
RIGHTS OF NATURE, RIGHTS OF ANIMALS

*Kristen Stilt**

The fields of animal law and environmental law have an uneasy relationship. At a basic level, they are intertwined by the fundamental observation that animals, human and nonhuman, exist in the environment. Environmental law is generally concerned with animals at the level of species (and specifically endangered or threatened species), whereas animal law is concerned with all animals, regardless of particular characteristics. The issue of wild horses in the western United States illustrates this tension. Some environmentalists view the horses as “feral pests” that damage the fragile ecosystem and compete with wildlife — and privately owned cattle — for resources.¹ They argue that the horses should be gathered through helicopter-led “roundups” and euthanized or sold.² Animal protection advocates argue that these roundups are cruel and note that the millions of cattle also grazing on these lands are far more damaging to the environment than the horses.³ They insist that these wild horses should not be killed — the life of each individual animal matters and should be protected.⁴

Environmental law is the older and more established field of law. There are many ways to measure this, such as at the constitutional level, which shows environmental law’s seniority and success. Most constitutions address the environment, and the typical phrasing is anthropocentric: a human right to a healthy environment as seen, for example, in article 42 of the Constitution of Kenya: “Every person has the right to a clean and healthy environment”⁵ Newer trends adopt ecocentric or biocentric approaches and grant rights to nature (or its component

* Professor of Law, Harvard Law School; Faculty Director, Harvard Animal Law & Policy Program. I thank Sam Bookman, Doug Kysar, Justin Marceau, Kathy Meyer, and Steve Wise for insightful comments on this Essay. I thank the editors of the *Harvard Law Review* for their thoughtful engagement and editorial assistance. Andy Stawasz, J.D. ’21, provided outstanding research assistance. I also thank the translators who assisted with translations of the cases cited in the Essay: Cibele Maria Melendez Teixeira Bandeira and Harvard Law School S.J.D. candidates Beatriz Botero Arcila, Sannoy Das, and Nicolás Parra-Herrera.

¹ Karin Brulliard, *The Battle over Wild Horses*, WASH. POST (Sept. 18, 2019), <https://www.washingtonpost.com/science/2019/09/18/wild-horses-have-long-kicked-up-controversy-now-foes-say-they-have-solution> [https://perma.cc/L9BW-GJP7].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ THE CONSTITUTION OF KENYA, 2010, art. 42, in *WORLD CONSTITUTIONS ILLUSTRATED* (HeinOnline, 2010).

parts, such as a river) at the constitutional or legislative level or through judicial decisions.⁶

In contrast to environmental rights, it is only a fairly recent phenomenon that assigns “constitutional significance to the experiences of individual nonhuman animals.”⁷ Animals are protected in just a handful of constitutions with no clear adoption trend: Switzerland (1973),⁸ India (1976),⁹ Brazil (1988),¹⁰ Slovenia (1991),¹¹ Germany (2002),¹² Luxembourg (2007),¹³ Austria (2013),¹⁴ Egypt (2014),¹⁵ and Russia (2020).¹⁶ These provisions use terms such as the “welfare” of animals,¹⁷ the “dignity” of animals,¹⁸ animal “protection,”¹⁹ “compassion” toward animals,²⁰ and animal “cruelty”²¹ — all of which follow a general animal welfare approach. In contrast to the environmental context, none of the provisions uses the term “rights.”²²

In this Essay, I show how developments and achievements in the field of environmental rights and specifically rights of nature can be instructive, intellectually and practically, to the cause of animal protection and animal rights.²³ That instruction includes not only positive examples but also notes of caution, where animal law may face different and more formidable challenges. The Essay first assesses the role that

⁶ JAMES R. MAY & ERIN DALY, *GLOBAL ENVIRONMENTAL CONSTITUTIONALISM* 255–56 (2015). A biocentric approach places humans on the same level as all living beings, whereas an ecocentric approach considers all that is in the natural world — living beings and nonliving entities — to all be equally valued. INT’L RIVERS ET AL., *RIGHTS OF RIVERS* 10 (2020), <https://3waryu2g9363hdvii1ci666p-wpengine.netdna-ssl.com/wp-content/uploads/sites/86/2020/09/Right-of-Rivers-Report-V3-Digital-compressed.pdf> [<https://perma.cc/JLG7-4QD5>].

⁷ Jessica Eisen & Kristen Stilt, *Protection and Status of Animals*, in *MAX PLANCK ENCYCLOPEDIA OF COMPARATIVE CONSTITUTIONAL LAW* ¶ 1 (Rainer Grote, Frauke Lachenmann & Rüdiger Wolfrum eds., 2016), Oxford Constitutional Law (article updated Dec. 2016).

⁸ *Id.* ¶¶ 26–35.

⁹ *Id.* ¶¶ 11–17.

¹⁰ *Id.* ¶¶ 36–38.

¹¹ *Id.* ¶¶ 39–41.

¹² *Id.* ¶¶ 18–25.

¹³ *Id.* ¶¶ 47–56.

¹⁴ *Id.* ¶¶ 42–46.

¹⁵ *Id.* ¶¶ 63–65.

¹⁶ See KONSTITUTSIJA ROSSIĬSKOĬ FEDERATSII [KONST. RF] [CONSTITUTION] art. 114(1)(e⁵) (Russ.), *translated in* WORLD CONSTITUTIONS ILLUSTRATED (HeinOnline, 2020). The year accompanying each country listed above indicates when the provision was added to an existing constitution or when a new constitution with the provision was adopted.

¹⁷ Eisen & Stilt, *supra* note 7, ¶ 45.

¹⁸ *Id.* ¶ 31.

¹⁹ *Id.* ¶ 23.

²⁰ *Id.* ¶ 12.

²¹ *Id.* ¶ 36.

²² *Id.* ¶ 69.

²³ The desire for more rights is not an unqualified positive, as some have argued. While an important question, this Essay does not engage in that debate.

a human right to a healthy environment has played in the development of environmental rights and rights of nature, and then it discusses the relevance of this experience for animal rights. In Part II, it turns to how rights of nature have been interpreted and applied in several prominent court decisions and suggests insights that animal rights can take from this jurisprudence. Given the brevity of Forum essays, I cannot be comprehensive. Rather, I chart out the range of my arguments and support them with some notable examples, with the intention to treat this topic more fully in a future work.

I. A HUMAN RIGHT TO A HEALTHY ENVIRONMENT, A HUMAN RIGHT TO ANIMAL PROTECTION

The anthropocentric formulation of a human right to a healthy environment initially may not seem like a helpful framing for the cause of animal rights, but it is actually very instructive. “Rights of Nature” have roots in two sources. First, these rights emerged from a recent recognition that current environmental law, including the human right to a healthy environment, has failed to address the global ecological crisis and notably climate change.²⁴ Second, indigenous traditions and jurisprudence “that have always treated humans as part of nature, rather than distinct from it,” have long provided a rights of nature framework and approach.²⁵ The widespread acceptance of a human right to a healthy environment served as part of the foundation for the development of a stronger rights of nature approach, which synergistically connected with indigenous approaches to nature.

In an animal context, an analogous formulation would be a human right to animal protection, a right of humans to have all animals adequately protected. This may sound like awkward phrasing, but such an approach does closely match how, in general, legal systems currently treat animals.²⁶ That is, animal interests are protected to the extent that humans want them to be and benefit from those protections and limitations.

An anthropocentric approach to animal protection along these lines is likely politically more acceptable than an animal rights–based approach. If it were widely adopted, however, it could serve merely to

²⁴ INT’L RIVERS ET AL., *supra* note 6, at 6.

²⁵ *Id.* In the animal law context, more research is needed on the alignment of beliefs in indigenous communities with animal rights approaches — a partnership that has been important in the contemporary rights of nature movement. Due to issues such as whaling and seal hunting, this alignment has proven difficult, but with thoughtful engagement, it is within reach. See generally Maneesha Deckha, *Unsettling Anthropocentric Legal Systems: Reconciliation, Indigenous Laws, and Animal Personhood*, 41 J. INTERCULTURAL STUD. 77 (2020).

²⁶ There is a long line of thinking in animal protection that preventing cruelty to animals is also beneficial for humans. One strand of this thinking focuses on a connection between violence against animals and violence against humans, referred to as the “link” theory. For a discussion and critique of this theory, see JUSTIN MARCEAU, *BEYOND CAGES* 193–250 (2019).

entrench the status quo in animal law. Alternatively, a human right to animal protection could offer the possibility of far more robust protection than currently exists under animal welfare laws. Because different humans will have different ideas about what the protection of animals should involve, a human right could allow more protective views to be recognized. It could also provide an intermediate step to animal rights, laying a foundation for future expansion. More needs to be known about the evolution from the right to a healthy environment to rights of nature, and how animal rights might be able to follow a similar path.

II. RIGHTS OF NATURE, RIGHTS OF ANIMALS

Ecocentric or biocentric approaches that lodge a right in nature or its component parts also may be promising for the development of legally recognized animal rights. Rights of nature are not widespread, but they have potential for growth and impact. At the constitutional level, Ecuador was the first to recognize the rights of nature. Article 71 begins: “Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.”²⁷ Bolivia adopted this approach through the Law on the Rights of Mother Earth (2010);²⁸ the enumerated rights are the rights to life, diversity of life, water, clean air, equilibrium, restoration, and pollution-free living.²⁹ Other countries have recognized the right in judicial opinions.³⁰

A. *Animals as Part of Nature*

At the most fundamental level, if nature has rights, and if nature includes animals, then rights-based claims could be made on behalf of animals using existing rights of nature doctrine and strategy. A 2008 case from the Superior Court of Justice in Brazil, known as the Wild Parrot case, illustrates this possibility.³¹ The case involved an individual who had kept a single wild animal, a blue-fronted parrot, in custody for

²⁷ CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR [CONSTITUTION] 2008, art. 71, *translated in* WORLD CONSTITUTIONS ILLUSTRATED (HeinOnline, Jefri Jay Ruchti, ed., Maria Del Carmen Gress & J.J. Ruchti, trans., 2018).

²⁸ Ley de Derechos de la Madre Tierra [Law of the Rights of Mother Earth], Ley 071 (2010) (Bol.).

²⁹ *Id.*

³⁰ See INT’L RIVERS ET AL., *supra* note 6, at 15–49.

³¹ S.T.J., No. 1.797.175/SP, Relator: Ministro OG Fernandes, 21.03.2019, Revista Eletrônica da Jurisprudência [R.S.T.J.], 13.05.2019 (Braz.), https://processo.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=1806039&num_registro=201800312300&data=20190513&peticao_numero=-1&formato=PDF [<https://perma.cc/TZ76-P4E3>] (translation on file with the Harvard Law School Library) [hereinafter Wild Parrot Case].

more than two decades and in inadequate living conditions.³² This parrot was considered a wild species; this no doubt facilitated the connection to nature, but the court engaged in language that stretched beyond concern for a wild species. The court cited article 225 of the constitution as evidence for Brazil's "ecological approach."³³ Article 225 is an anthropocentric human right to an "ecologically balanced environment," not a rights of nature provision, and the constitutional framing of animal protection comes through an environmental, "fauna and . . . flora" framework.³⁴ What is remarkable is that the court took this limited language as a starting point to reach a discussion of rights of nature and recognition of sentient beings in general.

The court called for a rethinking of the "Kantian, anthropocentric and individualistic concept of human dignity."³⁵ Dignity should be reformulated to recognize "an intrinsic value conferred to non-human sensitive beings, whose moral status would be recognized and would share with the human beings the same moral community."³⁶ The treatment of animals "must be based no longer on human dignity or human compassion, but on the very dignity inherent in the existence of nonhuman animals."³⁷ The court brought together two strands of jurisprudence: the protection of animals in the German and Swiss Constitutions³⁸ and the rights of nature language in the Ecuadorean Constitution and Bolivian Law on the Rights of Mother Earth. By doing so, it reached a language of rights: "This view of nature as an expression of life in its entirety enables the Constitutional Law and other areas of law to recognize the environment and non-human animals as beings of their own value, therefore deserving respect and care, so that the legal system grants them the ownership of rights and dignity."³⁹ The court conceptually moved nonhuman animals out of the environmental constraints of article 225 to attain their own independent status, for which the court advocated both rights and dignity.

B. Nonhuman Rights

Even if the concept of nature is not currently understood to include individual animals, provisions recognizing the rights of nature still implicitly acknowledge that a nonhuman can have rights. This may seem

³² *Id.* at 2–3.

³³ *Id.* at 9.

³⁴ CONSTITUÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 225 (Braz.), *translated in* WORLD CONSTITUTIONS ILLUSTRATED (HeinOnline, Jefri Jay Ruchi, ed., Keith S. Rosem, trans., 2020).

³⁵ Wild Parrot Case, *supra* note 31, at 10.

³⁶ *Id.*

³⁷ *Id.* at 12.

³⁸ See Eisen & Stilt, *supra* note 7, ¶¶ 22–24, 28–29.

³⁹ Wild Parrot Case, *supra* note 31, at 14.

obvious since corporations and other nonhuman entities are legal persons and have rights, but entities such as rivers or ecosystems traditionally have not been extended the same recognition by legal systems worldwide. Rivers have been treated as legal persons in some jurisdictions, notably in Bangladesh,⁴⁰ Colombia,⁴¹ Ecuador,⁴² India,⁴³ New Zealand,⁴⁴ and the United States.⁴⁵

One of the most significant cases involving river rights was decided by the Constitutional Court of Colombia in 2016 (the Atrato River Case).⁴⁶ The plaintiffs challenged the pollution and degradation that industrial and illegal mining and logging had caused to the Atrato River basin, the tributaries, and surrounding territories.⁴⁷ They showed that the Atrato banks were the ancestral home to Afro-Colombian and indigenous communities such as themselves.⁴⁸ The river provided a subsistence means of living based on agriculture, hunting, fishing, and artisanal mining.⁴⁹ The plaintiffs asked the court to protect their fundamental rights to life, health, water, food security, a healthy environment, and the culture and territory of their ethnic communities.⁵⁰ They also asked the court to impose measures to address the crisis in the Atrato River basin resulting from the environmental pollution and degradation.⁵¹

⁴⁰ See INT'L RIVERS ET AL., *supra* note 6, at 47.

⁴¹ See *id.* at 23.

⁴² See *id.* at 33.

⁴³ See *id.* at 44.

⁴⁴ See *id.* at 17.

⁴⁵ See *id.* at 39. In India, the decisions have been stayed by the Supreme Court. *Id.* at 46. In the U.S. context, Native American tribal jurisdictions have led the way in recognizing rights of nature. The Navajo Nation Code Annotated, tit. I, § 205 (2014), states that “[a]ll creation, from Mother Earth and Father Sky to the animals, those who live in water, those who fly and plant life have their own laws and have rights and freedoms to exist.” The publication of Christopher D. Stone’s *Should Trees Have Standing? — Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972), was influential for Justice Douglas, dissenting in *Sierra Club v. Morton*, 405 U.S. 727, 741–42 (1972) (“Contemporary public concern for protecting nature’s ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation.”). Recently, some local governments in the United States have attempted to declare that natural communities and ecosystems have rights. For a discussion of these efforts, see David R. Boyd, THE RIGHTS OF NATURE 109–30 (2017).

⁴⁶ Corte Constitucional [C.C.] [Constitutional Court], noviembre 10, 2016, Sentencia T-622/16 (Colom.), <https://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm> [<https://perma.cc/CP7X-3NCJ>], translated in *Center for Social Justice Studies v. Presidency of the Republic, Judgment T-622/16, Constitutional Court of Colombia (Nov. 10, 2016), The Atrato River Case*, DIGNITY RTS. PROJECT, <http://files.harmonywithnatureun.org/uploads/upload838.pdf> [<https://perma.cc/SF8R-W8EC>] [hereinafter Atrato River Case].

⁴⁷ *Id.* § I.2.1.

⁴⁸ *Id.* § I.1.

⁴⁹ *Id.*

⁵⁰ *Id.* § I.2.10.

⁵¹ *Id.*

While the plaintiffs framed their claims as rights of the individuals living in the Atrato River basin, the court did not limit itself to a consideration of anthropocentric rights. For the court, the importance of nature “[was] established, of course, in reference to the humans that inhabit it and the need to count on a healthy environment to live a dignified life in conditions of well-being; but [nature’s importance was founded] also in connection with the other living organisms with whom the planet is shared, *understood as entities deserving of protection in and of themselves*.”⁵² Nature was a subject of rights.⁵³

Thus, theoretically, the rights of nature may be violated even in the absence of any injury to humans. A decision from the Inter-American Court of Human Rights made this point clearly: “The Court consider[ed] it important to stress that, as an autonomous right, the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers, and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals.”⁵⁴

An excellent example of an approach that leads with the rights of nature is the Turag River case, decided by the Supreme Court of Bangladesh in 2019.⁵⁵ Through time-sequenced photographs, a news article that the court relied on in its decision showed the encroachment on the Turag River due to “river-grabbers,” pollutants, and the failure to keep the river navigable through dredging.⁵⁶ Despite laws and many judicial decisions, encroachers walled off land in the river and deployed bulldozers and excavators to fill their newly claimed territory, expanding the reach of dry land at the river’s expense.⁵⁷ The same actions were taking place in other rivers in the capital of this “riverine country.”⁵⁸ The NGO Human Rights and Peace for Bangladesh brought the case to eject all the illegal occupiers and stop landfilling and construction activities on the river’s territory.⁵⁹

The Turag River itself was at the center of the case from the outset. But the river for its own sake? The court echoed the language of the

⁵² *Id.* § IV.9.27.

⁵³ *Id.* § IV.9.31.

⁵⁴ The Environment and Human Rights (Arts. 4(1) and 5(1) in Relation to Arts. 1(1) and 2 American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 62 (Nov. 15, 2017), https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf [<https://perma.cc/W3HZ-LPX9>].

⁵⁵ Bangladesh Supreme Court, High Court Division, Writ Petition No. 13898/2016 (2019) (official translation on file with the Harvard Law School Library) [hereinafter Turag River Case].

⁵⁶ See *id.* at 3; Tawfique Ali, *Time to Declare Turag Dead*, DAILY STAR (Nov. 6, 2016), <https://www.thedailystar.net/frontpage/time-declare-turag-dead-1310182> [<https://perma.cc/R5NL-WA6M>].

⁵⁷ See Ali, *supra* note 56.

⁵⁸ See Turag River Case, *supra* note 55, at 3.

⁵⁹ *Id.* at 4.

Daily Star article, speaking in terms of the Turag becoming a “dead river”⁶⁰ or facing “extinction” if the activity was not stopped.⁶¹ The court also acknowledged that the occupation and pollution had caused a “major shortage of potable water, for which people are constantly facing health risks.”⁶² And given the centrality of waterways to Bangladesh, “[d]estroying the rivers is . . . the same as our collective suicide.”⁶³ As a last resort to save the river, the court declared the Turag and indeed all rivers in the country legal persons.⁶⁴ It also ordered the removal of all unlawful pollution and construction and issued seventeen other wide-ranging orders.⁶⁵ The Turag River case and others show that rights can be lodged in a nonhuman, but in practice the human rights are also significant components.

C. Nonhuman Remedies and Enforcement

Finally, the remedies discussion in rights of nature cases demonstrates that there are adequate ways for humans to assess and implement the desires and needs of nonhuman entities. In what is known as the Deforestation Case, the Superior Court of Justice in Brazil held that in addition to the requirement to restore the damage caused to the environment, a defendant may also be required to pay monetary damages, or “pure ecological damage,” for “degrading nature in itself, an asset that is not and cannot be owned.”⁶⁶ Applied to the animal context, it could stand for the principle that wrongful treatment of an animal, for example, could require the payment of compensation without any particular showing of physical harm. The payment would presumably go into a trust established to support the needs of the animal or her ecosystem.

In the animal context, the idea that humans are capable of making such an assessment has been questioned. In *Naruto v. Slater*,⁶⁷ the Ninth Circuit took a generally irritated tone toward the organization that brought the case on behalf of Naruto, a crested macaque.⁶⁸ Concurring in part, Judge Smith stated: “But the interests of animals? We are really asking what *another species* desires. . . . We have millennia of

⁶⁰ *Id.* at 4.

⁶¹ *Id.* at 54.

⁶² *Id.* at 4.

⁶³ *Id.* at 449.

⁶⁴ *Id.*

⁶⁵ *Id.* at 449–50.

⁶⁶ S.T.J., No. 1.145.083/MG, Relator: Ministro Heman Benjamin, 27.09.2011, Revista Eletrônica da Jurisprudência [R.S.T.J.], 04.09.2012, 10 (Braz.), https://processo.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=975073&num_registro=200901152629&data=20120904&formato=PDF [<https://perma.cc/FW7S-C6Q8>] (translation on file with the Harvard Law School Library).

⁶⁷ 888 F.3d 418 (9th Cir. 2018).

⁶⁸ *Id.* at 420.

experience understanding the interests and desires of humankind. That is not necessarily true of animals.”⁶⁹ If so — and without conceding the point — that is also not necessarily true of rivers, forests, or ecosystems, but courts that grant rights to nature routinely appoint guardianship bodies to make these determinations.⁷⁰

There is a limit to the analogy between nature and nonhuman animals that appears at the stage of remedies in some cases and goes to the heart of the comparison. For a river, the component of nature for which there is the most extensive case law, courts typically speak in terms of “rights that imply its protection, conservation, maintenance” and “restoration,” as in the Atrato River Case.⁷¹ That court sought to have the conditions of the river improved so that the human communities could again make full use of the river for agriculture, hunting, fishing, and artisanal mining. The remedy raises a deeper question, one that the court did not ask: What is the intrinsic purpose of a river? The implication of rights of river judgments is not that a river simply seeks to be left alone. The purpose of a river in these decisions is to serve humans, through access to water, transportation, and the animals who live in them.

The rights that advocates seek for animals are far more robust and categorically reject that the inherent purpose of an animal is to serve human interests and uses. In the habeas corpus cases, the animals are in captivity, such as in a zoo or research facility.⁷² The plaintiffs seek release of these animals to a setting in which they can live more natural lives, such as a sanctuary, given that these animals generally cannot be placed in a fully natural, wild environment.⁷³ While the presumption is

⁶⁹ *Id.* at 432 (Smith, J., concurring in part).

⁷⁰ INT’L RIVERS ET AL., *supra* note 6, at 8.

⁷¹ Atrato River Case, *supra* note 46, § IV.9.32.

⁷² See, e.g., Cámara del Fuero Contencioso Administrativo y Tributario [CABA] [Chamber of Appeals in Contentious Administrative and Tax Matters], Buenos Aires, sala 1, 14/06/2016, “Asociación de Funcionarios y Abogados por los Derechos de los Animales y Otros c. GCBA s/ Amparo,” (Arg.), 3, <https://www.animallaw.info/sites/default/files/1%20%20E2%80%209CASOCIACION%CC%81N%20DE%20FUNCIONARIOS%20Y%20ABOGADOS%20POR%20LOS%20DERECHOS%20DE%20LOS%20ANIMALES%20Y%20OTROS%20C%3A%20GCBA%20S%3A%20AMPARO%20E2%80%209D%20.pdf> [<https://perma.cc/7LD3-XCDG>] (translation on file with the Harvard Law School Library); Corte Constitucional [C.C.] [Constitutional Court], enero 23, 2020, Sentencia SU-016/20 (§§ I.1 to .3) (Colom.), <https://www.corteconstitucional.gov.co/comunicados/Comunicado%20No.%2003%20del%2023%20de%20enero%20de%202020.pdf> [<https://perma.cc/9EX8-UCYL>] (translation on file with the Harvard Law School Library). For an overview of habeas corpus cases brought in the United States on behalf of nonhuman animals, see *Challenging the Legal Thinghood of Autonomous Nonhuman Animals*, NONHUMAN RTS. PROJECT, <https://www.nonhumanrights.org/litigation> [<https://perma.cc/69P9-UU7M>].

⁷³ CABA, 14/06/2016, “Asociación de Funcionarios y Abogados por los Derechos de los Animales y Otros c. GCBA s/ Amparo,” 2, 14; C.C., enero 23, 2020, Sentencia SU-016/20 (§§ I.1 to .3).

that the transfer to better environments would aid in the protection, conservation, maintenance, and restoration of these animals, the point was not that the animals will look and feel better for any kind of human benefit. The remedy of habeas corpus seeks to release the animals from a human environment so that they could be, to the extent possible, left alone to be animals.

This difference in the issue of remedies and their enforcement may be significant and may project back onto the fundamental question of whether humans will recognize animal rights at all. Rights of nature call for some major changes in the way that humans live in the world, as seen in the above cases. Viewed from the remedy angle, the rights of animals are an even greater challenge to the behavior of humans. Rights of animals impact fundamental questions such as what humans eat and drink, what they wear, and what kinds of entertainment they engage in, to name just a few. A judge may seek to avoid remedies that would alter human behavior in dramatic ways, and the mere possibility of these remedies may also work to undermine the cause of action itself.⁷⁴

Rights of nature approaches are instructive to the cause of animal rights, intellectually and practically. They do not offer a model to be copied wholesale, but instead call for careful study of the parallels and points of disconnection, of the commonalities and the conflicts, with the potential for significant results.

⁷⁴ I thank Doug Kysar for the point that this also works in reverse; a judge in a jurisdiction with weak enforcement might be willing to go further with a finding of animal rights, knowing that the implications are unlikely to be seen as a practical matter.