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Articulating the Theory of Right-Holding and the Rights of Nature under Earth Jurisprudence

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Abstract: One of the core tenets of Earth Jurisprudence is the facilitation of legal rights for natural entities, known collectively as the 'rights of nature'. A major defect in the theory is that neither the optimal substantive content of these rights, nor the conception of right-holding upon which they rely, has been rigorously and coherently expounded in the existing literature. This article investigates the philosophical basis for an expanded theory of right-holding which permits certain ecological subjects, interrogating competing approaches in light of Earth Jurisprudence principles, and determines the entities to which the rights of nature can accrue. It also elaborates the ideal substance of these rights, analysing a range of candidate schemes with reference to the literature and to legal systems in which the rights of nature have already been implemented.

Keywords: rights of nature, Earth Jurisprudence, right-holding, Kramerian theory, environmental rights, environmental philosophy, environmental law

A. INTRODUCTION

The continued exploitation of the natural world by human agents has precipitated an environmental crisis of stunning proportions.[1] Acts of exploitation are almost invariably performed within a system of legal governance that may, at times, prohibit or condition them, but generally grants them express endorsement.[2] In this context, the relationship between law and the natural realm has been considered from numerous angles.[3] One of the many products of this extended discourse is a novel legal philosophy known as Earth Jurisprudence, which challenges classical Western legal theories in several radical ways. Earth Jurisprudence makes claims concerning general jurisprudence—offering a novel answer to what the concept of law is—and also to specific aspects of legal theory. One of the most significant components of Earth Jurisprudence is its facilitation of the 'rights of nature', a bundle of moral and legal claim-rights that certain natural entities enjoy. These rights, proponents argue, follow logically from, and are justified by, the premises of the philosophy, the most foundational of which operate to remove unjustified, embedded anthropocentrism in our understanding of law.

However, the treatment of the rights of nature by Earth Jurisprudence scholars is currently defective in two main respects. Firstly, no scholar has expounded, with sufficient analytic rigour, an account of a compatible theory of right-holding. It therefore remains unclear

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[1] Julian Saurin, 'Global Environmental Crisis as the 'Disaster Triumphant': The Private Capture of Public Goods' (2001) 10(4) Environmental Politics 63.

[2] Eva Johnson, *Mineral Rights: Legal Systems Governing Exploration and Exploitation* (KTH Sweden 2010).

[3] Richard Brooks and Ross Jones, *Law and Ecology: The Rise of the Ecosystem Regime* (1st edn, Routledge 2002).

which natural entities, or categories thereof, are capable of holding claim-rights in the first instance, and why they do or do not have this capability. Secondly, different writers and jurisdictions have offered different accounts of the substantive content of the rights of nature. These accounts are not all properly justified; some elements do not follow from Earth Jurisprudence principles, and others appear redundant. In this article, I aim to cure both defects. Following a brief exposition of the history and main ideas of Earth Jurisprudence in Part B, I will examine the most common theories of right-holding in Sections C.I and C.II, and, in Section C.III, construct the theory of right-holding that, in my view, derives from and coheres with the principles of Earth Jurisprudence. Subsequently, in Part D, I will chart the substance of the rights of nature across the literature and as they have been implemented in practice, before offering an ideal model of these rights and their accompanying obligations and entitlements. The final section concludes.

It is worth reflecting upon the scope and nature of the project undertaken in this article before embarking upon any substantive analysis. In essence, I argue that it can be viewed in one of two ways. First, the project could be approached from the perspective of someone who is already convinced by the normative strength of Earth Jurisprudence. In this case, the theory of right-holding and doctrine of rights presented in this article would stand in a normatively superior position as compared to accounts which are incompatible with Earth Jurisprudence, which includes those discussed in Sections C.I, C.II, and D.I. From this viewpoint, the consequence of my argument is that incompatible accounts should be rejected in favour of the account outlined in Sections C.III and D.II. In other words, if one accepts that Earth Jurisprudence is correct as a matter of ethics, it follows that right-holding and rights should be reconceptualised according to the account offered. Alternatively, the project could be approached from a position that is neutral on whether Earth Jurisprudence is normatively superior. In that case, the theory of right-holding and doctrine of rights presented in this article is on an equal normative footing with the main accounts explored. What it is, however, is the best account that is compatible with Earth Jurisprudence. Within the four corners of Earth Jurisprudence, it is analytically superior to other possible theories—including that provided by Thomas Berry. In other words, the project is concerned with adopting the claims of Earth Jurisprudence as a series of premises, examining which conclusions emerge as possible accounts of rights, and determining which of these is the best.

Under the first approach, this article presents an account which is normatively justified. Under the second, the account is not justified in this way, but is merely the optimum account of rights that is available under Earth Jurisprudence. The reason that both approaches can be

taken is that nowhere in this article will I attempt to offer a foundational justification of Earth Jurisprudence. That is a question of ethics which is quite beyond the scope of the article. Nevertheless, under either approach, I suggest that there are times within this article where it has exerted revelatory force. In particular, when interrogating the Kramerian approach to right-holding, reasoning empowered by Earth Jurisprudence has revealed the profound anthropocentrism that underlies many of the ethical convictions that guide and inform the theory. Whether such anthropocentrism is justified is a separate question, but Earth-centric thinking sheds light on its existence and provokes thought on the legitimacy of its foundation. This is a valuable part of the dialogue that allows for novel ways of thinking in this field.

B. EARTH JURISPRUDENCE: A BRIEF SKETCH

Whilst Earth Jurisprudence is generally thought to have emerged as a philosophy in its own right in 1999, with the publication of Thomas Berry's seminal text, *The Great Work*,[4] many of its core ideas have a long and developed pedigree. The earliest direct call for rights for natural entities beyond sentient non-human animals appears to have been made in 1867,[5] and was developed in several works penned throughout the latter half of the twentieth century.[6] Concurrently, in environmental ethics, the theory of deep ecology, which in many ways prefigures the more metaphysical elements of Earth Jurisprudence, began to gain prominence.[7] Nevertheless, *The Great Work* represents the starting point for Earth Jurisprudence as a philosophy of law. In this book, Berry noted that relations between human agents do not compose the cosmos; humanity exists as an element of the Earth community, which itself is just one part of the universe. He then expressly denounced the reflexive nature of human institutions, arguing that the ethical and legal theories which underlie them are effective in evaluating human actions involving other human beings—suicide, murder, torture, slavery, silencing, incarceration, and so on—but fail to rigorously prevent the destruction of large ecological units or the Earth system itself.[8] He averred that human agents have clear moral responsibilities towards the natural world, and that these responsibilities require systems of legal governance to reject anthropocentrism and extend protection to nature. For Berry, this moral obligation arises from the fact that, just like other species, humanity is interconnected with, and dependent upon, other functioning components of the Earth community.[9] As a result,

[4] Thomas Berry, *The Great Work: Our Way into the Future* (Harmony / Bell Tower 1999).
[5] John Muir, *A Thousand-Mile Walk to the Gulf* (Houghton Mifflin Co 1917 [1867]).
[6] Discussed in Alessandro Pelizzon, *Ecological Jurisprudence* (Springer 2025) 173-176.
[7] For an overview of the theory, see Bill Devall and George Sessions, *Deep Ecology* (Gibbs Smith 2007).
[8] Berry (n 4) 104.
[9] ibid 77.

the denial of the rights of natural beings is an unsustainable manifestation of the fallacious view that nature exists primarily for human use and exploitation.[10]

Berry proposed that natural entities enjoy "the right to be, the right to habitat, and the right to fulfill [their] role in the great community of existence" and, additionally, "the right not to be abused by humans, a right not to be despoiled of [their] primary dignity whereby it gives some manner of expression to the great mystery of existence, and a right not to be used for trivial purposes."[11] In addition, in a separate text, Berry made a number of brief comments justifying these rights.[12] He asserted that the ultimate source of rights is existence itself, and the universe, 'self-referent' in being and 'self-normative' in action, is the 'primary referent' for all derivative entities. Since the universe is composed of a communion of subjects, and not a collection of objects, the components of the universe are the subjects of the rights that he articulates.[13]

Whilst I will reserve my evaluative comments on Berry's version of Earth Jurisprudence for a later juncture, it is worth noting at this stage that such a view constitutes an extraordinarily radical reimagining of the nature and function of rights. Rather than serving a salutary role in regulating interactions and relations between human agents, which is the principal purpose envisioned by the conception of rights that dominates orthodox Western theories, rights are thought to follow from the constitutive structure of the cosmos itself, which is the final source of moral norms.

Earth Jurisprudence was developed significantly by Cormac Cullinan in his text Wild Law,[14] and by the contributors to Exploring Wild Law, a later volume edited by Peter Burdon.[15] Cullinan developed the concept of the Great Jurisprudence, which describes the principles by which the universe itself operates—in particular, how various natural entities interact in trophic and symbiotic relations, flourish, and evolve. He argued that human institutions and systems of governance ought to align with the Great Jurisprudence. Indeed, the concept of law itself, when constructed from an Earth-centric perspective, is quite different.[16] These propositions, which represent the position of Earth Jurisprudence on matters of general jurisprudence, are somewhat beyond the scope of this article, except to the extent that it is vital to recognise that the orthodox

[10] ibid 133.
[11] ibid.
[12] Thomas Berry, 'The Origin, Differentiation, and Role of Rights' (1 November 2001) <https://www.ties-edu.org/wp-content/uploads/2018/09/Thomas-Berry-rights.pdf> accessed 9 October 2025.
[13] ibid paras 1-3.
[14] Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (2nd edn, Bloomsbury 2011).
[15] Peter Burdon, *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press 2011).
[16] Cullinan (n 14) 29-31.

understanding of law, and the jural conceptions which flow from it, are marred by a pervasive—and, under Earth Jurisprudence, unjustified—anthropocentrism. The other aspect of the Great Jurisprudence is the principle of integrity, a paramount ethical consideration under Earth Jurisprudence which is discussed further throughout Parts C and D.

I have elsewhere outlined seven 'central theses' which, I suggest, emerge from a careful reading of all the Earth Jurisprudence literature.[17] The first three of these mirror Cullinan's propositions as to the Great Jurisprudence and the Earth-centric concept of law, and are largely irrelevant to the present exercise. The second set of three relates to the rights of nature: that all members of the Earth community must be the subjects of legal rights; that some of these rights are fundamental and therefore absolute; and that the remaining qualified rights must be balanced according to the terms of the Great Jurisprudence. The latter two of these, the last of which I have already criticised,[18] are the subject of Part D of this article, whilst the first is covered in Part C. The final thesis is that legal concepts must be understood and interpreted with reference to the Great Jurisprudence. This, in particular, requires a paradigm shift in legal reasoning. Essentially, it invites us to reconsider the nature of legal concepts in light of how they fit with the workings of the Earth community as a whole, not merely the socioeconomic considerations that usually inform them. In other words, it alludes to the point made above—that orthodox legal reasoning is underpinned by an anthropocentric worldview. As such, it operates as an undercurrent in much of the ensuing discussion.

Two further clarifications are in order. First, Earth Jurisprudence is best seen as a member of a family of legal philosophies, each of which is a form of 'ecological jurisprudence'. An important recent work by Alessandro Pelizzon traces the history of some of these sister theories.[19] None of them is coextensive, and indeed each possesses distinguishing features—Klaus Bosselmann's, for instance, is centred on human duties towards the environment, rather than the rights of nature.[20] What they all have in common, however, is an aspiration to bring law in harmony with ecological principles,[21] even if the level of abstraction at which this project is undertaken differs for each philosophy. However, this article is only concerned with Earth Jurisprudence itself. Second, although the rights of nature have been recognised in many jurisdictions, as I will explore in Section D.I, only a handful of these amount to a holistic

[17] Kaden Pradhan, 'Earth Jurisprudence and Land Law: A Critique of the Philosophical and Economic Foundations of the Modern Law of Real Property' (2025) 10 LSE Law Review 295, 312ff.
[18] ibid 319.
[19] Pelizzon (n 6) 182-191.
[20] ibid 187.
[21] ibid 188.

adoption of Earth Jurisprudence principles. Although I will strive to develop an ideal model for the rights of nature, such a model will naturally be enriched by comparisons and contrasts with these jurisdictions. It remains the case, however, that I will not be directly evaluating them as self-contained units.

C. RIGHT-HOLDING UNDER EARTH JURISPRUDENCE

1. The Main Approaches to Right-holding

A theory of right-holding is required because the theory of rights itself places no inherent limits on the class of potential right-holders. According to the classic Hohfeldian analysis,[22] A holds a claim-right vis-à-vis B when that right is deontically protected; that is, when any interference or non-cooperation that either fails to fulfil the terms of the right, or worsens A's position with respect to the content of the right, is prohibited. The existence of such a claim-right entails the existence of a correlative duty incumbent upon B, which renders such interference or non-cooperation impermissible. The content of the claim-right can either be moral or legal. In the former case, A might have a moral claim-right vis-à-vis all other human agents, for instance, not to be subject to physical abuse. This means that all human agents are under a moral duty not to interfere with that right—not to subject A to physical abuse. In the latter case, a statute or contract might confer a legal claim-right upon A vis-à-vis B to, for instance, demand £500 in costs from B. It follows that B is under a legal duty to pay the £500. Non-cooperation is particularly important here, as it is not permissible for B to refuse to pay the £500 in a way which contravenes the terms of the claim-right, and B's legal duty is therefore one of positive action.

Whilst the Hohfeldian analysis demarcates the form of the relationship A and B must be a part of in order for either of them to hold a claim-right, it sets no limits to either the content of the right or the set of agents between which such a relationship can obtain. As regards moral claim-rights, the limits are, of course, set by the particulars of whatever ethical philosophy underlies the assertion of those rights. Hence, certain utilitarians would deny that A always has a moral claim-right against torture vis-à-vis the State if, for instance, the exercise of that torture would increase aggregate or average utility across society.[23] Conversely, certain deontologists would hold that such a moral claim-right always exists.[24] As regards legal claim-rights, the limits to content are set by the legal norms of the system in question, some of which also bear

[22] Leif Wenar, 'Rights', *The Stanford Encyclopedia of Philosophy* (Spring edn 2023) para 2.1.
[23] Fritz Allhoff, 'Terrorism and Torture' (2003) 17(1) International Journal of Applied Philosophy 105.
[24] Bob Brecher, *Torture and the Ticking Bomb* (Blackwell 2007).

upon certain parties' legal powers to make contracts of certain kinds and thereby generate new claim-rights.

As for the set of agents who can hold a claim-right in the first instance, a separate theory is needed to define what does and does not fall within that set. The same is true for other Hohfeldian entitlements—liberties, powers, and immunities—although it is with claim-rights that I am principally concerned. At least two major camps have emerged from the extensive debate on this issue, two of which are particularly dominant—the will and interest theories—and it is on these two strains which I will focus.

Will theorists essentially maintain that for a right to accrue to any agent, that agent must acquire 'control' of the correlative duty.[25] In order to make such an acquisition, they must be able to do so, in terms of capacity. Control consists in a series of accompanying legal powers: a type of Hohfeldian entitlement which enables one party to change another's legal position; that is, generate new claim-rights and duties. According to HLA Hart's classic account, before a duty is violated, a right-holder must have the powers to maintain or extinguish the correlative duty; after it is violated, to demand enforcement of or waive the duty; and, after judgment is issued in their favour, to demand enforcement of or waive the ensuing remedy.[26] The existence of all of these powers at each relevant stage, alongside capacity, is individually necessary and jointly sufficient to render the agent a right-holder.

The powerful attraction to the will theory is that it coheres with a commonly held conception of the function of rights. For most people, right-holding entails a particular kind of authority or 'sovereignty' over another person's actions. Someone who holds a right would expect it to be accompanied by many of the powers that Hart specifies, and might be dismayed to find any of the powers lacking—indeed, they may view it as a failure of the legal system in question. However, the will theory also seems over-exclusive. In the first instance, consider the requirement of capacity inherent in acquisition. This can be read factually, in terms of an agent's actual capabilities to declare a waiver or pursuit of enforcement; morally, in terms of the presence of an underlying moral entitlement to do so; or legally, in terms of whether such a declaration, if made, would be effective at law.[27] In any of the three cases, however, a number of parties—such as individuals with psychiatric disorders, certain children, comatose and deceased people, non-human animals, future generations, and so on—are immediately excluded from the class of potential right-holders. Since the members of each of these groups

[25] Classically, HLA Hart, *Essays on Bentham* (Clarendon 1982) 183-184.
[26] ibid.
[27] This tripartite reading comes from Neil MacCormick, *Legal Right and Social Democracy* (OUP 1984) 156.

do not have capacity, they cannot acquire control, and, therefore, cannot hold rights. This seems problematic. Moreover, a number of other objections could be made, including that many of the most important claim-rights that people hold, the right not to be tortured, for instance, are unwaivable in law, which would mean that those rights cannot be genuinely held. As Matthew Kramer has observed, many of these objections are, in effect, question-begging. There is a presumption that children, animals, and so on *ought* to be right-holders, and the right against torture *ought* to be one that is genuinely held, and the objections therefore arise from preconceptions rather than raw analysis.[28] He has shown, however, that the will theory is also impugnable on its own terms—most private-law rights do not actually include a power to maintain the existence of the duty, per se, before the violation; the duty merely remains in existence by the operation of the general law—such that the vast majority of private-law rights are rendered unsusceptible to holding, a conclusion most will theorists would be anxious to avoid.[29]

Aside from the objections already raised, a separate question is whether the will theory can be sustained under Earth Jurisprudence principles. The short answer is no. Under Earth Jurisprudence, legal concepts must be evaluated in light of their place in the schema of the natural world as a whole. If the capacity requirement is read as legal, the vast majority of the members of the Earth community are denied the capacity to hold rights at all; if it read as factual, then the same majority will be unable to communicate a waiver or pursuit of enforcement, even if they can form and deliberate upon those decisions in the first place. The moral reading is the most forgiving to Earth Jurisprudence, but even then, if a form of moral capacity is admitted to natural entities, and they can therefore acquire the accompanying powers doctrinally, they are completely unable to exercise them on their own behalf. The capacity requirement expressly restricts right-holding to human agents, and to a particular subset of human agents at that; in this way, it betrays its intrinsic anthropocentrism. The core notion that a right is held when the right-holder can independently exert authority or sovereignty with respect to the correlative duty also rests on an anthropocentric worldview. This results from the fact that the legal powers that Hart postulates themselves presuppose capacity, in both a factual and legal sense. The exercise of 'will' in this regard is an exercise of a distinctly human will.

[28] Matthew Kramer, *Legal Rights and Moral Rights* (CUP 2025) 17-18.
[29] ibid 19-21.

On the other hand, interest theorists, who occupy the second dominant camp, essentially argue that for a right to accrue, it must operate to further the right-holder's interests. The classic formulation by Joseph Raz provides that an agent holds a right if they "can have rights" and if "other things being equal, an aspect of [their] well-being (… interest) is a sufficient reason" for holding someone else under a duty.[30] The first of these limbs constructs a class of potential right-holders but does not specify its limits; the second requires that the exercise of the right must be underpinned by a sufficient furtherance of their interests. Kramer's more rigorous formulation is stated as follows:

> Individually necessary and jointly sufficient for the holding of a claim-right by X are (1) the fact that the duty correlative to the claim-right deontically and inherently protects some aspect of X's situation that on balance is typically beneficial for a being like X, and (2) the fact that X is a member of the class of potential holders of claim-rights.[31]

In *Rights and Right-Holding*, from which the above definition is taken, Kramer presents his model as a non-justificatory account: unlike that of Raz, it demarcates the conditions of right-holding without broaching the question of whether the rights themselves are morally justified.[32] He also defends the interest theory from many criticisms; his ripostes to Sreenivasan, Kurki, Wenar, and others are comprehensive and convincing.[33] It remains, then, to assess the two conditions of his formulation from an Earth Jurisprudence perspective.

The application of the first condition rests on an evaluative premise which Kramer draws from his own version of the Rawlsian thin theory of the good. He acknowledges that certain primary goods, social and natural, are "conducive to anyone's pursuit of his or her objectives" regardless of the content of those objectives.[34] Primary social goods include basic civil rights, entitlements to wealth and income, and opportunities to obtain a position of power. Primary natural goods include health, intelligence, and warranted self-respect. The former can be distributed by human institutions of governance, whilst the latter cannot. His argument is that in applying the first condition, regard must necessarily be had to exactly what, on balance, is typically beneficial for the right-holder. This involves some basic evaluative judgment. Fortunately, Kramer does not specify that the domain of protected interests is restricted to what falls under the Rawlsian thin theory. This relieves an Earth Jurisprudence scholar from the burden of showing that the benefits which natural entities would putatively enjoy as right-

[30] Joseph Raz, *The Morality of Freedom* (OUP 1986) 166.
[31] Matthew Kramer, *Rights and Right-Holding: A Philosophical Investigation* (OUP 2024) 179.
[32] ibid 214 et seq.
[33] ibid 178-255.
[34] ibid 181; this page also covers what follows.

holders must be Rawlsian goods. Indeed, since the entire Rawlsian project is one of social justice—justice in human governance—most of his goods are clearly directed at humans. Kramer, however, construes interest at a level of generality high enough to include many other kinds of benefit. This prefigures his application of the theory to certain non-human animals; who, notably, cannot enjoy most of the Rawlsian goods.

The first condition, then, seems concomitant with Earth Jurisprudence. Provided that one can show that the correlative duty would deontically and inherently protect some aspect of a natural entity's situation that on balance is typically beneficial to an entity of their type, the first condition is met on its own terms. It would seem that this can, in many cases, be demonstrated with ease. Indeed, all of the rights that I will present in Part D of this article do meet this criterion.

The second condition, unfortunately, is not as easily compatible, at least according to Kramer's account of it. As he notes, on its terms, the class of potential right-holders—that is, the set of entities capable of holding rights at all—can be defined broadly or narrowly.[35] He maintains that the exercise of defining the scope of the class is still non-justificatory, despite being informed by 'deep matters of ethics'.[36] In his view, not every definable entity can be a member of this class, because some entities are precluded from right-holding as a result of these ethical considerations. At the outset, he gives the examples of grass, paintings, and buildings as entities that may satisfy the first condition, but whose inclusion under the second would be problematic.[37] He then constructs his theory as to the scope of the class, guided by the 'deep matters of ethics' to which he alludes, which essentially consist of four aspects. The first is that the limits on the class must be determined with reference to what promotes the enjoyment of each member of a community of a strong and warranted sense of self-respect.[38] Second, it relies on a paradigmatic category of community members who are morally obligated to recognise one another as right-holders.[39] The third is that any extension of right-holding capabilities to entities beyond the paradigmatic category is underpinned by the self-respect requirement, and this involves consideration of the effect of such an extension on both the paradigmatic category and the entities to which the capability might be extended.[40] The fourth is that a conception of 'ultimate' value which involves the quality of être pour soi, "a level of self-reflective

[35] ibid 291-297.
[36] ibid 293.
[37] ibid 295-296.
[38] ibid 329.
[39] ibid 330.
[40] ibid 334.

attunedness that is characteristic of conscious engagement with oneself and with the world", and intrinsic value to the furtherance of the entity's interests, is the 'hallmark' or key control which determines the entities that are and are not admitted to the class.[41] Each of these four aspects is open to challenge on the basis of Earth Jurisprudence principles, and I will now consider each in turn.

2. Interrogating the Kramerian Interest Theory

First, Kramer contends that the scope of the class of potential right-holders is "connected to the paramount moral responsibility borne by every system of governance and by each individual" which is to establish and sustain "the conditions under which everyone in a society can be warranted in harboring a strong sense of self-respect".[42] The notion of warranted self-respect is Rawlsian in origin, but has been significantly developed by Kramer in his earlier writings.[43] It rests on considerations of political morality—what the State is morally obligated to do with respect to its citizens—and therefore, as is immediately clear, emerges from a fundamentally anthropocentric worldview. Only a human can enjoy self-respect in the Kramerian sense. Human institutions of governance, when obligated to secure warranted self-respect amongst their human members, often produce satisfactory conclusions with respect to human problems such as capital punishment and torture.[44] Framing it as the 'paramount' moral responsibility of both individuals and officials, however, reflects Kramer's focus on developing an ethical philosophy that is able to yield satisfactory answers to distinctly human problems. As Berry pointed out, such philosophies are incapable of preventing significant harm to the Earth system.[45] Admittedly, some environmental harms might be so great as to impinge upon a human's sense of self-respect. The reason why this would engage a contrary moral responsibility, however, is because of the human's perception of their surroundings. In other words, what is determinative of whether an individual or an official is obligated to mitigate the destruction of the natural world is, under this 'paramount' responsibility, its effect on the humans who are members of the society proximate to that destruction. This is profoundly anthropocentric.

Earth Jurisprudence places emphasis on the moral responsibility of human agents, as constitutive members not only of a political system but also of the wider Earth community, to

[41] ibid 317-329.
[42] ibid 329.
[43] For instance, Matthew Kramer, 'On Political Morality and the Conditions for Warranted Self-Respect' (2017) 21(4) Journal of Ethics 335.
[44] ibid 340-34.
[45] Berry (n 4) 77.

promote and sustain the well-being of the Earth system as a whole. It is this responsibility which is paramount, and where it conflicts with other moral obligations—including that which relates to securing the conditions for warranted self-respect amongst human societies—it triumphs. The paramount responsibility that humans owe to the Earth community will rarely be engaged in ethical quandaries that arise in practice, most of which concern human agents only. However, the moment that a proposed action or omission bears upon other members of the natural world, considerations of political morality, such as Kramerian self-respect, are overridden by the true paramount responsibility. This paramountcy arises from the most foundational of Earth Jurisprudence principles: that it is the Earth system, not human society, which is the primary normative referent, and conclusions of permissibility arising from calculations undertaken under an ethical theory like Kramer's cannot be decisive as to the permissibility of the action or omission if its effects escape the domain of human relations and affect natural entities.

What Earth Jurisprudence reveals, then, is that Kramer's selection of a rule of political morality to inform the limits of the class of potential right-holders is anthropocentric and therefore somewhat arbitrarily stipulative. If, in the Rawlsian vision, a group of parties in an original position, which was abstracted from a planetary community containing only the (human) people to whom those parties connect, were to decide the limits of the class, they would of course be guided by an ethical philosophy that regulates their relations only. Human society is only one element of the Earth community, however. Once our responsibility to the Earth system is understood as paramount, it becomes clear that the ethical considerations which underlie the limits of the class must include this responsibility, which is superior when engaged.

Second, Kramer argues that the paramount moral responsibility of the members of the community of potential right-holders obligate certain amongst them, those within a paradigmatic category, to acknowledge the right-holding capabilities of all others within that category; otherwise, the paramount responsibility cannot be fulfilled.[46] The paradigmatic category, he argues, is made up of those entities which are "straightforward[ly] and uncontroversial[ly]" members of the community and which play a 'pivotal' role in discharging the obligation of recognising the capabilities of the others.[47] He concludes that the paradigm right-holders are sane human adults.

[46] Kramer (n 31) 330.
[47] ibid 330-331.

A preliminary point to note here is that, as noted above, although the responsibility to secure self-respect is of course important, it is superseded, according to Earth Jurisprudence, by the responsibility that humans owe towards the Earth system. Hence, the question upon which the exercise turns becomes: "would certain entities recognising the capability of certain other entities to hold rights fulfil the responsibility owed by humanity to the Earth system?". As regards the first limb of paradigmaticity, it is clear that the conclusions Kramer reaches are underpinned by an anthropocentric worldview. Indeed, the idea that only human beings are "straightforward[ly] and uncontroversial[ly]" right-holders is charged with some very powerful assumptions. To whom is it straightforward and uncontroversial that humans are the paradigmatic right-holders? To other legal philosophers? Perhaps to other humans? Not all human societies would agree with such a simplistic account—much has been written on how certain Indigenous ontologies reject such a premise.[48] The assumptions are not only anthropocentric, but Western-centric in substance. A potential riposte is that humans are straightforwardly and uncontroversially right-holders to the other members of the community, but this would only hold true for the other *Western human* members of the community. If the assumption is enthymematically informed by a view that the community in question comprises only human societies, then it is unclear when or why such a restriction has been introduced. Otherwise, the notion that only sane human adults belong to the paradigmatic category requires a much stronger justification. As regards the second limb, it is clear that only human agents can be subject to moral obligations, and therefore, it is only human agents who can be obliged to make the necessary acknowledgements as to other entities' right-holding capabilities. Why this itself demarcates the scope of the class of potential right-holders, however, is far from apparent.

Third, Kramer proposes that the extension of right-holding capabilities to those beyond the paradigmatic category must operate to fulfil the paramount responsibility, accounting for the effects on the paradigmatic members and the entities under consideration.[49] The application of Earth Jurisprudence principles is very clear here. Given that the paramount responsibility is that owed by human agents to the Earth system, it is evident that including certain natural entities in the class of potential right-holders would have a major salutary effect in fulfilling this responsibility. As for the effects on both paradigmatic right-holders and the entities under consideration, it is useful to consider at this stage Kramer's treatment of "inanimate and

[48] See, for instance, Jacinta Ruru, 'Listening to Papatūānuku: a Call to Reform Water Law' (2018) 48 Journal of the Royal Society of New Zealand 215.
[49] Kramer (n 31) 334.

insentient entities".[50] He argues first that because such entities "are wholly without any awareness of their situations" and therefore cannot experience pleasure or pain, they are not the beings "for whom any legal duties are imposed"; they are, rather, beings "in regard to which many such duties are established".[51] He then avers that an affirmation that such entities are excluded from the class by the paradigmatic right-holders does not "bespeak high-handedness or effrontery or insecurity" but simply "evince[s] their recognition that … [such beings] never have been able and never will be able to participate as subjects" in the community of potential right-holders.[52] The former proposition relates to his conception of 'ultimate' value, which I will turn to shortly. The latter is dubious, I suggest, for a number of reasons. First, the exclusion of all non-sentient natural entities does in fact 'bespeak high-handedness' insofar as it rests on an underlying anthropocentric conviction that merit is determinable by reference to human parameters; a criticism I shall develop subsequently. Second, the argument that the decision to exclude merely "evince[s] … recognition" that such entities are excludable is unsustainable. The position which I interpret Kramer to be taking is that the decision to exclude non-sentient entities is not itself morally pregnant, because it takes effect as mere 'recognition' that such entities cannot form part of the community of right-holders, which itself holds no moral content. Such a decision does hold moral content, however. Even though it may appear as mere 'recognition' in form, in substance, it must carry a justification with moral value. Perhaps the unspoken justification is, in this case, the 'paramount' responsibility to secure self-respect, to which it refers immediately afterwards.[53] As I have argued, however, such a responsibility is not absolutely superior. Rather, by excluding certain non-sentient natural entities, the paradigmatic members—even assuming, arguendo, that the paradigmatic category consisted solely of sane human adults—would be directly working against their true paramount responsibility towards the Earth system.

Finally, Kramer presents a notion of 'ultimate' value which, in his view, is the 'hallmark' of entities within the class. This is composed of (i) the être pour soi property described above and (ii) intrinsic value to the furtherance of the entity's interests.[54] In arriving at this conception, he considers and rejects, in turn, instrumental, constitutive, and intrinsic conceptions of value as sufficient to mark an entity as includable in the class. The sorts of natural entities with which Earth Jurisprudence is concerned possess great intrinsic value.

[50] ibid 334-338.
[51] ibid 334.
[52] ibid 336.
[53] ibid 337.
[54] ibid 317.

Given this, Kramer's dismissal of intrinsic value as a sufficient condition appears in tension with the moral commitments of Earth Jurisprudence. On what basis, then, is such a dismissal justified?

> … in itself [intrinsic value] is manifestly insufficient to serve as the point d'appui for the delimitation. None of the things just mentioned as possessed of intrinsic value is included in the class of potential holders of claim-rights. Great paintings and symphonies and poetry and rivers and trees and stone formations are all valuable in themselves independently of any other good things to which they can contribute causally or constitutively, but those inanimate entities are not capable of holding any claim-rights. Hence, like instrumental value and constitutive value, intrinsic value as consequence-independence is not suitable by itself as a cornerstone for this chapter's ruminations on the class of potential holders of claim-rights.[55]

This is unsatisfactory. Merely stating that entities with intrinsic but not ultimate value are "not capable of holding any claim-rights", when the entire project of formulating a satisfactory conception of value is for it to form part of a constructed theory of right-holding which will then demarcate what can and cannot hold rights, is akin to saying that *The Alchemist* is not substantial enough to be a novel whilst arriving at a conception of substantiality which will then inform the test developed for deciding what is and is not a novel. Kramer can avoid an allegation of circularity only by responding that when he here states that such entities are not capable of holding claim-rights, he is simply referring to the fact that they are not generally viewed as such by theorists or by the general populace. If that is the case, however, his entire discourse on value, and the conception which he does finally develop, are both impugnable on the basis that they arise from preconceptions as to what does and does not hold claim-rights. Neither of them is an analytic product. The 'hallmark' which he develops is no more than a signifier of what is commonly thought of as included within the class of right-holders. Kramer does attempt to justify his conception of ultimate value, however. Indeed, it supposedly "follow[s] from some deep ethical considerations":[56] that is, the first three aspects discussed above. At no point, however, does he explicitly demonstrate how the 'paramount' responsibility and the considerations of paradigmaticity and extension that follow give rise to the notion of ultimate value which he presents. Rather, ultimate value seems to play a crucial role in defining the paradigmatic category and the modality of the exercise of extension: it is one factor which militates in favour of including sentient animals and excluding non-sentient ones, for instance.[57] Hence, the justificatory force flows in the opposite direction.

[55] ibid 316.
[56] ibid 321.
[57] ibid 339.

The principles of Earth Jurisprudence reveal the profound anthropocentrism upon which this conception of ultimate value is built. First, it is undeniable that all entities that possess ultimate value also possess intrinsic value. Moreover, since both limbs of the conception rely on properties which inhere in the entity itself, ultimate value is just a form of enhanced intrinsic value; or, more accurately, a conception of intrinsic value which specifically amplifies certain intrinsic elements: être pour soi and the derivative value of furthering the entity's interests. The crucial question is why these two intrinsic elements are selected for special emphasis when a range of other elements could instead be chosen. The natural answer is that it flows from an anthropocentric conviction. Even though Kramer admirably includes non-human sentient animals in the class, because they are êtres pour eux-mêmes, a human being is the central case—the paradigmatic right-holder—and these animals are includable because they are similar enough to humans in possessing alert sentience. If we range outwards from the central case, from mammals to fish and lizards to insects, we soon hit a barrier at which those beings lose right-holding capabilities: hence, cockroaches are not included.[58] Indeed, Kramer expressly places importance on "the remoteness or proximity between the traits of human beings and the traits of other animals".[59] Moreover, even creatures which are êtres pour eux-mêmes can fail at the hurdle of possessing intrinsic value in the furtherance of their interests if such furtherance would be injurious to human interests, because the 'paramount' responsibility to secure self-respect obligates that such 'vermin' be excluded from the class.[60] Even the second limb of the conception—is the furtherance of the entity's interests intrinsically valuable?—is determined according to human parameters.

The choice of the two intrinsic elements to amplify in the given conception of ultimate value is, then, anthropocentric through and through. It cannot be sustained under the principles of Earth Jurisprudence, nor can any of the ethical considerations that underlie the choice of what entities are and are not capable of holding rights according to Kramer's account. The reality is that the entirety of Kramer's view of where the limits should be placed on the class rests on the neo-Rawlsian conviction that the principal responsibility of human individuals and officials is to secure robust self-respect across human society. This works excellently as an obligation with respect to social justice, but fails to account for the superior responsibility of humanity to maintain the well-being of the Earth community. Therefore, despite Kramer's insistence that his view of the limits of the class is 'more or less' the only sustainable one—

[58] ibid 345.
[59] ibid.
[60] ibid 346.

with some leeway at the edges—and hence legislatures which purport to grant rights to non-sentient natural entities do not, as a matter of deep theory, actually succeed in doing so,[61] it is clear that a robust alternative theory can nevertheless be constructed from ecocentric norms.

3. An Expanded Theory of Right-holding

The first step in developing a theory of right-holding fully concomitant with Earth Jurisprudence is to define the principal ethical considerations that will guide the project. For this, it is useful to return to Berry's notion of the universe as the "primary [normative] referent" and Cullinan's notion of the Great Jurisprudence.[62]

Philosophers tend to frame normativity as a quality which can obtain, and is therefore assessable, only from the perspective of a human agent. Hence, relations between humans can hold normative content: if one human is exploiting, torturing, or abusing the other—or, conversely, acting for their benefit—a normative assessment can be made as to the content of that relation. Similarly, if a human agent abuses an armadillo, the human side of that relation is normatively evaluable, but the armadillo side is not, as saying that the animal 'ought' or 'ought not' to do something is meaningless. The result for applied philosophy is that in undertaking the many normative calculations that are required to build a conception of, for instance, law or justice, relations with at least one human agent remain the primary referents. When jurisprudents debate legal positivism and natural law, and when political theorists debate Rawlsian and libertarian ideals of justice, they are debating conceptions that apply primarily, if not always, to human relations; hence, the conceptions that result are conceptions of human law and social justice.

Under Earth Jurisprudence, however, normativity is delocalised and is recognised as appurtenant to the Earth system.[63] The primary referent is how the Earth community, and not merely human society, self-regulates. Normative calculation is reframed with an acknowledgement that humanity is only one component of a complex whole. The conceptions which consequently emerge are free of the anthropocentrism which would otherwise restrict their effectiveness in processing non-human problems.

The Great Jurisprudence is one such conception. The essential feature of the Great Jurisprudence is that relations between entities are ordered in such a way that the integrity of the communities to which these entities belong is maintained.[64] Integrity is to be understood as

[61] ibid 338.
[62] Berry (n 12); Cullinan (n 14) 82 et seq.
[63] On this issue, see Pelizzon (n 6) 346-352.
[64] Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (1st edn, Green Books 2003) 87-89.

comprising both survival and gradual progressive evolution. Only a rudimentary understanding of ecology is required to grasp the fact that most natural communities are structured in such a way that both of these aspects are facilitated. Trophic and symbiotic interdependencies, whereby certain natural entities rely on others from other species either for sustenance or for mutual benefit, create self-regulating feedback loops whereby the populations of each species within that community are kept at roughly the same (or constantly growing) levels in the long-term, whilst also enabling evolutionary processes to take effect. The natural world regulates itself to preserve the integrity—survival and flourishing—of the communities that comprise it.

Once the fulcrum of normative reference is extended beyond human society to the Earth system as a whole, this integrity becomes the paramount ethical consideration. How human societies should order themselves to promote social justice remains a question of great relevance when considering human relations, but whenever such relations also exert an effect on any non-human natural community, the integrity of that community acquires a superior ethical position, and places limits—which may or may not be absolute—on the morality of any human actions contemplated. In other words, the paramount ethical consideration begets a paramount moral responsibility on human agents to ensure that integrity is maintained.

When constructing a theory of right-holding, this consideration must be borne in mind. Evidently, the will theory, even if cured of eliminativism,[65] is entirely inapposite: in assuming that the essential criterion to possess right-holding capability is the exercise of a uniquely human sovereignty, the will theory brushes away all natural entities. As for the Kramerian interest theory, it has already been demonstrated that the first condition, that the right must protect some aspect of the entity's situation that is of benefit, will be easily met. The exercise of defining the scope of the class of potential right-holders, however, must be undertaken anew.

As Kramer does, the first step is to consider the group of all possible right-holders and define the paradigmatic category. Given that the integrity of the Earth system is now the paramount ethical consideration, the paradigmatic right-holders are those entities which are central to that integrity. I reject the idea that the paradigm is defined according to what beings are "straightforward[ly] and uncontroversial[ly]" right-holders because, once the primary normative reference is removed from humanity, the entire basis for deciding to whom and according to what standards such non-controversy must present becomes manifestly difficult. Rather, the paradigmatic category consists of those entities to which rights must necessarily accrue in order for the paramount ethical consideration to be vindicated.

[65] The critique given in Kramer (n 28) 19-21.

I suggest that these entities are themselves the communities whose integrity is of significance under the Great Jurisprudence. In other words, ecosystems, and all self-regulating communities larger than ecosystems, are the paradigmatic right-holders. This might appear extremely radical. Perhaps it is, from an anthropocentric worldview under which rights are thought of as uniquely human constructs. In some ways, they are; legal rights are artefacts of human systems of governance which demarcate human responsibilities. The power of treating the Earth system as the primary normative referent, however, reveals itself here. The whole project of defining what beings can and cannot hold rights ceases to be guided by what would be beneficial for human society, and instead is oriented around what would be beneficial for the Earth community. Ecosystems and such are the paradigmatic right-holders precisely because their right-holding capacities are pivotal in the fulfilment of the paramount ethical consideration. It is irrelevant that they are non-sentient; indeed, the importance of sentience for paradigmaticity only results from an anthropocentric starting-point. The Kramerian conception of 'ultimate' value rests on an application of human qualities—whether an entity is actually of ultimate value depends upon its position in the complex, self-regulating Earth system.

It follows that the extension of right-holding capabilities to human beings, certain sentient animals, and so forth becomes of relevance in the exercise of extension rather than as a matter of paradigmaticity. It is at this stage when so-called 'ultimate' value and alert sentience are engaged, as it is necessary to extend right-holding capabilities to all of these entities to secure the fulfilment of the central principles of political morality—the need to secure self-respect, for instance—which are non-paramount but remain vital in ordering human societies and relations. Hence, right-holding capability is extended by the paradigmatic beings, for whom right-holding secures the integrity of the Earth system, to creatures of 'ultimate' value, for whom right-holding is necessary for robust social justice and political morality within human society.

It is worth noting that the exercise also works in the converse. Hence, even if, arguendo, sane human adults are still regarded as paradigmatic right-holders, then the extension of right-holding capabilities to ecosystems and such becomes of overriding importance because of the necessity of such an extension to secure the effective exercise of the paramount ethical consideration and the derivative paramount moral responsibility on all human agents. In any

case, the community of potential right-holders we arrive at includes creatures of 'ultimate' value *and* ecosystems and such.[66] It is of little practical relevance which group is paradigmatic.

The language of 'holon' is occasionally used in the Earth Jurisprudence literature.[67] A holon is essentially any self-regulating entity. Berry clearly expresses the view that holons of all scale are capable of holding rights. Hence, in his view: "Birds have bird rights. Insects have insect rights. Humans have human rights. Difference in rights is qualitative, not quantitative. The rights of an insect would be of no value to a tree or a fish".[68]

I am not convinced that all holons can be capable right-holders under Earth Jurisprudence. To be sure, the mass destruction of a population of wild insects would likely have a deleterious effect on the ecosystem those insects belong to, and therefore impinge upon the paramount ethical consideration of integrity. However, the destruction of a single insect, or even a dozen, does not have the same consequences. The fulfilment of the paramount consideration can be achieved by acknowledging that only holons above a certain minimum scale, which I contend to be that of an ecosystem, are capable of holding rights. It can also be achieved by saying that individual insects are right-holders but that, for instance, they only have very minimal rights. Those rights, however, must surely make reference to the destruction of populations of insects rather than individual ones: hence, a cockroach would have the right to be a member of a stable population of cockroaches within an ecosystem. This adds nothing at all to the minimum-scale approach, however, and would simply burden systems of legal governance in applying those rights. The application of Occam's Razor leads us towards a class of potential right-holders which include holons at the scale of ecosystem and above.[69] This is the most practically effective way of fulfilling the paramount ethical consideration, and no sacrifices are made in terms of outcomes.

It can be difficult in practice to define the extent of a holon, in terms of, for instance, which populations of which creatures belong to a single definable ecosystem. This does not detract from the fact that if such an ecosystem does exist, it benefits from right-holding capabilities as a result of the paramount consideration. It may be burdensome, therefore, to demonstrate an ecosystem, but this is an issue for the courtroom and does not bear upon the

[66] Including the other non-paradigmatic members that Kramer lists: deceased and comatose humans, future generations, foetuses, human collectives, and so on, all of which must be included because of the application of considerations of political morality: Kramer (n 31) 350-387.
[67] Ian Mason, 'One in All: Principles and Characteristics of Earth Jurisprudence' in Peter Burdon (ed), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press 2011) 36-37.
[68] Berry (n 12) para 6.
[69] As I have also suggested, see Pradhan (n 17) 319.

underlying ethical theory. The same argument applies to larger holons, such as networks of interdependent ecosystems and the global macroclimate.

The final question is whether any modification to the Kramerian conception of 'ultimate' value must be made under Earth Jurisprudence principles. The extension of right-holding capability to creatures of 'ultimate' value follows from an application of considerations of political morality, rather than the paramount consideration. Hence, it is legitimate to use alert sentience—être pour soi—as a controlling factor. However, if a creature does meet the requisite threshold of alert sentience, Earth Jurisprudence demands an adjustment to the second limb of 'ultimate' value: the intrinsic value of the furtherance of the creature's interests. The effect of the primary normative reference being removed from humanity is that such value cannot be assessed according to human parameters. As such, it is invalid to exclude alert sentient creatures which are 'vermin'—in the sense of being injurious to humans in large numbers—from the class of potential right-holders merely because the furtherance of their interests would be damaging to human interests. The value of the furtherance must be evaluated with regard to the paramount consideration: to what extent does it promote or damage the integrity of communities constitutive of the Earth system? This reframing changes the category of alert sentient animals who are not capable of holding rights from 'vermin', a definitionally anthropocentric concept, to 'invasive creatures': those for whom there may be no value to the furtherance of their interests because of the damaging effect such a furtherance would have on ecosystems and other communities in the vicinity. It might be that some vermin are invasive creatures and vice-versa, but this will not hold true in all cases.

In sum, the theory of right-holding concomitant with Earth Jurisprudence is a form of the Kramerian interest theory where the class of potential right-holders includes creatures of 'ultimate' value as well as ecosystems and all holons of larger scale. It is the latter which, I suggest, are paradigmatic right-holders, because their right-holding capability is pivotal to secure the integrity of the Earth system, which is the paramount ethical consideration. The former benefit from right-holding capability as it is necessary to fulfil other vital considerations of political morality to secure the effective ordering of human society.

D. ARTICULATING THE RIGHTS OF NATURE

1. The Rights of Nature in the Literature and in Practice

In this Section, I seek to resolve the flaws and inconsistencies in and across the Earth Jurisprudence literature and practice as regards the substantive content of the rights of nature. This requires a brief survey of the accounts offered.

As noted above, Berry wrote that natural entities had a right to be, a right to habitat, a right to fulfil their role in the Earth community, a right against abuse, a right to dignity, and a right against trivial use; for Berry, this included all living creatures.[70] This presents a number of difficulties. First, the scope of these rights is not clearly defined. It is clear that a fish would be deprived of their right to habitat if the river which they inhabit ceased to flow. However, if a hyena had their regular ranging grounds restricted from 75 km^2 to 10 km^2, would that infringe their right to habitat? What if the restriction was as severe as 1 km^2? Or the hyena was prevented from accessing only 25 km^2, but the barred area contained most of their prey at most times? Second, it is unclear why rights against abuse and trivial use need separate definition: all instances of such use would infringe a right to primary dignity. Moreover, none of these latter three rights is justifiable on the basis of the paramount ethical consideration of community integrity. Rather, they speak to the ethical position of an individual creature and the morality of acts of abuse by human agents against it. Finally, there is no justification schema for infringements of the rights. In other words, there is no way of balancing the rights enumerated against conflicting human public or private rights. They present themselves as absolute.

Cullinan adopts a similar approach, but adds that the rights of nature can be balanced against other rights—but the outcome "depend[s] on the circumstances" and the culture in question.[71] Hence, the killing of a zebra may be justified if undertaken for the purposes of individual nourishment, but may not be if performed to acquire a pelt of a certain kind for its commercial value.[72] He places great emphasis on the 'essential nature' of a natural entity and whether that nature is affected: hence the canalisation of a flooding river is contrary to its nature as a flooding river.[73] This improves upon Berry's account by providing a justification schema, but produces great uncertainty. First, why must the scope of the right depend on the culture of the human agent who allegedly infringes it? Allowing the permissibility of destroying a natural entity to hinge solely on the political customs of the acting human agent appears problematic, at least without those customs giving rise to a human right which can hold a place in the justification matrix. Second, the concept of 'essential nature' is very loose. Does the essence of a flooding river arise from the mere fact that it floods, or from the fact that a network of ecosystems relies on its regular flooding? The latter is more easily derivable from the paramount ethical consideration, but the former is arbitrarily stipulative.

[70] Berry (n 4) 133.
[71] Cullinan (n 64) 119.
[72] ibid 119-120.
[73] ibid 121.

In practice, the rights of nature have been holistically implemented in Bolivia; in Uganda; in various Mexican subregions, including Colima, Oaxaca, Guererro, and Mexico City and State; and in Ecuador—although such rights have been recognised in a wealth of jurisdictions, these other instances relate only to specific entities.[74] Bolivia passed Law 071 in 2010,[75] and Law 300 in 2012,[76] the combined effect of which is to grant 'Mother Earth' a series of rights—to life, to diversity, to water, to clean air, to balance, to restoration, against contamination (Art. 7 of 071)—and define a series of correlative duties on the State and on ordinary citizens (Art. 8-9 of 071; Art. 10-11 of 300). For these purposes, Mother Earth is defined as a dynamic system composed of an indivisible community of all living beings and communities (Art. 3 of 071). However, the rights of nature under these laws have not yet been invoked in court.[77] In Ecuador, the rights of nature find expression in Title II, Chapter VII of the Constitution, which grants nature the right "to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes" (Art. 71) as well as a right to restoration (Art. 72) and confers correlative duties upon the State and accompanying powers upon all people.[78] Unlike in Bolivia, the Ecuadorian courts have dealt with these provision actively. In *Wheeler*'s case, an injunction was granted preventing a construction project that would harm a local river and ordering reparations.[79] In the *Los Cedros* case, a similar order was made in respect of mining activities in a protected forest.[80] These were both cases against provincial governments, but the rights of nature have also been raised by the State against a mining corporation proceeding without authorisation—although the determinative issue in that case was one of criminal law.[81] In *Reyes & Others*' case, the Chapter VII rights were recognised as applicable to coastal marine ecosystems.[82] In Uganda and in the Mexican subregions, the rights of nature are given effect in almost precisely the

[74] See the overview in Pradhan (n 17) 336ff.
[75] *Law on the Rights of Mother Earth*, Law 071 of the Plurinational State of Bolivia, 21 December 2010.
[76] *Framework Law of Mother Earth and Integral Development to Live Well*, Law 300 of the Plurinational State of Bolivia, 15 October 2012.
[77] María Valeria Berros, 'Challenges for the Implementation of the Rights of Nature: Ecuador and Bolivia as the First Instances of an Expanding Movement' (2021) 48(3) Latin American Perspectives 192, 197.
[78] Constitution of the Republic of Ecuador. The Constitution is available in English at Georgetown University Center for Latin American Studies, 'Political Database of the Americas' <https://pdba.georgetown.edu/> accessed 9 October 2025.
[79] Case 11121-2011-0010, *Wheeler v Attorney-General of the State of Loja* (Provincial Court of Justice of Loja, Ecuador, 2011).
[80] Case 1149-19-JP/20, *Los Cedros* (Constitutional Court of Ecuador, 2021).
[81] Act of Session 66, *National Assembly of the Republic of Ecuador, Commission for Biodiversity and Natural Resources* (Second Court of Criminal Guarantees of Pichincha, Ecuador, 2011); Erin Daly, 'The Ecuadorian Exemplar: The First Ever Vindications of Constitutional Rights of Nature' (2012) 21(1) Review of European Community & International Environmental Law 63, 65.
[82] Case 95-20-IN/24, *Reyes & Ors* (Constitutional Court of Ecuador, 2024).

same terms as the Ecuadorian Constitution. The Ugandan legislation limits them to conservation areas designated by the government,[83] whilst the relevant parts of the Coliman, Guerreran, Mexican and Oaxacan State and Mexico City Constitutions apply to all ecosystems within their respective jurisdictions.[84] No cases have yet emerged from Uganda applying their provisions, but the Human Rights Commission in Guerrero has declared that it has jurisdiction to hear rights of nature complaints, and has found a violation in respect of the treatment of animals in the Zoochilpan Zoo.[85] Other cases on harm to the natural world in Mexico ordinarily focus on the human right to a healthy environment or on animal welfare laws.[86]

The Ecuadorian rights, which are substantially the same as those codified in Uganda and in Mexico, correspond closely to the three 'primary' rights in Berry's formulation; 'existence' maps to the right to be, whilst 'maintenance' and 'regeneration' map to the rights to habitat and flourishing. Similarly, the courts have accepted that these rights extend not only to ecosystems, but to individual wild animals, and potentially to populations thereof, although the content of the right depends on context.[87] Conversely, the Bolivian rights are more expansive, including specific rights to diversity, water, and air, as well as protections against contamination. There is perhaps some practical value in recognising these—in the sense that it will be easier for litigants to present an arguable case for a violation—although interferences with any of these will almost inevitably also infringe the three primary rights, so it is questionable whether they add any substantive, extensional content to Art. 7.

In all the other jurisdictions where the rights of nature have been recognised, they have been limited to specific settings or entities. By far the most common of these are rivers and lakes. In Bangladesh, all rivers have been declared to be the subjects of rights of protection and conservation.[88] Other jurisdictions have made similar declarations for specific rivers, whilst in Spain, the Mar Menor lagoon has been granted these rights through legislation.[89]

[83] National Environment Act 2019, s 4.
[84] Constitution of the State of Colima art 2(IX)(a); Constitution of the State of Guerrero art 2; Constitution of the State of Mexico art 5 and 18; Amendment to the Constitution of the State of Oaxaca DFDA/LXIV/OFIC068/2020; Constitution of the City of Mexico art 13(A)(3).
[85] Human Rights Commission of the State of Guerrero, Recommendation 063/2018, 2VG/AC/003/2018-III.
[86] Amparo 307/2016, *Laguna del Carpintero* (Supreme Court of Justice of Mexico, First Chamber, 2018), on the right to a healthy environment; Amparo 163/2018, *Constitutionality of the Prohibition on Cockfighting* (Supreme Court of Justice of Mexico, First Chamber, 2018), on animal welfare.
[87] Case 253-20-JH/22, *Estrellita Monkey* (Constitutional Court of Ecuador, 2022), paras 51-121.

2. A New Conception of the Rights of Nature

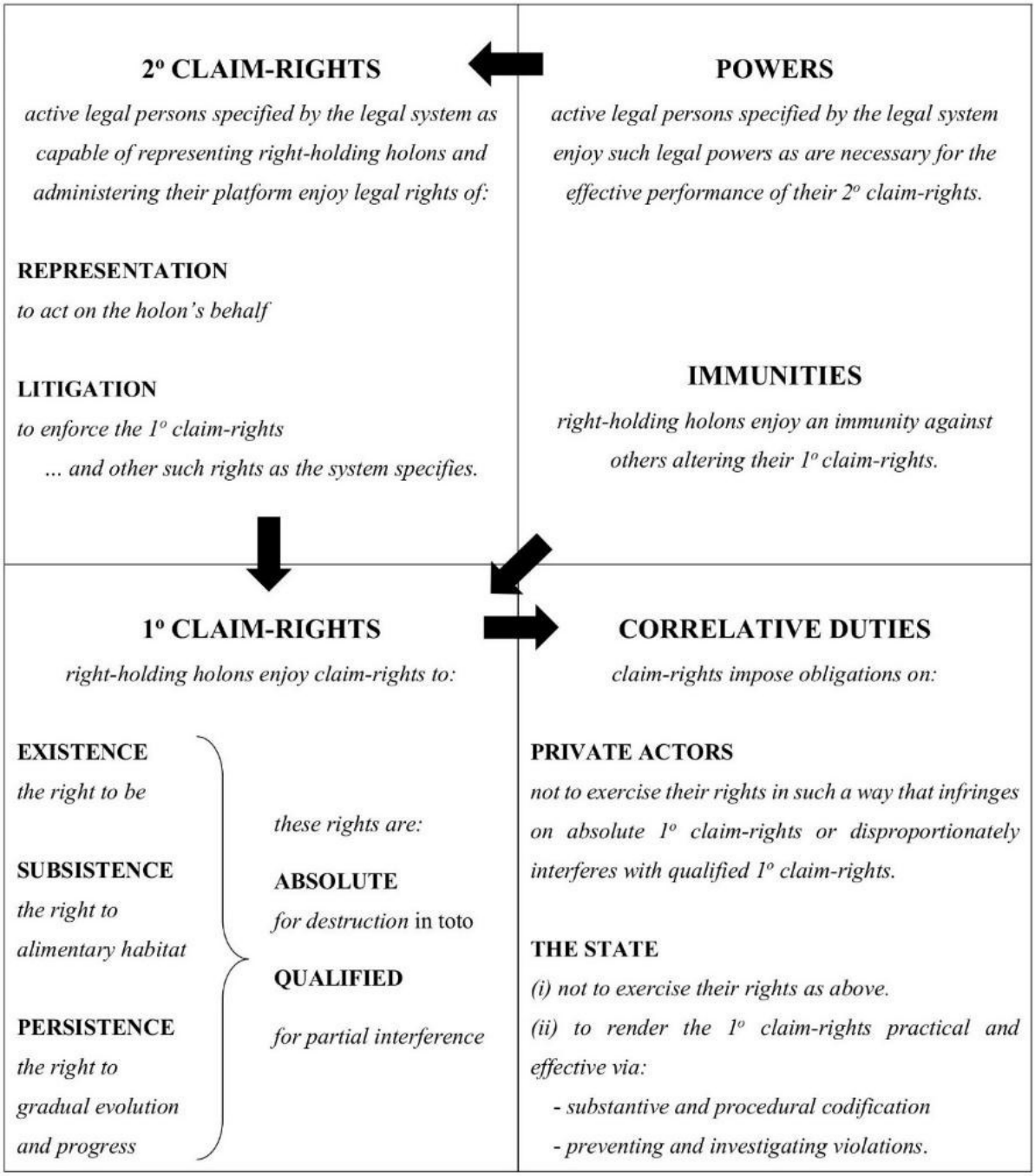

Figure 1: The Ideal Model for the Rights of Nature under Earth Jurisprudence.

[88] *Human Rights and Peace for Bangladesh & Ors v Secretary of the Ministry of Shipping & Ors*, Writ Petition No. 13989 of 2016 (Supreme Court of Bangladesh, High Court Division). Note the approach of the Appellate Division, which upheld these rights but modified some of the directions: *Nishat Jute Mills Ltd v Human Rights and Peace for Bangladesh*, Civil Petition for Leave to Appeal No. 3039 of 2019 (Supreme Court of Bangladesh, Appellate Division).

[89] Law 19/2022 of Spain, the Mar Menor Act.

The ideal model for the rights of nature which I propose is shown in diagrammatic form above (Figure 1). Each major element of the model will be derived and explored in the ensuing discussion, although certain minor elements are left for future work.

Under Earth Jurisprudence, the paramount consideration is the integrity of the Earth system and the communities which compose it. This follows from the delocalisation of normativity and the recognition that the Earth system self-regulates to promote both stability and gradual development as aspects of integrity. In constructing an ideal model of the rights of nature, integrity must be the central informing precept.

I have argued that only ecosystems and holons of larger scale—biotic areas and the macroclimate—are paradigmatic right-holders, because nothing is added to the fulfilment of integrity by including individual animals or populations thereof. Rather, the inclusion of animals (and humans) as right-holders is an exercise in extension, and follows from the moral value of those creatures as alert sentient beings. Although the innovation of the Ecuadorian courts and the Guerreran HRC in extending the rights of nature to animals is an admirable development, it is best dealt with under a different normative framework which is better capable of evaluating the moral content of a human-animal relation according to the ethical positions of each: sentience, dignity, and so on.[90] This framework is what is traditionally called 'animal rights' and its definition is marked by a debate between consequentialist and deontological theories.[91]

The prioritisation of community integrity and the recognition that 'animal rights' are best dealt with separately leads to the conclusion that, under Earth Jurisprudence, rights against abuse, to dignity, and against non-essential or frivolous use cannot form part of the rights of nature. These rights bear very little upon integrity, and indeed express ethical convictions which integrity cannot support.

As such, the rights of nature that flow from integrity are essentially Berry's three primary rights with adjustments, which I term 'existence', 'subsistence', and 'persistence'. The right of existence, the right to be, is a right against partial or complete destruction. The right of subsistence is a right to habitat and to supportive space, such that right-holding holons have a right against having their territory, and the nutritional and alimentary value thereof, reduced. The right of persistence protects the second aspect of integrity and shields holons against

[90] A suggestion I also make in Pradhan (n 17) 319.

[91] Peter Singer, *Animal Liberation Now* (HarperCollins 2023). Tom Regan, *The Case for Animal Rights* (University of California Press 1983). A new approach was recently suggested by Raffael Fasel, *More Equal than Others: Humans and the Rights of Other Animals* (OUP 2024).

activities which would prevent their restoration, gradual evolutionary progress, and development. These three rights, as moral rights, are, I argue, individually necessary and jointly sufficient to ensure that the integrity of the Earth system is maintained. As legal rights, they are similarly necessary and sufficient to ensure that human agents, individuals and officials, carry out their paramount moral responsibility not to damage holon integrity.

On their individual necessity, it is worth examining each of the rights separately, and considering a doctrine of rights which included two of these but excluded the third—and why such a doctrine would be unsatisfactory. First, take the right to exist. As a right against destruction, it is evaluable in quantitative terms. Populations of organisms within ecosystems fluctuate in size naturally,[92] but anthropogenic reductions in their sizes which go beyond the bounds of their ecological flux may threaten other populations in trophic or mutualistic relationships with them. Any such reduction may thus constitute a threat to the integrity of the ecosystem as a whole, and interferes with its right to exist. Conversely, any diminution in the size of a constitutive population which keeps that size within the bounds of its ordinary ecological flux does not bear consequences for other populations within the ecosystem, and does not therefore infringe the right to exist. This means that culling and other conservation strategies which involve managed reductions in population are not capable of amounting to a rights of nature violation unless the ecosystem is under threat, and indeed would be lawful unless otherwise regulated—for instance, by administrative laws requiring licensing, or by criminal or animal rights laws against certain modes of killing.

Clearly, a doctrine that excluded a right to exist would be inadequate. Natural organisms can be destroyed directly, without affecting their habitat, such that the right of subsistence will not always be engaged by acts of destruction. Moreover, ecosystems which are partially, but not wholly, destroyed by a human act can sometimes return to the original status quo after a period of regeneration; this is known as ecological resistance.[93] It follows that some acts of destruction would not engage the right to persist. The right of existence is therefore necessary to ensure the present integrity of the ecosystem is maintained, even where the right of persistence safeguards its future integrity. Similar considerations apply to holons of larger scale. The destruction of a population of organisms which is significant enough to threaten the stability of a biome should be construed as an interference with that biome's right to exist as

[92] Juli Pausus and William Bond, 'Feedbacks in Ecology and Evolution' (2022) 37(8) Trends in Ecology & Evolution 637.
[93] Anthony Ives and Stephen Carpenter, 'Stability and Diversity of Ecosystems' (2007) 317(5834) Science 58.

well as an interference with the relevant ecosystem.

Next, take the right of subsistence. This is similar to Berry's right to habitat, but in fact is slightly wider in scope—it protects the entire abiotic background which supports and sustains an ecosystem, including the spatial aspect of territory, and the nutritional or alimentary value of the various abiotic components, including the cycles which provide and replenish this value, such as the hydrological, carbon, and numerous mineral cycles.[94] Any human activity which reduces the effective availability of this value interferes with the right of subsistence. Such interferences therefore require qualitative and quantitative evaluation; whether a given abiotic component supports the right-holding holon falls to be determined first, following which the reduction in value must be assessed with reference to the expected range of natural ecological variability. For the first question, it is clear that some abiotic elements, such as soil, air, and waterways, will almost always sustain the ecosystem in some way. Others, such as rock landforms, will need a case-by-case analysis. For the second question, much like population fluctuations for the right to exist, the scale of the value provided by the relevant abiotic component may fluctuate over time and according to natural conditions—the water cycle will be restricted, for instance, in periods of natural drought. However, any human act which causes a reduction in alimentary value beyond what is ordinarily experienced by the holon, either in the sense that the value has fallen below some threshold which normal natural flux would never breach, or in the sense that the value remains within ordinary bounds but is artificially withheld to an abnormally low level for a longer period than natural flux would permit, constitutes an interference with the right of subsistence.

Consider, then, a doctrine which excluded this right. The right of subsistence may be thought of as parasitic upon the right to exist as reductions in the nutritional value of a supporting abiotic component threaten, by definition, the stability of the populations within the overlying holon. If this were true, the right of subsistence would be redundant; all interferences would also impinge upon the right to exist. This does not hold true in all cases, however. In particular, the spatial extent of territory is not connected with holon stability in that way. Territory is a complex concept, not least because it is not merely a block of defined space: avian and some marine populations can migrate vast distances, and this is part of their ranging territory, even if the other populations in an ecosystem occupy a much smaller area of land.[95]

[94] Melissa Ha and Rachel Schleiger, *Environmental Science* (ASCCC OERI 2022) 7.3.1.
[95] Peter Berthold, Eberhard Gwinner, and Edith Sonneschein (eds), *Avian Migration* (Springer 2013).

In any case, where the scale of territory, migratory or otherwise, is reduced by a human act to an extent greater than would be ordinarily expected under national conditions of flux, the right of subsistence is interfered with, as the right protects both the nutritional value of abiotic components and the intrinsic value in a right-holding holon occupying a space in which would otherwise naturally occupy. Both of these aspects inhere within the concept of integrity. Merely reducing the scale of territory, however, does not engage the right to exist, as it does not amount to the destruction of a constitutive living population, nor the right to persist, as the holon can still regenerate and evolve within the new spatial boundaries. The right of subsistence is therefore necessary to protect territory. Additionally, where it is indeed parasitic upon the right to exist—as with damage to the biogeochemical cycles—the right, whilst not strictly analytically necessary, carries a certain practical value. For instance, imagine a corporate actor who seeks to develop an industrial project that will prevent the local hydrological cycle from operating at natural levels for an extended period. Having identified an ecosystem that is at least in proximity to the project, a presumption arises that the right of subsistence enjoyed by that ecosystem would be interfered with if the project proceeded. The legal system might then choose to reverse the burden of proof in such cases, requiring the developer to demonstrate why their project would not reduce the alimentary value of the cycle to an extent sufficient to amount to an interference, before even proceeding to the conflicts of rights stage, discussed below. On the other hand, if only the right to exist were to be protected, the party evaluating whether the project would constitute a breach of the right would be compelled to amass a much greater amount of scientific and technical evidence demonstrating a connection between the hydrological cycle and the relevant population sizes, and, for an interference to arise, would have to show that the project would clearly threaten the stability of the ecosystem. Such evidence might be contested and controversial. A court might decline to prevent the development on this basis, and harm might result. Enshrining a separate right of subsistence, however, ensures that the integrity of the ecosystem is effectively protected in cases such as this.

Finally, take the right to persist. This protects the future integrity of the holon; its ability to regenerate following a destructive event, its evolutionary processes, and what Berry terms, a little whimsically, "the right to fulfill [its] role in the great community of existence".[96] It might be said that, whereas existence and subsistence allow a holon to survive, persistence allows it to thrive. The first aspect of persistence is regeneration or restoration. Again, as with

[96] Berry (n 4) 133.

the other rights, there is natural ecological fluctuation—or, more accurately in this case, natural ecological divergence. Hence, after a destructive event, some 'resistant' ecosystems restore themselves to the previous status quo, whilst other 'resilient' systems settle at a new equilibrium dictated, in part, by the consequences of the event.[97] A human act which prevented regeneration to the status quo would amount to an interference for a resistant ecosystem, but would not in all cases for a resilient one, because the ecosystem would not have regenerated in full in any case. Ordinarily, however, most activities which prevent regeneration to a lesser or greater extent will amount to interferences. Note that inherent in the concept of regeneration is an anterior destructive event, but strictly this need not be an anthropogenic one. Imagine a prolonged wildfire in a densely forested area which was not started by a deliberate human act. It might be that, applying attribution science, responsibility for the wildfire is partially allotted to anthropogenic climate change.[98] On the other hand, it might be that there is no human responsibility found for this particular fire. It is nonetheless true that, if an opportunistic real estate developer were to then purchase the land, clear the burnt areas, and begin construction of a housing complex, thus preventing the holons in the vicinity from regenerating effectively, the right of persistence would be impinged upon. The second aspect of persistence is evolution. The ability of a holon to evolve will naturally be affected by breaches of other rights, such as dramatic reductions in territory and reductions in population sizes. Evolution is uniquely relevant, however, to human acts of sterilisation of certain populations which prevent the holon to which they belong from evolving to the extent that such evolution could be expected under ordinary natural conditions.[99]

A doctrine which excluded the right to persist would protect the present survival of a given holon, but not its capacity to thrive. Integrity encompasses both of these aspects. It follows that such a right is indeed necessary. In many cases, the right of persistence will be breached in conjunction with an interference with the other two rights, but as shown above with the wildfire and sterilisation examples, this is not always true.

[97] Ives and Carpenter (n 93).
[98] Zhongwei Liu et al., 'A Global View of Observed Changes in Fire Weather Extremes: Uncertainties and Attribution to Climate Change' (2022) 173 Climatic Change 14.
[99] For an overview of some of the issues, see Jordan Hampton et al., 'Is Wildlife Fertility Control Always Humane?' (2015) 5(4) Animals 1047.

The three rights presented above—existence, subsistence, and persistence—are therefore individually necessary to protect Earth community integrity, but it remains to explain why they are jointly sufficient. As discussed, integrity is concerned with the stability and maintenance of the holon as a whole, both in present and in future. The rights of existence and subsistence protect, principally, the living components of any given holon, and, derivatively, abiotic components which provide alimentary value, but also, independently, the spatial extent of holon territory. The right of persistence safeguards the ability of a holon to regenerate and evolve. Conceptually, therefore, the three rights appear to do justice to the totality of the notion of integrity. However, in practice, it might be thought that certain duties would also need to be implemented. The Chapter VII rights enshrined in Ecuador are accompanied by a duty on the State to pursue restoration and mitigation: in cases "of severe or permanent environmental impact, including those caused by the exploitation of non-renewable natural resources, the State shall establish the most effective mechanisms to achieve restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences" (Art. 72). Do the three rights to suffice to protect integrity, or is a duty such as this necessary? I suggest that, since natural holons are capable of regenerating without human input, a right against activities which interfere with this self-restoration is all that is needed to secure integrity. A positive duty on the State may cause more uncertainty than it is worth. It is unclear, for example, how a court would interpret 'the most effective mechanisms', which appears to impose a very onerous obligation indeed, versus 'adequate measures', which seems weaker. Moreover, the State might legitimately submit that the 'most effective' way to restore a given holon is simply to leave it to regenerate on its own or to adopt light-touch conservation strategies. As such, a duty of the kind envisioned in Art. 72, although admirably framed, appears to add little extensional content to the three rights, and is uncertain in application. Nevertheless, it is crucial that the rights themselves are rendered practical and effective, and to this end the State is under ancillary obligations which I discuss below.

Having established the substance of the doctrine of rights under Earth Jurisprudence, a few questions remain as to their effective realisation. The first of these is how these three rights can be balanced against conflicting human public or private rights. The integrity consideration demands an absolute character where the infringement is so extreme as to amount to a total destruction of the core of each right. Hence, the complete elimination of an ecosystem, the

[100] An overview is given in Kristina Trykhlib, 'The Principle of Proportionality in the Jurisprudence of the European Court of Human Rights' (2020) 4 EU and Comparative Law Issues and Challenges Series 128.

complete annihilation of its habitat, or a complete restriction on its evolutionary capabilities are never justifiable. However, where the interference in question is only partial, the right in question is a qualified one and can be justified by the exercise of human rights. The justification schema used by the Strasbourg Court is useful in this regard.[100] A proportionality analysis must be employed to determine whether the exercise of a human right is proportionate to the infringement of the rights of nature. I have outlined elsewhere what such a calculation might look like in detail.[101] Essentially, it involves showing that the exercise is suitable to pursue the 'legitimate aim' of human development, is the least restrictive measure, and is proportionate stricto sensu.

The second question is whether these rights exist only vis-à-vis the State, as is the case in the European human rights context, or vis-à-vis all human agents. In other words, who is under a correlative duty not to interfere with the rights of nature? Unlike in human rights cases, the rights of nature can be readily infringed by an array of private rights. This is most acute in the context of real property—a landowner has rights of usus which might permit them to destroy a riparian ecosystem on land which belongs to them, for instance—but also holds true in maritime law (marine ecosystems), industrial regulation (pollution and contamination), and so forth. Non-State actors in a range of domains are able to pursue otherwise lawful activities which interfere with the rights of nature. Hence, it is natural that the rights of nature should stand vis-à-vis all humans. However, to ensure that the rights of nature are rendered 'practical and effective',[102] the State is also under a series of ancillary obligations which private actors are not subject to. I have discussed these elsewhere,[103] and they consist of: (i) a structural duty to codify the rights of nature in law and provide procedural rights for their vindication; (ii) an operational duty, engaged where the State knows or ought to know of an imminent rights of nature violation, to take reasonable measures to prevent it; and (iii) a procedural duty, engaged once a rights of nature violation is alleged to have occurred, to investigate, determine whether one has, and identify those responsible.

The third question is one of personhood and representation. Kurki is correct to hold that

[101] Pradhan (n 17) 320ff.
[102] To borrow from *Artico v Italy* [1980] 3 EHRR 1, para 33.
[103] Pradhan (n 17) 324ff.
[104] Visa Kurki, 'Can Nature Hold Rights? It's Not as Easy as You Think' (2022) 11(3) Transnational Environmental Law 525, 542.
[105] ibid 545.
[106] Erin O'Donnell and Elizabeth Macpherson, 'Voice, Power and Legitimacy: The Role of the Legal Person in River Management in New Zealand, Chile and Australia' (2019) 23(1) Australian Journal of Water Resources 35, 38.

the ability to be a subject of rights is not equivalent to active legal personhood.[104] Rather, right-holding holons under Earth Jurisprudence are passive legal persons, enjoying claim-rights but bereft of the secondary rights that would enable the vindication of those claim-rights. As such, some other party must represent the right-holding holon and administer its legal platform.[105] Different approaches have been adopted in different jurisdictions, including the establishment of a guardianship body capable of acting and litigating on behalf of the right-holding entity.[106] In Ecuador, any agent with capacity can bring a rights of nature claim. The merit of each approach depends on the institutional circumstances of each jurisdiction. For instance, charging specific people with a duty to enforce the rights of nature may be more expensive but lead to better outcomes; it may not do so, however, if civil society is itself capable pursuing the same enforcement objectives. The principles of Earth Jurisprudence do not set specific requirements for how right-holding holons should be represented, providing the ancillary duty of the State to ensure that the rights of nature are rendered practical and effective is met.

The final question relates to the consequences of a violation. It is proper that the rights of nature, as legal rights, should create liabilities. However, the principles of punitive justice appear generally inapposite to rights of nature violations. This is because, although such violations are morally wrong, many of them will occur unknowingly, with the violating agent responsible only for a failure to properly investigate the surrounding natural situation, and therefore culpable to a lesser extent. The proper approach is therefore remedial, with violating agents compelled to restore the situation to the pre-violation status quo.[107] The specifics of this approach will depend on the jurisdiction, but may involve, for instance, paying a conservation charity or environmental authority to undertake the necessary restorative work.

E. Conclusion

The object of this article was, first, to interrogate theories of right-holding from an Earth-centric perspective and develop a theory of right-holding concomitant with Earth Jurisprudence principles, and, second, to construct an ideal model for the rights of nature. I have argued that ecosystems and all holons of larger scale—networks of interdependent ecosystems and the global macroclimate—are the paradigmatic right-holders under Earth Jurisprudence, and right-holding capabilities are extended to humans, certain animals, and other creatures possessed of alert sentience to secure the effective promotion of political morality. This is a modification of the Kramerian interest theory. I have also proposed a framework whereby right-holding holons enjoy rights of existence, subsistence, and persistence, which are individually necessary and jointly sufficient to fulfil the paramount ethical consideration of Earth community integrity.

These rights have an absolute character where the contravention of their correlative duties would entail complete destruction of the core content of the right, and have a qualified character in instances of partial destruction, which allows interferences to be justified if proportionate. The rights of nature stand vis-à-vis all human agents, although the State is under additional obligations to ensure that they are rendered practical and effective, which includes specifying and granting secondary claim-rights of representation to active legal persons according to the institutional context.

It is worth noting that, as discussed in the Introduction, the project undertaken in this article is not one of foundational justification. In other words, I have adopted the principles of Earth Jurisprudence as premises and attempted to reason towards the best compatible theory of right-holding and doctrine of rights, all within the four corners of the philosophy. If one is of the view the paramountcy of the consideration of Earth community integrity can be justified ab initio as a matter of ethics, then the account of rights presented in this article is superior to those which do not prioritise that consideration. If one is not of that view, then this article simply offers the best account, analytically speaking, that can be derived from Earth Jurisprudence principles.

Moreover, my proposed ideal model for the rights of nature is, essentially, an ideal model within Earth Jurisprudence only. I have not suggested that jurisdictions such as Ecuador and Bolivia adopt it in toto—again, that would require Earth Jurisprudence to be justified ab initio. However, given that Ecuador and Bolivia already come so close to a holistic adoption of Earth Jurisprudence, some of the ideas expressed and discussed in this article might be useful to adjudicators and legislators within these jurisdictions.

Finally, this article leaves some nuances unsettled. In particular, the specific nature of the proportionality calculation for conflicting rights requires further exposition, as does the content and extension of other accompanying entitlements—powers and immunities—that the model demands. It is hoped nonetheless that this article has succeeded in providing clarity on the primary claim-rights granted to right-holding holons under Earth Jurisprudence.

[107] On restorative justice in Earth Jurisprudence, see Mason (n 67).