

Anti-Democratic Rights of Nature

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ABSTRACT

The global Rights of Nature (RoN) movement, which seeks to confer enforceable rights on organisms and ecosystems, has become a political force, and governments are now codifying legal rights for nature in legislation. But policymakers and legal scholars are overlooking how assertions of vague rights held by a limitless class of non-humans could lead to repressive, anti-democratic outcomes. Many scholars view recognition of nature's rights as an expansion of the boundaries of democracy, but a critical examination of RoN scholarship and advocacy shows that RoN principles are designed to check and constrain democratic institutions. Core tenets of the RoN movement are deeply antagonistic to democratic self-government and would damage representative institutions in ways that are not widely understood.

In this Article, I argue that the RoN vision for governance under a system of enforceable rights for all living things would have pernicious effects for democracy and human well-being if nature's rights were implemented widely, as advocates intend. I do not suggest that the RoN movement currently poses a threat to democracy or that every piece of RoN legislation is harmful. Instead, I argue that the long-term governance upheaval sought by RoN proponents—assuming it could be achieved—is both politically and ecologically undesirable. The fulfillment of the RoN vision would undermine legislative autonomy, human rights, public input, and representation, with no assurance that nature would be protected any better.

Focusing on distortions to legislative and judicial functions, I argue that widespread recognition of rights for all living beings would shift immense power to courts and would straitjacket representative institutions, making them less responsive and less effective for solving social and environmental problems. Given the urgency of climate change and other global environmental harms, policymakers should work within liberal democratic institutions, rather than discarding or distorting them, to promote effective solutions.

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INTRODUCTION

The global Rights of Nature (RoN) movement is growing rapidly and has had a string of legislative victories in the past two decades. Since 2006, local and tribal governments in the United States and national governments abroad have enacted legislation conferring legal rights on individual organisms and on entire ecosystems such as forests, lakes, and rivers.¹ Legal scholars have focused on how these new rights for nature could be vindicated in court, an idea that dates to Christopher Stone's classic 1972 article, *Should Trees Have Standing?*² By asserting rights in court (with the assistance of human guardians), organisms and ecosystems could, in theory, sue for injunctions and restoration damages.³

1. See Alexandra Huneus, *The Legal Struggle for Rights of Nature in the United States*, 2022 WIS. L. REV. 133 (2022) (tracing RoN developments in U.S. law); Sam Bookman, *The Puzzling Persistence of Nature's Rights*, UTAH L. REV. (forthcoming 2025), ssrn.com/abstract=4996393 (compiling a dataset of 83 RoN ordinances or non-binding resolutions enacted by U.S. municipalities and tribal communities); Alex Putzer et al., *Putting the Rights of Nature on the Map: A Quantitative Analysis of Rights of Nature Initiatives across the World*, 18 J. MAPS 89 (2022) (documenting 409 RoN initiatives globally, including national and local laws and court decisions).

2. Christopher Stone, *Should Trees Have Standing?*, 45 S. CAL. L. REV. 450, 455-57 (1972).

3. Oliver A. Houck, *Noah's Second Voyage: The Rights of Nature as Law*, 31 TUL. ENV'T L.J. 1, 25-30 (2017) (arguing that rights of nature could help overcome standing hurdles in litigation); Hope M. Babcock, *A Brook with Legal Rights: The Rights of Nature in Court*, 43 ECOLOGY L.Q. 1, 1 (2016) (same). *But see* Bookman, *supra* note 1, at 14-15 (documenting the RoN movement's losing track record in U.S. courts).

Deploying rights of nature in court is only half the story. The RoN movement also has long-term ambitions to harness new rights for non-humans to disrupt liberal democracy. Many RoN proponents argue that a paradigm shift away from liberal democracy is now necessary to save the planet,⁴ and the governance revolution they are proposing could have larger consequences for humanity than the shift from monarchy to representative government in past centuries.

Consider just some of the governance ideas asserted by RoN proponents. Many proponents want lakes, rivers, and trillions of individual organisms to become a societal “counterforce” to humans, each armed with an enforceable right to exist that could be wielded to challenge corporate activities as well as legislation and governmental initiatives.⁵ Within that vision, laws supported by substantial majorities might have to be nullified or set aside if they conflict with the rights of common, non-endangered organisms. Some RoN proponents want to constitutionalize novel rights for nature to make them superior to ordinary legislation and restrain democratic institutions.⁶ Some advocate that non-human organisms should have their own representatives in legislatures,⁷ while others believe that nature’s legal rights are grounded in natural law and govern us already, without our consent.⁸ This governance project is sweeping, ambitious, and perilous, yet its details are not widely known outside of small circles of RoN activists.

This Article explores the political agenda of the RoN movement, documenting its components and exploring what law and society would look like if this vision for ecocentric governance could somehow be brought into being. This Article responds to the growing literature in law and political science that advocates reshaping governance to incorporate the rights and interests of all living beings.⁹ RoN is also gaining traction within the environmental activist community as a

4. See, e.g., DAVID R. BOYD, *THE RIGHTS OF NATURE: A LEGAL REVOLUTION THAT COULD SAVE THE WORLD* 129-30 (2017); Vandana Shiva, *Earth Democracy and the Rights of Mother Earth*, *TIKKUN* (2011) (proposing “Earth Democracy” to replace existing political systems); GLOB. EXCH., *Stillheart Declaration on Rights of Nature and the Economics of the Biosphere* (2013) [hereinafter *Stillheart Declaration*], <https://perma.cc/LNG9-7ZY3> (the RoN movement seeks to jettison a “legal system designed to secure and consolidate the power of a ruling oligarchy and a ruling species” and substitute instead “a jurisprudence and legal system designed to serve all of the living Earth community”); MICHELE CARDUCCI ET AL., *TOWARDS AN EU CHARTER OF THE FUNDAMENTAL RIGHTS OF NATURE*, *EUR. ECON. AND SOC. COMM. STUDY* 69 (2019), <https://perma.cc/RFR4-Q3T8> (recognizing rights of nature would signal a “paradigm shift from the current neo-classical economic model to a holistic model”).

5. Geoffrey Garver, *Are Nature Rights Radical Enough for Ecological Law*, in *FROM ENVIRONMENTAL TO ECOLOGICAL LAW* 92 (Kirsten Anker et al. eds., 2020).

6. See Robyn Eckersley, *Liberal Democracy and the Rights of Nature: The Struggle for Inclusion*, 4 *ENV’T POL.* 169, 189 (2007).

7. See discussion *infra* Part IV.

8. *Id.*

9. See generally Houck, *supra* note 3; Babcock, *supra* note 3; David Takacs, *We Are the River*, 2021 *U. ILL. L. REV.* 545, 545-46 (2021); BOYD, *supra* note 4; CRAIG M. KAUFFMAN & PAMELA L. MARTIN, *THE POLITICS OF RIGHTS OF NATURE: STRATEGIES FOR BUILDING A MORE SUSTAINABLE FUTURE* 222 (2021) (arguing that RoN legislation will transform “the DNA of Western legal systems and society”).

supplement to, or replacement for, traditional statutes and regulations aimed at industry, and many environmental activists view RoN principles as “environmentalism’s next frontier.”¹⁰ There is no doubt that if RoN governance could be implemented, it would be the largest expansion of legal rights in history—to trillions of non-human organisms. But is building such a system of rights a productive path for the environmental movement? What powers would be wielded by those charged with interpreting such rights? What duties would be triggered by such rights? And what would we be giving up in accountability, justice, and representation if we proceed down this path?

This Article argues that this effort to recognize and enforce rights for all living beings is antagonistic to democratic values and would severely undermine legislative and judicial functions. Environmental problems such as climate change, ocean pollution, and habitat loss are serious and urgent, but the governance ideas of the RoN movement are likely a step backward for environmental protection and would warp and distort democracy. If implemented on a wide scale, legal rights for non-human organisms would constrain legislative authority, circumscribe the laws that legislatures could enact, nullify democratic initiatives, and disrupt processes of representation and consent. The RoN governance vision would also hand immense power to judges to enforce novel rights for non-humans, with a high potential for repression, including trampling statutory and constitutional rights that humans have earned through decades-long struggles.¹¹ In the end, I am skeptical that democracy could function as some humans dictate to other humans what the vague rights of nature command.

The RoN movement is certainly not the greatest threat to democracy today. Not even close. But it is growing rapidly, and policymakers should understand that many RoN advocates want nature’s rights to become, eventually, a constitutional or quasi-constitutional check on legislative freedom and the ability of human voters to put their interests into law.

With the RoN movement in its infancy, it is easy to overlook the potential for repressive, anti-democratic outcomes. RoN legislation enacted to date usually aims to protect a specific natural area such as a river, and with few exceptions, the legislation is geographically limited or limited to particular species. Much of it is unenforced. Yet the existing legislation advances, and is emblematic of, a long-term governance agenda that aims to transform liberal democracy. Existing RoN legislation from U.S. municipalities and foreign governments is the

10. See Jackie Flynn Mogensen, *Environmentalism’s Next Frontier: Giving Nature Legal Rights*, MOTHER JONES (Jul/Aug 2019), perma.cc/BE6M-LGVH; OSPREY ORIELLE LAKE ET AL., RIGHTS OF NATURE: REDEFINING GLOBAL CLIMATE SOLUTIONS AND ENVIRONMENTAL PROTECTION FOR SYSTEMIC CHANGE 2 (Nov. 2022), <https://perma.cc/AG8Z-R7S8> (“one of the fastest growing environmental movements in history,” the RoN movement “offers a systemic framework for change.”).

11. Noah M. Sachs, *A Wrong Turn with the Rights of Nature Movement*, 36 GEO. ENV’T L. REV. 39, 78-79 (2023) (discussing competing views within the RoN movement regarding whether human rights would be balanced with nature’s rights or must instead yield to nature’s rights).

harbinger of a broader vision, advanced by RoN theorists and scholars, for decentering human needs, wants, and interests in politics and law. This Article does not engage in a detailed analysis of enacted RoN statutes but rather explores the RoN's movement's long-term objectives for ecocentric governance.

The anti-democratic implications of RoN should not be justified by pointing to supposed ecological benefits from conferring legal rights on nature. In prior work, I showed why the rights the RoN movement wants to recognize in all living beings, such as a “right to exist,” a “right to flourish,” and a “right to regenerate,”¹² are likely to be ineffective at preserving nature.¹³ Such vague rights provide little guidance to humans as to how to protect the natural world or conform their behavior to law, and I predicted that these rights would be used by humans to sue other humans for malevolent purposes that have little to do with preserving nature.¹⁴ In this Article, I do not reiterate why a rights-based approach is likely to be ineffective for environmental protection. Instead, I identify what humans would be giving up to effectuate such rights.

My analysis proceeds in four main parts. In Part I, I outline the governance ideas of RoN proponents, beginning with their critique of liberal democracy. Part I presents the main RoN governance objectives that I respond to in the remainder of the Article.

In Part II, I spotlight the likely repercussions of RoN governance for legislatures. I argue that operationalizing the idea of nature's rights as a societal “counterbalance” or “counterforce” would mean, in practice, that these rights would come to constrain legislatures and undermine their role in democratic government.¹⁵ In the RoN worldview, rights-holding entities such as lakes, forests, beetles, or shrimp could be empowered to bring suit to quash legislation that is deemed (by some decision-maker) to be harmful to them. The legislative role, and by extension the direction of human societies, would become highly rights-constrained, especially if nature's rights became constitutionalized.¹⁶ I show why legislatures could hardly function under such a system, given the vast number of new rights-holders, and I argue that constraining legislatures in this way would damage democratic self-government, social movements, and human rights.

Part III turns to the role of the judiciary in the RoN governance vision. RoN proponents seek a “jurisprudential revolution”¹⁷ in which judges would determine the meaning of nature's rights and enforce them against governing institutions.

12. *Id.* at 48, 55-57.

13. *Id.*

14. *Id.* at 72.

15. See KAUFFMAN & MARTIN, *supra* note 9, at 6 (Earth Jurisprudence seeks to “fundamentally transform legal, socioeconomic, and governance systems”).

16. See John McEldowney, *The Rights of Nature: A Challenging Concept*, CHEMINS PUBLICS (Sep. 18, 2021), <https://perma.cc/B6EW-L5WT> (activists argue that RoN “should be part of international law or become embedded in national constitutions.”); Eckersley, *supra* note 6, at 181.

17. Jamie Murray, *Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology and Law—Part 1*, 35 LIVERPOOL L. REV. 215, 225 (2014).

Potentially, judges could nullify legislation and agency actions that conflict with nature's rights. Such a governance structure would, at minimum, elevate legal elites and reduce public input in social decision-making. At worst, it could lead to abusive authoritarianism and democratic decline. To be sure, one of the functions of rights in liberal democracies is to constrain governmental power. But I argue that judicial enforcement of rights for all living beings would be fundamentally different from existing functions of judicial review and far more dangerous for democracy.

Finally, Part IV critiques two concerning ideas within the RoN movement that are designed to expand and entrench RoN governance: providing non-human organisms with their own representatives in legislatures and grounding nature's legal rights in natural law.¹⁸ Both ideas seek to position non-human organisms as a force to constrain human activities and limit governing institutions. I explore some of the problems with representation of non-humans and discuss the dangers of natural law thinking about nature's legal rights. Natural law theorists believe, for example, that nature's legal rights arise from the existence of all living things and therefore already control us without our consent. While neither of these ideas is likely to be implemented any time soon, they show the extent to which RoN governance ideas could damage democratic values, representative institutions, and human development.

This Article is not meant to provide a comprehensive defense of liberal democracy or its outputs in environmental law or any other area of law. Certainly liberal democracy is not immune from criticism, and it does "load the dice" in various ways that can be harmful to the environment.¹⁹ For example, liberal democracies have election cycles that can lead to short-term planning horizons. But liberal democracies have also proven quite powerful in addressing environmental problems in the past, and they have pioneered legal innovations that we take for granted. These include public participation in environmental decision-making, judicial review of agency action, citizen suits against polluters, and protection of designated wilderness areas.²⁰ Indeed, liberal democracies birthed the modern environmental movement.

18. See, e.g., CARDUCCI ET AL., *supra* note 4, at 69; Laura Villa, *The Importance of the Atrato River in Colombia Gaining Legal Rights*, EARTH L. CTR., Colombia (May 5, 2017), <https://perma.cc/PQ74-2727> ("Nature's rights are not 'given' by humans, but rather are inherent to nature's existence."); Michelle Maloney & 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, 9 (2015) ("existence and the laws of the emerging Universe are the highest laws, and human-made laws need to be in alignment with them."); THOMAS BERRY, *THE GREAT WORK: OUR WAY INTO THE FUTURE* 4 (2000).

19. Robyn Eckersley, *Ecological Democracy and the Rise and Decline of Liberal Democracy: Looking Back, Looking Forward*, 29 ENV'T POL. 214, 221 (2020).

20. See Keith E. Whittington, *An "Indispensable Feature"? Constitutionalism and Judicial Review*, 6 LEG. & PUBLIC POL'Y 21 (2002); Michael J. Perry, *Protecting Human Rights in a Democracy: What Role for the Courts?*, 38 WAKE FOREST L. REV. 635, 636-37 (2003) (describing the widespread adoption of judicial review by liberal democracies); Donald E. Worster, *On John Muir's Trail: Nature in an Age of Liberal Principles*, 2 ENV'T, CITIZENSHIP, & PUB. 3, 11 (2008) (describing liberal democracies as the

For these reasons, progressives who support stronger environmental protection should be skeptical of the RoN project to overhaul liberal democracy and replace it with untested principles that could become anathema to human rights and well-being.²¹ The climate crisis is escalating, ecosystems are deteriorating, and there is no dispute that humans are causing grievous harm to the environment. But distorting core institutions of liberal democracy is no solution.²² Given the scale of problems, governments should focus on workable near-term solutions, aggressively tackling the climate crisis, deforestation, toxic contamination, and ocean pollution while maintaining democratic values. Conferring legal rights on all living beings offers a seductive but dangerous turn in environmental law and policy.

I. RIGHTS OF NATURE GOVERNANCE

The RoN movement is sprawling and diverse,²³ unfolding in multiple countries without any centralized structure and encompassing affiliated fields such as Earth Jurisprudence,²⁴ Earth Law,²⁵ and Eco-Democracy.²⁶ Within the movement, there is no single vision for how governance should be overhauled to recognize and incorporate rights for other beings. When RoN proponents discuss alternative political paradigms, they are far from precise about what governance under RoN principles would look like. Much of the relevant writing has been produced by political theorists, philosophers, theologians, ethicists, and semioticians.²⁷ It is

“vanguard” of nature preservation). See also Per G. Fredriksson et al., *Environmentalism, Democracy, and Pollution Control*, 49 J. ENV'T ECON. & MGMT. 343, 362-63 (2005) (higher levels of democratic participation are associated with stronger environmental regulation).

21. There is no *necessary* connection between liberal democracy and nature protection. Conceivably, a dictatorship could be green. But the achievements of liberal democracy in nature protection over the past century should give pause to those who want to overturn it. See Avner de-Shalit, *Is Liberalism Environment-Friendly?*, 21 SOC. THEORY & PRAC. 287, 291 (1995) (liberalism has led to “a flourishing of ecological attitudes.”).

22. Terrence Ball, *Democracy, in* POLITICAL THEORY AND THE ECOLOGICAL CHALLENGE 145 (Andrew Dobson & Robyn Eckersley eds., 2006) (noting “affinities” between liberal democracy and environmental protection and describing the importance of deliberation and participation in the formation of environmental values).

23. See Bookman, *supra* note 1, at 25 (RoN activists “do not speak with one voice”).

24. See generally Cormac Cullinan, *Earth Jurisprudence*, in THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW (Lavanya Rajamani & Jacqueline Peel eds., 2021); Jeremy J. Schmidt, *Of Kin and System: Rights of Nature and the UN Search for Earth Jurisprudence*, 47 TRANSACTIONS OF THE BRIT. INST. OF GEOGRAPHERS 820 (2022).

25. Tara Pierce, *Radical Legal Change: Moving Toward Earth Law*, 28 HASTINGS ENV'T L.J. 237 (2022); ANTHONY R. ZELLE ET AL., EARTH LAW: EMERGING ECOCENTRIC LAW 473–622 (2021); EARTH L. ALL., *What is Earth Law?*, <https://perma.cc/D7U2-CSL4>; EARTH L. CTR., *Frequently Asked Questions*, <https://perma.cc/NQC3-QEQN>.

26. Damian F. White, *Ecological Democracy, Just Transitions, and a Political Ecology of Design*, 28 ENV'T VALUES 31 (2019); Helen Kopnina et al., *Ecodemocracy in Practice: Exploration of Debates on Limits and Possibilities of Addressing Environmental Challenges within Democratic Systems*, 13 VISIONS FOR SUSTAINABILITY 44 (2021).

27. See generally Marc Brown, *Speaking for Nature: Hobbes, Latour and the Democratic Representation of Non-humans*, 31 SCI. & TECH. STUD. 31 (2017); Seth Epstein et al., *Liberalism and the Rights of Nature: A Comparative Legal and Historical Perspective*, L., CULTURE & THE HUMANS. 3

often abstract, ethereal, and utopian.²⁸ It frequently explores high-theory, such as the unstable boundaries between humans and nature,²⁹ but it contains relatively little discussion of the mechanics of how rights of nature would be implemented in functioning legal systems.³⁰

Despite this multiplicity of views, it is possible to identify some overarching themes within the RoN governance project. RoN scholars and activists widely agree, for example, that liberal democracy is harmful to the environment and that it needs to be transformed through recognition and deployment of nature's rights.³¹

In this Part, I provide an overview of RoN governance ideas. I first describe the RoN critique of liberal democracy, drawing on the work of leading RoN theorists and activists. To understand where RoN proponents want to take global governance, it is important to understand why they believe that liberal democracy is not up to the task of environmental protection. I then outline their ideas for an alternative system of governance based on rights for all living things. I aim to capture some dominant themes within RoN activism and scholarship, and I note where there are disputes or differing approaches within the movement.

A. THE RIGHTS OF NATURE CRITIQUE OF LIBERAL DEMOCRACY

RoN proponents widely share the belief that liberal democracy, as currently constituted, cannot safeguard nature. They contend that it is structured to cater to human interests and protect private property,³² and they argue that nature has no

(2022); BERRY, *supra* note 18; Kopnina et al., *supra* note 26; Patrik Baard, *Are Rights of Nature Manifesto Rights (And is that a Problem)?*, 29 RES PUBLICA 425 (2023).

28. See, e.g., John Page & Alessandro Pelizzon, *Of Rivers, Law and Justice in the Anthropocene*, 190 THE GEOGRAPHICAL J. 7 (2022) ("Rivers, thus, appear to represent not only the focal point of the second phase in the contemporary trajectory toward an ecological jurisprudence . . . , but also the pluralist interface through which distinct legal ontologies can begin to interact in an ontologically more profound manner.").

29. See, e.g., Anne Schillmoller & Alessandro Pelizzon, *Mapping the Terrain of Earth Jurisprudence: Landscape, Thresholds and Horizons*, 3 ENV'T & EARTH L.J. 1, 13-15 (2013).

30. Because the writing on RoN is voluminous and the concepts are novel, RoN governance objectives are open to varying interpretations. As several scholars remarked, it is unclear whether RoN principles "represent the continuation of liberal economic, political and legal norms and practices, a repudiation of them, or something in-between." Epstein et al., *supra* note 27.

31. See, e.g., Garver, *supra* note 5, at 94; David R. Boyd, *Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution?*, 32 NAT. RES. & ENV'T 13, 17 (Spring 2018); DARPÖ, J., CAN NATURE GET IT RIGHT? A STUDY ON THE RIGHTS OF NATURE IN THE EUROPEAN CONTEXT, REPORT TO THE EUROPEAN PARLIAMENT'S POLICY DEPARTMENT FOR CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS 13-14 (2021); KAUFFMAN & MARTIN, *supra* note 9, at 4-6.

32. Fifty years ago, the ecologist William Ophuls criticized liberal democracy in a way that echoes modern writers in the RoN movement, explaining that "liberal democracy as we know it . . . is doomed by ecological scarcity . . . we need a completely new political philosophy and set of political institutions." WILLIAM OPHULS, ECOLOGY AND THE POLITICS OF SCARCITY: PROLOGUE TO A POLITICAL THEORY OF THE STEADY STATE 3, 9 (1974). See also Marcel Wissenburg, *Liberalism, in POLITICAL THEORY AND THE ECOLOGICAL CHALLENGE* 20 (Andrew Dobson & Robyn Eckersley eds., 2006) (critics of liberal democracy charge that it is a "child of Enlightenment from which it has inherited its parent's deficiencies.").

voice within democracies, which are based on “one-species representation.”³³ Consequently, they argue, democratic processes will inevitably exclude and marginalize the interests of nature.³⁴ If humans and corporations are the only rights-holders, then democratic processes will promote their interests to the exclusion of the needs of the natural world. As Cormac Cullinan, a South African RoN theorist put it, democracies “value private profit and short-term benefit of some humans over the long-term interests of the inhabitants of the Earth as a whole.”³⁵

RoN proponents’ critiques of liberal democracy are frequently accompanied by anti-capitalist views, calls to restrict or abolish private property, and narratives of environmental neglect.³⁶ Many proponents say that liberal democracies are not only impotent to address global environmental decline, but are actually the cause of it.³⁷ Proponents root the environmental crisis in Lockean conceptions of private property, Enlightenment traditions that center human flourishing, hierarchical dualisms of humans and nature, and institutions of government that are overly responsive to human preferences.³⁸ A hostility to the natural world is allegedly baked into liberal democratic governance. According to Thomas Berry, one of the founders of the RoN movement, the U.S. Constitution, which “exalted the property-owning citizen,” was the “legal structure that would authorise the assault on the natural world.”³⁹

This pessimism about liberal democratic institutions distinguishes RoN proponents from mainstream environmental organizations, which usually work within existing structures of government and frequently tout the achievements of modern environmental lawmaking.⁴⁰ Although the RoN literature contains lengthy critiques of liberal

33. Kopnina et al., *supra* note 26.

34. For a comprehensive overview of these critiques of liberal democracy, see Eckersley, *supra* note 19, at 218-22. See also DARPÖ, *supra* note 31, at 14 (nature has “never been on the radar of legal systems.”).

35. Cormac Cullinan, *Wild Law and the Challenge of Climate Change*, SOUNDINGS (Winter 2007). See also CORMAC CULLINAN, *WILD LAW: A MANIFESTO FOR EARTH JUSTICE* 63-64 (2011); BOYD, *supra* note 4, at xxix (“If we are the only species with rights, we are the only species that really matters.”); Danielle Celermajer et al., *Multi-species Justice: Theories, Challenges, and a Research Agenda for Environmental Politics*, 30 ENV’T POL. 119, 134 (2021) (the “political economy” of democracies “is premised on the exclusion and exploitation of the nonhuman.”).

36. See DARPÖ, *supra* note 31, at 14; Ben Price, *Earth Emancipation Now* (Apr. 13, 2022), CMTY. ENV’T LEGAL DEF. FUND, <https://perma.cc/MZU7-JWRV> (“when . . . every subset of the natural world is emancipated from the legal status of property, then the threat to our rights and our common inheritance posed by the hegemony of private ownership of Earth can be ended.”) (emphasis in original); CARDUCCI ET AL., *supra* note 4, at 50.

37. See Danielle Celermajer et al., *Liberalism and the More-than-Human*, in RESEARCH HANDBOOK ON LIBERALISM (Duncan Ivison ed., 2024).

38. Ben Price, *Wouldn’t You Say? From Rights of Nature to Right Relationship*, (Mar. 3, 2023), CMTY. ENV’T LEGAL DEF. FUND, <https://perma.cc/7LTD-UV87>; Celermajer et al., *supra* note 35, at 125; Niels Hoek et al., *Implementing Rights of Nature: An EU Natureship to Address Anthropocentrism in Environmental Law*, 19 UTRECHT L. REV. 72, 74-75 (2023); Wissenburg, *supra* note 32, at 21.

39. Thomas Berry, *Foreword*, in CULLINAN, *supra* note 35, at 19.

40. See, e.g., EUR. ENV’T BUREAU, 2024 WORK PROGRAMME 11-12 (2024), <https://perma.cc/AB84-CVC9> (describing efforts of the largest coalition of European environmental groups to influence EU governing institutions).

democracy, it rarely discusses the environmental performance of other forms of government, such as dictatorships, socialist states, or authoritarian regimes.⁴¹

Most RoN proponents believe that environmental problems cannot be fixed within liberal democracies, such as by enacting new or stronger environmental legislation in the traditional mold. They are skeptical of legislative action and often view legislatures as impediments to environmental protection,⁴² arguing that they are just a “vehicle for the continuing domination of an economic elite.”⁴³ Many activists have a similar disdain for regulatory agencies.⁴⁴ Some have reported that they embraced RoN activism after “losing faith” in government,⁴⁵ and they say that it is pointless to enact traditional environmental statutes aimed at regulating industry. The system is captured, the flaws in liberal democracy are deep and structural, and something must replace it.⁴⁶

B. THE ALTERNATIVE GOVERNANCE VISION OF THE RIGHTS OF NATURE MOVEMENT

The alternative governance vision of RoN proponents is sweeping and ambitious. Many RoN proponents want to replace liberal democracy (or remake it) with new forms of governance that recognize, incorporate, and enforce legal rights for all living beings and for ecosystems.⁴⁷ For RoN proponents, recognition of nature’s legal rights is the starting point for transforming governmental institutions and humans’ relationship to the natural world. It would have a talismanic effect, they say, because law is the DNA of society.⁴⁸ Specifically, proponents contend that new rights for nature would work infrastructurally, at the deepest levels of law and society, to disrupt property rights, corporate law, environmental law, representation, and all legal and social development. In their vision, nature’s rights would counterbalance the power of corporations, constrain governmental projects and policies that harm living things, and root law and governance in

41. For scholarship on the environmental performance of various forms of government, see ENVIRONMENTALISM UNDER AUTHORITARIAN REGIMES: MYTH, PROPAGANDA, REALITY (Stephen Brain & Viktor Pal, eds., 2020); ROMY ESCHER & MELANIE WALTER-ROGG, ENVIRONMENTAL PERFORMANCE IN DEMOCRACIES AND AUTOCRACIES: DEMOCRATIC QUALITIES AND ENVIRONMENTAL PROTECTION (2020); David L. Kelly, *Capitalism, Socialism, and the Environment*, 8 NATURE & CULTURE 226 (2013).

42. Desmond Nichols, Note, *After Lebor, Can the Rights of Nature Movement Stand Back Up?*, 74 FLA L. REV. 699 (2022).

43. MATHEW HUMPHREY, ECOLOGICAL POLITICS AND DEMOCRATIC THEORY: THE CHALLENGE TO THE DELIBERATIVE IDEAL 3 (2007).

44. See Thomas Linzey, *Of Corporations, Law, and Democracy* (2005), <https://perma.cc/2G3Z-WQZK>. See also DARPÖ, *supra* note 31, at 14.

45. Bookman, *supra* note 1, at 26.

46. See CMTY. ENV’T LEGAL DEF. FUND, COMMUNITY RIGHTS DO-IT-YOURSELF GUIDE TO LAWMAKING 23 (2019), <https://perma.cc/YBS4-QG2M>.

47. See McEldowney, *supra* note 16 (“At the centre of RoN thinking is a single proposition that natural entities are best protected through the grant of legal personality.”).

48. CULLINAN, *supra* note 35, at 56 (the role of law in society is similar to the way organisms “define, structure, organize and reproduce themselves.”). See also KAUFFMAN & MARTIN, *supra* note 9, at 222 (arguing that RoN legislation will transform “the DNA of Western legal systems and society”).

ecocentrism rather than anthropocentrism. RoN is the “legal revolution that could save the world.”⁴⁹

What are the rights that nature possesses? In my prior work, I explored how advocates have defined nature’s rights and how these rights have been incorporated into legislation.⁵⁰ To sum up briefly, most RoN legislation expresses nature’s rights only in vague terms, such as a right to “exist” or “flourish.”⁵¹ Some proponents argue that ecosystems (e.g., lakes, rivers, forests) hold rights, such as a right to “regenerate . . . vital cycles,”⁵² while others contend that only an individual organism can be a rights-holder.⁵³ In my prior work, I criticized the vagueness of these rights and showed how such nebulous rights would inadequately protect nature.⁵⁴ Reliance on such rights as a dominant method of environmental protection would likely under-protect nature by poorly defining law’s limits on human activities.⁵⁵

In politics, RoN proponents expect that these same rights, once established, would serve as a countermajoritarian constraint on democratic decision-making. These rights, held by a boundless class of organisms, would serve as a check or limitation on the laws that governments could enact and the initiatives they could undertake. “The key idea is that if Rights of Nature” were established, “human values, interests, and rights must make space for nonhuman values, interests, and rights at the center of evaluating decision trade-offs and synergies.”⁵⁶ In the near-term, many RoN proponents are working to protect specific places, such as a lake, lagoon, or river, yet at the same time most RoN proponents contend that legal rights and personhood are held by *all* living things. If that view gained widespread acceptance, democracies would have to operate in ways that would not infringe on the rights of all organisms and ecosystems to “exist” or “flourish.” Each component of nature, potentially down to microscopic beings, would gain a right of refusal, positioned to reject (through lawsuits) legislation and democratic initiatives that are deemed harmful to nature.⁵⁷

49. BOYD, *supra* note 5.

50. Sachs, *supra* note 11, at 48-50, 55-57.

51. *Id.*

52. GLOB. ALL. FOR THE RTS. OF NAT., *What are the Rights of Nature?*, <https://perma.cc/XZN4-2MNT>; Garver, *supra* note 5, at 93 (describing RoN as “collective rights”). The constitution of the state of Mexico City recognizes rights of nature in this broader, collective sense, defining nature as “formed by all its ecosystems and species, as a collective entity with collective rights.” See CTR. FOR DEMOCRATIC AND ENV’T RTS, *Mexico*, <https://perma.cc/3RYL-LQQ7>.

53. See, e.g., Thomas Berry, *The Origin, Differentiation, and Role of Rights* (2001), <https://perma.cc/G437-GT87> (“Since species exist only in the form of individuals, rights refer to individuals, not simply in a general way to species.”); KAUFFMAN & MARTIN, *supra* note 9, at 15 (distinguishing governance models that grant rights to all of nature versus models that grant rights to particular named ecosystems).

54. Sachs, *supra* note 11, at 55-58, 67-70.

55. *Id.* at 55-58.

56. Louise Gallagher & Zenda Ofir, *The Rights of Nature: An Emerging Transformation Opportunity for Evaluation*, 36 CANADIAN J. OF PROGRAM EVALUATION 141, 143 (2021).

57. *Id.*

There is no consensus about how rigid this refusal would be. Specifically, there is no agreement among RoN proponents about whether nature's rights are inviolable or instead could sometimes be invaded. To serve human needs such as agriculture or housing, could humans lawfully destroy *some* rights-holding organisms or engage in *some* modification of rights-holding ecosystems?

The "weight" that would be given to nature's rights in comparison to human needs is obviously a crucial question—perhaps *the* crucial question about the entire RoN governance project. Whether living beings' rights to "exist" are completely inviolable or can sometimes be negated dictates the parameters within which human societies could operate. It also dictates how much humans could harvest for food. As I explored in my earlier work, RoN proponents are divided on this question, with some advocating accommodationist balancing and some rejecting it because the whole point is to give nature deontological rights, inherent dignity, and inviolable protections from harm.⁵⁸ The impacts of the RoN governance project all depend on how strict the constraints of nature's rights turn out to be.⁵⁹

What is clear is that many RoN scholars and activists take the principle of anti-speciesism quite seriously and reject any hierarchy of rights among species.⁶⁰ As the lawyer and activist Michelle Maloney put it, "human and non-human life forms are borne of Earth, and as evolutionary companions, we all have a right to exist, thrive and evolve."⁶¹

Some RoN proponents would even recognize enforceable legal rights for *non-living* things such as water, nutrients, and minerals.⁶² They use the term "Earth Community" to reflect the idea that the Earth is comprised of different

58. Sachs, *supra* note 11, at 78-80. *See also* Bookman, *supra* note 1, at 36 (describing the movement as advocating a shift from balancing to absolutes). I have not found any RoN legislation that details a balancing process for comparing nature's new rights to human rights or human interests. The idea of balancing remains a theoretical possibility rather than a concrete program written into legislation.

59. Those who advocate a balancing process rarely clarify how it would be conducted or what metrics would be used. For example, Craig Kauffman and Pamela Martin have written that under an RoN regime, humans could still cause limited harm to an ecosystem as long as they eventually restore the health of the ecosystem. KAUFFMAN & MARTIN, *supra* note 9, at 123. Their only guideline is that people would be "legally prohibited from inflicting such harm that it prevents the ecosystem's systems from functioning and regenerating." *Id.* This argument overlooks, however, that there is no scientifically-accepted definition for the boundaries of an ecosystem. Even a ¼ acre plot of land is an "ecosystem." Moreover, some human modifications to ecosystems are both necessary and permanent, such as building a school or a hospital. Is such construction prohibited because it would infringe on the "rights" of the "ecosystem" in that location?

60. *See, e.g.,* CULLINAN, *supra* note 35, at 96 ("all the component members of the universe are subjects capable of holding rights, and have as much right to hold rights as humans"); Robyn Eckersley & Jean-Paul Gagnon, *Representing Nature and Contemporary Democracy*, 1 DEMOCRATIC THEORY 94, 99 (2014) (advocating for the replacement of an "arrogant and self-serving hierarchy of being").

61. Michelle Maloney, *Rights of Nature, Earth Democracy, and the Future of Environmental Governance*, in REBALANCING RIGHTS: COMMUNITIES, CORPORATIONS & NATURE (2019), <https://perma.cc/482E-QN4P>.

62. *See* CULLINAN, *supra* note 35, at 104 (describing the rights of rivers); *Id.* at 147 (describing the members of the Earth Community); Craig Kauffman & Pamela Martin, *Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand*, 18 GLOBAL ENV'T POL. 43, 49 (2018).

“members,” both living and non-living, all of which hold rights that arise from their existence.⁶³ Indeed, one of the central objectives of the RoN movement is to confer legal rights on entities that are not living organisms. Many U.S. municipalities and nations such as New Zealand, Ecuador, and Spain have already enacted RoN laws that confer rights on aggregates of living and non-living things, such as lakes, rivers, and lagoons.⁶⁴ Complex definitional issues arise in delineating the boundaries of such ecosystems,⁶⁵ but one thing is clear: for most RoN advocates, once an entity (however defined) becomes a rights holder, it is a legal and political equal with other rights holders, including humans.

The media and the general public do not seem to be aware of the sweeping repercussions of these governance ideas. Media coverage of the RoN movement has focused on its campaigns on behalf of specific animals, such as elephants,⁶⁶ orcas,⁶⁷ and monkeys,⁶⁸ and on its campaigns on behalf of specific rivers.⁶⁹ Some RoN advocacy efforts are unobjectionable, such as calls for inclusive decision-making that involves indigenous peoples, workers, and marginalized groups.⁷⁰ These public-facing efforts, supported by most progressives, can obscure the long-term RoN project to disrupt democratic institutions and make them accountable to non-human rights holders.⁷¹

63. See, e.g., Cormac Cullinan, *The Legal Case for the Universal Declaration of the Rights of Mother Earth* (2010), <https://perma.cc/X4DR-HYHM> (all beings “have inherent, inalienable rights which arise from their existence.”); Maloney & Siemen, *supra* note 18, at 14-15; Berry, *supra* note 53 (“rights originate where existence originates.”).

64. See Sachs, *supra* note 11, at 47; Erin Ryan, *How the Successes and Failures of the Clean Water Act Fueled the Rise of the Public Trust Doctrine and the Rights of Nature Movement*, 73 CASE W. RES. L. REV. 475, 495 (2022) (cataloging protected rivers and lakes); Mauricio Guim & Michael A. Livemore, *Where Nature’s Rights Go Wrong*, 107 VA. L. REV. 1347, 1353 (2021)(defining aggregates).

65. See Sachs, *supra* note 11, at 65-67; Eckersley, *supra* note 6, at 190 (“it is no easy matter to determine the boundaries of ecosystems or other collective entities with the precision that would be required for the purposes of rights ascription.”) (emphasis in original).

66. See Nonhuman Rts. Project, Inc. *ex rel.* Happy v. Breheny, 197 N.E.3d 921, 923-24 (N.Y. 2022).

67. See Michelle Bender, Rachel Bustamante & Kriss Kevorkian, *Rights for the Southern Resident Orcas Gains Momentum*, EARTH L. CTR. (Feb. 22, 2023), <https://perma.cc/Q58V-2A8V>.

68. See *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).

69. Josh Grant, *U.S. Cities Declare Inherent Rights for Endangered Orcas That Swim in the Salish Sea*, CBC NEWS (Dec. 15, 2022), <https://perma.cc/JD32-R8EZ>; Jill Lepore, *The Elephant Who Could Be a Person*, THE ATLANTIC (Nov. 16, 2021); Patrick Barkham, *Should Rivers Have the Same Rights as People?*, THE GUARDIAN (July 25, 2021); Bookman, *supra* note 1, at 58 (noting the “impressive volume” of national media attention.).

70. Many RoN activist groups advance issues other than the project to confer legal rights on nature. These issues include recognizing the rights of future generations and enacting constitutional rights to a clean environment for humans. See, e.g., EARTH L. CTR., *Explore Our Campaigns by Region*, <https://perma.cc/TM4Q-HYLH>; ZELLE ET AL., *supra* note 25 (casebook on Earth Law documenting such initiatives). These ideas are provocative but are beyond the scope of this paper.

71. The repercussions of RoN governance ideas could potentially be downplayed by framing rights of nature as a rhetorical strategy for movement-building, not as a serious political program for governance. In a recent article, Sam Bookman argued that movement-building is the primary function of RoN activism in the United States, and he suggested that the U.S. RoN movement draws on a

Remarkably, RoN proponents have not addressed how many living organisms (or non-living things) would participate in the new governance structures they seek to build. The numbers are staggering. There are between 8 million and 1 trillion different *species* on Earth (the higher number includes microbes),⁷² putting the number of *organisms* that could potentially become rights-holders beyond the trillions and stretching into an uncountable, unknowable boundlessness: a biotic infinity. More than 85% of species believed to exist on Earth have not even been named or cataloged.⁷³ For simplicity, I use the term “trillions” in this Article to refer to the number of potential new rights-holders, but the true number of living beings on Earth is orders of magnitude higher.

RoN proponents never discuss these numbers as an administrative hurdle to the RoN project or as a reason to reconsider the project. The vastness of life of Earth highlights the challenge, and probably the futility, of a governance project that aims to include non-human organisms in a democratic polity or transform all of them into rights-holders.⁷⁴ The RoN literature is filled with discussions of how “nature” would assert legal rights. But it is important to keep in mind that nature is an uncountable “they,” often with mutually conflicting interests, not a singular “it.”

II. THE LEGISLATIVE ROLE UNDER RIGHTS OF NATURE GOVERNANCE

If the RoN governance agenda could be brought into being, one of its major consequences would be disrupting the legislative role in democracies. RoN proponents rarely discuss that new rights for organisms and ecosystems would be used to check or constrain legislatures, perhaps because RoN advocacy is

“mythology of rights discourse” to win supporters and mobilize action. Bookman, *supra* note 1, at 4. Bookman noted that courts in the United States consistently overturn municipal RoN legislation and that actual enforcement of RoN laws has never been the point of RoN activism in the United States. *Id.* at 3-4. After interviewing U.S. RoN activists, Bookman concluded that many view RoN principles simply as “provocations or thought experiments.” *Id.* at 40. While some U.S. activists clearly take that position, other proponents are vocal that RoN principles are meant to be the foundation for an alternative political system, and their writing on that topic is voluminous. *See, e.g.,* Linzey, *supra* note 44; Maloney & Siemen, *supra* note 18, at 11-13; Cullinan, *supra* note 35, at 120-23. In the United States, RoN advocates are working to pass RoN legislation that imposes criminal penalties and strips corporations of constitutional protections, and many municipalities have actually enacted such legislation. *See* Sachs, *supra* note 11, at 57-58 (discussing the Lake Erie Bill of Rights). Given this legislative work on the ground, the objectives of the RoN movement seem more than just a “thought experiment.” Bookman acknowledges the practical reach of the RoN project elsewhere in his paper. Bookman, *supra* note 1, at 35 (“the long-term objective is to build a movement powerful enough to pass rights of Nature laws at the state and national level.”). *See also* Sachs, *supra* note 11, at 59 (rejecting the idea that RoN goals are merely rhetorical provocations).

72. Camilo Mora et al., *How Many Species Are There on Earth and in the Ocean?* 9 PLoS BIOL. (2011), <https://perma.cc/M69V-WM4Y>; Kenneth J. Locey & Jay T. Lennon, *Scaling Laws Predict Global Microbial Diversity*, 113 PROC. NAT’L ACAD. OF SCI. (2016) (estimating upward of one trillion microbial species, of which only 1.2 million have been cataloged).

73. Mora et al., *supra* note 72.

74. Kopnina et al., *supra* note 26 (seeking an “expansion of democracy to include greater-than-humans”).

overwhelmingly focused on the identity of the plaintiff in RoN litigation, not the defendant. But a “right to exist” for each non-human organism, if widely recognized and enforced, would necessarily constrain legislatures, potentially limiting the decisions they could make, the laws they could pass, and the initiatives they could pursue. For nature’s rights to serve the long-term purpose that most RoN activists envision, which is ending anthropocentrism in legal *and political* systems, the rights of non-human organisms would *have* to constrain legislatures, not just corporations or other private sector actors.⁷⁵

Of course, other rights in constitutional democracies also constrain legislatures. Rights-based constraints on governmental power are one of the hallmarks of liberal democracy, as exemplified by the U.S. Bill of Rights. In Part III, I address why rights of nature would raise a unique set of concerns. For now, it is important to see how much of legislative decision-making, and by extension societal decision-making, would be subject to these new rights constraints from non-human entities.

In this Part, I explore the likely repercussions of RoN governance for legislatures. I argue that RoN governance ideas would straitjacket legislatures and limit their autonomy, undermining their role as a vehicle for expressing citizen preferences and resolving political conflict. I also explore the operational difficulties that would plague RoN governance, given the boundless number of potential rights-holders and the indeterminacy of the meaning of nature’s rights. Finally, I discuss the potential fallout of these legislative constraints for social movements and human rights.

A. CONSTRAINING LEGISLATURES THROUGH NATURE’S LEGAL RIGHTS

Although RoN proponents rarely discuss how nature’s rights would be deployed against legislatures, they widely assert, as foundational to the movement, that such rights should serve the role of checking or counterbalancing humans within democracies.⁷⁶ Their vision for what nature’s rights should *do* in democracies is fairly clear, even as the mechanics are left unstated. For this checking or counterbalancing role to be realized, most legislative decisions would have to be reviewed to determine if they conflict with the rights of ecosystems or the rights of non-human organisms.⁷⁷

This review of legislation under rights-constraints from non-human organisms would not be a procedural formality or an information-gathering exercise. RoN is not mere environmental impact review. Instead, the RoN project is meant to have substantive consequences by halting human endeavors that violate nature’s rights. Its dramatic paradigm-shifting consequences lie in the idea that the rights of plants,

75. See, e.g., Eckersley, *supra* note 6, at 180 (“human choices need to be constrained by a recognition and consideration of the interests of non-human beings . . .”).

76. See, e.g., CARDUCCI ET AL., *supra* note 4, at 51, 63.

77. See, e.g., Gallagher & Ofir, *supra* note 56, at 144.

animals, or ecosystems could be deployed to halt or nullify offending legislation. Democratic initiatives would have to be measured and assessed against a vague set of nature rights and could potentially be set aside in cases of conflict. As two RoN proponents explained, environmental governance should be “required to look to nature’s legal interests and be prepared to negotiate or compensate—or be sued by—nature’s elements and entities.”⁷⁸

The consequences for legislators and democratic decision-making are rarely spelled out in the RoN literature. RoN proponents have never detailed, for example, a system of judicial review of legislation under rights-constraints from nature. Yet some system of review of the actions of elected representatives is implicit in their ecocentric vision. It is hard to see how an ecocentric political system could be built without some process for reviewing legislation, including quashing legislation that harms (or threatens to harm) other organisms.⁷⁹

The problem is that nearly every legislative act has some impact on the physical world, so the straitjacketing of legislatures under this system would be comprehensive, affecting every aspect of political and social life. Under a governance system that enforced rights for all living things, legislatures would have sharply diminished decision-making authority over any public policy that affects nature (which is essentially all public policies). Important goals that a legislature might pursue—education, poverty alleviation, healthcare, national defense, affordable housing, renewable energy, economic development—could presumably take place only if they accord with the rights of nature and do not infringe on living beings’ rights to exist or flourish, which is impossible.

Legislatures could hardly act under such a system. I agree with RoN scholars that most questions of politics are fundamentally questions of human-nature interactions.⁸⁰ Because that is the case, subjecting democratic institutions to the constraint that their decisions cannot violate vaguely defined rights of nature destroys our ability to govern ourselves.

The scope of constraints on legislatures would be enormous. RoN proponents make clear that their vision for overhauling liberal democracy goes far beyond shaping specific environmental policies. It is about deploying nature’s rights to shrink the scale of human activities on Earth.⁸¹ RoN proponents seek to harness

78. *Id.*

79. See KAUFFMAN & MARTIN, *supra* note 9, at 219 (the sovereignty of humans “can only be limited by other subject’s similar formal rights.”).

80. See Andrew Dobson, *Democracy and Nature: Speaking and Listening*, 10 POL. STUD. 752, 755 (2010); BRUNO LATOUR, *POLITICS OF NATURE: HOW TO BRING THE SCIENCES INTO DEMOCRACY* 1 (2001).

81. See Cameron La Follete, *Rights of Nature: The New Paradigm* (Mar. 6, 2019), <https://perma.cc/T38Q-LK3X> (the RoN movement aims to put “Nature and its needs before human needs”); KAUFFMAN & MARTIN, *supra* note 9, at 219 (RoN’s purpose is to “reprogram” societies to decenter economic growth and force a transformation in human’s relationship to nature); Price, *supra* note 36 (the RoN movement is designed to terminate the privileged status of private property and end the “carnage” of the climate crisis and species loss).

nature's legal rights to enforce macro-constraints on the scale of human societies: on the scale of cities, water usage, energy usage, agriculture, and overall economic development.⁸² They widely share the view that the scale of human societies has grown too large under liberal democracies and that something must be deployed, legally, to knock it down to an assumed appropriate size. Some RoN proponents have even suggested that governance under an RoN regime would require "zero growth economics,"⁸³ so that overall economic activity never increases. The freedom of humans to legislate would be tightly circumscribed if such a powerful system of nature rights could be established, fulfilling the RoN movement's "long game."⁸⁴

One likely path to effectuate these legislative constraints is that activists would file suit, acting as guardians for nature, and judges would step in to strike down or nullify legislation that they deem contravenes the legal rights of organisms or ecosystems.⁸⁵ For example, judges might reject an appropriations law based on evidence that the funding of roads, schools, and other projects would harm amphibians or insects. Judges might reject a tax law that promotes home construction, citing the potential impacts of land clearing on pine trees or undergrowth. The list could go on. There is nothing in the RoN literature that would limit nature's rights to contesting or blocking *new* legislation. The rights, once recognized, could also be used to challenge laws and regulations already on the books.

Fulfilling these ecocentric governance objectives would mean that legislatures would lose considerable freedom and autonomy. They would be far less able to put voter preferences into law, and political conflict could increase dramatically if voter preferences were consistently frustrated by judges or other legal actors blocking legislation in the name of common, non-endangered organisms.

82. Because rights of nature have the potential to constrain legislative discretion, some scholars have compared it to the Public Trust Doctrine, which in the United States plays a similar, constraining role to protect lands and waters held in trust by the state. As Erin Ryan has explained, most U.S. states view the doctrine as a "quasi-constitutional constraint on the police power that obligates protection of unique public common resources." Ryan, *supra* note 64, at 491. Ryan notes that the Public Trust Doctrine is a "built-in doctrine that legislatures cannot just casually undo by statute because it is conceived as a limit on legislative authority itself." *Id.* There is a significant difference, however, between the Public Trust Doctrine and the governance proposals of the RoN movement. While the Public Trust Doctrine applies to a narrow class of publicly owned resources such as lakes and rivers, *id.* at 484-87, the RoN movement is seeking a quasi-constitutional protection for all organisms of every kind, whether on public or private property.

83. KAUFFMAN & MARTIN, *supra* note 9, at 230.

84. Garver, *supra* note 5, at 100.

85. Actors other than judges could conceivably be empowered to interpret and enforce nature's new rights. Sam Bookman has suggested, for example, that various officials in the executive branch could perform this role, such as an "Ombudsman for Nature" that was proposed in a draft constitution for Chile. Sam Bookman, *Demystifying Environmental Constitutionalism*, 54 ENV'T L. 1, 33 (2024). In my view, the most important issues are what powers these individuals would possess and what role they would play in reviewing and rejecting democratic initiatives, rather than their specific title or the branch of government in which they reside.

Legislative space for deliberation and action would narrow, yet many RoN advocates embrace this constriction of democratic freedom as a feature of their agenda. As ten European RoN scholars explained, a governance system based on rights of nature would “force all those who participate in [political] deliberations . . . to respect Nature as a priority . . . and limit the discretion of decision makers.”⁸⁶

Why would legislators vote to establish such a comprehensive system of nature rights? There is no discussion in the RoN literature of why elected legislators would enact nature rights into law and then maintain them over decades if the rights were deployed to sharply constrain both legislative autonomy and human socioeconomic development. Some writers suggest that humanity will have a revolution of the psyche and will come around to seeing that this project is in humans’ long-term interest.⁸⁷ Some RoN scholars advocate that nature should gain seats in legislatures to achieve the political muscle to bring about this project,⁸⁸ and others suggest that nature’s rights are already grounded in natural law and do not require legislative consent. I discuss these concerning long-term scenarios for establishing nature rights governance in Part IV.

In the near-term, the strategy of RoN activists seems to be to keep pushing, one piece of legislation and one lawsuit at a time, with the expectation that RoN governance will eventually, somehow, come into being. RoN proponents primarily focus on the desired end-state: a set of nature rights that democratic institutions would be legally bound to respect, forming a legal wall around the natural world.⁸⁹

The restrictions on representative government would be most stringent if nature’s rights became constitutionalized rather than being established through ordinary legislation. It is not surprising that many RoN proponents support such a move.⁹⁰ Constitutionalizing rights to “exist” or “flourish” for all living beings would not only codify the countermajoritarian purposes of nature’s rights, but it would also create a lock-in effect, making these rights part of the deep architecture

86. CARDUCCI ET AL., *supra* note 4, at 83, 84.

87. See, e.g., Hendrik Hallgren & Hans Landestrom, *Rights of Nature as an Ecopsychological Praxis*, in *RIGHTS OF NATURE IN EUROPE: ENCOUNTERS AND VISIONS* (Jenny Garcia Ruales et al., eds., 2024); KAUFFMAN & MARTIN, *supra* note 9, at 7; Bookman, *supra* note 1, at 8 (rights of nature “exhort [s] a change in environmental consciousness.”)

88. See *infra* section IV.A.

89. See, e.g., Erin Ryan et al., *Environmental Rights for the 21st Century: A Comprehensive Analysis of the Public Trust Doctrine and Rights of Nature Movement*, 42 CARDOZO L. REV. 2447, 2507-12 (2021) (describing categories of protected natural entities under RoN laws and the legal mechanisms through which RoN laws operate); Nadine Nadow et al., *Leveraging Earth Law Principles to Protect Ocean Rights*, 53 ENV’T L. REP. 10838, 10840-42 (2023) (describing the purposes of Earth Law and RoN).

90. See, e.g., Nathalie Ruhs & Aled Jones, *The Implementation of Earth Jurisprudence through Substantive Constitutional Rights for Nature*, 8 SUSTAINABILITY 174 (2016).

of governance systems throughout the world.⁹¹ Robyn Eckersley has explained that nature's rights would have to become "incorporated and entrenched alongside fundamental human rights in a constitutional bill of rights to ensure they are not 'bargained away' by a simple majority."⁹² By constitutionalizing the rights of every living being to "exist" or "flourish," legislatures could not repeal the rights whenever they became inconvenient to human interests.⁹³

In 2008, Ecuador became the first nation to constitutionalize rights for nature. Ecuador amended its constitution to provide that "Nature, or Pachamama, 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."⁹⁴ This provision is widely celebrated within the RoN movement, as it points the way to a hierarchical structure for nature's rights to constrain human activities. But scholars are still debating the practical effects of this provision for protecting nature in Ecuador, nearly two decades after enactment.⁹⁵ Ecuadorian judges have struggled to give meaning to a set of rights held by nature, a unitary entity "encompassing pretty much everything."⁹⁶ Ecuadorian judges are also working out how to balance a constitutional right held by nature with activities specifically authorized by the state, such as mining in a biodiversity-rich area.⁹⁷ Despite these difficulties of implementation, Ecuador has become a touchstone

91. *Id.* (constitutionalizing environmental rights makes them "harder to amend, taking them outside the zone of ordinary politics.").

92. Eckersley, *supra* note 6, at 181.

93. Guillaume Chapron, Yaffa Epstein & Jose Vicente López-Bao, *A Rights Revolution for Nature*, 363 SCI. 1392, 1392 (Mar. 29, 2019) (noting that important laws such as the Endangered Species Act can be repealed "at the whim of the legislature.").

94. CONSTITUTION DE LA REPUBLICA DEL ECUADOR, arts. 71-73.

95. Many scholars have analyzed the Ecuadorian constitutional provision, its place in the global RoN movement, and its practical impacts in Ecuador. *See, e.g.*, Mihnea Tanasescu, *The Rights of Nature in Ecuador: The Making of an Idea*, 70 INT'L J. ENV'T STUD. 846 (2013). Their conclusions are mixed, with some scholars concluding that the Ecuadorian constitutional provision has made a difference in limiting certain extractive projects and others concluding that its impact has been uncertain. *See* Seth Epstein, *Rights of Nature, Human Species Identity, and Political Thought in the Anthropocene*, 10 THE ANTHROPOCENE REV. 1 (2022) (surveying the literature about the constitutional provision in Ecuador); Ruhs & Jones, *supra* note 90 (discussing weakening of implementation of the constitutional provision amidst an economic crisis); Hugo Echeverria & Francisco Jose Bustamante Romo Leroux, *The Rights of Nature in Ecuador: An Overview of the New Environmental Paradigm*, in SUSTAINABILITY AND THE RIGHTS OF NATURE IN PRACTICE (Cameron La Follette & Chris Maser, eds., 2020) ("there is still no certainty about the effectiveness of the Rights of Nature language" in Ecuador's constitution.). The Ecuadorian RoN provision has been in place for nearly twenty years, during which Ecuador has increased its oil extraction and deforestation. *See* Huneeus, *supra* note 1, at 160 ("even in countries where rights of nature have strong legal footing, how much it affects change on the ground is unclear . . . thus far, several of the court judgments granting rights to rivers and forests have failed to reduce extractivist activities."); DARPÖ, *supra* note 31, at 48 (noting the continuation of the extractivist agenda in Ecuador).

96. Alexandra Huneeus, *The Three Faces of Non-Human Rights*, in OXFORD HANDBOOK ON COMPARATIVE HUMAN RIGHTS LAW (Neha Jain & Mila Verstaag, eds., 2025).

97. *See* KAUFFMAN & MARTIN, *supra* note 9, at 89-92 (describing the Condor-Mirador decision of a provincial court).

within the RoN movement for how democracies might be constitutionally restrained under a system of nature rights.⁹⁸

B. DIFFICULTIES OF OPERATIONALIZING CONSTRAINTS ON LEGISLATURES

The hurdles to operationalizing RoN governance would be enormous, assuming democracies had the will to create it. Implementation issues need far more attention in debates over RoN, and RoN proponents should engage with the complexity of implementation, including how nature's rights would be asserted during legislative debates and how they would be asserted to challenge enacted legislation. Examining how this might operate in practice highlights the unworkability of many RoN governance ideas and their distorting effects on democracy.

Consider some of the steps that would be required to position the legal rights of ecosystems and trillions of organisms as a constraint on human decisions within democracies. If legislative proposals or executive action were required to be consistent with the rights or interests of all living beings, there would have to be some process or proceeding in which the impacts on living beings would be identified and the corresponding rights (such as a "right to exist") would be asserted. Some decision-maker would have to be authorized to determine the meaning of these rights conclusively, with power to halt or overturn governmental action or legislation that conflicts. Further, living beings potentially affected by governmental conduct would presumably need a guardian to explain to the decision-maker what the rights of their "client" dictate.⁹⁹ And government officials ought to be able to defend their projects as consistent with nature's rights or, alternatively, as important human endeavors that should proceed even if they violate nature's rights.

The operational complexity would be enormous. How many parties would be involved? How would rights be defined and weighed? What powers would the decision-makers hold, and who will select and control the decision-makers? In the name of constraining human decisions with formal rights from all other organisms, RoN governance contains a clear potential for decision-making paralysis.

I am not suggesting that humans should legislate without regard to environmental consequences. But this governance vision, with trillions of plants, animals, and perhaps even microorganisms poised to assert vague rights against democratic institutions, is a flawed and unworkable way to govern society or improve environmental outcomes. Many environmentalists conceptually support the idea of expanding governance to include the rights of non-human organisms, but that vision would likely involve a complex process of review and assessment

98. See, e.g., Kauffman & Martin, *supra* note 62, at 59 (describing Ecuador's constitutional provision as "pioneering," with an impact "diffused by transnational networks to other countries"); MIHNEA TANASESCU, UNDERSTANDING THE RIGHTS OF NATURE: A CRITICAL INTRODUCTION 52 (2022); Guim & Livemore, *supra* note 64, at 1407.

99. See Stone, *supra* note 2, at 26, 28.

to identify those rights and give them meaning.¹⁰⁰ Laws important for education, health, and socioeconomic development might have to be pushed aside because of some identified conflict with the rights of other organisms or even the rights of non-living things. Notably, as this process (or something similar) becomes deployed for review and potential blockage of governmental action, it would not address the harm to nature that occurs from governmental *inaction*.¹⁰¹

The problems with governance based on rights-claims from nature run deeper than administrative complexity. There is also an overarching problem of defining the “interest” of nature that will purportedly guide human decision-making. There is no single “interest” of nature that could guide legislators, judges, or other legal actors in implementing such a rights program.

Living beings compete in Darwinian struggle, so the interests of living organisms, including their interest in having a “right to exist,” will frequently—perhaps always—conflict. Consider predator-prey relationships. Or consider how the aggregate interest of a forest to “flourish” may depend on the death and decay of individual organisms within the forest.¹⁰² In reviewing the actions of legislatures or other governing institutions, decision-makers’ conclusions about the meanings of rights of nature may depend entirely on the portion of the natural world they choose to examine. Will decision-makers train their lens on the micro-level or the whole biosphere? On the interests of this organism or that organism? On the interest of an organism or a whole ecosystem?¹⁰³

RoN proponents contend that nature’s rights must be recognized to counterbalance human preferences, yet the meaning of those rights, and what they might command of our institutions, is frequently indeterminate.¹⁰⁴ In a recent article,

100. See, e.g., Gallagher & Ofir, *supra* note 56, at 148-50 (discussing the role of environmental impact evaluation in an RoN framework).

101. Governmental inaction might be more harmful to the environment than governmental action. Addressing climate change, for example, will require an estimated \$3 trillion to \$3.5 trillion per year in new infrastructure development globally to build out renewable energy sources, transmission lines, and alternative transportation. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, GLOBAL WARMING OF 1.5 °C 321 (2018), <https://perma.cc/J5DG-SE3B>. Positioning nature’s rights as a roadblock to infrastructure development would hinder this needed build-out, potentially blocking physical infrastructure that would reduce emissions and protect human and non-human life from climate harms. See also J.B. Ruhl & James Salzman, *The Greens’ Dilemma: Building Tomorrow’s Climate Infrastructure Today*, 73 EMORY L.J. 1, 14 (2023) (noting the “massive scale” of new construction needed for decarbonization); Joseph L. Sax, *The Search for Environmental Rights*, 6 FLA. ST. J. LAND USE & ENV’T L. 93, 94 (1990) (noting that “positive government involvement is essential in dealing with externalities like pollution”).

102. See Sachs, *supra* note 11, at 64.

103. See Kopnina et al., *supra* note 26 (nature is “composed of interactive and reciprocal relationships that connect every organism on Earth into one planetary and complex interdependent ecosystem.”); Ruhs & Jones, *supra* note 90 (arguing that protecting nature in a local area could compete with “wider environmental claims,” such as the need to reduce greenhouse gas emissions).

104. The boundaries of ecosystems are similarly indeterminate. See Christy Clark et al., *Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance*, 45 ECOLOGY L. Q. 787, 791 (2019) (“Nature, the environment, or even single complex ecosystems are seldom easily quantifiable as bounded entities with geographically clear borders.”).

Mauricio Guim and Michael Livermore explored this indeterminacy problem in depth.¹⁰⁵ Using the example of constructing a road through a forest, they explained that the road might be bad for small mammals that become road-kill, but it might be good for carrion birds that feed off the dead mammals.¹⁰⁶ Overall biodiversity in the forest might decrease if some species avoid the road, but perhaps the road might divert automobile traffic from some other area that is even more ecologically sensitive.¹⁰⁷ As Guim and Livermore explained, “[i]f there are many different plausible ways to constitute the relevant aggregations—each with no stronger normative claim than the other—then the purported desirability of many decisions could be contingent on an arbitrary choice about how the aggregations are described.”¹⁰⁸

The indeterminacy problem highlights why it would be problematic to build a system of environmental protection around novel rights of nature, let alone overhaul liberal democracy to ensure accountability to these rights. The hurdles to identifying and applying nature’s rights would be particularly acute in the context of reviewing legislation, compared to reviewing a physical project such as a road. At the time of enactment, the impact of new legislation on living beings would be probabilistic at best, and likely totally speculative. What would be the impact on specific organisms from an increase in the capital gains tax? How would plankton or shrimp populations be affected by changes in banking regulations or labor law? Even if a connection could be drawn between particular legislation and particular negative outcomes for certain organisms, there might be offsetting benefits for other organisms, for natural systems, or for humans. How would we identify all the organisms or ecosystems that would be affected by legislation and interpret the meaning of their rights?

It is simply utopian to base a governance system on the idea that the rights (or interests) of organisms and ecosystems could be interpreted accurately to determine which legislative initiatives can go forward and which must be halted.

Perhaps recognizing the difficulties of putting this governance program into practical operation, some RoN advocates want to simply *presume* violations of nature’s rights. In a recent paper, ten European scholars wrote that evidence of harm to nature “cannot be adduced by humans in place of Nature” because “the assessment of damage to Nature would be subject to the discretion of humans and their interests.”¹⁰⁹ In other words, humans would self-interestedly downplay the harm to the natural world. These scholars advocated that EU law should simply presume harm to nature from any human activity, and therefore a violation of

105. Guim & Livermore, *supra* note 64, at 1381-94.

106. *Id.* at 1383.

107. *Id.*

108. *Id.*

109. CARDUCCI ET AL., *supra* note 4, at 85.

nature's legal rights, until humans can disprove the harm.¹¹⁰ This is unworkable territory for legislation and governance.

C. HARM TO SOCIAL MOVEMENTS AND HUMAN RIGHTS

The RoN literature is full of aspirational projections for how rights of nature would promote justice for marginalized groups or redress historic harms to indigenous communities.¹¹¹ But a darker outcome is also foreseeable: that enforceable rights for trillions of non-human organisms would be harnessed by the powerful to block dissenting social movements. Nature's rights could be abused and weaponized against disfavored groups, and they could be deployed to undercut and dismantle long-recognized human rights.

Liberalism allows social movements (racial groups, labor groups, ethnic groups, and sexual and religious minorities) to advocate for social change and increase power through campaigns and elections. Social movements seek not only recognition of rights, but also material benefits (resources, development, schools, housing), and the provision of these benefits would inevitably harm some organisms. Could democratic societies respond to or recognize rising social movements if legislatures were simultaneously constrained by the legal rights of trillions of other organisms?¹¹² Nature's rights could easily be interpreted to prohibit cultural practices of indigenous populations, religious and ethnic minorities, and political out-groups.

Some RoN proponents have acknowledged these risks to human dignity. Danielle Celermajer and her co-authors questioned whether RoN advocacy "projects our privilege as citizens and academics of the Global North" while "silencing other voices that demand basic justice in so-called 'bread-and-butter issues' (for example, affordable housing, education, and health care)."¹¹³ They also explained that a focus on nature's rights could result in ignoring or even condoning the

110. *Id.*

111. BOYD, *supra* note 4, at xxx; Edson Krenak Naknanuk, *Indigenous Peoples are Essential to the Rights of Nature* (Aug. 31, 2022), <https://perma.cc/6BGC-BCST>; EARTH L. CTR., *supra* note 25 ("For the realization of human rights, we must also recognize the Rights of Nature, because we cannot fulfill our rights without a healthy environment to support them."); Erin O'Donnell et al., *Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature*, 9 TRANSNAT'L ENV'T L. 403 (2020); TANASESCU, *supra* note 98, at 147.

112. Early in his career, Larry Tribe recognized this destructive potential of rights of nature in an article that was otherwise favorable to these rights. Laurence H. Tribe, *Ways Not to Think about Plastic Trees*, 83 YALE L.J. 1315, 1337-38 (1974). Tribe explained that conferring legal rights on non-human organisms could hinder political change by squelching the aspirations of social groups that do not yet enjoy political power. He wrote that "[t]reating the existing [natural] order as sacred ... or ... immutable ... might well relegate to permanent subjugation and deprivation those many who are not now among the privileged, freezing the social evolution of humanity into its contemporary mold." *Id.*

113. Celermajer et al., *supra* note 35, at 133. *See also* Ruhs & Jones, *supra* note 90 (raising concern that powerful groups could deploy rights of nature to prevent development that affects them, "only to see the development relocated to more poverty stricken neighbourhoods").

“brutal” mistreatment of millions of people today who are “silently enduring or violently contesting their less-than humanness.”¹¹⁴

These notes of apprehension, raised in passing by Celermajor and her colleagues, should be front and center in RoN debates. If the RoN project continues to gain traction, it could erect legal hurdles to fair and equitable treatment of humans, as both legislatures and courts would purportedly be obliged to weigh human needs in competition with rights-claims from other organisms. The anti-speciesism of the RoN movement, which would refuse to give any special consideration to human needs and interests, could cause a great deal of damage by providing a new political weapon to those who wish to silence groups seeking dignity, recognition, and social development.

Widespread recognition of rights of nature would also pose a threat to human rights already established in law. Many RoN proponents contend that human rights are subordinate in a hierarchy to nature’s rights.¹¹⁵ Michelle Maloney explained, for example, that human rights are but a “correlative subset of Earth rights.”¹¹⁶ Others suggest that human rights would be weighed in a balancing process with nature’s new rights. It is fundamental to the RoN project that legal rights should be conferred on nature so that nature can better “compete” with human rights-holders,¹¹⁷ or, as one writer put it, to “do battle with” us.¹¹⁸

To see how this competition might play out, consider the many liberal democracies that have established positive human rights, such as rights to education or healthcare.¹¹⁹ Upholding these rights could easily damage non-human organisms through activities such as construction, waste disposal, or energy consumption. Recognizing nature as a co-equal rights-holder could mean that human development projects, vital to raising people out of poverty, could be challenged and potentially dismantled by assertions of nature’s rights. International agreements such as the UN Convention on the Rights of the Child¹²⁰ and the International Covenant on Civil and Political Rights¹²¹ are replete with human rights (to travel, housing, refugee resettlement, healthcare etc.) that could ultimately come into

114. Celermajor et al., *supra* note 35, at 133.

115. Eckersley, *supra* note 6, at 181; EARTH L. CTR., *supra* note 25 (noting that “at times” the interests of ecosystems and nature must “override other rights and interests” held by humans).

116. Maloney, *supra* note 61, at 17.

117. Visa A.J. Kurki, *Can Nature Hold Legal Rights? It’s Not as Easy as You Think*, 11 TRANSNAT’L ENV’T L. 525, 528 (2022); CARDUCCI ET AL., *supra* note 4, at 63; Babcock, *supra* note 3, at 19.

118. Garver, *supra* note 5, at 90.

119. See, e.g., VLADISLAVA STOYANOVA, POSITIVE OBLIGATIONS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS: WITHIN AND BEYOND BOUNDARIES (2024); Akira Osuka, *Welfare Rights*, 53 L. & CONTEMP. PROBS. 13 (1990) (describing positive rights in Japan’s constitution); CONSTITUTION POLITICA DE COLOMBIA, *translated in* CONSTITUTE PROJECT, art. 44-49, <https://perma.cc/2LPA-T2K6> (positive rights for children, the elderly, and public health).

120. Convention on the Rights of the Child, adopted Nov. 20, 1989, 1577 U.N.T.S. 3, reprinted in 28 I.L.M. 1456 (1989).

121. International Covenant on Civil and Political Rights, adopted Dec. 19, 1966, 999 U.N.T.S. 171, reprinted in 6 I.L.M. 368 (1967).

conflict with proponents' views of nature's rights. The UN General Assembly and other international institutions have also recognized a human "right to development"¹²² that would undoubtedly conflict with rights of nature, as activists define them.

The RoN movement, while still in its infancy, does not pose any serious threat to the international human rights regime. But it would be naïve to ignore these long-term risks to human rights as RoN principles are increasingly being incorporated in legislation.

Policymakers and the broader environmental community should recognize that a narrowing of human freedom is, in many respects, *the point* of the RoN governance agenda. The RoN movement seeks to deploy nature's rights to restructure social relationships so that nature has a higher priority in comparison to human interests.

It is fanciful to believe that enforceable nature rights, once established, would be deployed only against egregiously harmful human practices and not against ordinary activities of human existence, such as building housing. Indeed, many RoN theorists are quite vocal that human rights and human interests have to *yield* to the rights of nature.¹²³ For these theorists, nature's legal rights do not exist on an equal plane with humans. Instead, nature's rights are inviolable and should be elevated *above* human rights and interests.¹²⁴ This view has chilling implications for social movements and human rights under RoN governance.

Cormac Cullinan advanced this draconian view of nature's rights in a 2002 book that is still influential within the RoN movement.¹²⁵ Cullinan explained that every human being is like a cell in the larger living organism of the Earth, and the

122. Declaration on the Right to Development, UN. Gen. Ass. Res. 41/128 (1986). *See also* African Charter on Human and Peoples' Rights, adopted June 27, 1981, reprinted in 21 I.L.M. 58 (1982); Rio Declaration on Environment and Development, adopted June 14, 1992, reprinted in 31 I.L.M. 874 (1992); United Nations Millennium Declaration, UN. Gen. Ass. Res. 55/2 (2000); United Nations Declaration on the Rights of Indigenous Peoples, UN. Gen. Ass. Res. 61/295 (2007).

123. Cormac Cullinan, *A History of Wild Law*, in *EXPLORING WILD LAW: THE PHILOSOPHY OF EARTH JURISPRUDENCE* 12 (Peter Burdon ed., 2011) (arguing that a new earth jurisprudence requires the "realignment of human governance systems with the fundamental principles of how the universe functions"); DARPÖ, *supra* note 31, at 14 (discussing view in the RoN movement that "the only laws that humans should create and observe are . . . those derived from the natural laws that govern life on Earth"); CMTY. ENV'T LEGAL DEF. FUND, *Rights of Nature FAQs* (Mar. 21, 2016), <https://perma.cc/HD4Q-J7LX> ("Given that ecosystems and Nature provide a life support system for humans, their interests must, at times, override other rights and interests.").

124. *See* Sachs, *supra* note 11, at 78-79; Celermajer et al., *supra* note 35, at 130 ("a right has a non-negotiable character: it cannot be traded off as one interest amongst others."); Cynthia Giagnocavo & Howard Goldstein, *Law Reform or World Reform: The Problem of Environmental Rights*, 35 MCGILL L. J. 345, 366 (1990) (noting that balancing of rights too often "is done to maintain the existing order."); Ben Price, *Challenges to Implementing Rights of Nature in the U.S.*, CMTY. ENV'T LEGAL DEF. FUND (Nov. 20, 2021), <https://perma.cc/AA6W-236G> ("Subordinating RoN law to administrative law runs the real risk of nullifying its transformative potential.").

125. *See generally* CULLINAN, *supra* note 35.

“duty” of the cell is to behave “in a manner that contributes to the health of the body.” If it ceases to do so, it “dies or becomes a cancer.”¹²⁶

After analogizing humans to cancer, Cullinan discussed the political implications of this analogy: “while the needs of the part must be respected, attempting to balance them against the rights of the whole is inappropriate. The rights of the whole cannot be compromised.”¹²⁷ For Cullinan, respecting the rights of the natural world (“the whole”) demands a demotion of human laws and human interests. As he put it, “human jurisprudence and the laws and constitutions that give expression to it must be subordinate in that they must conform to [the laws of the universe and the rights of nature]. To the extent they do not, they must be regarded as illegitimate.”¹²⁸ Cullinan’s views, echoed by other RoN proponents,¹²⁹ illustrate why the RoN movement’s political agenda could come to threaten human rights and human dignity.

III. THE JUDICIAL ROLE UNDER RIGHTS OF NATURE GOVERNANCE

At the heart of the RoN political project lies a remarkable paradox: proponents advocate a system of nature rights that would constrain legislators considerably, yet they are willing to grant extraordinary power to judges. Judges would determine the meaning of nature’s rights and would apply these rights in individual cases. Potentially, judges would serve as the final arbiters of whether democratically approved laws and projects can go forward. In the RoN worldview, legislators cannot be trusted because they prioritize human preferences and are insufficiently attentive to the needs of nature, yet judges would be elevated to the status of an environmental priesthood.

Judicial supremacy is an inescapable component of the RoN political agenda. It is the elite machinery through which the rights of nature will be enforced against humans, the fulcrum of the RoN movement’s “counterhegemonic strategies for multi-species justice.”¹³⁰ RoN proponents are vocal that they seek a court-centered revolution to reorient society, and they frequently assert that courts are the central institution that will give effect to nature’s rights.¹³¹ The movement places “jurisprudential revolution and creativity at the very centre of fundamental social change.”¹³²

In this Part, I discuss the judicial role under RoN governance, focusing on two anti-democratic repercussions of this jurisprudential revolution. First, there is a

126. *Id.* at 100.

127. *Id.*

128. *Id.* at 112.

129. See, e.g., MUMTA ITO, NATURE’S RIGHTS: THE MISSING PIECE OF THE PUZZLE (undated), <https://perma.cc/C6YH-DS3L> (“like a cell in an ecosystem, we are part of a whole, and we do not have any more rights than the other parts.”).

130. Erin Fitz-Henry, *Multi-Species Justice: A View from the Rights of Nature Movement*, 31 ENV’T POL. 338, 356 (2022).

131. See, e.g., Babcock, *supra* note 3, at 21.

132. Murray, *supra* note 17, at 225.

strong potential that concentration of power in the judiciary would devolve into abusive, repressive authoritarianism. Second, the centrality of the judiciary would likely result in a decline in public involvement in environmental and social decision-making. After exploring these issues, I discuss why the deployment of rights of nature would raise a unique set of concerns: judicial enforcement of novel rights for organisms and ecosystems would be vastly more complex than existing frameworks of judicial review. It would also be far more threatening to democratic values.

A. THE MOST DANGEROUS BRANCH

In the RoN governance vision, judges would possess extraordinary power. They would ensure that the rights of non-human organisms are respected not only by private actors but, as discussed above, courts could be positioned to review essentially all economic and social legislation to assess whether the democratic branches of government are violating nature's rights. Because the holders of these rights cannot speak for themselves, judges would possess sweeping powers to determine the interests of natural entities and the meaning of their rights.

As I noted in Part II, RoN proponents have not outlined any detailed mechanism for judicial review of legislation. But a clear implication of their vision is that judges would review the actions of governing institutions under a system of rights-constraints. For nature's rights to serve the counterbalancing or checking role that is discussed widely in the literature, *someone* has to be empowered to interpret the rights of living organisms and halt any damaging actions of governing institutions. To put this in practical terms, someone would have to decide whether a nation's housing legislation or energy policy violates the existence rights of ferns, flounder, or fungi.

If this role were fulfilled by judges, which seems likely, they would wield unprecedented powers of judicial review. In Federalist 78, Hamilton famously wrote that the judiciary is the "least dangerous" branch of government.¹³³ Centuries later, the RoN movement seeks to transform judges into some of the most powerful people on the planet.

RoN advocates have never adequately addressed why judges should be trusted with this central decision-making power. From a practical standpoint, judges are not particularly good at making critical decisions about nature protection. They are lawyers. They lack technical training and capabilities for long-term data gathering, and they respond only to the cases brought before them—not to the most serious environmental harms.¹³⁴ For reasons I discussed at length in my earlier work, the judicialization of environmental protection through rights-claims is likely to be *ad hoc* and under-protective of nature.¹³⁵

133. THE FEDERALIST No. 78 (Alexander Hamilton).

134. Sachs, *supra* note 11, at 68-71.

135. *Id.*

But even if judges were in some indeterminate sense “better” at environmental protection than legislators, the shift in power to judges is indefensible from the standpoint of democratic theory and public accountability. How long would people put up with this judicial supremacy? Why would these judicial rulings have any legitimacy? And who would control the interpreters of nature’s rights? RoN proponents look to the judiciary as the driver of a social revolution to effectuate nature’s rights, but they ignore how easily such a system could slide into democratic decline and repressive governance.

Even in the near term, elevating judicial power to enforce nature’s rights could warp democratic processes. Contested questions normally resolved through the political process would become judicialized, devolving into legal arguments over the application of nature’s rights. One foreseeable outcome of embracing RoN principles is that partisans in normal legislative conflict will try to invoke nature on their side. They will argue that their political opponents will harm some species, organism, or ecosystem, and they will undoubtedly file suit to get judges to intervene. In this way, nearly every political conflict will become judicialized. As Hope Babcock conceded in an article that strongly championed legal rights for nature, the RoN project carries the risk of “transferring potentially political disputes from the political branches of government to the nonpolitical one.”¹³⁶

The new powers that many RoN proponents want to hand to judges could be abused not only by judges themselves, but also by politicians seeking to use the judiciary to aggrandize their own power. In the burgeoning literature on why democracies fail, many scholars have cited corrupt or compliant judiciaries as an important factor.¹³⁷ As David Landau and Rosalind Dixon have explained, “the presumptive legitimacy accorded to judicial review” can easily be abused by judges and by authoritarian politicians looking to deploy the judiciary for nefarious ends.¹³⁸ They noted that “[h]aving a court, rather than a political actor, undertake an antidemocratic measure may sometimes make the true purpose of the measure harder to detect, and . . . may dampen both domestic and international opposition.”¹³⁹

The concern that judges will amplify their own power, or act at the behest of other political actors to solidify authoritarian rule, would become greatly magnified if judges were to enforce a broad assortment of rights held by trillions of organisms that cannot speak for themselves. Imagine if judges came to strike down laws, appropriations, policies, and programs that promoted human socioeconomic development because they threatened the “right to exist” of a few common, non-endangered organisms. The vagueness of nature’s rights, the sheer

136. See Babcock, *supra* note 3, at 4.

137. See, e.g., Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545 (2018); JASON STANLEY: HOW FASCISM WORKS: THE POLITICS OF US AND THEM 109-20 (2018).

138. David Landau & Rosalind Dixon, *Abusive Judicial Review: Courts Against Democracy*, 53 U.C. DAVIS L. REV. 1313, 1317 (2020).

139. *Id.*

number of rights holders, and the indeterminacy of the meaning of nature's rights would open the RoN political project to a massive potential for judicial abuse and repression. With little textual direction, judges could interpret these rights to hamstring dissident groups and promote nearly any political goal or agenda. Because judges would be positioned to police the margins of acceptable and unacceptable human impacts on nature, the judiciary could become the dominant political institution in democracies.

While there is a dangerous potential for judicial overreach and authoritarianism in RoN governance, there is also another possibility: that judges would not willingly exercise the raw power that RoN proponents want to hand to them. Judges could be deterred by their recognition of their institutional limits, or they might come to understand the undesirability of managing the scope and direction of human societies in such an aggressive way, without democratic accountability. In the United States, there are many examples of judges shying away from managing vast swaths of society without a clear legislative mandate and textual direction. These include the abandonment of *Lochner*-style economic regulation through the courts¹⁴⁰ and the Supreme Court's refusal to find that poverty constitutes a suspect class under the Equal Protection Clause.¹⁴¹

If judges were, in the future, put in charge of a system of rights that would purportedly refuse to weigh the interests of a human over the interests of a plant, would judges be willing and able to complete such a task? They could balk at enforcing such a rights equivalence, and they could end up prioritizing human interests. Ecocentric governance could amount to wishful thinking if human-run legal institutions refuse to enforce rights equivalence between humans and non-humans. Because of human psychology or rational self-interest, judges and other legal actors may not be willing to do so. The philosopher Alfonso Donoso calls this the "over-demandingness objection" to non-anthropocentrism in law.¹⁴² A truly non-anthropocentric governance program would likely be unreasonably demanding of human actors. It would be difficult to implement it or sustain it within human-run legal institutions.

These are admittedly distant scenarios, which involve discerning how judges might react to the new powers being handed to them. Many RoN proponents envision judges as the fulcrum of their "jurisprudential revolution" to save nature, but they could be making unrealistic assumptions about the judiciary's capacity and willingness to fill that role.

140. See *Lochner v. New York*, 198 U.S. 45 (1905).

141. *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 41 (1973) (refusing to "intrude in an area in which it has traditionally deferred to state legislatures" and noting that judges "lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues.").

142. Alfonso Donoso, *Representing Non-Human Interests*, 26 ENV'T VALUES 607, 630 (2017).

B. DECLINING PUBLIC INVOLVEMENT UNDER A SYSTEM OF JUDICIAL SUPREMACY

The elevated power of the judiciary under RoN governance would not only diminish legislative authority, but would also diminish opportunities for public engagement and input in environmental and social decision-making. Remarkably, RoN proponents, claiming to broaden the circle of democracy, have not explored how this “jurisprudential revolution” could limit the political participation of ordinary citizens. Although many RoN activist groups engage in political organizing and community education, RoN proponents’ ideas for ecocentric governance could actually undermine democratic participation in the long-term.

RoN proponents claim, appropriately, that liberal democratic institutions can be captured by economic elites.¹⁴³ But governance based on enforceable nature rights could be even worse for democratic input. Legally trained elites would steer the RoN governance project, with courts and lawyers at the center of societal transformation.

The threats to public involvement could take two forms. First, RoN governance could substantively diminish the importance of voter preferences. The RoN governance project is indisputably countermajoritarian, transforming liberal democracies so that nature’s rights would counterbalance and perhaps override the wishes of human voters. A clear implication of RoN governance is that laws supported by overwhelming majorities of voters might have to be set aside if a court determines that they conflict with the rights of other organisms, as human well-being would be just one interest among innumerable others that would be weighed and balanced. There is a strong potential that citizen preferences would be overridden and that existing modes of input and consent would be disrupted, yet these possibilities are rarely acknowledged in the RoN literature.

Second, existing procedural avenues for public participation might be closed off. If the most important environmental and social decisions shift to the courts, one foreseeable outcome is that public participation would diminish. Only those individuals with the money and will to spearhead RoN litigation (i.e., as nature’s guardians) would have a voice.¹⁴⁴ The crucial decisions on nature protection and preservation would be controlled by litigants, attorneys, and judges, who would have no obligation to consider the views of non-litigants and the public.¹⁴⁵ If

143. Dan Leftwich, *Evolving from Dominion to Communion: How Legal Rights for Nature Can Exist in Balance with Individual Property Rights in a Global Commons*, 1 BARRY U. ENV’T & EARTH L.J. 1, 3 (2011); Maria Akchurin, *Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador*, 40 L. & SOC. INQUIRY 937, 942 (2015); Linzey, *supra* note 44.

144. See Christopher Schroeder, *Lost in Translation: What Environmental Law Does that Tort Law Cannot Duplicate*, 41 WASHBURN L.J. 583, 586 (2002) (litigation leaves it up to the “beneficence” of the parties to raise the concerns of non-litigants and the public, “assuming the court would allow them to do so.”).

145. In high-stakes litigation, the identity of the guardian will often be dispositive of the outcome of the case because the guardian will determine what nature “wants” in the lawsuit and the relief that it seeks. The guardian would owe no duties to the communities, governments, businesses, or other species

economic and social legislation came to be reviewed under this system, a small cadre of legal elites would determine the essential directions of society, with minimal public input.

Some scholars have suggested that a court-appointed guardian for nature would become the public's "voice" in litigation.¹⁴⁶ But a guardian is still an elite actor, presumably selected among environmentally trained lawyers or professionals.¹⁴⁷ Appointment of a guardian in an RoN lawsuit is simply not the same as democratic deliberation on environmental or social policy.

The RoN governance project, if it could ever be established, would pose a clear threat to existing systems of input, deliberation, and consent. In liberal democracies, voters can discipline legislators through elections, and citizens can express their views during political campaigns and through other interactions with legislators. In environmental law, the public is involved in agency rulemaking, standard setting, commenting on permits, and other processes.¹⁴⁸ Public involvement in environmental policy is guaranteed by law in many liberal democracies and is recognized in international instruments such as the 1992 Rio Declaration and the 1998 Aarhus Convention.¹⁴⁹ In environmental law, public processes have been essential for transparency, legitimacy, and environmental justice.¹⁵⁰ It would be a step backward to create a system of nature protection driven primarily by the judiciary and other legal elites.

whose interests might be affected. See Ben Chen, *Elder Financial Abuse*, 34 NOTRE DAME J. L. ETHICS & PUB. POL'Y 307 (discussing fiduciary duties of guardians).

146. See, e.g., Justin E.H. Smith, *Nature is Becoming a Person*, FOREIGN POL'Y (Nov. 25, 2021).

147. See Joel Schwartz, *The Rights of Nature and the Death of God*, PUBLIC INTEREST (Fall 1989) (questioning why environmental groups should serve as guardians in RoN lawsuits).

148. See Sanne Akerboom & Robin Kundis Craig, *How Law Structures Public Participation in Decision Making: A Comparative Law Approach*, 32 ENV'T POL. & GOVERNANCE 232, 233 (2022) ("public participation rights have been expanding significantly around the world over the last five decades"); Cary Coglianese et al., *Transparency and Public Participation in the Rulemaking Process: Recommendations for the New Administration*, 77 GEO. WASH. L. REV. 924 (2009); William Funk, *Public Participation and Transparency in Administrative Law – Three Examples as an Object Lesson*, 61 ADMIN. L. REV. 171 (2009); Mariano-Florentino Cuellar, *Balancing Public Engagement and Agency Action in a Changing World*, THE REG. REV. (Mar. 14, 2022) (surveying multiple avenues for public input in the American regulatory state).

149. Rio Declaration on Environment and Development, adopted June 14, 1992, reprinted in 31 I.L. M. 874 (1992); UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted June 25, 1998, 2161 U.N.T.S. 447 (1999). See also Sharmishtha Sharma & S. Shri Nivasan, *Involvement of Public in Enforcing Environmental Law in India: A Synopsis*, 6 INT'L J.L. MGMT. & HUMAN. 1966 (2023).

150. See Dorothy M. Daily & Thomas G. Reames, *Public Participation and Environmental Justice: Access to Federal Decision-Making*, in FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT'S RESPONSE TO ENVIRONMENTAL JUSTICE (David M. Konisky ed., 2015); Hiro Saito, *The Developmental State and Public Participation: The Case of Energy Policymaking in Post-Fukushima Japan*, 46 SCI., TECH., & HUM. VALUES 139 (2020); David Irwin & Mercy Kyande, *Interest Group Representation on Government Committees in Kenya*, 11 INTEREST GROUPS & ADVOCACY 315 (2022).

C. JUDICIAL ENFORCEMENT OF RIGHTS OF NATURE AND THREATS TO DEMOCRACY

RoN proponents may contend that their vision for judicial enforcement of rights for non-human organisms is desirable because it simply builds upon the judiciary's existing role in liberal democracies. After all, judges *already* constrain legislatures and agencies (and by extension societies) by enforcing rights, and liberal democracies accept these constraints as both beneficial and democracy-enhancing. Constitutional rights, for example, protect minority groups and ensure the foundations of democracy (such as speech and voting). The role of rights in constraining governmental power is centuries old, dating at least to Montesquieu or Magna Carta.¹⁵¹

In light of this history, RoN proponents might suggest that my concerns about judicial supremacy are overstated. They may frame judges' potential role in RoN governance as enhancing democratic decision-making rather than undermining it, potentially drawing on John Hart Ely's theory of representation reinforcement.¹⁵² In this view, judicial enforcement of new rights for nature could sit comfortably with democratic values. RoN proponents frequently assert that liberal democracy structurally undervalues the interests of the natural world,¹⁵³ so they might contend that judges could take on a vital role, in revamped governance, to ensure that the rights of other organisms are not trampled upon by humans.¹⁵⁴

There are substantial differences, however, between the rights of nature, as proponents conceptualize them, and existing categories of rights. These differences undermine the argument that the RoN project is simply a pragmatic shoring up of democratic processes to "make room" for nature.¹⁵⁵ Because of these differences, the RoN project should be viewed not as a fruitful expansion of democratic norms, but rather as a threat to them.

1. The Problem of the Number of Rights-Holders

Judicial enforcement of a set of rights ascribed to all non-human organisms would raise unique and worrisome problems for democracy because of the number

151. MONTESQUIEU, *THE SPIRIT OF THE LAW* 11:4.

152. JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 80-90 (1980); MICHAEL SAWARD, *THE TERMS OF DEMOCRACY* (1998), Chapter 5 (Constitutional rights are "self-binding commitments" that democracies have established to ensure long-term well-being); Bookman, *supra* note 85, at 32 (discussing representation reinforcement theory and noting that certain environmental rights in constitutions could redress "pathologies and blindspots" in democratic decision-making). *But see* Ryan D. Doerfler & Samuel Moyn, *The Ghost of John Hart Ely*, 75 VAND. L. REV. 769 (2022) (criticizing Ely's thesis).

153. *See, e.g.*, Robyn Eckersley, *Representing Nature*, in *THE FUTURE OF REPRESENTATIVE DEMOCRACY* 237 (Sonia Alonso et al., eds. 2012).

154. *See, e.g.*, Mathew Humphrey, *Ecology, Democracy, and Autonomy: A Problem of Wishful Thinking*, in *LIBERAL DEMOCRACY AND ENVIRONMENTALISM* 118 (Wissensburg & Levy eds., 2004) (analyzing the view that environmental sustainability is a precondition for democracy similar to freedom of speech, conscience, and assembly).

155. Kopnina et al., *supra* note 26.

of new rights-holders. Enforcement of vague, purportedly inviolable rights for trillions of organisms and innumerable ecosystems would restrict representative government and human socioeconomic development in more harmful and far-reaching ways than enforcing existing political rights for humans. The scale issue is not just about the administrative burden of this rights enforcement (which is formidable). It is also about the constraints that judges could be positioned to impose on democratic institutions to effectuate nature's rights. A governance system that enforced the purported rights of every living being to exist would result in perpetual restrictions on socioeconomic development and would eviscerate the legislative role in steering societal development.

Far from being representation-reinforcing, a bold assertion of the rights of trillions of other beings would undercut the possibility of representation itself. Nearly every law or governmental project leads to *some* harm to other organisms, so representative government would be severely undermined if constrained by the purported rights of all living things on Earth.

Judicial enforcement of rights held by a vast and limitless class of claimants would also pose unique risks to democracy because the meaning of these rights is frequently indeterminate. Unable to identify accurately which organisms are affected by a democratic initiative or what these organisms' conflicting interests require, judges would be well-positioned to manipulate outcomes simply by changing the scale of nature they examine. This indeterminacy poses a grave and obvious potential for authoritarianism and judicial power grabs compared to judicial enforcement of comparatively narrower categories of rights, such as freedom of speech, that are admittedly imprecise yet still have understood meanings. Moreover, because organisms cannot speak for themselves, the rights-claims of nature would have to be asserted *by some other party*: the human guardians who would have to interpret what each component of nature "wants" in the particular dispute. These characteristics of the RoN governance project—trillions of rights-holders, indeterminate meanings of the rights, and humans who would have to interpret and assert the interests of each organism—make the RoN project exponentially more complex than enforcing other types of rights in liberal democracies.

2. Addressing Environmental Harm through Substantive Rights

Judicial enforcement of nature rights, such as a "right to exist" or a "right to regenerate," would also be different-in-kind from enforcement of many categories of rights for humans because the enforcement would be designed to achieve certain substantive outcomes. Many of the rights that democratic societies have constitutionalized are procedural rights that do not dictate any substantive outcome of politics. Rights to free speech, assembly, and voting, for example, are foundational ground-rules for democracy itself.¹⁵⁶ One of the hallmarks of

156. See Eckersley & Gagnon, *supra* note 60, at 102.

liberalism is the acceptance of pluralism, with individuals and interest groups pursuing their aims within a procedural framework.¹⁵⁷ Liberalism does not dictate a single “correct” lifestyle or viewpoint.¹⁵⁸

One of the core tenets of the RoN movement, however, is that the procedural ground-rules of liberal democracies are broken; they have to be overhauled because they are not leading to desired substantive outcomes in environmental protection.¹⁵⁹ Proponents therefore want to construct a system of substantive rights that would ensure protective outcomes for nature, regardless of voter preferences.¹⁶⁰ They expect that judicial enforcement of substantive rights for non-humans would lead to a higher level of environmental protection than activists have heretofore been able to achieve through the political process. RoN advocates widely believe that environmental protection is losing in the marketplace of ordinary politics,¹⁶¹ so something must be done outside of ordinary politics, centered on the judiciary, to ensure the protection of living organisms.

The substantive, even absolutist, character of the RoN program raises the potential for judicial abuse because judges would be making critical policy decisions about the future direction of society. Should a city be allowed to expand, or must its growth be halted to preserve forests on its outskirts? Can a port be constructed, or would it interfere with breeding grounds for mollusks? In the RoN governance vision, judges would make these decisions in the name of rights of non-human organisms. Yet there is no justification for judges making these decisions rather than elected policymakers.

The larger problem with attempting to protect the global environment through rights-claims is that a system of substantive rights is simply unsuitable to addressing most environmental problems. Environmental protection is ultimately about drawing lines between acceptable and unacceptable degrees of human use of natural systems. The approach of the RoN movement, founded on a system of

157. See MARCEL WISSENBERG, *GREEN LIBERALISM: THE FREE AND THE GREEN SOCIETY* 36 (1998) (democracies “respect value pluralism and hence dislike interfering with individuals plans of life or ideas of the good.”).

158. *Id.* See also *id.* at 208-09 (liberalism allows “many human theories of the good to be at least tolerated and taken into consideration in political decision-making”); Bookman, *supra* note 85, at 26 (liberal constitutionalism was founded on the idea that states should be neutral as between contrasting theories of the good).

159. See ROBERT E. GOODIN, *GREEN POLITICAL THEORY* 168 (1992) (“To advocate democracy is to advocate procedures, to advocate environmentalism is to advocate substantive outcomes; what guarantees can we have that the former procedures will lead to the latter sort of outcomes?”); WISSENBERG, *supra* note 157, at 203 (“Greens will find it hard to stick to [democratic] procedures if they do not bring them the result they want them to bring.”).

160. Eckersley & Gagnon, *supra* note 60, at 102; Dinah Shelton, *Whiplash and Backlash: Reflections on a Human Rights Approach to Environmental Protection*, 13 SANTA CLARA J. INT’L L. 11, 22 (2015) (environmental rights discourse attempts to “elevat[e] concern for the environment above a mere policy choice.”).

161. See DARPÖ, *supra* note 31, at 14-15 (proponents view RoN as a “quantum leap in governance” necessary to overcome flaws in existing political systems, which tolerate environmental damage and prioritize economic growth); CARDUCCI ET AL., *supra* note 4, at 22-29 (describing systemic failures in EU legislation that foster environmental decline).

inviolable rights for all living (and some nonliving) things on Earth, is not suited to creating sustainable coexistence between humans and nature. By purporting to constrain or prohibit human activities through judicially enforceable rights, the project will likely harm human well-being and could fall apart after political backlash.

To be clear, I am not arguing that judicial enforcement of substantive rights is *prima facie* illegitimate. Liberal democracies recognize some substantive constraints on democratic decision-making. Most liberal democracies, for example, prohibit the death penalty, removing that option from the political and judicial process.¹⁶²

But erecting a system of substantive rights for all living beings is a category error because daily incursions on the purported rights of living beings are *required* for human well-being. The normal operation of human communities results in damage and death to other organisms—violations of nature’s purported rights. Agriculture, fishing, construction, and eating all involve some harm or damage to natural entities. Further, the normal operation of *non-human* communities similarly results in death and damage to organisms. Damage and death to organisms, by other organisms, is a characteristic of life itself.

RoN proponents contend, reasonably, that humans are causing *too much* damage to ecosystems and other organisms. But it does not follow that the remedy is to confer substantive, judicially-enforced rights on all ecosystems and organisms on Earth. The purported inviolability of organisms and ecosystems should not be elevated to the status of a judicially enforceable right in the same way that rights such as religious freedom or anti-discrimination principles should be. In the case of those recognized rights, each instance of violation is widely considered a problem to be prevented or remedied wherever possible, but the same cannot be said for each instance of harm to non-human organisms.¹⁶³ The policy task is to determine reasonable limits on encroachment and consumption of nature, rather than cloaking all living beings in a system of rights.

Judicially enforceable substantive rights held by all organisms and ecosystems are simply ill-suited to achieving environmental goals. Some use, and even some permanent alteration of nature, is desirable. It is a question of degree.

162. WORLD COALITION AGAINST THE DEATH PENALTY, FACTS AND FIGURES, <https://perma.cc/9BF8-UHYW> (noting that 144 countries have abolished the death penalty in law or practice and finding a concentration of executions in the Middle East, China, and the United States).

163. The concept of a balancing of interests, widely discussed in the RoN literature, does not obviate these problems of enshrining a “right to exist” as a substantive right. Some RoN advocates have suggested that balancing the claims of nature and humans is desirable and would be similar to judicial balancing of competing rights claims among humans. But many RoN advocates vehemently oppose such a balancing process because nature’s rights are hierarchically superior and any balancing would undercut the rights’ transformative potential. *See, e.g.*, Garver, *supra* note 5, at 95-96 (the “legal landscape is ripe for gradual erosion of nature’s rights” as they become weighed and balanced). Even assuming such a balancing could be conducted, it would hand vast power to judges to determine the direction of society.

Joe Sax, the grandfather of the modern Public Trust Doctrine, recognized that environmental protection should not be governed entirely by rights claims. He explained it would be foolish to judicially enforce a “hands-off” approach to the natural world, because use and damage to nature is both inevitable and desirable in the development of human societies.¹⁶⁴ Environmental protection, Sax wrote, is usually a question of acceptable degrees of damage, of awareness of when human use of nature becomes overuse, which makes environmental protection fundamentally different from human rights law. “If questions of environmental regulation,” Sax explained, “are matters of adjusting the process of economic development, of more and less, they seem ill-fitted to the sort of ethical imperatives usually associated with fundamental rights.”¹⁶⁵

There is little doubt that democratic societies dangerously under-protect the environment, and humans are exceeding planetary limits and crossing ecological redlines.¹⁶⁶ But an alternative system of governance in which judges discern the meaning of organisms’ vague rights and enforce them against humans would raise a host of legitimacy problems and would likely become oppressively anti-democratic. It would exclude most public participation, usurp the proper role of legislators, and would likely be ineffective at preserving life.

IV. CONCERNING FRONTIERS OF RIGHTS OF NATURE GOVERNANCE

In the last two decades, multiple governments have enacted RoN legislation. But with a few exceptions, such as the constitution of Ecuador and the National Environment Act of Uganda, this legislation has been narrowly tailored to protect a specific natural entity such as a river or a lake. In the United States, RoN laws enacted by municipalities have yet to be enforced successfully against any corporate or governmental entity.¹⁶⁷ Existing RoN legislation, in narrow ways, does challenge Enlightenment thinking, but it does not, as of yet, fundamentally transform democratic governance.

164. Sax, *supra* note 101, at 94 (“Surely there can be no precept to leave nature untouched.”). Sax argued that leaving nature entirely free from human interference is not only unrealistic but would also result in an undesirable diminution of economic activity. A society that does not transform its environment would be one that returns to a “hunting and gathering culture,” with a poor record of social development and human rights. *Id.* at 95. The political philosopher Tim Hayward made a similar point, noting that “the environment may be degraded to some degree and yet still be adequate for everyone’s health and well-being.” Tim Hayward, *Environmental Rights as Democratic Rights*, in *DEMOCRACY AND THE CLAIMS OF NATURE: CRITICAL PERSPECTIVES FOR A NEW CENTURY* 251 (Ben A. Minteer & Bob Pepperman Taylor eds., 2002).

165. Sax, *supra* note 101, at 95. According to Sax, the framework that should be deployed to resolve the competing claims of human development and environmental preservation is a familiar one: “[r]epresentative government and majoritarian politics are no less applicable to environmental issues than to any others.” *Id.*

166. Will Steffen et al., *Planetary Boundaries: Guiding Human Development on a Changing Planet*, 347 *SCI.* 736 (2015).

167. See Bookman, *supra* note 1, at 14-20.

RoN proponents have advanced some concerning ideas, however, for how nature rights could be entrenched at a much deeper level to remake liberal democracy, effecting a “quantum leap in governance.”¹⁶⁸ In this Part, I discuss two ideas from the RoN movement that could be vehicles for such a dramatic governance transformation: representing nature in legislatures and grounding nature’s rights in natural law. These are frontier concepts in that they are advanced by some RoN proponents but are not dominant strategies of RoN advocacy groups. If they gained more acceptance and purchase, they could be used to disrupt liberal democracies and expand the role of nature’s legal rights in governance. These two ideas further highlight, in my view, the potential for anti-democratic and repressive governance from RoN principles.

A. REPRESENTING NATURE IN LEGISLATURES

Advocates for an expanded “ecodemocracy” or “biocracy”¹⁶⁹ argue that allocating representatives for nature is a logical evolution of previous extensions of the franchise through the nineteenth and twentieth centuries.¹⁷⁰ They argue that new parliamentary representatives for nature could solidify nature’s rights. They could literally counterbalance representatives for humans and create a more harmonious co-existence between the human and more-than-human worlds.

Advocates have advanced a staggering assortment of ideas for representing nature.¹⁷¹ Proposals include instituting bicameral legislatures in which nature would be represented in one house and humans in the other,¹⁷² choosing nature’s representatives from a random sample of people,¹⁷³ or selecting nature’s representatives by a “sustainability lobby” of experts who would determine the conditions for species to flourish.¹⁷⁴ Some scholars have advocated proportional representation based on the number of individual organisms within each species,¹⁷⁵ as if such a count were possible. And some scholars have advocated forms of world government, such as conferring power on “regional ecosystem assemblies” that

168. DARPÖ, *supra* note 31, at 14.

169. Ball, *supra* note 22, at 133-34.

170. See Eckersley, *supra* note 153, at 251-52 (arguing that representing nature is not a “radical departure” from existing democratic norms because the constituency of represented entities is “always larger than the class of political deliberators and decision makers.”).

171. See, e.g., Joe Gray et al., *Ecodemocracy: Operationalizing Ecocentrism Through Political Representation for Non-Humans*, 3 THE ECOLOGICAL CITIZEN 166, 168 (2020), <https://perma.cc/EW9Y-GKJK>; Donoso, *supra* note 142, at 607 (mechanisms for representing non-humans are being advanced “with increasing sophistication.”).

172. LATOUR, *supra* note 80, at 15; Kerry H. Whiteside, *A Representative Politics of Nature? Bruno Latour on Collectives and Constitutions*, 12 CONTEMP. POL. THEORY 185 (2013).

173. Carina Lundmark, *Eco-democracy: A Green Challenge to Democratic Theory and Practice*, Umea University doctoral dissertation 52 (1998), <https://perma.cc/36MA-2CJ3>.

174. Andrew Dobson, *Representative Democracy and the Environment*, in DEMOCRACY AND THE ENVIRONMENT: PROBLEMS AND PROSPECTS (William M. Lafferty & James Meadowcraft, eds., 1996).

175. Kopnina et al., *supra* note 26.

would overlap with the world's biomes and that would be integrated through an Earth System Council.¹⁷⁶

Most sweepingly, the French philosopher Bruno Latour advocated establishing a Parliament of Things in which organisms and non-living objects would gain representation along with humans.¹⁷⁷ In Latour's view, traditional Enlightenment dualisms of subject/object and nature/society are at the root of the environmental crisis, and we continue to exploit nature because politics is an exclusively human affair.¹⁷⁸ His solution was to establish nature, inanimate objects, and humans as equal "actants" in society and politics,¹⁷⁹ with scientists being desirable representatives for the non-human realm.¹⁸⁰ Latour provided few details about how the Parliament of Things would be structured or which non-living objects would gain representation, writing: "I have done my job as philosopher . . . Others will be able to convene the Parliament of Things."¹⁸¹ Published over thirty years ago, Latour's vision for a Parliament of Things has had an enduring influence on RoN scholars and activists,¹⁸² with one calling Latour's work "an educational phase in a process of more radical legal transformation."¹⁸³

Although there is a sweeping diversity of representation proposals, they advance a similar goal. They seek to constrain human activities and impacts, opening more "space" for the interests of nature by awarding legislative seats to people who will represent non-humans. They reflect the same distrust of legislators and liberal democratic procedures that animate the elevation of judicial power discussed above. And like the elevation of judicial power, these representation proposals would distort democratic institutions. They would seat additional legislators (it is never clear how many) who would exercise power without any real accountability to voters.

The representation proposals ignore the problem that "nature" is not a single entity with an identifiable interest, but rather is comprised of trillions of organisms and innumerable ecosystems with interests that frequently conflict.¹⁸⁴ The

176. Anthony Burke & Stefanie Fishel, *Across Species and Borders: Political Representation, Ecological Democracy and the Non-Human*, in *NON-HUMAN NATURE IN WORLD POLITICS: THEORY AND PRACTICE* 33 (Joana Castro Pereira & Andre Saramago eds., 2020).

177. BRUNO LATOUR, *WE HAVE NEVER BEEN MODERN* 142-45 (1991), translated by Catherine Porter.

178. *Id.* at 50-51.

179. LATOUR, *supra* note 80, at 75-80.

180. LATOUR, *supra* note 177, at 144.

181. *Id.* at 145.

182. See, e.g., Andreas Fischer-Lescano, *Nature as a Legal Person: Proxy Constellations in Law*, 32 *L. & LITERATURE* 237, 246-47 (2020); Celermajer et al., *supra* note 35, at 131; Brown, *supra* note 27, at 31; Kopnina et al., *supra* note 26.

183. Valérie Cabanes, *A Legal Revolution for the Rights of Nature*, *GREEN EUR. J.* (Mar. 11, 2020), <https://perma.cc/PD7H-48SS>.

184. Some scholars have suggested that legislators could represent blocs of organisms to make representation manageable, such as "all litter-dwelling microorganisms" or even the "'aggregate' interests of the ecological community at stake." Gray et al., *supra* note 171, at 170. The problem is that

indeterminacy of the interests of nature, which I discussed earlier, would infect these proposals to represent nature in legislatures. RoN proponents frequently assert that we can know the interests of nature and, at the very least, we know that natural entities have an interest in existing.¹⁸⁵ But even that is a contestable concept. We might say that a forest has an interest in existing, but that is true only if we take the perspective of the forest as a whole or certain organisms within the forest. The grasses that might replace the forest would have an opposing “interest” in seeing the forest disappear. In competition, some species and organisms have an interest in other species and organisms disappearing, making it exceedingly complicated to represent the interest of each living being in a democratic polity.

Further, there is no single identifiable interest of nature when local impacts conflict with global impacts. For example, construction of electric transmission lines undoubtedly damages nature in certain areas because it requires clear-cutting of trees, but more electric transmission lines are needed to support expansion of renewable energy and reduce greenhouse gas emissions. Which interest would nature’s representatives advance?

There are deeper problems beyond the issue of identifying the interests of nature. Non-human entities cannot participate as constituents in democracies, and they can never have a real “say” in democratic decisions.¹⁸⁶ They cannot speak or vote. They cannot hold representatives accountable.

These characteristics of the non-human world raise the stakes that nature’s anointed representatives could act in self-interested or repressive ways, abusing their new powers. Depending on how many are seated, such representatives could block decisions supported by democratic majorities.

Much of the RoN writing on representation assumes that whoever gets seated to represent nature would have appropriate green credentials and would act benevolently to bring ecological understanding to legislative bodies.¹⁸⁷ Twelve scholars explained, for example, that representatives for nature should be “like

organisms *within* ecosystems often have directly conflicting interests, such as organisms in predator-prey relationships. According to Gray and his colleagues, these conflicting interests of organisms would need to be “factored into” the representation, in a way that they leave unspecified. *Id.*

185. Houck, *supra* note 3, at 33; Stone, *supra* note 2, at 471 (“natural objects *can* communicate their wants (needs) to us.”); PAUL W. TAYLOR, *RESPECT FOR NATURE: A THEORY OF ENVIRONMENTAL ETHICS* 222 (2011) (“All organisms, whether conscious or not, are teleological centers of life in the sense that each is a unified . . . system of goal-oriented activities that has a constant tendency to protect and maintain the organism’s existence.”).

186. Some scholars have argued that nature is entitled to legislative representation on the grounds that “those affected by a policy or action should have a say in the decision-making process.” Celermajer et al., *supra* note 35, at 12; Eckersley, *supra* note 153, at 111 (“all those potentially affected by ecological risks should have some meaningful opportunity to participate . . .”). But when it comes to the non-human world that cannot speak, this is more of a slogan than a pragmatic reform proposal.

187. See, e.g., Joe Gray & Patrick Curry, *EcoDemocracy: Helping Wildlife’s Right to Survive*, 37 *ECOS* (2016), <https://perma.cc/DBQ4-SRCB> (nature’s representatives would have “a good grasp of both ethical and ecological principles.”)

ourselves,” people who are “biophilic, biocentric, ecocentric, and zoocentric individuals from different countries . . .”¹⁸⁸

Proponents’ assumption that nature’s representatives would have green credentials and motives is totally unwarranted. Imagine an assembly where some humans campaign for seats and can be removed by voters while other humans are appointed to seats to represent organisms and ecosystems in the same assembly. This latter class of representatives would possess enormous power, forming an elite, unaccountable political class, and they could abuse their power and block, for decades, reforms favored by a majority of voters.¹⁸⁹ They alone would determine what the interests of nature would mean in any legislative debate and would never have to face removal by those they represent.¹⁹⁰ They could easily use the rights-claims of nature as a “cover for their own desires.”¹⁹¹ Moreover, hundreds of factions and interest groups could plausibly claim to speak for nature’s interests, and they would fight to control nature’s legislative seats in an effort to control the direction of society. Depending on who is doing the appointing, loggers and ranchers might be appointed to nature’s legislative seats just as easily as biologists and ecologists. While many RoN proponents view representation for nature as a counterbalance to human preferences, they are assuming, without foundation, that nature’s interests can be identified accurately and that representatives for nature will inevitably promote environmental protection.

One could imagine less sweeping proposals to represent nature. Perhaps representatives could be elected rather than appointed. Perhaps there could be a small number of reserved seats for such representatives, such as three seats in a 100-person assembly. However, nature is not a single “thing” with an identifiable “interest,” and it is not clear why such legislators would truly represent “nature” rather than the preferences of the voters who put them in their seats.¹⁹²

188. Kopnina et al., *supra* note 26.

189. Some scholars have recognized the destructive potential of direct representation for nature. See Kerry H. Whiteside, *A Representative Politics of Nature? Bruno Latour on Collectives and Constitutions*, 12 CONTEMP. POL. THEORY 185 (2013) (“[w]ithout a way of circumscribing eligible participants, there is no way to allocate seats in anything resembling a representative assembly.”); Brown, *supra* note 27, at 33 (cautioning against the appointment of “moral or scientific technocrats who attempt to shut down democratic debate with claims to speak for nature’s objective interests.”); Mark Sagoff, *On Preserving the Natural Environment*, 84 YALE L.J. 205, 222 (1974).

190. Proposals to appoint guardians for nature in litigation raise similar concerns about the adequacy of representation. See, e.g., *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018) (Smith, J., concurring) (because an animal, the “real party in interest,” can “never credibly articulate its interests or goals, next-friend standing for animals is left at the mercy of the institutional actor to advance its own interests, which it *imputes* to the animal or object with no *accountability*.”) (emphasis in original).

191. Epstein et al., *supra* note 27, at 13.

192. See Whiteside, *supra* note 172, at 195 (arguing that all the “essential questions” about representing nature still remain unanswered, such as “Who serves on these bodies (and who is excluded)? How are they chosen? . . . How are they held accountable?”).

B. GROUNDING NATURE RIGHTS IN NATURAL LAW

A second concept that could entrench RoN governance is grounding the legal rights of all organisms in natural law rather than in the positive enactments of legislatures. In that way, liberal democracies could be forced to bend to natural law, and the lengthy process of convincing legislators to codify nature rights could be avoided. Recall that RoN advocates frequently assert that legislators in liberal democracies are corrupted by corporate influence and ignore the needs of the natural world.¹⁹³ If so, why would these same legislators enact sweeping RoN legislation to usher in a new era of rights-based ecological protection? To escape this paradox, some RoN proponents assume that the rights of nature arise phoenix-like from the Earth itself, bypassing legislatures entirely.¹⁹⁴ In this way of thinking, a universal set of nature rights *already exist* without legislative consent, and these rights are already positioned to constrain legislatures and the scale of human societies.

In my view, this is the most concerning of RoN governance ideas. It implies that humans have no role in establishing the terms of legal rights for nature and that nature's rights are superior to human laws and institutions. Going far beyond constitutionalizing nature rights, this natural law thinking would recognize nature's rights as perpetual, non-amendable, and non-repealable.¹⁹⁵ According to some theorists, the rights of each living being on Earth are a characteristic of the Universe itself, from which there is no deviation.¹⁹⁶

RoN literature is infused with natural law philosophy, drawing on strands from Hobbes,¹⁹⁷ Thoreau,¹⁹⁸ and especially indigenous cosmology.¹⁹⁹ Many RoN theorists argue that nature's rights are simply the product of *existence*. An organism's enforceable "right to exist" exists because the rights-holder exists. Nature's rights are born from the existence of each living thing and are generated from the

193. Peter Burdon, *Wild Law: A Proposal for Radical Social Change*, 13 N.Z. J. PUB. & INT'L L. 157, 164 (2015) (law is a "social relationship that is drenched in power politics"); DARPÖ, *supra* note 31, at 14; Kopnina et al., *supra* note 26; Price, *supra* note 36 (criticizing the privileged status of property in U.S. constitutional law and politics).

194. Ollie Houck, for example, noted that nature rights "have tapped into something larger than themselves that has been in the air for centuries and seems to have, at least for the moment, made landfall." Houck, *supra* note 3, at 44.

195. CARDUCCI ET AL., *supra* note 4, at 65, 69 (calling for a "nested hierarchy of rights" in which nature's rights are superior); Stillheart Declaration, *supra* note 4 (advocating "placing our human laws in alignment with Nature's laws."); Maloney & Siemen, *supra* note 18, at 12 (rights of nature "are created by the very act of the Universe bringing forth its evolutionary processes.").

196. See, e.g., Murray, *supra* note 17, at 227 (explaining that the cosmos, Earth, and nature are the sources of legality).

197. Leviathan, Chapter xv, ¶¶ 35-41.

198. RODERICK NASH, THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS 33-55 (1989).

199. CULLINAN, *supra* note 35, at 88-94; LAKE ET AL., *supra* note 10, at 4; Sam Bookman, *Rights of Nature in Comparative Perspective*, 37 NAT. RES. & ENV'T 4 (2022-2023).

Universe itself, not from human lawmakers.²⁰⁰ The consequence of such thinking is that humans need not be consulted to establish the terms or conditions of nature's rights. The rights are intrinsic. In the view of advocates, this is a good thing. Cormac Cullinan explained, for example, that "the ultimate source of jurisprudence and of law" should shift "out of the homosphere and *beyond human control*."²⁰¹ Cullinan acknowledged that this may seem "threatening" to democratic institutions, but it is the "price" humans will have to pay for "re-admission to the Earth Community."²⁰²

This natural law thinking has had a powerful influence within the RoN movement. Many RoN proponents use the jargon that humans should "recognize" the legal rights of nature because, in their view, humans are not positioned to grant or rescind legal rights for nature.²⁰³ Once nature's rights are recognized, a program can commence of "emancipating nature from bondage to its owners."²⁰⁴

How widespread are these views within the global RoN movement? Many RoN proponents, inside and outside academe, explicitly invoke natural law as the basis for nature's rights in the ways I have described. But other activists justify RoN on practical grounds, such as the hope that nature's rights might help to stop particular local projects. These activists are working to persuade legislators to enact RoN laws that could be pragmatically useful. Rather than holding any "grand guiding philosophy," they "simply have a problem which they want to go away."²⁰⁵ Natural law thinking is a part of the RoN movement and animates it, but not every RoN proponent is aware of it or buys into it.

Like other aspects of the RoN worldview, natural law thinking positions a set of rights for nature as an "extrinsic trigger,"²⁰⁶ an outside force operating on human society that would constrain human institutions and activities. For many RoN proponents, the goal is to align all human law with these higher laws of nature.²⁰⁷

200. Maloney, *supra* note 61, at 16 (rights of nature "are already existent; they are not created by human law but rather are created by the very act of the universe bringing forth its evolutionary processes."); EARTH L. CTR., *supra* note 18; CULLINAN, *supra* note 35, at 82 (humans are "embedded within, and bounded by" the laws of the universe and the natural world.). Cullinan refers to these laws of the natural world as the "Great Jurisprudence," with which human laws must conform. *Id.*

201. *Id.* (emphasis in original). See also Cullinan, *supra* note 35, at 120 ("human legal and political systems" should be designed "to ensure that natural 'laws' are not transgressed.").

202. CULLINAN, *supra* note 35, at 82.

203. Osprey Orielle Lake, *Rights of Nature and an Earth Community Economy*, TIKKUN (January 28, 2013); CULLINAN, *supra* note 35, at 97 ("rights originate where the universe originates and not from human jurisprudence."); Houck, *supra* note 3, at 33 (discussing human recognition of nature's rights); Boyd, *supra* note 31, at 14, 15.

204. Price, *supra* note 36.

205. Bookman, *supra* note 1, at 26.

206. Houck, *supra* note 3, at 49.

207. Huneus, *supra* note 1, at 151; Peter Burdon, *The Jurisprudence of Thomas Berry*, 15 WORLDVIEWS 151, 159 (2011) (arguing that nature provides an "external standard" by which to judge the validity of positive law and its "power to bind the populace.").

For three main reasons, grounding nature rights in natural law would have pernicious implications for representative government and human well-being.

First, judges could invoke natural law to strike down legislation and other governmental decisions that purportedly conflict with the unwritten rules of the Universe. Such a possibility may seem fanciful, but it is well within the governance vision of many RoN proponents. Like natural law theorists since Aquinas, RoN proponents frequently assert that legislative enactments are legitimate only when they correspond to and reinforce higher law.²⁰⁸ The point of governance under RoN principles, they say, is to make the world's legal systems operate in accordance with the unwritten rights of nature, and any contrary legislation has no legitimacy.²⁰⁹ In this worldview, it would not be necessary for legislators to codify nature's rights. Instead, judges could simply distill, from natural law, enforceable rights for insects, birds, or mangroves, and such rights could be harnessed to whack away at legislation that allegedly conflicts with these rights.

Second, natural law thinking about nature's legal rights could severely damage human rights. Proponents frequently describe nature's rights as occupying a superior position in a legal hierarchy, with humans occupying a subordinate position in a "nested hierarchy of rights."²¹⁰ In situations of conflict, human rights could be forced to yield. As Robyn Eckersley explained, "the extension of rights to non-humans would necessarily involve a corresponding adjustment, restriction, or redefinition of human rights."²¹¹

Policymakers and environmentalists should recognize the demotion of human rights that is implicit in much of RoN advocacy. In the United States, human rights have been established after bloody conflict in places like Gettysburg, the Edmund Pettus Bridge, and Stonewall. When RoN proponents assert that the unwritten rights of nature are legally superior to the human rights established after such struggles, they ignore the potential damage to humans. Indeed, the concept that the rights of lichen or ladybugs are superior to human rights and must be treated as such—both in court and in legislatures—radically undermines the meaning of human rights.²¹²

Finally, natural law thinking about nature's legal rights, if widely accepted, could undermine processes of representation and consent because nature's rights are too vague to guide human conduct. In natural law thinking, unwritten nature

208. THOMAS AQUINAS, *SUMMA THEOLOGICA*, Question 95, Article 2 (if a human law "deflects from the law of nature, it is no longer a law but a perversion of law."); Robert George, *Natural Law, the Constitution, and the Theory and Practice of Judicial Review*, 69 *FORDHAM L. REV.* 2269 (2001) ("believers in natural law believe positive law to be legitimate and binding in conscience only where it conforms to natural law . . .").

209. Stillheart Declaration, *supra* note 4; CULLINAN, *supra* note 35, at 100.

210. CARDUCCI ET AL., *supra* note 4, at 65, 69.

211. Eckersley, *supra* note 6, at 180. *See also id.* ("human choices need to be constrained by a recognition and consideration of the interest of non-human beings . . .").

212. *See* Baard, *supra* note 27 ("the entities in question differ so much" from humans "that it becomes highly questionable whether the same conditions apply, or whether rights would mean the same thing that we conventionally understand by them").

rights are purportedly universal and bind all human societies. But what do they say? What do they mean?

If nature's rights are borne from the Universe as an unwritten body of law to which no one has consented, the predictable result of governance based on such rights would be political clashes, perhaps violent ones. Legislation, court decisions, and agency actions would all become destabilized as factions battle over the meaning of nature's rights and fight over which laws, appropriations, and initiatives must yield to unwritten nature rights.

RoN theorists have expressed the content of nature's rights only through poetic allusions. The most influential expression of nature's rights comes from Thomas Berry, one of the founders of the RoN movement, who wrote that every organism has a "right to be, the right to habitat or a place to be, and the right to fulfill its role in the ever-renewing processes of the Earth community."²¹³ Cormac Cullinan stated that humans are legally obligated to act in a "whole-maintaining" way in "communion" with nature and with "strong and mutually beneficial interconnectivity."²¹⁴

RoN proponents are ignoring the dangers of relying on such ecobabble as the basis of universal laws purportedly superior to human laws and institutions. Would nature's right "to be," for example, preclude all human alteration of natural areas? Whose plans and aspirations would be limited to effectuate such a right? Which legislation would have to be repealed to conform with such a right? Who would need to be evicted from living near the natural rights-holder?²¹⁵ Without legislative consent, the meaning of these rights, in particular places and particular conflicts, would be unresolved and would be fought over intensely.

Natural law thinking offers rhetorical flourishes, but it dodges the controversial issues in environmental law and politics that must be addressed to confront 21st-century environmental challenges. Claiming that humans are legally obligated to act in a "whole-maintaining" way, for example, does nothing to solve practical environmental problems.²¹⁶ It does not tell us, for instance, whether we should build more electric transmission lines to promote renewable energy or dismantle the ones we have to regrow forests. It provides no guidance on resolving conflicts over land use, pollution, or resource use. As the political theorist Bob Pepperman Taylor explained, extending legal rights to nature "tells us nothing about the character and resolution of the very real conflicts between the human and non-human world that environmental ethics is charged with addressing."²¹⁷

213. Berry, *supra* note 53.

214. CULLINAN, *supra* note 35, at 83.

215. See Rina Chandran, *Fears of Evictions as Bangladesh Gives Rivers Legal Rights*, REUTERS (July 4, 2019).

216. In an article generally favorable to RoN principles, Sam Bookman noted that in the United States, it is "laughable" to believe that a series of powerful, unenumerated nature rights could take hold. He explained that because "unenumerated rights are contracting rather than expanding" in the United States, the RoN project, which "seemed audacious yet plausible in 1972 seems desperately utopian today." Bookman, *supra* note 1, at 10.

217. Bob Pepperman Taylor, *Environmental Ethics and Political Theory*, 23 POLITY 567, 573 (1991).

There are already some concerning signs about the influence of natural law thinking about nature's rights. For example, courts in India,²¹⁸ Bangladesh,²¹⁹ and Colombia²²⁰ have recognized legal rights for natural entities without any legislative authorization or statutory basis.²²¹ The High Court of Madras recognized enforceable legal rights for all of "Mother Earth" and declared her to be a "legal person, with all corresponding rights, duties and liabilities of a living person."²²² In 2019, the Bangladesh Supreme Court declared all rivers in the country legal persons and rights-holders, stating that the "law of nature" is "the supreme law of the world" and that all enacted laws contrary to it are null and void.²²³ In 2016, Colombia's Constitutional Court ruled that illegal mining in the basin of the Atrato River violated the written constitutional rights of indigenous groups who resided in the basin. It also took the further step of declaring the river itself an *entidad sujeto de derechos*.²²⁴ RoN proponents widely celebrate the Atrato decision, but as Sam Bookman has explained, "[R]ights of Nature in Colombia are largely a judicial creation. Neither the national constitution nor legislation makes provision for them."²²⁵

Natural law thinking is also creeping into policy proposals to advance the rights of nature. Here, I will discuss one policy proposal at some length because it contains views that are emblematic of the RoN governance agenda.

In 2019, ten European RoN scholars and activists, led by Michele Carducci of the University of Salento, published a lengthy study proposing a new "EU

218. See, e.g., Mohd. Salim v. State of Uttarakhand and Others, 2017 SCC OnLine Utt 367 ¶ 19 (India) (recognizing the Ganga and Yamuna rivers and their tributaries and streams as legal persons); Lalit Miglani v. State of Uttarakhand, 2017 SCC OnLine Utt 392 ¶ 63 (India) (recognizing the Gangotri and Yamunotri glaciers, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests, wetlands, grasslands, springs and waterfalls as legal persons); A. Periyakaruppan v. Principal Secretary to Government, 2022 SCC OnLine Mad 2077 ¶ 22 (India) (recognizing all of nature as a legal person).

India's Supreme Court stayed two 2017 decisions imbuing elements of nature with legal rights following appeals, and commentators noted that "[t]he use of religion as a rationale for determining the legal status of nature sits uncomfortably within the secular legal system of India." Stellina Jolly & K.S. Roshan Menon, *Of Ebbs and Flows: Understanding the Legal Consequences of Granting Personhood to Natural Entities in India*, 10 TRANSNAT'L ENV'T L. 467, 476 (2021); see also Kelly D. Alley, *River Goddesses, Personhood and Rights of Nature: Implications for Spiritual Ecology*, 10 RELIGION 502 (2019) (discussing similar tensions).

219. Human Rights and Peace for Bangladesh v. Government of Bangladesh, Writ Petition No. 13989 of 2016 at 151-52 (Bangladesh SC) (recognizing the Turag river and all other rivers in the country as legal persons).

220. Corte Constitucional [Constitutional Court] Nov. 10, 2016, Sentencia T-622/16 at 7 (Colom.), translated in DIGNITY RIGHTS PROJECT, DEL. L. SCH., THE ATRATO RIVER CASE (2019), <https://perma.cc/BK6U-LAJ3> (recognizing the Atrato River as a legal person); see also David Takacs, *We Are the River*, U. ILL. L. REV. 545, 585 (discussing the Colombia Constitutional Court's adoption of a "radical new legal form").

221. See Bookman, *supra* note 199, at 4, 6.

222. A. Periyakaruppan, *supra* note 218, at ¶ 22.

223. Human Rights and Peace for Bangladesh, *supra* note 219, at 122.

224. Corte Constitucional, *supra* note 220, at 7.

225. Bookman, *supra* note 199, at 6.

Charter on the Fundamental Rights of Nature.”²²⁶ The Charter would enshrine nature’s legal rights in a quasi-constitutional EU treaty. The paper was requested by a unit of the European Economic and Social Committee, a consultative and advisory body within the European Union.

In the paper, the ten authors began with a critique of liberal democracy that stressed many of the themes I discussed in Part I. They claimed that the global environment is in steep decline because legislators and voters do not possess sufficiently pro-environment views. Liberal representative democracy, they wrote, is based on “individual consensus and freedom of opinion that is not necessarily ‘ecological.’”²²⁷ Legislators and voters, in other words, are not green enough. According to the authors, this insufficient environmental consciousness means that environmental activists face persistent difficulties in advocating for the rights of nature “within liberal representative democracy.”²²⁸

A new EU Charter, the authors said, would overcome these democratic flaws by enshrining legal rights of nature into EU law. Strongly counter-majoritarian, the new Charter would be superior to ordinary legislation within the EU Member States and would give non-human organisms standing in European courts. Moreover, non-humans would be armed with unspecified “participatory rights in administrative or legislative decision-making processes.”²²⁹

The Charter would also enshrine various substantive rights for nature. These nature rights would include a “non-regression” rule under which “no subsequent [legislative] act can reduce the protection of Nature established by a previous act,” and “all forms of environmental protection . . . cannot be repealed by subsequent laws.”²³⁰

Most significantly, the scholars wrote that such a Charter, imposed “from above” and “entrenched in law,” would be beneficial because it would result in the “*liberation of governments from electoral blackmail*.”²³¹

The language in this document is astonishing, but not far removed from the views of other RoN advocates: normal mechanisms of legislation and electoral representation are not up to the task of environmental protection, and a radical new approach is needed to shake the foundations of liberal democracy. Legislators within liberal democracies will never sufficiently protect nature, so nature’s rights must constrain humans “from above.”

There is no evidence that EU institutions are seriously considering the arguments within this study. Nonetheless, the study is emblematic of common arguments within the RoN movement. The study is an unusually blunt statement of

226. See generally CARDUCCI ET AL., *supra* note 4.

227. *Id.* at 83.

228. *Id.*

229. *Id.* at 99.

230. *Id.* at 72.

231. *Id.* at 99-100 (emphasis added).

the RoN worldview, yet it reflects deep and widely-held strands within RoN philosophy.

CONCLUSION

Law is fundamentally a human construction, effectuated through human institutions. It often seems as if RoN proponents wish that were not the case as they seek to establish a political community that is coextensive with the biotic community.²³² To build ecocentric governance, they seek to demote the interests of humans within a set of judicial and political institutions entirely run by humans—a remote prospect. Their governance ideas contain a clear potential for repression and disruption of democratic institutions, with no assurance that rights-claims will protect Earth’s systems any better than traditional legislation. In an era of accelerating climate change and habitat loss, the goal of reducing human impacts on the natural world is critically important. However, for legitimacy, effectiveness, and sustainability, the remedies for environmentally destructive activities must ultimately come from human-made law and human lawmaking institutions, not through a new system of rights that acts externally on humans.²³³

This Article highlighted the distorting effects of the RoN governance vision. If widely embraced to reshape legal institutions, RoN governance ideas would become corrosive to democracy, legislative autonomy, and human rights. These ideas could lead to abusive rulings, authoritarian politics, and a straitjacketed democracy that would be less effective at solving social and environmental problems.

I share the concern and alarm of RoN proponents regarding our impacts on the natural world. Humans *are* overwhelming ecosystems, deforesting land, draining aquifers, crashing fish populations, and causing a mass extinction of species.²³⁴ RoN proponents seek a problematic remedy, however. They want to deploy vague new rights of nature to kick humans back into line and shrink the human footprint.²³⁵ The rights-based remedy of the RoN movement, relying heavily on the judiciary, is unlikely to work as a matter of practical effectiveness. And there is a significant threat to democracy, dignity, freedom, and human rights from proceeding down that path.

232. Ball, *supra* note 22, at 141. *See also* Julien Betaille, *Rights of Nature: Why it Might not Save the Entire World*, 16 J. EUR. ENV'T & PLANNING L. 35 (2019) (“Nothing can legally happen without humans”).

233. DARPÖ, *supra* note 31, at 60 (arguing that the flaws in environmental protection identified by the RoN movement are “general problems that have been discussed for years and which will not be remedied by introducing new labels in a system that still must be handled by humans.”).

234. Steffen et al., *supra* note 166; Sandra Díaz et al., *The Global Assessment Report on Biodiversity and Ecosystem Services*, IPBES (2019), <https://perma.cc/SY9N-ZWBJ>.

235. Houck, *supra* note 3, at 49; BOYD, *supra* note 4, at xxii.

Maintaining liberal democratic institutions and values does not mean that humans will “dance blindly into oblivion” amidst an environmental crisis.²³⁶ We have choices. We can recognize the seriousness of the environmental crisis and respond to it through law, policy, and grassroots action. We can imagine a different human relationship to the natural world without establishing a set of vague, enforceable rights for all living beings. A governance transition to the alternative paradigm of nature rights is not necessary to confront environmental problems, and it is likely to do serious damage to governing institutions.

236. Sachs, *supra* note 11, at 83.