

# BUILDING AN ALTERNATIVE JURISPRUDENCE FOR THE EARTH: THE INTERNATIONAL RIGHTS OF NATURE TRIBUNAL

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## INTRODUCTION

In January 2014, members of the civil society network, Global Alliance for the Rights of Nature, held the world’s first International Tribunal for the Rights of Nature and Mother Earth (International Tribunal) in Quito, Ecuador. Since that time, the International Tribunal has met in Lima, Peru and Paris, France in parallel with the Conference of Parties for UN climate change negotiations, and Regional Chambers of the International Tribunal have been held in the United States and Australia.<sup>1</sup> Given that the International Tribunal has emerged from civil society rather than state-centered international law, and given that countries like Australia and the United States do not recognize, in State or Federal law, the intrinsic rights of plants, animals, or ecosystems to exist, what possible benefits do Rights

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1. *International Rights of Nature Tribunal*, GLOBAL ALLIANCE FOR RTS. NATURE, <http://therightsofnature.org/rights-of-nature-tribunal> (last visited Nov. 23, 2016).

of Nature Tribunals offer the natural world, and what impact can they have on the current legal system?

In this paper, I outline the creation and ongoing hearings of the International Tribunal and its Regional Chambers and provide an overview of Earth jurisprudence, the emerging theory of Earth-centered law and governance from which the Tribunals have emerged. I then contextualize the Rights of Nature Tribunals within the phenomenon of peoples' tribunals during the twentieth and twenty-first centuries. I suggest that like many "peoples' tribunals" before them, Rights of Nature Tribunals provide a powerful voice for civil society concerns and create an alternative narrative to that offered by western legal systems regarding environmental destruction. They also have the potential to play a role in transforming existing law and offer a welcome, cathartic contribution to the burgeoning field of Earth jurisprudence.

#### I. THE INTERNATIONAL TRIBUNAL FOR THE RIGHTS OF NATURE AND MOTHER EARTH

The International Tribunal is comprised of lawyers and ethical leaders from indigenous and non-indigenous communities around the world.<sup>2</sup> The objective of the Tribunal is to hear cases regarding alleged violations of the rights of nature and make recommendations about appropriate remedies and restoration.

The International Tribunal's main source of law is the Universal Declaration of the Rights of Mother Earth (UDRME).<sup>3</sup> Additionally, for cases from Ecuador and Bolivia, the Tribunal can refer to the Ecuadorian Constitution and Bolivia's Framework Act for the Rights of Mother Earth and Holistic Development to Live Well 2012, respectively, as these existing domestic legal instruments explicitly recognize the rights of nature.<sup>4</sup>

Participants at the World People's Congress on Climate Change and the Rights of Mother Earth, held in Cochabamba, Bolivia in 2010 drafted

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2. *Id.*

3. World People's Conference on Climate Change & the Rights of Mother Earth, *Universal Declaration of the Rights of Mother Earth*, GLOBAL ALL. FOR RTS. NATURE (Apr. 22, 2010), <http://therightsofnature.org/wp-content/uploads/FINAL-UNIVERSAL-DECLARATION-OF-THE-RIGHTS-OF-MOTHER-EARTH-APRIL-22-2010.pdf>.

4. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR 2008 [2008 CONSTITUTION OF THE REPUBLIC OF ECUADOR] Oct. 20, 2008, tit. III, ch. 7; *Bolivia: Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien, 15 de [O]ctubre de 2012*, <http://www.lexivox.org/norms/BO-L-N300.xhtml> (last visited Nov. 23, 2016) [hereinafter *Bolivia: Ley Marco*]. See also Nick Buxton, *The Law of Mother Earth: Behind Bolivia's Historic Bill*, GLOBAL ALLIANCE FOR RTS. NATURE (Sept. 2, 2016), <http://therightsofnature.org/bolivia-law-of-mother-earth> (describing Bolivia's Act in English).

the UDRME.<sup>5</sup> Approximately 30,000 people from more than 100 countries attended the gathering and helped draft the Declaration.<sup>6</sup> Formal international law does not presently recognize this Declaration, but it represents the agreed values of many thousands of members from civil society.<sup>7</sup> The Declaration was submitted to the UN shortly after the Cochabamba meeting and was formally considered at the UN Dialogue on Harmony with Nature in April 2011.<sup>8</sup> The Declaration also featured prominently at the June 2012 UN Conference on Sustainable Development (Rio+20), and the Rio+20 People’s Summit “reaffirm[ed] the importance of the [UDRME] . . . .”<sup>9</sup> “While the final UN consensus document itself did not reference the UDRME, it specifically recognized the ‘rights of nature’ in the governing system of some of its member states . . . .”<sup>10</sup> This year, the UN Harmony with Nature initiative hosted its first Interactive Dialogue with the General Assembly on the themes of Earth jurisprudence and Earth-centered law.<sup>11</sup>

As the health of ecological communities continues to deteriorate around the world, due to human impacts including climate change, the International Tribunal is an important forum, both for drawing attention to an international audience about environmental atrocities and for reclaiming any notion of justice for these state-sanctioned violations of the rights of nature. But in practical terms, what impact can such a tribunal have in legal systems that do not recognize the rights of nature? To answer this question, it is first necessary to provide an overview of *Earth jurisprudence*, the theoretical framework from which the Rights of Nature movement and the Tribunals have emerged.

## II. EARTH JURISPRUDENCE, WILD LAW, AND THE RIGHTS OF NATURE

*Earth jurisprudence*, a term coined by cultural historian and “Earth scholar” Thomas Berry, is an emerging theory of Earth-centered law and

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5. World People’s Conference on Climate Change & the Rights of Mother Earth, *supra* note 3.

6. CLIMATE & CAPITALISM, DOCUMENTS OF THE WORLD PEOPLE’S CONFERENCE ON CLIMATE CHANGE AND THE RIGHTS OF MOTHER EARTH: BOLIVIA (Apr. 2010), <http://www.readingfromtheleft.com/PDF/CochabambaDocuments.pdf>.

7. *Id.*

8. *Virtual Dialogue*, UNITED NATIONS: HARMONY WITH NATURE, <http://www.harmonywithnatureun.org/knowledgenetwork/2016-dialogue> (last visited Nov. 23, 2016).

9. COMMITTEE FOR A CONSTRUCTIVE TOMORROW, *Rio+20: Final Declaration: “The Future We Want”*, <http://www.crossroad.to/articles2/2012/cfact/rio-future.htm> (last visited Nov. 23, 2016).

10. Linda Sheehan, *Nature’s Rule of Law Through Rights of Waterways*, in *RULE OF LAW FOR NATURE: NEW DIMENSIONS AND IDEAS IN ENVIRONMENTAL LAW* 222, 230 (Christina Voigt ed., 2013).

11. *Virtual Dialogue*, *supra* note 8.

governance.<sup>12</sup> Advocates for Earth jurisprudence propose that the primary cause of the ecological crisis is anthropocentrism—a belief held by people in the industrialized world that we are somehow separate from, and more important than, the rest of the natural world.<sup>13</sup> Berry argues that this anthropocentric worldview underpins all the governance structures of contemporary industrial society, economics, education, religion, and law, and has fostered the belief that the natural world is merely a collection of objects for human use.<sup>14</sup> In contrast, Earth jurisprudence suggests a radical rethinking of humanity's place in the world, both to acknowledge the history and origins of the evolving universe and to see ourselves as just one of many interconnected members of the Earth community.<sup>15</sup> By *Earth community*, Berry refers to all human and “other-than-human” life forms and components of the planet—animals, plants, rivers, mountains, rocks, the atmosphere—our entire Earth.<sup>16</sup> Berry and the broader Earth jurisprudence movement acknowledge the inspiration and guidance that indigenous cultures and wisdom can provide to industrialized societies and the development of Earth jurisprudence.<sup>17</sup> He suggests that “our great work” is to transform human governance systems to create a harmonious and nurturing presence on the Earth.<sup>18</sup>

Responding to Berry's work, Cormac Cullinan's *Wild Law: A Manifesto for Earth Justice* was a direct call to shift our legal and governance systems to support the Earth community.<sup>19</sup> *Wild Laws* are laws that express principles of Earth jurisprudence and are derived from the laws of nature.<sup>20</sup> They can be seen as one subset of the broader Earth

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12. THOMAS BERRY, *THE GREAT WORK: OUR WAY INTO THE FUTURE* 161 (1999) [hereinafter BERRY, *THE GREAT WORK*] (“[W]e need a jurisprudence that would provide for the legal rights of geological and biological as well as human components of the Earth community.”); Thomas Berry, *Rights of the Earth: We Need a New Legal Framework Which Recognises the Rights of All Living Beings*, 214 *RESURGENCE* (Sept./Oct. 2002), reprinted in *EXPLORING WILD LAW: THE PHILOSOPHY OF EARTH JURISPRUDENCE* 227, 228–29 (Peter Burdon ed., 2011) [hereinafter Berry, *Rights of the Earth*].

13. See BERRY, *THE GREAT WORK*, *supra* note 12, at 4 (“The deepest cause of the present devastation is found in a mode of consciousness that has established a radical discontinuity between the human and other modes of being and the bestowal of all rights on the humans.”).

14. *Id.*

15. Brian Swimme & Thomas Berry, *The Universe Story: From the Primordial Flaring Forth to the Ecozoic Era – A Celebration of the Unfolding of the Cosmos* 241–43 (1st ed. 1992).

16. *Id.* at 280 (defining *Earth Community* as “[t]he interacting complexity of all of Earth's components, entities, and processes, including the atmosphere, hydrosphere, geosphere, biosphere, and mindsphere”).

17. BERRY, *THE GREAT WORK*, *supra* note 12, at 176–80.

18. *Id.* at 3 (“The Great Work now . . . is to carry out the transition from a period of human devastation of the Earth to a period when humans would be present to the planet in a mutually beneficial manner.”).

19. CORMAC CULLINAN, *WILD LAW: A MANIFESTO FOR EARTH JUSTICE* 29 (2d ed. 2011).

20. *Id.* at 30–31.

jurisprudence philosophy; as the “legal thread” that weaves together so many other aspects of governance—including economics, institutional structures, and politics—to give expression to Earth jurisprudence.<sup>21</sup> In his book, Cullinan discusses law, regulation, and governance, acknowledging that all these concepts need to be made “wild” and Earth-centered.<sup>22</sup>

One of the many elements making up the complex web of Earth jurisprudence is the legal recognition of the rights of nature.<sup>23</sup> Many advocates of Earth jurisprudence argue that the Earth community and all the beings that constitute it have *rights*, including the right to exist, the right to habitat (or a place to be), and the right to participate in the evolution of the Earth community.<sup>24</sup> Berry argued that nature’s rights “must be the central issue in any . . . discussion of the legal context of our society.”<sup>25</sup> From this view, nature deserves to be valued for its own inherent worth.<sup>26</sup> This contrasts with the dominant legal system, which treats plants, animals, and entire ecosystems as human property, and only grants rights to humans and human-created constructs such as corporations. Granting rights to nature is a radical rethinking of the role of our anthropocentric legal system, and yet the idea appears to be taking hold in many jurisdictions. The legislation mentioned above, in Ecuador and Bolivia, moves Earth-centered ideas from merely a theory to a practical framework for action.<sup>27</sup> A rights-based approach is not just about conferring rights on nature; it is a means of giving legal recognition to nature’s inherent worth by recognizing what is already there. In operational terms, it is largely for the purpose of redressing the balance between humans and nature. A rights based approach “empowers those in the human community who are anxious to restore balance when they find themselves in conflict with powers and authorities

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21. *Id.*

22. *See id.* at 29–30 (distinguishing the common meaning of “wild” from its use in “wild law”).

23. *See id.* at 100 (stating that the first principle of Earth jurisprudence is to give priority to the needs of the community over the needs of individuals); Berry, *Rights of the Earth*, *supra* note 12, at 228–29 (proposing six Earth rights to lay the foundation of Earth jurisprudence); Christopher D. Stone, *Should Trees Have Standing? – Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 456 (1972) (“I am quite seriously proposing that we give legal rights to . . . the natural environment as a whole.”); SWIMME & BERRY, *supra* note 15, at 256 (discussing a constitution that acknowledges all levels of the Earth’s ecosystems); Cormac Cullinan, *If Nature Had Rights: What Would We Need to Give Up?*, ORION MAG., Jan.-Feb. 2008, at 26, 27–28 (“[T]he law would have to recognize that nature was not just a conglomeration of objects that could be owned, but was a subject that itself had legal rights and the standing to be represented in the courts to enforce those rights.”).

24. BERRY, *THE GREAT WORK*, *supra* note 12, at 80.

25. *Id.*

26. *Id.*

27. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR 2008, *supra* note 4; *Bolivia: Ley Marco*, *supra* note 4.

who prefer to consider nature solely as a resource to be exploited for human ends.”<sup>28</sup>

Many of the key elements of Earth jurisprudence and eco-centrism have long been debated in environmental philosophy and human ecology, and eco-centrism in the law has been explored by many writers, including Christopher Stone,<sup>29</sup> Roderick Nash,<sup>30</sup> and Klaus Bosselmann.<sup>31</sup> The work of Berry and Cullinan builds on this body of work, but I would argue that it also offers something new. In addition to being a critical theory stimulating a growing body of literature,<sup>32</sup> Earth jurisprudence and *Wild Law* are increasingly becoming practical and constructive tools as well. This is reflected in the growing international movement of people and organizations who are advocating for the Rights of Nature (and, more broadly, Earth-centered law and governance), and who are explicitly building their movements on the work of Berry and Cullinan.<sup>33</sup> This has been demonstrated by inspiring, real-world examples of social change and Earth-centered law and governance, such as Ecuador’s 2008 Constitution, Bolivia’s 2010 legislation,<sup>34</sup> and the 150 local level Rights of Nature ordinances that now exist in the United States.<sup>35</sup> It has also been

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28. BEGONIA FILGUEIRA & IAN MASON, *WILD LAW: IS THERE ANY EVIDENCE OF EARTH JURISPRUDENCE IN EXISTING LAW AND PRACTICE?* 4 (2009), <https://www.ukela.org/content/page/5489/Wild%20Law%20Research%20Report%20published%20March%202009.pdf>.

29. Stone, *supra* note 23, at 456 (highlighting his own work regarding the theory of the rights of nature).

30. Paul S. Boyer, *Foreword to RODERICK FRAZIER NASH, THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS* ix (Paul S. Boyer ed., 1989) (exploring the intellectual roots in eco-centrism).

31. Klaus Bosselmann, *Governing the Global Commons: The Ecocentric Approach to International Environmental Law*, in *DROIT DE L’ENVIRONNEMENT ET DÉVELOPPEMENT DURABLE* 93, 97 (Presses Universitaires de Limoges 1994) (discussing the interconnection between international law and healthy ecosystems).

32. Ian Lowe, *Wild Law Embodies Values for a Sustainable Future*, in *WILD LAW – IN PRACTICE* 3, 12 (Michelle Maloney & Peter Burdon eds., 2014) (discussing the underlying principles of *Wild Law* and Earth Jurisprudence). *See also* *EXPLORING WILD LAW: THE PHILOSOPHY OF EARTH JURISPRUDENCE* viii (Peter Burdon ed., 2011) (providing a tool for Earth Jurisprudence through this collection of works on Earth law and philosophy).

33. *See Founding Organizations and Members*, GLOBAL ALLIANCE FOR RTS. NATURE, <http://www.therightsofnature.org/founding-organizations> (last visited Nov. 23, 2016) (listing organizations from around the world advocating for Rights of Nature and Earth-centered governance).

34. *CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR 2008*, *supra* note 4; *Bolivia: Ley Marco*, *supra* note 4.

35. Kai Huschke, *Why the People of the Big Island Can’t Ban GMOs Without Challenging Corporate “Rights”*, COMMUNITY ENVTL. LEGAL DEF. FUND (July 11, 2014), <http://celfd.org/2014/07/why-the-people-of-the-big-island-cant-ban-gmos-without-challenging-corporate-rights>.

demonstrated through recent initiatives in Great Britain and Europe.<sup>36</sup> The European Citizens Initiative on the Rights of Nature has drafted, and is seeking support for, a directive to recognize and enforce the Rights of Nature,<sup>37</sup> and the Scottish Greens Party and the Green Party of England and Wales have adopted Rights of Nature policies.<sup>38</sup>

### III. THE GLOBAL ALLIANCE AND ITS CREATION OF THE INTERNATIONAL RIGHTS OF NATURE TRIBUNAL

The Global Alliance for the Rights of Nature (GARN) was formed in 2010 by an international group of Earth lawyers and advocates who attended the World People's Congress on Climate Change and the Rights of Mother Earth, held in Cochabamba, Bolivia.<sup>39</sup> The lawyers who comprise the founding members of the Alliance played an important role in drafting the UDRME and agreed to create a permanent network of people committed to implementing Earth jurisprudence and the rights of nature.<sup>40</sup> GARN is made up of around 70 organizations from around the world, including groups from the Global North, Global South, and First People's nations.<sup>41</sup>

The International Tribunal was created at a GARN Summit in Ecuador in January 2014.<sup>42</sup> It was a response to the perception by local Ecuadorians that the Correa administration was not implementing the Rights of Nature provisions in the Ecuadorian Constitution and was instead allowing the rights of nature to be violated.<sup>43</sup> The Tribunal was created to hear both Ecuadorian and international cases, and it was decided that each meeting of the Tribunal would have two functions: to admit new cases for later

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36. *Rights of Nature Advocacy*, WOMEN'S EARTH & CLIMATE ACTION NETWORK, INT'L, <http://wecaninternational.org/pages/rights-of-nature> (last visited Nov. 23, 2016).

37. *European Citizens Initiative for the Rights of Nature*, INT'L CTR. FOR WHOLISTIC LAW <http://www.wholistic-law.org/european-citizens-initiative-for-the-rights-of-nature> (last visited Nov. 23, 2016) (advocating through citizens initiatives for the rights of nature in the European Union).

38. *Greens Commit to Rights of Law Nature*, THE ECOLOGIST (Feb. 29, 2016), [http://www.theecologist.org/News/news\\_round\\_up/2987304/greens\\_commit\\_to\\_rights\\_of\\_nature\\_law.html](http://www.theecologist.org/News/news_round_up/2987304/greens_commit_to_rights_of_nature_law.html).

39. *Founding Organizations and Members*, *supra* note 33.

40. *Rights for the Earth: Towards New International Standards*, END ECOCIDE ON EARTH, <https://www.endecocide.org/wp-content/uploads/2015/10/3-EarthLaws-DossierUPDATE.pdf> (last visited Nov. 23, 2016).

41. *See Founding Organizations and Members*, *supra* note 33 (listing GARN's various members and their global locations).

42. *International Rights of Nature Tribunal*, *supra* note 1.

43. Mary Elizabeth Whittemore, Note, *The Problem of Enforcing Nature's Rights Under Ecuador's Constitution: Why the 2008 Environmental Amendments Have No Bite*, 20 PACIFIC RIM L. & POL'Y J. 659, 661 (2011).

consideration and to make final decisions and recommendations about cases admitted at earlier hearings.<sup>44</sup>

The first cases presented to the International Tribunal were: British Petroleum's pollution of the Gulf of Mexico; hydraulic fracturing ("hydrofracking") in the United States; the Chevron/Texaco case in Ecuador; the case of the failed attempt to protect Yasuni-ITT, Ecuador; the Condor mine case in Mirador, Ecuador; and the Great Barrier Reef case, presented by the Australian Earth Laws Alliance (AELA).<sup>45</sup> Two further issues were presented for advisory opinions: the danger to life on Earth presented by genetically modified organisms (GMO) and a special case presented on behalf of "defenders of the Earth," who had recently been persecuted by the Ecuadorian government.<sup>46</sup>

The international panel of judges sitting on the International Tribunal included lawyers and ethics experts from around the world.<sup>47</sup> Further sessions of the International Tribunal, held in Lima and Paris in 2014 and 2015 respectively, drew attention to environmental destruction throughout the world, and these Tribunals also provided Earth laws, judgments, and recommendations.<sup>48</sup>

#### IV. REGIONAL CHAMBERS OF THE INTERNATIONAL RIGHTS OF NATURE TRIBUNAL: THE EXAMPLE OF AUSTRALIA'S RIGHTS OF NATURE TRIBUNAL

Since hosting the first International Tribunal, GARN members have held four Regional Chambers in the United States and Australia.<sup>49</sup> Regional Chambers share the same role as the International Tribunal—to examine

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44. See *International Rights of Nature Tribunal*, *supra* note 1 (stating the intent of the Tribunal and its anticipated outcome).

45. Michelle Maloney, *Finally Being Heard: The Great Barrier Reef and the International Rights of Nature Tribunal*, 3 GRIFFITH J.L. & HUM. DIGNITY 40, 47–53 (2014) (providing a detailed overview of the Great Barrier Reef case).

46. See *International Rights of Nature Tribunal*, *supra* note 1 (listing organizations and lawyers who brought the cases to the Tribunal).

47. *Id.*

48. For example, in the Great Barrier Reef case the International Tribunal held that "[d]eliberate human activities are . . . violating the right[s] of the Great Barrier Reef community," and that the governments of Australia and Queensland have failed to protect the Reef from said activities. Int'l Tribunal for the Rights of Nature, *Judgement in the Matter of: Great Barrier Reef v. Australia Federal and State Governments and Others*, GLOBAL ALLIANCE FOR RTS. NATURE, para. 57–62 (Dec. 5–6, 2014), <http://therightsofnature.org/great-barrier-reef-judgement-paris-tribunal>. The Tribunal made further recommendations "to restore the integrity and health of the Great Barrier Reef." *Id.* See also *International Rights of Nature Tribunal*, *supra* note 1 (discussing the sessions held in Lima and Paris).

49. *International Rights of Nature Tribunal*, *supra* note 1; *Earth law Update—March 24, 2016*, GLOBAL ALLIANCE FOR RTS. NATURE (Mar. 24, 2016), <http://therightsofnature.org/ron-events/earth-law-update-march-24-2016/>.



and present findings on violations of nature's rights, which have remained outside formal government consideration. In addition to examining the Earth Community's plight, Regional Chambers try current legal and economic systems that permit the destruction of nature.<sup>50</sup>

In the United States, a Rights of Nature Tribunal, held in October 2014, charged the Bay Area Chevron Refinery with violations against the rights of nature.<sup>51</sup> Then, in April 2016, another American tribunal examined the plight of the San Francisco Bay-Delta Ecosystem.<sup>52</sup>

In Australia, a special Rights of Nature Tribunal, held in October 2014, brought together further evidence for the Great Barrier Reef case. The findings from this hearing were taken to the 2015 International Tribunal, held in Paris to coincide with the COP21.

In 2016, AELA formalized its Regional Chamber of the International Tribunal as a Permanent Peoples' Tribunal for the Rights of Nature Australia (the Australian Tribunal).<sup>53</sup>

The Australian Tribunal held its first all day hearing on October 22, 2016 and heard "cases presented by citizens and Earth lawyers concerned about the destruction of ecosystems and the wider Earth community in Australia."<sup>54</sup> The Tribunal's objectives include: providing a unique forum for Australians to speak on behalf of the non-human world, challenging the current legal system's failure to protect our ecosystems, and highlighting the role that the legal system, government agencies, and corporations play in destroying the Earth community.<sup>55</sup> First Nations People, lawyers, and scientists served as tribunal judges and in early 2017 will make recommendations about law reform and restorative actions that need to happen to ensure the future protection of Australia's precious ecosystems and the wider Earth community.<sup>56</sup>

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50. See Australian Earth Laws All., *Great Barrier Reefs Case 16. Judgments Summing Up & Conclusions*, YOUTUBE (Nov. 8, 2015), <http://www.youtube.com/watch?v=0XAsh7IZjNw> (summarizing the Tribunal's Great Barrier Reef judgment).

51. *Bay Area People's Tribunal on the Rights of Nature*, GLOBAL ALLIANCE FOR RTS. NATURE (Oct. 5, 2014), <http://therightsofnature.org/events/bayareatribunal>.

52. See Dan Bracher, *Tribunal Considers Rights of Nature in Imperiled San Francisco Bay-Delta*, DAILY KOS (May 2, 2016), <http://www.dailykos.com/stories/2016/5/2/1522252/-Tribunal-Considers-Rights-of-Nature-in-Imperiled-San-Francisco-Bay-Delta> (examining the San Francisco Bay-Delta problem).

53. See AELA *Rights of Nature Tribunal – 22nd October 2016, Banco Court, Brisbane*, AUSTRALIAN EARTH LAWS ALLIANCE, <http://www.earthlaws.org.au/events/tribunal2016> (last visited Nov. 23, 2016) (publicizing the 2016 Brisbane Rights of Nature Tribunal).

54. *Id.*

55. *Id.*

56. *Id.*

In keeping with the philosophical foundation of the rights of nature, a member of the Earth community was represented in each case. Importantly for the Australian context, not only is the source of law for the cases the rights of nature laws articulated in the UDRME, but also the ancient “first laws” of indigenous First Nations People from around Australia.<sup>57</sup>

The Tribunal heard four cases. In the first case, First Nations People of the Mardoowarra/Fitzroy River in Western Australia presented claims that the Mardoowarra River must have its legal rights recognized and protected. The second case was the Forests of Australia versus the Federal and State Governments, brought by First Nations People, forest protectors from Western Australia and Northern New South Wales, and supported by evidence from a scientist and a lawyer. The Forests case argued that since the British invasion, in 1788, of the continent now known as Australia, successive colonial and Australian governments have allowed ecocide to occur through the decimation of native forests by logging and land clearing.<sup>58</sup>

The third case was brought on behalf of the Great Artesian Basin, the largest and oldest groundwater system in the world. The case was presented by First Nations People and concerned citizens. It was further supported by evidence from a scientific expert and lawyer, who argued that “the contamination and depletion of Australia’s precious groundwater” by the unconventional gas industry was a violation of the Great Artesian Basin community’s rights of life—to exist, thrive, and evolve.<sup>59</sup>

The final case was brought for the Great Barrier Reef and for the atmospheric commons to “challenge Australia’s inaction on climate change . . . .”<sup>60</sup> The Tribunal received an update on the status of the Great Barrier Reef, which was the first case that AELA took to the International Rights of Nature Tribunal. Concerns for the Reef have heightened in light of the recent scientific evidence demonstrating the devastating bleaching of the Reef,<sup>61</sup> and also since the April 2016 announcement that the Queensland government has approved mining leases for Adani’s massive Carmichael coalmine.<sup>62</sup>

As the first such tribunal of its kind in Australia’s history, and the first time that both First Nations People and non-indigenous citizens have come

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57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Adani’s Carmichael Coalmine Leases Approved by Queensland Decision*, GUARDIAN (Apr. 3, 2016, 01:02 AM), <https://www.theguardian.com/environment/2016/apr/03/adanis-carmichael-coalmine-leases-approved-by-queensland>.

together to share their concerns about the natural world in a shared, public forum, the Tribunal has generated considerable excitement among participating groups, organizations, and the more than 150 observers who attended the Tribunal.<sup>63</sup> The Tribunal offers a rare opportunity for activists, lawyers, indigenous representatives, scientists, and others to celebrate Australia's precious natural world, speak on its behalf, and propose carefully developed recommendations for law reform and future governance.<sup>64</sup> However, can such tribunals have any impact on the existing system of state-centered law in countries like Australia, the United States, or Canada? To explore this question, it is helpful to place the Rights of Nature Tribunals into the broader context of modern peoples' tribunals, which have been held over the past 80 years.

#### V. PEOPLES' TRIBUNALS IN THE 20TH AND 21ST CENTURIES

Peoples' Tribunals have a "substantial history" in the 20th century.<sup>65</sup> Some assert that the 1967 International War Crimes Tribunal is the first peoples' tribunal, but others argue that the first non-governmental tribunal occurred with the 1937 Dewey Commission, which exonerated Leon Trotsky of charges made against him at the Moscow Trials.<sup>66</sup> British philosopher Bertrand Russell organized the International War Crimes Tribunal (the Russell Tribunal) after he published his book *War Crimes in Vietnam*, and French philosopher and playwright, Jean-Paul Sartre, hosted the Tribunal.<sup>67</sup> It investigated war crimes the United States government committed against the Vietnamese during the Vietnam War by revealing human rights abuses and advocating for justice for victims of State brutality.<sup>68</sup> The Second Russell Tribunal (1974-76) investigated human rights abuses in Brazil, Chile, and Argentina.<sup>69</sup> In 1979, law experts, writers, and philosophers created the Permanent Peoples' Tribunal (PPT) in

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63. *Founding Organizations and Members*, *supra* note 33.

64. *AELA Rights of Nature Tribunal – 22nd October 2016, Banco Court, Brisbane*, *supra* note 53.

65. Andrew Byrnes & Gabrielle Simm, *Peoples' Tribunals, International Law and the Use of Force*, 36.2 UNIV. NEW S. WALES L.J., 711, 713 (2013) [hereinafter *Use of Force*].

66. Arthur Blaser, *How To Advance Human-Rights Without Really Trying: An Analysis of Nongovernmental Tribunals*, 14 HUM. RTS. Q. 339, 340 (1992).

67. *Id.* at 340; Gabrielle Simm & Andrew Byrnes, *International Peoples' Tribunals in Asia: Political Theatre, Juridical Farce, or Meaningful Interventions?*, 4 ASIAN J. INT'L L. 103, 104–05 (2014) [hereinafter *International Peoples' Tribunals in Asia*].

68. AGAINST THE CRIME OF SILENCE: PROCEEDINGS OF THE INTERNATIONAL WAR CRIMES TRIBUNAL 8, 12 (John Duffett ed., Simon and Schuster 1970) (1968).

69. Ken Coates, *Introduction to REPRESSION IN LATIN AMERICA: A REPORT ON THE FIRST SESSION OF THE SECOND RUSSELL TRIBUNAL 1* (William Jerman ed. & trans., 1975).

Italy.<sup>70</sup> As its basis of law, the PPT uses international human rights laws and the UN Declaration on the Rights of Indigenous Peoples.<sup>71</sup> It is now an internationally recognized public opinion tribunal functioning independently of state authorities.<sup>72</sup> The PPT has launched proceedings against human rights abuses in Tibet, Western Sahara, East Timor, Zaire, El Salvador, Afghanistan, Guatemala, Nicaragua, the Former Yugoslavia, and several other countries.<sup>73</sup> In 2016, the PPT is investigating the human rights impacts of fracking and is supporting a network of linked tribunals in countries around the world.<sup>74</sup> Other non-state or peoples' tribunals include the Women's International War Crimes Tribunal of Japan's 2002 military trial for sexual slavery of "comfort women"<sup>75</sup> and the PPT's 2005 World Tribunal into Iraq.<sup>76</sup>

One of the first citizens' tribunals that focused on environmental issues was the 1998 International Peoples' Tribunal on Human Rights and the Environment.<sup>77</sup> While it focused on human rights rather than nature's rights, it articulated the idea that humanity has a "right to environment" and a "fundamental right to freedom, equality and adequate condition of life, in an environment . . . that permits a life of dignity and well-being."<sup>78</sup> In the past decade, a number of peoples' tribunals in India have also investigated environmental and human rights violations by the state.<sup>79</sup> The effectiveness

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70. TRIBUNALE PERMANENTE DEI POPOLI, <http://permanentpeopletribunal.org/?lang=en> (last visited Nov. 23, 2016).

71. TRIBUNALE PERMANENTE DEI POPOLI, *Statute*, art. 2, <http://permanentpeopletribunal.org/wp-content/uploads/2016/06/statute.pdf> (last visited Nov. 23, 2016).

72. TRIBUNALE PERMANENTE DEI POPOLI, *Mandate and functions*, <http://permanentpeopletribunal.org/mandate-and-functions/?lang=en> (last visited Nov. 23, 2016).

73. GUATEMALA: TYRANNY ON TRIAL: TESTIMONY OF THE PERMANENT PEOPLES' TRIBUNAL 3 (Susanne Jonas et al., eds. & trans., 1984); *Use of Force*, *supra* note 65, at 725.

74. *Session on the Human Rights Impact of Fracking, What is this Session About?*, PERMANENT PEOPLES TRIBUNAL ON THE HUMAN RIGHTS IMPACTS OF FRACKING, <http://www.tribunalonfracking.org/what-is-this-session-about> (last visited Nov. 23, 2016).

75. Christine Chinkin, *Peoples' Tribunals: Legitimate or Rough Justice*, 24 WINDSOR Y.B. ACCESS TO JUST. 201, 202 (2006); *International Peoples' Tribunals in Asia*, *supra* note 67, at 108.

76. Craig Borowiak, *The World Tribunal on Iraq: Citizens' Tribunals and the Struggle for Accountability*, 30 NEW POL. SCI. 161, 161 (2008); WORLD TRIBUNAL ON IRAQ: MAKING THE CASE AGAINST WAR ix (Müge Gürsöy Sökmen ed., 2008).

77. Saul H. Mendlovitz, *Statement of the International Peoples' Tribunal on Human Rights and the Environment: Sustainable Development in the Context of Globalization*, 23 ALTERNATIVES: GLOBAL, LOC., POL. 109, 109–13 (1998).

78. *Id.* at 121–22 (quoting Principle 1 of the Stockholm Declaration of the 1972 UN Conference on the Human Environment).

79. INDIAN PEOPLE'S TRIBUNAL, <http://www.iptindia.org> (last visited Nov. 23, 2016); *see also*, e.g., INDIAN PEOPLE'S TRIBUNAL ON ENV'T & HUMAN RIGHTS, THE INDIAN PEOPLE'S TRIBUNAL REPORT ON ENVIRONMENTAL AND HUMAN RIGHTS VIOLATIONS, BY CHEMPLAST SANMAR AND MALCO INDUSTRIES AT METTUR, TAMIL NADU (July 2005), <http://www.iptindia.org/wp->

and overall impact of peoples' tribunals is difficult to assess. As such tribunals do not have the authority to penalize those they find guilty, their success arises from their framing and changing public discourse on a particular issue.<sup>80</sup> The tribunals' success is difficult to measure because the literature lacks evaluations of tribunal impacts. One common thread in the literature is that peoples' tribunals emerge when there are deficiencies in the state-based legal system, and despite tribunals' inability to impose penalties on defendants, they offer an important space for people to be heard.<sup>81</sup> Scholars suggest that peoples' tribunals can be a precursor to state responses, as they create publicity and pressure governments for greater accountability. In some instances, peoples' tribunals can complement state sponsored initiatives due to their qualitatively different processes and content.<sup>82</sup>

#### CONCLUSION: THE POSSIBLE IMPACTS OF RIGHTS OF NATURE TRIBUNALS

One key reason for creating the International Rights of Nature Tribunal was to give a voice to the voiceless: to allow people to speak for nature and challenge the destructive practices that industrial society normalized throughout the 20th century.<sup>83</sup> By offering an alternative, Earth-centered legal analysis, the International and Regional Tribunals highlight specific injustices inflicted on the Earth community—injustices that are at present, legally and morally endorsed by nation-states and vested interests. Further, by critiquing the foundations and impact of the current legal system, the Tribunals draw attention to the flawed and devastating outcome of our anthropocentric laws and growth-obsessed government policies.<sup>84</sup>

While the Tribunals' decisions are not part of international law or enforceable in any nation-state's legal system, some argue that such decisions will have “performative significance as a forum in which an alternative ‘rights of nature’ legal discourse can be articulated and

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content/pdf/report/On-Environmental-and-Human-Rights-Violations-by-Chemplast-Sanmar-and-MALCO-Industries-at-Mettur-Tamil-Nadu.pdf; INDIAN INDEPENDENT PEOPLE'S TRIBUNAL, REPORT ON SARDAR SAROVAR PROJECT, CANALS OF INDIRA SAGAR & OMKARESHWAR AND JOBAT DAM PROJECT (June 2010), <http://www.iptindia.org/wp-content/pdf/report/IPT%20Report%20on%20Narmada.pdf>; HUMAN RIGHTS LAW NETWORK, INDIA, INDEPENDENT PEOPLE'S TRIBUNAL ON DAMS, ENVIRONMENT & DISPLACEMENT (Feb. 2012), <http://www.hrln.org/hrln/images/stories/pdf/IPT-SIKKIM.pdf>.

80. Blaser, *supra* note 66, at 359.

81. *Id.*

82. *Use of Force*, *supra* note 65, at 724–25.

83. *Call for Action for the Rights of Mother Earth*, GLOBAL ALLIANCE FOR RTS. NATURE, <http://www.therightsofnature.org/call-for-action> (last visited Nov. 23, 2016).

84. *Id.*

developed.”<sup>85</sup> Further, such alternative jurisprudence “compel us to interrogate existing legal principles, practices and findings through . . . a wild law lens [and] can contribute to a paradigm shift in existing legal systems.”<sup>86</sup>

The potential for the Tribunals to contribute to a paradigm shift was particularly obvious during the Rights of Nature Tribunals in Australia in 2014 and 2016. In 2014, expert witnesses and Tribunal members created decisions that involved a fascinating mix of discussions about existing environmental laws and normative legal structures based on an Earth-centered approach, recognizing the rights of nature. This melding of conceptual analysis was extremely valuable because the lawyers, the Tribunal members, and the audience all engaged in an act of creative extrapolation: critiquing existing law in order to pull it apart, lay it bare, reframe it, and begin building something new.

Anecdotal evidence after the 2014 Tribunal indicated that people could imagine an Earth-centered legal system, and they could see how the rights of nature could work in practice. Anecdotal evidence after the 2016 Tribunal, which had a strong indigenous involvement, demonstrated that non-indigenous Australians are keen to connect with and learn from the ancient “first laws” of First Nations People, and to transform Australia’s contemporary laws and governance to reflect the critical importance of First Nations’ Peoples custodial practices. While this powerful alternative jurisprudence does not offer immediate, increased protection for our beloved Earth community, it empowers environmental lawyers and activists with new concepts, a new vocabulary, and a transformative vision for how the legal system should work to protect life on Earth.

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85. Nicole Rogers & Michelle Maloney, *The Australian Wild Law Judgment Project*, 39 ALTERNATIVE L.J. 172, 173 (2014).

86. *Id.*