THE LEGAL STRUGGLE FOR RIGHTS OF NATURE IN THE UNITED STATES

ALEXANDRA HUNEEUS*

Introduction 133
I. The Origins of U.S. Nature Rights 138
A. Codifying Navajo Common Law 139
B. Corporate Persons and Toxic Sludge 141
C. Ecuador's Constitution as a Catalyst 145
II. The Quixotic Persistence of Non-Human Rights in the USA 149
A. Transnational Legitimacy and Symbolic Politics 150
B. The (Re)Turn to Native American Law 152
C. Wild Rice Litigation as Symbolic Politics 155
III. Social Movements in Our Era of Climate Change 158
Conclusion 161

INTRODUCTION

In February 2019, residents of Toledo, Ohio, adopted the Lake Erie Bill of Rights (LEBOR).[1] Through this amendment to their city charter, Toledoans sought to transform one of North America's Great Lakes into a legal subject with the right to "exist, flourish, and naturally evolve."[2] Toledoans also granted Lake Erie standing to pursue its rights in the local court of common pleas through an action by any citizen, even as they stripped corporations that might infringe on Lake Erie's rights—by polluting it with fertilizer, for example—of their personhood rights.[3]

For a brief time, Lake Erie found itself in the select company of the Earth's rights-bearing natural features. Over the past two decades, rivers, forests, glaciers, mountains, lakes, highland plateaus, wild rice, and Mother Earth herself have been granted positive legal rights and have

* Professor of Law, University of Wisconsin Law School, huneeus@wisc.edu. My thanks go to Arwen Bleksley, Wendy Li, Eleanor Waters, Kelly Wilfert, and Ganxin Zhang for creative and diligent research support, to the University of Wisconsin Law School for research funding, and to the activists and lawyers who gave of their time. I am also grateful to the editors of the *Wisconsin Law Review* for their thoughtful and rigorous editing and to Richard Monette for insightful comments. All errors are my own.

1. TOLEDO, OHIO, MUN. CODE ch. XVII, §§ 253–260 (2020) (Lake Erie Bill of Rights (LEBOR)).

2. § 254(a).

3. § 257(a).

begun to litigate in court in countries as diverse as Mexico,[4] New Zealand,[5] Ecuador,[6] and India.[7] At the international level, the United Nations General Assembly has taken note of this phenomenon and initiated a dialogue with experts of "Earth jurisprudence,"[8] and one international court has declared that rights protect nature "not only for its connection to human use . . . but also for its importance to other living organisms with whom we share the planet, and who are worthy of protection in and of themselves."[9] Scholars have also taken note, publishing books, journal symposia, and articles focused on—and often advocating for—rights of nature, published in fields as varied as natural science, history, political science, anthropology, critical humanities, and law.

An aspect of this emerging environmental movement that legal scholars have explored less is how it not only claims its origins in the United States, but also continues to unfold stateside through the passage of town and city ordinances. Over fifty communities in eleven states and four Native American Nations have passed laws recognizing rights of ecosystems, natural communities, and particular entities.[10] Further, two states have introduced legislation granting nature rights, and at least one state political party has incorporated rights of nature into its official

4. Constitución Política de la Ciudad de México [Political Constitution of the City of Mexico], art. 18, sec. A, Pfos. 2–3, Diario Oficial de la Federación [DOF] 05-02-2017, últimas reformas DOF 02-09-2021; Constitución Política del Estado Libre y Soberano de Guerrero [Constitution of the State of Guerrero], art. 2, Diario Oficial de la Federación [DOF] 03-11-1917, últimas reformas DOF 03-06-2020; Constitución Política del Estado Libre y Soberano de Colima [Constitution of the State of Colima], art. 9, Diario Oficial de la Federación [DOF] 20-10-1917, últimas reformas DOF 20-03-2021.

5. Te Awa Tupua (Whanganui River Claims Settlement) Bill 2016 (129-2) (N.Z.).

6. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR [CONSTITUTION OF THE REPUBLIC OF ECUADOR] Oct. 20, 2008, arts. 71–72.

7. *Lalit Miglani v. State of Uttarakhand*, Writ Petition (PIL) No. 140 of 2015, decided on Mar. 30, 2017 (Uttarakhand HC), 64–66 (India).

8. G.A. Res. 70/208, ¶ 2 (Dec. 22, 2015).

9. Medio Ambiente y Derechos Humanos [The Environment and Human Rights] (Arts. 4(1) and 5(1) American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 62 (Nov. 15, 2017), http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf [https://perma.cc/PPP9-UP7S].

10. The author created a database of U.S. rights of nature laws and used NVivo to examine their evolution over time through qualitative analysis. The database includes fifty-two municipal ordinances and four tribal laws passed in the United States that grant natural entities legal personhood or declare them to bear rights. Further, the study relies on interviews with activists and lawyers, as well as analysis of court documents and the press releases and other materials that the activist organizations produce. It forms part of a larger study on the evolution of the rights of nature legal movement and jurisprudence in the Americas.

platform.[11] In other words, the movement is anchored not just in smaller countries or developing economies—it also is anchored, albeit less sturdily, in the United States.

This Article analyzes the rise and persistence of the U.S.-based nature rights movement and its engagement with social movements in the Global South and with Indigenous ideas.[12] This is not, however, the story of an underdog social movement slated to reshape the U.S. legal landscape through a string of court wins. In Ohio, a local farmer filed suit the day after LEBOR passed, and a district court judge struck the law down in February 2020.[13] The Ohio legislature, meanwhile, passed a law barring entities "that are not human or human creations" from having standing in any court.[14] One of the many interesting strands in this story, then, is that the moves to deny Lake Erie legal personhood have been swift and have rained down from both the federal judicial and state legislative branches.[15] More broadly, of the fifty-two municipal ordinances passed declaring rights of nature in the United States, few have survived court challenges,[16]

---

11. Scott Powers, *Florida Democratic Party Adopts 'Rights of Nature' into Platform*, FLA. POL. (Oct. 16, 2019), https://floridapolitics.com/archives/308603-florida-democratic-party-adopt-rights-of-nature-into-platform [https://perma.cc/FD8H-TJEK].

12. The term "Global South" has at least three different meanings. Here, it is used in its geographical sense to refer to economically disadvantaged states, once referred to as the Third World. But it will also be used "in a postnational sense to address spaces and peoples negatively impacted by . . . globalization," even if they reside in the United States. *See* Anne Garland Mahler, *Global South*, OXFORD BIBLIOGRAPHIES: LITERARY AND CRITICAL THEORY (Oct. 25, 2017), https://www.oxfordbibliographies.com/view/document/obo-9780190221911/obo-9780190221911-0055.xml [https://perma.cc/58H8-FBY6].

13. *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551, 558 (N.D. Ohio 2020); *see also Drewes Farms P'ship v. City of Toledo*, No. 3:19 CV 434, 2019 WL 1254011 (N.D. Ohio Mar. 18, 2019) (granting preliminary injunction to halt LEBOR from taking effect).

14. OHIO REV. CODE ANN. § 2305.011(A)(1) (LexisNexis 2019); *see id.* § 2305.011(B) (providing that "[n]ature or any ecosystem does not have standing to participate in or bring an action in any court of common pleas"); *see also* Devon Alexandra Berman, *Lake Erie Bill of Rights Gets the Ax: Is Legal Personhood for Nature Dead in the Water?*, SUSTAINABLE DEV. L. & POL'Y, Fall 2019, at 15.

15. *See generally* Kathleen M. Mannard, *Lake Erie Bill of Rights Struck Down: Why the Rights of Nature Movement Is a Nonviable Legislative Strategy for Municipalities Plagued by Pollution*, 28 BUFF. ENV'T L.J. 39 (2021).

16. *See* Katie Surma, *Does Nature Have Rights? A Burgeoning Legal Movement Says Rivers, Forests and Wildlife Have Standing, Too*, INSIDE CLIMATE NEWS (Sept. 19, 2021), https://insideclimatenews.org/news/19092021/rights-of-nature-legal-movement/ [https://perma.cc/LDP9-EMB6]; *see, e.g.*, *Pa. Gen. Energy Co. v. Grant Township*, 658 F. App'x 37, 42–43 (3d Cir. 2016) (holding that community bill of rights could not provide appellants with a right to intervene in federal litigation related to nature gas exploration); *Seneca Res. Corp. v. Twp. of Highland*, 863 F.3d 245, 247–51 (3d Cir. 2017) (explaining that "Township stipulated that much of the Community Bill of Rights was an impermissible exercise of Highland's legislative authority, unconstitutional, or unenforceable"); *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551, 558 (N.D. Ohio 2020) (holding that

and courts have consistently denied standing to natural entities and those who would represent them.[17]

The story of the U.S. movement is significant, in other words, not because these rights will soon come to a river or prairie near you, but due to its quixotic persistence. This Article argues that the U.S. movement has been able to sustain itself and evolve through law—but without legal footing or court victories—through a three-fold strategy of a) using law in a declaratory and largely symbolic manner, while b) increasingly tying its work to legislation, constitutional law, and court victories unfolding in distant countries, many in the Global South, and c) connecting to the activism of Indigenous communities in particular. While much has been written about the emerging rights of nature movement's recent legal gains across the world, scholars are just beginning to study the U.S. experience, which unfolds at the humble level of small-town and city ordinances and so often ends in swift legal or political defeat.[18] This study draws on empirical sources to understand the emergence and persistence of U.S. nature rights despite the movement's lackluster achievements at home.[19]

The argument is important due to what it teaches us about the symbolic use of law in our time of environmental crises. Social movements often use law to change the way we frame arguments and the way we think. But usually such movements rely on actually having legal impact, and define success as changing material reality in some significant way. Here the movement's trajectory is toward greater symbolic and declaratory emphasis at the expense of actual court wins. So tenuous are some of the legal arguments nature rights lawyers advance that they risk

---

LEBOR was unconstitutionally vague and exceeded the power of municipal government in Ohio).

17. *See, e.g.*, *Cetacean Cmty. v. Bush*, 249 F. Supp. 2d 1206, 1211 (D. Haw. 2003) (denying standing to whales), *aff'd*, 386 F.3d 1169 (9th Cir. 2004); *Coeur D'Alene Lake v. Kiebert*, 790 F. Supp. 998, 1006 (D. Idaho 1992) (denying standing to a lake).

18. *See, e.g.*, Susana Borràs, *New Transitions from Human Rights to the Environment to the Rights of Nature*, 5 TRANSNAT'L ENV'T L. 113 (2016); Erin Fitz-Henry, *Challenging Corporate "Personhood": Energy Companies and the "Rights" of Non-Humans*, 41 PoLAR: POL. & LEGAL ANTHROPOLOGY REV. 85 (2018); Gwendolyn J. Gordon, *Environmental Personhood*, 43 COLUM. J. ENV'T L. 49 (2018); Craig M. Kauffman & Pamela L. Martin, *Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand*, 18 GLOB. ENV'T POL. 43 (2018); Hannah White, Comment, *Indigenous Peoples, The International Trend Toward Legal Personhood for Nature, and the United States*, 43 AM. INDIAN L. REV. 129 (2018); CRAIG M. KAUFFMAN & PAMELA L. MARTIN, THE POLITICS OF RIGHTS OF NATURE: STRATEGIES FOR BUILDING A MORE SUSTAINABLE FUTURE 163–88 (2021); Elizabeth Macpherson, *The (Human) Rights of Nature: A Comparative Study of Emerging Legal Rights for Rivers and Lakes in the United States of America and Mexico*, 31 DUKE ENV'T L. & POL'Y F. 327 (2021); Erin Fitz-Henry, *Multi-Special Justice: A View from the Rights of Nature Movement*, 30 ENV'T POL. 1 (2021).

19. *See supra* note 10.

court sanction for frivolous litigation.[20] Understanding the movement's persistence despite a lack of solid legal footing can teach us about the distinct dynamics and new opportunities facing environmentally focused social movements in our time. It is not that these groups are creating a new path to legal success. Rather they are re-defining success, using law in a symbolic way so as to ignite new conversations.[21]

The story told here of the U.S. nature rights movement is also significant because it reveals dynamics about the circulation of legal ideas across borders and legal traditions. Scholars have argued that, in the transnational flow of legal ideas, states in developing regions like Latin America act as sites of reception of transnational theories of law rather than sites of production.[22] Legal actors based in the periphery have the role of receiving canonical theories, doctrine, and institutions of law developed in and for the North and adapting them to local experience and politics.[23] The causes of this lopsided exchange are both material and cultural. Northern scholars have more funding and greater access to knowledge, as well as a greater ability to export their ideas.[24] They also enjoy more prestige or symbolic capital. To counterbalance these dynamics, some scholars have promoted the idea of the South as an underutilized source of innovative intellectual production.[25] This scholarship highlights ways in which ideas from the Global South can exert influence in the North and how Indigenous legal ideas can find expression in the national legal system and beyond—a process sometimes referred to as "interlegality in reverse."[26] Similarly, in scholarship on climate change in particular, the

20. Lindsay Fendt, *Colorado River 'Personhood' Case Pulled by Proponents*, ASPEN JOURNALISM (Dec. 5, 2017), https://aspenjournalism.org/colorado-river-personhood-case-pulled-by-proponents/ [https://perma.cc/5G7P-LCLC].

21. The argument that court losses can translate into gains for social movements comes from the socio-legal literature. *See* Douglas Nejaime, *Winning Through Losing*, 96 IOWA L. REV. 941 (2011); *see also* Michael McCann, *Law and Social Movements: Contemporary Perspectives*, 2 ANN. REV. LAW SOC. SCI. 17 (2006). The claim here is that simply getting these ideas on the table is a success for many rights of nature activists. This is distinct from, but does not negate, the claim that U.S. activists are seeking new strategies that will make the laws effective on the ground, as argued by KAUFFMAN & MARTIN, *supra* note 18.

22. DIEGO EDUARDO LÓPEZ MEDINA, TEORÍA IMPURA DEL DERECHO: LA TRANSFORMACIÓN DE LA CULTURA JURÍDICA LATINOAMERICANA (1st ed. 2004); *see also* Diane Stone, Osmany Porto de Oliveira & Leslie A. Pal, *Transnational Policy Transfer: The Circulation of Ideas, Power and Development Models*, 39 POL'Y & SOC'Y 1, 2, 11–12 (2020).

23. *See* Mahler, *supra* note 12.

24. MEDINA, *supra* note 22.

25. *See, e.g.*, BOAVENTURA DE SOUSA SANTOS, CONOCER DESDE EL SUR: PARA UNA CULTURA POLÍTICA EMANCIPATORIA (1st ed. 2006); RAEWYN CONNELL, SOUTHERN THEORY: THE GLOBAL DYNAMICS OF KNOWLEDGE IN SOCIAL SCIENCE (2007).

26. André J. Hoekema, *European Legal Encounters: Cases of Interlegality*, 37 J. LEGAL PLURALISM & UNOFFICIAL L. 1, 6–7 (2005) (defining interlegality in reverse); *see*

idea that the West can learn from Indigenous systems of knowledge has recently been given much weight.[27] This Article contributes to these debates. It shows a path by which legal ideas developed in the periphery can influence and nourish U.S. social movements and even local laws.

Part I introduces the origins of the global rights of nature movement, with emphasis on several sources: U.S. Indian tribes; U.S. NGOs; and Latin American laws and social movements. Part II shows how the movement in the United States has persisted by shifting toward more aspirational and symbolic uses of law, by redefining itself as part of a transnational movement, and by turning toward engagement with Indigenous peoples and ideas. Part III presents the implications of this case study for our thinking about the symbolic use of law and about how legal ideas are deployed and travel—between the periphery and core and between Indigenous and non-Indigenous peoples—in a time of perceived environmental crisis.

I. THE ORIGINS OF U.S. NATURE RIGHTS

Many scholars date the start of the movement to bring nature rights into positive law to 1972. That is the year that Christopher Stone wrote a law review article arguing that trees and other "natural objects" should have standing to appear in court in cases where development projects affect them.[28] Like all social phenomena, however, the U.S. rights of nature movement draws from multiple sources and has more than one starting point. This Part begins instead with the first written expression of nature rights, which forms part of the 2002 Diné (or Navajo) codification of long-practiced customary tribal law.[29] It then turns to three other written sources, each of which acts as a distinct turning point in the movement to codify nature rights law in the United States: the Stone article, which is

also Craig Proulx, *Blending Justice: Interlegality and the Incorporation of Aboriginal Justice into the Formal Canadian Justice System*, 37 J. LEGAL PLURALISM & UNOFFICIAL L. 79 (2005) (describing how Indigenous concepts have shaped Canadian law).

27. The emphasis is on understanding how climate change is affecting ecosystems and sustainable practices. *See, e.g.*, Cuthbert Casey Makondo & David S.G. Thomas, *Climate Change Adaptation: Linking Indigenous Knowledge with Western Science for Effective Adaptation*, ENV'T SCI. & POL'Y, Oct. 2018, at 83; A. Nyong, F. Adesina & B. Osman Elasha, *The Value of Indigenous Knowledge in Climate Change Mitigation and Adaptation Strategies in the African Sahel*, 12 MITIGATION & ADAPTATION STRATEGIES FOR GLOB. CHANGE 787 (2007); Kyle Whyte, *Indigenous Climate Change Studies: Indigenizing Futures, Decolonizing the Anthropocene*, ENG. LANGUAGE NOTES, Fall 2017, at 153.

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

29. *See* Erin O'Donnell, Anne Poelina, Alessandro Pelizzon & Cristy Clark, *Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature*, 9 TRANSNAT'L ENV'T L. 403 (2020) (arguing that scholars have paid too little heed to the importance of Indigenous people's participation in rights of nature movements).

rooted in Western intellectual traditions; the first U.S. municipal nature rights ordinance, passed in Tamaqua, Pennsylvania; and the Ecuadorian constitution of 2008, which wrote Indigenous ideas about the relation of nature and human society into a constitution for the first time, sparking international interest in this legal idea and transforming U.S. efforts around nature rights.

A. Codifying Navajo Common Law

In 2002, the governing council of the Diné people added a new opening chapter codifying Diné customary law into their statutes.[30] The chapter divides Diné custom into four strands, one of which is "Natural Law" and refers to the natural world and "the cycles and changes of the elements of creation."[31] It reads in part, "All creation, from Mother Earth and Father Sky to the animals, those who live in water, those who fly and plant life have their own laws and have rights and freedoms to exist."[32]

The passage is brief, and there is no language on implementation. In order to understand how it would work on the ground, one must refer to the treatment of custom in Native nation judicial systems which some Native American courts refer to as "common law."[33] The Navajo Supreme Court has said that Navajo custom "refers to a higher law. It means something which is 'way at the top'; something written in stone so to speak . . . something like the Anglo concept of natural law."[34] The Navajo Council, its governing body, refers to Diné custom as "the immutable laws,"[35] and a former Navajo chief justice described the fundamental laws in the 2002 amendment as akin to a human rights declaration.[36] Referring to these amendments specifically, the Navajo Supreme Court has held that

30. Customary law can also be referred to by Native American courts as "common law" and is also known as consuetudinary law. *See* Ezra Rosser, *Customary Law: The Way Things Were, Codified*, 8 TRIBAL L.J. 18, 18 (2007); WORLD INTELL. PROP. ORG., CUSTOMARY LAW, TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY: AN OUTLINE OF THE ISSUES (2013), https://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview_customary_law.pdf [https://perma.cc/457Y-KBH4].

31. Kenneth Bobroff, *Diné Bi Beenahaz'áanii: Codifying Indigenous Consuetudinary Law in the 21st Century*, 5 TRIBAL L.J. 1, 8 (2004), https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1042&context=tlj [https://perma.cc/LR22-TJFK].

32. Navajo Nation Council Res. CN-69-02 (2002).

33. For a more thorough discussion of the role of customary law in Native nation courts, see Rosser, *supra* note 30, at 18.

34. *Bennett v. Navajo Bd. of Election Supervisors*, 18 Indian L. Rptr. 6009, 6011 (Navajo 1990).

35. Res. CN-69-02.

36. *See* Robert Yazzie, *Air, Light/Fire, Water and Earth/Pollen: Sacred Elements That Sustain Life*, 18 J. ENV'T L. & LITIG. 191, 196–97 (2003).

it "mandate[s] that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous but have applied the plain language directly when it applies and clearly requires a certain outcome."[37] By this reading, then, the codified customary law acts as a binding guide to statutory interpretation in cases where a statute is unclear.[38]

The fact that CN-69-02 codifies an existing body of customary law suggests, of course, that these unwritten laws had been in practice for some time, predating the movement to pass laws recognizing natural rights.[39] The Navajo Council and Navajo scholars describe these ideas as having accompanied the Diné people from before colonial times,[40] and CN-69-02 itself is written in the language of the immutable principles that have accompanied the Diné since their creation.[41] That said, the Navajo courts have also acknowledged the plasticity of custom as it adapts to historical change.[42] Indeed, codification followed "more than two decades of conscious efforts by the Navajo Nation judiciary to apply Navajo common law in written legal opinions."[43] The codification project itself took place in Navajo and drew on the knowledge of experts in Navajo spirituality, philosophy, and law.[44] In this sense, even accounting for the plasticity of custom, these principles of the rights of nature were in place prior to codification in 2002. Other Native nations in the United States, as in Canada and Latin America, had similar customary law. Deborah McGregor writes that a major commonality of Indigenous perspectives on justice that distinguishes them from non-Indigenous perspectives

37. *Tso v. Navajo Hous. Auth.*, 8 Navajo Rptr. 548, 557 n.1 (2004).

38. It would be interesting to study whether and how this provision has shaped judicial interpretation or legislative action in any specific case since codification, but no such study was found.

39. *See* Yazzie, *supra* note 36, at 191 (describing the Diné Fundamental Law as "generations of Navajo traditional oral teachings and principles which have just recently been written down."); *see also* Rosser, *supra* note 30, at 18–20.

40. Bobroff, *supra* note 31 ("Navajo leaders have used this unwritten Navajo law in local governance and traditional dispute resolution under all three colonial governments [Spain, Mexico, and the United States].").

41. Navajo Nation Council Res. CN-69-02 (2002).

42. *Lente v. Notah*, 3 Navajo Rptr. 72, 79–80 (Ct. App. 1982) ("Navajo custom varies from place to place throughout the Navajo Nation; Old customs and practices may be followed by the individuals involved in a case or not; There may be a dispute as to what the custom is and how it is applied; or, A tradition of the Navajo may have so fallen out of use that it cannot any longer be considered a 'custom.'").

43. Bobroff, *supra* note 31, at 1.

44. *See id.*

"involves the conception of humanity's relationships with 'other orders of beings,' or . . . the 'more than human world.'"[45]

This Diné origin has not been emphasized in the literature, and it does not seem to have been an explicit influence on the movement to enact nature rights in ordinances. As a matter of written law, however, it seems the Diné 2002 amendment to the Navajo Code contains the world's first positive rights of nature provision. In this way, the United States may indeed be the first home of written nature laws, although it was a law passed not by lawmakers of the United States or of its fifty states, but rather by those of its "third sovereign."[46] This Diné origin is also significant because it points us to the origin of these ideas in Indigenous systems of thought prior to the recent trend to write them into positive law, and it is resonant with the more recent turn toward Native nations writing nature rights into tribal law. The hope is that emphasizing it here will spur more research and emphasis on this precedent.

B. Corporate Persons and Toxic Sludge

In most countries, the legal persona of natural beings comes tied to an effort to write Indigenous, non-Western worldviews into positive law. The rights of nature ordinance movement in the United States, however, initially understood itself as having its roots in the writings of Western environmentalists.[47] Further, it first turned to arguing for standing for ecosystems and natural entities not from eco-centric principles but as a tactic to strengthen the voices of local communities in the face of corporations.[48] This Section relates the emergence of the U.S. movement to write rights of nature into municipal ordinances from a law review article on standing and a movement fighting for greater autonomy for cities and towns.

The famed *Should Trees Have Standing?* might have led a life of obscurity had its author not sent it to Justice Douglas. That same year, the Supreme Court reviewed *Morton v. Sierra Club*,[49] a case about the standing of the Sierra Club, an environmental public interest firm, to intervene in a controversy over developing Mineral King Valley in the Sierra Nevada.[50] The Court held that the Sierra Club did not have standing

45. *See* Deborah McGregor, *Reconciliation and Environmental Justice*, 14 J. GLOB. ETHICS 222, 224–25, 227, 229 (2018) (citation omitted).

46. For a discussion on the third sovereign, see generally Sandra Day O'Connor, *Lessons from the Third Sovereign: Indian Tribal Courts*, 33 TULSA L.J. 1 (1997).

47. *See* RODERICK FRAZIER NASH, THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS 13–22 (1989) (describing the development of the rights of nature movement from Western traditions of thought).

48. *See infra* Section I.B.

49. 405 U.S. 727 (1972).

50. *See id.* at 727.

because the club did not claim that any of its members were directly affected.[51] Ultimately, the case is about whether only those with direct economic stakes have voices in judicial decision-making about the use of public lands or whether those with other types of interests can also intervene.[52] The Court signaled that, while an interest can be non-economic, a generalized concern for the underlying natural resource is simply not enough to qualify for standing.[53]

In dissent, Justice Douglas advanced the proposition, not argued by the parties, that natural objects themselves should have standing to appear in court.[54] He cited prominently to Stone's article. In Douglas's view, the federal and state agencies entrusted with public lands were biased toward corporate interests in their decision-making and failed to give weight to the true social value of preservation of natural areas.[55] Legal standing for "the inanimate object about to be despoiled, defaced, or invaded" would allow third parties who know and understand the ecosystems to have a voice, leading to a better decision-making process.[56] The object could be defended in court by "existing beneficiaries" with an "intimate relation" to the area: "[t]hose who hike it, fish it, hunt it, camp in it, frequent it or visit it merely to sit in solitude and wonderment."[57] Although at first the idea may sound surprising, there is nothing unusual about non-human legal personality, Douglas argued, citing to litigation in the name of ships and corporations,[58] just as there is nothing unusual about a third party speaking for those who cannot speak for themselves, as in cases involving children.[59]

The Douglas dissent is an argument for a procedural mechanism, not for a new way of understanding the relation of humans to nature or for protecting the ways Indigenous peoples live on their territory. Although Douglas closes with reference to Aldo Leopold's land ethic of humans as in community with "soils, waters, plants, and animals," the thrust is to argue for a procedural mechanism that better captures the value our society already assigns to the preservation of natural areas.[60] Similarly, Stone's article was original and ambitious but grounded in Western tradition.[61] Stone cites Western thinkers from Socrates to Darwin but mentions

---

51. *Id.* at 739–41.
52. *Id.* at 734–35.
53. *Id.*
54. *Id.* at 749–52 (Douglas, J., dissenting).
55. *See id.* at 745–46 (Douglas, J., dissenting).
56. *Id.* at 741 (Douglas, J., dissenting).
57. *Id.* at 744–55 (Douglas, J., dissenting).
58. *See id.* at 742–43 (Douglas, J., dissenting).
59. *See id.* at 752 (Douglas, J., dissenting).
60. *Id.* at 752 (Douglas, J., dissenting) (quoting ALDO LEOPOLD, A SAND COUNTY ALMANAC 204 (1949)).
61. *Id.* at 493 (Douglas, J., dissenting).

Indigenous peoples only once, briefly, to question the idea that Native Americans live in harmony with nature.[62]

Despite its fame, Douglas's dissent has failed to gain legal footing over time. Subsequent efforts to argue for direct legal standing for animals and other non-human natural entities have failed in U.S. courts.[63] But the dissent has helped fuel the transnational rights of nature movement by providing it with a legal instrument issued by the U.S. Supreme Court and by catapulting the Stone article to its current status as a founding document of the movement.

Christopher Stone's article, in turn, played a pivotal role in the passage of an ordinance that is often described as the first rights of nature law in the United States and in the world, passed by the town of Tamaqua, Pennsylvania. Starting in 1995, Community Environmental Legal Defense Fund (CELDF) began working with rural communities in order to oppose corporate projects that would create negative effects, such as pollution and health problems.[64] One problem CELDF focused on was that in U.S. law, development decisions often take place at the state level.[65] While local communities can regulate industry, they cannot exclude it: they are preempted from doing so by state law and, at times, by federal law.[66] In Pennsylvania, for example, many towns opposed fracking in their communities, fearing the effects of fracking on their water and land.[67] CELDF worked with these communities to write ordinances that would seek to exclude these projects.

One of the legal obstacles with which CELDF struggled was corporate rights. Any claim by a corporation that a local ordinance interfered with its legal rights would put it out of reach of the local ordinance. When working with the town of Tamaqua to oppose a dredging project, the organizers hit on the idea of opposing corporate personhood with natural personhood. One CELDF organizer reports that, by 2006, they had been talking about Stone's *Do Trees Have Standing?* and searching for a way they could use its ideas to carve out greater space for community

62. *See* Stone, *supra* note 28, at 494.

63. *See supra* note 17 and accompanying text.

64. *See CELDF Celebrates 20 Years!*, CELDF, https://celdf.org/2015/12/celdf-celebrates-20-years/ [https://perma.cc/TY7B-9CCN] (Dec. 2, 2015).

65. *See, e.g.*, *About CELDF*, CELDF, https://celdf.org/about-celdf/ [https://perma.cc/JAN9-D9P9] (Aug. 14, 2019); *How We Work*, CELDF, https://celdf.org/celdf-services/ [https://perma.cc/MK3V-7HX9] (Aug. 8, 2019).

66. *See, e.g.*, Lori Riverstone-Newell, *The Rise of State Preemption Laws in Response to Local Policy Innovation*, 47 PUBLIUS: J. FEDERALISM 403, 403–05 (2017); Christopher B. Goodman, Megan E. Hatch & Bruce D. McDonald, III, *State Preemption of Local Laws: Origins and Modern Trends*, 4 PERSP. ON PUB. MGMT. & GOVERNANCE 146, 151–52 (2021).

67. *See, e.g.*, Jamal Knight & Bethany Gullman, *The Power of State Interest: Preemption of Local Fracking Ordinances in Home-Rule Cities*, 28 TUL. ENV'T L.J. 297, 308 (2015).

voices in community development.[68] Perhaps if nature had rights similar to those of the corporation, they thought, that could counterbalance the corporation's rights; the idea was to fight one legal fiction with another. The resulting Tamaqua Borough Sewage Sludge Ordinance became the first of a long line of CELDF-sponsored ordinances declaring nature rights.[69]

At the time, the provision on legal personhood for nature was little noted. Nature rights are not a prominent feature of the ordinance. The ordinance defines the category of "person" to include "natural communities" and "ecosystems" while threatening to strip of their legal personhood those "corporations engaged in the land application of sludge."[70] However, the bulk of the eleven-page ordinance is about the regulation of dredging and sludge in the borough. It does not explain what consequence comes from declaring the personhood of ecosystems. Indeed, the ordinance does not even specify what rights natural communities and ecosystems can claim. Nor does it convey ideas about the relation of humans to nature. It is a regulatory instrument rather than a declaration of rights. But it does contain the unusual, if under-developed, idea of the personhood of natural entities, which would become the foothold for the development of the rights of nature movement. After Tamaqua, CELDF regularly began inserting such natural personhood language into ordinances. Between 2006 and 2008, it partnered with communities to pass at least six ordinances declaring ecosystems and natural communities to be legal persons.[71]

The U.S. nature rights municipal ordinance movement, then, did not begin in conversation with Indigenous ways of thought or with the language of fundamental rights. Its roots lie in procedural arguments, mainstream U.S. environmental thinkers, and a community rights movement fighting for greater local control for suburban communities in Pennsylvania. Activists there included standing for ecosystems in their

---

68. *See* Ben Price, *'It Is Like Satire': Prince Charles' Terra Carta Is a Manifesto for the Status Quo*, COMMON DREAMS (Jan. 19, 2021), https://www.commondreams.org/views/2021/01/19/it-satire-prince-charles-terra-carta-manifesto-status-quo [https://perma.cc/F8AN-RK5W].

69. Schuylkill County, Pa., Ordinance 612 (Sept. 19, 2006).

70. *Id.* §§ 7.5–7.6.

71. Barnstead, Pa., Barnstead Water Rights and Local Self-Government Ordinance (Mar. 18, 2006); Blaine Twp., *Community Self-Governance and Corporate Takings Prohibition Ordinance*, CMTY. ENV'T LEGAL DEF. FUND (Oct. 19, 2010), https://web.archive.org/web/20101019042648/http://celdf.org/article.php?id=429.
Donegal Township, Pa., Donegal Township Corporate Mining and Democratic Self-Government Ordinance (Dec. 18, 2007); TOWN OF ATKINSON, NH, WATER WITHDRAWAL CONTROL ORDINANCE (2012); Town of Halifax, Va., An Ordinance to Amend the Town Code of Halifax, Virginia, Adding "Article VII. Corporate Mining and Chemical And Radioactive Trespass" Under "Chapter 50 Environment" (Feb. 20, 2008); Nottingham, N.H., Nottingham Water Rights & Self Government Ordinance (Mar. 15, 2008).

ordinance in the pragmatic search for a legal tool to keep corporations at bay. As the next Section shows, however, the inclusion of nature rights provisions put this local, U.S.-based rights movement in touch with a global movement that preceded it—and that would ultimately transform it.

C. Ecuador's Constitution as a Catalyst

The 2008 Ecuadorian constitution contains a chapter devoted to the Rights of Mother Earth (referred to in Kichwa as "*Pacha Mama*"), which declares in part:

> 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 . . . .
>
> 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 . . . .[72]

Concern with nature in the Ecuadorian constitution is not limited to the rights provisions but rather permeates the entire document. The charter begins in its preamble by "celebrating nature . . . of which we are a part and which is vital to our existence."[73] A chapter titled "Biodiversity and Natural Resources" spells out in greater detail the responsibilities of the government for care of the natural environment. Many provisions focused on other matters, such as the sections on agriculture[74] and international relations,[75] also acknowledge the importance of caring for the environment. More broadly, the rights of nature are linked to two other commitments that undergird the constitution. The first is a commitment to *sumak kawsay*, often translated from Kichwa as "living well,"[76] which was used to refer to views of economic development that challenge extractive, export-led growth and seek to incorporate Indigenous ideas about

72. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR [CONSTITUTION OF THE REPUBLIC OF ECUADOR] Oct. 20, 2008, arts. 71–72.

73. *Id.* pmbl.

74. *See id.* art. 281, § 6.

75. *See id.* art. 416, § 13.

76. Alfredo Macías & Pablo Alonso, *El Buen Vivir. Sumak Kawsay. Una Oportunidad Para Imaginar Otros Mundos*, 33 REVISTA DE ECONOMÍA MUNDIAL 265, 265 (2013) (book review); *see* Antonio Luis Hidalgo-Capitán & Ana Patricia Cubillo-Guevara, *Seis Debates Abiertos Sobre el Sumak Kawsay*, 48 ÍCONOS 25 (2014), https://revistas.flacsoandes.edu.ec/iconos/article/view/1204 [https://perma.cc/3PRG-4YFZ] (discussing different views as to the meaning of the term and its origins).

sustainability and living well into how Ecuador organizes its economy.[77] Second is the constitution's definition of Ecuador as a plurinational state: a state in which many different Indigenous nations co-exist as self-governing within the state and alongside the national government.[78]

Rights of nature in Ecuador are most often described as articulating Indigenous world views, or *cosmovisiones*, but they were also prioritized by other groups. Leading up to and during the constituent assembly of 2007, as described by María Akchurin, environmental groups were the first to put the rights of nature idea on the table as a way to emphasize environmental governance.[79] But the idea came to the fore only because Indigenous social movements found it consonant with their perspectives on the relationship of people with their environment and because it advanced particular political goals, including greater leverage to exclude extractivist projects from their territories.[80] Other groups—including local environmental groups, activists connected with transnational activist networks, and socialist critics of the liberal economic model of development—quickly converged around the idea.[81] In other words, different political factions were able to find common ground and converge on this concept, even though it had not been a starting point for any of them. It is thus an example of "interlegality," a hybrid legal product with roots in Indigenous philosophies or worldviews.[82]

As the debates over Ecuador's new constitution were unfolding, CELDF, the NGO that had worked with the town of Tamaqua to write rights of nature into a city ordinance, was invited to have a conversation with those in Ecuador writing their constitution.[83] They were at first doubtful as to whether to attend, as it seemed distant from their work, but they eventually traveled to Ecuador to speak of the work they began in the United States.[84] While this invitation could be described as another act of importing ideas from the North, it was clearly a fruitful moment of exchange that would reshape the U.S. movement.

---

77. Rickard Lalander & Javier Cuestas-Caza, *Sumak Kawsay y Buen-Vivir en Ecuador*, *in* CONOCIMIENTOS ANCESTRALES Y PROCESOS DE DESARROLLO: NACIONALIDADES INDÍGENAS DEL ECUADOR 30 (Ana D. Verdú Delgado & Norman A. González Tamayo eds., 2017); ALBERTO ACOSTA ET AL., EL BUEN VIVIR: UNA VÍA PARA EL DESARROLLO (Alberto Acosta & Esperanza Martínez, eds., 2009) (2009).

78. Maria Akchurin, *Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador*, 40 LAW & SOC. INQUIRY 937, 939 (2015).

79. *See id.* at 952–53.

80. *See id.* at 944–51.

81. *See id.* at 946–48.

82. *See* Boaventura de Sousa Santos, *Law: A Map of Misreading. Toward a Postmodern Conception of Law*, 14 J.L. & SOC'Y 279, 290 (1987).

83. Kyle Pietari, *Ecuador's Constitutional Rights of Nature: Implementation, Impacts, and Lessons Learned*, 5 WILLAMETTE ENV'T L.J. 37, 41–42 (2016).

84. *See* Akchurin, *supra* note 78, at 953.

These provisions of the Ecuadorian constitution were unique and became famous upon passage, for it was a pivotal moment: In one fell swoop, rights of nature law moved from the status of lowly, small-town ordinance to national constitutional law. Further, the Ecuadorian political project of its plurinational constitution was, in some ways, a regional project. In neighboring Bolivia, President Evo Morales, Bolivia's first Indigenous president, embraced the idea and passed national rights of nature legislation in 2010.[85] In neighboring Colombia, the Constitutional Court declared,

> Nature [is] a cross-cutting element of the Colombian constitutional order. Its importance lies, of course, in attention to the human beings that inhabit it and the need to have a healthy environment to live a dignified life in decent conditions; but also in relation to the other living organisms with whom the planet is shared, which are understood to be worthy of protection in themselves. . . . This is a position that is particularly relevant in Colombian constitutionalism, given the principle of cultural and ethnic pluralism that supports it, as well as the knowledge, usages and ancestral customs bequeathed by indigenous and tribal peoples.[86]

In Mexico, rights of nature laws have been written into three state-level constitutions, including that of Mexico City.[87] Further, the Ecuadorian constitution was soon followed by passage of laws and rights of nature court judgments beyond Latin America, including New Zealand (2014 and 2017), India (2017), and Bangladesh (2019).[88] Chile's constitutional convention, created to write a new constitution for the country, includes a commission charged with "Environment, Rights of Nature, Public Natural Goods and Economic Model."[89]

The Ecuadorian constitution's groundbreaking declaration of rights for *pacha mama* spurred developments at the international level as well.

---

85. Law 71 (2010) (*Ley de Derechos de la Madre Tierra*) (Bolivia); Law 300 (2012) (*Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien*) (Bolivia).

86. Corte Constitucional [C.C.] [Constitutional Court], La Sala Sexta de Revisión, noviembre 10, 2016, Jorge Iván Palacio Palacio, T-622/16, Gaceta de la Corte Constitucional [G.C.C.].

87. *See supra* note 4 and accompanying text.

88. *See supra* notes 4–7 and accompanying text; *see also Human Rights and Peace for Bangl. v. Gov't of Bangl.*, Writ Petition No. 13989 of 2016 (High Ct. Div. Feb. 3, 2019) (declaring Bangladeshi rivers to have rights).

89. CONVENCIÓN CONSTITUCIONAL, REGLAMENTO GENERAL DE LA CONVENCIÓN CONSTITUCIONAL [General Regulations of the Constitutional Convention] art. 61, §5 (2021), https://www.chileconvencion.cl/wp-content/uploads/2021/10/Reglamento-definitivo-versio%CC%81n-para-publicar-diciembre-2021-2.pdf [https://perma.cc/A6HV-BHA4].

The international rights of nature movement coalesced between 2009 and 2010 under the leadership of President Morales and the Bolivian government. In 2009, the U.N. General Assembly established the U.N. Harmony with Nature program.[90] Through this program, the U.N. General Assembly has adopted annual resolutions and has established annual dialogues and reports by the Secretary-General on eco-centric activity in the world.[91]

In tandem with these international developments, transnational social movements began to converge around the idea of rights for nature. In 2010, the World People's Conference on Climate Change (WPCCC) met in Cochabamba, Bolivia, and passed the Universal Declaration on the Rights of Mother Earth.[92] Two-hundred forty-one organizations signed on to the document.[93] Following the WPCCC, two new transnational NGOs focused on rights of nature were formed: the Global Alliance for the Rights of Nature (GARN) and the Earth Law Center. GARN was founded in 2010 and aimed to both convene NGOs and advocate for rights of nature around the world.[94] The Earth Law Center was also established in 2010 with a focus on policy advocacy.[95] It has assisted local governments in passing rights of nature laws, submitted amicus briefs in Latin American judicial proceedings, and advocated for the incorporation of rights of nature at the U.N. and the International Union for Conservation of Nature (IUCN).[96]

The Constitution of Ecuador, then, marks a pivotal point in the development of the transnational rights of nature movement. It also marks a turning point for the U.S. movement to write rights of nature into law, as will be argued below.

---

90. *Chronology*, HARMONY WITH NATURE U.N., http://www.harmonywithnatureun.org/chronology/ [https://perma.cc/ZV7F-E2YG] (last visited Mar. 20, 2021).

91. *See id.*

92. *Partners*, WORLD PEOPLE'S CONF. ON CLIMATE CHANGE & THE RTS. OF MOTHER EARTH, https://pwccc.wordpress.com/partners/ [https://perma.cc/U5UK-CSPC] (last visited Mar. 14, 2021) [hereinafter *Partners* WPCCC]; *Peoples Agreement*, WORLD PEOPLE'S CONF. ON CLIMATE CHANGE & THE RTS. OF MOTHER EARTH, https://pwccc.wordpress.com/support/ [https://perma.cc/2F78-E2UB] (last visited Mar. 14, 2021).

93. *Partners* WPCCC, *supra* note 92.

94. *About Us*, GLOB. ALL. FOR THE RTS. OF NATURE, https://therightsofnature.org/get-to-know-us/ [https://perma.cc/KS9E-5AVB] (last visited Feb. 28, 2021).

95. Michelle Maloney & Sister Patricia Siemen, *Responding to the Great Work: The Role of Earth Jurisprudence and Wild Law in the 21st Century*, 5 ENV'T & EARTH L.J. 6, 16 (2015).

96. *What Is Earth Law?*, EARTH L. CTR., https://www.earthlawcenter.org/what-is-earth-law [https://perma.cc/8FNV-35BA] (last visited Feb. 28, 2021).

II. THE QUIXOTIC PERSISTENCE OF NON-HUMAN RIGHTS IN THE USA

In Ecuador and Colombia, nature rights are understood to form part of national constitutional law. In Mexico, they sit at the state constitutional level (Mexico is a federal state).[97] In Bolivia, they were articulated through national legislation.[98] In the United States, by contrast, the movement has developed at the level of small-town ordinances and, more recently, tribal laws. Furthermore, these laws rarely have succeeded in changing the status quo. Some are rescinded.[99] Others fall into desuetude.[100] Yet others are challenged in court under state-level laws—and lose.[101] Another way of stating this is that the United States does not have a propitious political opportunity structure for rights of nature.[102] Nonetheless, since 2002, at least fifty-seven local and tribal laws declaring natural entities or ecosystems to have legal rights have been passed in the United States.[103] Two states have introduced legislation granting nature rights, and at least one state political party has incorporated rights of nature into its official platform.[104] Several U.S.-based NGOs now focus their work on nature rights. The question that emerges, therefore, is, Why does the movement persist?

This Part argues that the rights of nature movement in the United States has been able to continue in the face of an unfriendly political opportunity structure by adapting in three specific, interrelated ways: First, it has drawn on the success of the movements in other countries to legitimate the movement here despite its lack of effective local impact. Second, it has moved into the realm of symbolic politics, transforming from a movement that seeks to exclude extractivist activity from rural towns to one that seeks to change the way we understand the relationship of humans to nature through loftily written ordinances, declarations, press releases, and other actions. Third, it has shifted in identity, increasingly drawing on Indigenous thought and working in Indian Country. This Part

---

97. *See supra* note 4.

98. *See supra* note 85.

99. *See supra* note 17 and accompanying text.

100. Many of the ordinances in the database were difficult to locate and seemed to have played no role in the municipalities' governance after passage. *See supra* note 10.

101. *See supra* notes 13, 17 and accompanying text.

102. Political opportunity structure refers to the idea that social movements choose different forms of mobilization and protest depending on the broader political context. DONATELLA DELLA PORTA, POLITICAL OPPORTUNITY/POLITICAL OPPORTUNITY STRUCTURE, THE WILEY-BLACKWELL ENCYCLOPEDIA OF SOCIAL AND POLITICAL MOVEMENTS 1 (David A. Snow, Donatella della Porta, Bert Klandermans & Doug McAdam eds., 2013).

103. *See supra* note 10 and accompanying text.

104. Scott Powers, *Florida Democratic Party Adopts 'Rights of Nature' into Platform*, FLA. POL. (Oct. 16, 2019), https://floridapolitics.com/archives/308603-florida-democratic-party-adopt-rights-of-nature-into-platform [https://perma.cc/FD8H-TJEK].

closes by exploring these trends in the context of ongoing litigation between the White Earth Band of Ojibwe and the Minnesota Department of National Resources.

A. Transnational Legitimacy and Symbolic Politics

After its encounter with the Ecuadorian constitution and its participation in the nascent transnational movement, CELDF and the local NGOs with which it works pivoted toward rights of nature. Several indicators suggest this was a key moment that reshaped the U.S. nature rights movement.

The first indicator is the rate of passage of rights of nature ordinances in the United States. Of these, twenty-six were passed between 2011 and 2015, after the transnational movement's activities described above.[105] There was clearly an uptick of activity in the United States in the wake of the movements in Ecuador and Bolivia and the international movement they spurred. CELDF continued its work on community rights, and the ordinances it helped pass did not always refer to nature rights, as not all communities were convinced that this was the direction they wanted to go.[106] But rights of nature quickly became an increasingly central piece of CELDF's work.

It was not just the frequency of passage that changed. Analysis of the ordinances reveals changes in their substantive approach as well.[107] With time, the ordinances move away from arguments about legal personhood, which, as noted above, was where the movement began. Increasingly, they emphasize rights language, elaborating on the rights that nature has and making declaratory statements about the meaning of nature rights.[108] Further, the ordinances shift from declaring the rights of "ecosystems" in the abstract to the more tangible approach of declaring the rights of certain entities, such as particular lakes, rivers, and wild rice, to have rights. This is a powerful rhetorical move. It also tracks the declarations in other countries, many of which focus on particular natural features of significance to local communities.[109]

---

105. *See supra* note 10.

106. For example, Envision Spokane, an NGO in Spokane, Washington, worked for many years with CELDF to pass a community rights ordinance but never incorporated rights of nature into its campaigns. *See* ENVISION SPOKANE, https://www.envisionspokane.org [https://perma.cc/6872-FAM7] (last visited Mar. 28, 2021).

107. The analysis in this Section is drawn from coding and textual analysis of the the fifty-seven ordinances and tribal laws over time.

108. *See supra* note 10.

109. *See, e.g.*, *Hanalei River*, EARTH L. CTR., https://www.earthlawcenter.org/hanalei-river [https://perma.cc/HE6C-QCDG] (last visited Feb. 28, 2021); *River Ethiope Initiative*, EARTH L. CTR.,

Another significant change is that the NGOs themselves explicitly began to emphasize their connection to rights of nature movements outside the United States. Of four main NGOs working in the United States, all prominently focus on the legal success that the movement has had in such places as Ecuador and New Zealand and actively link themselves to these milestones.[110]

Increasingly, they also acknowledge and foreground the influence of Indigenous thinking in the rights of nature movement. Whereas CELDF began by drawing on the works of Christopher Stone and other U.S. and European thinkers, the movement now also acknowledges a different point of origin, emphasizing rights of nature as rooted in Indigenous cosmology and declaring that it should be led by Indigenous people.[111] An activist who helped write the Tamaqua ordinance described the experience in the following way: "I helped draft the first law enacted on settler colonial-controlled land to recognize such rights."[112] Movement Rights, another NGO that has worked with communities to pass nature rights laws in the United States, describes itself as "[w]orking with tribes and communities to align human laws with natural laws since 2014."[113] The Center for Democratic and Environmental Rights (CDER) emphasizes its work with tribal nations and Indigenous governments alongside the other work it does with foreign and U.S. communities and has prominent Indigenous activist Winona LaDuke on its board of advisors.[114] These changes to the ordinances and to how the U.S. movement frames its connections to

https://www.earthlawcenter.org/river-ethiope [https://perma.cc/589K-AR4D] (last visited Feb. 28, 2021).

110. *See, e.g.*, *Ecuador*, CTR. FOR DEMOCRATIC AND ENV'T RTS., https://www.centerforenvironmentalrights.org/where-we-work/ecuador [https://perma.cc/5ANN-KNGM] (last visited Feb. 25, 2022) (explaining Center for Democratic and Environmental Rights's work in Ecuador); *Champion the Rights of Nature*, CMTY. ENV'T LEGAL DEF. FUND, https://celdf.org/rights-of-nature/ [https://perma.cc/Z8EH-ZW4F] (last visited Feb. 25, 2022) (explaining CELDF's involvement in Ecuador and other countries outside the United States); *Amicus Briefs*, EARTH L. CTR., https://www.earthlawcenter.org/amicus-briefs [https://perma.cc/WR3B-T2H5] (last visited Feb. 25, 2022) (showcasing its involvement in writing amicus briefs for rights of nature legal cases in Ecuador); *The Ponca Rights of Nature Campaign: Law Follows Culture, Not the Other Way Around*, MOVEMENT RTS., https://www.movementrights.org/ponca-rights-of-nature-campaign/ [https://perma.cc/BM8T-ZRY3] (last visited Mar. 9, 2022) (explaining Movement Right's connection with the Whanganui iwi (tribe) in New Zealand).

111. *See* Price, *supra* note 68.

112. *Id.*

113. *Welcome*, MOVEMENT RTS., https://www.movementrights.org/ [https://perma.cc/6DA3-VDT9] (last visited Feb. 28, 2021).

114. *See What We Do*, CTR. FOR DEMOCRATIC & ENV'T RTS., https://www.centerforenvironmentalrights.org/what-we-do [https://perma.cc/5GTX-9R75] (last visited Feb. 28, 2021); *Board of Advisors*, CTR. FOR DEMOCRATIC & ENV'T RTS., https://www.centerforenvironmentalrights.org/board-of-advisors [https://perma.cc/3N4P-4XHT] (last visited Feb. 28, 2021).

foreign countries and Native nations can be explained in part by the shape of the local political opportunity structure. As argued by Craig Kauffman and Pamela Martin, the U.S. movement turns to local ordinances because there is no room at the national or even state level for this type of action to succeed.[115] The ordinances, however, are legally vulnerable and are able to survive only if they do not get entangled in legal challenges by corporations or other actors. If they do face such challenges, localities rescind them or courts strike them down as overbroad, as preempted by state law, or both.[116] Thus, the U.S. movement is being pushed into an ever-more symbolic realm, where the ordinances are written to be more inspiring than technical.

In this space, CELDF and its allied local NGOs can still use law to push for changes in *thinking* about the relationship of local communities to their environment, despite existing in a legal and political space that has foreclosed most actual implementation of rights of nature. Further, by reference to the success of movements in writing rights of nature laws abroad, CELDF is able to portray itself as part of a successful rights of nature movement, even if its ordinance-passing work is ever susceptible to legal challenge. Thus, U.S.-based rights of nature work is nourished and buoyed by the passage of laws and the social movements abroad.

B. The (Re)Turn to Native American Law

Perhaps the most significant recent change in the rights of nature movement within the United States is the protagonism of Native nations. When the Diné codified their customary law in 2002, they included a provision on the rights of nature, as described above.[117] While this provision preceded the work by CELDF and other organizations toward passing dozens of rights of nature ordinances in the United States, it went mostly unnoted by that subsequent movement. In recent years, however, CELDF and other U.S. NGOs have shifted to working with Native American communities toward declarations of rights of nature in written tribal law in the United States. To date, four Native American nations besides the Diné have passed such declarations, and another has passed a constitutional amendment, approval for which is pending.[118] Further, the

115. Kauffman & Martin, *supra* note 18, at 53.

116. *See, e.g.*, *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551 (N.D. Ohio 2020).

117. *See supra* Section I.A.

118. *See* Res. 001-19-010, White Earth Rsrv. Bus. Comm. (2018); Res. 01-01092018, Ponca Tribe Bus. Comm. (2018); Res. 19-52, Menominee Tribal Leg. (2020); Res. 19-40, Yurok Tribal Council (2019); Res. 12-18-18 F, Ho-Chunk Nation Leg. (2018) (on file with author).

Sauk-Suiattle Tribe has raised a rights of nature claim based on customary law in tribal court.[119]

The governing body of the Ponca Tribe of Indians in Oklahoma voted to pass a tribal law recognizing the rights of nature on October 20, 2017.[120] Leaders of the tribe worked closely with Movement Rights, an NGO focused on nature rights and Native American tribes. Its founders worked with CELDF in the past and were among the founding NGOs of GARN.[121] The Ponca Tribe was concerned with the impacts of fracking on its community and saw the statute as a tool of resistance. The Poncas' law is unique among U.S. nature laws in imposing criminal penalties and giving jurisdiction to tribal court.[122] The ordinance, however, also had an important cultural significance. As Ponca elder and member of the Ponca Tribal Business Council Casey Camp-Horinek said, "We are proud to be moving into the future by honoring our original instructions to respect all life on our Mother Earth."[123]

The following year, working with CELDF, the White Earth Band of Ojibwe in Minnesota granted legal rights to wild rice in tribal law. The resolution begins, "Manoomin, or wild rice, within the White Earth Reservation possesses inherent rights to exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation."[124] This resolution was prompted by the proposal of Enbridge to replace its Line 3 pipeline, which carries crude oil from Canada to the United States.[125] Again, however, the resolution had great cultural significance. One of the lawyers who collaborated with CELDF explained that Manoomin is "not just an important food, but a 'major part of [the Tribe's] cultural, spiritual connection with the Creator.'"[126] In the words of another tribe member, the legal declaration "reiterat[es] very old traditional legal principles and put[s] them in a modern code."[127] In August

119. Civil Complaint for Declaratory Judgment at 6, *Sauk-Suiattle Indian Tribe v. City of Seattle* (Sauk-Suiattle Tribal Court 2022) (No. SAU-CIV-01/22-001).

120. Movement Rights, *Ponca Nation of Oklahoma to Recognize the Rights of Nature to Ban Fracking*, GLOB. ALL. FOR THE RTS. OF NATURE (Jan. 29, 2018), https://therightsofnature.org/ponca-rights-of-nature/ [https://perma.cc/9LK7-4A42].

121. *Id.*

122. *See* Res. 01-01092018.

123. Movement Rights, *supra* note 120.

124. Res. 001-19-010.

125. Heidi Brandes, "*Like Gold to Us": Native American Nations Struggle to Protect Wild Rice*, SIERRA (Aug. 26, 2019), https://www.sierraclub.org/sierra/gold-us-native-american-nations-struggle-protect-wild-rice [https://perma.cc/CX23-C3VR].

126. Jennifer Bjorhus, *Minnesota Tribe Asks: Can Wild Rice Have Its Own Legal Rights?*, STAR TRIB. (Feb. 19, 2019, 4:55 PM), https://www.startribune.com/minnesota-tribe-asks-can-wild-rice-have-its-own-legal-rights/505618712/ [https://perma.cc/LJH2-RMC4].

127. *Id.*

2021 the White Earth Band filed a lawsuit against the Minnesota Department of Natural Resources under this law, as described below.

In 2019 the Yurok Tribe passed a resolution that established

> the Rights of the Klamath River to exist, flourish, and naturally evolve; to have a clean and healthy environment free from pollutants; to have a stable climate free from human-caused climate change impacts; and to be free from contamination by genetically engineered organisms.[128]

The resolution announced that it was providing notice to the U.S. and California governments that it is time to legally protect the Klamath River in order to ensure the continuation of the Yurok people.[129] It further announced that the rights of the River would be spelled out in a subsequent ordinance, but that has not yet been passed.[130]

Finally, two Native nations in Wisconsin have put rights of nature into legal resolutions. In 2020, the Menominee Indian Tribe granted legal personhood to the Menominee River, a site of special significance to the tribe.[131] The Menominee worked with CDER as part of the tribe's struggle against the "Back Forty" open-pit sulfite mining project proposed by the Canadian company, Aquila Resources.[132] The Ho-Chunk Nation, meanwhile, is waiting for approval of a proposed constitutional amendment granting rights of nature.[133] The Ho-Chunk have voted on the proposal, but it requires Bureau of Indian Affairs (BIA) certification because it is a constitutional provision.[134]

Taken together, the language and structure of these recently passed Native American laws differ from the language and structure of the non-Indigenous U.S. ordinances. All focus on a particular natural entity, such as a river or wild rice, and its significance to their people. They make reference to tribes' long-held traditions and worldviews, with emphasis on the special relationship the people hold with the natural entity. In this way, the laws act as an expression in written law of long-held tribal norms and as a way to communicate these norms to others.

---

128. Res. 19-40, Yurok Tribal Council (2019).

129. *Id.*

130. *Id.*

131. Res. 19-52, Menominee Tribal Leg. (2020) (Recognition of the Rights of the Menominee River) (on file with author).

132. *See* Amelia Cole, *Wisconsin Tribe Recognizes Menominee River Rights*, GREAT LAKES ECHO (Mar. 13, 2020), https://greatlakesecho.org/2020/03/13/wisconsin-tribe-recognizes-menominee-river-rights/ [https://perma.cc/CVH8-V5FM].

133. Res. 12-18-18 F, Ho-Chunk Nation Leg. (2018) (on file with author). It is important to acknowledge that the author is based at a university that sits on ancestral Ho-Chunk land, a place their nation has called Teejop since time immemorial and that they were forced to cede in an 1832 treaty.

134. KAUFFMAN & MARTIN, *supra* note 18, at 179.

One might argue this is a tactical move aimed at finding a more effective path toward change. Tribal laws hold a higher status vis-à-vis state law than do municipal ordinances. Whereas local ordinances can be preempted by state law, the Supreme Court recognizes each tribe as "'domestic dependent nations' that exercise 'inherent sovereign authority'"[135] and as "possessing attributes of sovereignty similar to states but not rising to the level of a foreign state."[136] Further, the White Earth Band resolution claims its footing in treaties made with the United States, which it argues could potentially preempt state law.[137]

Thus far, however, these tribal nature rights laws have played more of a symbolic and declarative role. Diné lawyers describe the nature rights provision as akin to natural law or a human rights declaration rather than as binding regulatory law.[138] The Ponca law has a different tenor: it includes criminal provisions and a jurisdictional clause. Yet Movement Rights, the NGO that works closely with the Ponca on nature rights laws, writes, "The work ahead is to make the Ponca Rights of Nature . . . become a strong model that leverages and contributes to the power of the global movement for culture shift."[139] Indeed, as in the case of the non-tribal ordinances, some attorneys view the rights of nature laws as merely "a disruptive political tactic."[140]

In contrast to these two laws, the White Earth Band law declaring the rights of wild rice, or Manoomin, has led to litigation in tribal and federal court. Even here, however, the role of nature rights tends toward symbolic politics.

C. Wild Rice Litigation as Symbolic Politics

On August 4, 2021, various named plaintiffs—including Manoomin, or wild rice, the White Earth Band of Ojibwe, and various individual plaintiffs—filed a lawsuit against the Minnesota Department of Natural

---

135. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (quoting *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991)).

136. Rebecca M. Webster, Andrew Adams III & David R. Armstrong, *An Introduction: American Indian Tribes and Law in Wisconsin*, STATE BAR OF WIS.: WIS. LAW. (May 1, 2015), https://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?Volume=88&Issue=5&ArticleID=24068#a [https://perma.cc/S9WN-M47D].

137. Res. 001-19-010, White Earth Rsrv. Bus. Comm. (2018) (on file with author).

138. Res. CN-69-02, Navajo Nation Council (2002).

139. *The Ponca Rights of Nature Campaign: Law Follows Culture, Not the Other Way Around*, *supra* note 110.

140. *See* Bjorhus, *supra* note 126.

Resources in the Tribal Court of the White Earth Band.[141] *Manoomin v. Minnesota Department of Natural Resources* is part of a broader set of actions taken by the White Earth Band and others to oppose the Enbridge Line 3 Pipeline Replacement Project in Minnesota, which crosses tribal lands.[142] The complaint alleges violations of various federal statutes, constitutional law, and treaty law, including the taking of treaty-recognized usufructuary property rights, First and Fourth Amendment violations, and Due Process violations.[143] The complaint also alleges the violation of the rights of Manoomin as declared by the White Earth Band in its 2018 code.[144] For relief, plaintiffs request that the DNR rescind all water appropriation permits for Line 3 and that the court establish Surface and Ground Water Property and Joint Permitting Agreements with Minnesota for the 1855 Treaty Territory to prevent further unilateral permitting by the DNR.[145] Plaintiffs also demand various forms of declaratory relief, including asking the court to acknowledge that Manoomin has inherent rights.[146]

The tribal lawsuit soon led to parallel litigation in federal court. On August 12, the DNR filed a Motion to Dismiss, claiming that the tribal court lacked subject matter jurisdiction and that the DNR was entitled to sovereign immunity and Eleventh Amendment immunity.[147] When the tribal court denied this motion, the DNR filed suit in the Minnesota district court against the White Earth Band and Chief Judge David DeGroat, seeking to enjoin the tribal court proceedings.[148] The DNR argued that the tribal court did not have subject matter jurisdiction over claims brought against non-members for conduct occurring off the reservation and that the defendants in the tribal suit had sovereign immunity.[149]

On September 3, the Minnesota district court denied the DNR's motion for a preliminary injunction. It found that both the Band and Judge DeGroat were protected from suit in federal court by tribal sovereign immunity and the district court therefore lacked the authority to enjoin

---

141. Complaint, *Manoomin v. Minn. Dep't of Nat. Res.*, No. GC23-0428 (White Earth Band of Ojibwe Tribal Ct. Aug. 4, 2021).

142. The opponents of the project take issue with its characterization as a "replacement" because the new Line 3 is wider than the original, will carry nearly twice the amount of oil, and will traverse a different route. *See Issues*, STOPLINE3.ORG, https://www.stopline3.org/issues [https://perma.cc/7ZJR-DTU4] (last visited Feb 13, 2022).

143. Complaint, *supra* note 141, at 39–42.

144. *Id.* at 44.

145. *Id.* at 46–47.

146. *Id.* at 45–46.

147. Order Denying Defendant's Motion to Dismiss, *Manoomin v. Minn. Dep't of Nat. Res.*, No. GC23-0428 (White Earth Band of Ojibwe Tribal Ct. Aug. 18, 2021).

148. Complaint at 6, *Minn. Dep't of Nat. Res. v. White Earth Band of Ojibwe*, No. 21-cv-1869 (D. Minn. Aug. 19, 2021).

149. *Id.*

them.[150] On September 13, the DNR filed a notice of appeal to the Eighth Circuit Court of Appeals.[151] On the same day, it filed a notice of appeal to the White Earth Tribal Court of Appeals.[152] The tribal court then dismissed the DNR as a defendant and ordered that further proceedings be stayed pending the tribal appeal.[153] The Eighth Circuit heard argument in December 2021, but final resolution of both the tribal and federal cases was still pending as this Article went to press.[154]

The fact that litigation is ongoing in both federal and tribal court might suggest that the lawsuit has teeth. Clearly, the legal issues are important enough that the DNR took the case quite seriously. But the role of the Manoomin rights of nature claims within the lawsuit is nonetheless largely symbolic and declarative. The Rights of Manoomin law on which these claims rest is itself very broad. For example, it states that the rights of Manoomin include "the right to a healthy climate system and a natural environment free from human-caused global warming impacts and emissions."[155] The law also states that "[t]he Tribal Government shall take all necessary actions to protect, implement, defend, and enforce the rights and prohibitions" of the law.[156] Such sweeping language without regard for jurisdictional limits or other legal constraints means that the law does not lend itself to regulating specific questions and actual disputes but rather serves a declaratory role.

In this vein, insofar as Manoomin is concerned, the case seeks only declaratory relief in the form of acknowledgement of Manoomin's rights. The rest of the arguments hinge on the rights of the tribe under treaty and other laws. The rights of nature piece of the litigation, in other words, works at the declaratory level, helping to draw attention to the lawsuit and spark new conversations around nature rights.[157]

---

150. Order Denying Plaintiff's Motion for Preliminary Injunction and Dismissing Complaint Without Prejudice at 5, *Minn. Dep't of Nat. Res. v. White Earth Band of Ojibwe*, No. 21-cv-1869 (D. Minn. Sept. 3, 2021).

151. Memorandum on Notice of Appeal from Michael E. Gans, Clerk of Ct., U.S. Ct. of Appeals for the Eighth Cir., to Colin P. O'Donovan, Assistant Att'y Gen., Minn. Att'y Gen.'s Off. (Sep. 13, 2021).

152. Notice of Appeal, *Minn. Dep't of Nat. Res. v. Manoomin,* No. AP21-0516 (White Earth Band of Ojibwe Tribal Ct. App. Sept. 13, 2021).

153. Order Dismissing DNR and Staying Further Proceedings Pending Appeal, *Manoomin v. Minn. Dep't of Nat. Res.*, No. GC23-0428 (White Earth Band of Ojibwe Tribal Ct. Sept. 14, 2021).

154. Dan Gunderson, *Appeals Court to Decide if Minnesota DNR Can Be Sued in Tribal Court*, MPR NEWS (Dec. 16, 2021, 2:03 PM), https://www.mprnews.org/story/2021/12/16/appeals-court-to-decide-if-minnesota-dnr-can-be-sued-in-tribal-court [https://perma.cc/VL6F-3MV4].

155. Res. 001-19-010, White Earth Rsrv. Bus. Comm. § 1(a) (2018) (on file with author).

156. *Id.* § 3(a).

157. *See, e.g.*, Eamon Whalen, *How Giving Legal Rights to an Indigenous Food Could Stop a Pipeline*, MOTHER JONES (Feb. 9, 2022),

Most tellingly, the Line 3 project has already been completed, even as the lawsuit continues. On September 29, 2021, Enbridge announced that the portion of Line 3 that goes through Minnesota is complete (the other segments were already complete), that it would become operational on October 1, and that the only remaining work to be done was clean-up and restoration work.[158] Indigenous advocacy groups that have been involved in the anti-pipeline movement, such as Honor the Earth and the Indigenous Environmental Network, took the announcement in stride, claiming that the struggle against Line 3 helped to focus attention on the ongoing impact of fossil fuels on climate change.[159] Even as Indigenous activists and Native nations play a larger role, then, the rights of nature movement in the United States continues to draw on law as a symbolic resource, now using it as an instrument to spark new conversations around Indigenous peoples and their sovereignty over their lands.

III. SOCIAL MOVEMENTS IN OUR ERA OF CLIMATE CHANGE

This Article has suggested that a U.S.-based social movement has been reshaped by its interaction with Global South rights of nature movements and by Indigenous ideas. What began as a community rights movement focused on challenges to corporate personhood in white, middle-class, suburban communities has become a movement that seeks to reshape our understanding of the relationship between human society and nature writ large, engaged with (and by) Indigenous worldviews and, increasingly, with U.S. native nations. At one level, this is a tactical move: the U.S. movement is able to draw on the prestige of the Ecuadorian constitution and the subsequent spread of rights of nature laws, creating a teleological story about the movement's gains even as it meets dead ends at home. At another level, however, the engagement with Indigenous narratives and movements in the Global South has come to reshape how the U.S. movement understands its impetus and its goals.

---

https://www.motherjones.com/food/2022/02/line3-wild-rice-bibeau-indigenous-rights-minnesota/; Nick Martin, *Indian Country's Right to Say No*, NEW REPUBLIC (Nov. 1, 2021), https://newrepublic.com/article/163949/tribal-consultation-indian-country-right-say-no [https://perma.cc/38QA-LZML]; Ray Levy Uyeda, *'Rights of Nature' Laws Can Strengthen Indigenous Sovereignty and Provide a Pathway to Environmental Justice*, PRISM (Feb. 22, 2022), https://prismreports.org/2022/02/22/rights-of-nature-laws-can-strengthen-indigenous-sovereignty-and-provide-a-pathway-to-environmental-justice/ [https://perma.cc/3JTW-66SU].

158. The Associated Press, *Enbridge Says Line 3 Replacement Complete, Opens Friday*, MPR NEWS (Sept. 29, 2021, 10:55 AM), https://www.mprnews.org/story/2021/09/29/enbridge-says-line-3-replacement-complete-opens-friday [https://perma.cc/TT5S-GYN9].

159. Mary Annette Pember, *Line 3 Opposition Lives On, Clean-up Begins*, INDIAN COUNTRY TODAY (Oct. 21, 2021), https://indiancountrytoday.com/news/line-3-opposition-lives-on-clean-up-begins [https://perma.cc/9G4K-5VEP].

More specifically, the story of the U.S. rights of nature movement conveyed above highlights three particular ways in which the U.S. movement has been recast, each with significance for the literature on social movements. First, the U.S. movement became transnational. The three main NGOs that work with local communities on rights of nature in the United States all are linked to movements abroad, and two of them regularly work with groups beyond the United States to advance the rights of nature into law. They now portray themselves as transnational, globally connected activists and fundraise with reference to their international work.[160]

Second, analysis of the language of the ordinances reveals that, since 2004, when the Tamaqua ordinance was passed, there has been a turn away from the language of a local ordinance seeking to regulate businesses and toward declaratory and aspirational language. Over time, the ordinances have become characterized by greater reference to rights, and there is less language about implementation. For example, they increasingly refer not to ecosystems in general but to a particular natural subject, such as a river.[161] But these changes do not seem to reflect the legal opportunity structures in the United States, at least not exclusively. They also reflect the development of rights of nature in other countries. In this way, the ordinances have become more symbolic: they try to write into legal form the law as it should be, rather than law as it is, despite at times facing instant claims of illegality. The ordinances are being rewritten so as to challenge systems of *thinking* about our relationship to the environment with little connection to the legal context in which they are being passed. However, they do lay claim to legal footing by linking themselves to laws passed and implemented in other countries.

The third dynamic revealed here is a shift in identity. Thus far, rights of nature claims have been most successful in places with strong Indigenous social movements, and these are the places where the legal doctrine is consequently most developed.[162] The U.S. NGOs have begun to acknowledge this by increasingly identifying themselves as working within a movement led by Indigenous peoples in the materials they publish about rights of nature.[163] As a result, the U.S. movement is currently an unusual amalgam of white suburban and Indigenous communities. More recently, U.S. Native American communities have begun to write nature rights into tribal law.[164] There are tactical reasons for this shift in domestic law. There is more autonomy and even more legal ambiguity in the relation

160. *See supra* notes 93–96 and accompanying text.
161. *See, e.g.*, Cole, *supra* note 132.
162. *See supra* Section II.A.
163. *See supra* Section I.C.
164. *See supra* notes 118–19 and accompanying text.

of tribal law to state and federal law than there is for municipal law.[165] But it is also because this move resonates with nature rights movements abroad. In this sense, it is not just that the U.S. movement is using Southern Indigenous movements to sustain itself; Southern Indigenous movements have reshaped the U.S. movement.[166] One could argue that the shifts described above have not been a winning strategy. Even if each year brings a few new ordinances passed in the United States, the U.S. movement is peripheral to the environmental movement as a whole, and it steadily loses court challenges. One might even say that the case of Toledo with which this Article began and the Menominee case with which it ends are but examples of political and legal defeat. Some have criticized nature rights lawyers, accusing them of committing malpractice by tricking towns into passing illegitimate laws that lock them into costly, losing litigation.[167] Indeed, the flight to symbolic legal actions described here is a response to court and legislative losses. Even in countries where rights of nature have strong legal footing, how much it affects change on the ground is unclear. Rights of nature laws are, without a doubt, difficult to implement in practice: thus far, several of the court judgments granting rights to rivers and forests have failed to reduce extractivist activities.[168] In any case, we can construct guardianship models without actually calling them nature rights.[169]

All of this is true, at least thus far. But part of the significance of this story is the use of law to articulate new ways of thinking.[170] Social movements are turning to rights of nature arguments not because they give concrete answers but because they give expression to a growing sense of

165. See *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459–62 (2020), as an example of this increasing ambiguity.

166. Prior scholarship on social movements has revealed how tactical decisions about legal strategies can, in the end, transform the goals and identity of the movement. *See, e.g.*, Gwendolyn M. Leachman, *Media, Marriage, and the Construction of the LGBT Legal Agenda*, 69 RUTGERS U. L. REV. 691, 693–94 (2017) (demonstrating how gay rights activism's turn to lawyers and litigation ended up reshaping the movement's goals to refocus on gay marriage).

167. *See, e.g.*, Gary Cooper, *Lafayette's Climate Bill of Rights Is Proposed Anarchy*, TIMES-CALL (Mar. 4, 2017, 11:02 PM), https://www.timescall.com/2017/03/04/gary-cooper-lafayettes-climate-bill-of-rights-is-proposed-anarchy/?clearUserState=true [https://perma.cc/37EA-2TFP]; *see also* Mannard, *supra* note 15.

168. *See, e.g.*, *The Colombian Government Has Failed to Fulfill the Supreme Court's Landmark Order to Protect the Amazon*, DEJUSTICIA (Apr. 5, 2019), https://www.dejusticia.org/en/the-colombian-government-has-failed-to-fulfill-the-supreme-courts-landmark-order-to-protect-the-amazon/ [https://perma.cc/4VJF-WNAP].

169. Stone, *supra* note 28, at 464–65.

170. There are many studies that emphasize the symbolic effects of law in the context of social movements, viewing law as "a system of cultural and symbolic meanings [more] than as a set of operative controls." Marc Galanter, *The Radiating Effects of Courts*, *in* EMPIRICAL THEORIES OF COURTS 117, 127 (Keith D. Boyum & Lynn Mather eds., 1983).

environmental crisis, and they have been effective at drawing national and international attention to particular local environmental struggles. In the context of the growth in climate change litigation over the past years, scholars have noted the importance of paying attention to low-level litigation and litigation that might not appear initially to be about climate change.[171] The passage of nature rights in the United States is not an example of climate change litigation (although some of the ordinances do mention climate change).[172] Nonetheless, the passage of nature rights in the United States is worth noting in this context because it reflects an effort to use ordinances and litigation as a way to trigger a shift in framing and thinking about environmental harm. Activists in the United States are deploying the legal concept of rights of nature, and the effort to recast natural entities as subjects rather than objects in law is a way to disrupt thinking and legal concepts in a time of environmental anxiety and climate-driven disasters. The story of rights of nature in the United States thus tells us how a social movement sustains itself through law even as it seeks to disrupt law. It is in this context that the claim to origins in Indigenous and Global South law has found resonance.

CONCLUSION

As this Article went to press, the president of Panama enacted national legislation declaring the rights of nature and the duty of the government to protect them.[173] Just weeks earlier, the Sauk-Suiattle Indian Tribe filed a lawsuit against the city of Seattle in tribal court asking the court to declare, based on customary tribal law, that the salmon within its territory "possesses inherent rights to exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation."[174] The contrast between the two legal actions—the passage of national law versus a lawsuit based on unwritten custom and filed in tribal court—throws into relief the characteristics of the U.S. movement this Article has sought to highlight. The Sauk-Suiattle suit is a local legal action facing long odds. Like the state of Minnesota in the Manoomin case, the city of Seattle turned to federal court to quash the tribal proceeding even as it sought to dismiss the lawsuit from tribal court. As the lawyer for the Sauk-Suiattle noted, "The City is represented by the international law

171. Kim Bouwer, *The Unsexy Future of Climate Litigation*, 30 J. ENV'T L. 483, 483–84 (2018).

172. *See, e.g.*, SANTA MONICA, CAL., MUNICIPAL CODE art. 12 (2013).

173. Katie Surma, *Panama Enacts a Rights of Nature Law, Guaranteeing the Natural World's 'Right to Exist, Persist and Regenerate*,*'* INSIDE CLIMATE NEWS (Feb. 25, 2022), https://insideclimatenews.org/news/25022022/panama-rights-of-nature/ [https://perma.cc/V6CD-AULM].

174. Civil Complaint for Declaratory Judgment at 1–2, *Sauk-Suiattle Indian Tribe v. City of Seattle* (Sauk-Suiattle Tribal Court 2022) (No. SAU-CIV-01/22-001).

firm of K & L Gates, which has 2000 lawyers in 40 offices around the globe."[175] The Sauk-Suiattle Indian Tribe has roughly 350 members and its counsel consists of one attorney.[176]

There is no indication that the adverse context in which the U.S. rights of nature movement operates will change any time soon. What is curious—and striking—is the movement's adaptability and perseverance. Claiming nature rights was initially one of several legal strategies used to help communities gain greater local control over land-use decisions. However, the encounter with and participation in the rights of nature movement as it unfolded in other countries reshaped not only the movement's legal strategy but also its goals. For CELDF and allied local-level NGOs, rights of nature came to be not a means but the end itself. A legal innovation originally identified with leftist governments in the Global South and with ethnically identified non-Western peoples thus came to be identified in the United States with white, middle-class suburban and rural communities, and, not infrequently, Republican ones.[177]

Most recently, Native nations within the United States have begun to pass rights of nature laws in their struggles against extractive industries and to strengthen their sovereignty. The Sauk-Suiattle lawsuit opens up the possibility of bringing tribal court claims absent positive, written law. But the movement continues to operate at the level of symbolic politics. As the Sauk-Suiattle lawyer admitted, "the Sauk-Suiattle Indian Tribe merely seeks a declaration from its own court . . . . The tribe does not otherwise seek to regulate Seattle's conduct nor has it sought damages nor injunctive relief."[178]

By constantly adapting in this way, the rights of nature movement is able to persist despite what appears at first blush to be a losing strategy in the context of U.S. law. Moving forward, it will be important to continue to study the movement as an example of creative perseverance in our time of climate crises.

175. Motion to Dismiss at 3, *City of Seattle v. Sauk-Suiattle Tribal Court* (W.D. Wash. 2022) (No. 2:22-cv-00142-BJR).

176. The Sauk-Suiattle Tribe's official website claims a tribal membership of 350. *Home*, SAUK-SUIATTLE INDIAN TRIBE, https://www.sauk-suiattle.com/ [https://perma.cc/B6U7-VF9S] (last visited Feb. 26, 2022).

177. Sixteen of the fifty-two U.S. municipal ordinances are in predominantly Republican communities, and six are in "purple" districts. *See supra* note 10.

178. Motion to Dismiss, *supra* note 175, at 11.