Nordisk Miljörättslig Tidskrift

Nordic Environmental Law Journal

2024 special issue

www.nordiskmiljoratt.se

Nordisk Miljörättslig Tidskrift/Nordic Environmental Law Journal 2024 special issue
ISSN: 2000-4273
Redaktör och ansvarig utgivare/Editor and publisher: David Langlet
Webpage http://nordiskmiljoratt.se/about-the-journal.html (which also includes writing instructions).

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Editor's Introduction

Welcome to this special issue of the Nordic Environmental Law Journal (NELJ), focusing on "Rights of Nature, National Interest, and Representation". At NELJ we are happy to be able to provide a platform for this initiative and welcome further proposals for special issues.

Due to the special nature of this issue, a brief comment is called for. As is further explained in the guest editors' introduction, the special issue is the result of a transdisciplinary symposium that brought together scholars from different disciplines representing different scientific traditions and backgrounds. One of the contributors could also be described as a rights of nature practitioner rather than a scholar. For this reason, it has not been feasible to apply the usual NELJ peer review process in which each text is anonymously reviewed by a law scholar with relevant expertise. Instead, theses texts have each gone through a process of editorial review with authors receiving and integrating editorial commentary provided by the guest editors.

With that, I'm happy to give the floor to the guest editors.

David Langlet
Editor of MNT/NELJ

Introduction

Seth Epstein, Victoria Enkvist, and Marianne Dahlén

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] 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-

[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.

[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 Tängh 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 Tängh 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 duty-holders 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 justice. 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.

Rights of Nature meets the Swedish Constitution*

*Marianne Dahlén** and Victoria Enkvist****

> The fact is, that each time there is a movement to confer rights onto some new "entity," the proposal is bound to sound odd or frightening or laughable.[1]

Abstract

Nature is primarily seen as property in modern Western legal systems. Property usually has one or more owners with far-reaching rights to dispose of it. The idea that nature has rights is therefore new and radical; it represents a shift in the balance of power between humans and nature. The purpose of this article is to investigate how the current Swedish constitutional protection of nature may relate to the idea of the rights of nature. How is nature, environment, and the relationship between climate and nature negotiated in the existing legal and constitutional framework? Using examples from the recent Cementa and the Girjas cases, we discuss how the constitutional issues involved are legally interpreted and politically negotiated in ways leading to environment and nature being downplayed through government actions and interventions. The question is whether granting rights to nature would fit into Sweden's constitutional system and result in nature having a stronger position. Or is it a strange bird?

Introduction

Can nature have rights, in the same way as humans, or in some other way? In modern Western legal systems, nature is primarily seen as property. Property usually has one or more owners with far-reaching rights to dispose of it. The idea that nature has rights (Rights of Nature) is new and radical; it represents a shift in the balance of power between humans and nature. It is based on the view that nature should be allowed to exist on its own terms and not on man's. Expectations are that such an approach will become a tool for changing the view of the relationship between humanity and nature. The purpose of this article is to investigate how the current Swedish constitutional protection of nature, the environment, and climate may relate to the emerging idea of the rights of nature and current attempts to realize this idea. We wish to highlight the possible consequences of a transition from nature as a mere object of protection and care into a subject with rights of its own, independent of man. Consequently, our main focus in this article is the constitutional challenges and opportunities. We begin by presenting the rights of nature as an idea and phenomenon, giving examples from some places where it has been realized in law and practice. This will be contrasted with

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* This article has been published in Swedish: Marianne Dahlen & Victoria Enkvist, Regeringsformens natur och naturens rättigheter in *De lege. Regeringsformen 50 år 1974–2024* (eds. Anna Jonsson Cornell, Mikael Ruotsi, Caroline Taube och Olof Wilske) Iustus 2024, pp. 23–42.

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[1] Christopher D. Stone, "Should Trees Have Standing? – Toward Legal Rights for Natural Objects", *Southern California Law Review* 45 (1972) pp. 450–501, 455.

a review of the present position of nature, the environment, and climate in the Swedish constitution and a discussion of how the rights of nature could fit into the Swedish constitutional landscape. Rights of Nature highlights power relationships, and not least the relationship between law and politics. To illustrate this aspect, we will include a more detailed discussion of a particular case, the Cementa process concerning concessions for limestone quarries on the island of Gotland.

The Rights of Nature

Over the past decades, environmental and climate issues have become increasingly prominent in both political and media discourse, resulting from an increased environmental and climate change awareness and growing grassroots movements, one of which is Greta Thunberg and *Fridays for Future*. Young climate activists in a number of countries have initiated legal proceedings to bring about change through national courts and the European Court of Human Rights. According to *Sveriges Natur*, the membership magazine of The Swedish Society for Nature Conservation, there are more than 2000 climate lawsuits around the world, mainly led by young activists.[2] In the so called Aurora case in Sweden, several hundred young people have sued the state for jeopardizing the right to life, health, and development of children and young people in violation of Articles 2, 3, 8 and 14 of the European Conventions on Human Rights (ECHR) and Article 1 of the First Additional Protocol (protection of property) by failing to take adequate measures against climate change.[3] In April 2024 the Supreme Court granted a leave to appeal to answer the question whether the case was admissible.[4] In the Netherlands the Dutch Supreme Court has ordered the state to reduce greenhouse gas emissions by 25% in the so called Urgenda case, citing the right to life and the right to private and family life, Articles 2 and 8 of the ECHR. More senior people have also engaged in the battle against climate change. In Switzerland, a group of women called the Klima-Seniorinnen in April 2024 won a case against the state of Switzerland in the European Court of Human Rights.[5]

The aim of a human rights equivalent for nature is to enable society to better address the challenges facing nature, climate, and the environment in a robust and sustainable way. Until now, protection for the environment has mainly been found in environmental law. Such protection is found in the international, regional, and national legal systems, based on protecting people from harmful interference and emissions in nature. In some countries, the idea of the rights of nature has been put into practice. How the rights of nature have been constructed and implemented differs between countries, which affects the scope, strength, and impact of protection.

These issues have attracted the attention of the scientific community in the natural sciences, humanities, social sciences, law, and theology. There is a perception, even among many scientists, that the Earth has now entered a new age where the human footprint is shaping the Earth's development and future, which is usually referred to as the Anthropocene, the age of

[2] "Aurora kan lyftas till HD", Sveriges Natur 28, August 2023, https://www.sverigesnatur.org/aktuellt/aurora-kan-lyftas-till-hd/ (visited 29/07/2024).

[3] Aurora.se, https://xn--auroramlet-75a.se/ (visited 29/07/2024).

[4] ECLI:NL:HR:2019:2007, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf (visited 29/07/2024).

[5] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC]* – 53600/20 Judgment 9.4.2024 [GC], https://hudoc.echr.coe.int/eng/?i=002-14304 (visited 29/07/2024).

humanity. The prelude to the shift to the Anthropocene is the Industrial Revolution and the subsequent human footprint on Earth. The more precise timing of the shift is considered to be the early 1950's when a large amount of radioactive pollution was released from nuclear testing.[6] However, the view that we have entered a new phase is not shared by all and is one of several strands in the debate on climate change.

Environment and sustainable development issues have long been at the forefront of public debate. As early as the 1972 Stockholm Conference, initiated by the Swedish Government, environment and development issues were linked and placed on the international agenda. The UN Conference on Environmental and Development in Rio de Janeiro and several subsequent world meetings on climate change are a result of the Stockholm Conference.[7] Since 1988, the UN Intergovernmental Panel on Climate Change (IPCC) has focused on current environmental and climate issues. International agreements have been concluded to address the problems facing the environment and climate change. The 2030 Agenda[8] and the 2015 Paris Agreement[9] are two examples of political and legal agreements that have attracted considerable attention in this area. Since 2009, the UN has been leading intergovernmental negotiations aimed at a paradigm shift in the approach to human-nature relations through the Harmony with Nature initiative. The ambition is to find ways to achieve a more sustainable development where human rights and the rights of nature go hand in hand to ensure good development for planet Earth and for future generations.[10] The compliance and concrete significance of these agreements are debatable, as they are mainly declarations of objectives with no direct sanctions in case the signatory states do not meet the objectives. Nonetheless, there is a great political potential in the Agenda 2030 and other international initiatives.

Giving rights to nature means granting nature the right to self-determination. Giving legal capacity to a tree, a river, a mountain, an ecosystem or the whole of nature imply that nature is an independent subject of law. The idea of nature's rights originated in grassroots movements but has also made its way into the scientific community. In 1972, just as a major environmental movement was taking shape in the West, the young legal philosopher Christopher D. Stone published his groundbreaking article "Should Trees Have Standing? – Toward Rights for Natural Objects" in the *Southern California Law Review*. Stone put forward the "unthinkable" thought that nature can and should be granted rights and be represented by people to speak for it. Stone argued that it has been considered as "a natural law" that men (the white man) and not things that have rights and legal capacity whereas, in reality, that conception is only a legal construction. It was not until the 19th century that it became possible to consider corporations as legal persons even though there had been similar discussions much earlier regarding the Catholic

[6] See *International Union of Geographic Sciences* (IUGS) *Working Group on the Anthropocene*, decision 19 May 2016, http://quaternary.stratigraphy.org/working-groups/anthropocene/ (visited 29/07/2024). For a comprehensive presentation of the Anthropocene, see Sverker Sörlin, *Antropocen: En essä om människans tidsålder* (Stockholm: Weyler förlag, 2018).

[7] "Only one Earth", conference in Stockholm 1972, Svenska Unescorådet 2 March 2012, https://unesco.se/only-one-earth-konferens-i-stockholm-1972/ (visited 29/07/2024).

[8] https://sdgs.un.org/2030agenda (visited 07/08/2024).

[9] Adopted by 196 states at the UN Climate Change conference (COP21) in Paris 12 December 2015. It entered into force on November 4, 2016. https://unfccc.int/process-and-meetings/the-paris-agreement (visited 29/07/2024).

[10] *Harmony with Nature*, UN, with further references: http://www.harmonywithnatureun.org/chronology/ (visited 29/07/2024).

Church and empires claiming status and capacity corresponding to the concept of legal personhood. Nevertheless, there has always been hesitation or even solid resistance to extending rights and legal capacity to new entities.[11]

Over time, rights – after struggle – have come to include groups of persons who had not previously been granted rights: children, women, Black people, indigenous peoples, for example, and to some extent animals.[12] Based on this historical perspective, Stone proposed that we give forests, oceans, rivers and other parts of nature, indeed all of nature, rights, including the right to speak for themselves.[13] Stone based his argument on legal reasoning about legal subjectivity, which he argued could be applied to nature, e.g. a tree, because nature should be given a value in itself, a value that is not based on nature (e.g. a particular tree) serving as a means of human benefit. According to Stone, a tree, for example, should be able to bring an action in court on its initiative and courts would then be obliged to take into account the damage caused to the tree.[14]

Stone's thoughts are based on a liberal tradition of thought and a rights discourse where the individual and property rights are central. Stone wants to include nature in this rights tradition, notwithstanding the fact that his idea runs counter to it. The introduction of the concept of "legal person", which Stone suggests to extend to include objects in nature, such as trees, was crucial to the rights, ownership, financing, and profits of corporations and financial institutions during the Industrial Revolution. The concept contributed to the rise of industrial capitalism, where a basic premise was, and is, the availability of raw materials and the freedom to make an impact on emissions into nature. Stone's idea aims to limit the possibilities of exploiting nature, but his idea is based on the same liberal tradition of thought.[15] The possibilities and difficulties of making "objects" such as nature, animals, or AI into legal persons have subsequently been explored and conflicting conclusions have been put forward.[16]

Since Stone wrote his article, a field of research has emerged around the rights of nature, with a variety of approaches and proposals. Political scientists, lawyers, theologians, historians of technology, organizations and activists have thought and written about the phenomenon. Mihnea Tanascescu provides an updated overview in *Understanding the Rights of Nature* from 2022.[17] An example of grassroots movements with a more activist approach is Henrik Hallgren and Pella Thiel's *Naturlagen*.[18]

Since the 1960s, a majority of countries in the world have adopted some form of constitutional provisions related to the environment, including Sweden.[19] These provisions are primarily aimed

[11] Stone, "Should Trees Have Standing?", pp. 453–56.
[12] Stone, "Should Trees Have Standing?", p. 453.
[13] Stone, "Should Trees Have Standing?", p. 456.
[14] Stone, "Should Trees Have Standing?", p. 458.

[15] See for example Seth Epstein, Marianne Dahlén, Victoria Enqvist & Elin Boyer, "Liberalism and Rights of Nature: A Comparative Legal and Historical Perspective", *Law, Culture and the Humanities* 2022, pp. 1–23.
[16] There is no space to detail the debate here, but see further e.g. Visa A. J. Kurki, *A Theory of Legal Personhood* (Oxford: Oxford University Press, 2019), Ngaire Naffine, "Hidden presuppositions and the problem of paradigm persons", *Open Edition Journals* 44, 2021, https://doi.org/10.4000/revus.6953 (visited 20/07/2024) and Raffael N. Fasel, "Shaving Ockham", *Open Edition Journals* 44 2021, https://doi.org/10.4000/revus.6953 (visited 20/07/2024).
[17] Mihnea Tanasescu, M., *Understanding the Rights of Nature: A Critical Introduction (Bielefeld*: Transcript Verlag, 2022).
[18] Henrik Hallgren & Pella Thiel, *Naturlagen: om naturens rättigheter och människans möjligheter* (Stockholm: Volante, 2022).
[19] United Nations Environment Programme, Environmental Rule of Law: First Global Report (2019) 2, https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report (visited 30/07/2024). See also Agnes Hellner & Yaffa Epstein, "Allocation of

at ensuring a good and healthy environment for present and future generations.[20] A characteristic feature of the rules is that humans are at the center.[21] In some countries, however, nature has been given a more central role in the constitution and its own specific rights. The most prominent example is Ecuador, which in 2009 became the first country in the world to enshrine the rights of nature in its constitution. A number of articles in the constitution recognize nature's right to exist and manage itself, giving all communities, peoples and nations the right to call upon public authorities to enforce the rights of nature. However, it is worth noting that it is still humans who represent nature in legal proceedings, which means that full legal subjectivity has not been achieved. The State is obliged to remedy violations of nature. The Ecuadorian Constitution promises a new model of sustainable development, based on the idea that humanity and nature should live in harmony and that nature is no one's property.[22] Another famous example is the Whanganui River in New Zealand, which has been declared a legal entity with its own rights, represented by the Maori people living along the river.[23] There are more examples of the realization of nature's rights around the world, some are the following: In the United States, nature's rights have been enshrined in local ordinances, the first being the Lake Eire Bill of Rights (LEBOR), adopted by the citizens of Toledo, Ohio in 2019. LEBOR gives the lake ecosystem the right to exist and develop on its terms, as well as the right to self-government and a clean and healthy environment for the city's residents. However, it was annulled in court shortly after its adoption because it was unconstitutional.[24] In 2022, Spain became the only country in Europe to pass a law making the Mar Menor, Europe's largest saltwater lagoon, a legal entity with its own rights. Initiatives have been taken also in Sweden, in particular a declaration of rights for Lake Vättern, with formulations similar to those in LEBOR.[25] In the Swedish parliament motions to that effect have been tabled at several occasions, last time in November 2022, to introduce a new section 2:26 in the Swedish Instrument of Government (IoG) (Regeringsformen, RF), giving nature the right to naturally exist, flourish, generate and develop. None of the motions have been adopted.[26]

Nature in the Swedish Constitution

In environmental and climate cases, legal arguments are often based on human rights and constitutional rights. Consequently, the design and construction of these rights are of great importance for the realization of protection. This is often overlooked in analyses of the role of law in climate litigation. Nature does not have its own

institutional Responsibility for Climate Change Mitigation: Judicial Application for Environmental Provisions in the European Climate Cases Artic Oil, Neubauer and l´Affaire du Siécle", *Journal of Environmental Law*, vol. 35, no. 2, 2023, p. 208.

[20] See for example the Swedish IoG (RF) 1:2 para. 3.

[21] Agnes Hellner & Yaffa Epstein, "Allocation of institutional Responsibility for Climate Change Mitigation: Judicial Applicatioon of constitutional Environmental Provisions in the European Climate Cases *Arctic Oil, Neubauer*, and *L'Affaire du siècle*.", Journal of Environmental Law, Vol. 35, Issue 2, July 2003 pp. 207–227, at 208.

[22] *Harmony with Nature*, UN, Law and Policy: http://www.harmonywithnatureun.org/rightsOfNature/, 12 (visited 30/07/2024).

[23] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 No. 7, 20 March 2017. https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html (visited 30/07/2024).

[24] Adopted on February 26 2019, see "Rights of Nature Case Study Lake Eire", *Harmony with Nature's* web-site: http://files.harmonywithnatureun.org/uploads/upload1141.pdf (visited 30/07/2024).

[25] Vätterns rättigheter (Rights of lake Vättern): https://naturensrattigheter.se/vattern/ (visited 30/07/2024).

[26] Motion 2022/23:728, raised by Rebecka Le Moine, (MP, the green party), https://www.riksdagen.se/sv/dokument-och-lagar/dokument/motion/naturens-rattigheter_ha02778/ (visited 14/08/2024).

rights in the Swedish Constitution. However, there are a number of provisions that may be of importance for the protection of the environment and nature and by extension, the climate. One such rule is IoG 1:2 para. 3, which states that the public authorities shall promote sustainable development leading to a good environment for present and future generations. The provision in its original wording was added in 1976. Its purpose was to express "certain particularly important principles for the direction of social activity".[27] When a proposal was made, and which was later adopted, to introduce a rule on the promotion of sustainable development and a good environment for present and future generations in the Constitution in 2021, it was considered appropriate to include such wording in IoG 1:2. In the Government Bill it was emphasized that Sweden should be a pioneer in environmental protection.[28]

The wording of the new provision in IoG 1:2 para. 3 is linked to purposes of the Environmental Code (*miljöbalken* 1998:808), and the Government stated that it was "natural that the central environmental policy concept of sustainable development" was confirmed, a concept that was first introduced by the 1987 Bruntland Commission Report "Our Common Future".[29] It was also pointed out that in addition to being an overall objective for environmental policy and the Environmental Code, sustainable development is also essential in international as well as EU environmental law. In this context, it was considered imperative to emphasize the principle of solidarity with future generations in the efforts to achieve long-term sustainability.

Several of the bodies commenting on the government bill pointed out that it was unclear what effect the new environmental provision would have on the interpretation of other laws. The Government responded to the critique by emphasizing that IoG 1:2 is a program declaration "whose main function is to oblige the public to work positively to ensure that the expressed objectives are realized as far as possible".[30] At the same time, the Government emphasized that the program declaration has significance for the interpretation of the Constitution as well as law in general. Consequently, in the legislative process as well as in legal practice, it is of great importance that courts and public authorities concerned consider the program declaration in their decision making. It is expressed in the following words:

> This means that an individual cannot successfully base an action in legal proceedings solely on one of the provisions in Chapter 1, Section 2 of the Instrument of Government. However, a provision in Chapter 1, Section 2 of the Instrument of Government can be invoked and be of significance as an interpretation of how another invoked provision is to be applied, e.g. in an environmentally friendly manner. (Our translation).[31]

This means that the application of environmental law is a matter of constitutional interpretation. Legal rules must be interpreted in the light of the constitutional rule in question. During the 2000s, there has been a development where the

[27] Government Bill, prop. 1975/76:209, pp. 97, 127, 136 and Report to the standing committee on the constitution, bet. KU 1975/76:56, p. 41.
[28] Government Bill, prop. 2001/02:72 p. 23.
[29] Government Bill, prop. 2001/02:72 pp. 21–24.
[30] Prop. 2001/02:74 p. 24.
[31] Swedish Government Official Report, SOU 2001:19 p. 64. In the original Swedish wording: "Det nu sagda innebär att en enskild inte med framgång kan grunda en talan i en rättsprocess enbart på något av stadgandena i 1 kap. 2 § RF. Däremot kan ett stadgande i 1 kap. 2 § RF åberopas och få betydelse som tolkningsdatum för hur ett annat åberopat lagrum skall tillämpas, t.ex. på ett miljövänligt sätt."

consideration of rights has come to play an increasingly important role in the interpretation and application of laws. For a constitutional interpretation to be possible, the constitutional rule must have a certain degree of concreteness and the law in question be susceptible to a constitutional interpretation. If the wording of the right in question allows for an excessively broad interpretation in terms of scope, the right risks becoming an empty shell without any concrete meaning. At the same time, too narrow a scope of interpretation can create other problems, in that many phenomena/objects/subjects risk falling outside the scope of protection. Since the constitution is intended to be permanent or at least difficult to change, the design of laws have to be open ended enough to cover different phenomena. Flexibility lies in the scope for interpretation. The preparatory works to IoG 1:2 para. 3 refers to the opening article of the Environmental Code and reads as follows:

> The provisions of this chapter aim to promote sustainable development, which means that present and future generations are assured of a healthy and good environment. Such development is based on the recognition that nature has a conservation value and that man's right to change and use nature is associated with a responsibility to manage nature well. (Our translation).[32]

A fundamental idea in the Environmental Code is that people cannot engage in a way of life that damages the environment and depletes natural resources. It also states that both present and future generations must be assured of a healthy and good environment in which to live. The preparatory works to the Environmental code state that development in society must be steered towards paths that are sustainable in the long term. It also emphasizes that humans have a responsibility to manage nature well. In the bill, this is expressed in the following terms "Anyone who carries out any form of activity or takes measures of various kinds must always ensure that human health and the environment are protected against damage and inconvenience."[33]

In the light of the Environmental Code, the provision on the environment in the IoG 1:2 para 3 is clarified. Humanity is placed at the center and regarded as a steward of nature. Nature is subordinate to people. When strong socio-economic interests are at stake, it turns out that the constitutional provisions can be circumvented.

Environment in negotiation with other societal interests of vital importance

The relationship between politics and law is constantly under discussion. One area where the balance between the two has come under scrutiny is the possibility of appealing against government decisions, which is now regulated by the Act on judicial review of certain government decisions (lagen 2006:304 om rättsprövning av vissa regeringsbeslut). Before the Act was adopted, the Government was the final instance in some administrative matters. This arrangement was inconsistent with the ECHR, the right to judicial review, which is the background to the introduction of the act. An important issue in the drafting process of the act was how intrusive judicial review of political decisions could be

[32] Government Bill, prop. 2001/02:72 pp. 21–24. In the original Swedish wording: "Bestämmelserna i denna balk syftar till att främja en hållbar utveckling som innebär att nuvarande och kommande generationer tillförsäkras en hälsosam och god miljö. En sådan utveckling bygger på insikten att naturen har ett skyddsvärde och att människans rätt att förändra och bruka naturen är förenad med ett ansvar för att förvalta naturen väl."

[33] Government Bill, prop. 1997/98:45 p. 2. In the original Swedish wording: "[D]en som bedriver någon form av verksamhet eller vidtar åtgärder av olika slag alltid skall se till att människors hälsa och miljön skyddas mot skador och olägenheter."

without unduly affecting democracy.[34] The tension between law and politics has changed but not disappeared with the introduction of the Act on judicial review, as illustrated by the Cementa case and the Girjas case discussed in the following section.

In Sweden, various forms of balancing of interests have taken place in a number of legal proceedings concerning the environment. One of the most high-profile cases from a constitutional perspective is the Cementa case. The case consists of a number of court decisions and a government decision.[35] In the Cementa case, vital and opposing societal interests were at play. The protection of the environment eventually had to take a back seat, in favor of the (economic/societal) need for cement. The government took relatively drastic measures to ensure that Cementa's operations would continue. The geographical area in question is Slite on the island of Gotland. As the Cementa case involves a number of different legal issues, that have been tried in courts at different levels, we start with a brief summary of the case. The summary follows a background description given by the Land and Environment Court (*Mark- och miljödomstolen*).[36]

Until the end of October 2021, the company Cementa AB held a concession for limestone and marlstone mining in Slite. This is established in a 2010 Land and Environment Court decision.[37] The concession was limited to a period of ten years. It was furthermore established that the activity was not considered to affect the nearby Natura 2000 areas to any greater extent.[38] In 2017, three years before the concession expired, Cementa applied for permission to continue and expand quarrying operations in Slite. The application covered the same amount of extraction and the same maximum depth as in the previous concession from 2010 plus new extraction sites. The Land and Environment Court granted the application.[39] The decision was appealed to the Land and Environment Court of Appeal (*Miljööverdomstolen, MÖD*), which set aside the lower court's decision on the grounds that the environmental impact assessment contained considerable deficiencies.[40] Cementa lodged an appeal against the decision to the Supreme Court (*HD*), which did not grant a leave to appeal. Consequently, the decision by the Environment Court of Appeal stood.[41]

The Cementa AB is one of the country's largest suppliers of cement and when the concession for limestone mining was not renewed, it was feared that it would have severe consequences for Swedish industry. In light of the expected consequences of a shutdown of Cementa, in the early autumn of 2021 the government proposed in a government bill an amendment to the Environmental Code. The bill introduced a temporary regulation in chapter 17a, to apply from October 15 2021 until the end of the year. In practice, this meant that the government would

[34] Caroline Taube, "Den dömande makten", in Ingvar Mattson & Olof Petersson (eds.), *Svensk författningspolitik*, 6th ed. (Lund: Studentlitteratur, 2022), p. 215.

[35] The case includes a number of individual decisions, starting with the Land and Environment Court (*Mark- och miljödomstolen*) cases M 2334-09, October 1 2010, M 1579-20, July 6 2021, Supreme Court (*HD*) T 4746-21, August 25 2021, Government Decision (*Regeringens beslut*), November 18 2021, M2021/01774, Supreme Administrative Court (*HFD*) 7208-21 656-22, December 7 2022, Land and Environment Court (*Mark- och miljödomstolen*) M 2724-22, December 13 2022.

[36] Land and Environment Court (*Mark- och miljödomstolen*), M 2724-22, December 13 2022, 15–16.

[37] Land and Environment Court (*Mark- och miljödomstolen*), M 2334-09, October 1 2010.

[38] Land and Environment Court (*Mark- och miljödomstolen*), M 2334-09, October 1 2010.

[39] Land and Environment Court (*Mark- och miljödomstolen*), M 2334-09, October 1 2010.

[40] Land and Evironment Court of Appeal (*Mark- och miljööverdomstolen, MÖD*), M 1579-20, July 6 2021.

[41] Supreme Court (*HD)*, T 4746-21, August 25 2021.

take over the concession examination and the right to grant exemptions from the environmental assessment procedure concerning activities on Natura 2000 sites.[42]

The Legislative Council (*lagrådet*) critiqued against the bill on two grounds: firstly because of deficiencies in the preparation of the bill and secondly because the constitutionally protected generality requirement was not considered to be met. The Legislative Council took note of the lack of concrete instructions on the preparation of government bills in the constitution and stated that nonetheless, it is clearly of great importance that the bodies given the bill for consideration are given sufficient time to submit well-founded consultation responses.[43] The Legislative Council emphasized that the concrete content of the preparation requirement is determined by "the nature of the government matter".[44] In the case of the proposed amendment to the Environmental Code, the consultation period was in practice less than a week. The Council considered the short consultation period to be particularly problematic in view of the complex content of the bill. In light of these circumstances, it was considered that the drafting requirements under IoG 7:2 were not met.[45]

The Council also discussed whether the Act complied with the requirement of regulatory generality – a prohibition against *in casu* legislation. To be considered a regulation (and not a decision in an individual case) it must be legally binding, addressed to individuals or authorities, and have a general applicability. The generality requirement is not clearly expressed in a specific article of the IoG. However, it follows from IoG 11:4 and IoG 12:3, that no judicial function may be performed by the Riksdag unless laid down in fundamental law or the Riksdag Act Riksdagsordningen, the Riksdag's rules of procedure).[46] The Council pointed out that the requirement of generality is first and foremost formal, but that other circumstances must be taken into account, such as the number of people affected by the law, the size of the geographical area affected, and the duration of the regulation in question.[47] The Council did not see any deficiencies in a formal sense, as the content of the proposed law was a general standard. However, the Council considered that the substantive part was problematic as the regulations in Chapter 17a of the Environmental Code would only be in force for a very limited time period the time was adapted entirely to the needs in an individual case, namely Cementa's concession for limestone mining.[48] Another problem identified by the Council was that the requirements in the bill were formulated so that the law could only be applied in the Cementa case. The Council stated that the proposed legislation appeared to be a measure taken […] "to correct the outcome of the concrete concession case which had ended with the Supreme Cort's decision on August 25 2021 not to grant a leave to appeal of the rejection decision by the Land and Environment Court." (Our translation.)[49] Against this background, the Leg-

[42] Government Bill, prop. 2021/22:15.

[43] Legislative Council (*lagrådet*), Minutes from the 2021-09-16 meeting, p. 5.

[44] Legislative Council (*lagrådet*), Minutes from the 2021-09-16 meeting, p. 5.

[45] Legislative Council (*lagrådet*), Minutes from the 2021-09-16 meeting, p. 5.

[46] See Erik Holmberg, Nils Stjernquist, Magnus Isberg, Marianne Eliasson & Göran Regner, *Grundlagarna*, 2nd ed. (Stockholm: Norstedts Juridik, 2006), p. 501.

[47] Holmberg *op. cit.*, pp. 317–18.

[48] Legislative Council (*lagrådet*), Minutes from the 2021-09-16 meeting, p. 8.

[49] Legislative Council (*lagrådet*), Minutes from the 2021-09-16 meeting, pp. 8–9. In the original Swedish version: […] "för att korrigera utfallet av den konkreta tillståndsprocess som tog sin ände i och med Högsta domstolens beslut den 25 augusti 2021 att inte meddela prövningstillstånd avseende Mark- och miljööverdomstolens avvisningsbeslut."

islative Council considered that there were considerable reasons to believe that the bill also contravened the generality requirement.

Despite the Legal Council's criticism, the new Chapter 17a was adopted on September 29, 2021. The Act entered into force on October 15, 2021, and expired on January 1, 2022.[50] The Government granted a concession for quarrying in Slite on November 18, 2021.[51] The concesson was valid until the end of 2022 and covered the extraction of residual stone within the quarrying areas covered by the concession from 2010. The government considered that the quarry could affect the Natura 2000 areas Hejnum Kalgate, Kallgatburg, and Bojsvätar, which is why a Natura 2000 concesson was also granted in regard to the quarrying activities.

The Supreme Administrative Court (HFD) received a number of applications for judicial review of the Government's decision on the temporary concession. In one of the applications an injunction was also claimed pending final decision. The application was rejected and consequently the Government's favorable decision on the quarrying activities continued to apply.[52] In that case, the question of the preparation requirement was examined. The Supreme Court emphasized that there are no rules on the length of the consultation period for government decisions and that short deadlines are acceptable in urgent and serious situations.[53] The Supreme Administrative Court highlighted the assessment made by the Environment and Agriculture Committee (miljö- och jordbruksutskottet) that the preparation requirement was met despite the short preparation time.[54] One circumstance that was given particular significance was that, according to the Supreme Court, the legislative amendments were aimed at averting an imminent risk of serious societal consequences as a result of cement shortage.

As regards the generality requirement, in the case concerning judicial review the Supreme Administrative Court emphasized that the Riksdag may not make decisions in individual cases, a prohibition that cannot be circumvented by enacting legislation. At the same time, however, it was also pointed out that there was no detailed definition of what the generality requirement actually means. In its opinion, the court referred to case law stating that a regulation must be generally formulated and applicable, i.e. it may not expressly refer to a specific case.[55] The court emphasized that this requirement is evident from case law that the requirement is essentially formal, i.e. that the wording is formulated in a general manner.[56] In accordance with the view of the Legislative Council, the Supreme Administrative Court considered that the wording of the law is general. However, assessing who is actually concerned, the court came to a different conclusion than the Legislative Council. The court considered the provisions of Chapter 17a, to concern an indeterminate group of agents, namely operators engaged in activities relating to the extraction of limestone in Sweden.[57] According to the Supreme Administrative Court,

[50] Introduced by law 2021:875, terminated by law 2021:876.

[51] 'Government's decision of 18 November 2021, M2021/01774, see also "Regeringens arbete med cementförsörjningen", https://www.regeringen.se/sveriges-regering/klimat--och-naringslivsdepartementet/regeringens-arbete-med-cementforsorjning/ (visited 07/08/2024).

[52] Supreme Administrative Court (*HFD*) case 7208-21 656-22, 7 December 2022.

[53] Supreme Administrative Court (*HFD*) case 7208-21 656-22, 7 December 2022.

[54] The Environment and Agriculture Committee Report (*Miljö- och jordbruksutskottets betänkande*), 2021/22:MJU7.

[55] Supreme Administrative Court (*HFD*) case 7208-21 656-22, 7 december 2022.

[56] Supreme Administrative Court (*HFD*) case 7208-21 656-22. See also RÅ 80 1:92 and RÅ 1999 ref. 76.

[57] Supreme Administrative Court (*HFD*) case 7208-21 656-22.

the fact that there is only one such operator and that the law has only been applied once did not constitute a breach of the requirement of generality and consequently, there was no reason to annul the government decision.[58]

Interestingly, the Legislative Council and the Supreme Administrative Court come to opposite conclusions regarding the generality requirement. The Supreme Administrative Court emphasizes case law confirming that the generality requirement is essentially formal. The Legislative Council, on the other hand, presumes that the generality requirement is not merely formal. The Supreme Administrative Court focuses on the wording of the legal rule in question while the Legislative Council makes a broader interpretation. It should be added that Cementa AB is actually mentioned in the government bill. Under the heading "Reasons for the government's proposal regarding entry into force and transitional provisions" the following is stated: "Cementa's concession for quarrying of limestone and water activities, which among other things involve the removal of emerging surface and groundwater in Slite on the island Gotland, expires on October 31, 2021. The legislative amendments therefore need to enter into force as soon as possible." (Our translation).[59]

Cementa then submitted a new application for a concession for continued and expanded quarrying activities for four years. It was examined by the Land and Environment Court, which granted the concession in December 2022, covering continued and expanded quarrying activities at the Västra brottet and the Filehajdar quarry.[60]

Would there have been a different outcome if nature in Sweden had been granted constitutional protection as a legal subject with its own rights? The answer is that, in this particular case it might not have made any difference because of the political interventions. The courts followed the law, i.e. environmental considerations were taken into account. But when the highest court, the Land and Environment Court of Appeal rejected Cementa's application, the government proposed a temporary law to circumvent the court's decision. The law was subsequently adopted by the Riksdag. Although there were clear rules on environmental protection in the Environmental Code and in the Swedish constitution, economic interests weighed so heavily that an exception was deemed necessary. The politics took precedence over the law.

Similar considerations have been made regarding iron ore mining in Kallak (Kallak K No. 1). Despite massive criticism from nearby Sami villages, the Sami Parliament, UNESCO, the County Administrative Board of Norrbotten, the Church of Sweden and other important organizations, the government announced the processing concession on March 22, 2022.[61] Then-minister Karl Petter Thorvaldsson stated that it is necessary to open new mines in Sweden to cope with the green transition by 2045. This is not the first time that Norrland has played a central role in Sweden's economic development. In his book *Framtidslandet*, environmental historian Sverker Sörlin describes the shifting visions and interests that met in the exploitation of the

[58] Supreme Administrative Court (*HFD*) case 7208-21 656-22.

[59] Government Bill, prop. 2021/22:15 p. 40. In the original Swedish version: "Cementas tillstånd till täkt av kalksten och vattenverksamhet som bl.a. innebär bortledning av uppkommande yt- och grundvatten i Slite på Gotland upphör att gälla den 31 oktober 2021. Lagändringarna behöver därför träda i kraft så snart som möjligt."

[60] Land and Environment Court (*Mark- och miljödomstolen*), M 2724-22, 13 December 2022.

[61] Geological Survey of Sweden (*SGU*), "Regeringen beviljar koncession för Kallak", https://www.sgu.se/om-sgu/nyheter/2022/mars/regeringen-beviljar-koncession-for-kallak/ (visited 07/08/2024).

North during industrialization.[62] The same issues are being raised in the wake of the green transition. In particular, mining in Kallak comes into conflict with reindeer husbandry. While the decision includes conditions to protect reindeer herding, representatives of the Sami community see the decision as a blow to Sami culture.[63] If nature would have rights of its own, the decisive factor would be whether and, if so, how such rights would be formulated and even more importantly, how the rights could or would be limited. In the Cementa example it was not the balancing of interests in the court cases that was decisive. The balancing was taken out of courts and instead the balancing act took place on the political level. Nonetheless, the introduction of rights for nature might contribute to a clearer and stronger framework for the legislator.

The Cementa and Kallak K No. 1 cases are examples of how constitutional rules protecting the environment, climate and indigenous peoples' rights can be set aside by politicians – government and parliament – when these rights threaten industrial and political prioritizations.

Rights of Nature and indigenous people

The idea of rights of nature is strongly inspired by the view of the nature-human relationship in indigenous knowledge and practices.[64] When translated into a legal context, it has much in common with the conceptualization of indigenous people's rights, in particular by questioning the distinction between humans and nature. Indigenous culture is strongly linked to the land through subsistence and traditional economic activities. Like the rights of indigenous peoples, the rights of nature can come into conflict with other societal interests, not least large economic interests. One example of such a collision is the Per Geijer deposit in Kiruna, which was widely publicized at the start of Sweden's EU presidency. The metals are considered essential for Sweden and Europe in the green transition.[65] The metal deposit is located on the reindeer grazing lands of the Gabna Sami village. Gabna is a mountain Sami village that has been severely affected by LKAB's mining operations for more than a century. If the new deposit starts to be mined, the last remaining migration route between the reindeer pastures will be cut off. If reindeer herding disappears, it will have serious consequences for Sami culture and the Sami language.[66]

In the case of mineral exploitation in Norrland, Sami rights are juxtaposed with economic growth, jobs and the green transition. As described earlier, the idea of nature's rights has many common features with indigenous rights. In Sweden, Sami reindeer herding, hunting and fishing often coincide with sustainable development and other values. In Sweden, the Sami have been recognized as an indigenous people with the right to special cultural treatment under international law since 1977, which has subsequently been confirmed by the Riksdag on a number of occasions, for example in connection

[62] Sverker Sörlin, *Framtidslandet*, Bearbetead och utökad nyutgåva (Luleå: Teg Publishing, 2023).

[63] Sveriges Natur, "Regeringen beviljar gruvbrytning i Kallak", https://www.sverigesnatur.org/aktuellt/regeringen-beviljar-gruvbrytning-i-kallak/ (visited 2023-12-19).

[64] Joshua C. Gellers, *Rights for robots: artificial intelligence, animal, and environmental law* (Milton Park, Abingdon, Oxon: Routledge, 2021), p. 104.

[65] https://lkab.com/press/europas-storsta-fyndighet-av-sallsynta-jordartsmetaller-nu-25-procent-storre-idag-tas-forsta-steget-i-kritisk-provning/ (visited 15/12/2023). See also "Jättefynd av sällsynta jordartsmetaller i Kiruna", SR 12 Januari 2023. https://sverigesradio.se/artikel/lkab-har-gjort-jattefynd-av-sallsynta-jordartsmetaller-i-kiruna (visited 07/08/2024).

[66] "Här ställs kampen om samebyns framtid på sin spets", DN, 10 January 2023, https://www.dn.se/sverige/har-stalls-kampen-om-samebyns-framtid-pa-sin-spets/ (visited 07/08/2024).

with the adoption of the Council of Europe's Framework Convention for the Protection of National Minorities.[67] The rights of the Sami are enshrined in the Swedish constitution, IoG 1:2 para. 6: "The opportunities of the Sami people and ethnic, linguistic and religious minorities to maintain and develop their own cultural and social life shall be promoted."[68] This wording is a result of the 2010 constitutional reform and was intended to confirm the special status of the Sami people in Sweden. In addition, reindeer husbandry has special protection in IoG 2:17 para. 2, an exception to the main rule on freedom of trade in IoG 2:17 para. 1. These provisions thus potentially include indirect protection for the environment, the climate, sustainable development and a good environment for future generations. Such indirect protection consists in a belief that the Sami people have a different and "more environmentally friendly" approach to nature and lifestyle than the majority society. The idea is that when – or if – their rights are respected, nature is also respected and protected. So far, no government has managed to resolve the issue of Sami land rights. That is why the issues have continued to end up in the Supreme Court.

In a recent Swedish decision, Girjas Sami village against the State from January 2020, for the first time, and contrary to the provisions of the Swedish Reindeer Husbandry Act (1971:437), a Sami village was granted exclusive fishing and small game hunting rights, including the right to control the lease of those rights without the consent of the State on the Sami village's reindeer grazing lands. The court's decision is based on the concept of protracted use and the historical doctrine of immemorial prescription. To support the argumentation, the court makes use of innovative interpretations of both constitutional and international law provisions concerning the opportunities of the Sami people and the rights of indigenous people's.[69] The court claims that the introductory provisions of the constitution in the IoG 1:2, para. 6, contrary to what constitutionalists traditionally claim – that the first chapter is merely a declaration of objectives – the provision also has practical significance when weighing opposing interests against each other.[70]

Furthermore, the court finds support for its interpretations in the ILO Indigenous and Tribal Peoples Convention No. 169[71], a convention which is not ratified by Sweden. Regardless of this fact, the court establishes that parts of the convention now constitute general principles of international law, relevant for the case.[72]

The Girjas case constitutes a considerable development in the field of Sami law. As of today, the future significance of the case is however unclear. Shortly after the ruling, in May 2020, the Government appointed a parliamentary committee, the Reindeer Land Committee (*Renmarkskommittén*) with the assignment of creating a long-term sustainable solution to the issues. In an interim report from June 2023 titled Hunting and Fishing in Reindeer Grazing Land (*Jakt och fiske i renbetesland*), it is proposed to clarify that the prohibition on leasing hunting and fishing

[67] Government Bill, prop. 2009/10:80 p. 189. See also the Culture Committee's Report, KrU 1976/77:43, p. 4, and Government Bill, prop. 1976/77:80 p. 16.

[68] In the original Swedish wording: "Samiska folkets och etniska, språkliga och religiösa minoriteters möjligheter att behålla och utveckla ett eget kultur- och samfundsliv ska främjas."

[69] NJA 2020 p. 3.

[70] NJA 2020 p. 3.

[71] ILO 169, adopted 27 June 1989, https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312314 (visited 07/08/2024).

[72] For a thorough analysis of the Girjas case, see Christina Allard & Malin Brännström, "Girjas Reindeer Herding Community v. Sweden: Analysing the Merits of the Girjas Case", *Arctic Review on Law and Politics*, Vol. 12 (2021) 57–69, DOI https://doi.org/10.23865/arctic.v12.2678.

rights in the Reindeer Husbandry Act does not apply in relation to a Sami village that, according to a Supreme Court Ruling, has a stronger right to hunting and fishing than the State.[73] The interim report has caused division in the Government.

Nature's rights – a strange bird?

Introducing rights for new entities such as nature is complex. It challenges the traditional view of what rights are and who or what can have rights. The rights of nature require a change in the way we think about nature and the environment. Perhaps we are currently in a time of change. New rightsholders and new types of rights have emerged at different periods in history: the elimination of race discrimination, the rights of women, children, and indigenous peoples, persons with disabilities. These new rights were all subject to hard resistance. In order to understand the implications of giving nature rights, shifting the status of nature from object to subject and rightsholder, lessons can possibly be learned from examining the previous rights struggles. What were the major objections and obstacles, and what were the factors that promoted the eventual inclusion of new rights holders? Are there remaining obstacles after the adoption and implementation of the rights? Are there parallels with nature's rights, and are there major differences?

Realizing rights of nature challenges fundamental values in a liberal market economy. One major challenge is the likely interference with property rights. The challenge lies both in the legislative, implementation and application phase. The formulation and implementation therefore require clarity in the wording of the law and clear rules of interpretation, not least on how to weigh opposing against each other. This kind of conflict can manifest itself not only when different rights are conflicting with each other, but also when there is a conflict between different rightsholders claiming the same right. In Swedish constitutional law there is currently no guidance on how to balance this kind of clashing interests.[74] Also, realizing rights of nature gives rise to a host of complex issues concerning representation. Who should represent nature? How should representatives of nature be appointed? How to safeguard that the persons appointed to or claiming to represent nature act really act in the best interest of nature? and not in self-interest? This raises complex and conflicting issues of representation.

In this article, we have discussed both direct and indirect protection of nature, the environment, and climate. Direct protection refers to when nature, the environment, or the climate are explicitly mentioned in constitutional and environmental provisions, as in IoG 1:2 para. 3. Indirect protection refers to the aims and consequences of the application of various legal rules, where nature, the environment or the climate are not the explicit target. One example that we have discussed in this article is Sami law. Environmental protection can be a positive side effect of protecting Sami culture and Sami use of land and water, ways that are much less exploitative of nature.

An important aspect of environmental cases in general and which is highlighted in the cases we have discussed in this article, is the relationship between law and politics. In the Cementa case, the Government stepped in and legislated when the courts rejected company's application

[73] Swedish Government Official Report, SOU 2023:46 *Jakt och fiske i renbetesland. Delbetänkande av Renmarkskommittén*, p. 550.

[74] See Karin Åström & Victoria Enkvist, "Vem får mest rätt? – om konsten att beakta rättighetsskyddet i mål med flera rättighetshavare", *Europarättslig tidskrift* 2022, pp. 415–436.

for continued and expanded limestone mining. In the Girjas Case, the Supreme Court's ruling in favor of the Sami reindeer community represents a significant change in Swedish Sami law. Also in this case the Government stepped in, by appointing a parliamentary committee to amend the legislation set aside by the court. When it comes to sensitive and contentious issues such as society's need for and production of cement, or important minerals deemed vital for the green transition, political leaders may initially be reluctant to take a position on the issues. This has led to the issues being decided in court instead. However, as illustrated in this article, when a court decision based on law, including the constitution, was not considered satisfactory from a political perspective, it resulted in direct political interventions. There is reason to believe that the same phenomenon would occur, even if rights of nature were given constitutional protection. Notwithstanding these difficult challenges, such a legal framework may still have a transformative value.

Strong societal and economic interests such as the green transition, Swedish industry, strengthening the rural parts of Sweden, and new jobs, have proven to be highly valued when balanced against with climate and environmental protection. Stone drew attention to the conflicting interests in environmental cases as early as in 1972. He proposed to strengthen the position of nature through the "unthinkable" thought of making parts of nature or ecosystems legal persons with rights. However, giving rights to nature entails many challenges. Either way, it is our belief that giving nature a stronger legal and political position involves finding solutions and compromises that are politically accepted *and* starts a shift in balance making it possible for nature to assert itself against powerful industrial interests. We can only agree with Stone's dark prophecy: if we do not succeed, nature will disappear "in a quantitative compromise between two conflicting interests".[75]

[75] Stone, "Should Trees Have Standing?", p. 461.

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

Seth Epstein and Anton Andersen***

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.

Acknowledgements

The authors gratefully acknowledge support from the Swedish Research Council Formas for project number 2020-00437. They also thank Victoria Enkvist and Marianne Dahlén for their feedback and insights.

[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.

Dreaming of a Decolonial Language? The Limits of Posthuman Critique in the Anthropocene

*Claes Tängh Wrangel**

Abstract

Within posthuman critical theory, the advent of the Anthropocene has revived dreams of a critical and decolonial language, free of the exclusions of modernity. Through a deconstructive reading of Bruno Latour's texts on the Anthropocene and *Gaia* – which constitutes one of the most clear and influential examples of this hope – this article aims to deconstruct the dream of a decolonial language. What emerges from this deconstruction is that Latour's writings – far from being free of modernity – rather reproduces key facets of the modernity that he seeks to critique. By showcasing the intimate and paradoxical relationship between posthuman critique and the colonial power relations expressed in discourses of modernity, the article problematizes ideas of a critical language free and outside of power as well as the notion of a pure critical position that this idea presupposes. In this way, the article strives to contribute to an ongoing debate about the conditions for critical theory in a time of global climate change.

Introduction

Few concepts are as debated as the concept of the Anthropocene: the idea that we have entered a new geological age characterized by humanity's impact on planetary climate and geology. According to political philosopher Bruno Latour, the concept of the Anthropocene questions the entirety of social organization, representing a transformation "as profound and radical as that of Galileo's time."[1] The human-centered world that the theories of political science were created to understand is increasingly claimed to no longer exist. Gone, it is argued, is the linear and predictable world presupposed by modernism, a world that could be studied from the outside, neutrally and objectively, and where human social relations were claimed to play out against the backdrop of a silent and static earth. Gone, it is claimed, is indeed the very possibility of distinguishing between man and nature, as no nature untouched by humans can be said to exist in the Anthropocene.[2] As such, it has been claimed that the Anthropocene disrupts modernity's founding act – the creation of a strict human sphere, separate and apart from nature.[3]

Contemporary critical theory has embraced the challenge that the Anthropocene – as a philosophical concept as well as a geological era – presents to us. Many are those who have met the

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[1] Bruno Latour, 2019. "Uppsala University, 'Hans Rausing Lecture 2019'", available at: https://media.medfarm.uu.se/play/video/9878, last accessed 2024-07-31.

[2] Clive Hamilton, 2013. "Climate Change Signals the End of the Social Sciences", The Conversation. Available at: http://theconversation.com/climate-change-signals-the-end-of-the-social-sciences-11722. Last accessed 12 April 2024.

[3] Georg Hegel, *Philosophy of Nature* (Oxford: Oxford University Press, 1970[1817]), 283.

challenge of the Anthropocene with hope, and see in the concept of the Anthropocene an opportunity to subvert the racialized, gendered and (post)colonial relations of exclusion, domination and exploitation of both people and of natural resources through which modernity was constituted.[4] As part of this discussion, questions have been raised about the political possibility of creating a new language beyond modernism, formulating dreams of a "pluriversal"[5] language and imaginary that recognizes the value of non-human objects and subjects, a language that would be *as* changing and complex as the Earth itself is claimed to be. For instance, Kathryn Yusoff has argued that the Anthropocene "challenges us to invent a whole new language"[6] and Anthony Burke and others have urged us to invent "a political imagination that can rise from the ashes of our canonical texts."[7] Elizabeth Grosz's dream of a social science that does not "write *for* and *of* objects", but "*with* them, or between them"[8] in order to open up humanity to "the non-human, the geological and the non-organic"[9] is another example of this dream, as is Charlotte Epstein's appeal to embrace a "language of life."[10] According to Latour, the language of the Anthropocene holds within it a capacity to forge a new posthuman subject and a new "common,"[11] "public"[12] and "atmospheric"[13] earth into presence. For Latour, the formulation of this language is now the main task of critical theory and political philosophy writ large: "The problem for all of us in philosophy, science or literature becomes: how do we tell such a story?"[14]

According to James W. Moore, the symbolism and power of this promise is great, if not entirely unproblematic: "The unfolding planetary crisis – which is also an epochal crisis of the capitalist world-ecology – cries out for 'pluriversal' imaginations of every kind. But what kind of pluriversalism, set against what kind of universalism, and for what kind of politics?"[15] This article attempts to respond to Moore's request for a critical examination of the dream of a pluriversal, decolonial and posthuman language. It does so by problematizing and contextualizing this dream, and the critical position that the dream of a decolonial language is both equated with and assumed to enable. In that way, the article also responds to Latour's brief self-criticism

[4] For instance, see Natasha Myers, "Becoming Sensor in Sentient Worlds: A More-than-natural History of a Black Oak Savannah," in *Between Matter and Method: Encounters In Anthropology and Art*, eds. Gretchen Bakke and Marina Petersen (London: Routledge, 2017); Elizabeth Povinelli, *Between Gaia and Ground: Four Axioms of Existence and the Ancestral Catastrophe of Late Liberalism*, Durham NC: Duke University Press, 2021; Bruno Latour, *Down to Earth: Politics in the New Climatic Regime* (Cambridge: Polity Press, 2018); Charlotte Epstein, "Seeing the ecosystem in the international: Ecological thinking as relational thinking," *New Perspectives* 30, no. 2 (2022): 170–179.

[5] Michael Simpson, "The Anthropocene as Colonial Discourse," *Environment and Planning D: Society and Space* 38, no. 1 (2020): 53–71, here 68; James W. Moore, "Anthropocene, Capitalocene & the Flight from World History: Dialectical Universalism & the Geographies of Class Power in the Capitalist World-Ecology, 1492-2022," *Nordia Geographical Publications* 51, no. 2 (2022): 123–146, here 123.

[6] Kathryn Yusoff, "Geosocial Strata," *Theory, Culture & Society* 34, nos. 2–3 (2017): 105–127, here 125.

[7] Anthony Burke, Stefanie Fichel, Audra Mitchell, Simon Dalby and Daniel J. Levine, "Planet Politics: A Manifesto from the End of IR," *Millennium: Journal of International Studies* 44, no. 3 (2016): 499–523, here 523.

[8] Elizabeth Grosz, Kathryn Yusoff and Nigel Clark, "An Interview with Elizabeth Grosz: Geopower, Inhumanism and the Biopolitical," *Theory, Culture & Society* 34, no. 2–3 (2017): 129–146, here 144, emphasis added).

[9] Ibid., 138.

[10] Epstein, "Seeing the ecosystem in the international," 171.

[11] Latour, *Down to Earth*, 94.

[12] Latour, *Down to Earth*, 45.

[13] Latour, *Down to Earth*, 93.

[14] Bruno Latour, "Agency at the Time of the Anthropocene," *New Literary History* 45, no. 1 (2014): 1–18, here 3.

[15] Moore, "Anthropocene, Capitalocene & the Flight from World History," 123.

expressed in the endnote to his last book *After Lockdown: A Metamorphosis*, in which Latour admitted that his texts on the Anthropocene, "still looked at the situation 'from above'", i.e. from the vantage point of the modernity he sought to subvert.[16] In my eyes, Latour's self-reflection expresses a call to critically reflect on the relationship between our critical language and the prevailing discourses we intend to criticize: Is there a form of critique that is not in some way related to or entangled in what it is trying to criticize? Is there a purely critical position, and in what way would such an imagination not reproduce ideas that the world can be viewed from the outside – *from above*?

In order to both make visible and scrutinize the dream of a decolonial language – what this dream presupposes, makes politically possible and ultimately risks hiding – a deconstructive reading of Latour's late interventions on the Anthropocene is performed. In this analysis, I pay particular attention to Latour's discussions of the limits of modernist language and epistemology[17] as well as the importance he grants to James Lovelock's poetry,[18] as an example of a living and performative language beyond modernity. It is important to point out that the article's object of study is not Latour's oeuvre as a whole, which is of course both broad and varied, but rather to expose and problematize a posthuman form of critique of Modern language that Latour has strongly influenced.

My ambition with this reading is twofold: firstly to highlight the internal contradictions that make Latour's position both possible and impossible, and to illustrate the modernist history and contemporary context that underpins the dream and idea of a new language. To that end, I make use of Jacques Derrida's deconstructive approach in order to read how the signifier of 'language' is articulated in Latour's works – how different languages are defined, which definition(s) of politics and agency the signifier of language are associated with, as well as how language is used to give meaning to the Anthropocene and modernity alike. As an aid in my reading, I employ two of Derrida's key terms: 1) differ*a*nce, which emphasises both how discursive concepts are created through linguistic distinctions (to differ) and how these differences postpone the establishment of fixed meaning to an indeterminable future (to defer).[19] Secondly, I make use of Derrida's concept 2) *bricolage*, which highlights the discursive and historical context that surrounds and gives meaning to each discursive articulation.[20]

Instead of treating modernity and the Anthropocene as ontologically distinct entities whose political meaning and effect are given in advance, I thus examine what the distinction between the two *does* – discursively and politically. Considered as discursive articulations, the concepts of modernity and the Anthropocene appear as political attempts to stabilize meaning to fundamentally contested and contingent concepts. As argued by Simon Dalby, rather than a fixed geological period, the concept of the Anthropocene has come to serve as "a lightning rod for political and philosophical arguments."[21] In that way, the article builds on a series of critical

[16] Bruno Latour, *After Lockdown: A Metamorphosis* (Cambridge, UK: Polity Press, 2021), 93.
[17] Bruno Latour, "Onus Orbis Terrarum: About a Possible Shift in the Definition of Sovereignty," *Millennium: Journal of International Studies* 44, no. 3 (2016): 305–320; Latour, *Down to Earth*.
[18] Latour, "Why Gaia."
[19] Jacques Derrida, *Margins of Philosophy* (Sussex, UK: The Harvester Press, 1982), 7–8.
[20] Jacques Derrida, *Writing and Difference* (London: Routledge, 2001), 360.
[21] Simon Dalby, "Framing the Anthropocene: The Good, the Bad and the Ugly," *The Anthropocene Review* 13, no. 1 (2015): 33–51, here 34.

studies which in recent years have come to criticize the dichotomy between a singular modernity and a politically equally singular Anthropocene.[22]

The article begins with a close reading of Latour's late interventions on the Anthropocene and the political implications of these texts. In this reading, both the meaning given to the binary conceptual pair modernity/Anthropocene as well as to the signifier of language are analysed. Throughout this reading, conflicting meanings will be highlighted and contrasted. The article concludes by contextualizing the dream of a new decolonial language that Latour expresses, placing this dream in relation to the modernity that Latour aims to criticize and subvert.

Latour and the Politics of Language in the Anthropocene

Latour is often regarded as one of the main critics of the ontopolitical role given to language in deconstructive approaches. In particular, Latour was critical of Derrida, who Latour argues reduced the world to a matter of human language.[23] Despite these criticisms, human language holds a central, if ambiguous and contradictory, role in Latour's writings on the Anthropocene. In these texts, Latour articulates, at the same time, human language as 1) a violent means of world-making, articulated as the purest form of modern sovereignty, 2) an effect and expression of geological agency, 3) an arena in which geological agency is measured, given and acknowledged *by* humans and, lastly, 4) a performative call that, if we humans respond to it, holds a promise of a new posthuman form of life as well as a new Earth for all of life to inhabit. In other words, Latour defines, simultaneously, human language as both constituted by and as constituting the geological world – as that which enables geological agency, and as that which prevents geology from speaking. In this section I will review these conflicting meanings, and discuss how they activate an aporia that not only risks making modernity inseparable from the promise that Latour invests in the Anthropocene, but also risks rendering impossible his posthuman project.

Although different, all of Latour's four definitions are based on an underlying distinction between what Latour calls the modern *Globe* and the Anthropocene *Earth*. As per the first of Latour's definition of the politics of language – language as a violent means of word-making – Latour argues that the language of modernism, most notably the "perversity"[24] of the "technical and literal"[25] language of science, has replaced the complex *Earth* with an image of a controllable and static *Globe*. Through the language of science, the world has come to be seen as "a universal, unproblematic, and uncoded category that is supposed to mean the same thing for everybody."[26] For Latour, the *Globe* has now become the place that Modern Man takes for grant-

[22] See Clara Eroukhmanoff and Matt Harker, eds., *Reflections on the Posthuman in International Relations: The Anthropocene, Security and Ecology* (Bristol: E-International Relations Publications, 2017); David Chandler, *Ontopolitics in the Anthropocene: An Introduction to Mapping, Sensing and Hacking* (London: Routledge, 2018); Simpson, "The Anthropocene as Colonial Discourse"; David Chandler, Erika Cudworth and Stephen Hobden, "Anthropocene, Capitalocene and Liberal Cosmopolitan IR: A Response to Burke et al.'s 'Planet Politics,"' *Millennium: Journal of International Studies* 46, no. 2 (2017): 190–208; Jack Amoureux and Varun Reddy, "Multiple Anthropocenes: Pluralizing Space – Time as a Response to 'the Anthropocene,"' *Globalizations* 18, no. 6 (2021): 929–946.

[23] Bruno Latour, *We Have Never been Modern* (Cambridge, MA: Harvard University Press, 1993), 90.

[24] Latour, "Why Gaia," 69.

[25] Latour, "Why Gaia," 70.

[26] Latour, "Onus Orbis Terrarum," 308.

ed, a construction created from the "outside,"[27] and, as phrased by Latour, from above.[28]

It is in within the limited epistemological framework of the *Globe* that current political issues find their logic, and that the actors which traditional theories of political science regard as the core of global politics – states, international organizations, civil societies, companies, individuals – can be taken for granted, and appear as natural. As such, Latour argues that the *Globe* is the world we all inhabit, living our lives in "ignorance"[29] and "denial,"[30] continuously "floating in dreamland."[31] According to Latour, the *Globe* is:

> "the undisputed, authoritative, universal, external frame inside which all geopolitical entities – be they empires, nation-states, lobbies, networks, international organisations, corporations, diasporas – are situated in a recognisable place, a province side by side with all the other provinces."[32]

In *War of the Worlds*, Latour describes modernity as engaged in a "reality war" with the *Earth*, aimed towards constructing the *Earth* in the image of the *Globe* – to divide the *Earth* into distinct parts and levels, governed by distinct actors.[33] The modern history of division, referred to by Latour as the "principle of localisation," defines for Latour modern sovereignty in its purest form.[34] Its basic function is, Latour holds, to define "any entity – human or non-human […] as distinct from any other and as occupying a certain chunk of space," building on "the idea that entities are impenetrable to one another, and are, for that reason, delineated by precise boundaries that define their identity".[35] The principle and practice of localization, Latour posits, has transformed the *Earth* into a machine, whose parts come together to create a controllable order. It is thus through the practice of localization that sovereign power is both constituted and practiced: the power to create order, the power to separate, and the power to exploit – to govern parts instrumentally for the benefit of human ends and economic growth. Like the machine's need for an operator, the modernist *Globe* presupposes an idea of an actor standing outside of itself: "a constructor, a planner, or some antecedent overbearing figure; some instance that plays the role of assembling the parts in advance."[36] As Latour notes, this external position has historically been filled by Modern Man, primarily by Europe – a clear example of the colonial logic he equates with modernism and of the decolonial context in which he automatically places the Anthropocene.

The *Earth* – equally referred to by Latour as *Gaia* – is in many ways described as the polar opposite of the *Globe*. While the *Globe* is seen as a colonial construction, a result of "the imperial dominion of the European tradition" imposed from above, Latour presents the *Earth* as that which transcends all attempts at control, that resists all attempts at categorization and order.[37] The parts that modernity both presupposes and creates do not exist on *Earth*, according to Latour. The *Earth* thus comes to signify our planet both before and after the *Globe*[38] – it is described as a "hyperactive," "loud"[39] (Ibid.) and "alive"[40]

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[27] Latour, "Why Gaia," 62.
[28] Latour, *After Lockdown*, 93.
[29] Latour, *Down to Earth*, 24.
[30] Latour, *Down to Earth*, 36.
[31] Latour, *Down to Earth*, 7.
[32] Latour, "Onus Orbis Terrarum," 307.
[33] Bruno Latour, *War of the Worlds: What about Peace?* (Chicago: Prickly Paradigm Press, 2002), 16.
[34] Latour, "Onus Orbis Terrarum," 314.
[35] Latour, "Onus Orbis Terrarum," 311.
[36] Latour, "Onus Orbis Terrarum," 312.
[37] Latour, "Onus Orbis Terrarum," 308.
[38] Latour, "Why Gaia," 61.
[39] Latour, "Why Gaia," 62.
[40] Latour, "Why Gaia," 64.

home to "thousand-fold" forms of life,[41] impossible to stabilize.[42] In other words, Latour holds the *Earth* to be characterized by complexity, by relationships and by non-linear processes, processes that the modernist *Globe* seek to deactivate.[43]

It is in light of the distinction between the *Globe* and the *Earth*, that Latour discusses the ongoing climate crisis, which leads us to the *second* of the four distinct meanings that he gives to human language: language as an effect of geological agency. For Latour, the climate crisis is first and foremost an expression of *Earthly* voice, and as such it is by definition understood as a political event – a "revolt of […] colonial *objects*."[44] In the Anthropocene, and through climate change, it is as if the *Earth*, which for so long has been rendered passive, is no longer silent. In Latour's terminology, the *Earth* speaks through climate change: "*Another ground*, another earth, another soil has begun to stir, to quake, to be moved […] nothing will be as it was before: you are going to have to pay dearly for the return of the *Earth*."[45]

According to Latour, the decolonial voice of the Anthropocene thus cannot be avoided. Everywhere we move, not least in our public discourse, the voice takes presence. "No matter which political persuasion you come from" Latour writes, *Gaia* has "modifie[d] what it is for human actors to present themselves on the stage [of public discourse]."[46] Indeed, for Latour, "abstaining from using the disputed term [Gaia] is no longer an option."[47] Changes in discourse, in human language, are in other words perceived as an effect of geological change. As argued by Latour, the *Earth's* voice, its agency, is defined by its capacity to "*make a difference* in our thinking."[48] So defined, language is no longer seen as the prerogative of human life. In the Anthropocene, the *Earth* speaks through humans, through our language. Indeed, virtually all contemporary political developments – from climate activism, the resurgence of nationalism, global inequality, to a global information campaign designed by a global elite to spread climate denial – are all seen by Latour as an effect of a changing ecology, as an expression of *Earthly* voice.[49]

As George Revill has highlighted, the concept of voice holds a central role in Latour's broader political project.[50] Latour defines voice – and agency – not as an expression of individual will, the expressed intention of a rational and unified subject, but rather with practice: with the effect that something causes in a given object, subject or language. A voice is thus not a capacity that a given agent has or does not have, but something that comes to life in its imprint: if and when something "brings into presence an issue or matter of concern as a proposition that would otherwise not be articulated and brought into the public realm."[51] Many have read this redefined concept of voice as an expression of Latour's deconstruction of human exceptionalism. But as Revill convincingly demonstrates, Latour's concept of voice risks reproducing modernism's privileging of human language as the central arena of politics. Ultimately, it is in human public discourse that agency (human as well as non-human) can be measured, valued and recognized. It is in this context that Latour's

[41] Latour, "Why Gaia," 61.
[42] Latour, "Why Gaia," 62.
[43] Latour, "Why Gaia," 64.
[44] Latour, "Onus Orbis Terrarum," 310, original emphasis.
[45] Latour, *Down to Earth*, 17, italics in original.
[46] Latour, "Why Gaia," 62.
[47] Latour, "Why Gaia," 63.
[48] Lisa Disch, "Representation as 'spokespersonship': Bruno Latour's political theory," *Parallax* 14, no. 3 (2008): 88–100, here 92, original emphasis.
[49] Latour, *Down to Earth*, 1.
[50] George Revill, "Voicing the environment: Latour, Peirce and an expanded politics," *Theory, Culture and Society* 39, no. 1 (2021): 121–138.
[51] Revill, "Voicing the environment," 127.

third definition of the politics of language is actualized: language as an arena in which geological agency is measured, given and acknowledged *by* humans.

Latour's own use of language is a clear example of this paradox, argues Revill. Language usage such as "'*giving* voice to', '*searching* for', and '*finding* voice'" all give precedence to human, rather than *Earthly*, agency, assigning to humans the task of performing, representing and making heard the voice of *Gaia*.[52] As Revill notes, the definition of human language as a mediator for *Gaia's* voice also presupposes the notion that human's hold the capacity to determine who or what has a voice. Latour's description of his grander political project in *Politics of Nature* makes this point explicit, formulated as an attempt "to *add* a series of new voices to our discussion, voices that have been inaudible up to now…the voices of non-humans."[53] In Latour's writings on the Anthropocene, the giving of voice to the *Earth* is explicitly formulated as a task for humanity in general, and Europe in particular – a responsibility for humans to "recall"[54] the modernist *Globe*, both in terms of finding a "successor to the notion of the *Globe*"[55] as a term, and to find a language that allows us "remember"[56] our place on the original *Earth*.[57] Such language indicates that, for Latour, the voice or agency of *Gaia* is not simply external to human language, but appear rather as formed *through* and made possible *by* human language – thus destabilizing the ontological distinction between the *Globe* and the *Earth*.

In *Down to Earth*, Latour describes the aim of this new language as a possibility to come down to or land on *Earth*. According to Latour, how we use our language determines where we are, which world we see and inhabit: the modern *Globe* or the Anthropocene *Earth*. Language, so defined, contains within it the promise of the Anthropocene, a means to create and "live in an alternative worlds[to] share the same culture, face up to the same stakes, [and to] perceive a landscape that can be explored in concert."[58]

Formulations like these actualize Latour's fourth articulation of human language: Language as a performative calling. Latour's observation – that it is no longer possible to abstain "from using the disputed term"[59] of *Gaia* – thus appears less as a demand issued to us from the *Earth*, than a normative call issued from within the *Globe*, an appeal to abandon the *Globe's* scientific and supposedly objective language[60] in favor of a new decolonial language, with the capacity to make the *Earth* come "alive,"[61] to give the *Earth* the voice that, according to Latour, the *Earth* should have had by default.

For readers of Latour, it is no secret that it is in James Lovelock's writings on *Gaia* that Latour finds the tools to unlock this decolonial and performative language. In sharp contrast to the scientific language of modernity, Latour describes Lovelock's "prose" as an open and living language: open to its own limitations, to its own changeability, and to the adaptability of language.[62] He describes Lovelock's language as "a fully reflexive attempt at including the difficulty of writing in the writing itself."[63] With reference to the world of biology – spe-

[52] Revill, "Voicing the environment," 122, emphasis added.
[53] Bruno Latour, *The Politics of Nature: How to Bring the Sciences into Democracy* (Cambridge, MA: Harvard University Press, 2004), 69, emphasis added.
[54] Latour, "Onus Orbis Terrarum," 310.
[55] Latour, "Onus Orbis Terrarum," 307.
[56] Latour, "Onus Orbis Terrarum," 310.
[57] Latour, "Why Gaia," 61.
[58] Latour, *Down to Earth*, 25.
[59] Latour, "Why Gaia," 63.
[60] Latour, "Why Gaia," 69.
[61] Latour, "Why Gaia," 73.
[62] Latour, "Why Gaia," 71.
[63] Latour, "Why Gaia," 71.

cifically with how plants move in relation to external stimulation, Latour describes Lovelock's prose as characterized by "tropism," i.e. as equally changeable as the *Earth* itself.[64] Latour notes, for example, how "ceaselessly" Lovelock "modifies [his] metaphor," and how often he "change[s] his position."[65] Lovelock's language is further held to exemplify and make visible an "extended pluralism."[66]

Through a precise step-by-step method, consisting of eight points that he extracts from Lovelock, Latour here articulates the politics of Lovelock's language: to break up modernity's distinctions and parts, between "the inside and the outside of any given entity" thus making visible the context and relations, which, according to Latour, condition and give meaning to each object.[67] It is in this method that the real promise of Lovelock's poetry becomes visible: not only a new – more correct – language, in tune with the *Earth* rather than the *Globe*, but more importantly, a method, a toolbox through which the *Globe* can be transformed into the *Earth*. According to Latour, "Lovelock describes a planet that is alive *because his prose is alive*."[68] In previous texts, Latour has granted similar performative capacity to language, urging us to establish a "common geostory"[69] with the aim of creating and enabling a "shareable"[70] and "atmospheric" *Earth*.[71] Articulations like these blur the sharp distinction that Latour both presupposes and establishes between the *Earth* and the *Globe*, rendering the Anthropocene in effect dependent on human will and agency: "There is a chance", urges Latour, "for everyone to wake up, or so we can hope. The wall of indifference and indulgence that the climate threat alone has not managed to breach may be brought down."[72]

As I have noticed elsewhere,[73] human language is, for Latour, central to this awakening – and to Latour's definition of politics as a whole. Not only is it through human language that the *Earth* has become colonized, "empt[ied] of any meaning"[74], it is also through human language that the *Earth* can eventually be granted the capacity to speak, that its voice can be recognized and that the Anthropocene ultimately can come into being. Through Latour's four definitions of language, a paradox or aporia thus appears in the posthuman framework. At the same time that the *Earth* is seen as eternal, holding a voice independent of Modern Man – a representation that allows Latour to imbue the concept with normative and decolonial promise – the *Earth* is simultaneously portrayed as a distinctly human project, constructed through and by the performative and deconstructive power of human language. Given this aporia – the impossibility of separating oneself from human language *through* the use of human language – we should thus not be surprised by the brief self-criticism Latour expressed in his final book, *After Lockdown*, in which he admitted that "*Down to Earth* looked at the situation 'from above.'"[75]

Critique "from above"? Possibilities and limitations

Read as part of the "above" – as part of the modernism Latour so intensely tries to recall – we can identify a series of similarities between Latour's

[64] Latour, "Why Gaia," 69.
[65] Latour, "Why Gaia," 70.
[66] Latour, "Why Gaia," 71.
[67] Latour, "Why Gaia," 72.
[68] Latour, "Why Gaia," 73.
[69] Latour, "Agency at the Time," 3.
[70] Latour, *Down to Earth*, 98.
[71] Latour, *Down to Earth*, 93.
[72] Latour, *Down to Earth*, 38.
[73] Claes Tängh Wrangel and Amar Causevic, "Critiquing Latour's Explanation of Climate Change Denial: Moving Beyond the Anthropocene/Modernity Binary," *Millennium: Journal of International Studies* 50, no. 1 (2021): 199–223.
[74] Latour, "Why Gaia," 69.
[75] Latour, *After Lockdown*, 63.

view of language and his definition of the matrix of modernism. If modernism is defined by the practice of localization, of crafting and constructing specific parts – "*impenetrable* to one another, and are, for that reason, *delineated* by precise boundaries that define their identity"[76] – from a complex, relational and changing network, then Latour's ontological distinction between the *Earth* and the *Globe* (always referred to by Latour in the singular) appears as a repetition of this logic: an articulation of two separate worlds, separate from and impenetrable to each other. And if this practice has made modernity blind, capable of seeing only itself, then Latour's unintentional repetition of modernism's practice also appears blind, incapable of recognizing the diversity and complex relationships that have, and continues to, characterize human and non-human life, including the various ways in which humanity has responded to ongoing climate change.[77] As Audra Mitchell has argued, "between the two extremes […] – a radical, eliminative posthumanism and a relapse into unreflective humanism – there exists a wide space of relations."[78]

A growing body of critical literature has increasingly emphasizes this variation, employing concepts such as "biocultural diversity" to capture the heterogeneity through which human life interacts with 'nature' in different contexts.[79] According to Jack Amoureux and Varun Reddy, there is not *one* Anthropocene but several, a diversity of *Anthropocenes*,[80] co-produced by a series of related, but different dominant Anthropocene discourses.[81] As such Bronizlaw Szerszynski has argued that in the time of change we are now experiencing, nothing is given: "Earth's new epoch will probably be noisy," riven by new and old power relations alike.[82]

Given this noise, Latour's image of a homogenous *Globe* emerges less as an ontological state, than as a discursive articulation, a constitutive outside that makes the idea of the *Earth* simultaneously possible and impossible. As Delf Rothe has observed, the idea of a homogeneous modernity has enabled the concept of the Anthropocene to be filled with "a single set of normative implications,"[83] a normativity that could explain why Latour's dream of a new decolonial language has received such a response.[84] Considered as discursive constructions, the *Earth* and the *Globe* do not appear as ontological opposites, but as mutually dependent on each oth-

[76] Latour, "Onus Orbis Terrarum," 311, emphasis in original.

[77] For a critical examination of Latour's definition of denial, in respect to climate change, see Tängh Wrangel and Causevic, "Critiquing Latour's Explanation of Climate Change Denial."

[78] Audra Mitchell, "Posthuman Security: Reflections from an Open-ended Conversation," in *Reflections on the Posthuman in International Relations: The Anthropocene, Security and Ecology*, eds. Clara Eroukhmanoff and Matt Harker (Bristol: E-International Relations Publications, 2017), 12, emphasis added.

[79] Sanna Stålhammar and Ebba Brink, "'Urban Biocultural Diversity' as a Framework for Human–Nature Interactions: Reflections from a Brazilian Favela," *Urban Ecosystems* 24 (2020): 601–619.

[80] Amoureux and Reddy, "Multiple Anthropocenes."

[81] See Delf Rothe, "Governing the End Times? Planet Politics and the Secular Eschatology of the Anthropocene," *Millennium: Journal of International Studies* 48, no. 2 (2020): 143–64; Philippe Descola, *Beyond Nature and Culture* (Chicago: The University of Chicago Press, 2013); Joel Wainwright and Geoff Mann, "Climate Leviathan," *Antipode* 45, no. 1 (2013): 1–22.

[82] Bronislaw Szerszynski, "Gods of the Anthropocene: Geo-Spiritual Formations in the Earth's New Epoch," *Theory, Culture & Society* 34, nos. 2–3 (2017): 253–275, here 254.

[83] Delf Rothe, "Global Security in a Posthuman Age? IR and the Anthropocene Challenge," in *Reflections on the Posthuman in International Relations: The Anthropocene, Security and Ecology*, eds. Clara Eroukhmanoff and Matt Harker (Bristol: E-International Relations Publications, 2017), 87.

[84] Eva Lövbrand et al., "Who Speaks for the Future of Earth? How Critical Social Science Can Extend the Conversation of the Anthropocene," *Global Environmental Change* 32 (2015): 211–18; Moore, "Anthropocene, Capitalocene & the Flight from World History"; Rothe, "Global Security in a Posthuman Age?."

er, a binary pair that both gives and postpones meaning, what Derrida would refer to as differ*a*nce – to differ and to defer.[85] Paradoxically, it is only through Latour's reference to the *Globe* that the *Earth* becomes possible – as fantasy, concept and political utopia, if not as reality. The *Earth* is thus postponed, it remains to-come, deferred to an indeterminate future, incapable of freeing itself from its constitutive relation to the *Globe*. To paraphrase Derrida: *the conditions of possibility of* the Earth *is also its condition of impossibility*.[86]

Given this im/possibility, we should hence not assume that this normative dream automatically is free from the (post)colonial modernity it seeks to criticize.[87] On the contrary, as several studies have shown, the decolonial dream of the Anthropocene emerged in a largely colonial and racialized context, within an "undoubtedly white intellectual European/Western academic environment."[88] For example, Angela Last has demonstrated the dominance of white voices within "the intellectual prehistory of the Anthropocene" and in current normative versions of what she calls the "Anthropocene discourse."[89] Michael Simpson's genealogy of the concept of the Anthropocene further demonstrates the colonial context in which early formulations of man as a geological force emerged – such as Antonio Stoppani's idea of an Anthropozoic era and Edouard Le Roy and Vladimir Vernadsky's concept of the noösphere – and how these ideas were used to legitimize colonial occupation, administration and violence.[90] Today, a series of critical studies have shown how ideas about a changing and relational world continue to regulate and reproduce power relations between the global South and the global North, in part by influencing discourses on global security policy and poverty reduction. According to Brad Evans and Julian Reid, the appropriation of geological concepts such as resilience, relational coexistence and complexity by discourses of global governance have functioned to naturalize vulnerability, presenting structural human-made inequalities as inescapable facets of adaptable and relational life.[91] There is, as several authors argue, a striking similarity between the ecological view of these discourses and how posthumanist critique, including Latour, defines life on *Earth*.[92]

It is this complex and heterogeneous network of statements that Latour's dream of a new decolonial language is embedded in. Drawing on Claude Levi-Strauss's *The Savage Mind* (1962), Derrida calls such a network *bricolage*.[93] For Derrida, every discourse, every language –

[85] Derrida, *Margins of Philosophy*, 7–8.
[86] Jacques Derrida, *Spectres of Marx: the State of Debt, the Work of Mourning and the New International* (London: Routledge, 1994), 82.
[87] Simpson, "The Anthropocene as Colonial Discourse."
[88] Zoe Todd, "Indigenizing the Anthropocene," in *Art in the Anthropocene: Encounters among Aesthetics, Politics, Environment and Epistemology*, eds. Heather Davis and Etienne Turpin (London: Open Humanities Press, 2015), 246–247.
[89] Angela Last, "We Are the World? Anthropocene Cultural Production between Geopoetics and Geopolitics," *Theory, Culture & Society* 34, nos. 2–3 (2017): 147–68, here 149.
[90] Simpson, "The Anthropocene as Colonial Discourse."
[91] Brad Evans and Julian Reid, *Resilient Life: The Art of Living Dangerously* (Cambridge: Polity Press, 2014); see also David Chandler, *Resilience: The Governance of Complexity* (London: Routledge, 2014); Jacqueline Best, "Redefining poverty as risk and vulnerability: Shifting strategies of liberal economic governance," *Third World Quarterly* 34, no. 1 (2013): 109–129.
[92] Rothe, "Governing the End Times?" 154; Thomas Lemke, *The Government of Things: Foucault and the New Materialisms* (New York: New York University Press, 2021), 171; Claes Tängh Wrangel, "Securing the Hopeful Subject? The Militarisation of Complexity Science and the Limits of Decolonial Critique," in Valerie Waldow, Pol Bargués, and David Chandler (eds), *Hope in the Anthropocene: Agency, Governance and Negation* (Edinburgh University Press, 2024).
[93] Derrida, *Writing and Difference*, 360, original emphasis; Claude Levi-Strauss, *The Savage Mind* (London: Weidenfeld & Nicolson, 1962).

modern and Anthropocene alike – is in essence a *bricolage*: a network of statements and ideas that "borrow[s] one's concepts from the text of a heritage which is more or less coherent or ruined."[94] In other words, for Derrida, every discourse is a rearticulation of the language that preceded it – including the dream of a language free from its history, a language, like Lovelock's prose, that is claimed to have "br[oken] free with all forms of *bricolage*."[95] What is also repeated, but rendered invisible, by Latour's dream of a new language is that this dream paradoxically repeats the modern fascination with what Latour would call a constructor, and what Derrida and Levi Strauss name an engineer: "a subject who supposedly would be the absolute origin of his own discourse and supposedly would construct it out of nothing, 'out of whole cloth."[96] According to Derrida, the idea of the engineer, or the constructor, is nothing more than a "myth, produced by the *bricoleur*."[97]

Given this *bricolage*, this fractured imperfect heritage, Latour's brief, half-hidden, self-reflection that recognises that his texts are written "from above" appears both true and important. It is a reminder not only that modernity is more elastic and heterogeneous than Latour's one-sided description of the *Globe* suggests, it is also a reminder that modernism has an ability to absorb concepts, practices and criticisms directed at it. According to Evans and Reid, modernism's current neoliberal form is not "a homogeneous doctrine, nor are its particular forms of dogmatism homeostatic. Its powers of persuasion and its discursive prosperity depend on its own resilient capacities to adapt to the hazards of critique."[98] With this in mind, Latour's brief self-reflection can be read as a call: a call to scrutinize, instead of taking for granted, the relationship between critique and hegemony, between humanism and posthumanism, between the decolonial and the modern. In this short article, I have tried to respond to this call by deconstructing, problematizing and contextualizing the posthuman dream of a free and pure critical language. My hope is that this discussion has contributed to an increasingly important discussion about what critique might mean in the Anthropocene – given that we all, more or less, whether we like it or not, write *from above*.

[94] Derrida, *Writing and Difference*, 360.
[95] Derrida, *Writing and Difference*, 360.
[96] Derrida, *Writing and Difference*, 360.
[97] Derrida, *Writing and Difference*, 360.
[98] Evans and Reid, *Resilient Life*, 71.

References

Amoureux, Jack & Reddy, Varun, 2021. "Multiple Anthropocenes: Pluralizing Space – Time as a Response to 'the Anthropocene"', *Globalizations* 18(6), p. 929–946.

Best, Jacqueline, 2013. "Redefining poverty as risk and vulnerability: Shifting strategies of liberal economic governance," *Third World Quarterly* 34(1), p. 109–129.

Burke, Anthony, Fichel, Stefanie, Mitchell, Audra, Dalby, Simon & Levine, Daniel. J., 2016. "Planet Politics: A Manifesto from the End of IR", *Millennium: Journal of International Studies* 44(3), p. 499–523.

Chandler, David, 2014. *Resilience: The Governance of Complexity*. London: Routledge

Chandler, David, Cudworth, Erika & Hobden, Stephen, 2017. "Anthropocene, Capitalocene and Liberal Cosmopolitan IR: A Response to Burke et al.'s "Planet Politics"', *Millennium: Journal of International Studies* 46(2), p. 190–208.

Dalby, Simon, 2015. "Framing the Anthropocene: The Good, the Bad and the Ugly," *The Anthropocene Review* 13(1), p. 33–51.

Derrida, Jacques, 1994. *Spectres of Marx: the State of Debt, the Work of Mourning and the New International*. London: Routledge.

Derrida, Jacques, 1982. *Margins of Philosophy*. Sussex, UK: The Harvester Press.

Derrida, Jacques, 2001. *Writing and Difference*. London: Routledge.

Descola, Philippe, 2013. *Beyond Nature and Culture*. Chicago: The University of Chicago Press.

Disch, Lisa, 2008. "Representation as 'spokespersonship': Bruno Latour's political theory," *Parallax* 14(3), p. 88–100.

Epstein Charlotte, 2022. "Seeing the ecosystem in the international: Ecological thinking as relational thinking", *New Perspectives* 30(2), p. 170–179.

Eroukhmanoff, Clara & Harker, Matt (ed.), 2017. *Reflections on the Posthuman in International Relations: The Anthropocene, Security and Ecology*. Bristol: E-International Relations Publications.

Grosz, Elizabeth, Yusoff, Kathryn & Clark, Nigel, 2017. "An Interview with Elizabeth Grosz: Geopower, Inhumanism and the Biopolitical," *Theory, Culture & Society* 34(2–3), p. 129–146.

Hamilton Clive, 2013. "Climate Change Signals the End of the Social Sciences", The Conversation. Available at: http://theconversation.com/climate- change-signals-the-end-of-the-social-sciences-11722. Last accessed 12 April 2024.

Hamilton, Clive & Grinevald, Jacques, 2015. "Was the Anthropocene Anticipated?," *The Anthropocene Review* 2(1), p. 59–72.

Hamilton, Scott, 2019. "I Am Uncertain, but We Are Not: A New Subjectivity of the Anthropocene," *Review of International Studies* 45(4), p. 607–626.

Hegel, Georg, 1970[1817]. *Philosophy of Nature*. Oxford: Oxford University Press.

Last, Angela, 2017. "We Are the World? Anthropocene Cultural Production between Geopoetics and Geopolitics," *Theory, Culture & Society* 34(2–3), p. 147–68.

Latour, Bruno, 1993. *We Have Never been Modern*. Cambridge, MA: Harvard University Press.

Latour, Bruno, 2004. *The Politics of Nature: How to Bring the Sciences into Democracy*. Cambridge, MA: Harvard University Press.

Latour, Bruno, 2014. "Agency at the Time of the Anthropocene," *New Literary History* 45 (1), p. 1–18.

Latour, Bruno, 2016. "Onus Orbis Terrarum: About a Possible Shift in the Definition of Sovereignty," *Millennium: Journal of International Studies* 44(3), p. 305–320.

Latour, Bruno, 2017. "Why Gaia Is Not a God of Totality," *Theory, Culture & Society* 34(2–3), p. 61–81.

Latour, Bruno, 2018. *Down to Earth: Politics in the New Climatic Regime*. Cambridge: Polity Press.

Latour, Bruno, 2019. "Uppsala University, 'Hans Rausing Lecture 2019'", available at: https://www.idehist.uu.se/avdelningen-for-vetenskapshistoria/hans-rausing-forelasningar/2019/?fbclid=IwAR1av6ivIhaKIeFXbj-U_QgqRHOUi-YR3zx9pegK7IPSK0HmRVE-VVJ0I0zo. Quoted 2022-06-23.

Latour, Bruno, 2021. *After Lockdown: A Metamorphosis*. Cambridge UK. Polity Press.

Lemke, Thomas, 2021. *The Government of Things: Foucault and the New Materialisms*. New York: New York University Press.

Levi-Strauss, Claude, 1962. *The Savage Mind*. London: Weidenfeld & Nicolson.

Lövbrand, Eva, Beck, Silke, Chilvers, Jason, Forsyth, Tim, Hedrén, Johan, Hulme, Mike, Lidskog, Rolf, Vasileiadou, Eleftheria, 2015. "Who Speaks for the Future of Earth? How Critical Social Science Can Extend the Conversation of the Anthropocene," *Global Environmental Change* 32, p. 211–18.

Mitchell, Audra, 2017. "Posthuman Security: Reflections from an Open-ended Conversation," p. 10–18 in Eroukhmanoff, Clara & Harker, Matt (red.) *Reflections on the Posthuman in International Relations: The Anthropocene, Security and Ecology*, Bristol: E-International Relations Publications.

Moore, James W. 2022. "Anthropocene, Capitalocene & the Flight from World History: Dialectical Universalism & the Geographies of Class Power in the Capitalist World-Ecology, 1492–2022," *Nordia Geographical Publications*, *51*(2), p. 123–146.

Myers, Natasha, 2017. Becoming Sensor in Sentient Worlds: A More-than-natural History of a Black Oak Savannah, in Bakke, Gretchen & Petersen, Marina (eds.) *Between Matter and Method: Encounters In Anthropology and Art*, London: Routledge.

Povinelli, Elizabeth, 2021. *Between Gaia and Ground: Four Axioms of Existence and the Ancestral Catastrophe of Late Liberalism*, Durham NC: Duke University Press.

Revill, George, 2021. "Voicing the environment: Latour, Peirce and an expanded politics," *Theory, Culture and Society* 39(1), p. 121–138.

Rothe, Delf, 2017. "Global Security in a Posthuman Age? IR and the Anthropocene Challenge," p. 87–101 in Eroukhmanoff, Clara & Harker, Matt (eds.) *Reflections on the Posthuman in International Relations: The Anthropocene, Security and Ecology*, Bristol: E-International Relations Publications.

Rothe, Delf, 2020. "Governing the End Times? Planet Politics and the Secular Eschatology of the Anthropocene," *Millennium: Journal of International Studies* 48(2), s. 143–64.

Simpson, Michael, 2020. 'The Anthropocene as Colonial Discourse," *Environment and Planning D: Society and Space* 38(1), p. 53–71.

Szerszynski, Bronislaw, 2017. "Gods of the Anthropocene: Geo-Spiritual Formations in the Earth's New Epoch," *Theory, Culture & Society* 34(2–3), p. 253–275.

Stålhammar, Sanna, Brink, Ebba, 2020. "'Urban Biocultural Diversity' as a Framework for Human–Nature Interactions: Reflections from a Brazilian Favela,'" *Urban Ecosystems* 24, p. 601–619.

Todd, Zoe, 2015. "Indigenizing the Anthropocene," p. 241–254 in Davis, Heather & Turpin, Etienne (red.) *Art in the Anthropocene: Encounters among Aesthetics, Politics, Environment and Epistemology*. London: Open Humanities Press.

Tängh Wrangel C (2024) "Securing the Hopeful Subject? The Militarisation of Complexity Science and the Limits of Decolonial Critique," in D Chandler, V Waldorf, P Bourges (eds) *Hope in the Anthropocene: Agency, Governance and Negation*, Edinburgh University Press.

Tängh Wrangel C & A Causevic (2021) "Critiquing Latour's Explanation of Climate Change Denial: Moving Beyond the Anthropocene/Modernity Binary," *Millennium: Journal of International Studies* 50(1), p. 199–223

Wainwright, Joel & Mann, Geoff, 2013. 'Climate Leviathan', *Antipode* 45(1), p. 1–22.

Yusoff, Kathryn, 2017. "Geosocial Strata," *Theory, Culture & Society* 34(2–3), (2017), p. 105–127.

Rights critique and rights of nature – a guide for developing strategic awareness when attempting to protect nature through legal rights

*Love Rönnelid**

Abstract

This article investigates how some influential historical forms of rights critique apply to rights of nature. Some potential risks with employing legal rights in this context are employing an inefficient strategy, unintended consequences such as empowering environmentally unfriendly actors, and an inability to intervene in areas considered private. The ability of legal rights to strengthen environmental interests is evaluated through a dominant framework for legal rights, where rights typically are (1) invoked against the state, (2) to stop it from doing something (3) by legal persons. The article discusses which types of environmental projects fit this dominant legal framework. The analysis highlights the need for strategic awareness when choosing to employ legal rights as an environmental strategy.

Introducing the relationship between the rights of nature and rights critique

This article outlines some classical forms of rights critique with a view to understanding their relationship with the emerging rights of nature.[1] The article discusses some historical forms of rights critique and attempts to tease out how they might apply to rights of nature. In particular, the text endeavours to investigate the extent to which using a legal form of rights might be a strategic choice for political movements trying to expend limited resources on action for environmental protection.[2] It thus views this particular form of legal framing of the problem to be one out of several possible avenues for political action.[3] The choice between different available approaches turns on numerous political factors, such as the exact goal of the environmental

* Assistant Professor in Public International Law, Stockholm University. The author wishes to thank the conveners of the symposium "National Interest, Representation and the State: Implications for the Recognition of Rights of Nature", 5 June 2023 at Uppsala University, as well as the reviewers of this article. Early parts of this research were carried out with funding from the Swedish Research Council under the auspices of the Institute of Global Law and Policy at Harvard University.

1 For an overview of some of the judgements that have brought the idea of rights of nature to the fore, see Lidia Cano Pecharroma, "Rights of Nature: Rivers That Can Stand in Court", 7(1) *Resources* 13 (2018). For a broader treatment, see David R. Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (ECW Press 2017).

2 Some famous examples of rights critique in legal scholarship are Martti Koskenniemi, "The Effect of Rights on Political Culture" and "Human Rights, Politics and Love" both reprinted in *The Politics of International Law* (Hart 2011). In order to understand the breadth of rights critique in legal scholarship, see the comparison of the critiques by David Kennedy, Anne Orford, and Makau Mutua in Ben Golder, "Beyond redemption? Problematising the critique of human rights in contemporary international legal thought", 2(1) *London Review of International Law* 77 (2014). For a review essay on more recent scholarship, see Ben Golder, *Critiquing Human Rights*, 12(2) *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 226 (2021). See also Samuel Moyn, *Not Enough – Human Rights in an Unequal World* (Harvard University Press 2019).

3 For discussions on framing power in law, see Pierre Schlag and Amy J. Griffin, *How to Do Things with Legal Doctrine* (University of Chicago Press 2020), chapter 2.

group, the receptivity of the relevant legal actors to the intended outcomes, and alternative environmental projects available. There are thus strategic choices involved in choosing between different ways of pursuing an environmental agenda. Due to the complexity of the trade-offs, this article of course cannot decide what is the better approach for any particular environmental group or politico-legal project.[4] However, this does not mean that strategic insight cannot be gathered from previous discussions on pursuing political projects through (legal) rights. In fact, there seems to be clearly discernible lessons to be drawn from earlier critiques of rights of relevance also in the context of rights of nature. Therefore, the article aims to raise strategic awareness for those faced with such choices and increase awareness about some of the potential implications of using the law for environmental protection by invoking rights. The hope is that this investigation of the promises and pitfalls of rights rhetoric in this context can help environmental movements chose wisely when it comes to how to expend limited time, resources, and political capital.

Enshrining your agenda in law has been a common goal for movements pushing for diverse forms of societal change. This stands to reason, since law in many political systems stands almost as a symbol for state power. Achieving legal recognition of your project thus becomes a sign of political success. Since the middle of the 20th century, human rights in particular has held this form of symbolic capital.[5] During this time, we have seen increasing reframing of other political projects into the language of legal rights. It is during this period, for example, that the labour movement starts arguing that labour rights are human rights.[6] Nevertheless, the attainment of legal rights has not always meant achieving the relevant aims. See for example the exposé by Cheryl Harris largely about how legal victories for Afro Americans often served as a stand-in for actual emancipation.[7] Similarly, it is unclear to what extent anti-discrimination law can come to terms with many of the forms of inequality that its proponents hoped it would solve.[8] Finally, attempts of NGOs to push for human-rights mainstreaming in the operations of the World Bank might also have done more to change the talk of the World-Bank institutions than its walk.[9]

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[4] For an important discussion on the complications involved in evaluating these kinds of trade-offs, see David Kennedy, "The International Human Rights Movement: Part of the Problem?", 15(3) *Harvard Human Rights Journal* 101 (2002), pp. 102–6.

[5] Famously, Samuel Moyn in *The Last Utopia* (Harvard University Press 2012), argues that the dominance of human rights as a vehicle for political change is a relatively recent phenomenon, emerging largely as a European language creating an alternative to Soviet or American worldviews. The history of human rights has itself become a part of the contestation of the political meaning of human rights law, see Philip Alston, "Does the Past Matter? On the Origins of Human Rights", 7 *Harvard Law Review* 126 (2013). For a broader discussion on the politics of history in international law, see Anne Orford, *International Law and the Politics of History* (Cambridge University Press 2021).

[6] For some scholarly discussions on the framing of labour rights as human rights, see Judy Fudge, "Labour Rights as Human Rights: Turning Slogans into Legal Claims", 37 *Dalhouse Law Journal* 601 (2014) and Cedric Dawkins and Christina Dawkins, "Disciplining the Notion of 'Labour Rights as Human Rights'", 13(1) *Global Labour Journal* 2 (2022). A relevant recent development is the request by the ILO to the ICJ about if the right to strike is included in the Freedom of Association and Protection of the Right to Organise Convention from 1948.

[7] Cheryl Harris, "Whiteness as Property", 106(8) *Harvard Law Review* 1707 (1993), in particular pp. 1745–1757.

[8] For a famous argument along these lines, see Alan David Freeman, "Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine", 62 *Minnesota Law Review* 1049 (1978). For a recent example, see the excellent discussion in Maria Nääv, *(o)likabehandling – Likabehandling och jämställdhetsförbättrande åtgärder i den svenska diskrimineringslagstiftningens genealogi*, diss. (Stockholm University 2023).

[9] For such analyses, see Dimitri Van Der Meerssche, "A Legal Black Hole in the Cosmos of Virtue – The Politics

It seems the promise of legal rights historically often have created a particular allure for social movements.[10] This article attempts to highlight some underlying arguments inherent in such rights critiques, with a view to contributing to a broader discussion about the promises and pitfalls of resorting to legal rights as a strategy for environmental movements.

It seems hard to disregard that the idea of casting environmental protection as a legal right emerges at the same time that human rights have become a dominant way of framing political projects at large.[11] Ben Golder writes bluntly that "the language of human rights has come to provide the dominant mode of expression for political claims today".[12] While not explicitly (or rather, explicitly not) a *human* right, these phenomena are related; rights of nature and human rights both constitute attractive rights discourses appealing to law in order to "trump" other societal concerns.[13] By invoking the language of rights, you are typically indicating that a particular interest should take precedence over other concerns, thus removing them from other forms of politics. It might be exactly this deontological quality of rights that constitutes the crucial appeal for political movements. This also seems (laudably, to my mind) to be the core underlying thinking when reaching for rights language to protect environmental interests.[14]

Due to this complicated relationship between legal rights and emancipatory projects, it is meaningful to delve deeper into effects of resort to law, in the form of rights of nature, also for environmental groups.[15] As a heuristic tool, this text introduces a framework describing the dominant form of legal rights, springing largely from a human-rights setting. Put simply, this framework indicates that rights typically operate so as to give individuals rights to stop the state from doing something. Outlining the typical form of legal rights can help better understand the capacity of the currently dominant form of rights to transform societies. This heuristic is intended to illuminate which types of projects might be most easily pursued using legal rights rhetoric. While the framework cannot provide prescriptions for any particular environmental group, it can be employed strategically to indicate what is likely to happen when the law transforms demands by a movement. This framework can either be used as a way of better evaluating if environmental concerns at hand are likely to succeed when employing the law or to highlight how a movement might want to litigate or lobby for a particular kind of rights of nature, knowing the extent to which its agenda fits the dominant legal rights framework. Where the agenda does not fit the dominant framework, this could indicate a need to litigate strategically to change the

of Human Rights Critique Against the World Bank", 21 *Human Rights Law Review* 80 (2021), p. 92 (relying on further important sources): "Rather than bringing the political pathologies of the Bank's development practice to the fore, 'human rights mainstreaming' might then be a process of casting the organization's pre-existing institutional operations and objectives in the language of its critics."

[10] For a discussion of law from a movement perspective, see Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements, and Third-World Resistance* (Cambridge University Press 2003), in particular chapter 7, discussing the role and effects of using human rights.

[11] For the history and historiography of human rights, see the sources above (n. 5).

[12] Golder (2014), *supra* (n. 2), p. 78.

[13] This terminology comes from Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977).

[14] See for example, Yaffa Epstein and Hendrik Schoukens, "A positivist approach to rights of nature in the European Union", 12(2) *Journal of Human Rights and the Environment* 205 (2021), discussing "legal rights that cannot be trumped by mere utilitarian interests".

[15] For a famous discussion on how (international) law is political, see Martti Koskenniemi, *From Apology to Utopia – The Structure of International Legal Argument* (Cambridge University Press 2006, reissue with new epilogue), in particular p. 562 *et seq*.

current overarching structure of legal rights. To sum up, the framework is introduced in order to better evaluate the transformative potential of legal rights – or to help illuminate the constraints of the dominant framework of legal rights.

Simultaneous with the thirst for rights in political discourse, there have consistently been voices criticising their centrality, noting their inability to achieve their intended goals, or highlighting how rights discourse is averting attention away from more effective ways of changing society. The idea with this brief article is to introduce a variety of ideas from rights critique and try to tease out their potential applicability to different projects pursued under the banner of rights of nature. The aim is not to go into depth into either of these critiques. Each of them comes in many renditions, with their own complicated history of ideas. Rather, the idea is to draw on different forms of rights critique in order to investigate to which extent such critiques can be applied to rights of nature projects. I will thus employ the different forms of rights critique selectively, in order to take away what might be helpful for analysing the rights of nature.

Introducing the framework: a dominant mode of legal rights

By introducing the main way in which rights are operating legally, we can better evaluate how different rights projects may fit into the currently dominant form of rights. As mentioned above, this framework is not aimed to be prescriptive. Neither does it imply that this is the only available form of legal rights. To the contrary, there are many other forms of rights and the discussion below includes several exemptions to the main framework. However, it is submitted that when a social movement attempts to have a right enshrined into law, the main framework below is the taken-for-granted blueprint by lawyers. Rendering this framework clear can improve strategic awareness, for example by allowing for litigation wary of that the fact that it challenges the dominant mode of legal rights.

The dominant form of legal rights is one where a private party can bring a claim against the state in order to stop the state from doing something. This is how the most commonly discussed forms of legal rights in human rights instruments are formulated. Some ideal-typical examples include the right to not be subjected to torture, cruel or inhumane treatment or the right not to be subject to arbitrary detention. Since this way of thinking about rights is deeply ingrained in the minds of many lawyers, it makes sense to discuss separately the three facts that (1) individuals are the rights-holders, (2) that governments are the duty-holders, and (3) that the dominant form of rights are negative ones.

First, take the fact that individuals are the rights-holders in this model.[16] In general, this tends to mean that rights are interpreted to protect individual interests. While it is of course common to highlight that such individual rights are a part of broader view of society (freedom of speech is, for example, necessary for a democratic society) this idea typically still comes about through vesting the protected rights in individuals. One key part of the rights of nature project seems to be exactly to challenge the dominant model in order to make nature the rights-bearer.[17] The fact that the rights-bearer is typically an individual has not been lost on those attempting to use human rights to combat climate change, where climate change has to be recast to concern the interests of the claimants.[18] It might be that

[16] An often mentioned (but not so practically important) exemption to this is the African Charter of Human and Peoples' Rights, which explicitly lays down group rights.
[17] For example, when holding that a river is a rights holder.
[18] An illustrative example is the many climate litigation cases against parties to the European Convention on Human Rights, such as in the combined cases *Verein*

further acceptance of groups as rights-holders could be an improvement from an environmental point of view.

Changes in who constitutes the rights-bearer or interest-holder are not unheard of. The fact that lawyers often imagine all types of private actors as "individuals" appears to make it less strange for lawyers to imagine corporations as rights-holders.[19] One early significant case of this, which might highlight what can happen when rights are interpreted through typical legal imaginaries, is the case of *Société de Colas Est and Others v. France*. In the case, the European Court of Human Rights found that "the time had come" to extend the right to private life under article 8 to corporations, thereby shielding them against state intervention, in the relevant case from competition law.[20] This way of imagining the beneficiaries of rights can help illuminate some of the risks with choosing the language of legal rights as a strategy for societal transformation.[21] In particular when the environmental concern at stake fundamentally concerns transformation of the economy – such as with respect to global warming, the destruction of biodiversity, or overfertilization – the capacity of legal (human) rights language to bestow corporations with additional protection is worth taking into account.[22] To the extent an appeal to rights language is intended to weaken economic interests that harm the environment, it is worthwhile to also consider the risk of inadvertently appealing to a language that is prone to strengthen such interests.

Second, in the main model above, the duty-holder is the state. It is deeply engrained in the history of the legal human-rights tradition that such rights serve mainly to provide protection against the power of the state.[23] This is strengthened by a justification of human rights as bulwarks against historical atrocities committed by states. This also means that (legal) human rights tend to come with an anti-state bias.[24] Depending on the kind of environmental project a movement is attempting to pursue, this might be a good or a bad thing. The anti-state bias might turn out helpful in instances when legal rights are used to stop the state from taking a particular kind of action, perhaps using a state-owned company to open up a mine, start exploiting an oil field, or even potentially in order to stop the state from approving a licence that harms the environment. However, the equivalent acts taken by non-state companies – presumably a bigger issue from an environmental point of view – will typically be harder to come to terms with through this discourse. Several of the critiques discussed below concern the ways in which rights discourse operates in accordance with public-private logics, including both that the state is the typical duty-holder and that corporations (in addition to humans) are common rights-holders.

Klimaseniorinnen Schweiz and Others v. Switzerland, *Carême v. France*, and *Duarte Agostinho and Others v. Portugal and 32 Others*.

[19] I am discussing this in a forthcoming co-written article with Erik Bengtson and Oskar Mossberg.

[20] *Société de Colas Est and Others v. France*, (Application no. 37971/97), Judgement of 16 April 2002, para. 41.

[21] Frédéric Mégret, "Where Does the Critique of International Human Rights Stand? An Exploration in 18 Vignettes", in José María Beneyto, David Kennedy, Corti Varela, and John Haskell (eds), *New Approaches to International Law – The European and the American Experiences* (Springer 2012), in particular p. 24 *et seq.*, discussing the limitations of using rights language to promote ecology.

[22] In the EU context, this is particularly clear with respect to article 16 in the readings of the European Court of Justice. See e.g. Eduardo Gill-Pedro, "Whose Freedom is it Anyway? The Fundamental Rights of Companies in EU Law", 18(2) *European Constitutional Law Review* 183 (2022). For a broader reading of how human rights and neoliberalism emerged simultaneously, see Jessica Whyte, *Human Rights and the Rise of Neoliberalism* (Verso 2019).

[23] This is often clear in arguments about human rights filling a counter-majoritarian function.

[24] Koskenniemi (The Effect), *supra*, p. 150.

Third, the main type of right in this model is a negative right. This means simply that the dominant form of rights aims to stop the state from doing something. This again is best understood when imagining this regime to have arisen in response to heinous acts committed by states, in particular during the Second World War. From this vantage-point it makes sense to view legal rights as mainly negative, in contrast with rights that might demand that the state (or some other actor) take (positive) steps to carry out an action. This means that rights are, by their legal DNA, hard to use for *constructing* societal institutions. A court can more easily demand that a state ceases to act in a certain way, than to order it to start doing something. This also appears to flow from the very capabilities and competences vested in many courts in the first place, with them seldom being asked to create institutional structures. This is of relevance when imagining how to protect many forms of environmental interests, in particular where this requires creating new institutional structures not available to courts, including putting into place things like policy specialists, training programs, a budget, or tools to establish administrative routines. The fact that rights mostly are negative might indicate which types of environmental projects are more usefully pursued through rights rhetoric. Where the main aim is to stop something, it is more likely to succeed. Where the aim is instead to create some new institutional situation, legal rights are less likely to be helpful.

There are important exemptions to these three main characteristics in the dominant form of rights. As rights of nature itself illustrates, we can imagine creating other rights holders or standing to protect other interests.[25] For example, in the European human-rights regime, there has been an increased attention to positive obligations (for states).[26] Also, there are social and economic rights, where individuals can at times claim to get something (from the state). However, lawyers have overall taken a sceptical stance to enforcing these rights.[27] Also, some legal systems have to a limited extent allowed rights to operate as between third parties (but typically mediated by the state).[28]

While these exceptions are important in some situations, they are clearly less practically important than the dominant rights framework established above. Spelling out these situations as exemptions can dispel the risk that their presence will blur the limitations of the dominant framework. There are exceptions to all the three parts of the framework. (1) It is not that humans are the only duty rights holders (corporations might also hold human rights and we cannot exclude protecting interests that are not directly individual). (2) It is not that human rights only protect against the state (sometimes they might oblige the state to create obligations for oth-

[25] The first cases concerning rights of nature did exactly proclaim rights for non-human entities, such as rivers. The classic article about the phenomenon is Christopher D. Stone, "Should Trees Have Standing – Toward Legal Rights for Natural Objects," 45 *Southern California Law Review* 450 (1972).

[26] See for example, Vladislava Stoyanova, "Causation between State Omission and Harm within the Framework of Positive Obligations under the European Convention on Human Rights", 28 *Human Rights Law Review* 309 (2018).

[27] Martin Scheinin, "Economic and Social Rights as Legal Rights", in Asbjørn Eide, Catarina Krause, and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook* (Brill 2001), p. 29: "Many authors are of the opinion that economic and social rights, because of their very nature, are not 'justiciable' in the sense that they are not capable of being invoked in courts of law and applied by judges." See also, Aryeh Neier, "Social and Economic Rights: A Critique", 13(2) *Human Rights Brief* 1 (2006), holding on p. 3 that "it is dangerous to allow this idea of social and economic rights to flourish".

[28] Often discussed with the German word *Drittwirkung*. For a discussion from an EU-law point of view (where this might be the most discussed), see Eric Engle, "Third party effect of fundamental rights (Drittwirkung)", 5 *Hanse Law Review* 165 (2009).

ers). (3) It is not that rights are always negative (there are also some limited social and economic rights). Nevertheless, seeing these situations as exemptions to a main form of legal rights might help foster strategic awareness about what it might take to challenge the rights-framework to pursue many environmental projects. It might of course also be that some rights-of-nature projects fit well in the dominant form. Perhaps the agenda can be used to stop the state from issuing new permits in sectors that are environmentally destructive (where such permits are required). Whichever the situation, hopefully the framework can help improve our understanding of how environmental interests and the typical mode of legal rights interact.

Classical forms of rights critique

The first examples of rights critiques emerge in response to catalogues proclaiming domestic legal rights, such as in the Magna Charta or in the French Declaration of the Rights of Men and Citizens. It is worth remembering that in these declarations, rights were a part of a broad political reorganization, negotiated as a component of a larger domestic political settlement. Consequently, these rights were not universal in the sense of being intended to apply in the same way everywhere. Take for example clause 39 of Magna Charta, that imprisonment only could take place by court orders.[29] This famous negative right was a part of the political settlement attempting to strike a compromise where barons in England would enjoy relative safety in exchange for laying down arms. Thus, the right came about in a particular context to solve a specific local problem. Neither the universalist nor the international part of rights rhetoric was yet a thing. However, some universalist aspirations did come about with the rights catalogues emerging during the enlightenment, such as with respect to the French and American rights declarations. These rights were nevertheless clearly components of particular political settlements and not in that sense imagined to apply everywhere. Importantly, it is also at around this time that some famous early critiques of rights emerge, some of which echo into the present time.

One set of critiques include what we can term realist critiques. In this group, I include all arguments about rights not having their intended or imagined effects. Such critiques might either simply indicate that rights do not work, in the sense that they do not achieve what their proponents think they do, or, worse, achieve some other problematic thing. In short, these are critiques that highlight unintended effects or drawbacks of some rights regime.

One famous critique that one might place in the realist camp would be Bentham's critique of rights in the French declaration in the aftermath of the revolution. One of his critiques is of the inability of rights proponents to see the other side of rights projects. Referring particularly to laws affecting outcomes between individuals, he highlighted that the creation of liberty for some party normally came at the expense of another, and that therefore "no liberty can be given to one man but in proportion as it is taken from another".[30] In this respect, his thinking resembles Hohfeldian analysis of law, always noting that there is a relationship between rights and duties (as well as highlighting the reverse cor-

[29] The clause reads: "No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land."

[30] Jeremy Bentham, "Anarchical Fallacies; being an examination of the Declaration of Rights issued during the French Revolution", cited from *The Works of Jeremy Bentham* (Simkin, Marshall & Co. 1843), vol. 2 (also easily available online), p. 503.

ollaries of other forms of legal relationships).[31] When the obligation side of the right is not well established, rights take on an anarchical character on Bentham's reading. For example, he highlights some of the central ways in which a right to property stands in contrast with other things. Not only is it the case that strong property rights render ownership by those that do not hold property harder, they also come in contradiction with other parts of the legal system, such as taxes and fines.[32] Similarly, he analyses the rights to security and resistance to oppression (that constitute core ideas in the French Declaration). Should total security for someone be upheld by punitive acts against others? How to decide if someone's oppression can justly be resisted?[33]

Without delineating how these rights are to be weighed against other parts of the legal system or societal interests, it becomes hard to say what they mean, or indeed to know if they mean anything at all. This seems to be one of the core reasons why Bentham believed natural rights were "rhetorical nonsense" or, famously, "nonsense upon stilts".[34] However, his critique does not stop at revealing the indeterminacy of rights and highlighting how rights to some things affect other interests. He paints a picture where the French rights regime at hand was complicit in creating the terror of post-revolutionary France. Bentham seems to argue that the lack of analytical rigour in the Declaration of Rights in combination with the appeal of rights ("right, that most enchanting of words") created the political conditions for the Reign of Terror following the revolution.[35] Thus, in this instance the vague declaratory rights led to the dissolution of order and a descent into lawlessness.[36]

A meaningful takeaway from this analysis of rights in the particular context of rights of nature might be that the allure of having rights enshrined in law leads to a risk of missing their actual impact. That is, if the goal becomes to enshrine rights into law (if one starts to treat them as enchanted words), there is a risk of missing that the actual effects of those rights might not live up to their aim.[37] Perhaps this takes place due to an inability to highlight the actual targets that will create the obligations that will make the rights come alive. In this rendition, the argument would merely amount to the attempt being less effective than intended or for groups to expend energy on projects not worth the while. More forcefully, realists might indicate a risk of rights having completely other effects than those intended. In the context of climate change for example, directing energy into a legal vocabulary that often centres on limiting the power of states might risk disempowering the very actors that might be most likely to be able to deal with the problem at hand.

A second, related, critique of rights can be found among other utilitarian thinkers. In this rendition of rights critique, it is the trumping character of rights that shroud complicated trade-offs or renders it hard to strike a correct balance between interests. The explicitly deontological character of rights excludes utilitarian weighing of societal interests in some instances.[38] By placing some interests above others,

[31] Wesley Newcomb Hohfeld, "Fundamental Legal Concepts as Applied in Judicial Reasoning", 26(8) *The Yale Law Journal* 16 (1917). For an accessible modern take on some of the core insights, see Pierre Schlag, "How to Do Things with Hohfeld", 78 *Law and Contemporary Problems* 185 (2015).

[32] Bentham, *supra* (n. 30), p. 503.

[33] Bentham, *supra*, pp. 503–504.

[34] Bentham, *supra*, p. 501.

[35] Bentham, *supra*, pp. 522–523.

[36] Bentham, *supra*, p. 523: "the mortal enemies of law, the subverters of government, and the assassins of security".

[37] Perhaps a similar strain of thinking can be found in some modern international-relations realists.

[38] A classic discussion is H.L.A. Hart "Between Utility and Rights", 79(5) *Columbia Law Review* 828 (1979). For a

meaningful evaluation of important societal choices is shrouded or rendered unachievable.[39]

An often invoked (but perhaps not particularly illuminating) example of a utilitarian argument against rights common in philosophy class is the ticking bomb scenario: The example paints a picture of a terrorist having placed a bomb that is about to kill a large group of people. The question is whether torture in order to get to the location of the bomb and disarm it can be justified.[40] As is commonly pointed out, the argument loses much of its power since we normally do not know for certain if someone holds information that they refuse to divulge. Neither do we know much about the effectiveness of torture in extracting it.[41]

An example that might resonate more for lawyers concerns human-rights law prohibitions on amnesties as a part of peace agreements.[42] The case law of the Inter-American Court of Human Rights has been much discussed from this perspective, as this court has taken a strict position on such amnesties.[43] By outlawing amnesties as a way to protect against impunity, it has been argued the Court has placed peace processes in peril.[44] In this context, it becomes clear that a deontological rights-based argument can be contrasted with a plausible broader utilitarian idea of human well-being.

Consequentialist critiques of rights are not just a historical phenomenon. A well-known modern take on right-critique from a utilitarian perspective is offered by Richard Posner. He claims that a focus on a country's human-rights record has crowded out interest in whether countries pursue policies leading to human welfare.[45] This critique suggests that the focus on a particular set of rights leads to worse overall results.

A takeaway from the utilitarian critique for the rights of nature movement might be that the deontological "trumping" character of rights make them less helpful for pushing projects of complicated social engineering. Where the main agenda is simply to protect a river, legal rights might be a helpful strategy. But where a trade-off is at stake between the river and the (perceived) need for hydropower in order to phase out coal-powered plants is at stake, rights discourse might rather simply shift power away

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discussion on different utilitarian positions on rights, see Allan Gibbard, "Utilitarianism and Human Rights", 1(2) *Social Philosophy & Policy* 92 (2009).

[39] However, with the modern expansion of rights, in particular in the European context, the situation at times appears to be the opposite of precluding weighing. Instead, there typically seems to be several rights that can be invoked, leading to a perpetual situation of balancing, shifting power to the adjudicator. See Lars Karlander, *The ECJ's Adjudication of Fundamental Rights Conflicts: In Search of a Fair Balance* (Uppsala 2018) diss.

[40] For a far-reaching discussion on different aspects of the example, see Yuval Ginbar, *Why Not Torture Terrorists? Moral, Practical, and Legal Aspects of the "Ticking Bomb" Justification for Torture* (Oxford University Press 2008), in particular chapter 3 (about consequentialist arguments).

[41] The unrealistic nature of the scenario is discussed in Ron E. Hassner, "The Myth of the Ticking Bomb", 41(1) *The Washington Quarterly* 83 (2018).

[42] For a discussion, see Christina Binder, "The Prohibition of Amnesties by the Inter-American Court of Human Rights", 12 *German Law Journal* 1204 (2011).

[43] In *Barrios Altos v. Peru*, Judgment of March 14, 2001 (Merits), the Court held, at para 41: "This Court considers that all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law."

[44] For one out of many discussions (dealing both with amnesties before the ICC and the Inter-American Court of Human Rights), see, Peter Burbidge, "Justice and Peace? – The Role of Law in Resolving Colombia's Civil Conflict", 8 *International Criminal Law Review* 557 (2008). See also Binder, *supra*.

[45] Richard Posner, "Human Welfare, Not Human Rights", 18 *Columbia Law Review* 1758 (2008).

from other forms of politics to the adjudicator. Similarly, it might be hard to say if judicializing rights of nature will mean protecting the lands of indigenous people when their lands hold minerals that are imagined to be useful for green transition or seen as ideal placements for wind power plants. Where many interests that can be seen as environmental are at play, the deontological character of rights tend to revert back to weighing of interests or judicial "balancing". Whether it is in the interest of an environmental group to empower lawyers to make such decisions of course come with its own set of strategic considerations.[46] The strategic question might often be to which extent the relevant judge perceives the relevant "appropriate balance" or "weighing" in a similar way as the environmental group.

A third important early critique of rights springs from the Marxist tradition. In his essay *On the Jewish Question*, Karl Marx argues against the position of a contemporary scholar who claimed that Jewish emancipation could come only after Jewish people relinquished their religion and thereby could acquire civil rights.[47] In essence, the complicated and much-debated position of Marx argues against that Jewish people should not have to relinquish their religion to become equal citizens, but also – which is the central issue for the current text – the text more generally critiques rights as an emancipatory language.[48] In this part of the text, Marx highlights the rights in the French Declaration as being those of the "egotistical man, of the man who is separated from men and from the community".[49] In a surprisingly similar vein as Bentham, he highlights that the right to property is constructed so as to give those that hold it an individual right against other individuals and thus "allows each man to find in the other not the *actualisation*, but much more the *limit*, of his freedom".[50] The sort of freedom created by rights on this reading thus serves to uphold a separate individual sphere which does not acknowledge the need of humans to operate as social animals (what Marx calls species-beings).[51] A reading of the critique is that Marx held that rights discourse helped enforce a system where members of civil society were led to direct their claims to a legal sphere were they got splintered and depoliticalized.[52] Political emancipation by way of rights, on this account, did not entail true social emancipation.[53]

I have found a recent text by Wendy Brown helpful for thinking about Marx's rights critique. Her reading highlights how rights-projects tend to embody liberal political values, in spite of them often being discussed as ahistorical and universal.[54] This political background implies that turning to rights to combat one's subordination also changes the identity and goals of the rights-claimer.[55] For such reasons, this rights

[46] Koskenniemi "The Effect", *supra*, p. 150: "As politics lose their creative, 'imaginative' character, they are transformed from their core sense as human *vita activa* into an exercise of technical competence by experts". See also, pp. 142–145 about balancing,

[47] Karl Marx, "On the Jewish Question", in Joseph J. O'Malley and Richard A. David (eds.), *Marx: Early Political Writings* (Cambridge University Press 1994).

[48] Marx position in the text is largely debated since he, in spite of defending Jewish interests, enforces stereotypes about Jewish people. There is a large literature debating Marx relationship to his partly Jewish upbringing in general and about the stereotypes in this text in particular. See, for example, Solomon F. Bloom, "Karl Marx and the Jews", 4(1) *Jewish Social Studies* 3 (1942).

[49] Marx, *supra*, p. 44.

[50] Mars, *supra*, p. 45 (emphases in original).

[51] Marx, *supra*, p. 46.

[52] Marx, *supra*, pp. 48–49.

[53] Marx, supra, p. 50.

[54] Wendy Brown, "Rights and Identity in Late Modernity: Revisiting the 'Jewish Question'", in Thomas R. Keams (ed.), *Identities, Politics, and Rights* (University of Michigan Press 1995), pp. 86–87.

[55] Brown, *supra*, pp. 90–91. In this respect, she outlines in some detail two interesting critiques of attempts to resuscitate rights discourse.

critique has been employed to caution against confusing, first, rights with the arena of political contestation and, second, of confusing legal recognition with obtaining one's emancipatory goals.[56]

The early Marxian rights critique potentially contains some seeds of his later thinking on alienation in the sense that he imagines rights to individualize and break up political groups. This seems to hold a lesson for the rights-of-nature movement. Perhaps the rights-approach misses more potent political ways of collective organization? Moreover, his analysis foreshadows other later similar critiques of rights discourse in outlining how protecting a private sphere against the state comes with its own costs, in particular with respect to entrenching property rights. Perhaps another takeaway from this rights critique for environmental groups could be that rights often sound more radical than they are. Or, put differently, that there is something about rights discourse that makes it a powerless companion when embarking on a project of deeper structural change. One reason for this might be the tendency of rights-thinking to direct negative claims against the state (as outlined above). It is hard to use that form of law to reshape the economy at its core. In the way that Marx's later project was one of deep change to the economic system, this also goes for many present-day forms of environmentalism. After all, both degrowth and green transition are about remaking the economy, albeit in fairly different ways.

Later forms of rights critique

With the spread of human rights thinking globally after the Second World War, the project became more explicitly universalist. As discussed above, much indicates that it is only at this point in time that the idea of human rights takes on a more universal meaning and starts spreading around the world. In the influential reading by Samuel Moyn, human rights start spreading at this point in time as a less political alternative to the Capitalist-Communist power struggle of the Cold War. Starting the with Universal Declaration of Human Rights in 1948 and peaking around the year 1980, human rights takes over other forms of emancipatory languages, such as revolutionary nationalism.[57] With the spread of human-rights language in the post-World War world, new critiques of the discourse emerge.

One such critique focuses on cultural relativism. Perhaps an obvious response to the global dissemination of a set of legal ideas from the North-Atlantic world, scholars and activists started noting the particular cultural, historical, and contextual politics of human rights when transplanted to other parts of the world.[58] The relativist challenge in essence consists in numerous ways of highlighting that the human rights projects arises from particular political contexts and therefore enforces particular political priorities: for example, the project prioritises civil and political rights over economic ones;[59] it focuses on the rights of individuals (as opposed to groups);[60] and it does not sufficiently take into account the values present in non-Western societies,[61] to name a few.

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[56] Brown, *supra*, p. 129.

[57] Moyn, *supra* (n. 5), in particular the instructive graph about the spread of the idea of human rights in Anglo-American news on p. 231.

[58] For an overview, see Alison Dundes Renteln, "The Unanswered Challenge of Relativism and the Consequences for Human Rights", 7(4) *Human Rights Quarterly* 514 (1985), in particular footnote 1, citing many further sources.

[59] Philip Alston, "The Universal Declaration at 35: Western and Passé or Alive and Universal", 31 *International Commission of Jurists Review* 60 (1983), pp. 64–65.

[60] Alston, *supra*, pp. 63–64.

[61] Bonny Ibhawoh, "Cultural Relativism and Human Rights: Reconsidering the Africanist Discourse", 19(1)

The cultural relativism critique was fairly prominent in scholarship for a while. Many legal academics wrote articles about how the positions could be reconciled or how the cultural relativism position did not have to affect the legitimacy of human rights etc.[62] Perhaps for that reason, the critique was somehow dismantled. Perhaps it declined because of the focus on the international agenda on questions of economic development, including on the (largely ineffective) "right to development".[63] While development projects were central in many domestic contexts, it seems the internationally recognized *right* to development in the end did little to further this agenda.[64]

An insight from the cultural-relativist critique that can be harnessed by the rights-of-nature movement, is to investigate more closely what the political stakes of rights discourse are in a particular context and think hard about how the appeal to legal rights compares to other available framings. To name a few, it might be that intergenerational justice, appeal to the Anthropocene, or critiques of corporate power or carbon capitalism, might constitute more helpful framings for diverse environmental projects.[65] Of course, for some forms of environmental projects in some contexts, the rights approach might be the most helpful one.

A critique loosely related to the one on cultural relativism came from post-colonial quarters. As the rise of human rights as a dominant emancipatory language coincided with the wave of decolonization after the Second World War, it makes sense that these in certain ways became linked. It is not uncommon to credit human rights for the decolonization wave that took place after the Second World War.[66] However, postcolonial scholars often see a darker role of the effects of universalising human rights, distorting the voices of the Global South.[67] Ratna Kapur writes: "Assertions about the universality of human rights simply deny the reality of those whom it claims to represent and speak for, disclaiming their histories and imposing another's through a hegemonising move".[68] The critique asserts that universal rights discourse distorts the very stories that have to be told to claim justice in a postcolonial context.

One way of rendering such a critique in a commonsensical form is by reference to the dominant framework of human rights described above. Recall that legal human rights mainly

Netherlands Quarterly of Human Rights 43 (2001), discussing both "Asian values" and "African values".

[62] Guyora Binder, "Cultural Relativism and Cultural Imperialism in Human Rights Law", 5 *Buffalo Human Rights Law Review* 211 (1999); Jack Donnelly, "Cultural Relativism and Universal Human Rights", 6(4) *Human Rights Quarterly* 400 (1984); and Ibhawoh, *supra*.

[63] For an analysis that foreshadows this, see Alston, *supra* (n. 59), in particular pp. 68–69.

[64] Rather, other questions stood centre stage on the agenda of law and economic development, see David Kennedy, "The 'Rule of Law', Political Choices, and Development Common Sense" in David Trubek and Alvaro Santos (eds.), *The New Law and Economic Development: A Critical Appraisal* (Cambridge University Press 2006).

[65] On framing in a legal context, see Schlag and Griffin, *supra* (n. 3), chapter 2. On the anthropocene and rights of nature, see Seth Epstein, "Rights of nature, human species identity, and political thought in the anthropocene", 10(2) *The Anthropocene Review* 1 (2022).

[66] For example, Jan Eckel, "Human Rights Decolonization: New Perspectives and Open Questions", 1(1) *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 111 (2010), p. 111: "unlike in the interwar years, the ideal of human rights was now available as a possible justification for the colonies' struggle for freedom and as a potential supporting ideology".

[67] The difficulties in representing postcolonial voices and the risks of them being co-opted by other powerful groups is famously discussed in Gayatri Chakravorty Spivak, "Can the subaltern speak?" in Patrick Williams and Laura Chrisman (eds.), *Colonial Discourse and Post-Colonial Theory: A Reader* (Columbia University Press 1994).

[68] Ratna Kapur, "Human Rights in the 21st Century: Take a Walk on the Dark Side", 28 *Sydney Law Review* 665 (2006), p. 674.

operate to provide negative rights to citizens against their state. Now imagine you as a person seeking justice in a newly independent post-colonial state. Colonialism was largely an economic system whereby the former colonizer extracted value from the labour and resources of your people and land.[69] Under such circumstances, you might want to address your collective grievances towards the former colonial power to undo that economic structure. However, under the dominant model of legal rights, redress instead has to be sought (individually) *from* the postcolonial state. The dominant form of rights discourse thus shifts the main target of grievances from the formerly colonizing to the formerly colonized state. Instead of channelling such grievances collectively thorough the post-colonial state, the relevant rights-holders are now formerly colonized individuals (and potentially other legal persons). Furthermore, instead of directing such claims against the colonizer, the natural actor to claim justice from becomes the post-colonial state.

Another set of critiques emerging largely in the post-war era came from feminist thinkers. These emphasised that human rights tended not to highlight the difficulties women experienced or at least to prioritize the form of rights available to men.[70] One particularly salient critique coming from these thinkers highlights how taken-for-granted ideas about public and private enabled rights to operate more in a public (male-coded) sphere than a private (female-coded) sphere.[71] Discrimination law, to take a concrete example, can only achieve limited effects in the dominant framework, as it often mainly addresses claims against the state. Furthermore, rights even operated to shield a private sphere, where much of the oppression of women took place, according to feminist thinkers.[72] In a quote that transcends the particular gender context it emerges from, Frances Olsen holds that "any effort to keep the state out of our personal lives will leave us subject to private domination".[73] The quote gives voice to a form of analysis that has something in common with the different discussed critiques with respect to property above, but also extends it to other forms of private-coded areas, such as the home (where much domestic violence takes place).

Much can be learnt for rights of nature proponents from these forms of critique. Rights tend to shield a private sphere from intervention. When the problem one wants to deal with is located there, rights might not do what you imagine them to do. In particular, this applies to situations where environmental proponents want to influence behaviour taking place within the private sphere of individuals or corporations.[74] This could concern questions regarding consumption choices or corporate choices about

[69] For an illuminating treatment, see Erik S. Reinert, *How Rich Countries Got Rich… and Why Poor Countries Stay Poor* (Constable 2007), in particular p. 133 (on the economic aspects of colonialism).

[70] An influential treatment is Hilary Charlesworth, "Feminist Approaches to International Law", 93(2) *American Journal of International Law* 379 (1999), in particular, p. 381 *et seq*. See also, Shazia Qureshi, "Feminist Analysis of Human Rights Law", 19(2) *Journal of Political Studies* 41 (2012).

[71] Celina Romany, "State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in international Human Rights Law" in Rebecca J. Cook (ed.), *Human Rights of Women National and International Perspectives* (University of Pennsylvania Press 1994).

[72] Frances Olsen, "Statutory Rape: A Feminist Critique of Rights Analysis", 63(3) *Texas Law Review* 387 (1984).

[73] Frances Olsen, "Liberal Rights and Critical Legal Theory: A Feminist Perspective", in Christian Joerges and David M. Trubek (eds.), *Critical Legal Thought: An American-German Debate* (Nomos Verlagsgesellschaft 1989), p. 251.

[74] For another relevant related critique of how public-private distinctions can shield certain interests from intervention, see Cutler, A. Claire, "Artifice, ideology and paradox: the public/private distinction in international law", 4 *Review of International Political Economy* 261 (1997).

investment or between technologies with different environmental impacts. Under such conditions, rights discourse might be a part of the problem rather than the solution. Moreover, the broader question of how rights discourse construes how we view problems is also a relevant one with respect to rights of nature.

Which forms of critique might be most relevant for the environmental movement?

There are a number of common strains of thinking in the above-discussed rights critiques. Several of the critiques highlight how human right operate according to taken-for-granted public-private dichotomies. Several of them indicate how rights language is likely to crowd out or direct attention away from more effective forms of political organisation. Several of them highlight how using rights may also have unforseen repercussions that are invisible to many thinkers or activists. Several critiques indicate the centrality of how the idea of property rights shroud central political stakes. Several of the critiques seem to view rights discourse as an appealing but ultimately fairly powerless vocabulary for many projects.[75] When starting to investigate how these strains of critique might apply to rights of nature, some tentative groupings of these critiques come to mind.

First, certain types of critiques turn on the risk of resorting to the law as a substitute. Sometimes, you can get a right *instead* of the thing you wanted – almost as a recognition of the lack of something important. In the case of rights of nature, there is a risk you might achieve something like an abstract right to a clean environment, instead of a clean environment. Second, there is a risk of the right at hand not doing what you want it to. Because of the attractiveness of legal rights in political struggle, there is the risk of uncritically resorting to them. The main idea in this article is to provide information that allows for a thoughtful examination of this exact question. Here, we might imagine situations where the appeal of rights makes activists push an agenda where they get a fairly insignificant token instead of the overarching environmental goal. Perhaps rights can be used to force some environmental adjustment (in particular where they fit into the dominant framework), but still often may be a far cry from creating systematic change that can limit something like biodiversity loss. Third, there is the risk of rights doing *another* thing than you wanted them to. This is a stronger critique than not simply achieving your main aim. In this set of critiques, we might find arguments that tapping into the main form of legal rights help reinforce the very interests that you attempt to combat. One such effect might be that carrying out your struggle in the language of rights might strengthen interests that are contrary to certain environmental interests. In particular where the environmental agenda turns on changing the economy, one must consider the ability of rights discourse to also grant rights to core economic actors, such as corporations.

Another such effect might be to accidentally shift power to unforeseen groups. First, and perhaps most obviously, this might mean strengthening the hand of lawyers. In particular, in legal areas where there are many rights, the inevitable balancing that ensues might shift decision-making power to this group. In this respect, I think environmental movements should think about whether they perceive this to be a group that is

[75] I have previously tried to indicate how legal research can be helpful in the context of sustainable development, see Love Rönnelid, "What legal research in sustainable development could become", in Mattias Dahlberg, Therése Fridström Montoya, Mikael Hansson, and Charlotta Zetterberg (eds.), *De lege 2022 Hållbarhet* (Iustus 2023). Some of those ideas resemble the ones in this section, in particular on the risks of a language becoming detached from meaningful truth-claims.

likely to long-term strengthen their agenda.[76] This is not an obvious question and will in all likelihood differ depending on which environmental agenda we are contemplating. Second, in some situations an emphasis on legal rights discourse might come with a(n unintended) strengthening of the hand of private interests that are opposed to the relevant environmental project, for example due to the substantive or procedural rights that legal rights grant humans and corporations.[77] Depending on the project at hand, this risk might differ in importance. Strengthening the hand of those owning corporations in oil, coal, and gas seems an important obstacle for green transition or degrowth. However, when combating state action with respect to the use of some particular part of the natural environment, this might be less of risk.

Another strain of thinking that might be helpful is the loss of imagination about how societies can be transformed. The striking appeal of rights might make them attract political attention even when they are not the most helpful tool. Conversely, rights-discourse taking centre stage might *indicate* a loss of imagination about the concrete legal, political, and institutional changes needed in order to protect some environmental interest. In some instances, perhaps the skills of lawyers in imagining new legal-technical solutions to societal problems might be better served by thinking about how to reimagine property rights, reconstructing financial or insurance law, or imposing concrete environmental obligations on the most disruptive actors.

One characteristic of rights is that they mostly operate to (negatively) stop the state from doing things. They are by their very nature not suited for (positively) *constructing* more societally complex forms of institutional change.[78] For example, green transition (in its typical rendition) requires figuring out several sets of complicated governance choices. In that context, accessing the power of trumping other choices might seem powerful, but might risk reaching for a vocabulary whose main power is to stop things. Let us take as an example the common idea of green transition as policy that will successively make it harder, more costly, or prohibited to use oil, coal, and natural gas – while simultaneously incentivizing the use of green technologies, electrification, and modes of production and transportation that emit less greenhouse gases. This type of setup can probably only with great difficulty be carried out only or perhaps even mainly by stopping things.[79] The intended mix of sticks and carrots therefore appears hard to achieve through invoking rights. Potentially, some carrots can be created where the money is taken from the government, but would require for lawyers to litigate for positive rights. And one can theoretically imagine using rights as sticks as well, but mainly if they create obligations for the government. The more important sticks for private parties (in this case

[76] A helpful place to start for thinking about strategic litigation in this respect is, Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change", 9 *Law & Society Review* 95 (1974). I have applied this framework to strategic litigation in another context, see Love Rönnelid, "The Distributive Impact of Third-Party Funding in Investment Arbitration", 1 *Juridikum – Zeitschrift für Kritik, Recht, Gesellschaft* 125 (2021).

[77] For a related (albeit different) analysis, see Philip Alston, 'Resisting the Merger and Acquisition of Human Rights by Trade Law: A Reply to Petersmann', 13(4) *European Journal of International Law* 815 (2002).

[78] Perhaps for this reason, many courts have resorted to sending questions back to the legislator in important environmental cases. For a discussion of this approach, see Agnes Hellner and Yaffa Epstein, "Allocation of Institutional Responsibility for Climate Change Mitigation: Judicial Application of Constitutional Environmental Provision in the Europe and Climate Cases *Artic Oil*, *Neubauer*, and *l'Affaire du siècle*", 35 *Journal of Environmental Law* 207 (2023).

[79] Some other, less politically salient ways of tackling climate change, such as degrowth, appears even less achievable through the dominant form of rights.

oil, coal and gas corporations) would require deep changes to the current legal imaginary about rights. If one imagines green transition to require a certain societal acceptance, it would seem to require difficult political compromise that would not necessarily be helped by legal intervention by way of legal rights.[80]

A related insight is that rights discourse typically identifies governments as targets. For some environmental projects this might be problematic, because much environmental destruction is not directly created by the state – even where the state is in some sense enabling it through the current legal system. In many instances, one can imagine that directing the obligations against third parties might be a significantly more effective way of making rights of nature effective.

To sum up, there seems to be numerous insights for the rights of nature project from different kinds of rights critique. Hopefully, this sort of text could be the point of departure for a deeper discussion on the viability of rights of nature as an effective form of environmentalism. Hopefully, the text can contribute to increasing strategic awareness of actors thinking about these types of claims, allowing them to litigate better. This could happen for example by explicitly challenging the dominant form of legal rights or by finding non-rights legal strategies. Due to the current state of the globe, these questions can hardly be much more urgent. Time and energy in this arena should be spent on effective strategies.

[80] For a common take discussing the need to find political acceptance for green transition, see Jeffrey D. Sachs, Guido Schmidt-Traub, Mariana Mazzucato, Dirk Messner, Nebojsa Nakicenovic, and Johan Rockström, "Six Transformations to achieve the Sustainable Development Goals", 2 *Nature Sustainability* 805 (2019). I have commented on some difficulties with this point of view, in Rönnelid, *supra* (n. 75), p. 282 *et seq*.

The Symbolic Nature of Legal Rights

*Maria Refors Legge**

Abstract

This article explores the application of human rights doctrine to the concept of nature as a rights-holder, drawing parallels between challenges faced by proponents of nature rights and children's rights activists. It delves into jurisprudential theories such as the will theory and interest theory to scrutinize the applicability of rights to diverse contexts. Critiquing symbolic legislation, it questions the efficacy of enacting laws for symbolic value alone. Instead, it proposes reframing legal rights as duties to promote a more holistic approach to addressing systemic injustices and upholding the welfare of both society and nature. Through this analysis, the article advocates for a shift towards a legal framework that prioritizes collective welfare over individual entitlements.

Point of Departure

I am not a scholar of environmental law, nor do I have a background in natural sciences like ecology or biology. However, I do have a background in children's rights and have written about human rights on many occasions.[1] This article endeavours to apply my understanding of human rights doctrine and philosophy to the concept of nature as a rights-holder. Despite appearing counterintuitive, there are numerous similarities between the challenges faced by proponents of "nature as a rights-holder" and children's rights activists throughout recent history. These challenges primarily arise from the so-called "will theory", which posits that rights holders cannot exist without agency.[2]

Today, the term "human rights" is utilised across various contexts and holds a significant place in legal writings, political debates, and everyday conversations. The concept of human rights can be traced back to Greek ideas about the individual person, Roman notions of law and rights, and Christian doctrine of the soul.[3] In many respects, the human rights doctrine represents a Western and imperialistic mental (and legal) legacy that warrants questioning and criti-

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[1] See for example Refors-Legge, Maria, *Skolans skyldighet att förhindra kränkande behandling av elever* [The school's obligation to prevent abusive treatment of students], Stockholms universitet, 2021, p. 55 ff; Refors-Legge, Maria, *Avstängning av elever och rätten till utbildning – en jämförelse av avstängningar som disciplinär åtgärd i Sverige och England* [Suspension of pupils and the right to education – a comparison of suspensions as a disciplinary measure in Sweden and England], Victoria Enkvist (eds.), Antologi om barnkonventionen och skolan [Anthology on the Convention on the Rights of the Child and the School], iUSTUS, 2021; Refors-Legge, Maria, *Religionsfrihet, skolplikt & diskriminering i grundskolan* [Freedom of religion, compulsory education & discrimination in primary school], Juridisk Publikation, 2019 and Refors-Legge, Maria, *Ordning i klassen – om lärares fysiska maktutövning över elever* [Order in the class – about teachers' exercise of physical power over students], Juridisk Publikation, 2020.

[2] Richards, David, *Rights and autonomy*, Ethics, 1981, p. 3–20. Goodin, Robert och Gibson, Diane, *Rights, Young and Old*, Oxford Journal of Legal Studies, 1997, p. 185–186; Buck, Trevor, *International Child Law*, u. 3, Routledge, 2014, p. 24. See also Perry, Michael, *The idea of human rights*, Oxford University Press, 1998 och Gewirth, Alan, *The community of rights*, The University of Chicago Press, 1996.

[3] Hunt, Lynn, *Inventing Human Rights – A History*, Norton, 2008, p. 20.

cal examination in its own right.[4] However, in this article, I will only acknowledge that the concept of human rights (and rights in general) carries with it a background noise of the conqueror's view of the conquered and the notion that the interpretations of the global West regarding what is "good" and "bad" are the only viable ones with which to comprehend (and resolve) the significant challenges posed by destroyed ecosystems, climate change, mass species extinction, poverty, and war.[5]

In this text, I will delve into the concept of rights and human rights alongside theories on symbolism and symbolic legislation. The aim is to challenge the assumption of necessity of introducing rights to address the extensive environmental challenges faced by all of Earth's inhabitants today, attributable, among other factors, to humankind's use of fossil fuels, the destruction of entire ecosystems, and the systematic extinction of other species on the planet.

What is a Right?

The concept of rights is challenging to define, as their very existence relies as much on emotions as on reasoning. The term "right" embodies the desire for protection, the necessity for recognition, and the hope of the powerless for shelter and understanding. It is often asserted that humans are inherently endowed with rights and that these rights are equal and self-evident.[6] However, this assertion of self-evidence presents a paradox: if the equality of rights is so apparent, why must it be proclaimed, and how can they be universal if not universally recognized?[7]

This paradox arises for several reasons. First, the need to proclaim the equality of rights indicates that, in practice, these rights are not always respected or enforced. Historical and contemporary struggles, such as the civil rights movement in the United States and ongoing efforts for gender equality globally, show that rights often need active advocacy and legal protection to be realized.[8]

Second, the idea of universal rights assumes a shared understanding and recognition across different cultures and societies, which is not always present. For example, cultural relativism argues that rights and moral principles are not universally applicable but are instead shaped by cultural contexts. Jack Donnelly notes that while human rights are universal in principle, their application can vary significantly across cultures due to differing societal values and norms.[9]

Moreover, the concept of self-evident rights is rooted in Enlightenment philosophy, particularly the works of John Locke and Thomas Paine, who posited that natural rights are inherent and inalienable.[10] Critics like Alasdair MacIntyre

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[4] For more on this, see for instance Chimni, Bhupinder, *Third World Approaches to International Law: A Manifesto*, International Community Law Review, 8(1), 2006, p. 12; wa Mutua, Makau, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, Harvard International Law Journal, 42(1), 2001, p. 31 and Baxi, Upendra, *The Future of Human Rights*, Oxford University Press, 2002, p. 89.

[5] wa Mutua, Makau, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, Harvard International Law Journal, 42(1), 2001, p. 31

[6] See for example Kant, Immanuel, *The Metaphysics of Morals*, Gregor, Mary (transl.), Cambridge University Press, 1996; Lecester Ford, Paul (ed.), *The Writings of Thomas Jefferson*, 10 vols., G. P. Putnam's Sons, 1892–99, vol. 2, pp. 42–58 and Glendon, Mary Ann, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, Random House, 2001, p. 310–314. See also Taylor, Charles, *Sources of the Self: The Making of Modern Identity*, Harvard University Press, 1989, p. 12 ff. and Hunt, Lynn, *Inventing Human Rights – A History*, Norton, 2008, p. 15 ff.

[7] Hunt, Lynn, *Inventing Human Rights – A History*, Norton, 2008, p. 20.

[8] Donnelly, Jack, *Universal Human Rights in Theory and Practice*, Cornell University Press, 2013, p. 20.

[9] Donnelly, Jack, *Universal Human Rights in Theory and Practice*, Cornell University Press, 2013, p. 40.

[10] Locke, John, *Two Treatises of Government*, Awnsham Churchill, 1686, p. 5 and Paine, Thomas, *The Rights of Man*, J.S. Jordan, 1791, p. 68.

argue that rights are not natural but are social constructs that gain meaning only within specific historical and cultural contexts.[11] This perspective challenges the notion of universal, self-evident rights by emphasizing the role of social and cultural factors in defining and recognizing rights.

In short, while the concept of rights aims to establish universal principles of justice and equality, the practical realization of these rights often requires continuous advocacy and adaptation to diverse societal contexts. The assertion that rights are self-evident and universal is complicated by the realities of cultural diversity and the need for ongoing efforts to ensure that rights are recognized and respected in practice.

As the historian Lynn Hunt articulates in her book *Inventing Human Rights*, the existence of human rights necessitates three interlocking qualities: they must be natural,[12] inherently belonging to humans,[13] and be traditionally universal.[14] This framework is essential for several reasons since without them, the concept of human rights would be fragmented and inconsistent, leading to unequal and selective application that undermines their effectiveness.[15]

Historically, fulfilling the requirements for universal human rights has proven nearly impossible, and humanity continues to grapple with these challenges today.[16] The difficulties arise because the requirements are deeply embedded in the complex and varied fabric of global societies. Efforts to universalize human rights must (among other things) contend with cultural relativism, entrenched inequalities, and political power dynamics. For instance, cultural relativism presents a significant barrier, as different societies hold diverse beliefs about what constitutes a right, leading to varying interpretations and implementations.[17] Entrenched inequalities further complicate the situation, as historical and systemic disparities in wealth, education, and access to resources create uneven starting points for different groups. Political power dynamics also play a crucial role, as those in power may resist changes that threaten their status, thus hindering the progress towards equality.[18]

The complexities could be illustrated through some thought provoking questions, for instance: at what age does a person attain the right to decide their own religious and political beliefs? Do immigrants possess the same rights as citizens? Are women afforded the same rights

[11] MacIntyre, Alasdair, *After Virtue: A Study in Moral Theory*, University of Notre Dame Press, 1981, p. 69.

[12] Human rights are considered natural because they are thought to arise from human nature itself. These natural rights are seen as inherent and inalienable, meaning they cannot be granted or revoked by governments but exist independently of any legal or social recognition.

[13] For human rights to be meaningful and effective, they must be equal. Equality in rights implies that every individual, regardless of their characteristics or circumstances, possesses the same fundamental rights. This principle of equality is crucial to prevent discrimination and ensure that all people are treated with the same level of dignity and respect. Historical documents such as the Declaration of the Rights of Man and of the Citizen and the Universal Declaration of Human Rights emphasize equality as a core tenet, aiming to eliminate distinctions based on race, gender, nationality, or religion.

[14] Human rights must be universally applicable globally to ensure that they provide protection and uphold human dignity everywhere. The universality of human rights is based on the premise that all human beings, by virtue of being human, are entitled to these rights regardless of their geographic, cultural, or political context. This global applicability is intended to foster international solidarity and cooperation in protecting human rights and addressing violations wherever they occur.

[15] Hunt, Lynn, *Inventing Human Rights – A History*, Norton, 2008, p. 20.

[16] Hunt, Lynn, *Inventing Human Rights – A History*, Norton, 2008, p. 20.

[17] Donnelly, Jack, *Universal Human Rights in Theory and Practice*, Cornell University Press, 2013, p. 28–29 and Freeman, Michael, *Human Rights: An Interdisciplinary Approach*, Polity Press, 2011, p. 121–122.

[18] See for instance Merry, Sally, *Human Rights and Gender Violence: Translating International Law into Local Justice*, University of Chicago Press, 2006, p. 75–77.

as men? Do transgender individuals enjoy the same rights as those who identify with their assigned gender at birth? To answer these questions and others like them the legal scholar turns to jurisprudential theory.

On the Will Theory and the Need for Agency

In the realm of jurisprudence, the concept of human rights has been a subject of extensive debate and analysis.[19] One theoretical framework that offers a lens through which to examine human rights is the will theory. Originating from the works of legal philosophers such as Immanuel Kant, Herbert Lionel Adolphus Hart, and Ronald Dworkin, the will theory posits that rights are contingent upon the capacity for agency, whereby individuals possess the ability to make choices and exercise their will freely. This perspective challenges traditional notions of rights as inherent or natural, instead emphasizing the role of individual autonomy and volition in the recognition and enforcement of rights.

Immanuel Kant's conception of rights lays the groundwork for the will theory by emphasizing the moral autonomy of individuals as rational beings. Kant argues that individuals have inherent worth and dignity by virtue of their capacity for rational thought, and that rights derive from this fundamental aspect of human nature. According to Kant, rights are grounded in the categorical imperative, which dictates that individuals must be treated as ends in themselves, rather than as means to an end.[20] This focus on individual moral autonomy aligns with the symbolic nature of rights, as it underscores the inherent dignity and value that rights symbolize. However, applying this to nature as a rights-holder presents challenges, as natural entities like rivers and forests do not possess rational thought or moral autonomy.

Building upon Kant's ideas, Hart further develops the will theory by articulating rights as protected spheres of discretion, wherein individuals are entitled to exercise their autonomy free from interference or coercion. Hart emphasizes the importance of agency in defining the boundaries of permissible conduct within a legal framework, arguing that rights serve to safeguard individual autonomy and freedom of choice.[21] This perspective highlights a core issue in attributing rights to nature: the lack of agency. Nature cannot exercise autonomy or discretion in the way humans can, which complicates the application of will theory to environmental rights. The symbolic promise of protection and recognition for nature, therefore, must be rooted in different theoretical grounds, such as the interest theory or a shift towards framing these protections as duties. By relating Kant's and Hart's theories to the broader discussion of nature as a rights-holder, we see that traditional human rights framework struggle to accommodate the non-agential nature of the environment. This necessitates a revaluation of how we conceive legal rights and the symbolic value they hold, pushing us towards alternative frameworks that bet-

[19] See Dembour, Marie-Bénédicte, What are human rights? – four schools of thought, Human Rights Quarterly, 2010, s. 1–2. See also Donnelly, Jack, *Universal human rights in theory and practice*, Cornell University Press, 2013; Perry, Michael, *The idea of human rights*, Oxford University Press, 1998; Gewirth, Alan, *The community of rights*, The University of Chicago Press, 1996; MacIntyre, Alasdair, *After Virtue: A Study in Moral Theory*, University of Notre Dame Press, 1981; Mutua, Makau, *Human Rights: A Political and Cultural Critique*, University of Pennsylvania Press, 2008; Stammers, Neil, *Human rights and social movements*, Pluto Press, 2009; Baxi, Upendra, *The future of human rights*, Oxford University Press, 2008; Habermas, Jürgen, *Between facts and norms: contributions to a discourse theory of law and democracy*, William Rehg (transl.), Polity, 1996 and Ignatieff, Michael, *Human rights as politics and idolatry*, Princeton University Press, 2001.

[20] Kant, Immanuel, *Groundwork for the Metaphysics of Morals*, Harper & Row, 1785, p. 29.

[21] Hart, Herbert, *Are There Any Natural Rights?*, The Philosophical Review, 64(2), 1955, p. 189.

ter capture the needs and protections required for both human and non-human entities.

From a children's rights perspective, the will theory presents a problem. Young children do, of course, have some form of agency; the agency to live, to be cared for, to be fed, to sleep, and to play, for instance. However, returning to the questions posed in the section above, can young children really be attributed with agency regarding, for instance, their religious beliefs? And even if they could, there is always the possibility that their agency, their choice so to speak, might go against their own safety and be detrimental to their health.

From a will theory perspective, nature faces a similar problem. Of course, every living thing on the planet carries with it the biologically hardwired strive to survive and to procreate, but what about rivers and lakes? What about the air, the rain, and the soil? Can these natural phenomena be attributed with any agency at all?

To solve these dilemmas the concept of "passive agency"[22] has been elevated by some authors and researchers. Passive agency refers to the idea that entities might influence their environment and be affected by it, even without possessing active, conscious decision-making capabilities. For example, a river shapes the landscape through which it flows, supporting ecosystems and affecting human activities, even though it does not do so intentionally. Similarly, trees, ants, and lions impact their environments through their natural behaviours and life cycles. However, many legal scholars would argue that they lack the capacity to communicate this influence in a way that would satisfy the requirements set out by the will theory.[23]

Thus, while nature may exhibit forms of passive agency, it does not align with the active agency required by the will theory, which focuses on autonomy and conscious decision-making. This distinction underscores the limitations of applying traditional human rights frameworks to environmental contexts and highlights the need for alternative approaches, such as the interest theory, which will be emphasised in section 4 below. Another alternative is that rights should be reframed as duties, which is something that I will argue at the end of this article in section 6.

On the Interest Theory and the Satisfaction of Fundamental Human Interests

In children's rights doctrine, the challenge of proving agency that would satisfy the will theory has given rise to the interest theory. The interest theory of rights posits that rights are based on the interests and needs of individuals rather than their capacity for agency. According to this perspective, rights derive from the satisfaction of fundamental human interests, such as the need for security, liberty, and well-being.[24] Proponents of the interest theory argue that rights should be understood as instruments for advancing the interests and welfare of individuals, rather than solely as expressions of autonomy and self-determination.[25]

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[22] Gottlieb, Robert, *Environmentalism Unbound: Exploring New Pathways for Change*, MIT Press, 2002, p. 112.

[23] Gottlieb, Robert, *Environmentalism Unbound: Exploring New Pathways for Change*, MIT Press, 2002, p. 112. Cf. Hart, Herbert, *Are There Any Natural Rights?*, The Philosophical Review, 64(2), 1955, p. 189.

[24] Eekelaar, John, *The Emergence of Children's Rights*, Oxford Journal of Legal Studies, 6(2), 1986, p. 163 f; Freeman, Michael, *The Rights and Wrongs of Children*, Frances Pinter, 1983, p. 46 f; Archard, David and Skivenes, Marit, *Balancing a Child's Best Interests and a Child's Views*, International Journal of Children's Rights, 17(1), 2009, p. 16 and MacCormick, Neil, *Children's Rights: A Test-Case for Theories of Right*, Neil MacCormick (Eds.), Legal Right and Social Democracy: Essays in Legal and Political Philosophy, Clarendon Press, 1982, p. 154.

[25] MacCormick, Neil, *Rights in Legislation*, Peter Hacker and Joseph Raz (Eds.), Law, Morality, and Society: Es-

This perspective on the purpose of rights parallels discussions in environmental law, particularly within the Rights of Nature (RoN) movement. The RoN movement, with its origins in indigenous traditional knowledge and ancestral cultures, has obtained concrete expression in courts, constitutions, and citizen referenda worldwide.[26] A key premise underlying this global initiative is that the Cartesian separation between man and nature is illusory and that all organic life is intimately connected.[27] The arrival of the *Anthropocene* has further exposed frailties in the concept of legal personhood and invited debate over the boundaries of nature itself.[28]

Even from an interest theory standpoint, there are questions that can be posed regarding nature as a rights holder. Advocates of the interest theory argue that rights should be based on the satisfaction of fundamental interests,[29] such as the need for ecological integrity and biodiversity. Recognizing nature as a rights holder thus requires redefining rights in terms of the broader ecological and ethical considerations inherent in the natural world.[30] A movement towards this direction can be gleaned, for instance, in Ecuador's 2008 constitution that grants nature the right to "exist, persist, maintain and regenerate its vital cycles", see tit. II, Ch. 7, art. 71. This legal innovation arguably reflects an ecocentric ethical orientation, valuing ecosystems as a whole rather than merely their utility to humans.[31]

The rights of nature have been interpreted and justified in various legal contexts, as seen in landmark cases from Ecuador, Colombia, and India. These cases provide insights into how legal systems (re)interpret nature and legal personhood in light of traditional and diffused ideas.[32] For example, in the Atrato River case in Colombia, the Constitutional Court emphasized the intrinsic rights of the river, recognizing its role in sustaining both nature and local cultures.[33] Similarly, India's High Court in the Ganges and Yamuna case granted these rivers the status of legal persons, highlighting their religious and ecological significance.[34]

However, instead of delving deeper into philosophical musings on personhood, agency, and ways of expressing fundamental interests, it is crucial to discuss whether rights, as imagined in a human rights framework, genuinely offer the kind of protection to nature that its proponents hope and that the world, for all intents and purposes, need. This discussion should start with the notion of rights as a symbol and the challenges that arise with symbolic legislation since rights for nature, much like other symbolic legal instruments, will face implementation

says in Honour of H.L.A. Hart, Clarendon Press, 1977, p. 198 f.

[26] Kauffman, Craig and Martin, Pamela, *Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand*, Global Environmental Politics, 18(4), 2018, p. 54.

[27] Boyd, David, *The Rights of Nature: A Legal Revolution That Could Save the World*, ECW Press, 2017, p. xxix.

[28] Arias-Maldonado, Manuel, *The "Anthropocene" in Philosophy: The Neo-material Turn and the Question of Nature*, Frank Biermann and Eva Lövbrand (Eds.), Anthropocene Encounters: New Directions in Green Political Thinking, Cambridge University Press, 2019, p. 56.

[29] See for instance Raz, Joseph, *The Morality of Freedom*, Oxford University Press, 1986, p. 166 and MacCormick, Neil, *Legal Right and Social Democracy: Essays in Legal and Political Philosophy*, Clarendon Press, 1982, p. 154.

[30] See for instance Stone, Christopher, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, Southern California Law Review, 45, 1972, p. 456 and Boyd, David *The Rights of Nature: A Legal Revolution That Could Save the World*. ECW Press, 2017, p. 112.

[31] Greene, Natalia, *The first successful case of the Rights of Nature implementation in Ecuador*, GARN, www.garn.org, 2011, retrieved 2024-05-24.

[32] Gellers, Joshua, *The Great Indoors: Linking Human Rights and the Built Environment*, Journal of Human Rights and the Environment, 7(2), 2016, p. 243.

[33] Center for Social Justice Studies et al. v. Presidency of the Republic et al., 2016.

[34] Mohd Salim v. State of Uttarakhand & Others, 2017.

challenges and resistance from established legal and economic systems.[35]

To conclude, while extending legal rights to nature through frameworks like the interest theory offers a novel approach to environmental protection, the effectiveness of such rights depends on their practical enforcement and the broader socio-legal context. The recognition of nature as a rights holder represents a significant shift towards an ecocentric legal and ethical framework, but its success will ultimately hinge on overcoming the symbolic nature of such legislation and ensuring robust implementation and respect for these rights within human institutions.

What Is a Symbol?

Symbols are pervasive elements of human communication, permeating every aspect of our lives from language and art to culture and religion. In their essence, symbols are representations that convey complex meanings and ideas beyond their literal interpretations.[36]

At its core, a symbol is a visual, auditory, or conceptual representation that stands for something else. Unlike signs, which have a direct and explicit relationship with their referents, symbols possess deeper layers of meaning that may vary depending on cultural, social, and individual contexts. Charles Sanders Peirce, a prominent philosopher and semiotician, classified symbols as one of three types of signs, distinguishing them from indices and icons. According to Peirce, symbols rely on conventions and agreements within a community to convey meaning, making them inherently arbitrary yet culturally significant.[37]

Symbols serve various functions in human communication, functioning as tools for expressing abstract concepts, evoking emotions, and fostering social cohesion. In language, words themselves act as symbols, representing ideas, objects, or actions through arbitrary linguistic conventions. Moreover, symbols play a crucial role in visual communication, as seen in the use of images, gestures, and cultural artefacts to convey complex meanings and values.[38]

Beyond communication, symbols serve as vehicles for cultural expression and identity formation. Cultural symbols, such as national flags, religious icons, and ceremonial rituals, encode shared beliefs, values, and traditions within a society. These symbols not only foster a sense of belonging and solidarity but also reinforce cultural norms and ideologies, shaping collective identity and social cohesion.[39]

Symbols play a significant role not only in communication and culture but also in the realm of law and legislation. In legal contexts, symbols are employed to represent and embody abstract concepts, principles, and values, thereby shaping the interpretation and application of laws and regulations. The use of symbols in law and legislation has profound implications for the interpretation and application of legal norms and principles. Legal symbols not only convey substantive meaning but also evoke emotional responses and associations, influencing perceptions of justice, fairness, and legitimacy.[40]

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[35] Tarlock, Adan, *Is There a There There in Environmental Law?* Journal of Land Use and Environmental Law, 19(2), 2004, p. 217.

[36] Cassirer, Ernst, *The Philosophy of Symbolic Forms*, Yale University Press, 1955, p. 43.

[37] Peirce, Charles, *Pragmatism and Pragmaticism*, Charles Hartshorne and Paul Weiss (Eds.), Collected Papers of Charles Sanders Peirce, Volumes V and VI, Harvard University Press, 1931, p. 171.

[38] Saussure, Ferdinand, *Course in General Linguistics*, McGraw-Hill, 1916, p. 67.

[39] Billig, Michael, *Banal Nationalism*, Sage, 1995, p. 93.

[40] See for instance Goodrich, Peter, *Legal Emblems and the Art of Law: Obiter Depicta as the Vision of Governance*, Cam-

As described at the very beginning of this essay, the concept of rights, and human rights in particular, carries with it a heavy symbolism. Granting someone, or something, a right means granting them a symbolic promise of protection or even: *power*. Some would argue that this symbol is sufficient; that symbolism and the striving towards something better will eventually "heal" the injustices of the world. However, most people use rights as a means of asserting their *triumph*, leveraging them as arguments to compel others to respect their autonomy, property, or entitlement to, for instance, education or housing. In many cases, this is also how rights are "sold" by governments, politicians, and Non-Governmental Organizations (NGOs) worldwide. The codification of the right to, for instance, housing or education is seen as a means to create a better future. The act of granting rights to the powerless through legislation is perceived as evidence of political benevolence and strength.

Since rights are often perceived as triumphs, the expectation is not that they will *eventually* lead to improvement in some distant future. Rather, there is a common demand that rights should be *effective*[41] in the present and actionable in some way, typically through legal proceedings. This is where the criticism of rights as a form of symbolic legislation becomes central as a critique of human rights and rights in general.

bridge University Press, 2013, p. 45 and Resnik, Judith and Curtis, Dennis, *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms*, Yale University Press, 2011, p. 14.

[41] It is my belief that effective laws should be a central objective in all legal systems. If laws are not effective, there is a risk that the deficiencies they are intended to remedy and the goals they are designed to fulfil remain unaddressed or unfulfilled. The laws then become, at best, ineffective and, at worst, a burden for authorities and individuals. My positions and reasoning on this can be found in my dissertation. See Refors-Legge, Maria, *Skolans skyldighet att förhindra kränkande behandling av elever* [The school's obligation to prevent abusive treatment of students], Stockholms universitet, 2021, p. 11–31.

What is Symbolic Legislation?

Symbolic legislation encompasses laws and regulations that are enacted primarily to convey symbolic messages or values, rather than to achieve tangible policy outcomes. These laws often target contentious or high-profile issues, such as discrimination, inequality, or social injustice, and are intended to signal a government's commitment to addressing these issues.[42] To legislate in a similar manner on the rights of animals, plants, or entire ecosystems would undoubtedly be possible as a form of political, symbolic gesture. Such legislation would possibly signal a commitment to recognising the intrinsic value and inherent rights of non-human entities within the legal framework. It could be argued that "granting" nature rights would serve as a powerful statement of environmental stewardship and a recognition of the interconnectedness of all living beings. Another argument for nature as a rights holder could be that the act of legislating might encourage greater public awareness and consciousness regarding the importance of biodiversity conservation and sustainable coexistence with nature. However, the effectiveness of such legislation would depend on its enforcement mechanisms and practical implementation, as well as broader societal attitudes towards the rights of non-human entities, and this is where the ineffectiveness of symbolic legislation can be gleaned.

It can be argued that symbolic legislation may lack substantive provisions or enforcement mechanisms necessary to bring about meaningful change. This type of legislation often serves as a form of political rhetoric or performative action designed to appease public opinion or project a positive image of government responsive-

[42] Scheppele, Kim, *The New Judicial Deference*, The Yale Law Journal, 103(6), 2004, p. 1989.

ness to social concerns.[43] By enacting laws that convey a superficial commitment to rights (both to human and non-human rightsholders) principles without implementing substantive measures, governments may undermine efforts to achieve meaningful change and accountability.[44]

Symbolic legislation may also serve to deflect attention from more pressing rights concerns or perpetuate a false sense of progress in addressing systemic injustices. By focusing on symbolic gestures rather than meaningful reforms or policy interventions, there is a risk of diluting rights norms and principles. This can lead to the co-option or depoliticization of both human rights activism and nature rights activism, as governments offer superficial concessions or gestures of compliance without addressing underlying power dynamics or structural inequalities.[45] Consequently, this may perpetuate a false sense of achievement or progress in the field of human rights, leading to complacency and a lack of accountability for ongoing human rights violations.

Without meaningful enforcement mechanisms or measures to address root causes of human (or nature) rights abuses, symbolic legislation may fail to deliver substantive improvements.

On Rights and Duties: Is There an Alternative?

In the landscape of modern legal discourse, the prevailing emphasis on individual rights has shaped legal frameworks globally. Advocating against human rights might be perceived as inhumane, just as arguing against rights for nature might seem like an unwillingness to halt humanity's exploitation of the natural world and other living beings. However, the effectiveness of rights as a legal tool in preventing man-made pollution, mass extinctions, and climate change should be a subject of debate.

As Wesley Newcomb Hohfeld theorized in the early 20th century, the idea of rights should be understood in relation to privileges, powers, and immunities.[46] Hohfeld argued that rights are not absolute but exist in conjunction with corresponding duties or obligations.[47] Understanding this interplay between rights and duties is essential for effective legal analysis and decision-making. Therefore, it is worthwhile to consider rights' counterparts, namely duties and obligations.

While rights typically imply an active subject with agency, whether through the will theory or interest theory, duties or obligations require no such active player. Instead of focusing solely on the rights of nature, it may be more pragmatic to concentrate on the duties and obligations of the state. This concept is not revolutionary, as many legal systems already recognize the state's duty towards its citizens. For example, in Sweden, municipalities have a duty to provide education, which corresponds to students' right to education, as outlined in the Swedish Education Act and the Swedish Instrument of Government. There is also a growing recognition of the anthropocentric right to a healthy environment, and efforts by people to hold governments accountable for this. For instance, in the United States, young climate activists in Montana have successfully argued in court that the state has a

[43] Carozza, Paolo, *Subsidiarity as a Structural Principle of International Human Rights Law*, American Journal of International Law, 108(2), 2014, p. 213.
[44] Forsyth, David, *Human Rights in International Relations*, Cambridge University Press, 2012, p. 155.
[45] Moyn, Samuel, *The Last Utopia: Human Rights in History*, Harvard University Press, 2012, p. 88.
[46] Hohfeld, Wesley Newcomb, *Some fundamental legal conceptions as applied in judicial reasoning*, The Yale Law Journal, 1917, p. 710 ff.
[47] Hohfeld, Wesley Newcomb, *Some fundamental legal conceptions as applied in judicial reasoning*, The Yale Law Journal, 1917, p. 710 ff.

duty to protect the environment for future generations.[48] This landmark case and others like it[49] emphasizes the state's obligations towards environmental protection as a fundamental right of its citizens.[50]

The distinction between rights and duties is significant. While rights typically imply a need for action or demand from an active subject with agency, whether through the will theory or interest theory, duties or obligations imply an imperative to act without requiring such an active counterpart or rights-holder. Scholars such as Samuel Moyn has argued that focusing on state obligations rather than individual rights is a more effective strategy for addressing environmental issues.[51] Moyn suggests that a renewed commitment to duties can help address contemporary environmental catastrophes by rethinking our moral and legal priorities.[52] Similarly, Kathleen Birrell, Daniel Matthews and Peter Burdon, advocate for a re-engagement with, and focus on, obligations rather than rights in the Anthropocene. They argue that such a shift can better address systemic injustices and promote the collective welfare of society as a whole, including the non-human environment.[53]

By shifting the focus from individual rights to state obligations, legal systems can better address systemic injustices and promote the collective welfare of society as a whole, even for individuals and entities without agency. This approach recognizes the role of the state as a steward of public interest and underscores the importance of fulfilling its responsibilities towards both individuals and the environment.[54]

The important part that I wish to underline in this article is that, while rights focus on the needs and demands for action by individuals, duties emphasize the imperative for states to act, ensuring the welfare and rights of all, including the environment, thereby addressing broader societal and ecological concerns.

Reframing legal rights as duties could enhance legal analysis and decision-making by providing a more nuanced understanding of legal relationships. It encourages policymakers and legislators to consider not only the rights conferred upon individuals but also the corresponding duties that must be fulfilled to uphold those rights. This approach promotes a more holistic and balanced approach to legal interpretation and implementation.

In practice, viewing legal rights as duties can lead to more robust legal frameworks that prioritize the collective welfare of society and nature over individual entitlements. By recognizing the reciprocal nature of rights and obligations, legal systems can work towards creating a more just and equitable society where the rights of all individuals (human and non-human) are respected and upheld.

Conclusion

In conclusion, the discourse surrounding legal rights as a form of symbolic legislation presents a complex interplay between legal theory, politi-

[48] Held et al. v. State of Montana. See also Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC] – 53600/20, Judgment 9.4.2024 [GC].

[49] Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC] – 53600/20, Judgment 9.4.2024 [GC].

[50] Neal, Jeff, *Big (Sky) climate win*, Harvard Law Today, www.hls.harvard.edu, 2023, retrieved 2024-05-24.

[51] Moyn, Samuel, *Rights vs. Duties*, Boston Review, www.bostonreview.net, 2020, retrieved 2024-05-24.

[52] Moyn, Samuel, *Rights vs. Duties*, Boston Review, www.bostonreview.net, 2020, retrieved 2024-05-24.

[53] See Birrell, Kathleen and Matthews, Daniel, *Re-storying Laws for the Anthropocene: Rights, Obligations and an Ethics of Encounter*, Law and Critique, 31(3), 2020, p. 67–89 and Burdon, Peter, *Obligations in the Anthropocene*, Law and Critique, 31(3), 2021, p. 83–102.

[54] Birrell, Kathleen and Matthews, Daniel, *Re-storying Laws for the Anthropocene: Rights, Obligations and an Ethics of Encounter*, Law and Critique, 31(3), 2020, p. 67–89 and Burdon, Peter, *Obligations in the Anthropocene*, Law and Critique, 31(3), 2021, p. 83–102.

cal rhetoric, and societal values. As this essay has explored, the concept of rights carries significant symbolic weight, serving as both a promise of protection and a tool for asserting dominance or control. The prevailing emphasis on individual rights has shaped legal frameworks globally, yet the effectiveness of rights as a legal tool remains subject to debate.

The analysis of legal rights through the lens of jurisprudential theories, such as the will theory and interest theory, has revealed inherent challenges and contradictions in attributing rights to individuals, nature, or other entities. While the will theory emphasises agency as a prerequisite for rights, the interest theory focuses on the satisfaction of fundamental needs and interests. Both perspectives raise questions about the applicability of rights in diverse contexts and the extent to which rights can effectively address systemic injustices discussed in this article.

Moreover, the critique of symbolic legislation highlights the potential pitfalls of enacting laws primarily for their symbolic value, rather than to achieve tangible policy outcomes. Symbolic legislation may lack substantive provisions or enforcement mechanisms necessary to bring about meaningful change, leading to a false sense of progress and accountability. Furthermore, symbolic legislation risks co-opting or depoliticizing human rights activism and nature rights advocacy, perpetuating systemic inequalities and injustices.

In light of these challenges, reframing legal rights as duties offers an alternative approach to addressing systemic injustices and promoting the collective welfare of society and nature. By shifting the focus from individual entitlements to state obligations, legal systems can better address root causes of rights violations and promote a more holistic understanding of legal relationships. This approach recognises the role of the state as a steward of public interest and underscores the importance of fulfilling its responsibilities towards both individuals and the environment.

In conclusion, while the concept of legal rights remains central to modern legal discourse, it is essential to critically examine its symbolic implications and consider alternative approaches that prioritise the collective welfare of society and nature. By reframing legal rights as duties and obligations, legal systems can work towards creating a more just and equitable society where the rights of all individuals, human and non-human alike, are respected and upheld.

The Democratic Inclusion of Nature*

Exploring the Categorical Extension of the All-Affected Principle

*Jonas Hultin Rosenberg***

Abstract

This article contributes to the Rights of Nature debate by exploring the preconditions for extending political rights to non-human natural entities. This is done by exploring the scope of inclusion of the all-affected principle. It is argued that the categorical scope of inclusion of the principle could be stretched to include natural entities, including nonsentient organisms. Stretching the scope of inclusion in this way assumes that the class of interests worthy of political concern is interpreted in a maximally inclusive way. Doing this would imply that artifacts have a claim to democratic inclusion too.

Introduction

Rights of Nature involve the idea that nature or natural entities should be recognized as right-holders. Natural entities should be granted standing in themselves and not because natural entities matter to human rights-holders. "Standing" could refer to legal, moral, or political standing. The rights of nature debate has mainly been focused on granting legal and moral standing to nature or natural objects.[1] This article will focus on the *political standing of individual natural entities* (organisms and objects).[2] The democratic way of ensuring equal political concern is through democratic inclusion. As evident from historical practices of exclusion, individuals and groups that are excluded from the demos risk having their interests disregarded in the political process. In this respect, political rights are instrumental in ensuring the protection of other rights and the interests that these rights are meant to protect.

As understood here, democratic inclusion concerns the scope of the demos (understood as the group of entities) that should govern or elect those who govern. Democratic inclusion has been widely discussed in recent scholarly literature within the field of normative democratic theory. The main focus has been on basic normative principles of democratic inclusion. These are the principles that specify under what conditions an individual entity has a claim to inclusion in a particular demos governing or electing those who govern a particular democratic state. The debate has essentially revolved around two major alternatives and different versions of these alternatives: the all-affected principle (AAP) and the all-subjected principle (ASP).[3] According to

* This study was supported by Vetenskapsrådet [2021-03315] and Marianne and Marcus Wallenberg Foundation [MMW 2019.0160].

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[1] Daniel P. Corrigan and Marku Oksanen, "Rights of Nature: Exploring the Territory," in *Rights of Nature: A Re-examination*, eds. Daniel P. Corrigan & Markku Oksanen (London: Routledge, 2021), 1–13.

[2] Focusing on individual natural entities, this article does not address the question of the political standing of nature as a whole or of entire ecosystems.

[3] See Ludvig Beckman, *The Boundaries of Democracy: A Theory of Inclusion* (London: Routledge, 2022), https://doi.org/10.4324/9781003359807; Robert E. Goodin, "En-

the former, an entity has a claim to inclusion in the demos if and only if affected by political decisions taken by the demos or by those who are elected by the demos. According to the latter, an entity has a claim to inclusion in the demos if and only if subjected to political decisions taken by the demos or by those who are elected by the demos. The difference between the two is that the claim to inclusion, on AAP, is determined by the scope of the causal implications of political decisions while the claim to inclusion, on ASP, is determined by the scope of the binding rules, principles, or norms. Both AAP and ASP have been argued to stretch the boundaries of inclusion far beyond the current limits. For the question of the democratic inclusion of Nature, AAP is a particularly suitable point of departure since it opens the possibility of stretching the scope of inclusion to non-human entities.[4]

This article contributes to the Rights of Nature debate by exploring the normative and conceptual preconditions for extending political rights to non-human natural entities. This is done by investigating the scope of inclusion of AAP. The article will be structured as follows: in the first section, I will distinguish between three dimensions of inclusion, the spatial, the temporal, and the categorical. Thereafter, in the second section, I will develop the categorial scope of AAP by specifying its relational requirement and argue that on the most inclusive interpretation of the principle all entities with an interest that could be causally affected by political decisions have a claim to inclusion. In section three, I will introduce an additional patiency requirement and argue that the scope of inclusion of AAP could be stretched to include nonsentient organisms. However, interpreted in this way AAP would also include artifacts (human-made objects). I conclude this section with a few remarks on the problem of political agency.

Three dimensions of the scope of inclusion of AAP

The present discussion addresses AAP as a principle of democratic inclusion – a principle that specify under what condition an individual entity has a claim to inclusion in a particular demos. AAP shares with its main rival, ASP, the notion that democratic inclusion is triggered by a relationship between an individual entity (human or non-human, natural or artificial) and a decision. AAP and ASP thus identify a *relational requirement* as a necessary condition for inclusion.[5] The disagreement concerns the more precise formulation of this relational requirement. On AAP, an individual entity has a claim to inclusion in the demos governing or electing those who govern a particular state if and only if the entity is causally affected by political decisions taken in that state.

The scope of inclusion of different principles of democratic inclusion has been the subject of extensive discussion. The main focus in these discussions has been on the *spatial dimension* of inclusion. This dimension of inclusion concerns the territorial boundaries of the demos.

franchising All Affected Interests, and Its Alternatives," *Philosophy & Public Affairs* 35, no. 1 (Winter, 2007): 40–68; Robert E. Goodin, "Enfranchising all subjected, worldwide," *International Theory* 8, no. 3 (2016): 365–389; Jonas Hultin Rosenberg, "The All-Affected Principle Reconsidered," *Social Theory and Practice* 46, no. 4 (2020): 847–867; David Miller, "Democracy's domain," *Philosophy & Public Affairs* 37, no. 3 (2009): 201–228; Laura Valentini, "No Global Demos, No Global Democracy? A Systemization and Critique," *Perspectives on Politics* 12, no. 4 (2014): 789–807.

[4] Robert Garner, "Animals and Democratic Theory: Beyond an Anthropocentric Account," *Contemporary Political Theory* 16, no. 4 (Nov. 2017): 459–477; Ludvig Beckman and Jonas Hultin Rosenberg, "The Democratic Inclusion of Artificial Intelligence? Exploring the Patiency, Agency and Relational Conditions for Demos Membership," *Philosophy and Technology* 35, no. 24 (2022), https://doi.org/10.1007/s 13347-022-00525-3.

[5] Beckman and Hultin Rosenberg, "The Democratic Inclusion of Artificial Intelligence?"

One key issue is whether or not the boundaries of the demos should follow the territorial boundaries of the state. AAP has been argued to stretch the scope of inclusion beyond the territorial boundaries of the state by suggesting that all entities that are causally affected by political decisions taken by a state (directly by the demos or by those who are elected by the demos) have a claim to inclusion regardless of whether these entities reside within the territorial boundaries of the state or not.

The spatial inclusiveness of AAP depends on how it is more precisely formulated. There are different versions of the principle with radically different implications in this regard. The differences between these versions consists in different specifications of the relational requirement of AAP. As specified above, the relation that triggers democratic inclusion is the relation between an individual entity (human or non-human, biological or artificial) and a state such that the former is causally affected by a decision take by the latter. This specification is close to what appears to be the most common specification in the literature. The relation that triggers inclusion is the relation of an individual entity being affected by an *actual decision* taken by the state (directly by the demos or by those who are elected by the demos). When specified in this way, all individual entities who are affected by the actual decisions taken by the state have a claim to inclusion. However, as I have argued elsewhere, this version of AAP can be considered under-inclusive because it requires the exclusion of entities that would have benefitted from a decision that could have been taken but that was not. This version of AAP arguably requires us to do something that we cannot do and therefore violates the principle of ought implies can.[6]

The main alternative position in the literature is that *possible decisions*, not actual decisions, should determine democratic inclusion and exclusion. This is a view that Robert Goodin introduced and defended in his "Enfranchising All-affected Interests and its Alternatives."[7] Specifying the relational requirement in this way, AAP requires the inclusion of "anyone who might possibly be affected by any possible outcome of any possible question that might possibly appear on any possible ballot."[8] Since the focus falls not on actual decisions, but on possible decisions, the important issue is not what is decided, but what could possibly be decided. Specifying the relational requirement of AAP in this way avoids the problems mentioned above.

Both the actual decision and possible decision versions of AAP focus on decisions, not on non-decisions. This is important with respect to the actual decision version of AAP since the domain of all actual decisions does not include any non-decisions. This is not as obviously important with respect to the possible decision version of the principle since a non-decision could be understood as a decision that could have been taken, but was not. Understood in this way, the domain of all possible decisions is identical to the domain of all decisions plus the domain of all non-decisions. It is not necessary to understand a non-decision in this inclusive way, however. An alternative understanding of a non-decision is that it is a decision that was available to the state (or more precisely to those who govern the state) in question but was not taken.

[6] Hultin Rosenberg, "The All-Affected Principle Reconsidered."

[7] Goodin, "Enfranchising All Affected Interests." See also David Owen, "Constituting the polity, constituting the demos: on the place of the all affected interests principle in democratic theory and in resolving the democratic boundary problem," *Ethics & Global Politics* 5, no. 3 (2012): 129–152; Hultin Rosenberg, "The All-Affected Principle Reconsidered."

[8] Goodin, "Enfranchising All Affected Interests," 55.

This implies a clear alternative to the actual and the possible decision versions, whereby inclusion and exclusion should be determined neither by what the state does, nor by what the state could possibly do, but instead by what the latter does together with what it has the political power to do, but abstains from doing. The key here concerns what the state (those who govern the state) has the political power to do. That is to say that the democratic state is responsible only for those aspects of the current state of affairs that it has the political power to change. With this interpretation of AAP, all those who are affected by an aspect of the current state of affairs that the state (those who govern the state) has the political power to change, but has nonetheless left unchanged, are in the relation that triggers inclusion. That which the state (those who govern the state) has the political power to do consists of what it has the capacity and authority to do. Political power, as understood in the present discussion, is thus a combination of might and right (understood as a right to rule).[9]

This version of AAP that focuses on what the collective agent has the capacity and authority to do differs from the actual decision version in that it equates decisions and non-decisions, while it differs from the possible decision version in that it differentiates between that which the state could possibly do and that which it has the political power to do. The actual decision version, the possible decision version, and the non-decision version are thus three distinct views concerning what the state does that triggers democratic inclusion. How much AAP stretches the spatial boundaries of inclusion depends on how the relational requirement is specified in this regard. The version that focuses on possible decisions is the most inclusive one while the version that focuses on actual decisions is the least inclusive one.

The spatial boundaries of AAP are important when determining which (if any) currently existing individual natural (non-human) entities to include in which demos. In order to fully specify the scope of inclusion of AAP, two additional dimensions need to be taken into account – the *temporal dimension* and the *categorical dimension*.[10] The temporal dimension concerns whether AAP stretches the boundaries of inclusion beyond currently existing entities (human or non-human). In this regard, it has been argued that AAP requires the inclusion of both future and past generations.[11]

More important for this article is the categorical dimension. The categorical dimension concerns what type of entities could have a claim to democratic inclusion. Currently, democratic inclusion is the privilege of human beings. However, democratic inclusion does not have to be reserved for humans. This "speciesist" assumption of democracy is increasingly under pressure.[12]

[9] This version of AAP is developed in more detail by Hultin Rosenberg, "The All-Affected Principle Reconsidered."

[10] See Beckman and Hultin Rosenberg, "The Democratic Inclusion of Artificial Intelligence?."

[11] For scholarship examining implications for future generations, see Andrés Cruz, "The Case for Democratic Patients: Epistemic Democracy Goes Green," *ethic@-An international Journal for Moral Philosophy* 17, no. 3 (2018): 423–444; Goodin, "Enfranchising All Affected Interests"; Clare Heyward, "Can the all-affected principle include future persons? Green deliberative democracy and the non-identity problem," *Environmental Politics* 17, no.4 (2008): 625–643. For scholarship examining implications for past generations, see Goodin, "Enfranchising All Affected Interests; Andreas Bengtson, "Dead People and the All-Affected Principle," *Journal of Applied Philosophy* 37, no. 1 (2020): 89–102.

[12] Beckman and Hultin Rosenberg, "The Democratic Inclusion of Artificial Intelligence?"; Garner, "Animals and Democratic Theory"; Robert E. Goodin, "Enfranchising the Earth, and Its Alternatives," *Political Studies* 44, no. 5 (1996): 835–849; Will Kymlicka and Sue Donaldson, "Locating animals in political philosophy," *Philosophy Compass* 11, no. 11 (2016): 692–701.

AAP is usually formulated in the literature as a principle that requires the inclusion of "all" or "everyone" relevantly affected without further specifying who is included in "all" or "everyone." This could be taken to imply that all entities who are affected should be included, which would if taken literally, include currently excluded entities such as infants, non-human animals, artificial intelligences, corporations, and natural organisms and objects. If understood in this way, AAP would be radically inclusive in the categorical sense and challenge common practices of inclusion and exclusion in a fundamental sense.

However, AAP is not necessarily this inclusive. An alternative and far less inclusive view is that only adult human beings are eligible for democratic inclusion.[13] Even if other types of entities were affected by decisions taken by the state (directly by the demos or by those who are elected by the demos), they should nevertheless not be included in the demos. This view concerning eligibility for inclusion appears to be what David Miller has in mind when he claims that the most inclusive version of AAP means "including every (competent adult) human being in the demos."[14] In order to address the questions of the democratic inclusion of nature, the categorical dimension of the scope of inclusion of AAP needs to be elaborated in more detail.

The categorical scope of AAP

Despite the fact that the categorical extension is rarely discussed, the literature on AAP offers some guidance on how to interpret the principle in this regard.[15] As specified in the previous section, all and only those who are causally affected by actual/available/possible decisions have a claim to inclusion. Being affected is usually specified as being better or worse off. This general characterization could be further specified. This general notion of what it means to be affected could be combined with a number of different specifications of better or worse off. Two aspects in particular of the general notion need to be specified, namely, what it means to be worse off, and how much worse off one needs to be in order to be affected in the relevant sense.

The statement above could then be reformulated as follows: an entity is relevantly affected by a decision (or non-decision) if that entity is *sufficiently* better or worse off in the *relevant sense* as a consequence of that decision (or non-decision). Accordingly, an individual entity has a claim to inclusion on AAP if significantly better or worse off as a consequence of decisions (or non-decisions) taken by a state (directly by the demos or by those who are elected by the demos). It is debated whether inclusion is triggered by actual, possible, or foreseeable consequences.[16] This is important when determining which individual natural entities that should be included in which demos (the spatial scope of inclusion of AAP). It does not decide the more fundamental question of whether natural entities at all could have a claim to democratic inclusion. In other words, it does not decide the categorical scope of inclusion of AAP.

Whether we care about actual, possible, or foreseeable consequences, only entities that could be better or worse off (in any meaningful sense) could have a claim to democratic inclusion. A reasonable starting point is that only en-

[13] Limiting the scope of inclusion of AAP in this way could be done by combining AAP with some additional principle that excludes non-humans and young humans or by assuming a speciesist and ageist limitation on the scope of application of principles of democratic inclusion.

[14] Miller, "Democracy's domain," 215.

[15] For an exception see Beckman and Hultin Rosenberg, "The Democratic Inclusion of Artificial Intelligence?."

[16] Hultin Rosenberg, "The All-Affected Principle Reconsidered."

tities with *interests* could be better or worse off. Understood in this way, the relational requirement of AAP implies that only entities with an interest could have a claim to democratic inclusion. On this understanding of AAP, the scope of inclusion, categorically understood, is determined by what type of entities have an interest that could be causally affected by political decisions taken by a state (directly by the demos or by those who are elected by the demos).

In order to determine the categorical scope of inclusion of AAP, we need to specify what type of entities could be attributed interests. An inclusive interpretation is that all entities with welfare have interests. Theories of welfare can be divided into mentalistic views, satisfaction views, and objective-list views.[17] Mentalistic and satisfaction views are subjective in the sense that "having cognitive capacity is a necessary condition for having welfare."[18] The objective list view is not committed to this limitation. Based on this view, the scope of entities that *could* be attributed interests include not only human and non-human sentient beings but also non-sentient organisms. It does not include natural objects.

John Basl develops an objective-list account of welfare that includes nonsentient organisms.[19] In this account, nonsentient organisms are teleologically organized in the sense that these entities have ends. Something is bad for the organism if it frustrates these ends and good for the organism if it promotes these ends.[20] According to Basl, this teleological account meets three reasonable requirements on an account of welfare.[21] The teleological account is nonarbitrary, nonderivative, and subject-related. It is an account of what is *objectively specifiably* good *for* nonsentient organisms not because it is *derivatively* good for some sentient being but because it is good for the nonsentient organism itself.[22] The teleological account of welfare suggested by Basl is etiological in the sense that "the ends of an organism are defined directly in terms of the organism's selection history."[23]

The teleological account of interests suits our purpose by offering a basis for the maximally inclusive interpretation of the relational requirement of AAP. A nonsentient organism is affected by the consequences of a political decision if the political decision frustrates or promotes the ends of the organism. The organism is better off if the decision promotes the ends of the organism and worse off if the decision frustrates the ends of the organism. Some natural objects are not teleologically organized and therefore have no ends that could be promoted or frustrated as a consequence of political decisions. Stones reasonably fall within this category. Interpreted in this way, the categorical scope of AAP stretches the boundaries of inclusion far beyond the human domain. Non-human sentient beings and nonsentient organisms can have a claim to inclusion. Natural objects that are not teleologically organized cannot.

Political patiency and political agency

The relational requirement of AAP could be interpreted to imply that all entities (sentient or non-sentient) that are teleologically organized have a claim to democratic inclusion. This makes AAP highly inclusive (in a categorical sense) – much more inclusive than how the principle is typically understood. As Beckman and Hultin Rosenberg suggested, AAP could be argued to have an implicit patiency requirement that

[17] John Basl, *The Death of the Ethic of Life* (New York: Oxford University Press, 2019).
[18] Basl, *Death of the Ethic of Life*, 46.
[19] Basl, *Death of the Ethic of Life*.
[20] Basl, *Death of the Ethic of Life*.
[21] Basl, *Death of the Ethic of Life*.
[22] Basl, *Death of the Ethic of Life*.
[23] Basl, *Death of the Ethic of Life*, 81.

could potentially limit the categorical scope of inclusion.[24] Having an interest that is causally affected by political decisions taken by a collective agent is necessary but not sufficient for having a claim to democratic inclusion. To have a claim to democratic inclusion, the interest must be of a certain kind. It must be *an interest that is worthy of political concern*. There are good reasons to assume a mentalistic view on political patiency which means that only entities with cognitive capacities that are required for *experiencing* welfare, harm, pleasure, and pain qualify as political patients with interests worthy of political concern.[25] This *sentientist* interpretation of AAP is more inclusive than the *anthropocentric* interpretation that reserves political patiency for humans.

In this section, I will explore the reasonableness of a more inclusive, *biocentric*, interpretation. Alfonso Donoso's argument that nonsentient organisms have interests that are worthy of political concern provides a suitable starting point for such an endeavor.[26] In Donoso's account, the set of interests that are worthy of political concern cannot be reduced to cognitive states.[27] In this sense, Donoso rejects the mentalistic view. Nonsentient (as well as sentient) organisms have biological *needs* and *functions*. To fulfill these needs and functions is in the interest of all organisms (independent of their mental states). As put by Donoso, "to not be burnt or chopped down is in the interest of a lemon tree, even though the lemon tree cannot desire or take an interest in not being burned or chopped down."[28] Donoso extended the scope of entities with interests worthy of political concern to include all *living organisms*. Understood this way, all living organisms are political patients. Donoso does not conclude that nonsentient organisms have a claim to inclusion, however. To qualify for democratic inclusion, entities need a capacity for democratic agency.[29] However, AAP does not contain an agency requirement. It could perhaps be argued that an agency requirement is implicit in the rationale behind AAP.[30] I will return to the issue of agency later in this section.

According to Donoso's account, all entities with welfare have interests worthy of political concern.[31] As specified by Donoso, nonsentient organisms have welfare because they have needs *and* functions.[32] The needs of the nonsentient organism seem to be perfectly reducible to its functions, however. Of course, it makes sense to say that a plant *needs* water and light. But that does not answer the question of why water and light are good for the plant. In this sense, needs are similar to integrity, stability, growth, and reproduction discussed by Basl as alternatives to ends.[33] To answer that question, we must refer to its ends. Water and light are good for the plant because water and light are essential for the plant to fulfill its ends.

Interpreted in this way, Donoso's account of the welfare of nonsentient organisms is teleological (although not described by Donoso in this way).[34] Being a teleological account, the welfare of an organism is given by its ends. Follow-

[24] Beckman and Hultin Rosenberg, "The Democratic Inclusion of Artificial Intelligence?."
[25] Beckman and Hultin Rosenberg, "The Democratic Inclusion of Artificial Intelligence?"; see also Bauböck, 2018; Ben Saunders, "Defining the demos," *Politics, Philosophy & Economics* 11, no. 3 (2012): 280–301.
[26] Alfonso Donoso, "Representing Non-Human Interests," *Environmental Values* 26, no. 5 (2017): 607–628, https://doi.org/10.3197/096327117X15002190708137.
[27] Donoso, "Representing Non-Human Interests."
[28] Donoso, "Representing Non-Human Interests," 614.
[29] Donoso, "Representing Non-Human Interests"; see also Saunders, "Defining the demos."
[30] Beckman and Hultin Rosenberg, "The Democratic Inclusion of Artificial Intelligence?"
[31] Donoso, "Representing Non-Human Interests."
[32] Donoso, "Representing Non-Human Interests."
[33] Basl, *Death of the Ethic of Life*.
[34] Donoso, "Representing Non-Human Interests."

ing Basl, its ends are given by natural selection. Nonsentient organisms have welfare by virtue of being teleologically organized.[35]

Donoso manages to stretch the scope of interests worthy of political concern to include not only sentient beings but also nonsentient living organisms.[36] However, if the aim was to include *all and only* living organisms Donoso's account is over-inclusive.[37] If nonsentient organisms qualify as political patients, other entities (including artifacts) that are teleologically organized also qualify as political patients.

As successfully argued by Basl, the etiological account of teleological welfare could be generalized to include entities that biocentrists (like Donoso) intend to exclude.[38] Basl's argument concerns the moral and not the political considerability of nonsentient organisms.[39] However, his argument has clear implications for the position defended by Donoso and for the question of the categorical extension of AAP. Basl argues that artifacts have welfare and that there is no coherent case to be made for an asymmetry of moral considerability between (nonsentient) organisms and artifacts.[40] He starts by providing an argument for the welfare of artifacts. Artifacts are teleologically organized in the sense that "they are oriented toward achieving particular outcomes or goal-states."[41] The welfare of artifacts can be defined in the same way as the welfare of organisms; something is good for an artifact if it promotes one of its ends and bad if it frustrates one of its ends.[42] He goes on to argue that there is no difference between organisms and artifacts which is of such a kind that it can justify treating the welfare of the former as different (in terms of moral considerability) from the welfare of the latter.[43] Especially important in this context is the living/nonliving distinction since it seems to be the most plausible candidate for a substantial difference between artifacts and organisms. However, there seems to be no other quality that all living things have together that is not also shared by some artifacts.[44]

If what has been suggested so far is true, the categorical scope of inclusion of AAP can be stretched to include not only sentient beings but also nonsentient organisms (as has been suggested by for example Cruz).[45] However, there seems to be no coherent formulation of the principle such that *all and only* (sentient and nonsentient) organisms have a claim to democratic inclusion. Adherents of the biocentric interpretation of AAP are forced to either exclude some (or perhaps all) nonsentient organisms *or* include (at least some) artifacts. In the environmental ethics literature, this is sometimes referred to as the "Artifact *Reductio ad absurdum*."[46] Biocentrists might be uncomfortable biting the bullet and extending the scope of democratic inclusion in this way. It is nevertheless the case that AAP could be interpreted as a principle according to which all living natural entities have a claim to inclusion.

It could be argued that meeting the relational and the patiency requirements is necessary but not sufficient for democratic inclusion. An additional *agency requirement* is arguably implicit in the normative rationales for democratic inclusion on the AAP.[47] Having an interest

[35] Basl, *Death of the Ethic of Life*.
[36] Donoso, "Representing Non-Human Interests."
[37] Donoso, "Representing Non-Human Interests."
[38] Basl, *Death of the Ethic of Life*.
[39] Basl, *Death of the Ethic of Life*.
[40] Basl, *Death of the Ethic of Life*.
[41] Basl, *Death of the Ethic of Life*, 131.
[42] Basl, *Death of the Ethic of Life*.
[43] Basl, *Death of the Ethic of Life*.
[44] Basl, *Death of the Ethic of Life*.
[45] Cruz, "The Case for Democratic Patients."
[46] Joel MacClellan, "Is Biocentrism Dead? Two Live Problems for Life-Centered Ethics," *The Journal of Value Inquiry* (2023), https://doi.org/10.1007/s 10790-023-09954-5.
[47] Beckman and Hultin Rosenberg, "The Democratic Inclusion of Artificial Intelligence?."

that is causally affected and worthy of political concern is not enough to have a claim to inclusion. Democratic inclusion is about extending political influence to entities whose interests are affected as a consequence of political decisions. A minimal capacity for political agency is necessary for exercising political influence (independent of how the democratic decision procedures are organized). Nonsentient organisms lack this capacity and do therefore not have a claim to inclusion. The same is true for most artifacts. On this account, we still ought to take the interests of nonsentient organisms and artifacts that are teleologically organized into account when making political decisions. However, some artifacts (certain AI-powered systems) might possess a capacity for some kind of political agency. Assuming that this is true, the "biocentric" interpretation of AAP would (counterintuitively) exclude all nonsentient organisms and include some artifacts.

Concluding remarks

The categorical scope of inclusion of AAP could be stretched to include non-human natural entities (both sentient non-human beings and nonsentient organisms). This interpretation of the principle could be substantiated by an etiological account of teleological welfare and a conception of political considerability according to which all entities with welfare have an interest worthy of political concern. On this account, nonsentient organisms meet the relational requirement of AAP in the sense that they could be better or worse off (having their ends promoted or frustrated) as a consequence of political decisions. Nonsentient organisms also meet the patiency requirement assuming that all (non-derivative) interests are interests worthy of political concern. On this interpretation of AAP, all entities with teleological interests (i.e. entities with ends) sentient and nonsentient, artificial and biological have a claim to inclusion. Adding an agency requirement that does not follow from the principle but could be justified by the normative underpinnings of the principle, AAP does not require the inclusion of biological or artificial non-sentient entities unless these develop with a minimal capacity for political agency. This is highly unlikely in the case of biological non-sentient entities but is quite possible in the case of artificial non-sentient entities.

Religion, Nonreligion and Nature's Rights: What's the Connection?

*Lauren Strumos**

Abstract

This article explores the relevance of religion and nonreligion for a comprehensive grasp on nature's rights. To do so it investigates both the overt and more elusive factors of (non)religion present in the theory and practice of nature's rights. Nature's rights may exemplify a shift away from the dominion or stewardship models for human/nonhuman relations in western societies, and towards a more horizontal one that invokes equality. This article suggests that this shift is made possible in part by the rise of nonreligion.

Introduction

This article focuses on Canada, where an Indigenous council and a municipality in the province of Québec agreed to declare legal personhood to a river in 2021. I start with a description of their parallel resolutions and situate them in the sociopolitical context from which they developed. Part of this context are relations between Indigenous and non-Indigenous governance. Nature's rights may be framed as a forged space in democratic states whereby Indigenous legal orders and collective rights can be realised.[1] Scholars have also explored how Indigenous philosophies or cosmologies interact with rights for nature in three ways: as the conceptual source or foundation of nature's rights; as one side of a "cultural bridge" between Indigenous and non-Indigenous peoples that manifests via nature's rights; and as one part of an assemblage of social, political, and legal factors that lead to specific cases of nature's rights.[2] Scholars working from this final viewpoint emphasise that there is no fixed or stable connection between Indigenous peoples and nature's rights.[3] Thus, although there is no consensus on the connections between nature's rights and Indigenous peoples, scholars have still heavily investigated and, as a

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I would like to thank Seth Epstein, Victoria Enkvist and Lori G. Beaman for their helpful comments and suggestions on this article. I am grateful to the Centre for Multidisciplinary Research on Religion and Society (CRS) at the University of Uppsala for hosting me (January to April 2023) through a Mitacs Globalink Award, which offered me the opportunity to develop many of the ideas presented in this article. Special thanks are owed to Seth Epstein for his guidance and insightful conversations during that time. I am also grateful to the Centre for Studies in Religion and Society (CSRS) at the University of Victoria for hosting me as an Ian H. Stewart Graduate Fellow (2021–2022) when I first started this research.

[1] Seth Epstein et al. explore a tension between the liberal prioritisation of individual rights and the collective rights often associated with rights of nature. They suggest that rights of nature are one way that Indigenous collective rights may be realised beyond a narrow framework of individual rights or property rights. Seth Epstein et al., "Liberalism and Rights of Nature: A Comparative Legal and Historical Perspective," *Law, Culture and the Humanities* (2022): 19.

[2] Matthias Petel, "The Illusion of Harmony: Power, Politics, and Distributive Implications of Rights of Nature," *Transnational Environmental Law* 13, no. 1 (2024): 28–31.

[3] Ibid.

result, strengthened this connection from their own post-colonial positions.

Understanding the social dimensions of nature's rights also requires consideration of religion's social significance. Religious ideas affect moral values and behaviours in ordinary social life and institutional settings like law. This point is particularly true for western settler societies with a history of religious majoritarianism. There is some consideration of religion in the nature's right literature. Teresa A. Velásquez explores how, following Ecuador's establishment of Pachamama's constitutional rights in 2008, Andean cosmologies and symbolism were mobilized by Catholic leaders in the anti-mining movement. She describes how Catholic priests, leading outdoor masses, turned rivers and watersheds into "emblems of Pachamama" in a way that aligns with Catholic theology.[4] Scholars have also considered the place of Hinduism in the Uttarakhand High Court's reasoning for granting legal personhood to the Rivers Ganga and Yamuna in 2017.[5] Rather than comprising a specific area of interest, however, 'religion' most often appears in a more passing manner as one perspective among others (i.e., 'religious, philosophical and cultural views') that can inform rights of nature.[6]

Another aspect to nature's rights, which constitutes a larger gap in the literature, is nonreligion. In this article I draw inspiration from the work of Lori G. Beaman, who argues that nonreligion has "opened space for an imaginary of equality in which the human relationship with non-human animals and the world around us is in the process of being renegotiated."[7] I propose that nature's rights can emerge from within this space. In societies that have experienced a rise in the number of individuals who identify as having no religious affiliation—sometimes called 'nones'—nonreligion in addition to religion shapes how human/nonhuman relationships are constructed. According to census data, the number of individuals with no religious affiliation in Canada increased from 16.5% in 2001 to 34.6% in 2021.[8] In New Zealand (which has gained much attention in the nature's rights literature) those who say they have no religion increased from 29.6% in 2001 to 48.2% in 2018.[9] Those with no religion in Australia increased from 16.7% in 2001 to 38.9% in 2021.[10] The nonreligious include self-identified atheists, humanists and agnostics, the spiritual but not religious, and those who are indifferent to religion. Research on the nonreligious started to gain momentum among social scientists in the mid 2000s.[11] The intersection of nonreligious values with law is a more recent

[4] Teresa A. Velásquez, *Pachamama Politics: Campesino Water Defenders and the Anti-Mining Movement in Andean Ecuador* (Tuscan: University of Arizona Press, 2022), 86–100.

[5] Marco Immovilli et al., "Exploring Contestation in Rights of River Approaches: Comparing Colombia, India and New Zealand," *Water Alternatives* 15 (2022): 547–591; Kelly D. Alley, "River Goddesses, Personhood and Rights of Nature: Implications for Spiritual Ecology," *Religions* 10, no. 9 (2019): 502.

[6] An early and notable exception is Roderick Frazier Nash's *The Rights of Nature* (1989), in which Nash dedicates a chapter to the 'greening of religion' with a largely theological focus.

[7] Lori G. Beaman, "Collaboration Across Difference: New Diversities and the Challenges of Our Times," in *Nonreligious Imaginaries of World Repairing*, eds. Lori G. Beaman and Timothy Stacey (Springer, 2021), 138.

[8] "Ethnocultural and religious diversity," Statistics Canada, accessed 5 May 2024. https://www.statcan.gc.ca/en/census/census-engagement/community-supporter/ethnocultural-and-religious-diversity.

[9] "Losing our religion," Statistics New Zealand, "https://www.stats.govt.nz/news/losing-our-religion.

[10] "Religious affiliation in Australia," Australian Bureau of Statistics, accessed 5 May 2024. https://www.abs.gov.au/articles/religious-affiliation-australia.

[11] Jesse M. Smith and Ryan T. Cragun, "Mapping Religion's Other: A Review of the Study of Nonreligion and Secularity," *Journal for the Scientific Study of Religion* 58, no. 2 (2019): 319–355.

and underexplored subarea of research.[12] I follow the approach of Cory Steele in treating law as a site to explore nonreligion's influence on shifting ideas of morality.[13]

The purpose of this article is to explore the relevance of religion and nonreligion for a comprehensive grasp on nature's rights. This entails investigating both the overt and more subtle or elusive factors at play in the theory and practice of nature's rights. Though I focus on the Canadian context, I attempt to show the relevance of (non)religion for a comprehensive understanding more generally. I first turn to the resolutions granting rights to a river in Québec, illustrating the sociopolitical landscape in which these rights arose. I then discuss the residual influence of Christianity on social norms in Canadian society, specifically in the area of human/nonhuman relations. These relations, which are reflected in and mediated by law, have traditionally been structured in accordance with religious ideas of dominion or stewardship. Nature's rights may exemplify a shift away from the dominion or stewardship models for human/nonhuman relations, and towards a more horizontal one that invokes equality. This shift is made possible in part by the rise of nonreligion.[14]

Finally, I discuss research findings on how individuals opposed to an oil pipeline project in western Canada imagine their moral relationships with nonhuman beings. These relationships offer insights into how nonreligion is 'lived,' or how ordinary individuals imagine their encounters with nonhumans outside of religious language or ideas.[15] I define these moral relationships through a lens of ecological justice. At its foundation, the concept of ecological justice is non-hierarchical in that it attributes rights to nature or nonhumans for their own sake. The community of justice is not exclusive to a human species membership. Through this research, a thread is tied between 'on the ground' manifestations of ecological justice and nature's rights in the realm of law, where ecological justice finds its institutional expression. This connection is not a causal one; it is rather complementary and intended to show how nonreligion contributes to the foundation upon which nature's rights materialise in western settler societies.

The Magpie River/Mutehekau Shipu Resolutions

The Magpie River (English) or Mutehekau Shipu (Innu) in the province of Québec[16] was granted legal personhood through parallel resolutions adopted by the Innu Council of Ekuanitshit

[12] Cory Steele, "Nonreligion as a Substantial Category in Canadian Law: *Canada (Attorney General) v. Bedford*," *Implicit Religion* 23, no. 1 (2020): 30.

[13] Cory Steele demonstrates changing conceptualizations of dignity in relation to physician-assisted dying, for example, in Canadian law in the context of growing nonreligiosity. Through analysing Supreme Court of Canada decisions and intervenor factums, he maps how dignity has become associated with immanent or 'this-worldly' factors like agency and autonomy, whereas a more traditional framework rooted in Christianity positioned human dignity as inviolable and rooted in a transcendent source. See Cory Steele, "More Than the Absence of Religion: Nonreligion and its Positive Content in Canadian Law" (PhD diss., University of Ottawa, 2023).

[14] Beaman, "Collaboration Across Difference."

[15] For discussions of 'lived nonreligion' see Douglas Ezzy, "Afterword: Towards an Understanding of Being Human," in *Nonreligious Imaginaries of World Repairing*, eds. Lori G. Beaman and Timothy Stacey (Springer, 2021), 141–150; Anna Sofia Salonen, "Living and Dealing with Food in an Affluent Society—A Case for the Study of Lived (Non)Religion," *Religions* 9, no. 10 (2018): 306; Peter Beyer, "From Atheist to Spiritual But Not Religious: A Punctuated Continuum of Identities among the Second Generation of Post-1970 Immigrants in Canada," in *Atheist Identities – Spaces and Social Contexts*, eds. Lori G. Beaman and Steven Tomlins (Springer, 2015), 137–151.

[16] The number of Québec residents who reported no religious affiliation was 6% in 2001 and 27.3% in 2021.

in January 2021,[17] and the Minganie Regional County Municipality in February 2021.[18] The Magpie River now possesses nine fundamental rights: the right to live, exist and flow; the right to respect for its natural cycles; the right to evolve naturally, to be preserved and protected; the right to maintain its natural biodiversity; the right to maintain its integrity; the right to perform essential functions within its ecosystem; the right to be free from pollution; the right to regeneration and restoration; and lastly the right to sue, which is done by way of Guardians appointed by the municipality and Innus of Ekuanitshit. Each resolution made note of 'the worldwide movement to recognise rivers as entities with rights,' as well as the 'Indigenous communities around the world' working to ensure that both humans and ecosystems have fundamental rights.

Though rights of nature are often framed as a global movement, Mihnea Tănăsescu reminds us that such rights are not a "monolith" and emerge from specific political processes.[19] Settler colonialism informs the power relations in which these dual resolutions are embedded. Indeed, Yenny Vega Cárdenas and Uapukun Mestokosho state that the Magpie River/ Mutehekau Shipu resolutions "encompasses a decolonial process that advances reconciliation."[20] The concept of reconciliation between Indigenous and non-Indigenous peoples was propelled by the federal government and the formation of the Truth and Reconciliation Commission in 2008. This commission was created as part of a class-action settlement (the largest in Canadian history) that addressed the legacy of the residential school system. Residential schools operated across Canada from 1831 to 1997.[21] They were established by the federal government and run by churches. Their goal was "to separate children from their families, culture, and identity."[22] They were part of a broader colonial project operating on extractive views of land as wealth, power and control: "To gain control of the land of Indigenous people, colonists negotiated Treaties, waged wars of extinction, eliminated traditional landholding practices, disrupted families, and imposed a political and spiritual order that came complete with new values and cultural practices."[23]

The Magpie River resolutions demonstrate a concrete effort by non-Indigenous actors to incorporate Innu law into political decision-making.[24] That being said, reconciliation is a process with "vast and unexplored territory,"[25] and it

[17] The Innu Council of Ekuanitshit, Resolution No. 919–082 (18 January 2021).

[18] Regional County Municipality of Minganie, Resolution No. 025-21, Reconnaissance de la personnalité juridique et des droits de la rivière Magpie – Mutehekau Shipu (16 February 2021).

[19] Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (Transcript verlag, 2022), 16.

[20] Yenny Vega Cárdenas and Uapukun Mestokosho, "Recognizing the Legal Personhood of the Magpie River/Mutehekau Shipu in Canada," in *A Legal Personality for the St. Lawrence River and other Rivers of the World* (Editions JFD, 2023), 119.

[21] The last residential school closed in Inuvik, Northwest Territories in 1997 but it was not federally funded. The last federally funded school closed just one year earlier (1996) in Punnichy, Saskatchewan.

[22] Truth and Reconciliation Commission of Canada, "Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada" (2015), 5.

[23] Ibid., 45.

[24] The municipality's resolution states: "Whereas the recognition of the rights of Nature in a context of legal pluralism encourages the recognition of Indigenous legal traditions, since the legal norms enshrined in these traditions are based on a symbiotic relationship with the territory" (Translated from French to English by Mathilde Vanasse-Pelletier).

[25] Joshua Nicols, "'We Have Never Been Domestic:' State Legitimacy and the Indigenous Question," in *Braiding Legal Orders: Implementing the United Nations Declaration on the Rights of Indigenous Peoples*, eds. John Borrows, Larry Chartrand, Oonagh E. Fitzgerald, and Risa Schwartz (Montreal & Kingston: McGill-Queen's Press, 2023), 40.

has been met with some skepticism.[26] It is difficult to imagine, for instance, how similar resolutions would stand if they were to challenge the economic interests of the province or state.[27] Or, perhaps it is not unreasonable to think that the state might be more willing to grant rights to nature than to Indigenous nations, particularly when it comes to land or territory rights, including jurisdictional authority.[28] There exists "significant power asymmetries between Indigenous and non-Indigenous peoples" in Canada.[29] Attributing rights to nature as seen with the Magpie River can confront these power asymmetries, offering opportunities for respect, collaboration and mutual understanding, but they do not solve them.

Rights of nature reflect and offer an entry point to better understand the society from which they emerge. That is to say, "law is societally bound – it is only law within the society that created it."[30] Canadian society is experiencing a heightened awareness among the settler population of the ongoing impacts of colonialism. This process has many aspects, including a growing knowledge of Canada's legal pluralism and the resurgence of Indigenous law.[31] Such awareness is part of what Lori G. Beaman calls 'the new diversity' of Canadian society, which has four components: a recent, rapid increase in the number of religious 'nones'; a decrease in affiliation to institutional religion, especially Christianity; an increased presence of non-Christian religions due to accelerated migration; and a "renewed" understanding of the impacts of colonisation on Indigenous peoples,[32] including their cultural and spiritual practices.[33] This final aspect of the new diversity plays a large role in the political processes leading up to the Magpie River resolutions. Yet religion and nonreligion also form part of the social backdrop.

The Relevance of (Non)Religion

In societies with a history of hegemonic religion, traditionally religious concepts and language continue to shape socially constructed responses to contemporary issues, including those of the climate and ecological crises. Christopher D. Stone acknowledged in his 1972 article and later book *Should Trees Have Standing?* that granting rights has "socio-psychic aspects."[34] An associa-

[26] Kyle Powys Whyte, "On Resilient Parasitisms, or Why I'm Skeptical of Indigenous/Settler Reconciliation." In *Reconciliation, Transitional and Indigenous Justice*, eds. Krushil Watene and Eric Palmer (London: Routledge, 2020), 155–167.

[27] In this case granting rights to the Magpie River was tied to the economic benefits of tourism.

[28] Tănăsescu, *Understanding the Rights of Nature*, 152.

[29] Veldon Coburn and Margaret Moore, "Occupancy, Land Rights and the Algonquin Anishinaabeg," *Canadian Journal of Political Science* 55, no. 1 (2022): 16.

[30] Val Napoleon, "Thinking About Indigenous Legal Orders," in *Dialogues in Human Rights and Legal Pluralism*, eds. René Provost and Colleen Sheppard (Springer 2012), 232.

[31] Kelty McKerracher, "Relational Legal Pluralism and Indigenous Legal Orders in Canada," *Global Constitutionalism* 12, no. 1 (2023), 133–153; John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (University of Toronto Press, 2002).

[32] Lori. G Beaman, "*Recognize the New* Religious *Diversity*." *Canadian Diversity* 14 (2017), 19.

[33] In 2022 the British Columbia Court of Appeal concluded in *Servatius v. Alberni School District No. 70* that a smudging demonstration by a Nuu-Chah-Nulth Elder and a hoop dancer's prayer at a public elementary school did not violate the state duty of religious neutrality. Situating the events of the case in sociohistorical context, the court referenced residential schools and the indoctrination of Indigenous children into Christianity, and further noted that children at these schools were "harshly" punished "if they spoke their own languages and engaged in their own cultural practices" (*Servatius v. Alberni School District No. 70*, 2022 BCCA 421, at para. 102). See also Lauren Strumos, "Indigenous practice as culture in the Alberni case," *Nonreligion and Secularity*, April 3, 2023, https://thensrn.org/2023/04/03/indigenous-practice-as-culture-in-the-alberni-case/.

[34] Christopher D. Stone, "Should Trees Have Standing?—Toward Legal Rights for Natural Objects," *Southern California Law Review* 45 (1972), 458; Christopher D. Stone, *Should Trees Have Standing? Law, Morality, and*

tion between Christianity and morality has influenced these "socio-psychic aspects" in western societies. To be sure, there is no intrinsic relationship between religion and morality, nor is there one between morality and law. Tănăsescu states: "For Stone, as well as for many of his followers, the question of legal standing for nature is intrinsically tied to its moral standing: nature should have legal standing because it is morally worthy as such."[35] Yet nature's moral standing does not equate to its legal standing. As noted, nature's rights rather emerge from specific political processes shaped by social context—and religion is part of 'the social.' I follow Stone who noted that there exists "a number of developments in the law that may reflect a shift from the view that nature exists *for men*."[36] I aim to highlight some social aspects of this shift in relation to religion.

This shift proposed by Stone (away 'from the view that nature exists for humans') is often described as one away from the dominion model.[37] The concept of human dominion was brought to the fore by Lynn White Jr. in his oft-cited 1967 article, "The Historical Roots of Our Ecological Crisis," in which he attributed the crisis to medieval Christian dogma. This dogma for White separated 'man' and 'nature' (the latter including animals) into a conceptual dualism with disastrous consequences. Humans started to view their exploitation of nature as a matter of divine will, so that their 'rule' over creation was limitless like that of an all-powerful god. This exploitation later informed a coupling of science and technology, which operated on ideals of natural theology and perpetual progress.[38] White concluded:

> Their [technology and science] growth cannot be understood historically apart from distinctive attitudes toward nature which are deeply grounded in Christian dogma. The fact that most people do not think of these attitudes as Christian is irrelevant. No new set of basic values has been accepted in our society to displace those of Christianity. Hence we shall continue to have a worsening ecologic crisis until we reject the Christian axiom that nature has no reason for existence save to serve man.[39]

White was not concerned with Christian dogma for its own sake. He arrived at this understanding through his efforts, as an historian, to investigate the dynamics behind the ecological crisis. Through this effort he offered a broader lesson: "What people do about their ecology depends on what they think about themselves in relation to things around them."[40] Science and technology constituted this 'doing' for White, but his argument may also extend to law. Scholars have noted, for instance, that the notion of dominion is reflected in and perpetuated by laws that frame animals as property.[41] It is not that such laws

the Environment (New York: Oxford University Press, 2010), 4.

[35] Tănăsescu, *Understanding the Rights of Nature*, 22.

[36] Stone, "Should Trees Have Standing? (1972), 489. Emphasis in original.

[37] Stone (Ibid., 26) states: "It is commonly being said today, for example, that our present state of affairs—at least in the West—can be traced to the view that Nature is the dominion of Man, and that this attitude, in turn, derives from our religious traditions."

[38] Stone, like White, presented a critical view of dominion, but he also cited other "intellectual influences" and Darwin as additional reasons "for our present state of affairs" (Stone 2010, 26).

[39] Lynn White Jr., "The Historical Roots of Our Ecological Crisis," *Science* 155 (1967), 1207.

[40] Ibid.

[41] Gail Morgan, "The Dominion of Nature: Can Law Embody a New Attitude" *Bulletin of the Australian Society of Legal Philosophy* 18 (1993), 45; see also Gary L. Francione, *Animals, Property, and the Law* (Temple University Press, 1995); Lesli Bisgould, "Gay Penguins and Other Inmates in the Canadian Legal System," in *Critical Animal Studies: Thinking the Unthinkable*, ed. John Sorenson (Canadian Scholar's Press, 2014), 154–165; James Gacek,

are categorically religious or Christian. There is rather a Christian residue in societies with a history of Christian majoritarianism, which lingers in the social imaginary and normative notions that underlie political institutions.[42] This residue can be found in laws that mediate human/nonhuman relations.[43]

In response to White, many theologians argued that the 'correct' Christian position is one of stewardship and not dominion. The concept of stewardship does not place human beings in a transcendent position over the rest of creation. Instead, it situates humans among creation as creatures or animals themselves, while reserving for them a special duty to care for creation on behalf of god. In *Is it Too Late? A Theology of Ecology*, originally published in 1972 (the same year Stone first published his article) John B. Cobb Jr. directly opposed White's thesis by arguing for kinship. He stated:

> The fundamental duality lies between creator and creature, not between the human species and other animals. Yet the story speaks of God creating humans in the divine image, thus lifting them above the rest, and Christian theology has focused more upon the image of God than upon human cocreaturehood with other animals […] It is the image of cocreaturehood that we need now to recover without the loss of the biblical sense of humanity as the apex of creation.[44]

Humans are situated on the latter side of the creator/created dualism, but they are still distinct in being made in the divine image. In this image they are to be god's earthly caretakers. Hence humans may be one part of a larger creation, but the scales of equality remain tilted due to human advantage. This advantage may appear in the form of "privileging human consciousness."[45] That is, among creation, only humans *can know* whether they are participating in creation as its masters or morally as its stewards. The latter has not escaped dominion's hubris, in that stewardship requires humans to be 'smart enough' to learn what animals and nature require of them.

The distinction between dominion and stewardship hinges on the moral value attributed to nature. Though stewardship challenges the mechanist or instrumental view of nature found in the dominion model, it still assigns intrinsic value without conceding human superiority.[46] Elizabeth A. Johnson states: "The stewardship interpretation of the mandate to have dominion honors the singularity that the human species undoubtedly is while firmly connecting our powers with a moral responsibility to act for the well-being of other species."[47] The idea that humans assume "moral priority" while standing alongside creation is described by Frederick V. Simmons

"Confronting Animal Cruelty: Understanding Evidence of Harm Towards Animals," *Manitoba Law Journal* 42, no. 4 (2019): 315–342.

[42] Beaman, "Collaboration Across Difference," 131; David Seljak, "Protecting Religious Freedom in a Multicultural Canada," *Canadian Diversity* 9, no. 3 (2012): 8–11.

[43] It is interesting to note that Québec amended its provincial civil code in 2015 to consider animals as "sentient beings" with "biological needs" (though this still falls under the code's section on 'property'). This amendment was acknowledged in the Magpie River/Mutehekau Shipu resolutions. Civil Code of Québec 2015, c. 35, a. 1.

[44] John B. Cobb Jr, *Is it Too Late? A Theology of Ecology* (Fortress Press, 2021), 66.

[45] Tănăsescu, *Understanding the Rights of Nature*, 28.

[46] Friedrich Lohmann, "Climate Justice and the Intrinsic Value of Creation: The Christian Understanding of Creation and its Holistic Implications," in *Religion in Environmental and Climate Change: Suffering, Values, Lifestyles*, eds. Dieter Gerten and Sigurd Bergmann (Bloomsbury, 2011), 85–106.

[47] Elizabeth A. Johnson, *Ask the Beasts: Darwin and the God of Love* (London: Bloomsbury, 2014), 266.

as a "hierarchical non-anthropocentrism."[48] In a smaller area of scholarship, theologians are seeking new ways to imagine human/nonhuman relations beyond stewardship.[49] Works on stewardship remain most prominent, however, due in part to the concept's application to other moral issues.

For instance, stewardship has been amended for relations in the Anthropocene. Christoph Baumgartner proposes a form of "planetary stewardship" in which humans are obliged to maintain "a hospitable climate for future generations" rather than god.[50] Willis Jenkins also details a generational account of stewardship in which humans likewise hold obligations on behalf of future generations.[51] This can be combined with a theocentric stewardship, "if the direct obligation to God is understood as a practical command to care for a trust for the sake of future generations."[52] Each of these accounts share a view of humans as entrusted moral actors, with motivations to act located beyond immanent time and space (i.e., god or the future of a climate-changed world). In asserting the significance of distinguishing the 'Anthropocene' from the 'Holocene,' Paul Crutzen and Christian Schwägerl state: "Rather than representing yet another sign of human hubris, this name change would stress the enormity of humanity's responsibility as stewards of the Earth. It would highlight the immense power of our intellect and our creativity, and the opportunities they offer for shaping the future."[53] The origin of "human responsibility as stewards" is left undefined, but the "immense power" of humans is offered in terms of our cognitive ability, not *imago Dei*.

An ethic of stewardship has also informed environmental law. It is found in property rights, obligations placed of landowners, and in efforts to enable environmental responsibility.[54] The *Canadian Environmental Protection Act, 1993* states, for example, that "principles to be considered in the administration of the Act" include the "principle of intergenerational equity, according to which it is important to meet the needs of the present generation without compromising the ability of future generations to meet their own needs."[55] This link between environmental protection and future generations is made possible in part by an imaginary of stewardship. There are 'the stewards' (human protectors from the present generation) and 'the stewarded' (the environment protected on behalf of future humans).[56] When stewardship in-

[48] Frederick V. Simmons, "What Christian Environmental Ethics Can Learn from Stewardship's Critics and Competitors," *Studies in Christian Ethics* 33, no. 4 (2020): 529–548.

[49] David P Warners and Matthew Kuperus Heun, eds., *Beyond Stewardship: New Approaches to Creation Care* (Grand Rapids: Calvin College Press, 2019).

[50] Christoph Baumgartner, "Transformations of Stewardship in the Anthropocene," in *Religion and the Anthropocene*, eds. Celia Deane-Drummond, Sigurd Bergmann and Markus Vogt (Wipf and Stock, 2017), 63.

[51] Willis Jenkins, *The Future of Ethics: Sustainability, Social Justice, and Religious Creativity* (Georgetown University Press, 2013), 298.

[52] Ibid.

[53] Paul Crutzen and Christian Schwägerl, "Living in the Anthropocene: Toward a New Global Ethos," *YaleEnvironment360*, January 24, 2011, https://e360.yale.edu/features/living_in_the_anthropocene_toward_a_new_global_ethos.

[54] Emily Barritt, "Conceptualising Stewardship in Environmental Law," *Journal of Environmental Law* 26, no. 1 (2014), 1–23.

[55] *Canadian Environmental Protection Act, 1993* Section 5.1 para. a.2.

[56] This observation is supported by works that start with a description of 'religious stewardship' prior to its description as a legal principle for land management or ownership. Emma Lees explains, for example, that while religious or moral motivations for stewardship are relatively straightforward, stewardship as a legal principle must include justification for obligations imposed on landowners. She proposes a harm-based approach to stewardship in property law, which requires taking into account the collective interests of future generations of land users. Emma Lees, "Property in the Anthropocene," in *William and Mary Environmental Law and Policy Review* 43, no. 2 (2018), 561.

tersects with intergenerational concerns, a view towards future generations satisfies an impetus for moral action located beyond immanent time and space. This can also be seen in notions of stewardship, as indicated above, that privilege human consciousness. Each reflects the priority given to transcendence and cognition by Christian metaphysics.[57]

Rights of nature in law, unlike environmental protection, challenge this form of Christian residue. The shift from dominion to stewardship was about reconstituting human identity. Intrinsic value may be assigned to nature, but this value was conferred in a way that helps explain human uniqueness in terms of care and not mastery. Rights of nature recast nonhumans from object to subject, elevating their status to that of other legal persons. Or, through obtaining rights, nature is no longer backgrounded in law as a resource in need of our protection. Nature's rights defy another barrier used to divide humans off from 'the rest', so that nature becomes worthy of consideration for its own sake, no longer inferior to the political domain of rights holders.[58] Stewardship softens this divide but does not fully overcome it, as it still limits the inherent value of nature in order to bolster our identity as caretaker. Unlike dominion or stewardship, then, rights of nature in law create an opportunity to use language of 'equality' when describing human/nonhuman relations, without the need for 'on behalf of' reasoning that calls on god or future generations. Such reasoning is still evident in nature's rights by way of legal guardians who represent nature's interests. This reasoning results from the need for *representation*, as opposed to a moral *justification* for why nature is worthy of rights in the first place. Representation in practice necessarily entails the centring of human outlooks and communication. This practice does not, however, exclude taking into account the interests of other beings or entities for their own sake.[59]

This optimistic view does not overshadow the difficulties involved in granting nature's rights in practice. One issue is competing concepts of 'nature,' which like those of 'religion,' derive "meaning from the wider frameworks in which they are embedded."[60] For instance, in 2017, the Supreme Court of Canada ruled that the Ktunaxa Nation's constitutional right to religious freedom was not violated by the provincial government's decision to allow a ski resort development on their sacred site.[61] The resort was to be built on Qat'muk, the home of Grizzly Bear Spirit, and the Ktunaxa Nation affirmed that any development on this land would cause Grizzly Bear Spirit to depart, permanently disrupting their religious practice and community. In reaching its decision the Court employed a narrow view of religious freedom, one that privileges a Christian (specifically protestant) conception of religion as belief.[62] It concluded that the state is not obligated "to protect the object of beliefs, such as Grizzly Bear Spirit. Rather, the state's duty is to protect everyone's freedom to hold such beliefs and to manifest them in worship and practice or by teaching and dissemination."[63] This approach renders conceptions of religion as grounded in collective

[57] Ezzy, "Towards an Understanding of Being Human," 144.

[58] Val Plumwood, *Feminism and the Mastery of Nature* (Routledge, 1993).

[59] Ibid., 213.

[60] Linda Woodhead, "Five Concepts of Religion," *International Review of Sociology* 21, no. 1 (2011), 122.

[61] *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations),* 2017 SCC 54, [2017] 2 SCR 386.

[62] Nicholas Shrubsole, *What Has No Place, Remains: The Challenges for Indigenous Religious Freedom in Canada Today* (University of Toronto Press, 2019).

[63] *Ktunaxa Nation* at para. 71.

relationships, including relations to land, as inferior to those based on individual belief.

That decision-makers must reason which natural entities merit rights (and that judicial or quasi-judicial bodies determine whether these have been infringed upon) likewise entails an opportunity to maintain power asymmetries. In western settler societies, rights have not been granted to nature in totality or to all rivers in a jurisdiction; rights are attributed to specific natural entities whose distinctiveness must be defined in the process. In the Magpie River resolution, the river's particularness was defined by its contribution to the municipality's 'social, environmental and economic well-being.' Economic wellbeing was specifically tied to the river's importance to the tourism sector. These reasons, though dependent upon human valuation, do not cancel out the river's own ends or interests, nor does it deny that there are shared interests between humans and the river. That is, the river's right to flow is not only in the river's own interest, but those humans financially dependent upon the tourism sector. The Innu Council of Ekuanitshit resolution also mentions tourism, but unlike the municipality's, it also includes the 'sacred character' of the river as a source of 'cultural and spiritual activities.' It further states that 'the Innu of Ekuanitshit have the inherent right to maintain and strengthen their special spiritual ties to the territory,'[64] including the river.

A critical consideration of nature's rights requires concepts like 'sacred' to not be taken for granted, especially when the sacredness of natural sites can aid in justifying legal personhood for nature.[65] Differences or even tensions between Indigenous and non-Indigenous philosophies may otherwise be glossed over. Jeanine LeBlanc and Paul Gareau explain that "Indigenous spirituality is often framed as a cultural element that stands in contradistinction to Western definitions of religion as a transcendent, metaphysical framework that is teleological, institutional, hierarchical, and authoritarian."[66] This hierarchical character is evident in attempts to make nature 'more equal' by redefining it as sacred. In western thought, rationality and sentience have served as reasons to separate humans from 'the rest.'[67] Religion (including the religious idea of human sanctity) has operated as another marker of human identity, which, as Ngaire Naffine explains, has influenced who counts as legal persons.[68] The bestowing of 'sacredness' upon nature can (but not inescapably) constitute an attempt to overcome this difference by incorporating nature into the human side of the human/nature dualism. This move does not resonate with the holism of Indigenous knowledges and their absence of dualistic constructs like sacred/profane.[69]

Ecological Justice and Moral Considerability

The rise of nonreligion may be creating opportunities to locate and challenge the hierarchy perpetuated by the logic and language of stew-

[64] Translated from French to English by Mathilde Vanasse-Pelletier.

[65] John Studley, *Indigenous Sacred Natural Sites and Spiritual Governance: The Legal Case for Juristic Personhood* (Routledge, 2019).

[66] Paul Gareau and Jeanine LeBlanc, "Our Spiritual Relations: Challenging Settler Colonial Possessiveness of Indigenous Spirituality/Religion," *Anthropologica* 65, no. 1 (2023), 3.

[67] Plumwood, *Feminism and the Mastery of Nature*.

[68] Ngaire Naffine, *Law's Meaning of Life: Philosophy, Religion, Darwin and the Legal Person* (Hart Publishing, 2009).

[69] Paul L. Gareau, "Storied Places and Sacred Relations: Métis Density, Lifeways, and Indigenous Rights in the Declaration," in *Honouring the Declaration: Church Commitments to Reconciliation and the un Declaration on the Rights of Indigenous Peoples* (University of Regina Press, 2021), 137–138; Margaret Kovach, "Doing Indigenous Methodologies: A Letter to a Research Class," in *The SAGE Handbook of Qualitative Research*, eds. Norman K. Denzin and Yvonna S. Lincoln (SAGE, 2018), 393.

ardship. Beaman states: "Nonreligion opens the space to escape the confines of the harmful collaboration between stewardship and 'Big Science', allowing us to reimagine the world in ways that facilitate flourishing or living well together."[70] Rights of nature can emerge from within this space. The term 'Big Science' is borrowed from Bruno Latour by Beaman and is the type of science critiqued by Lynn White. It is not the 'earth sciences,' but science operationalised for politicized ends that serve the interests of nature's masters. Nonreligion is not above 'Big Science,' and it certainly does not equate to any sense of morality.[71] The key point is that there is an unprecedented rise in nonreligion, and this brings opportunity to reshape expectations or norms in social and political life. Rights of nature provide a legal framework that grassroots actors mobilize to defend nonhuman entities from anthropogenic harm. The success of this process is explained by several factors, including collaboration between Indigenous and non-Indigenous governance.[72] I propose that in certain social contexts another factor is the demographic changes in religion and nonreligion. In an effort to add credence to this claim I now turn to a brief empirical example.

In my research I explore the significance of religion and nonreligion for how individuals construct their moral relationships during an era of planetary crisis. Morality in this context is defined by theories of ecological justice. Nicholas Low and Brendan Gleeson first proposed ecological justice (EJ) as a way to blur "the sharp moral distinction between the human and nonhuman world" traditionally found in liberal theories of justice.[73] Indeed, political philosophers like John Rawls and Brian Barry explicitly excluded nonhumans from the realm of justice.[74] They were not beyond moral concern, but issues of justice were specifically reserved for humans as moral agents. EJ theories position nonhuman life as having rights to the environmental conditions they require to live and often flourish. It encompasses what western thought traditionally deems to be sentient and nonsentient life.[75] Crucial to EJ is that nonhumans are situated in the community of justice for their own sake. It is a representation of interspecies egalitarianism.[76] Of course, a line is still maintained between humans and the rest, in that humans are owed environmental justice and nonhumans are owed ecological justice.[77] More recent works have sought to conceptualise justice in less divisive terms, such as 'multispecies justice'[78] and 'plan-

[70] Lori G. Beaman, "Reclaiming Enchantment: The Transformational Possibilities of Immanence," *Secularism and Nonreligion* 10, no. 8 (2021), 9.

[71] Ezzy, "Towards an Understanding of Being Human."

[72] Kauffman and Martin locate points of similarity and difference across nature's rights in the United States, Ecuador and New Zealand, with one commonality being: "Indigenous and non-Indigenous local communities, concerned with the degradation of local ecosystems on which they depend, searched for new legal tools to expand their authority to protect these ecosystems. Given the inadequacy of existing legal frameworks, these communities sought new laws that strengthened their legal standing to protect Nature, ultimately producing RoN laws." Craig M. Kauffman and Pamela L. Martin, *The Politics of Rights of Nature* (MIT Press, 2021), 76.

[73] Nicholas Low and Brendan Gleeson, *Justice, Society and Nature: An Exploration of Political Ecology* (Routledge, 1998), 46.

[74] Brian Barry, "Sustainability and Intergenerational Justice," in Fairness and Futurity: Essays on Environmental Sustainability and Social Justice, ed. Andrew Dobson (Oxford, 1999), 44–45; John Rawls, *A Theory of Justice* (Harvard University Press, 1971), 512.

[75] Brian Baxter, *A Theory of Ecological Justice* (Routledge, 2004); Katy Fulfer, "The Capabilities Approach to Justice and the Flourishing of Nonsentient Life," *Ethics & The Environment* 18, no. 1 (2013): 19–42.

[76] Val Plumwood, *Environmental Culture: The Ecological Crisis of Reason* (Routledge, 2002).

[77] David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press, 2007).

[78] Danielle Celermajer et al., "Multispecies Justice: Theories, Challenges, and a Research Agenda for Environmental Politics," *Environmental Politics* 30, nos. 1–2

etary justice.'[79] The distinction of ecological justice is still empirically useful, however, as it can help capture where the moral line between humans and nonhumans remains stark and where it becomes blurred.

As its rights-based logic suggests, ecological justice finds institutional expression in legal rights of nature.[80] There are incongruities, however, between EJ theories and the actual implementation of nature's rights. Scholars of EJ are partial to the idea of flourishment.[81] Craig M. Kauffman and Linda Sheehan observe that some legal instruments for nature's rights recognise a right to flourish, whereas others set more basic standards like avoiding species extinction.[82] Nevertheless, EJ and nature's rights both depart from a place of redefining *who* has rights. In this way they each challenge the power imbalance maintained in the "human largess" of stewardship: "While many liberal states have long had laws placing obligations on humans with respect to harming animals or the environment, more recent developments expressly recognise the personhood of beings other than humans. Such beings then enter the political landscape as rights holders, and not merely recipients of human largesse – a distinction definitional to the very idea of justice."[83]

I aim to capture how notions of EJ manifest in the 'on the ground' perspectives, relationships, and experiences of religious and non-religious individuals who actively opposed an oil pipeline project. This project, called the Trans Mountain Expansion project, entailed the twinning of an existing interprovincial oil pipeline in western Canada. The new pipeline became operational in May 2024 with the capacity to carry approximately 890,000 barrels of crude oil per day from the province of Alberta to a marine terminal in Burnaby, British Columbia. It was purchased by the federal government in 2018 and later reapproved by it in June 2019,[84] just one day after the House of Commons passed a motion to recognise that Canada is in a climate emergency.[85] Opposition to this project focused on its adverse impacts on human health, water bodies, trees, climate change, animals, land, and the rights of Indigenous peoples, as the pipeline will impact the unceded territories of several Indigenous nations, some of whom did not offer their free, prior and informed consent to the project.[86] I conducted a total of thirty semi-structured interviews with non-Indigenous or settler

(2021), 119–140; Christine J. Winter, "Introduction: What's the Value of Multispecies Justice?" *Environmental Politics* 31, no. 2 (2022): 251–257.

[79] John S. Dryzek and Jonathan Pickering, *The Politics of the Anthropocene* (Oxford University Press, 2018).

[80] Wienhues, *Ecological Justice and the Extinction Crisis*, 11, 28.

[81] See, for example, Baxter, *A Theory of Ecological Justice*, 56, 139.

[82] Craig M. Kauffman and Linda Sheehan, "The Rights of Nature: Guiding Our Responsibilities through Standards," in *Environmental Rights: The Development of Standards*, eds. Stephen J. Turner et al. (Cambridge University Press, 2019), 366.

[83] Celermajer et al., "Multispecies Justice," 130.

[84] This reapproval occurred after the Federal Court of Appeal overturned the government's initial approval of the pipeline in 2016 for two reasons. First, the court determined that the regulatory agency which recommended the project for approval did not adequately account for the effects of increased marine oil vessels under the *Canadian Environmental Assessment Act, 2012* and *Species at Risk Act*. Second, the Government of Canada did not adequately consult Indigenous peoples, as required by subsection 35(1) of the *Constitution Act, 1982* and outlined by the Supreme Court of Canada. See *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153, [2018] ACF No 876; *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550, 2004 SCC 74.

[85] It passed with 186 votes to 63. See https://www.ourcommons.ca/Members/en/votes/42/1/1366/.

[86] This means that "consent should not be coerced or secured after the project has begun, or without communities receiving basic information about the costs and the potential benefits, risks, and harms of the project." Kimberly R. Marion Suiseeya, "Procedural Justice Matters: Power, Representation, and Participation in Environ-

individuals engaged in protest and/or direct action in Metro Vancouver on the unceded lands of the Musqueam, Squamish, Tsleil-Waututh and Kwikwetlem Nations. I also engaged in participant observation as an 'insider,' helping to organise in-person events, attending rallies, and running social media campaigns aimed at educating the public and stopping the pipeline.

Opposition to the Trans Mountain Expansion project serves as an entry point to ask broader questions about relationships in the Anthropocene. Do the ways in which individuals construct their relationships resonate with principles of ecological justice? And are religious or nonreligious conceptions, language and identities relevant for how these principles are expressed? During interviews, I gained deeper insights into how people construct their relationships when they recalled their experiences of activism. This more 'practical' approach helps me avoid what Jenkins calls the 'cosmological temptation.'[87] Instead of adopting a narrow focus on belief or cosmology, I take a more 'bottom-up' approach that accounts for lived experience. This counters the 'greening of religion' approach that pursues cohesive worldviews, and commonly brings diverse ways of being with or without religion under one common umbrella of 'dark green religion' or 'eco-spirituality.'[88] Doing so perpetuates a sentiment that nonreligious individuals are somehow lacking, not only religion but in its moral framework.[89] It also fails to account for the messiness that often exists between religion and nonreligion in ordinary life. This became especially clear when one interviewee, a biochemist who does not "call herself a person of faith" but "a person of science," still identified as being religious in practice because she attends church.

Everyone I interviewed expressed concern over the nonhuman impacts of the pipeline project. Matthew, for example, listed the "destruction of land and water and animal habitat" as harms of the pipeline project. He also reflected upon such issues in a broader sense, asking: "And why should there be this gap, this hierarchy, um, wide open, so that [we don't consider] the needs of non-human species the same way that we consider the needs of humans? And I do think that's very valuable. I think it extends to trees as well as animal. Um, so that's something that I don't understand why we do." Speaking of trees again, Matthew later stated: "I kind of include them [trees] with animals in my mind, like the non-human victims of all of this." Matthew framed nonhuman "needs" as morally considerable, without locating reason for such consideration beyond the "victims" (a term of personhood) themselves. Matthew further talked about 'fairness' and 'balancing needs': "Why can't we just weigh the animals' needs more fairly with our needs? […] I don't know if an equal balance is possible. I think more balance than we see now, for sure." Matthew does not elaborate on what 'fairness' entails, or what an equal balance would look like. Crucially, his questioning relies upon a conception of animals as having needs that hold weight against our own. Whether they are balanced or treated as equal is a separate issue from their moral status.[90]

mental Governance," in *Environmental Justice: Key Issues*, ed. Brendan Coolsaet (Routledge, 2020), 45.

87 Jenkins, *The Future of Ethics*.

88 Bron Taylor, *Dark Green Religion: Nature Spirituality and the Planetary Future* (University of California Press, 2010).

89 Lori G. Beaman and Lauren Strumos, "Toward Equality: Including Non-human Animals in Studies of Lived Religion and Nonreligion," *Social Compass* (2023), 11.

90 Matthew's questioning of whether "equal balance" is possible connects to Anna Wienhues' idea of "non-ranking biocentrism." In her account of EJ, Wienhues uses 'non-ranking' rather than 'equality' because it is not possible, in situations of resource scarcity, to treat all distributive claims as equal. Someone's interest will eventually

Another participant, Maureen, demonstrated moral consideration for nonhumans when recalling her experience of tree sitting. She did not explicitly mention fairness like Matthew, but a sense of unfairness underlies her distinction between creatures at the tree sit on one hand, and those violating their rights on the other. She stated:

> I mean we have frogs that are hanging out, like little, two little adorable frogs, actually one's quite big, um, hanging out next to the tree sit. And I always say hi to them when we go by and check to make sure, and try not to scare them and it's like, find my route around to get there. And this is their home. This is where they live. They don't have anywhere else to go. I mean, the reason they're here in that zone, and not over in the pretty part on the greenway by the Brunette [River], is because well people are walking their dogs, and there's people running, we've already claimed that. And we made it look nice for us, right? And this idea that well this piece isn't useful to us, but it's useful to all these other creatures that need it. They needed a place to be and they needed a place just to, yeah just to live and have the right to have that just without us coming in and ripping it up to put in a pipeline so that a few people make some money.

Maureen mentions threats to the frogs' home and their right to live there. Concern is centred on the frogs themselves, for their own sake. This view resonates with distributive theories of EJ, which consider distributive harm (like "ripping up land") to the needs and interests of nonhumans, including their "homes." There are limits to how much humans can know about other animals, but it is nevertheless clear that certain conditions are necessary for nonhuman living or flourishment.[91] One requirement is the place or territory in which nonhumans live, especially when they "don't have anywhere else to go," to quote Maureen.

Neither Matthew nor Maureen identified as religious. Matthew self-identified as "a spiritual person," and explained that he was raised religious, went to church and Sunday school until he was 13 years-old, and noted that there are several ministers in his extended family. When asked what spirituality means to him, he talked about "energy, consciousness, connectivity between all things, between the natural world and animals and other people." Maureen stated that she "doesn't feel" herself "to be religious," and she did *not* self-identify as spiritual. She explained that her parents were raised Catholic, but she was taught that "a lot of times religion does more harm than good." She then expressed: "I've met other people who I've found are religious and who are really, uh, impressively, moral, thoughtful caring people. So, I've learned to, to balance that out and say … the concept of religion can be a good thing." That both Matthew and Maureen are nonreligious is not pertinent to their morally relevant relationships. They rather demonstrate that non-anthropocentric moral consideration is not dependent upon a religious worldview, or a view of nature as sacred, in which case harm to nature becomes immoral as an act of desecration.

It is certainly possible to advocate for EJ from religious perspectives. Another participant, Emma, identified as a practicing Buddhist

be treated as superior, receiving priority over another's. Crucial in this distributive model is that moral ranking is not determined a priori. Doing so opens the door to anthropocentrism. See: Anna Wienhues, *Ecological Justice and the Extinction Crisis: Giving Living Beings Their Due* (Bristol University Press, 2020), 40, 108.

[91] Wienhues, *Ecological Justice and the Extinction Crisis*, 42.

and referenced Buddhist principles when talking about fish threatened by the pipeline project. She stated:

> You know, in the case of like, let's say the Nooksack Dace which has been here since the last ice sheets retreated, like this is all they know. Um, and so, for one species to decide that that species is not worth existence and force it into extinction is the utmost violence. So it's breaking the first [Buddhist] precept of non-harm.

She further explained:

> So unfortunately, most of our ecosystems don't have rights […] like the Nooksack Dace in the Brunette River and the, the salmon runs of the Brunette River. Like, we're at a period where the salmon populations on the West Coast are in dire states. And of course, there's huge consequences for all the ecosystems that they are part of. [And] the Nooksack Dace is like this endangered little minnow size, nocturnal fish that [has] four micro populations in [British Columbia]. And one of them is, like, right where they're planning the horizontal drilling. And, yeah, I mean, how do you ask for consent from a species that doesn't speak your language?

Emma's reference to ecosystem rights demonstrates a knowledge of nature's rights, which is accompanied by notions of agency (non-human communication) and functioning (the salmons' run). The Nooksack Dace are also presented as having interest in their river ecosystem, which becomes threatened by the pipeline construction's "horizontal drilling" (a distributive harm). Emma's question—"how do you ask for consent from a species that doesn't speak your language?"—further resonates with work on participatory justice that explores how to incorporate non-human communication or 'ecological reflexivity' into political decision-making.[92] This area of scholarship, like Emma, acknowledges nonhuman beings as agents with their own interests.

EJ can also arise from an ethic of stewardship that assigns inherent value to nature. The two are not mutually exclusive. Jenkins states: "To critics who object that responsibilities to nonhuman creatures should not come under the concept of justice, but rather under concepts of care or stewardship, the reply must worry for the softness of alternative concepts. Without capacity to make a claim on agents, nonhumans under our care or stewardship remain vulnerable to our self-serving conceits."[93] This approach to justice, according to Jenkins, does not entail a redefinition of nature's moral worth in a cosmological sense. Extending legal personhood to nature does not require nature to be reconceived as a person.[94] Justice for Jenkins is more strategic in that it is needed to adequately address Anthropocene powers, supporting Tănăsescu's point that there is no direct connection between moral status and rights for nature in law.[95] At the same time, my research indicates that there are perspectives that resonate more closely with notions of justice than stewardship. The people I interviewed did also express ideas of stewardship, as well as "human valuational perspectives" (e.g., trees are valuable because they provide us with oxygen).[96] These indicate humility in the sense of human dependence on nature, in contrast to the human exceptionalism seen in the dominion model. But such humility alone does not offer an alternative to hierarchical relations the way that EJ does.

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[92] Celermajer et al. "Multispecies Justice," 131–132; Schlosberg, *Defining Environmental Justice.*
[93] Jenkins, *The Future of Ethics*, 222.
[94] Ibid.
[95] Tănăsescu, *Understanding the Rights of Nature*.
[96] Plumwood, *Feminism and the Mastery of Nature*, 213.

Conclusion: We are all Terrestrials

How might we begin to challenge the human/nature dualism—as embedded in dominion and lingering in stewardship—from within a western framework? Ecological justice offers one vantage point. Another is Bruno Latour's identity of "terrestrials." This concept does not entail a reinvention of human identity so radically as a reorientation. It draws us back down to the place where we stand as one terrestrial among many, one "breather among billions of breathers."[97] Latour also offers—in response to what he calls climatic and ecological mutations—a related geopolitical formation called 'Terrestrial' (capitalized 'T').[98] In this order the Terrestrial is a political agent, one who acts in recognition of their being grounded in a certain place with other terrestrials (both human and non-human). It is through this Terrestrial self-conception that one may be propelled to advance rights for nature, in the form of 'terrestrial justice.' The concept of 'Terrestrial' displaces "the human/other species distinction" from "our ethical thinking" while also avoiding the trap of "totality thinking" by situating us in our dwelling place.[99] This approach is particularly relevant to nature's rights in Canada and the United States, where such rights appear locally, and are not sought for 'nature' as a whole but specific entities with whom one shares a territory.[100] An avenue for exploration is whether acting as Terrestrials would not lead us closer to rights of nature per se but decolonisation and land repatriation.[101]

The descriptive essence of 'terrestrial' makes it an identity not dependent upon (non)religious identity. It does not position humans as creatures, but it does not contradict this view either. It rather draws us away from thinking about creation as a whole to those beings we are connected to in everyday life. Latour states: "Speak of nature in general as much you like, wonder at the immensity of the universe, dive down in thought to the boiling center of the planet, gasp in fear before those finite spaces, this will not change the fact that everything that concerns you resides in the miniscule Critical Zone."[102] In this way it does reconstitute traditional cosmological priorities, shifting human focus from the temporal to the spatial. It redirects attention from "the destiny of souls" to "that of the world."[103] Relatedly, the Terrestrial identity emphasises *who* we should act for as opposed to *why* in an ontological sense. Not everyone conceives of themselves as a steward, caretaker or eco-spiritualist. Everyone shares a dwelling place with other terrestrials.

Unmistakeably, Indigenous philosophies, legal orders and governance are a crucial part of nature's rights in western settler societies. Religion and nonreligion occupy a more 'behind the scenes' position. The rise of nonreligion generates opportunity to imagine ways of being in the world beyond a model of dominion or stewardship.[104] Values of ecological justice and the concept of Terrestrials are examples. The latter

[97] Bruno Latour, *After Lockdown: A Metamorphosis*, trans. Julie Rose (Polity Press, 2021), 11.
[98] Bruno Latour, *Down to Earth: Politics in the New Climatic Regime*, trans. Catherine Porter (Polity Press, 2018).
[99] Plumwood, *Environmental Culture*, 169; Tănăsescu, *Understanding the Rights of Nature*, chapter 5.
[100] Kauffman and Sheehan, "The Rights of Nature."
[101] For discussions on decolonisation in relation to justice, see: Christine J. Winter, *Subjects of Intergenerational Justice: Indigenous Philosophy, the Environment and Relationships* (Routledge, 2021); Deborah McGregor et al., "Indigenous Environmental Justice and Sustainability," *Current Opinion in Environmental Sustainability* 43 (2020), 35–40; Erin Fitz-Henry, "Multi-species Justice: A View from the Rights of Nature Movement," *Environmental Politics* 31, no. 2 (2022): 338–359.
[102] Latour, *Down to Earth*, 63.
[103] Bruno Latour, "Ecological Mutation and Christian Cosmology," trans. by Sam Ferguson, a lecture for the International Congress of the European Society for Catholic Theology, Osnabrück (August 2021), 5.
[104] Beaman, "Collaboration Across Difference," 138.

likewise has empirical credence. The individuals I interviewed are not merely acting as 'humans' on behalf of 'the earth,' but individuals concerned about the nonhuman entities (or terrestrials) impacted by a destructive project in their communities.[105] Maureen, for example, did not express concern for 'nature' but the frogs she encountered in-person at the tree sit. Although I interviewed people engaged in activism, not everyone self-identified as an 'activist' during interviews. They arrived at their activism as concerned teachers, scientists, artists, parents, grandparents and people with a meaningful connection to their local ecologies.

Equality is possible without reference to religious doctrine or even the philosophies of environmental ethicists.[106] This has implications for how we understand the normative beliefs that underlie the meaning and force of nature's rights. The idea of equality is not new, but we do not need to limit our search for notions of egalitarianism (such as nonhuman personhood) to longstanding religious traditions or cultures.[107] Conceptual support for nature's rights can be found in the lived experiences of ordinary individuals. This connection I make based on my data, from the local to rights of nature in law, is not causal. It offers insights into the social factors that help create a foundation upon which nature's rights become not only conceivable but practical. To be sure, nature's rights are not inevitable in some evolutionary sense due to the rise of nonreligion. I wish to highlight that a partial—and virtually ignored—explanation for nature's rights can be found in lived experiences, practices and perspectives that challenge the Christian residue of stewardship. This challenge entails suspending any moral justification predicated on 'our specialness' whether cast in religious or nonreligious terms. Afterall, we do all live as terrestrials.

[105] The idea of 'territory' becomes complicated by the fact that the individuals I interviewed engaged in protests and direct action on unceded land. They were aware of this and sometimes discussed how their involvement in opposition prompted or furthered their own self-reflections as settlers.

[106] Here I have in mind Aldo Leopold's 'land ethic,' which defines humans as members or citizens of a biotic community that includes plants, animals, soils and waters (or 'the land' collectively). Another example is Deep Ecology, which differs from the land ethic in part through its process of 'identification,' which entails an expansion of one's 'self' as an individual to an ecological 'Self' constituted by relationships with human and nonhuman beings.

[107] White did not view the alternative to dominion as stewardship, but rather referenced equality (White, *The Historical Roots*, 1206). Another example of anti-speciesism can be found in the works of Christian artist and poet William Blake. See: Anne Milne, "Blake's 'Auguries of Innocence' as/in Radical Animal Politics, *c.*1800," in *Beastly Blake*, eds. Helen P. Bruder and Tristanne Connolly (Palgrave, 2018), 65–86.

Reflections on nature experiences and knowledge shaping attitudes towards the rights of nature

*Andreas Brutemark, Maria Brandt and Daniel Schrire**

Abstract

As the human population increases, more resources are needed to sustain human consumption and activities, often leading to unsustainable use of natural resources. Recognizing the rights of nature could result in a more sustainable use of and relationship with nature. In this article we argue that without the fundamental knowledge of how ecosystems function and how human activities disrupt these functions, combined with an empathy towards nature, endowing nature with rights has a low chance of effecting real change.

Introduction

As the human population increases, more resources are needed to sustain human consumption and activities.[1] This increased demand is not conductive to sustainable use of targeted natural resources. As a consequence, the Earth is facing a plethora of challenges including climate change, land use change, biodiversity, habitat loss and pollution to name a few. These challenges not only occur on a local level but are often global. However, conservation and management of the resources and challenges differs between countries as well as within countries, e.g. municipalities, due to societal and natural factors. Not only does our relationship with nature differ between countries but our, i.e. human, relationship with nature can change over time.[2] For example, the Western cultures have developed a view of nature as a potential resource to be used for our own benefit.[3]

Nature is often viewed as the physical world and everything in it that is non-human and includes the inorganic as well as the organic, i.e. everything from animals and plants to bacteria and rocks.[4] Alves and colleagues defined Rights of Nature as "*the idea that the whole biosphere, meant as the place in which life can happen, is endowed with natural rights*."[5] Thus, the rights of nature and our western view of nature as ours to use as we see fit sparks a potential conflict. In such conflicts nature tends to lose which is

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Thank you to Seth Epstein for constructive comments and suggestions on the manuscript.

[1] Johan Rockström, Will Steffen, Kevin Noone et al., "A safe operating space for humanity," *Nature* 461 (Sept. 24 2009): 472–475, https://doi.org/10.1038/461472a; IPBES, *Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (Bonn, Germany: IPBES secretariat, 2019), doi: 10.5281/zenodo.3553458.

[2] Miles Richardson, Iain Hamlin, Lewis R. Elliott et al., "Country-level factors in a failing relationship with nature: Nature connectedness as a key metric for a sustainable future," *Ambio* 51 (2022): 2201–2213, http://doi.org/10.1007/s 13280-022-01744-w.

[3] Richardson et al., "Country-level factors."

[4] Fátima Alves, Paulo Manual Costa, Luca Novelli et al., "The rights of nature and the human right to nature: an overview of the European legal system and challenges for the ecological transition," *Frontiers in Environmental Science* 11 (2023): 1–10, https://doi.org/10.3389/fenvs.2023.1175143.

[5] Alves et al., "The rights of nature and the human right to nature."

evident from a continuous deterioration of the environment. Recognizing the rights of nature, i.e. shifting from viewing nature as a resource or a commodity towards a subject with rights of its own, could result in a more sustainable use of and relationship with nature and could therefore prevent further environmental degradation. In this article we reflect on the possible importance of having nature experiences and knowledge for recognizing nature's intrinsic value. This in turn can be of importance for the implementation and overall understanding of the rights of nature.

Connection to nature

Human contact with nature and its potential health benefits have received a lot of research interest.[6] The effects of nature on human well-being includes both physical and mental health benefits. Nature connection has been defined as "a positive relationship between humans to the rest of the natural world."[7] Although contact with nature is associated with several benefits, research indicates that people's contact with nature is decreasing. Urbanization, whereby people move to urban areas that are developed and natural surroundings are cut off, is an often-used explanation.[8] Although this may be part of the reason, changes in technology and changes in our recreational habits cannot be neglected. During the 1950s, television was established as a popular form of entertainment. Today, more and more time is spent on the internet and different kinds of video games. Have we reached a point where children are more likely to name fictional characters of a videogame rather than be able to name wildlife species?

Apart from health benefits, a connection to nature seems to support pro-environmental attitudes and behaviours.[9] Indeed, studies have found that a lack of regular positive experiences in nature is associated with the development of fear, discomfort and dislike of the environment.[10] We speculate that negative experiences in nature can also lead to lasting dislike or fear. How are we to make sound judgement on the behalf of nature if we dislike or fear it? Furthermore, how can we speak on the behalf of nature without having experienced it first hand? Thus, if people increasingly lack positive nature experiences, this may have a negative outcome for environmental attitudes and behaviours with consequences for the environment.

Positive nature experiences during childhood are one main factor nurturing lifelong positive attitudes and values towards nature and is, as such, important for our view and engagement in nature as adults.[11] In order to prevent development of fear, discomfort or dislike of nature, positive nature experiences are needed. One way of working with children (and presumably adults as well) could be using the principles of the "nature triangle" (see figure 1). Overall, the idea is to develop a relationship with nature. Reading about nature cannot replace actual outdoor experiences in nature. In the long run, as people develop a relationship with nature, knowledge, appreciation and understanding of

[6] Howard Frumkin, Gregory N. Bratman, Sara Jo Breslow et al., "Nature contact and human health: A research agenda," *Environmental Health Perspectives* 125, no. 7 (2017), 075001-1–075001-18, https://doi.org/10.1289/EHP1663.

[7] Alexia Barrable and David Booth, "Disconnected: what can we learn from individuals with a very low nature connection?" *International Journal of Environmental Research and Public Health* 19, no. 8021 (2022) 1–9, https://doi.org/10.3390/ijerph19138021.

[8] Richardson et al., "Country-level factors."

[9] Claudio D. Rosa and Silvia Collado, "Experiences in nature and environmental attitudes and behaviors: setting the ground for future research," *Frontiers in Psychology* 10 no. 763 (April 2019): 1–9, https://doi.org/10.3389/fpsyg.2019.00763.

[10] Rosa and Collado, "Experiences in nature."

[11] Rosa and Collado, "Experiences in nature."

nature increases, bringing with it insight, engagement, and concern for nature. According to Hedberg a good route to positively affect nature and the environment is to go through the five steps in the nature triangle (figure 1).[12] Firstly, one needs to be able to be in and enjoy nature. For instance, the right clothing can be essential to keeping one dry and warm. Once you manage to be comfortable in and enjoy nature, it is possible to see and discover the surrounding environment. Establishing this curiosity makes it possible to understand how things in nature are connected. This in turn is essential for understanding the impacts humans have on the environment. Finally, we can act deliberately and make a difference. Contact with nature and a better understanding of its importance and the threats against the environment are essential to raise public awareness, engage in conservation and monitor issues.

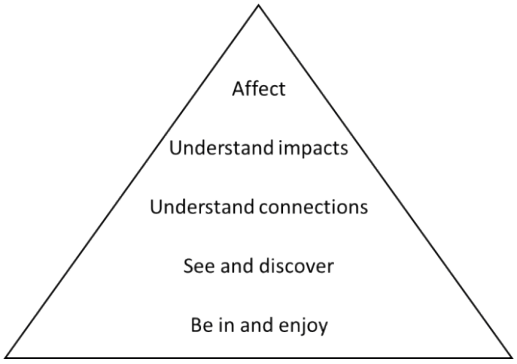

Figure 1. Pyramid representing a simple model illustrating how knowledge and experience transforms into values and potential willingness to make a difference (redrawn from Hedberg 2004).

However, since society has changed and most of the population currently resides in urban areas, we tend toward a decreasing amount of contact with nature. Hence, we stress the importance that schools include biodiversity and ecosystem services into the education in the form of outdoor activities. Nature schools, biological museums, and nature visitor centers play an important role in supplementing people's nature experiences.

Biotopia is a biological museum founded in 1910 with the aim of exhibiting Swedish nature in a holistic way, visualizing different ecosystems in a condensed form. The exhibitions serve to inspire visitors to go out in nature and gain first-hand experiences. Nowadays, we also meet many groups of people outside in real natural environments, some of which are portrayed in the museum. Our goal is to facilitate contact with nature and inspire further exploration of nature in accordance with figure 1. All our activities, indoors as well as outdoors, offer first-hand experiences of nature, natural objects or species with one's own senses. Holding a rose chafer in one's hand, feeling it crawl around and watching the light play on its metallic carapace cannot be compared to simply looking at a picture. The same goes for following wolf tracks through the snow on a crisp winter day, listening to the silence of the winter forest for that silence to be broken by a pair of ravens flying by.

In order to motivate and accept the concept of endowing nature with rights of its own, one must first recognize nature as an entity on par with oneself. In other words, empathizing with a squirrel in the forest may lead to a subconscious recognition that the squirrel is also experiencing the world. Drawing these parallels between oneself and organisms in nature may, over time, lead to a recognition of entire ecosystems as living entities with rights of their own. However, it should also be stressed that implementing nature's rights runs the risk of unwanted consequences, potentially nullifying or even harming

[12] Per Hedberg, "Att lära in ute – Naturskola," in *Utomhusdidaktik*, eds. Iann Lundegård, Per-Olof Wickman, and Ammi Wohlin (Lund: Studentlitteratur, 2004), 63–80, here 68.

the ecosystems endowed with rights.[13] These adverse consequences can be mitigated by the empathy gained from good nature experiences, as the ability to empathize and care for the environment brings with it a motivation to act in the interest of nature.

Concluding remarks

In a democratic society, the basis for implementing rights of nature lies in the citizen's acceptance of the concept. This in turn is based on the understanding of nature and its intrinsic values. In short, it seems as if spending time in nature as a part of childhood experiences can be key to development of environmentally friendly attitudes as adults. Seemingly, experiences in nature during especially childhood, but also adulthood are positively associated with pro-environmental perspectives. This in turn is dependent on several factors such as the type of nature and how nature is perceived. For example, would hiking in nature have the same positive effect as spending time in a city park? Throughout this article we have discussed the positive aspects of experiencing nature. One field that deserves attention is exploring the underlying factors behind people with fearful feelings towards nature or disinclination to outdoor life. Is it so simple that they did not experience nature as children, or did they have a bad experience of nature as a child? Experience and knowledge of nature, positive as well as negative, and how that transforms into engagement for the rights of nature should be explored. Since the children of today are the policymakers of tomorrow, we wish to stress the importance of a solid experience- and knowledge base with which to know what actions to take in the interest of nature's rights. Without the fundamental knowledge of how ecosystems function and how human activities disrupt these functions, combined with an empathy towards nature, endowing nature with rights has a low chance of affecting real change.

[13] Maria Refors Legge and Love Rönnelid each provide such critiques in this issue. See Maria Refors Legge, "The symbolic nature of legal rights," *Nordic Environmental Law Journal* (Special Issue 2024): 77–87; Love Rönnelid, "Rights critique and rights of nature – a guide for developing strategic awareness when attempting to protect nature through legal rights," *Nordic Environmental Law Journal* (Special Issue 2024): 61–76.

References

Alves F, Costa PM, Novelli L, Vidal DG (2023) The rights of nature and the human right to nature: an overview of the European legal system and challenges for the ecological transition. Frontiers in Environmental Science 11: 1175143. doi: 10.3389/fenvs.2023.1175143.

Barrable A, Booth D (2022) Disconnected: what can we learn from individuals with a very low nature connection? International Journal of Environmental Research and Public Health 19: 8021. doi: 10.3390/ijerph19138021.

Frumkin H, Bratman GN, Breslow SJ, Cochran B, Kahn PH Jr, Lawler JJ, Levin PS, Tandon PS, Varanasi U, Wolf KL, Wood SA (2017) Nature contact and human health: A research agenda. Environmental Health Perspectives 2017, 125, 075001. doi: 10.1289/EHP1663.

Hedberg P (2004) "Att lära in ute – Naturskola", in: Lundegård I, Wickman P-O, Wohlin A (eds.) Utomhusdidaktik. Lund: Studentlitteratur, pp. 63–80 (in Swedish).

IPBES. 2019. Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. https://ipbes.net/ global-assessment (lastly visited 27 March 2024).

Legge MR (2024) The symbolic nature of legal rights. Nordic Environmental Law Journal Special Issue 2024: 77–87.

Richardsson M, Hamlin I, Elliott LR, White MP (2022) Country-level factors in a failing relationship with nature: Nature connectedness as a key metric for a sustainable future. Ambio 51:2201–2213. doi: 10.1007/s 13280-022-01744-w.

Rockström J, Steffen W, Noone K, et al. (2009) A safe operating space for humanity. Nature 461: 472–475. doi: 10.1038/461472a.

Rosa CD, Collado S (2019) Experiences in nature and environmental attitudes and behaviours: setting the ground for future research. Frontiers in Psychology 10: 763. doi: 10.3389/fpsyg.2019.00763.

Rönnelid L (2024) Rights critique and rights of nature – a guide for developing strategic awareness when attempting to protect nature through legal rights. Nordic Environmental Law Journal Special Issue 2024: 61–76.

Most EU Residents Support Rights of Nature Laws

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Abstract

Rights of nature laws have been enacted in a growing number of countries, but the extent to which they are supported by public opinion has been unclear. We report the results of a survey in which over 11,000 participants across the EU were asked 'Would you support or oppose policy that would give legal rights to forests or rivers – such as the right to exist free from destruction or pollution'. Most respondents said they would support such a policy: 62% would support, 28% were neutral or not sure, and 10% were opposed. We discuss some implications and limitations of the survey. The main implications are first, that majority support among respondents indicates that further rights of nature laws or policies could be enacted in the EU, and second, that a majority of respondents (68%) fell outside the most extreme categories (i.e., strongly support, strongly oppose) suggests there is also opportunity for advocates or opponents of rights of nature laws to shift public opinion. The main limitations are that the survey does not indicate what types of rights of nature laws respondents preferred, what types of trade-offs respondents would accept, that respondents may have limited knowledge or understanding of rights of nature, and that limited inferences can be drawn about whether public support for rights of nature will in fact lead to policy changes. More complex studies are needed to make more precise inferences.

Introduction

Rights of nature laws – laws that assign explicit legal rights to nature as a whole, or to particular categories of non-human natural entities such as ecosystems or rivers, or to specific non-human natural entities such as the Whanganui River – have been enacted in a growing number of countries over the last 20 years. One important question for understanding whether these laws will be successfully implemented or continue to spread is whether they have public support. After all, laws in a democracy ostensibly reflect the views of the people.

Rights of nature laws have been passed in a growing number of jurisdictions worldwide. They have been most successful in terms of implementation in Latin America, particularly in Ecuador, and in New Zealand. In terms of number of enactments, the United States leads with rights of nature laws enacted at city, county or tribal levels in dozens of jurisdictions, although thus far many of these laws have not been legally effective and some have been overturned by courts or invalidated by state legislatures. To date, however, there have been few rights of nature laws passed in European Union (EU) countries. Spain enacted the first European rights of nature law in 2022, recognizing the legal personhood of the Mar Menor saltwater lagoon and its basin, which had experienced severe environmental degradation. Local jurisdictions in Ire-

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land and the Netherlands have also endorsed rights of nature, and several other initiatives are being contemplated across Europe.[1] Even amongst those who advocate for rights of nature, though, it is sometimes claimed that enacting these laws would require a paradigm shift in current views of the relationship between humans and nature, suggesting that even these advocates do not believe that most humans currently support the legal rights of nature.[2] In any case, the extent to which these enactments do in fact reflect the current views of the broader population, rather than merely the efforts of interest groups, is unclear.

We assessed public support for rights of nature in the EU. In the next section, we describe the study design. We then present the results of the survey, which, in brief, showed that far more respondents support rights of nature than oppose them in every country and demographic group included in the survey. Finally, we discuss what these survey results may mean for the continued enactment and implementation of rights of nature laws.

The survey

Data were collected as part of a broad-scale assessment of the EU publics' views about nature and wildlife. We designed a self-administered questionnaire and contracted with the well-regarded survey research firm Qualtrics[3] to collect data across 23 EU countries between 2022 and 2024. Overall, Qualtrics received completed questionnaires from approximately 11,000 respondents who were invited to participate in an online survey administered via the Qualtrics platform. We initially aimed to collect 500 answers from each country, except for Germany, where we stratified sampling in order to aim to collect 500 answers from both the former East and former West Germany.[4] On average, we collected 480 answers (sd:142) per country (a mean of 460 answers – sd:106 – excluding Germany; see Table 1 for actual number of respondents per country). There were only 4 countries below the estimated ideal sample size of 370 answers per country to get representative results from the target population, providing a minimum of +/- 5% margin of error at the 95% confidence level (Table 1).

Respondents were asked for their opinions on a broad range of environmental and related policy issues.[5] One question specifically concerned rights of nature: '**Would you support or oppose policy that would give legal rights to forests or rivers – such as the right to exist free from destruction or pollution.**'[6] Participants responses were recorded using a five-point scale including: strongly oppose, oppose, neutral or not sure, support, or strongly support.

One aim of our larger survey was to determine the extent to which people residing in urban and rural areas differed with respect to their opinions, which could be relevant with respect

[1] Jenny García Ruales, Katarina Hovden, Helen Kopnina, Colin D. Robertson, and Hendrik Schoukens, eds. *Rights of Nature in Europe: Encounters and Visions* (Taylor & Francis 2024), 9–10.

[2] See for example, Pella Thiel, 'Moral Imagination for the Rights of Nature: An Embassy of the Baltic Sea' Nordic Environmental Law Journal (Special Issue 2024), 154. Thiel claims that '[t]he way law currently treats nature is a manifestation of a cultural understanding of human separation and supremacy.'

[3] Taylor C. Boas, Dino P. Christenson, and David M. Glick, 'Recruiting Large Online Samples in the United States and India: Facebook, Mechanical Turk, and Qualtrics' Political Science Research and Methods (2020) 8:232.

[4] To ensure a broad geographical distribution, Qualtrics was instructed to collect 500 combined answers from the Länder Brandenburg, Mecklenburg-Vorpommern, Sachsen, Sachsen-Anhalt and Thüringen, and 500 answers from other Länder.

[5] We and colleagues expect to address the responses to other questions in several other papers.

[6] See Annex 2 for this question in other languages.

to rights of nature laws, since rural populations may be more directly impacted by additional laws. This objective required oversampling rural areas. This was accomplished by the use of quotas that attempted to cap responses from urban residents at 50%. This creates potential bias in the response. For instance, if a country's population was 70% urban and 30% rural, our 50/50 urban/rural quota means that the rural population is overrepresented.[7] In addition to the urban/rural quota, two additional quotas were enforced in survey administration – a 50/50 male/female quota and an age quota (i.e., 50% of responses from adults under the median age, 50% from those over the median age[8]). As opposed to the urban/rural quota, these other quotas were designed to increase the representativeness of the sample. To account for biases associated with these quotas we report responses according to age, sex and rural/urban identification in Annex 1.

Results

Across all survey respondents, 62% supported rights of nature, 10% opposed, and 28% were neutral or not sure. That is, of those with an opinion, participants supported granting rights of nature at a ratio of more than 6:1 (support and strongly support responses and oppose and strongly oppose responses pooled together). The country with the highest support for rights of nature was Bulgaria, with 79% supporting and only 7% opposing, and 14% neutral or not sure; that is a ratio of 11:1 in support of rights of nature. Sweden had the lowest support for rights of nature laws, with 49% supporting, 11% opposing, and 39% neutral or unsure; but still almost a ratio of 5:1 in support of rights of nature. Portugal had the highest opposition to rights of nature, with 23% opposing, but 51% supporting, and the rest neutral. That is, in the country with the highest level of opposition, support for rights of nature still exceeded 2:1. Remarkably, in no country did opposition exceed 23%. See Table 1 and Annex 1.

A clear majority of our respondents stated that they would support or strongly support some type of legal rights for forests or rivers. This suggests that, in contrast to a few studies of attitudes of people working in forestry and other areas likely to be impacted by rights of nature, there is broader support amongst the general public for rights of nature laws.[9] We had hypothesized that there may be lower support for rights of nature amongst rural populations because they might be more directly impacted by additional nature protections. This turned out to be true to a small degree, though overall rural residents also were far more likely to support than to oppose rights of nature. It should be noted that because rural residents were intentionally overrepresented in our study, the national levels of support may be even higher than the levels reported. Notably, there were only small differences in the level of support between younger and

[7] The EU population is estimated to be more than 70% urban. See Greg Clark, Tim Moonen, and Jake Nunley, *The Story of your City: Europe and its Urban Development, 1970 to 2020* (European Investment Bank 2019) at 6. We note that despite efforts to include 50% rural participants, it proved so difficult to recruit participants from rural areas in some countries that this was not fully achieved. See Annex 1.

[8] The quota was based on the median age in each country, but to simplify our tables, we have reported results using the single median age of 44 in all countries.

[9] Seth Epstein and Anton Andersen, 'Contemplating Rights of Nature in Sweden: Democratic Legitimacy, Conflict, and Centralization of Power' Nordic Journal of Environmental Law (Special Issue 2024); Eija Meriläinen and Ari A. Lehtinen, 'Re-articulating Forest Politics Through "Rights to Forest" and "Rights of Forest"' Geoforum (2022) 133:89. Another recent survey of G-20 countries, however mirrors our survey results of about 60% support for RoN. See "Earth for All Survey 2024," G20+ Global Report: Attitudes to Political and Economic Transformation, Earth4All and the Global Common Alliance (June 2024): 32–33.

older participants. Females, however, were quite a bit more likely to support rights of nature than males, and particularly more likely to strongly support them. In every demographic and geographical area surveyed, though, and contrary to our expectations, support for rights of nature was much higher than opposition.

Table 1: 'Would you support or oppose policy that would give legal rights to forests or rivers – such as the right to exist free from destruction or pollution.'

Country	Number of Respondents	% Strongly Oppose	% Oppose	% Neutral	% Support	% Strongly Support
Austria	506	5	6	28	32	29
Belgium	510	4	7	30	33	26
Bulgaria	569	5	2	14	34	45
Croatia	327	4	5	29	38	25
Czech Republic	509	4	5	30	34	28
Denmark	508	6	7	36	28	23
Estonia	299	2	6	29	45	18
Finland	500	4	10	35	34	16
France	494	2	7	29	34	28
Germany	927	6	5	31	32	26
Greece	499	2	5	18	40	35
Hungary	521	3	6	23	35	33
Italy	499	2	5	20	37	36
Latvia	110	3	6	30	46	15
Lithuania	380	2	4	26	41	28
Netherlands	499	6	9	34	31	19
Poland	496	5	11	35	31	19
Portugal	501	12	10	26	28	23
Romania	558	3	4	17	35	41
Slovakia	500	3	5	39	37	17
Slovenia	334	2	6	28	34	29
Spain	498	8	7	24	27	34
Sweden	498	5	7	39	28	21
Overall	**11042**	**4**	**6**	**28**	**34**	**28**

(Due to rounding, some lines do not add up to 100%)

Discussion

As examined by political scientists including Craig Kauffman, Pamela Martin, and Mihnea Tănăsescu, NGOs have often worked with local communities to advocate for the enactment of rights of nature at the local, national and international levels. This advocacy and assistance of NGOs has been demonstrably important to the successful legal recognition of these rights.[10] It

[10] Craig M. Kauffman and Pamela L. Martin. *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (MIT Press 2021), see especially chapter 2; Mihnea Tănăsescu 'The Rights of Nature in Ecuador: The Making of an Idea' *International Journal of Environmental Studies* (2013) 70:846.

was not clear, however, the extent to which the success of these interest groups in facilitating the legal recognition of rights for nature reflected the desire for these laws amongst the public in those jurisdictions or simply the prowess of the interest groups.

One indication that legal rights of nature may also have broad public support is that they have been enacted through direct elections or other public initiatives in several instances. The Mar Menor Lagoon Personhood law was approved by the national legislature at the behest of a popular legislative initiative that collected nearly 640,000 signatures.[11] In the United States, some cities and states allow members of the public to propose and enact laws through ballot measures. Proponents of these measures must collect a certain number of signatures to qualify a measure to appear on the ballot. A couple such ballot measures passed with large margins. The 2019 Lake Erie Bill of Rights, for example, was enacted in Toledo, Ohio with 61% of the vote. A similar ballot measure in Orange County, Florida passed with 89% of the vote in 2020. The representativeness of this election data is unclear however, as there was fairly low voter turnout in both cases and rights of nature have been on the ballot in only a small portion of the country. In any case, the state legislatures of both Ohio and Florida responded to these local laws by passing state laws prohibiting the legal recognition of any type of nature's rights within the states, and these local laws are no longer valid.[12]

This survey found similar levels of support amongst EU residents for rights of nature as there was in the two elections in US jurisdictions. The survey results thus both tend to support the idea that there may be broad public support for these laws in Europe, as well as to an extent corroborate the election evidence of public support in the US even if there have been few true success stories on either continent. This strong support suggests that if the political systems work to reflect the desires of the populace, rights of nature laws will continue to be democratically enacted in these regions. Further studies should examine and propose legal pathways to effective rights of nature laws within the European Union and United States, as well as examine the potential harm that could result from poorly formulated rights of nature laws.

Still, only limited conclusions about public support for rights of nature laws, or the likelihood that this support will lead to the widespread enactment of rights of nature laws, can be drawn from our survey results. First, the question posed asked whether respondents supported or opposed some type of legal rights for forests or rivers. The responses might have been different if the question had used different examples. Rights of nature laws take many forms and recognize rights for many types of natural entities. For example, Ecuador's well-known constitutional provision recognizes the rights of 'nature or Pacha Mamma' as a whole. Types of rights recognized have ranged from fundamental substantive rights to property rights, to personhood and to procedural rights. Notably, the example stated in the question, 'the right to exist free from destruction or pollution' is a negative right, one that would maintain a status quo, as opposed to one that would require positive actions from humans such as a right to be restored. The question used does not indicate what types of rights of nature laws people may prefer.

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[11] Teresa Vicente Giménez and Eduardo Salazar Ortuño. 'An Ecological Citizenship's Triumph: From the Popular Legislative Initiative to the Rights Granted for the Mar Menor.' In *Rights of Nature in Europe* (Jenny García Ruales, Katarina Hovden, Helen Kopnina, Colin D. Robertson, and Hendrik Schoukens, eds.) (Routledge 2024) 83.

[12] A court also held the Lake Erie law to be invalid on constitutional grounds. *Drewes Farms P'ship v. City of Toledo*, 441 F.Supp.3d 551, 2020.

Second, our results do not indicate how the public may weigh potential trade-offs that may result from enacting legal rights of nature laws. People may support legal rights for some natural entities in principle, yet not be willing to pay any costs that would result if, for example, a forest's right to exist led to an increase in the price of paper products. They may support rights of nature in the abstract, but balk at any concrete rights that would have to be weighed against human rights and interests.

Third, members of the general public may have limited knowledge about rights of nature, or different interpretations of what they would entail. Indeed, a substantial percentage of respondents expressed no opinion on the topic. As comedians such as Jay Leno and Stephen Colbert have repeatedly demonstrated, people on the street often do not give astute answers to public policy questions.[13] Still, people generally have some idea of what legal rights are, even if that idea may not fully reflect a lawyer's idea of what rights are. People know what forests and rivers are. They may not fully understand the consequences of endowing forests, rivers or other natural entities with legal rights, but no one does. In our opinion, the survey responses reflect a genuine desire amongst the general public to better protect nature. They would support doing so through rights of nature laws even if the trade-offs and consequences are yet unknown.[14]

Finally, while high public support for rights of nature laws suggests that they may be enacted by direct democracy, as they have been in a few jurisdictions in the United States, opportunities to enact laws by direct democracy are rare. The European Union and its Member States are representative democracies, in which elected representatives pass laws after a deliberative process.[15] It may be that these representatives, when considering the various interests and potential trade-offs at stake, would make different decisions than might be made through a direct vote. The general public is often thought to be particularly ill-equipped to make decisions concerning the rights of others.[16] Another possible explanation is that bans on rights of nature laws like those in some US states, and failure to enact rights of nature laws, may reflect the over-influence special interests and elites.[17] In any case, the apparent public preference for recognizing the rights of natural entities is a factor that deserves consideration by elected representatives.

There is a need for more complex surveys in order to make more precise inferences. Our survey results do however imply some courses of action to both advocates and adversaries of rights of nature laws. Changing the culture is very difficult; changing the law is relatively easy. Survey results suggest that the cultural conditions may already exist. Sixty percent or more of respondents stated that they would sup-

[13] For a description of so-called 'man on the street' humor, see Matt Sienkiewicz and Nick Marx, 'Appropriating Irony: Conservative Comedy, Trump-era Satire, and the Politics of Television Humor' JCMS: Journal of Cinema and Media Studies (2021) 60:85, 94.

[14] In fact, from the polling instrument used by the European Commission (i.e., Eurobarometer) to monitor regularly the state of public opinion on issues related to the European Union, such as attitudes of Europeans towards the environment, it can be observed an increasing concern with environmental issues among European citizens. According to the 2024 survey, 84% of citizens agreed about the importance of environmental legislation to protect the environment in their country. See European Commission, *Attitudes of Europeans towards the Environment* (2024), available at https://europa.eu/eurobarometer/surveys/detail/3173.

[15] E.g., Treaty on European Union, Article 10.

[16] Anna Forgács, *Referendum Authorization Procedures in Europe* (Edward Elgar Publishing 2023), 11.

[17] See Martin Gilens and Benjamin I. Page, 'Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens' Perspectives on Politics (2014) 12:564, arguing that economic elites and groups representing business interests have had outsized influence on US policies.

port rights of nature laws in Bulgaria, Romania, Greece, Italy, Lithuania, Hungary, Slovenia, Estonia, Croatia, France, Austria, Czech Republic, Latvia, Spain and Belgium. High public support in these countries highlights the potential to seek to enact rights of nature laws at the national or regional levels in these countries, perhaps even through direct democratic procedures where available,[18] although advocates should take careful consideration of other legal and political factors that may be in play. On the other hand, a large percentage of respondents were neutral or undecided, and only a minority of voters felt strongly either way. This suggests there is also opportunity for advocates or opponents of rights of nature laws to shift public opinion.

Acknowledgements

We acknowledge funding from the Swedish Research Council (Vetenskapsrådet) for projects 2018-05203 and 2020-04973. Epstein also received funding from Riksbankens Jubeliumsfond. Thank you to Kimberley Graham for comments on a draft.

Annex 1: 'Would you support or oppose policy that would give legal rights to forests or rivers – such as the right to exist free from destruction or pollution.'

RURAL/ URBAN							
Country	**Number of respondents**	**Group Type**	**% Strongly Oppose**	**% Oppose**	**% Neutral**	**% Support**	**% Strongly Support**
Austria	202	rural	4	4	28	33	31
Austria	304	urban	6	7	28	31	28
Belgium	255	rural	4	6	27	36	27
Belgium	255	urban	3	9	33	29	26
Bulgaria	82	rural	5	4	15	40	37
Bulgaria	487	urban	5	2	14	33	47
Croatia	82	rural	4	6	30	41	18
Croatia	245	urban	4	4	29	36	27
Czech Republic	131	rural	3	7	37	27	26
Czech Republic	378	urban	5	4	28	36	28
Denmark	253	rural	5	7	39	28	21
Denmark	255	urban	7	8	33	27	25
Estonia	134	rural	1	6	34	45	14
Estonia	165	urban	3	5	25	45	22
Finland	244	rural	5	10	39	36	10
Finland	256	urban	3	9	32	33	22
France	244	rural	2	6	26	36	30
France	250	urban	2	8	32	32	26

[18] Ibid. at 24.

RURAL/ URBAN							
Country	**Number of respondents**	**Group Type**	**% Strongly Oppose**	**% Oppose**	**% Neutral**	**% Support**	**% Strongly Support**
Germany	424	rural	7	5	25	32	30
Germany	503	urban	5	5	35	32	22
Greece	245	rural	2	6	20	38	35
Greece	254	urban	2	4	17	43	35
Hungary	260	rural	2	5	26	36	32
Hungary	261	urban	5	7	20	34	35
Italy	244	rural	2	3	19	39	38
Italy	255	urban	2	6	21	35	35
Latvia	28	rural	7	11	25	43	14
Latvia	82	urban	1	5	32	48	15
Lithuania	125	rural	2	3	28	42	25
Lithuania	255	urban	2	4	24	40	29
Nether-lands	245	rural	6	11	36	30	17
Nether-lands	254	urban	6	8	33	32	21
Poland	242	rural	5	11	38	31	15
Poland	254	urban	5	11	32	30	22
Portugal	244	rural	11	8	25	31	25
Portugal	257	urban	13	12	28	26	20
Romania	90	rural	2	3	16	33	46
Romania	468	urban	3	4	17	36	40
Slovakia	245	rural	3	7	43	33	14
Slovakia	255	urban	3	2	35	40	20
Slovenia	154	rural	2	7	29	34	27
Slovenia	180	urban	3	6	26	34	31
Spain	244	rural	9	7	27	24	33
Spain	254	urban	7	6	21	29	36
Sweden	243	rural	6	5	39	28	23
Sweden	255	urban	4	10	38	29	19
Overall	4660	rural	5	6	30	33	26
Overall	6382	urban	4	6	27	34	29

MALE/ FEMALE							
Country	**Number of respondents**	**Group Type**	**% Strongly Oppose**	**% Oppose**	**% Neutral**	**% Support**	**% Strongly Support**
Austria	254	female	7	6	29	28	30
Austria	252	male	4	6	27	35	28
Belgium	255	female	4	7	29	32	28
Belgium	255	male	3	8	31	34	25
Bulgaria	292	female	5	3	12	34	47
Bulgaria	277	male	5	2	16	34	44
Croatia	168	female	4	2	21	40	32
Croatia	159	male	4	7	37	35	17
Czech Republic	255	female	3	4	27	36	31
Czech Republic	254	male	6	6	33	31	24
Denmark	252	female	4	4	40	27	23
Denmark	256	male	7	11	32	28	23
Estonia	165	female	3	5	25	45	22
Estonia	134	male	1	7	34	45	14
Finland	251	female	3	7	35	33	22
Finland	249	male	5	12	35	36	11
France	246	female	1	6	31	33	29
France	248	male	4	8	27	35	27
Germany	486	female	6	6	29	30	29
Germany	441	male	5	5	32	35	23
Greece	249	female	2	5	17	40	36
Greece	250	male	2	4	20	40	34
Hungary	262	female	4	4	22	35	36
Hungary	259	male	3	8	24	35	31
Italy	250	female	2	4	25	32	36
Italy	249	male	2	5	15	41	37
Latvia	55	female	2	0	33	53	13
Latvia	55	male	4	13	27	40	16
Lithuania	243	female	2	4	21	44	28
Lithuania	137	male	1	4	33	34	27
Netherlands	264	female	5	11	34	25	25
Netherlands	235	male	8	8	34	37	12
Poland	247	female	4	7	34	34	22
Poland	249	male	5	15	37	28	16
Portugal	250	female	13	13	29	23	22
Portugal	251	male	12	8	24	34	23

MALE/ FEMALE							
Country	**Number of respondents**	**Group Type**	**% Strongly Oppose**	**% Oppose**	**% Neutral**	**% Support**	**% Strongly Support**
Romania	274	female	3	3	14	36	43
Romania	284	male	2	5	20	35	38
Slovakia	250	female	3	3	42	32	20
Slovakia	250	male	3	6	36	41	14
Slovenia	177	female	2	3	28	33	33
Slovenia	157	male	3	10	27	36	25
Spain	248	female	12	6	21	27	35
Spain	250	male	5	8	28	27	33
Sweden	250	female	4	7	39	28	22
Sweden	248	male	6	7	38	28	21
Overall	5643	female	4	5	28	33	30
Overall	5399	male	5	7	29	35	25

YOUNG/ OLD							
Country	**Number of respondents**	**Group Type**	**% Strongly Oppose**	**% Oppose**	**% Neutral**	**% Support**	**% Strongly Support**
Austria	274	young	5	5	30	30	29
Austria	232	old	5	6	25	34	29
Belgium	270	young	3	6	30	35	26
Belgium	240	old	5	9	29	30	27
Bulgaria	352	young	4	3	13	33	47
Bulgaria	217	old	6	1	15	35	43
Croatia	200	young	4	4	30	36	25
Croatia	127	old	3	6	28	39	24
Czech Republic	262	young	5	4	26	33	32
Czech Republic	247	old	4	5	34	34	23
Denmark	266	young	6	8	34	26	26
Denmark	242	old	5	7	38	29	21
Estonia	191	young	3	7	28	46	16
Estonia	108	old	0	4	31	44	22
Finland	273	young	5	10	36	34	16
Finland	227	old	3	10	35	35	17
France	272	young	3	7	28	31	30
France	222	old	1	7	30	37	25

YOUNG/ OLD							
Country	**Number of respondents**	**Group Type**	**% Strongly Oppose**	**% Oppose**	**% Neutral**	**% Support**	**% Strongly Support**
Germany	513	young	8	6	29	31	26
Germany	414	old	4	4	32	34	26
Greece	322	young	2	5	20	38	35
Greece	177	old	1	4	16	44	35
Hungary	290	young	5	6	24	32	33
Hungary	231	old	2	5	20	39	34
Italy	212	young	3	7	21	36	33
Italy	287	old	1	3	19	38	39
Latvia	70	young	1	4	33	46	16
Latvia	40	old	5	10	25	48	12
Lithuania	233	young	2	5	27	40	26
Lithuania	147	old	2	3	22	42	31
Nether-lands	249	young	7	11	30	31	21
Nether-lands	250	old	5	8	39	31	18
Poland	315	young	5	11	34	32	18
Poland	181	old	4	10	37	29	20
Portugal	248	young	13	12	29	27	19
Portugal	253	old	12	8	24	30	26
Romania	380	young	3	5	18	33	41
Romania	178	old	2	2	16	41	39
Slovakia	318	young	3	4	36	36	20
Slovakia	182	old	2	5	43	38	12
Slovenia	181	young	3	8	22	29	38
Slovenia	153	old	1	5	34	41	19
Spain	299	young	10	7	21	25	36
Spain	199	old	6	6	28	29	32
Sweden	282	young	4	8	41	25	22
Sweden	216	old	6	6	35	32	20
Overall	6272	young	5	7	28	33	28
Overall	4770	old	4	6	29	35	27

Annex 2: Other languages

Bulgarian

Подкрепяте или сте против политика, която ще даде законни права на горите или реките, например правото да не да бъдат унищожавани или замърсявани?

Czech

Podporujete nařízení, které by přiznávalo lesům nebo řekám zákonná práva – například právo na existenci bez ničení nebo znečišťování, nebo mu oponujete?

Danish

Vil du støtte eller modsætte dig en politik, der ville give juridiske rettigheder til skove eller floder – såsom retten til at eksistere fri for ødelæggelse eller forurening?

German

Würden Sie eine Politik unterstützen oder ablehnen, die den Wäldern oder Flüssen Rechte einräumt – beispielsweise das Recht, frei von Zerstörung oder Verschmutzung zu existieren?

Greek

Θα ήσασταν υπέρ ή κατά μιας πολιτικής που θα έδινε νομικά δικαιώματα σε δάση ή ποτάμια – όπως το δικαίωμα να υπάρχουν χωρίς να τα καταστρέφουν ή να τα ρυπαίνουν?

Spanish

¿Apoyaría o se opondría a una política que otorgara derechos legales a los bosques o ríos, como el derecho a existir libres de destrucción o contaminación?

Estonian

Kas te toetaksite või oleksite selliste reeglite vastu, mis annab metsadele või jõgedele seaduslikud õigused – nt õiguse mitte hävitatud või reostatud saada?

Finnish

Kannattaisitko vai vastustaisitko politiikkaa , jossa metsille tai joille annettaisiin lailliset oikeudet – kuten oikeus olemassaoloon ilman tuhoa tai saastumista?

French

Seriez-vous favorable ou opposé à une politique qui donnerait des droits légaux aux forêts ou aux rivières – comme le droit d'exister sans destruction ou pollution?

Croatian

Biste li podržali ili se protivili politici koja bi dodijelila zakonska prava šumama ili rijekama – poput prava na slobodu bez uništavanja ili zagađenja?

Hungarian

Támogatná vagy ellenezné azt a politikát, amely törvényi jogokat adna az erdőknek vagy folyóknak – például a pusztítástól és szennyezéstől mentes létezéshez való jogot?

Italian

Sarebbe favorevole o contrario a politiche che attribuiscano diritti legali alle foreste o ai fiumi, come il diritto di esistere senza distruzione o inquinamento?

Lithuanian

Ar pritariate politikai, kuri suteiktų įstatymines teises miškams ar upėms, pavyzdžiui, teisę egzistuoti nesunaikinant ar neteršiant?

Latvian

Vai Jūs atbalstītu vai būtu pret politiku, saskaņā ar kuru mežiem un upēm tiktu piešķirtas likumīgas tiesības, piemēram, tiesības eksistēt bez iznīcināšanas vai piesārņošanas?

Dutch

Zou je voor of tegen beleid zijn dat bossen of rivieren wettelijke rechten geeft, zoals het recht om vrij van vernietiging of vervuiling te bestaan?

Polish

Czy poparłbyś lub sprzeciwiłbyś się polityce, która nadawałaby prawa lasom lub rzekom – takie jak prawo do istnienia wolnego od zniszczenia lub zanieczyszczenia?

Portuguese

Diria que apoia ou que se opõe a políticas que concederiam direitos legais às florestas e aos rios – tal como o direito à existência livre de quaisquer destruição ou poluição?

Romanian

Ați sprijini sau v-ați opune unei politici care ar da drepturi legale pădurilor sau râurilor – cum ar fi dreptul de a exista fără a fi distruse sau poluate?

Slovak

Podporili by ste túto politiku alebo by ste boli proti tomu, aby sa poskytli zákonné práva na lesy alebo rieky – ako napríklad právo na existenciu bez ničenia alebo znečistenia?

Slovenian

Bi podprli politiko, ki bi gozdom ali rekam dala zakonske pravice – na primer pravico do obstoja brez uničevanja ali onesnaževanja, ali bi ji nasprotovali?

Swedish

Skulle du stödja eller motsätta dig en politik som skulle ge skogarna eller älvarna juridiska rättigheter – t.ex. rätten att existera utan att förstöras eller förorenas?

What is valuable in human and non-human nature?

*Lina Langby**

Abstract

This article philosophically explores metaphysical naturalism, panpsychism, and their respective connection to intrinsic value. All environmental ethics must, one way or another, face the problem of intrinsic value. Environmental ethics must answer how we can coherently justify the claim that nature, or parts of nature, have intrinsic value that, therefore, should be protected by rights. The article argues that panpsychism is particularly promising from a rights-of-nature perspective. It is also argued that metaphysical naturalism is incoherent regarding the notion of nature having intrinsic value, which makes metaphysical naturalism a weak ground for the justification of rights of nature.

Introduction

Aspects of nature have been given legal rights around the world. The Universal Declaration of Rights of Mother Earth was presented in Bolivia in 2010, which also adopted a law on the rights of Mother Earth the same year. The river Vilcabamba in Ecuador, the national park Te Urewera in New Zealand, the river Atrato in Columbia, and the river Whanganui in New Zealand are examples of pieces of nature that have been given legal rights. There are several other examples where non-human nature has been given legal rights. Research on the political, historical, and legal perspectives on nature rights is crucial and provides valuable knowledge in understanding the implications of giving nature rights.[1] However, we must also understand the philosophical reasons for giving nature rights in the first place. Why is a river valuable enough to be given legal rights? What separates the river from the riverbank? Where should the lines be drawn? Since pieces of nature have already been given legal rights, it is essential to understand why, not only from political and legal perspectives. The *philosophical grounds for nature's rights must be outlined* so that these rights do not become arbitrary or misused in harmful ways.[2] Mihnea Tănăsescu has voiced the concern that we must be cautious when adopting and using the rights of nature since these rights are not necessarily created to save the environment. "[T]he question of who has the power to represent a nature with rights is central to understanding their [the rights of nature] potential."[3] How rights of nature are used and applied depends on "the power configuration that births them."[4] It is, therefore, crucial to critically analyze and outline what type or types of worldviews and value systems can serve as a long-lasting base for the legal rights of nature. When exploring the philosophical justifications for rights of nature and the metaphysics behind

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[1] Research Project *Att förverkliga naturens rättigheter: Hållbar utveckling och demokrati* provides exactly this. See more on https://www.crs.uu.se/forskning/pagaende/forverkliga-naturens-rattigheter/ (2023-09-22).

[2] Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (Bielefeld: transcript, 2022), 16–17.

[3] Tănăsescu, *Understanding the Rights of Nature*, 16.

[4] Tănăsescu, *Understanding the Rights of Nature*, 17.

them, it is also of high relevance to answer how demarcations should be made between different subjects of nature rights.

Naturalism and value

A strict naturalistic perspective on the value of human and non-human nature leads nowhere other than to a purely instrumental and anthropocentric view of the latter. Why is that?

In the West, most countries, governments, and cultures are grounded in the idea that religious beliefs should be kept out of the political and legal institutions. The idea is that in all democracies, the secular perspective must be the governing one to safeguard people's freedom of religion and make sure that everyone can understand the rationale used in political and legal decisions.[5] The secular perspective is thought to be the neutral position, a position that all can understand and, therefore, accept. A secular outlook on life is, in turn, based on metaphysical naturalism. Metaphysical naturalism is, therefore, widely spread.

A metaphysical naturalist believes that nature is all there is and that everything in nature is reductively physicalist.[6] Everything can be reduced to whatever physics says about it. According to a naturalist and reductive physicalist, the conscious mind cannot be attributed to any qualities other than purely physical ones. In other words, there can be no mental causation unless that can be reduced to and fully explained in purely physical terms. But if it can be so reduced, there is really no mental causation at all because the mental causation would become overdetermined.[7]

Given this position, is it reasonable to think that we could derive intrinsic value from the natural, physical world? I argue otherwise. As mentioned, metaphysical naturalism holds two truth claims: (1.) materialism and (2.) physicalism. This entails a commitment to the belief that all that exists ultimately is material. If consciousness and mental states are real and not only epiphenomenal, then they supervene on the material. The second belief held by metaphysical naturalists is that everything is reducible to physical laws, particles, or energy.[8] Physics can tell us many things about reality. What physics cannot comment on is ethical questions or questions of value. From a physics perspective, we can describe how a gene has evolved, mutated, and adapted, but we cannot, from this perspective alone, say whether the mutations and adaptations were good or not. From descriptive facts, we cannot draw normative conclusions about value. To paraphrase the philosopher David Hume, we cannot derive ought from is. We cannot derive normative assertions and moral laws from pure descriptive facts about reality. It may be a fact that a human being dies without oxygen. But from this fact, we cannot, without additional normative theories, draw conclusions about the moral rights or wrongs in letting people die from suffocation due to insufficient access to oxygen. In other words, from a reductive physicalist description of reality stating that everything is reducible to whatever physics says about reality, for example, that it is constituted by non-sentient and non-experiencing particles and energy, we cannot draw conclusions about intrinsic value. Nature as a whole, or pieces of

[5] Robert Audi, *Democratic Authority and the Separation of Church and State* (Oxford: Oxford University Press 2011), 39.

[6] Philip Clayton, *Religion and Science: The Basics*, Second edition (London: Routledge, Taylor & Francis Group, 2019), 2.

[7] Jaegwon Kim, "Emergence: Core Ideas and Issues", *Synthese* 3, no. 151 (2006): 547–559.

[8] Clayton, *Religion and Science*, 2.

nature such as trees and rivers, cannot be inherently valuable from a reductive physicalist perspective. A reductive physicalist universe has no value at all, at least not any intrinsic value but only instrumental value to beings such as ourselves.

Value is something humans attribute to things, particularly that which makes our own lives better and more fulfilling. According to a physicalist and naturalist, value is relative to human flourishing.[9] If naturalism serves as the metaphysical base for understanding nature rights, then the rivers, forests, and mountains are only *instrumentally valuable for our sake*. I argue that this is a weak ground that could easily be taken away as humans change their minds about what they need and value for the moment.[10]

More long-lasting and promising value systems from the perspective of the rights of nature are found in religion. Pantheistic and panentheistic views of the God-world relationship have good environmental potential as they attribute intrinsic value to the human and non-human world.[11] Pantheism entails the view that God and the world are identical in some way or another.[12] Panentheism entails the view that God includes but also transcends the world.[13] Pantheism and panentheism take the natural world to be intrinsically divine or part of the divine. Further, traditional views of God as the Creator of the world have reason to attribute intrinsic value to the natural world, as it is believed to be created by a good God who "saw that it was good" (Genesis 1). However, in all these religious worldviews, the question that was raised in the introduction arises: how to draw the line between different value-holders? A Christian believing that God created the world could still coherently argue that human beings are the *most* valuable, or even the only beings with *intrinsic* value. Similar problems also arise regarding pantheism. If everything is a monistic divine God-world, how can we claim that a meadow has value and the right to be protected but not the trees and bushes that must be cut down to keep the meadow open?[14]

However, there are also non-religious worldviews with the potential of serving as a good metaphysical ground for justifying the value of non-human nature. For the reasons mentioned above, it cannot be a form of metaphysical and reductive naturalism. However, several researchers have pointed to the ecological potential in panpsychist worldviews.[15] Panpsychists hold everything in reality to be fundamentally mental, conscious, experiencing, or subjective –

[9] This is one of the fundamental differences between metaphysical naturalists and pantheists. Pantheists believe that there is inherent value in the God-world, while the naturalist must deny that. See Martin O. Yalcin, "American Naturalism on Pantheism", *American Journal of Theology & Philosophy* 32, no. 2 (2011): 156–157.

[10] See Tănăsescu, *Understanding the Rights of Nature*.

[11] Lina Langby, *God and the World: Pragmatic and epistemic arguments for panentheistic and pantheistic conceptions of the God-world relationship* (Uppsala: Acta Universitatis Upsaliensis, 2023), 79–81.

[12] For more on the identity claim in pantheism, see Langby, *God and the World*, 87.

[13] Langby, *God and the World*, 71–72.

[14] For more on the pantheist problem of value differentiation, see Lina Langby, "The role of panentheism and pantheism for environmental well-being", in *Views of Nature and Dualism: Rethinking Philosophical, Theological, and Religious Assumptions in the Anthropocene*, eds. Knut-Willy Saether and Thomas John Hastings, (Palgrave Macmillan, 2023) 43–70.

[15] See Langby (2023), chapter 6, Mikael Leidenhag, *Naturalizing God?: A Critical Evaluation of Religious Naturalism* (Uppsala: Department of Theology, Uppsala University, 2016); Joanna Leidenhag, *Minding Creation: Theological Panpsychism and the Doctrine of Creation*, T&T Clark Studies in Systematic Theology (London: Bloomsbury T&T Clark, 2022).

even at the material and most basic level.[16] Everything is either mental, conscious, experiencing, or subjective, according to panpsychists, and the step from panpsychism to perceiving rivers and mountains as sentient beings with the right to protection is not far. If everything – both human and non-human nature – are subjective parts of a shared community, it could very well be argued that also non-human nature is part of our moral community and, thus, has the right to be protected by rights.

Panpsychism combines both religious and non-religious views well and thus has a great explanatory advantage for understanding the rights of nature. A panpsychist ontology can be added to, for example, pantheistic, panentheistic, classical theistic, Christian, Hindu, and Buddhist worldviews.[17] Moreover, given that panpsychism only makes claims about the nature of physical reality, it is wholly compatible with secular worldviews as well. However, for obvious reasons, it is incompatible with metaphysical and reductive naturalism since the fundamental truth claims of metaphysical naturalism are incompatible with the panpsychist claim that physical matter is more than physical.

Panpsychism and value

Critiques of panpsychism often claim it lacks evidence and is too implausible to be true. They claim that there are no reasons to think that mentality, or consciousness, is fundamental to physical reality.[18] However, there is no evidence that suggests otherwise, and there is no evidence to suggest that a reductive physicalist worldview is correct. No one has proved that reductive physicalism is true. The fact that brain neurons are active when we think and use our minds does not rule out the reality of truly mental phenomena. Naturalism, in general, and reductive physicalism, in particular, hold physical matter to be wholly non-sentient, non-conscious, and non-experiencing without providing any evidence for it. Naturalism and reductive physicalism are *philosophical* worldviews, just like panpsychism. Furthermore, reductive physicalism must face the interaction problem (how the mind can interact with the physical, and vice versa) or else claim that all mental and conscious phenomena are, in fact, only epiphenomenal – something that contradicts our commonsense view of ourselves and the world. Joanna Leidenhag and several other philosophers argue in detail for the reasonableness of panpsychism and show that panpsychism deserves to be taken seriously.[19]

Panpsychism and physicalism are both metaphysical, philosophical theories, and physicalism is not without explanatory problems. Given a reductive physicalist perspective, we cannot answer how mentality and consciousness emerge – in fact, a reductive physicalist would reject mental phenomena altogether – and seeing that at least humans are conscious and experiencing beings, this is a problem. On the

[16] See contemporary panpsychists/panexperientialists Joanna Leidenhag, Thomas Jay Oord, Philip Goff, and Mikael Leidenhag. Leidenhag, *Minding Creation*, 1; Thomas Jay Oord, *God Can't: How to Believe in God and Love after Tragedy, Abuse, or Other Evils* (Grasmere, Idaho: SacraSage, 2019), 56; Philip Goff, *Why? The Purpose of the Universe*, 1st ed. (New York: Oxford University Press, 2023), 119, 126; Leidenhag, *Naturalizing God?*, 219.

[17] Langby, *God and the World*, 133; Leidenhag, *Naturalizing God?*, 217; Joanna Leidenhag, "Panpsychism and God", *Philosophy Compass* Vol. 17:12 (2022), 1–11.

[18] See, e.g., Colin McGinn, *The Character of Mind* (Oxford: Oxford University Press, 1982), 32; J.P. Moreland, *Consciousness and the Existence of God* (New York: Routledge, 2008), 128; Achim Stephan, "Emergence and Panpsychism," in *Panpsychism: Contemporary Perspectives*, eds. Godehard Brüntrup and Ludwig Jaksolla (Oxford: Oxford University Press, 217), 347 (334–348); and Willhelm B. Drees, *Religion and Science in Context: A Guide to the Debates* (New York: Routledge, 2010), 92.

[19] For a good overview of the arguments for and against panpsychism, see Leidenhag, *Minding Creation*, 60–81.

contrary, given a panpsychist perspective, the emergence of complex beings with highly developed forms of consciousness and experience is something to be expected if mentality is fundamental to everything. Panpsychism has explanatory advantages, is particularly interesting from an environmental perspective, and should be the focus of more research.

Val Plumwood argues in favor of a kind of (weak) panpsychism: that mindlike qualities are fundamental to all things, although not necessarily experience or consciousness.[20] If we follow Plumwood, we see that goal-directedness, teleology, is necessary in a world that strives for ecological flourishing and well-being. "Notions of growth, of flourishing, for example, are implicitly teleological and do not presuppose consciousness […]"[21] Thus, we do not need consciousness to have teleology. That seems correct. But what panpsychism does is infuse the entire world with subjectivity; there is something it is like to be a stone and a tree. They experience their surroundings in a subjective way. All environmental ethics must, one way or another, face the problem of intrinsic value. In other words, environmental ethics must answer how we can coherently justify the claim that nature, or parts of nature, have intrinsic value that, therefore, should be protected by rights. It is a widespread assumption that if no one is there to *experience* the value, the concept of intrinsic value becomes meaningless.[22] As Leidenhag notes, "[…] by grounding intrinsic value in subjectivity, panpsychism need not face [the problem of equal value for everything] since the complexity and intensity of the subject will quite naturally correspond to the quantity of intrinsic value."[23] The reason for grounding intrinsic value in subjectivity is because it seems that something must have a mind to be able to both value and be valued.[24] In other words, we do not necessarily need consciousness to ground intrinsic value, *but we need teleology – the strive for something (better) – and possibly also subjective minds*.

In a strict naturalistic world, there is no coherent reason to think that ecological flourishing is inherently *better in itself* than destruction. A naturalist can only coherently claim that it would be better for different instrumental reasons but not in itself because nature – matter – is inherently non-sentient, non-experiencing, and valueless. According to Plumwood and many other environmental philosophers, the ecological crisis of today results to a high degree from the dualistic and hierarchal division between humans/nature, as if humans are not part of nature.[25]

Relationality and Rights of Nature

I argue that panpsychism is particularly interesting from a rights-of-nature perspective. The main reason is that panpsychism is a fundamentally relational ontology, meaning that all parts of nature relate to and experience each other. Depending on the type of panpsychism in question, the demarcations between different subjects or mental entities and their value will vary. However, all types of panpsychism entail that

[20] Val Plumwood, *Feminism and the Mastery of Nature* (London and New York: Routledge 1993, Taylor & Francis e-Library, 2003), 133.

[21] Plumwood, *Feminism and the Mastery of Nature*, 135.

[22] Leidenhag, *Minding Creation*, 143; Frederik Ferré, "Personalistic Organicism: Paradox or Paradigm?", *Royal Institute of Philosophy Supplement* 36 (1994), 73.

[23] Leidenhag, *Minding Creation*, 146.

[24] Leidenhag, *Minding Creation*, 142.

[25] Plumwood, *Feminism and the Mastery of Nature*, 2. See also Langby, *God and the World*, Ch. 5–6; Sallie McFague, *Models of God: Theology for an Ecological, Nuclear Age* (London: SCM Press, 1987); Radford Ruether Rosemary, "Ecofeminist Philosophy, Theology, and Ethics: A Comparative View," in *Ecospirit: Religion, Philosophy, and the Earth*, eds. Laurel Kearns and Catherine Keller (New York: Fordham University Press, 2007), 77–93.

humans, animals, plants, and even objects, are relational, experiencing, and possibly also subjective beings.

If nature is fundamentally mental or experiencing, then relationality is fundamental. If we, when encountering trees, rivers, and mountains, are not encountering dead, non-sentient nature but something fundamentally experiencing – we see that we are part of a fundamentally relational world. This has far-reaching ethical implications because relations can be cherished and tended to or neglected. Relating this back to the question of giving nature legal rights, we see the potential in a relational ontology such as panpsychism. If we are in an ethical relationship, or rather many ethical relationships, with a *mind-full* nature, then we cannot reject nature as inherently valueless, and we cannot coherently claim that it falls beyond the category of what could constitute a moral entity entitled to moral and legal rights. We see the relational aspect and motivation in the legislation *Te Awa Tupua* Act (Whanganui River Claims Settlement) in Aotearoa, New Zealand. The Māori people experience themselves to be part of the river Whanganui, just as the river is part of them.[26] Relational ontologies, of which panpsychism is one, appear fruitful for justifying nature rights.

There are, however, those who voice the concern that a rights perspective is counterproductive to relational understandings of reality. Miriama Cribb, Elizabeth Macpherson, and Axel Borchgrevink argue that the legal rights of the river Whanganui in Aotearoa, New Zealand, are the results of the New Zealand government's wish to correct the past wrongdoings of the British Crown against the Māori people rather than an expression of a genuine relational worldview. The worry is that the legal aspects of nature rights get in the way of the relational understanding expressed, e.g., in the Māori mindset, *I am the river, and the river is me* (Ko au te Awa, ko te Awa ko au).[27]

> Even though the *Act* does recognise the river as a person and establishes rights for the river, this is a by-product of legislation designed to (partially) repair the Crown's past wrongdoings against Māori. In spite of *Te Awa Tupua* having gained international attention as a way of legislating *rights of nature*, it is better understood as a recognition of the state's obligations in terms of *Indigenous rights and authority*, especially jurisdiction for Indigenous Law.[28]

By giving nature legal rights, we do not necessarily get a change in mindset, and we do not necessarily act in nature as if it really is a subject of its own (or rather, many subjects). As mentioned at the beginning of this article, Tănăsescu argues that the rights of nature are not about nature at all but about power relations, and the outcomes for nature will always depend on its legal spokespersons and their political interests.[29] For example, the Te Urewera Act 2014 ascribes legal rights to Te Urewera, the ancestral home of Tūhoe people in Aotearoa, New Zealand. According to Tănăsescu, the reason for the

[26] https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html (2024-05-30). See also Miriama Cribb, Elizabeth Macpherson, and Axel Borchgrevink, "Beyond legal personhood for the Whanganui River: collaboration and pluralism in implementing the Te Awa Tupua Act", *The International Journal of Human Rights* (2024), 7.

[27] https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html (2024-05-30).

[28] Miriama Cribb, Elizabeth Macpherson, and Axel Borchgrevink, "Beyond legal personhood for the Whanganui River: collaboration and pluralism in implementing the Te Awa Tupua Act", *The International Journal of Human Rights* (2024), 2.

[29] Mihnea Tănăsescu, "The Rights of Nature as Politics," in *Rights of Nature: A Re-Examination*, eds. Daniel P. Corrigan and Markku Oksanen (London: Routledge, 2010), 69, 71–72.

legal decision to let this piece of land have legal personality to own itself was a political one to "sidestep the question of ownership" between the British Crown and the Tūhoe people.[30]

The concern that the rights of nature are driven by political power interests rather than a genuine interest in the well-being of nature and human-nature relationships is important and valid. *For this reason*, I am stressing the importance of philosophical investigations and analyses of metaphysical value systems. Laws are not absolute but constituted and constructed. What is law and what is right are not always the same. This entails a responsibility to keep philosophically critiquing and discussing laws, their implications, and their normative grounds. It is not enough that rights of nature are realized in constitutional laws. We must still philosophically evaluate and critique the normative reasons for such laws and the value systems that justify them.

The epistemic arguments in favor of panpsychism show that panpsychism cannot be easily dismissed.[31] With even more research on panpsychism, it will hopefully become more widespread and well-known even in Western cultures. Moreover, research on panpsychism ties well into ecological and biological research on non-human nature. For example, Suzanne Simard's pioneering work on forest ecology conveys the intelligence and communication among trees.[32] Granted that such research does not prove the truth of panpsychism, it still coheres well with it, which contributes to making panpsychism a reasonable and viable ontology that can help us make sense of our lives and our experiences. Relational worldviews such as panpsychism should be taken seriously, and panpsychism suggests that reality is inherently relational. According to panpsychism, non-human nature is full of minds, subjects, and experiences. In a nature full of subjective minds, a rights aspect might be politically applied but still contribute to a more long-lasting normative value system that promotes, rather than prevents, relationality between both humans and non-humans.

[30] Tănăsescu, "The Rights of Nature as Politics," 75.

[31] See, e.g., Leidenhag, *Minding Creation*, 49–81; Goff, *Why? The Purpose of the Universe*; David Ray Griffin, *Reenchantment Without Supernaturalism: A Process Philosophy of Religion*, Cornell Studies in the Philosophy of Religion (Ithaca, N.Y: Cornell University Press, 2001), 103–17.

[32] Suzanne Simard, *Finding the Mother Tree: Discovering the Wisdom of the Forrest* (London: Allen Lane, 2021).

References

Audi, Robert, *Democratic Authority and the Separation of Church and State* (Oxford: Oxford University Press 2011).

Clayton, Philip, *Religion and Science: The Basics*, Second edition (London: Routledge, Taylor & Francis Group, 2019).

Cribb, Miriama, Macpherson, Elizabeth, and Borchgrevink, Axel, "Beyond legal personhood for the Whanganui River: collaboration and pluralism in implementing the Te Awa Tupua Act," *The International Journal of Human Rights* (2024), 1–24.

Drees, Willhelm B., *Religion and Science in Context: A Guide to the Debates* (New York: Routledge, 2010).

Ferré, Frederik, "Personalistic Organicism: Paradox or Paradigm?," *Royal Institute of Philosophy Supplement* 36 (1994), 73.

Goff, Philip, *Why? The Purpose of the Universe*, 1st ed. (New York: Oxford University Press, 2023).

Griffin, David Ray, *Reenchantment Without Supernaturalism: A Process Philosophy of Religion*, Cornell Studies in the Philosophy of Religion (Ithaca, N.Y: Cornell University Press, 2001).

Langby, Lina, *God and the World: pragmatic and epistemic arguments for panentheistic and pantheistic conceptions of the God-world relationship* (Uppsala: Acta Upsaliensis, 2023).

Langby, Lina, "The role of panentheism and pantheism for environmental well-being," in *Views of Nature and Dualism: Rethinking Philo-*

sophical, Theological, and Religious Assumptions in the Anthropocene, eds. Knut-Willy Saether and Thomas John Hastings (Palgrave Macmillan, 2023), 43–70.

Leidenhag, Mikael, *Naturalizing God?: A Critical Evaluation of Religious Naturalism* (Uppsala: Department of Theology, Uppsala University, 2016).

Leidenhag, Joanna, *Minding Creation: Theological Panpsychism and the Doctrine of Creation*, T&T Clark Studies in Systematic Theology (London: Bloomsbury T&T Clark, 2022).

Leidenhag, Joanna, "Panpsychism and God," *Philosophy Compass* Vol. 17:12 (2022), 1–11.

McGinn, Colin, *The Character of Mind* (Oxford: Oxford University Press, 1982).

Moreland, J. P., *Consciousness and the Existence of God* (New York: Routledge, 2008).

Kim, Jaegwon, "Emergence: Core Ideas and Issues," *Synthese* 3, no. 151 (2006): 547–559.

Plumwood, Val, *Feminism and the Mastery of Nature* (London and New York: Routledge 1993, Taylor & Francis e-Library, 2003).

McFague, Sallie, *Models of God: Theology for an Ecological, Nuclear Age* (London: SCM Press, 1987).

Radford Ruether, Rosemary, "Ecofeminist Philosophy, Theology, and Ethics: A Comparative View," in *Ecospirit: Religion, Philosophy, and the Earth*, eds. Laurel Kearns and Catherine Keller (New York: Fordham University Press, 2007).

Oord, Thomas Jay, *God Can't: How to Believe in God and Love after Tragedy, Abuse, or Other Evils* (Grasmere, Idaho: SacraSage, 2019).

Simard, Suzanne, *Finding the Mother Tree: Discovering the Wisdom of the Forrest* (London: Allen Lane, 2021).

Stephan, Achim, "Emergence and Panpsychism," in *Panpsychism: Contemporary Perspectives*, eds. Godehard Brüntrup and Ludwig Jaksolla (Oxford: Oxford University Press, 217), 334–348.

Tănăsescu, Mihnea, *Understanding the Rights of Nature: A Critical Introduction* (Bielefeld: transcript, 2022).

Tănăsescu, Mihnea, "The rights of nature as politics," in *Rights of Nature: A Re-examination*, eds. Daniel P. Corrigan and Markku Oksanen (London: Routledge 2010), 69–84.

Yalcin, Martin O., "American Naturalism on Pantheism," *American Journal of Theology & Philosophy* 32, no. 2 (2011): 156–57.

Intresseavvägningar och implementeringen av naturens rättigheter i svensk rätt

*Fabianne Lenvin**

Abstrakt

Denna reflekterande essä tar upp flera punkter om intresseavvägningen i miljötillståndsprocessen. Den diskuterar bristen på tydliga riktlinjer för hur denna avvägning ska gå till. Vidare föreslås att om naturen behandlas som en rättighetsbärande entitet kan det öka antalet intressen som måste balanseras, vilket gör en redan komplex fråga ännu mer komplicerad. Med älgjakt som exempel antyder den att naturens rättigheter kan tvinga fram en fråga om ”vad som verkligen gynnar naturen” i samtal där den tidigare varit frånvarande. Slutligen påpekas att urfolkssamernas intressen för närvarande balanseras mot Sveriges energi- och konsumentkrav.

Som nyexaminerad jurist var det både lärorikt och inspirerande att ta del av symposiet om naturens rättigheter. Det var också lägligt att kunna tal del av diskussionerna så nära inpå inlämnandet av mitt examensarbete som handlade om systemet för omprövning för moderna miljövillkor av vattenkraftverk och dammar för produktion av vattenkraftsel.[1] Ett omdiskuterat förfarande där flera olika intressen ställs mot varandra. Syftet med mitt examensarbete var att undersöka omprövningen för moderna miljövillkor i ljuset av den problembild som presenterades i Miljöprövningsutredningen[2] under år 2022 avseende nuvarande miljötillståndsprocess och orsaken till en ineffektiv miljöprövning. Särskilt koncentrerades undersökningen kring hur samverkansprocessen, domstolens utredningsskyldighet och processledning, samt tillstånd enligt den äldre rättigheten urminnes hävd påverkar omprövningens processeffektivitet. För nämnda ändamål genomfördes kvalitativa intervjuer med parter som var aktivt involverade i omprövningarna för att belysa differensen mellan den teoretiska rättsvetenskapliga litteraturen och den praktiska tillämpningen. Det som väckte mitt intresse vid genomförandet av examensarbetet var den problematik kring avvägningar som visade sig föreligga vid samverkansprocessen. Syftet med samverkan är bl.a. att inför de individuella prövningarna av berörda verksamheter sammanställa det underlag som behövs för att alla verksamheter ska kunna förses med moderna miljövillkor på ett sätt som, i enlighet med 11 kap. 28 § miljöbalken, innebär största möjliga nytta för vattenmiljön och en effektiv tillgång till vattenkraftsel. Hur denna avvägning ska genomföras är dock inte närmare reglerat eller specificerat i lagstiftningen, vilket utgör ett hinder för en effektiv miljöprocess och införandet av moderna miljövillkor. Mig veterligen är just frågan om avvägningen en av anledningarna till att regeringen införde en paus i omprövningarna i december 2022. Pausen var ursprungligen tänkt att pågå i ett år och skulle bland annat medföra

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[1] Lenvin, Fabianne, *Omprövning av vattenverksamhet – effektivitet och moderna miljövillkor på bekostnad av vattenkraftsproduktion?*, https://www.diva-portal.org/smash/record.jsf?pid=diva2:1730265, publ. januari 2023.

[2] SOU 2022:33.

ett rättsligt förtydligande kring den ovannämnda avvägningen. Regeringen har dock redan vid två tillfällen beslutat att förlänga pausen ytterligare, nu till den 1 juli 2025.[3] Enligt mig visar regeringens beslut tydligt på hur komplex och svår frågan om avvägningar är, vilket gör det svårt att hitta en lagstiftning eller lösning som tillgodoser olika parters intressen.

På samma sätt anser jag att tillämpningen av naturens rättigheter kommer att stöta på liknande problem i framtida miljörättsprocesser. Naturens rättigheter är en relativt ny juridisk utveckling. Så vitt jag förstår är tanken att erkänna naturen som ett eget subjekt med rättigheter i syfte att skydda naturen från exploatering och bevara ekosystem och arter. En intresseavvägning, å andra sidan, är en princip som används för att väga motstridiga intressen eller rättigheter mot varandra i olika processer. Särskilt inom miljörätten vägs ofta intresset för ekonomiskt tillväxt mot miljöskydd och bevarande av arter. Även om det inom de flesta rättsområden finns intressen som behöver ställas mot varandra, anser jag att miljörättsprocessen är ett särskilt komplext system. Bestämmelser grundar sig i både nationell rätt och EU-rätten. Det krävs samordnade prövningar där både myndigheter, verksamhetsutövare och kommuner kan bli delaktiga. Även miljörättsföreningar och enskilda fastighetsägare kan anse sig vara berörda av ärendet och har därmed rätt att föra talan. Samtliga parter med skilda styrande intressen.

Utöver omprövningarna för moderna miljövillkor, som exemplifierar när olika miljörättsliga intressen ställs mot varandra, kan en händelse som uppmärksammades i media i höstas nämnas.[4] Flera jaktlag valde att inte skjuta älg trots att Skogsstyrelsen och Naturvårdsverket tillät fler skjutningar. Det handlar enligt mig om intresseavvägningar mellan skogsindustrin som vill utöka virkesproduktionen, om älgen som förstör kvaliteten på träden och om en minskande älgstam i Sverige. Men, vad är egentligen bäst för naturen? Enligt min uppfattning är detta en fråga som inte beaktas i den nuvarande debatten. Jag menar inte heller att den hör hemma där, men att ytterligare frågor kan komma att påverka implementeringen och tillämpningen av naturens rättigheter.

Samtidigt fick vi under symposiet höra Christina Allard presentera hur naturens rättigheter har tillämpats i förhållande till maorierna i Nya Zeeland, där Whanganui-floden blev erkänd som en juridisk identitet med rättigheter, och på vilket sätt det skulle kunna påverka utvecklingen för samerna i Sverige. Samernas mångåriga traditioner och syn på naturen är av särskilt intresse. En urbefolkning som försöker ta tillvara sin livsstil, sina rättigheter och kanske främst naturens rättigheter. Något som ständigt behöver avvägas mot exempelvis Sveriges energibehov och dagens konsumtionssamhälle i största allmänhet. Även i andra delar av världen har naturens rättigheter vunnit framgång, såsom i Colombia där Atrato-floden har fått sina rättigheter erkända. Dessa exempel visar att det således finns potential att tillämpa naturens rättigheter på hemmaplan – förutsatt att lagstiftaren kommer att öppna upp för en sådan möjlighet.

[3] Regeringskansliet, *Regeringen flyttar fram pausen av omprövningen av vattenkraftens miljötillstånd till 1 juni för vissa aktörer*, https://www.regeringen.se/pressmeddelanden/2024/03/regeringen-flyttar-fram-pausen-av-omprovningen-av-vattenkraftens-miljotillstand-till-1-juni-for-vissa-aktorer/, den 15 mars 2024; Regeringskansliet, *Regeringen förlänger pausen av vattenkraftens omprövning till 1 juli 2025*, https://www.regeringen.se/pressmeddelanden/2024/05/regeringen-forlanger-pausen-av-vattenkraftens-omprovning-till-1-juli-2025/, den 6 juni 2024.

[4] SVT, "*Jägare vägrar skjuta: De vill eliminera älgen*", https://www.svt.se/nyheter/lokalt/vasterbotten/jagare-vagrar-skjuta-de-vill-eliminera-algen, den 26 oktober 2023.

Sammantaget är min uppfattning att naturens rättigheter är ett behövligt, om än utopiskt, rättsområde där intresseavvägningar kommer att påverka dess implementering och användning. Med rådande klimatförändringar kommer flera frågor, förr eller senare, att ställas på sin spets. Vi kommer att behöva ändra vår syn på naturen, på vår konsumtion och hur vi väljer att leva våra liv. Det gör att naturens rättigheter redan är ett högaktuellt ämne som förtjänar att diskuteras och utvecklas vidare – en utveckling jag ser fram emot att följa framöver.

Balance of interests and the implementation of the rights of nature in Swedish law

Fabianne Lenvin

Abstract

This reflective essay makes several points about the balancing of interests in the environmental permitting process. It discusses the lack of clear guidelines regarding how this balancing should proceed. It then goes on to suggest that treating nature as a rights-bearing entity may increase the number of interests that must be balanced, making an already complex issue more complex. Using moose hunting as an example, it suggests that nature's rights may force a question of "what truly benefits nature" into conversations where it had previously been absent. Finally, it points out that the interests of the Indigenous Sámi people are currently being balanced against Sweden's energy and consumer demands.

As a newly graduated lawyer, attending the symposium on the rights of nature was both instructive and inspiring. The timing was also fortuitous, as it allowed me to engage in discussions shortly after submitting my thesis, which focused on the re-examination of water operations that produce hydroelectric power to ensure they adhere to modern environmental standards as set out in the Environmental Code.[1] This is a contentious procedure where multiple interests are pitted against each other. The aim of my thesis was to investigate the re-examination of water operations in light of the issues presented in Miljöprövningsutredningen[2] in 2022, which addressed the current environmental permitting process and the causes of its inefficiency. The investigation specifically concentrated on how the collaborative process, the court's duty to investigate and lead the process, and permits based on ancient rights (urminnes hävd) affect the efficiency of the re-examination process. For this purpose, qualitative interviews were conducted with parties actively involved in the re-examinations to highlight the difference between the theoretical legal literature and practical application. What particularly piqued my interest during the thesis was the issue of trade-offs evident in the collaborative process. The purpose of collaboration is, among other things, to compile the necessary data before individual assessments of the involved water operations so that all operations can be provided with modern environmental standards in a manner that, according to Chapter 11, Section 28 of the Environmental Code, yields the greatest possible benefit for the aquatic environment and efficient access to hydroelectric power. However, how this trade-off should be conducted is not clearly regulated or specified in the legislation, which poses an obstacle to an efficient environmental process and the implementation of modern environmental

[1] Lenvin, Fabianne, *Re-examination of water activities – efficiency and modern environmental terms at the expense of hydropower production?*, https://www.diva-portal.org/smash/record.jsf?pid=diva2:1730265, published January 2023.

[2] SOU 2022:33.

standards. To my knowledge, the issue of trade-offs is one of the reasons the government imposed a pause in the re-examinations in December 2022. The pause was initially intended to last for a year and was meant to provide legal clarification regarding the aforementioned trade-offs. However, the government has already decided on two occasions to extend the pause further, now until July 1, 2025.[3] In my opinion, the government's decisions clearly demonstrate how complex and challenging the issue of trade-offs is, making it difficult to find legislation or solutions that satisfy the interests of various parties.

Similarly, I believe that the application of rights of nature may encounter comparable challenges in future environmental legal processes. The rights of nature represent at relatively recent legal development. As I understand it, the idea is to recognize nature as a legal entity with rights, aimed to protect nature from exploitation and preserve ecosystems and species. A balancing of interests, on the other hand, is a principle used to balance conflicting interests or rights in various processes. Especially in environmental law, the interest in economic growth is often weighed against environmental protection and species conservation. Although most legal fields involve interests that need to be balanced against each other, I believe that the environmental law process is a particularly complex system. The regulations are based on both national law and EU law. Coordinated assessments are required, involving authorities, operators, and municipalities. Environmental organizations and property owners may also consider themselves affected by the case and thus have the right to participate. All these parties have different guiding interests.

In addition to the re-examinations for modern environmental standards, which exemplify when various environmental law interests are weighed against each other, an incident that garnered media attention last autumn can be mentioned.[4] Several hunting teams chose not to shoot moose despite the Swedish Forest Agency and the Swedish Environmental Protection Agency allowing more hunting. In my opinion, this is an example that illustrates the complexity of balance of interests between the forest industry, which wants to increase timber production, the moose that destroys the quality of the trees, and a declining moose population in Sweden. However, the crucial question remains: what truly benefits the nature? In my opinion, this question is not considered in the current debate. Nor do I believe it necessarily belongs there, but additional issues may influence the implementation and application of rights of nature.

During the symposium, we heard Christina Allard present how the rights of nature have been applied in relation to the Māori in New Zealand, where the Whanganui River was recognized as a legal entity with rights, and how this could potentially influence the development for the Sámi in Sweden. The Sami's long-standing traditions and view of nature are of particular interest. The Sámi are an indigenous population striving to preserve their lifestyle, their rights, and perhaps most importantly, the rights of nature. This continually needs to be balanced against, for example, Sweden's energy needs

[3] Regeringskansliet, *Regeringen flyttar fram pausen av omprövningen av vattenkraftens miljötillstånd till 1 juni för vissa aktörer*, https://www.regeringen.se/pressmeddelanden/2024/03/regeringen-flyttar-fram-pausen-av-omprovningen-av-vattenkraftens-miljotillstand-till-1-juni-for-vissa-aktorer/, den 15 mars 2024; Regeringskansliet, *Regeringen förlänger pausen av vattenkraftens omprövning till 1 juli 2025*, https://www.regeringen.se/pressmeddelanden/2024/05/regeringen-forlanger-pausen-av-vattenkraftens-omprovning-till-1-juli-2025/, den 6 juni 2024.

[4] SVT, "*Hunters refuse to shoot: They want to eliminate the elk*", https://www.svt.se/nyheter/lokalt/vasterbotten/jagare-vagrar-skjuta-de-vill-eliminera-algen, 26 October 2023.

and the demands of contemporary consumer society. In other parts of the world, the rights of nature have also gained recognition, such as in Colombia, where the Atrato River's rights have been acknowledged. These examples demonstrate the potential to apply the rights of nature domestically, provided that the legislature will open up to such a possibility.

Overall, my view is that the rights of nature represent a necessary, albeit utopian, legal field where balancing of interests will influence its implementation and use. With ongoing climate change, several questions will eventually come to a head. We will need to change our perspective on nature, our consumption, and how we choose to live our lives. This makes the rights of nature a highly relevant topic that deserves further discussion and development – a development I look forward to following in the future.

Moral imagination for the rights of Nature: An Embassy of the Baltic Sea

*Pella Thiel**

"The care of the Earth is our most ancient and most worthy, and after all our most pleasing responsibility. To cherish what remains of it and to foster its renewal is our only hope" – Wendell Berry[1]

Abstract

International environmental law is miserably failing to protect ecosystems, due to deeply held cultural perceptions of nature as just a resource for humans. In the Baltic Sea this results in severe degradation including collapsing fish stocks. The failure of decision-making bodies at EU-level to follow their own policies is used as an example of how law is not respected when an anthropocentric culture reaches ecological limits. This article argues for rights of nature (RoN) as not just a strategy to legally protect ecosystems, but a powerful lever for a necessary cultural transformation as well as a governance tool for a society in harmony with nature. In a transnational context lacking legal recognition of RoN, establishing an Embassy of the Baltic Sea would enhance representation of more-than-human beings and support acknowledgement of RoN. It would be a space inviting a diversity of voices and knowledge forms, practicing speaking for and with the sea. Such cultural "laboratories of care" are important for emerging Earth jurisprudence. The Embassy of the Baltic Sea would also potentially support a shift in human identity towards belonging, responsibility and care for the living whole we are a part of.

Introduction

Nordic countries are conspicuously far from anything resembling sustainability, despite their reputation as sustainability leaders. If everyone on the planet had a similar resource consumption, measured as ecological footprint, as the average citizen of Sweden, Denmark, Finland or Norway, the Earth would run out of resources in April, counting from the beginning of the year. The rest of the year we are exceeding the carrying capacity of the Earth, depleting ecosystems or using resources from the future or from other places.[2] As an example, 70% of fish consumed in Sweden is imported.[3] Our societies seem unable to respond to the signals from ecosystems. The vision "Living in harmony with nature", expressed in UN policies like the Convention on Biological Diversity, appears distant.

Laws could be viewed as the rules our societies organize from, the DNA of the system.[4]

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[1] Religious Naturalist Association, "Wendell Berry," https://religiousnaturalism.org/wendellberry/, last accessed 14 August 2024.

[2] Global Footprint Network, "Country Trends," https://data.footprintnetwork.org/#/countryTrends?cn=210&type=earth, last accessed 1 August 2024.

[3] The European Market Observatory for Fisheries and Aquaculture Products, *The EU Fish Market* (Luxembourg: Publications Office of the European Union, 2023). This figure is consistent with other EU countries.

[4] Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice*. Chelsea Green Publishing: White River Junction, VT, 2011.

Environmental law has developed a lot since the early days, but remains "piece-meal and reactive", especially at the international level.[5] It is not protecting the environment but regulating the use of it. Since law is primarily enacted on domestic level by sovereign states, in practice environmental law is a fragmented governance system for a global system with inherent interdependence.[6] Wood even calls for a legal autopsy of current environmental law as it is "a withering wallflower"; humanity has no more time to waste in efforts that fail to address the systemic causes of environmental damage.[7]

These systemic causes include the understanding of nature as a legal object rather than a subject of rights. When law or policy aims at protecting nature, the motive is generally human benefit. In the sphere of international law, most treaties focus "on the rights of states, international organizations, humans, and sometimes corporations and other 'stakeholders'".[8] The way law currently treats nature is a manifestation of a cultural understanding of human separation and supremacy, meaning that nature is usually approached as a resource to be owned and exploited. This is not only reflected in property law and trade agreements, but also in the domain of sustainability, for example the 1992 Rio Declaration: "Human beings are at the centre of concerns for sustainable development".[9] International environmental law has so far been a part of reinforcing "the false assumption that humanity can exercise dominion over Nature without repercussions"[10] and is "predominantly anthropocentric and exclusively aimed at promoting human interests".[11] This legal logic intensifies the "underlying conception of nature as a resource", separate from human society, and reinforces it at a cultural level.[12]

A healthy future culture will have to organise itself from a very different and much more respectful and attentive relationship with the living whole. Acknowledging the Rights of Nature (RoN) is one important way of doing this. From a geographical perspective, organisation around bioregional boundaries will be necessary.[13] In the Nordic countries the Baltic Sea is the bioregion of the largest scale. This article investigates the potential of establishing an Embassy of the Baltic Sea as a manifestation of moral imagination for legal and political representation of nature. In the absence of legal frameworks recognising RoN, the Embassy would act as a space for building awareness, increasing acceptance

[5] United Nations General Assembly, "Gaps in International Environmental Law and Environment-Related Instruments: Towards a Global Pact for the Environment," 2018, Report A/73/419, 1, https://digitallibrary.un.org/record/1655544?v=pdf.

[6] Pella Thiel and Valérie Cabanes, "Ecocide law as a transformative legal leverage point," in *Rights of Nature in Europe: Encounters and Visions*, ed. Jenny García Ruales et al. (New York: Routledge, 2024), 303–324, here 303.

[7] Mary Christina Wood, "'You Can't Negotiate with a Beetle': Environmental Law for a New Ecological Age," *Natural Resources Journal* 50, no. 1 (2010): 167–210, here 172, http://www.jstor.org/stable/24889663.

[8] Jérémie Gilbert, "Creating Synergies between International Law and Rights of Nature," *Transnational Environmental Law* 12, no. 3 (2023): 671–769, here 673, doi:10.1017/S2047102523000195.

[9] "Declaration on Environment and Development," Report of the United Nations Conference on Environment and Development," A/CONF.151/26 (Vol. I), 1992, 1.

[10] Sam Adelman, "Epistemologies of Mastery," in *Research Handbook on Human Rights and the Environment*, ed. Anna Grear and Louis Kotzé (Northampton, MA: Edward Elgar, 2015), 9–27, here 9.

[11] Paola Villavicencio-Calzadilla and Louis Kotzé, "Re-imagining Participation in the Anthropocene: The Potential of the Rights of Nature Paradigm," in *Sustainability through participation? Perspectives from National, European and International Law*, ed. Birgit Peters and Eva Julia Lohse (Leiden, The Netherlands: Koninklijke Brill NV: 2023), 51–72, here 51, https://doi.org/10.1163/9789004509382_004.

[12] Gilbert, "Creating Synergies," 678.

[13] Allen Van Newkirk, "Bioregions: Towards Bioregional Strategy for Human Cultures," *Environmental Conservation* 2, no. 2 (July 1975): 108, doi:10.1017/S0376892900001004.

and practising representation of more-than-human beings.

The state of the Baltic Sea and the case of herring

The Baltic Sea is the planet's youngest sea and one of its largest bodies of brackish waters. It is surrounded by nine states: Sweden, Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, and Russia, with parts of Belarus, Czech Republic, Norway, Slovakia, Ukraine in the drainage basin. More than 85 million people live in the Baltic Basin. It is about 1,600 km long, an average of 193 km wide, the surface area is about 349,644 km^2, and the average depth is 55 metres.[14] Brackish water is a rare and unstable environment and the Baltic Sea has a low biodiversity. It is inhabited by a mix of marine and freshwater species. There is a salinity gradient from south to north, with more species in the saltier south.

The Baltic, being one of the most polluted seas in the world, is as good an example as any of how existing environmental law fails to protect nature. Despite decades of agreements, treaties and plans, the Baltic Sea is dying.[15] Key pressures "include eutrophication, pollution from hazardous substances, land use and overfishing".[16] Around 20% of the bottoms of the Baltic Sea are anoxic areas, devoid of life due to lack of oxygen.[17] The largest so-called "dead zone" in the world is found in the Baltic Sea.[18] According to the intergovernmental organisation Baltic Marine Environment Protection Commission (HELCOM), "[t]ransformative changes are needed in all socioeconomic sectors interacting with or affecting the Baltic Sea environment. Actions are needed both to stop current negative trends and to protect and restore ecosystems".[19]

The fisheries in the Baltic Sea are governed by the Common Fisheries Policy (CFP) of the European Union with the aim of reaching Maximum Sustainable Yield, ie., how much the fish resource can be exploited for human use over time.[20] The CFP shall also 'ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies'. Further, the CFP shall apply the precautionary principle and an ecosystem-based approach to minimise negative impacts of fishing activities on the marine ecosystem and ensure Maximum Sustainable Yield.[21] In a pedagogic infographic, the European Council illustrates the logic of fish catch limits and quotas.[22] The headline speaks volumes, literally: "*Keeping the seas stocked*". Four symbols illustrate what EU rules on fishing do: (i) preserve stocks, (ii) share opportunities, (iii) keep the fishing industry competitive and, lastly, (iv) preserve marine

[14] Wikipedia, "Baltic Sea," https://en.wikipedia.org/wiki/Baltic_Sea, last accessed 3 August 2024.

[15] HELCOM, "State of the Baltic Sea 2023: Third HELCOM holistic assessment 2016-2021," *Baltic Sea Environment Proceedings* 194 (Helsinki Commission: Helsinki, 2023).

[16] HELCOM, "State of the Baltic Sea 2023," 6.

[17] Martin Hansson, Lena Viktorsson & Lars Andersson, "Oxygen Survey in the Baltic Sea 2018 – Extent of Anoxia and Hypoxia, 1960-2018," *SMHI Report Oceanography* 65 (2018), 22.

[18] UNESCO, *The State of the Ocean Report* (Unesco: Paris, 2024).

[19] HELCOM, *State of the Baltic Sea: 2023: Third HELCOM holistic assessment 2016-2021*. Baltic Sea Environment Proceedings No. 194 (Helsinki Commission: Helsinki, 2023), 6.

[20] "Regulation (EU) No 1380/2013 of the European Parliament and of the Council," 11 December 2013, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R1380, art. 6, p. 2.

[21] Regulation (EU) No 1380/2013 of the European Parliament and of the Council," 11 December 2013, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R1380, art. 2, p. 1.

[22] European Council, "Keeping the Seas Stocked," https://www.consilium.europa.eu/en/infographics/fishing-opportunities-infographics/, last accessed 5 August 2024.

ecosystems. Virginijus Sinkevičius, EU Commissioner for Environment, Oceans and Fisheries, further explains the goal of preserving marine ecosystems: "The Baltic Sea is not in good shape. It's time to save this sea for the people who live around it, for our fishers and for future generations".[23] The message from both policy and communication is clear: the sea needs saving for the sake of humans.

Despite all the good intentions, legislation and communication, the goal to keep the Baltic Sea stocked is failing miserably. The cod population has collapsed[24] and the herring populations are down 50–80% from the early 1990s.[25] Fish are being harvested by large-scale industrial trawlers; with the 20 largest boats responsible for 95 per cent of the catch in 2021 (mostly herring and sprat). The herring is not even eaten by humans, but is a protein source for salmon, chickens and mink. Of the herring landed in 2021, only 10 per cent went to human consumption.[26] Thus, we are exhausting sea ecosystems to feed animals kept in industrial conditions which increase contamination of sea ecosystems.[27]

Despite proposals from the EU Commission to not allow any targeted fishing of herring in the Baltic Sea in 2024 due to low stocks, the decision-making body, the European Council, decided on quotas totalling almost 100 000 tonnes. The NGO BalticWaters commissioned a legal review of this decision titled "*Are EU ministers breaking the law?*"[28] The answer to the question is yes; the decision of the Council on herring fishing quotas is not compatible with EU laws and regulations on fisheries and should be repealed, according to the review. Despite heavy criticism, the Council did not withdraw its decision but instead proposed to take away a regulation aimed at protecting the fish stock from being overfished.[29] Konrad Stralka, director of BalticWaters stated the obvious in an op ed: "Decisions that affect our seas demand not only knowledge in biology but compliance with the laws and rules in place to govern the sea and its resources".[30]

The herring fishery in the Baltic is a classic tragedy-of the-commons-problem, where states are over-exploiting a resource with their own national interests in focus, to the detriment of all. Supranational cooperation in the EU would ideally be able to handle this. Instead, the Council conspicuously broke its own policy and allowed fishing quotas that threaten marine ecosystems as well as maximum sustainable yield. How are we to understand this? Anthropocentric legal provisions see ecosystems through a lens of competing interests, values, needs and rights between humans. When the fish in the sea is governed from a perspective of human interest, com-

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[23] European Commission Directorate-General for Maritime Affairs and Fisheriies, "Our Baltic conference: Commissioner Sinkevičius gathers ministers in September to improve the situation of the Baltic Sea, 24 July 2023, https://oceans-and-fisheries.ec.europa.eu/news/our-baltic-conference-commissioner-sinkevicius-gathers-ministers-september-improve-situation-baltic-2023-07-24_en, last accessed 14 August 2024.

[24] The Fisheries Secretariat, "New study presented on dramatic decline of cod in the Baltic Sea," 24 March 2022, https://www.fishsec.org/2022/03/24/press-release-new-study-presented-on-dramatic-decline-of-cod-in-the-baltic-sea/.

[25] David Langlet, "Bryter EU:s fiske-ministrar mot lagen?" 2, https://balticwaters.org/wp-content/uploads/2024/03/Bryter-ministerradet-mot-lagen_BalticWaters.pdf, last accessed 5 August 2024.

[26] BalticWaters, "Policy Papers," 1, https://balticwaters2030.org/wp-content/uploads/2023/03/Policy-paper-More-profitable-for-Sweden-to-fish-for-human-consumption-2023.pdf, last accessed 5 August 2024.

[27] A.L.S. Munro, "Salmon farming," *Fisheries Research* 10, nos. 1-2. (1990): 151–161; HELCOM, "Sources and pathways of nutrients to the Baltic Sea," Baltic Sea Environment Proceedings No. 153 (2018), 18.

[28] Langlet, "Bryter EU:s fiske-ministrar mot lagen?".

[29] Langlet, "Bryter EU:s fiske-ministrar mot lagen?".

[30] Konrad Stralka, "Regeringen struntar i fakta – offrar Östersjön," *Aftonbladet*, 23 April 2024, https://www.aftonbladet.se/debatt/a/rPpRV3/baltic-waters-regeringen-struntar-i-vetenskap-och-lagar-offrar-ostersjon, last accessed 5 August 2024.

petition between interests of different groups of humans amount to short-sighted exploitation of what is perceived as (just a) resource.

The time is late for critical deconstruction; if there ever was a time for creative construction, it is right now. The Baltic Sea is not waiting. When we witness the flagrant and repeated failure to respect the living systems we inhabit, a responsibility arises to not just analyse, but also envision how a different way of organising society may look. The analysis of how things are must at some point lead to ideas on how they might be; and imagination is a powerful moral force.[31] When the carrying capacity of the living systems humans depend on is systematically exceeded, we need to develop our caring capacity. How do we collectively shift to a culture of care?

Rights of Nature: a moral and legal shift in perception

The ecological, social, and economic crises we are facing are not separate, but interconnected expressions of one single crisis: a "crisis of perception", according to physicist Fritjof Capra.[32] The perception of separation from the living whole which western society has maintained for centuries is simply wrong, with fatal results. In the early 21 st century it is becoming difficult to believe that environmental problems can be "solved" within the prevailing paradigm. The world does no longer live up to expectations of continuous exploitation. As we move closer to the limits of growth and the hunger of the "Superorganism" of industrial growth society[33] becomes more pervasive, laws and regulations put in place from an understanding of human separation and supremacy do not hold. There is a deeper logic, where assumptions from an anthropocentric worldview shape collective doing. To paraphrase a saying attributed to Peter Drucker, culture eats law for breakfast.

Rights of nature may be seen as a cultural transformation as well as a legal invention. Perceiving the more-than-human world as having rights to existence, regardless of its utility to humans, is a way to re-envision our collective relationship with nature. This paradigm-shifting perception has been conceptualised by cultural historian Thomas Berry as Earth jurisprudence. Berry argued that there are two types of law that are hierarchically arranged: human law and the Great Law.[34] The Great Law entails the principles of how nature functions as an interconnected whole, where harm to any part reverberates throughout the network of life. This law is primary, as it is the source from where humans as well as our societies and institutions emerge. "Humans are born into an ordered and lawful Universe", whose laws we need to obey if we are to have a benevolent and lasting presence on Earth. This is also a perspective prevalent in indigenous societies.[35] Human law is, and will always be, subordinate to the Great Law. As another Berry, the poet Wendell, puts it: "Whether we and our politicians know it or not, Nature is party to all our deals and decisions, and she has more votes, a longer memory, and a sterner

[31] Mark Johnson, *Moral imagination: implications of cognitive science for ethics* (Chicago: University of Chicago Press, 1993), ix.

[32] Fritjof Capra, *The Systems View of Life: A Unifying Vision* (Cambridge: Cambridge University Press, 2014), xi.

[33] N.J. Hagens, "Economics for the future – Beyond the superorganism," *Ecological Economics* 169 (2020): 1–16, https://doi.org/10.1016/j.ecolecon.2019.106520.

[34] Peter D. Burdon, "The Earth Community and Ecological Jurisprudence," *Oñati Socio-Legal Series* 3, no. 5 (2013): 815–837, here 823.

[35] Mary Evelyn Tucker and John Grim, "Thomas Berry and the Rights of Nature," Kosmos: Journal for global transformation 19, no. 4, https://www.kosmosjournal.org/kj_article/thomas-berry-and-the-rights-of-nature/, last accessed 22 August 2024; Henrik Hallgren and Pella Thiel, Naturlagen: *Om naturens rättigheter och människans möjligheter* (Stockholm: Volante, 2022), 107.

sense of justice than we do".[36] We can ignore the Great Law but at our peril, as faithkeeper Oren Lyons of the North American Onondaga Nation reminds: "You can't negotiate with a beetle. You are now dealing with natural law. And if you don't understand natural law, you will soon".[37] From this perspective, nature and law are deeply intertwined: the landscape is the source of law. Rights of nature is not just a strategy or a more or less helpful approach to protect ecosystems, but a truer reflection of how the world is organised. The primacy of the Great Law implies that for a society to last over time, human laws must align with the ecological context, reflecting a moral obligation for humans to act in a way that sustains and enhances the well-being of the whole community of life.

Acknowledging the rights of nature in law is potentially the most powerful and practical way of aligning western law with the Great Law. This paradigm has taken big strides the last decade, with over 400 rights of nature initiatives in 39 jurisdictions all over the world.[38] RoN can be characterised as a leading transnational trend in environmental law.[39] The first mention of rights of nature in international policy was in the Kunming-Montreal Agreement of the Convention on Biological Diversity from 2022: "(t)he framework recognizes and considers these diverse value systems and concepts, including, for those countries that recognize them, rights of nature and rights of Mother Earth, as being an integral part of its successful implementation".[40] Several initiatives seek to expand this space by calling for general recognition of rights of oceans[41] and rivers.[42] Especially interesting in this sense are the high seas, as no one owns them, and they are beyond state legislation.

Harden-Davies et al identify four defining characteristics of Rights of Nature approaches:

i. **Rights**: Nature is a rights-bearing entity;
ii. **Connectivity and the primacy of life**: All elements of nature, including humans, are interconnected; ensuring the ongoing health of life supporting ecosystems is a societal goal;
iii. **Reciprocity**: Human use of nature entails a concomitant responsibility to respect, restore and regenerate nature by maintaining, for example, environmental quality, ecosystem structure and function, and natural levels of biodiversity;

[36] *Eco Books*, "The Dying of the Trees: The Pandemic in America's Forests," https://www.ecobooks.com/books/dying.htm, last accessed 14 August 2024.

[37] Oren Lyons, quoted in Wood, "'You Can't Negotiate with a Beetle," 167.

[38] Alex Putzer, Tineke Lambooy, Ronald Jeurissen, and Eunsu Kim, "Putting the rights of nature on the map: A quantitative analysis of rights of nature initiatives across the world," *Journal of Maps* 18, no. 1 (2022): 89–96, here 90.

[39] Craig M. Kauffman and Pamela L. Martin, "Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail," World Development92 (2017):130–142, here 130. https://doi.org/10.1016/j.worlddev.2016.11.017.

[40] Kunming-Montreal Global biodiversity framework, "Introduction to the GBF," 18 Dec. 2022, CBD/COP/15/L.25, https://www.cbd.int/gbf/introduction, last accessed 6 August 2024.

[41] Harriet Harden-Davies et al., "Rights of Nature: Perspectives for Global Ocean Stewardship," *Marine Policy* 122 (2020): 1–11, https://doi.org/10.1016/j.marpol.2020.104059; Earth Law Center, "Rights of Nature: A Catalyst for the implementation of the Sustainable Development Agenda on Water," https://sdgs.un.org/partnerships/rights-nature-catalyst-implementation-sustainable-development-agenda-water, last accessed 6 August 2024; French National Research Institute for Sustainable Development (IRD), "The MerMéd Project. To see the Mediterranean Sea Reign Again! The Rights of the Mediterranean Sea as a Legal Entity: A science based feasibility study," https://sdgs.un.org/partnerships/mermed-project-see-mediterranean-sea-reign-again-rights-mediterranean-sea-legal-entity#progress, last accessed 6 August 2024; The Ocean Race, "Ocean Rights: Racing towards a Universal Declaration of Ocean Rights," https://www.theoceanrace.com/en/ocean-rights, last accessed 6 August 2024.

[42] "Universal Declaration of the rights of rivers," https://www.rightsofrivers.org/, last accessed 6 August 2024.

iv. **Representation and Implementation**: Implementation measures are needed to execute human responsibilities; States should not be the only entity to speak for nature.[43]

In her article in this volume, Refors Legge notes arguments that rights seek to implement "principles of justice and equality".[44] To acknowledge the rights of nature would mean to respect individuals who are conspicuously *not* equal, but who have inherent dignity and worth anyway. The diverse interests and needs of more-than-human beings demand corresponding diversity of treatment. According to Thomas Berry, all rights are limited and relative: "Trees have tree rights, insects have insect rights, rivers have river rights, mountains have mountain rights. So too with the entire range of beings throughout the universe".[45]

As Refors Legge[46] and Rönnelid[47] remind, rights of nature are symbolic. Symbolism is an important dimension for humans, as we interpret the world mainly through symbols. After all, the symbolism of human separation and domination over nature is massive, visible in a language replete with words describing nature as environment, resources, ecosystem services, stocks, etcetera. It is the symbol of rights (of nature) that creates duties and obligations (for humans). You cannot have duties toward rightless objects. The symbolic dimension of RoN does not mean, however, that RoN is just "a symbolic gesture lacking necessary legal force and accountability".[48] On the contrary, the power of RoN is the concrete and practical dimension consisting of access to decision making institutions. It contains a (symbolic) paradigm shift in perception that is possible for legal institutions to recognise and work with, thus harnessing the power of the current system in the transformation towards a new system.

There will always be conflicting interests over land; will RoN be powerful enough to protect landscapes from pressures from perceived societal interests? Rönnelid worries about whether RoN will protect lands of indigenous people which hold minerals that are "imagined to be used for green transition or seen as ideal placements for wind power plants". There is still a lack of experience of these situations, but there are promising examples in countries which have enshrined rights of nature in law, like Ecuador or Panama, where the legal system has been able to uphold those rights even in difficult cases where the defendant was the state[49] or a big corporation.[50]

Refors Legge and Rönnelid both question if rights are the best tool for protecting nature. But rights are not merely about protection (of nature in the case of RoN) but about respect.[51] Weighing different rights against one another will always be tricky, but that is not an argument against

[43] Harden-Davies et al., "Rights of Nature," 2.

[44] Maria Refors Legge, "The Symbolic Nature of Legal Rights," *Nordic Environmental Law Journal* (2024 Special Issue), 77–87 (here 79).

[45] Thomas Berry, *The Great Work: Our Way Into the Future* (New York: Three Rivers Press, 1999), 5.

[46] Refors Legge, "Symbolic Nature."

[47] Love Rönnelid, "Rights critique and rights of nature – a guide for developing strategic awareness when attempting to protect nature through legal rights," *Nordic Environmental Law Journal* (Special Issue 2024), 61–76.

[48] Refors Legge, "Symbolic Nature."

[49] Eco Jurisprudence Monitor, "Ecuador court case on rights of nature violations from mining in the Los Cedros Protected Forest," https://ecojurisprudence.org/initiatives/los-cedros/, last accessed 6 August 2024.

[50] Juan Carlos Villarreal A., Nelva B. Villareal, and Luis. F. De Léon "Panama says no to more mining – a win for environmentalists," *Nature* 625 no. 7993 (2 January 2024), 30, doi: https://doi.org/10.1038/d41586-023-04165-1.

[51] Pella Larsdotter Thiel and Henrik Hallgren, "Rights of Nature as a Prerequisite for Sustainability," in *Strongly Sustainable Societies: Organizing Human Activities on a Hot and Full Earth*, ed. Karl Johan Bonnedahl K J. and Pasi Heikkurinen (New York: Routledge, 2019).

RoN. It is easy to perceive the massive disrespect for the more-than-human world in a culture that perceives it mostly as rightless. "Perhaps the rights-approach misses more potent political ways of collective organization?" Rönnelid asks[52], while Refors Legge states that "it is essential to …consider alternative approaches that prioritise the collective welfare of society and nature"[53]. Perhaps. I haven't seen any more potent alternative approaches though. Acknowledging the rights of nature is not just a legal technicality for better protection, but also a collective shift in perception and thus relationship.

Rights are thus not the goal but a tool, and a powerful tool in a society that has come to place a lot of weight onto rights. Western society is hardwired around human rights, not just as a legal tool but as a dominant emancipatory language, even an existential force.[54] Indeed a powerful symbol! The Universal Declaration of Human Rights has been called "the 'sacred text' of a 'world-wide secular religion'" by Elie Wiesel[55] and the "yardstick for measuring the degree of progress of societies" by UN Secretary General Kofi Annan.[56] Building on this cultural reverence for rights, the RoN movement challenges the core of the western worldview in a way that is conceivable to its core institutions. In that sense, it has a transformational power that other environmental movements lack. The aim of the movement for RoN is generally not legal rights per se, but a society which listens to, respects and perceives itself as part of the living world. Law helps to fashion "a world of meaningful relations".[57] Maybe the most important aspect of RoN is this potential to support a cultural shift in responsibility and care toward nature, to paraphrase Dworkin: the moral imperative that reflects the inherent dignity and worth *of every being*.

Being a voice of nature – on representation

Following the acknowledgement of RoN in various jurisdictions is a variety of arrangements for representation of nature in human contexts. There are initiatives towards general Earth trusteeship; a duty of humankind to act with care towards nature (the Earth Charter being one of the most widespread), but there are yet no frameworks or mechanisms for Nature to be heard as a subject in international fora.

As Jérémie Gilbert has pointed out, "the Aarhus Convention is one of the few binding treaties that encourages all actors to accept their custodial stewardship duties in order to benefit present and future generations".[58] The parties of the 2023 Treaty of the High Seas (known as the BBNJ) concerning biological diversity in areas beyond national jurisdiction, express the "desire … to act as stewards of the ocean in areas beyond national jurisdiction".[59] In the light of the Anthropocene and ecological crisis at global

[52] Rönnelid, "Rights Critique," 71.
[53] Refors Legge, "Symbolic Nature," 87.
[54] Rönnelid, "Rights Critique."
[55] Henri Féron, "Human rights and faith: a 'world-wide secular religion'?" *Ethics & Global Politics* 7, no. 4 (2014): 181–200, here 182, https://www.tandfonline.com/doi/full/10.3402/egp.v7.26262.
[56] United Nations, "Statement by Mr. Kofi Annan, Secretary-General of the United Nations to the opening of the fifty-fourth session of the Commission on Human Rights," 16 March 1998, https://www.ohchr.org/en/statements/2009/10/statement-mr-kofi-annan-secretary-general-united-nations-opening-fifty-fourth, last accessed 14 August 2024.
[57] Kathleen Birrell and Daniel Matthews "Re-storying laws for the anthropocene: Rights, obligations and an ethics of encounter. Law and Critique 31, no. 3 (2020): 275–292, here 277, cited in Seth Epstein, "Rights of nature, human species identity, and political thought in the anthropocene," *The Anthropocene Review* 10, no. 2 (2023): 415–433, here 420.
[58] Gilbert, "Creating Synergies," 686.
[59] United Nations, "Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction," UN Doc. A/

scale, it is easy to understand the idea that humans must become better stewards. Strategies for global stewardship or "earth system governance" are being proposed.[60] The fact of human dominance should not, however, be a prompt to extend the human ambition of governance over other beings, but instead to extend our skills in governing *ourselves* in relationship with the living whole that we are a part of. We can assume that "nature" has no interest in human concepts like rights and representation. Nature does not need rights; it is humans who need nature to have rights in order to govern ourselves in relation to the Great Law. To organize ourselves in modes that facilitate the understanding of living entities and speak for/with them will shift our priorities and how we collectively act as a society. The all-affected principle, as described by Hultin Rosenberg in this volume, could be a basis of practising such governance.[61] According to Villavicenzio & Kotzé, the Anthropocene urges an "opening up of the anthropocentrically embedded notion of participation in law and governance processes to also include more-than-humans, if law and governance is to more fully respond to the differentially distributed vulnerabilities of the *entire* living order, including non-human vulnerability".[62] Ehrnström-Fuentes et al. describe this as "multispecies organizing".[63] This form of governance, reflecting the reality of participating in a living system, is vastly more complex than what is possible from an anthropocentric worldview.

The representation of nature, building on rights, is an emergent space worldwide with novel arrangements for guardianship and custodianship. These can range from individuals speaking for the whole of nature in court, as in Ecuador, to designated guardians or institutions acting as representatives of ecosystems with legal personhood, as in New Zealand, Colombia, or Spain.[64] There are also a growing number of companies appointing a representative of nature on the board.[65] The lack of recognized models for representation of nature may be perceived as a problem but can also be seen as an important and necessary stage of deliberation and experimentation. Also, there are reasons to be cautious about models that aim for universal application. There will never be a one-size-fits all model of representation. Gilbert et al caution against following RoN approaches "in a way that reproduces problematic, homogenising aspects of international law" with states as sovereign actors, and call for a centering of "human relationality with nature in place" inspired by Indigenous peoples.[66] In a Nordic context, Sami understand-

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CONF.232/2023/L.3, 2, available at: https://www.un.org/bbnjagreement/en, last accessed 6 August 2023.

[60] Frank Biermann, "'Earth system governance' as a crosscutting theme of global change research, "*Global Environmental Change*17, nos. 3–4 (2007): 326–337, https://www.sciencedirect.com/science/article/abs/pii/S0959378006000987.

[61] Jonas Hultin Rosenberg, "The Democratic Inclusion of Nature. Exploring the Categorical Extension of the All-Affected Principle," *Nordic Environmental Law Journal* (this issue).

[62] Villavicencio-Calzadilla and Kotzé, "Re-imagining Participation in the Anthropocene," 51.

[63] Maria Ehrnström-Fuentes, Steffen Böhm, Linda Annala Tesfaye, and Sophia Hagolani-Albov, "Managing Relationally in the Ecology-in Place: Multispecies Organizing in Ecological Restoration," *Academy of Management Proceedings* 1 (2023), https://doi.org/10.5465/AMPROC.2023.119bp.

[64] Craig M. Kauffman and Pamela L.Martin, "Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand," *Global Environmental Politics* (2018) 18, no. 44 (2018): 43–62, here 45.

[65] Faith in Nature, "Nature on the board: an open source guide," https://ecojurisprudence.org/wp-content/uploads/2022/11/Faith-In-Nature_NOTB_GUIDE.pdf, last accessed 6 August 2024.

[66] Jérémie Gilbert, Elizabeth Macpherson, Emily Jones, and Julia Dehm, "The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's 'Greening' Agenda," in *Netherlands Yearbook of International Law* 52 (2021), ed. Daniëlla Dam-de Jong and Fabian Amtenbrink, (The

ings of "reciprocal, caring relationships between humans and nature" are a source of knowledge.[67]

One critique of human representation of nature in law and other institutions is that we cannot fully know what "nature"/the being(s) in question would want or say.[68] This obvious limitation in representing more-than-human beings perfectly is not a reason to abstain from doing the best we can to engage with their needs and interests. After all, the problem today is that we disregard that nature even has interests and needs that merit respect. Also, we do have substantial knowledge about the health of ecosystems, which is systematically disregarded as in the Baltic herring case. A lot of resources are spent on scientific research; recognising the interests of nature as a subject in decision-making would assert a greater importance to such knowledge.[69]

However, the RoN paradigm contains a greater shift. As Epstein notes, while RoN may facilitate a focus on relations between humans and other entities, an approach that recapitulates the perceptions of humans as existing outside of nature by seeking to rectify harm which humans do nature "out there" will not be enough.[70] Pecharroman and O'Donnell have studied four cases of representation of waterways: the Mar Menor salt water lagoon (Spain), the Whanganui river (New Zealand), the Birrarung/Yarra river (Australia) and the Atrato river (Colombia). Building on Tănăsescu's model of relational representation, they identify a "spectrum of representation of natural entities": speaking *about*; speaking *for*; and speaking *with*.[71] Speaking *about* is the dominant model of nature as object. Speaking *for* is the immediate translation of representation of nature as an other with rights that can be represented in human institutions. Speaking *with* acknowledges the relationship between represented and representative as primary, with the assumption that we can never precisely know the interests and needs of another, or how it would want to be represented. Speaking *with* a water ecosystem is open, relational, intimate, and placed based: "(n)one of the cases are contingent on establishing the 'objective facts' relating to the waterway and its health in order to enable effective representation. Instead, they prioritise the multiple relationships and ways of knowing the waterway, supporting dialogues between knowledges, between people, and with the waterway".[72] *Speaking with* also implies *listening to*. Kauffman and Martin, who studied the guardianship of the indigenous Tūhoe in relation to the forest Te Urewera in New Zealand, argue that the focus of their approach is to create a system designed to listen to what Te Urewera is 'saying' and using this information to manage human impacts. What is being protected is "the relationship between people and Nature".[73]

RoN approaches broaden conventional notions of who can speak for nature. Accord-

Hague: T.M.C. Asser Press, 2023), 47–74, here 68, https://doi.org/10.1007/978-94-6265-587-4_3.

[67] Gilbert et al. "'Caring for Nature': Exploring the concepts of stewardship in European philosophies, spiritual traditions, and laws," in *Rights of Nature in Europe: Encounters and Visions*, ed. Jenny García Ruales et al. (New York: Routledge, 2024), 45–62, here 54.

[68] Seth Epstein, "Rights of nature, human species identity, and political thought in the anthropocene," *The Anthropocene Review*, 10, no. 2 (2023): 415–433.

[69] Yaffa Epstein et al., "Science and the legal rights of nature," *Science* 380, no. 6646 (May 19, 2023), DOI: 10.1126/science.adf4155.

[70] S. Epstein, "Rights of Nature, human species identity," 5.

[71] Lidia Cano Pecharroman and Erin O'Donnell, "Relational representation: speaking with and not about Nature," preprint (2024), 1–40, here 3, https://eartharxiv.org/repository/view/6878/, last accessed 14 August 2024.

[72] Pecharroman and O'Donnell, "Relational representation," 27.

[73] Craig M. Kauffman and Pamela L. Martin, *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (Cambridge, MA: MIT Press, 2021), 153.

ing to Harden-Davies et al, *all* humans have an obligation to protect the environment and a right to protect nature from harm. This "perspective presents a direct challenge to the legitimacy of state control of the environment and are particularly thought-provoking when considering ocean ABNJ" (areas beyond national jurisdiction).[74] Through *speaking with* waterways, representatives enable dialogue between the waterway and many participants, who may then form their own relationship with it: "(t)he representative seeks not only to help the waterway communicate its will and preference to others, but also to draw others into conversation, and relationship, with the waterway"[75], thus increasing participation, connectivity and complexity through a multiplicity of relationships between people and the waterway. One practice which has been tried by the UK Government for the River Roding is the Interspecies Council. The participants, "including stakeholders with a professional or community interest in the local area", were invited to "imagine and empathise with the needs of some of the species living in and around the river". Questions such as: what concerns does the bee or the reed warbler have? were asked, and the effects was substantial: "we saw an appetite for people to keep engaging, both with each other and the river Roding, weeks after the Council had taken place. … a legacy effect of more-than-human empathy has developed for some; almost all participants reported a noticeable, lasting change within their perception or feelings towards nature, the world or themselves in the week after the Council".[76] In the Baltic Sea bioregion, an embassy would be a way to extend this conversation between people and nature, even in the absence of legal rights for the Baltic Sea. The Embassy of the Baltic Sea would be a space for representation of the sea with its more-than-human inhabitants in relation to all states in the Baltic Sea basin.

An embassy of the Baltic Sea

The transformation of human societies to align with the Great Law will require a shift in perceptions and values. It will be messy and have many manifestations. There is a need for moral imagination. Namely, to respond ethically to challenges we must first conceive of all the possibilities presented by the particular set of circumstances.[77] Creating an Embassy of the Baltic Sea (EBS) is an example of such imagination, building on the understanding that the sea and its inhabitants have rights to life, wellbeing and sovereignty, regardless of their value as resources for humans. As Epstein notes, there is a lack of "vision of what it means to act as one among many species", partly due to the absence of responsible institutions.[78] This is probably a feature of cultural transformations; institutions will not lead the way. Responsible leadership will have to emerge outside of institutions. The EBS could also be a space for the further unleashing of moral imagination: when we listen to what the herring wants and needs, what then do we do differently?

On the international arena, states represent themselves by means of embassies: bodies of diplomatic representation from one state to another. Some basic functions of an embassy are to represent and safeguard the interests of the

[74] Harden-Davies et al., "Rights of Nature," 5.

[75] Pecharroman and O'Donnell, "Relational representation," 9.

[76] "Using experimental methods to reimagine decision-making for the freshwater system," *Policy Lab*, post 2043, https://openpolicy.blog.gov.uk/2024/02/07/using-experimental-methods-to-reimagine-decision-making-for-the-freshwater-system-post-2043/, last accessed 14 August 2024.

[77] Johnson, *Moral Imagination*, x.

[78] S. Epstein, "Rights of Nature, human species identity," 10.

home state and its citizens, negotiate with the government of the receiving state, and promote friendly relations between the states.[79] The idea of establishing an embassy for representation of more-than-human interests is not new. The Embassy of the North Sea is maybe the most developed example, founded in 2018 on the principle that the North Sea owns itself, with the Embassy being a space "to listen to, speak with and negotiate on behalf of the sea and all the life that it encapsulates".[80] It aims at contributing to a policy vision for the sea by the Dutch government by encouraging as many voices, ideas and insights as possible. There is also an Embassy of Species (Arternas ambassad) in Sweden inviting people to give other species a voice by appointing ambassadors of other species, and Arternes Aarhus/City of Species is a similar initiative in Denmark.[81] EBS would possibly be the first embassy for more-than-human representation in a transnational context.

Most of the Baltic Sea, like most of all seas, is beyond national jurisdiction. Still, it is states that negotiate the use of marine resources in international treaties from their interests, excluding the interests of more-than-human beings. The UN Convention on the Law of the Sea (UNCLOS) provides that "[s]tates have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment".[82] Gilbert argues that this state sovereignty and the overriding goal of "development" are the main obstacles to the understanding that nature has rights.[83] Currently, the main governance concern in international settings is "defining the nationality of nature"; since nature is viewed as a resource, the main legal issue that arises is to define which states own, and therefore can exploit, what.[84] The Embassy of the Baltic Sea uses a concept (the embassy) tightly associated with nation states, aiming to confer a voice to all parties affected by state decisions. The moral imperative of sovereignty of all beings would challenge and loosen the legitimacy of state power over resources, allowing for imagining other forms of organisation.

Building on the Great Law, EBS places humans in the bioregion with relationships and care in the centre, thereby transcending state borders as well as human-nature dichotomy. It creates a space for people to speak for and with nature from a shared ethic of care for the Baltic Sea watershed and its inhabitants. A key competence of an embassy is to establish, strengthen, protect and, if necessary, recover relationships. Embassies are skilled in communication and meetings that promote the best in people, aiming for maintaining peace and connection. EBS would be a space for deliberation and knowledge co-production from the mutual viewpoint of fulfilling human (including state) obligations and responsibility to the sea, free from vested interests and entrenched positions. It would be a space to practise the all-affected principle, inviting more voices into speaking for, as well as with the sea. If all humans have obligations to protect the environment, as Harden-Davies et al claim,[85] and act in a way that sustains and enhances the well-being of the whole community

[79] United Nations Conference on Diplomatic Intercourse and Immunities, "Vienna Convention on Diplomatic Relations", April 18, 1961, 2–3.
[80] Embassy of the North Sea, https://www.embassyofthenorthsea.com/over/, last accessed 12 August 2024.
[81] "City of Species," *Rod*, http://rodnet.org/city-of-the-species/, last accessed 12 August 2024.
[82] United Nations Division for Ocean Affairs and the Law of the Sea, United Nations Convention on the Law of the Sea, art. 193 (10 December 1982), 100, http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm, last accessed 12 August 2024.
[83] Gilbert, "Creating Synergies," 674.
[84] Gilbert, "Creating Synergies," 675.
[85] Harden-Davies et al., "Rights of Nature," 4.

of life, as Berry argues, this requires radical participation and engagement from people. Representation must be shared and dispersed. As long as decisions influencing the health of ecosystem are taken far away in large institutions (like the EU), it is difficult to feel that one is an important part of caretaking, thus remaining care-free and, in practice, irresponsible. EBS would be a space to support and develop a shared responsibility and agency. Examples of human representation of waterways have showed how new relationships and co-production of knowledge in these processes also affected the people involved in them; "new forms of horizontal dialogue and collaboration amongst communities who have traditionally worked in silos" emerged.[86] Representation of more-than-humans in human institutions requires humans with different perspectives, experiences, and knowledge to be engaged. Participation will be a central aspect. People must understand the context and desire to become involved. People in general have an idea of what an embassy is and does. An Embassy of the Baltic Sea has a cultural potential in that it is a "sticky idea",[87] graspable and memorable, standing out from the noise of information conveying a complex understanding in a short form.[88] The Embassy would have to invite all forms of knowledge – the rigorous research of scientists, the imaginative capacity of artists, the balanced view of diplomats, the engaged passion of activists and the idealistic energy of children – from an awareness of bioregional limits rather than national borders.

Pecharroman & O'Donnell urge us to liberate ourselves "from pre-existing assumptions of what representation is, and how it should look". We should, rather, explore the possibilities presented by this "ever-evolving concept".[89] While national embassies rely heavily on a fixed legitimacy as representatives of states, the legitimacy of an Embassy of the Baltic Sea would be much more blurry. At least from the outset it would be relying on its ethos more than institutional support and political legitimacy. The representation of the Baltic Sea could be imagined at various, maybe complementary levels: like in Ecuador, any person living in the Baltic watershed could represent the sea, or like the cases with specific ecosystems being appointed legal persons, specific guardians could be appointed as ambassadors with corresponding duties to speak for the sea or some aspect of it. From a relational perspective, in some sense everyone in the Baltic Sea basin needs to be an ambassador, a radical participation enabling a particularity of context and knowledges. In any case an embassy has to begin as an explorative project, building a shared understanding of human interdependency with the Baltic Sea. Mirroring the fractal nature of the landscapes involved, the embassy would have to enable representation on different scales, from local watersheds to the whole catchment area of the Baltic Sea. The scope of its moral imagination could stretch from supranational agreements on the rights of the Baltic Sea to local engagement in regenerative practices, like interspecies councils on landscape scale, fostering caring capacity on all levels.

[86] Pecharroman and O'Donnell, "Relational representation," 24.

[87] Chip Heath and Dan Heath, *Made to stick: Why some ideas survive and others die* (New York: Random House, 2007), 14.

[88] Both the foundation BalticWaters and Rotary are already educating "Baltic Sea ambassadors," a sign of the palatability of the concept. For information on the former, see https://balticwaters.org/utlysning/traineeprogram-for-ostersjoambassadorer/, last accessed 12 August 2024. For information on Rotary, see https://rotary.fi/d1420/en/blog/news/ryla-baltic-sea-will-take-place-in-finland-in-august-2024/, last accessed 12 August 2024.

[89] Pecharroman and O'Donnell, "Relational representation," 31.

Conclusion: a shift towards a caring culture needs cultural and institutional support

The RoN paradigm can be viewed as less about protecting nature than about how we understand and organize ourselves as humans, aligning our laws with the Great Law. From this perspective we perceive ourselves not as separate from a "nature" that needs protection, but as participants in a living whole. The aim of governing ourselves in relationship with all other beings may dissolve the tension of humans inevitably being humans, and emancipate us to use human language and perspective as unique gifts in the striving to listen to, speak for and with nature; becoming more attuned and attentive to needs, interests, and languages of more-than-human beings. Such a participatory representation is needed for our societies and governance systems to become ecologically literate.

Ehrnström-Fuentes et al. present a framework for such multispecies organising for a caring culture, consisting of three interrelated dimensions: the *affective states of being* that shape the multispecies relations in the web of life, the *vital doings* that entangle multiple species, and the *ethico-political obligation* that define what is being cared for in and beyond the ecology-in-place.[90] Acknowledging the rights of the Baltic Sea through opening a space for representation – an embassy – could be seen as the ethico-political basis for engaging and emancipating affective states of being, laying the groundwork for formal legal recognition. This would unleash and direct societal investments and policy towards vital doings regarding the health of the whole ecosystem. Epstein illustrates this potential with the Los Cedros forest court case in Ecuador, where the Constitutional Court ordered the offending ministry to create a participatory management plan, meant to encourage "economic activities for the surrounding communities that are in harmony with the rights of nature".[91]

In several cases in Sweden, ecosystems have been protected as a result of engagement from civil society. People are voluntarily surveying forests to protect endangered species or paying lawyers to work on court cases to protect valuable landscapes, regardless of how society at large acts (or fails to act) to protect ecosystems. People in general value and care deeply about nature, but this sense of respect and interconnection is continuously betrayed by a culture which treat it as a rightless resource. Research on values show that a majority of people prioritise compassionate values like helpfulness or care for nature, but that they greatly underestimate the extent to which others hold such values. This inaccurate belief about other people's values systematically suppresses values of care towards other people and nature.[92] In other words, people have great caring capacity, but there is a lack of institutional support to validate and recognise this capacity. When RoN are institutionally acknowledged, it would be a responsibility of society as a whole, not just civil society, to respect and protect ecosystems. For this institutional support to emerge, spaces where these practices can take place, "laboratories of care" are needed. EBS would be such a laboratory where care for the Baltic Sea would be perceived as valid and important, where the moral imagination of an embassy would make space for ethical deliberation as well as visions of a caring culture.

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[90] Ehrnström-Fuentes et al., "Managing Relationally."

[91] Constitutional Court of Ecuador, *El Pleno De La Corte Constitucional Del Ecuador En Ejercicio De Sus Atribuciones Constitucionales Y Legales, Expide La Siguiente*, sentencia, caso No. 1149-19-JP/20 (10 November 2021), 80, cited in S. Epstein, "Rights of nature, human species identity," 425–426.

[92] Common Cause Foundation, *Perceptions Matter: The Common Cause UK Values Survey* (London: Common Cause Foundation, 2016), 1.

Growing into the understanding that the "natural world is the larger sacred community to which we belong" is to also embrace our humanity, as "to be alienated from this community is to become destitute in all that makes us human. To damage this community is to diminish our own existence," in the words of Thomas Berry.[93] Maybe it is not until we realise the severity of the ecological crisis – when the sea that unites us is dying – that we can face the difficult questions of human identity, and maybe it is not until we face those questions that we can transform our culture towards living in harmony with nature. A human identity in line with the Great Law in the context of the Baltic Sea, would be as a bioregional citizen belonging to a watershed. This participation can help to enliven a human species identity through a "form of freedom embedded within and through the interconnections that animate an ecosystem"[94] where the unique human capacities of imagination, compassion and creativity can be directed towards the health of the whole living system. Somewhat paradoxically, this shift away from human-centeredness has "'human self-perception and self-understanding…at the centre'"[95] and helps us step into our full humanity.

[93] Religious Naturalist Association, "Thomas Berry," https://religiousnaturalism.org/thomasberry/, last accessed 12 August 2024.

[94] S. Epstein, "Rights of nature, human species identity," 428.

[95] Mihnea Tănăsescu, *Environment, Political Representation, and the Challenge of Rights* (London: Palgrace Macmillan, 2016), 24, cited in Pecharroman and O'Donnell, "Relational representation," 9.

Imagining Mutuality as Base for Rights of Nature
A Theological Perspective on Humanity's Relation to the More-than-human World

*Michael Nausner**

Abstract

Focusing particularly on mutuality, this article broadens the interdisciplinary approach common in Rights of Nature scholarship to include religious perspectives as well. After offering reflections on the significance of theological imagination for Rights of Nature and the contribution of religious and theological perspectives to the concept's early interpretation, the article considers the perennial question of the relation between humanity and the more-than-human. Informed by insights from scholars from other disciplines, the article gives the dynamics of mutuality a theological grounding. It suggests that such mutuality necessitates a supplementation of the concept of Human Rights with an affirmation of the integrity and dignity of the more-than-human world as they are mirrored in the movement for the implementation of RoN.

Introduction

In May of 2024, I joined a group of visitors to a forest in the Swedish landscape of Tiveden. That forest had over the course of several decades been cared for with special regard for the maintenance of biodiversity and sustainability of the forest as such. Such care implied that clear cutting of forest areas was avoided, and trees were cut down much later and in lesser quantities than in regular commercial forestry. We spent several hours in the woods, and hardly anywhere did I have the feeling of being in the context of commercial exploitation (and yet the forest was maintained in a commercial way). During a conversation with one of the initiators of this enterprise I learned about the ideas behind it, and they centered on an understanding of the forest not so much as a plantation designed to deliver products for the market but rather as an ecosystem of which the humans caring for it were a part. Here forestry, it seemed to me, was understood as an exercise in *mutuality between the human and the more-than-human spheres*, i.e., humans were not understood as external to the ecosystem of the forest. This relational understanding of the forest led to several basic principles for the practice of forestry. Such forestry aims among other things at maintenance of the forest's natural composition, at protection of its natural processes, at a minimization of intrusion in these processes, and at contribution to its varied structure and biodiversity.[1]

But what struck me the most was the following insight that was communicated: We as humans will never come close to understanding the tremendous complexity of the myriads of interactions and relations a forest consists of, both above but not least below the ground. Such

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[1] Naturnära Skogsbruk i Tiveden (naturnaraskogsbruk.se) (accessed June 26, 2024).

respect if not reverence for the intricate life of the forest seemed to me to open for a mutuality between various forms of subjectivity rather than human subjects managing natural objects.[2] After all, the forest is a place of mutual communication long before humans even enter the scene. A conversation is going on "that is pervasive through the *entire* forest floor", as Suzanne Simard writes in her book *Finding the Mother Tree*, and "it has similarities with our own human brains" in as much as neurotransmitters communicate signals across fungal membranes in a way analogous to brain activities.[3] I am beginning with this experience in one of the most densely forested regions in Sweden because it initiated within me a similar imagination which already inspired one of the early theoreticians of the Rights of Nature (RoN), Christopher D. Stone, who in his seminal article *Should Trees Have Standing?* delivered the first in depth argument for ascribing "natural objects" legal rights, i.e., subjectivity.[4]

My contribution to this special issue of the *Nordic Environmental Law Journal* on the topic of RoN is an attempt to broaden the interdisciplinary approach to the question to include religious perspectives as well – with a special focus on mutuality.[5] While it is frequently acknowledged that the growing movement in favor of granting rights to nature needs perspectives from various disciplines to be properly understood, the focus is on disciplines such as ecology, environmental sciences, economy, and possibly biology. Religion as a contributing factor often is excluded from the relevant disciplines considered. However, as I will try to show in this chapter, religious intuitions have played both an epistemological and a motivational role from the very beginning of the RoN movement.

In this chapter I first reflect on the nature of theological imagination and its significance for a consideration of the RoN, also in their relation to Human Rights (HR). I then offer a selective presentation of religious and theological perspectives on RoN which have contributed to the interpretation of the concept early on. Finally, I focus on the perennial question of the relation between humanity and the more-than-human. How can the relation between these spheres be conceived? My conclusion is that the relation can be read as shaped by mutual flows. Informed by insights from scholars from other disciplines, I will give these dynamics of mutuality a theological grounding. I suggest therefore that such mutuality necessitates a supplementation of the concept of HR with an affirmation of the integrity and dignity of the more-than-human world as they are mirrored in the movement for the implementation of RoN.

A Theological Imagination

I understand creative imagination as one of the main exercises of theology both for practicing believers and for the wider public.[6] In the context of our current climate predicament such creative imagination can contribute to the necessary paradigm shift toward a more livable future for the earth. It is a lack of such imagination

[2] For an in-depth reflection on forests as living ecosystems with previously unknown levels of consciousness, see: Simard, Suzanne. *Finding the Mother Tree. Uncovering the Wisdom and Intelligence of the Forest*. Penguin Book 2021.

[3] Simard 2021, 5.

[4] Stone, Christopher D. "Should Trees Have Standing? – Towards Legal Rights for Natural Objects." *Southern California Law Review* 45 (1972): 450–501.

[5] For a thorough treatment of religious dimensions of human encounters with the more-than-human and more specifically with forests, see the empirical study of Henrik Ohlsson who has conducted interviews with various practitioners of "nature connection". – Henrik Ohlsson. Facing Nature. Cultivating Experience in the Nature Connection Movement. Stockholm 2022.

[6] Cf. Jones, Serene. *Trauma and Grace. Theology in a Ruptured World*. Louisville, KY: Westminster John Knox Press 2009, 19–21.

writers concerned with the future of the earth frequently miss in public discourse. Bruno Latour, the tireless advocate for the earth as living organism, laments that "it appears that the public at large no longer has enough energy to *imagine* other ways of living, that there are no more utopias"[7] but that the obligation for humanity is "to redraw from top to bottom the totality of our existences" and "the list of beings with which we are going to have to cohabit."[8] In a similar vein political scientist and specialist on the history of RoN, Mihnea Tănăsescu, ends his book *Ecocene Politics* with the somewhat gloomy exclamation that we "can barely *imagine* a future that will not be one of parasitism, both inter and intra-specific. Increasingly we cannot imagine a future without tragic loss. Though ostensibly very different, the consumer capitalism of today and the totalitarianism of the twentieth century are similarly stifling to the *imagination*; both ensure a decomposition of the surrounding world in tandem with a psychic and moral decomposition of the human."[9]

My wager in this chapter is that constructive theology indeed can contribute to an imagination that resists such tragic decomposition of humanity together with its surroundings. Humanity, according to such an imagination, together with a myriad of other creatures is part of one mutually interdependent ecosystem called creation.[10] This kind of theological approach imagines (and confesses) the entire cosmos as created and therefore ultimately beyond the possessive grasp of human endeavors. An influential example of such an approach is Pope Francis' encyclical *Laudato Si'* which spells out the implications of an imagination of the earth as created. It prohibits an objectification of what usually is called "nature" and instead perceives "Mother Earth" as humanity's sister.[11] The bond between humanity and the more-than-human is perceived as intimate. Accordingly, humanity is understood as woven into the fabric of creation, as participating in larger ecosystems so that humans "can feel the desertification of the soil almost as a physical ailment, and the extinction of a species as a painful disfigurement."[12] Such a theological approach to the more-than-human world is in tension with a "technocratic paradigm" according to which humanity can fix ecological challenges by technical means alone, so to speak from a distance. "To seek only a technical remedy to each environmental problem which comes up", the encyclical states, "is to separate what is in reality interconnected." Instead, it calls for an "ecological culture"[13] in which humanity finds itself in "secretly interwoven relationships" in accordance with divine trinitarian relations.[14] Now, this perhaps sounds like mythological and therefore non-consequential language to secu-

[7] Latour, Bruno. *If We Lose the Earth, We Lose Our Souls*. New York: polity 2024, 80. (My italics.)

[8] Latour 2024, 81.

[9] Tănăsescu, Mihnea. *Ecocene Politics*. Open Books Publishers 2022, 181. (My italics.)

[10] Since creation in its entirety is seen as created by God, from a theological perspective no other limited interests can be regarded as superior to the flourishing of all of creation. This is why from a theological perspective all (economically) narrowly conceived "national interests" need to be considered critically (see the introduction of Seth Epstein) and initiatives that seek to mitigate national competition such as an international law against ecocide and an Embassy of the Baltic for the protection of the Baltic Sea (cf. Pella Thiel's contribution to this issue) can count on theological support.

[11] Cf. Encyclical Letter Laudato Si' § 1–2.

[12] Laudato Si' § 89.

[13] Laudato Si' § 111.

[14] Laudato Si' § 240.

lar or non-religious ears, but it has analogies to the findings of contemporary sciences regarding the entanglement of all life in ecosystems. Such entanglement is a serious blow to modern imaginations of the human as autonomous and independent. New biological science that identifies symbiosis a "ubiquitous feature of life" and therefore radically challenges the "talk about individuals" can become theology's ally in criticizing the ubiquitous anthropocentrism in public discourse.[15]

Even though the papal encyclical stops short of dethroning the human as key actor in creation,[16] it depicts humanity as fundamentally interdependent. For example, it offers an intriguing understanding of mutuality between humans and the more-than-human in its interpretation of the second story of creation according to which humanity has the responsibility to "till and keep" the earth (Gen 2:15). This implies, as Pope Francis suggests, "a relationship of *mutual responsibility between human beings and nature*. Each community can take from the bounty of the earth whatever it needs for subsistence, but it also has the duty to protect the earth and to ensure its fruitfulness for coming generations."[17] Such intimate mutuality on the one hand makes the notion of absolute property unconceivable, and on the other hand opens the door for an understanding of law that needs to be grounded in something broader than a Western understanding of the (property) law of the individual.

The Necessary Connection Between Rights of Nature and Human Rights

This does not mean that RoN need to be understood in contrast to or even in competition with HR. Instead, one could argue together with the philosopher of law, Tilo Wesche, that RoN are a logical consequence of HR. In his book *Die Rechte der Natur* he argues that "rights of nature and currently practiced right are siblings" and that "ecological internal rights (German *Eigenrechte*) are implicit to modern legal systems, but as an unutilized (German *unabgegoltenes*) potential."[18] But to my mind Wesche ascribes the secular Western legal system too much of a hegemonic role when he insists that "ecological internal rights need to be deduced from established legal concepts."[19] He therefore is critical of the "re-mythologization" of nature by which he means mythological (i.e. religious?) arguments for the "inviolable dignity" (German *Unverfügbarkeit*) of nature.[20] Instead he believes in a solid anchoring of RoN in property rights: "Property rights can only be healed from their blindness for nature by an enlightened concept of property."[21] Such an enlightened concept seems to Wesche to be incompatible with myth of any kind. There is nothing to be gained from mythological perspectives. In a fashion that risks colonial undertones, he locates the source for ecological sustainability from a legal perspective exclusively in the "normative foundations of modern property companies."[22] As a theologian I have no reason to doubt the validity of such skepticism in the context of a Western legal system, and I sincerely hope that Wesche's project of "sustainable rights

[15] Sheldrake, Merlin. *Entangled Life. How Fungi Make Our Worlds, Change Our Minds & Shape Our Futures*. New York: Random House 2020, 17–18.
[16] Cf. Nausner, Michael. "Eco-Justice as Mutual Participation. Towards a Theological Vision of the Mutual In-Dwelling of All Creation". In: Jan Niklas Collet, Judith Gruber, Wieske de Jong-Kumru, Christian Kern, Sebastian Pittl, Stefan Silber, Christian Tauchner (Eds.). *Doing Climate Justice. Theological Explorations*. Leiden: Brill 2022, 101–119 (109–110).
[17] Laudato Si' § 67. (My italics.)
[18] Wesche, Tilo. *Rechte der Natur*. Berlin: Suhrkamp 2023, 14. (My translation from the German.)
[19] Wesche 2023, 17.
[20] Wesche 2023, 20.
[21] Wesche 2023, 21.
[22] Wesche 2023, 23.

of property"[23] within a basically unaltered Western legal system can bear fruit.

Love Rönnelid in his contribution to this issue argues in a similar direction in his rights critique.[24] To him rights in general mostly have a negative thrust, which consequently would be true for RoN as well. By pushing too hard for the implementation of RoN, Rönnelid argues, one might harvest the opposite of the intended outcome, putting too much power in the hands of lawyers (instead of the state).[25] To Rönnelid, they even risk stifling the imagination, and he therefore in a way reminiscent of Wesche ends up suggesting staying within the system so to speak by reimagining property rights as a way forward. There is little imagination, it seems, toward a widening of the circle of (non-individual) right holders. Rights in general to him are tools to (negatively) *stop* things and not to (positively) *construct*.[26]

The designation of rights as mainly *negative* may be adequate within the realm of a certain judicial tradition, but certainly not from a broader theological perspective. The entire movement for the implementation of RoN is full of imaginative and constructive ideas.[27] As a theologian committed to theology as an exercise of imagination, I think that even legal systems need to be understood as (imaginatively) anchoring in certain philosophical and religious groundings. They mirror *constructively* what is behind, so to speak. I agree with Sigurd Bergmann, therefore, who points out that a recognition of RoN ultimately is embedded in religious and philosophical traditions. "Substantially, rights of nature concern even religious beliefs and practices."[28] And I believe in the potential of transdisciplinary enrichment on the journey toward a more sustainable future for the earth. This might be akin to what John Rawls called "overlapping consensus,"[29] i.e., we can arrive at similar conclusions from very different perspectives. In the context of RoN, this would mean that their critical evaluation, but also their justification can be strengthened by instances of overlapping consensus. Bergmann imagines such overlapping as an "alliance of religious and secular forces in the struggle for the rights of nature."[30]

I overlap with Tilo Wesche in terms of my conviction that RoN need to be reconciled with HR. The ecological and the social need to be understood as woven together in a fundamental way, so that a new and more comprehensive understanding of the political can emerge, with consequences for our understanding of the scope of democratic systems. But I differ from Wesche in that I believe in the vital role of myth for making such a reconciliation work, a role that oftentimes is suppressed in Western rational

[23] Wesche 2023, 29.

[24] Cf. Rönnelid's contribution to this issue.

[25] Rönnelid.

[26] Rönnelid.

[27] One such constructive proposal is the idea of an *Embassy of the Baltic Sea* which Pella Thiel proposes in her contribution to this issue. Such an embassy, Thiel suggests, would be "an example of moral imagination".

[28] Cf. Bergmann, Sigurd. "Rights of Nature. The Intrinsic Value of all Living in God's Creation as One Legal Community". In: Marion Grau, Lovisa Mienna Sjöberg, Michael Nausner (eds.), Nordic Handbook on Climate, Religion, and Theology, *forthcoming*, 1. An important spiritual contribution to the movement toward the implementation of RoN are indigenous traditions which per definition are grounded spiritually. A milestone of this contribution was the adoption of the Universal Declaration of the Rights of Mother Earth in Bolivia in 2010. See: Universal Declaration for the Rights of Mother Earth – Global Alliance for the Rights of Nature (GARN) (accessed July 15, 2024) – The *Wild Law Institute* founded by the lawyer Cormac Cullinan is explicit in its weaving together of legal, philosophical, and spiritual sources, not least the indigenous voices behind the Universal Declaration of the Rights of Mother Earth. See: Wild Law (accessed July 15, 2024).

[29] Quoted in: Féron, Henri. "Human rights and faith: a 'world-wide secular religion'?" *Ethics & Global Politics*, 7:4, 2014, 181–200 (185 & 193).

[30] Bergmann, Rights of Nature, 11.

argumentation. Therefore, I prefer Tănăsescu's approach that is more open for the constructive potential of mythological/religious perspectives. In his above quoted *Ecocene Politics* he solidly embeds human agency (*responsibility*) in wider ecological relationality (*reciprocity*), and he does so by bringing Western moral and political thought in conversation with Māori philosophy (which does not allow any neat separation from mythology). Responsibility, Tănăsescu declares, "has received much attention in political ecological thought", but it is reciprocity that "holds an untapped potential to ground political ethics."[31] In Māori mythology humanity is inherently ecological. Therefore, human behavior is "always already participating in wider processes that define the very nature of the human."[32]

Even though Tănăsescu does not explicitly acknowledge myth as a source for his argument that reciprocity/mutuality in a crucial and necessary way qualifies our political coexistence as creatures, his plea for mutuality resonates with the theological argument in the papal encyclical and the lament that humanity lacks an awareness "of our mutual belonging."[33] This is the theological base for holding together RoN and HR or as it is formulated more broadly (and somewhat poetically) in the encyclical: "We have to realize that a true ecological approach *always* becomes a social approach; it must integrate questions of justice in the debates about the environment, so as to hear *both the cry of the earth and the cry of the poor*."[34] To Bruno Latour the connection between the cry of the earth and the cry of the poor signals an important aspect of a necessary paradigm shift in anthropology, because it broadens the anthropocentric gaze and opens for an "involvement of the earth system in human history – geohistory – [that] defines in more scientific terms what the encyclical calls a 'cry'."[35] It also opens for a reimagination of democratic systems from being a purely human affair to include more-than-human actors. Decades ago, Latour was the one who in his *Politics of Nature* opposed the nature-culture dichotomy and envisioned a community that incorporates humans and nonhumans as actors.[36] Many years later he claimed that "geo" already participates fully in public life,[37] but our modern mindsets resist hearing it. Claes Tängh Wrangel might have a point when he critiques Latour for too neat an opposition between the modern *Globe* that sees humans as exceptional actors from the outside and the *Earth* as the organism of which humans are a part.[38] Wrangel here detects a certain dichotomizing tendency in Latour's language, the very tendency Latour so sharply criticizes in modernism.[39] If Earth has a voice, Wrangel comments, it is still a voice that is "formed *through* human language – thus destabilizing the ontological distinction between the *Globe* and the *Earth.*"[40] Notwithstanding the legitimacy of such criticism against a polarizing tendency that might be due to Latour's broad (ecological) political engagement, Latour's still is a key voice providing a scientific motivation (never in strict opposition of myth!) for a complementation of the concept of HR with RoN. At the same time, Latour remains in conversation with theology,

[31] Tănăsescu 2022, 16.
[32] Tănăsescu 2022, 115.
[33] Laudato Si', § 202.
[34] Laudato Si', § 49. (Emphases are in the original.)
[35] Latour 2024, 43.
[36] Cf. Bruno Latour. Politics of Nature. How to Bring the Sciences into Democracy. Boston: Harvard University Press 2004.
[37] Cf. Bruno Latour. Down to Earth. Politics in the New Climatic Regime. New York: polity 2018, 41.
[38] See Wrangel, Claes Tängh. "Dreaming of a Decolonial Language? The Limits of Posthuman Critique in the Anthropocene." *Nordic Environmental Law Journal*, 2024 Special Issue, 47–59 (50–51). Wrangel capitalized "Earth."
[39] Wrangel.
[40] Wrangel.

continuing the work of theologians "to 'stitch back together' what modernity had taken apart through a series of abstractions."[41] To him theological imagination plays a role in a reconceptualization of the relations between the human and the more-than-human. He sees a fine task for theology in imagining the church as instituting "itself in entirely new civil relationships with the other modes of existence."[42] But he also sympathizes with a process-philosophical tradition, rethinking the incarnation as not only applying to God becoming human in Christ, but as a concept that reflects a fundamental divine interaction with earthly matters. Inspired by the initiator of process philosophy, Alfred North Whitehead, Latour reflects on God as intimately faithful to the earth. This means that "what counts […] is that the creator is implicated in what is created, that the creator is not master of what is created, that the creator risks losing the creation and risks being lost along with it."[43] Here Latour ventures into a theological formulation of divine-earthly mutuality that may be seen as an epistemological and motivational argument for an implementation of RoN.

With these examples of theological imagination, I wanted to indicate how such imagination can aid in shaping an awareness of interdependence between everything on earth, an awareness that sees human dignity as inseparable from more-than-human dignity. To imagine the earth as created is an implicit commitment to a transcendent dimension of material reality and can serve as a theological acknowledgement of the dignity of the more-than-human world and thus as a motivation to ascribe rights to nature. One does not need to be religious to see the value in such a theological acknowledgement, and, as Henri Féron has aptly shown, religion played and plays a role in the establishment and development of HR even though they themselves should not be called religious in a narrow sense.[44]

On October 14th, 2001, when the world community still was in shock after what was perceived as the tremendous destructive potential of religion in the September 11th, 2001 attacks on the World Trade Center in New York City, the secular philosopher Jürgen Habermas chose to focus on religious myth as seedbed for an understanding of human dignity and in extension of human rights. Habermas, in his speech at the occasion of receiving the peace prize of the German booksellers, emphasized the relevance of understanding humans as created in the image of God (Gen 1:27) for an affirmation of human dignity. While confessing that he himself is "religiously non-musical", he affirmed the implications of such mythical language as it is found in Jewish-Christian tradition: Created by a free and loving God, humans are free beings and called to mutual acknowledgement of such freedom. God simultaneously empowers and obliges humans to be free.[45] Habermas toward the end of his career became even more appreciative of religious sources for the creation of social cohesion, while acknowledging their cultural and mythological plurality.[46] As Féron points out, such endorsement of religious arguments for HR does not mean that a "consensus on the metaphysi-

41 Frédéric Louzeau in: Latour 2024, ix.
42 Latour 2024, 16.
43 Latour 2024, 70.
44 Féron 2014, 183.
45 Habermas, Jürgen. "Glauben und Wissen." Dankesrede anlässlich der Verleihung des Friedenspreises des deutschen Buchhandels am 14 Oktober 2001. https://www.friedenspreis-des-deutschen-buchhandels.de/alle-preistraeger-seit-1950/2000-2009/juergen-habermas, 9–15 (15). (Accessed June 29, 2024).
46 For a fine overview on Habermas' reflections on religion written for the occasion of his 95th birthday, see: Amos Nascimento, "The Conceptual Plurality of Jürgen Habermas' *Auch eine Geschichte der Philosophie*. *Res Philosophica*, Vol. 101, No. 2, April 2024, 1–30.

cal foundations of human rights" is found,[47] but rather that they are needed for a trustworthy tapestry for the creation of an "overlapping consensus" that can claim universal validity. And the same is true for RoN. Like HR, they continuously need to be renegotiated, *not least* due to the necessity to widen the understanding both of who "the human" is and what "nature" is, since there is great cultural diversity regarding those definitions.

My point here is to highlight that theological imagination can play an important motivational role for the development of social, political, and not least legal models for the organization of the common good. At the same time as every religious community needs to pay attention to the temptation to misuse religious intuitions for manipulative power games, it also has the obligation to share its constructive contributions for the common good. The example of Jürgen Habermas shows how theological imagination can be a contributing factor to formulate a constructive anthropology, and the example of the encyclical *Laudato Si'* shows how theology can contribute to a reimagination of anthropology in times of overbearing anthropocentrism. Human dignity and the dignity of the more-than-human world need not be in competition to each other but rather presuppose each other.

The Need of a "Background Myth"

Regarding RoN, an acknowledgement of the need of something like a (religious) "background myth" for their effective and convincing implementation can be traced from the very beginning and up to today. I want to offer some examples to make that case. Already Christopher D. Stone, the environmental lawyer who can be seen as one of the original thinkers of RoN, in his seminal article *Can Trees Have Standing?* from 1972 embedded his juridical argument for inclusion of natural objects as rightsholders[48] in a reflection with religious undertones. There he argued for a supplement of HR with RoN and suggested in a visionary fashion the following: "I am quite seriously proposing that we give legal rights to forests, oceans, rivers and other so-called 'natural objects' in the environment – indeed, to the natural environment as a whole."[49] He saw the need of a sound worldview out of which a constructive judicial theory could emerge: "One's ontological choices will have a strong influence on the shape of the legal system, and the choices involved are not easy."[50] Given the degree of environmental devastation because of corporate exploitation in the USA in the 1960s and 1970s, he saw the necessity of "a radical new theory or *myth* – felt as well as intellectualized – of man's relationships to the rest of nature."[51] One such myth that has received attention in scientific and not least theological discourse is the myth of planet earth as organism. "I do not think it too remote", Stone writes, "that we may come to regard the Earth, as some have suggested, as an organism, of which Mankind is a functional part – the mind, perhaps: different from the rest of nature, but different as a man's brain from his lungs."[52] Stone here opens the door toward a rethinking of anthropology that fundamentally seems to challenge the Western judicial system with its roots in the rights of persons, i.e., individuals. And most significantly for my purpose here, it challenges us to understand humanity and earth in a relationship of mutuality.

[47] Féron 2014, 185.

[48] Stone, 475.
[49] Stone, 456.
[50] Stone, 456, footnote 26.
[51] Stone, 498. (My italics.)
[52] Stone, 499.

The Challenge of "Natural Objects"

Of course, there are the problems of how to define "natural objects" and who can represent them, problems which were discussed controversially during the Uppsala symposium in June of 2023. I think Maria Refors Legge is right when she points out that recognizing nature as right holder requires a redefinition of rights.[53] A successful implementation of RoN in a Western context indeed will put the traditional understanding of rights as rooted in individual (human) rights under significant pressure. At the end, it is a matter of reimagining anthropology. The need for such a reimagination can be traced back to Stone, as we have seen. But is it the case, as Refors Legge seems to think, that only RoN has the disadvantage of being what she calls "symbolic legislation?"[54] Do we not need to put a Western emphasis on *individual* HR under similar scrutiny regarding its "symbolism"? Might we not think, as I suggest in this chapter, of humans in terms of (parts of) ecosystems in an analogical sense as more-than-human ecosystems with their reciprocal dynamics? Refors Legge opens a door in that direction when she suggests shifting the focus from individual rights to state obligations. In that way, the state's role as "steward of public interest" could create a balance between responsibilities toward individuals and the environment and the "reciprocal nature of rights and obligations" would come to the fore. However, Refors Legge still thinks of such reciprocity as a matter between "individuals (human and non-human)."[55]

Jonas Hultin Rosenberg takes us a step further when he probes into the possibilities of a "democratic inclusion of nature." For such an inclusion to take effect, the acknowledgement of political agency needs to be enlarged beyond the human sphere. According to the "all affected principle" (AAP),[56] all affected entities in time and space need to be considered in a truly inclusive democratic system, which puts the "speciesist assumption (only humans)" of traditional democratic systems under pressure.[57] While Hultin Rosenberg stops short of ascribing non-sentient organisms more than "patiency,"[58] he acknowledges that based on the AAP they are worthy of political concern.[59] While Hultin Rosenberg, thus, is quite cautious in his designation of "political concern" to the more-than-human, with this acknowledgement he opens the door for a more radical inclusion of ecosystems in democratic processes not just as patients but as agents. Such inclusion is hinted at in Tănăsescu's *Ecocene Politics*, where he follows Andrew Light in widening the understanding of an "involvement of those affected." And he therefore concludes that "there is no reason to suppose that only human communities have the right to be active participants."[60]

Already Stone struggled with the notion of agency in the more-than-human, even if he used a different vocabulary, and I think he would have agreed with Tănăsescu's intention to include more-than-human agents in a democratic system. But he was keenly aware of the conceptual challenges when he wrote that "there are large problems involved in defining the boundaries of the 'natural object.'" However, not only the definition of 'natural objects' poses a challenge but also the definition of a 'person',

[53] Cf. Refors Legge, Maria. "The Symbolic Nature of Legal Rights." Nordic Environmental Law Journal, 2024 Special Issue, 77–87 (81–82).
[54] Cf. Refors Legge, 78.
[55] Cf. Refors Legge.
[56] Cf. Rosenberg, Jonas Hultin. "The Democratic Inclusion of Nature – Exploring the Categorical Extension of the All-Affected Principle." *Nordic Environmental Law Journal*, 2024 Special Issue, 89–98.
[57] Cf. Hultin Rosenberg.
[58] Cf. Hultin Rosenberg.
[59] Cf. Hultin Rosenberg.
[60] Tănăsescu 2022, 176.

a challenge which from a modern Western perspective often goes without notice. With other words: There are similar and probably less often acknowledged problems with "the concept of a 'person' in legal *or* everyday speech", as Stone reminds us. "Is each *person* a fixed bundle of relationships, persisting unaltered through time? Do our molecules and cells not change at every moment? Our hypostatizations always have a pragmatic quality to them."[61] Stone here in a modest footnote formulates an understanding of the "pragmatic", i.e., constructed, nature of the individual as constituted by a (not so fixed) bundle of relationships decades before such an understanding became common sense among natural scientists from various disciplines. And he obviously understood the paradigm shift that legal systems would go through if they acknowledged a certain fuzziness in its ontological foundations, a certain necessary pragmaticism. The question of how to understand 'natural objects' on the one hand and 'persons' on the other hand needs to be under scrutiny time and again. How the difference and distinction between the two is perceived and understood is of vital importance not only for a legal system but also for the organization of a society, the commons.

Theology as Resource for Rights of Nature

Stone indeed opened the door for religious and theological approaches with his quest for a radical new myth of man's [sic.] relationship to the rest of nature. Curiously, this happened shortly after the publication of Lynn White's article *The Historical Roots of Our Ecologic Crisis* in 1967, a scathing and justified critique of Christianity's bad track record when it comes to its elevation of humanity as rulers of the earth. The understanding of humans as God's image according to White – and in stark contrast to Habermas' positive evaluation of the same concept – had in modernity led to a highly problematic theological legitimization of anthropocentrism. "Man" is above the earth. Christianity, according to White, especially in its Western form "is the most anthropocentric religion the world has seen."[62] The historian White sees a clear connection between modern science with its objectifying and distancing gaze and the Christian tradition in modernity: "Modern technology is at least partly to be explained as an Occidental, voluntarist realization of the Christian dogma of man's transcendence of, and rightful mastery over, nature. […] If so, Christianity bears a huge burden of guilt."[63]

This indictment needs to be kept in mind, and I think it has its lasting justification for large parts of Christianity to this day. There have, however, continuously existed countercurrents to such anthropocentrism and human exceptionalism. White himself mentions Francis of Assisi as an example of such countercurrents and elevates him to "a patron saint for ecologists."[64] But even since White and Stone wrote their seminal articles in 1967 and 1972 respectively a steady stream of voices in theology has undertaken a reimagination of humanity's relation to the more-than-human in a way that remedies the age-old anthropocentrism of the Christian tradition. Let me mention a few: There is John B. Cobb, Jr. who, in the same year as Stone wrote about the standing of trees, published *Is It Too Late? A Theology of Ecology*, the first book length treatment of the ecological crisis from a Christian perspective.[65] There is Rosemary Radford

[61] Stone, 456, footnote 26.

[62] White, Jr., Lynn. "The Historical Roots of Our Ecologic Crisis". *Science*, 10 March 1967, Volume 155, Number 3767, 1203–1207 (1205).

[63] White 1967, 1206.

[64] White 1967, 1207.

[65] Cobb, Jr., John B. *Is It Too Late?: A Theology of Ecology*. Benzinger, Bruce & Glencoe, Inc. 1972.

Ruether who in her *Gaia & God. An Ecofeminist Theology of Earth Healing* radically challenges Western culture of male domination by imagining a world of healed relationships to each other and to the earth.[66] There is Sallie McFague who in her *The Body of God. An Ecological Theology* counteracts modernity's exploitation of the earth by imagining the whole universe as the body of God.[67] There is Leonardo Boff who in the aftermath of the UN Conference on the Environment and Development in Rio de Janeiro wrote his *Cry of the Earth, Cry of the Poor* in which he shows how the ecological and the social crises are connected and the result of the same destructive paradigm: We humans, Boff exclaims, are "hostages to a paradigm that places us […] *over* things instead of being *with* them in the great cosmic community."[68] And last but not least there is the recently deceased Jürgen Moltmann who already in the 1980s widened the concept of the social from a theological perspective by talking about a "creation community"[69] and who shortly before his death wrote *The Great Ecological Transformation*, a passionate plea arguing for the need of a new understanding of humanity that, fueled by a cosmic spirituality, embeds human beings in the community of creation.

Towards a Theology of Mutuality

It is the concept of a "community of creation" – and not only of humans – that leads Moltmann from a theological perspective to the necessity of acknowledging RoN explicitly: "Ecological justice," he maintains, "is meaningless without the rights of nature."[70] He arrives at that conclusion after acknowledging Christianity's active contribution to the "conquest of nature" due to a misunderstood interpretation of humankind as created in the image of God and embraces therefore James Lovelock's Gaia hypothesis, i.e., his imagination of the earth as an organism. Indeed, Moltmann affirms, even "from a theological perspective the earth can be seen as a living creature since it brings forth life (Gen 1:11)."[71] Such an understanding of creation as a mutual affair, and therefore as a conversation between subjects rather than a one-way command, has been extensively elaborated upon by constructive theologian Catherine Keller. God communicates with creation even before humanity comes into the picture. The created realm remains full of creative subjectivity. Creation, Keller explains, "takes place as invitation and cooperation" and "the creator lures self-organizing systems out of the fluctuating possibilities."[72] For all their likeness with God, humans enter the creative process later than other organisms.[73] The "earth and the waters," Keller points out, "participate as invited in the creative process ("Let the earth bring forth," etc.) […]. Earth and ocean seem to mirror more directly than the human the character of the creator – to create. (Humans are not here invited to 'bring forth'.)"[74] An understanding of creation as a mutually communicative process between God and *all* other creatures can

[66] Radford Ruether, Rosemary. *Gaia & God. An Ecofeminist Theology of Earth Healing*. San Francisco: Harper Collins 1992.

[67] McFague, Sallie. *The Body of God. An Ecological Theology*. Minneapolis, MN: Fortress Press 1993.

[68] Boff, Leonardo. *Cry of the Earth, Cry of the Poor*. Maryknoll, NY: Orbis Books 1997, xii.

[69] Moltmann, Jürgen. *Gott in der Schöpfung. Ökologische Schöpfungslehre*. München: Chr. Kaiser Verlagshaus 1985.

[70] Moltmann, Jürgen. "The Great Ecological Transformation". *Theology Today*, 2023, Vol. 80 (1), 9–17 (10).

[71] Moltmann 2023, 13.

[72] Keller, Catherine. *Face of the Deep: A Theology of Becoming*. London & New York, NY: Routledge 2003, 195.

[73] This point is made convincingly by philosopher of religion Jan-Olav Henriksen. Cf. Jan-Olav Henriksen. *Theological Anthropology in the Anthropocene. Reconsidering Human Agency and its Limits*. Cham: Palgrave Macmillan 2023, 9–23.

[74] Keller, Catherine. *Political Theology of the Earth: Our Planetary Emergency and the Struggle for a New Public*. New York, NY: Columbia University Press 2018, 76.

be found in older Jewish exegesis as well. Rabbi Samson Raphael Hirsch, for example, interprets the plural in Genesis 1:26 ("Let Us make the human in Our image after Our own likeness") as an affirmation of agency in non-human creation: Before the creation of humanity, God sought approval of nature itself and wants "nature's consenting to humanity's existence."[75]

Among such theological voices which implicitly or explicitly endorse the potential of RoN by acknowledging agency in the more-than-human realm, maybe Rosemary Radford Ruether is the earliest and most imaginative one. Hers is a voice that with its interdisciplinary reach has contributed to the above-mentioned overlapping consensus. Before Bruno Latour, whose critique of "nature" as something beyond the human is well known,[76] she laments in her *Gaia & God* that "we in the West have constructed our concept of 'nature' as both the nonhuman and the non-divine."[77] Instead, she sees God's covenant with the earth as a theological foundation for ascribing rights to nature: "Each species of plant or animal is a distinct evolutionary form of life, and thus, as a species, has unique value in its own right."[78] Toward the end of her book she (as one of the earliest theologians) is in direct conversation with Christopher D. Stone whose interest in the Gaia hypothesis she shares. Inspired by his writings she agrees that it is "inadequate to define 'nature' solely through the rubric of 'individual rights'. We need to learn to envision humans and nonhumans in biotic communities, in which a plurality of values needs to be balanced in relation to each other."[79] She therefore affirms a fundamental mutuality between all living beings on earth that has both spiritual connotations but is also in resonance with approaches such as Donna Haraway's who argues for a kinship between humanity and all critters of the earth.[80] Akin to Haraway's earthly kinship of all living critters, Radford Ruether recognizes that "humans and other life forms are part of one family, sisters and brothers in one community of interdependence. There is an ultimate thouness at the heart of every other living being."[81] Such "thouness" of other beings is intrinsically transformative, since it is rooted in continuous mutual exchanges given that "our own bodies are composed from minute to minute of substances that once were parts of animals and plants" etc.[82] Radford Ruether concludes that such systems of domination and exploitation as the ones plaguing our creaturely coexistence today are in need of replacement by systems characterized by what she calls "biophilic mutuality."[83] And this, in the spirit of overlapping consensus across disciplinary boundaries, is in tune with Tănăsescu's political plea for mutualism. To him, everything that appears as an individual is suspect[84] because (individual) independence is a political and not a scientific term.[85] Therefore, "we need infrastructures of reciprocity built through political processes committed to the living world."[86]

From a theological perspective, there is reason to endorse initiatives that correspond to the real mutuality that is a fundamental feature of humankind's relatedness to the more-than-human. Therefore, the idea of RoN has at least one

[75] Neril, Rabbi Yonatan & Rabbi Leo Dee. *Eco Bible. Volume 1: An Ecological Commentary on Genesis and Exodus*. The Interfaith Center for Sustainable Development 2020, 11.
[76] Cf. Latour 2024, 70–74.
[77] Radford Ruether 1992, 5.
[78] Radford Ruether 1992, 221.
[79] Radford Ruether 1992, 226.
[80] Cf. Donna Haraway, Staying with the Trouble. Making Kin in the Chthulucene, Durham, NC: Duke University Press 2016.
[81] Radford Ruether 1992, 227.
[82] Radford Ruether 1992, 252.
[83] Radford Ruether 1992, 258.
[84] Tănăsescu 2022, v.
[85] Cf. Tănăsescu 2022, 157.
[86] Tănăsescu 2022, 158.

important role to play in the anthropocentric and individualistic paradigm of modernity: it problematizes a Western understanding of law based on the rights of individuals and property rights etc. Whether or not climate change can or should be understood as "nature responding to human agency,"[87] RoN poses at least one possible challenge to a legal system that obviously does not come to terms with large scale ecological devastation, and it does so by proposing a widening of possible legal right holders. After my experience in the majestic forest in Tiveden, I came a step closer – at least in my imagination – to understand its ecological web as a subject of unalienable dignity and thus as worthy of legal personhood. And I was able to take this step because I witnessed a mutual relationship between humans and forest that built on an understanding of the forest as ecosystem of which the humans caring for it were a part. I think we need more examples of such mutual sensitivity, because Mother Earth/Gaia is groaning and longing for inclusion by its human guests in new models of biophilic mutuality (Rom 8:22). The concept of RoN offers possibilities for accomplishing just that.

[87] Cf. Latour 2018, 40–44.