

Introduction

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This special issue of the *Nordic Environmental Law Journal* is the result of a symposium titled “National Interest, Representation, and the State: Implications for the Recognition of Rights of Nature” held at Uppsala University on 5 June 2023. The symposium was organized by members of the Formas-funded research project “Realizing Rights of Nature: Sustaining Development and Democracy” and brought together scholars in the fields of law, political science, international relations, history, and theology. Its purpose was to consider the implications of a novel approach to nature protection that has drawn increased interest in recent years: the recognition of nature as a rights-bearing legal entity. In 2008, Ecuador’s new Constitution extended certain rights to nature, including the rights to evolve and flourish. Any human could claim to represent nature by seeking to compel the state to defend those rights. Since then, other jurisdictions have recognized particular rights to either “all” of nature within their boundaries or a particular natural feature or ecosystem. In 2022 Spain became the first EU country with a rights of nature law when the country’s Parliament passed a law recognizing Mar Menor lagoon as a legal person with, among others, the rights to evolve and restoration. As these examples suggest, rights of nature (RoN) differ from previous protections for nature and people. Much like other innovative legal approaches to environmental protection, RoN makes legal subjects of entities that have typically been understood as objects. For instance, as a means of effecting changes in

climate and social policy activists have sued authorities in defense of the right of future generations to inherit a “habitable planet.”¹ In contrast, more familiar and established approaches have viewed “nature” as an object whose treatment ultimately depended on and served the rights and needs of currently living humans.

The symposium focused on two questions that commonly arise when the legal recognition of RoN is contemplated: how nature will be represented and the relation of its recognition as a rightsholder to the concepts of national interest. Representation is an enduring challenge for RoN. As scholars have succinctly noted in a recent article, “Natural entities cannot defend their own rights and require representation.”² What Tănăsescu pointed out in 2016 still holds: there are limits to what we can know about nature and its interests.³ It is not only the content but also the claim of representation that is uncertain, however; Patrik Baard points out that who can be said to legitimately represent nature is often unclear, particularly when would-be representatives present conflicting interpretations.⁴ As

¹ Randall S. Abate, *Climate Change and the Voiceless* (Cambridge: Cambridge University Press, 2019), 46.

² Jérémie Gilbert et al., “Understanding the Rights of Nature: Working Together Across and Beyond Disciplines,” *Human Ecology* 51 (2023): 363–377, here 373.

³ Mihnea Tănăsescu, *Environment, Political Representation, and the Challenge of Rights* (New York: Palgrave Macmillan, 2016), 21.

⁴ Patrik Baard, “Fundamental Challenges for Rights of Nature,” in *Rights of Nature: A Re-Examination*, eds. Daniel P. Corrigan and Markku Oksanen (New York: Routledge, 2021), 165.

Tănăsescu has argued, a lack of clarity regarding whose claim to represent nature would receive legal and judicial backing has the potential to reinforce existing unequal relationships.⁵ Both Tănăsescu as well as Kauffman and Martin each point to the necessity of accounting for power and power relations when interpreting the meaning of nature's rights.⁶ Power can flow to those individuals or collectives whose claims to speak for nature receive legal sanction, meaning that a political perspective is indispensable for interpreting the significance of nature's rights in any particular context. Amplifying these concerns, multiple speakers at the symposium suggested that attention to power relations is an essential perspective for the evaluation of rights of nature.

The political dimension of nature's rights is also reflected in its potential to impact the ways in which national interest is understood and justified. Rights of nature may present a means of re-politicizing the notion of the national interest and its relationship to "development." The term has both a generalized meaning as well as, in jurisdictions such as Sweden, particular administrative and legal meanings. The notion of the national interest has empowered expert knowledge and minimized popular influence. Much as Timothy Mitchell has argued that regarding the construction of "the economy," the national interest acts as a privileged field that insulates questions and conflicts from public opinion.⁷

⁵ Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (Bielefeld, Germany: Transcript, 2022), 70.

⁶ Mihnea Tănăsescu, "The Rights of Nature as Politics," in Daniel P. Corrigan and Markku Oksanen (eds), *Rights of Nature: A Re-Examination* (New York: Routledge, 2021), 69; Craig M. Kauffman and Pamela L. Martin, *The Politics of the Rights of Nature: Strategies for Building a More Sustainable Future* (Cambridge, MA: MIT Press, 2021), 3.

⁷ Timothy Mitchell, *Carbon Democracy: Political Power in the Age of Oil* (London: Verso 2011), 109.

Dams are one drastic environmental intervention often justified by appeals to the national interest and the assertion of socio-economic utilitarian "progress". This association has limited the strategies open to dam opponents.⁸ In effect, this linkage has had a "de-politicizing" impact. The language of national interest places pressure on those opposing a particular decision or project, "rendering a project or policy process as apolitical and separating legitimate from illegitimate actors, demands and grievances."⁹ Rights of nature has the potential to act as a way to re-politicize debates over projects claimed to be in the national interest. Arguments based on nature's rights may disrupt calculations of socio-economic benefit that justify approval of the large-scale, transformative projects often undertaken in the name of the national interest. Claims based on both rights of nature and human rights have been used to challenge approval of mining projects in Ecuador, for instance.¹⁰ Given the continued influence of invocations and calculations of the national interest to environmental policies, it is important to investigate its relationship to nature's rights.

The power that accrues to those who can claim to represent nature's rights may trouble established representative institutions. It may also challenge or alter the influence of notions of the national interest. These are but two challenges stemming from the recognition of nature as a rights-holding entity. These challenges were the main focus of the symposium and are central to this special issue. In order to clarify such challenges, our research project has adopted a multi-

⁸ Ed Atkins, "Disputing the 'National Interest': The Depoliticization and Repoliticization of the Belo Monte Dam, Brazil," *Water* 11, no. 103 (2019), 4 of 21.

⁹ Atkins, "Disputing the 'National Interest,'" 5.

¹⁰ 'Consulta previa en la comunidad A'I Cofán de Sinangoe' (2022) Corte Constitucional [Constitutional Court] No. de Caso: 273-19-JP/22 (27 January 2022), 33, para 125 ('A'I Cofán de Sinangoe case').

disciplinary approach. We have placed it within a comparative analytical frame alongside other historically novel rightsholders and rights.

The symposium and this resulting special issue expanded upon this multidisciplinary base by bringing together scholars largely working in fields other than environmental law. In this special issue the symposium's themes have been broadened to examine different challenges for nature's rights. The recognition of a right belonging to nature is but one point in a longer struggle over its implementations and consequences. Political analysis is fundamental to understanding how the contest over those rights may serve to alter relations between populations and the state, as is a legal perspective that can analyze the status and power of the right relative to the jurisdiction's structure of government. Social analysis can illuminate the implicit models with which people understand their relations to nature in their lives. Religious studies can provide indispensable insights. The necessity of drawing on multiple disciplines to evaluate nature's rights holds true for established methods of environmental protection and regulation as well.

Contributors and Contributions

The contributions featured in this issue broadly address questions raised by nature's rights. The issue is divided into three sections. The first section contains articles that for the most part identify and analyze challenges for the strategy, acceptance, and implementation of nature's rights. Those challenges may be found in reigning political and social sensibilities, the tendency of rights to be symbolic or dependent on suppositions of an entity's qualities and abilities, or their suitability for restraining but not effecting government action. The theoretical justifications for inclusion in a political collective present another obstacle, as may the very ways in which the Anthropocene is conceptualized as a sharp

and monolithic break from modernity. The issue's focus on challenges is not total, however, as it also includes an examination of how some people already effectively think of their relations with non-human nature in terms of justice.

The first article, "Rights of Nature meets the Swedish Constitution" by guest editors and legal scholars Victoria Enkvist and Marianne Dahlén, considers how the environment, climate and nature are presently protected in the Swedish constitution and how the introduction of a new legal concept such as rights of nature would interact with the existing legal framework. One of the focal points of the article is how conflicting interests are dealt with in the legal system. The next article, titled "Contemplating Rights of Nature in Sweden: Democratic Legitimacy, Conflict, and Centralization of Power" and authored by guest editor Seth Epstein and legal scholar Anton Andersen, analyzes interviews conducted by Andersen in the fall and winter of 2021–2022. Interviewees' work in some way involved the managed extraction of value from the environment or the protection of the environment. Respondents' concerns focused on issues of representation and national interest. The conversations highlighted perceived tensions between the recognition of nature's rights and the responsiveness of democratic political institutions to popular influence. These two articles highlight the importance of political, social, and legal context in considering the possibilities of nature's rights.

The subsequent articles provide different perspectives, addressing some of the questions which rights of nature raise. First, international relations scholar Claes Tångh Wrangel's "Dreaming of a Decolonial Language? The Limits of Posthuman Critique in the Anthropocene" problematizes the notion of a sharp division between modernity and the Anthropocene while asking what political and discursive action that

assumed division may facilitate. Providing a close reading of Bruno Latour's understanding of the "political of language," the article additionally scrutinizes the notion that language could function as a sort of emancipatory vehicle or machine. The article is helpful for conceptualizing rights of nature precisely because those rights themselves are often understood as occupying the boundary between modernity and the Anthropocene. The article further provides a platform from which we can ask questions about the representational responsibilities which rights of nature bestow to humans. The move to treat nature or distinct ecosystems as a rightsholder with rights that, like the right to evolve, charges humans with the responsibility to use language much as Latour advocated: as a means of inviting the Earth to speak through them while continuing to mediate and influence that voice. Rights of nature thus highlight the sorts of tensions involved in language and voice which Tāngh Wrangel points out exist in Latour's own politics of language.

On a different note, law scholar Love Rönnelid's "Rights critique and rights of nature – a guide for developing strategic awareness when attempting to protect nature through legal rights" identifies ways in which historical rights critiques may be relevant for the appraisal of nature's rights; by providing historical rights critiques, Rönnelid's article calls attention to "trade-offs" involved in movements for social change that rely on rights. The article asks us to consider the ways in which nature's rights may depart from the form which rights commonly take: the rightsholder is an individual, the dutyholders are largely governmental, and the rights tend to be negative, stopping rather than mandating a particular action. The article highlights cautionary signs for advocates of a rights of nature approach, enabling us to place rights of nature in relation to other conversations about jus-

tice. It also assists in the recognition that doubts about nature's rights appear similar to doubts about other rights. This recognition helps avoid the exceptionalism that can shape discussions of nature's rights.

This theme is expanded upon in the subsequent article, public and education law scholar Maria Refors Legge's "The Symbolic Nature of Legal Rights." Refors Legge's article considers the limits of the will and interest theories as justifications for rights. It additionally evaluates rights as a kind of "symbolic legislation," which expresses a political collective's principles but omits the underlying provisions essential for their effective enactment. Both human rights and nature's rights initiatives, Refors Legge maintains, may in particular contexts be best understood as forms of symbolic action. In seeking an alternative that is less susceptible to the lure of symbolism than rights have proven to be, Refors Legge productively urges a renewed focus on duties. Duties, the article suggests, compels a closer scrutiny of relationships and places greater priority on collective flourishing. Refors Legge's analysis points to several key issues that present challenges to the implementation of rights of humans as well as non-humans. For children as well as non-human, the ability to express a "rational" will (and thus satisfy the 'will' theory of rights) must be supplemented in some way, often through the delegation of representative responsibility.

Political science scholar Jonas Hultin Rosenberg's article "The Democratic Inclusion of Nature" explores the intellectual "preconditions" for the inclusion of nature as a member of a political collective. Hultin Rosenberg examines the applicability of the "all-affected-principle" (AAP) to encompass (individual) non-human entities. That principle refers to the idea that those who are affected by the decisions taken by a collective have a credible claim to inclusion in

that collective. Hultin Rosenberg suggests that the principle itself implies an “agency requirement.”

RoN protections in Ecuador, Spain, Columbia, and elsewhere specify the right to evolve. This and other rights, like the right to flourish, seem to be based on the recognition of the integrity of the organism’s ends. Hultin Rosenberg also highlights one of the most stubborn challenges to inclusion of entities by alluding to AAP’s implicit requirement of political agency for inclusion. That this most broad of rationales for the extension of membership in a political collective would still rely on a certain capability of political agency illustrates again why representation is such a key and contested feature of rights of nature recognitions. Is this agency simply transferred to those humans through their representative roles?

The next article, “Religion, Nonreligion and Nature’s Rights: What’s the Connection?” by religious studies scholar Lauren Strumos, takes a very different approach. Nonetheless, her article is similarly interested in foundations, only of a different sort: the ways in which people make sense of their day-to-day relationship to nature.

Strumos provides another perspective by focusing on the relationship of nonreligion to nature’s rights. The article suggests non-religion may play a role in offering an alternative to a stewardship perspective, which has reflected the influence of monotheistic religion. It employs a lens of ecological justice to interpret how people involved in a protest of the construction of a crude oil pipeline in British Columbia understood their relations with non-human nature. Strumos examines the role of nonreligion in broadening opportunities for non-hierarchical conceptions of these relations.

The contributions in this section provide succinct analyses of various aspects of rights of nature. If the contributions in the first section

tend to focus on challenges to rights of nature, the ones here suggest the presence of opportunities to build towards nature’s rights. These contributions examine this presence in public opinion, civic education, and ways of perceiving relations between humans and non-human nature. These articles are authored by symposium attendees who responded to our invitation to reflect on the day’s conversations. The first is from three leaders of Biotopia, a center in Uppsala that organizes nature experiences and education. The article “Reflections on nature experiences and knowledge shaping attitudes towards the rights of nature,” is co-authored by Andreas Brutemark, the head of Biotopia, nature guide Maria Brandt, and project manager Jonathan Schalk. The essay argues for the importance of providing children with positive nature experiences. These experiences will support children developing a more nuanced sense of their relations with non-humans and their embedded place within nature. Absent opportunities to develop consciousness of their relations with nature, children may develop relations characterized by fear and dislike. Interestingly, scholars have argued that rights of nature protections are one means of encouraging a recognition of human embeddedness in nature, a recognition also developed by positive nature experiences.

In “Most EU Residents Support Rights of Nature Laws,” environmental law scholar Yaffa Epstein, ecologist José Vicente López-Bao and environmental psychologist Jeremy Bruskotter interpret their contemporary expression through a survey conducted in 23 European countries. Cautious about the results that appear to indicate consistent support for rights of nature across these countries, the authors nonetheless suggest that there may be greater popular support for rights of nature in Europe than has previously been perceived. They also call attention to the finding that many people may have

yet to form a strong opinion on the issue. Based on their data, they point out that the “cultural conditions” may already exist for the recognition of nature’s rights.

A third contribution, “What is valuable in human and non-human nature?” by theology scholar Lina Langby, examines the implications of different philosophies for the identification of nature’s intrinsic value. Langby examines the possibilities for the perception of nature’s intrinsic value offered within both non-religious and religious worldviews. Langby argues that a naturalist and reductive physicalist perspective leaves no room for the perception of such an intrinsic value. Langby additionally discusses religious perspectives, such as pantheism and panentheism, which also present potential challenges for the extension of intrinsic value to non-human nature. Langby eventually turns to panpsychism, which considers everything to be “conscious, experiencing, or subjective.” This perception consequently places humans in relationship with all sorts of entities, disrupting the subject-object organization of life, and makes inescapable the question of justice in these relations.

Finally, lawyer Fabianne Lenvin, whose dissertation was published in condensed form by this journal in 2023, contributes “Balance of interests and the implementation of the rights of nature in Swedish law.” Reflecting both on her own work and on speakers’ topics, Lenvin noted the difficulty involved in the balancing of interests. While nature’s rights appear to introduce a new voice previously absent in the process of balancing, Lenvin also points out that the balancing process applies to rights as well as interests. The Indigenous Sámi people hold a place in this balancing process, as the state often balances their rights against those of the country’s energy and consumer needs.

In its last section, the special issue includes contributions from two speakers whose role at the symposium was to reflect upon the day’s conversations and addresses. United Nations Harmony with Nature Initiative knowledge expert Pella Thiel and systematic theologian and researcher at the Unit for Research and Analysis of the Church of Sweden Michael Nausner each reprise and expand on their roles at the symposium to reflect on speakers’ articles. Furthermore, Thiel and Nausner suggest ways that “imagination” may help to address challenges to the recognition of nature’s rights. In “Moral imagination for the rights of Nature: An Embassy of the Baltic Sea,” Thiel explores the potential for a prospective Embassy for the Baltic Sea to expand the “moral imagination” with which human political collectives perceive ecological crises. Such an embassy would facilitate broader participation in representative practices, affording people opportunities to engage in diverse ways of communicating with and for the Baltic Sea. If Thiel examines the role this prospective Embassy may play in stretching the public’s “moral imagination,” Nausner reminds us of the influence of religious and “theological imagination” on how humans perceive their relations with non-humans. Arguing against an individualistic perspective, in “Imagining Mutuality as Base for Rights of Nature: A Theological Perspective on Humanity’s Relation to the More-than-human World,” Nausner highlights religious foundations for the recognition of the inextricable and “intimate” interdependence between humans and non-humans. Such mutuality, Nausner goes on to discuss, is also a reason why human rights and nature’s rights ultimately reinforce each other. He thus delves into a recurring theme in scholarship and legal cases: the extent to which the rights of humans and the rights of nature conflict or harmonize with one another.