

# Naturalized Rights of Animals, Animalized Rights of Nature

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*In this Article, we argue that animal rights and rights of nature can and should find synergistic connections to tackle some of the most significant planetary threats today, notably, industrial animal agriculture. Until a landmark 2022 decision of the Constitutional Court of Ecuador, no court or legislation had concluded that animal rights could exist within rights of nature, and scholarship on rights of nature and animal rights has mostly ignored each other. Tackling industrial animal agriculture fits both movements’ goals as this industry is a major driver of climate change, deforestation, land and water use, and soil erosion, and is responsible for the suffering of billions of animals. However, the animal rights movement has not developed a significant practical strategy or achieved substantial success against industrial animal agriculture, and the rights of nature movement has taken on many issues adjacent to industrial animal agriculture but not the key issues themselves. We examine each movement, identify its history, aims, past practices, strengths, advantages, weaknesses, and disadvantages, and piece together a path forward that is inspired by the Ecuadorian decision and draws upon the strengths of each movement. We propose an approach that can produce an effect greater than the sum of the parts and call the movements together to advance the strategy we launch here. This Article presents an argument and an invitation.*

## I. INTRODUCTION

The story of the woolly monkey who would eventually be named Estrellita likely began with wildlife traders in Ecuador, operating both in plain sight and in contravention of the country's wildlife laws. The illegal wildlife trade is like the illicit drug trade. Powerful international and national mafias request certain species to sell as pets or to collectors.<sup>1</sup> The hunters are economically disadvantaged locals who are paid around ten dollars for each poached animal. Intermediaries then smuggle the animals across the Ecuadorian border using the same routes as the illegal drug trade.<sup>2</sup> Infant monkeys are sedated and stuffed into toilet paper rolls.<sup>3</sup> If the animals survive, they will be sold for thousands of dollars in China, Japan, Thailand, Canada, the U.S., or Europe.<sup>4</sup> Only one out of ten animals survive.<sup>5</sup>

We do not know much about Estrellita's origins but considering what we know about woolly monkeys and the fact that Estrellita was poached when she was less than a month old, we can reasonably picture her first weeks of life. Around the year 2000, poachers went into the Ecuadorian Amazon to capture young animals. Estrellita would have lived with an extended community of woolly monkeys in a lowland forested region and would have spent most of her time in the canopies of the highest trees, holding on to her mother.<sup>6</sup> Female woolly monkeys' reproduction cycle is slow; they have one infant at a time, nurse them for a year, and invest a long time raising them, forming deep emotional bonds.<sup>7</sup>

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1. EU Redacción, *Más casos de fauna afectada por el tráfico de especies, incendios y tala durante la pandemia en Ecuador*, EL UNIVERSO (Dec. 27, 2020), <https://www.eluniverso.com/noticias/2020/12/27/nota/8805919/trafico-especies-ecuador>; Eliana Garzón, *¿Cuál es la situación actual de los primates en Colombia?*, MONGABAY (Mar. 1, 2017), <https://es.mongabay.com/2017/03/la-situacion-actual-los-primates-colombia/>.

2. Isabel Riofrio, *Fauna silvestre a la venta: ¿Es posible ganar la pelea en Ecuador?*, MONGABAY (Oct. 18, 2016), [https://es.mongabay.com/2016/10/biodiversidad-extincion-trafico\\_de\\_especies-amazonia-conservacion-especiales/](https://es.mongabay.com/2016/10/biodiversidad-extincion-trafico_de_especies-amazonia-conservacion-especiales/); EU Redacción, *supra* note 1.

3. EU Redacción, *supra* note 1.

4. *La fauna tropical de Ecuador es blanco del tráfico de especies*, EL COMERCIO (June 12, 2014), <https://www.elcomercio.com/actualidad/seguridad/ecuador-trafico-animales-fauna-ilegal-especies.html>; Riofrio, *supra* note 2.

5. EU Redacción, *supra* note 1.

6. Woolly monkeys, NAT'L GEOGRAPHIC, <https://www.nationalgeographic.com/animals/mammals/facts/woolly-monkeys> (last visited Jan. 31, 2024).

7. Sarah Papworth, E.J. Milner-Gulland & Katie Slocombe, *Hunted Woolly Monkeys (Lagothrix Poeppigii) Show Threat-Sensitive Responses to Human Presence*, 8 PLOS ONE 1, 9 (2013); Sara Álvarez-Solas, Stella de la Torre & Diego G. Tirira, *Familia Atelidae. Mono Lanudo de Humboldt. Lagothrix Lagothricha Lagothricha (Humboldt, 1812)*, 12 in ESTADO DE

Woolly monkeys can distinguish hunters from other humans who represent no danger, such as gatherers and researchers, but this ability does not always ensure their escape.<sup>8</sup> Hunters must first shoot the mother to catch the infant monkeys,<sup>9</sup> so Estrellita's mother would have been shot dead, and Estrellita would likely have fallen many feet to the ground, where she was likely stuffed into a box with other infant woolly monkeys. Most of these infants would die shortly after.<sup>10</sup>

Estrellita would likely have been handed a stuffed animal or a blanket as a surrogate mother while she waited in a cage for someone to buy her for \$80 U.S. dollars in a market.<sup>11</sup> Most poached infant monkeys develop physical problems such as muscle atrophy, bone disease, and behaviors such as rocking and self-mutilation, and Estrellita likely would have developed some of these problems.<sup>12</sup> It is unclear how Estrellita came into Ana Beatriz Burbano Proaño's life in Ambato, Ecuador, but we do know that Ana raised her as a human toddler, drinking from cups, sitting on chairs, and wearing clothes and diapers.

It was not until eighteen years later that the environmental authority received an anonymous tip that a monkey was living in a private home.<sup>13</sup> The authority confiscated Estrellita on September 11, 2019.<sup>14</sup> The Ecuadorian Organic Code of the Environment prohibits the possession of wild animals without a license, which is not

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CONSERVACIÓN DE LOS PRIMATES DEL ECUADOR, 185 (Diego G. Tirira, Stella de la Torre, & Galo Zapata Ríos eds., 2018); Woolly monkeys, *supra* note 6; Pablo Stevenson, *Woolly Monkeys and Their Cognition and Social Abilities*, (2021), <https://animal.law.harvard.edu/wp-content/uploads/ENGLISH-HLS-NhRP-amicus-curiae-Ecuador.pdf>.

8. Papworth, Milner-Gulland, & Slocombe, *supra* note 7, at 9.

9. EU Redacción, *supra* note 1.

10. *Id.*

11. Roohi Narula, *Care and Compassion For Orphaned Monkeys*, WILDLIFE SOS (2022), <https://wildlifesos.org/care-and-compassion-for-orphaned-monkeys/> (last visited Feb 11, 2025); EU Redacción, *supra* note 1.

12. *Id.*

13. Corte Constitucional [CC] [Constitutional Court], Caso “Mona Estrellita”, Caso No. 253020-JH ¶ 27 (Jan. 27, 2022), available at [http://esacc.corteconstitucional.gob.ec/storage/api/v1/10\\_DWL\\_FL/e2NhcNBLdGE6J3RyYW1pdGUUnLCB1dWlkOic3ZmMxMjVmMi1iMzZkLTRkZDQtYTM2NC1kOGNiMWIwYWViMWMucGRmJ30=](http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcNBLdGE6J3RyYW1pdGUUnLCB1dWlkOic3ZmMxMjVmMi1iMzZkLTRkZDQtYTM2NC1kOGNiMWIwYWViMWMucGRmJ30=) (Ecuador), *translated in* BROOKS MCCORMICK JR. ANIMAL L. & POL'Y PROGRAM HARV. L. SCH., <https://animal.law.harvard.edu/wp-content/uploads/ENGLISH-Final-Judgment-No.-253-20-JH22-Estellita.pdf> [hereinafter *Mona Estrellita Case English Translation*] (last visited Dec. 12, 2024). All citations to and quotes from this case are from the English-language translation.

14. *Id.* at ¶ 30.

generally issued to individuals.<sup>15</sup>

Estrellita was quarantined at the San Martín de Baños Zoo.<sup>16</sup> The vet report upon her entry to the zoo stated that Estrellita was underweight and malnourished,<sup>17</sup> displaying a high level of aggressiveness.<sup>18</sup> Possibly due to the abrupt change of circumstances and her physical condition, Estrellita died less than a month later, on October 9, 2019.<sup>19</sup> The autopsy report indicated that Estrellita's suffered a cardiorespiratory arrest.<sup>20</sup>

After Estrellita was taken from her home, Ana Burbano filed a habeas corpus requesting Estrellita's return and the issuance of a wildlife license to her so that Estrellita's domestic presence could become legal.<sup>21</sup> The habeas has traditionally been used to challenge the detention of humans, but a developing worldwide movement seeks to use it for animals, with limited success. However, apparently unknown to her at the time of her filing, Estrellita had already died in the zoo. She later claimed that she was not informed about Estrellita's death before seeking the release of Estrellita through the habeas.<sup>22</sup> She also claimed that Estrellita's rights were violated when she was removed from her home and placed in a zoo.<sup>23</sup>

The lower court denied the habeas, which Ana Burbano modified to refer to Estrellita's corpse.<sup>24</sup> The Court of Appeals affirmed the denial.<sup>25</sup> But the Constitutional Court of Ecuador selected the case to develop binding jurisprudence on issues of great significance to animal rights, rights of nature, and individual animals such as Estrellita. Specifically, the Court asked: (1) Can an animal be considered as a subject of rights?; (2) What is the scope of the writ of *habeas corpus* in relation to the protection of other [that is, not human] living beings?; and (3) Can nonhuman animals be considered subjects of rights protected by the rights of nature that are

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15. CÓDIGO ORGÁNICO DEL AMBIENTE [COA] [ORGANIC CODE OF THE ENVIRONMENT] art. 147 (Ecuador).

16. *Mona Estrellita Case English Translation*, *supra* note 13, ¶ 30.

17. *Id.* ¶ 30.

18. *Id.* ¶ 130.

19. *Id.* ¶ 35.

20. *Id.* ¶ 36.

21. *Id.* ¶ 38-39.

22. *Id.* ¶ 45.

23. *Id.* ¶ 38.

24. *Id.* ¶ 45, 47.

25. *Id.* ¶ 49.

provided for in Article 71 of the Constitution?<sup>26</sup>

In the formulation of these questions, and question (3) in particular, the Court suggested connections between rights of nature, which is explicitly provided for in the Constitution of Ecuador, and animal rights, which is not mentioned in the Constitution and had not, at the time the Court selected the case, been determined to exist in Ecuadorian law. This suggested connection turned into a jurisprudential reality. The Constitutional Court's decision of January 27, 2022, relied upon rights of nature to establish that individual animals, including Estrellita, are subjects of rights.

This is the most important decision in the modern era on animal rights *and* rights of nature—two different theoretical approaches with important practical applications. The Estrellita decision, as it is referred to, establishes and justifies the principle that a rights of nature (RoN) framework can include animal rights. In this Article, using the Estrellita case as our touchstone and point of departure, we argue that these two approaches, and related movements, can and should find synergistic connections that extend beyond the context of Estrellita to reach some of the most significant planetary threats today, including industrial animal agriculture.<sup>27</sup> It may seem that the connections between RoN and animal rights are obvious, even already taking place today—but this is not the case. Until the Estrellita decision, no court, let alone an apex court, had reached the conclusion that animal rights exist within RoN, nor had any legislation done so. Further, scholarship on animal rights and RoN have not even engaged with one another, let alone worked together in an intentional way and in pursuit of an articulated cause.<sup>28</sup>

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26. *Id.* ¶ 165.

27. In intentionally and carefully using the phrase “synergistic connections,” we mean “synergy” in its technical sense: an interaction or cooperation that produces a combined effect greater than the sum of their separate effects.

28. Rights of nature have taken the law reviews by storm, with over fifty publications in 2023 alone. For instance, Alyssa Florack-Hess, *Owning the Right to Migrate: A Proposal for Migration Corridors in the Greater Yellowstone Ecosystem*, 2023 UTAH L. REV. 249 (2023); Anne Haluska, *Restorative Justice and the Rights of Nature: Using Indigenous Legal Traditions to Influence Cultural Change and Promote Environmental Protection*, 49 MITCHELL HAMLINE L. REV. 92 (2023); Elizabeth Kronk Warner & Jensen Lillquist, *Laboratories of the Future: Tribes and Rights of Nature*, 111 CALIF. L. REV. 325 (2023). None of these connect with animal rights. The one exception is an essay written by a co-author of this paper, Kristen Stilt, *Rights of Nature, Rights of Animals*, 134 HARV. L. REV. 276 (2021). This publication, prior to the Estrellita decision, recognized potential tensions between RoN and animal rights.

The real-world stakes of our argument are high. Animal agriculture is a major contributor to greenhouse gas (GHG) emissions. According to the United Nations Food and Agriculture Organization (FAO), approximately 14.5% of global anthropogenic greenhouse gas (GHG) emissions are attributable to livestock.<sup>29</sup> At a time when cultivatable land is shrinking due to climate change, the fact that livestock requires nearly 80% of all available agricultural land on this planet yet produces only 17% of the world's calories and 38% of its protein is an egregious imbalance and not sustainable.<sup>30</sup> Again, it may seem that with these figures, intensive industrial animal agriculture would be a focus of significant world attention and reform efforts.<sup>31</sup> And yet this has not happened to date. The animal rights movement has had a consistent view in opposition to industrial animal agriculture but has had limited success, mainly animal welfare improvements. The RoN movement, with its broader internal diversity, has successfully taken on many issues adjacent to industrial animal agriculture, but not the key issues themselves. This Article calls out the problem of industrial animal agriculture continuing as a business-as-usual practice and shows a path forward through a RoN framework.

With this focus, we are making a new and impactful argument but are not foisting upon either of these two movements an issue far afield from their respective ambitions. Rather, we have carefully examined each movement and identified its history, aims, past practices, strengths, advantages, weaknesses, and disadvantages. In this Article, we use this comprehensive understanding to create an approach that can produce an effect greater than the sum of its parts.<sup>32</sup> We invite both movements to come together around our

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29. Food and Agricultural Organization of the United Nations [FAO], LIVESTOCK SOLUTIONS FOR CLIMATE CHANGE (2017), <https://openknowledge.fao.org/server/api/core/bitstreams/0d178ab7-b755-4eb2-a6cd-05ba1db35819/content>.

30. Hannah Ritchie & Max Roser, *Half of the World's Habitable Land Is Used for Agriculture*, OUR WORLD IN DATA (Feb. 16, 2024), <https://ourworldindata.org/global-land-for-agriculture>.

31. Indeed, at the HLS Faculty Workshop, one faculty member expressed disbelief that industrial animal agriculture, with its full package of human, environmental, and animal harms, is still operational. It is probably the case that many people simply have not focused on just how harmful it is or cannot believe that a practice so egregious is legal let alone prevalent.

32. To be clear, we are not arguing here that RoN and animal rights have an overlapping consensus. An "overlapping consensus" connotes agreement by supporters of different normative doctrines—that entail apparently inconsistent conceptions of justice—on particular principles of justice that underwrite a political community's basic social institutions.

argument—both intellectually and literally through a roundtable that the authors will host at Harvard Law School. This Article puts forward the naturalizing of animal rights and the animalizing of rights of nature as an argument and an invitation.<sup>33</sup>

The structure of the Article proceeds as follows. **Part 1** covers essential groundwork. We introduce RoN and animal rights. We introduce industrial animal agriculture and briefly explain the harms it causes to humans, to the environment, to animals, and to nature writ large. The range of animals caught up in the exploitation are vast, including the animals who themselves are raised and killed in industrial settings and the animals outside this setting in the literal sense who are also harmed, such as wild animals who suffer deforestation and loss of habitat due to the voracious expansion of industrial animal agriculture.

In **Part 2**, we carefully look at each movement, identify its history, aims, past practices, strengths, advantages, weaknesses, and disadvantages. We show why RoN and animal rights have tended, to date, to cede to centrifugal forces that have kept them apart. We show that this current state is not inevitable and not productive. Occupying separate intellectual and practical spheres also prevents each movement from achieving its own goals. A dedicated challenge to industrial animal agriculture is possible and can have impactful results. We show the need to piece together a way forward that draws upon the strengths of each movement and leaves the weaknesses—which can be significant—behind to the extent possible.

In **Part 3**, we turn back to Ecuador and the Estrellita case, our touchstone and our point of departure for naturalizing animal rights and animalizing rights of nature. We begin with a look at the drafting history of the constitution of Ecuador of 2008, which added rights of nature. Then, we focus on the Estrellita decision,

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Nor are we arguing that animal rights are subsidiary to RoN, in the sense of being less important but related to RoN. Rather, and again taking the Estrellita decision as our touchstone, we argue that RoN is capacious enough to include animal rights as an independent theoretical approach and movement that contributes essential aspects of the synergistic case against industrial animal agriculture.

33. We do not use “nature” and its derivatives—“natural,” “unnatural,” or “naturalized”—in opposition to the concept of culture. Instead, we adopt the understanding of nature articulated by the RoN movement, which is rooted in Indigenous worldviews and a holistic view of the environment where all its components, human and nonhuman, are interconnected and interdependent. For a scholarly examination of the issues surrounding the nature-culture dichotomy, see VAL PLUMWOOD, *FEMINISM AND THE MASTERY OF NATURE* 41 (1993).

which came after a series of cases at the Constitutional Court that slowly built a RoN jurisprudence. The lengthy decision hints at scenarios beyond the facts of the case, likely for the purpose of generating public support for the decision or forestalling public criticism. While the case clearly was *not* about industrial animal agriculture, with our own expertise in RoN, animal rights, and industrial animal agriculture, we can discern in the opinion the kernel of arguments that we do not believe have ever been made—not in court decisions and not in legal scholarship. We carefully identify this kernel and expand it into the novel arguments that we make as an extension of the writing of the judges. Specifically, we view the Estrellita decision to be a direct rebuke to the industrial production of animals, characterized by disequilibrium and conditions impeding species-specific behavior.

In the final part of the article, **Part 4**, we show why it is both desirable and necessary for RoN and animal rights to approach industrial animal agriculture together and from their individual positions of strength. RoN should be concerned with the farmed animals in industrial factory farms because all their welfare interests, not to mention rights, are violated. Further, the rapid spread of industrial agriculture necessitates more and more land, which means more and more deforestation. Deforestation is a major cause of loss of biodiversity—meaning the loss of species.<sup>34</sup> Species loss is a major concern within RoN. Theoretically, animal rights has a fully developed theory for the protection of all animals, including farmed animals. By engaging with RoN, the animal rights movement can reach new communities, groups, and peoples whose support will be essential. RoN facilitates animal rights' ability to become more mainstream and inclusive generally as well as specifically through the law. Countries and jurisdictions that recognize RoN give advocates a legal tool to advance animal rights through litigation and policy, and the recognition of RoN is expanding at a rapid pace. By engaging with animal rights, the RoN movement can refine its messaging and address criticisms of vagueness. Additionally, it can learn from the grassroots and corporate campaigning experience

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34. The concept of “biodiversity” has faced extensive criticism within academic discourse. See Freya Mathews, *From Biodiversity-Based Conservation to an Ethic of Bio-Proportionality*, 200 *BIOL. CONSERVATION* 140 (2016); Carlos Santana, *Biodiversity Is a Chimera, and Chimeras Aren't Real*, 33 *BIOL. PHILOS.*, 12 Apr. 2018, at 1; Pablo P. Castelló & Francisco Javier Santiago-Ávila, *Conservation after Biodiversity: An Analysis of Michael E. Soulé's 'What Is Conservation Biology?'*, 287 *BIOL. CONSERVATION* 1 (2023).

of the animal rights movement and its extensive literature and litigation regarding nonhuman animal personhood and fundamental rights. This knowledge is crucial for the RoN movement's paradigm shift, particularly in challenging anthropocentrism.

## II. AN INTRODUCTION TO RIGHTS OF NATURE, ANIMAL RIGHTS, AND INDUSTRIAL ANIMAL AGRICULTURE

### A. *The Rights of Nature: A Widespread Global Movement*

RoN is a diverse movement worldwide, so diverse that some scholars argue that it cannot be described as a single international movement.<sup>35</sup> In general, a stated goal is “a paradigm shift: to change the way people understand humans’ relationship with Nature, change their behaviors in a way that is more ecologically sustainable, and change formal and informal rules to reinforce these behaviors.”<sup>36</sup> This is a sweeping aim, and can be seen as a reaction to the anthropocentric approaches to the environment in national and international law historically and indeed existing in the present.

In general, in jurisdictions worldwide, nature and animals are considered property, and environmental law and animal welfare law have been developed to regulate human use of the environment, natural resources, and animals. Traditionally, environmental protection has been grounded on an anthropocentric foundation, whereby the law considers a healthy environment a human right. Hence, as humans are at the center of the law, the law protects nature for human benefit.<sup>37</sup> For example, the 1972 United Nations (UN) Declaration on the Human Environment, known as the Stockholm Declaration, a non-binding resolution, was first to recognize the right to the environment:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that per-

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35. Mihnea Tănăsescu, *Rights of Nature, Legal Personality, and Indigenous Philosophies*, 9 TRANSNAT'L ENVTL. L. 429, 431 (2020).

36. CRAIG M. KAUFFMAN & PAMELA MARTIN, *THE POLITICS OF RIGHTS OF NATURE: STRATEGIES FOR BUILDING A MORE SUSTAINABLE FUTURE* 7 (2021).

37. Louis J. Kotzé & Paola V. Calzadilla, *Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador*, 6 TRANSNAT'L ENVTL. L. 401, 403 (2017).

mits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.<sup>38</sup>

At a regional level, the 1981 African Charter on Human and Peoples' Rights provided that "all peoples shall have the right to a general satisfactory environment favorable to their development."<sup>39</sup> In Latin America, the 1988 Protocol of San Salvador incorporated the right to a healthy environment in article 11: "Everyone shall have the right to live in a healthy environment and to have access to basic public services."<sup>40</sup> The Inter-American Court of Human Rights has since recognized the "undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights."<sup>41</sup> In Europe, the Aarhus Convention recognized every person's right to live in an environment adequate to his or her health and well-being.<sup>42</sup> In Asia, the Association of Southeast Asian Nations (ASEAN) 2012 Declaration of Human Rights recognized the "right to a safe, clean, and sustainable environment" within the right to an adequate standard of living.<sup>43</sup>

In parallel, nations began recognizing the right to a healthy environment in their constitutions. Portugal (1976) and Spain (1978) were the first countries to recognize this right. In other countries, courts have taken on the task of recognizing the right to a healthy environment by interpreting other constitutional provisions, such

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38. Rep. of the U.N. Conference on the Human Environment, at 4, A/CONF.48/14/Rev.1 (June 16, 1972); G.A. Res. 2994/XXVII, 2995/XXVII and 2996/XXVII (December 15, 1972).

39. African Charter on Human and Peoples' Rights art. 24, June 27, 1981, 1520 U.N.T.S. 217.

40. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: Protocol of San Salvador art. 11, Nov. 17, 1988. The 1969 American Convention on Human Rights (Pact of San José) did not mention the right to a healthy environment, so this right was added to the Protocol of San Salvador in 1988.

41. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: interpretation and scope of articles 4(1) and 5(1) in relation to articles 1(1) and 2 American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. ¶ 47 (Nov. 15, 2017).

42. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), June 25, 1998, 2161 U.N.T.S. 447.

43. ASEAN Human Rights Declaration and Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration, Jakarta: ASEAN Secretariat, February 2013.

as the right to life, health, and dignity.<sup>44</sup> In short, international soft law instruments, regional conventions, and national provisions regulate the human right to a healthy environment.<sup>45</sup> Under this framework, nature and animals do not possess intrinsic value and are subsidiary to humans' interests.

The anthropocentric foundation of environmental law, in addition to viewing nature as property, has pushed the planet to what in common language is referred to as the Anthropocene, characterized by humanity's significant geological impact and severe damage to Earth.<sup>46</sup> Climate change, the crisis of the Amazon Rainforest and the world's coral reefs, deforestation, desertification, drought, toxic waste, accelerated species extinction, water contamination, air pollution, microplastics, and many other dynamics are shaping the Anthropocene. RoN developed as a possible glimmer of hope in this grim picture, moving from anthropocentrism toward a biocentric or even ecocentric understanding of what surrounds us. Biocentrism gives moral primacy to living individuals or living components of the environment,<sup>47</sup> while ecocentrism gives moral primacy to ecological units or wholes.<sup>48</sup>

Christopher Stone's influential 1972 article *Should Trees Have Standing?* proposed granting rights to natural objects, jumpstarting the RoN movement in the U.S.<sup>49</sup> This publication opened the door to a paradigm shift at a time when environmental rights had just emerged.<sup>50</sup> Stone's paper transcended academia, influencing (and rushed to publication in time to do so) Justice William O. Douglas' famous dissent in *Sierra Club v. Morton* (1972), which could be deemed one of the first RoN cases in the U.S.<sup>51</sup> In 1965, the U.S. Forest Service called for bids for constructing and operating a ski

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44. Susana Borràs, *New Transitions from Human Rights to the Environment to the Rights of Nature*, 5 TRANSNAT'L ENVTL. L. 113, 124-25 (2016).

45. *Id.* at 127.

46. After 15 years of debate, geologists have rejected declaring the start of a new geological epoch called the Anthropocene. However, this concept has become a powerful cultural concept to identify humans' immense impact on the planet. See Raymond Zhong, *Are We in the 'Anthropocene,' the Human Age? Nope, Scientists Say.*, N. Y. TIMES, (Mar. 5, 2024), <https://www.nytimes.com/2024/03/05/climate/anthropocene-epoch-vote-rejected.html> (last visited Mar 13, 2024); Alexandra Witze, *Geologists Reject the Anthropocene as Earth's New Epoch – after 15 Years of Debate*, 627 NATURE 249 (2024).

47. DALE JAMIESON, ETHICS AND THE ENVIRONMENT: AN INTRODUCTION 145 (2008).

48. *Id.* at 149.

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

50. Kotzé & Calzadilla, *supra* note 37, at 411.

51. 405 U.S. 727 (1972)

resort and summer recreation area in the Mineral King Valley, located in the Sierra Nevada Mountains in Tulare County, California, adjacent to Sequoia National Park. The Forest Service chose Walt Disney Enterprises' proposal. However, the Sierra Club filed a lawsuit in 1969, arguing that it had "a special interest in the conservation and the sound maintenance of the national parks, game refuges and forests of the country" and opposing Disney's development project.<sup>52</sup>

The Supreme Court determined that the Sierra Club lacked standing. However, Justice Douglas' dissent argued that inanimate objects should have standing:

The critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers, and where injury is the subject of public outrage. Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation. See Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S.Cal.L.Rev. 450 (1972). This suit would therefore be more properly labeled as *Mineral King v. Morton*.<sup>53</sup>

While speaking to the legal question of standing, which was before the Court, this dissent also implicitly raised the issue of Mineral King, the mountain, holding rights and suing to enforce those rights.

Christopher Stone's work has rightly been seen as key to the RoN movement in the U.S. and even globally, but this recognition has also tended to overshadow other key actors. In 1962, before Stone wrote *Should Trees Have Standing?*, marine biologist and conservationist Rachel Carson published *Silent Spring*, addressing the pernicious environmental effects of pesticides on nature, humans, and animals in the U.S.<sup>54</sup> This book prompted the modern environmental movement.<sup>55</sup> Two years later, she wrote the foreword to Ruth Harrison's *Animal Machines*, where she severely criticized human domination of other living beings and called for their moral

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52. *Id.* at 730.

53. *Id.* at 742.

54. RACHEL CARSON, *SILENT SPRING* (1962).

55. Eliza Griswold, *How 'Silent Spring' Ignited the Environmental Movement*, N. Y. TIMES MAG., (Sep. 21, 2012), <https://www.nytimes.com/2012/09/23/magazine/how-silent-spring-ignited-the-environmental-movement.html>.

consideration.<sup>56</sup> Although she did not write about nature having legal rights, her scholarship defended ideas central to RoN today. For example, *Silent Spring* starts with a fable about an American town where people coexist harmoniously with nature,<sup>57</sup> she recognizes the interconnection between humans, animals, and nature,<sup>58</sup> the inherent value of all living beings and rejects human domination over animals and nature.<sup>59</sup>

Chilean environmental attorney Godofredo Stutzin was also advancing similar ideas around the same time as Stone, while taking a different approach to identifying who the holder of rights should be.<sup>60</sup> Roderick Nash and Thomas Berry in the U.S. and Cormac Cullinan in South Africa did similar work in the following years.<sup>61</sup> During this period, the UN started working on recognizing nature's inherent value and humans' interconnection with nature, adopting the World Charter for Nature in 1982.<sup>62</sup>

These works have been valuable, but what is often lost is that practices and beliefs that align with contemporary RoN have been associated for generations with Indigenous peoples worldwide. The belief in living in harmony with nature, viewing animals and natural entities as subjects instead of property, and understanding the interconnection between all living beings, including humans, is neither new nor a Western creation.<sup>63</sup> However, framing such re-

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56. Rachel Carson, *Foreword* to RUTH HARRISON, *ANIMAL MACHINES: THE NEW FACTORY FARMING INDUSTRY* (1964).

57. CARSON, *supra* note 54, at 1-3.

58. *Id.*

59. *Id.*

60. Godofredo Stutzin, *La Naturaleza: ¿un Nuevo Sujeto de Derecho?* (1973); Godofredo Stutzin, *La Naturaleza: ¿un Nuevo Sujeto de Derecho?* (1974); Godofredo Stutzin, *Should We Recognize Nature's Claim to Legal Rights? An Essay*, 2 ENVTL. POL'Y & L. 129 (1976); Godofredo Stutzin, *La Naturaleza de Los Derechos y Los Derechos de La Naturaleza*, ATENEA 37 (1978). Stutzin took the position that nature as a whole was a rights holder, not any particular constituent part.

61. RODERICK NASH, *THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS* (1989); Thomas Berry, *The Origin, Differentiation and Role of Rights*, (2001), <https://www.ties-edu.org/wp-content/uploads/2018/09/Thomas-Berry-rights.pdf>; CORMAC CULLINAN, *WILD LAW: A MANIFESTO FOR EARTH JUSTICE* (2002).

62. G.A. Res. 37/7, World Charter for Nature (28 Oct. 1982).

63. Mario Melo, *Buen vivir, naturaleza y nacionalidades en la nueva Constitución: una lectura esperanzada*, AMÉRICA LATINA EN MOVIMIENTO (Sep. 5, 2008), <https://www.alainet.org/es/active/26131>; Edson Krenak Nakanuk, *Indigenous Peoples Are Essential to the Rights of Nature*, CULTURAL SURVIVAL (Aug. 31, 2022), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/indigenous-peoples-are-essential-rights-nature> (last visited Feb 14, 2024).

lationship with nature in terms of rights enforceable through national legal systems is a Western liberal creation.<sup>64</sup>

Since the 2000s, RoN, as part of national and subnational law, has been growing at a fast pace worldwide.<sup>65</sup> In 2006, Tamaqua Borough, Pennsylvania, became the first municipality in the U.S. to recognize RoN when it prohibited corporations from dumping toxic sewage sludge, acknowledging the rights of ecosystems to exist and flourish.<sup>66</sup> In 2008, Ecuador became the first country in the world to recognize nature as a subject of rights in its constitution. Shortly after, the UN General Assembly proclaimed International Mother Earth Day,<sup>67</sup> and Bolivia passed a set of laws on the rights of Mother Earth.<sup>68</sup> Aotearoa/New Zealand has also advanced its recognition of RoN. The 2014 deed of settlement, subsequently enacted in legislation, granted legal personhood to the Whanganui River,<sup>69</sup> and the 2014 Te Urewera Act recognized the intrinsic worth of a specific area on the North Island.<sup>70</sup> In 2019, Uganda passed the National Environment Act recognizing nature's right to exist, persist, maintain, and regenerate its vital cycles, structure, functions, and processes in evolution.<sup>71</sup> There have also been advances in Europe. Spain passed a law recognizing the rights of Mar

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64. MIHNEA TĂNĂȘESCU, UNDERSTANDING THE RIGHTS OF NATURE: A CRITICAL INTRODUCTION 10 (2022).

65. Jonathan Watts, *Could 2024 Be the Year Nature Rights Enter the Political Mainstream?*, THE GUARDIAN, (Jan. 1, 2024), <https://www.theguardian.com/environment/2024/jan/01/could-2024-be-the-year-nature-rights-enter-the-political-mainstream>.

66. Community Environmental Legal Defense Fund (CELDF), *Tamaqua Borough, Pennsylvania*, CELDF (2015), <https://celdf.org/2015/08/tamaqua-borough/> (last visited Jan. 29, 2024). Other municipalities followed Tamaqua Borough's example but were also challenged in court and invalidated. See Marsha J. Moutrie, *The Rights of Nature Movement in the United States: Community Organizing, Local Legislation, Court Challenges, Possible Lessons and Pathways*, 10 ENVNT. & EARTH L.J. 5, 24 (2020).

67. G.A. Res. 63/278 (Apr. 22, 2009)

68. Ley de Derechos de la Madre Tierra [Ley 071 de 21 de diciembre 2010] [Legal Rights of Mother Earth, Law 071 of Dec. 21, 2010].

69. Deed of Settlement, Central Whanganui (Te Korowai o Wainuiārua), July 29, 2023, <https://www.tearawhiti.govt.nz/te-kahui-whakatau-treaty-settlements/find-a-treaty-settlement/central-whanganui-te-korowai-o-wainuiarua/>.

70. Te Urewera Act 2014 (N.Z.). Additionally, at the beginning of 2025, parliament passed a law conferring Taranaki Mounga (Taranaki Mountain) legal personhood. See Eva Corlett, *Taranaki Mounga: New Zealand mountain granted same legal rights as a person*, THE GUARDIAN, (Jan. 30, 2025), <https://www.theguardian.com/world/2025/jan/30/taranaki-mounga-new-zealands-second-highest-mountain-granted-same-legal-rights-as-a-person>.

71. The National Environment Act, 7 March 2019, The Uganda Gazette No. 10, Vol. CXII (Uganda).

Menor, a saltwater lagoon, in 2022.<sup>72</sup> And Ireland and Aruba may become the next countries in the world to recognize RoN in their constitutions.<sup>73</sup>

In the U.S., more than fifty communities in eleven states have passed RoN ordinances.<sup>74</sup> Municipalities in California, Maine, Maryland, New Hampshire, New York, Ohio, Pennsylvania, and Virginia have attempted to ban natural gas drilling and fracking, elevating RoN and community rights over corporate rights.<sup>75</sup> Recently, the city of Everett in Washington voted to grant the Snohomish River Watershed rights.<sup>76</sup> Even megafauna have benefited: the Grizzly Treaty was signed by more than 200 U.S. and Canadian tribal nations recognizing the bear's right to exist in a healthy ecosystem.<sup>77</sup>

The Community Environmental Legal Defense Fund (CELDF) has been behind many of the rights of nature ordinances passed in the U.S. CELDF started as a public interest law firm focused on environmental protection. Initially, CELDF worked to protect communities from environmental harm caused by fracking, pipelines, and factory farms, among others.<sup>78</sup> Today CELDF's mission is to build "sustainable communities by assisting people to assert their right to local self-government and the rights of nature"<sup>79</sup> and a "decolonial movement for Community Rights and the Rights of Nature to advance democratic, economic, social, and environmental

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72. Ley 19/2022, el 30 de septiembre, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su cuenca [Ley del Mar Menor] [Law 19/2022, of September 30, for the recognition of legal personality to the Mar Menor lagoon and its basin] Boletín Oficial del Estado [BOE] [Official Gazette], 3 Oct. 2022 (Spain).

73. Katie Surma, *Ireland Could Become the Next Nation to Recognize the Rights of Nature and a Human Right to a Clean Environment*, INSIDE CLIMATE NEWS, (Jan. 1, 2024), <https://insideclimatenews.org/news/01012024/ireland-rights-of-nature-human-right-to-clean-environment/>. In Aruba's case, lawmakers and the Kingdom of the Netherlands must sign off on this constitutional amendment. See Katelyn Weisbrod, *Aruba Considers Enshrining the 'Rights of Nature' in Its Constitution*, INSIDE CLIMATE NEWS (May 10, 2023), <https://insideclimatenews.org/news/10052023/aruba-rights-nature/>.

74. Alexandra Huneus, *The Legal Struggle for Rights of Nature in the United States*, 1 WIS. L. REV. 133, 134 (2022).

75. Borràs, *supra* note 44, at 127.

76. Eric Christensen et al., *City in Washington Votes to Grant Local River Legally Enforceable Right to Exist*, BEVERIDGE & DIAMOND (Dec. 19, 2024), <https://www.bdlaw.com/publications/city-in-washington-votes-to-grant-local-river-legally-enforceable-right-to-exist/>

77. Grizzly Treaty, GLOBAL INDIGENOUS COUNCIL, <https://www.globalindigenouscouncil.com/grizzly-treaty> (last visited Jan. 31, 2024).

78. See Protecting Nature and Communities, CELDF, <https://celdf.org/about-celdf/> (last visited Mar 21, 2024).

79. *Id.*

rights – building upward from the grassroots to the state, federal, and international levels.”<sup>80</sup> However, courts have struck most of such municipal ordinances in the U.S. for different reasons,<sup>81</sup> such as the vagueness of the language used and because granting rights to nature exceeds municipal power.<sup>82</sup>

Courts outside the U.S. have played an essential role in granting nature rights. In different rulings, courts in Colombia, Bangladesh, and India have recognized legal personhood or specific rights to nature or its elements, such as the Amazon, rivers, glaciers, lakes, and forests.<sup>83</sup> Most of the successes of RoN have centered on granting legal personhood to rivers or, in some cases, particular ecosystems.<sup>84</sup> While that may point to some inherent limitations, the trajectory of growing recognition and adoption of rights of nature worldwide is clear and a strength of the movement, as discussed in greater detail below in Part II.

### B. *Animal Rights*

In discussions about how humans should treat animals, three concepts are often confused: animal rights, animal protection, and animal welfare. Animal rights aim for the law to recognize that animals have fundamental rights and prohibit the use of animals for the benefit of humans: as food, clothing, cosmetics, research, entertainment, and transportation. Animal protection aims to reduce the harm caused to animals in the activities and industries mentioned above, and while many animal protectionists may personally want to see the day arrive when there is no animal use whatsoever, they are more cautious in their public argumentation and do not typically seek to prohibit humans’ use of animals. An animal welfare approach is accepting of animal use, and even studies animals’ physical and mental states in relation to the conditions in which animals live and die to improve conditions for animals, to improve

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80. *Id.*

81. Huneus, *supra* note 73, at 135.

82. *Id.* at 136.

83. Rights of Nature: Timeline - CELDF - Protecting Nature and Communities, CELDF, <https://celdf.org/rights-of-nature/timeline/> (last visited Jan. 31, 2024).

84. CYRUS R. VANCE CTR. FOR INT’L JUST. ET AL., RIGHTS OF RIVERS: A GLOBAL SURVEY OF THE RAPIDLY DEVELOPING RIGHTS OF NATURE JURISPRUDENCE PERTAINING TO RIVERS 4, <https://www.internationalrivers.org/wp-content/uploads/sites/86/2020/10/DIGITAL-Right-of-Rivers-Report-Exec-Summary-English-optimized.pdf> (last visited Dec. 13, 2024).

productivity for the animal use industry, or both.<sup>85</sup>

There can be a blurry line between these three concepts. In some cases, animal rights and animal protection may support the same goal. For instance, animal rights and animal protection advocates celebrated the U.S. Preventing Animal Cruelty and Torture (PACT) Act. In other situations, an animal rights approach may look like a strong animal protection approach because of the need to soften the “rights language” due to courts and policymakers’ reluctance to advance animal rights. In other cases, animal rights and animal protection may disagree on the best path forward for animals. Animal rights and animal welfare have traditionally been treated as two incompatible strategies because animal welfare regulation does not seek to abolish animal exploitation.<sup>86</sup> Some argue that the rise of plant and cell-based alternatives to animal products will blur the rights-welfare division and push lawyers to advance animal rights while using both abolition and welfare-focused advocacy.<sup>87</sup>

Animal rights advocates see their approach as a necessary step in a rights-centered legal system to bring about a paradigm shift in the way that humans treat animals. Animal protection does not challenge the general understanding that only humans are legal persons with fundamental rights. Thus, animals face an unfair battle as human interests generally outweigh animal interests. Animals are still widely exploited, enforcement of animal welfare regulation is weak, the consumption of animal products is increasing globally,<sup>88</sup> and animals are becoming extinct on a mass scale, causing what has been called the “mutilation of the tree of life.”<sup>89</sup>

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85. *Animal Health and Welfare*, WORLD ORG. FOR ANIMAL HEALTH (WOAH), <https://www.woah.org/en/what-we-do/animal-health-and-welfare/> (last visited Jan. 29, 2024).

86. Gary L. Francione, *Animal Rights and Animal Welfare*, 48 RUTGERS L. REV. 397, 468 (1996).

87. Jareb A. Gleckel, Grace Brososky & Cheryl Leahy, *A New Age of Animal Law*, 99 N.Y.U. L. REV. ONLINE, 25, 101 (2024).

88. Hannah Ritchie, Pablo Rosado & Max Roser, *Meat and Dairy Production*, OUR WORLD IN DATA (2023), <https://ourworldindata.org/meat-production> (last visited Jan. 29, 2024).

89. Gerardo Ceballos & Paul R. Ehrlich, *Mutilation of the Tree of Life via Mass Extinction of Animal Genera*, 120 PROCS. NAT'L ACAD. SCI. 1 (2023).

The animal rights movement, and even more broadly, the animal protection movement,<sup>90</sup> has emerged from a wealth of theoretical work.<sup>91</sup> Some would date the emergence of a global movement to Peter Singer's book *Animal Liberation*, published in 1975, even though he very clearly adopted a utilitarian view in which animal interests count and not a rights-based approach.<sup>92</sup> Following *Animal Liberation*, the Animal Legal Defense Fund was established in 1979, and People for the Ethical Treatment of Animals (PETA) followed in 1980. In 1993, Peter Singer and Paola Cavalieri founded The Great Ape Project, urging the recognition of chimpanzees, bonobos, gorillas, and orangutans' fundamental rights.

Since then, there have been many advances globally to reduce animal suffering. In the 2000s, the European Union banned cosmetic ingredient testing, and the sale or import of seal products, and the National Institutes of Health in the U.S. stopped funding new experiments on chimpanzees. In 2012, scientists published the Cambridge Declaration on Consciousness, recognizing that many animals, like mammals, birds, and octopuses, have consciousness.<sup>93</sup> Recently, the U.K. included lobsters, crabs, and octopus in the Animal Welfare (Sentience) Act,<sup>94</sup> California banned the use of gestation crates for sows, battery cages, and veal crates in the state

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90. When we refer to the animal rights movement, we also include animal protection advocates who do not see protection as the final goal, but rather aim for something more like rights for animals in the long run.

91. See, e.g. PETER SINGER, *ANIMAL LIBERATION: A NEW ETHICS FOR OUR TREATMENT OF ANIMALS* (1st ed. 1975) (Although, Singer does not adopt a rights-based approach, *Animal Liberation* is an essential book for the AR movement); TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* (1983); *THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY*, (Paola Cavalieri & Peter Singer eds., 1994); GARY L. FRANCIONE, *ANIMAL, PROPERTY, AND THE LAW* (1995); GARY L. FRANCIONE, *RAIN WITHOUT THUNDER: THE IDEOLOGY OF THE ANIMAL RIGHTS MOVEMENT* (1996); STEVEN WISE, *RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS* (2000); *ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS*, (Cass R. Sunstein & Martha C. Nussbaum eds., 2004); SUE DONALDSON & WILL KYMLICKA, *ZOOPOLIS. A POLITICAL THEORY OF ANIMAL RIGHTS* (2011); ROBERT GARNER, *A THEORY OF JUSTICE FOR ANIMALS: ANIMAL RIGHTS IN A NONIDEAL WORLD* (2013). For most animal rights scholars and animal protection advocates, the sentience of animals is what entitles them to moral consideration.

92. Several centuries before the West, religious traditions such as Islam were concerned with animal welfare and kindness to animals. See Kristen Stilt, *Animals, in THE OXFORD HANDBOOK OF ISLAMIC LAW* 861, 864 (Anver M. Emon & Rumees Ahmed eds., 2015).

93. Doris Lin, *Historical Timeline of the Animal Rights Movement: Animal Activism's Major Milestones, Setbacks, and Accomplishments*, TREEHUGGER. SUSTAINABILITY FOR ALL (Mar. 27, 2021), <https://www.treehugger.com/historical-timeline-of-animal-rights-movement-127594>.

94. Animal Welfare (Sentience) Act 2022, c. 22 (Eng., Wales, Scot., N. Ir.).

and the sale in California of meat and animal products that come from animals treated in contradiction to the law.<sup>95</sup> In Latin America, Chile banned cosmetic testing on animals<sup>96</sup> and Colombia banned bullfighting.<sup>97</sup> Moreover, new research has emerged since the 2012 Cambridge Declaration on Consciousness, so scientists have published the New York Declaration on Animal Consciousness, recognizing a realistic possibility of consciousness in all vertebrates and many invertebrates, such as cephalopod mollusks, decapod crustaceans, and insects.<sup>98</sup>

Despite these advances, any attention a country has given to animals in the legal system has been through animal welfare and anticruelty provisions, not through recognizing basic and fundamental rights for animals. This is true even in, or especially in, countries that recognize some kind of animal interests in their constitutions.<sup>99</sup> This trend can be viewed as a parallel to the approach of a human right to a healthy environment explained above, as from an anthropocentric grounding, animal welfare regulations are premised on allowing humans to exploit animals for human benefit, and the human benefit is the greatest when the animals have good welfare. Thus stated, there is a human right to animal welfare. (There is a paradox in this, however, as the very large-scale exploitation of animals for human benefit interferes with a human right to a healthy environment, as discussed below).

In most countries, the law considers animals as property or, in the best case, as a special kind of property to distinguish them from inanimate objects.<sup>100</sup> Most legislation protecting animals punishes

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95. Prop. 12, § 3, approved Nov. 6, 2018, eff. Dec. 19, 2018. California's law was upheld by the Supreme Court. *See Nat'l Pork Producers Council v. Ross*, 98 U.S. 356 (2023).

96. Humane Society International, *Chile Outlaws Cosmetics Testing on Animals*, HUMANE SOC'Y INT'L (Dec. 21, 2023), <https://www.hsi.org/news-resources/chile-outlaws-cosmetics-testing-on-animals/> (last visited Jan. 30, 2024).

97. Stefano Pozzebon, Michael Rios & Heather Chen, *Colombia's Parliament Has Banned Bullfighting - Leaving Just Seven Nations That Still Permit It*, CNN NEWS (2024), <https://www.cnn.com/2024/05/28/americas/colombia-bullfight-ban-bill-passed-intl-hnk/index.html> (last visited Sep 18, 2024).

98. New York University, *The New York Declaration on Animal Consciousness*, (Apr. 19, 2024), <https://sites.google.com/nyu.edu/nydeclaration/declaration> (last visited Sep 18, 2024).

99. Jessica Eisen & Kristen Stilt, M.P.E.C.CO.L. *Animals, Protection Of* § 71 (2017).

100. Following the example of France (2015) and Colombia (2016), Portugal modified its Civil Code to recognize animals as sentient beings in 2017. *See, e.g.*, Helena Correia Mendonça, *Reconocimiento de La Sentiencia En El Código Civil Portugués*, 8 DA. DERECHO ANIMAL 1 (June 2017). Spain also modified its Civil Code in 2019. *See, e.g.*, CARLOS ANDRÉS CONTRERAS LÓPEZ, *Perspectives on the Recognition of Animal Sentience in Spain*, in THE LEGAL

animal cruelty, which is commonly limited to certain animals in certain settings and certain kinds of treatment. In the context of industrial factory farming, only some of the most harmful practices, such as battery cages and gestation crates, have been banned in a few countries and states.<sup>101</sup>

There are many strong and convincing theoretical arguments for why it is possible and even necessary for animals to have rights.<sup>102</sup> But what about rights in practice? The actual granting of rights to animals or acknowledging that animals have rights or even some rights for some animals? The track record is tentative and modest, as we discuss below in Part II. While interested in animals used by humans in a broad range of settings, one of the main focuses of animal rights has been industrial animal agriculture, which is also a source of many of the planetary ills that are now central to the RoN movement.<sup>103</sup>

### C. *Industrial Animal Agriculture*

Humans kill billions of animals every year for consumptive purposes. In the U.S. alone, more than 10,000,000,000 animals were killed for food in 2024,<sup>104</sup> and 99% of meat and animal products come from industrial animal agriculture.<sup>105</sup> By now, the scientific consensus is clear that these animals are sentient beings who can experience pain and joy. Cows are cognitively and socially intricate animals.<sup>106</sup> They can discriminate among objects, humans, and

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RECOGNITION OF ANIMAL SENTIENCE, PRINCIPLES, APPROACHES, AND APPLICATIONS (Jane Kotzmann & Marcelo Rodríguez Ferrere eds., 2024).

101. For example, Ohio banned battery cages for laying hens and California banned gestation crates for pregnant sows. See Landmark Ohio Animal Welfare Agreement Reached Among HSUS, Ohioans for Humane Farms, Gov. Strickland, and Leading Livestock Organizations, THE HUMANE SOCIETY OF THE UNITED STATES (2010), [https://web.archive.org/web/20150318003752/http://www.humanesociety.org/news/press\\_releases/2010/06/landmark\\_ohio\\_agreement\\_063010.html](https://web.archive.org/web/20150318003752/http://www.humanesociety.org/news/press_releases/2010/06/landmark_ohio_agreement_063010.html) (last visited Jan. 29, 2024); HEALTH & SAFETY § 25990 et seq, *supra* note 94.

102. Saskia Stucki, *Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights*, 40 OXFORD J. LEGAL STUD. 533 (2020).

103. RUTH HARRISON, ANIMAL MACHINES; THE NEW FACTORY FARMING INDUSTRY (1964); F. Bailey Norwood & Jayson L. Lusk, *Animal Farms, Animal Activism: The Emergence of Factory Farms and Its Opposition*, in COMPASSION, BY THE POUND: THE ECONOMICS OF FARM ANIMAL WELFARE 34, 37 (2011).

104. 2024 U.S. Animal Kill Clock, ANIMAL CLOCK (2024), <http://animalclock.org> (last visited Jan. 29, 2024).

105. Lindsay Walton & Kristen King King Jaiven, *Regulating CAFOs for the Well-Being of Farm Animals, Consumers, and the Environment*, 50 ENVTL. L. REP. (2020).

106. Lori Marino & Kristin Allen, *The Psychology of Cows*, 4 ANIMAL BEHAV. &

other cows, possess complex emotions, self-agency, and unique personalities, and develop strong mother-calf bonds.<sup>107</sup> Chickens are “just as cognitively, emotionally and socially complex as most other birds and mammals in many areas.”<sup>108</sup> They possess the capacities of self-control and self-assessment, communication, reason and logical inference, perception of time intervals, distinct personalities, complex emotions, and social behavior.<sup>109</sup> Sheep possess complex emotions and distinct personalities, the capacity to distinguish and identify the faces of other sheep and humans, and strong mother-offspring bonds.<sup>110</sup> Pigs are also cognitively and socially complex animals, similar to dogs and chimpanzees.<sup>111</sup> Moreover, researchers recommend that “fish”<sup>112</sup> be afforded the same level of welfare that warm-blooded vertebrates receive because they display cognitive and behavioral complexity and feel pain.<sup>113</sup>

Even though we have extensive research on these animals’ sentience, cognition, and social behavior, we violate animals’ most basic interests by manipulating their bodies and reproductive systems to breed them and confine them in overcrowded cages or pools far too small for their well-being. We systematically slaughter them as soon as they reach “finishing weight” in lines going by so fast that animals can be conscious when their throats are slit.<sup>114</sup>

Even the skeptic who may or may not cognitively accept animal sentience or value still ought to object—according solely to their own self-interest—to industrial animal agriculture. Industrial animal agriculture not only destroys the lives of sentient social beings, it also destroys nature itself—“nature,” which is not and has never

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COGNITION 474, 474 (2017).

107. *Id.* at 484, 490.

108. Lori Marino, *Thinking Chickens: A Review of Cognition, Emotion, and Behavior in the Domestic Chicken*, 20 ANIMAL COGNITION 127, 127 (2017).

109. *Id.* at 141.

110. Keith M. Kendrick et al., *Sheep Don’t Forget a Face*, 414 NATURE 165 (2001); Lori Marino & Debra Merskin, *Intelligence, Complexity, and Individuality in Sheep*, 25 ANIMAL SENTIENCE, no. 1, 2019, at 1, 16.

111. Lori Marino & Christina M. Colvin, *Thinking Pigs: A Comparative Review of Cognition, Emotion, and Personality in Sus Domesticus*, 28 INT’L J. COMPAR. PSYCH., 2015, at 1, 18.

112. “Fish” is not a taxonomic category; rather, it groups together diverse species that are quite different from one another. This broad classification reflects a lack of understanding of these species and a diminished moral concern for them as sentient individuals.

113. Culum Brown, *Fish Intelligence, Sentience and Ethics*, 18 ANIMAL COGNITION 1, 1 (2015).

114. Delcianna J. Winders & Elan Abrell, *Slaughterhouse Workers, Animals, and the Environment: The Need for a Rights-Centered Regulatory Framework in the United States That Recognizes Interconnected Interests*, 23 HEALTH & HUM. RTS. 21, 26 (2021).

been a “background” against which humans live out their lives, but inseparable from human life.<sup>115</sup> Numerous studies on the contribution of animal agriculture to greenhouse gas emissions (GHGs) have been sidelined in the face of far greater attention to the carbon majors: the big oil, gas, and coal producers. However, animal agriculture is responsible for approximately 16.5% of all GHGs<sup>116</sup> and responsible for more than half of food-related emissions.<sup>117</sup>

According to the Global Methane Assessment, livestock emissions from manure and enteric fermentation represent 32% of the global anthropogenic emissions of methane.<sup>118</sup> Methane is a greenhouse gas ten times more potent at warming the atmosphere than carbon dioxide,<sup>119</sup> responsible for 23% to 40% of total warming.<sup>120</sup> Unsurprisingly, scientists warn that it is necessary to introduce major changes in food production to stay below the international climate target of 1.5°C above pre-industrial levels.<sup>121</sup> To reduce GHGs, scientists propose measures that target food production and demand, such as adopting a plant-rich diet.<sup>122</sup> This means consuming less red meat and dairy, as these foods have a much higher carbon footprint.<sup>123</sup> However, scientists argue that a vegan diet is the most effective way to reduce GHG emissions, global acidification, eutrophication, land use, and water use.<sup>124</sup>

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115. See BONNIE NADZAM & DALE JAMIESON, *LOVE IN THE ANTHROPOCENE* (2015).

116. Richard Twine, *Emissions from Animal Agriculture—16.5% Is the New Minimum Figure*, 13 SUSTAIN. (2021). In 2017, the FAO estimated that 14.5% of global anthropogenic emissions come from livestock, but experts argue it is higher, *supra* note 29.

117. Xiaoming Xu et al., *Global Greenhouse Gas Emissions from Animal-Based Foods Are Twice Those of Plant-Based Foods*, 2 NATURE FOOD 724 (2021)

118. *Id.* at 9.

119. United Nations Environment Programme and Climate and Clean Air Coalition. *Global Methane Assessment: Benefits and Costs of Mitigating Methane Emissions*. Nairobi: United Nations Environment Programme 11 (2021), [https://www.ccacoalition.org/sites/default/files/resources//2021\\_Global-Methane\\_Assessment\\_full\\_0.pdf](https://www.ccacoalition.org/sites/default/files/resources//2021_Global-Methane_Assessment_full_0.pdf) (last visited Mar. 18, 2024).

120. Hannah Ritchie, *The Carbon Footprint of Foods: Are Differences Explained by the Impacts of Methane?*, OUR WORLD IN DATA (2020), <https://ourworldindata.org/carbon-footprint-food-methane> (last visited Mar 18, 2024).

121. Michael A. Clark et al., *Global Food System Emissions Could Preclude Achieving the 1.5° and 2°C Climate Change Targets*, 370 SCIENCE 705 (2020).

122. *Id.*

123. Ritchie, *supra* note 119.

124. Damian Carrington, *Avoiding Meat and Dairy Is ‘Single Biggest Way’ to Reduce Your Impact on Earth*, THE GUARDIAN, May 31, 2018, <https://www.theguardian.com/environment/2018/may/31/avoiding-meat-and-dairy-is-single-biggest-way-to-reduce-your-impact-on-earth> (last visited Mar 19, 2024); Joseph Poore & Thomas Nemecek, *Reducing Food’s Environmental Impacts through Producers and Consumers*, SCIENCE, June 2018, at 987.

Animal agriculture is also responsible for deforestation. Livestock requires nearly 80% of agricultural land yet produces only 17% of the world's calories and 38% of its protein.<sup>125</sup> Land clearing and deforestation contribute to climate change, releasing GHGs, particularly carbon dioxide and nitrous oxide, into the atmosphere.<sup>126</sup> Deforestation is mainly driven by beef production, which is responsible for 41% of tropical deforestation, while soybeans, which are primarily used to feed livestock,<sup>127</sup> and palm oil are responsible for 18%.<sup>128</sup> Mostly half of all tropical deforestation takes place in Brazil and Indonesia.<sup>129</sup> In the case of Brazil, cattle ranching is responsible for 72% of deforestation, and soybean production is a crucial driver of deforestation in the Amazon.<sup>130</sup> To avoid authorities tracing cattle to illegal deforestation, ranchers “cattle launder,” which involves selling cows raised on illegally deforested land to farms on regulated land. Moreover, cattle ranching has been linked to organized crime, violence, and seizure of Indigenous lands and forced displacement.<sup>131</sup>

Deforestation of land for animal agriculture also increases the risk of zoonotic disease and spillover because it brings humans and wild animals closer.<sup>132</sup> Industrial animal agriculture presents a significant risk of zoonotic disease, considering the scale of production and the practices employed, risking the health of workers and neighboring communities.<sup>133</sup> Moreover, our global food system is primarily driving biodiversity loss.<sup>134</sup> Scientists have warned that industrial animal agriculture is driving the sixth mass extinction of

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125. Ritchie & Roser, *supra* note 30.

126. Clark et al., *supra* note 120.

127. Only 6% of soybeans are used to feed humans. See, Hannah Ritchie, *Cutting down Forests: What Are the Drivers of Deforestation?*, OUR WORLD IN DATA (Feb. 2021), <https://ourworldindata.org/what-are-drivers-deforestation> (last visited Mar 19, 2024).

128. *Id.*

129. *Id.*

130. *Id.*

131. Dom Phillips, *Brazilian Meat Companies Linked to Farmer Charged with “massacre” in Amazon*, THE GUARDIAN, Mar. 3, 2020, <https://www.theguardian.com/environment/2020/mar/03/brazilian-meat-companies-linked-to-farmer-charged-with-massacre-in-amazon>.

132. Jeff Tollefson, *Why Deforestation and Extinctions Make Pandemics More Likely*, 584 NATURE 175 (2020); JEFF SEBO, SAVING ANIMALS, SAVING OURSELVES 48 (2022).

133. ANN LINDER ET AL., ANIMAL MARKETS AND ZOOONOTIC DISEASE IN THE UNITED STATES 26 (2023).

134. TIM G. BENTON ET AL., FOOD SYSTEM IMPACTS ON BIODIVERSITY LOSS 2 (2021), <https://www.unep.org/resources/publication/food-system-impacts-biodiversity-loss> (last visited Mar. 21, 2024).

animal species.<sup>135</sup> Research on the biomass of every class of living being on Earth has determined that 60% of all mammals are livestock, 36% are human, and only 4% are wild animals.<sup>136</sup> Humanity has wiped out 83% of all wild mammals.<sup>137</sup>

Industrial animal agriculture is a multi-billion-dollar industry expanding globally that is directly causing both the destruction of the environment (including lakes, rivers, and entire ecosystems at the heart of RoN interests) as well as causing extreme suffering to individual sentient animals. The animal rights movement has not been able to slow the upward trend of this industry, let alone defeat it.<sup>138</sup> An animal protection approach has achieved some success at the level of the welfare of the animals confined in these facilities, but the constitutionality of these anti-confinement laws in the U.S. is still a live question.<sup>139</sup> Some rights of nature NGOs, notably U.S.-based CELDF (Community Environmental Legal Defense Fund) with regard to Lake Erie, have also tried to tackle industrial animal farming indirectly, but became entangled in complexities of U.S. federal, state, and local law instead.<sup>140</sup> In Part II, we examine both movements to determine if a strategic combined approach that draws upon the strengths of each and attempts to distance the weaknesses could more successfully confront this particular aspect of the planetary crisis.

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135. Ian Johnston, *Industrial Farming Is Driving the Sixth Mass Extinction of Life on Earth, Says Leading Academic*, THE INDEPENDENT, Aug. 27, 2017, <https://www.independent.co.uk/climate-change/news/mass-extinction-life-on-earth-farming-industrial-agriculture-professor-raj-patel-a7914616.html> (last visited Oct 11, 2024).

136. Damian Carrington, *Humans Just 0.01% of All Life but Have Destroyed 83% of Wild Mammals – Study*, THE GUARDIAN, May 21, 2018, <https://www.theguardian.com/environment/2018/may/21/human-race-just-001-of-all-life-but-has-destroyed-over-80-of-wild-mammals-study> (last visited Mar 19, 2024).

137. *Id.*

138. The acquittal in the Smithfield trials by DxE activists may be the only real win to date. See Andrew Jacobs, *Animal Rights Activists Are Acquitted in Smithfield Piglet Case*, N.Y. TIMES, Oct. 8, 2022, <https://www.nytimes.com/2022/10/08/science/animals-rights-piglets-smithfield.html> (last visited Mar 13, 2024).

139. See, e.g., *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023); Agence France-Presse in Berlin, Germany Approves Draft Law to End Mass Culling of Male Chicks, THE GUARDIAN, Jan. 20, 2021, <https://www.theguardian.com/world/2021/jan/20/germany-approves-draft-law-to-end-mass-culling-of-male-chicks> (last visited Mar 13, 2024).

140. Marsha J. Moutrie, *The Rights of Nature Movement in the United States: Community Organizing, Local Legislation, Court Challenges, Possible Lessons and Pathways*, 10 ENVNT. & EARTH L.J. 5, 38 (2020)

### III. RIGHTS OF NATURE AND ANIMAL RIGHTS—COMPARATIVE STRENGTHS AND WEAKNESSES

Each of these two movements, by itself, falls short in its ability to successfully address industrial animal agriculture in several important ways. Both movements have their fair share of critics, but the criticisms differ in terms of volume and perspective, as we detail below. To date, these movements have not been allies, or, at best, have simply ignored one another. With the invitation offered by this Article, we hope that this will soon change.

In this Part, we compare and contrast rights of nature and animal rights in terms of (a) pace of growth, which also is indicative of general acceptance; (b) theoretical and practical coherence and the degree to which there is a concerted goal and even canon; (c) the range of species that are of concern to each; (d) the perception of each in terms of inclusivity and avoidance of approaches that are seen as racist and problematic for other aspects of non-inclusiveness; (e) and the tangible successes in terms of litigation and legislation. An approach that combines the strengths of each movement is not only possible but is necessary both in terms of achieving their own goals (whether articulated broadly or specifically) and, more importantly, to slow down and reverse our collective trajectory of planetary degradation and devastation.

#### A. *Pace of Growth and General Acceptance*

Both the RoN and animal rights movements push for recognizing legal rights to nonhumans such as animals, rivers, or forests, thus challenging the law's anthropocentrism. However, RoN is growing rapidly worldwide, while the animal rights movement is advancing much slower. The reasons we surmise for this distinction have to do with all the following sections, (b)-(e). But there might be one reason above all that RoN has taken off around the world and on every continent, across religious traditions, and across economic statuses, while animal rights advocates watch this movement whiz past them. That reason is the consequences of accepting a RoN versus the consequences of accepting an animal rights approach. RoN's advantage is its vagueness in terms of tangible effects (which is also a criticism, as discussed below).

To focus for now on the benefit of vagueness, an individual does not necessarily assume that by embracing RoN, they are asked to make any specific changes in their own behavior. Perhaps they

should drive less, use fewer resources to heat and cool their homes, use less water, and the like, but none of this is a must-do. And, to the extent that anyone takes up these changes in their personal life, there is also the benefit that they correlate strongly with behavior that individuals see as in their own self-interest.

In contrast, animal rights advocates ask humans, in the words of the People for the Ethical Treatment of Animals (PETA), to accept that “animals are not ours to experiment on, eat, wear, use for entertainment, or abuse in any other way.”<sup>141</sup> Choices that humans have made are put on the table front and center in clear and unambiguous terms. Accept animal rights? Stop eating animals, and that includes animal products such as dairy and eggs. Accept animal rights? Stop buying leather, wool, and silk. It is simply a much bigger ask. This bigger ask has not gone unnoticed by courts, which often use the slippery slope argument to dismiss animal rights cases. For example, in elephant Happy’s habeas corpus case, discussed below, the New York Court of Appeals based its decision, in part, on its concerns that granting Happy rights could disrupt property rights, agriculture, medical research, pet ownership, the use of service animals, and the use of animals for other work.<sup>142</sup>

### B. *Theoretical and Practical Coherence*

Animal rights has been theorized for decades, and has specific goals, but is still considered far outside the mainstream. The animal rights movement, and even more broadly, the animal protection movement, has emerged from a wealth of theoretical work.<sup>143</sup> While interested in animals used by humans in a broad range of

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141. People for the Ethical Treatment of Animals (PETA), PETA, <https://www.peta.org/> (last visited Mar 21, 2024).

142. *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555 (N.Y. 2022).

143. See, e.g. PETER SINGER, *ANIMAL LIBERATION. A NEW ETHICS FOR OUR TREATMENT OF ANIMALS* (1st ed. 1975) (Although, Singer does not adopt a rights-based approach, *Animal Liberation* is an essential book for the AR movement); TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* (1983); *THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY*, (Paola Cavalieri & Peter Singer eds., 1994); GARY L. FRANCIONE, *ANIMAL, PROPERTY, AND THE LAW* (1995); GARY L. FRANCIONE, *RAIN WITHOUT THUNDER: THE IDEOLOGY OF THE ANIMAL RIGHTS MOVEMENT* (1996); STEVEN WISE, *RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS* (2000); *ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS*, (Cass R. Sunstein & Martha C. Nussbaum eds., 2004); SUE DONALDSON & WILL KYMLICKA, *ZOOPOLIS. A POLITICAL THEORY OF ANIMAL RIGHTS* (2011); ROBERT GARNER, *A THEORY OF JUSTICE FOR ANIMALS: ANIMAL RIGHTS IN A NONIDEAL WORLD* (2013). For most animal rights scholars and animal protection advocates, the sentience of animals is what entitles them to moral consideration.

settings, one of the main focuses of animal rights and animal protection is industrial animal agriculture. In fact, advocates note, with some consternation depending on their area of focus, that it seems that most of the current donor funds are specifically for farmed animal protection. Indeed, a study conducted in 2021 on resource allocation in effective altruism indicated that farm animal welfare is one of the most funded areas.<sup>144</sup>

RoN has gained the support of constitutional drafters, judges, legislators, academics,<sup>145</sup> and the general public, but it lacks a theoretical infrastructure generally accepted by rights of nature advocates and clear, specific aims. Scholars stress RoN's vagueness, the lack of limiting principles, the problem with environmental protection becoming judicialized, and arbitrary outcomes in court.<sup>146</sup> Environmental law professor Noah Sachs exemplifies RoN's vagueness with the language used in the U.S. ordinances that recognize nature's right to exist or flourish,<sup>147</sup> arguing that this language fails to guide policymakers, industry, and communities.<sup>148</sup> In other words, RoN do not tell people how to conform their behavior to nature's legal rights.<sup>149</sup> Thus, judges would have to decide technical issues related to economic development, land use, and environmental protection.<sup>150</sup> Similarly, a recent criticism of RoN is that it does not offer a toolkit or guidance to transition from capitalism, but rather, its implementation could lead to different outcomes depending on the ideological or political view of those implementing RoN.<sup>151</sup>

Additionally, Sachs also argues that RoN are impossible to apply

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144. Benjamin Todd, *How Are Resources in Effective Altruism Allocated across Issues?*, 80,000 HOURS (2021), <https://80000hours.org/2021/08/effective-altruism-allocation-resources-cause-areas/> (last visited Mar 19, 2024).

145. See, e.g., Joshua J. Bruckerhoff, *Giving Nature Constitutional Protection: A Less Anthropocentric Interpretation of Environmental Rights*, 86 TEX. L. REV. 615 (2008); Huneeus, *supra* note 74; Kekek Jason Stark, *Bbezhiqwan Ji-Ezhi-Ganawaabandiyang: The Rights of Nature and Its Jurisdictional Application for Anishinaabe Territories*, 83 MONTANA L. REV. 79 (2022); Elizabeth Kronk Warner, & Jensen Lillquist, *Laboratories of the Future: Tribes and Rights of Nature*, 111 CALIF. L. REV. 325 (2023).

146. Noah M. Sachs, *A Wrong Turn with the Rights of Nature Movement*, 136 GEO. ENVTL. L. REV., 3–4 (2023).

147. *Id.* at 20.

148. *Id.* at 21.

149. *Id.* at 19.

150. *Id.* at 25.

151. Matthias Petel, *The Illusion of Harmony: Power, Politics, and Distributive Implications of Rights of Nature*, TRANSNAT'L ENVTL. L. 1, 1 (2024).

because they are limitless, including all living and non-living entities.<sup>152</sup> Similarly, scholars Mauricio Guim and Michael Livermore stress that extending rights to natural phenomena and nonhuman biological aggregates such as species or ecosystems renders RoN incoherent, relegating its role to the symbolic.<sup>153</sup>

Another challenge is defining nature itself,<sup>154</sup> determining who or what has the right and who can speak for nature.<sup>155</sup> There is also a fear of change surrounding RoN. Scholars warn that RoN will reduce humans' constitutional and statutory rights in favor of the rights of natural entities<sup>156</sup> and “drive systemic change not just in environmental law, but in all of law and governance across the planet.”<sup>157</sup>

### C. *Range of Species and Entities of Concern*

On a general level, the issue of the species of concern can be stated simply. Insofar as RoN's roots trace back, in part, to the environmental movement, it has inherited an attention to animals at the level of species, particularly endangered species. Animal rights advocates tend to focus on all animals but particularly the neglected animals, including individual animals, whose species provides them no grand attention: the chicken in the factory farm, the beagle in the research lab, the elephant in the zoo.

As a result, animal rights advocates view a RoN framework as inherently limited to endangered species or at least wildlife instead of dealing with the immense suffering caused to animals exploited on factory farms.<sup>158</sup> Similarly, RoN's stance on managing invasive species concerns animal rights advocates. The issue of invasive species is not uniquely a problem for RoN but a problem that environmental law and any environmentally focused movement must confront. It is a complicated issue that does not even have a one-size-fits-all solution within the animal right movement because “invasive” animals can hurt and cause suffering to other animals, creating a conflict of rights between two individual animals.

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152. Sachs, *supra* note 146, at 27.

153. Mauricio Guim & Michael A Livermore, *Where Nature's Right Go Wrong*, 107 VA. L. REV. 1347, 1419 (2021).

154. JAMIESON, *supra* note 47, at 2.

155. Stilt, *supra* note 28, at 284.

156. Sachs, *supra* note 146, at 4.

157. *Id.* at 51.

158. This observation is based on questions and comments the authors have received at over twenty presentation on the topic since 2021.

Going beyond animal-animal conflicts, conflicts can also emerge “between” animals and other parts of nature. If a river is granted rights, does this mean that fish have rights and fishing is banned? Or does it mean that the river’s rights will lead to cleaner water, for the benefit of humans who drink it and fish who live in it—and for the humans who intend to catch and consume those healthier fish. Frequently, in judgments on the rights of rivers, courts aim to improve the river’s condition so humans can use the river to navigate and fish.<sup>159</sup> The suffering of the fish is not considered among the arguments for recognizing the river’s rights.

Critics of environmental ethics have argued that defending an idyllic or pristine vision of nature through a RoN framework ignores the severe suffering of animals in nature, instead of acknowledging that animals’ basic interests are not met “in nature.” Animals in “the wild” suffer enormously from premature and painful deaths; disease; lack of food, water, and shelter; extreme temperatures; and other natural and human-caused disasters.<sup>160</sup> Some scholars have proposed intervening in nature to reduce animal suffering.<sup>161</sup> Considering nature as idyllic or pristine can lead to rejecting any intervention in nature that could help wild animals.<sup>162</sup> The concern about the idyllic view of nature can be easily transferred to RoN. This approach focuses on protecting nature as a subject of rights, including its processes and functions, which can cause great suffering to animals. However, RoN can also support interventions in nature to decontaminate, help ecosystems recover and even protect animals, as occurred with marine turtles in Panama, a case examined in Part IV.

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159. Stilt, *supra* note 28, at 284.

160. Mark Sagoff, *Animal Liberation and Environmental Ethics: Bad Marriage, Quick Divorce*, 22 OSGOODE HALL L.J. 297, 302 (1984).

161. Oscar Horta, *Debunking the Idyllic View of Natural Processes: Population Dynamics and Suffering in the Wild*, 17 TÉLOS 73 (2010).

162. *Id.*

#### D. Inclusivity

The animal rights movement has been accused of being racist,<sup>163</sup> elitist,<sup>164</sup> fatphobic,<sup>165</sup> ableist,<sup>166</sup> colonialist,<sup>167</sup> and pro-carceral.<sup>168</sup> It has also been accused of objectifying women.<sup>169</sup> There are bases for these accusations, and indeed, there is a strong current in the animal rights movement that seeks to both acknowledge and repair these positions and perceptions.<sup>170</sup> However, a common strategy within the movement has been to use arguments comparing how humans exploit and abuse animals to how white people exploited, abused, and enslaved Black people and genocide victims.<sup>171</sup> Regarding this strategy, scholar Bénédicte Boisseron argues that:

[R]eplacing the human-animal divide with a debate about a race-animal divide that frames animal subjugation as analogous to black slavery is a perverted form of re-compartmentalization where the black is once again removed from the human species. The main argument here is that, though one should not ignore entangled forms of oppression, analogizing can be harmful when

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163. Nonhuman Rights Project, Inc., ex rel. Happy v. Breheny, 136 HARV. L. REV. 1292 (2023).

164. Lisa Betty, *Veganism\* Is in Crisis.*, MEDIUM (Feb. 20, 2021), <https://lbbetty1.medium.com/veganism-is-in-crisis-36f78fa9a4b9> (last visited Jan. 23, 2024).

165. Jasmin Singer, *I'm With Lizzo: Why the Vegan Anti-Fat Bias Needs to End Now*, VEGNEWS (Aug. 16, 2021), <https://vegnews.com/vegan-health-wellness/veganism-and-body-positivity> (last visited Jan. 24, 2024); Corey Lee Wrenn, *Fat Vegan Politics: A Survey of Fat Vegan Activists' Online Experiences with Social Movement Sizeism*, 6 FAT STUDIES 90 (2017).

166. Sunaura Taylor, *On Ableism and Animals*, THE NEW INQUIRY, (May 2017), <https://thenewinquiry.com/on-ableism-and-animals-2/> (last visited Jan. 24, 2024).

167. Betty, *supra* note 164.

168. JUSTIN MARCEAU, BEYOND CAGES: ANIMAL LAW AND CRIMINAL PUNISHMENT (2019).

169. Carol Adams, *PETA and a Pornographic Culture. A Feminist Analysis of "I'd Rather Go Naked than Wear Fur."* 8 FEMINISTS FOR ANIMAL RTS., Fall-Winter 1994-1995, at 1.

170. Aryenish Birdie, for example, is the founder and executive director of Encompass, an organization working to foster racial diversity and inclusivity in the farmed animal protection movement.

171. MARJORIE SPIEGEL, THE DREADED COMPARISON: HUMAN AND ANIMAL SLAVERY (1996); CHARLES PATTERSON, ETERNAL TREBLINKA: OUR TREATMENT OF ANIMALS AND THE HOLOCAUST (2002); Danielle Wright, *Another PETA Exhibit Compares Animal Cruelty to Slavery*, BET, (July 21, 2011), <https://www.bet.com/article/jwfy24/another-peta-exhibit-compares-animal-cruelty-to-slavery>; JTA, *EU Court Rejects PETA Appeal on Holocaust Ad*, THE JERUSALEM POST, Nov. 8, 2012, <https://www.jpost.com/jewish-world/jewish-news/eu-court-rejects-peta-appeal-on-holocaust-ad>; Justine Calma, *PETA Compared 'Speciesism' to Racism in Allegedly Banned Super Bowl Ad*, THE VERGE (Feb. 3, 2020), <https://www.theverge.com/2020/2/3/21120970/peta-banned-nfl-super-bowl-ad-colin-kaepernick> (last visited Jan. 23, 2024).

it is meant to serve one cause over the other; when its sole function is, for example, to serve the animal cause by instrumentalizing the black cause.<sup>172</sup>

These comparisons instrumentalize one cause for the benefit of the other, equate very different histories and struggles, suggest the differences between white and Black people are analogous to the differences between humans and nonhuman animals,<sup>173</sup> and treat racism as an issue of the past as if animals were “the new black.”<sup>174</sup>

The animal rights movement justifiably holds as a basic tenet that ethical veganism is the alternative to animal use and exploitation. But this message has not always resonated with or translated well across cultures and demographic groups. Scholars such as Lisa Betty have criticized “white veganism,”<sup>175</sup> which represents vegans as white, wealthy, thin, healthy, and able-bodied<sup>176</sup> and ignores Black, Brown, and Indigenous cultures practicing veganism and their potent vegan and animal rights activism globally.<sup>177</sup> White veganism is exclusionary, on the one hand, to vegans who do not fall

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172. BÉNÉDICTE BOISSERON, *AFRO-DOG: BLACKNESS AND THE ANIMAL QUESTION* xiii (2018).

173. Nonhuman Rights Project, Inc., ex rel. Happy v. Breheny, *supra* note 163, at 1297.

174. Che Gossett, *Blackness, Animality, and the Unsovereign*, VERSO (Sep. 8, 2015), <https://www.versobooks.com/blogs/news/2228-che-gossett-blackness-animality-and-the-unsovereign> (last visited Jan. 23, 2024); Nonhuman Rights Project, Inc., ex rel. Happy v. Breheny, *supra* note 163.

175. Betty, *supra* note 164.

176. Singer, *supra* note 165.

177. See Earthling Liberation Kollektive, Margaret Robinson - Indigenous veganism: Feminist Natives Eat Tofu - Human Rights are Animal Rights, YOUTUBE (2014), <https://www.youtube.com/watch?v=ahD6uz1mYJA> (last visited Mar 12, 2024); Katherine Compitus, *What Does the BLM Movement Have to Do With Animal Rights?*, PSYCHOLOGY TODAY (Aug. 31, 2020), <https://www.psychologytoday.com/us/blog/zooeyia/202008/what-does-the-blm-movement-have-do-animal-rights> (last visited Mar 12, 2024); Margaret Robinson, *Veganism and Mi'kmaq Legends*, in COLONIALISM AND ANIMALITY. ANTI-COLONIAL PERSPECTIVES IN CRITICAL ANIMAL STUDIES 107 (Kelly Struthers Montford & Chloë Taylor eds., 2020); Betty, *supra* note 164; Christopher “Soul” Eubanks, *As a Black Man, I Felt Uncomfortable Becoming an Animal Activist*, SENTIENT MEDIA (Mar. 1, 2021), <https://sentientmedia.org/as-a-black-man-i-felt-uncomfortable-becoming-an-animal-activist/> (last visited Jan. 24, 2024); Jamila Alfred, *5 Black Vegan Activists Who Are Transforming Their Communities*, AFROVEGAN SOCIETY (2022), <https://www.afrovegansociety.org/post/5-black-vegan-activists-who-are-transforming-their-communities> (last visited Mar 12, 2024); Isaias Hernandez, *What Is White Veganism?*, QUEER BROWN VEGAN (Jan. 1, 2022), <https://queerbrownvegan.com/what-is-white-veganism/> (last visited Mar 12, 2024); Kitty Block, *Exploring the Rich, Overlooked History of Black Animal Activism*, A HUMANE WORLD BLOG (Feb. 23, 2023), <https://www.humanesociety.org/blog/exploring-rich-overlooked-history-black-animal-activism> (last visited Mar. 12, 2024); Meganne Natale, *5 Black Animal Activists Who Inspire Us*,

into these categories and, on the other hand, to individuals who would like to adopt a plant-based diet but face limitations due to food injustice, environmental racism, or poverty.<sup>178</sup> Instead of supporting inclusivity to attract different people to support animal rights, white veganism alienates people who do not feel represented by these images and messages.

The animal rights and the animal protection movement have also been accused of being pro-carceral. Indeed, a crucial campaign within these movements has focused on passing laws imposing higher penalties for cruelty towards animals. For instance, both animal rights and animal protection NGOs celebrated the Preventing Animal Cruelty and Torture (PACT) Act, which allows acts of animal cruelty to be charged as federal felonies.<sup>179</sup> Law Professor Justin Marceau has identified this trend as carceral animal law<sup>180</sup> and warns that contrary to the standard narrative, “more prosecutions and longer sentences are not paving a path to animal rights.”<sup>181</sup>

The RoN movement, coming at a different time and from different corners than the animal rights movement, has far fewer areas of attack on inclusivity grounds. RoN is generally without the negative perceptions outlined here for animal rights but does have

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WORLD ANIMAL PROTECTION US (2023), <https://www.worldanimalprotection.us/latest/blogs/5-black-animal-activists-who-inspire-us/> (last visited Mar 12, 2024); Isaiah Reynolds, *Black Communities Are Leading a Vegan Revolution. Food Insecurity and Systemic Obstacles Still Stand in Their Way.*, BUSINESS INSIDER (Feb. 27, 2023), <https://www.businessinsider.com/black-americans-vegan-diets-food-deserts-2023-2> (last visited Mar 12, 2024); Victoria Uwumarogie, *Black Americans Are Going Vegan at a Higher Rate than Anyone Else. Here's Why and How You Can Do It Too.*, ESSENCE (July 12, 2023), <https://www.essence.com/lifestyle/black-americans-vegan/> (last visited Mar 12, 2024); *Este Mes de la Historia Negra, Celebramos a 7 Latinas Veganas Negras que Están Cambiando el Mundo* [This Black History Month, Let's Celebrate 7 Black Vegan Latinas Who Are Changing the World], PETA LATINO (2023), <https://www.petalatino.com/blog/este-mes-de-la-historia-negra-celebremos-a-7-afrolatinas-vegan-que-est-est-est-cambiando-el-mundo/> (last visited Mar. 12, 2024).

178. Betty, *supra* note 164; Elie Gordon, *Reminder: The Roots of Veganism Aren't White*, ATMOS (Jan. 14, 2021), <https://atmos.earth/veganism-history-instagram-culture/> (last visited Jan. 23, 2024).

179. See Danny Prater, *Trump Signs Pro-Animal PACT Act into Law*, PETA (Apr. 23, 2024), <https://www.peta.org/blog/pact-act-signed-into-law/> (last visited Jan. 23, 2024); Kitty Block & Sara Amundson, *BREAKING NEWS: PACT Act Passes U.S. Senate Two Weeks after Clearing House; Bill Now Awaits Trump's Signature*, THE HUMANE SOC'Y OF THE U.S. (Nov. 5, 2019), <https://www.humanesociety.org/blog/breaking-news-pact-act-passes-us-senate-two-weeks-after-clearing-house-bill-now-awaits-trumps> (last visited Jan. 24, 2024).

180. MARCEAU, *supra* note 168.

181. Justin Marceau, *Palliative Animal Law: The War on Animal Cruelty*, 134 HARV. L. REV. 250, 252 (2021).

its critics for significant reasons. Scholars criticize RoN for appropriating Indigenous worldviews and being detrimental to their sovereignty claims. Scholar Mihnea Tănăsescu argues that mixing Western and Indigenous philosophy in RoN has not always been beneficial to Indigenous peoples because central aspects of their philosophies have been omitted, such as the notion of reciprocity.<sup>182</sup> Particularly, scholar Virginia Marshall criticizes granting rights to nature instead of recognizing Indigenous peoples' sovereignty over their lands.<sup>183</sup> Marshall argues that the RoN movement "acknowledges the 'wisdom' of Aboriginal peoples of Australia but seeks to establish the rights of nature ideology as an environmental norm – creating a new tool of colonization which would decouple Indigenous ontological relationships and laws and the inherent obligations to manage and care for the environment."<sup>184</sup>

In Google searches for "rights of nature" and "racism," and "animal rights" and "racism," the results indicate that racism in the animal rights movement has been a significant and widely discussed issue. The results include accounts of Black activists experiencing racism in the movement<sup>185</sup> and how their advocacy has been historically overlooked,<sup>186</sup> how the animal rights movement has compared itself to Black Life Matters,<sup>187</sup> and criticism of animal rights campaigns supporting white normativity.<sup>188</sup> In the same search but for "rights of nature" and "racism," the results acknowledge the historical problem with environmental racism and white environmentalism,<sup>189</sup> which predates rights of nature; how rights of nature, as

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182. Tănăsescu, *supra* note 35, at 431.

183. Virginia Marshall, *Removing the Veil from the "Rights of Nature": The Dichotomy between First Nations Customary Rights and Environmental Legal Personhood*, 45 AUSTL. FEMINIST L.J. 233, 233 (2019).

184. *Id.* at 234.

185. Eubanks, *supra* note 177.

186. Block, *supra* note 177.

187. Compitus, *supra* note 177; Summer Anne Burton, *Stop Comparing Black Lives Matter to Animal Rights*, MEDIUM (June 4, 2020), <https://tenderly.medium.com/stop-comparing-black-lives-matter-to-animal-rights-59a640d741f1>.

188. Luis C. Rodrigues, *White Normativity, Animal Advocacy and PETA's Campaigns*, 20 ETHNICITIES 71 (2020).

189. Carmen Gonzalez & Rebecca Bratspies, *The Unbearable Whiteness of Environmental Law*, CENTER FOR PROGRESSIVE REFORM (Nov. 1, 2023), <https://progressivereform.org/cpr-blog/the-unbearable-whiteness-of-environmental-law/> (last visited Mar 18, 2024).

a new movement, must engage Indigenous and critical race scholarship to reject environmental racism;<sup>190</sup> and how the rights of nature movement in the U.S. is focusing on local communities' decision-making, which can help bridge the gap between racial justice and environmentalism.<sup>191</sup> Perhaps because it is a newer movement compared to the animal rights movement and is working to a certain extent alongside Indigenous peoples and local and rural communities in different regions, the rights of nature movement does not share the same fraught relationship with racism as the animal rights movement and can learn from the experiences of the animal rights movement.

#### E. *Winning and Losing*

Determining what qualifies as a win in strategic litigation is complex and somewhat easier in legislative efforts. Animal rights cases may have more wins in the court of public opinion than wins in real courts.<sup>192</sup> Habeas corpus cases for great apes and elephants are engaging stories for the media and tend to elicit sympathy for a specific animal such as chimp Cecilia, orangutan Sandra, or elephant Happy. Media attention can shine a light on the suffering of captive animals and the ethics of zoo captivity. Judicial wins are a different story. There are few victories globally, and courts worry about the slippery slope effect, as Happy's case demonstrates.

In contrast, the RoN movement has secured important wins in high courts in Latin America and South Asia and important legislative advances in Aotearoa/New Zealand, Australia, and, more recently, also in Europe. Ecuador may soon be joined by several countries in terms of constitutional RoN. Anyone placing bets would be

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190. Erin Fitz-Henry, *Multi-Species Justice: A View from the Rights of Nature Movement*, 31 ENVTL. POL. 338 (2022).

191. Erin Fitz-Henry, *The 'Rights of Nature' in an Age of White Supremacy?*, 41 ENVTL. & PLAN. C: POL. & SPACE 1066 (2023).

192. A case can be lost in court but create favorable media attention. Even adverse media attention can end up being positive for a campaign or animal rights NGO. In the U.S., the SeaWorld orcas, Naruto the black macaque, and Justice the horse cases lost in court but received significant media attention. See *SeaWorld Sued over "Enslaved" Killer Whales*, BBC, (Feb. 7, 2012), <https://www.bbc.com/news/world-us-canada-16920866> (last visited Jan. 30, 2024); Meagan Flynn, *Monkey Loses Selfie Copyright Case. Maybe Monkey Should Sue PETA, Appeals Court Suggests*, WASH. POST, (Apr. 24, 2018), <https://www.washingtonpost.com/news/morning-mix/wp/2018/04/24/monkey-loses-selfie-copyright-case-maybe-monkey-should-sue-peta-appeals-court-suggests/> (last visited Jan. 30, 2024); Brad Mielke & Pavni Mittal, *A Horse Named Justice Sues Former Owner for More than \$100,000 for Neglect*, ABC NEWS, May 2, 2018, <https://abcnews.go.com/US/horse-named-justice-sues-owner-100000-neglect/story?id=54880051> (last visited Jan. 30, 2024).

advised to join up with RoN. Understanding the reasons behind RoN's advantage is a challenge that calls for its own article.

This section compares both movements' tangible successes in litigation and legislation. It first examines global animal rights cases. Then, it examines Happy's case to demonstrate how a compelling animal rights case can still be dismissed due to the court's fear of the slippery slope affecting industrial animal agriculture. Finally, it examines global rights of nature cases.

### 1. *Global Animal Rights Cases*

There are few cases worldwide that recognize animal rights, and none of them grant fundamental rights or legal personhood to farmed animals.<sup>193</sup> In orangutan Sandra's case, Argentine NGO AFADA filed a writ of habeas corpus requesting Sandra's transfer to a Brazilian sanctuary in 2014, which the lower court and the Court of Appeals rejected.<sup>194</sup> AFADA filed an appeal to the Federal Criminal Court of Cassation, which recognized as obiter dictum that Sandra is a subject of rights.<sup>195</sup> This was the first time a court recognized an animal as a subject of rights in Argentina.<sup>196</sup> However, the Court did not grant the habeas or order Sandra's transfer to a sanctuary; it ordered the competent Court to hear the case.<sup>197</sup>

AFADA instead filed a protective legal action (*acción de amparo*) on Sandra's behalf, which Judge Liberatori granted in 2015, recognizing Sandra as a nonhuman person.<sup>198</sup> The Court of Appeals

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193. The Indian cases explained below involved horses and cows, but these cases symbolically used the language of rights to order the enforcement of animal welfare regulations during transportation. There are no habeas corpus cases regarding farmed animals to our knowledge.

194. Gustavo Federico de Baggis, *Solicitud de Hábeas Corpus Para La Orangután Sandra. Comentario a Propósito de La Sentencia de La Cámara Federal de Casación Penal de La Ciudad Autónoma de Buenos Aires, de 18 de Diciembre de 2014* [Request for Habeas Corpus for the Orangutan Sandra. Commentary on the Sentence of the Federal Court of Criminal Appeals of the Autonomous City of Buenos Aires, December 18, 2014], 6 DA. DERECHO ANIMAL 2 (2015).

195. Cámara Federal de Casación Penal [CFCP] [Federal Criminal Court of Cassation of Argentina], 18/12/2014, "Orangutana Sandra s/ Recurso de Casación s/ Habeas corpus," case no. 2603 of 2014 (Arg.).

196. de Baggis, *supra* note 194, at 6.

197. Steven Wise, *Update on the Sandra Orangutan Case in Argentina*, NONHUMAN RTS. BLOG (Mar. 6, 2015), <https://www.nonhumanrights.org/blog/update-on-the-sandra-orangutan-case-in-argentina/>; Cecilia Domínguez, *El Habeas Corpus*, in PROTECCIÓN JURÍDICA DE LOS ANIMALES NO HUMANOS 253, 283 (Lorena Bilicic ed., 2020).

198. Juzgado en lo Contencioso Administrativo y Tributario N° 4 de la ciudad de Buenos Aires [JCAT] [Court for Contentious, Administrative, and Tax Matters no 4 of the

overturned this recognition but upheld the mandate ordering the local government to ensure appropriate living conditions and enrichment for Sandra.<sup>199</sup> Judge Liberatori pushed for Sandra's transfer to Florida's Center for Great Apes in 2019 after living alone for twenty-five years.<sup>200</sup> The media was fascinated with Sandra's story, presenting her as the first nonhuman person recognized by a court.<sup>201</sup>

Chimp Cecilia's case is the world's only successful habeas corpus case of the many that have been filed.<sup>202</sup> NGO AFADA filed a habeas on behalf of Cecilia, who lived alone in a cement cage in the Mendoza Zoo in Argentina.<sup>203</sup> The judge ruled that Cecilia is a legal person and a subject of fundamental rights,<sup>204</sup> ordering her transfer to Brazil's Great Ape Sanctuary.<sup>205</sup> The zoo did not oppose the writ, contributing to a fast trial. Cecilia currently lives in the Great

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city of Buenos Aires], 21/10/2015, "Asociación de Funcionarios y Abogados por los Derechos de los Animales y otros c. GBCA sobre amparo," case no. A2174-2015/0, at 4, 9 (Arg.).

199. Sala I del Fuero Contencioso Administrativo y Tributario de la ciudad de Buenos Aires [FCAT] [Chamber of Appeals in Contentious, Administrative, and Tax Matters of the city of Buenos Aires], 14/6/2016, "Orangutana Sandra-Sentencia de Cámara- Sala I del Fuero Contencioso Administrativo y Tributario CABA," 25 (Arg.). See, Graciela Regina Adre, *El Amparo En La Justicia Argentina. ¿La Vía Idónea Para El Reconocimiento de Los Derechos de Los ANH?*, 9 DA DERECHO ANIMAL, 138, 147 (2018).

200. Enric González, *Sandra, La Orangutana Que Se Convirtió En Persona*, EL PAÍS, (June 22, 2019), [https://elpais.com/elpais/2019/06/17/eps/1560778649\\_547496.html](https://elpais.com/elpais/2019/06/17/eps/1560778649_547496.html).

201. See, e.g., *Id.*; Guillermo Altares, *La Orangutana Sandra y Otras "Personas No Humanas"*, EL PAÍS, (Dec. 18, 2015), [https://elpais.com/elpais/2015/12/17/ciencia/1450369696\\_771294.html](https://elpais.com/elpais/2015/12/17/ciencia/1450369696_771294.html); Antonio Cerrillo, *La Nueva Vida de Sandra*, LA VANGUARDIA, (Oct. 7, 2019), <https://www.lavanguardia.com/natural/20191007/47848304853/orangutan-sandra-persona-no-humana-florida.html>; *Sandra, La Orangután Que Pelea Por Su Libertad Como "Persona No Humana"*, COOPERATIVA, (Nov. 24, 2014), <https://cooperativa.cl/noticias/mundo/argentina/sandra-la-orangutan-que-pelea-por-su-libertad-como-persona-no-humana/2014-11-24/063001.html>; Alaa Elassar, *Sandra the Orangutan, Freed from a Zoo after Being Granted "personhood," Settles into Her New Home*, CNN, (Nov. 9, 2019), <https://edition.cnn.com/2019/11/09/world/sandra-orangutan-florida-home-trnd/index.html>; Juan Ignacio Irigaray, *Conceden El Hábeas Corpus a Sandra, Una Orangután Del Zoo de Buenos Aires*, EL MUNDO, (Dec. 21, 2014), <https://www.el-mundo.es/internacional/2014/12/21/5496e8c622601dcd148b4571.html>; *Argentina Court Grants Orangutan Basic Rights*, AL JAZEERA, (Dec. 23, 2014), <https://www.aljazeera.com/news/2014/12/23/argentina-court-grants-orangutan-basic-rights>; *Argentine Court to Rule on "Depressed" Orangutan*, EURONEWS, (May 21, 2015), <https://www.euro-news.com/2015/05/21/argentine-court-to-rule-on-depressed-orangutan>.

202. Macarena Montes Franceschini, *Animal Personhood: The Quest for Recognition*, 17 ANIMAL & NAT. RES. L. REV. 93 (2021).

203. Tercer Juzgado de Garantías de Mendoza [TJG] [Third Criminal Court of Mendoza], 3/11/2016, "Presentación Efectuada Por AFADA Respecto del Chimpancé 'Cecilia' Sujeto No Humano," case no. P-72.254/15, at 42, 44 (Arg.).

204. *Id.* at 36–40.

205. *Id.* at 41.

Ape Sanctuary, spending her days with her new companions, chimp Marcelino and chimp Miguel.<sup>206</sup>

Another case that could be considered a judicial win for animal rights is the case of the Marghazar Zoo in Pakistan. In contrast to the Argentine cases, this was not a habeas or a constitutional law case. On April 25, 2020, the Higher Court of Islamabad decided a case involving animals living in deplorable conditions at the Marghazar Zoo.<sup>207</sup> Justice Minallah referred to animals in zoos as inmates<sup>208</sup> and claimed that animals are not mere property,<sup>209</sup> but subjects of rights: “Do the animals have legal rights? The answer to this question, without any hesitation, is in the affirmative.”<sup>210</sup> Judge Minallah cited Sandra and Cecilia’s cases as examples of animal rights cases abroad.<sup>211</sup>

The ruling ordered the zoo’s temporary closure and the animals’ transfer to different sanctuaries.<sup>212</sup> For example, recognizing that zoos are not appropriate places for elephants and that zoos worldwide are phasing them out,<sup>213</sup> Judge Minallah ordered elephant Kaavan to be transferred to a sanctuary.<sup>214</sup> NGO Free the Wild, which works on transferring animals in captivity to sanctuaries or better-equipped zoos,<sup>215</sup> filed the legal action on Kaavan’s behalf and transferred him to the Cambodia Wildlife Sanctuary.<sup>216</sup> The Court also ordered that a board take over the zoo’s management until all the animals had been relocated.<sup>217</sup> The Court explicitly prohibited the board from introducing new animals into the zoo until an international agency had certified that the zoo could

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206. *Cecilia*, PROJETO GAP, <https://www.projetogap.org/br/residente/cecilia-argentina/>.

207. *Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad, etc.*, (2020) W.P. No. 1155/2019 PLD (ISL) at 1, 4 (Pak.).

208. *Id.* at 12.

209. *Id.* at 57.

210. *Id.* at 59.

211. *Id.* at 30–31.

212. *Id.* at 63.

213. *Id.* at 12.

214. *Id.* at 62.

215. *About Us*, FREE THE WILD, <https://www.freethewild.org/about> (last visited Feb. 27, 2021).

216. The Nonhuman Rights Project, *Islamabad High Court Recognizes the Rights of Nonhuman Animals*, GLOBENEWSWIRE (2020), <https://www.globenewswire.com/news-release/2020/05/21/2037371/0/en/Islamabad-High-Court-Recognizes-the-Rights-of-Nonhuman-Animals.html> (last visited Jan. 26, 2024).

217. *Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad, etc.*, (2020) W.P. No. 1155/2019 PLD (ISL) at 62 (Pak.).

ensure the animals' behavioral, social, and physiological needs.<sup>218</sup> Moreover, the Court ordered the board to inspect other zoos in Islamabad;<sup>219</sup> recommended that the federal government include teachings on the importance of caring for animals, their welfare, and well-being in the Islamic studies curriculum in schools;<sup>220</sup> and called upon the media to educate and inform the general public on the treatment of animals.<sup>221</sup>

Most of the other cases regarding animal personhood and rights globally can be categorized as criminal law cases where judges recognize animal rights on their motion, mainly in Argentina; multispecies family cases where judges recognize the animal as a family member; and symbolic cases in which judges use the language of personhood and rights to stress the importance of implementing and enforcing animal welfare regulations.<sup>222</sup>

Some Argentine judges recognize the animal victim of cruelty as a subject of rights, citing Sandra and Cecilia's cases to stress the severity of the cruelty inflicted upon the animal.<sup>223</sup> There are cases involving dogs, monkeys, elephants, pumas, among others. In Argentina, the statute that criminally punishes cruelty against animals recognizes animals as victims.<sup>224</sup> Thus, the statute gives judges a legal argument to recognize animals as subjects of rights.

There are also some multispecies family cases considered as examples of animal rights in which judges recognize an animal as a family member and order shared custody.<sup>225</sup> For example, there is an anticruelty case in Argentina that is an example of the category of cases explained above where the judge recognized the dog Tita, who was shot dead by a police officer, as a nonhuman person and rights holder<sup>226</sup> and also as the nonhuman daughter of her human

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218. *Id.* at 63.

219. *Id.*

220. *Id.* at 64.

221. *Id.*

222. Montes Franceschini, *supra* note 202.

223. *Id.*

224. U.S. courts have also deemed animals victims. *See*, *State v. Nix*, 334 P.3d 443 (Or. 2014).

225. In the U.S., judges increasingly look to the standard of the best interest of the animal in divorce cases. *See* Rachael Bouwma, *How to Apply the "Best Interest of the Pet" Standard in Divorce Proceedings in Accordance with Newly Enacted Laws*, ANIMAL LEGAL & HIST. CTR. (2019).

226. Oficina Judicial de Rawson, Provincia del Chubut [O.J.R.] [Criminal Court of Rawson, Chubut Province], 10/6/2021, "C., M. M. M. s/ Denuncia Maltrato Animal," 13-14 (Arg.).

caregivers.<sup>227</sup>

The Uttarakhand and Haryana cases in India are examples of symbolic cases. The Uttarakhand High Court recognized the entire animal kingdom as legal persons and gave guidelines for preventing cruelty to animals.<sup>228</sup> This case concerned the health of animals used for transportation, such as horses, on the route from Banbasa Uttarakhand to Nepal.<sup>229</sup> Although the ruling caught the media's attention because it declared all animals legal persons,<sup>230</sup> the Court ordered the State to implement and comply with animal welfare legislation rather than recognize fundamental animal rights.<sup>231</sup> In the Haryana case, the High Court of Punjab and Haryana also recognized the entire animal kingdom as legal entities.<sup>232</sup> Cows were transported in deplorable conditions for more than three hundred and seventy miles from Uttar Pradesh to Haryana. This ruling also intended to improve animal welfare in India rather than recognize animals as legal persons entitled to fundamental rights.

Legislative approaches have primarily focused on animal welfare and anticruelty provisions and not on recognizing fundamental rights or legal personhood to animals. For example, the Great Ape Project in Spain has been working for over a decade to persuade Congress to fulfill its commitment to pass a law that protects the fundamental interests of chimpanzees, gorillas, orangutans, and bonobos.<sup>233</sup> Additionally, there was an extensive campaign in Basel City in Switzerland to recognize nonhuman primates' fundamental rights in the cantonal Constitution.<sup>234</sup> Still, voters declined to include this provision in their constitution.

There are few judicial and legislative wins for animal rights

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227. *Id.* at 3

228. Jayanta Boruah, *Narayan Dutt Bhatt v. Union of India & Others. Writ Petition (PIL) No. 43 Of 2014: Uttarakhand High Court's Decision: "Entire Animal Kingdom As Legal Entity, With Rights, Duties & Liabilities Of A Living Person."*, 32 LEX TERRA 22 (2018).

229. *Id.*

230. Saptarshi Ray, *Animals Accorded Same Rights as Humans in Indian State*, THE TELEGRAPH, (July 5, 2018), <https://www.telegraph.co.uk/news/2018/07/05/animals-accorded-rights-humans-indian-national-park/> (last visited Jan. 29, 2024).

231. Boruah, *supra* note 228, at 23.

232. Karnail Singh & others v. State of Haryana (2019) CRR-533-2013, at 104 (High Court of Punjab & Haryana at Chandigarh) (India).

233. Paula Casal, *Los Derechos de Los Simios, Treinta Años Después*, EL CABALLO DE NIETZSCHE, [https://www.eldiario.es/cabalodenietzsche/grandes-simios-derechos-animales\\_132\\_9284636.html](https://www.eldiario.es/cabalodenietzsche/grandes-simios-derechos-animales_132_9284636.html) (last visited Jan. 31, 2024).

234. Charlotte E. Blattner & Raffael Fasel, *The Swiss Primate Case: How Courts Have Paved the Way for the First Direct Democratic Vote on Animal Rights*, 11 TRANSNAT'L ENVTL. L. 201 (2022).

globally. Animal rights litigation has probably had more wins in the court of public opinion because the cases involving individual animals like Cecilia, Sandra, and Kaavan are captivating for the public. Legislative advances worldwide have primarily focused on implementing or improving animal welfare and passing anticruelty provisions. And there is a larger limitation: legal practitioners, policymakers, and the general public are far from accepting animal rights or personhood on a broad scale. This general perception against animal rights worldwide raises the question, if a court received a case with very compelling facts, would it be willing to recognize animal rights or personhood to an animal? We next examine what we consider to be such a case, the U.S. case of Happy the Elephant.

2. *The Struggles of Animal Rights Litigation in the U.S.: Happy's Habeas*

Happy's case indicates the difficulty of litigating for fundamental animal rights or personhood in the U.S. and is generally representative of how animal rights are viewed worldwide. The case is certainly representative of how courts dismiss cases using the slippery slope and floodgate litigation arguments and focus on what would happen to industrial animal agriculture instead of the individual animal plaintiff.

Happy is a 53-year-old Asian elephant living in solitary confinement in a 1.15-acre cage in the Bronx Zoo. In cruelly ironic contrast with her name, Happy's life has been a story of despair caused by humans. Happy was born in the wild in 1971. She was caught by poachers, sold to a safari in California,<sup>235</sup> and then relocated to the Bronx Zoo in 1977, where she was forced to perform.<sup>236</sup> Happy was the first elephant to pass the mirror test, evidencing she has the capacity of self-recognition.<sup>237</sup>

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235. *Happy*, NONHUMAN RTS. PROJECT, <https://www.nonhumanrights.org/client/happy/>.

236. *Id.*

237. Charles Q. Choi, *Elephant Self-Awareness Mirrors Humans*, LIVE SCIENCE (Oct. 30, 2006), <https://www.livescience.com/4272-elephant-awareness-mirrors-humans.html> (last visited Jan. 16, 2025). Psychologist Gordon Gallup Jr. developed the mirror test in 1970 to determine whether chimpanzees could recognize themselves visually. The mirror test involves anesthetizing and marking animals in a place they cannot see, then allowing them to see their reflection after waking up. If the animal touches the marked spot rather than their reflection, it suggests self-awareness. See Gordon G. Gallup Jr., *Chimpanzees: Self-Recognition*, 167 SCIENCE 86, 86 (1970).

In 2006, the zoo announced that it would end its captive elephant program once one or more elephants died, implicitly acknowledging that keeping elephants alone is inhumane.<sup>238</sup> But Happy has lived alone ever since 2006.<sup>239</sup> The zoo has made no effort to move her to a sanctuary where she can live with other elephants, while it is well known that she is a cognitively and socially complex species that lives in matriarchal herds and has biological and social needs that can never be fulfilled in a zoo.

In October 2018, the Nonhuman Rights Project (NhRP) filed a habeas corpus requesting the New York state court in which the Bronx Zoo is located to recognize Happy's legal personhood and her fundamental right to bodily liberty and integrity, and order her transfer to a sanctuary.<sup>240</sup> Justice Tuitt from the Bronx County Supreme Court denied the habeas: "Regrettably, in the instant matter, this Court is bound by the legal precedent set by the Appellate Division when it held that animals are not 'persons' entitled to rights and protections afforded by the writ of habeas corpus."<sup>241</sup> She added: "This Court is extremely sympathetic to Happy's plight and the NhRP's mission on her behalf. It recognizes that Happy is an extraordinary animal with complex cognitive abilities, an intelligent being with advanced analytic abilities akin to human beings."<sup>242</sup> Judge Tuitt stated that she was bound by the legal precedent set by the New York Appellate Division, which had decided that animals are not persons and had dismissed the habeas claim that was before that court for chimps Tommy and Kiko.<sup>243</sup>

The NhRP appealed, but the New York Supreme Court also denied Happy's habeas.<sup>244</sup> The NhRP requested the New York Court of Appeals—the state's highest court—to hear arguments. The hearing took place on May 18, 2022.<sup>245</sup> The Court of Appeals dismissed Happy's case on the grounds that the NhRP sought to transfer

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238. *Happy*, *supra* note 235.

239. *Id.*

240. *Client, Happy (Elephant)*, NONHUMAN RTS. PROJECT, <https://archive.nonhumanrights.org/client-happy/> (last visited Jan. 25, 2025).

241. *Nonhuman Rights Project v. Breheny*, 2020 WL 1670735, at \*9 (N.Y. Sup. Ct. 2020).

242. *Id.* at \*10.

243. *Nonhuman Rights Project, Inc. ex rel. Tommy v. Lavery*, 54 N.Y.S.3d 392 (1st Dept. 2017). This precedent did not formally bind Judge Tuitt because the arguments to deny chimp Tommy and Kiko legal personhood were dicta and, thus, not binding. However, Judge Tuitt still deferred to that precedent.

244. *Nonhuman Rights Project*, *supra* note 238.

245. *Id.*

Happy, not free her from captivity,<sup>246</sup> that animals cannot bear duties,<sup>247</sup> and that habeas corpus only protects humans.<sup>248</sup> The Court's argumentation is circular: "habeas only applies to humans, because only humans have been given the right to habeas."<sup>249</sup> The Court used the slippery slope and floodgate litigation<sup>250</sup> arguments to deny the remedy, fearing the effects granting the habeas to an elephant could cause in U.S. society due to the extensive use of animals. The Court stated it cannot turn a blind eye to:

the impact of any ruling that elephants (or autonomous beings more generally) have liberty interests. A determination that Happy, an elephant, may invoke habeas corpus to challenge her confinement at the Bronx Zoo—a confinement both authorized and, by all indications, compliant with state and federal statutory law and regulations—would have an enormous destabilizing impact on modern society. It is not this Court's role to make such a determination...Granting legal personhood to a nonhuman animal in such a manner would have significant implications for the interactions of humans and animals in all facets of life, including risking the disruption of property rights, the agricultural industry (among others), and medical research efforts. Indeed, followed to its logical conclusion, such a determination would call into question the very premises underlying pet ownership, the use of service animals, and the enlistment of animals in other forms of work.<sup>251</sup>

The Court feared the effects granting a writ of habeas corpus could have on other activities involving animals, notably industrial animal agriculture, and that there would be a flood of petitions regarding the imprisonment of every *kind* of animal.

Judges Jenny Rivera and Rowan D. Wilson dissented and would have granted the writ of habeas corpus.<sup>252</sup> The fact that there were two dissenting judges, who wrote with powerful language, does show some evolution in the positions on animals within the U.S.

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246. Nonhuman Rights Project, Inc. v. Breheny, 197 N.E.3d 921, 925 (N.Y. 2022).

247. *Id.* at 928-29.

248. *Id.* at 927.

249. Kristen Stilt, 'The Court Simply Refused to Extend to Happy the Elephant the Opportunity to Prove, through Her Lawyers, That She Deserves Her Freedom', HARVARD LAW TODAY (2022), <https://hls.harvard.edu/today/the-court-simply-refused-to-extend-to-happy-the-elfphant-the-opportunity-to-prove-through-her-lawyers-that-she-deserves-her-freedom/>.

250. Breheny, 197 N.E.3d 929 (N.Y. 2022).

251. *Id.*

252. *Id.* at 933 (Wilson, J. dissenting); *Id.* at 966 (N.Y. 2022) (Rivera, J. dissenting).

judiciary. Further, press and media coverage was generally favorable to Happy.<sup>253</sup> Happy's case offered a good set of facts to argue for animal personhood or fundamental animal rights because, throughout Happy's life, humans gratuitously violated her fundamental interests many times. Moreover, Happy's transfer to an elephant sanctuary would have had minimal to no financial impact on the Bronx Zoo. Many U.S. zoos have voluntarily transferred elephants to sanctuaries due to the overwhelming evidence that elephants simply cannot live in the kind of confinement that characterizes even the largest and most resourced zoos. In the case of the Detroit Zoo, visitations actually increased after the elephants' transfer to sanctuaries.<sup>254</sup> Happy's case, involving more than five decades of suffering, only prompted two judges to accept that Happy deserved to be recognized as a rights holder.

### 3. *Global Rights of Nature Cases*

RoN initiatives are growing rapidly and globally, as well as other initiatives considered under the umbrella term Ecological Jurisprudence, which refers to the legal theory rejecting anthropocentrism.<sup>255</sup> In the U.S., rights of nature have mostly been developed in local ordinances, which have been mostly struck down.<sup>256</sup> A notable exception is the Santa Monica ordinance, also called the Sustainability Rights Ordinance, which passed in 2013. It recognizes that "Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City of Santa Monica. To effectuate those rights on behalf of the environment, resi-

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253. See, e.g., Jill Lepore, *The Elephant Who Could Be a Person*, THE ATLANTIC, (Nov. 16, 2021), <https://www.theatlantic.com/ideas/archive/2021/11/happy-elephant-bronx-zoo-nhrp-lawsuit/620672/> (last visited Mar 13, 2024).

254. The Detroit Zoo was the first in the U.S. to send its elephants, Wanda and Winky, to a sanctuary due to ethical concerns. The zoo admitted it could not meet their needs. However, rather than losing visitors as a result saw increased visitors, who expressed their understanding for the transfer of the elephants. See Detroit Zoo, *Celebrating Elephants*, DETROIT ZOO, <https://detroitzoo.org/lesson/celebrating-elephants/> (last visited Jan. 29, 2024); Detroit Zoo, *Winky and Wanda – A Tale of Two Elephants*, DETROIT ZOO, <https://detroitzoo.org/about/your-detroit-zoo/elephants/> (last visited Jan. 29, 2024); Steve Friess, *The Jewish Zookeeper Whom Even PETA Loves*, FORWARD, (Apr. 19, 2021), <https://forward.com/news/467999/the-jewish-zookeeper-whom-even-peta-loves/> (last visited Jan. 29, 2024).

255. There are so many rights of nature initiatives that we will only examine some of the most renowned examples here for space limitations. See *About*, ECO JURIS. MONITOR, <https://ecojurisprudence.org/about/> (last visited Mar 19, 2024).

256. Huneus, *supra* note 74, at 135.

dents of the City may bring actions to protect these natural communities and ecosystems, defined as: groundwater aquifers, atmospheric systems, marine waters, and native species within the boundaries of the City.”<sup>257</sup> The ordinance requires biennial reports and hearings on the ordinance’s implementation and compliance.<sup>258</sup>

To take another example from halfway around the world from Santa Monica, in 2016, two NGOs requested the eviction of illegal river encroachers to the Bangladesh High Court.<sup>259</sup> The illegal encroachers were constructing factories, houses, and buildings on the Turag River basin, causing pollution, potable water shortage, and putting the very existence of the river in danger.<sup>260</sup> The High Court recognized that Bangladesh’s lifestyle and economy are entirely dependent on water.<sup>261</sup> Most importantly, the Court stated that granting the river legal personhood was the last option to protect it, considering its severely polluted state.<sup>262</sup>

In Colombia, rights of nature have been mostly developed in lower and higher courts. In the Atrato River case, the Constitutional Court recognized that the Atrato River is a subject of rights entitled to protection, conservation, maintenance, and restoration.<sup>263</sup> The Constitutional Court linked the rights of the Atrato River to the biocultural rights of Indigenous and Afro-Colombian communities, referring to the communities’ rights to protect their territories according to their culture, which is grounded on a deep connection with nature.<sup>264</sup> Following this decision, the Supreme Court recognized the Colombian Amazon as a subject of rights entitled to protection, conservation, maintenance, and restoration.<sup>265</sup> Rather than focusing on biocultural rights of the local communities living in the Amazon, the Supreme Court focused its

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257. SANTA MONICA, CAL., SUSTAIN. CODE Art. 12, § 12.02.030 (2013).

258. Moutrie, *supra* note 66, at 50.

259. Human Rights & Peace for Bangladesh v. Government of Bangladesh (2016) No. 13989/2016 (Supreme Court of Bangladesh), *translated in Bangladesh Case Regarding Rights of Rivers*, ECO JURIS. MONITOR, <https://ecojurisprudence.org/initiatives/rights-of-rivers-in-bangladesh/>. All citations to and quotes from this case are from the English-language translation.

260. *Id.* at 4.

261. *Id.* at 49.

262. *Id.*

263. Corte Constitucional [CC] [Constitutional Court], Caso No. T-622/16 (Nov. 10, 2016) (Colom.).

264. *Id.*

265. Corte Suprema de Justicia [CSJ] [Supreme Court of Justice], Caso No. STC4360-2018, at 45 (Apr. 5, 2018) (Colom.).

decision on future generations' rights, probably because young people filed the case.<sup>266</sup>

These examples of rights of nature victories from different countries show that the strategy and reasons for granting rights to a river, a rainforest, or nature in whole differ greatly. In some cases, granting rights to nature is part of protecting local communities' deep connection to nature or future generations' rights to a healthy environment. In other cases, granting legal personhood to a natural entity is seen as the last option to protect a severely polluted ecosystem. And in other cases, it is a way for small cities to exercise self-governance.

In this section, we have examined the tangible successes of both movements in litigation and legislation. The rights of nature movement has achieved significant victories in high courts and through national laws. In contrast, the animal rights movement has had few successes in high courts, and its legislative efforts have primarily concentrated on improving animal welfare rather than recognizing animals as nonhuman persons or subjects of fundamental rights. Furthermore, animal rights cases reveal courts' fear of the slippery slope, particularly concerning the industrial animal agriculture sector.

In Part II we have produced an overall assessment of the strengths and weaknesses of the two approaches by examining their (a) pace of growth, (b) theoretical and practical coherence, (c) the range of species that they focus on, (d) the perception of each movement in terms of inclusivity and (e) their litigation and legislative successes. We have demonstrated that the animal rights and RoN movements have some things in common, such as pushing for the legal rights of nonhuman beings or entities and, thus, challenging anthropocentrism. Both also have a fair share of critics and skeptics. They have failed to tackle industrial animal agriculture and have chosen to mostly ignore each other. The differences between the two movements suggest that a combined approach is necessary to achieve their own goals and tackle the most pressing environmental challenges of our times, such as industrial animal agriculture.

In the next Part, we turn back to the *Estrellita* decision to scrutinize it for clues on how farmed animals in industrial settings can benefit from a RoN framework.

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266. *Id.* at 13, 19-21, 34.

IV. THE LANDMARK CASE OF ESTRELLITA: BRIDGING THE DIVIDE  
BETWEEN ANIMAL AND NATURE

A. *Rights of Nature in the Constitution*

The Ecuadorian RoN originated from the convergence of two movements: the Indigenous claim to *Sumak Kawsay*,<sup>267</sup> commonly (mis-)translated as *buen vivir* or good living,<sup>268</sup> when it means *vida en plenitud* or life in plenitude,<sup>269</sup> and a broad sector of the population's stance against extractivism. Since colonial times, Ecuador's economic model has depended on extracting natural resources.<sup>270</sup> Particularly, the destruction to the Northern Amazon near Sarayaku in the hands of the oil industry and the class action against Chevron Texaco partially explain society's sympathy to RoN.<sup>271</sup>

The 1983 Constitution was the first to include environmental protection.<sup>272</sup> However, the state's competence in environmental matters was unclear, so ecologists, farmers, Indigenous and Afro-Ecuadorian communities continued to demand change.<sup>273</sup> The 1998 Constitution incorporated these claims by recognizing the right to live in a healthy, ecologically balanced, and contamination-free environment.<sup>274</sup> The government's policy on development, however, failed to achieve these new rights.<sup>275</sup> Instead, environmental destruction continued in Ecuador, causing flooding,

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267. The Kichwa concept *Sumak Kawsay* can be defined as a "philosophy of life based on ancestral Indigenous knowledge and practices, where *ayllu* (family-community) coexists in harmony with the *pacha* through certain principles and values." In Andean philosophy, *Pacha* refers to the concepts of space and time. See Javier Cuestas-Caza, *Sumak Kawsay Is Not Buen Vivir*, 5 ALTERNAUTAS 51, 52 (2018).

268. Kotzé & Calzadilla, *supra* note 37, at 417.

269. The concept of *buen vivir* is better translated to Kichwa as *Alli Kawsay*, which refers to the "integrality and aspiration to improve the quality of life in interdependence with the beings of the environment, at the personal level (*runa*), at the family level (*ayllu*), at the community level (*llakta*) and at intercommunity level within a territory." It refers to the everyday life of the Kichwa people, while *Sumak Kawsay* refers to the ideal and imaginary beautiful life. See Cuestas-Caza, *supra* note 267, at 54.

270. Kotzé & Calzadilla, *supra* note 37, at 416.

271. Borràs, *supra* note 44, at 127.

272. ASAMBLEA CONSTITUYENTE [CONSTITUTIONAL ASSEMBLY], ACTA 040, at 12 (Apr. 29, 2008) (Ecuador) (record of constitutional debate of the Ecuadorian Constitutional Assembly).

273. *Id.* 12.

274. *Id.* 13.

275. *Id.* 14.

drought, the expansion of the oil, livestock, mining, and road borders, and the worst deforestation in Latin America.<sup>276</sup>

The Ecuadorian government's economic recovery plan to pay off external debt depended on exploiting nonrenewable resources like oil.<sup>277</sup> The government declared oil and mining national priorities, and the regulations that banned their exploitation in protected areas and Indigenous territory were annulled.<sup>278</sup> The climate change crisis and biodiversity loss came into the picture, pushing the Indigenous communities and the Ecuadorian population to demand that development conserves their natural patrimony and balances the use of natural resources while respecting Indigenous communities' rights.<sup>279</sup>

In this social and political climate, the Constitutional Assembly started to work on drafting a new constitution on November 29, 2007. The Constitutional Assembly's Majority Report stated that RoN represent the need to redefine the relations between society and nature, economy and nature, culture and nature, as well as economy and society.<sup>280</sup> The Majority Report proposed recovering ancestral practices on non-predatory development to redefine these relations, acknowledging its complete departure from the Western understanding of development.<sup>281</sup> The Majority Report also recognized that the constitution should implement *Sumak Kawsay*, life in harmony or *buen vivir*.<sup>282</sup>

During the debate, there were two prominent positions. Some Assembly members argued that the Constitution should not recognize nature as a rights holder. Instead, the Constitution should recognize human duties towards nature. For example, Assemblymember Rosanna Queirolo opposed RoN because granting nature rights would only work if these rights were absolute and superior to human rights.<sup>283</sup> Additionally, Assemblymember León Roldós stated that protecting nature to such an extent would imply violating its rights with any conduct and urged the Assembly to limit the scope of RoN.<sup>284</sup> Along these lines, an Assemblymember argued

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276. *Id.* 15.

277. *Id.* 16.

278. *Id.* 16.

279. *Id.* 19.

280. *Id.* 8.

281. *Id.* 9.

282. *Id.* 9.

283. *Id.* 50.

284. *Id.* 74.

that the tropical humid forests should be excluded from the list of fragile ecosystems because they cover 40% of Ecuador, including cities, towns, and rural areas.<sup>285</sup>

On the other hand, other Assembly members supported RoN due to humans' rampant destruction of nature. Assemblymember Pilar Núñez argued that humans have considered nature and other species as property, failing to recognize nature as a whole but as separate elements that provide an economic benefit.<sup>286</sup> Additionally, Assemblymember Sofía Espín claimed that RoN refer to Indigenous and rural communities' rights, as well as cities' rights because all depend on nature to thrive. She also claimed that nature does not center on the human species, rejecting anthropocentrism and promoting humans' interdependence with nature for sustainable long-term development.<sup>287</sup> In line with the idea of interdependence, Assemblymember Humberto Guillem stated that all living beings, including humans, need their environment and other living beings to survive.<sup>288</sup> Finally, Assemblymember Sara Paredes argued that the sun, air, soil, insects, wild animals, and humans cohabit to survive, develop, and preserve their species.<sup>289</sup>

During the drafting process of the Ecuadorian Constitution, the Assembly members did not define nature. The main topics during the debate were moving away from anthropocentrism and considering nature as property for human benefit, incorporating the Indigenous communities' cosmovision of living in plenitude, and acknowledging the interdependence of nature's components, including humans.

As a result, the constitution as adopted included the following provisions:

Article 10. Persons, communities, peoples, nations and communities are bearers of rights and shall enjoy the rights guaranteed to them in the Constitution and in international instruments.

Nature shall be the subject of those rights that the Constitution recognizes for it.

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285. ALBERTO ACOSTA, BITÁCORA CONSTITUYENTE. ¡TODO PARA LA PATRIA, NADA PARA NOSOTROS! [EVERYTHING FOR THE COUNTRY, NOTHING FOR US!] 267 (2008).

286. ASAMBLEA CONSTITUYENTE [CONSTITUTIONAL ASSEMBLY], ACTA 040, at 69–70 (Apr. 29, 2008) (Ecuador) (record of constitutional debate of the Ecuadorian Constitutional Assembly).

287. *Id.* 108.

288. *Id.* 111–12.

289. *Id.* 118.

Article 71. Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate. The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.<sup>290</sup>

This is sweeping and ambitious language. A definition of nature and the scope of the right would soon begin to take shape in the hands of the Constitutional Court.

### B. *Estrellita Decision*

It is within the jurisdiction of the Constitutional Court to interpret the constitution. The RoN provisions, entering the constitution for the first time in 2008, provided the Court with a new challenge. The Court decided several cases involving RoN before taking the claims concerning Estrellita for review. In this section, we examine the decision's advances for rights of nature and animal rights and then extend the Court's conclusions into new territory regarding humans' eating animals, the right to food, and industrial animal agriculture.

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290. CONSTITUCIÓN de 2008 [CONSTITUTION OF 2008], (Ecuador) *translated in Ecuador: 2008 Constitution in English*, POLITICAL DATABASE OF THE AMERICAS (2011), <https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html> (last visited Jan. 26, 2024).

Article 72. Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.

In those cases of severe or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.

Article 73. 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.

The introduction of organisms and organic and inorganic material that might definitively alter the nation's genetic assets is forbidden.

Article 74. Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy the good way of living.

Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State.

1. *Animals are Subjects of Rights Protected by the Constitutional Rights of Nature*

On January 27, 2022, the Constitutional Court of Ecuador ruled on the case of Estrellita.<sup>291</sup> Many amici briefs were filed; the authors of this article co-authored a brief with the Nonhuman Rights Project (NhRP).<sup>292</sup> This brief argued that the rights of nature should protect nonhuman individual animals because species are made up of individuals, so what happens to an individual animal has an impact to one degree or another on the species. In short, the authors requested the Court to determine that (1) nonhuman animals can be subjects of rights; (2) writs of habeas corpus can be appropriate for nonhuman animals; and (3) nonhuman animals are subjects of rights protected by the rights of nature.

Seven of the nine judges of the Constitutional Court of Ecuador decided to recognize Estrellita as a subject of rights protected by the constitutional rights of nature, thereby acknowledging that animal rights constitute a specific dimension of the rights of nature with its own particularities.<sup>293</sup> The Court took into consideration the arguments advanced in the amicus brief, which challenged the view that regards only ecosystems and species as protected by RoN, not individuals:

In this sense, this Court warns that animals should not be protected only from an ecosystemic perspective or from a view that focuses on the needs of human beings, but mainly from a perspective that focuses on their individuality and intrinsic value.<sup>294</sup>

This becomes relevant because protecting only the species of animals - neglecting the protection of individual animals, which in turn make up the species - endangers a significant number of animals and fuels the idea of the possibility of extinction. Even in the case of animals whose species is not endangered, neglecting or failing to protect individuals also has an impact.<sup>295</sup>

The Constitutional Court of Ecuador not only recognized animals as subjects of rights protected by the rights of nature but also outlined the rights of wild animals. The Court listed the following

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291. *Mona Estrellita Case English Translation*, *supra* note 13, ¶ 27.

292. Stilt, Kristen, Constitutional Court of Ecuador, Case No. 253-20-JH, Amicus Curiae Submitted by Harvard Law School Brooks McCormick Jr. Animal Law & Policy Program and the Nonhuman Rights Project (November 15, 2022).

293. *Mona Estrellita Case English Translation*, *supra* note 13, ¶ 91.

294. *Id.* ¶ 79

295. *Id.* ¶ 126.

rights: right to exist;<sup>296</sup> right not to be hunted, fished, captured, collected, extracted, kept, detained, trafficked, traded, or exchanged;<sup>297</sup> right to the free development of their animal behavior,<sup>298</sup> which includes the right to behave according to their instinct, the innate behaviors of their species, and those learned and transmitted among the members of their population, and the right to freely develop their biological cycles, processes, and interactions;<sup>299</sup> right to freedom and good living;<sup>300</sup> right to food according to the species' nutritional requirements;<sup>301</sup> right to live in harmony;<sup>302</sup> right to health;<sup>303</sup> right to habitat;<sup>304</sup> right to demand their rights from the competent authorities;<sup>305</sup> right to physical, mental, and sexual integrity;<sup>306</sup> right to live in an environment that is suitable for each species, with adequate shelter and resting conditions;<sup>307</sup> and right to life,<sup>308</sup> which includes ensuring a life in a violence-free environment, as well as an environment free from disproportionate cruelty, fear, and distress.<sup>309</sup> The Court did not elaborate on these rights in practice and raised many more questions than it answered. For example, if a wild animal has a right not to be hunted or fished, how will this affect communities in Ecuador who rely on hunting and fishing for sustenance?

Additionally, the Court argued that a wild animal's rights to life, freedom, and integrity, among others, must be protected regardless of the claims, intentions, or desires of third parties: "if the judges prove that the deprivation or restriction of the freedom of a wild animal is unlawful, they must provide the most suitable alternative for the preservation of the life, freedom, integrity, and other related rights of the victim . . ."<sup>310</sup>

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296. *Id.* ¶ 111.

297. *Id.* ¶ 112.

298. *Id.*

299. *Id.* ¶ 113, 137.

300. *Id.* ¶ 119, 137.

301. *Id.*

302. *Id.* ¶ 119.

303. *Id.* ¶ 119, 137.

304. *Id.*

305. *Id.* ¶ 121.

306. *Id.* ¶ 133.

307. *Id.* ¶ 137.

308. *Id.* ¶ 155.

309. *Id.* ¶ 137.

310. *Id.* ¶ 173.

Regarding the scope of writs of habeas corpus, the Constitutional Court considered that, although the writ of habeas corpus was inadmissible in Estrellita's case due to her death, it can be an appropriate action to request the release of a wild animal depending on the circumstances of the case:

Thus, so far, the Court has analyzed in its binding rulings on the rights of Nature cases derived from actions for the protection of the rights of Nature. However, this does not mean that this is the only jurisdictional guarantee for the protection of the rights of Nature or of any of its elements, including animals.<sup>311</sup>

The action for protection is characterized as a guarantee that is applicable as long as its purpose is not the protection of rights that are protected by another jurisdictional guarantee...for the protection of the rights of Nature, in general, and of animals, in particular, [the case] must be evaluated in order to determine which jurisdictional guarantee best suits the context and the claims of the case . . . .<sup>312</sup>

The Constitutional Court of Ecuador also ordered the Ministry of Environment to develop a protocol that considers and evaluates the particular circumstances of captive wild animals to guarantee their protection, as proposed by the brief. Furthermore, the Court ordered the Ombudsman and Congress to prepare and approve a bill on the rights of animals, based on the rights and principles developed in the ruling. As of this time, the bill is being debated in Congress. A competing bill introducing basic animal welfare standards was presented by the livestock industry and is being debated at the same time.

Estrellita was a woolly monkey, but the Court did not limit its discussion to this species or to wild animals generally. In fact, the decision speaks about all animals. The Court asked, "To address

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311. *Id.* ¶ 166.

312. *Id.* ¶ 167. The action for protection is regulated in article 88 of the Constitution and seeks to protect the fundamental rights established in the Constitution and international treaties. Article 88. Protection proceedings shall be aimed at ensuring the direct and efficient safeguard of the rights enshrined in the Constitution and can be filed whenever there is a breach of constitutional rights as a result of deeds or omissions by any non-judiciary public authority against public policies when they involve removing the enjoyment or exercise of constitutional rights; and when the violation proceeds from a particular person, if the violation of the right causes severe damage, if it provides improper public services, if it acts by delegation or concession, or if the affected person is in a status of subordination, defenselessness or discrimination. *See*, CONSTITUCIÓN DE 2008 [CONSTITUTION OF 2008], (Ecuador) *translated in Ecuador: 2008 Constitution in English*, Political Database of the Americas (2011), <https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html> (last visited Jan. 26, 2024).

the question of whether a *wild animal* such as Estrellita, the chorongu monkey, is a *subject of rights*, first of all, it is important to determine whether animals, in general, can be considered as subjects of rights.”<sup>313</sup> The Court answered affirmatively: “an animal is a basic unit of ecological organization, and being an element of Nature, it is protected by the rights of Nature and enjoys an inherent value.”<sup>314</sup> The Court noted that human beings first perceived themselves as “subjects of rights and as beings with intrinsic value” and over time the “affirmations, denials, judgments and conclusions about animals as to whether or not they are subjects of rights have developed throughout history.”<sup>315</sup>

The Court noted that “marked anthropocentrism” and “speciesism” has characterized law, even in modern times, but that these are not “conclusive, finished and immovable approaches in law.”<sup>316</sup> The Court summarized the progression of human attitudes in four phases: the protection of animals as objects; animal welfare (including of animals used for food); animals as “protected objects of the environment, where animals are only recognized as having an ecosystemic value, but not an inherent individual value”; and, finally, “the recognition of animals as subjects of rights.”<sup>317</sup> This view of the phases of “development” is significant for several reasons. First, it refers to all species of animals. Second, it clearly indicates that the value of animals is not only in relation to species or impact on ecosystems; the lives of individual animals are also worthy of consideration. Third, the Court’s final stage (to date) is the position that all animals are subjects of rights. While the Court did not state that these are clearly divided temporal states, nor did it claim that we are or should be living in the fourth state now, the language suggests that recognizing animals as subjects of rights is currently the most developed position. Fourth, the Court left open the possibility for further progression. And finally, the Court put forth, citing a Colombian case, that “animals are protected not only in terms of the ecosystemic contribution, but also as sentient beings, individually considered.”<sup>318</sup>

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313. *Mona Estrellita Case English Translation*, *supra* note 13, ¶ 71 (italics in original).

314. *Id.* ¶ 73.

315. *Id.* ¶ 74.

316. *Id.* ¶ 76.

317. *Id.* ¶ 76.

318. *Id.* ¶ 79, citing the Constitutional Court of Colombia’s ruling on Chucho, the Andean bear. *See Corte Constitucional [CC] [Constitutional Court]*, enero 23, 2020 Caso No. T-6.480.577, 12 (Colom.).

## 2. *Eating Animals and Industrial Animal Agriculture*

The Court then turned to the particular animal at issue, Estrellita the woolly monkey, and introduced two important concepts: the interspecies principal and the principle of ecological interpretation.<sup>319</sup> The interspecies principle “guarantees the protection of animals with a concrete grounding in the characteristics, processes, life cycles, structures, functions and evolutionary processes that differentiate each species.”<sup>320</sup> That is, not every species, or every animal, should receive the same rights. For example, only migratory species have the right to conservation of their migration routes.<sup>321</sup> This principle could be interpreted as essentializing animals as if they were the mere product of their biological heritage. However, we consider that the interspecies principle guarantees protecting animals according to their unique biology, species specific behaviors and also as social beings with their own cultures and social structures. These are all essential characteristics of animals to ensure their adequate legal protection through the interspecies principle.

The principle of ecological interpretation “respects the biological interactions that exist between species and between populations of individual species.”<sup>322</sup> Biologists use the concept of biological interaction to define the effect organisms living together in a community have on each other, such as competition, amensalism, antagonism, neutralism, commensalism, and mutualism.<sup>323</sup> For example, as the Court stated, “when a predator kills its prey in compliance with the trophic chain [the position the animal occupies in the food chain], the right to life of an animal is not illegitimately violated.”<sup>324</sup> This seems to mean for the Court that if a cat kills and eats a bird or mouse, the rights of the deceased animal have not been violated.

The Court then took a turn in its logic to both endorse rights of animals and yet also allow for their consumption of them. The Court achieved this by a definitional move that animal protectionists also make, although for different reasons and to different ends.

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319. *Mona Estrellita Case English Translation*, *supra* note 13, ¶ 97.

320. *Id.* ¶ 98.

321. *Id.* ¶ 99.

322. *Id.* ¶ 100.

323. Emma Rova, *A Brief Note on Biological Interactions*, 12 ANNALS OF BIOLOGICAL RSCH. 1, 1 (2021).

324. *Mona Estrellita Case English Translation*, *supra* note 13, ¶ 102.

Simply put, humans are animals, too. For the Court, this meant that “human beings are predators, and being omnivorous by nature, their right to feed on other animals cannot be forbidden. In addition to being a biological condition of human beings, driven by the intrinsic principle of survival, food is a right established in the Constitution and in international human rights instruments.”<sup>325</sup>

The Court accepted killing animals for food as part of the trophic chain and as part of humans’ omnivorous nature. At first read, this seems like an attempt to exempt farmed animals writ large from the Court’s notion of animal rights—when Estrellita was not even a farmed animal. And because industrial animal agriculture accounts for such a high percentage of the animals who are consumed by humans, the language could be an acknowledgment that industrial animal agriculture is acceptable and not in contradiction to animal rights or rights of nature. How does this square? Perhaps it was simply caution in the first case of its kind. For the Court to declare that Estrellita has some rights, the Court possibly believed that it had to offer these concessions to human omnivores, and the animal agricultural industry, to maintain legitimacy. The “slippery slope” argument looms large in any case involving a potential right of an animal.<sup>326</sup>

However, in our view, the decision does not need to be understood this way, and indeed a much more internally coherent approach would not read the decision as safeguarding industrial animal agriculture. In fact, we see that the opposite is true. The interspecies principle, also at work in the decision, “guarantees the protection of animals with a concrete grounding in the characteristics, processes, life cycles, structures, functions and evolutionary processes that differentiate each species.”<sup>327</sup> Industrial animal agriculture has removed animals, indeed manipulated animals, so far from their “characteristics, processes, life cycles, functions and evolutionary processes” that many animals bred and killed for food have a short life of suffering, with severe physical problems and cannot perform any species-specific behaviors.

Industrial animal agriculture uses genetic selection for breeding to increase production, which is detrimental to animals’ health

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325. *Id.* ¶ 103 (citations omitted).

326. For example, on May 18, 2022, the N.Y. Court of Appeals continuously questioned attorney Monica Miller on the implications of granting Happy the elephant rights to other animals like dogs and horses. Transcript of Oral Argument at 7, 12-14, 30, Matter of Nonhuman Rights Project, Inc. v. Breheny, 197 N.E.3d. 921 (N.Y. 2022) (No. 52).

327. *Mona Estrellita Case English Translation*, *supra* note 13, ¶ 98.

and welfare.<sup>328</sup> Chickens are bred to grow very fast, meaning that they can barely stand because their legs are not strong enough to support their bodies.<sup>329</sup> If human babies grew as fast as chickens, they would weigh 660 pounds by the time they were two months old.<sup>330</sup> Sows are genetically selected to have larger litters, increasing piglet mortality and decreasing sows' overall health;<sup>331</sup> cows are selected to produce more milk, increasing leg and metabolic problems, reducing their longevity, and modifying their species-specific behavior.<sup>332</sup> To be clear: that humans have genetically selected these animals to conform to humans needs does not remove them from the "nature" protected by the rights of nature. Rather, the interspecies principle has been consistently violated and it would be illogical to reward the violator by declaring that the animal has lost the protection under the rights of nature due to what was done to the animal.

In addition, in our view, the Court's language on humans' right to feed on other animals is not as categorical as it may seem initially. The Court noted the biological fact that humans are omnivorous—this means that human animals can, physically, eat and survive on both animal and plant matter. But human survival—which seems to be the guiding principle in this part of the Court's discussion—is in grave danger due to climate change. The reduction in the rate of planetary warming depends in part, perhaps in large part, on humans consuming fewer animal products. A holistic view of human survival would weigh all the relevant factors and find that the global industrial animal agriculture industry is far more destructive than it is beneficial.<sup>333</sup>

Moreover, the Court's usage of rights becomes very unstable in this discussion. To say that a biological condition—the ability to digest animal flesh—is a "right" that "cannot be forbidden" is a strained way to make the point that most humans are capable of

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328. Este van Marle-Köster & Carina Visser, *Unintended Consequences of Selection for Increased Production on the Health and Welfare of Livestock*, 64 ARCHIVES ANIMAL BREEDING 177 (2021).

329. Kate M. Hartcher & Hannah K. Lum, *Genetic Selection of Broilers and Welfare Consequences: A Review*, 76 WORLD'S POULTRY SCI. J. 154 (2020).

330. R.F. Wideman et al., *Pulmonary Arterial Hypertension (Ascites Syndrome) in Broilers: A Review*, 92 POULTRY SCI. 64, 65 (2013).

331. Sophia A. Ward, Roy N. Kirkwood & Kate J. Plush, *Are Larger Litters a Concern for Piglet Survival or An Effectively Manageable Trait?*, 10 ANIMALS (BASEL) 1 (2020).

332. Pascal Oltenacu & Donald M. Broom, *The Impact of Genetic Selection for Increased Milk Yield on the Welfare of Dairy Cows*, 19 ANIMAL WELFARE 39 (2010).

333. See discussion *supra* notes 114-36 and accompanying text.

consuming animals. It can be considered an expression of carnism, the dominant ideology that considers meat eating normal.<sup>334</sup> The Court does not use “rights” in a manner consistent with other usage throughout the opinion. Just because humans are biologically capable of eating both animals and plants, indeed omnivores, does not mean that they *must*, or even that they must have access to both. Humans are also biologically capable of eating human flesh. Still, cannibalism is prohibited in most societies, and no court would state that human animals are predators and that their right to feed on other human animals cannot be forbidden.

Further, humans are under no obligation of any kind to consume animal flesh, and humans are certainly able to live on a plant-based diet alone. Countries have banned the consumption of some animal products for health, ecological, and ethical reasons. For instance, China banned the trade and consumption of terrestrial wild animals due to the COVID-19 pandemic.<sup>335</sup> The British government has in the past banned the sale of beef due to the fear that it was infected with bovine spongiform encephalopathy, or BSE, commonly referred to as “mad cow disease.”<sup>336</sup> Most countries also ban hunting and fishing of certain animals for ecological reasons to protect their populations. Every year in September, capturing, selling, and consuming the Chilean common hake (*Merluccius gayi gayi*) is banned because this type of fish mainly reproduces during that month.<sup>337</sup> Chile also forbade capturing, possessing, transporting, and selling catfish between 2011 and 2026 to protect these fish.<sup>338</sup> And South Korea recently banned consumption of dogs.<sup>339</sup>

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334. MELANIE JOY, *WHY WE LOVE DOGS, EAT PIGS, AND WEAR COWS: AN INTRODUCTION TO CARNISM* (2010).

335. Lian Pin Koh, Yuhan Li & Janice Ser Huay Lee, *The Value of China’s Ban on Wildlife Trade and Consumption*, 4 *NATURE SUSTAIN.* 2 (2021). The fact that in practice this ban was not enforced uniformly does not detract from the point that a ban was issued.

336. Sarah Lyall, *Mad Cow Alert: British Ban Beef on the Bone*, *N.Y. TIMES*, (Dec. 4, 1997), <https://www.nytimes.com/1997/12/04/world/mad-cow-alert-british-ban-beef-on-the-bone.html>.

337. Generación M, *Llaman a respetar veda de la merluza chilena*, *EL MOSTRADOR*, (Sep. 1, 2021), <https://www.elmostrador.cl/generacion-m/2021/09/01/llaman-a-respetar-veda-de-la-merluza-chilena/> (last visited Jan. 31, 2024).

338. Subsecretaría de Pesca y Acuicultura [SUBPESCA] [Subsecretariat of Fishing and Aquaculture], *Vedas en Chile*, available at [https://www.subpesca.cl/portal/617/articles-100030\\_documento\\_.pdf](https://www.subpesca.cl/portal/617/articles-100030_documento_.pdf) (Chile).

339. Jessie Yeung et al., *South Korea Passes Bill to Ban Eating Dog Meat, Ending Controversial Practice as Consumer Habits Change*, *CNN* (Jan. 9, 2024), <https://www.cnn.com/2024/01/09/asia/south-korea-bill-bans-dog-meat-bill-intl-hnk/index.html>.

Ethical reasons also motivate bans on producing certain animal products. In 2014, India became the first country to ban foie gras imports for ethical reasons.<sup>340</sup> Foie gras production requires force-feeding ducks or geese to engorge their livers up to 10 times their original size. California passed a state law in 2012 banning foie gras production while forbidding restaurants and retailers to sell it. Consumers can only order foie gras from out-of-state producers for individual consumption.<sup>341</sup> In 2019, the New York City Council passed a law banning foie gras sales as of 2022, qualifying force-feeding animals as an inhumane process.<sup>342</sup> Argentina, Austria, Czech Republic, Denmark, Finland, Germany, Ireland, Israel, Italy, Luxembourg, Netherlands, Norway, Poland, Sweden, Switzerland, Turkey, and the United Kingdom have also banned foie gras production.<sup>343</sup>

After stating that the “right [of humans] to feed on other animals cannot be forbidden,” the Court noted that food is a right established in the Constitution and in international human rights instruments. The right to food, as provided for in international instruments, is a different kind of right, a third-generation human right well known to human rights lawyers. It is understood to refer to adequate nutrition not animal products *per se*.<sup>344</sup> And this human right to food is itself threatened by a high and still-increasing level of consumption of animal products globally.<sup>345</sup> The right of all to access food is hindered by some consuming large quantities of animal products, thereby diverting substantial amounts of grain and other feed and resources away from humans. One strong indi-

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340. Animal Equality, *Breaking! Indian Government Bans the Importation of Foie Gras*, ANIMAL EQUAL. (Feb. 29, 2024), <https://animalequality.org/news/indian-government-bans-foie-gras/>.

341. Associated Press, *Appeals Court Upholds Limit on California’s Foie Gras Ban*, NBC BAY AREA, (May 8, 2022), <https://www.nbcbayarea.com/news/california/appeals-court-upholds-limit-on-californias-foie-gras-ban/2884498/>.

342. Jeffrey C. Mays & Amelia Nierenberg, *Foie Gras, Served in 1,000 Restaurants in New York City, Is Banned*, N.Y. TIMES, (July 17, 2021), <https://www.nytimes.com/2019/10/30/nyregion/foie-gras-ban-nyc.html>.

343. Joaquín Elcacho, *Prohibir La Producción de “foie Gras” En España: El Senador Mulet Reabre El Debate*, LA VANGUARDIA, Oct. 5, 2021, <https://www.lavanguardia.com/natural/20211005/7768564/prohibir-produccion-foie-gras-espana-senador-mulet-reabre-debate.html>.

344. Office of the High Commissioner for Human Rights, *CESCR General Comment No. 12: The Right to Adequate Food (Art. 11)*, U.N. Doc. E/C.12/1999/5, adopted at the 20<sup>th</sup> Session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999.

345. Ritchie, Rosado, & Roser, *supra* note 87.

cator of this imbalance is that livestock uses 80% of global agricultural land, producing less than 20% of the world's supply of calories.<sup>346</sup> The use of water, an increasingly scarce resource, is staggering. The amount of water used to produce one pound of beef is 1,800 gallons. That is equivalent to seven years of drinking water for the average person and a clear example of extreme inequality in access to and use of essential resources.

Ecuador is no exception to this problem. Animal agriculture is one of the most environmentally detrimental sectors. According to the Ministry of the Environment, Water, and Ecological Transition (in Spanish "MAE"), animal agriculture in Ecuador presents three main environmental threats: soil loss and desertification risk; contamination and greenhouse gas emissions; and the extension of the agricultural frontier.<sup>347</sup> Moreover, the FAO notes that Ecuador has the highest rate of deforestation in South America.<sup>348</sup>

Then why did the Court speak about a human right to eating animals, and how does this statement relate to challenging industrial animal agriculture? Perhaps the Court wanted to make clear that it was not threatening the animal agriculture industry with the development of its rights of nature jurisprudence. The Court may have believed it needed to make this statement about the "right" of humans to the consumption of animals to avoid antagonizing powerful agricultural interests in Ecuador. Regardless of motive, the Court still managed to carefully walk a fine line. It left open many avenues for an expansion of animal rights through rights of nature when another relevant case, with the right facts, reaches the Court.<sup>349</sup> But that is not all.

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346. Hannah Ritchie, *How Much of the World's Land Would We Need in Order to Feed the Global Population with the Average Diet of a given Country?*, OUR WORLD IN DATA (Oct. 3, 2017), <https://ourworldindata.org/agricultural-land-by-global-diets> (last visited Mar 14, 2024).

347. *MAE Ejecuta Proyecto sobre Manejo de Ganadería Sostenible* [MAE Executes Project on Sustainable Livestock Management], MINISTERIO DEL AMBIENTE, AGUA Y TRANSICIÓN ECOLÓGICA [MINISTRY OF ENVIRONMENT, WATER & ECOLOGICAL TRANSITION], <https://www.ambiente.gob.ec/mae-ejecuta-proyecto-sobre-manejo-de-ganaderia-sostenible/> (last visited Jan. 31, 2024).

348. Food and Agriculture Organization of the United Nations [FAO], *Ecuador en una Mirada* [Ecuador at a Glance], <https://www.fao.org/ecuador/fao-en-ecuador/ecuador-en-una-mirada/es/> (last visited Dec. 11, 2024).

349. In Ecuador, at least two cases in lower courts were decided in part according to the Estrellita precedent. The first case involved a sloth named Cuqui Brown, who lived with a woman for four years and was confiscated by the environmental authority. Similarly to Estrellita's case, the woman filed a habeas corpus requesting Cuqui Brown's return. The lower court and the Court of Appeals dismissed the habeas citing Estrellita's case. See Tribunal de Garantías Penales [TGP] [Court of Criminal Guarantees], Mar. 31, 2022, Gómez

Even more pointedly, we view the Estrellita decision to be a direct rebuke to the industrial breeding, growing, and slaughter of animals, characterized by disequilibrium and conditions very far from the animals' species-specific behaviors. The biology of animals is modified through selective breeding to make them more profitable, often (if not almost always) to the detriment of humans who presumably have the right to a healthy environment, including the food raised in it. Estrellita's case and the subsequent rulings that have used it as precedent in Ecuador show us that arguments can be generated within RoN to challenge industrial farms. Farmed animals could directly benefit from these arguments, or arguments could act directly to benefit the land, waterways, and air affected by industrial agriculture, including in the vicinities of the "farms" and slaughterhouses.

The value of the Court's reasoning applies to Ecuador and any other site where industrial animal agriculture exists. The Court carefully articulated its arguments, ingeniously recognizing some existing realities while also showing a path forward away from them. This section examined the interspecies and ecological interpretation principles, offering arguments against conflating humans' biological capacity to consume animals and a human right to food. A right to food, as this right refers to access to adequate nutrition, which can be plant-based. Insistence on producing animals in concentrated environments causes environmental harms so severe that it is now jeopardizing some of the most basic human

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*Velastegui Marcia Carmita v. Ing. Fiodor Mena Director de la Dirección Zonal 8 Napo-Orellana del Ministerio del Ambiente*, case no. 15241-2022-00006 (Ecuador); Corte Provincial de Justicia de Napo [CPJN] [Provincial Court of Justice of Napo], July 29, 2022, *Gómez Velastegui Marcia Carmita v. Ing. Fiodor Mena Director de la Dirección Zonal 8 Napo-Orellana del Ministerio del Ambiente*, case no. 15241-2022-00006, (Ecuador). The second case involved dogs and cats confiscated in a money laundering case. A woman filed a habeas corpus requesting the animals' return as she considered them family members. Following Estrellita's case, the lower court recognized the dogs and cats as subjects of rights protected by the constitutional rights of nature. *See* *Unidad Judicial Multicompetente con sede en el cantón Samborondón, Provincia de Guayas [UJM]* [Lower Court of the Province of Guayas], June 22, 2022, case no. 09333202200667T (Ecuador); Corte Provincial de Justicia de Guayas [CPJG] [Provincial Court of Justice of Guayas], Dec. 21, 2022, case no. 09333-2022-00667T (Ecuador). Outside Ecuador, in 2024, a Peruvian lower court recognized an Andean fox named Run Run as a subject of rights, highlighting the legal framework that protects nature and its organisms as subjects of rights. The court affirmed that animals deserve distinct protection as sentient beings, applying animal rights theory within an ecocentric framework that regards nature as a rights holder. *See* *Corte Superior de Justicia de Lima Tercer Juzgado Especializado en lo Constitucional [CSJL]* [Superior Court of Justice of Lima, Third Specialized Court on Constitutional Matters], June, 28, 2024, case no. 04921-2021-0-1801-JR-DC-03 (Peru).

rights, including the right to life. This section argued that industrial animal agriculture violates the interspecies principle as this industry has genetically selected animals, manipulating their bodies for efficiency and impeding their species-specific behaviors. In the next Part, we go beyond the Estrellita case to show that animal rights and RoN advocates can use their experience, knowledge, and momentum to reduce or even eliminate industrial animal agriculture using a RoN framework.

#### V. THE POWER OF INTEGRATED RIGHTS OF NATURE AND ANIMAL RIGHTS

The recognition of RoN's and animal rights' limitations and possibilities, as outlined above in Part II, are intended as a prompt for each movement to bring its experiences and arguments to a collaboration that would, in turn, advance the fundamental principles and goals of each. RoN's rejection of anthropocentrism is enriched by animal rights theory on the moral and legal consideration of individual sentient beings, requiring RoN's attention to individual sentient animals. Without this attention, RoN could become undistinguishable from environmental law's focus on species, and endangered species particularly. This is a problem because one of the key aspects of the RoN movement is that it is *not* environmental law as usual, and that environmental law as usual provided no stopping point to planetary degradation. RoN should be concerned about non-endangered animals because human activity can still be detrimental to their well-being and communities in which they live, pushing them closer to becoming endangered. RoN should be concerned with the farmed animals in industrial factory farms, for the sake of the violation of all welfare notions of the animals. Further, the rapid spread of industrial agriculture necessitates more and more land, which means more and more deforestation. Deforestation is a major cause of loss of biodiversity—meaning the loss of species. Species loss is a major concern with RoN.

By engaging with RoN, the animal rights movement can reach new communities, groups, and peoples whose support will be essential. RoN facilitates animal rights' ability to become more mainstream and inclusive generally as well as specifically through the law. Countries and jurisdictions that recognize RoN give advocates a legal tool to advance animal rights through litigation and policy, and the recognition of RoN is expanding at a rapid pace. By engag-

ing with animal rights, the RoN movement can enhance the specificity and clarity of its messaging and campaigns, addressing the significant criticism it faces for being too vague. The animal rights movement brings valuable grassroots experience and expertise in corporate campaigning to the table. Additionally, it has cultivated a rich body of literature and developed substantial litigation experience regarding nonhuman animal personhood and fundamental rights—essential elements for achieving the global paradigm shift that the RoN movement aims to accomplish.

Regarding industrial animal agriculture specifically, RoN as a concept offers animal rights advocates an opportunity to make tangible achievements, which have so far been out of reach. RoN's primary goals are to bring about a paradigm shift where nature is granted legal rights recognizing her inherent worth independent of the value afforded by humans, to fight anthropocentrism by recognizing that humans are interconnected to other living and nonliving beings, and to promote living in balance and harmony with nature. Scientific research is clear on industrial animal agriculture's devastating effects on nature. This industry is one of the main GHG emitters, pollutes water and soil, and causes deforestation, contributing to the extinction of animal species.<sup>350</sup>

Industrial animal agriculture contradicts all RoN's goals. First, industrial animal agriculture rejects that animals exploited on farms have inherent worth. For humans, the animals' value is merely economic. Second, GHG emissions and pollution extend far beyond a CAFO's walls, contaminating human and animal communities and habitats, as well as other natural entities such as rivers, groundwater, and soil. Third, industrial animal agriculture exploits human workers and animals. Any concept of balance and harmony is at odds with what happens inside industrial animal agriculture facilities. Animals are genetically selected to boost production, modifying their biology to produce more meat, offspring, and milk to the detriment of their welfare.<sup>351</sup>

Even if a jurisdiction's use of RoN only extends to endangered wild animal species, protecting this group of animals could indirectly benefit farmed animals. For example, protecting the habitat of an endangered wild animal species would prevent massive deforestation that takes place in many parts of the world to build bigger

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350. See discussion *supra*, section I.C.

351. *Id.*

and more industrial animal facilities. Also, developing animal agricultural complexes adjacent to wild (or once wild) ecosystems increases zoonotic disease risk, which is not in anyone's interests. The RoN movement as it has developed to date is sufficiently capacious to attend to the needs of both individual animals and species of animals and the habitats in which they live. And if those habitats are not at all natural, but rather are industrial farming facilities, then RoN's commitments should extend to these harms too, despite the likely political pressure, everywhere in the world, to look the other way.

A recalibration within the RoN movement to face industrial animal agriculture directly is not only consistent with RoN's self-stated goals but also is supported by important examples of legislative and judicial bodies relying on RoN to reach conclusions in favor of protecting individual animals and to argue for the rights of animals in specific cases or in general. We point to two prominent examples, one from Panama and one from the U.S.

#### A. *Panama*

The Panamanian National Assembly passed Law 287, which recognizes the rights of nature, in February 2022.<sup>352</sup> Surprisingly, this law did not face much opposition in the National Assembly. Only Congressman Mariano López Amador questioned what would happen with economic development while stating that he supported the law.<sup>353</sup>

Considering governments' interest in promoting industries for economic growth, one might initially think that the State would not support such a bill. However, the Ministry of Environment endorsed the bill, arguing that Panama's environmental law focuses on profiting from nature, not on nature's intrinsic value, and that other countries, like Colombia, Australia, and Aotearoa/New Zealand, have also recognized the rights of nature, which has allowed them to advance environmental protection and fight climate

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352. Ley 287 del 24 de febrero 2022, que reconoce los derechos de la Naturaleza y las obligaciones del Estado relacionadas con estos derechos [Law 287 of February 24, 2022, which recognizes the rights of Nature and the State's obligations in relation to these rights] *Gaceta Oficial Digital* [G.O.D.] (Pan.).

353. Asamblea Nacional [National Assembly], Acta de la Primera Legislatura del Tercer Periodo de Sesiones Ordinarias del Periodo Constitucional [Minutes of the First Legislature of the Third Period of Ordinary Sessions of the Constitutional Period] 2019-2024, 21.10.2021, Aprobación del Proyecto de Ley 471 en segundo debate, intervención del Honorable Diputado Mariano López Amador [Approval of Bill 471 in second debate, intervention by the Honorable Deputy Mariano López Amador], 19 (Pan.).

change.<sup>354</sup>

Rights of nature skeptics have warned that the vagueness of these laws can render them merely symbolic declarations of intentions, and in some cases, this may be true. However, in Panama's case, the Supreme Court recently declared the country's largest copper mine unconstitutional, referencing the rights of nature law among its rationale for ruling against the mine:

However, through Law No. 287 of February 24, 2022, our country granted "nature" the condition of "subject of rights." This implies that the Panamanian State must have the necessary public policies to ensure "the superior interest of nature" because of nature's intrinsic value, regardless of its utilitarian value for human beings.

In other words, our legal system recognizes that nature is a collective, indivisible, and self-regulated "entity" comprising biodiversity and ecosystems. And therefore, the State has the obligation to ensure the protection, respect, permanence, restoration, maintenance, and regeneration of its life cycles, as well as the conservation of its ecological structures and functions.

In addition to the above account, there is no evidence in the whole Contract of the inclusion of regulations that bind the concessionary company to establish strict environmental damage prevention measures; the Contract is limited to establishing a reactive regime (mitigation measures) which, logically, come into effect once the damage is caused.<sup>355</sup>

Law 287 does not limit the rights of nature to specific groups of animals. On the contrary, Article 3 considers nature a collective, indivisible, and self-regulated entity comprising elements, biodiversity, and interrelated ecosystems.<sup>356</sup> Article 12 recognizes that nature has the right to conserve its biodiversity, so the law must protect living beings independent of their value to humans.<sup>357</sup> And to be sure, the country's largest copper mine had significant economic clout in the country, even similar to industrial animal agriculture.

The effects of recognizing the rights of nature have expanded beyond Law 287. In March 2023, the National Assembly passed Law 371, establishing the conservation and protection of marine turtles

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354. *Id.* at 18.

355. Corte Suprema de Justicia [CSJ] [Supreme Court of Justice] Magistrada Ponente: María Eugenia López Arias, Nov. 27, 2023, Gaceta Oficial No. 29922, 2.12.2923, 215-216 (Pan.).

356. Law 287 of February 24, 2022, *supra* note 352.

357. *Id.*

and their habitats in Panama.<sup>358</sup> The bill's preamble states that turtles are not only exotic, beautiful, and endearing animals but also a key component to sustaining ecosystems and have a priceless value.<sup>359</sup>

At first glance, the law seems like any other species conservation regulation. Article 1 states that the law's objective is to protect and conserve all marine turtle species, guarantee the restoration of their habitat, and prevent the contamination and degradation of their habitats.<sup>360</sup> Article 2 states the law's purpose, declaring marine turtles' protection a matter of public interest, recognizing that turtle conservation is crucial to ensure humans' right to a healthy environment.<sup>361</sup>

Thus, the regulation seems to confirm the importance of humans within the legal system without developing the rights of Nature or animal rights. However, article 29 states:

The State will guarantee that natural and juridical persons *protect the rights of marine turtles and their habitats*, such as living and having free passage *in a healthy environment*, free of contamination and other anthropocentric impacts that cause physical and health harms, like climate change, contamination, incidental capture, coastal development, and unregulated tourism, among others.<sup>362</sup>

Law 371 is the first law in the world to recognize that an animal also has the right to live in a healthy environment. It is a historic legal milestone because the right to a healthy environment is traditionally understood as a human right. It is also consistent with Law 287, which considers animals as part of nature and considers the human right to a healthy environment requires protecting nature and its elements. Together, these two laws provide significant support for a RoN framework that encompasses farmed animals and the anthropocentric impacts that cause them great harm in industrial animal agriculture.

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358. Ley 371 de 1 de Marzo de 2023, que establece la conservación y protección de las tortugas marinas y sus hábitats en la República de Panamá [Law 371 of March 1, 2023, which establishes the conservation and protection of marine turtles and their habitats in the Republic of Panama] GACETA OFICIAL DIGITAL [G.O.D.], March 1, 2023 (Pan.).

359. *Id.*

360. *Id.*

361. *Id.*

362. *Id.* (emphasis added).

## B. *The United States*

RoN in the U.S. have been developed by two different communities. First, Tribal Nations have adopted RoN laws and have initiated litigation relying on RoN.<sup>363</sup> In 2022, the Sauk-Suiattle Tribe filed a lawsuit on behalf of the rights of salmon in Tribal Court, demanding that Seattle recognize that salmon have the right to exist, flourish, regenerate, and restore, and recognizing the Tribe's duty to protect and save the salmon.<sup>364</sup> The City of Seattle settled the lawsuit and agreed to provide passageways for the salmon around the hydroelectric dams on the Skagit River so they can feed and migrate upstream.<sup>365</sup> This case seeks to protect salmon, ensuring they can feed adequately and migrate up and downstream, and also protects the Tribe's and the Southern Resident Orcas' right to fish, as both depend on the salmon.<sup>366</sup>

Second, smaller cities and towns have proclaimed nature's rights in local ordinances against sewage dumping, fracking, drilling, and injection wells to protect their water supplies.<sup>367</sup> Most of these municipal ordinances have been struck down in court.<sup>368</sup> Furthermore, some states have begun to pass preemptive laws to prohibit rights of nature and legal personhood for animals. For example, Ohio passed a law prohibiting nonhuman entities that are not created by humans from having standing in court<sup>369</sup> and a bill in Utah seeks to prohibit governmental entities from granting or recognizing legal personhood to a nonhuman animal.<sup>370</sup>

Animals have not been at the forefront of the RoN movement in the U.S. However, there are some recent developments of organizations using a RoN approach to advance animal rights. Earth Law

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363. Huneus, *supra* note 73, at 134.

364. Thomas Linzey, *Press Release: Sauk-Suiattle Indian Tribe Brings First "Rights of Salmon" Case*, CTR. FOR DEMOCRATIC & ENVTL. RTS. (Jan. 11, 2022), <https://www.centerforenvironmentalrights.org/news/press-release-sauk-suiattle-tribe-vs-seattle-sees-the-rights-of-salmon-protected-in-new-tribal-court-case>.

365. Katie Surma, *Lawsuit Asserting the 'Rights of Salmon' Ends in a Settlement that Benefits the Fish*, INSIDE CLIMATE NEWS (May 6, 2023), <https://insideclimate-news.org/news/06052023/lawsuit-asserting-the-rights-of-salmon-ends-in-a-settlement-that-benefits-the-fish/> (last visited Jan. 30, 2024).

366. *Id.*

367. Moutrie, *supra* note 66.

368. *Id.* at 24.

369. OHIO REV. CODE ANN. § 2305.011 (West 2024). Toledo, Ohio had recognized that Lake Erie has the right to "exist, flourish, and naturally evolve." TOLEDO, OHIO, MUN. CODE ch. XVII, §§ 253–260 (2020) (Lake Erie Bill of Rights (LEBOR)).

370. H.B. 249, 2024 Gen. Sess. (Utah) (enacted).

Center (ELC) is an NGO established in 2008 that self-identifies as a leader in ecocentric law, focused on changing the “anthropocentric worldview and legal frameworks that consider nature as mere property.”<sup>371</sup> ELC’s mission is to “advance Earth-centered laws, movements, and education” and secure “new laws and landmark court decisions that strengthen our obligation to protect Nature.”<sup>372</sup> A prominent example deals with Southern Resident Orcas. Since less than 80 Southern Resident Orcas are left in the wild, ELC launched a campaign in 2018 to recognize their rights.<sup>373</sup>

Since December 2022, the cities of Port Townsend, Gig Harbor, Langley, Bainbridge, Jefferson County, and San Juan County in Washington State have passed proclamations recognizing the inherent rights of orcas.<sup>374</sup> The city of Port Townsend proclaimed that Southern Resident Orcas “are culturally, spiritually, and economically important to the people of Washington State and the world” and hold the right to life, autonomy, culture, free and safe passage, adequate food supply from naturally occurring sources, and freedom from conditions causing physical, emotional, or mental harm, including a habitat degraded by noise, pollution, and contamination.<sup>375</sup>

Orcas are a quintessential megafauna, a species that draws in human fascination and respect. In some ways, orcas are the functional opposite of the animals confined in a factory farm and whose life path has been chosen for them long before their birth by corporate executives in offices far from where the pigs and chickens live and die. In other ways, orcas share similarities with animals in factory farms: they have been torn from their families, confined in

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371. Who is Earth Law Center?, EARTH L. CTR., <https://www.earthlaw-center.org/what-is-earth-law> (last visited Jan. 30, 2024).

372. *Id.*

373. Animal Rights & the Rights of Nature, EARTH L. CTR., <https://www.earthlaw-center.org/animal-rights-rights-of-nature> (last visited Jan. 30, 2024).

374. *Id.*

375. CITY OF PORT TOWNSEND (WASH.), PROCLAMATION ON THE RIGHTS OF THE SOUTHERN RESIDENT ORCAS (Dec. 5, 2022).

small concrete tanks, exploited for human entertainment in marine theme parks,<sup>376</sup> and subjected to chronic stress,<sup>377</sup> often resulting in brain damage.<sup>378</sup> Additionally, the decline of the Southern Resident Orcas in the wild is primarily attributed to the depletion of salmon caused by dams. Therefore, protecting the rights of orcas, much like advocating for animals in industrial agriculture, necessitates confronting a powerful adversary—the hydroelectric industry. Addressing this challenge requires robust collaboration between the rights of nature (RoN) and animal rights movements.

The U.S. will probably not be the first place in which RoN and animal rights approach industrial animal agriculture, given the power of the agricultural lobby, but as the campaign for the Southern Resident Orcas shows, there is a path forward.

## VI. CONCLUSION

The RoN movement is growing quickly worldwide, while animal rights is advancing at a much slower pace. Animals are part of nature—in any commonsense definition of nature and also according to a number of courts around the world. This offers a new path for advancing animal rights. Prior to the Estrellita judgment, RoN had only protected animals as species. As important and influential as that judgment is, in its region and globally, without animal rights-minded advocates at the table, the RoN movement will continue to take a more limited approach to animals and protect them under ecological terms, at the level of species, or protect animals in limited settings. The animal rights movement has an opportunity to enter the RoN discussion and advocate consistently for the consideration of individual sentient animals to develop strategies to protect free-living animals *and* to reduce industrial animal agriculture. At the same time, RoN advocates have an opportunity to draw upon animal rights arguments and experiences to fully recognize the crucial role of animals of all kinds in the RoN movement's ambitious goals. We invite both movements to come together

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376. NOAA Fisheries, *Southern Resident Killer Whale (Orcinus Orca)*, NAT'L OCEANIC & ATMOS. ADMIN. [NOAA], <https://www.fisheries.noaa.gov/west-coast/endangered-species-conservation/southern-resident-killer-whale-orcinus-orca> (last visited Oct 16, 2024).

377. Lori Marino et al., *The Harmful Effects of Captivity and Chronic Stress on the Well-Being of Orcas (Orcinus Orca)*, 35 J. VETERINARY BEHAV. 69 (2020).

378. Bob Jacobs et al., *Putative Neural Consequences of Captivity for Elephants and Cetaceans*, 33 REV. NEUROSCI. 439 (2022).

around our argument—both intellectually and literally—to naturalize animal rights and animalize rights of nature.