).

of signs, rhythms, and cycles they observe (*maramatka*).[135] Actively looking after the environment (*kaitiakitanga*) is part and parcel of human existence,[136] as the Māori believe that forests, rivers, lakes, and the sea are fueled by life force (*mauri*) and spiritual power (*mana*).[137] Allowing those to flow and flourish may even call for certain spiritual restrictions (*tapu*).[138]

b. India: Jurisprudence

Since 2017, India has witnessed the rise of a hodgepodge of judge-made case law regarding the Rights of Nature.[139] In that year, the High Court of Uttarakhand handed down a pair of judgments that conferred legal personhood upon the Yamuna River and the Ganges River[140] and, in a separate ruling ten days later, upon their source glaciers, the Gangotri and the Yamunotri.[141]

The High Court of Uttarakhand's first ruling decided a public interest lawsuit against the State of Uttarakhand, which had been brought by a villager who sought the cessation of construction and mining activities, the removal of encroachments on the banks of a canal out of the Ganga, and the abatement of the high levels of water pollution.[142] In view of the State of Uttarakhand's inaction, the High Court of Uttarakhand expressed "serious displeasure"[143] and, beyond

---

135 Issac Warbrick et al., *Te Maramataka—An Indigenous System of Attuning with the Environment, and Its Role in Modern Health and Well-Being*, 20 INT'L J. ENV'T RSCH. & PUB. HEALTH 2739, 2742 (2023), https://www.mdpi.com/1660-4601/20/3/2739 [https://perma.cc/N76W-QNTM].

136 Merata Kawharu, *Kaitiakitanga: A Maori Anthropological Perspective of the Māori Socio-Environmental Ethic of Resource Management*, 109 J. POLYNESIAN SOC'Y 349, 349–67 (2000).

137 John Patterson, *Respecting Nature: A Māori Perspective*, 2 WORLDVIEWS 69, 69–77 (1998).

138 William J. Phillipps, *European Influences on* Tapu *and the* Tangi, 63 J. POLYNESIAN SOC'Y 175, 175–98 (1954).

139 Katie Surma, *Indian Court Rules That Nature Has Legal Status on Par with Humans—and That Humans Are Required to Protect It*, INSIDE CLIMATE NEWS (May 4, 2022), https://insideclimatenews.org/news/04052022/india-rights-of-nature/ [https://perma.cc/5TXX-39NH].

140 Mohammed Salim v. State of Uttarakhand, Writ Petition (PIL) No. 126 of 2014, Uttarakhand HC (Dec. 5, 2016) (India) [hereinafter Salim 1]; Mohammed Salim v. State of Uttarakhand, Writ Petition (PIL) No. 126 of 2014, Uttarakhand HC (Mar. 20, 2017) (India) [hereinafter Salim 2].

141 Miglani v. State of Uttarakhand, Writ Petition (PIL) No. 140 of 2015, Uttarakhand HC (Mar. 30, 2017) (India).

142 Salim 1, *supra* note 140.

143 Salim 2, *supra* note 140, at 4.

what was requested in the original petition, took it upon itself to recognize both rivers, along with their tributaries and running water, as "juristic/legal persons/living entities having the status of a living person with all corresponding rights and liabilities of a loving person in order to preserve and conserve [those river resources]."[144] According to the High Court of Uttarakhand, the attribution of legal personality is a fiction of human ingenuity that responds to societal needs and that is susceptible of being conferred upon any subject other than a human being.[145] In support of its determination, the High Court of Uttarakhand offered several rationales. Recalling "[t]he extraordinary situation [which] has arisen [in view of the] Rivers Ganga and Yamuna . . . loosing [sic] their very existence[,]" the High Court of Uttarakhand deduced that the situation required "extraordinary measures to be taken to preserve and conserve [the] Rivers Ganga and Yamuna."[146] Moreover, the conferral of legal personhood was necessary to give useful effect to constitutional dispositions that task the State and every citizen with safeguarding the environment and natural resources.[147] Finally, the High Court of Uttarakhand referred to the deep faith (*Astha*) held by Hindus for those rivers as the providers of "both physical and spiritual sustenance to all of us from time immemorial."[148]

By anchoring the conferral of personhood in the *parens patriae* power,[149] the High Court of Uttarakhand crafted a guardianship model that borrows from tutorship and curatorship in the law of persons, which are designed to protect those who cannot defend themselves. Emphasizing that giving legal status to both rivers was of the utmost expedience, the High Court of Uttarakhand declared that "[t]he Director of NAMAMI Gange, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand are . . . *persons in loco parentis* [acting] as the human face to protect, conserve and preserve [the] Rivers Ganga and Yamuna and their tributaries."[150] The High Court of Uttarakhand further entrusted the Advocate General of the State of Uttarakhand with representing the interest of the rivers at all legal proceedings.[151]

---

144 *Id.* at 11.

145 *Id.* at 10 (citing from Corpus Juris Secundum, vol. 6, p. 778).

146 *Id.* at 4.

147 *Id.* at 11 (invoking Articles 48-A and 51A(g) of the Constitution of India).

148 *Id.* at 11.

149 *Id.* at 11–12.

150 *Id.* at 11–12.

151 *Id.* at 12.

In a subsequent decision, which arrived on the heels of the first ruling, The High Court of Uttarakhand held that the Himalayan glaciers Gangotri and Yamunotri, along with "rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls," were legal persons.[152] Beyond its earlier ruling, the High Court of Uttarakhand specified that "[t]he rights of these legal entities shall be equivalent to the rights of human beings and the injury/harm caused to these bodies shall be treated as harm/injury caused to the human beings."[153] Referring to New Zealand settlement legislation for the Urevera National Park, the High Court of Uttarakhand coupled the principles of parens patriae power with what it referred to as New Environment Jurisprudence.[154] A year later, in 2018, the High Court of Uttarakhand decided a case involving the purported abuse of horses used to transport cargo from Nepal to India.[155] The decision recognized the "entire animal kingdom including avian and aquatic . . . as legal entities having a distinct *persona*" and conferred guardianship in loco parentis unto all citizens throughout the State of Uttarakhand.[156] The High Court of Uttarakhand's rulings appear to have inspired the Bangladesh Supreme Court's Appellate Division to follow suit in 2019, when it recognized the legal rights of the Turag River and all other rivers in the country as "living entities" with rights as "legal persons," while endowing the country's National River Conservation Commission with guardianship to ensure the protection of these rights.[157]

A more recent case, which was decided in 2022 by the Madurai Bench of Madras High Court,[158] involved a petition of a Tahsildar or custodian of government lands, who was forcibly retired, along with a pension cut, for having deeded to a private person a tract of protected Forest Poramboke Land in Megamalai in the Theni District of Tamil

152 Miglani v. State of Uttarakhand, at 64.

153 *Id.* at 65.

154 *Id.* at 41–42.

155 Bhatt v. Union of India, AIR 2018 UTR 613, Writ Petition (PIL) No. 43 of 2014, Uttarakhand HC (2018) (India).

156 *Id.* at 50.

157 Rina Chandran, *Fears of Evictions as Bangladesh Gives Rivers Legal Rights*, REUTERS (July 4, 2019, 12:26 PM), https://www.reuters.com/article/us-bangladesh-landrights-rivers-idUSKCN1TZ1ZR/ [https://perma.cc/JG9G-D47D].

158 Common Order, Periyakaruppan v. The Principal Secretary to Gov't, Dep't, Secretariat, Chennai- 600 009 (2022) (Nos. 18636 of 2013, 3070 of 2020, and 2614 of 2020) (India).

Nadu.[159] This space is also known as "green peak" (*Paccha Kumachi*) for its cardamom plantations and evergreen forests.[160] Lands of this kind are not susceptible of being transferred to any individuals.[161] Since the grantee's *patta*, which in India embodies the proof of ownership and establishes lawful possession of specific lands,[162] had long been canceled,[163] the Madras High Court reduced the petitioner's punishment to a six-month suspension for his "act done against nature."[164] But the Madras High Court took the occasion to invoke its parens patriae power, declare Mother Nature a living being with a separate legal personality, and order the state and central governments to protect Mother Nature in all possible ways.[165] Leveraging its *parens patriae* power allowed the Madras High Court to step in judicially as guardian for Mother Nature. In describing Mother Nature as comparable to a living person with rights, duties, and liabilities, the Madras High Court invoked monikers from jurisdictions across the globe to describe actors of a corporate nature, including legal entity, legal person, juristic person, judicial person, and moral person.[166] Mother Nature's legal personality, said the Madras High Court, translated into fundamental and constitutional rights to survival, safety, sustenance, and resurgence.[167] According to the Madras High Court, "past generations have handed over the 'Mother Earth' to us in its pristine glory and we are morally bound to hand over the same Mother Earth to the next generation"[168] and therefore, the time had come to declare Mother Nature a juristic actor.[169]

To this day, however, the overall impact of the various court decisions has remained somewhat in limbo as the Ganges and Yamuna case has been stayed pending appeal to the Supreme Court of India.[170]

---

159 *Id.* at 6–8, 13–16.

160 Surma, *supra* note 139.

161 Common Order at 5–6, Periyakaruppan v. The Principal Secretary to Government (2022) (Nos. 18636 of 2013 and 3070 of 2020) (India).

162 GEOFFREY K. PAYNE, URBAN LAND TENURE AND PROPERTY RIGHTS IN DEVELOPING COUNTRIES 41, 62 (1997).

163 Common Order at 5–6, 19–21, Periyakaruppan v. The Principal Secretary to Government (2022) (Nos. 18636 of 2013, 3070 of 2020, and 2614 of 2020) (India).

164 *Id.* at 21–22.

165 *Id.* at 22.

166 *Id.*

167 *Id.*

168 *Id.* at 21.

169 *Id.*

170 Petition for Special Leave to Appeal, State of Uttarakhand v. Salim (2017) (No. 016879 of 2017) (India).

After the High Court of Uttarakhand had spoken, the State of Uttarakhand and others filed to have the decision overturned.[171] In addition to noting the silence of the petition and the lack of a matching precedent in law with regard to the rise of legal personality for river systems, the State of Uttarakhand's plea advanced the federalism argument that it was for the Union Government to regulate the management of India's interstate rivers.[172] The State of Uttarakhand then formulated a number of questions to show that, in this light, the decision subject to its challenge was unworkable. These queries concern not only the delineation of the specific prerogatives enjoyed by State of Uttarakhand guardians over authorities of the sister states and the central government but also the liabilities incurred by the State of Uttarakhand for damage caused by flooding or associated with drownings in the rivers.[173]

c. Yield

The two principal design models for devising and formulating rights of Nature—the Nature Rights Model, which prevails in the Americas, and the Legal Personhood Model, which is found in Oceania and South Asia—have proponents and detractors. It appears that Rights of Nature are most powerful in their concrete outcomes when applied to a specific ecosystem or feature or when hitched to a particular community's reliance interest.

Under the Nature Rights model, which is steeped in indigenous spirituality and practices, nature is endowed with separately recognized rights or newly created rights that are positioned in separation from human rights.[174] Ecuador, Bolivia, and Panama recognize the inherent rights of natural features. Those jurisdictions appear to reflect the Civil Law's commitment to legislated law. Bolivia anchors nature rights in social progressivism. Ecuador leaves the enforcement of its constitutional dispositions in the hands of the courts.[175] Colombia leans into newer, judicially created human rights such as biocultural rights, which arise from economic, social, cultural, and environmental contexts.[176]

---

171 *See* Kauffman, *supra* note 59, at 14–15 (offering an excerpt from the petition).

172 *Id.* at 15.

173 *Id.*

174 Magallanes, *supra* note 33, at 18.

175 *Id.* at 19.

176 Sentencia T-622/16, *supra* note 88, § IV(5.11)–(5.18), at 43–48.

Compared to the Nature Rights model, the Legal Personhood model moves the environment and natural resources away from public law and into the ambit of private law by harnessing time-honored approaches rooted in the Common Law.[177] In Legal Personhood jurisdictions, the installation of guardians invests local stakeholder groups not only in the process of managing a particular natural feature but also in the makeup of the entrusted body itself. Unlike New Zealand's national legislation, which vests title to the natural feature,[178] but leaves enforcement to volunteers empowered at large, India's state court decisions, which have conferred corporate personality upon natural features, make the appointment of guardians themselves through the exercise of parens patriae power.[179] New Zealand's statutory settlement approach may be described as a consecration of restorative earth justice—addressing harm and risk of harm to the planet through fostering a common understanding among stakeholders.[180] Indian courts across the Union have pioneered a jurisprudence that melds common law with religious law. Literature has noted the Hinduist underpinnings of the decision to endow the Yamuna and Ganges rivers with legal personhood.[181] Both New Zealand and India accomplish the separation from the anthropocentric idea of nature in the service of human beings by considering a natural feature an ancestor or deity.[182]

3. Forays of Rights of Nature into Western Liberal Democracies

In the course of a process of international policy diffusion, the movement toward consecrating Rights of Nature continues to reach all four corners of the world. The most instrumental organizations in this endeavor have included the Global Alliance for the Rights of Nature (GARN),[183] Centre for Democratic and Environmental Rights

177 ÓSCAR DARÍO AMAYA NAVAS, LA CONSTITUCIÓN ECOLÓGICA DE COLOMBIA 20 (3rd ed. 2016).

178 *Id.*

179 *Id.*

180 Chaitanya Motupalli, Notes and Comments, *Intergenerational Justice, Environmental Law, and Restorative Justice*, 8 WASH. J. ENV'T L. & POL'Y 333, 360 (2018).

181 Sudipta Sen, *Of Holy Rivers and Human Rights: Protecting the Ganges by Law*, YALE UNIV. PRESS (Apr. 25, 2019), https://yalebooks.yale.edu/2019/04/25/of-holy-rivers-and-human-rights-protecting-the-ganges-by-law/ [https://perma.cc/R4H5-UAV2]; Erin L. O'Donnell, *At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India*, 30 J. ENV'T. L. 135, 136, 140, 141 (2018).

182 Magallanes, *supra* note 33, at 19.

183 *Who We Are*, GLOB. ALL. FOR THE RTS. OF NATURE, https://www.garn.org/ [https://perma.cc/Z2SL-EJDZ] (last visited May 18, 2025).

(CDER),[184] Community Environmental Legal Defense Fund (CELDF),[185] the Earth Law Center,[186] and the United Nations Harmony with Nature Knowledge Network.[187] In 2014, for example, the GARN initiated the International Tribunal for the Rights of Nature, which "aims to create a forum for people from all around the world to speak on behalf of nature, to protest the destruction of the Earth—destruction that is often sanctioned by governments and corporations—and to make recommendations about Earth's protection and restoration."[188] The process of diffusion had recently led to the entry of Right of Nature into Western liberal democracies. In addition to attempts at returning to the United States, Rights of Nature have appeared in Europe.

a. Full Circle: Recent Discussions in the United States

Long after Justice Douglas's dissent in *Sierra Club*, which had formulated an impassioned plea for protecting nature as such through judicial proceedings, a variety of municipal laws embracing rights of nature have surfaced in the United States. Toledo, Ohio, for example, incorporated in its municipal charter the "Lake Erie Bill of Rights" (LEBOR).[189] A federal judge, however, struck down LEBOR in its entirety, reasoning that the municipal law was unconstitutionally vague

---

184 *Who We Are*, CTR. FOR DEMOCRATIC & ENV'T RTS., https://www.centerforenvironmentalrights.org/who-we-are [https://perma.cc/M8C4-445P] (last visited May 18, 2025) (endeavoring to join forces "with communities, indigenous peoples and tribal nations, grassroots organizations and civil society, and governments around the globe to advance Rights of Nature legal protections, and to implement and enforce these rights").

185 *About CELDF*, CMTY. ENV'T LEGAL DEF. FUND, https://celdf.org/about-celdf/ [https://perma.cc/NH6N-KZEL] (last visited May 18, 2025) (endeavoring to "build a decolonial movement for Community Rights and the Rights of Nature to advance democratic, economic, social, and environmental rights—building upward from the grassroots to the state, federal, and international levels").

186 *Our Mission*, EARTH L. CTR., https://www.earthlawcenter.org/our-mission [https://perma.cc/4CG3-UAE6] (last visited May 18, 2025) (pursuing the mission "to advance ecocentric laws, policies, and governance for the well-being of the Earth community").

187 *Chronology*, HARMONY WITH NATURE, http://www.harmonywithnatureun.org/chronology/ [https://perma.cc/2PDC-LCZG] (last visited May 18, 2025) (highlighting activities, starting with the declaration of International Mother Earth Day on April 22, 2009, by the United Nations General Assembly).

188 *About Us and the History of RoN Tribunals*, INT'L RTS. OF NATURE TRIBUNAL, https://www.rightsofnaturetribunal.org/about-us/ [https://perma.cc/7GZ7-GYGV] (last visited May 18, 2025).

189 TOLEDO, OHIO, MUN. CODE, ch. XVII § 253 (declaring "irrevocable rights for the Lake Erie Ecosystem to exist, flourish and naturally evolve, a right to a healthy environment for the residents of Toledo, and which elevates the rights of the community and its natural environment overpowers claimed by certain corporations").

and, therefore, in violation of federal due process rights under the Fourteenth Amendment to the U.S. Constitution.[190] Moreover, at the state level, several legislatures have been pushing back against local initiatives through presumptive bans.[191] Yet, protections for nature created by tribes have proven more resilient to court challenges than other local ordinances. For example, the Chippewa Nation's White Earth Band successfully adopted the "Rights of the Manoomin" law to secure legal rights for wild rice (*manoomin*) and forestall the development of an oil pipeline that could destroy the crop's viability.[192]

There are currently no initiatives afoot that could promote the Rights of Nature at the federal level. In 2017, a social and environmental justice organization and five of its members filed a lawsuit against the State of Colorado in federal district court as "next friends" and guardians of the Colorado River Ecosystem.[193] The complaint asked for declaratory relief, arguing that the Colorado River Ecosystem was a "person" susceptible of possessing rights and that the Colorado River Ecosystem as such had the "rights to exist, flourish, regenerate, be restored, and naturally evolve."[194] According to the complaint, certain activities carried out or permitted by the State of Colorado could threaten or violate those rights and hence, the plaintiffs were entitled to the injunction they sought.[195] Just a few months after the complaint had been filed, however, the lawsuit was withdrawn by the plaintiffs.[196] Notwithstanding, in their motion to dismiss, the plaintiffs contended that the complaint "represented a good faith attempt to introduce the Rights of Nature doctrine to our jurisprudence"[197] and "that the doctrine provides American courts with a pragmatic and workable tool for

190 Drewes Farms P'ship v. City of Toledo, 441 F. Supp. 3d 511, 555–57 (N.D. Ohio 2020).

191 H.R. 166, 133rd Gen. Assem. § 2305.011 (Ohio 2019) ("Nature or any ecosystem does not have standing to participate in or bring an action in any court of common pleas.").

192 *Resolution Establishing Rights of Manoomin, Res. # 2018-05*, WHITE EARTH NATION, https://www.whiteearth.com/media/pages/divisions/judicial-services/codes-ordinances/952551d73e-1727297519/1855-res-estab-rts-of-manoomin-2018-with-resolution.pdf [https://perma.cc/D9PZ-2BXQ] (last visited May 18, 2025).

193 Complaint for Declaratory Relief, The Colorado River Ecosystem v. State of Colorado, No. 1:17-cv-02316-RPM (D. Colo. Sept. 25, 2017).

194 *Id.* at 22.

195 *Id.* at 9, 18, 22.

196 Unopposed Motion to Dismiss Amended Complaint with Prejudice, The Colorado River Ecosystem v. State of Colorado, No. 1:17-cv-02316-NYW (D. Colo. Dec. 3, 2017).

197 *Id.* at 2.

addressing environmental degradation and the current issues facing the Colorado River."[198]

b. New Frontiers: Spain and Germany

In 2022, Spain made the Mar Menor, a vast saline coastal Mediterranean lagoon, the first ecosystem with rights in Europe.[199] The legislation, which is known as Law 19/2022, declares the juridical personality of the lagoon and its basin,[200] establishes a triad in representation and governance,[201] imposes criminal, civil, environmental, and administrative liability on the public authorities and entities of private law,[202] and gives any natural or legal person the active legitimation in court for defending the interests of the lagoon.[203] Law 19/2022 was invoked in criminal proceedings over the purported dumping of agricultural and mining wastes by several companies and individuals.[204] In the "Topillo" case,[205] a farmer recently agreed to a one-year suspended prison sentence.[206] But in the "Balsa Jenny" case, the court decided that Law 19/2022 did not allow Mar Menor to be a victim party in criminal proceedings.[207]

---

198 *Id.* at 3.

199 Ley 19/2022, de 30 de septiembre, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su Cuenca [Law 19/2022 of Sept. 30, 2022, for the recognition of legal personality to the Mar Menor Lagoon and its basin], BOE núm. 237, de 3 de octubre 2022, https://www.boe.es/buscar/act.php?id=BOE-A-2022-16019 [https://perma.cc/LJW3-TBEG].

200 *Id.* art. 1.

201 *Id.* art. 3.

202 *Id.* art. 4.

203 *Id.* art. 6.

204 Evie Winebrenner, *Spanish Lagoon Mar Menor Faces Initial Court Involvement and Constitutional Challenges to Its Rights*, EARTH L. CTR. (July 31, 2024), https://www.earthlawcenter.org/blog-entries/2024/7/mar-menor-court-updates [https://perma.cc/JY7F-BD5Y]; Eduardo Salazar Ortuño & María Teresa Vicente Giménez, *Mar Menor: Europe's First Ecosystem with Legal 'Personhood*,*'* HEINRICH BÖLL STIFTUNG (Feb. 5, 2025), https://www.boell.de/en/2025/02/05/mar-menor-europes-first-ecosystem-legal-personhood [https://perma.cc/LL57-WG5S].

205 *Prosecution of Senior Officials Accused of Polluting Mar Menor to Be Divided into 2 Separate Proceedings*, MURCIA TODAY (Jan. 10, 2023), https://murciatoday.com/prosecution-of-senior-officials-accused-of-polluting-mar-menor-to-be-divided-into-2-separate-proceedings_1969025-a.html [https://perma.cc/Q82G-CK99].

206 *First Trial for Polluting Mar Menor Ends in 1-Year Prison Sentence for Farmer*, MURCIA TODAY (Sept. 18, 2024), https://murciatoday.com/first-trial-for-polluting-mar-menor-ends-in-1_year-prison-sentence-for-farmer_1000128861-a.html [https://perma.cc/5TG4-5YDN].

207 Winebrenner, *supra* note 204.

A couple of years ago, more than fifty members of the parliamentary group Vox challenged the constitutionality of Law 19/2022, arguing that it violates the right to private property and freedom of occupation because of disproportionate restrictions on agricultural activities in the region.[208] They also contended that the notion of rights of nature is constitutionally unclear and that consequently any decision or sanction based on the statute would be void.[209] Spain's Constitutional Tribunal, however, dismissed the complaint as unfounded.[210]

In 2024, a pair of decisions by Germany's Erfurt District Court in the "diesel cases"[211] extracted rights for nature from the Charter of Fundamental Rights of the European Union (the EU Charter)[212] to determine the amount of plaintiff's damages.[213] The court characterized these rights as a protection booster that must be considered *ex officio* when it comes to determining the amount of plaintiff's damages.[214] In support of its opening the courtroom's backdoor to nature as a holder of rights, the court simply postulated that the EU Charter, which it characterized as a "living document," was casting a "penumbra"[215] over

208 Marie-Christine Fuchs, *Rights of Nature Reach Europe*, VERFASSUNGSBLOG (Feb. 24, 2023), https://verfassungsblog.de/rights-of-nature-reach-europe/ [https://perma.cc/M3ZY-UYSG].

209 *Id.*

210 Recurso de inconstitucionalidad n.º 8583-2022, interpuesto por más de cincuenta diputados del Grupo Parlamentario Vox en el Congreso de los Diputados, en relación con la Ley 19/2022, de 30 de septiembre, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su cuenca [Constitutionality Complaint No. 8583-2022, filed by more than 50 members of the parliamentary group Vox in the Congress of Deputies, with regard to Law 19/2022 of Sept. 30, 2022, for the recognition of legal personality in favor of the Mar Menor lagoon and its basin], B.O.E. núm. 311, de 26 de diciembre de 2024, https://www.boe.es/boe/dias/2024/12/26/pdfs/BOE-A-2024-27140.pdf [https://perma.cc/XU5P-KVFZ].

211 For the landmark ruling ("dieselgate") by the Court of Justice of the European Union, see Case C-100/21, QB v. Mercedes Benz Group AG, ECLI:EU:C:2023:229 (Mar. 21, 2023) (holding that EU Member States are required to ensure that the individual purchaser of a motor vehicle with a prohibited defeat device has access to adequate compensation from the manufacturer).

212 Charter of Fundamental Rights of the European Union, Oct. 26, 2012, OJC 326/391.

213 LG Erfurt, Aug. 2, 2024, 8 O 1373/21, ECLI:DE:LGERFUR:2024:0802.8O1373.21.00 (Ger.) [hereinafter LG Erfurt I]; LG Erfurt, Oct. 17, 2024, 8 O 836/22, ECLI:DE:LGERFUR:2024:1017.8O836.22.00 (Ger.) [hereinafter LG Erfurt II].

214 LG Erfurt I, *supra* note 213, ¶¶ 26, 37; LG Erfurt II, *supra* note 213, ¶¶ 27, 56, 77.

215 LG Erfurt I, *supra* note 213, ¶ 27; LG Erfurt II, *supra* note 213, ¶¶ 32, 95. For the legal metaphor, which was originally invoked by U.S. Supreme Court Justice William O. Douglas to explain that a right to privacy is found in the penumbras created by the specific

these cases.[216] According to the court, a judicial conferral of effects accruing from nature's intrinsic rights was therefore justified.[217] Yet, both Americanisms, "living document" and "penumbra," which continue to be the subject of deep dissensions in the United States, remain largely unexplained beyond the court's general embrace. Significantly, anchoring the rise of novel intrinsic subjective rights in the EU Charter may require more than a juxtaposition of its different language versions.[218] Also, other than referring to "ecological persons,"[219] the court did not offer much detail as to whether it embraced the nature rights model, the legal personhood model, or some blend of both. Thus, the court did not explain whether nature at large or singular ecosystems enjoy these rights. Moreover, the court did not identify actors now entitled to vindicate those rights in Europe. In light of the many open questions associated with the rationales advanced in both decisions and absent positive constitutional or legislative dispositions beyond programmatic declarations or, at least, confirmatory blessings from higher courts, the district court's judgments may not gain further traction in Germany.

4. Summation: Sources, Contents, and Diffusion of Rights of Nature

Finally, through a process of international policy diffusion, the movement toward consecrating Rights of Nature continues to reach all four corners of the world. The most instrumental organizations in this endeavor have been the Global Alliance for the Rights of Nature (GARN),[220] Centre for Democratic and Environmental Rights (CDER),[221] Community Environmental Legal Defense Fund (CELDF),[222] the Earth Law Center,[223] and the United Nations Harmony

guarantees housed in the Bill of Rights, see Griswold v. Connecticut, 381 U.S. 479, 484 (1965).

216 LG Erfurt I, *supra* note 213, ¶ 29; LG Erfurt II, *supra* note 213, ¶ 60. *See, e.g.*, DAVID A. STRAUSS, THE LIVING CONSTITUTION (INALIENABLE RIGHTS) (2010) (arguing for a "living" over an "originalist" constitution).

217 LG Erfurt I, *supra* note 213, ¶ 36; LG Erfurt II, supra note 213, ¶ 29.

218 LG Erfurt I, *supra* note 213, ¶ 31; LG Erfurt II, *supra* note 213, ¶ 54.

219 LG Erfurt I, *supra* note 213, ¶¶ 27, 29, 32. LG Erfurt II, *supra* note 213, ¶¶ 28, 29, 54, 55, 56, 62, 65, 66, 68, 81, 98.

220 GLOB. ALL. FOR THE RTS. OF NATURE, https://www.garn.org/ [https://perma.cc/Z2SL-EJDZ] (last visited May 18, 2025).

221 CTR. FOR DEMOCRATIC & ENV'T RTS., *supra* note 184.

222 CMTY. ENV'T LEGAL DEF. FUND, *supra* note 185.

223 EARTH L. CTR., *supra* note 186.

with Nature Knowledge Network.[224] In 2014, for example, GARN initiated the International Tribunal for the Rights of Nature, which "aims to create a forum for people from all around the world to speak on behalf of nature, to protest the destruction of the Earth—destruction that is often sanctioned by governments and corporations—and to make recommendations about Earth's protection and restoration."[225]

III
HOW NATURE FARES UNDER SUBJECTIVE RIGHTS THEORIES

The exuberance projected by the Rights of Nature movement has reached all corners of the world. But the general euphoria, even in Western reception areas, has largely avoided discussing the hard legal and philosophical question of how the Rights of Nature model can be reconciled with what liberal democracies have conceptualized as subjective rights. Adding nature as such, or specific ecosystems alongside humankind, could engender a relative devaluation of human rights and even lead to a "disanthropization" of human rights.

A. Subjective Rights Theories

Concomitant with the rise of the modern liberal order, rights theories have generally focused on the "rights holder" or "subject" of those rights to express the postulates of individual freedom and proprietary individualism. Harnessing the foundations laid by the great luminaries from nominalism to the Enlightenment who had moved the needle for a conceptualization of rights—from right as an attribution of what is owed to someone (*suum ius*), to right as the object of justice, and then to right as faculty (*facultas*) and moral power (*potestas*)[226]—German legal scholars developed a theory of the subjective right (*subjektives Recht*) during the nineteenth century. Two main theories crystallized—the "will theory" (*Willenstheorie*) and the "interest theory" (*Interessenstheorie*).

---

224 HARMONY WITH NATURE, *supra* note 187.

225 INT'L RTS. OF NATURE TRIBUNAL, *supra* note 188.

226 Ana Caldera Fouto, *Revisiting Subjectivity in Rights*, REVISTA PORTUGUES DE FILOSOFIA 75, 1103 (2019) (Steps toward the use of right (*ius*) in the subjective sense were taken by medieval scholars, Renaissance humanists, natural law scholars Hugo Grotius, Gottfried Leibniz, and Christian Wolff, George Darjes, Daniel Nettelbladt, and Christian Friedrich Mühelenbruch during the early modern age). For the origins of this discussion, *see also* ANICETO MASFERRER, DIGNIDAD Y DERECHOS HUMANOS: UN ANÁLISIS RETROSPECTIVO DE SU FORMACIÓN EN LA TRADICIÓN OCCIDENTAL 87–124 (2022).

The will theory was created by Friedrich Carl von Savigny, who is considered the pioneer of the German science of civil law.[227] According to Savigny, a legal relationship is predicated upon the presence of a subjective right:

> If we look at the state of the law as it surrounds and penetrates us in real life from all sides, it appears to us first of all as the power to which the individual person is entitled: a domain which [that person's] will reigns, and [does so] with our consent.[228]

Savigny calls this power (*Macht*), or authority (*Befugnis*), a "right of this person" (*ein Recht dieser Person*).[229] The law in the objective sense, says Savigny, will furnish the rules of decision for delineating the borders of the freedom spaces assigned to the will of each right holder. Savigny adds that the ethics of freedom and morality are served as the law secures the force residing in each singular will.[230] In this sense, the subjective right becomes a means to a purpose—carving out and activating the necessary freedom space for the morally acting person.[231] Echoing Kantian notions of the law as a balancer when the caprices of one meet those of another, Savigny's hint at the existence of the subjective right independent of abstract notions of morality, however, appears to move his words away from the rubric of natural law.[232]

The interest theory was inaugurated by Rudolf von Jhering—the German exponent of social utilitarianism.[233] According to Jhering,

---

227 *See* Luis Kutner, *Savigny: German Lawgiver*, 55 MARQUETTE L. REV. 280 (1972).

228 FRIEDRICH CARL VON SAVIGNY, 1 SYSTEM DES HEUTIGEN RÖMISCHEN RECHTS 7 (1840) ("Betrachten wir den Rechtszustand, so wie er uns im wirklichen Leben von allen Seiten umgiebt und durchdringt, so erscheint uns darin zunächst die der einzelnen Person zustehende Macht: ein Gebiet, worin ihr Wille herrscht, und mit unsrer Einstimmung herrscht."). For an English translation, see FRIEDRICH KARL VON SAVIGNY, SYSTEM DES HEUTIGEN RÖMISCHEN RECHTS 6 (William Holloway trans., 2013) (1840).

229 VON SAVIGNY, *supra* note 228, at 7. (Others have referred to this right as the right in the subjective sense (*das Recht im subjektiven Sinn*)).

230 *Id.* at 332.

231 *Id.*

232 KLAUS RÖHL, ALLGEMEINE RECHTSLEHRE 350 (1995).

233 Iredell Jenkins, *Rudolf Von Jhering*, 14 VAND. L. REV. 169 (1960); William Seagle, *Rudolf von Jhering: Or Law as a Means to an End*, 13 U. CHI. L. REV. 71 (1945); *see also* The Editors of Encyclopedia Britannica, *Rudolf von Jhering*, BRITANNICA (Sept. 13, 2024), https://www.britannica.com/biography/Rudolf-von-Jhering [https://perma.cc/J3JQ-AXQ5] ("Rudolf von Jhering (born August 22, 1818, Aurich, Hanover [Germany]—died September 17, 1892,Göttingen, Germany) was a German legal scholar, sometimes called the father of sociological jurisprudence.").

> [It is t]wo moments that constitute the notion of right[:] a substantive one, which embodies the practical purpose of the same, namely the utility, advantage, gain that shall be guaranteed by the law[;] and a formal one, which behaves as means to that purpose, namely, the legal protection, the legal action.[234]

The subjective right, says Jhering, accrues from the legal certainty of its enjoyment, and rights embody legally protected interests (*rechtlich geschützte Interessen*).[235] Prefacing his two elements, Jhering answers the question about the relationship between will and right by declaring that the law does not exist because of the will but rather the will exists because of the law.[236] According to Jhering, the law is not at all about facilitating the free activation of the will.[237] The law serves a different purpose—allowing the authorized individual to maximize their needs and interests.[238] Jhering then summarizes that "the will is not the purpose and the driving force of the rights; the notion of will and power is not capable to unlock the understanding of the rights."[239]

Later works in the era of pandectism advanced a dual formula combining Savigny's will theory and Jhering's interest theory.[240] According to Bernhard Windscheid, the pandectist who is said to have entrenched the moniker of subjective rights,[241] a subjective right reflects a power of the will or rule of the will that has been conferred by objective law—the legal order.[242] Windscheid's posture articulated a distinctly positivist posture.[243] Georg Jellinek described subjective rights as the human willpower pertaining to a good or interest recognized and protected by the legal order.[244]

---

234 RUDOLF VON JHERING, GEIST DES RÖMISCHEN RECHTS AUF DEN VERSCHIEDENEN STUFEN SEINER ENTWICKLUNG pt. 3.1 at 316–17 (1865) ("Zwei Momente sind es, die den Begriff des Rechts constituiren, ein substantielles, in dem der praktische Zweck desselben liegt, nämlich der Nutzen, Vortheil, Gewinn, der durch das Recht gewährleistet werden soll, und ein formales, welches sich zu jenem Zweck bloß als Mittel verhält, nämlich der Rechtsschutz, die Klage.").

235 Gerhard Wagner, *Rudolf von Jherings Theorie des Subjektiven Rechts und der Berechtigenden Reflexwirkungen*, 193 ARCHIV FÜR DIE CIVILISTISCHE PRAXIS 319, 323 (1993).

236 VON JHERING, *supra* note 234, at 316.

237 *Id.*

238 *Id.*

239 *Id.*

240 *See* RÖHL, *supra* note 232, at 352 (referring to the pandectist treatise authored by Ferdinand Friedrich Regelsbeger).

241 Fouto, *supra* note 226, at 1112.

242 RÖHL, *supra* note 232, at 353.

243 *Id.*

244 GEORG JELLINEK, SYSTEM DER SUBJEKTIVEN ÖFFENTLICHEN RECHTE 44 (2011).

Literature has diagnosed that hitching the subjective right to the will of the right holder and the protection of interests made the subjective right a bastion of liberal individualism.[245] Not surprisingly, the subjective right became a target of national socialism in their attempt to weaken subjective rights by adding that these rights must be exercised in consonance with a serious and legitimate purpose and in the discharge of their social function[246]—a cipher for a subordination to the interests of the racially unified and hierarchically structured "people's community" (*Volksgemeinschaft*).[247]

The debate about rights theories has not been limited to Germany. In the Anglo-Saxon space, Jeremy Bentham, the founder of modern utilitarianism, advanced his version of an interest theory, while John Austin, the creator of analytical jurisprudence, advocated for a will theory.[248] But, unlike Germany, where the combination formula put the debate to rest, the controversy has continued in the English-speaking world.[249] Contemporary literature from the English-speaking world, however, has asserted that both theories suffer from fatal flaws.[250]

B. Subjective Rights and Nature Rights

As the Nature Rights model postulates inherent rights held by nature, the major challenge under subjective rights theories relates to nature's lack of will. A criterion of simply being alive, in one way or the other, as a requisite for holding rights seems to be overinclusive and fuzzy because the exercise of an autonomous will derives from the power to reason beyond self-transporting forces, instinct, and consciousness. A way out for rights of nature would then need to be connected to the devising of a higher category of a more capacious moral community of natural persons that includes not only humans but also all living beings based on their own intrinsic value and spiritual dignity. This has been the position advanced for nonhuman animals by the Australian animal

245 RÖHL, *supra* note 232, at 354.

246 *See id.* (referring to the Kiel School headed up by Wolfgang Siebert (1905–1959) and Karl Larenz (1903–1993)).

247 *See* The Editors of the Encyclopedia Britannica & Michael Ray, *Volksgemeinschaft*, BRITANNICA (Mar. 9, 2021), https://www.britannica.com/topic/Volksgemeinschaft [https://perma.cc/Y2NH-EQ5S].

248 Wagner, *supra* note 235, at 321.

249 *Id.* at 319, 321 (identifying H.L.A. Hart as advocate of the Will Theory and Neil Mac MacCormick as proponent of the Interest Theory).

250 *See* David Frydrych, *The Case Against the Theories of Rights*, 40 OXFORD J. LEGAL STUD. 320 (2020).

rights advocate Peter Singer,[251] and exemplified by court decisions in the Americas. Yet, this avant-garde position likewise suffers from not being able to answer the question surrounding the absence of autonomous reasoning in all living organisms alike. Turning to the interest theory and assuming a version that does not require any activation of willpower, it is still difficult to see how nature as a legal person could autonomously be in the pursuit of a purposive maximization of its needs and interests.

C. Subjective Rights and Legal Personhood

Under the positivist conception of the legal or juridical person, the legal order is free to endow with legal capacity certain combinations of humans and certain property masses. Savigny's Romanist fiction theory (*Fiktionstheorie*), which denies the prelaw existence, conceives the juridical person as an auxiliary construct.[252] The theory of the real corporate personality (*Theorie der realen Verbandspersönlichkeit*) developed by Otto von Gierke emphasized the reality of corporate bodies as social beings.[253] Successor theories have focused on what they call the autopoietic autonomy of corporate bodies.[254]

Arguably, juridical persons may have no will or no interest, but their members at large or their dedicated assets might, in the guise of the purpose of the body. While the Legal Personhood model avoids bifurcating the notion of "natural persons" that has traditionally been reserved to humans into humans and nature, it would still need to construe nature as some kind of social entity. A juridical person typically is an organization, and its counterpart is the contract.[255]

IV
EXISTING MECHANISMS POSITIONED TO VINDICATE THE INTERESTS OF NATURE

Even if Rights of Nature could conceptually be fitted into subjective rights of a third kind, one might query whether there is a practical need for such a significant reworking in Western liberal democracies, especially if one were to couple citizen suit provisions with relaxed

---

251 PETER SINGER, ANIMAL LIBERATION: A NEW ETHICS FOR OUR TREATMENT OF ANIMALS (1975).

252 *See* RÖHL, *supra* note 232, at 482.

253 *Id.* at 482–83.

254 *Id.* at 483.

255 *Id.* at 484–85.

standing requisites for associations. This approach fuses models from the United States and Europe.

A. Citizen Suits, Individual Standing, and Actio Popularis

At the dawn of the environmental era in the United States in the 1970s, citizen suit provisions were added to a host of federal environmental statutes. Citizen suit provisions equip individual citizens with the right to sue alleged polluters in federal court for violations of the law and seek injunctions, civil penalties, and attorney's fees.[256] Citizens are typically required to give sixty days of advance notice of their intent to sue.[257]

Despite this innovation, which allows citizens to serve as private attorneys general in favor of the environment, the constitutional standing requisites of injury-in-fact, traceability and redressability—developed by the U.S. Supreme Court as a gloss on the cases-and-controversies language in the U.S. Constitution—have frequently kept the door to federal courts closed as far as the interests of nature are concerned.[258] In too many cases, citizens were unable to establish a personal stake in seeing violations of environmental statutes corrected.[259] One of the rationalizations of tight standing requisites stems from fears that allowing the "*actio popularis*" might open the floodgates and overwhelm courtrooms.[260] The *actio popularis*, which is rooted in Roman law, may be described as a complaint that allows anyone to file on behalf of another or in the general interest.[261] Germany's exclusion of the *actio popularis*, not surprisingly, stems

256 Scott Strand, *At Risk: Citizen Suits and the Doctrine of Standing*, ENV'T L. & POL'Y CTR. (June 21, 2023), https://elpc.org/blog/citizen-suits-and-the-doctrine-of-standing/ [https://perma.cc/28CG-5QFQ].

257 *Id.*

258 *Id.*

259 *See* Barry Bower & Errol Meidinger, *Privatizing Regulatory Enforcement: A Preliminary Assessment of Citizen Suits Under Federal Environmental Laws*, 34 BUFFALO L. REV. 833, 957 (1985) ("the success or failure of private enforcement appears to be a function of the relationships and attitudes among the principal actors").

260 *See* David E. Adelman & Robert L. Glicksman, *Reevaluating Environmental Citizen Suits in Theory and Practice*, 91 U. COLO. L. REV. 385, 447–48 (2020) (asserting that such risk has no empirical basis).

261 SLAVICA CHUBRIKJ & NEDA CHALOVSKA-DIMOVSKA, USE OF ACTIO POPULARIS IN CASES OF DISCRIMINATION 7 (Zaneta Poposka ed., 2016); *see also* James E. Pfander, *Standing to Sue: Lessons from Scotland's Actio Popularis*, 66 DUKE L.J. 1493 (2017) (Scottish *actio popularis* allowed individual suitors to press legal claims held in common with other members of the public).

from the distinction between subjective rights and objective law.[262] The assertion that administrative action is objectively unlawful does not suffice for a court action in Germany if challengers cannot establish their own subjective rights.[263]

B. Associational Standing

Beyond individuals, organizations may also have standing. This "associational" standing may appear in two guises. Organizations may firstly sue on their own behalf for injuries sustained as an organization,[264] for example, when it has incurred a loss of membership. Secondly, organizations may file to redress the injuries of its members. In such cases, the organization must establish that its members would have standing to sue in their own right, that the interest it sues for pertains to its purpose, and that the participation of individual members in the lawsuit is not required to press the claim or relief.[265] Absent a final word from the U.S. Supreme Court, the answer to the question of whether establishing standing requires an organization to identify members by name, depends on where the lawsuit is brought.[266]

The European Court of Human Rights recently offered its own version of a bifurcated approach to standing.[267] In *KlimaSeniorinnen*,[268] the court first confirmed that individuals needed to, but could not, clear the high bar associated with a sufficient stake to qualify for victim

262 Jakob Hohnerlein, *Who Is Afraid of Actio Popularis? On Separating Rights and Remedies in the ECtHR's Climate Judgment*, VERFASSUNGSBLOG (Apr. 26, 2024), https://verfassungsblog.de/who-is-afraid-of-actio-popularis/ [https://perma.cc/3HD5-GQFE].

263 *Id.*

264 Warth v. Seldin, 422 U.S. 490, 511 (1975).

265 United Food & Com. Workers Union Loc. v. Brown Grp., Inc., 517 U.S. 544, 553 (1996) (applying the three-part test and determining that an automobile workers union had associational standing to challenge a Department of Labor policy directive interpreting the trade readjustment allowance); Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977) (determining that a state agency that represents an industry of the state and acts like a trade association but with compelled membership may have standing to sue for its members' injuries).

266 Michael R. Hatcher et al., *What U.S. Supreme Court Decision on Standing Tells Us About Challenges to Corporate DEI Initiatives*, JACKSONLEWIS (July 17, 2024), https://www.jacksonlewis.com/insights/what-us-supreme-court-decision-standing-tells-us-about-challenges-corporate-dei-initiatives [https://perma.cc/7JJ4-SQS6] (Eleventh Circuit: no identification by name of members who allegedly suffered an injury required to establish standing; Second Circuit: lack of standing when organization refused to name even a single member who allegedly suffered an injury).

267 Verein KlimaSeniorinnen Schweitz v. Switz., App. No. 53600/20 (Apr. 9, 2024), https://hudoc.echr.coe.int/eng?i=001-233206 [https://perma.cc/2BVX-DPAE].

268 *Id.* (characterizing Judge Eicke's opinion).

status under the European Convention of Human Rights and Fundamental Freedoms.[269] This, of course, reflects the traditional skepticism toward the *actio popularis*. By the same token, however, the court accepted the standing of associations representing individuals for purposes of vindicating their interests with regard to the newly minted right to climate protection.[270] In the opinion of one of the judges, this opening has created the basis for *actio popularis* type complaints.[271]

The majority approach offered by the European Court of Human Rights may very well offer a formula that threads the needle for protecting nature without upending the system of human rights protection in Europe. Under this formula, the interests of nature are protected by cautiously opening the circle of procedural representation, not as an end in itself but rather as a means to broaden, evolve, and green the existing human rights patrimony. This is not unprecedented, as this approach had been ushered in two decades ago by the Supreme Court of the Philippines[272] and was later taken up by the Inter-American Court of Human Rights.[273]

In addition to the new human right to climate protection consecrated by the European Court of Human Rights, other candidates for innovative human rights could very well include the type of biocultural rights inaugurated by Colombia's Supreme Court.[274] Also, as the powerful impacts of nature preservation and environmental advocacy organizations show across the globe, lawsuits offer but one arrow in the quiver when it comes to protecting the interests of nature. For

---

269 George Letsas, *Did the Court in KlimaSeniorinnen Create an Actio Popularis?*, EJIL: TALK! (May 13, 2024), https://www.ejiltalk.org/did-the-court-in-klimaseniorinnen-create-an-actio-popularis/ [https://perma.cc/H7C5-ZQMX].

270 Verein KlimaSeniorinnen Schweitz v. Switz., App. No. 53600/20.

271 *Id.* (characterizing Judge Eicke's opinion).

272 Oposa v. Factoran, G.R. No. 101083, 224 S.C.R.A. 792 (1993) (Phil.) (petitioners properly before court in representation of their generations as well as generations yet unborn; rights to a healthy environment are "basic rights" that predate all governments and constitutions and that have existed from the inception of humankind).

273 State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 1, 62 (Nov. 15, 2017) (right to a healthy environment as an autonomous human right, which is fully judiciable); Caso Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina, Inter-Am. Ct. H.R. No. [], ¶ 1, 203, 370 (Feb. 6, 2020) (Argentina violated an autonomous right to a healthy environment, to indigenous community property, cultural identity, food, and water).

274 Sentencia T-622/16, *supra* note 88, § IV(5.11)–(5.18), at 43–48.

example, The Nature Conservancy plans to conserve billions of acres of oceans and lands as well as hundreds of thousands of miles of rivers and millions of acres of lakes and wetlands.[275] Of course, organizations run by human beings may always benefit from design improvements to achieve better outcomes for nature.

CONCLUSION

The nature-subject posture signaled by the preposition "of" in Rights of Nature has been hailed as a qualitative leap forward toward ecocentricity in the law and the development of "earth jurisprudence."[276] Rights of Nature have been formulated across the globe with great verve. Notwithstanding the general excitement, Western liberal democracies signaling a readiness to adopt Rights of Nature have largely avoided foundational debates over how to reconcile these novel rights within extant theories and philosophies of subjective rights. The recent examples of disputes over rights of nature in Spain and Germany highlight potential fissures in the doctrinal derivation of a relationship between nature rights, human personhood, and constitutionally entrenched human rights. Moreover, there appears to be no practical need in Western liberal democracies for situating Rights of Nature alongside human beings if citizen suits coupled with relaxed associational standing were made available for purposes of protecting, safeguarding, and restoring the environmental and ecological interests of nature. By the same token, new experiences with Rights of Nature models from the Americas, South Asia, and Oceania will continue to accrue. Having Western anthropocentric human rights approaches compete with those ecocentric experiences can only lead to better outcomes.

Some three decades ago, Gunther Teubner closed his famous essay, "The Invisible Cupola: From Causal to Collective Attribution in Ecological Liability,"[277] in hopes the Cupola Palermitana—his image for the fight by the Sicilian Mafia Commission against organized crime, may progressively morph into the Cupola Fiorentina—his invocation of Filippo Brunelleschi's masterpiece:

---

275 *What We Do: Our Goals for 2030*, THE NATURE CONSERVANCY, https://www.nature.org/en-us/what-we-do/our-priorities/ [https://perma.cc/U7LB-82D8] (last visited May 18, 2025).

276 Franks, *supra* note 8, at 633, 634.

277 Gunther Teubner, *The Invisible Cupola: From Causal to Collective Attribution in Ecological Liability*, 16 CARDOZO L. REV. 429 (1994).

> It seems as if the ecological cupola is changing its shape. It may yet develop from the sinister threatening hierarchy of the eco-mafia into an institution protecting the environment. Is the *cupola palermitana* gradually being transformed into the *cupola fiorentina*?[278]

A Convivencia of the third kind that invites different and diverse rights systems across the globe to strive for the best solutions tailored to sociocultural contexts might do the trick for humanity's life in balance and harmony with nature under La Bella Cupola we call our home: Planet Earth. Sis felix!

278 *Id.* at 464.