Contemplating Rights of Nature in Sweden: Democratic Legitimacy, Conflict, and Centralization of Power

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Abstract

The recognition of nature as a legal rightsholder has become one means by which people around the world have sought to pursue eco-centric sustainable development strategies. We examine perceptions in Sweden of how the prospective recognition of nature as a rights-bearing legal subject may nonetheless conflict with the objectives identified in the U.N.'s 2030 Sustainable Development Agenda for "Peace, Justice and Strong Institutions." Our analysis is based on interviews with individuals whose work involves the protection of the environment or the use of its resources. The article demonstrates how concerns about the harm to democratic systems are built upon several interlocking assumptions regarding human-nature relationships, the limits of human knowledge about nature, and the proliferation of conflict engendered by recognition of nature's rights.

1. Introduction

Environmental regulation has tended to raise concerns about the lack of opportunity for people to have a say in the laws that impact the ecosystems in which they live.[1] In the years since its 1973 passage, for instance, strong proponents of popular influence have criticized the United States' Endangered Species Act as a prime instance of the power that unelected and supposedly unaccountable experts can wield on public life.[2] Institutional support for public participation in environmental policy has matured since the 1970s. The 1998 Aarhus Convention's recognition of the right of the public to participate in environmental decisions illustrates this development.[3] Nonetheless, within EU borders there is a history of tension between conservation efforts and local influence, as exemplified by the establishment of particular Natura 2000 conservation sites that lacked "sufficient involvement of the local authorities."[4] The effective participation of the public in environmental governance continues to present challenges, particularly as political collectives are forced to consider the necessity for dramatic changes to address climate change.[5]

The U.N.'s 2030 Sustainable Development Agenda is itself not free from such potential ten-

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[1] Scott Kuhn, "Expanding Public Participation Is Essential to Environmental Justice and the Democratic Decisionmaking Process," *Ecology Law Quarterly* 25, no. 4 (1999): 647–658, here 647–648.

[2] Brian Czech and Paul R. Krausman, *The Endangered Species Act: History, Conservation Biology, and Public Policy* (Baltimore: Johns Hopkins University Press, 2014), 121.

[3] Maria Lee and Carolyn Abbot, "The Usual Suspects? Public Participation under the Aarhus Convention," *The Modern Law Review* 66, no. 1 (Jan., 2003): 80–108, here 80.

[4] E. Carina H. Keskitalo and Linda Lundmark, "The Controversy Over Protected Areas and Forest-Sector Employment in Norrbotten, Sweden: Forest Stakeholder Perceptions and Statistics," *Society and Natural Resources* 23, no. 2 (2009): 146–164, here 150.

[5] Erik Hysing, "Representative democracy, empowered experts, and citizen participation: visions of green governing," *Environmental Politics* 22, no. 6 (2023): 955–974, here 955.

sions. What Pradhan et al. term "trade-offs," and "negative correlations" have emerged between the seventeen sustainable development goals (SDGs).[6] One such goal is Peace, Justice and Strong Institutions (SDG 16), which encompasses the development of "effective, accountable and transparent institutions" as well as "responsive, inclusive, participatory and representative decision-making at all levels" of governance. This goal itself may be imperiled by various efforts to attain other SDGs, such as Life on Land (SDG 15), which includes the pledge to "protect, restore and promote sustainable use of terrestrial ecosystems" and "reverse land degradation."[7] As scholars have pointed out, what may appear as characteristics of a healthy democratic system, such as predictable and frequent elections, may also make it difficult to enact sustainability policies if those policies are politically unpopular.[8] Moreover, complicating any relationship between social justice and environmental sustainability is that each are "contested concepts" resistant to reduction to a single meaning.[9]

Potential tensions between these goals are highlighted by concerns about the impact on democratic institutions of the recognition of nature as a legal rightsholder, which Kauffman and Martin note represents one contemporary strategy to achieve goals for the sustainable use of the earth's resources.[10] Civil society, judicial, and political actors around the world have sought to employ this rights of nature (RoN) approach in order to create "a more eco-centric sustainable development paradigm" able to realize the objectives identified in the 2030 SDGs.[11] In Ecuador this strategy informed the recognition in the country's 2008 Constitution of nature's rights to "the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes." Anyone, whether they were Ecuadorian citizens or not, could bring suit to hold the state to its responsibility to defend those rights.[12] The Constitution's preamble committed the state to a co-existence with nature that Kauffman and Martin describe as "an alternative model of sustainable development."[13]

This article illustrates and analyzes the perception in Sweden that the similar treatment of nature as a legal subject may complicate the goals of accessible, accountable, and transparent legal institutions outlined in SDG 16. It does so through the interpretation of 16 interviews conducted by co-author Anton Andersen in the fall and winter of 2021–2022. Andersen interviewed individuals whose professional work involved the extraction of value from or protection of nature. Respondents' concerns largely revolved around perceived potential tensions between the recognition of nature's rights and the responsiveness of democratic institutions to popular influence. Interview participants questioned the

[6] Prajal Pradhan et al., "A Systematic Study of Sustainable Development Goal (SDG) Interactions," *Earth's Future* 5, no. 11 (Nov. 2017): 1169–1179, here 1169. doi: 10.1002/2017EF000632.

[7] "The 17 Goals," United Nations Department of Economic and Social Affairs, last accessed 5 September 2024, https://sdgs.un.org/goals.

[8] Frederic Hanusch, *Democracy and Climate Change* (New York: Routledge, 2018), 13.

[9] Andrew Dobson, *Justice and the Environment: Conceptions of Environmental Sustainability and Theories of Distributive Justice* (New York: Oxford University Press: 1998), 5.

[10] 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), 2.

[11] Kauffman and Martin, *The Politics of the Rights of Nature*, 3.

[12] "Constitution of the Republic of Ecuador," *Political Database of the Americas*, last modified 31 January 2011, last accessed 23 December 2022, https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html.

[13] Kauffman and Martin, *The Politics of the Rights of Nature*, 79.

transparency and certainty of a political and legal system which recognizes nature's rights.

As the article demonstrates, three features of respondents' thinking about nature's rights helped to produce this estimation of the danger posed by these rights to democratic accountability and legitimacy. The first was the evaluation of human-nature relationships based on the power of the former to act upon the latter. They understood nature's rights as means of reshaping this relationship in favor of both nature as well as the humans who would claim to speak for nature. The second was skepticism about the integrity and certainty of human knowledge about nature. The third is the expectation that the extension of rights to nature would generate social and legal conflict. Their comments suggested that rights of nature's reevaluation of human-nature relationship would rest on an uncertain epistemological foundation. At the same time, a wide grant of standing would expose particular human-non-human relationships to intervention by other parties. They felt the resulting conflicts would ultimately be resolved by people far removed from and unaccountable to the interests and perspectives of the humans whose relationships with nature were under scrutiny.

It is important to illuminate the attitudes that underpin the concern for the impact of nature's rights on democratic legitimacy. They provide a contrast with how RoN advocates have themselves framed the recognition of nature as a legal rightsholder or legal person: as a means of involving local populations in decisions that affect the ecosystems with which they are inextricably connected. Rights of nature is arguably one instance of the environmental movement's longer-running effort to "green" democracy.[14] This greater degree of influence may occur through the opportunities afforded local populations to represent the rights and interests of nature. These practices of representation have taken different forms depending on the specific RoN context. The impulse to buttress local influence is reflected in the first legal recognition of nature as a rightsholder, passed in a small town in the U.S. state of Pennsylvania in 2006. The goal was to strengthen "community rights vis-à-vis corporate property rights" by recognizing ecosystems as a legal person while refusing that status to corporations.[15] The impulse also intersects with legal pluralism and processes of decolonization. The Aotearoa New Zealand's Crown government's recognition of the legal personhood of the Whanganui River and an area previously known as Te Urewera National Park. This change functioned as a way to partially satisfy the desires of the Indigenous Māori people to reclaim greater control over their land. New governance systems acknowledged the Whanganui and Tūhoe iwi, respectively, as guardians of those ecosystems with at least shared responsibility for their management.[16] Courts have also recognized nature's rights as a way to encourage local involvement in environmental governance. In declaring the Atrato River a rightsholder, the Constitutional Court of Colombia in 2018 named both the state Ministry of the Environment as well as "community guardians" to a management body tasked with creating policy that respected the river's rights and interests.[17]

For their part, scholars have drawn diverging conclusions about the relationship between rights of nature and popular influence on land use decisions. Some have pointed out the ways

[14] Hysing, "Representative democracy," 960.

[15] Kauffman and Martin, *The Politics of Rights of Nature*, 69.

[16] Kauffman and Martin, *The Politics of Rights of Nature*, 154–155.

[17] Philip Wesche, "Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision," *Journal of Environmental Law* 33 (2021): 531–556, here 548.

in which local activists have employed nature's rights to assist their efforts at being involved in such decisions. Erin Fitz-Henry shows how in the highland Azuay province of Ecuador RoN has propelled activists' calls that they have a significant role in decision-making processes governing extractive activities.[18] Speaking of the potential of the Los Cedros Protected Forest case prior to Ecuador's Constitutional Court's decision in November 2021, Juan M. Guayasamin and co-authors predict that a ruling in favor of the forest's protection from mining projects based on the rights of nature (which in fact is what occurred) would demonstrate the potential for activists and scientists to successfully contest mining claims and consequently initiate "a possibility of real and effective citizen action towards environmental enforcement."[19] Contributing to a forum article on the results of granting rights to rivers, Erin O'Donnell concludes that the rights of the Whanganui River have prompted "renewed collaboration" among multiple parties, illustrating that some forms of RoN may provide opportunities for broader participation and ability to influence land use decisions.[20]

Conversely, other scholars have warned about the ways in which RoN may diminish democratic practice and popular influence. A recent survey of attitudes towards rights of nature among respondents in Northern Finland's Tornio River valley conducted by Meriläinen and Lehtinen shows doubts about the "compatibility of the rights-*of*-nature framing with the existing political and legal system."[21] Vesting power to enforce nature's rights in a state already perceived by some to inadequately represent the region raised the possibility that local use rights, which are similar to those in Sweden, would be curtailed.[22] More broadly, a 2020 assessment on rights of nature in the EU composed by Jan Darpö expresses pessimism regarding the compatibility of certain forms of rights of nature with democracy.[23] The report voices a critique that recalls liberal animal rights activists' earlier criticism of the supposed readiness of biocentric philosophers to sacrifice individuals for the sake of the collective.[24] Darpö's report critically appraises the conviction, associated with deep ecology and Earth Jurisprudence, that nature "is the ultimate norm giver through 'rights' to which humankind is obliged to abide no matter what social interests are at stake." This principle would likely be irreconcilable with "democratic choices or prioritisations." In this vision of political order, the institutions or people that are given the ability to "define the superior interest of the environment" become crucial.[25] If, as Tănăsescu argues, the recognition of nature as a rightsholder necessarily favors "certain groups over others," then Darpö's warning could be realized depending on whose claims to represent

[18] Erin Fitz-Henry, "Distribution without representation? Beyond the rights of nature in the southern Ecuadorian highlands," *Journal of Human Rights and the Environment* 12, no. 1, (March 2021): 5–23, here 22.

[19] Juan M. Guayasamin, Roo Vandegrift, Tobias Policha et al., "Biodiversity conservation: local and global consequences of the application of 'rights of nature' by Ecuador," *Neotropical Biodiversity* 7, no. 1 (2021): 541–545, here 544. doi: 0.1080/23766808.2021.2006550.

[20] Gabriel Eckstein et al., "Conferring legal personality on the world's rivers: A brief intellectual assessment," *Water International* 44, no. 6–7 (2019): 804–829, here 812. doi: 10.1080/02508060.2019.1631558.

[21] Eija Meriläinen and Ari A. Lehtinen, "Re-articulating forest politics through 'rights *to* forest' and 'rights *of* forest,'" *Geoforum* 133 (July 2022): 89–100, here 96. doi: 10.1016/j.geoforum.2022.05.010.

[22] Meriläinen and Lehtinen, "Re-articulating forest," 97.

[23] Jan Darpö, *Can Nature Get It Right?: A Study on Rights of Nature in the European Context*, (Brussels: European Union, 2021), 47, http://www.europarl.europa.eu/supporting-analyses.

[24] Roderick Nash, *The Rights of Nature: A History of Environmental Ethics* (Madison: University of Wisconsin Press, 1989), 159–160.

[25] Darpö, *Can Nature Get It Right?*, 47.

nature are recognized.[26] The unease voiced in these works highlights how RoN may be perceived to generate tensions between the three pillars of social, environmental, and economic sustainability that are prominent in recent definitions of sustainable development, including the 2030 SDGs.

As these diverging interpretations suggest, it is difficult to arrive at categorical conclusions regarding the relationships between rights of nature, power relations, political institutions, and popular influence on land use decisions, because those relationships depend on political circumstances that are situational and contextual, as Tănăsescu has suggested.[27] One cannot foresee what will happen in a specific context by looking at previous examples of RoN elsewhere. Attention to context requires analysis of the expectations held by actors who would be affected by changes in environmental regulations. These expectations are informed not just by a transnational repertoire for nature's rights but also by actors' sense of their own social, political, and ecological traditions and contemporary conditions. It is therefore vital to illuminate not only those expectations but also the sensibilities that inform them. This article builds upon Darpö's report by illustrating how the concerns of the anti-democratic character of rights of nature are based on particular, interdependent assumptions about human – non-human relationships, humans' capacity to understand nature, and the capacity of nature's rights to generate legal and social conflict.

It is important to analyze attitudes towards the recognition of nature's rights in Sweden and Europe, where this legal strategy has recently gained greater notice. In Sweden there have been efforts by civil society and members of Parliament from the Green Party to bring RoN to public attention. In 2019 Swedish Earth Rights Lawyers worked with the Community Environmental Legal Defense Fund (CELDF), an NGO headquartered in the United States that has assisted efforts elsewhere to recognize nature's rights, to formulate a declaration granting rights to the country's second largest lake. This Declaration of the Rights of Lake Vättern recognized the body of water's rights to exist, flourish, regenerate, and evolve.[28] Within the EU there has also been much talk but relatively little concrete action until quite recently. In 2022 Spain's Parliament passed a law recognizing Mar Menor lagoon as a legal person with, among others, the rights to evolve and restoration.[29] It is possible that the approach will gain traction elsewhere in other member states.

Analyzing the political, social, and environmental expectations that inform attitudes towards rights of nature can additionally tell us about conditions for the perceived legitimacy of environmental measures more broadly. Keskitalo and Lundmark find that Swedish forestry workers' perceptions of risk to their livelihood stemming from environmental protection depended upon judgments about the perceived voluntariness, controllability, and legitimacy of actions that might contribute to that risk.[30] Our interviewees' perceptions of political danger and

[26] Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (Bielefeld, Germany: Transcript, 2022), 140.

[27] Mihnea Tănăsescu, "The Rights of Nature as Politics," in *Rights of Nature: A Re-examination*, 69-84, eds. Daniel P. Corrigan and Markku Oksanen (New York: Routledge, 2021), 69.

[28] "Lake Vattern," International Rights of Nature Tribunal, last accessed 5 September 2024, https://www.rightsofnaturetribunal.org/cases/vattern-case/.

[29] Erik Stokstad, "This lagoon is effectively a person, says Spanish law that's attempting to save it," *Science* 378, no. 6615 (7 October 2022): 15–16, here 16.

[30] Keskitalo and Lundmark, "The Controversy Over Protected Areas," 149.

legal chaos also rested upon perceptions of how life is ordered. For respondents previously unfamiliar with rights of nature, those conditions of legitimacy were formulated as the preservation of human autonomy and the intertwined modernist distinctions between both nature and culture and subject and object.[31] Respondents largely viewed nature's rights as an impairment on human freedom. They anchored their objections in what Grear identifies as a notion of autonomy that detaches humans "from the wider living order of which we are but a part."[32] Like those individuals in early 2000s Sweden who felt there was a contradiction between the wolf's status as a figure of authentic "wild" nature and its dependence upon government action for survival, these respondents perceived political danger when the distinctions they made between nature and culture were undermined.[33]

In the following section the article discusses the methodological procedures employed in conducting these interviews. It then proceeds to analyze respondents' concerns. Finally, the article turns to one potential step that emerged from respondents' interviews. This was the establishment of an environmental ombudsman office (*miljöombudsman* in Swedish, or MO hereafter). In contrast to recognition of nature's rights, the prospective establishment of such an office did not trouble respondents. Indeed, in 1994 the Swedish government produced a detailed vision for the office, which would fit squarely within national regional traditions of governance. The establishment of such an office does not apparently threaten the perceived boundaries between nature and culture, object and subject, which are central to the notions of human autonomy and which nature's rights have been perceived to potentially disrupt.[34] An environmental ombudsman office may nevertheless play a role in altering the perceived fixity of those boundaries.

2. Methods

We first generated a list of individuals and organizations to contact. Potential interviewees were chosen for their familiarity with either nature's rights, the regulated extraction of value from the environment, or the protection of the environment. As we were interested in their expectations and initial reactions to the idea of nature gaining rights, we did not rule out respondents who were unfamiliar with this strategy. Our criteria were set wide because we understood stakeholders to mean, as Keskitalo and Lundmark do, "those impacted by change in the sector."[35] We wanted to draw from a variety of backgrounds and experiences and therefore reached out to people and organizations known for their advocacy of heightened environmental protection as well as trade organizations directly engaged in activities that make use of the land in different ways, including mining and farming. Casting a wide net meant that, on the one hand, we succeeded in capturing a range of opinions on nature's rights. However, as we relied on individuals' and organizations' willingness to sit down for interviews, it was to some extent a self-selected group. The small sample size makes it difficult to generalize about attitudes towards nature's rights among people and organizations whose work pertains to the environment. However, the political, social, and environmental sensibilities

[31] Anna Grear, "The vulnerable living order: human rights and the environment in a critical and philosophical perspective, *Journal of Human Rights and the Environment* 2 (2011): 23–44, here 30.

[32] Grear, "The vulnerable living order," 29.

[33] Annelie Sjölander-Lindqvist, "Local Identity, Science and Politics Indivisible: The Swedish Wolf Controversy Deconstructed," *Journal of Environmental Policy and Planning* 10, no. 1 (2008): 71–94, here 90.

[34] Arturo Escobar, "Latin America at a Crossroads," *Cultural Studies* 24, no. 1 (2010): 1–65, here 39.

[35] Keskitalo and Lundmark, "The Controversy Over Protected Areas," 151.

that inform their expectations are deeply rooted in modern life. The interviews provide the material for understanding how these sensibilities align in such a way that the extension of rights to nature appears to threaten political, social, and legal stability.

Individuals and organizations were contacted with an invitation to participate in these discussions. Sixteen individuals agreed to be interviewed. Interviews took place in person and via different online meeting platforms. Interview subjects provided informed consent forms to the interviewer. Respondents varied in their professional experience and backgrounds. Seven worked in industries that depended on the cultivation and refinement of renewable or non-renewable natural resources. This number included three employees of the Federation of Swedish Farmers (Lantbrukarnas Riksförbund). We refer to them as FSF1, FSF2, and FSF3. An additional respondent, referred to as FO, was a forest owner who also worked for an association of forest owners. Three more interviewees worked in the mining industry; two of them worked for mining companies and the third was employed by the Swedish Association of Mines, Mineral and Metal Producers (Svemin). We have designated them as M1, M2, and M3.

Three of the remaining nine worked for environmental NGOs. We refer to them as NGO1, NGO2, and NGO3. Two others were employed by the Lutheran Church of Sweden, which formerly was the state-supported church. We refer to them as LC1 and LC2. In 2019 the Swedish Church decided to include nature's rights in its educational content (Harmony with Nature). Moreover, the Church still manages large areas of land, holding approximately one percent of the land in the country. In addition to land for agricultural use, it administers 400,000 hectares of productive forest land.[36] Forest ownership or administration by public or quasi-public entities including the Church, the state, and smaller jurisdictions of government accounts for roughly a fourth of all such holdings in Sweden.[37] Of the remaining four respondents, one was a member of the Swedish Parliament from the Green Party and is referred to as MP. One is a retired legal expert for the Ministry of the Environment and is referred to as ME. One is a legal counsel at an environmental law firm and is designated as EL. Finally, a legal researcher whom we refer to as LR studies nature's rights at a Swedish University.

We succeeded in obtaining a diversity of opinion, as the subsequent analysis will make clear. There was a range of familiarity with the idea of nature's rights among respondents. Some had little knowledge of rights of nature or their recognition elsewhere in the world prior to conversing with the interviewer; those who did, in contrast, tended to be in favor of some form of legal recognition of rights for nature. Other respondents, some of whom learned about nature's rights for the first time at the interview, expressed negative or cautious opinions. We provided all interviewees with the following passage prior to their interviews: "Rights of nature is a relatively new legal concept that has been introduced into a growing number of legal systems in recent years. Although the meaning of the rights of nature varies between legal systems and contexts, it is a recognition of nature, or part of it, as a legal entity with rights of its own. Rights of nature are often perceived as provid-

[36] The Church of Sweden and the forests," *Svenska kyrkan*, last updated 24 June 2020, last accessed 14 June 2023, https://www.svenskakyrkan.se/skarastift/the-church-of-sweden-and-the-forests.

[37] Örjan Kardell, "Swedish Forestry, Forest Pasture Grazing by Livestock, and Game Browsing Pressure Since 1900," *Environment and History* 22 (2016): 561–587, here 562.

ing enhanced protection of nature and the environment compared to traditional environmental law." The interviews were semi-structured. The questions, which were asked and answered in Swedish, focused on four topics: respondents' views of the obstacles to the implementation in Sweden of rights of nature along the lines of Ecuador's example, the conflicts it might raise, the consequences, positive or negative, that might result from such a step, and how to represent nature as a rightsholder. A close reading of how respondents addressed these questions generated the categories that structure this article's analysis.

During their interviews some respondents referred to two ongoing environmental controversies that appeared to weigh mining operations against the desires of a sizeable portion of a local population. The first was the attempt by the Beowulf Mining Company, initiated in 2013, to secure permission to begin mining operations in Gállok, the Sámi name for the area within the northern Swedish municipality of Jokkmokk.[38] This conflict pitted many Sámi people and anti-mining activists against the company and, ultimately, the national government. A second controversy centered on the island of Gotland, where the company Cementa sought a continuation of its permit to mine limestone. As Marianne Dahlén and Victoria Enkvist demonstrate in their article in this issue, direct political intervention by the government was required to sustain the company's ability to mine limestone. A court denied Cementa's permit on the grounds that the environmental impact assessment was insufficient in 2021. This action sparked concerns that a resulting shortage of limestone would negatively impact the Swedish economy. After the Supreme Court did not reverse the lower court's decision, the government introduced legislation to ensure the mine could continue operations.[39]

3. Concerns raised by respondents

3.1 The relationship between humans and non-humans

Respondents' concerns centered on how nature's rights may reshape the relationships people maintained with nature. Some imagined the impact of RoN in negative terms, in that it would restrict people's actions and choices. For example, one FSF employee discussed the potential of RoN to limit humans' freedom to act upon nature. Imagining the perspective of farmers, they voiced this concern: "dear, what will this lead to now? Now I'm going to have even more restrictions on farming my land, there's going to be even more litigation" (FSF1). Depending on how RoN is defined, a FSF environmental and water law expert predicted, it would "clash everywhere" (FSF3). This reaction may also in part be a product of rights language. Rights are often understood in and through conflict, and RoN advocates have at times suggested that the creation of a right for nature will force legal authorities to weigh such a right against other rights.[40]

Some respondents who were supportive of the effort to recognize nature's rights did claim that such a recognition would limit human action. The Green Party Parliament member juxtaposed the premise of current environmental law with the premise of rights of nature. The first permits and manages some level of degradation. In contrast, the recognition of rights of nature allows a jurisdiction to say, "you are not

[38] Sofia Persson, David Harnesk, and Mine Islar, "What local people? Examining the Gállok mining conflict and the rights of the Sámi population in terms of justice and power," *Geoforum* 86 (Nov. 2017): 20–29.

[39] Marianne Dahlén and Victoria Enkvist, "Rights of Nature meets the Swedish Constitution," *Nordic Environmental Law Journal* (this issue).

[40] Cormac Cullinan, "A history of wild law," in *Exploring Wild Law: The Philosophy of Earth Jurisprudence*, 12–23, ed. Peter Burdon (Kent Town: Wakefield Press, 2012), 13.

actually allowed to destroy things here, without possibly applying for a permit for it." The MP likened nature's perspective rights with human rights, with each setting out lines that could not be transgressed (MP).

In contrast, other advocates for RoN emphasized that the recognition of nature's rights in fact was meant to create a partnership and provide a foundation for a healthier relationship between humans and nature, rather than allowing for "nature" to dominate what must be a zero-sum relationship. An environmental activist who for several years has worked towards the recognition of nature's rights in Sweden thus argued that nature's rights could help normalize "regenerative development" (NGO2). The term refers to the goal of a "co-evolutionary, partnered relationship between human and natural systems, which are designed to build sustained social and natural capital to achieve a holistic goal in 'ultimate co-benefit.'"[41] The respondent hoped for a change in orientation in human relationships to nature, which they described as "from a use to a partnership." To primarily consider RoN in terms of its restrictions on humans was therefore incorrect. A priest in the Church of Sweden voiced a similar perspective, noting that nature's rights constituted an effort through legal means to create a more cooperative "relationship with creation" (LC1).

A Church of Sweden researcher formulated a sort of middle position that stressed the need to acknowledge both humans' exceptionality and their interdependence with nature (LC2). They criticized what Latour termed the "modernist settlement" that frames human-nature relations in terms of mastery and servitude.[42] Such a sentiment was based on incorrect assumptions about human autonomy. Mastery was a mistaken impression of reality, as was the underlying assumption that humans can control their situation. Instead, they called for sensitivity to the endless connections that bind humans to all other things. However, if the respondent criticized this notion of mastery, they also were critical of a conception of flat relationality that failed to acknowledge what set humans apart from the rest of nature. As they put it: "we can be exceptional, and still related."

The Church researcher also warned it would be a mistake to consider nature's rights equal to human rights. They criticized binary thinking as it applied to both a narrow conception of human mastery of nature as well as the reverse. People could too glibly shift "from a certain perhaps privileged perspective to say now nature must take precedence." Legislative and social actions inspired by this new outlook could harm other humans. Doing so would reflect a different, though also mistaken, aspiration for supremacy. Rights of nature should not extinguish the biblical concept of human stewardship but rather imbue it with a renewed recognition of relationality (LC2).

The readiness to think about RoN in terms of its restrictions on humanity rests at least in part on how nature's rights are conceptualized. If it is understood as a device to achieve a more muscular and less compromising variety of current environmental protection, then it easily follows that nature's rights will predictably result in a diminution of human freedom. The very process of recognizing natural entities with rights of their own can prompt this conclusion

[41] Xiaoling Zhang, Martin Skitmore, Martin De Jong, Donald Huisingh, and Matthew Gray, "Regenerative sustainability for the built environment – from vision to reality: an introductory chapter," *Journal of Cleaner Production* 109 (2015): 1–10, here 2. doi: 10.1016/j.jclepro.2015.10.001.

[42] Bruno Latour, *Pandora's Hope: Essays on the Reality of Science Studies* (Cambridge: Harvard University Press, 1999), 193.

by obscuring the interdependence people maintain with lands. As Anna Arstein-Kerslake and co-authors have observed, "as an individualised creation of personhood" nature's rights does not necessarily recognize the interdependence between humans and the natural entities invested with rights.[43] What Tănăsescu has referred to as the harmful "western obsession with totality" expressed in Ecuador's constitutional and countrywide RoN provision can additionally obscure the relationships that peoples have with specific lands and ecosystems.[44] This would support the impression that rights of nature were a means of bringing humans and nature into greater conflict.

On the other hand, Meriläinen and Lehtinen indicate that ownership rights, central to common notions of human freedom, need not be extinguished by nature's rights. They can be reinterpreted in a way compatible with nature's rights by providing humans with the "power to govern over, and potentially with, local natures." This perspective understands nature's rights "in a mutualistic manner, centering on human dependency on nature."[45] Kauffman and Martin elaborate on this outlook by noting that RoN does not necessarily imply the end of human ownership rights. Instead, allowable expressions of those rights would have to be considered in light of an acknowledged interdependency between humanity and nature; the former could continue to obtain necessities for life from the non-human. Such taking is but a component of a more comprehensive "reciprocal transaction" that binds humanity and nature.[46] In Ecuador, communities have endeavored to highlight their interdependence with particular locales they insist deserve protection due at least in part to their status as rights-bearing entities. This has been the case with non-Indigenous peasant farmers in the highlands of the country who have emphasized their connections to and relationships with particular land.[47] It has also been evident in legal efforts of Indigenous peoples such as the A'I Cofán de Sinangoe, who invoked rights of nature in order to protect the relationship they had maintained with their land, which was threatened by mining operations.[48]

3.2 Limits of Human Knowledge

The perceived potential of RoN to limit human freedom to act upon the environment magnified a second concern respondents voiced. This was the difficulty of producing and applying objective knowledge not just about nature, but about what its prospective rights might require. A mining sector employee pointed out that a law required a definition of nature. This was a difficult task; nature as a rights-bearing subject is an abstraction which "people in general don't understand" (M1). A bird conservation officer for an NGO also voiced concern about the abstract aspect of nature protection, as it was hard "to relate to, well…what is nature, in general" (NGO1). Scholars such as Daniel Corrigan have likewise argued that designating all of nature as a rightsholder, as does Ecuador's constitutional

[43] Anna Arstein-Kerslake, Erin O'Donnell, Rosemary Kayess, and Joanne Watson, "Relational personhood: a conception of legal personhood with insights from disability rights and environmental law," *Griffith Law Review* 30, no. 3 (2021): 530–555, here 547.

[44] Mihnea Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," *Transnational Environmental Law* 9, no. 3 (2020), 429–453, here 450.

[45] Meriläinen and Lehtinen, "Re-articulating forest politics," 97.

[46] Kauffman and Martin, *The Politics of the Rights of Nature*, 229.

[47] Teresa A. Velásquez, "Tracing the Political Life of Kimsacocha: Conflicts over Water and Mining in Ecuador's Southern Andes," *Latin American Perspectives* 45, no. 5 (Sept. 2018): 154–169, here 156.

[48] '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), 21.

RoN provision, "may be too abstract."[49] A related challenge was defining what was natural, and whether nature's rights would curb efforts by humans to make nature safe for them (M1). A concern raised by multiple respondents focused on whether RoN adequately accounts for changes in nature. The status of invasive species in a rights of nature jurisdiction for example, was unclear (M1).

Respondents additionally identified potential flaws in human understanding that would be amplified by the recognition of nature's rights. One respondent suggested that humans should be aware of their limits of understanding "what nature wants or needs." This misinterpretation, if it occurs in a legal context, may have significant consequences. This is a challenge that their bird advocacy organization already has to address, as it seeks to advance what it considers the interests of nature in issues such as wind power. This difficulty is compounded by human favoritism, which can render a particular species unjustly vulnerable regardless of its role in an ecological community (NGO1). A retired Ministry of the Environment official who helped introduce the Swedish Environmental Code made a similar point: RoN would require humans to impose their own judgments of what justice meant on a landscape where kinds of life are constantly interacting and preying upon one another (ME). Part of the challenge is defining the level at which nature's rights function and whether those rights would operate for the benefit of single animals (FSF2). Respondents were implicitly considering how RoN may pose challenges for the relationship which Black traces between modern states, knowledge, and their capacity to act on their populations.[50]

The implications of the difficulties identified by these respondents for the management of relationships between humans and nature are meaningful. Respondents expressed skepticism about the objectivity of knowledge about nature as well as its use in the adjudication of the meaning of its rights. Despite its uncertain foundation, this knowledge would be crucial to the management of human-nature relations. That these relations tended to be evaluated in terms of human power and its limitation particularly helps to clarify the significance of people's apprehensions. In effect, respondents' skeptical reactions cast doubt on the successful inclusion of non-humans as subjects rather than objects within what Foucault names "biopower" – the processes that "brought life and its mechanisms into the realm of explicit calculation and made knowledge-power an agent of transformation of human life."[51]

3.3 Conflict

Concerns regarding the proliferation of conflict that rights of nature might engender and the loss of people's trust in institutions that might ensue reflected assumptions both of the limits of human knowledge about nature and the notion that nature's rights entailed the exclusion of human activity. Those positively oriented towards nature's rights welcomed the conflict they believed that nature's rights would bring, believing that prospective struggle would be productive; others saw nature's rights as unnecessarily adding chaos. They raised the possibility that legal in-

[49] Daniel P. Corrigan, "Human Rights and Rights of Nature: Prospects for a Linkage Argument," in *Rights of Nature: A Re-examination*, eds. Daniel P. Corrigan and Markku Oksanen, 101–120 (New York: Routledge, 2021), 103.

[50] Jeremy Black, *The Power of Knowledge: How Information and Technology Made the Modern World* (New Haven: Yale University Press, 2014), 295.

[51] Michel Foucault, *The History of Sexuality, vol. 1, An Introduction*, trans. Robert Hurley (New York: Random House, 1978), 143.

stitutions would empower a minority opinion. Of particular concern was the possibility of the grant of standing to the general population to contest decisions with environmental impacts, raising the possibility that anyone could bring suit to ostensibly protect nature's rights. This would, they pointed out, make for greater legal and economic uncertainty. A FSF legal policy expert brought up agricultural producers, who already have to manage risk. They formulated the following scenario: a person could decide to say to a farmer "'hey, you planted here last spring, but now we have heard that a family of hares has moved in here, so you must not harvest until we have established that they do not live there.'" In such a case, they foresaw "predictability disappearing completely" in the event of the recognition of nature's rights (FSF2).

Other respondents also focused on the arbitrary power that RoN would bestow upon opponents of extractive activities. A mining sector employee expressed concerns that RoN would give activists who hoped to stop construction something to "cling to." The result of the extension of standing to sue to protect nature to the entire human population would consequently be chaotic. As an example, the respondent asked the interviewer to pretend that those protesting the planned mine at Gállok could forward legal claims to speak for nature's rights (M1). An employee of the state-owned mining company LKAB's sustainability department, also thought that to broaden standing would be to invite disorder, as "ignorant and unreliable appeals" from environmentalists who perhaps lacked sufficient knowledge about the specific conflict at hand would wield unwarranted influence (M3). One respondent who worked for an environmental NGO voiced similar objections and shared the concern for disorder (NGO1).

The scenarios imagined by these respondents each bring together themes discussed in previous sections. The themes include the questionable foundations of knowledge about nature, its ostensibly irresponsible use in a legal system that recognized rights of nature, and the resulting chaotic and uncertain human-nature relations. In each instance, respondents imagined a greater limitation upon human activity. Indeed, respondents' objections focused on the use of power as a restraint upon human action. This perhaps reflects a presumption that nature's rights would largely play a reactive and "negative" role. As Kauffman and Martin have observed, this has been the case in Ecuador, though less so in Aotearoa New Zealand.[52] Other respondents were more cautious regarding the impact; the legal researcher at a Swedish University predicted that while RoN recognition would generate additional lawsuits, this development would not necessarily lead to a higher level of nature protection (LR).

Respondents generally more favorable to RoN suggested that some conflict, or at least some uncertainty, may be beneficial. The Church of Sweden priest considered the impact of including "those who we have been used to exploiting" in decision-making procedures. They thought it crucial to generate "some friction there, in human decision-making processes" (LC1). Their hope that the resulting "friction" would be productive and beneficial was echoed by other respondents. A RoN activist argued that conflict will produce clarity. They framed the Cementa mine controversy on Gotland thusly: "we are sacrificing the groundwater in order to continue building with cement." When such conflicts become distinct, "then it becomes clear what society is sort of choosing." Their emergence, the interviewee predicted, will feed "the appetite for alternative ways of both seeing and

[52] Kauffman and Martin, *The Politics of the Rights of Nature*, 159.

doing things." RoN can provide such alternatives and suggest certain practices. Nature's rights, in their interpretation, would perform a sort of de-normalizing function (NGO2).

3.4 Power Relations and Decision-Making Authority

A fourth concern raised by respondents was that nature's rights would result in a concentration of decision-making responsibility and a corresponding diminution in local influence. This concern was supported by their doubts regarding knowledge about nature, its impact on human-nature relationships, and the resulting increase in conflict. The recognition of rights of nature would test the limits and objectivity of knowledge about nature. At the same time, a broad grant of human standing to represent those rights of nature, such as in Ecuador, would make it much easier for others to intervene in those relationships, leading to an increase in conflict. These dynamics would empower not only humans who claimed to represent the rights and interests of non-human nature, but also those with the authority to judge those claims.

Respondents feared that the implementation of RoN, and to some extent ecological and climate change advocacy more generally, would occlude local perspectives and interests. An FSF policy expert described a RoN approach such as what exists in Ecuador or what was proposed by the Swedish Green Party as "extremely authoritarian." This was because of the presumed power of authorities to mandate the actions other people may take. These authorities, moreover, would in the policy expert's formulation be unelected, while properly elected officials would lack any influence (FSF2). This kind of state control, another respondent suggested, did not lead to effective management of nature. Instead, individual rights, responsibility, and motives, including the ability to profit from land, as an important component of environmental administration. The concentration of power would cut individual landowners out of the process of land use decisions (FSF3). A third respondent, who is a forest owner, made explicit the concern of loss of status of property rights to which these other objections alluded. Rights of nature and other efforts to address biodiversity loss and climate changes often centered nature's rights and interests to the exclusion of the human populations. Those populations, this respondent maintained, had to be included in the planning and enactment of any measures for ecological protection (FO).

Compounding these misgivings about the centralization of power in unelected officials and the diminution of individual rights like property rights is the perception of one FSF employee that RoN is fundamentally illiberal. Though not using the term, they considered RoN to be a form of reenchantment, insofar that it suggests the existence of a normative order whose transcendent values must be followed. At multiple points the respondent likened RoN to a religion, arguing that "just like religious dogma, there is something absolute, which man should relate to." This characteristic was counterposed to the model of "a free responsible individual in a democratic constitutional state." Centered in liberalism, their critique suggests nature's rights is in a way inappropriate for a liberal society in which almost everything should be debatable (FSF2).

Interestingly, one RoN supporter also sounded a note of caution regarding the wisdom of seeking a state-centric RoN protection. This caveat reflected of the respondent's own focus on the importance of people's "relationship with the land." As noted earlier, this activist hoped for a more collaborative human relationship with nature. These elements are difficult to maintain on a larger scale: "that understanding becomes increasingly difficult the larger the systems are." For this reason, they considered that having the

state assume responsibility for defining these relationships may be counterproductive. The difficulty of knowing nature at a large scale to which other respondents referred was also a concern for this respondent, because the relationships they considered crucial to highlight are place-specific. Though put in different terms, they also were wary of the power that might accrue to the state empowered by rights of nature to overrule local populations (NGO2). These are common concerns regarding rights of nature, noted for instance by Meriläinen and Lehtinen in the views of respondents in Northern Finland's Tornio River valley, who expressed "fears of losing local rights *to* forest" as a result of the state's prospective protection of nature's rights.[53]

Akin to this distrust of centralized power was the evident desire of one respondent for collaborative care of a nearby river that was a nature reserve and a Natura 2000 site. This forest owner's preferred arrangement illustrates associations between notions of human-nature relations and preference for grassroots environmental management. This person's remarks suggested an appreciation for the kind of reciprocity for which RoN supporters advocate. An understanding of how "valuable" the river is could lead people to want to take part in its upkeep, in the intertwined activities of "nurturing and managing" the river (FO). In a critique of top-down environmentalism, they asked why there was nonetheless little effort to take into account "the point of view of all of us people" who were adjacent to the river or their desire to participate in the administration of a feature whose value they recognized. They suggested that there was an untapped pool of local knowledge that could be used to inform management of the waterway. Inhabitants on the river could be marshaled to "take better care of this water" (FO). Their rough proposal suggested how a rethinking of human-nature relations and a readiness for local inhabitants to participate in environmental governance may reinforce one another.

4. The Ombudsman Solution

In addition to concerns regarding legal recognition of the rights of nature, respondents voiced their thoughts on a possible alternative: the creation of an environmental ombudsman, which the Swedish government had contemplated and even planned in the mid-1990s.[54] The report of Darpö also indicates that the possibility of the creation of a national MO office tasked with investigating the application of current law was worthy of further consideration.[55] Indeed, many of the respondents commented upon the potential of a MO as a means of implementing something approaching rights of nature. Three aspects of the ombudsman office made it attractive to different respondents. The first was its status as an established mechanism within Swedish legal and political traditions. Current ombudsman offices include the Parliamentary Ombudsman (JO), which can investigate and bring suit to compel compliance with current law but cannot itself issue legally binding judgments. Employing this familiar mechanism could potentially facilitate explanation of nature's rights and thereby increase the likelihood of its acceptance. A respondent who works as an environmental lawyer counseled that for an initiative like recognition of nature's rights to succeed, it was crucial that it "not be perceived as hocus-pocus" (EL). In contrast to the RoN activist, who appeared concerned about the ability to extend the attitude fostered by a recognition of

[53] Meriläinen and Lehtinen, "Re-articulating forest politics," 97.

[54] *Miljöombudsman* (Stockholm: Fritzes Offentliga Publikationer, 1994).

[55] Darpö, *Can Nature Get It Right?*, 63.

human-non-human interdependence to a broad population and space, the environmental lawyer thought the "hocus-pocus" could be dispelled by careful presentation and proper education. As something whose established purpose is recognized by the Swedish population, the ombudsman position may help to solve what, in this legal professional's analysis at least, was a technical problem. The importance of considering local and national traditions when considering the adoption of ideas like nature's rights that travel in international circuits of strategy and influence holds true for courts as well. As Epstein and Schoukens point out, if courts that are called upon to rule on rights claims for nature perceive those claims "to be incompatible with legal system in which it is asserted," they are likely to deny the validity of those claims.[56]

The second feature was that it would channel environmental conflicts. As noted earlier, a grant of legal standing to the general public troubled multiple respondents. An environmental ombudsman offered a preferable alternative to respondents like a mining sector employee who thought a grant of universal standing would be unaffordable (M1). The ombudsman would channel and manage conflicts with environmental interests. The Green Party member of Parliament also raised the possibility of an environmental ombudsman, declaring that "there has to be somebody who is kind of in charge of that, to speak up for that" (MP). In this view, the ombudsman would be preferable to a broad grant of standing alone, which would not recognize anyone's leadership or empower anyone.

Third, the office's focus on better enforcement rather than a new law conciliated both those who argued that RoN would be redundant in Sweden as well as those who claimed that the country's environmental regulations were inadequately enforced. Those who voiced the former opinion asserted that the current Environmental Code and the legal standing which the Aarhus Convention affords to NGOs to contest land use decisions in effect allowed them to represent nature and its interests (FSF2). Another FSF employee cited the Water Directive's "concept of good ecological status" as an example of the current effective protection of nature's rights, specifically "the right of water not to be polluted" (FSF1). Their colleague put the matter of redundancy more broadly: "If you show consideration," that amounted to a *de facto* recognition of nature's rights (FSF3). The perceived redundancy of a prospective recognition of nature's rights also was a function of international environmental commitments. The environment ministry official who in addition to their work on the Environmental Code had participated in the adaptation of EU environmental directives, contended that it was reasonable to suppose that the Aarhus Convention, which Sweden ratified in 2005, granted "nature interests the right to speak" by means of humans (ME).

On the other hand, this promise of more rigorous enforcement associated with an environmental ombudsman office could also mollify critics of the current application of environmental law. Asked their opinion of the relative status of "nature or environmental interests" in Sweden, the Church of Sweden priest stated that while they were "in theory quite high," in reality the opposite was nearer to the truth (LC1). The Parliament member voiced a similar sentiment, claiming that environmental interests stand at the bottom in the Swedish legal system (MP). Another respondent hinted that the apparent recognition of the intrinsic value of nature in the Environmental Code is more aspirational than accurate at this point. They noted, furthermore,

[56] Yaffa Epstein and Hendrik Schoukens, "A positivist approach to rights of nature in the European Union," *Journal of Human Rights and the Environment* 12, no. 2 (Sept. 2021): 205–227, here 226.

that such practices of ostensibly objective knowledge-based environmental regulation, such as "environmental quality standards" were themselves not independent from the political context in which they occurred (EL). A respondent who had previously worked at the Legal, Financial and Administrative Services Agency Kammarkollegiet also underlined the role of political context in shaping how the current Environment Code worked. They felt that chapter 22, section 6 of the Code provided a solid foundation for the people to represent nature. The wording in question provided multiple national agencies, county administrative boards, and municipalities the ability to "plead" in application cases "in order to safeguard environmental interests and other public interests." The respondent noted, however, that this opportunity to in effect represent nature at times is not taken, as "the reins have been tightened by" local governments (NGO3).

While it would not necessarily involve a legal recognition of nature's rights, respondents thought the establishment of an MO office would itself be generative. The university researcher hesitated to endorse the notion that an environmental ombudsman would have little legal impact and instead noted the potential broad consequences of such an office to change people's thinking: "words matter for how we think about these things" (LR). The rights of nature activist envisioned this office more as a beginning than an endpoint, suggesting that the office might spur the work of non-governmental actors by suggesting a commitment to nature's interests. If the office existed, "it would be a very clear expression, community interest," and therefore would embolden others to take action. They thus described a sort of cascade effect (NGO2). A respondent who has worked as legal counsel to an environmental NGO also thought the creation of the office would potentially represent a departure from current practice, where "economic interests are often mixed in with" public interests. But an ombudsman would not be obliged to take those economic ramifications into account (NGO3).

Working toward full implementation of EU environmental law would seem to be an alternative to explicit rights of nature approaches. Some scholars have suggested that the most important take-away for the EU to observe from RoN developments elsewhere was the necessity of ensuring that people can obtain a legal hearing, particularly as a check on the tendency of officials to not fully apply environmental law.[57] As EU law expert Mumta Ito has pointed out, though, the obstacles standing in the way of effective implementation are "severe."[58] More complete implementation would not necessarily forestall something akin to the treatment of nature as a legal rightsholder. As Epstein and Schoukens contend, EU environmental law currently treats nature as a legal rightsholder due to the duties which people hold towards it.[59] If this is the case, then an environmental ombudsman could constitute an important step towards rights of nature despite not appearing to transgress perceived boundaries between nature and human or trouble the notion of the autonomous self which that boundary supports.

5. Conclusion

While a rights of nature approach may well help to create a path towards sustainability, its prospective implementation nevertheless appeared

[57] Ludwig Krämer, "Rights of Nature and Their Implementation," *Journal for European Environmental and Planning Law* 17 (2020): 47–75, here 75. doi:10.1163/18760104-01701005.

[58] Mumta Ito, "Nature's Rights: Why the European Union Needs a Paradigm Shift in Law to Achieve Its 2050 Vision," 311-330, in *Sustainability and the Rights of Nature in Practice*, eds. Cameron La Follette and Chris Maser (Boca Raton, FL: CRC Press, 2020), 314.

[59] Epstein and Schoukens, "A positivist approach," 207.

to several of our respondents to threaten social cohesion, the health of legal and political institutions, and people's faith in them. These concerns intersect with democracy in different ways. They focus on the limitations and inequities of human knowledge that is necessary for knowing what the exercise of those rights entails, the human-non-human relationship that the rights appear to imply, the proliferation of environmental conflict that they could engender, and those rights' impact on the centralization of power. Respondents voiced apprehension that these rights would empower holders of minority views as well as those called upon to implement policy based on those rights, to the detriment of other humans. Such concerns highlight perceived tensions between particular approaches to sustainability in line with SDG Goal 15 and the values and standards set out in Goal 16 regarding the promotion and maintenance of accountable institutions that can provide opportunities for popular participation. This conflict is not new, but it will likely deepen in the future. Robert Marzec has argued that the identification of climate change as a matter of national security may exacerbate conflicts between the state and local communities over environmental measures.[60]

It is valuable to scrutinize the potential for conflict between these goals, but there is risk that these conflicts themselves become naturalized through their examination. It is therefore important to examine the sensibilities that set the stage for this expectation of perceived conflict and to thus illuminate their constructed and contingent nature. RoN has no single form. It may be capable of addressing the respondent's preference for the involvement of local populations in management of ecosystems of which they are a part. However, its association with the diminution of human freedom and autonomy, which reflect the persistence of a powerful distinction between nature and culture, currently limit that possibility.

Respondents' opinions seemed to suggest an option that could in effect further both SDG goals: an environmental ombudsman office. Its establishment could help Swedish environmental law work towards sustainability by ensuring its practice accords with the country's Environmental Code while simultaneously providing for popular influence in this process. Respondents suggested the ombudsman's office could lift the interpretation and implementation of environmental law out of political contestation and consideration. The political context may nonetheless impinge upon the office's operation in several ways. First, not all current ombudsman offices have been created equal. As legal scholar Thomas Bull notes, ombudsman offices that followed the first Parliamentary (Justice) Ombudsman were not the equal of their predecessor in independence. While the Parliamentary Ombudsman was completely independent, other offices like the Children's and Equality ombudsmen were dependent upon the government, which could oust them at its pleasure while simultaneously overseeing their office's budget. In addition, the particular political possibilities and limitations attending the offices' creations shaped the particular powers with which each was vested. As Bull observes, each office possesses distinct capabilities.[61] The first person to perform the role of Equal Opportunities ombudsman noted that because the office could only oversee jobs not governed by a collective agreement, "its scope

[60] Robert P. Marzec, *Militarizing the Environment: Climate Change and the Security State* (Minneapolis: University of Minnesota Press, 2015), 26.

[61] Thomas Bull, "The Original Ombudsman: Blueprint in Need of Revision or a Concept with More to Offer?," *European Public Law* 6, no. 3 (2000): 334–344, here 342.

of action was quite circumscribed."[62] The contingent process of creating ombudsman offices can impact what formal powers they possess. As has been the case with other ombudsman offices such as the Children's Ombudsman, an EO may be limited to acting largely as "an institute for public information."[63] If this were the case, the office may only lead to deeper anxieties over environmental issues, because it will be able to inform the public of their severity without being able to act upon them.

Additionally, a MO may also express and institutionalize particular political values not only through such powers but also by makeup of councils created to advise the office on their exercise. One of the benefits of the ombudsman's office that respondents referred to was its ability to channel conflict and claims of environmental harm and wrong decisions. This necessarily involves choices about whose voices will be heard. This dynamic was recognized in the 1994 report on the prospective establishment of this office. The MO would have been assisted by a board of environmental organizations appointed by the government. To counter the rigidity which may have in time characterized the council's perspective, the report suggested allowing larger organizations that possesses "a strong character of popular resistance" to maintain permanent seats on the council while providing rotating seats for smaller organizations.[64]

The ombudsman office appeared to represent the possibility for change in environmental policy absent the sharp political struggle that often accompanies such changes. Political ferment, sustained by fundamental unhappiness with current arrangements, facilitated the recognition of nature's rights in Ecuador. There, political upheaval and deep distrust of the established order was crucial to creating what Kauffman and Martin describe as a "window of opportunity" that facilitated the introduction of those rights at the national level.[65] Similarly, the passage of the public referendum in Toledo, Ohio that recognized Lake Erie as a legal person in 2019 reflected, in Elizabeth MacPherson's estimation, an aspiration 'to upset the status quo' borne of disappointment with previous measures.[66] During their interview the former Ministry of the Environment official suggested that nature could have the rights that democratic institutions were prepared to give it (ME). What was left unexplored in this and other interviews was the turmoil that might precede the existence of such a legislative majority.

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[62] Agneta Hugemark and Christine Roman, "Putting Gender and Ethnic Discrimination on the Political Agenda: The Creation of the Equal Opportunities Ombudsman and the Ombudsman against Ethnic Discrimination in Sweden," *NORA – Nordic Journal of Feminist and Gender Research* 22, no. 2 (2014): 84–99, here 91.

[63] Bull, "The Original Ombudsman," 342.

[64] *Miljöombudsman* (Stockholm: Fritzes Offentliga Publikationer, 1994), 34.

[65] Kauffman and Martin, *The Politics of Rights of Nature*, 70.

[66] Elizabeth MacPherson, "The (Human) Rights of Nature: A Comparative Study of Emerging Legal Rights for Rivers and Lakes in The United States of America and Mexico," *Duke Environment Law & Policy Forum* 31 (Spring 2021): 327–377, here 376.