

Comparing Rights of Nature Laws in the U.S., Ecuador, and New Zealand: Evolving Strategies in the Battle Between Environmental Protection and “Development”

Craig Kauffman, Ph.D. and Pamela L. Martin, Ph.D.

International Studies Association Annual Conference, Baltimore, USA, February 23, 2017

There is increasing international recognition that in the age of the Anthropocene the wellbeing and rights of humans are inextricably linked to those of natural ecosystems. For two years, international governmental and non-governmental organizations have tracked and reported “co-violations”— violations of both human rights AND rights of Nature (RoN). In the past two years, reported co-violations of human and Nature’s rights have doubled from 100 to 200 cases. Hundreds of activists from over 16 countries, including Goldman Environmental Prize winner Berta Caceres and Peruvian Maxima Acuna de Chaupe, were killed for defending Nature’s rights and the rights of communities to live in a clean ecosystem (Wilson, Bender, and Sheehan 2016, 3). UN Special Rapporteur on the Situation of Human Rights Defenders blamed this “disturbing trend” on “intensified competition for natural resources over the last decades,” noting that “in a globalized world, the quest for economic growth has resulted in a neo-colonial environment that exacerbates conflicts between communities and business actors” (United Nations 2016, 3, 23). While attention is often focused on the Global South, pressures for human and Nature’s rights are also mounting in the Global North, including in the U.S. and New Zealand cases described below. Consequently, some in the global community have concluded that a focus on human rights has left a whole in existing systems for defending rights. Increasingly, communities and governments around the world are working to plug this hole by adopting legal provisions granting rights to Nature.

RoN legal provisions exist in countries as diverse as the U.S., New Zealand, Ecuador, Bolivia, and Mexico, and are being crafted in Brazil, Argentina, Nepal, India and elsewhere.

These laws reflect emerging global counter-norms regarding humans' relationship to Nature that challenge dominant anthropocentric norms and neoliberal development principles. Once considered quite radical, RoN norms (described below) are becoming more mainstream. They are expressed in venues as diverse as Supreme Court decisions in India (Radhakrishnan 2012), Pope Francis' 2015 encyclical *Laudato Si*; UN General Assembly resolutions (including the 2015 resolution A/RES/70/208 to develop RoN jurisprudence), and the 2015 Paris Climate Talks, where RoN was advocated as a tool for curtailing fossil fuel emissions. In 2012, the International Union for Conservation of Nature (IUCN) made RoN "the fundamental and absolute key element for planning, action and assessment...in all decisions taken with regard to IUCN's plans, programmes and projects" (IUCN 2012, 147-148).

In this paper, we address a puzzle posed by the emergence of RoN laws and related norms. While they are clustered temporally (all have arisen since 2006) and share common normative underpinnings, the laws look very different. The temporal clustering suggests policy diffusion or isomorphism are at work (Berry and Berry 2007). However, models designed to explain these processes cannot account for the significant differences in both the content and structural design of existing RoN laws. Any explanation of the rise of new RoN norms and laws must account for both the common timing and divergent institutional expressions.

I. Theory

We argue that the common timing is explained by the fact that RoN laws are responding to common structural changes experienced globally – a common impetus that has been pushing communities to augment protection of human and community rights by institutionalizing protection for RoN. That common impetus is the increase in extreme pressure on ecosystems and the communities that live in and rely on them, detailed by the Earth Law Center study on co-

violations and the UN report described above (Wilson, Bender, and Sheehan 2016, United Nations 2016). These pressures have revealed a limitation in human rights norms and policies at the local and global levels: the failure to adequately address pressures from and on the environment, which human beings depend on for survival, exacerbating socio-economic conflict. These pressures also highlight conflicts between human rights norms and dominant neoliberal development norms, as many significant pressures come from market dynamics that open new spaces for extraction, mining, big agriculture, and industrialization.

Local challenges to dominant development norms emerged independently and simultaneously in separate corners of the globe, from Tamaqua, Pennsylvania, to Lago Agrio, Ecuador, to Whanganui, New Zealand. While a school nurse in Tamaqua Borough, Pennsylvania, organized resistance in 2006 against a state plan to dump PCB river dredge into abandoned mines in her community, Ecuadorian indigenous groups in Lago Agrio were fighting to clean up their area of the Amazon from petroleum pollution caused by Chevron Texaco. Meanwhile, Maori leaders of the Whanganui iwi (tribe) were fighting to protect the Whanganui River, considered to be the iwi's ancestor, from environmental damage.

These actions emerged independently in response to similar problems in distinct local conditions. But over time, transnational networks formed among citizens seeking solutions to the degradation they faced. These networks facilitated information sharing and learning processes, and spurred global efforts to strengthen new RoN norms in order to change the way sustainable development is conceptualized and practiced (Kauffman 2017). In 2010, 35,000 people from 140 states gathered in Bolivia to draft a Universal Declaration of the Rights of Mother Earth (UDRME), later presented to the UN General Assembly (Wilson, Bender, and Sheehan 2016, 4, UDRME 2010). A Global Alliance for the Rights of Nature (GARN) was established as a

coordinating body for activists and organizations that mutually support a Universal Declaration of the Rights of Nature and the application of RoN in domestic and international law. At its first meeting, GARN members agreed to create a world network “of individuals and organizations that, through active cooperation, collective action and legal tools, based on Rights of Nature as an idea whose time has come, can change the direction humanity is taking our planet” (Global Alliance for the Rights of Nature 2017).

The global norms promoted by GARN and other RoN activists are reflected in the Universal Declaration of the Rights of Mother Earth. In contrast to dominant development norms, which view humans as separate from Nature, RoN norms view humans as part of Nature, defined as an “indivisible, self-regulating community of interrelated [living] beings that contains and reproduces all beings” (UDRME 2010, 2). All components of Nature, including humans, are considered to have inherent rights, including (but not limited to) the right to life and to exist; the right to be respected; the right of ecosystems to continue their vital cycles and processes free from human disruptions; the right to water, clean air and to be free from all contamination; and the right “to full and prompt restoration” when rights are violated. Like all norms, RoN norms state what humans *should* do, reflected in the declaration’s section on “Obligations of human beings to Mother Earth.” These include, among other things, “respecting and living in harmony with Mother Earth,” acting in accordance with the RoN, and ensuring “that the pursuit of human wellbeing contributes to the wellbeing of Mother Earth” (UDRME 2010, 3-4).

These norms challenge dominant development norms by prioritizing balance and the functioning of natural ecosystems over perpetual economic growth, reflected in the catchphrase “living in harmony with nature.” This challenge is illustrated by a 2013 report by former UN Secretary General Ban Ki-Moon, who criticizes perpetual economic growth and makes a

normative argument for creating a new paradigm “for living in harmony with nature” based on ecological economics. Ban Ki Moon writes that constructing this new paradigm requires

the redefinition of humankind’s needs and the recognition of the need to move beyond the unsustainable pursuit of ever-increasing economic growth without concern for social development and nature. Harmony with nature implies that people do not assume that they have unlimited resources or means... Harmony with nature also calls for a rehabilitation of the human spirit, the concept of holism, and for its relevance as a factor in the pursuit of a lifestyle that respects the rights of nature... This means adopting a new paradigm that includes harmonious relationships with nature... A paradigm for a new economics must go beyond neoclassical and environmental economics and learn instead from the concepts of deep ecology, the rights of nature and systems theory... In the discussions leading up to the formulation of the post-2015 development agenda, nature must be placed at the core of sustainable development (United Nations 2013).

Given the dense network connections and global organizations created to promote and institutionalize RoN norms, one might expect resulting laws to look similar due to diffusion and/or isomorphism. So why, as we show below, do they look so different? We argue that the explanation has to do with the way norms are constructed. Contrary to how norms are typically treated in the International Relations literature, norms are not static, existing in the ether waiting for norm entrepreneurs to put them into action. Rather, they are constructed through contestation, experimentation, adaptation, and learning (Krook and True 2012, Sandholtz 2008, Van Kersbergen and Verbeek 2007, Wiener 2004). As Krook and True note, “the norms that spread across the international system tend to be vague, enabling their content to be filled in many ways and thereby to be appropriated for a variety of different purposes” (2012, 104). As we show below, vague RoN norms calling on humans to live in harmony with nature are being constructed in distinct ways, with implications for how RoN are defined.

Norms, in other words, are best understood as processes—works in progress—rather than finished products. We argue that this process is shaped by domestic context, which acts as a filter, creating windows of opportunity for network actors in some places and not others, and

shaping their strategies and tactics (Kauffman 2017). We show below, for example, how varying political, cultural, and socio-economic conditions spur activists to frame RoN differently in order to mobilize support and to craft different types of legal provisions for protecting RoN. Of course, domestic context is not static, nor is its effect deterministic. Norm entrepreneurs adapt their strategies to navigate the domestic context. As pragmatist scholars of institutional change have shown, the process of putting new ideas into practice is characterized by experimentation, adaptation, and learning, which has a transformative effect on social and institutional structures (Kauffman 2017, Abers and Keck 2013, Berk and Galvan 2013, 2009, Dewey 1981).

In sum, there is a dynamic relationship between norm entrepreneurs and the socio-political structures in which norms are constructed through practice. This means that the meaning ascribed to norms changes as justifications and methods of implementation shift across space and time (Kratochwil 1991, Sandholtz 2008). Consequently, existing RoN laws share underlying norms regarding the intrinsic value of Nature and resulting obligations of humans, yet they differ in their institutional structure, scope (e.g., definition of Nature and array of rights granted), and strength (i.e., mechanisms for enforcement). These differences are the result of local contestation, experimentation, and learning during the norm construction process.

II. Research Design and Methodology

To illustrate this process of norm construction, we compare the institutionalization of RoN norms in seven different RoN laws from three different countries: U.S., New Zealand, and Ecuador. We look at these countries both because they constitute very different systems (varying by level of economic development, political system, geography, culture, and other factors), but also because these are the places where the process of institutionalizing RoN norms has advanced the furthest, thereby providing the most data for analysis.

We note that the unit of analysis is the RoN law, not country. Because these laws vary by type, multiple laws exist in some countries. Ecuador's RoN legal provisions are contained in its 2008 Constitution, which grants rights to all of Nature. By contrast, New Zealand has two national laws—the Te Awa Tupua Act and Te Urewera Act—each of which grants rights to a particular ecosystem. In the U.S., some three dozen cities and municipalities have adopted local laws recognizing RoN in their jurisdictions. We analyze four of these: local ordinances adopted by three Pennsylvania municipalities (Tamaqua Borough, Highland Township, and Grant Township) and the City of Santa Monica, California. We selected these U.S. cases because each is pioneering in its own way. Tamaqua's RoN ordinance was the world's first. Highland and Grant Townships are the first and only cases to date where RoN norms and laws have been challenged in the US court system. Santa Monica is distinct in that its RoN ordinance resulted from proactive community planning rather than a response to a particular environmental threat. Together, these U.S. cases elucidate differing paths producing local RoN laws, their different institutional forms, and the implications of these differences.

Our case comparisons and analysis draw on hundreds of primary and secondary documents as well as scores of in-depth interviews conducted over several years of fieldwork in Ecuador (2014-2015), New Zealand (2016) and the U.S. (2014-2016). We first trace the origin of each law to show how each emerged in response to local manifestations of macro-level pressures being felt globally, which we argue explains the temporal clustering of the laws. We then use case comparisons to identify similarities and differences in the emerging body of RoN laws to analyze the contestation over how to define RoN (i.e., identifying where agreement is emerging and where it is not). To aid our analysis, we constructed a conceptual framework for comparing RoN laws along two axis: strength and scope. In our final section, we use process tracing and

network analysis to show how contestation and learning prompted institutional experimentation and adaptation in the U.S. and New Zealand cases. We show how the legal tools and collective action strategies employed differ based on context and opportunity. Together, the case comparisons show that while norm entrepreneurs responded to similar macro-level pressures and drew on the same set of vague meta-norms described above, these norms were appropriated for a variety of purposes, and consequently filled with different content and given different institutional form, shaped by domestic context (e.g., societal organization, windows of opportunity, and institutional structures).

III. Emerging Rights of Nature Laws in a Global Context

In this section, we describe the emergence of RoN laws in our seven cases to show how RoN norms are being institutionalized in different ways in different contexts in response to local challenges. We present our seven cases in chronological order, however, to highlight transnational connections among the cases and the learning that takes place over time. Our description of the dynamic interaction between domestic context and the agency of transnational networks sets the stage for our analysis in section two of how different contexts, as well as learning over time, produce different institutional expressions of RoN norms. Each case illustrates an attempt to put shared meta-norms of living in harmony with nature and recognizing inherent ecosystem rights into practice. Yet each case gives these norms distinct institutional expressions due to varying structural windows of opportunity and domestic challenges. Together, the cases show how RoN laws are accumulating at a quickening pace, spurred by transnational efforts, but through different legal paths and strategies shaped by local context.

Tamaqua Borough, Pennsylvania

The U.S. RoN ordinances have their roots in the work of the Community Environmental Legal Defense Fund (CELDF). CELDF was formed in 1995 by environmental lawyers who concluded that existing environmental laws were inadequate because they focused on mitigating harms rather than preventing them. CELDF advocated new laws strengthening the rights of communities to protect themselves from environmental degradation caused by industrial activity. Having lost faith in conventional regulatory organizing, CELDF established a new approach to grassroots organizing centered on Democracy Schools, which trained community residents “to confront the usurpation by corporations of the rights of communities, people, and earth.”¹ CELDF began helping communities develop Community Bills of Rights that could provide a legal basis for residents to defend their interests against corporations invoking property rights to justify environmentally destructive behavior.

A turning point came in 2006 when Cathy Miorelli, a local supervisor for Tamaqua Borough, PA, attended one of CELDF’s Democracy Schools. Miorelli was concerned about a planned new sewage sludge deposit facility in the borough. A nurse, Miorelli had been studying the increasing incidences of cancer in her vicinity with an internal medicine doctor from a neighboring town. They gathered evidence of a cancer called Polycythemia Vera, which they found was linked to industrial toxins like benzene. Since their communities bordered three superfund sites, the two worried that contamination by yet another facility would put residents at even more risk and potential harm from such diseases. Inspired to assist her borough, Cathy ran for and won a seat as a local supervisor and attended the Democracy School.

After the experience, Miorelli said, “I realized that we could act on what we wanted most and put together an ordinance that would prevent contaminants from coming into our town.”²

¹ <http://celdf.org/how-we-work/education/democracy-school> (Accessed February 17, 2017).

² <http://celdf.org/2015/08/tamaqua-borough> (Accessed February 17, 2017).

Miorelli arranged for CELDF representatives to meet with the Tamaqua Council various times. With the mayor, Miorelli and the council of supervisors held several town meetings to educate the public and mobilize popular support. Despite the threat of lawsuits against the town and the supervisors individually, Tamaqua Borough crafted (with CELDF's help) and passed the world's first RoN ordinance in 2006—the “Tamaqua Borough Sewage Sludge Ordinance” (Tamaqua Borough 2006).

The ordinance invokes the community's right “to protect the health, safety, and welfare of the residents of Tamaqua Borough, the soil, groundwater, and surface water, the environment and its flora and fauna” in order “to ban corporations and other limited liability entities from engaging in the land application of sewage sludge” (Tamaqua Borough 2006, 3). We describe the ordinance below, but note here that the ordinance was novel in that it treats RoN as a tool for strengthening community rights vis-à-vis corporate property rights. Because it is easier to legally prove harm to an ecosystem than to the health of a particular person, RoN provisions theoretically make it easier for citizens to challenge corporations in court. Moreover, the ordinance considers borough residents, natural communities, and ecosystems to be legal “persons,” but it explicitly denies the same recognition to corporations in order to limit their rights to interfere “with the existence and flourishing of natural communities or ecosystems” (Tamaqua Borough 2006, 4). Following the passage of the 2006 sewage sludge ordinance, the borough passed another ordinance against all waste disposal.

Ecuador

In 2008, Ecuador became the world's first country to grant rights to Nature in its Constitution. Ecuador's RoN provisions resulted from changes in the political opportunity structure created in 2006 when Rafael Correa was elected president. After a decade of extreme

political and economic instability, Correa rose to power on the promise to fundamentally remake Ecuador's political and economic system, supported by a loose collection of leftist academics, Indigenous, and other social movement activists united by their opposition to neoliberal economics and seeking to implement a post-neoliberal development approach (Radcliffe 2012, Becker 2013, Sader 2009, Grugel and Ruggirozzi 2012). A key step was rewriting the country's constitution in 2007.

The process of writing Ecuador's new constitution was remarkably participatory, meant to be a reflection of true development from multiple collectivities (Radcliffe 2012). Civil society submitted over 3,000 proposals, which were considered by the Constituent Assembly (Greene 2015). This process provided a window of opportunity for RoN activists, in Ecuador and abroad, to influence national legislation. Connections between Ecuadorian and foreign RoN activists was facilitated by Bill Twist, co-Founder of the Pachamama Alliance. Since the mid-1990s, Twist had partnered with Ecuadorian Indigenous nations and NGOs like Fundación Pachamama to empower indigenous people of the Amazon rainforest to preserve their lands and culture. Just before learning of Ecuador's Constituent Assembly, Twist had learned of CELDF's Democracy Schools from Randy Hayes, founder of Rainforest Action Network and Foundation Earth.

Through mutual friends and colleagues of Fundación Pachamama and Ecuadorian environmental activist Natalia Greene (now on the board of the Global Alliance for the Rights of Nature), Twist was introduced to Alberto Acosta, President of Ecuador's Constituent Assembly. Coincidentally, Acosta was familiar with the principles of Rights of Nature. He had studied in Europe with friend and colleague Jörg Leimbacher, Swiss jurist, who had published articles on Rights of Nature. Discussions around the viability of including Rights of Nature ensued, and Twist arranged for members of CELDF to advise Ecuador's Constituent Assembly. CELDF

founder Thomas Linzey and Mari Margil made several trips to Ecuador, meeting with Alberto Acosta and Assembly leaders, and proposed language and alternatives for incorporating the RoN concept into the new Constitution, based on their experiences in Pennsylvania.³

Despite the diffusion of vague RoN meta-norms through the networks described above, Ecuador's RoN provisions are heavily shaped by the thinking of Ecuadorian Indigenous movements. They had a substantial influence on the Constitution owing to their place in Correa's coalition (Becker 2013). Indigenous movements had long protested the human and environmental destruction caused by neoliberal economic policies, particularly industrial extractivism, and advocated an alternative development approach rooted in Indigenous norms and values. It is no coincidence that Ecuador's Constitution pledges to build a new form of sustainable development based on the Andean Indigenous concept of *sumak kawsay* (translated into Spanish as *buen vivir*), which is rooted in the idea of living in harmony with Nature (Chuji 2014, Oviedo 2014). The Preamble "celebrates" Nature, defined as Pachamama (often translated as Mother Earth in English), a sacred deity revered by Indigenous people in the Andes.⁴ It also presents a guiding principle for the new development approach: that humans are part of Nature, and thus Nature is a vital part of human existence. Ecuador's Constitution presents *buen vivir* as a set of rights for humans, communities, and Nature, and portrays RoN as a tool for achieving a post-neoliberal development model rooted in the concept of *sumak kawsay* (*buen vivir*).

Universal Declaration of the Rights of Mother Earth

Ecuador's pioneering move to grant Nature constitutional rights received global attention and inspired RoN activists from around the world to attend the 2009 UNFCCC talks in

³ Robin Millam, email communication, June 10, 2016.

⁴ Pachamama is a sacred deity revered by Indigenous people in the Andes. Pachamama is often translated as Mother Earth in English. While Ecuador's constitution equates Pachamama with Nature, we note that non-indigenous Ecuadorians do not always interpret Pachamama in the same way.

Copenhagen. They sought to strengthen RoN norms at the global level, promoting RoN as a necessary response to the increased environmental pressures described above. Dismayed by a lack of agreement among governments to take meaningful action, 35,000 people from 140 states gathered in Cochabamba, Bolivia, in April 2010 for the World Peoples' Conference on Climate Change and the Rights of Mother Earth. From that conference, the Universal Declaration of the Rights of Mother Earth (UDRME), described above, was crafted and presented to the UN General Assembly. Since then, activists have continued to build an alliance of NGOs and governments pressuring the UN to adopt a Universal Declaration of the Rights of Nature.

In late 2010, activists from the US, South Africa, Ecuador, Bolivia, Australia, and Peru met in Patate, Ecuador, to form the Global Alliance for the Rights of Nature (GARN), a coordinating body for a global network of activists and organizations supporting a Universal Declaration for the Rights of Nature and the application of RoN in domestic and international law. Among those present were Alberto Acosta, President of Ecuador's Constituent Assembly, Ben Price of CELDF, Bill Twist of Pachamama Alliance, and Natalia Green, then with Fundación Pachamama, the network that moved RoN from Tamaqua to Ecuador.

Santa Monica, CA

Following GARN's first meeting, in November 2010 Pittsburgh became the first major US city to pass an ordinance recognizing RoN and banning shale gas drilling and fracking. Energized by the momentum, GARN co-founders Linda Sheehan (Earth Law Center Executive Director) and Shannon Biggs (of Global Exchange) began working with the city of Santa Monica to craft a Sustainability Rights Ordinance. They enlisted CELDF attorneys to assist in the wording of the ordinance and to sponsor a 3-day Democracy School workshop on community

and Nature's rights to strengthen local democratic governance (Biggs 2013). After three years, the ordinance passed in April 2013.

Unlike the Tamaqua ordinance, Santa Monica's RoN ordinance was not in response to an immediate threat to the community, but rather grew out of a local movement that initiated a Santa Monica Sustainable City Plan in 1994 and had revised it over the years. Given the window of opportunity created by the city plan and societal base of support, Linda Sheehan, Shannon Biggs, and Mark Gold (Chair of the Santa Monica Task Force on the Environment) drafted various versions of an ordinance and presented them to community members and the City Council in 2012. Ultimately, the version that unanimously passed in April 2013 was drafted in coordination with City Attorney Marsha Jones Moutrie.⁵

The text of Santa Monica's ordinance acknowledges the influence of RoN norms diffusing through transnational networks. It highlights this "new paradigm that recognizes the rights of the natural world to exist, thrive and evolve" (City of Santa Monica 2013, 1). It cites as justification, precedents like the 2008 Ecuadorian Constitution and the December 2010 City of Pittsburgh Community Bill of Rights, which bans natural gas drilling in city limits and "elevates the rights of people, the community and nature over corporate rights" (City of Santa Monica 2013, 1). Similarly, it notes other RoN legislation emerging around the US (e.g., Virginia, New York, Pennsylvania, Ohio, Maine, New Mexico) that recognize the rights of natural communities and subordinate corporate rights to local sustainability efforts.

Despite the influence of ideas diffusing through global RoN networks, Santa Monica's ordinance has distinct features (discussed further below) resulting from unique local conditions. The Santa Monica ordinance differs from the other U.S. ordinances in our sample in that it takes a proactive approach, providing a model for sustainable development, rather than reacting to a

⁵ Interview with Linda Sheehan, via telephone, September 22, 2016.

specific threat, like sewage sludge and gas fracking. Differences also result from contestation and the need to adapt to local conditions. For example, Biggs notes the version that passed was not as strong as previous versions that included “constitutional protections for corporations and the Commerce Clause.” As Chris Gutierrez of Santa Monica Neighbors Unite! movement noted,

Working to educate people about rights of nature and the ordinance was a challenge... Many goals we could not lay out in the ordinance, but at the same time, that's what we should be driving for, practical measurable goals. Turning it into an educational tool is exciting. Sustainability is now our legal commitment (cited in Biggs 2013).

The comments by Biggs and Gutierrez highlight how RoN norms get expressed differently when put in to practice in unique conditions. In interviews, both Biggs and Gutierrez emphasized their intention to adapt the plan through the review process, mandated by the ordinance. We address this issue of adaptation in response to contestation and learning in sections three and four.

Grant and Highland Townships, PA

Grant and Highland Townships are examples of a growing number of U.S. communities adopting RoN ordinances to prevent environmental damage caused hydraulic fracturing (fracking). Concerned that fracking would contaminate their water supply, Highland’s Water Authority spearheaded the drafting of a Community Bill of Rights Ordinance in 2012. A local group, Citizen’s Advocating a Clean Healthy Environment (CACHE) and CELDF assisted in the drafting (Nicholson 2016). Passed in 2013, the ordinance expanded community rights, gave ecosystems in the county the right to exist and flourish, and banned all activities of natural gas and fossil fuel extraction and waste water injection.

Similar action was taken by Grant Township, which relies entirely on private wells and springs for their drinking water. After Pennsylvania Gas and Electric (PGE) filed for a permit to inject waste water into one of its unused wells in the township, residents began to worry the injected wastewater would leak into their drinking-water sources (Pryts 2016). While PGE has

seven other wells, this was the first wastewater injection well for the township. In response to what the community perceived as a threat to their natural environment, on June 3, 2014, Grant Township adopted a Community Bill of Rights Ordinance (created with CELDF support) that recognized RoN and prohibited depositing of oil and gas waste materials in the township.

New Zealand's Te Awa Tupua Act

The New Zealand cases demonstrate a very different path to institutionalizing RoN norms that was not directly connected to the global RoN networks discussed above. New Zealand's RoN laws emerged through the process of resolving long-standing treaty disputes between New Zealand's Crown government and two Maori iwi (tribes). In 1840, New Zealand's government signed the Treaty of Waitangi with various Maori iwi. Among other things, the treaty delineated land rights. Over succeeding decades, Maori iwi lost control of much of their lands and were subjected to extremely unfair treatment. During the 1960s and 1970s, New Zealand underwent a "Maori Renaissance," which included a strong Maori protest movement demanding redress for treaty violations and unequal treatment. In 1975, New Zealand's government established the Waitangi Tribunal to research treaty violations and suggest means of redress.

During the 1990s, the government began negotiating settlements of historical claims with individual iwi. This opened a window of opportunity for codifying Maori conceptions of Nature into New Zealand law. Maori iwi trace their ancestral lineage to a common ecosystem, which they view as a living, spiritual being. Maori generally do not emphasize the concept of rights, since they do not conceptualize Nature as property. Rather, they emphasize the concept of guardianship resulting from their duty to care for their ancestor. New Zealand's RoN laws resulted from efforts by Western lawyers to codify the Maori view of their relationship to Nature in Western law. This occurred in treaty settlements with two iwi: the Whanganui iwi, regarding the Whanganui River,

and the Tūhoe iwi, regarding the forest Te Urewera. We detail in section four how these RoN provisions emerged as a result of experimentation, adaptation, and learning.

On August 30, 2012, representatives of Whanganui Iwi and New Zealand's government signed the Whanganui River Agreement (Tutohu Whakatupua) defining the terms settling all historical treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River. The final deed of settlement was signed August 5, 2014. In addition to addressing issues of cultural and financial redress, the settlement adopts the Maori view of the river, recognizing "the Whanganui River as a living being, Te Awa Tupua; an indivisible whole incorporating its tributaries and all its physical and metaphysical elements from the mountains to the sea" (Whanganui Iwi and The Crown 2012, para 1.2). In describing the river, the agreement adopts a genealogical approach, detailing Whanganui Iwi's links to the river:

Whanganui Iwi have common links in two principal ancestors, Paerangi and Ruatipua. Ruatipua draws life force from the headwaters of the Whanganui River on Mount Tongariro and its tributaries which stretch down to the sea. The connection of the tributaries to form the Whanganui River is mirrored by the interconnection through whakapapa [genealogy] of the descendants of Ruatipua and Paerangi (para 1.1).

To implement this Maori perspective of the river's status, the settlement legally recognizes the river as its own legal entity, named "Te Awa Tupua," with "all the rights, powers, duties, and liabilities of a legal person." This is expressly intended to reflect the Whanganui Iwi's view that the River is a living entity with intrinsic value that is incapable of being "owned" in an absolute sense and to enable the River to have legal standing in its own right (Iorns Magallanes 2014). To uphold and protect the river's interests, the settlement requires the appointment of a Guardian (Te Pou Tupua) authorized to speak on behalf of Te Awa Tupua and charged with protecting its interests. The Guardian body is comprised of one iwi representative and one Crown representative. The appointment of guardians recognizes the inseparability of the people and

River as well as the responsibilities inherent in that relationship for taking care of the river as kin. Importantly, guardians must secure the spiritual and cultural rights of Te Awa Tupua, not simply its physical and ecological rights.

In February 2016, the Te Awa Tupua bill was introduced to New Zealand's parliament to give effect to the Whanganui River Deed of Settlement. While the Deed of Settlement already holds New Zealand's government to the obligations made, once passed, the Te Awa Tupua Act will give the settlement terms the force of national law. At the time of writing, the bill was undergoing its third and final reading in the parliament and was expected to be approved in 2017.

New Zealand's Te Urewera Act

Negotiations between the Crown government and the Tūhoe Iwi occurred in parallel to negotiations with the Whanganui Iwi. The Tūhoe were among several iwi that never signed the Treaty of Waitangi, and they had long advocated for Maori sovereignty. During the 20th Century, the Tūhoe lost control over much of their ancestral home, the forest known as Te Urewera. In 1954, the Crown established Te Urewera National Park, one of New Zealand's largest national parks, comprising most of Tūhoe ancestral land. On June 4, 2013, Tūhoe representatives and the Crown government signed a Deed of Settlement, fully settling all Tūhoe historical claims regarding Te Urewera. Tūhoe negotiations proceeded more quickly than those with the Whanganui Iwi. The settlement terms were incorporated into national law in July 2014 through Parliament's passing of the Tūhoe Claims Settlement Act and the Te Urewera Act.

Since the same Crown negotiating team simultaneously negotiated the Whanganui and Tūhoe settlements, it is no coincidence that the settlements contain similar provisions. The Tūhoe Claims Settlement Act provides a historical apology and financial and cultural redress to the Tūhoe (Jones 2014). The Te Urewera Act recognizes the Tūhoe's genealogical ties to the

forest and the Maori view of the forest as a living spiritual being, named Te Urewera. It also grants Te Urewera legal personhood status with “all the rights, powers, duties, and liabilities of a legal person” (Part 1 s 11). As a legal person, Te Urewera is not owned by anyone, and was removed from New Zealand’s national park system. Importantly, from a RoN perspective, the Act recognizes Te Urewera’s intrinsic value and created a Te Urewera board, comprised of six Tūhoe and three Crown members, to serve as guardians of Te Urewera’s interests.

II. Comparing Rights of Nature Laws

RoN laws share general normative beliefs regarding the intrinsic value of nature, the need for humans to see themselves as part of nature, and their obligation to live in harmony with nature. This is not surprising given the network connections described above that diffused vague meta-norms. More surprising is that, despite these similarities, existing RoN laws vary in important respects, owing to the unique contexts in which they were created. These differences shape the way underlying RoN norms are applied in practice and thus constructed. To analyze the similarities and differences among RoN laws, we constructed a framework that includes indicators of two concepts: scope and strength (see Table 1).⁶ Scope refers to the range of rights afforded and how broadly these rights can be applied. This has important normative implications regarding how Nature is conceptualized and defined in practice. Strength refers to enforcement capacity. Our indicators of strength examine each law’s formal authority, the capacity of individuals to enforce Nature’s rights, and evidence that these rights are being applied in practice. The remainder of this section compares the seven laws in our sample along these two conceptual axes.

⁶ We draw on the insights of Fukuyama (2004), who distinguishes between scope and strength to analyze variation in “stateness.”

Table 1: Indicators of Scope and Strength of Rights of Nature Laws

		Ecuador	Tamaqua (U.S.)	Highland (U.S.)	Grant (U.S.)	Santa Monica (U.S.)	Te Awa Tupua (New Zealand)	Te Urewera (New Zealand)
Scope	How is Nature defined?	All of Nature; Pachamama (Mother Earth)	Ecosystems in municipality (natural community)	Ecosystems in municipality (natural community)	Ecosystems in municipality (natural community)	Ecosystems in municipality (natural community)	Whanganui River (catchment-wide); living spiritual being	Te Urewera Forest; living spiritual being
	Who represents Nature?	Everyone	City/municipal citizens	City/municipal citizens	City/municipal citizens	City/municipal citizens	Guardians (1 Maori, 1 Crown)	Guardian board (6 Maori, 3 Crown)
	Which rights are granted?	To exist; maintain integrity; be restored	To exist and "flourish"	To exist and "flourish"	To exist and "flourish"	To exist and "flourish"	Legal personhood; interests considered by courts	Legal personhood; interests considered by courts
Strength	Type of Law/Legal Standing?	Constitution (maximum legal standing)	Municipal ordinance (subordinate to state, US law)	Home Rule Charter (legal standing unclear)	Home Rule Charter (legal standing unclear)	Municipal ordinance (subordinate to state, US law)	National act (parliamentary supremacy)	National act (parliamentary supremacy)
	Established hierarchy of rights?	RoN declared transversal	Places RoN over corporate rights	Places RoN over corporate rights	Places RoN over corporate rights	Places RoN over corporate rights	Not explicitly addressed	Not explicitly addressed
	Precautionary principle?	Yes	No	No	No	Yes	No	No
	Secondary laws?	Yes	No	No	No	Under construction	Under construction	Under construction
	Challenged in court?	Yes	No	Yes	Yes	No	No	No
	Upheld by courts?	Yes	N/A	No	No	In process	N/A	N/A

Scope: Defining Rights-Bearing Nature

All RoN laws treat Nature as a legal personality, but they vary both in the way Nature is defined and the array of rights granted to it. In all cases, Nature is conceptualized at the ecosystem level rather than at the level of individual flora and fauna. All at least implicitly recognize that humans are part of these ecosystems. However, the laws vary in how expansive are the boundaries of rights-bearing Nature.

Ecuador's Constitution is the most expansive. As we note above, Ecuador's constitutional RoN provisions resulted from the activism of a diverse array of indigenous, environmental, and leftist organizations seeking to implement a post-neoliberal development agenda rooted in the Andean Indigenous concept of *sumak kawsay* (translated into Spanish as *buen vivir*), which is rooted in the idea of living in harmony with Nature. The Constitution's Preamble defines Nature as the Andean Indigenous deity "Pachamama, where life is reproduced and occurs," a product of Indigenous influence in the process.⁷ Pachamama is often translated as Mother Earth in English. No other definition is offered, purposefully leaving the definition expansive. Interviews with people who crafted Ecuador's RoN provisions show they intended to portray Nature's rights as being inherent to all of the Earth's ecosystems, including those outside of Ecuador's political boundaries. This is evidenced by the fact that in 2010 a group of Ecuadorian RoN activists submitted a lawsuit to the Ecuadorian Constitutional Court, invoking universal jurisdiction to sue British Petroleum for environmental damage resulting from its 2010 oil spill in the Gulf of Mexico. While the court declined to hear the suit, the expansive definition of Nature remains in the Constitution.

⁷ Pachamama is a sacred deity revered by Indigenous people in the Andes. Pachamama is often translated as Mother Earth in English. While Ecuador's constitution equates Pachamama with Nature, we note that non-indigenous Ecuadorians do not always interpret Pachamama in the same way, as we show elsewhere (Kauffman and Martin 2017).

On the other extreme are the two New Zealand laws. These laws do not grant rights to all of Nature, but only to particular ecosystems: the Whanganui River in the case of the Te Awa Tupua Act and the forest Te Urewera in the Te Urewera Act. The laws explicitly define the boundaries of these ecosystems and restrict legal personality to them. However, like Ecuador's law, New Zealand's RoN laws recognize the ecosystems as living spiritual beings. For example, the Te Awa Tupua Act defines the Whanganui River as an "indivisible and living whole, incorporating all its physical and met-physical elements (Part 2, clause 12). The Te Urewera Act similarly recognizes the forest as "alive" and "a place of spiritual value, with its own mana and mauri" (Part 1, article 3).⁸ This similarity among Ecuador's and New Zealand's laws results from the leading role played by Indigenous groups and their effort to codify their non-Western understandings of humans' relationship to Nature within a Western legal framework. One consequence is that elements considered to be non-living in Western science (e.g., rocks, soil, and water) are legally defined both as living and having metaphysical characteristics that make them deserving of moral consideration.

By contrast, ecosystems granted rights in U.S. ordinances are not framed as living spiritual beings, but rather as sets of "natural communities" whose welfare is necessary for the wellbeing of human communities. Tamaqua's ordinance does not state which natural communities or ecosystems are covered, while the others define some combination of wetlands, streams, rivers, aquifers, soil and native species of flora and fauna. Like New Zealand's laws, the U.S. laws restrict legal personhood status to ecosystems within the municipal boundaries, and unlike Ecuador do not recognize RoN beyond local ecosystems.

Scope: Who Speaks for Nature?

⁸ In the Maori language, "mana" refers to a supernatural force in a person, place or object that confers authority, influence, status, or spiritual power. The term "mauri" refers to a spiritual leader.

While all RoN laws treat Nature as a legal person, they vary in who can legally represent Nature to protect its rights. Theoretically, the more broadly legal representation is applied, the lower the barriers to defending Nature's rights. Ecuador's Constitution grants legal representation most broadly. Article 71 states "All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature." Anyone, Ecuadorian citizen or not, can bring suit to defend the RoN. The U.S. ordinances are somewhat more restrictive, limiting legal representation to citizens of the city or township. New Zealand's laws are the most restrictive in this respect. The Te Urewera Act created a Te Urewera Board, comprised of six members of the Tūhoe iwi and three Crown representatives, charged with acting "on behalf of, and in the name of, Te Urewera" and providing "governance for Te Urewera" (Part 2, clause 17). The Te Awa Tupua Act similarly call for one Crown representative and one Whanganui iwi representative to be chosen as "guardians" to speak on behalf of the Whanganui River.

Scope: Which Rights are Granted?

Rights of nature laws also vary in the specific rights granted. Ecuador's Constitution reflects a holistic approach to conceptualizing Nature's intrinsic value and an emphasis on maintaining balance within natural systems. This stems from RoN being framed as a tool for realizing the Indigenous concept *sumak kawsay* (*buen vivir*). Title II, Chapter 7 of Ecuador's constitution grants Nature the rights to exist, to maintain its integrity as an ecosystem, and to regenerate "its life cycles, structure, functions and evolutionary processes." Nature also has the right to be restored if injured, independent of human claims for compensation (Articles 71-73).

The three ordinances subsequently adopted in the U.S. (Santa Monica, Highland and Grant) go a step further. These ordinances grant Nature not only the right to "exist" (i.e., maintain the functioning of their ecosystems), but also "to flourish." While this may initially appear to be a

matter of semantics, it has important implications for determining when human impacts on the environment have gone too far. As members of ecological communities, humans invariably impact the ecosystems of which they are a part. Under Ecuador's Constitution, human impacts do not violate Nature's rights so long as they do not irreparably damage the integrity of an ecosystem to the point where it cannot regenerate itself. One author of Ecuador's RoN provisions likened the distinction to the difference between breaking your arm (a temporary damage that will heal naturally) and the permanent damage of cutting off your arm (Greene 2015). By contrast, the right to flourish switches the emphasis from preventing permanent damage to ensuring some level of wellbeing for an ecosystem. The ordinances do not define what it means to flourish, but they open the possibility of a much more restrictive definition of which human impacts are acceptable.

The New Zealand laws are the most limited in terms of the rights granted to Nature. Neither of the laws include a statement of intrinsic rights. Rather, Te Awa Tupua (the Whanganui River) and Te Urewera (the forest) are simply declared to be legal persons, with "all the rights, powers, duties, and liabilities of a legal person" (Te Awa Tupua Bill, Clause 14; Te Urewera Act 2014, Art. 11). In other words, these ecosystems are treated like corporations or trusts. The rights grant procedural access to New Zealand's political and legal systems. For example, the laws grant these two ecosystems the standing to be parties in litigation, to have their interests considered by the courts, and to receive reparations for damages, should a court rule in their favor. The laws do not explicitly guarantee the right for the ecosystems to maintain their integrity or be restored, much less to flourish.

Strength: Hierarchy of Rights

Laws often recognize multiple rights that at times come into conflict. A second measure of strength is the degree to which RoN laws establish a hierarchy of rights and define the

relationship between RoN and other types of rights, particularly property rights. The U.S. ordinances are the strongest in this respect. For reasons discussed above, all four ordinances explicitly limit the rights of corporations and financial interests and subordinate these to the rights of communities and Nature established in the ordinances.

Ecuador's Constitution portrays RoN as necessary to achieve the development approach (referred to as *buen vivir*) on which the Constitution is based. Ecuador's 2008 Constitution Preamble states, "We decide to construct a new form of civil society, in diversity and harmony with nature to achieve *buen vivir*, *sumak kawsay*" (Republic of Ecuador 2008, 3). According to Alberto Acosta (2010), the President of Ecuador's Constitutional Assembly, the significance of incorporating *buen vivir* into the Constitution lies in its reorientation of the country's development model. Title VII stipulates that *buen vivir* must be the foundation of a new development model "that is environmentally balanced and respectful of cultural diversity, conserves biodiversity and the natural regeneration capacity of ecosystems."

This led some legal scholars and activists to argue that rights of nature are transversal, and thus must take precedence over property rights or financial interests. While this issue is not explicitly resolved in the Constitution, the notion that RoN are transversal and therefore take precedent over property rights is gradually being established through the creation of judicial precedent (Kauffman and Martin 2017). For example, in a lawsuit over whether shrimp farmers could be expelled from fragile mangrove ecosystems in, Ecuador's Constitutional Court ruled in 2015 that RoN are transversal (citing Art. 83 no. 6 and Art 395 no. 2), and thus RoN affect all other rights, including property rights. The Court acknowledged that this reflects "a biocentric vision that prioritizes Nature in contrast to the classic anthropocentric conception in which the

human being is the center and measure of all things, and where Nature was considered a mere provider of resources” (Corte Constitucional del Ecuador 2015, 10).

The hierarchy of rights in New Zealand’s Te Awa Tupua Act is less clear. On one hand, Part 2, clause 16 states that “nothing in this Act—(a) limits any existing private property rights in the Whanganui River; or (b) creates, limits, transfers, extinguishes, or otherwise affects any rights to, or interests in, water; or (c) creates, limits, transfers, extinguishes, or otherwise affects any rights to, or interests in, wildlife, fish, aquatic life, seaweeds, or plants.” On the other hand, the new legal framework for governing the river under the Act (Te Pā Auroa) contains legal weighting provisions that specify that any public or private actor taking actions that affect the river must “have particular regard to” the interests of the river and “recognize and provide for” the Status and Values defining Te Awa Tupua as an indivisible, living, whole spiritual being.

Moreover, resource use in Te Awa Tupua is subject to the Resource Management Act, which governs most New Zealand ecosystems and is extremely progressive in terms of balancing ecocentric values against more anthropocentric concerns (Barraclough 2013). For example, section 15 defines the intrinsic value of ecosystems and their constituent parts, stating they “have value in their own right, including—(a) their biological and genetic diversity; and (b) the essential characteristics that determine an ecosystem’s integrity, form, functioning, and resilience.” In sum, the Te Awa Tupua Act grants Te Awa Tupua (via its guardians) the ability to defend its interests by invoking various ecocentric elements of the Resource Management Act. Nevertheless, the Resource Management Act also recognizes anthropocentric concerns, and specific conflicts will have to be resolved through New Zealand’s Environmental Courts.

The hierarchy of rights is handled somewhat differently in the Te Urewera Act. In contrast to Te Awa Tupua, Te Urewera is not subject to the Resource Management Act because it was

formerly a national park governed by special Conservation Department provisions. For the same reason, there is no private property. Consequently, a Te Urewera Board has full authority to determine management of the forest and is charged with doing so according to ecocentric principles and the interests of Te Urewera as a living, spiritual being. It is this autonomy of the Te Urewera Board, along with the charge of managing in the interests of Te Urewera, that makes the Te Urewera Act stronger than the Te Awa Tupua Act in terms of prioritizing the rights of the forest.

Strength: Precautionary Principle

A second measure of strength is whether RoN laws require the precautionary principle to be employed. In other words, do the laws require preventive action to be taken to protect Nature before harm has been inflicted when there is reason to believe that an action will violate Nature's rights. Ecuador's Constitution is the only RoN law in our sample that explicitly requires such preventive action. Article 73 states "The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles." Moreover, Article 396 requires the state to "adopt timely policies and measures to avoid adverse environmental impacts where there is certainty about the damage. In the case of doubt about the environmental impact stemming from a deed or omission, although there is no scientific evidence of the damage, the State shall adopt effective and timely measures of protection."

By contrast, the other laws do not explicitly address the precautionary principle. However, it is worth noting that three of the U.S. ordinances (Tamaqua, Grant, and Highland) were created in reaction to existing or planned industrial activities and are designed to prevent damage from the application of sewage sludge or waste water injection from natural gas and fossil fuel extraction.

Strength: Secondary Laws

While RoN laws lay out general principles, applying RoN in practice requires specifying standards or criteria for judging when RoN violations occur and how these should be handled in specific cases. For this reason, a third measure of strength is the existence of secondary laws and regulations setting out such standards. Because it was among the first to adopt RoN, Ecuador has proceeded the furthest in this respect. Domestic political conflict stalled passage of planned secondary RoN laws and regulations. As a result, criteria for determining how RoN should be applied in specific cases have largely developed through court rulings and accumulation of judicial precedent (Kauffman and Martin 2017). However, in 2014 the legislature passed a Penal Code that specifies “crimes against Nature or Pachamama” and specifies punishment (Chapter 4). These include crimes against biodiversity (Art. 245-248), mistreatment of animals (Art. 249-250), crimes against water, soil, and air (Art. 251-253). Moreover, the Environment Ministry has increasingly invoked rights of nature when enforcing regulations protecting ecological reserves and endangered species. At the time of writing, Ecuador’s legislature was crafting an Environmental Code (Ley Orgánico del Ambiente), which will presumably provide further guidelines for applying RoN.

Because the New Zealand laws are so new, there has not yet been time to establish the secondary regulations giving form to RoN principles. However, both laws call for the creation of collaborative governing boards charged with developing integrated management plans for their respective ecosystems. These management plans will contain the specific regulations for managing the respective ecosystems according to the principles laid out in the acts. The Te Urewera Board was established in 2014 and is charged with completing the integrated forest management plan by 2017. The board has been working for two years and expected to complete

the plan on time.⁹ The process for Te Awa Tupua has proceeded more slowly, but initial efforts are underway to lay the foundation for a collaborative planning process in anticipation of the Act's approval by parliament.

Most U.S. ordinances also are not supplemented by secondary regulations, in part due to challenges over their legal standing. However, stakeholders involved with passing the Santa Monica Sustainability Rights Ordinance (SRO) have worked with the City's Task Force on the Environment and other city government officials to move implementation of the ordinance forward. City staff and stakeholders examined different strategies for applying the SRO's language on nature's 'right to flourish', including through significantly heightened greenhouse gas emissions reductions (City of Santa Monica 2016), a prohibition on new private wells (City of Santa Monica Task Force on the Environment 2016), and institution of regular staff reports ('consistency determinations') to the City Council that assess compliance of significant new proposals with the SRO.¹⁰

Strength: Legal Standing

RoN laws challenge the interests of powerful economic actors, who themselves have legally recognized rights. Consequently, they are often challenged in court. Another measure of strength is whether RoN norms are enshrined in provisions that have strong legal standing within a country's political system. Formally, Ecuador's RoN laws are extremely strong in this respect. Contained in the Constitution, they cannot conflict with superior laws (although they can conflict with other constitutional rights). Ecuador's RoN provisions are also declared to be transversal, meaning they affect all other laws and regulations. New Zealand's RoN laws are national acts passed by parliament. Because the political system recognizes parliamentary supremacy, these

⁹ Amb John Wood, Te Urewera Board member, interview by author, Wellington, New Zealand, August 10, 2016.

¹⁰ For examples of staff report analysis of a City's adherence to its Sustainable City Plan in a specific action, Claremont, see <http://www3.ci.claremont.ca.us/weblink/browse.aspx?dbid=2&StartID=1216&cr=1>.

national acts by definition have superior legal standing. By contrast, the U.S. municipal ordinances' limiting of corporate property rights conflict with state Constitutions and/or the U.S. Constitution, which protect such rights. We discuss below how corporations have challenged the standing of the Grant and Highland township ordinances, causing community RoN advocates to adapt the institutional form of their RoN protections to strengthen their legal standing.

Strength: Recognition By the Courts

It is one thing to institutionalize a new norm into law, but it is another thing to put those norms into practice. In the early stages of a norm's life cycle, when a norm remains highly contested, laws often are not applied in ways that support the norm. For example, the adoption of human rights laws cannot fully explain the pattern of human rights prosecutions (Dancy and Michel 2015, 1). For this reason, an important informal measure of strength is whether RoN laws have been challenged in court and, if so, if the laws have been upheld and applied in practice.

Ecuador has advanced the furthest in this respect—unsurprising, since it was among the first laws adopted. Between 2008 and 2016 there were 12 lawsuits invoking RoN, some brought by civil society and others brought by the state. In nine cases the courts upheld the RoN. Elsewhere we document these lawsuits and explain why RoN were upheld in some cases and not others (Kauffman and Martin 2017). The New Zealand cases are among the most recent, so remain untested in the courts. However, we expect lawsuits to arise in the coming years as the implementation process proceeds. Two of the U.S. ordinances, for Grant and Highland Townships, have been challenged in court by energy corporations whose economic interests are restricted by the ordinances. In the Grant case, the judge ruled that the ordinance did overstep the legislative boundaries of a municipality. As we describe below, community members in both townships responded by developing a new legal structure to (potentially) enforce RoN in the US

federal system, namely Home Rule Charter. The cases illustrate how RoN laws are evolving through a process of experimentation, adaptation, and learning.

IV. Experimentation, Adaptation & Learning in Pennsylvania Townships

On August 14, 2014, Pennsylvania General Energy Company (PGE) filed a lawsuit challenging the constitutionality, validity and enforceability of Grant Township's Community Bill of Rights ordinance (Pennsylvania General Energy Company, LLC v. Grant Township 2015 1). PGE claimed preemption, arguing that the ordinance conflicted with several state statutes (The Oil and Gas Act, the Limited Liability Companies Law, and the Sunshine Act) that took precedence over the township ordinance due to the Pennsylvania state constitution's Second Class Township Code. This code requires townships to align their laws with the Pennsylvania constitution and follow the state code. PGE also argued that the township illegally discriminated against them by singling them out as a corporation, which PGE noted has personhood status under the U.S. Constitution.¹¹ PGE's lawsuit sought declaratory judgements and injunctive relief from Grant Township. We note that the judgements and relief claims were similar to those that Tamaqua supervisors feared might be levied against them, holding them personally liable.

Grant Township filed a counterclaim alleging that by challenging the ordinance, PGE was violating the inalienable rights of the Township's people. The Township submitted a Brief in Opposition of Summary Judgement, arguing that local communities have a right to self-government and have "legitimate reasons to be concerned about corporate activities causing environmental contamination and public health hazards, coupled with inadequate federal and state oversight."¹² Moreover, the Township's brief invoked RoN norms to expand the concept of

¹¹ PGE cited the US Constitution First Amendment Supremacy Clause, Equal Protection Clause, Petition Clause, and the US Constitution Contract Clause and the Due Process Clause.

¹² Grant Township's Opposition to Pennsylvania General Energy Company, LLC's Motion for Summary Judgement, Civ.No. 1:14-cv-209, submitted February 29, 2016.

community rights to also include “environmental rights,” including a “constitutional right to clean air, water, and a safe environment.”¹³

In response to PGE legal actions and the threat of waste water injection into the well water and natural springs on which they depend, a group of concerned citizens formed the East Run Hellbender Society. They intervened in the PGE lawsuit, issuing a brief on behalf of the Little Mahoning Watershed on which they depend. In their brief, the Hellbenders claimed to legally represent the Little Mahoning Watershed, citing as justification legal systems around the world that recognize “rights of ecosystems,” including Ecuador’s Constitution. The brief noted that “Grant Township law recognizes the rights of ecosystems” and cited the case of *Cetacean Community v. Bush* (386 F.3d 1169, 1174-75, 9th Cir. 2004) to argue that natural communities like the Little Mahoning Watershed can have standing in court when written into the law.¹⁴

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

Undeterred, residents experimented with a new institutional expression of RoN norms. On November 3, 2015, Grant Township adopted a Home Rule Charter, relinquishing its Second Class township status. A legal tool applicable in 43 U.S. states, including Pennsylvania, home rule charters are local, municipal constitutions that overrides the second-class status of a municipality

¹³ Grant Township’s Opposition to Pennsylvania General Energy Company, LLC’s Motion for Summary Judgement, Civ.No. 1:14-cv-209, submitted February 29, 2016, p. 26, 31.

¹⁴ Reply to Plaintiffs Opposition to Motion to Intervene by Little Mahoning Watershed and East Run Hellbenders Society, Inc. CIV. NO.: 1:14-cv-209, December 18, 2014, p. 3. In Section 2 of the Ordinance, sections d and e outline nature’s rights. Section 2 f specifies the right of residents to enforce these rights and intervene.

to a US state (Russell and Bostrom 2016). Inspired by the court's rejection of its RoN ordinance, Grant Township passed the Home Rule Charter to circumvent the preemptive nature of state constitutions over municipalities.

When adopting the Home Rule Charter, Grant Township repealed its Bill of Rights Ordinance so that it should not be held liable then for any damages to PGE resulting from the court decision. However, the Home Rule Charter created a new, stronger legal pathway for invoking RoN to prohibit PGE from injecting waste water in the township. Grant Township's Home Rule Charter (2015) declares that its residents and "all natural communities and ecosystems within the Township, possess the right to clean air, water, and soil." In section 106, the Charter states that "Natural communities and ecosystems within Grant Township, including, but not limited to, rivers, streams, and aquifers, possess the right to exist, flourish, and naturally evolve." The Charter explicitly states nature's right to be free from damaging activities, including "waste from oil and gas extraction" (Article 105).

To date, the RoN provisions in Grant Township's Home Rule Charter have not been challenged in court by PGE. However, it is affecting contestation over RoN norms in another Pennsylvania municipality: Highland Township.

Like Grant Township, Highland is a small, second-class township that passed a Community Bill of Rights Ordinance that, in addition to community rights, gave ecosystems the right to exist and flourish in the county and banned all activities of natural gas and fossil fuel extraction and waste water injection. The 2013 ordinance was passed in response to plans by the gas drilling company Seneca Resources to place a wastewater injection well within a half mile of the township's water source, known as the Crystal Springs Ecosystem. On February 8, 2015, Seneca Resources filed a lawsuit challenging the ordinance's legal standing (Seneca Resources v.

Highland Twp 2015). The citizens group Citizens Advocating for Clean Healthy Environment (CACHE) filed to intervene in the suit on behalf of the Crystal Lake Ecosystem. In March 2016, Judge Baxter denied the request, reasoning that the township adequately represented the ecosystem (Seneca Resources v. Highland Twp 2016).

In response to the Community Bill of Rights Ordinance of January 2013, Seneca Corporation filed suit on Feb 18, 2015. By August 2015, CACHE and the Crystal Lake Ecosystem filed to intervene in the suit, which was denied on March 29, 2016. Judge Baxter reasoned that the township adequately represented the intervenors (Seneca Resources v. Highland Twp 2016). This process mimicked that of Grant Township, and Highland's local supervisors knew the outcome of PGE's challenges to Grant's ordinance. Reportedly fearing costs to the county from a lawsuit and the possibility that they might be held personally liable, on August 11, 2016, Highland's Supervisors filed a "consent decree" with Seneca, removing local obstacles to the dumping of Seneca's waste. The next day, a federal judge accepted the settlement and refused to allow Township residents to intervene in the proceedings to protect their rights.

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

Aware of how Grant Township adapted their RoN law through the adoption of a Home Rule Charter, Highland's community residents pressed for similar action. Concerned, the Highland Board of Supervisors unsuccessfully tried to remove the Home Rule Charter Ballot from the November 2016 ballot. The ballot passed and Seneca Resources immediately filed a complaint against it. Seneca claims that the Home Rule Charter (2016) oversteps its state constitutional boundaries by granting standing to ecosystems. It further challenges the township's right to remove the personhood status of corporations. Further, Seneca argues that the Pennsylvania Oil and Gas Act and the Safe Drinking Water Act both have provisions for the disposal of brine in fracking wastewater.

On January 17, 2017, CACHE and the Crystal Spring Ecosystem filed for intervenor status in the complaint against Highland Township. In this motion, CACHE argues that they have a unique right to local, community self-government and a right to enforce the rights of the Crystal Spring ecosystem, per Section 105 and 407 of the Home Rule Charter, which include the rights "to flourish and exist." The Highland Township Board of Supervisors did not support the ordinance and were unsupportive of the Home Rule Charter. Thus, the intervention brief asserts that, unlike Grant Township, the Highland Township Board of Supervisors cannot adequately represent CACHE and the ecosystem (Memorandum in Support of Motion to Intervene 2017, 8). This is important because Judge Baxtor denied the 2015 motion saying the municipal authority represented the citizens and ecosystem of Highland Township. Since the 2017 motion does not include the municipal authority, it presents a new question to the courts regarding whether CACHE and the ecosystem are adequately represented in the original complaint.

Unlike the Grant Township case, Highland Township's lawsuit addresses the Home Rule Charter status, not an ordinance. Additionally, as the municipality is not asking to intervene, the

question of ecosystem standing must be addressed by the Western Pennsylvania 3rd District Court. This issue was not addressed directly in the motion to intervene in the previous suit of 2016, nor in Grant Township. Thus, the Highland Township lawsuit moves the contestation over and construction of RoN norms in the US to new legal frameworks, including Home Rule Charters and recognition of ecosystems' legal standing in US courts.

The lawsuit over the legality of Highland Township's Home Rule Charter and the legal standing of the Crystal Spring ecosystem illustrate how contestation is fueling experimentation and adaption by RoN activists to evolving challenges in the court system and corporate responses to RoN. John Guras, a member of CACHE, said, "Our Supervisors have been failing to protect the health and safety of Highland Township residents. In addition to settling a lawsuit with Seneca Resources, our Supervisors sued our county Board of Elections in an attempt to keep us from even voting on our Charter. That lawsuit failed, and residents voted in our Charter. We want to protect all the residents of Highland Township, and uphold our democratically enacted Charter, and so today we are filing to intervene in the case" (quoted in Nicholson 2017). CELDF attorney Lindsey Schromen-Wawrin says, "By recognizing ecosystems as legal persons we're trying to change this, to recognize legally that the earth has rights and is not merely property. That means, of course, that we're going up against at least 1,000 years of dogma in western law. That's not going to be easy, but at the same time we need to make some fundamental shifts in how we relate to the earth in short time" (quoted in Nicholson 2017).

The contestation of Highland Township's Home Rule Charter in the Western 3rd Circuit Court of Pennsylvania will hold great weight for the meaning of RoN in Grant Township, PA and other PA communities who are battling wastewater injection and hydraulic fracturing. Yet, we note that this legal tool is only applicable in certain US states. RoN advocates in Santa Monica,

for example, will have to pursue other legal pathways if and when they are challenged in court. This illustrates how context and socialization are key components to explaining variation in how RoN norms are institutionalized.

V. Experimentation, Adaptation and Learning in New Zealand

In New Zealand, the idea of granting Nature legal personality originated with members of the Crown team simultaneously negotiating settlements with the Whanganui and Tuhoe Iwis. In interviews, Maori negotiators explained that “rights” is a foreign concept stemming from the European legal system. Rather, the Maori emphasize their responsibility of guardianship (rangatiratanga) for the natural entity (forest, river, land, etc.) to which their iwi is tied.¹⁵ They consider it an ancestor, and their focus is their responsibility to care for their ancestor in order to maintain their ties to it. For Maori negotiators, the idea of granting their river or forest a legal personality was an imperfect approximation (but likely the best that could be done within a European legal framework) of treating the river or forest as a whole, living, spiritual being.

A key reason the legal personality and guardian provisions exist in the Whanganui and Tuhoe settlements is that the same Crown negotiators and lawyers worked on both settlement processes simultaneously (an unusual circumstance). This allowed learning and the diffusion of ideas across the two processes. In both cases, granting Nature legal personality was conceived as a strategic tool for overcoming unique obstacles that had caused negotiations to break down.

The idea to grant Nature legal personality arose first in the Whanganui negotiations. After talks stalled in 2004, the Whanganui Iwi took a step back to rethink their ultimate goals and aspirations. Older iwi leaders that had led the protests and struggles for decades decided to transfer leadership in the settlement negotiations to a younger generation. A new negotiating team

¹⁵ Gerrard Albert, Lead Whanganui Iwi negotiator, interview by author, Whanganui, New Zealand, August 16, 2016. Tamati Kruger, Lead Tuhoe negotiator, interview by author, Wellington, New Zealand, August 17, 2016. Kirsti Luke, Lead Tuhoe negotiator, interview by author, Wellington, New Zealand, August 17, 2016.

led by Gerrard Albert decided to take a new approach. Rather than demanding ownership or transfer of title, the Whanganui Iwi's main goal was recognition and treatment of Te Awa Tupua according to the Maori view—as a whole, living, spiritual being.¹⁶ This required treating the river at a catchment-wide level, which conflicted with the fragmented treatment required under the Crown's regulatory system.

Various things came together to open a window of opportunity for restarting negotiations in 2009. One was the new approach taken by the Whanganui Iwi. Another was a change in government from the more ideological Labour party to the more pragmatic National party. The National government created new cabinet guidelines for settlement of natural resource use claims that provided more flexibility. Also, a highly skilled negotiator, John Wood, became the chief Crown negotiator. The political skill of Minister for Treaty of Waitangi Negotiations Christopher Finlayson also played a crucial role.

When negotiations restarted in 2009, it became clear that the primary obstacle to settlement was reconciling the Whanganui Iwi's aspiration to view the river as Te Awa Tupua with the Crown's regulatory framework under the Resource Management Act, which treated the river in a fragmented way. As Chief Crown Negotiator John Wood explained:

we had to come up with something that created the possibility of a catchment-wide approach...The problem was that under statute, regulations, etc., no such catchment existed...and [a solution required] the particular dimension that at the heart of that catchment-wide approach was the iwi's view of their relationship to the river as a living whole, the health and wellbeing of which was essential to their people. And the health and wellbeing of the river was not good. So there would have to be that added dimension of improving the health and wellbeing of the river in the negotiating outcome, and therefore providing for the iwi's health and wellbeing.¹⁷

In thinking about the dilemma, Wood was inspired by the writings of 19th century New Zealand constitutional scholar Sir John Salmond on the concept of legal fiction. While Salmond

¹⁶ Gerrard Albert, Lead Whanganui Iwi negotiator, interview by author, Whanganui, New Zealand, August 16, 2016.

¹⁷ Amb. John Wood, Chief Crown Negotiator, interview by author, Wellington, New Zealand, August 10, 2016.

applied the concept of legal fiction to corporations (i.e., treating corporations as if they were persons), Wood and other members of the Crown negotiating team began thinking about how to creatively apply the concept to the river. They first looked at corporations and trusts as models, but faced many questions. Who would speak for the river? What would the boundaries of the legal entity be? And what rights and responsibilities would it have? According to Wood, this is where the idea of having “guardians” began to develop, which resonated well with the Maori notion of rangatiratanga, or being guardians with responsibility to care for their ancestor.

As these ideas were germinating in the Crown negotiating team, the Tuhoe settlement process progressed faster and overtook the Whanganui negotiations. The Tuhoe negotiations had many differences with the Whanganui negotiations. The Tuhoe never signed the Treaty of Waitangi and had a more contentious relationship with the Crown, as Te Urewera constituted a clearer example of theft of land. Also, in 1954, the Crown turned Te Urewera into a national park, which gave it special status, complicating the settlement process in many ways. Non-Maori New Zealanders are famously proud and protective of their national parks, and for a time the government took negotiation of national park land off the table.

Like the Whanganui, Tuhoe Iwi members spent a great deal of time developing their fundamental objectives before negotiating. They identified three elements necessary for an agreement: (1) the return of Te Urewera; (2) autonomy for Tuhoe management of Te Urewera; and (3) the maximum Crown allowance for redress.¹⁸ Crown-Tuhoe negotiations began in 2009, and initially dealt with the conflict over title and ownership of Te Urewera. The Crown initially proposed a “gift-back” scheme that had worked in some early settlements, in which the Crown would transfer title of the forest to the Tuhoe, but after three months it would automatically be

¹⁸ Tamati Kruger and Kirsti Luke, lead Tuhoe negotiators, interviews by author, Wellington, New Zealand, August 17, 2016.

“gifted back” to the Crown to manage for the public’s interest. The Tuhoe rejected this. A year later, the Crown proposed another experiment that had succeeded in a previous settlement: vesting title in a Tuhoe ancestor. The Tuhoe initially agreed and settlement appeared in reach, but at the last minute the prime minister pulled out of the agreement. There was a popular backlash against transferring ownership of a beloved national park to the Tuhoe, and the Prime Minister famously stated that doing so was “a bridge too far.”¹⁹

A year later, a breakthrough came when Crown negotiators realized that the Tuhoe’s demand for the return of Te Urewera did not necessarily mean the Tuhoe wanted or needed to own it legally (i.e., have title). In the Tuhoe worldview, one cannot truly own nature, and they never specifically asked for ownership. Rather, they asked for the return of the land, which Tuhoe do not equate with ownership. Wood realized a political solution would require neither the Crown nor the Tuhoe to own the land. It occurred to Wood and other Crown negotiators that the legal personality provisions they had been developing for the Whanganui negotiations might provide a technical way to sidestep the issue of ownership. If Te Urewera was granted legal personality, ownership of the land could be vested in Te Urewera itself. Then the Crown could say it is not transferring ownership to the Maori, and the Maori could say the Crown does not own it. The Tuhoe accepted this as an acceptable legal approximation of their claim for a return of the land. This became the basis for the Te Urewera Act passed in July 2014, described above. One month later, the Whanganui River Deed of Settlement was signed, containing similar RoN provisions, as described above.

Minister Finlayson and the lawyers involved in drafting both settlement agreements say their common solution to the unique problems presented by each case was inspired by the

¹⁹ “Tuhoe win control over national park,” *Dominion Post*, September 11, 2012, <http://www.stuff.co.nz/dominion-post/news/politics/7653524/Tuhoe-win-control-over-national-park> (accessed February 16, 2017).

writings on RoN by North American legal scholars, particularly Christopher Stone, as well as U.S. legal cases.²⁰ As Finlayson explains:

*Negotiations [on the Whanganui River] had stalled. Then we worked out the concept of, again, getting away from the idea of anything to do with the Crown and that there would be two representatives who would speak for the river. And that drew very much from the North American thinking...It really was an example of New Zealand drawing on North American ideas.*²¹

VI. Conclusion

While the New Zealand, U.S., and Ecuadorian cases differ from one another in important respects, they tell a common overall story. Local communities increasingly concerned with the degradation of local ecosystems searched for new legal tools to expand their authority to protect the ecosystems on which they depend. The influence of transnational RoN networks was less direct in the New Zealand cases than in the Ecuadorian and U.S. cases. Nevertheless, in each case people involved drew on emerging RoN norms and ideas circulating globally to address unique local problems regarding natural resource management. Together, the case studies demonstrate how processes of contestation, adaptation, and learning, both within and across cases, produce different institutional expressions of common global RoN meta-norms regarding the need to “live in harmony with nature.” This meta-norm was given different institutional expression in each case due to the need to adapt to unique local circumstances and challenges.

The need to adapt to local contexts explains why RoN was framed differently in various countries. In the U.S, RoN is linked to the concept of community rights and is seen as a tool for communities to protect themselves against the vagaries of corporate property rights. In Ecuador,

²⁰ Since the lead lawyers working on the settlements were environmental lawyers, they were familiar with writings on RoN by U.S. environmental lawyers. Christopher Finlayson, Minister for Treaty of Waitangi Negotiations, interview by author, Wellington, New Zealand, August 11, 2016. Paul Beverley, Crown lawyer for Whanganui and Tuhoe settlements, interview by author, Wellington, New Zealand, August 19, 2016. Rachel Houlbrook, member of Crown negotiating team, interview by author, Wellington, New Zealand, August 10, 2016.

²¹ Christopher Finlayson, Minister for Treaty of Waitangi Negotiations, interview by author, Wellington, New Zealand, August 11, 2016.

RoN is framed as a tool for realizing a post-neoliberal development model rooted in the Andean Indigenous concept *sumak kawsay*. In New Zealand, the concept of rights is downplayed in favor of the Maori concept of responsibility of guardianship (*rangatiratanga*) for natural entities to which *iwis* are tied.

Local experiments and adaptations in response to varying political, legal, cultural, and socio-ecological settings have caused the scope of RoN to be defined differently in various cases. In Ecuador, RoN is applied to all of Nature, as opposed to only certain ecosystems, as is the case in New Zealand and the U.S. Who can legally speak for Nature differs as well. This authority is granted most broadly in Ecuador (to any person from any nation), while representation is limited to municipal citizens in the U.S. and appointed guardians in the New Zealand cases. Most importantly, the process of defining what Nature's rights are in specific contexts is under construction globally. In Ecuador, Nature has the right to exist and maintain the integrity of its ecosystems. In the US, ecosystems have the additional right to *flourish*, which opens the door to stricter restrictions on human impact. In New Zealand, rights bearing ecosystems are merely granted the rights of any legal person to have their interests considered in court.

Regarding the strength of RoN norms, Ecuador's constitution grants RoN transversal priority and is the only law that applies the precautionary principle, which is also recognized in the Universal Declaration of the Rights of Mother Earth. This provides the basis for secondary laws specifying the application of RoN for animals, water, air, soil, and biodiversity. Santa Monica's Sustainability Bill of Rights Ordinance also applies the Precautionary Principle, but is only now beginning to establish benchmarks and secondary laws to fulfill the ordinance goals. Efforts to develop such secondary laws are beginning in New Zealand, but not yet developed in the other U.S. cases. Finally, courts have not upheld RoN laws outside of Ecuador. Yet, actors in

each U.S. and New Zealand case are using legal tools to move toward developing legal standing in the courts. This is illustrated by Highland Township's recent motion to intervene on behalf of the Crystal Lake ecosystem's rights. This motion exemplifies the learning and adaptation among actors across and within cases.

One lesson from these cases is that there is no single best pathway to legally recognizing RoN. The best path is determined by local context and realized through experimentation, adaptation, contestation, and learning. This supports pragmatist theories of how institutions change. While Ecuador's cases of mining and oil extraction demonstrate structural barriers to protecting RoN in the courts even when there is a constitutional provision (see Kauffman and Martin 2017), Ecuador's constitution remains the most expansive application of the global RoN meta-norm to date. U.S. RoN ordinances are proliferating (expanding to Ohio, Oregon, California, Colorado, Florida), and are adopting similar ordinances given the US federal system.

All of these applications demonstrate normative development that does not move from the top down, as IR theories have conventionally argued. But they also do not only move from the bottom up. Together, the cases demonstrate a dynamic process of interaction and experimentation with applying a global RoN meta-norm to distinct contexts and within unique structures at differing governing levels. As Global Alliance for the Rights of Nature members work with local allies and constituents—like the Earth Law Center is doing in Santa Monica and the NGO Movement Rights is doing in New Zealand—they gather lessons from local experiments and share information and strategies at the global level. Strategies for successful implementation in varying local contexts have been critical learning tools. This is illustrated by the way Ecuador's Constitution built on the foundation provided by Tamaqua County, how Grant Township's move to Home Rule Charter influenced the strategies of RoN activists in Highland Township, and how

the Whanganui settlement process influenced the Tuhoe settlement.

Given the indicators of growing co-violations of RoN and human rights, we expect this mobilization to proliferate. Future research is therefore needed to identify new tools and pathways, and analyze the effectiveness of RoN norms and laws. This looks to be a fruitful area of new research within a paradigm of sustainable development beyond the bottom line and anthropocentric-dominated concepts of community.

References

- Abers, Rebecca Neaera, and Margaret E. Keck. 2013. *Practical Authority: Agency and Institutional Change in Brazilian Water Politics*. Oxford: Oxford University Press.
- Acosta, Alberto. 2010. *El Buen Vivir en el camino del post-desarrollo: Una lectura desde la Constitución de Montecristi*. Quito: Fundación Friedrich Ebert Stiftung.
- Barraclough, Tom. 2013. "How Far Can the Te Awa Tupua (Whanganui River) Proposal Be Said to Reflect the Rights of Nature in New Zealand?" LLB, University of Otago.
- Becker, Marc. 2013. "The Stormy Relations between Rafael Correa and Social Movements in Ecuador." *Latin American Perspectives* 40 (3):43-62.
- Berk, Gerald, and Dennis Galvan. 2009. "How people experience and change institutions: a field guide to creative syncretism." *Theory and Society* 38:543–580.
- Berk, Gerald, and Dennis Galvan. 2013. "Processes of Creative Syncretism: Experiential Origins of Institutional Order and Change." In *Political Creativity: Reconfiguring Institutional Order and Change*, edited by Gerald Berk, Dennis Galvan and Victoria Hattam, 29-54. Philadelphia: University of Pennsylvania Press.
- Berry, Frances Stokes, and William D. Berry. 2007. "Innovation and Diffusion Models in Policy Research." In *Theories of the Policy Process*, edited by Paul A. Sabatier, 223-260. Boulder, CO: Westview Press.
- Biggs, Shannon. 2013. "Legalizing Sustainability: Santa Monica Recognizes Rights of Nature." Global Exchange, accessed February 17, 2017.
<http://www.globalexchange.org/blogs/peopletopeople/2013/04/11/legalizing-sustainability-santa-monica-recognizes-rights-of-nature/>.
- Chuji, Mónica. 2014. "Sumak Kawsay versus desarrollo." In *Antología del Pensamiento Indigenista Ecuatoriano sobre Sumak Kawsay*, edited by Antonio Luis Hidalgo-Capitán, Alejandro Guillén García and Nancy Deleg Guazha, 229-236. Huelva & Cuenca: FIUCUHU.
- City of Santa Monica. 2013. An Ordinance of the City Council of the City of Santa Monica Establishing Sustainability Rights. Santa Monica, CA.
- City of Santa Monica. 2016. "Santa Monica City Council Votes in the World's First Zero Net Energy Building Requirement; Implementation Begins in 2017."
<https://newsroom.smgov.net/2016/10/27/santa-monica-city-council-votes-in-the-world-s-first-zero-net-energy-building-requirement-implementation-begins-in-2017> (Accessed February 17, 2017).

- City of Santa Monica Task Force on the Environment. 2016. "Special Meeting."
https://www.smgov.net/uploadedFiles/Departments/OSE/Task_Force_on_the_Environment/TFE_2016/TFE_Minutes_10_24_16.pdf (Accessed February 17, 2017).
- Corte Constitucional del Ecuador. 2015. Sentencia No. 166-15-SEP-CC, Caso No. 0507-12-EP.
- Dancy, Geoff, and Veronica Michel. 2015. "Human Rights Enforcement From Below: Private Actors and Prosecutorial Momentum in Latin America and Europe." *International Studies Quarterly* doi: 10.1111/isqu.12209:1-16.
- Dewey, John. 1981. "The Need for a Recovery of Philosophy." In *The Philosophy of John Dewey*, edited by John J. McDermott, 58-97. Chicago: University of Chicago Press.
- Fukuyama, Francis. 2004. *State-Building: Governance and World Order in the 21st Century*. Ithaca, NY: Cornell University Press.
- Global Alliance for the Rights of Nature. 2017. "Founding the Global Alliance."
<http://therightsofnature.org/founding-meeting/> (Accessed February 17, 2017).
- Grant Township Home Rule Charter. 2016.<http://celdf.org/wp-content/uploads/2016/02/Grant-Township-Community-Rights-Home-Rule-Charter.pdf> (Accessed February 17, 2017).
- Grant Township, Indiana County, Pennsylvania. 2014. Community Bill of Rights Ordinance.
- Grant Township's Opposition to Pennsylvania General Energy Company, LLC's Motion for Summary Judgement, Civ.No. 1:14-cv-209, submitted February 29, 2016.
- Grant Township's Opposition to Pennsylvania General Energy Company, LLC's Motion for Summary Judgement, Civ.No. 1:14-cv-209, submitted February 29, 2016, p. 26, 31.
- Greene, Natalia. 2015. "The Politics of Rights of Nature in Ecuador." Webinar sponsored by the Yale Center for Environmental Law and Policy, New Haven, CT, February 6.
- Grugel, Jean, and Pia Riggirozzi. 2012. "Post Neoliberalism in Latin America: Rebuilding and Reclaiming the State after Crisis." *Development and Change* 43 (1):1-21.
- Highland Township Ordinance, Elk County, Pennsylvania. 2013. Highland Township Community Rights and Protection from Injection Wells Ordinance.
- Highland Township, Elk County, Pennsylvania. 2016. Home Rule Charter.
- Iorns Magallanes, Catherine. 2014. "Moving toward global eco-integrity." In *The Earth Charter: Ecological Integrity and Social Movements*, edited by Laura Westra and Mirian Vilela, 181-190. London: Routledge.
- IUCN. 2012. *Resolutions and Recommendations, World Conservation Congress*. Jeju, South Korea: IUCN.
- Jones, Carwyn. 2014. "Tūhoe-Crown settlement – Tūhoe Claims Settlement Act 2014; Te Urewera report of the Waitangi Tribunal." *Māori Law Review* October.
- Kauffman, Craig M. 2017. *Grassroots Global Governance: Local Watershed Management Experiments and the Evolution of Sustainable Development*. New York: Oxford University Press.
- Kauffman, Craig M., and Pamela L. Martin. 2017. "Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian lawsuits Succeed and Others Fail." *World Development* 92:130-142.
- Kratochwil, Friedrich. 1991. *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*. Cambridge: Cambridge University Press.
- Krook, Mona L., and Jacqui True. 2012. "Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality." *European Journal of International Relations* 18:103-127.

- Memorandum in Support of Motion to Intervene by Citizens Advocating a Clean Healthy Environemnt, Inc. and the Crystal Spring Ecoystem. January 13, 2017. Seneca Resources v. Highland Township, Elk County, Pennsylvania and the Highland Township Board of Supervisors, El County Pennsylvania. November 30, 2016. Civil Action No. 1:16-cv-289. United States District Court for the Western District of Pennsylvania.
- Nicholson, Chad. 2016. "Press Release: Democracy Ruled Dead in Highland Township." Community Environmental Legal Defense Fund. <http://celfdf.org/2016/08/press-release-democracy-ruled-dead-highland-township/> (Accessed February 17, 2017).
- Nicholson, Chad. 2017. "Ecosystem and Residents File Motion to Intervene in Federal Lawsuit." Community Environmental Legal Defense Fund. <http://celfdf.org/2017/01/pr-ecosystem-residents-file-motion-intervene-federal-lawsuit/> (Accessed February 17, 2017).
- Oviedo, Atawallpa. 2014. "El Buen Vivir posmoderno y el Sumakawsay ancestral." In *Antología del Pensamiento Indigenista Ecuatoriano sobre Sumak Kawsay*, edited by Antonio Luis Hidalgo-Capitán, Alejandro Guillén García and Nancy Deleg Guazha, 267–297. Huelva & Cuenca: FIUCUHU.
- Pennsylvania General Energy Company, LLC v. Grant Township. No. 14-209ERIE. 2015.
- Pryts, Monica. 2016. "Shale waste insights." *Allied News*. http://www.alliednews.com/news/shale-waste-insights/article_ab4a4246-9b48-5f5a-bb84-94e96de7c6d0.html (Accessed February 17, 2017).
- Radcliffe, Sarah A. 2012. "Development for a Postneoliberal Era? Sumak Kawsay, living well and the limits to decolonisation in Ecuador." *Geoforum* 43:240-249.
- Radhakrishnan, K. 2012. T.N. Godavarman Thirumulpad vs Union Of India & Ors. Delhi: Supreme Court of India.
- Republic of Ecuador. 2008. Constitution of the Ecuadorian Republic. Available at Political Database of the Americas, <http://pdba.georgetown.edu/Constitutions/Ecuador/english08> (Accessed February 14, 2015).
- Republic of Ecuador. 2014. Código Orgánico Integral Penal, Ministerio de Justicia, http://www.justicia.gob.ec/wp-content/uploads/2014/05/código_organico_integral_penal_-_coip_ed._sdn-mjdhc.pdf (Accessed February 17, 2017).
- Russell, Jon D., and Aaron Bostrom. 2016. "Federalism, Dillon Rule and Home Rule." American City County Exchange, <https://www.alec.org/app/uploads/2016/01/2016-ACCE-White-Paper-Dillon-House-Rule-Final.pdf> (Accessed February 17, 2017).
- Sader, Emir. 2009. "Postneoliberalism in Latin America." *Development Dialogue* 51:171-180.
- Sandholtz, Wayne. 2008. "Dynamics of International Norm Change: Rules against Wartime Plunder." *European Journal of International Relations* 14:101-131. doi: 10.1177/1354066107087766.
- Seneca Resources Corporation v. Highland Township, et al. February 18, 2015 filed and judgement ordered March29, 2016. C.A. No 15-60 Erie. Judge Susan Paradise Baxter.
- Seneca Resources v. Highland Township, Elk County, Pennsylvania and the Highland Township Board of Supervisors, El County Pennsylvania. November 30, 2016. Civil Action No. 1:16-cv-289. United States District Court for the Western District of Pennsylvania.
- Tamaqua Borough, Schuylkill County, Pennsylvania, Ordinance No. 612. 2006. <http://www.harmonywithnatureun.org/content/documents/205Ordinance-Tamaqua--.pdf> (Accessed February 17, 2017).
- Te Awa Tupua Bill (Whanganui River Claims Settlement). 129-2, New Zealand Parliament, <https://www.parliament.nz/resource/en->

- NZ/51DBSCH_SCR71822_1/315ac3b5a45049dc3435afe94555b0edff10371e (Accessed February 17, 2017).
- Te Urewera Act. 2014. No. 51. New Zealand Parliament, <http://www.legislation.govt.nz/act/public/2014/0051/latest/DLM6183601.html> (Accessed February 17, 2017).
- UDRME. 2010. “Universal Declaration of the Rights of Mother Earth.” World People’s Conference on Climate Change and the Rights of Mother Earth, Cochabamba, Bolivia, April 22.
- United Nations. 2013. *Harmony with Nature: Report of the Secretary-General*. New York: UN General Assembly.
- United Nations. 2016. Report of the Special Rapporteur on the Situation of Human Rights Defenders. A/71/281, http://www.un.org/ga/search/view_doc.asp?symbol=a/71/281 (Accessed February 17, 2017).
- Van Kersbergen, Kees, and Bertjan Verbeek. 2007. “The Politics of International Norms: Subsidiarity and the Imperfect Competence Regime of the European Union.” *European Journal of International Relations* 13:217-238.
- Whanganui Iwi and The Crown. 2012. “Tūtohu Whakatupua (Whanganui River Agreement).” Whanganui, New Zealand.
- Wiener, Antje. 2004. “Contested Compliance: Interventions on the Normative Structure of World Politics.” *European Journal of International Relations* 10:189-234. doi: 10.1177/1354066104042934.
- Wilson, Grant, Michelle Bender, and Linda Sheehan. 2016. “Fighting for Our Shared Future: Protecting Both Human rights and Nature’s Rights.” Redwood City, CA.