Evaluation of Rights of Nature as a Legislative Avenue for Indigenous Land Sovereignty

Maria Alejandra de Urioste Gonzales

EE 538

Professor Reibstein

Spring 2025

As humanity gets closer and closer to pushing planetary boundaries and causing irreversible damage to the Earth and the systems that keep us on Earth, we continue searching for sustainability. Sustainability is about the synergies between ecology, economy, and society to ensure that present needs are met without compromising the ability of future generations to meet their own, emphasizing good governance, equity, and the historical interplay of geography, demography, and climate in shaping development. When we are talking about sustainability, what we are trying to sustain is human well-being. Sustainability is about both inter- and intra-generational well-being. As we think of the consequences we face from pushing those planetary boundaries, the people most affected are often the ones who contribute the least to the problem.

It is a fact that inequality is built into most of the very systems that run humanity today. To understand wildness in humanity and nature is a way to think about the question of the rights of nature. To recognize wildness—distinct from 'wilderness' as a concept—to recognize the vitality of either wildness or wilderness - is in some respects to relinquish the human need to dominate and control. 'Wildness' refers to the inherent autonomy and interconnectedness of natural systems, while 'wilderness,' which is often envisioned as untouched, pristine landscapes separate from human influence. Thoreau stated, “in Wildness is the conservation of the World”(Cronon, 24), which holds that wildness, by its very existence, is our defense against the damage caused by humans and our own escape from human-constructed boundaries between man-made and nature. Nature has been painted as a formidable enemy to be feared and then conquered, but respect for other living things provides a different perspective.

The perception of nature has been struck with otherness, causing it to be thought of as the pristine, the untouched, and the other. The idea of wilderness is associated with something

other than the human-made world. The idea of wildness provides a compelling guide for environmentalism because if it is not something to be feared and conquered, it can extend the positive attitudes that wilderness invokes and apply it past the cognitive boundaries we have created. Thus, the two concepts, distinguished, can be applied together to good effect. The concept of wildness can dismantle the myth of the binary separating humans and nature; by its nature, it questions this myth, or separation from the pristine, and unveils it as a fabrication. Acknowledging humans as a part of the wild, and in turn that existence on our planet is a multi-species entanglement, can restore a sense of purity to the human sense of self. It can allow us to take responsibility for interactions we inevitably have as inhabitants of a system, while at the same time us acknowledging its autonomy and inherent value. The idea of wildness can also compel concern for environmental justice, as it contrasts with traditional wilderness notions that often overlook or marginalize relationships with humans as well as nature, as in contexts of land ownership that are about historical precedence or financial capacity. Wildness is as much part of the human world as humans are part of the wild; all that is natural and vital, the life force of it all.

With this perspective of coexistence comes the question of how to implement it to the benefit of society. RoN or the rights of nature, is a way of understanding human conceptualization of the natural environment, where non-human matter is understood as having value independent of human interest (Putzer et al). To implement any kind of sustainability, the world needs to re-evaluate the way we conceptualize nature and develop cultural attitudes, legislations, and initiatives (Kauffman). RoN calls for legal recognition of the rights of nature but also implies a relationship of responsibility to provide for the well-being of natural entities (Kauffman). There is a growing body of environmental jurisprudence reflecting the idea of rights

of nature. As we move towards a future where we try to sustain human existence with the law, the rights of nature are a way to acknowledge the complexity of nature. In the past few years, nature has begun to be acknowledged as a series of systems, humanity being one of the systems (Kauffman, Martin). For the law to reflect that ideal of wildness and interconnectedness, "the law must value Nature (understood as nested systems) primarily for its ability to generate the conditions for life rather than for providing stocks of resources to be extracted" (Kauffman, Martin).

Crucially, Rights of Nature (RoN) is not just about protecting nature in the abstract, it also opens legal and philosophical pathways for recognizing Indigenous land claims. Many Indigenous communities already understand nature as a living entity with whom they coexist in a relationship of reciprocity. By aligning legal frameworks with these worldviews, RoN can strengthen Indigenous legal standing to protect their territories from extractive industries, government expropriation, and ecological destruction. In this paper, I explore whether RoN can serve as a viable mechanism for Indigenous peoples to keep their land. Specifically, I analyze cases where RoN has been enacted using Indigenous languages and concepts of personhood, investigating whether such frameworks can provide communities with the legal recognition necessary to assert their land rights within settler legal systems.

Case Studies on Rights of Nature and Indigenous People:

In Australia, the Rights of Nature framework has been successfully localized through Indigenous ontologies, particularly in the concept of "*Caring for Country*." This philosophy, rooted in Aboriginal law, recognizes reciprocal responsibilities between people and land. The *Yarra River Protection (Wilip-gin Birrarung murron) Act of 2017* granted the Yarra River legal personhood. The Act explicitly acknowledges the Wurundjeri Woi-wurrung people as the river's

traditional custodians, and it is the first to be also titled in an indigenous language (O'Bryan, 2017). As O'Bryan states: "The recognition of the Whanganui River as a legal entity... is undeniably Māori in its terms; it guarantees standing to access the courts to protect the River's values, those values being unquestionably Māori in orientation" (O'Bryan, 2017). Engaging in "Caring for Country" practices provides Indigenous communities with interconnected health, cultural, economic, and environmental benefits.

Studies in Arnhem Land show that involvement in Indigenous Cultural and Natural Resource Management (ICNRM) is associated with lower rates of chronic diseases such as diabetes and cardiovascular illness, as well as reduced psychological stress and greater physical activity, especially when individuals live on their ancestral lands (Weir, Stacey, & Youngetob, 2011). The benefits extend beyond individual health to broader community wellbeing, including reductions in substance abuse and strengthened family structures, as demonstrated by the 74% of Indigenous Protected Area (IPA) communities reporting such outcomes (Weir et al., 2011).

Jurisprudence from Ecuador's Constitutional Court also shows how the Rights of Nature are evolving since they were written into the Constitution in 2008. Judicial activism has been central to this development. Since 2019, the Court has taken a proactive role in selecting cases and ordering transformative remedies, such as conservation plans, territorial management strategies, and the revocation of environmental permits (Tănăsescu et al., 2024). This may be a result of the fact that Ecuador's 2008 Constitution grants legal personhood to nature, recognizing it as a subject of rights alongside individuals and collectives. Article 10 establishes that nature is entitled to the rights outlined in the Constitution and relevant laws. Article 71 affirms nature's right to exist, persist, maintain, and regenerate its vital cycles and processes, and it grants all people and communities standing to defend these rights in court. Article 72 guarantees nature the

right to restoration, even in the absence of direct human harm, and obligates the state to adopt effective measures to remedy environmental damage, especially from non-renewable resource extraction. Article 74 further asserts that people, communities, and nationalities have the right to benefit from natural wealth in ways that promote well-being, but it also specifies that environmental services cannot be privately appropriated and must be regulated by the state.

In Bolivia, the first indigenous president, Evo Morales, was inaugurated in 2006. His platform relied on both environmental and indigenous rights appeals. Part of his political party was the institutionalized movements of indigenous people. As a result, they initiated comprehensive rights of Nature frameworks in Bolivian law. The most extensive is the statutory Law No. 300, *Framework Law of Mother Earth and Integral Development* to Live Well. It was led by the groups Pacto de Unidad, which is a coalition of indigenous movements and organizations.

The Framework Law of Mother Earth and Integral Development to Live Well was passed in 2012; most of it redefined the relationship between Earth and humans. The guiding principle of the law is an indigenous philosophy of Vivir Bien, or Living Well, which recognizes nature, or as Mother Earth, as a living being with rights (Bolivian Law No. 300, 2012). These rights include the right to exist, to regenerate, and to be restored when harmed (Bolivian Law No. 300, 2012). The law moves beyond conventional environmental protection by proposing a way of life based on balance, harmony, and mutual care between humans and nature (Bolivian Law No. 300, 2012). This statute proposes a new (for people born in the modern age) relationship between humans and the natural world, moving away from exploitative and extractivist relationships and affirming the earth as having cycles and systems that should be respected and protected as sacred (Bolivian Law No. 300, 2012).

The law places responsibility on both the state and communities to care for the Earth (Bolivian Law No. 300, 2012). The law calls for an integration of traditional Indigenous knowledge with scientific practices in areas such as agriculture, energy, water management, and climate change. To support its goals, the law establishes new institutions, including the Plurinational Authority for Mother Earth and a Climate Justice Fund, which are tasked with coordinating policies and funding projects aligned with the law's vision. It gives all people the right to defend nature in legal settings, naming the need to protect Nature a collective duty.

In New Zealand, the *Te Urewera Act of 2014* gives legal personhood to a forest, using the indigenous language. Te Urewera was a formerly state-owned national park. The act recognized Te Urewera as its own legal entity, no longer owned by the Crown but rather existing as a living being with legal personhood (Te Urewera Act, 2014). Its purpose is to reflect the deep spiritual and ancestral relationship that the Tūhoe people have with this land, while also affirming its importance to all New Zealanders. Under the act, Te Urewera is managed by a co-governance board made up of Tūhoe representatives and government appointees, who together are responsible for protecting the area's ecological, cultural, and spiritual values (Te Urewera Act, 2014). The act outlines how Te Urewera is to be governed, how activities are authorized, and how the land is to be preserved for recreation, learning, and reflection (Te Urewera Act, 2014). At its core, the act is about recognizing a landscape as having its own identity and authority, and about creating a legal framework rooted in respect, relationship, and shared responsibility rather than ownership.

All of these examples exemplify the ability of law to change the exploitative relationships we have with Nature and the Earth, and protect indigenous land sovereignty by using indigenous knowledge systems, philosophy, and language. Now I ask the following questions: How do we

track rights of nature being brought into legal frameworks? Are laws based on RON effective in protecting indigenous people's land and interests? What needs to be done to use the legal philosophy of Rights of Nature to promote not only sustainability, but to protect indigenous people's concerns?

The Putzer Tool:

It is important, when validating a legal philosophy, that one takes into account how many times it has been applied, the motivation of the application, etc. Putzer et al. developed a categorization tool for RON movements and organized a database (building on previous work by Kauffman, because while the movement is rapidly diversifying, it still lacks a systematic, empirically grounded foundation that would allow for meaningful theoretical or legal development. They bridge the gap in a 2021 paper.[1] Their research supports more informed engagement with RoN across academic, legal, and public domains. The work they did is summarized in **Figure 1.**

[1] The authors also created visual tools, such as spatial charts, to improve overall understanding of the movement's scope.

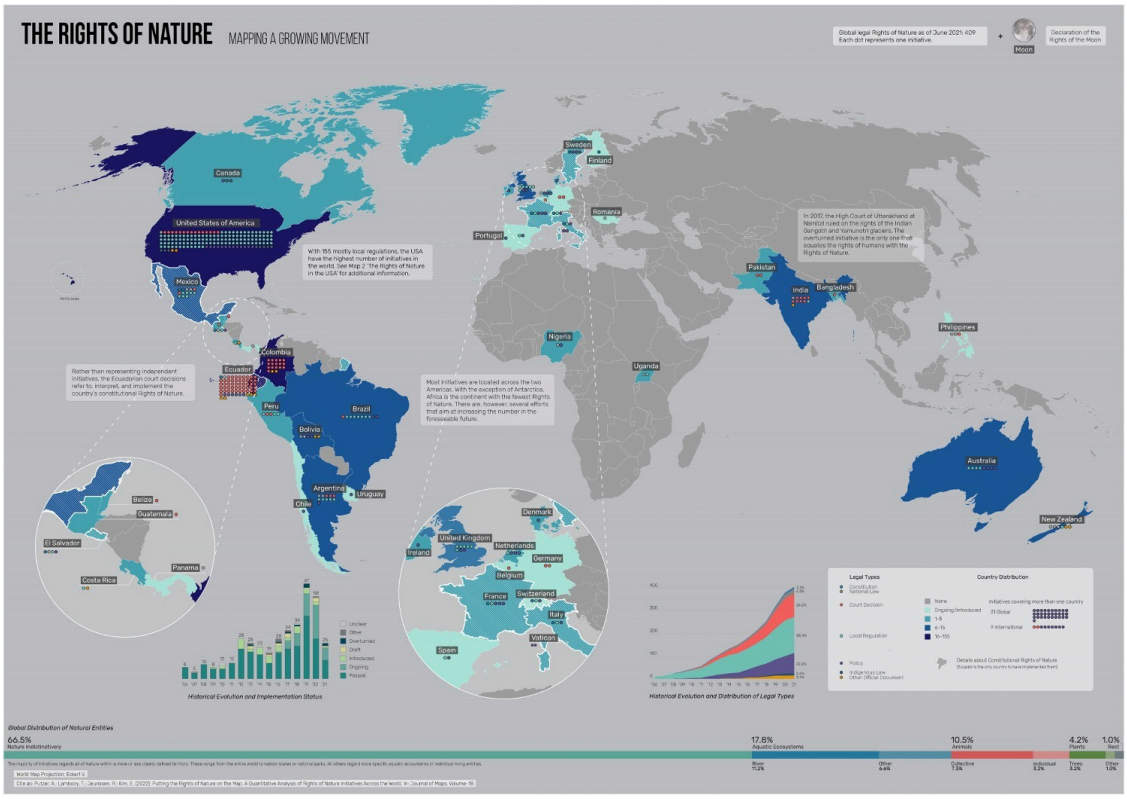

Figure 1: Putzer et als. Map of RoN.

Source: Putzer, A., Lambooy, T., Jeurissen, R., & Kim, E. (2022). Putting the rights of nature on the map. A quantitative analysis of rights of nature initiatives across the world. *Journal of Maps*, *18*(1), 89–96. https://doi.org/10.1080/17445647.2022.2079432

The authors conclude that in order for academic and legal discourse around the Rights of Nature (RoN) to meaningfully evolve, there must first be a solid empirical foundation. They argue that the movement's growing diversity demands a comprehensive understanding of what RoN initiatives actually look like in practice before theoretical frameworks can be effectively developed. The authors .

The conclusion of their research was that the RoN movement constitutes a substantial and lasting global trend toward redefining the human-nature relationship. The movement is a development of legal rights, from human-centered frameworks and toward a more ecologically grounded understanding of justice and governance.

Apart from the broad conclusions of the movement, there are also interesting statistics on how rights of nature relate to different motivations they categorized within the RoN laws. However, approximately 1 in 5 cases of Rights of Nature (RoN) initiatives reference Indigenous beliefs (or 18.6 percent of them), and only 2.4 percent result in specific Indigenous RoN laws. (Putzer et. al, 2021). This percentage is noteworthy given how frequently Indigenous worldviews are cited as foundational to the philosophical and legal development of RoN (Putzer et. al, 2021). Now I will analyze why some rights of nature cases fail to protect indigenous sovereignty.

RoN and Faling Indigenous Peoples:

There are concerns about whether the RoN framework truly protects indigenous peoples' interests or may be exploitative. There are concerning trends with RoN legislations and their applications to Indigenous peoples, which Tănăsescu et al. highlight. In Colombia, the Amazonas Rights of Nature case largely overlooked Indigenous rights, even though it involved Indigenous territories (Tănăsescu et al., 2024). There is a broader trend where global RoN efforts, often led by international NGOs, promote Western conservation models that can overshadow local Indigenous traditions (Tănăsescu et al., 2024). These place-based and diverse legal worldviews are more context-sensitive and often resist being reduced to generalized legal norms. As more RoN cases emerge, there is growing evidence that these global frameworks risk displacing or diluting Indigenous alternatives. The two trends I found with examples of failures are conflicting

statutes that prevent indigenous people from benefiting, and the laws simply not being implemented because of state interest.

While Ecuador is often presented as a global leader in RoN, a close reading of cases such as Mangroves, Monjas, and Aquepi reveals that Indigenous legal traditions have played only a minimal role in shaping these interpretations. Rather than grounding decisions in Indigenous concepts like Pachamama or sumak kawsay, the Court has constructed a largely Western, systemic view of nature that treats ecosystems as indivisible, functional wholes (Tănăsescu et al., 2024). Although these cases often intertwine RoN with human rights, the relationship is not governed by a clear philosophical hierarchy. Instead, the Court pragmatically aligns RoN with rights to water, health, and cultural heritage when strategically useful, and even embraces the contested notion of sustainable development within an ecocentric framework (Tănăsescu et al., 2024). The Court's understanding of nature reflects a "wilderness" ideal, excluding permanent human pressure unless framed as harmonious with nature, thereby raising concerns about erasure of place-based Indigenous land use and stewardship (Tănăsescu et al., 2024). Importantly, while some Indigenous communities have used RoN strategically, as in the Waorani case, their legal successes have hinged on the enforcement of pre-existing constitutional rights such as Free, Prior, and Informed Consent (FPIC), not RoN itself (Tănăsescu et al., 2024). This gap between RoN rhetoric and its practical utility for Indigenous sovereignty underscores the need to critically evaluate RoN frameworks not as inherently decolonial, but as potentially reproducing the limitations of Western legal systems (Tănăsescu et al., 2024).

The legal framework also had problems in Bolivia. I started by saying that Law No. 300 was made by Indigenous Peoples, a coalition of different indigenous peoples called the Pact of Unity. The contradiction and alienation of the indigenous interests is exemplified by the TIPNIS

conflict. In 2011, the TIPNIS, which is home to about 14,000 people, mostly indigenous people of the Yuracaré, Tsimané, and Mojeño-Trinitario groups, was declared untouchable (Morales, 2013). This status was earned after thousands of indigenous people marched for nearly two months to the capital of Bolivia, La Paz, protesting over a road that would have passed straight through the middle of the virgin territory (Morales, 2013). The marchers were tear-gassed and even assaulted by authorities, but they pushed forward, forced President Evo Morales to talk to them, and in turn forced the government's hand. This seemed to give the indigenous people sovereignty and control over the land. The problem is that in 2017, the government completely ignored the previous agreement. They proceeded with plans to build a road that would bring human exploitation, harm to biodiversity, and kill animals that the people there need to consume to survive. The road named Villa Tunari would stretch for 182 miles and effectively cross the TIPNIS territory through the middle, cutting it in two. Morales argued that the road would merge the Amazonian and Andean regions, which was within the rights of another law, permitting economic development for the benefit of the country. This was widely talked about and discussed, but came into shape in 2008, when the government signed a contract with a Brazilian construction company, OAS.

As a young leader of the indigenous people named Teco told The Guardian in a 2017 interview, "The day the government rips up the land, this is all going to disappear. Who is going to suffer? We will live in Tipnis. The animals will die. And so will we." The TIPNIS provides provisioning services to the people living there, as the communities, according to the interview in The Guardian, mainly rely on the land. Cultural ecosystem services are non-material benefits that people derive from ecosystems, particularly in relation to their cultural, spiritual, and recreational

experiences. These services are deeply intertwined with human culture, traditions, values, and sense of identity

The idea was defended for its ability to bring in economic growth, as it would facilitate trade, which is a hope for a country stricken by poverty, and benefit highland indigenous people. The protests ended with violence and deaths, and proved that lowland and small communities of indigenous people were neglected by the MAS. CONAMAQ, one of the indigenous groups forming the Pact of Unity, officially withdrew from the Pact of Unity and allied with CIDOB (a lowland indigenous people group) to oppose the government in 2011, following the TIPNIS controversy. The failure to adhere to Bolivian Law No. 300, by a government that was supposed to protect indigenous interests, raises alarms about people's willingness to respect RoN, as they are not systematically built into the culture or the law.

These examples show that simply having rights of nature within a legal framework does not guarantee the interests of indigenous peoples, even when the law uses their language or cites their motivation as protecting Indigenous rights.

Concluding Remarks:

Rights of nature initiatives are expanding across legal systems around the world. The legal philosophy that helps systems recognize rights of nature is not only beneficial; it is essential to the sustainability of ecosystems that we are starting to understand as incredibly entangled. Nature and humans are not separate; the human-nature divide is simply a superiority paradox. Instead, we coexist. Indigenous people have understood and lived with nature in this way before humans could create dominating complexes regarding Nature. It is essential that they keep their land. Rights of Nature could be a way of implementing it in our legal systems. To do so more effectively, good governance and accountability are needed. Overall, there needs to be a

shift in how our communities, countries, and governments care. Care in the way that Samrasinha outlines in their book, Care Work—mutual benefits without judgment or moral superiority. Care when we speak of nature. And care when making laws.

Bibliography:

Australian Government Department of Climate Change, Energy, the Environment and Water. (2021). *Caring for Country*. State of the Environment Report. https://soe.dcceew.gov.au/indigenous/management/caring-country

Cronon, W. (1996). The trouble with wilderness; or, getting back to the wrong nature. *Environmental History, 1*(1), 7–28.

Kauffman, C. M., & Martin, P. L. (2021). *The politics of rights of nature: Strategies for building a more sustainable future*. The MIT Press.

Kauffman, C. M., & Martin, P. L. (2021). Introduction: Rights of nature as a political strategy. In *The politics of rights of nature: Strategies for building a more sustainable future* (pp. 1–22). The MIT Press.

Morales, W. Q. (2013). The TINPIS crisis and the meaning of Bolivian democracy under Evo Morales. *The Latin Americanist, 57*(1), 79+. Gale Academic OneFile.

Muñoz, L. (n.d.). *Bolivia's mother earth laws: Is the ecocentric legislation misleading?* ReVista. https://revista.drclas.harvard.edu/bolivias-mother-earth-laws-is-the-ecocentric-legislation-misleading/

New Zealand Government. (2014). *Te Urewera Act 2014*. Eco Jurisprudence Monitor. https://ecojurisprudence.org/wp-content/uploads/2022/02/New-Zealand_Te-Urewera-Act-2014_111.pdf

Plurinational State of Bolivia. (2012). *The Mother Earth Law and Integral Development to Live Well (Law No. 300)*. Climate Change Laws of the World. https://climate-laws.org/documents/the-mother-earth-law-and-integral-development-to-live-well-law-no-300_a11c?id=the-mother-earth-law-and-integral-development-to-live-well-law-no-300_42c0

Putzer, A., Lambooy, T., Jeurissen, R., & Kim, E. (2022). Putting the rights of nature on the map: A quantitative analysis of rights of nature initiatives across the world. *Journal of Maps, 18*(1), 89–96. https://doi.org/10.1080/17445647.2022.2079432

Tănăsescu, M., Macpherson, E., Jefferson, D., & Torres Ventura, J. (2024). Rights of nature and rivers in Ecuador's Constitutional Court. *The International Journal of Human Rights*, 1–23. https://doi.org/10.1080/13642987.2024.2314536

Appendix:

Some philosophical concepts: Jennings

Ecological Care Defined:

Ecological care is both caring for the health of ecosystems and creating a culture of care-giving practices in society. It integrates natural and cultural ecologies, requiring both environmental protection and social structures that support care..

He draws on Aldo Leopold's "land ethic," which includes non-human nature in the moral community, and argues that ethics should emerge from ecological interdependence.

Care as Moral Practice:

Care ethics emphasizes attention, responsibility, and responsiveness. It is not merely a private virtue but a public, political ethic essential for democratic engagement and ecological stewardship.

Feminist and Democratic Dimensions:

Care work, often gendered and undervalued, is foundational to both human flourishing and ecological sustainability.

Vulnerability in the Human Condition Initiative: From Emory University

Rather than focusing solely on individual autonomy, the Initiative emphasizes that institutions, created and shaped by law, must be accountable when they fail to support just and equitable distributions of power and privilege. At the center of this framework is the "vulnerable legal subject," a concept meant to replace the dominant liberal legal subject in law and policy. Vulnerability is understood not simply as a condition of weakness but as a shared and embodied human reality that necessitates support structures.