Rights of Nature: Legal Advancement or Symbolism?

A legal-philosophical analysis of the potential of Rights of Nature to stimulate ecocentrism in environmental protection legislation

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Summary

The mixed results of Rights of Nature cases lead to questions about the potential of Rights of Nature as an improved form of environmental protection legislation. Drawing on Bruno Latour's work and the Atrato River ruling by the Colombian Constitutional Court, I argue that if Rights of Nature is accompanied by an understanding of planetary life that emphasizes the connectedness and interdependence of life on Earth including human life, Rights of Nature can provide a more ecocentric approach to environmental protection than traditional environmental protection legislation.

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Introduction

In response to the climate crisis, Rights of Nature is increasingly taking stage as an alternative way to relate to the environment. This legal theory and form of governance proposes an alternative approach to environmental protection. Current environmental protection laws have only partly lived up to the aim of protecting the planet against commodification and exploitation, as illustrated by the state of the Earth: the past five years have showcased the highest temperatures on record since 1850;[1] the speed with which sea levels are rising, has tripled compared to the rate between 1901 – 1971;[2] fires – most of which are deliberate – have inhibited the capacity of the Amazon to capture any CO2 at all.[3] In the words of environmental activist Terri Swearingen: "We are living on this planet as if we had another one to go to."

In current predominant legal systems, non-human or natural entities tend to be viewed as objects, without legal personhood and mostly incapable of carrying rights. When there are rights that relate to non-human or natural entities, these are not autonomous rights ascribed to non-human entities, but rights that apply to human entities and indirectly protect natural entities. Most often, those rights are human rights. Legal proceedings to challenge actions that result in environmental damage tend to be mediated through the rights of a person that are violated and revolve around the damage of said person, not the damage to the environment per se. This form of environmental protection results in a right that is made dependent on human damage or suffering. Natural entities are only worthy of protection if damage begets human damage.

Rights of Nature challenges the framework of indirect environmental protection. Rather than viewing nature as a resource or object that can be unconditionally used to benefit humankind, Rights of Nature ascribes inherent worth to species and ecosystems. 'Natural objects' like rivers and forests have a right to flourish, in addition to subsidiary rights like a right to function without interference and a right to restoration.[4] These rights are similar in character to fundamental human rights but applied to non-human (made) entities rather than individuals. Just like the latter, they can be enforced legally, to which end natural objects have legal standing.

Rights of Nature made its first appearance in a 1972 article by Christopher Stone, "Should Trees Have Standing?", although the name Rights of Nature was yet to be coined. In his article, Stone argued that ecological areas and natural objects, as he calls it, should have legal personhood and accompanying rights. That would allow these 'natural objects' to protect their ecological integrity. This

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[1] IPCC, 2021: Summary for Policymakers. In: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, p. 5. Available at: https://www.ipcc.ch/report/ar6/wg1/#SPM.
[2] Idem., p. 6.
[3] Gatti, L., et al., "Amazonia as a Carbon Source Linked to Deforestation and Climate Change," *Nature* 595 (2021): 388 – 393, https://doi.org/10.1038/s41586-021-03629-6.
[4] La Follette, C., "Rights of Nature: The New Paradigm," American Association of Geographers, March 6th, 2019, http://news.aag.org/2019/03/rights-of-nature-the-new-paradigm/.

is hardly a new idea, as in most Indigenous worldviews and traditions, the non-human living world has long been approached as comprising subjects with rights of their own.[5] Stone's article formed the conception of an academic theory, however, and since then, Rights of Nature has slowly gained foothold in the mainstream discourse. Some countries have implemented Rights of Nature strategies into their legal system. The 2008 Ecuador constitution ascribes to nature "the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes,"[6] as well as the right to be restored in the case of damage. Subsequently, an international gathering in Bolivia led to the founding of the Global Alliance for the Rights of Nature. In New Zealand, in a fusion of Western legal philosophy and Maori tradition, the Whanganui River was granted legal identity, legislation for which was implemented in 2017. Similar developments are ongoing in various countries, from the protection of Lake Erie in Ohio to the public discussions about the envisaged broadening of a highway near Amelisweerd, The Netherlands.[7]

Clearly, there is potential in including rights and/or legal personality of non-human lifeforms in our legal systems, as attested by the way the idea has increasingly surfaced in the past and keeps popping up more and more. Pointing at the successful inclusion of non-human lifeforms in Indigenous societies – Indigenous Peoples comprise less than 5% of the world's population and hold less than 20% of the total landmass, yet protect over 80% of the world's biodiversity[8] – Rights of Nature presents itself as a solution for the climate crisis. By giving non-human lifeforms and entities the status of a subject of law rather than an object to be used for (economic) benefit, Rights of Nature aims to emulate the fruitful relationship of many Indigenous Peoples in a legal framework, thereby improving existing legal frameworks for environmental protection. Rights of Nature's main asset to that end is that it provides a shift in perspective: it broadens our perspective from an anthropocentric one to an ecocentric perspective, alleviating the risk of anthropocentrism that pops up even in environmental protection legislation.

Rights of Nature is not an uncontested idea, however. As it is increasingly introduced in jurisdictions, mostly in the Americas, it begs questions that require answering. For example, scholars struggle to conceptually make sense of ascribing legal personhood to entities that are thought of as inanimate objects. Even if one accepts the ability of entities like rivers to be a legal person, it remains the question how Rights of Nature in practice can form an improvement of current, more anthropocentric environmental legislation. The Rights of Nature

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[5] Cano Pecharroman, L., "Rights of Nature: Rivers That Can Stand in Court," *Resources* 7, 1 (2018): 13 – 27, https://doi.org/10.3390/resources7010013, p. 19.

[6] Constitution of the Republic of Ecuador, Title II, Chapter 7. English translation available at: https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html.

[7] Van de Venis, J., et al, "Amelisweerd is de ideale proeftuin om de werking van rechten voor de natuur te verkennen," *De Volkskrant,* April 22nd, 2021, https://www.volkskrant.nl/columns-opinie/amelisweerd-is-de-ideale-proeftuin-om-de-werking-van-rechten-voor-de-natuur-te-verkennen~bdf22af0/.

[8] Sobrevila, C., *The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners* (Washington, D.C.: The World Bank, 2008), p. 5.

discourse often plays with the idea of living ‘in harmony with nature’, thereby perpetuating a stark distinction between human interest and the interests of ‘nature’ as a monolithic domain. Is Rights of Nature actually an upgrade of the current environmental framework, or little more than a rebranding of that same framework?

In this thesis, I formulate an answer to the following question: *How can Rights of Nature reach its proposed potential of augmenting legal protection for non-human life forms?* In chapter one, I first dive into the history of Rights of Nature, including the Indigenous worldviews that precede Rights of Nature as a concept. Subsequently, in chapter two, I discuss Stone’s paper *Should Trees Have Standing?* and explore the conceptual problems that Rights of Nature poses. In chapter three, I discuss Bruno Latour’s conception of distributed agency as an alternative foundation for Rights of Nature, that can help abridge the conceptual problems discussed in chapter two. Lastly, in chapter four I discuss multiple practical cases of Rights of Nature, that showcase where the potential for Rights of Nature lies, and where it does not.

Chapter One – Rights of Nature as a concept

§1.1 Introduction

Rights of Nature (hereafter: RoN) is a broad concept, perhaps even an umbrella term. It holds aspects of philosophy, anthropology, political science, legal theory and governance. Depending on the context in which it appears and the accents that the user highlights, it can be all of those things at once or one of them. No matter the exact approach taken, however, all applications of RoN have in common the idea that non-human forms of life should be viewed as a subject of rights, not as an external object to be used by society. In the following chapter, I explain what RoN as a concept entails. I start with its introduction into the academic world in 1972 and following the development from there. I then discuss the importance of Indigenous worldviews and traditions for the concept of RoN.

§1.2 History of RoN

In 1972, American law professor Christopher Stone published an article that laid the foundation for what would later be coined RoN. In *Should Trees Have Standing? – Toward Legal Rights for Natural Objects,*[9] Stone offered a perspective on a then still pending court case before the US Supreme Court.[10] In the case, an environmental advocacy organization, the Sierra Club,[11] challenged the decision of the American Forest Service to issue permits to Disney for the development of a ski resort in Mineral King Valley, which is now part of Sequoia National Park in the Sierra Nevada. In a preceding judgment, the court of first instance had held that the Sierra Club itself would not be adversely affected by the project, and therefore had no legal standing. This led to a rejection of the lawsuit. While the appeal was pending, Stone took up the pen to challenge the idea that it is the legal standing of the party defending the natural object that is important. Rather than relying on environmental defense organizations to be sufficiently adversely affected by the challenged behavior to meet locus standi requirements, Stone argued that environmental objects should be granted their own legal personhood.[12] Consequently, natural objects would have the right to defend *themselves* legally against practices harming its ecological integrity, through the guardianship of a designated party. The article caught the attention of one of the judges in the case, Justice William O. Douglas. Although the Supreme Court did not rule in favor of the Sierra Club – who regardless managed to prevent the intended construction of the ski resort – Stone's concept of legal standing for natural objects gained a foothold. In his dissenting opinion, Justice Douglas

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[9] Stone, C., "Should Trees Have Standing? Towards Legal Rights for Natural Objects," *Southern California Review* 45 (1972): 450 – 501, available at: https://iseethics.files.wordpress.com/2013/02/stone-christopher-d-should-trees-have-standing.pdf; Stone uses the term 'natural objects', which I will also use when discussing his paper.

[10] Sierra Club v. Morton, 405 U.S. 727 (1972).

[11] https://www.sierraclub.org/about-sierra-club

[12] Stone, C., "Should Trees Have Standing? Towards Legal Rights for Natural Objects."

affirmed the idea that environmental objects should have standing in order "to sue for their own preservation."[13]

In the following 30 years, the concept of RoN gained academic traction.[14] Stone's suggestion instigated and still instigates a debate between scholars on the question if legal personhood should include nature and animals, and if yes, how legal personhood should be defined so as to allow room for inclusive legal personhood.[15] It was not until the 2000s, however, that the concept steeped into a more widespread, practical application. The first organization that publicly embraced RoN was the Community Environmental Legal Defense Fund (hereafter: CELDF), a nonprofit public interest law firm assisting persons in the protection of their environment. In 2006, the CELDF launched a campaign for the adoption of local bills ascribing rights to non-human life forms in the US. This campaign saw its first success in the Pennsylvanian community of Tamaqua Borough, which sought to ban the dumping of toxic sewage sludge in the community. With the passing of the proposed Rights of Nature bill, Tamaqua Borough became the first place in the world to legally implement the concept of RoN.[16]

The surfacing of RoN outside of the academic world instigated further developments in the subsequent years. Since the early 2000s, an ever-growing body of case law, legislation and political declarations has developed that, to a greater or lesser extent, ascribes rights to non-human life forms.[17] This development has taken place at the local, national as well as the international level. The CELDF successfully joined forces the Pachamama Alliance, an organization which empowers Amazonian indigenous communities and with Ecuadorian politicians for the introduction of RoN into the 2008 Ecuadorian Constitution. Article 71 of the Constitution of Ecuador recognizes nature as a legal person, with a right to "integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes" and a right to restoration.[18] To effectuate those rights, both individuals as well as collectives like communities and peoples can demand enforcement by Ecuadorian public authorities. Moreover, in the Article, the Ecuadorian State accords to create incentives for legal agents to protect and respect nature, including ecosystems in their entirety. The provisions on nature's rights have not stayed at a paper reality. When a government incentive to construct a road threatened the integrity of the Vilcabamba River, legal

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[13] Sierra Club v. Morton, 405 U.S. 727, 6 – 7 (1972).
[14] Authors such as Roderick Nash, Thomas Berry and Cormac Cullinan.
[15] See for instance Korsgaard, C., "Personhood, Animals, and the Law," *Think* 12, 34 (2013): 25 – 32, https://doi.org/10.1017/S1477175613000018; Kurki, V., *A Theory of Legal Personhood* (Oxford: Oxford University Press, 2019); Dyschkant, A., "Legal Personhood: How We Are Getting It Wrong," Illinois Law Review 5 (2015), p. 2075 – 2110, Volume 2015, p. 2075.
[16] https://www.therightsofnature.org/timeline/
[17] Cano Pecharroman, L., "Rights of Nature: Rivers That Can Stand in Court," p. 16 – 17.
[18] The constitution explicitly speaks of nature as a whole. In chapter 3, I challenge the notion of nature as an existing domain. For the remainder of chapter 1, however, I adhere to the terminology used by the mentioned documents when relevant.

proceedings on behalf of the river itself led to the discontinuation of the project.[19] The Ecuadorian Constitutional Court has even interpreted rights of nature expansively to include the protection of Indigenous Peoples, whose ancestral rights and knowledge play a fundamental role in the preservation of nature.[20]

2009 marked another step toward the constitutional recognition of RoN in South America. Although Bolivia in its 2009 Constitution did not include nature as a bearer of rights, the Constitution did grant citizens the right to "protect and defend an adequate environment for the development of living beings,"[21] and formed the upbeat for the so-called Law of the Rights of Mother Earth, which confers several legal rights to non-human life forms, i.e., the rights to life, regeneration, biodiversity, water, clean air, balance and restoration.[22] The idea of living in harmony with nature was presented as an alternative to global capitalism,[23] and ecological integrity was recognized as a prerequisite for the Bolivian state.[24] Additionally, in 2009, the Global Alliance for the Rights of Nature was founded, a global network of organizations advocating for the adoption and implementation of RoN in legal systems. At the first World People's Conference on Climate Change and the Rights of Mother Earth in 2010, held in Bolivia, the Universal Declaration of the Rights of Mother Earth was adopted, and was also submitted to the General Assembly of the UN. Adoption by the General Assembly has yet to happen, however, together with proclaiming April 22 as International Mother Earth Day, the General Assembly has expressed the conviction that the promotion of 'Harmony with Nature' is necessary. This intention has resulted in multiple reports of the Secretary-General of the UN on the Harmony with Nature, which have instigated a current total of twelve resolutions, the latest adopted in December 2020.[25] In 2012, the International Union of the Conservation of Nature adopted a policy to incorporate RoN in its decision-making.

§1.3 Indigenous precedents

Tamaqua Borough, Ecuador and Bolivia are the first example of a RoN into practice, but certainly not the last. Since then, further developments such as RoN affirming court cases and local laws that grant RoN have arisen across a multitude of states and continents, *inter alia* in Ecuador, Bolivia and New Zealand, but also the US, Australia and to lesser extent in Europe.

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[19] Criminal Division of the Provincial Court of Loja, Judgement no. 11121-2011-0010, 31 March 2011; https://www.jstor.org/stable/pdf/26268374.pdf p. 39.
[20] Idem, p. 42, Constitutional Court of Ecuador, Judgement no. 065-15-SEP-CC, 11 March 2011.
[21] 2009 Constitution of Bolivia, Section IX, Art. 74. English translation available at: https://www.constituteproject.org/constitution/Bolivia_2009.pdf.
[22] Villavicencio Calzadilla, P. & Kotzé, L., "Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia," *Transnational Environmental Law* 7, 3 (2018): 397 – 424, https://doi:10.1017/S2047102518000201, p. 399.
[23] Valeria Berros, p. 37.
[24] Kotzé & Villavicencio Calzadilla, p. 403.
[25] UN General Assembly, Twelfth Resolution on Harmony with Nature, A/RES/75/220, available at: https://undocs.org/en/A/RES/75/220.

It is not strange that RoN has been predominantly implemented in South America and Oceania, states are founded on Indigenous lands and still hold Indigenous populations. Notably, it must be recognized that while on the academic conception of RoN as a legal theory a clear date of origin can be put, the idea of ascribing inherent worth to non-human life forms long precedes the academic postulation to give such life forms legal personhood. Indigenous worldviews, traditions and knowledge as a paradigm in which the inhabitants, in the broadest sense of the word, of the living world have rights, long precedes the concept of RoN.[26] In this paradigm, non-human life forms and humankind are seen not just as interdependent, but as parts of the same world. With due respect for the great diversity between Indigenous cultures, a common characteristic of Indigenous tradition and worldview is a non-anthropocentric social system, in which co-existence with non-human life has a central role.[27]

When using the term 'Indigenous', I adhere to the UN definition of Indigenous Populations.[28] The delineation of the term 'Indigenous' is important because not all civilizations that have at one point been native to lands that were later colonized – and thus in the broadest sense can be called Indigenous – have had the relationship to nature as described above. There are certainly 'Indigenous' civilizations that have ended, at least in part, due to a skewed relationship to the environment, such as the civilization on Easter Island.[29] Concisely, the UN definition of Indigenous peoples encompasses peoples whose ancestral lands have been colonized or settled in by peoples not native to those lands, and who have maintained aspects of their ancestral culture. These groups still consider themselves separate from the dominant population on their lands and aim to preserve their ethnic identity and cultural, social and legal patterns, passing it down to future generations. In practice, this largely comes down to minority groups in the Americas and Africa. Thus, for the purpose of this thesis, 'Indigenous' refers only to those groups.

Across Indigenous Peoples in South America, the Sumak Kawsay is a prevalent way of life. In this, nature is seen as an alive, overarching system, comprising the harmonious interactions of all beings and natural systems on Earth. This system gets the name of Pacha Mama, and while sometimes it is seen as a deity, mostly it is a philosophy that guides Indigenous populations in all their living to act in harmony with nature from a place of reciprocity and respect.[30]

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[26] Cano Pecharroman, L., "Rights of Nature: Rivers That Can Stand in Court," p. 19.
[27] Ibid.
[28] "Indigenous communities, peoples, and nations are those that, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems." Study of the Problem of Discrimination Against Indigenous Populations, p. 10, Paragraph 25, 30 July 1981, UN EASC.
[29] Diamond, J., *The Last Tree on Easter Island* (London: Penguin UK, 2021).
[30] Zaffaroni, E., *La Pachamama Y El Humano* (La Plata: Ediciones Madres de Plaza de Mayo, 2012).

Living in harmony with nature does not refer to a romantic utopia in which no problems, conflicts or disasters ever arise. The living world can be volatile and present societies with all kinds of issues, ranging from temporary weather changes that disrupt food chains to catastrophic events like earthquakes, floods and even meteor impacts. What living in harmony with the living world rather means in this context, is that the interests of non-human life forms are considered, as they are inherently tied to human interests and vice versa. The principles of caring for the Earth and allowing it to regenerate, not just to provide for future human generations but for all other beings as well, permeate the framework of norms of these Indigenous communities in its entirety.[31] Although the exact form may differ, Indigenous populations across North America, Asia, Africa and Oceania all embody a similar philosophy in which the living world is not an object for humans to use, but an aggregate of which humankind is part. These philosophies of reciprocity and respect stand at the base of and infuse their societies.[32]

Environmental damage is a complex issue and blaming it entirely on the modern, Western perspective in which the living world is an object at our disposal, a resource rather than a subject, lacks nuance. Nevertheless, it is clear that Indigenous Peoples have gotten something right in the way they relate to their surroundings. Indigenous Peoples comprise less than 5% of the world's population and hold less than 20% of the total landmass, yet protect over 80% of the world's biodiversity.[33] In the current climate crisis, experts look to Indigenous Peoples for guidance on effective environmental policies.[34]

In a similar sense, RoN too is a turn toward indigenous knowledge in an attempt to get off the crash course human life as we know it is currently on, rather than a new concept. That is not to say that RoN is in every sense compatible with indigenous worldviews, nor is it meant to devalue the contribution of scholars

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[31] Herold, K., "The Rights of Nature: Indigenous Philosophies Reframing Law," *Intercontinental Cry Magazine,* https://intercontinentalcry.org/rights-nature-indigenous-philosophies-reframing-law/.

[32] See for example Barnhart, R. & Kawagley, A., "Indigenous Knowledge Systems and Alaska Native Ways of Knowing," *Anthropology and Education Quarterly* 36 (2005): 8 – 23, https://doi.org/10.1525/aeq.2005.36.1.008; Cano Pecharroman, L., "Rights of Nature: Rivers That Can Stand in Court," p. 19; Ens, E., Finlayson, M., et al, "Australian Approaches for Managing 'Country' Using Indigenous and Non-Indigenous Knowledge," *Ecological Management & Restoration* 13, 1 (2012): 100 – 107, https://doi.org/10.1111/j.1442-8903.2011.00634.x; Jääskeläinen, J., "The Sámi Reindeer Herders Conceptualizations of Sustainability in the Permitting of Mineral Extraction – Contradictions Related to Sustainability Criteria," *Current Opinion in Environmental Sustainability* 43 (2020): 49 – 57, https://doi.org/10.1016/j.cosust.2020.02.002; Vásquez-Fernández, A. & Ahenakew pii tai poo taa, C., "Resurgence of Relationality: Reflections on Decolonizing and Indigenizing 'Sustainable Development," *Current Opinion in Environmental Sustainability* 43 (2020): 65 – 70, https://doi.org/10.1016/j.cosust.2020.03.005; Mwende Maweu, J., "Indigenous Ecological Knowledge and Modern Western Ecological Knowledge: Complementary, not Contradictory," *Thought & Practice* 3, 2 (2011): 35 – 47.

[33] Sobrevila, C., *The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners* (Washington, D.C.: The World Bank, 2008), p. 5.

[34] Garnett, S. *et al*., "A Spatial Overview of the Global Importance of Indigenous Lands for Conservation," *Nature Sustainability* 1 (2018): 369 – 374, https://doi.org/10.1038/s41893-018-0100-6.

such as Stone to the development of RoN. Rather, it is important to acknowledge the Indigenous roots of the concept so as not to co-opt or appropriate Indigenous worldviews. Moreover, awareness of the indigenous roots of Rights of Nature might contribute to the evaluation of the question whether RoN can live up to its potential, and if so, how. First, in order to understand the conceptual issues that RoN currently faces, I discuss Stone's paper in depth in the next chapter.

Chapter Two – *Should Trees Have Standing?* and legal objections

§2.1 Introduction

As mentioned in the previous chapter, the academic birth of RoN as a concept was the 1972 article *Should Trees Have Standing?* by Christopher Stone, an American professor. Delving both in the procedural rights that Nature should have as well as – albeit less extensively – the substantive aspects of rights for natural objects, Stone's article has laid the foundation for RoN. In the coming chapter, I discuss *Should Trees Have Standing?* in detail, including Stone's reasoning behind legal rights for nature. For the sake of discussing his article, I adopt Stone's usage of the word 'object of nature' or 'natural object' and 'nature', as well as the order in which he argues for the rights of natural objects. Subsequently, I delve into the possible objections that can be made against RoN, concluding that these valid objections require not just an intellectual response, but a conceptual shift of perspective as well.

§2.2 An analysis of Should Trees Have Standing?

As aforementioned, *Should Trees Have Legal Standing?* offered a fresh perspective during legal proceedings in which at first instance, an organization acting as advocate for an area of nature was denied legal standing. Notably, Stone anticipated that his suggestion to give legal standing to objects of nature would be received as odd at best, ridiculous at worst. His introduction, revealingly titled "The Unthinkable," features an account of how the catalogue of persons or entities that possess rights, has expanded over time. None of these extensions took place without resistance; at the time of bestowing rights upon someone or something previously thought of as rightless, the idea of ascribing rights to said person or entity has to varying degrees been unthinkable. Examples are women, children, enslaved persons, Indigenous Peoples and prisoners.[35] At some point in most jurisdictions, even nonhuman entities have been granted rights: states and ships, but most commonly, corporations, joint ventures and the likes.[36] All of those legal rights seemed impossible, until they were not, says Stone.

Stone's idea might have not been embraced immediately, but it was most definitely not universally received as entirely ludicrous. Supreme Court Justice Douglas picked up on the idea quickly, and debates on the concept of RoN are increasingly present.[37] Stone's explanation for the resistance to extend rights to a new entity is that the extension of rights entails a shift in the perceived status of the entity concerned. That is to say, until a rightless entity receives rights, we only perceive it as something that exists for the sake of *us.*[38] In other words, we perceive it as an object. The entity is defined purely in terms of its usefulness to us. When an entity gets rights, however, it becomes a legal subject, wherein it is not merely defined in terms of its usefulness to us but gets independent value. As

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[35] Stone, "Should Trees Have Standing? Towards Legal Rights for Natural Objects," p. 451, 453.
[36] Idem., p. 452.
[37] See for instance Van de Venis, "Amelisweerd is de Ideale Proeftuin om de Werking van Rechten voor de Natuur te Verkennen."
[38] Stone, "Should Trees Have Standing? Towards Legal Rights for Natural Objects," p. 455 – 456.

Stone puts it, "there will be resistance to giving the thing 'rights' until it can be seen and valued for itself; yet it is hard to see it and value it for itself until we can bring ourselves to give it 'rights'."[39]

§2.2.1 The rightlessness of nature

Before Stone dives into the matter of ascribing rights to nature, he discusses what it means to have legal rights. For Stone, the ability to have actions that might be inconsistent with the right reviewed by a public body of authority is just the bare minimum of what it means to have legal rights.[40] In addition to that ability, an entity can only be said to possess legal rights if it suffices three criteria, which all indicate that said entity has "a legally recognized worth and dignity in its own right, and not merely to serve as a means to benefit 'us'."[41]

Note that in Stone's observation, legal rights do not bring about the worth and dignity of whatever entity has rights. It is merely about legal *recognition* thereof. Giving a previously rightless entity rights – say, women in medieval times, enslaved persons before the abolition of slavery or nature in present day – changes merely the status of the entity in the relevant jurisdiction. In Stone's view, the entity *already has* worth and value before any legal recognition has taken place.

The three criteria that Stone postulates, are the following: an entity that has rights can, first, initiate legal actions for itself; second, such legal proceedings must revolve around injury or damages that concern the entity; and third, the relief resulting from those proceedings must come to the benefit of the entity. In most legal systems, nature's legal status suffices none of those criteria. Nature's fundamental rightlessness manifests in three ways, that correspond to the three criteria to matter legally.

As a first, natural objects cannot initiate proceedings, as objects of nature have no legal standing. Actions that damage a natural object's integrity, such as pollution, cannot be legally challenged in a direct way. Only indirect legal action is possible, i.e., if there is an entity *with* rights such as a human being, whose rights are damaged by the damaging action. In an ideal situation, this possibility of indirect legal action might suffice as a way of protecting a natural object. In reality, however, this is not a reliable means of protection. There are ample reasons why persons whose rights are violated by actions that impact the environment, do not challenge said actions. Economic dependance on the polluter; lack of the knowledge, time or funds that legal action requires; own interests in pollution; not to mention theoretical legal problems such as causality all make this an unreliable system of environmental protection.

If in spite of the previous hurdles a case is started anyway, the second way in which objects of nature are rightless showcases itself. Corresponding with his second criterion, Stone argues that it is not the damage to the object of nature that gets the center stage during legal proceedings. In those cases that involve natural

[39] Ibid.
[40] Idem., p. 458.
[41] Idem., p. 457.

objects indirectly, courts tend to balance the interests of the polluter with the interests of the person whose rights are inhibited by environmental damage, both often economic. The damage to the body of nature *an sich*, whether that be the entity as an ecosystem or the separate lifeforms in it, is not a factor to be weighed.[42] It is only considered in its relation to the damage of the person who is party to the case. Between the conflicting interests of the parties to the case, nature itself gets lost.

The third and final way in which natural objects are rightless according to Stone, is that if any relief eventuates from a judgment, the natural object concerned is not the beneficiary. Stone gives the example of how it is cheaper for a polluter to pay off the legally ordered damages but continue polluting than to change technology or location, or the fact that the parties can settle on a sum and make peace – peace for the parties, that is, not for the body of nature concerned.[43]

Stone argues that nature's lack of rights both results in as well as symbolizes how we view it as an object: bodies of nature are objects to be used for our benefit, not entities that have independent worth and entitlement to protection. Admittedly, on occasion the wellbeing of objects of nature is taken into account during decision-making, sometimes even resulting in measures that serve to protect natural objects, such as regulations limiting nitrogen levels, limits on wood cutting and prohibition of littering in natural spaces. However, without rights, Stone states that nature is dependent on our benevolence for protection. It goes without saying that that is not a very strong base for effective protection. Moreover, more often than not the main motive for protective measures is conservation for *our* sake, to enjoy our enjoyment of it.[44] Nature in and of itself counts considerably less.

§2.2.2 Rights of Nature through a guardianship model

The solution to natural objects as mere resources in our society is to grant objects of nature legal rights, according to Stone. Not in the sense of expecting a tree to subpoena a polluter, obviously, but in the same sense that municipalities, corporations or legally incompetent persons have legal standing, i.e., through a representing guardian. Stone suggests a legal system in which a "friend of a natural object" can, when considering said object to be endangered, "apply to a court for the creation of a guardianship."[45] This goes for natural objects on public as well as on privately owned lands.

In accordance with his guardianship model, the rights for nature that Stone envisions, are oriented around what a guardian would need to adequately protect a natural object under their auspices. Some of these rights have a practical nature, like a right of inspection to determine the land's condition. Others are more protective, like the right to represent the object in decision-making procedures. Most importantly in Stone's article, guardianship should come equipped with the ability to effectuate the rights of the natural object and initiate legal proceedings.

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[42] Stone, "Should Trees Have Standing? Towards Legal Rights for Natural Objects," p. 461.
[43] Ibid.
[44] Idem., p. 463.
[45] Stone, "Should Trees Have Standing? Towards Legal Rights for Natural Objects," p. 464.

Different than in the case of indirect legal proceedings as described earlier, it is not required that the rights of the guardian are violated by the challenged action. It is the damage to the natural object itself that is central to the proceedings. It is also distinct from solely an expansive interpretation of traditional standing requirements. In that situation, the requirement to suffer disadvantage is interpretated in such a way that it is not limited to the holder of the right that is violated, but to include other persons or entities who have exhibited a special interest in "the aesthetic, conservational and recreational aspects" of the object concerned.[46] Stone holds that guardianship approach solves possible problems of expansive interpretation approach, such as a flood of litigation, as practically any group can claim that their members have aesthetic or recreational interests in the object of nature concerned.[47] The advantages of guardianship are not limited to court economy, however, says Stone. The effectuation of legal standing through guardianship is also more effective. It provides the natural object concerned with continuous supervision by an entity that consequently has adequate expertise of the problems the object faces, not limited to one lawsuit.[48] The right to legal standing, executed via the guardianship model, should enable legal action on behalf of natural objects for their own right; put the focus on the damage to the object; and ensure that the object is the beneficiary of redress. In other words, through the guardianship model, natural objects can meet the three criteria that make an entity a holder of rights, Stone holds.

Stone's proposal for legal protection has been characterized by some as a courtroom-led theory.[49] This is not strange, given his focus on the procedural aspects of a system in which nature has legal rights. Concerning substantive rights, Stone is considerably briefer. Natural objects should have substantive rights, to be enforced through legal action. That does not mean that those rights are absolute: just like most human rights, Stone proposes that nature's substantive rights are relative and must be balanced with the interests of others. That does require certain procedures which must be followed before nature's rights can be violated, and that a balance needs to be struck between the interest of the object of nature and the conflicting interests.[50] Here, Stone turns to existing policies and legislation. Some of nature's rights may take shape as procedural safeguards: the right for environmental impacts to be considered in decision-making; the right to prevention of environmental decline, as much as possible; the obligation to study, develop and describe appropriate alternatives of available resources that are less demanding on nature, etc.[51] Another substantive right could be the right to be free from irreparable injury.[52] This could be absolute to the extent that while repairable damage could be balanced and weighed against conflicting interests, irreparable

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[46] Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608, 616 (2d Cir. 1965); Road Review League v. Boyd, 270 F. Supp. 650 (S.D.N.Y. 1967).
[47] Stone, "Should Trees Have Standing? Toward Legal Rights for Natural Objects," p. 470.
[48] Idem., p. 471.
[49] Oksanen, M., "Should Trees Have Standing? Law, Morality and Environment," *Environmental Politics* 21, 1 (2012): 174 – 175, https://doi.org/10.1080/09644016.2011.643378, p. 174.
[50] Stone, "Should Trees Have Standing? Toward Legal Rights for Natural Objects," p. 482.
[51] Idem., p. 482 – 485.
[52] Stone, "Should Trees Have Standing? Towards Legal Rights for Natural Objects," p. 485.

damage could not succumb. This, however, is not a fruitful option, according to Stone, the most important reason being that such a rule of universal application cannot do justice to the reality and complexity of cases. Furthermore, the term "irreparably" is vague: before it becomes usable, we need to agree on what "irreparably" means.[53] With that, Stone leaves the question of the exact substance of rights of natural objects as something to be determined by societies as a whole.[54]

§2.3 Objections against RoN

While the idea of infusing legal systems with environmentalism and a less anthropogenic perspective is attractive to many, the RoN movement has not been free from critiques. Objections against RoN can be both of a practical nature as well as a more conceptual or philosophical nature. Some of these critiques Stone foresaw and immediately addressed in 1972. Other objections developed later. In the coming section, I analyze the most significant objections against RoN, as well as counterarguments.

§2.3.1 Practical objections

Stone addresses two critiques in his article that are of a practical nature. The first is that it is difficult, if not impossible, for a guardian to judge the needs of natural objects. How is a guardian to know what a river or forest requires? In response, Stone counters that natural entities can communicate their needs. Even with little biological or botanical knowledge, one can tell that a houseplant needs more water if its leaves and the soil become dry. Undoubtedly, situations exist in which the signs a natural object gives are ambiguous and evidently, mistakes will be made. All the same, ambiguity about needs does not withhold us from accepting legal standing of other nonhuman entities, says Stone. Nobody asks how a country communicates to an Attorney General the need to appeal an unfavorable judgment.[55]

The second objection entails that in the US, the 'Department of Interior' already assumes a guardian role for public lands, and most state attorney generals are legislatively empowered to seek relief for injuries to public land. Still, the guardianship model would be more effective, according to Stone. Besides the limitation of the Department's jurisdiction to federal public lands and the fact that it has been charged with several institutional goals, there is a more fundamental objection: the ability to legally challenge actions that affect you, even those taken in your benefit, is an essential part of having fully secured rights, Stone argues.[56] Accordingly, if we want natural entities to have a legal status that does justice to its inherent value, it should not have to be made dependent on an institution for the legal challenging of damaging actions.

[53] Idem., p. 486.
[54] Idem., p. 487.
[55] Idem., p. 471.
[56] Idem., p. 473.

A third objection Stone addresses later on in the paper. If legal proceedings are started by a guardian, how can a monetary value be put on the environmental damage?[57] Stone suggests that natural objects in this regard can be approached in the same way as literary works and privacy: by creating monetary value through property rights. In that way, a work of art is ascribed a certain value by means of copyright law, an invention by means of patents, privacy by means of tort law. In the same way, we could declare the violation of ecological integrity to be a violation of a property interest. As such, the polluter could be issued with the compensation of not only the cost of the damage on humans, but also the cost to the environment *an sich.* This raises the problem of how to put a price on environmental damage. However, Stone argues that this is not different from other kinds of immaterial damage like human suffering. Hard to but a price on, but in practice, courts still manage to make a rough estimation because ignoring the damage is worse than making a crude estimate. It is not a reason, as such, to deny natural entities rights, Stone contends.

§2.3.2 Conceptual objections

Although practical objections are certainly valid, they are often easier to solve than the conceptual problems that a theory might face. Law is only as good as the conceptual foundation that underpins it,[58] and the extent to which an answer can be formulated to the hard questions helps us assess if RoN is a viable legal theory or if a different approach is required.

One of the objections against RoN concerns the question whether the concept of rights as a category can be applied to nature.[59] The framework of rights is a construct that is uniquely human, according to environmental philosopher Holmes Rolston III. Legal rights exist in the context of a relation between subjects of a legal system, which results in reciprocal claims and duties. If a mountaineer gets caught in a mountain slide and there is a mountain ranger nearby and in the reasonable position to help, the mountaineer has a right to be rescued and the mountain ranger a duty to aid due to their relationship and a duty of care.[60] If the mountain ranger would not attempt to rescue the mountaineer, the ranger would violate that right and his own duty of care. Objects of nature, in contrast, cannot enter such a reciprocal relation. Accordingly, Rolston argues, the mountain slide itself does not violate a human right by killing the mountaineer because it has no duties vis-à-vis the mountaineer. In the same way, the mountain slide does not violate the rights of the forest that it uproots. The framework of rights just cannot apply to the mountain as it applies to humans, he argues. Pretending otherwise by

[57] Idem., p. 476.
[58] Burdon, P., "The Rights of Nature: Reconsidered," *Australian Humanities Review* 49 (2010): p. 69 – 91, available at https://ssrn.com/abstract=1709015, p. 78.
[59] Rolston, H. "Rights and Responsibilities on the Home Planet," *Yale Journal of International Law* 18 (1993): 251 – 279, available at https://digitalcommons.law.yale.edu/yjil/vol18/iss1/8, p. 256.
[60] Burdon, "The Rights of Nature: Reconsidered," p. 78.

using the language of rights for objects of nature is comical in Rolston's view, "because the concept of rights is an appropriate category for nature."[61]

Stone foresaw this objection in 1972. In *Should Trees Have Standing?* he refuted that recognizing rights for nature means that objects of nature should get the same, full range of rights as humans. Rather, the framework of rights could be extended to natural objects to a limited extent only, he says.[62] Similarly, such rights could be role-specific or species-specific,[63] qualitatively different depending on the entity concerned. Like humans have human rights, specific to our needs and capabilities, a river would get river rights, and a fox would get fox rights.[64] Such specific rights do require deep knowledge of the entity concerned, but in Stone's guardian model the guardian of an entity ideally has specific, long-standing, and place-based knowledge of the entity. Combined with general principles of science, the existence of such intimate understanding is not far-fetched.[65]

A second critique also challenges the suitability of legal rights for an extension to nature. Legal rights would be essentially individualistic: a right is a claim of one individual or group of individuals, which places a corresponding duty on another individual or group of individuals.[66] In that, the wellbeing of the right-holding individual is of sufficient importance to justify that another individual is a duty bearer. Applying this individualistic framework to natural entities would require fragmenting an integrated whole – nature as a worldwide system – into smaller parts to which rights could be ascribed, e.g., a delineated forest or a certain species, whose interests would then be ranked so as to establish who has rights and who has a duty. Such an individualistic account of legal rights is, however, not a conception which is universally agreed upon. An alternative take on the nature of rights proposes that rights are not necessarily individualistic but center around relationships. Jennifer Nedelsky, for instance, describes rights not as possibly clashing individual interests, in which one takes precedence over the other. Rather, rights are socially constructed constituents of various kinds of relationships.[67] They create rules within a community of individuals that require individuals to respect the interests of others and ensure that the community functions well. In that, 'community' can be interpreted in a broad sense: including the Earth as a system. Rights do not take away individuals' autonomy, but enhance autonomy, as the relationships that rights foster – security, support, education – are a precondition for autonomy.[68] I agree that a relational account of rights is better suited to RoN than a primarily individualistic account. In the

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[61] Rolston, "Rights and Responsibilities on the Home Planet," p. 257.
[62] Stone, "Should Trees Have Standing? Towards Legal Rights for Natural Objects," p. 457.
[63] Berry, T., *Legal Conditions for Earth Survival: Reflecting on Earth as Sacred Community* (San Francisco: Sierra Club Books, 2006), p. 111.
[64] Burdon, "The Rights of Nature: Reconsidered," p. 79.
[65] Burdon, "The Rights of Nature: Reconsidered," p. 79.
[66] Raz, J. *The Morality of Freedom* (Oxford: Oxford University Press, 1986), p. 183.
[67] Nedelsky, J. "Reconceiving Autonomy: Sources, Thoughts and Possibilities," *Yale Journal of Law and Feminism,* 1, 7 (1989): 6 – 36, available at https://digitalcommons.law.yale.edu/yjlf/vol1/iss1/5, p. 13.
[68] Nedelsky, "Reconceiving Autonomy: Sources, Thoughts and Possibilities," p. 7.

context of Nedelsky's relational account of legal rights, ascribing rights to natural entities has a very different effect than the fragmented hierarchy of needs that an individualistic account of legal rights would have. If rights are the constituent of a web of relationships that both allow and require one to consider the interests of others, recognizing the rights of nature includes natural objects in the sphere of persons or entities whose interests are considered. It reinforces the idea that human societies and nature are interdependent, and that the relationship between, say, a property owner and his land, should be shaped by values like care and respect.[69]

A third objection was voiced by Mark Sagoff in 1974, who mockingly asked why Mineral King would not want a ski resort to be constructed on its side.[70] Overlooking his disdain, Sagoff does point out a serious issue. Conservation might best serve humankind, e.g., conservation of the climate prevents human damage due to climate change, but that does not imply that the interests of a natural entity align to that. How are we supposed to discern what natural entities' interests are? Some continue further on the same note and question whether natural interests can be said to have interests at all. This challenge is best represented by Joel Feinberg's interest principle. He considers that an entity can only possess interests if it has awareness, needs and wants.[71] While on that account animals can possess interests and therefore have rights, objects of nature such as rivers and forests cannot.[72] However, Feinberg's simplistic conviction of natural objects fails to acknowledge that many natural objects are not singular, senseless entities but instead highly complex ecosystems, made up of entities with awareness, a desire to survive and a potential for fulfillment.[73] With regard to how one can tell what the interests of natural objects are, Stone proposes the notion of moral pluralism. Different ethical systems would enable us to regulate actions on different levels, *inter alia* between humans mutually, and between humans and natural objects.[74] Stone fails, however, to provide any means by which to establish what ethical systems there are, what these imply, and which ethical system applies to which actions.

Should a natural relationship not be based on reciprocal sympathy and care, rather than legal claims? This concern forms a fourth, communitarian critique on the approach of rights of nature.[75] Peter Burdon rightfully counters this critique with the analogy of a household. In a healthy, loving household, surely relationships are preferably based on care and sympathy. In an abusive household, however, the need to recognize rights becomes stronger and few would object to a

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[69] Burdon, "The Rights of Nature: Reconsidered," p. 85.
[70] Sagoff, M., "On Preserving the Natural Environment," *Yale Law Journal* 84 (1974): 205 – 267, available at https://digitalcommons.law.yale.edu/ylj/vol84/iss2/2, p. 222.
[71] Feinberg, J. "The Rights of Animals and Unborn Generations," in: *Philosophy and Environmental Crisis,* ed. Blackstone, W., (Athens: GA, 1974), 43 – 68, p. 47.
[72] Idem., p. 50; 60.
[73] Berry, T., *The Great Work: Our Way into the Future* (New York: Bell Tower, 1999), p. 4; Lovelock, J., *Gaia: A New Look at Life on Earth* (Oxford: Oxford University Press, 1979).
[74] Stone, C., *Earth and Other Ethics: The Case for Moral Pluralism* (New York: Harper & Row, 1985), p. 44.
[75] Burdon, "Rights of Nature: Reconsidered,", p. 82.

legal intervention in order to protect the household's members. The same goes for the relationship between humans and objects of nature: in an ideal situation, we interact with nature on the basis of care and sympathy. In situations or exploitation and harm, like extractive economic relationships such as mining and logging, rights constitute a powerful fallback option to prevent environmental damage.[76] Providing that legal obligation to consider the interests of natural entities is the main objective of RoN.

A final objection questions whether RoN solves the inadequacy of environmental protection legislation at all. Not only has the need for RoN diminished since Stone's article was published, according to some, due to loosening of standing requirements and more adequate environmental law, RoN is also not the legal revolution it is made out to be, such critics argue.[77] For all the RoN movement intends to move away from an anthropocentric perspective and protect nature's inherent value, law is a human instrument and any legal protection of nature is per definition human-mediated – via guardianship, as Stone's theory proposes, or through any other form of stewardship. This human involvement, however, makes RoN susceptible to the exact problems of the environmental law framework that Stone criticizes: anthropocentrism and the precedence of non-environmental interests.[78] Julien Bétaille goes even further: he argues that RoN substantively amounts to the same obligations that the human right to a healthy environment places on us. The right to a healthy environment constitutes – in theory – an obligation that all persons must protect the environment, including nature. RoN boils down to an identical duty.[79] Case law in for instance Ecuador confirms this, as Ecuadoran courts tend to use the constitutional right of nature and the human right to a healthy environment interchangeably.[80] Thus, Bétaille argues that discussions around RoN are superfluous and obscure the main challenge, i.e., how to improve (the enforcement of) the existing environmental protection framework.[81]

I contend, however, that critics along the lines of Bétaille neglect to appreciate that there is a significant difference between approaching environmental protection via the human right to a healthy environment and a right of nature itself. While both arguably result in an obligation to protect the object of nature concerned, in the former situation the worth of nature is made dependent on nature's value to humans. There must be human damage before the right is violated. In the latter situation, in contrast, the nature's right is autonomous and damage that has no notable impact on the enjoyment of human rights can still

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[76] Burdon, "Rights of Nature: Reconsidered,", p. 82.
[77] Bétaille, J., "Rights of Nature: Why it Might Not Save the Entire World," *Journal for European Environmental & Planning Law* 16 (2019): 35 – 64, https://doi.org/10.1163/18760104-01601004, p. 41 – 54.
[78] Gutwirth, S., "Culture contre Nature", in *Des Droits Pour La Nature* (Paris: Editions Utopia, 2016), p. 41.
[79] Bétaille, "Rights of Nature: Why it Might Not Save the Entire World," p. 58.
[80] Kotzé, L., & Villavicencio Calzadilla, P., "Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador," *Transnational Environmental Law* 6, 3 (2017): 401 – 433, https://doi.org/10.1017/S2047102517000061, p. 428.
[81] Bétaille, "Rights of Nature: Why it Might Not Save the Entire World," p. 59.

amount to a violation of rights.[82] Such a distinction was also made by the Inter-American Court of Human Rights in 2017. Regardless of the question whether an environmental case in which the human right to a healthy environment or an autonomous right of nature is used have a different outcome, a legal system with a right of nature reflects the inherent worth and right to integrity of nature, which prompts a different understanding of the relationship between humans and nature.[83]

A legal system in which nature has inherent value, forms a very different foundation on which guardianship can be based, compared to a legal system in which nature's worth is human-dependent. Still, that does not make RoN immune to anthropocentrism. Evidently, both in a situation with RoN and one without, advocacy for the interests of nature – both in legal action as well as in a governmental context – is human-mediated, which brings in the risk of anthropocentrism. In the next chapter, I propose that RoN needs a strong foundational underpinning that acknowledges the interdependence of human and non-human life forms, so as to properly prevent excessive anthropocentrism.

§2.4 Concluding remarks

'Conventional' legal developments seeking to protect nature tend to reflect the notion that the environment deserves protection for our sake.[84] This is also the approach that is presently taken in human rights based environmental litigation: in such cases, environmental damage is viewed as a violation of human rights, as a healthy environment is a prerequisite for the proper realization of human rights.[85] While this development sure does kills two birds with one stone – the realization of human rights and the condemnation of acts that cause environmental damage – it still frames nature as a resource that is there to be used by humankind. Is it not time to protect the environment *per se*, Stone asks?[86] If nature is a subject in itself, this demands of us that we stop approaching environmental damage in a utilitarian manner and start viewing nature's integrity as a goal in itself.

RoN proposes a legal-operational system to accommodate to that end. Although there are certainly questions to be asked about the technicalities of RoN, the aforementioned objections in essence do not concern the more practical side of matters. They each highlight different aspects and possible challenges of RoN but a common thread runs through all: each questions whether the legal framework can accommodate a relation between humankind and nature in which nature is viewed as a subject, rather than an object. Some even question whether RoN offers an adequate alternative to modern environmental law at all, as it is susceptible to the same risk of excessive anthropocentrism that RoN challenges in

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[82] IACtHR, Advisory Opinion OC-23/17, §63.
[83] See chapter 3 for elaboration and chapter 4 for practical examples.
[84] Stone, C., "Should Trees Have Standing? Towards Legal Rights for Natural Objects," p. 489.
[85] Burger, M., & Wentz, J., *Climate Change and Human Rights* (Nairobi: United Nations Environment Programme, 2015), https://web.law.columbia.edu/sites/default/files/microsites/climate-change/climate_change_and_human_rights.pdf, p. VIII.
[86] Stone, C., "Should Trees Have Standing? Towards Legal Rights for Natural Objects," p. 490.

current environmental law. All legal-operational aspects of RoN might be sound and fully fleshed out, it is highly questionable if RoN would in practice work if the predominant relationship to nature continues, as illustrated by the abovementioned objections.

Accordingly, what makes RoN such a heavily debated concept, is that it questions our relationship to nature. By dappling with the concept of RoN, therefore, we do not just talk about developing our legal systems, but we also interrogate on a more fundamental level what we view as being capable of having legal personhood, and what entities we include in our decision-making. In a lecture that long preceded his famous article, Stone mused: "So, what would a radically different law-driven consciousness look like? … One in which Nature had rights … Yes, rivers, lakes … trees … animals … How would such a posture in law affect a community's view of itself?"[87]

Accordingly, answers to those objections generate reflections on how we view ourselves, the non-human life forms around us and the relationship between the two. Such contemplations emerge for instance in Nedelsky's answer to the objection that the structure of legal rights is too individualistic to be suitable for application to nature. A relational account of rights conjures a very different worldview than the individualistic conception does. So do answers that invoke values like reciprocity, care and sympathy. Such values and reflections sketch a vague outline of legal system in which not only non-human life forms are included as carriers of rights, but the relationship between human and non-human subjects takes a different shape compared to the predominant legal systems. RoN can only reach its full potential as an alternative to the current legal environmental protection law if it is accompanied by a clear view of the character of non-human life forms and the relationship between human and non-human subjects. In the next chapter, I discuss an alternative take on non-human life forms, that supports the ascribing of legal personhood to such life forms and the consideration of them in human political life. I propose several elements that could be implemented into RoN so as to acknowledge the nature of non-human legal persons and provide adequate legal protection for non-human life forms.

[87] Stone, C., *Should Trees Have Standing: And Other Essays on Law, Morals and the Environment* (New York: Oxford University Press, 2010), p. VII.

Chapter Three – Latour's framework of distributed agency and Rights of Nature

§3.1 Introduction

In the previous chapter, I discussed several conceptual objections against RoN and concluded that each of those objections points at an incongruence between the current understanding of nature that is reflected in legal systems, and the understanding of nature that RoN requires. RoN seriously questions our view of who or what can carry rights, of non-human life forms and the relationship between human and non-human subjects. If nature is an object, it does not make sense to give it legal personhood or rights. Fixing this incongruence goes beyond legal-operational tweaks like mediating the implementation of rights via models like guardianship.

RoN presupposes nature as a subject instead of an object. However, nowhere in the discourse is made explicit how parts of nature can be a subject. In other words, it is not clear what understanding of the world underpins the RoN discourse. A clear picture of the ontology supporting RoN can aid in bridging the gap between RoN and legal systems as they currently stand. At the same time, that clear picture can clarify what the advantages (or disadvantages) of RoN are compared to current legal frameworks of environmental protection.

In this chapter, I offer an alternative conception of nature, using Bruno Latour's work on distributed agency. I explain how this account of nature and human political life as intricately connected forms an adequate basis for the legal personhood of non-human life forms. Taking this as a point of departure, I critique some elements of the current RoN discourse and offer amendments that could elevate RoN to reach its full potential as a legal framework for the protection of nature. I explain how with those amendments, RoN is a preferable means of protecting nature compared to current environmental protection legislation, like the RoN discourse tries to be.

§3.2 Nature vs culture

As Stone suggested and as discussed in §2.4, RoN gives rise to a particular discomfort: RoN argues for legal personhood for non-human life forms, which are often viewed as incapable of enjoying legal personhood. Daniel Matthews argues that this discomfort stems from the mediation role of legal frameworks. There is no unmediated access to the material world, he says.[88] Instead, our experience of the world is formed by concepts, ideas, theories and stories: social and political narratives that allow for the ordering of our surroundings. In addition to providing lenses that order our experience of our surroundings and social life, such narratives render us sensitive and insensitive to certain parts of the world, like objects, actions and relationships.[89]

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[88] Matthews, D. "Law and Aesthetics in the Anthropocene: From the Rights of Nature to the Aesthesis of Obligations," *Law, Culture and the Humanities* 00, 0 (2019): 1 – 21, https://doi.org/10.1177/1743872119871830, p. 5.

[89] Ibid.

A common aspect in many modern legal systems that shapes our experience is a bifurcation between nature and culture.[90] The idea of nature and culture as opposed, clearly separated domains has been the predominant worldview in the most recent centuries. Bruno Latour argues that this bifurcation is not an inherent truth, but rather a result of western modernity, that has spread through the world via the hegemony of western philosophical and scientific tradition.[91] In the age of enlightenment, Descartes put the individual human intellect at the base of his worldview and characterized the world outside of that individual intellect as an inanimate machine.[92] According to Latour, this was the outset of a centuries-long, western tradition that increasingly placed the human species outside of nature and made the rest of the living planet an object. With that separation came an unequal distribution of agency: humans are seen as capable of acting, i.e., as having agency; nature is perceived as without agency and is only viewed through the lens of objective cause and effect.[93]

Western legal systems have developed to support and reinforce that conception. Law is seen as a cultural phenomenon, with the partakers of human society or political life as the subjects. 'Nature', on the other hand, comprises anything that is not human or human-made. Nature is perceived as the backdrop against which human cultural and political life takes place. That does not mean that everything that fits under the umbrella of nature is excluded from legal systems. Non-human or other than human entities feature on the legal stage continuously: for instance, property tends to concern land, which technically falls in the category of natural entities. Similarly, wild species and stretches of land are protected under environmental law.[94] Even so, when non-human entities feature in law, like previously discussed they take on the role of inanimate objects, rather than subjects capable of action.

RoN presses for the rights of things that since modern times have been considered to fall in the category of nature. In the RoN discourse, natural entities are subjects, deserving of rights and legal personhood just as humans or human-created entities like companies do. By suggesting that, it seriously challenges the bifurcation between nature and culture. However, does not explicitly reject the bifurcation of nature and culture. At times, it even reinforces that bifurcation by posing harmony between nature and humanity as a goal. The simultaneously challenging and reinforcing of a division between nature and culture makes RoN difficult to make sense of and leads to objections like discussed in §2.3.

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[90] Davies, M., *Law Unlimited: Materialism, Pluralism and Legal Theory* (Abingdon: Routledge, 2017).
[91] Latour, B., *We Have Never Been Modern,* trans. Catherine Porter (Cambridge, Massachusetts: Harvard University Press, 1993), p. 91.
[92] Lee Mueller, M., *Being Salmon, Being Human: Encountering the Wild in Us and Us in the Wild* (River White Junction: Chelsea Green Publishing, 2017).
[93] Facing Gaia, p. 90 – 91.
[94] See for example the Natura 2000 legislation in the EU: Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; and Directive 2009/147/EC of the European Parliament and of the Council of 30 November on the conservation of wild birds.

Matthews and other scholars contend that to give the non-human living world a place in legal systems in a logically sound way, the bifurcation between nature and culture must be discarded. Matthews draws *inter alia* on Margaret Davies, who argues that nature and culture are not separate and opposed domains but rather a continuum, natureculture.[95] Related to this is the position of Latour, who describes the separation of nature and culture as parts of the same conceptual exercise. The domains of nature and culture are placed against one another as contrasting opposites, as a means of comparison. Culture is only distinct and exceptional if nature is placed in opposition, and vice versa. Neither can exist without the other, which leads Latour to reformulate the distinction as nature/culture.

So many phenomena cross the boundary between nature and culture, however, that the distinction does not help us make sense of the world anymore, according to Latour. For example, science is often perceived as the objective study of everything inside the domain of nature, keeping with facts only. Yet it is not free of politics – think of the value-ridden art of creating policy based on those facts or of the influence of politics on policies and the financing of science. Latour notes that facts are hardly ever truly value-free: Latour argues that a statement based on objective data like "the concentration of CO2 in the atmosphere is alarmingly high" is not just a constitutive statement, but also a call to action, as illustrated by the use of 'alarmingly'. Likewise, a statement that climate change is caused by humans is not just an observation. The causation implies some extent of responsibility, and thus some kind of action.[96] As a consequence, Latour suggests eliminating the framing of nature/culture altogether.

Dropping the conceptual framework of nature and culture as opposite domains, whether that be by letting go of the idea of nature and culture altogether or by viewing them as two ends on a continuum, creates the possibility to create or revise legal systems that do not reinforce a conceptual bifurcation of nature and culture. In Davies words, "[a] theoretical objective would be to find concepts of law that are part of this space [of natureculture] rather than entirely abstract."[97] The idea of that is to create a legal scaffolding that does not shut the door to the non-human living world by pushing it into the role of an object, but rather renders us sensitive to non-human life forms as well as human life.[98]

Opening the gates of legal personhood to include natural spaces and non-human life forms might result in a legal system which is sensitive to the existence and interests of non-human life forms, but that does not tell us how we should view and relate to those life forms. Why should we consider nature a subject? A forest cannot perform legal actions. As discussed in chapter 2, if a person gets lost in a forest and dies, the forest has not violated the rights of said person. Nor can a

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[95] Matthews, D. "Law and Aesthetics in the Anthropocene: From the Rights of Nature to the Aesthesis of Obligations," p. 4.
[96] Latour, B., *Facing Gaia: Eight Lectures on the New Climatic Regime,* trans. Catherine Porter (Cambridge: Polity Press, 2017), p. 40 – 50.
[97] Davies, M., *Law Unlimited: Materialism, Pluralism and Legal Theory*, p. 72.
[98] Matthews, D. "Law and Aesthetics in the Anthropocene: From the Rights of Nature to the Aesthesis of Obligations," p. 5.

forest clearly state its interests and advocate for them, be that through voting, debating or legal action. It cannot have an individual right to demonstrate or to education. Even defining the entity we are talking about when we say a forest has legal personhood, is difficult. What does the forest consist of and where does it begin and end? Does the forest as a whole have legal personhood or the many separate organisms that make up the forest? Why is that forest is a subject and not an inert object? A legal system that includes non-human life must be preceded by some idea of what makes something a subject. Agency is often considered to be strongly connected to subjectivity, regularly as a precondition to subjectivity.[99] In the next section, I explain to what extent non-human life forms have agency, using the Anthropocene as an illustration and drawing mostly on the work of Latour.

§3.3 Latour's theory of agency

Although it has not formally been accepted, many consider that with the first significant human impact on the Earth's geology and biosphere, we have entered a new geological period: the Anthropocene.[100] The Anthropocene challenges the predominant modern ontological view concerning nature. As Latour proposes, "the earth system reacts henceforth to your action in such a way that you no longer have a stable and indifferent framework in which to lodge your desires for modernization."[101] Latour points at the elimination of the distinction between human society and nature, as discussed in the previous paragraph. He also points out a different aspect, however. The above citation specifically highlights a notion that anything other than human has been thought to be void of: agency.[102] Latour defines agency as the capability of affecting or modifying a state of affairs, including other bodies and its surroundings, through an action. That modification does not have to be intentional.[103] Although other definitions of agency are possible, for the purpose of this chapter, this is the definition of agency that I talk about when mentioning agency.

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[99] See *inter alia* Allen, A., "Power, Subjectivity and Agency: Between Arendt and Foucault," *International Journal of Philosophical Studies* 10, 2 (2002): 131 – 149, https://doi.org/10.1080/09672550210121432, p. 135; and Kockelman, P., "Agent, Person, Subject, Self," *Semiotica* 162, 4 (2006): 1 – 18, https://doi.org/10.1515/SEM.2006.072.

[100] International Commission on Stratigraphy, Anthropocene Working Group, *Results of Binding Vote by AWG,* May 21st, 2019, https://libguides.wvu.edu/c.php?g=418946&p=2855160. Accessed December 18th, 2021. There is no consensus yet on the commencement of the Anthropocene, varying from the beginning of the Agricultural Revolution to the beginning of colonialism to the first atomic bomb in 1945, after which radionuclides fallout peaked.

[101] Latour, B., *Down to Earth: Politics in the New Climatic Regime* (London: Polity, 2018), p. 84.

[102] Arguably, not all humans have agency, for example infants, unconscious persons or persons with severe mental disabilities. However, Latour's point is not that all humans have agency, but rather that anything that is not a human is fundamentally excluded from being capable of having agency. Being a human is regarded as a necessary condition to have agency at all. Latour challenges that.

[103] Latour, B. *Politics of nature: How to bring the sciences into democracy*, trans. Catherine Porter (Cambridge: Harvard University Press, 2004) p. 75; Kim, J., "The Problem of Nonhuman Agency and Bodily Intentionality in the Anthropocene," *Neohelicon* 47 (2020): 9 – 16, https://doi.org/10.1007/s11059-020-00534-1, p. 12.

The Anthropocene – and in a more urgent manner, the climate crisis – challenges this unequal allocation of agency. The impact of the actions of a small but powerful part of the human population leads to repercussions that are much more complex than a simple cause and effect story of human action setting of natural phenomena, like volcanic stone that contains plastic, a decline in the biosphere's ability of carbon sequestering, a subsequent excess of carbon in the atmosphere, changing weather patterns and modified migration patterns of species. The impact of modern societies is substantial enough to categorize that force as similar to geological forces, turning the bifurcation of nature and culture on its head. What is more, the Anthropocene challenges the thought that modern human life is set against the static backdrop of the 'natural' world. That world is neither static nor a backdrop, but rather a complex interweaving of a myriad of life forms, in which human political life is embedded. [104]

Latour argues that agency is not exclusive to the human species. All forms of life on Earth have a form of agency, be that individual animals, plants, fungi, or collective life forms as collectives, like mycorrhizal networks in forest soil or bodies of water, with all the life they contain. On a small scale, the agency of organisms lies in the capability to exert effects on their surroundings. Each organism tries to shape its environment to increase the likelihood of its survival. Zooming out a bit, each organism is disturbed in the exercise of that agency by surrounding organisms that do the same. Precisely because *each* organism can manipulate its surroundings, organism A is limited in its agency by the surrounding organisms, B and C, that are attempting to effectuate their agency. A network of clashing agencies arises in which each acting life form responds to its environment and other life forms in it, including animals, fungi, bacteria, plants, viruses, etc. Millions of years of mutual influence and coevolution have resulted in networks of agency and influence that are planet-wide, yet deeply rooted in local conditions.[105]

Acknowledging the agency of non-human life forms and the embeddedness of human political life in an ecologically complex, living world, is required to make sense of the Anthropocene, according to Latour. I add that the acknowledgement of agency as Latour defines has a legal advantage. As discussed in chapter two, a common critique of RoN is that it does not explain how seemingly inert objects – a river, a forest, etc. – can and should have legal personhood. A company might also not have agency directly, but gains agency through bodies like a directory board. A river has no such thing. However, if such non-human entities are active, capable of exerting agency and reacting to (human influence), instead of the inert objects as they have long been thought to be, that critique is countered. Recognizing the agency of non-human entities alleviates some of the discomfort of ascribing legal personhood to them.

In addition to alleviating the conceptual discomfort around ascribing legal personhood to non-human life forms, the distribution of agency aids in the creation of a legal system that highlights the relationship between human and non-

[104] Matthews, D. "Law and Aesthetics in the Anthropocene: From the Rights of Nature to the Aesthesis of Obligations," p. 3.
[105] Latour, B., *Facing Gaia*, p. 198.

human actors. Recognizing the life in our surroundings is a starting point for a legal system that is place-based, rooted in the material world.[106] The nature of non-human life forms as actors is the point of departure.

What does that mean? It means a shift in focus to our actual, material surroundings. Latour calls this localization. The connectivity of agency – the aforementioned networks of mutually influencing actors – constitutes what he calls continuous loops of action, feedback and reaction at every scale, that make up the functioning of planetary life as a whole.[107] This functioning does not make up a systemic superorganism or deity, but it exists only in the uncountable interactions between various actants in a complex context.[108] As such, Latour suggests zooming in on the interactions that are enclosed in any action we take. That is to say, when acting, we should be sensitive to our material surroundings and try to gauge what effects our actions could have on whom. We cannot see the effects of every single action by every single organism at every single level, but we *can* pay attention to our own form of agency and carefully observe what the effects are, as far as we can note. That goes beyond being aware of one's ecological footprint, as the focus is not on what a human actor does to the world, but also what the response of other actors is. By reframing our mindset to pay attention to the meeting of our own agency with the agency of the lifeforms around us, we become aware of the reactions of other life forms and thus the world that we are a part of.[109] As Indigenous scholar Robin Wall Kimmerer formulates it, we can get to know our relatives.[110] With that awareness, over time we can accumulate knowledge of what life forms around us are stakeholders, what they need, how our actions impact those needs and how the reaction of those stakeholders in turn affect us. This awareness or *sensitivity* is the beginning of a place-based relationship between us as humans and the lifeforms we are connected to.[111] In Latour's words, "after each pass through an action loop, we become more sensitive and react more strongly to the fragile shells in which we live."[112] We become attuned to the place we live in and the other actants we share it with. That renders us sensitive to the effects of our actions on that place and the reaction of non-human life forms.

That does not imply harmony between humanity and 'nature' as a total unit, as tends to be a theme in the RoN discourse.[113] The interests of life forms

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[106] Ibid.
[107] Latour, B., Facing Gaia, p. 95.
[108] Latour, B., "Why Gaia is not a God of Totality," Theory, Culture & Society 34, 2 – 3 (2017): 61–81, https://doi.org/10.1177/0263276416652700.
[109] Latour, B., Facing Gaia, p. 202.
[110] Wall Kimmerer, R., *Braiding Sweetgrass* (Minneapolis: Milkweed Editions, 2013).
[111] At this point, Latour suggests that acknowledging the agency and animacy of the organisms around us and entering a relationship with them creates the possibility to assume moral responsibility for our actions as they concern other lifeforms {Latour, B., *Facing Gaia,* p. 201). Important as the question of moral responsibility for our actions regarding non-human life forms is, it is beyond the scope of this thesis.
[112] Latour, B., *Facing Gaia*, p. 202.
[113] Matthews, D. "Law and Aesthetics in the Anthropocene: From the Rights of Nature to the Aesthesis of Obligations," p. 6.

can surely align – neither humans dependent on river water nor the fish in said river will flourish in case of water pollution – but inevitably, interests will often clash. If tectonic activity results in an earthquake that causes mass human death and destruction, the tectonic plates have not violated rights, nor does it make sense to subpoena the tectonic plates for ascribing the wrong weight to its own and human interests. An example that is closer to home is COVID-19: the interest of the coronavirus is to survive and infect potential carriers as possible to spread. No one expects the virus to consider the impact of its dispersal on human society. Trying to get a grip on the infection rates and thereby inhibiting the virus in its survival is not a violation of the interests of the virus: of course, we can protect our own integrity.

What sensitivity to place rather gets at, is that in political decision making, non-human life forms are included in the weighing of relevant interests. Failing to do so will likely backfire, as the life forms that are impacted will react to said impact and in turn affect the outcome of the decision made. A virus does not consider our interests, but to preserve human political life and prevent big societal disturbances, we should consider the interests of a virus that affects us. Which interests are deemed more important than other interests is highly dependent on the situation, place and decision at stake, but non-human life needs to be considered – in a different way than existing legislation requires, because the rights of nature are autonomous and can be infringed in absence of any damage to humans;[114] and because the enforcement is regulated via guardians with place-based knowledge of the subject they are mandated to protect.[115] The status of non-human life as agents emphasizes that such life forms are not tools to be used at the benefit of humanity, but agents that can be stakeholders and influence the outcome of a decision. As Latour argued in 2017, "[t]o be a subject is not to act autonomously in front of an objective background, but to share agency with other subjects".[116] The status of non-human life as capable of agency, asks for their inclusion in political life as interested parties.[117]

§3.4 RoN and Latour's theory of agency

The legal system should reflect the distributed agency of all life forms and stimulate the development of sensitivity to place. RoN is an adequate legal way to invite sensitivity and guide human action. By granting legal personhood to non-

[114] Stilt, K., "Rights of Nature, Rights of Animals," *Harvard Law Review* (blog), March 20th, 2021, https://harvardlawreview.org/2021/03/rights-of-nature-rights-of-animals/ (accessed February 1st, 2022).
[115] Levang, L., "Can We Protect Nature By Giving It Legal Rights?," *Ensia* (blog), February 4th, 2020, https://ensia.com/articles/legal-rights-of-nature/ (accessed February 1st, 2022).
[116] Latour, B., "Agency at the Time of the Anthropocene," *New Literary History* 45, 1 (2014): 1 – 18, p. 5.
[117] How exactly to include non-human life as subjects in political life is a question on its own, that is unfortunately beyond the scope of this thesis. For more on this topic, I recommend Latour, B., *Politics of Nature,* trans. Catherine Porter (Cambridge: Harvard University Press: 2004) and Brown, M., "Speaking for Nature: Hobbes, Latour and the Democratic Representation of Nonhumans," *Science and Technology Studies* 31, 1 (2017): 31 – 51, https://doi.org/10.23987/sts.60525.

human life forms, it creates a legal obligation to consider the interests of those life forms as subjects in decision making. In that, it offers stronger protection than non-RoN environmental protection legislation, precisely because non-human life is included as a subject with a fundamental right to integrity. Moreover, that protection applies even outside of the context of environmental legislation. Just like human rights must be respected in the making and execution of every political decision, rights for non-human life streamline the protection of nature in political life. Procedural rights can ensure that nonhuman lifeforms get a seat at the table in political decision-making. Substantive rights like the right to integrity form a safety net of protection to ensure that non-human life is not forgone for human benefit unless absolutely necessary.

That is not to say that RoN is without issues. A point of contention is how to delineate the entities that have legal personhood under a system of RoN. If the living planet exists in the complex, inseparable interactions of numerous actors, giving rights to individual actants does not do justice to that complexity of interlocking agencies.[118] Neither is it practically operable to consider the interests of uncountable microscopic life forms in each political decision whenever those interests can be relevant. At the same time, giving rights to nature as a whole mistakenly implies that nature is one monolith entity, which Latour argues against.[119] What is more, such an approach stifles the place-based, localized political inclusion that a legal system as described above should foster.

Currently, RoN takes the approach of granting legal personhood to somewhat separable ecosystems: a somewhat clearly delineated forest, a river or a mountain range. Examples are the Atrato River in Colombia and the Lake Erie in the US.[120] This approach takes a middle ground between the mammoth scale of the planet as a whole and the microscopic view of the smallest individual life forms. The idea is not to cut off certain parts of nature as separate legal persons. Rather, the point of departure is geographically identifiable areas or bodies of nature that form a network that hypothetically could be seen as an ecosystem in itself. At a larger scale, that area or body of nature also interacts with other bodies of nature, that form networks in themselves. It is important to note that this only concerns *legal* separations for the sake of practicality, and not separations that are actual descriptions of the world. I will give an example. Take the Rhine. Flowing through six countries, the river basin of the Rhine is roughly 185,000 km^2 and is the water source of numerous forests, grasslands, etc., which in turn form the habitat of and provide food for millions of animals, humans, etc. Moreover, the river itself is home to a myriad of bacteria, fish and other forms of life. Accordingly, the Rhine in the most literal sense – a stream of water – cannot be separated from its river basin. Yet, the Rhine as a river is an identifiable entity. As a body of nature, it is home to a large set of flora and fauna that interact closely. Imagine that a factory somewhere in Switzerland dumps wastage in the Rhine. The pollution has a terrible effect on all downstream organisms that are in some

[118] Matthews, D. "Law and Aesthetics in the Anthropocene: From the Rights of Nature to the Aesthesis of Obligations," p. 7.
[119] Latour, B., Facing Gaia, p. 143 – 144.
[120] See chapter 4 for a discussion of these examples of RoN.

way connected to the now polluted water. The contaminated water that seeps into the ground pollutes forests that are dependent on that water, which in turn affects the organisms in said forests; fish are poisoned, resulting in the death of the organisms that feed on those fish; the entire river basin is impacted by the pollution. Yet, we make a distinction between the effects of the wastage dump on the *river* and the effects that the river pollution has downstream. The effects on the river itself we view as primary or direct, whereas the impact on nearby forests is considered as indirect. The two levels of effect also take place at a different scale. At the first level, the river is impacted – i.e., the network of life forms that the river is home to. At the second level, in contrast, the river impacts other entities through the pollution – i.e., nearby forests, the city on the riverbanks downstream, etc. At this level, the network that is the river interacts with *other networks.* Without denying the interactions between the life forms that are in direct relation with each other in or around the river and those in the entirety of its basin, the river can legally be considered as a somewhat discreet ecosystem. An ecosystem that is connected with multiple other ecosystems, but a conceptually *separable* entity.

By focusing on separable ecosystems a balance is struck between on the one hand the inextricable and complex ties between organisms and on the other hand the need to create subdivisions of our surroundings as required for legal personhood. Yet it still has advantages from the positive legal environmental framework, because the underlying understanding of the river is different: it is viewed as home to a network of interacting subjects – fish, water plants, bacteria, etc. – that deserve to be included in political decision-making, and as part of a larger network of other ecosystems, including human ecosystems like cities, villages and farm areas. In a comparison of the Rhine Convention and what an autonomous right for the Rhine River would look like, Bettina Wilk and Dries Hegger argue that a right for the Rhine can transform decision-making about the water quality, flooding and navigation in the Rhine basin to a more ecocentric form of governance, by reinforcing the voice of the river in the weighing of interests.[121]

To further reflect the complex interactions between life forms and their surroundings, the legal system should emphasize the relationality of rights. Like Nedelsky suggests, rights can be viewed as creating rules within a community that require actors to respect the interests of others and ensure the integrity of both the actors and the community as a whole.[122] Of course, there is an individualistic element to this, as rights in this situation concern individual actors. However, putting the emphasis of the individualistic aspect to rights entails highlighting the ordering of clashing individual interests. When one emphasizes the relationality of rights, on the other hand, the focus is on fostering awareness of interdependence and sensitivity to the interests of others rather than whose interest should trump

[121] Wilk, B., Hegger, D., et al, "The Potential Limitation on its Basin Decision-making Processes of Granting Self-Defence Rights to Father Rhine," *Water International* 44, 6 – 7 (2019): 684 – 700, https://doi.org/10.1080/02508060.2019.1651965, p. 696.
[122] Nedelsky, "Reconceiving Autonomy: Sources, Thoughts and Possibilities," p. 7.

the other's interest.[123] In 2017, Latour argued: "To be a subject is not to act autonomously in front of an objective background, but to share agency with other subjects that have also lost their autonomy."[124] A legal system with relation-focused RoN, based on Latour's idea of distributed agency, stimulates the inclusion of non-human interests in human political life, based on the awareness that we share a place on the planet with non-human life forms and the sensitivity to the agency of those life forms.

§3.5 Concluding remarks

The conceptual objections against RoN point at an incongruence between the idea of legal personhood for non-human life forms and our current legal framework. A different conception of the non-human living world, i.e., one in which nature is not an inactive backdrop for human political life, but a complex interaction of a multiplicity of actors at various scales, helps alleviate that incongruence. In this chapter I have discussed an alternative theoretical take on the living world, which proposes that there is no bifurcation between nature and culture. Moreover, in this alternative account, the non-human living world consists of life forms that are capable of exercising agency. Humans and non-humans are part of intricate networks of mutual influence, action and reaction. It is the distribution of agency that supports the conception of non-human life forms as subjects.

The current predominant legal framework fails to provide room for the distributed agency of the living world. Consequently, RoN makes little sense in the predominant legal worldview. Yet, RoN is capable of accommodating to the distributed agency of the living world: granting legal personhood to entities that are alive and have agency, capable of having interests, acting and reacting is not a stretch. Similarly, ascribing a right to integrity, procedural and political rights to non-human subjects is viable. By considering legally separable networks of life forms as subjects, RoN offers an ecocentric approach to nature protection, as opposed to the anthropocentric approach of the existing legal environmental protection framework. To that end, the focal point of RoN should not be litigation. Enforcement of RoN via judicial decisions is a vital safety net to uphold the protection of non-human life, but more importantly, RoN should be put into action, meaning that the legal framework promotes the involvement of non-human life forms in human political life and the cultivation of localized, informed, holistic governance.[125]

RoN can be used to adapt the legal framework to better account for non-human agency. In the next chapter, I discuss examples of RoN that show this potential. By proposing the legal obligation to include non-human life in the political realm and to respect their agency as much as possible, RoN fosters awareness of the relationships between humans and their surroundings. By the same token, it stimulates sensitivity to relevant non-human interests. That does call for the letting go of the ideal of harmony with nature that is prevalent in the

[123] Burdon, "The Rights of Nature: Reconsidered," p. 85.
[124] Latour, B., "Why Gaia is not a God of Totality," p. 70.
[125] Valeria Berros, M., "Defending Rivers: Vilcabamba in the South of Ecuador," p. 43.

RoN discourse: no amount of sensitivity or co-existence can prevent all natural disasters or a lion viewing an unlucky person as sustenance. Rather, the point is to be aware of the potential repercussions of human activity on non-human life forms and their subsequent reaction, while realizing that human interest does not per definition trump the right to integrity of non-human life forms.

Chapter 4

§4.1 Introduction

In the previous chapter, I have discussed Latour's theoretical framework of distributed agency and proposed that RoN, if underpinned by this framework, has the potential to adapt legal systems to be less anthropocentric and better account for the agency of non-human life. To reach that potential, the RoN discourse should, however, emphasize the interdependence of planetary life, including humans. In an ideal situation, the rights of non-human life forms or ecosystems extend beyond the courtroom, i.e., the interests of ecosystems are included in governance. Otherwise, RoN runs the risk of becoming an empty catchphrase like "green economy" or "sustainable development", used by *inter alia* policymakers to justify anthropocentric decisions, as Maria Valeria Berros notes.[126] The Atrato River ruling by the Colombian Constitutional Court is one of the cases in which RoN shows and partly lives up to its potential to let the legal system accommodate ecocentric governance. What makes the ruling successful, is the Court's governance-focused approach, extending the ruling beyond the mere statement that the river has rights by providing a set of procedural directions that solidify the inclusion of place-based, local knowledge and those with long-term interests in the integrity of the ecosystem in policymaking. In contrast, RoN rulings or legislation that solely declare the legal personhood and rights of an ecosystem, do not tend to move beyond the courtroom. In this chapter, I discuss the Atrato River ruling, as well as other cases of RoN, to demonstrate that RoN, if accompanied by a worldview in which nature and human political life are not separate and gives rise to procedural guidelines that do justice to these connections, can provide extra environmental protection compared to non-RoN environmental protection legislation.

§4.2 South American cases of RoN

In 2016, the Colombian Constitutional Court considered a question regarding the possibility of legal personhood of the Atrato River, one of Colombia's most extensive rivers. *Tierra Digna,* a non-governmental organization, filed a request to the Court on behalf of multiple communities local to the river's banks and inlets in the department of Chocó, an allegedly 'forgotten' region in the west of Colombia. These communities are the descendants of African enslaved individuals, forced to work in Chocó's gold mines alongside the agricultural cultivation for their own subsistence by the Spanish in the 17th century. Since the abolition of slavery, these communities have relied heavily on the river, securing their livelihood through subsistence agriculture, traditional forms of gold mining and fishing. Additionally, the river has played a focal role in their social and cultural life, forming a home for the communities. Since the 1980s, illegal mining practices have seriously threatened the communities and their way of life. Deforestation, sedimentation and the discharge of heavy metals and fuel residues in the water and soil have resulted in a loss of biodiversity, contamination and

[126] Ibid.

significant changes in the river's course.[127] Related social impacts are a deterioration of a loss of traditional agricultural practices, an increase of diseases and conflicts over the use and ownership of lands that are fit for mining, which seriously deteriorates the social and cultural fabric of the communities.

In an attempt to find protection from the environmental and socio-cultural impacts of illegal mining, the communities challenged the Colombian government's failure to address illegal mining at the Colombian Constitutional Court. The resulting decision has been hailed as the "first and most prominent decision recognizing the rights of nature",[128] for the Court not only emphasized the rights of the affected communities, such as the right to life, health, culture and a healthy environment, but also recognized the Atrato River itself as a legal person and a subject of rights. This legal personhood and the accompanying rights are not derivative of the rights of the local communities but exist independently. In order to properly protect the rights of the river, the communities play a focal role, however. The Court noted that its line of jurisprudence that has connected the protection of the environment to the rights of Indigenous and local communities, for example by giving these communities a role in environmental decision-making, has "helped to protect both the biological diversity and the cultural diversity of the nation, recognizing the deep interrelations of indigenous peoples, black and local communities with the territory and natural resources."[129] The Court introduced the concept of biocultural rights, which emphasizes the connection between communities and their surroundings, as an explanation.

To reach this conclusion, the Court took on a unique ecocentric perspective. As a starting point, it viewed humans as only one of the species belonging to the Earth.[130] That is a significant departure from the predominant modern view that poses nature as the backdrop to human political life. In the Court's opinion that does not only mean that the planet must be protected because humans are dependent on a healthy, functioning planet, but also because we share that planet: we live in "relation to other living organisms, with which we share the planet, conceived as existences worthy of protection in themselves."[131]

Consequently, the Court deemed the Atrato River a carrier of rights, with an entitlement to protection, maintenance and restoration. "For the effective fulfilment of this declaration", the Court arranged "for the Colombian State to

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[127] Wesche, P., "Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision," *Journal of Environmental Law* 33, 3 (2021): 531 – 555, https://doi.org/10.1093/jel/eqab021, p. 534.

[128] Idem, p. 538.

[129] Constitutional Court of Colombia, Judgment no. T-622/16, November 2nd, 2016, translation used: http://files.harmonywithnatureun.org/uploads/upload838.pdf, §119. The Court paraphrases *inter alia* judgment T-574, 1996, stating that "sustainable development is a process to improve economic and social conditions and maintain natural resources and diversity and that it should strive to ensure social sustainability which "aims to raise the development of the control that people have over their lives and to maintain the identity of the community" and cultural sustainability, which "requires that development be compatible with the culture and values of the affected peoples"."

[130] Idem, §86 – 87.

[131] Idem, §90.

exercise legal guardianship and representation of the rights of the river in conjunction with the ethnic communities that inhabit the Atrato River Basin".[132] It entrusted the government to legally represent the river, in conjunction with the communities local to the Atrato region. Practically, both the governments and the communities must select a representative, which are burdened with the task to form a commission of guardians, consisting of the representatives and an advisory group, which includes environmental organizations.[133] Since the ruling, the Colombian Constitutional Court has granted legal personality to a multiplicity of other ecosystems, including the Magdalena and Cauca Rivers, the Pisba highlands and the entire Colombian Amazon.[134]

At the surface, the Atrato decision is very much in line with Stone's vision of RoN: a body of nature is granted legal personhood, with accompanying rights and to be implemented through a model that is alike to a guardianship model. Diving deeper, however, the Court pushes the boundaries of the predominant, modern, legal framework further. The Court explicitly underlines the importance of entering a relationship with our surroundings: "In summary, only from an attitude of deep respect and humility with nature, its members and their culture, is it possible to enter into relationships with them in fair and equitable terms, leaving aside any concept that is limited to the simply utilitarian, economic or efficiency. […] It is about being aware of the interdependence that connects us to all living beings on earth; that is, recognizing ourselves as integral parts of the global ecosystem – the biosphere – rather than from normative categories of domination, simple exploitation, or utility."[135] The Court's point of departure of considering the human species as a co-habitant of the world, along with many other species, is a starting point to align the legal framework to a worldview that recognizes the complexity and distributed agency of the non-human living world. In that, the Court ascribes inherent worth to non-human life forms, entitled to protection in and of themselves. This is a strikingly ecocentric point of departure, which the Court explicitly reads into the Colombian Constitution.[136]

The Court does not state that the river has rights, full stop. In contrast, the Court states those rights and connects them to (without deriving those rights from) the communities that have lived in close reciprocal connection to the river for a significant amount of time. Introducing the notion of biocultural rights, the Court embeds human life in a complex, living world. The Court defines biocultural rights as "the rights of ethnic communities to autonomously administer and protect their territories […] as well as resources that constitute their habitat, where their culture, traditions and way of life and developed based on their special

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[132] Idem, §314.
[133] Constitutional Court of Colombia, Judgment no. T-622/16, November 2nd, 2016, §336 – 337.
[134] Cyrus R. Vance Center for International Justice et al, *Rights of Rivers: A Global Survey of the Rapidly Developing Rights of Nature Jurisprudence* (Oakland: International Rivers, 2020); Villavicencio Calzadilla, P. & Kotzé, L., "Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia"; Kotzé, L., & Villavicencio Calzadilla, P., "Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador".
[135] Constitutional Court of Colombia, Judgment no. T-622/16, November 2nd, 2016, §89 – 90.
[136] Idem, §79 – 88.

relationship with the environment and biodiversity."[137] These rights are the result "the recognition of the profound and intrinsic connection that exists between nature, its resources, and the culture of ethnic communities […], which are interdependent and cannot be understood in isolation."[138] Central to biocultural rights is the notion that indigenous and ethnic cultures and ways of life are inherently tied to and influence other, non-human lives: plants, microorganisms, animals and the environment as a whole. Protecting cultural diversity requires the protection of biodiversity, and vice versa. A striking implication is that this couples the protection of both human rights as well as the environment to procedural obligations in the making of public policies, without making the environmental rights derivates of human rights. Rather, the Court shows how awareness of independent rights of non-human life and accompanying care for non-human life can be embedded in human culture, primarily in indigenous and local communities which have lived in close connection to their surroundings for a long time. Environmental protection policies must include, according to the Court, indigenous knowledge and culture, guaranteeing "the conditions conducive to the generation, conservation and renewal of their knowledge system." In this way, the legal framework as set out by the Court prioritizes a place-based connection to the environment and the acquiring of insights into the needs of the relevant surroundings.

The fostering of place-based connection and sensitivity to the environment, the obligation to protect the environment and the accompanying procedural obligation to include local knowledge and stakeholders in public policymaking, have had noticeable results in the governance strategy of the Colombian state. Although the first policy adopted after the ruling to eradicate illegal mining lacked concrete targets, costs and success markers, in 2018 the Ministry of the Environment intensified the collaboration with the local communities and Commission of Guardians. This resulted in the adoption of an extensive plan to restore, maintain and protect the ecosystems of the river basin, "through a process of collective construction that respects and guarantees territorial autonomy, the communities' own views of development and their biocultural rights."[139] According to the local communities and community guardians, this amounts to more than just words: in their experience, "the plan was constructed on the basis of their integral participation and fully incorporates their perspective and positions," which translates into better protection of the river and as a consequence the protection of their culture and way of life, which are intricately connected to the river's wellbeing.[140]

In practice, the ruling has had a twofold effect on the governance approach. On the one hand, the Ministry of the Environment has taken on a proactive and participatory leadership role regarding the protection of the river, including its local communities, by streamlining environmental protection through

[137] Idem, §111.
[138] Ibid.
[139] Wesche, P., "Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision," p. 547.
[140] Ibid.

all its policies and coordinating with other state entities. On the other hand, local communities have gained a strong foothold in policy making, noting that every intervention in the area has to be accorded with the community guardians.[141] As historically decision-making has occurred "from the desk in Bogota, by persons who […] don't know these regions,"[142] the active involvement of local knowledge signifies an impressive shift to policymaking on the basis of place-based knowledge within a centralized governance system. Similarly, RoN cases in Ecuador have boosted the valuing of local and indigenous knowledge and cultural practices, as these both give invaluable insight into how non-human life forms and humans impact one another, as well as provide practices in which humans take up a role of co-existence rather than false ownership of their surroundings.[143]

The space that RoN creates for place-based knowledge is featured in one of the RoN cases brought before the Ecuadorian Constitutional Court. This case concerned 70 families whose livelihoods consisted of crab collecting in a mangrove swamp.[144] They found themselves displaced by the commercial prawn industry. An initial judicial decision endorsed the commercial activity. The Constitutional Court, however, concluded that the decision had to be reviewed, *inter alia* because to respect the rights of the mangrove swamp, the relation between RoN and ancestral knowledge and rights had to be made. The initial decision lacked the establishment of this relationship between environmental protection and place-based knowledge and practices, for example by not including reporting on the contribution of the ancestral practice of crab collecting to the preservation of the swamp.

The activity of the guardianship model regarding the Atrato ruling has so far focused on facilitating dialogue and constructive policymaking as opposed to litigation. This could be interpreted as a marker of success, signifying that the policies are conducive to the protection of the river's rights. However, the lack of litigation might also be due to a lack of clarity on the precise powers of the guardianship body and a lack of legal knowledge and funding on the side of the community guardians. Nevertheless, the case underlines the conclusion that RoN can be a fruitful tool to adapt legal frameworks to have a more ecocentric approach in which it makes sense to grant legal personhood to non-human life forms, through accommodating ecological policymaking and cultivating the inclusion of local knowledge of and sensitivity to the living planet in governance.

§4.3 Lake Erie, Te Urerwa and Te Awa Tupua

In contrast to the Atrato River decision and its successors in Colombia, not all RoN cases can be called success stories. Several RoN cases exist in which the legal personhood and rights of an ecosystem or non-human entity were declared, but this did not lead to a noticeable change in governance. For example, the High

[141] Idem, p. 548.
[142] Idem.
[143] Constitutional Court of Ecuador, Judgement no. 065-15-SEP-CC, 11 March 2011; Constitutional Court of Ecuador, Judgement no. 166-15-SEP-CC, 20 May 2015; Valeria Berros, M., "Defending Rivers: Vilcabamba in the South of Ecuador," p. 42.
[144] Constitutional Court of Ecuador, Judgement no. 065-15-SEP-CC, 11 March 2011.

Court of Uttarakhand in India concluded that all rivers in the region are legal entities, yet the Ganges in this region is still just as heavily polluted as before the ruling.[145] A similar lack of effect can be discerned regarding the ruling of the Dhaka High Court in Bangladesh, which declared the Turag River to be a legal entity.[146]

Legislative acts that ascribe rights and legal personhood to non-human living entities are sometimes unsuccessful because they run into legality challenges. In 2019, the municipal constitution of Toledo, US, was adopted to add the following text: "Lake Erie, and the Lake Erie watershed, possess the right to exist, flourish and naturally evolve. The Lake Erie Ecosystem shall include all natural water features, communities of organisms, soil as well as terrestrial and aquatic sub ecosystems that are part of Lake Erie and its watershed."[147] The adoption was halted, however, by an injunction of the federal court, requested by a local farmer that claimed to be hurt in their economic interests by the bill. Subsequently, the State of Ohio passed legislation that declared nature or any ecosystem to be incapable of having legal standing, nor may persons bring a case before the court on behalf of nature or an ecosystem.[148]

US law professor Richard Lazarus stated that Lake Erie would benefit more from the election of officials that initiate, support and implement environmental protection measures than from the ability to fight lawsuits.[149] With his suggestion, Lazarus does not set RoN as such aside as a legal tool for environmental protection, but rightly points at the risk that RoN fails to transcend the level of well-meant but empty symbolism. If RoN is supposed to extend beyond symbolic declarations, it should stimulate or even obligate governance – at any level, both in local, regional and national parliaments as well as in any public body – that actively includes non-human interests in their policy and decision-making. The Colombian Court's model in the Atraro ruling is a strategy to that end, bringing the river's rights into effect through including local communities, who live in close connection with the river, have a long-term interest in the well-being of the river and are aware of its needs, in policymaking. A similar approach was chosen by the New Zealand government in 2014 and 2017. In 2014, New Zealand adopted a piece of legislation that declared the area of Te Urewera to be a legal entity and entitled it to "all the rights, powers, duties and liabilities of a legal person," to be exercised on behalf of the area by a board that consists of six members appointed by the indigenous population of the area

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[145] Kramer, L., "Rights of Nature and Their Implementation," *Journal for European Environmental & Planning Law* 17 (2020): 47 – 75, https://doi.org/10.1163/18760104-01701005, p. 61 – 62; High Court of Uttarakhand, no. 126 of 2014 Mohd. Salim v. State of Uttarakhand et al., 20 March 2017, §19: "the River Ganga and Yamuna, all their tributaries, streams, every natural water flowing continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person".

[146] Idem, p. 62 – 63.

[147] City of Toledo, Lake Erie Bill of Rights, February 26th, 2019.

[148] Ohio State Congress, House, *State Budget Bill,* of July 18th, 2019, section 2305.011.

[149] Lazarus, R., "Rights for Lake Erie?," *Harvard Law Review (*blog), April 1st, 2019, https://blog.harvardlawreview.org/rights-for-lake-erie/, accessed January 23rd, 2022.

and three members appointed by the New Zealand government.[150] Three years later, in 2017, the Whanganui River Act was adopted, stating that "Te Awa Tupua is a legal person with all the rights, powers, duties and liabilities of a legal person", Te Awa Tupua being the Maori expression for Whanganui River as an indivisible and living whole which comprises the entity of the river, including all physical and 'metaphysical elements'.[151] The rights of the river were to be enforced by an office consisting of two guardians, one appointed by the indigenous population and one by the government, and are supported by an advisory group of three persons and a strategic group of 17, in which various local indigenous groups as well as the government were represented. These acts were intended to repair colonial damage by giving the Maori back ownership and agency over a piece of their original territory, which had been made into state-owned natural parks. Although the legislation speaks of the agency of the Maori people, in Maori culture, Te Awa Tupua is considered an ancestor, an active and relational entity to which the Maori relate as if it were a person.[152] Despite the intention not explicitly being the protection of the river and its ecosystems, the guardian body has the task of protecting and promoting the well-being of Te Awa Tupua, fostering a sense of responsibility and respect for the river as a living, evolving entity.[153] The notion of Te Awa Tupua as an actor thus trickles down in the legislation and the governance it prescribes, thanks to the adoption of the Maori interpretation of the river. The protection of the river is thus embedded in the river management, with an ecocentric focus.[154]

§4.4 Concluding remarks

The Atrato River ruling shows the potential of RoN: a declaration of the legal personality of a river and its ecosystems can result in a form of governance that takes a holistic, ecocentric approach. At the same time, there are ample examples of RoN cases that are considerably less successful and lack a leg up compared to traditional environmental legislation.[155] It is the focus on procedural obligations that makes the Atraro River ruling different. The Court bestowed the Colombian State and the local communities with the joint legal guardianship over the river, obliging the State to streamline the protection of the river in all its policies and to ensure the active involvement of the local community guardians, which must give

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[150] Te Urewera Act 2014, Public Act 2014 no. 51, of July 27th, 2014, Article 12.
[151] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, Public Act 2017 no.7, of March 20th, 2017, Article 14.
[152] Kramm, M., "When a River Becomes a Person," *Journal of Human Development and Capabilities* 21, 4 (2020): 307 – 319, https://doi.org/10.1080/19452829.2020.1801610, p. 311.
[153] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, Public Act 2017 no.7, of March 20th, 2017, subpart 3; Schmiesing, M., "Rights, Water, and Guardians: How Rights of Nature Movements Are Reshaping Our Current Environmental Ethics and What These Policies Need to be Successful," (Pitzer Senior Thesis, Claremont College, 2020), 108, https://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1112&context=pitzer_theses, p. 56.
[154] It must be noted that since the adoption of the Te Awa Tupua Act, polluting actions have continued to be undertaken. However, these have occurred mostly downstream and can be ascribed to the long-term approach of the act.
[155] Kramer, L., "Rights of Nature and Their Implementation," p. 75.

their accord for all policies that concern the river. By going beyond the mere statement that the river and its ecosystems have legal personality and emphasizing the connections between the human inhabitants of the river, the non-human inhabitants, and the river itself, the Colombian Constitutional Court laid the foundation for an ecocentric approach. It rejected human exceptionalism and instead highlighted how the local communities are co-inhabitants of the region, which they must share with non-human species and life forms as well, each with their own inherent worth and entitled to their own integrity: "It is about being aware of the interdependence that connects us to all living beings on earth; that is, recognizing ourselves as integral parts of the global ecosystem – the biosphere – rather than from normative categories of domination, simple exploitation, or utility."[156]

This worldview lays the foundation for procedural obligations like those resulting from the Atrato River decision, that help to realize the implementation of RoN in an ecocentric way. The inclusion of biocultural rights and local knowledge are strategies to that end, although evidently, the worth of including biocultural rights and local knowledge is not limited to the positive effects on the realization of RoN.

That worldview is conducive to ensuring that RoN declarations – whether legislative or judicial – are not only operable but also reach their full potential of promoting the involvement of non-human life forms in human political life and the cultivation of localized, informed, holistic governance and protecting those life forms. When RoN cases lack that worldview, such as in the case of Lake Erie, RoN runs into objections and falls short. The New Zealand and South American cases of RoN discussed in this chapter show that the opposite is also possible. The view that humans and nature are not separate, but that humans are part of intricate networks with other life forms, becomes a logical basis for the inclusion of those other life forms in governance. RoN then becomes a framework that allows procedural obligations to be formed to foster awareness of the relationships between humans and their surroundings. That is not to enable a romantic notion of living in total harmony with nature. Rather, legally obligating the inclusion of local and/or indigenous knowledge in policymaking is a practical tool to stimulate sensitivity to relevant non-human interests, and consequently, help realize more ecocentric and holistic governance, to the benefit of both environmental protection as well as human flourishing. The Atrato River ruling and the Te Awa Tupua and Te Urewera Acts illustrate that.

[156] Constitutional Court of Colombia, Judgment no. T-622/16, November 2nd, 2016, §90.

Conclusion

The RoN discourse has been presented by its advocates as a more adequate legal framework for protecting the environment than existing environmental legislation. Taking inspiration from indigenous ways of relating to our surroundings, RoN aims to shift environmental protection from an anthropocentric form of protection to an ecocentric one, which recognizes not only the dependence of human life on healthy planetary life, but also the inherent worth of that life. Rather than viewing nature as a resource or object that can be unconditionally used to benefit humankind, RoN ascribes inherent worth to species and ecosystems. By giving non-human lifeforms and entities the status of legal persons rather than objects to be used for (economic) benefit, RoN aims to emulate the fruitful relationship of many Indigenous Peoples in a legal framework, thereby improving existing legal frameworks for environmental protection.

Recent years show an increase in judicial and legislative declarations of the legal personhood of various ecosystems, predominantly in South America and Oceania. At the same time, not all of these examples result in better protection of the entities to which rights are ascribed compared to traditional environmental protection legislation. The enforcement of the legal personhood is dependent on humans through a guardianship model, leading to the recurrence of the risk of anthropocentric protection. For example, while the Atrato River ruling in Colombia has led to significant improvement of the river's health, the ascribing of legal personhood to the Ganges in India has not alleviated any pollution. In addition, RoN runs into issues of a more conceptual nature, such as how seemingly inanimate entities like rivers and ecosystems can have legal personhood and inherent rights.

In this thesis, I have argued that RoN has the potential to be an improved approach to legal environmental protection, However, to fulfil that potential, RoN should be underpinned by an understanding of planetary life that emphasizes the connectedness and interdependence of life on Earth, including human life. The conceptual objections against RoN point at an incongruence between the idea of legal personhood for non-human life forms and our current legal framework. A different conception of the non-human living world, i.e., one in which nature is not an inactive backdrop for human political life, but a complex interaction of a multiplicity of actors at various scales, helps alleviate that incongruence. Latour's account of distributed agency is such a theoretical framework. It explains not only how non-human life forms have agency, but also why they are forces to be reckoned with in policymaking, as human action expends reactions from the life around us, affecting the outcomes of our decisions. Underpinned by such a framework, RoN has the potential to adapt legal systems to be less anthropocentric and better account for the agency of non-human life.

In analyzing successful RoN cases, such as the Atrato River ruling, that potential is displayed. In that ruling, the Colombian Court takes as a point of departure the view that the human species is a co-habitant of the world, along with many other species. The Court moves beyond the symbolic declaration that the river has an independent right: From the embeddedness of human life in the

complex, intricate network of life comprising and surrounding the river, the Court draws a set of procedural obligations that are supposed to effectuate the rights of the river, infusing public policymaking with awareness of independent rights of non-human life and accompanying care for non-human life.

There is human involvement in the protection of these rights, just as in traditional environmental legislation. However, that human involvement comes from a place of long-term connection and interdependence to the environment, in which the river is valued as an entity in itself rather than a commodity for human benefit. By making such indigenous and place-based knowledge and culture fundamental to policymaking, the Court aimed better protection of the river and as a consequence the protection of the local communities' culture and way of life, which are intricately connected to the river's wellbeing. In this way, the legal framework as set out by the Court prioritizes a place-based connection to the environment and the acquiring of insights into the needs of the relevant surroundings.

It is exactly in this aspect that RoN holds its promise and shows how it is a legal advancement compared to traditional environmental protection legislation: where traditional environmental protection legislation remains stuck in an anthropocentric perspective, RoN stimulates ecocentrism by promoting the involvement of non-human life forms in human political life and the cultivation of localized, informed, holistic governance and protecting those life forms. By legally obligating the inclusion of local and/or indigenous knowledge in policymaking, RoN stimulates sensitivity to relevant non-human interests, to the benefit of environmental protection. As such, RoN can augment the legal environmental protection framework to be more conducive to holistic, ecocentric forms of governance.

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