Sortuz. Oñati Journal of Emergent Socio-legal Studies
Volume 15, Issue 2 (2025), 313-326
ISSN 1988-0847
DOI link: https://doi.org/10.35295/sz.iisl.2511

Introduction – How Magic are Rights of Nature?

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This publication is based on a research project funded by the Volkswagen Foundation. We would like to thank Elspeth Burdette for editorial support.

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1. SETTING THE SCENE

The Rights of Nature (RoN) debate has become a global phenomenon. Quite long ago seem the times when granting rights and legal personhood to nature or specific parts and facets of it was considered a completely unrealistic demand, and debates focused primarily on whether RoN were possible or feasible at all. Whilst those debates continue, RoN are now a reality, having found their way into numerous legal texts and rulings around the globe. In parallel, academic discourse on the topic has increased enormously in such a way that it is becoming difficult to track what is happening where (Hanschel and Mehlhorn forthcoming 2026a, 2026b). Collaborative efforts such as the Eco Jurisprudence Monitor assist in this endeavor.[1] What stands out, however, is what can be described as the growth of seeds planted by RoN (Bonilla 2023, 5, 35, Gutmann and García Ruales 2024). RoN manifest in a diversity of unexpected shapes, not only in academic spaces, but also through collective socio-legal activism and its entanglement with the arts (Bonilla *et al.* 2022, García Ruales *et al.* 2025). The legal terrain even becomes a site of creative struggle.[2]

2. DISCOVERING THE MAGIC IN RIGHTS OF NATURE

RoN are stirring emotions, great hope and enthusiasm, but also skepticism, leading to a number of very fruitful and innovative academic debates. Our joint publication in this journal serves to develop (some of) these debates in a forward-looking manner. The starting point for this was a conference in January 2024 at the Max Planck Institute for Social Anthropology in Halle (Saale), Germany.[3] For the purpose of this conference, we started to think about RoN through the notion of magic. We decided to use this concept to inject a new provocative aspect into the debate and to try and capture some of the most interesting questions regarding law, social change and ecological justice which RoN raise in novel and urgent ways.

In times of global environmental stress, manifest injustices and an increasing feeling that we are running out of time, the question is whether RoN can ultimately provide stronger protection to those who are suffering from such injustice or to nature itself and its components. Looking at the grim reality, believing in such profound change through the power of words that articulate new rights or concepts bears elements reminiscent of a magic spell. At the same time, beyond this sense of wonder the notion of "magic" also points to a possible critique regarding the reinvigorated belief in a legal revolution (Boyd 2017).

We wonder: Might a narrative of RoN as the magic solution to a complex multi-crisis hide the actual causes of the latter? Re-enforce legal figures which come with (hi)stories of violence and exclusion? Naturalise an attachment to law and the juridification of protest at the expense of other forms of organising and thinking? Conceal or blur the root causes of

[1] For more, visit: https://ecojurisprudence.org/

[2] See for example the concept of "artistic legal mingas" (García Ruales *et al.* 2025; see also Dietrich *et al.* 2024 for more on the RoN artistic project, Organisms Democracy in Berlin).

[3] This was part of a research project funded by the Volkswagen Foundation, but also inspired by early engagements within the ERCC Fellow group accompanying the discussions of RoN and environmental rights in different cultural contexts, for more visit: https://www.eth.mpg.de/ercc

conflict and create added complications of who can represent whom, what their interests are and how they can be balanced against each other? In sum, we argue that looking at RoN debates and developments through this prism might help capture some of the most fascinating aspects of RoN. The idea of magic points both to the great hope and the profound novelty that RoN represent for many, as well as to the illusions that may go along with them.

3. Digging Deeper into Magic of Rights Thinking

Whilst our work invites attention and offers innovative perspectives, it is rooted in a century-long debate on law and magic, which is itself starting to trigger new contributions in the field. On a first glance, the two seem to have nothing in common. In fact, they might be considered as opposites: the rationality of law stands in contrast to "irrational" magic.[4] Yet, the connection between law and magic has been highlighted and debated in a rich literature.

To start with some of the enthusiasm that RoN has so impressively sparked, one good way to use the term magic in this context is to apply it to law's capacity to empower those who are oppressed, voiceless or powerless and to enable them to step up and seek justice, whether they are human beings or in fact nature itself. One particularly strong empowerment through the law occurs through its ability to grant rights to persons. We might remember Patricia Williams' seminal work on race and rights in the US context, where she described rights as the "magic wand of visibility and invisibility, of inclusion and exclusion, of power and no-power" (Williams 1987, 431). This magic wand is now also ascribed to nature. And does it not indeed seem like a transformation so profound and sudden that it can be only powerful sorcery? Nature as an object to be owned and exploited suddenly becoming a person? (Alvarez-Nakagawa 2019).

Beyond this idea of magic as empowerment, the connections between law and magic have also been discussed in different streams of literature, dating back at least to key works in 19th century legal history and anthropology. Alexis Alvarez-Nakagawa clusters the different approaches which have emerged since then under the "magico-juridical hypothesis" (2024). The claim is made that there is a fundamental unity between magic and law (and religion), the practices of which cannot be disentangled. The hypothesis is that law relies on magic to be effective, and thus it "needs a 'supplement' to close the gap between norm and fact—between the rule and its application" (Alvarez-Nakagawa 2024, 187). 19th century legal historians quite commonly connected law and magic in their accounts of the birth of law; in the early 20th century vibrant interdisciplinary debates (with key figures being legal historian Huvelin and anthropologist Marcel Mauss) discussed possible connections and differences between law and magic – debates which set the groundwork for later debates on the magical content of modern law.[5] "Modern" law finally became the explicit object considered through the notion of magic by the (importantly Scandinavian and US American) legal realists of the 20th century. For the "magical legal realists" the doctrinal reasoning, formal procedures and other pillars of legal rationality were but "magic solving words" (Cohen 1935, 820), "word ritual" (Green 1928, 1016), and "legal myth" (Frank

[4] On the relation of magic and rationality, see Tambiah (1990).

[5] Importantly for these debates, see Hubert and Mauss (1902/2006); for a comprehensive overview of historical debates, see e.g. de Sutter (2017).

1930, Part One) (for an overview see Allen 2008, 774) obscuring the indeterminacy of legal decisions and the real reasons and powers behind them.

In many RoN arguments, this indeterminacy is in fact an opening, an opportunity to change the law and use it to promote social and ecological justice and different ways of co-inhabiting this world. So instead of deconstructing law in order to discard it, RoN might show a way to turn this critique into a productive re-definition and re-appropriation of rights. Returning to Patricia Williams here, she reminds us that not only "[i]n many mythologies, the mask of the sorcerer is also the source of power. To unmask the sorcerer is to depower" but also that "[i]n those ancient mythologies, however, unmasking the sorcerer was only part of the job. It was impossible to destroy the mask without destroying the balance of things, without destroying empowerment itself" (Williams 1987, 431, see also Halifax 1979, 22).

Another key argument made in this legal realist literature gives way to a more skeptical assessment. It regards the performative force of language, meaning here the belief that "when judges and sorcerers speak in the proper ritual contexts, the act of saying it does make it so" (Allen 2008, 777). Similar arguments are also made more recently in legal scholarship, e.g. by Julieta Lemaitre, who refers to "legal fetishism" as the superstition that "law can change reality" simply by being enacted (2007, 8, 2008, 333). In this broader sense, legal fetishism names a "blindness to the tension between the making of law and its application", privileging "the rituals of the law over its real efficacy" (Lemaitre 2007, 8). This has similarly been explored in anthropology (see e.g. Greenwood 2009, Whitaker *et al.* 2025). Hence, Franz von Benda-Beckmann wrote that "Law, as [a] "desired situation projected into the future" (...), is used as a magic charm" (1989, 129). He calls for attentiveness to the plurality of legal practices and doings and to how law is used in everyday life, rather than treating it solely as a magic charm to summon change (Benda-Beckmann 1989).

This understanding of legal speech acts (which ultimately responds to a conservative view of legal determinism), contends that legal doctrines bring about specific results without taking into account other factors (Orford 2006, see also Mehlhorn 2024). This can be detected in some RoN enthusiasm – and understandably so. In the light of the complexity and subjectively overwhelming effect of the intensifying global crisis - do we want to believe that after all there is a magic solution? That we can halt a catastrophe through magic words? Hägerström, a key figure in the legal realists' development of magic and law, argued that "underpinning modern law was the (...) old human longing for a supernatural power to control persons and things" (Alvarez-Nakagawa 2024, 181).

However, there is also a different way to look at it. Magic can be something socially useful and powerful, not only sleights of hand and smoke-screens. This is what legal scholar Jessie Allen argues, when she points out that the legal realists might be right about the fact that there is a magical element in law but wrong about the role of magic in society. Roughly at the same time of the legal realist critique, anthropological works focused on the very rational and useful role magic can play in society (2008, 808, 811, 830). As Allen points out, the legal realists followed the "Victorian anthropological definition of magic as a kind of false science" (2008, 775) and disregarded the insights of modern anthropology which for example stress the social work of ritual or interpret magic and ritual in terms of performance, language, and symbol, thus rejecting the necessary opposition of ritual magic and reason (see Allen 2008, 775). In this sense, "law constitutes and transforms social

meaning by helping to create and recreate the social situations at issue in adjudication. Ritual magic is a long-recognized mechanism of such transformations" (Allen 2008, 775).

Looking back at classical debates about magic and law finally leads us to a crucial point, raised in different ways throughout this issue. As Alvarez-Nakagawa points out "the huge interest of 19th-century European scholars in magical practices was prompted by the 'colonial encounter', with much of their views affected by the imperial gaze that characterized the period. (...) Magic was thus conceived as either exotic or archaic, that is, foreign to European modernity" (2024, 175). These colonial logics to disregard, illegalize and annihilate Indigenous knowledge and law to some extent continue to characterize our present moment and are crucial in debates about RoN. Acknowledging the magical propensities of hegemonic law would open up "a set of awkward present-tense analogies between the West and its 'Other'", as Alvarez-Nakagawa (2024, 176) further points out. RoN has the potential to unsettle these violent divisions and exclusions. In many contributions, RoN are emphasized to have opened up law for Indigenous knowledges and legalities (see e.g. Acosta 2014, Cordovez *et al.* 2021, Murray and Martínez-Moscoso 2025). What has been deemed irrational and the impossible outside of modern law has slowly made its way into hybrid legal formations in different Latin American context and legal academic debates.

In this context we might think of the writings of socio-legal scholar Iván Vargas Roncancio, who explores the role of plants and the conjuring of beings in Amazonian law-making. He asks: "In what sense, then, could conjuring other-than-human beings as agents of legal meaning, rather than mere recipients of state-sanctioned rights, transform what we mean by law and RoN in Latin America?" (2021, 119). The conjuring at play is not only about the legal personhood or being recipients of nature's rights, but about grasping the entanglement of Indigenous first law and settler law (O'Donnell *et al.* 2020, 425), and how they operate together. These cosmic-material intertwinings lie at the heart of normative cosmo-materialities and their relation to RoN (García Ruales 2025).

Yet again, the notion of magic can also open up our interrogation in a more skeptical direction. When RoN are considered magical – is this not sometimes again building on the essentialisation and exotisation of Indigenous thought (or- somewhat less present in the debate- other forms of non-dominant knowledge such as that of the Black or Afro-Colombian People described by Hinestroza Cuesta in this issue)? This might surely happen in a more benevolent form than in early social evolutionist accounts but nevertheless can rely on the same colonial logic. If Indigenous Peoples are only able to enter the debate as the "hyperreal indian" (Ramos 1994), the "ecologically noble savage" (Redford 1991) that justifies an ultimately liberal and Global-North-centric project, this is far from emancipatory dialogue and the decolonisation of law (Rawson and Mansfield 2018). A significant body of critical literature furthers this point: RoN distort, instrumentalise and ultimately can silence Indigenous knowledge and exclude Indigenous political projects (Marshall 2019, Tănăsescu 2020, Fitz-Henry 2023, Viaene 2024, Petel 2024).

4. Providing a New Impetus to the Debate

It is in this context that we have decided to extend the multi-faceted discussion on magic in the law towards the magic of RoN by engaging in a multi-perspective debate with authors

in this joint publication. Such an extension has not been systematically undertaken as of yet and therefore offers new ground, even for a debate as relevant and dynamic as the one on RoN. The papers, each in their own specific way, give answers to the question of magic and hence provide a broad range of opinions on how magic RoN can really be. RoN are critically interrogated, developed and used as entry point for debates from perspectives as diverse as legal theory, law and literature, ethnographic studies, Indigenous philosophy, pedagogy, etc.[6] Contributions are characterized by a broad range of trajectories, views and standpoints, and interests regarding RoN and their relation to magic.

We deliberately broadened the spectrum of papers to create space for contributions that are academic accounts of current developments within the RoN debate (Joel Colón Ríos and Marina Lostal or Stefan Knauss and Anne-Kathrin Lindau) and others that are more informed by personal insights and experiences such as by a reporting judge in a landmark decision (Agustín Grijalva). Some papers are informed by Marxist theory and Indigenous philosophy (Fausto Quizhpe Gualán), others rather by the law and literature genre (Andrés Martínez Moscoso). Still others deal with specific elements or parts of nature, such as the Atrato River (Lisneider Hinestroza Cuesta), or with the analysis and application of several RoN rulings (Diana Murcia). Each contribution has its own specific way of addressing the theme of RoN and the magic that these rights may entail.

Stefan Knauss and Anne-Kathrin Lindau combine perspectives of a philosopher and a geographer in their analysis of two case studies on RoN from two very distant places and different perspectives: Mount Taranaki, a volcano in New Zealand, was officially recognised as an ancestor of the Māori People and therefore as a legal person through legislation in January 2025. The authors then look at rulings by a German Civil Court in Erfurt in 2024 which recognised the RoN in the context of litigation on diesel emissions by reading nature into the EU Fundamental Rights Charter. The unusual comparison allows them to generate a productive opportunity for transformative learning and education. They consider this evolution which combines different elements of knowledge, values and governance as manifestations of hybrid legality which may contain certain elements of magic.

Fausto Quizhpe Gualán develops the concept of ecospirituality, the praxis and sacralisation of life (p. 351 et seq.), as part of Indigenous Philosophy and ecoreligion. His vivid argument takes as a starting point the Indigenous world, particularly the Saraguro Kichwa People, and builds on this using Marxist theory, insights and methods from liberation theology and philosophy, and a wide array of further theoretical and historical references. He writes that what is eco-spiritual for the indigenous world is a naive act for modern science (p. 365), thus furthering the argument that knowledge has often been deemed irrational magic (p. 361 et seq.) in colonial logics, as described above. His account of ecospirituality spans both a historical and global contextual understanding of what he details as capitalist death cult and the different forms of the dispossession of the Indigenous world, as well as very personal accounts including the author's first memory of ecospiritual life, the learning of fire reading. Undoubtedly these strong accounts of Indigenous philosophy and ecoreligion are a crucial contribution in RoN debates. But can RoN take serious account of those debates? Should we even invest in RoN? The author states it unequivocally - RoN are for

[6] On RoN and interdisciplinarity, see Gilbert *et al.* 2023.

Quizhpe Gualán a plagiarism of Indigenous philosophy, used in a commodified way according to current fashions.

Diana Murcia cautiously undertakes a comparative legal exercise on the application of RoN rulings in Ecuador, New Zealand, Colombia, Spain, India, and the United States, addressing rivers, plateaus, glaciers, forests, and lagoons. She draws attention to and poses the question: To what extent is the protection of an ecosystem reinforced after its declaration as a subject of rights? Taken together, the rulings and her analysis provide parameters of comparison that can serve as a basis for comparative law in RoN jurisprudence. The common element of her findings, which may to some extent be associated with magic, is how guardianships for nature by individuals, collectives and other actors are strengthened through the construct of recognising legal personhood. RoN even though they are not perfect have, according to Diana Murcia, created a new approach to environmental justice.

Andrés Martínez Moscoso draws insights from the ecosystem and swamp scenery of Macondo in the novel One Hundred Years of Solitude by Gabriel García Márquez, where magical realism is at the center. The author compares Macondo collapsing "under an anthropocentric vision" with the Los Cedros cloud forest in Ecuador that, by contrast, has been saved through a famous ruling of the Constitutional Court which thus "transforms reality and protects nature" (p. 388). Through a legal-literary lens, the author brings protagonists, species, stories, similarities and complexities of both scenarios into conversation. He concludes that both magic realism as well as RoN provide important contributions from the South that may contribute to a paradigm shift.

As the reporting judge on the Los Cedros decision, *Agustín Grijalva* is ideally placed to provide further background information on this landmark case. Using the example of this ruling on the cloud forest, he sets out to "describe and analyze how the rights of nature can engage in a dialogue between Western sciences, diverse ontologies and local knowledge" (p. 411). He provides deep insights on how the interpretation and application of the Rights of Nature as stipulated in the Ecuadorian Constitution depends on judicial craft, deep scientific information and ethical considerations. Explaining this very practical and rational interaction, he refutes the idea of magic, in the sense that RoN might be contrary to science or constitute a panacea. However, he finds the forest of Los Cedros to be magic both due to its richness of life and by the way it has become a symbol for RoN. As part of this analysis Grijalva looks at the life's work of guardian Josef Decoux,[7] who dedicated himself to protecting the cloud forest, its orchids, rainfrogs, spectacled bears, and biodiversity corridors. His legacy lives on in the Constitutional Court ruling that put a halt to mining activity in the forest, although Los Cedros remains vulnerable to anthropogenic pressure (Rodríguez Garavito and De Bona 2024).

Lisneider Hinestroza Cuesta describes the intimacy of the worldview of Black communities in the context of the Atrato River ruling. She takes up the questions: Who and for whom is the Atrato River? What rights does the River have? Why did the judgment by the Colombian Supreme Court not name the *Orishas* (divinities, energies, and spirits) of the Atrato River? When she describes the RoN as a magic wand, this is to be understood as an

[7] For a beautifully written piece about Josef Decoux who passed away while we were writing this issue and whom we co-authors met in Los Cedros see https://reservaloscedros.org/2024/07/03/for-josef-decoux-guardian-of-the-forests-in-the-tropical-andes/

important critique, as she emphasises the lack of true sparks (*destellos*) when approaching these questions. From her "critical perspective on constitutionalism and environmentalism" she argues "that the restoration and conservation of the river must not be limited to a legal figure rooted in Western law" (p. 432). "Instead", as she insists, "it must recognise, respect, and recover the ancestral ways of relating to nature held by the peoples who have historically lived with the river, such as Afro-Colombian communities" (p. 432).

It is misleading to think that simply extending legal personhood to nature will result in some "magical" changes, argue *Joel Colón Ríos* and *Marina Lostal*. As long as rights and legal personality are reproduced, they argue, "[t]his (...) does not alter reality, as magic is supposed to do, but duplicates it" (p. 475). However, instead of discarding RoN, the authors present three models for RoN which can substantially facilitate a debate about different ways RoN can be understood and their respective potential and shortcomings: the extension model (which simply applies rights and legal personality to nature), the all-encompassing model (where nature takes centre-stage of the constitutional order) and the co-dependence model (where human beings and nature are on equal footing and depend on each other). While they see substantial problems with the first two models, they provide a theoretically innovative justification and embrace of the co-dependence model. Here rights recognition is neither the point of departure nor the ultimate goal. Instead, the focus lies on the very possibility of future exercise of constituent power and democratic institutions which is dependent on and impossible to achieve without nature's continued flourishing. Instead of reproducing the logics of rights, the authors shift the focus on the "potentiality of novel forms of constitutional organisation, forms that may contradict the existing political or economic interests, but advance further the realisation of what we called the co-dependence principle" (p. 475).

5. IDENTIFYING CHANCES AND LIMITATIONS OF THE LAW

Through the variety of approaches encapsulated in these papers, we are able to present findings that help to illuminate where RoN as engrained in the law can actually help to tackle injustices perceived and analysed at many different levels, thus connecting the global and the local. These findings allow us to discuss in new ways the feasibility of providing solutions for environmental problems and injustices that we are so much struggling to find. The discussion includes embracing the variety of legal design and cultural and political embeddedness, displaying the many different circumstances and ways in which RoN may be considered to have a magical component. They may provide shifts of paradigm, empower objects by turning them into subjects, inject Indigenous and other marginalised views into "mainstream" debates or, in turn, only seem magic to those in the Western world who "extract" concepts as potential remedies against their unsustainable life ways, whereas the real magic of Indigenous and other cosmovisions remains concealed from them.

At the same time, and this is an argument that most legal scholars would insist on, the contributions remind us to remain mindful of the limits of the law. In fact, law's strengths are particularly rooted in those limits, as it seeks to encapsulate policies emanating from public discourse and to provide legal certainty that everyone can rely on and adjust their behavior to. A risk is to overload the law with things that it cannot afford (Hanschel and Mehlhorn forthcoming 2026a, 2026b). Considering law as magic may create tension with its key assets of transparency, democratic foundation, foreseeability and certainty. Who

would be the magicians using the law? Everyone, the courts, (vulnerable) communities? Talking about law's magic is talking about power relations as well. What should manifestations of RoN look like and who has the authority to write it down and declare it to be binding? How will a court balance human rights and RoN? Who can enforce it? There are also major cultural differences and plural legal realities that we should respect. Judges are no legislators, and RoN are no panacea for problems that societies or local communities are struggling with.[8] At the same time, the respect for the plurality of norms expressing human and more-than-human relationships, visions and understandings (without being limited to what can be subsumed under RoN) demands an openness and an eagerness to learn and to gain new insights. This is what our joint publication in this journal is all about.

And what is it not about? As this introduction indicates, this is not a manifesto where all editors and authors necessarily share the same view. Both the conference and the completion of this publication have been marked by many discussions and, in some cases, controversies, as RoN are flourishing in different directions and are discussed from a variety of theoretical and methodological standpoints. Many findings by authors are likely to stir a lively debate. Instead of silencing such debates, we decided to bring them to the fore and facilitate discussion. We believe that it is one potentially powerful aspect of concepts/frameworks such as RoN that can bring together different disciplines and theoretical and political outlooks and standpoints, not with the aim to reconcile them, but to find points of productive dialogue. And we believe that each and every one of the papers provides a valuable contribution that tackles the question of magic in their own specific way. In sum, we are quite proud and grateful to be able to present a mix of thought-provoking contributions that have used the metaphor of magic as a key towards opening new insights into the rich Rights of Nature debate. Whilst being in no way definitive, we hope that the insights from this joint publication spark further thought and research on the topic.

There are a number of ways in which law can actually do magic through RoN, and maybe this insight can serve as a suggestion for a minimum consensus to reconcile the more enthusiastic and the more critical views. Law provides fiction, inspiration, creativity, empowerment, and depends on interpretation. In that sense the power of words, or more precisely of norms and in particular rights, is tangible and when it comes to RoN it resonates with what many would associate with magic. Like magic, law instils hope in change. And the more we are prepared to engage with the multiple facets of normativity inside and outside the State law, the more we can embrace manifestations of the law that overcome the classical human – nature divide and help to do their magic in showing us ways out of the multiple environmental crises that we are currently facing. At the same time, and again most lawyers would insist on this point, we must not overstretch the law or the notion of rights but accept their limitations through which they indeed draw their strength, such as law itself.

[8] As anthropologists Eben Kirksey and Sophie Chao note: "While fighting for justice in legal and symbolic realms, while advocating for forms of life that we find beautiful and necessary, it is critical to remain mindful of exclusionary languages and logics. (...). While government officials, lawyers, and some activists rally to defend Nature, it is important to return to a question that Donna Haraway posed more than twenty years ago: "What counts as nature, for whom, and at what cost?" As legal scholars and philosophers seek to expand the category of rights bearing subjects—to identify animals, plants, rivers, and ecosystems as legal persons—it is important to remember that not all people are treated as fully human before the law" (Kirksey and Chao 2022, 7–8).

6. Instead of a Conclusion

What this means will still have to be debated and negotiated in concrete circumstances. Lessons that can be drawn from the debate are as diverse as the contributions to this theme. But what the papers show is that context matters, and experiences of injustice in the face of environmental degradation are multi-faceted. RoN can help to instill new hope and belief in ways to empower people and maybe nature itself to recalibrate the balance and establish justice where there was formerly none. This is what some associate with magic, whereas other findings justify more sobering accounts. One way or another, RoN can help to give nature a voice, in a stronger way than inherently anthropocentric human rights, such as the recently established right to a healthy environment can.[9] We can probably not help but look through the human lens, and many of the injustices described in this issue are in fact injustices done to human beings. RoN cannot provide a substitute for the political debates and socio-economic struggles that we have to conduct in light of the global ecological crisis. Yet, the particular asset of RoN is that they widen the perspective and visualise the fact that human beings are not alone on this planet, but part of nature. RoN can help and inspire us to develop deeper notions of justice that respect this integrity. Illuminating the invisible in this way is clearly necessary, and it will probably not harm the law if there is a bit of magic in it as well.

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[9] On chances and limitations of this right see for instance Hanschel *et al.* (2022).

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