Toward a Decolonized Non-Anthropocentric Legal System: Why the Rights of Nature Movement Should Codify Indigenous Customary Laws and Look to the Indigenous Bagungu People for Best Practice

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> *We should know that [the Great Spirit] is within all things; the trees, the grasses, the rivers, the mountains, and the four-legged animals, and the winged peoples.*
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> —Black Elk of the Oglala Lakota[1]

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1. JOSEPH EPES BROWN, THE SACRED PIPE, at xx (1953).

INTRODUCTION

Courts and legislatures around the globe are increasingly recognizing the legal rights of Nature.[2] While the legal concept of Rights of Nature[3] may appear relatively new, with legal academia[4] on the topic largely beginning in the 1970s,[5] Rights of Nature is in fact an ancient concept rooted in Indigenous customary laws and ways of knowing found in Indigenous cultures around the world.[6] This Article will explore the ancient origins of Rights of Nature, with a critical analysis on the role postcolonialism has played in invalidating Indigenous customary laws and ways of knowing, and in turn, erasing some of the most powerful—and as this Article will later argue, *effective*—underpinnings of Rights of Nature. This Article will then review two significant Rights of Nature laws, discussing the legal and policy considerations underlying each law, and highlighting the difference between appropriation of Indigenous rhetoric and concepts (as seen in what this Article calls Bifurcated Rights of Nature laws) versus the successful enshrining of Indigenous customary laws into modern legal systems (as seen in what this Article calls Holistic Rights of Nature laws). Finally, this Article will outline what it believes to be best practice in crafting the most effective and protective type of Holistic Rights of Nature laws: highly localized laws, developed in collaboration with Indigenous communities, that not only codify Indigenous customary laws but also recognize the rights of Indigenous custodians by providing governance power to Indigenous populations to oversee implementation and enforcement.

The entirety of this Article is based on the knowledge and wisdom of different Indigenous cultures from around the world, and hopefully serves only as a delivery device to further communicate Indigenous ideas that are too often overlooked or misappropriated by legal and academic communities in the dominant culture. This Article does not support an essentialist account of Indigenous customary laws or ways of knowing; Indigenous cultures around the world, and within the same geographical regions, possess unique and diverse cultural proclivities, perceptions, values, understandings, and practices. Any reference to Indigenous customary laws and ways of knowing should be read to only include those specific

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2. Daniel Quinn, *What are the Rights of Nature*, GLOBAL ALLIANCE FOR RIGHTS OF NATURE, https://perma.cc/Y9Z6-47CX (last visited Apr. 17, 2021) ("Rights of Nature is the recognition and honoring that Nature has rights. It is the recognition that our ecosystems—including trees, oceans, animals.").

3. *Id.*

4. *Legal academia* in this context refers to legal academia created and consumed by the dominant culture. Indigenous ways of knowing include both legal and academic elements, though postcolonial rhetoric, especially in the academy, often overlooks or erases the legal and academic elements of Indigenous beliefs.

5. *See, e.g.*, Christopher Stone, *Should Trees Have Standing?—Towards Legal Rights for Natural Objects*, 45 S. CAL. L. REV 450–501 (1972).

6. *See infra* Part II.

Indigenous cultures referenced who possess customs and knowledge relating to the interconnectedness between humans, animals, and Nature.

This Article acknowledges that use of any all-encompassing term, such as *Indigenous*, to refer to more than one distinct People is in itself potentially problematic, and any definition of such a term necessarily requires the imposition of standards that could undermine a People's unique way of identifying and being. Given that Indigenous Peoples have consistently argued against any formal definition of the term *Indigenous* at the international level,[7] this Article intentionally does not utilize a formal definition. Indigenous Peoples have suffered from centuries of definitions being imposed on them by others, most often by their oppressors, and such a formal definition would be an extension of such oppressive practices.

In place of a formal definition, there are several shared characteristics or factors—developed with input from Indigenous populations and adopted by numerous international organizations—that may be used as a nonrestrictive guiding light for understanding the concept of *Indigenous*. These characteristics or factors often include (1) self-identification as Indigenous, (2) inhabitation of a region at the time when people of different cultures or ethnic origins arrived, (3) a strong link to territories and surrounding natural resources, (4) cultural distinctiveness through language, spiritual values, or social, economic, and political systems, (5) an experience of marginalization, dispossession, exclusion, or discrimination by the state, and (6) a special connection or attachment to ancestral environments and systems as distinct Peoples.[8] It should be noted that a majority of international organizations consider self-identification and the right to self-determination as the "fundamental criterion" in identifying Indigenous Peoples.[9]

This Article should be read as a call for engagement with ancient Indigenous Rights of Nature concepts, with the ultimate goal of engaging with Indigenous Peoples from around the world to further implement Indigenous developed concepts into current legal systems. Though this Article strives to cite to Indigenous leaders and thinkers, the analysis in some areas is lopsided, as hundreds of years

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7. *See, e.g.*, ASIA PACIFIC FORUM OF NAT'L HUMAN RTS. INST. & THE OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RTS., UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: A MANUAL FOR NATIONAL HUMAN RIGHTS INSTITUTIONS, at 6 (2013) ("Indigenous [P]eoples have argued against the adoption of a formal definition at the international level, stressing the need for flexibility and for respecting the desire and the right of each [I]indigenous [P]eople to define themselves.").

8. *See, e.g.*, *id.* at 7; Carlos Marecos, *Indigenous Peoples*, AMNESTY INT'L, https://perma.cc/9AP9-GZ7H (last visited Apr. 11, 2023).

9. *See, e.g.*, ASIA PACIFIC FORUM OF NAT'L HUMAN RTS. INST. & THE OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS, *supra* note 7, at 8 ("[S]elf-identification as [I]ndigenous is a 'fundamental criterion for determining the groups' which are [I]ndigenous."); Marecos, *supra* note 8 ("Indigenous Peoples can be identified according to certain characteristics: Most importantly, they self-identify as Indigenous [P]eoples.").

of postcolonial Westernized legal tradition has set the framework for this conversation.

I. THE ORIGINS OF RIGHTS OF NATURE: RECOGNIZING INDIGENOUS ROOTS

Rights of Nature is both a legal and jurisprudential concept,[10] as well as a form of ecological governance.[11] While Rights of Nature legislation and case law vary, a core feature of Rights of Nature is the concept that Nature holds certain inalienable rights, such as the right to exist, persist, maintain, regenerate, or flourish.[12] Rights of Nature laws thus seek to provide for and prioritize such rights for Nature, its ecosystems, and the individuals that comprise such systems.[13] While globally Rights of Nature laws trend towards envisioning all components of Nature as having inherent rights, some Rights of Nature laws only grant rights to specific ecosystems.[14] Of the Rights of Nature laws that grant rights to ecosystems, some do so by recognizing ecosystems as "living spiritual beings" while others, largely in the United States, do so by recognizing ecosystems as "natural communities."[15] The strength and success of different Rights of Nature laws are often defined by the specific contours of, and bases for, the rights granted, as well as the jurisdictional positionality of such rights within the given political system.[16]

While many academic sources cite Christopher Stone as the first scholar to question whether Nature should have legally cognizable rights in his now famous 1972 essay, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*,[17] the origins of the legal concept that many now refer to as "Rights of Nature" dates much farther back. The concept of Rights of Nature is built upon a foundation of Indigenous worldviews that envision humans as a part of Nature

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10. Stillheart Institute, *The Economics of the Biosphere: The Stillheart Declaration on the Rights of Nature*, *in* RIGHTS OF NATURE & MOTHER EARTH: RIGHTS-BASED LAW FOR SYSTEMIC CHANGE 5, 7 (Shannon Biggs, Tom B.K. Goldtooth, & Osprey Orielle Lake eds., 2017) (discussing Rights of Nature as an alternative "jurisprudence and legal system designed to serve all of the living Earth community").

11. Cameron La Follette, *Rights of Nature: The New Paradigm*, AM. ASS'N OF GEOGRAPHERS (Mar. 6, 2019), https://perma.cc/N6HQ-8M8M ("Rights of Nature is a short-hand term for a form of ecological governance that both provides for and prioritizes Nature's right to flourish.").

12. *See, e.g.*, Quinn, *supra* note 2 ("[R]ights of [N]ature acknowledges that [N]ature in all its forms has the *right to exist, persist, maintain and regenerate its vital cycles*.") (emphasis added).

13. *Id.*; La Follette, *supra* note 11.

14. Craig M. Kauffman & Pamela L. Martin, *Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand*, 18 GLOB. ENV'T POL. 43, 49 (2018).

15. *Id.* at 45.

16. *Id.* at 50.

17. *See, e.g.*, Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court*, 7 RESOURCES 1, 1 (2017) ("The first scholar to raise the question of whether Nature should be recognized the right to stand in court was Professor Christopher Stone, a professor from the University of Southern California who in 1972 wrote his famous essay: 'Should Trees Have Standing? Toward Legal Rights for Natural Objects.'"); Christopher Stone, *Should Trees Have Standing?—Towards Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 450–501 (1972).

and recognize the intrinsic right to life of all living creatures.[18] In Ecuador, the first country to enshrine Rights of Nature in its constitution,[19] the grant of rights was framed using the Indigenous Ecuadorian religious belief—*sumak kawsay*, commonly referred to as *buen vivir*—that there is a connection between the preservation of Nature and the ideal for human quality of life.[20] It is important to note that the Indigenous concept *sumak kawsay* is distinct from the concept of *buen vivir*, though the two have been incorrectly used as synonyms by the Ecuadorian government. *Sumak kawsay* is an Indigenous epistemological concept, given meaning through other theoretical referents, while *buen vivir* has come to be a post-modern political construct that combines various ideologies and theologies in pursuit of the "good life." Indigenous activists and some scholars have asserted that the Indigenous concept of *sumak kawsay* was turned into a political project and reframed as *buen vivir* by the Ecuadorian government, which coopted and twisted the Indigenous concept of *sumak kawsay* to justify anthropocentric Western development rooted in the extraction and consumption of Nature.[21] Thus, while Ecuador's incorporation of Indigenous religious belief underscores the ancient Indigenous origins of Rights of Nature, it also brings to light the foundational issue with most Rights of Nature laws: the coopting of Indigenous rhetoric and ideology to pass what are ultimately anthropocentric postcolonial environmentalist laws.

In New Zealand, the recognition of the Whanganui River as a legal entity was a result of the integration of Māori of Aotearoa beliefs into New Zealand jurisprudence following more than 140 years of negotiations with the government.[22] Gerrard Albert, lead negotiator for the native Whanganui iwi[23], stated that

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18. BIONEERS, *Rights of Nature*, https://perma.cc/M9YP-KZFE (last visited Mar. 16, 2021) ("At its core, Rights of Nature reflects Indigenous worldviews. While the Western philosophical system is underpinned by the ideology that humankind is separate from Nature and has dominion over it, Indigenous worldviews conceive of humans as a part of Nature, with an obligation to maintain its balance and the intrinsic right to life of all beings.").

19. Kyle Pietari, *Ecuador's Constitutional Rights of Nature*, 5 WILLAMETTE ENV'T. L.J. 38, 89 (2016).

20. *Id*. While the concept of *buen vivir* can be viewed as anthropocentric, as it places the preservation of Nature within the human desire for good living, its Indigenous roots of *sumak kawsay* highlight the interconnectedness between Nature and humans, thereby transcending traditional anthropocentric environmentalist views of Nature as a subjugated resource to be enjoyed by superior humans.

21. *See, e.g.,* Oviedo Atawallpa, *El Buen Vivir Posmoderno y el Sumakawsay Ancestral, in* ANTOLOGÍA DEL PENSAMIENTO INDIGENISTA ECUATORIANO SOBRE SUMAK KAWSAY 267, 276 (Antonio Luis Hidalgo Capitán, Alejandro Guillén García & Nancy Rosario Déleg Guazha, eds. 2014) *translated in* Johannes Waldmüller, *Buen Vivir, Sumak Kawsay, 'Good Living': An Introduction and Overview*, 1 ALTERNAUTAS 17, 20 (2014); Craig M. Kauffman & Pamela L. Martin, *Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail*, 92 WORLD DEV. 130, 139–40 n.3 (2017).

22. Meredith N. Healy, *Fluid Standing: Incorporating the Indigenous Rights of Nature Concept into Collaborative Management of the Colorado Ecosystem*, 30 COLO. NAT. RES., ENERGY & ENV'T L. REV. 327, 332–33 (2019).

23. The word *iwi*, which translates to *bone* in the Māori language, has come to be used to refer to a tribe, nation, or people, often referring to a large group of people descended from a common ancestor

"Māori cosmology understands that we are part of the universe . . . [T]he mountains and rivers are our ancestors. Our cultural identity as a people is inseparable from the river—it is more than water and sand, it is a living spiritual being."[24] Even before the Whanganui River, the native Tūhoe iwi negotiated with the government to pass the *Te Urewera* Act, which recognized legal personhood for a national park located in Tūhoe territory. The Act was largely motivated by the Tūhoe iwi's desire to be reconnected with the land that is a source of their cultural identity, with the Act itself reflecting the Tūhoe iwi's belief that the land is inseparable from the Tūhoe iwi.[25]

In the United States, recognition of certain inalienable rights of Nature is embedded into numerous Native American religions and cultures.[26] As Native American attorney and legal scholar Walter Echo-Hawk reflected, "[T]ribal religions cannot be considered in a vacuum, but must be understood within the context of the primal world, for tribes in their aboriginal places are embedded in their indigenous habitats so solidly that the line between Nature and the tribe is not easy to establish."[27] In this way, many view Rights of Nature legislation as a form of Indigenous rights, as the recognition of Rights of Nature is inherently a recognition of the rights of Indigenous Peoples whose identity is inseparable from Nature.[28]

Indigenous beliefs that embrace the interconnection between Nature and humans have consistently served as the philosophical underpinnings of Rights of Nature legislation, constitutional provisions, and case law across the globe.[29] Perhaps then it is not surprising that Indigenous Peoples have also been at the forefront of pioneering, advocating for, and crafting Rights of Nature law.[30] Despite the significant contributions of Indigenous Peoples, both philosophically and through labor, many academic and legal resources refer to Rights of Nature as a *new* concept, and often credit white academics with the creation of the legal

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and associated with a distinct territory. *See, e.g.,* MĀORI DICTIONARY, https://www.maoridictionary.co.nz/search?keywords=iwi (last visited Mar. 26, 2021).

24. Shannon Biggs, *Rivers, Rights and Revolution: Learning from the Māori*, *in* RIGHTS OF NATURE & MOTHER EARTH: RIGHTS-BASED LAW FOR SYSTEMIC CHANGE 24 (Shannon Biggs, Tom B.K. Goldtooth, & Osprey Orielle Lake eds., 2017).

25. Shannon Biggs, *When Rivers Hold Legal Rights*, EARTH ISLAND J. (Apr. 17, 2017), https://perma.cc/P5L6-KTDQ (last visited Apr. 17, 2021).

26. Healy, *supra* note 22, at 351.

27. *Id.* (quoting WALTER R. ECHO-HAWK, IN THE LIGHT OF JUSTICE: THE RISE OF HUMAN RIGHTS IN NATIVE AMERICA AND THE UN DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES 147 (2013)).

28. *See, e.g.*, Biggs, *Rivers, Rights and Revolution*, *supra* note 24, at 25 ("These changes also shift more than just governance of the (former) national park, it is also seen as a step toward sovereignty for the Tūhoe people whose identity is inseparable from the land.").

29. *See, e.g.*, BIONEERS, *Rights of Nature—Codifying Indigenous Worldviews into Law to Protect Biodiversity*, https://perma.cc/FK8C-6B3Y (last visited Apr. 16, 2021).

30. *Id.*

and jurisprudential concepts of Rights of Nature.[31] Praise for scholars such as Christopher Stone or Thomas Berry,[32] without mention of the contributions of Indigenous beliefs and labor, is a denial of Indigenous jurisprudence and an implicit assertion that Indigenous customary laws and ways of knowing are neither 'academic' nor 'legal.'

Laws are created through expectations about proper conduct, and as such, many Indigenous legal traditions were developed and rooted in the customs and practices of Indigenous People.[33] For example, in Canada, Indigenous Peoples developed a multitude of "spiritual, political, and social customs and conventions to guide their relationships," which have become the foundation for complex systems of law.[34] Thus, the first people to create the legal and jurisprudential concept to Rights of Nature were in fact Indigenous Peoples who had practiced customary laws for hundreds of years. Those customary laws mirror what we now call Rights of Nature. With this in mind, Rights of Nature is neither new nor the result of modern legal scholars and academics but is instead an ancient legal and jurisprudential concept developed by Indigenous Peoples around the world and integrated into modern legal systems largely through the labor of Indigenous People.

There is an inherent contradiction present in most Rights of Nature laws (whether they be constitutional provisions, legislation, or case law). On one hand, they recognize the intrinsic value and inalienable rights of Nature.[35] On the other hand, they characterize Nature as a resource to be maintained only so far as it can be enjoyed by humans.[36] The former embraces Indigenous worldviews and ways

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31. *See, e.g.*, Anna Leah Tabios Hillebrecht & María Valeria Berros, *Introduction*, *in* CAN NATURE HAVE RIGHTS 5 (Anna Leah Tabios Hillebrecht & María Valeria Berros eds., 2017) ("Rights of Nature is a *new* emerging concept, one that is being integrated and developed in several legal systems around the world, and spurring a *new* field of political discourse.") (emphasis added); Pecharroman, *supra* note 17, at 1 ("The first scholar to raise the question of whether Nature should be recognized the right to stand in court was Professor Christopher Stone, a professor from the University of Southern California who in 1972 wrote his famous essay: 'Should Trees Have Standing? Toward Legal Rights for Natural Objects.'").

32. Thomas Berry is often credited as the first person to identify or verbalize the concept of Earth Jurisprudence—a non-anthropocentric jurisprudence which recognizes that the Earth is embedded in a lawful and ordered Universe and that all living creatures, including humans, are inextricably subject to such laws and processes—though such concepts have existed within various Indigenous cultures for most of history. GAIA FOUND., *Earth Jurisprudence*, https://perma.cc/7MG3-QD2G (last visited Apr. 17, 2021); GAIA FOUND., *The Great Work of Thomas Berry*, https://perma.cc/CG4Z-RF9R (last visited Apr. 17, 2021).

33. John Borrows, *Indigenous Legal Traditions in Canada*, 19 WASH. U.J.L. & POL'Y 167, 189 (2005).

34. *Id.* at 190.

35. Article 71 of Ecuador's constitutional Rights of Nature provision extolls that Nature has a "right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes." Republica del Ecuador, *Constitucion de 2008* [Republic of Ecuador, *Constitution of 2008]*, POLITICAL DATABASE OF THE AMERICAS, https://perma.cc/JSB2-S8KQ (last updated Jan. 31, 2011).

36. Article 74 of Ecuador's constitutional Rights of Nature provision states, "Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy a good way of living." *Id.*

of knowing, while the latter reflects Western anthropocentric values. This Article refers to such contradictory laws as Bifurcated Rights of Nature, wherein Nature's rights and humans' rights are seen as distinct and through separation create an inherent conflict. Bifurcated Rights of Nature laws that incorporate such anthropocentric language are less effective and ultimately replicate problems rampant in postcolonial environmental law.[37] Namely, such laws protect Nature, its ecosystems, and individuals that comprise such systems, only as far as they can be enjoyed by humans or utilized as resources. Such legislation and case law breaks from Indigenous customary laws and ways of knowing foundational to the concept of Rights of Nature, erasing the interconnectedness between, and intrinsic value of, humans, animals, and Nature alike. This Article ultimately advocates for further creation of what this Article calls Holistic Rights of Nature laws, wherein Nature's rights and humans' rights are holistically integrated through the codification of local Indigenous customary laws and ways of knowing.

Given environmental law's focus on Nature as a resource to be protected only as far as it can be enjoyed by humans, Rights of Nature should be considered as a shift *away* from traditional anthropocentric environmental law and credited as a form of Indigenous customary law. Despite the Indigenous origins of Rights of Nature, and the conflict between traditional anthropocentric environmental law and Rights of Nature, environmentalists continue to refer to Rights of Nature as a "*new* approach to *environmental law*."[38] The more accurate statement would be that Rights of Nature is a codification—or appropriation in cases where Indigenous rhetoric and concepts are utilized to enforce Western anthropocentric values—of Indigenous customary laws and ways of knowing.

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37. A distinction must be made between what this Article calls "postcolonial environmental law"—that is environmental law that has been developed and propagated from a postcolonial perspective—and environmental law as seen in Indigenous customary laws and ways of knowing. This Article asserts that environmentalism and environmental law are in fact Indigenous concepts that have been coopted by the dominant culture and reframed as new. Indigenous cultures around the world have long seen themselves as "custodians" or "guardians" of the Earth, and thus while anthropocentric environmentalism was made popular by the dominant culture in the twentieth century, the core concepts of protecting the environment have roots in different Indigenous cultures around the world. Along with coopting Indigenous knowledge and labor, anthropocentric postcolonial environmentalism resulted in stealing land from Indigenous tribes in the name of "conservation." *See, e.g.*, Jazmin Murphy, *Decolonizing Environmentalism*, ECOWATCH (Sept. 17, 2020), https://perma.cc/USH4-ULAE (last visited Apr. 11, 2021); Raymond Foxworth, *Indigenous Communities and Environmental Justice*, NONPROFIT QUARTERLY (Oct. 9, 2020), https://perma.cc/5CRZ-LG7J (last visited Apr. 11, 2021).

38. *See, e.g.*, Pietari, *supra* note 19, at 38 ("Granting rights to Nature is a *new* approach to *environmental law* that conceptualizes the natural, non-human world as something worthy of protection for its own sake, and not just as something to be used for the benefit of people.") (emphasis added).

II. COMPARING BIFURCATED RIGHTS OF NATURE LAWS THAT COOPT INDIGENOUS RHETORIC WITH HOLISTIC RIGHTS OF NATURE LAWS THAT ENSHRINE INDIGENOUS CUSTOMARY LAWS INTO MODERN LEGAL SYSTEMS

Rights of Nature legal provisions currently exist in 29 different countries, with approximately 130 different constitutional provisions, national laws, local regulations, court decisions, and official recognitions or declarations.[39] The first modern case to address the concept of Rights of Nature was *Sierra Club v. Morton*,[40] for which Justice William O. Douglas wrote a spirited dissent asserting that natural resources ought to have standing to sue for their own protection.[41] The first modern piece of local Rights of Nature legislation was passed in Tamaqua Borough, Pennsylvania in 2006 in the form of a local ordinance which announced that "Borough residents, natural communities, and ecosystems shall be considered to be 'persons' for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems."[42] The first modern constitutional Rights of Nature provision was passed in Ecuador in 2008, followed by the world's first courtroom victory three years later in the Provincial Court of Loja on behalf of the Vilcabamba River.[43]

This Part will discuss and analyze two significant Rights of Nature laws to demonstrate the importance of meaningful engagement with, and legal incorporation of, Indigenous customary laws and ways of knowing. Section II.A will examine the historical and political context of the passage of Ecuador's 2008 constitutional provisions that were structured using a Bifurcated Rights of Nature approach. Section II.A will then focus on the conflict between Article 71's use of Indigenous rhetoric and ideology and Articles 72 through 74's anthropocentric postcolonial environmentalist rhetoric. Finally, section II.A will argue that the conflict between Indigenous rhetoric and postcolonial environmentalist rhetoric—inherent in all Bifurcated Rights of Nature laws—ultimately weakened Ecuador's Rights of Nature constitutional provisions. Section II.B will examine the Holistic Rights of Nature ordinance crafted in the Buliisa District of Western Uganda by the Indigenous Bagungu People in December of 2020. After exploring the national and local legislative foundation that laid the groundwork for the

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39. UNITED NATIONS: HARMONY WITH NATURE, *Rights of Nature Law and Policy*, https://perma.cc/2BAU-3NF3 (last visited Apr. 5, 2021).

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

41. *Id.* at 743–44 ("The ordinary corporation is a 'person' for purposes of adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes. So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life.").

42. TAMAQUA BOROUGH, PA., ORDINANCE 612 § 7.6 (Sept. 19, 2006).

43. *See* UNITED NATIONS: HARMONY WITH NATURE, *supra* note 39 (describing the Loja case as the "[f]irst Rights of Nature court victory"); Kauffman & Martin, *Can Rights of Nature Make Development More Sustainable?*, *supra* note 21, at 136 ("In March 2011, the provincial court [of Loja] ruled in favor of the Vilcabamba River, making it the world's first successful R[ights] o[f] N[ature] lawsuit.").

Buliisa District's Holistic Rights of Nature ordinance, section II.B will focus on the ordinance's successful codification of Indigenous Bagungu customary laws and creation of a co-governance body led by Bagungu custodians, and outline the benefits of such characteristics. Finally, section II.B will argue that the Buliisa District's ordinance serves as an example of best practice in crafting Holistic Rights of Nature laws that meaningfully incorporate Indigenous customary laws and ways of knowing into modern legal systems.

A. ECUADOR'S BIFURCATED RIGHTS OF NATURE CONSTITUTIONAL PROVISIONS: PROBLEMS WITH UTILIZING INDIGENOUS RHETORIC AND CONCEPTS ALONGSIDE POSTCOLONIAL ENVIRONMENTALIST RHETORIC

On September 28, 2008, Ecuador became the first country in the world to grant constitutional rights to Nature.[44] The successful passage of Ecuador's Rights of Nature constitutional provisions largely resulted from a unique political opportunity. In 2006, following a decade of extreme political and economic instability in the country, Rafael Correa was elected president of Ecuador. President Correa ran on a progressive platform,[45] criticizing the power of corporations, neoliberal policies, and the involvement of the United States in Ecuador, and promising to fundamentally restructure Ecuador's political and economic systems and transition Ecuador to an alternative form of development.[46] The election of President Correa on such a progressive platform represented a decided shift away from Ecuador's previous development model that relied primarily on extraction and exports, with petroleum being Ecuador's leading extraction and export.[47] In fact, President Correa appointed many members of the anti-oil extraction community within his cabinet.[48]

A catalyst for the success of Ecuador's constitutional Rights of Nature provisions was the rewriting of the Ecuadorian Constitution in 2007.[49] President

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44. COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND, *Press Release: Community Environmental Legal Defense Fund, Ecuador Approves New Constitution: Voters Approve Rights of Nature* (Sept. 28, 2008), https://perma.cc/BL9C-GQ8X (last visited Apr. 11, 2023).

("By an overwhelming margin, the people of Ecuador today voted for a new constitution that is the first in the world to recognize legally enforceable Rights of Nature, or ecosystem rights.").

45. While President Correa is often included with Venezuela's Hugo Chávez and Bolivia's Evo Morales as a member of one of the radical left-leaning governments in South America, President Correa has also been criticized by the left social movement for failing to fully transition away from structures that oppress and exploit marginalized communities. Marc Becker, *The Stormy Relations Between Rafael Correa and Social Movements in Ecuador*, 40 LATIN AM. PERSPS., 43, 45–46 (2013).

46. Kauffman & Martin, *Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand*, *supra* note 14, at 55; Maria Akchurin, *Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador*, 40 L. & SOC. INQUIRY 937, 942 (2015).

47. Akchurin, *supra* note 46, at 945.

48. Kauffman & Martin, *Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand*, *supra* note 14, at 55.

49. *Id.*

Correa called for a referendum to draft a new charter for Ecuador that would be created through a participatory process.[50] The 2008 Ecuadorian Constitution, which replaced the 1998 Constitution, was "drafted via a constituent assembly of 130 elected delegates and was ratified by 64 percent of the population in a constitutional referendum."[51] With over eighty percent of voters in support of rewriting the constitution and participation from 130 delegates, the 2008 Constitution was a far cry from the 1998 Constitution, which was written "behind closed doors at a military site."[52] Leading up to the assembly, delegates received constitutional proposals from organizations and private citizens throughout the country, with the assembly receiving approximately 70,000 in-person visitors and 1,632 written proposals in only six months.[53] Although the assembly heard from the private industry, including resource extraction companies, the process was characterized by an openness toward leftist social organizations, creating an ideal political and legal climate to pass Rights of Nature constitutional provisions.[54]

While the legal and political environment in Ecuador provided a unique opportunity to pass Rights of Nature constitutional provisions, much of the ideological foundation for the concept of Rights of Nature had been laid decades earlier in both legal and sociopolitical settings.[55] In 1934, Ecuador declared the Galápagos Islands a protected area.[56] Tucked within a set of hunting and fishing regulations, the Executive Decree linked the concepts of Nature, conservation, and wildlife refuges.[57] Ecuadorian professionals in the natural sciences continued to advocate for environmental protection throughout the next several decades, and such protections were even included in the 1945 Ecuadorian Constitution, which incorporated the need to protect places of natural beauty as well as local flora and fauna.[58]

In the 1990s, Ecuadorian citizens brought suit against Texaco in U.S. federal court to address oil pollution in the Northern Ecuadorian Amazon.[59] During this time, environmental organizations and Indigenous groups were advocating for the codification of the "Indigenous cosmovision that Nature is sacred, possesses its own rights, and is part of a living community in which humans exist" within Western legal frameworks.[60] The 1990s proved especially fruitful for Ecuadorian

50. Akchurin, *supra* note 46.
51. *Id*.
52. *Id*.
53. *Id*. at 943.
54. *Id*.
55. Kauffman & Martin, *Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand*, *supra* note 14, at 55; Akchurin, *supra* note 46, at 944.
56. Akchurin, *supra* note 46, at 944.
57. *Id*.
58. *Id*.
59. Kauffman & Martin, *Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand*, *supra* note 14, at 55.
60. *Id*.

environmental commitments and legislation, with the incorporation of the right to live in a pollution-free environment and other environmental principles into Ecuador's 1998 Constitution.[61] It was against this historical backdrop that Ecuador became the first country to enshrine Rights of Nature provisions within its constitution.

While Ecuador's Rights of Nature constitutional provisions are primarily enshrined in Chapter Seven of the 2008 Ecuadorian Constitution, the preamble of the Constitution makes the first mention of Rights of Nature.[62] According to the foremost English translation, the preamble of the 2008 Constitution states:

> We women and men, the sovereign people of Ecuador . . . CELEBRATING Nature, the Pacha Mama (Mother Earth), of which we are a part and which is vital to our existence . . . Hereby decide to build a new form of public coexistence, in diversity and in harmony with Nature, to achieve the good way of living, the *sumak kawsay*.[63]

Two notable aspects of Ecuador's Rights of Nature constitutional provisions, which are incorporated throughout the Constitution and referenced as early as the preamble, are the incorporation of (1) "Mother Earth" rhetoric and (2) the use of Indigenous language and beliefs. Unlike Rights of Nature legislation and case law in the United States, which primarily refer to ecosystems or "natural communities," the Ecuadorian Constitution not only embraces the Indigenous rhetoric and belief systems at the core of the concept of Rights of Nature, but attempts to enshrine such rhetoric and beliefs with constitutional protection.[64]

Chapter Seven, Articles 71 through 74, outline the contours of the rights bestowed on Nature, or Pacha Mama.[65] Chapter Seven utilizes a Bifurcated Rights of Nature approach, creating a palpable tension between Ecuadorian Indigenous beliefs underlying Rights of Nature and postcolonial environmentalist concepts of Nature as a resource to be enjoyed by humans. Article 71 employs Indigenous Mother Earth rhetoric, declaring that "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."[66] In contrast, Articles 72 and 73 employ familiar postcolonial environmental rhetoric, stating for example, "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

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61. Akchurin, *supra* note 46, at 946.

62. POLITICAL DATABASE OF THE AMERICAS, Republica del Ecuador, *Constitucion de 2008* [Republic of Ecuador, *Constitution of 2008]*, https://perma.cc/JSB2-S8KQ (last updated Jan. 31, 2011).

63. *Id*. (emphasis added).

64. *Id*.

65. *Id*.

66. *Id*.

or mitigate harmful environmental consequences."[67] The Chapter concludes with Article 74, which reflects more anthropocentric environmental interests, stating that "Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy a good way of living."[68] While the concept of "good living," or *buen vivir*, draws from the Indigenous concept of *sumak kawsay*,[69] the language of Article 74 sheds the Indigenous focus on harmony between Nature and humans as a facet of plentiful living, and instead focuses on good living through Nature as a resource to be enjoyed by humans. The language within Chapter Seven thus creates a typical Bifurcated Rights of Nature conflict between the rights of Pacha Mama, who has a right to exist and maintain, and the rights of humans, who have the right to exploit Pacha Mama within reasonable bounds.

Perhaps unsurprisingly, the Ecuadorian government and courts have been prone to focus more on the anthropocentric and postcolonial environmentalist rhetoric than the Indigenous rhetoric (a risk inherent in any Bifurcated Rights of Nature law), which has led to the devaluation of the most effective and protective elements of Ecuador's Rights of Nature constitutional provisions (i.e., the elements based in Indigenous beliefs), and prioritization and further cementation of anthropocentric and postcolonial environmentalist elements in Ecuadorian law. For example, in 2009 the Ecuadorian Constitutional Court upheld the constitutionality of the Mining Law which greatly expanded mining operations, noting the law contained procedures designed to avoid environmental damages,[70] mirroring the postcolonial environmentalist rhetoric and ideology contained in Articles 72 and 73.[71]

Despite Ecuador's Rights of Nature constitutional provisions, there is a general lack of institutionalized secondary laws.[72] While there was an effort to create secondary laws and institutions to further form the Rights of Nature constitutional principles, such as the 2009 Mining Law mentioned in the paragraph above, these

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67. *Id.*

68. *Id.*

69. As mentioned in Part I, the Indigenous concept *sumak kawsay* is distinct from the concept of *buen vivir*, though the two have been incorrectly used as synonyms. *Sumak kawsay* is an Indigenous epistemological concept, given meaning through other theoretical referents, while *buen vivir* has come to be a post-modern political construct that combines various ideologies and theologies in pursuit of the "good life." Indigenous activists and some scholars have asserted that the Indigenous concept of *sumak kawsay* was turned into a political project reframed as *buen vivir* by the Ecuadorian government, who coopted and twisted the Indigenous concept of *sumak kawsay* to justify anthropocentric Western development rooted in the extraction and consumption of Nature. *See, e.g.,* Atawallpa, *supra* note 21, at 276 ; Kauffman & Martin, *Can Rights of Nature Make Development More Sustainable?*, *supra* note 21, at 139–40 n.3.

70. CRAIG M. KAUFFMAN & PAMELA L. MARTIN, TESTING ECUADOR'S RIGHTS OF NATURE: WHY SOME LAWSUITS SUCCEED AND OTHERS FAIL 6 (Mar. 18, 2016), https://perma.cc/PN5Z-D5HP.

71. *Id.*

72. Kauffman & Martin, *Can Rights of Nature Make Development More Sustainable?*, *supra* note 21, at 132–33.

attempts were met with criticism from Indigenous and environmental activists who rightly saw the laws as violating the Rights of Nature constitutional provisions.[73] Large-scale activism pertaining to Rights of Nature erupted in the country following the proposal of the 2009 Water Law, which similarly violated Ecuador's Rights of Nature constitutional provisions, leading to the arrest of almost 200 Indigenous leaders by 2011, who were charged with terrorism for their efforts to protest mining activities.[74] With the Ecuadorian government's clear intent to continue exploiting natural resources, further attempts to create secondary laws and institutions to form the Rights of Nature constitutional provisions were halted.[75] The lack of secondary Rights of Nature laws has resulted in Ecuador's Rights of Nature constitutional provisions being enforced primarily through the courts, producing problematic case law in the higher courts, but somewhat successful case law in the lower courts which has strengthened what many now see as Ecuador's "weak" Rights of Nature constitutional provisions.[76]

While Indigenous communities and environmental groups have found some success in the lower courts of Ecuador, training lower-level judges who are now applying Rights of Nature even when claimants have not alleged Rights of Nature violations, the necessity of relying on the courts in the first place is a result of Ecuador utilizing a Bifurcated Rights of Nature approach. As mentioned above, there is a conflict between Article 71's Indigenous Mother Earth rhetoric extolling and enshrining the rights of Pacha Mama, and Articles 72 through 74's anthropocentric postcolonial environmentalist rhetoric outlining the rights of humans to benefit from Nature and how to "mitigate" damage to Nature.

This unnecessary conflict, inherent in all Bifurcated Rights of Nature laws, has provided the Ecuadorian government and higher courts with a rationalization whenever the impacts of Article 71 would be an imposition to the government or industry (see the Ecuadorian Constitutional Court's decision to uphold the constitutionality of the 2009 Mining Law because the law contained procedures designed to avoid environmental damages per Articles 72 and 73).[77] Higher courts have consistently focused on the language of Articles 72 through 74 in justifying environmentally harmful practices and projects, and have consistently ruled that individual rights (such as property rights or the right to work) supersede Nature's rights as enshrined in Article 71.[78] Such issues could have been avoided by simply utilizing a Holistic Rights of Nature approach that implements consistent Indigenous rhetoric and ideology throughout the Rights of Nature provisions,

73. *Id*.
74. *Id*.
75. *Id*.
76. *Id*. at 131–33.
77. KAUFFMAN & MARTIN, *supra* note 70.
78. Kauffman & Martin, *Can Rights of Nature Make Development More Sustainable?*, *supra* note 21, at 134.

eliminating any option for the government and higher courts to rely on less effective anthropocentric and postcolonial environmentalist rhetoric.

B. THE BULIISA DISTRICT'S HOLISTIC RIGHTS OF NATURE ORDINANCE: BENEFITS OF CODIFYING INDIGENOUS CUSTOMARY LAWS AND CREATING GOVERNANCE POWER FOR INDIGENOUS CUSTODIANS

In 2019, Uganda became the first nation in Africa to recognize Rights of Nature in national legislation when it passed the National Environmental Act.[79] Section 4 of the Act recognizes that "Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution."[80] Section 4 of the National Environmental Act has only four concise subparts, each consisting of one sentence. Section 4(1) outlines Nature's relevant rights,[81] Section 4(2) creates a right for persons to sue on behalf of Nature,[82] Section 4(3) instructs the Government to take precautions against "all activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles,"[83] and Section 4(4) instructs the Minister to prescribe the conservation areas for which Rights of Nature apply.[84] While the language of Section 4 does not draw upon Indigenous rhetoric or concepts, the Act served as a stepping stone for a groundbreaking ordinance passed one year later in the Buliisa District which utilized a Holistic Rights of Nature approach to meaningfully incorporate and enforce Indigenous customary laws and ways of knowing.

Building upon the skeletal Rights of Nature provisions in the National Environmental Act, the Indigenous Bagungu People in the Buliisa District of Western Uganda pioneered a Holistic Rights of Nature ordinance, which passed on December 22, 2020, that incorporates customary laws of the Bagungu People to safeguard Nature's right to exist, thrive, and evolve.[85] The process for enacting the groundbreaking ordinance began one year earlier when the Buliisa Council codified customary laws of the Indigenous Bagungu People.[86] These legally recognized customary laws formed the foundation of the new Holistic Rights of

79. National Environmental Act, Act 5 of 2019 (2019) (Uganda).

80. *See id.* § 4(1).

81. *Id.* ("Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.").

82. *Id.* § 4(2) ("A person has a right to bring an action before a competent court for any infringement of rights of Nature under this Act.").

83. *Id.* § 4(3) ("Government shall apply precaution and restriction measures in all activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles.").

84. *Id.* § 4(4) ("The Minister shall, by regulations, prescribe the conservation areas for which the rights in subsection (1) apply.").

85. GAIA FOUND., *Uganda Recognises Rights of Nature, Customary Laws, Sacred Natural Sites* (Mar. 29, 2021), https://perma.cc/GV4D-SNKZ (last visited Apr. 11, 2023).

86. *Id.*

Nature ordinance which provides for the protection of an interconnected network of sacred natural sites (*Mpuluma*) embedded within Bagungu ancestral territory and recognizes the rights of Indigenous custodians (*Balamansi*) of such sacred sites.[87]

Of particular significance, the ordinance does not simply utilize Bagungu rhetoric or codify Bagungu customary laws, but it in fact creates a co-governance body to be led in part by Bagungu custodians who will oversee the implementation of the ordinance and ensure the protection and health of the natural sites while safeguarding the rights of the Bagungu People.[88] Furthermore, the ordinance incorporates elements of restorative justice, asking that violators of the law make amends in ways that "uphold the dignity and integrity of the sacred natural sites, such as restoring damaged areas, planting trees or offering seeds."[89] The ordinance's concept of restorative justice is rooted in Indigenous customary laws, and is otherwise not recognized by Uganda's civil justice system.[90]

In its initial codification of Indigenous Bagungu customary laws, the Buliisa District Council relied on several African charters and resolutions to form strong legal precedents supporting the recognition, promotion, and implementation of Indigenous customs, values, and traditions that form the foundation of Indigenous customary laws. Of particular relevance, the Buliisa District Council relied on the Cultural Charter for Africa (1976),[91] the African Charter on Human and People's Rights (1982),[92] the African Commission on Human and People's Rights' Resolution on the Protection of Natural Sites and Territories (2017),[93] and

87. *Id.*
88. *Id.*
89. *Id.*
90. *Id.*
91. Org. of African Unity [OAU], *Cultural Charter for Africa*, art. 1(b) (July 5, 1976). The Buliisa District Council cited to the Cultural Charter for Africa (1976) for its provision of "rehabilitation, restoration, preservation and promotion of African cultural heritage." Buliisa District Local Government Council, Resolution on The Customary Laws of Bagungu Custodian Clans by Buliisa District Council, at ¶ 12 (Nov. 22, 2019).
92. OAU, *The African Charter on Human and People's Rights*, arts. 20 and 25 (June 27, 1981). The Buliisa District Council cited to the African Charter on Human and People's Rights for its requirement that "states . . . promote and protect the collective rights and responsibilities of people including the 'unquestionable and inalienable right to self-determination." Buliisa District Local Government Council, Resolution on The Customary Laws of Bagungu Custodian Clans by Buliisa District Council, at ¶ 13 (Nov. 22, 2019).
93. African Commission on Human and People's Rights, *Resolution on the Protection of Sacred Natural Sites and Territories*, ACHP/Res.372(LX) (May 22, 2017), https://perma.cc/4NBC-6PPV. The Buliisa District Council cited to the Resolution on the Protection of Sacred Natural Sites and Territories for its "call on State Parties to uphold their obligations and commitments under regional and international law on sacred natural sites and territories and their customary governance systems and the rights of custodian communities and urges State Parties to recognize and respect the intrinsic value of sacred natural sites and territories." Buliisa District Local Government Council, Resolution on The Customary Laws of Bagungu Custodian Clans by Buliisa District Council, at ¶ 15 (Nov. 22, 2019).

the Charter for African Cultural Renaissance (2006).[94] Read in combination, these charters and resolutions provide a strong legal foundation for codifying Indigenous customary laws. More specifically, the Buliisa District Council read the charters and resolutions as requiring:

> (1) "rehabilitation, restoration, preservation and promotion of African cultural heritage";
> (2) recognition of "the importance of culture including spiritual value systems and traditions in promoting African identity and good governance";
> (3) the upholding of "sacred natural sites and territories and their customary governance systems and the rights of custodian communities";
> (4) recognition and respect for "the intrinsic value of sacred natural sites and territories"; and
> (5) "promot[ion] and protect[ion of] the collective rights and responsibilities of people including the 'unquestionable and inalienable right to self-determination.'"[95]

It was upon this firm legal foundation that the Buliisa District Council recognized the customary laws of the Bagungu People, and later enshrined such laws in the form of a local bill.[96]

Unlike the Bifurcated Rights of Nature constitutional provisions in Ecuador which utilized Indigenous rhetoric and concepts without any prior or concurrent legal mechanisms from which to interpret and enforce the legality of such Indigenous rhetoric and concepts, the Buliisa District's ordinance codifying Indigenous customary laws was built upon a strong foundation of legal recognition, promotion, and implementation of Indigenous customs and heritage. It was only after codifying the customary laws of the Indigenous Bagungu People that the Buliisa District Council, in collaboration with the Indigenous Bagungu People, later passed the more detailed Rights of Nature ordinance recognizing specific customary laws providing for the protection of an interconnected network of sacred natural sites and the creation of a co-governance body led by Bagungu custodians.[97] The Buliisa District's local ordinance pioneered by the Indigenous Bagungu People serves as an example of best practice in crafting

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94. African Union [AU], *The Charter for African Cultural Renaissance* (Jan. 24, 2006). The Buliisa District Council cited to the Charter for African Cultural Renaissance for its recognition of "the importance of culture including spiritual value systems and traditions in promoting African identity and good governance." Buliisa District Local Government Council, Resolution on The Customary Laws of Bagungu Custodian Clans by Buliisa District Council, at ¶ 14 (Nov. 22, 2019).

95. Buliisa District Local Government Council, Resolution on The Customary Laws of Bagungu Custodian Clans by Buliisa District Council, at ¶¶ 11–15 (Nov. 22, 2019).

96. Buliisa District Local Government Council, Resolution on The Customary Laws of Bagungu Custodian Clans by Buliisa District Council, at ¶¶ 39–40 (Nov. 22, 2019).

97. GAIA FOUND., *supra* note 85.

Holistic Rights of Nature laws that meaningfully incorporate Indigenous customary laws and ways of knowing into modern legal systems.

III. CRAFTING HOLISTIC RIGHTS OF NATURE LAWS: USING THE BULIISA DISTRICT'S ORDINANCE AS BEST PRACTICE

There are several underlying contradictions present in Bifurcated Rights of Nature laws (whether they be constitutional provisions, legislation, or case law) which often result in invalidation or de-prioritization of the most effective elements of Rights of Nature. First, there is a conflict between the anthropocentric concept of Nature, and all of its living elements, as property to be used and enjoyed by humans, and the Indigenous concept of interconnectedness at the core of the concept of Rights of Nature. The use of Nature as a resource to be enjoyed by humans is also in conflict with the concept of Rights of Nature as an anticapitalistic alternative to traditional forms of development. Furthermore, the application of traditional anthropocentric environmentalism undercuts claims that Rights of Nature laws are a *new*[98] form of environmental law or that Rights of Nature laws represent a paradigm shift. While indeed the incorporation of Indigenous customary laws and ways of knowing into modern legal systems represents a radical and exciting paradigm shift, the most radical and paradigm-shifting concepts are erased or overpowered by familiar anthropocentric and postcolonial environmentalist rhetoric utilized in Bifurcated Rights of Nature laws.

Bifurcated Rights of Nature laws, which utilize Indigenous concepts and rhetoric to pass laws that ultimately function like familiar postcolonial environmental laws, are a form of legal cultural appropriation. An important aspect of incorporating Indigenous customary laws and ways of knowing into modern legal systems is to ensure that Indigenous concepts are enshrined with the weight of law. The Ecuadorian Bifurcated Rights of Nature constitutional provisions, as they have been interpreted by the government and courts, operate to give legal power to environmentalist rhetoric, while Indigenous rhetoric is used primarily as romantic window dressing. While this Article argues for the incorporation of Indigenous customary laws and ways of knowing into Rights of Nature laws, it only advocates for doing so in a meaningful way. Indigenous beliefs must not only be acknowledged and honored, but must also be given meaningful legal weight as is prescribed by the culture's relevant customary laws, lest incorporation of Indigenous rhetoric be nothing more than the legal and academic community's latest form of cultural appropriation. The Holistic Rights of Nature approach allows for such meaningful recognition, incorporation, and enforcement of Indigenous customary laws and ways of knowing.

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98. As discussed in Part II, referring to Rights of Nature laws as a "new" academic or legal concept is an inherent denial of its ancient Indigenous roots and an implicit assertion that Indigenous customary laws and ways of knowing are neither 'academic' nor 'legal.'

Legal communities should look to the wisdom of Indigenous populations in determining how to craft Holistic Rights of Nature laws that best enshrine Indigenous beliefs into modern legal systems. The Buliisa District's local ordinance, pioneered by the Indigenous Bagungu People, serves as an example of best practice in crafting Holistic Rights of Nature laws that not only incorporate Indigenous customary laws and ways of knowing into modern legal systems, but also provide governance power to Indigenous populations to oversee implementation and enforcement.

Using the Buliisa District's local ordinance as best practice, this Article suggests four adaptable and reproducible tactics that can be utilized by those wishing to pass effective and protective Holistic Rights of Nature laws. These four tactics include: (1) implementation of a three-tier enactment scheme codifying Indigenous customary laws and ways of knowing, (2) direct collaboration with local Indigenous populations, drawing from localized Indigenous knowledge and traditions, (3) recognition of the rights of Indigenous custodians, and (4) creation of a governance power for interested members of the Indigenous community to oversee the implementation and enforcement of the newly crafted Holistic Rights of Nature law.

First, where possible, there should be three levels to any Holistic Rights of Nature law: (1) a national or state Rights of Nature provision, (2) a semi-local law codifying Indigenous customary laws more broadly, and (3) a local Holistic Rights of Nature law specifically incorporating Indigenous concepts of Rights of Nature. In some jurisdictions and political systems, attaining all three levels will not be possible. In this case, the final local Rights of Nature law should incorporate Indigenous customary laws more broadly, and creatively draw from the protection of a national or state provision. In jurisdictions where passing a national or state Rights of Nature provision is unrealistic, the two latter level laws can be grounded in existing national or state environmental and cultural heritage laws or treaties. For example, the first modern piece of local Rights of Nature legislation, which was passed in Tamaqua Borough, Pennsylvania in 2006, grounded its ordinance in Articles of the Pennsylvania Constitution which provides citizens with "certain unalienable rights" and for the "preservation of the natural, scenic, historic, and esthetic values of the environment."[99] In the United States, local Rights of Nature ordinances have been preempted by state and federal laws, thus it is beneficial to firmly ground any local Rights of Nature provisions in national or state law. The most commonly preempted Rights of Nature ordinances in the United States are those that explicitly ban certain industrial activities. Holistic Rights of Nature laws focusing on codifying Indigenous customary laws are able to avoid "ban" language by focusing on the positive rights of Nature and Indigenous custodians.

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99. TAMAQUA BOROUGH, PA., ORDINANCE 612 § 2 (Sept. 19, 2006).

Enshrining Indigenous customary laws more broadly within current legal systems serves as an important step in creating a statutory legal foundation for the enforcement of Indigenous beliefs to be used as a springboard for precedent that will later support and help interpret Holistic Rights of Nature provisions. One of the failings of Ecuador's Bifurcated Rights of Nature constitutional provisions—and with Bifurcated Rights of Nature laws in general—is the lack of institutional knowledge and experience in interpreting and giving meaning to Indigenous concepts. In a comprehensive study of Rights of Nature case law in Ecuador, one of the primary causes for negative rulings in Rights of Nature cases was that lawyers and judges simply lacked knowledge in how to interpret and apply Rights of Nature. In fact, upholding Nature's rights over individual and corporate property rights ran counter to judges' legal education and training.[100] Without any precedent or other legal sources to rely on, it is not surprising that governments and courts favor familiar postcolonial environmentalist rhetoric when navigating Bifurcated Rights of Nature laws. Providing an initial law that more broadly enshrines Indigenous customary laws and ways of knowing into the legal system provides legal guidance and precedent for judges and lawyers to better interpret and apply local Holistic Rights of Nature provisions.

Second, non-Indigenous policymakers, lawyers, or organizers intending to craft Holistic Rights of Nature laws drawing on Indigenous beliefs and perspectives should work directly with local Indigenous populations, drawing from localized Indigenous knowledge and traditions. If Indigenous communities do not wish to be associated with the proposed Rights of Nature law, then non-Indigenous actors should ensure they do not appropriate Indigenous rhetoric or beliefs. While this Article argues that the most effective and protective Rights of Nature laws are those that draw from Indigenous customary laws and ways of knowing, non-Indigenous actors should refrain from utilizing such concepts without input and support from the local Indigenous community.

Third, any Holistic Rights of Nature laws should not only recognize the rights of Nature but also the rights of Indigenous custodians who have, in many cases, for centuries played a pivotal role in protecting Nature. Finally, the local Holistic Rights of Nature law should not only codify and give legal weight to Indigenous customary laws relating to Rights of Nature, but it should create a governance power for interested members of the Indigenous community to oversee the implementation and enforcement of the local Rights of Nature law. Some critics have argued that Rights of Nature laws that grant legal personhood to ecosystems located on Indigenous land equate to the removal of Indigenous property rights over such land. Such critics advocate for giving Indigenous communities a central

100. Kauffman & Martin, *Can Rights of Nature Make Development More Sustainable?*, *supra* note 21, at 134.

role in managing and maintaining lands rather than granting rights to Nature.[101] Tactics three and four of the Holistic Rights of Nature approach suggested by this Article circumvent such issues by codifying the rights of Indigenous custodians alongside the Rights of Nature, and providing a separate governance mechanism to give interested Indigenous custodians a central role in implementing Indigenous customary laws and protecting the land.

IV. CONCLUSION

While Rights of Nature legislation and case law around the world vary, the majority of Rights of Nature laws take a Bifurcated Rights of Nature approach wherein Nature's rights and humans' rights are viewed as distinct. Bifurcated Rights of Nature laws create an inherent conflict between Nature's rights and humans' rights, by recognizing the intrinsic value and inalienable rights of Nature while simultaneously recognizing humans' rights to exploit and enjoy Nature.[102] The former embraces Indigenous worldviews and ways of knowing, while the latter reflects Western anthropocentric and postcolonial environmentalist values. The Bifurcated Rights of Nature approach, which utilizes Indigenous concepts and rhetoric to pass laws that ultimately function like familiar postcolonial environmental laws, is a form of legal cultural appropriation. As can be seen in the case of Ecuador, such Bifurcated Rights of Nature laws are less effective and ultimately replicate problems common in postcolonial environmental law.

In 2008, Ecuador passed several Bifurcated Rights of Nature constitutional provisions, employing Indigenous rhetoric and concepts in Article 71 to grant rights to Nature, while utilizing familiar anthropocentric and postcolonial environmentalist rhetoric in Articles 72 through 74 to protect humans' right to enjoy Nature and utilize Nature in a way that "mitigates" permanent damage.[103] Unsurprisingly, the Ecuadorian government and courts have been prone to focus more on the anthropocentric and postcolonial environmentalist rhetoric than the Indigenous rhetoric, a risk inherent in any Bifurcated Rights of Nature law. This focus on anthropocentric and postcolonial environmentalist rhetoric has led to the devaluation of the most effective and protective elements of Ecuador's Rights of Nature provisions (i.e., the elements based in Indigenous beliefs), and prioritization and further cementation of anthropocentric and postcolonial environmentalist elements in Ecuadorian law.

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101. Virginia Marshall, *Removing the Veil from the 'Rights of Nature': The Dichotomy Between First Nations Customary Rights and Environmental Legal Personhood*, 45 AUSTRALIAN FEMINIST L.J. 233, 234 (2019).

102. Article 74 of Ecuador's constitutional Rights of Nature provision states, "Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy a good way of living." Republica del Ecuador, *Constitucion de 2008* [Republic of Ecuador, *Constitution of 2008]*, POLITICAL DATABASE OF THE AMERICAS, https://perma.cc/JSB2-S8KQ (last updated Jan. 31, 2011).

103. *Id.*

The conflict between Article 71's Indigenous Mother Earth rhetoric extolling and enshrining Nature's rights, and Articles 72 through 74's anthropocentric postcolonial environmentalist rhetoric has provided the Ecuadorian government and higher courts with a rationalization whenever the impacts of Article 71 would pose an imposition to the government or industry.[104] Such issues could have been avoided by utilizing a Holistic Rights of Nature approach, wherein Nature's rights and humans' rights are holistically integrated through the codification of local Indigenous customary laws and ways of knowing, without the use of anthropocentric and postcolonial environmentalist rhetoric.

In December of 2020, the Buliisa District Council in Western Uganda, passed a groundbreaking Holistic Rights of Nature ordinance that not only codified Indigenous Bagungu customary laws, but also created a co-governance body to be led in part by Bagungu custodians and a restorative justice enforcement scheme rooted in Indigenous Bagungu customary laws. In so doing, the Buliisa District created what this Article argues is best practice in crafting Holistic Rights of Nature laws that incorporate Indigenous customary laws into modern legal systems, giving meaningful legal weight to Indigenous customary laws and ways of knowing, and providing a governance power to Indigenous populations to oversee the implementation and enforcement of laws built upon Indigenous beliefs.

Using the Buliisa District's local ordinance pioneered by the Indigenous Bagungu People as best practice, this Article suggests four adaptable and reproducible tactics that can be successfully utilized in crafting Holistic Rights of Nature laws: (1) implementation of a three-tier enactment scheme codifying Indigenous customary laws and ways of knowing, (2) direct collaboration with local Indigenous populations, drawing from localized Indigenous knowledge and traditions, (3) recognition of the rights of Indigenous custodians, and (4) creation of a governance power for interested members of the Indigenous community to oversee the implementation and enforcement of the newly crafted Holistic Rights of Nature law. It is through this kind of meaningful engagement with Indigenous communities that we can begin to work toward a decolonized non-anthropocentric legal system.

104. KAUFFMAN & MARTIN, *supra* note 70.