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Claiming Rights for Nature: A Wittgensteinian Politics

*Manoomin* is the Ojibwe name for the only edible grain indigenous to North America, similar to wild rice.[[1]](#footnote-2) Also translated as “the food that grows on water,” *manoomin* is a staple of the Ojibwe people, harvested each year from the vast lake beds of upper Minnesota.[[2]](#footnote-3) In August 2021, the White Earth Band of Chippewa Indians sued the state of Minnesota for violating *manoomin*’s rights.[[3]](#footnote-4) Their complaint cites a 2018 tribal resolution that enshrines the rights of *manoomin* to “exist, flourish, regenerate, and evolve.”[[4]](#footnote-5) The White Earth Band argues that the Minnesota Department of Natural Resources put the rights of *manoomin* at risk when it permitted the Enbridge Corporation to construct a crude oil pipeline through wild rice lakes. The plaintiffs claim that local water pollution and the global climate impacts of the pipeline endanger *manoomin*’s health. “For the Chippewa, Manoomin is alive like all living creatures and they are our relations,” reads the legal brief.[[5]](#footnote-6)

The battle for the rights of *manoomin* is just one example of a growing trend in which environmental activists and land defenders claim legal rights for rivers, forests, species of animals and plants, and even “Nature” itself.[[6]](#footnote-7) In 2006, residents of Tamaqua Borough, U.S.A. granted rights to “natural communities and ecosystems” in their town in order to halt the dumping of toxic sewage sludge;[[7]](#footnote-8) two years later, environmental and Indigenous groups successfully campaigned to incorporate nature’s rights in Ecuador’s 2008 constitution.[[8]](#footnote-9) More recently, civil society groups opposing the construction of the East African Crude Oil Pipeline convinced Uganda to recognize nature’s rights in its 2019 National Environment Act,[[9]](#footnote-10) and a transnational group of advocates launched a petition to grant legal personhood to Antarctica (also 2022).[[10]](#footnote-11)

How should we understand these unconventional rights? Do they hold emancipatory potential at a time of world-destroying environmental breakdown? Drawing on Ludwig Wittgenstein’s philosophy of language, as interpreted by Stanley Cavell, I argue that nature’s rights claims are instances of the projection of a word into a new context: “nature” into the context of rights-bearing. In my first section, I contend that these projections innovate at the grammatical limits of the “language game” of rights claiming by (1) reversing the conceptual relationship between “rights” and “property,” in which rights paradigmatically refer to the liberty of the human subject to *own* property, conceptually akin to “nature;” [[11]](#footnote-12) and (2) undermining the individualistic conventions of the rights discourse. These claims thus defamiliarize the conceptual foundations of both “rights” and “nature,” innovating at the fuzzy boundary between the rule-bound and radically open character of language. In the second section of my paper, I argue that the public character of nature’s rights – the fact that they are claimed against corporations and the state, and often asserted to galvanize public support for particular issues – renders them *performative acts of democratic persuasion.* Drawing on speech act theory, Karen Zivi’s work on rights and performativity, and Linda Zerilli’s democratic theory, I contend that these claims are instances of what Wittgenstein called “imaginative seeing,” “dawning” new aspects of the world to others and arguing for their perspective, thus maintaining the plural political space of thinking, acting and judging. [[12]](#footnote-13) The public nature of these projections delivers up questions for debate that previously may have been “settled,” such as who does and does not count as a subject of rights, what is “natural” and what is “societal,” and what is “valuable” or “extractable.” Nature’s rights thus open and maintain democratic space for seeing and acting politically, contributing to the plural activity of interpreting and acting on the world.

My argument intervenes in two scholarly debates. The first debate, housed between moral and legal philosophy, concerns the *nature of rights*: what are rights? Are rights claims made by a subject, correlates of duties, or properties of an agent? Do rights reference the liberties and faculties of persons, or do they protect valuable interests? In other words, what is the logical structure of rights, and who can bear them? Key authors in this debate include Wesley Hohfeld, H.L.A. Hart, Joel Feinberg, Joseph Raz, Jeremy Waldron, Ronald Dworkin, and Leif Wenar. In response to the emergent phenomenon of nature’s rights, scholars in this vein have argued that rights cannot be extended to nature. On this view, the idea is a category mistake that strains the limits of the discourse.[[13]](#footnote-14) I call this the “critique from nonsense.” In relative isolation from this debate, another literature has investigated the relationship of the rights discourse to a leftist emancipatory politics. Less interested in the logical trappings of rights, these authors ask what rights claims *do –* what forms of politics does the rights discourse makes possible? Writing in the wake of the “rights revolution” of “New Left” social movements and the outcomes of international human rights advocacy, some authors have raised skepticism about the emancipatory potential of the rights discourse. For example, Derrick Bell, Wendy Brown and Samuel Moyn have respectively argued that at best, the false universalism and atomistic individualism of rights renders them unfit to challenge structures of racial, gender and economic oppression, and at worst, predisposes them to naturalize constructed social identities and displace radical political programmes of redistribution and self-determination.[[14]](#footnote-15) If the last 30 years have seen rights exhausted as tools of freedom, what good are nature’s rights? In this vein, other scholars have argued that nature’s rights claims paradoxically re-entrench the very power structures they wish to combat, such as the anthropocentric human/nature dualism and a racialized mode of liberal personhood. I call this the “self-defeating critique.”

My paper argues that nature’s rights not only shed light on the questions asked by both literatures (what are rights, and are they emancipatory?), but that neither question can be answered in isolation. I maintain that nature’s rights hold emancipatory political potential precisely because they publicly pose the question “What are rights, and what are they good for?” As such, I respond directly to the first literature, asserting that we should not think of rights as claims that adhere to a particular grammatical structure. Rather, *efforts to grant* *nature rights demonstrate that is no essential logic to “rights” determinable outside of the assertions political actors make about rights in particular historical contexts.* I thus disagree with the “critique from nonsense,” which holds that nature simply cannot have rights, by logic fiat. At the same time, I also do not agree that we can just “extend rights to nature,” incorporating a new, nonhuman subject within an old paradigm.Rather, I hold that because nature’s rights destabilize the very grammar of both “rights” and “nature,” they mark not an *extension* of the paradigm of rights, or the game of rights-claiming, to a new subject, but a *potential* *transformation* our existing grammar of rights and game of rights-claiming. By destabilizing its foundations and opening room for a radical transformation of the boundaries of sense, these rights open anew possibilities to refigure and reimagine both rights and nature. Therein, I argue, lies their emancipatory political potential (which is not to say that this potential will always be reached or realized in all contexts). Hence, I disagree with the “self-defeating critique,” as this view mobilizes an ossified and decontextualized view of language that prevents us from seeing the emancipatory potential of these rights claims.

My point is not to argue that nature can have rights. Rather, I want to ask, what would rights and nature be, and mean, if nature could have rights?

*Section 2: The Projection of Words into a New Context*

Ludwig Wittgenstein’s philosophy of language provides a useful framework to understand how words, like “rights” and “nature,” come to mean what they do for us*.* Wittgenstein maintained that our words do not correspond neatly to things “out there” in the world.[[15]](#footnote-16) Rather, words gain significance through their relationships with other words and concepts. Consequently, it is impossible to pin down a single meaning for a word or to define the boundaries of a concept in reference to fixed criteria. Rather, concrete instances of our concepts bear “family resemblances” with one another, sharing multiple elements even though no singular characteristic applies to all.[[16]](#footnote-17) For example, in different circumstances we say that an adult person is “reading” a book, that a child is “reading” the ABCs, that a computer is “reading” a software, or that a gallery docent “reads” a painting.[[17]](#footnote-18) These instances of the application of “reading” share elements in common, but no single feature determines the validity of applying “reading” to describe the activity in question in *all* cases. However, a competent speaker of our language will be able to “look and see” a family of meanings that hold together these various uses.[[18]](#footnote-19)

Whence and how do the various, open criteria for the application of concepts originate? Wittgenstein contends that our use[[19]](#footnote-20) of words and concepts provide the basis of mutual intelligibility.[[20]](#footnote-21) The repetitive use, the “recurrent patterns, regularities, characteristic ways of doing and being, of feeling and acting, of speaking and interacting,”[[21]](#footnote-22) as Hannah Pitkin glosses, provide a social context for our deployment of language. The repetitious nature of social life sediments the use of words and concepts around the regularities of our actions, practices and purposes. In this sense, language is “rule-bound” by the social conventions of meaning, speaking and acting.[[22]](#footnote-23) However, crucially, these “rules” do not precede or determine the speaking practices in which we engage. We cannot divine “rules of grammar,” “rules of meaning” or “set criteria of meaning” that hold through time and context.[[23]](#footnote-24) Rather, our agreements in forms of life, which have no independent existence outside of the practices which affirm or change them, gives rise to these recognizable yet mutable “rules.” In a way, these “rules” are our grammar of living, which corresponds to our grammar of language (indeed, these are the same in some respects).[[24]](#footnote-25) As such, Wittgenstein argues that language has a dual character: it is both “rule-bound” *and* radically open to revision.

Accordingly, Wittgenstein maintains that we can extend concepts we have learned, such as “rights,” into new contexts. In fact, the ability to do this shows that we have understood the “rules” that accompany the use of that concept in the first place.[[25]](#footnote-26) In so doing, we can create new grounds of mutual intelligibility, new “family resemblances.” However, as Stanley Cavell writes, “While it is true that we must use the same word in, project a word into, various contexts… it is equally true that what will count as a legitimate projection is deeply controlled.”[[26]](#footnote-27) This is to say that uptake of new projections depends on whether the relevant community of speakers recognizes the new projection as legitimate.New family resemblances may only be created when the forms of life foundational to these resemblances also shift. Even as the projection of words into new contexts bears the potential to change the parameters of sense, these projections might also fail to do so.

I want to argue that nature’s rights are Wittgensteinian instances of the projection of a word into a new context: the word “nature” into the context of rights-bearing. My claim of “newness” is both historical and linguistic. The historical claim asserts that political actors only began to use the language of “nature’s rights” to voice their demands relatively recently, hence the newness of the context into which the claims are asserted. The trend began with Christopher Stone’s canonical 1972 law review article, “Should Trees Have Standing?”[[27]](#footnote-28) In this article, Stone argued that people should be able to sue on behalf of the intrinsic worth of “natural objects.” He wrote it hastily as the Walt Disney Corporation planned to build a mega-million dollar ski resort in the Mineral King Valley, a pristine area of California’s Sequoia National Park, which environmentalists widely opposed. The article was then used by the Sierra Club in a lawsuit on behalf of Mineral King that attempted to halt construction and cited in Chief William O. Douglass’ dissenting opinion after the Sierra Club’s case was defeated at the Supreme Court.[[28]](#footnote-29) In the time between Stone’s publication and 2006, when the first nature’s rights campaign began in Tamaqua Country, Pennsylvania, there were sparse instances of campaigns to grant legal rights to natural features, ecosystems and species of animals. However, since 2006, there have been 409 recorded initiatives in 39 countries that have produced legal documents (legislation, court decisions, local ordinances, declarations and international organization policies) declaring or referencing nature’s rights.[[29]](#footnote-30) This is partly due to the efforts of the Global Alliance for the Rights of Nature and the Community Environmental Legal Defense Fund, two NGOs who support communities and activists to engage in strategic litigation for nature’s rights. Since 2006, CELDF has assisted municipalities in California, Colorado, Florida, Maryland, Mexico, New Hampshire, New Jersey, New York, Ohio, Pennsylvania and Virginia in passing similar laws.[[30]](#footnote-31) Moreover, a number of tribal governments in the U.S. and Canada have either recognized rights for nature or filed lawsuits claiming the rights of particular species. Examples include the Ho-Chunk Nation’s recognition of nature’s rights in 2016, the Innu Council of Ekuanitshit and the Minganie Regional County Municipality, Canada’s granting of legal personhood to the Magpie River, and a lawsuit filed by the Sauk-Suiattle Indian Tribe on behalf of wild salmon.[[31]](#footnote-32) There have also been campaigns for nature’s rights in Nepal, Brazil, Sweden, the United Kingdom, Mexico, Costa Rica, and Spain, and at the European Union.[[32]](#footnote-33)

To be clear, I recognize the existence of ideas and norms that bear a family resemblance akin to the idea of nature’s rights, legal or moral, and which predate this notion. Indeed, there is a long history of the personation of the non-human in the law, such as the history of efforts to sue animals for eating grain in medieval England, to personate the state or bridges as in Hobbes’ *Leviathan,* or to grant rights to spirits, the dead and other unconventional, perhaps “natural” subjects.[[33]](#footnote-34) There are also a myriad of examples from non-Western philosophical and legal traditions of the valuation of entities akin to the concept of “nature” with a status akin to the kind of respect denoted by rights.[[34]](#footnote-35) Given this history, what is so new about efforts to grant nature rights? Here, I maintain, with Mihnea Tanasescu, that although there may be conceptual similarities between nature’s rights and the place afforded to the non-human in Indigenous ontologies, nature’s rights have a distinct intellectual genealogy that cannot be traced back to “Indigenous philosophies” (not to mention the problematic flattening of all Indigenous cultures into one totality that this trope accomplishes).[[35]](#footnote-36) Furthermore, the claims I discuss in this paper are “new” projections because environmental activists and frontline communities use the language of rights to assert claims for recognition and redress *in response to extraction, pollution and environmental degradation.* They are claims made *towards* particular entities, usually the state and/or corporations. Most often, these states and corporations have systematically ignored the health risks and climate risks of extractive projects, but have done so legally – within the purviews of existing property and environmental law – hence the need to “trump” existing law with moralizing rights-claims.

In addition to the historical newness of nature’s rights, these claims are linguisticallynew. In this sense, claims that nature should have rights are projections of a word into a new context because they depart from the extant grammatical-conceptual conventions of our game of rights naming and claiming. Two conventions are particularly salient: the paradigmatic, hierarchical relationship between the subject of rights and the right to property, akin to “nature”; and the individualistic character of the rights discourse. As I will demonstrate, the relationship between subject and object that is assumed within our grammar of individual rights is inextricably linked with its individualism.

As Michel Villey, Richard Tuck, Annabel Brett and Brien Tierney have argued, our contemporary notion of rights is subjective in that it departs from older notions of *objective right.* These scholars concur that there is a conceptual distinction between the objective notion found in Aristotle, Roman law and Thomas Aquinas of “right” and the sense we have of “natural rights,” “human rights,” or “legal rights” possessed by persons.[[36]](#footnote-37) Objective right canvasses the idea of “that at which justice aims and with which it deals,” “the just portion which is due between persons,” or that which is permitted by natural law.[[37]](#footnote-38) Brett writes, “Objective right is conceived as right in the sense of the object of justice… the *daikon* of Aristotle’s *Ethics*, the *ius* of classical and Byzantine Roman law.”[[38]](#footnote-39) By contrast, subjective rights canvass the notion of right as a faculty or liberty of the individual. These rights reference “une *qualité* du sujet, une de ses *facultés,* plus précisement une franchise, une liberté, une possibilité d’agir”[[39]](#footnote-40) – a quality of the subject, one of their faculties, more precisely a franchise, a liberty, a possibility to act.

If rights are subjective, who is this subject, and what is its object? Paolo Grossi and Richard Tuck have argued that our modern language of rights operates off of the assumption that rights are a kind of property of the individual, and likewise, that property as the paradigmatic right.[[40]](#footnote-41) Tuck’s book *Natural Rights Theories* tracks the conceptual cross-pollination of the notions of *ius,* commonly translated as “right” or “law,” and *dominium,* or “property” from Roman law through the early modern period. For the early Romans, *ius* were duties, obligations or privileges citizens enjoyed by custom, whereas *dominium* was property owned by those citizens. Tuck argues that under the Roman empire, *dominium* became a kind of *ius,* as the Roman Emperor instituted a new regime of bilateral relationships with his citizens: each citizen’s *dominium* was theirs, in a sense, but they only enjoyed usufructuary rights to use it by the grace of their Emperor. Here, Tuck argues that *iura* become quasi-public, moving out of realm of the private sphere into governmental regulation; and that *dominium* thus became a kind of *ius.* The notions of “objective” and “subjective” right intertwine, later making it possible to conceive the individual as having a property claim in their own self and their world.[[41]](#footnote-42)

I will spare the reader the rest of the historical details, which Tuck renders with alacrity, and instead skip to the crux of the matter. Tuck argues that, influenced by this tradition, Aquinas’s philosophy understood *iura* as objective moral rules, while *dominion* came to be that of man's natural *control* and *sovereignty* over the Earth. Here, Aquinas likened humanity’s relationship to the God-given universe, “nature,” to God’s own sovereignty over the World.[[42]](#footnote-43) Building on Villey’s argument, Tuck then argues that in the 14th century debate around apostolic poverty between Franciscans and Pope John XXII, the idea of right as both the liberty to *control* and *use property*, and right as a *property* of the subject, come into view. Against the Franciscans’ argument that property is customary, meaning that people may have *dominium* over objects when they use them, but they don’t have external property rights *to* them.Pope John XXII countered that God's *dominium* over earth was conceptually akin to man's *dominium* over his possessions, which was natural.[[43]](#footnote-44) Tuck cites the pope’s bull *Quia vir reprobus,* where the Pope argued that Adam, “in the state of innocence, before Eve was created, had by himself *dominium* over temporal things.”[[44]](#footnote-45) Here, the subject of rights is figured as he (gendered as it is) who can own property and in whom this capability inheres as a property, in turn, of his subject. William of Ockham would later attempt to defend the Franciscans, but ultimately conceded that “natural man” possesses active *iura* over the natural world. At this moment, Tuck argues, legal theorists being to think that men have a kind of control over their lives that could be described as *dominium* or property. In sum, subjective right “is understood to be linked with the subjectivity of early Franciscan philosophy, which posits a radical disjunction between the individual subject and the world of things,”[[45]](#footnote-46) Brett explains.

With this history, Tuck shows us how the grammar of subjective rights was forged in reference to a Christian worldview in which man is master over all of creation. A hierarchical syntax exists between the subjective rights-bearer and the object of property, conceptually akin to nature or “the Earth.” My point is not that there is an essential essence to rights language. Rights are not artifacts which *must* belong to individuals, or which can only be claimed in the name of human subjects. Furthermore, not every right is a right of property. My point is rather that there are a constellation of meanings regarding hierarchical juxtapositions between subject and object, and property and nature, which lend force to rights assertions. With Wittgenstein, I do not mean to claim that these are the “rules” of the language-game of claiming or defining rights, but rather that the grammar of our language of rights relies on and reinaugurates a semantic universe in which these relationships make sense.

Intimately related to the paradigmatic relationship between the human subject and their right to property, or “nature,” the rights discourse also is individualistic in character. Because rights are *subjective,* they inhere or are attributed to discrete subjects. These individuals, in turn, possess, claim or bear these rights. Just as objective right refers to an overall state of the world – it might be “objectively right” that we respect “subjective rights,” for example – subjective right refers to the faculties, liberties or well-being of an individual. Various authors have dissected and problematized the individualism of the rights discourse, exposing how the construct of the autonomous, universal “Man” lies at the heart of the conception of the “person” to which rights are often applied.[[46]](#footnote-47) To be clear, I do not deny the existence of “group” or “group-differentiated” rights; Jeremy Bentham argued in 1789 that the general public and distinct social classes might have rights, and contemporary scholarship has analyzed the rights of particular groups to particular treatment, collective self-determination and cultural heritage preservation, for example. I follow Bentham, Will Kymlicka and others in granting that groups can certainly claim rights. However, I also follow them in maintaining that there is no ontological holism therefore implied; and that the fundamental units of moral concern, within the rights discourse, always lead back to identifiable individuals who benefit from those group rights.[[47]](#footnote-48) The grammar of the rights discourse operates on the distinction between humans and nature, and on an individualistic premise. What can happen when rights are publicly claimed for the “ungrounded ground,” the “constitutive outside” of the property-owning subject?

*Section 3: Performative Acts of Democratic Persuasion that Defamiliarize Rights*

When words projected into new contexts in the public sphere, as when nature’s rights claims are addressed to government, fellow citizens or even the international community, what kind of political work might be accomplished? I maintain that *nature’s rights have the potential to transform our “forms of life” through unsettling the publicly-held grammatical grounds on which “nature” and “rights” rest*. On my account, claims that nature should have rights are thus *performative acts of democratic persuasion,* in which the speaker *does* something, both *in* and *by* making a claim – maintaining the political space of seeing, thinking and acting in common.[[48]](#footnote-49)

Through claiming nature’s rights, political actors assert what they believe are urgent priorities, describe the world from a new perspective, identify problems and solutions, and attempt to recruit people to their cause. In so doing, speakers can accomplish a variety of illocutionary actions (e.g., criticizing government decisions, explaining their perspective on environmental issues) and provoke various perlocutionary effects (e.g., evoking feelings of agreement or anger, producing group cohesiveness, inciting change) through claiming these rights.[[49]](#footnote-50) This practice is democratic because the reality – and the significance – of components of the world in common only appear to us as we see through others’ eyes. Wittgenstein muses, “The aspects of things that are most important for us are hidden because of their simplicity and familiarity. (One is unable to notice something – because it is always before one’s eyes.)”[[50]](#footnote-51) But what is “always before one’s eyes” may be rendered new and strange if we are able to see it through the eyes of another. This is especially the case if that other engages in “imaginative seeing,”[[51]](#footnote-52) as Linda Zerilli has argued. Claims that nature has rights should be understood as exercises in *imaginative seeing,* which “dawn” new aspects of nature, and ourselves, for us.[[52]](#footnote-53)

As such, these claims allow actors to partake in the democratic practice of constituting the public sphere. They contribute to the creation and maintenance of a “political space in which differences in valuation can be publicly expressed and judged.”[[53]](#footnote-54) Indeed, we offer new views of familiar things not necessarily in order to adjudicate the “true” nature of those things, but to contribute to a plural space of perspective-giving and -sharing that constitutes what Hannah Arendt calls “our sense of the common world.”[[54]](#footnote-55) Asserting such perspectives helps to build our common life, maintaining our conditions of acting anew in the world together. From this perspective, extending familiar concepts into new contexts, as do nature’s rights advocates, is an activity that contributes to the collective effort of elucidating and acting upon our interests, desires, and purposes. It participates in the weaving of a common fabric of meaning-in-the-world which is always contested and yet foundational to our capacity to think and act politically.

Nature’s rights can help political actors to make visible our existing conventions of rights-claiming and ideas of the natural, enabling the creation of new horizons of meaning and political possibility through delivering these ideas to the arena of public debate. People must ask not only whether “nature” can have “rights,” but also question what rights are *for* and why nature rarely has them. This may include conceptual parsing and/or contestation over *what nature is to us, whose nature is important, and which political subjects are validly seen as representing nature.* These claims thus open into view our entire grammar of rights – what they are, who has them, how we use them – and, not least, their limitations for protecting the things that rights are supposed to protect. For example, in redescribing nature as an entity that has rights, advocates not only scramble our political grammar but also make space for a consideration of the contingent foundations of that grammar. Insofar as the possession of moral rights is constitutive of our conception of the human, and nature is that which is not human and does not have rights, a nature with rights is an impermissible figure. It is a figure that cannot be, that does not make sense. Yet this figure that does not make sense brings to light precisely the sense through which we saw things before, or as Zerilli states, in reference to Wittgenstein’s duck-rabbit, “That I *now* see the picture as a rabbit reveals that I *had* been seeing it as a duck all along – according to a concept.”[[55]](#footnote-56) Nature’s rights do the important work of bringing into focus our cultural view of nature as constitutively rights-less. “Nature is that which doesn’t have any rights or deserve any rights.” If this is not true, then what is the human? And where is the boundary between the two? What might this mean for us?

Consider for example the following quotes, from the campaign for nature’s rights in Ecuador and from. In the first, economist and environmental activist Alberto Acosta writes,

"*The Rights of Nature, which constitute ‘a catastrophe for the French-Roman legal tradition,’ were and still are seen as ‘conceptual gibberish’… To free Nature from the condition of a subject without rights or a simple object of property, a political effort is necessary that recognizes that Nature is a subject of rights. This aspect is fundamental if we accept that, as Arnes Naess, the Norwegian philosopher who was the father of deep ecology, affirmed, “all living beings have the same value”. This liberation struggle is, above all, a political effort that begins by recognizing that the capitalist system destroys its own biophysical conditions of existence.*”[[56]](#footnote-57)

Here, Acosta flips the script on modernity’s ontological hierarchy. He asserts that Nature simply “is” a subject of rights, implying that our extant grammar which disallows this figure is conceptual gibberish – not nature’s rights. He also frames nature’s rights as part and parcel of a “liberation struggle” against the capitalist world system, implying that recognizing nature’s rights is a way to ensure the continued conditions of biological existence on this planet.

With his assertion that nature simply has rights, Acosta takes up (intentionally or not) the argumentative structure of natural law doctrine, which holds that the standards of human morality are entailed by the nature of the world and the nature of human beings.[[57]](#footnote-58) Natural rights, or the rights of humans to particular spheres of action or treatment, constitute a central facet of this moral code.[[58]](#footnote-59) In both canonical works of natural rights theory and 21st century “naturalistic” or “orthodox” conceptions of human rights, nature is taken to be the grounds of human rights and human rights claim-making.[[59]](#footnote-60) We have rights by virtue of *what we are, naturally, as* *humans –* however figure is rendered. Acosta mirrors this logic; his claim both fits into and transforms the tradition of claim-making based on natural law. For Acosta, *nature is both the grounds of intrinsic value for itself and the subject of the moral rights it produces.* Objective right, a deontologically desirable state in which things are “right” in the world, cannot come into existence if nature’s subjective rights are disrespected. In other words, “natural right” cannot be right if nature does not have subjective rights. This is a profound defamiliarization of the grammar of rights.

Second, on a recent webinar about *manoomin* and nature’s rights, Winona LaDuke (Anishinaabe), an Indigenous feminist scholar, activist and two-time Green Party presidential candidate, commented,

*“It is essential that we transform legal systems from their foundational flaws of being based on the rights of discovery, the doctrine of discovery, the rights of Christians, and the view that Man has rights over Nature. And now in 2022 and beyond, we are seeing the beginning of a reversal of the process of Indigenous peoples leading in many cases in North America the challenges of the rights of corporations over the rights of rivers, Mother Earth, salmon, wild rice, but we are also seeing these cases internationally.”*

LaDuke’s statement indicates how rights of nature are used to expose the limits of justice of our current system. The Ojibwe are using the rights of nature to expose the “foundational flaw” of the U.S. legal system, which is that it is based on the “doctrine of discovery” and the “rights of Christians.” It is a system which privileges the rights of some people over others, and the profit of Enbridge over the water and air of the Great Lakes. It is also a legal system which permits the destruction of particular natures over others, and the construction of Moore’s “cheap natures” in territories inhabited or stewarded by Indigenous people. In this sense, nature’s rights allows political actors to shed light on the constitutive exclusions in rights-granting and rights-bearing that occur in the world. The “commonsense” and the “critical theory” scholars are right: nature is not definable, it is politically constructed, and it is an unfit subject for rights. In my view, this is precisely what makes nature’s rights valuable: it exposes the injustices of our current system by agitating for recognition and recourse within its logics. Yet even as it takes up the language of rights and subjects, nature and humans, these concepts quickly begin to fall apart. The question that remains is, what can be imagined in its place? What does this opening allow us to see?

# Section 4: Re-thinking Rights from the Rights of Nature

My account of nature’s rights, and the forms of political imagination they make possible, intervenes in two distinct literatures: the analytic literature about what rights are and who can bear them, and the political theory literature about the benefits and drawbacks of rights for emancipatory politics. I mentioned before the “critique from nonsense” and the “self-defeating critique”: the first, stemming from the first literature, holds that nature’s rights are bankrupt politically because the extension of rights to nature makes no conceptual sense, while the second maintains that nature’s rights are paradoxically self-defeating, at best toothlessly papering over injustice with abstract formalism and at worst, entrenching structures of oppression. I agree with the critique from nonsense that nature’s rights *is* a strange idea: it is not straightforward sense. The critique from nonsense anticipates conflicts around the definition of nature’s boundaries and disagreement over who represents nature. These worries elucidate why nature’s rights might strike us as strange. They also sometimes accurately predict challenges that nature’s rights cases encounter. However, I disagree that it constitutes nonsense. As I have shown, nature’s rights play at the boundary between sense and nonsense. Given this, I am more optimistic than the self-defeating critique about nature’s rights’ potential to serve emancipatory politics.

# At first glance, the idea of “nature’s rights” may seem nonsensical. We are accustomed to claims that humans, future generations and animals should have rights, but the extension of rights to nature may strike many as strange. In her 1995 essay “Liberal Democracy and the Rights of Nature,” Robyn Eckersley argues (an argument I have also made) that one of the central premises of the idea of rights is that they protect “identifiable individuals.”[[60]](#footnote-61) Eckersley then contends that the project of extending rights to ecological wholes – forests, mountains, ecosystems and natural features – encounters “conceptual strain” because these wholes are not distinctly separate and self-possessed units.[[61]](#footnote-62) In their recent law review article, Mauricio Guim and Michael Livermore concur, asserting that the indefinite character of mountains, forests, and all of “Nature” prevents policymakers from defining which organic and inorganic life/material to include as rights-bearing.[[62]](#footnote-63) Eckersley concurs: “Indeed, identifying what is an entity for the purposes of assigning such rights is likely to be a difficult, and ultimately, arbitrary exercise.”[[63]](#footnote-64) The insolubility of defining “nature’s” boundaries hinders the lexical ordering of rights claims, preventing policymakers from deciding whose rights to honor in the inevitable case when nature’s and human rights conflict.[[64]](#footnote-65) Are humans part of nature? If so (as literature written by nature’s rights activists often suggests[[65]](#footnote-66)), it is hard to see what entity would be subject of these rights.[[66]](#footnote-67) Guim and Livermore conclude, “To the extent that nature’s rights are incoherent or ineffective, they may dissipate energy and create skepticism about future environmental advocacy efforts.”[[67]](#footnote-68) The first part of the critique from nonsense thus hypothesizes that nature’s rights’ nonsensical quality will exasperate policymakers, preventing them from weighing competing priorities and dissuading the public from supporting environmental advocacy.

In addition, critics have questioned the relationship between the non-individual character of nature and the association of rights with individuals’ interests.[[68]](#footnote-69) In his essay “The Rights of Animals and Unborn Generations,” Joel Feinberg contends that an entity must at least “have a sake” in being treated in a particular way to bear moral rights based on a concern for its interests. In his words, it must have the necessary conative equipment, such as sentience, consciousness or a central nervous system, for its treatment to *matter to it.*[[69]](#footnote-70) Mark Sagoff pursues this worry, doubting that non-human nature could have “interests” of the kind that might ground rights to environmental protection. Even if it did, he wonders how we would determine what they are. “Environmentalists always assume that the interests [of nature] are opposed to development. How do they know this? Why wouldn’t Mineral King [a valley in the Sequoia National Forest] want to host a ski resort, after doing nothing for a billion years?”[[70]](#footnote-71) he quips. Insofar as nature’s rights are rooted in the idea that nature is *owed something* in virtue of its *valuable interests*, and to the extent that nature is an unstable subject that can only be spoken for, claiming that nature has rights would seem either groundless or audacious.[[71]](#footnote-72)

Politically, then, Eckersley, Guim and Livermore worry that nature’s lack of voice creates a problem of authentic representation. The absence of a set of criteria on which to base our moral and political judgments of the “true” interests of nature produces anxiety: first of all, what is this nature and where are its boundaries? Unless we have such certainty, which efforts at political representation mirror nature’s interests accurately?[[72]](#footnote-73) And how would we know? The problem is not only that it is unclear what nature is and *whether* nature has interests. It is also that the question of *who* should determine them and “speak for nature” is unanswerable within the nature’s rights framework. Thus, this prong of the critique from nonsense envisions scenarios in which many actors claim to speak for nature and no adjudicating criterion can be applied to settle conflicting claims, because there simply are no determinate “nature interests” and therefore, no claims to better or worse representation.

Isolated from these concerns, the self-defeating critique consists of two prominent arguments: nature’s rights re-entrench the anthropocentric bias they purport to combat, reinforcing a harmful human/nature dualism, and sediment a problematic mode of liberal personhood. First, critics such as Anna Grear worry that nature’s rights re-entrenches anthropocentric biases. On the one hand, the action of extending one’s concern to a previously excluded group preserves nature as something that needs to be “brought into” the world of ethical recognition. It entrenches the role of humans as the ultimate arbiters of value, who choose when and how to consider the “sub-human” realm.[[73]](#footnote-74) On the other hand, because nature’s rights make nature into a legal subject – either through conceiving of all of nature as an abstract subject, as in Ecuador’s constitution, or by making distinct “natures” into legal persons – Grear worries that the concept privileges the all-too-human category of the “subject.” Borrowing a term from Ben Mylius’s categorization of types of anthropocentrism, we might understand this critique as pointing out the *descriptive* anthropocentrism of “nature’s rights:” a descriptively anthropocentric paradigm is one that “begins from, revolves around, focuses on, takes as its reference point, is centered around, or is ordered according to the species *Homo sapiens* or the category of ‘the human.’”[[74]](#footnote-75) This critique charges nature’s rights with taking the human as the paradigmatic mode of subjective being, attempting to jamb nature into this frame. In other words, the discourse of rights forces us to imagine the non-human as a self-possessed individual that “claims” what is “due to it.” As a result, Great worries, “We risk only having respect for things *insofar* as they resemble human experience and characteristics.”[[75]](#footnote-76) She demurs that the language and conceptual framing of “rights,” which stem from human-centered law and morality, may obscure the otherness of the non-human.

In tandem with entrenching anthropocentric perspectives, critics also worry that nature’s rights perpetuate a problematic nature/culture dualism. For example, drawing on the results of a discourse analysis of U.S. nature’s rights ordinances, Sara Rodrigues asserts that these laws “assume there exists in nature an ecological equilibrium that is continually unfettered unless and until it is disturbed by destructive, human activities.”[[76]](#footnote-77) These publications equate nature with “harmony,” “balance” and “community” in opposition to the discord, imbalance and destruction that characterizes human society.”[[77]](#footnote-78) This romantic view of nature is not “natural,” but rather historically situated and socially constructed. Rodrigues fears that nature’s rights “naturalize” this understanding of nature through making it into a political subject that is asserted as always having been there, unrecognized;[[78]](#footnote-79) when, in fact, it only comes into being *as* a political subject in the moment that it is asserted as such in language and *made visible.[[79]](#footnote-80)*

Ariel Rawson and Becky Mansfield extend Rodrigues’ concern, contending that nature’s rights recapitulate the nature/human dualism through resuscitating another binary, that of West/non-West. They detail how environmental advocates often describe nature’s rights as the codification of “indigenous” knowledge into Western law. Indeed, this discursive practice was prevalent in the campaigns to grant nature rights in Bolivia and Ecuador,[[80]](#footnote-81) and continues to be a prominent feature of much “Wild Law” scholarship that fuses eco-theological, holistic thinking about nature with jurisprudence.[[81]](#footnote-82) It is also a framing device often used by organizations that participate in the Global Alliance for the Rights of Nature’s advocacy activities.[[82]](#footnote-83) Rawson and Mansfield argue that not only are nature’s rights a product of the West, “nature’s rights enacts a contradictory logic, where in the name of overcoming western human-nature dualism, and its concomitant anthropocentrism, *it turns to western notions of rights, personhood and holism as the solution.* In so doing, nature becomes something identifiably ‘natural’ by becoming more like colonial conceptions of the human, whose existence can only be legitimized by legal personhood,” they contend. [[83]](#footnote-84) The benevolent inclusion of “nature” in the sphere of liberal recognition via rights problematically marshals the institution of legal personhood, which has been used to demarcate the racialized and colonial boundaries of human subjects. In their words: “Seen this way, extending personhood to nature as an alternative to the commodification of life and human-nature dualism attaches properties of whiteness to nature and naturalizes being human as a property of whiteness.”[[84]](#footnote-85)

The self-defeating critique does pick out some of the risks of claiming rights for nature. Viewed from one angle, nature’s rights may reinforce or “naturalize” an entity which is, in fact, constructed. Likewise, I agree with Rodrigues, Rawson and Mansfield that political actors can and do use nature’s rights to advance a dualistic picture of nature/humans, and their claims may be embedded in discourses that reposition the “West/rest” conceptual division and a colonial, racialized mode of liberal personhood. These are real risks in the use of “nature’s rights,” and they reflect but also magnify the risk involved in all rights claims: the problem of speaking politically, which is to say not only for oneself but for others.

However, insofar as nature’s rights retains the word “nature,” these claims cannot always sustain the kind of romantic/Western/white characteristics these critics would impute on it. As I illustrated earlier, the practice of claiming and granting nature’s rights *also* has the potential to unearth the instability of nature as a subject.

To illustrate this point, let us examine the case of a lawsuit filed in 2017 on behalf of the Colorado river. The lawsuit accuses the state of Colorado of harming the river via pollution, deforestation, fracking, and permitting two projects the plaintiffs had tried to halt: a Bureau of Land Management initiative to clearcut old-growth forests, opening rangeland for livestock grazing and mining, and a plan to pump groundwater out of the river to Las Vegas.[[85]](#footnote-86) These plans violate the river’s rights, holds the brief. In defining the river, Deep Green Resistance, the environmental group that sued, wrote:

*“Human language lacks the complexity to adequately describe the Colorado River Ecosystem. Any attempt to define it or account for the sheer amount of life made possible by it will necessarily be arbitrary. Nevertheless, we are asked to bring an accurate description of the Colorado River from the vastness of the real, physical world into the small confines of a courtroom. We shall start with this: The Colorado River Ecosystem is best understood as a complex collection of relationships...”*[[86]](#footnote-87)

These activists describe the river as an infinite ensemble of relationships between organic and inorganic matter – the energy of the sun and the movement of the winds. They proceed as if the Colorado River can be represented, if not fully comprehended. For its part, the state’s motion to dismiss refers to the river as a known unit, a natural resource already regulated by interstate and water law.[[87]](#footnote-88) Here, we can see the unsettling of the idea of the “river” in process: the plaintiffs argue that the river is a complex web of relationships, that it has been impacted by deforestation on its banks and fracking on its shores, and that “it” includes, in some sense, their own livelihoods. Rather than re-entrenching an anthropocentric view of nature, or a dualistic formulation, could it be possible that their claim made visible the political construction of the subject that is the Colorado River?

An additional case study, which the reader will remember from the introduction, further illuminates this question. In August 2021, the White Earth Band of Chippewa Indians sued the state of Minnesota for violating the rights of *manoomin*, or wild rice. The fight for *manoomin’s* rights was a strategy deployed by a coalition of Ojibwe activists to prevent the state of Minnesota for jeopardizing a prominent economic means of subsistence and an important cultural tradition that anchors communal life of the Anishinaabe people. In summoning *manoomin* out of Minnesota’s quiet lake beds and into the noisy sphere of political subjects, the Ojibwe also asserted their standing as those who *speak for manoomin,* who claim a part in the political order. In representing nature, they also re-presented themselves and the interests of their sovereign nation. It would seem that the notion of “nature” Rawson and Mansfield are concerned with does not accurately plot on to the dynamics of this case; to the extent that *manoomin* was positioned as an ancestor of the Ojibwe people and a part of their cultural heritage, it is difficult to see how it assumed the binary formulations to which critics imagine nature will fall prey.

In this sense, political actors can sometimes use nature’s rights to shed light on the constitutive exclusions in rights-granting and rights-bearing that occur in the world. The critique from nonsense and scholars who worry about conceptual re-entrenchments are correct: nature is not definable, it is politically constructed, and it is an unfit subject for rights. In my view, this is precisely what makes nature’s rights valuable: it exposes the injustices of our current system by agitating for recognition and recourse within its logics. Indeed, it is one of the paradoxes of rights that we assert them in order to demand action from others and “end” the conversation, but in fact, ongoing dialogue and political activity is the grounds for the recognition and enforcement said rights.[[88]](#footnote-89)

However, if parts of the environment, often treated as property, became rights-bearing subjects, would the foundational assumptions of the binaries that Grear, Rodrigues, and Rawson and Mansfield identify begin to deteriorate? As Annabel Brett has argued, subjective rights are often thought of as the *property* of a sovereign individual human, and property ownershiphas been the paradigmatic right.[[89]](#footnote-90) Would this statement make sense in a world with nature’s rights? Once again, we need to “look and see.”

# Conclusion

This essay has argued thatit is too simplistic to assert that nature’s rights are nonsense and therefore politically impotent, or that nature’s rights re-entrench anthropocentrism, harmful dualisms or the worst aspects of liberal personhood. If we want to understand the emancipatory potential of rights claims today, we must attend to the forms of political claim-making this concept makes possible. Using insights from ordinary language philosophy, I maintained that claiming nature’s rights is an exercise in the projection of words into new contexts. I also posited that in asserting our points of view in the public sphere, we contribute to the building of common grounds of intelligibility. Of course, political actors’ performative utterances of nature’s rights are liable to fail; the assertion of nature’s rights is a social practice, which is “rule-bound” insofar as claims of nature’s rights will only have “uptake” or be “felicitous,” to speak with J.L. Austin, if they are accepted by a competent community of language users. At the same time, both language and our forms of life are radically open. We can change social conventions in and through the dialectical relationship between our speech acts and norms. Although our claims reference and reiterate social norms, they also have forces and effects that exceed them.

Claiming rights – and claiming nature’s rights – is not always emancipatory. But it can be emancipatory in some cases. We must consider how the meaning of nature’s rights is constantly mutable, as it is produced in specific historical contexts and determined through the political practice of claiming rights. Due to the way they push the limits of the rights discourse and problematize our idea of nature, nature’s rights help us to see what is already in plain view: that nature does not exist “out there,” but is summoned into being through speech; that who decides what nature is and which intermediary gets to “speak” or “silence” results from ongoing political struggle; and that extant grammars of liberal claim-making on behalf of individuals and the nature/human ontology it supposes cannot quite accommodate, yet are forced to act as vehicles for, the kind of political future that sees beyond them.

Thus, perhaps we must re-evaluate the notion that rights claiming in the 21st century bolsters problematic dualisms, modes of personhood and ways of thinking. At the margins of the rights discourse, political actors are using these claims to unseat the economy of rights giving and granting that undergirds the human/nature binary, the West vs. rest conceit, and the continued rendering of certain peoples and lands as sacrificeable and exploitable. Instead of entrapping us in its clutches, what if the rights discourse were the power to be seized?

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2. Barbara Barton, *Manoomin: The Story of Wild Rice in Michigan*, 123; Winona LaDuke, *Recovering the Sacred: The Power of Naming and Claiming*, 167–70. [↑](#footnote-ref-3)
3. Manoomin vs. Minnesota Department of Natural Resources at 2. [↑](#footnote-ref-4)
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5. Manoomin vs. Minnesota Department of Natural Resources at 3. [↑](#footnote-ref-6)
6. See Alex Putzer et al., “Putting the Rights of Nature on the Map. A Quantitative Analysis of Rights of Nature Initiatives across the World” for a quantitative overview of nature’s rights cases over time. [↑](#footnote-ref-7)
7. Craig M. Kauffman and Pamela L. Martin, “Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand,” 53–55. [↑](#footnote-ref-8)
8. Asamblea Nacionál de la República de Ecuador, Constitution of the Republic of Ecuador. [↑](#footnote-ref-9)
9. The National Environment Act; The Gaia Foundation, “Uganda Recognises Rights of Nature, Customary Laws, Sacred Natural Sites.” [↑](#footnote-ref-10)
10. David Doonan, “Rights of Nature and Antarctica Rights.” [↑](#footnote-ref-11)
11. Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*, 5. [↑](#footnote-ref-12)
12. Karen Zivi, *Making Rights Claims: A Practice of Democratic Citizenship*, 16. [↑](#footnote-ref-13)
13. Sagoff, “On Preserving the Natural Environment”; Eckersley, “Liberal Democracy and the Rights of Nature”; Mauricio Guim and Michael A. Livermore, “Where Nature’s Rights Go Wrong.” [↑](#footnote-ref-14)
14. Derrick Bell, “Racial Realism,” 373; Kimberlé Crenshaw et al., *Critical Race Theory: The Key Writings That Formed the Movement*, e.g. xv: "Despite their disagreements about affirmative action, liberals and conservatives who embrace dominant civil rights discourse treat the category of merit itself as neutral and unconnected to systems of racial privilege. Rather than engaging in a broad-scale inquiry into why jobs, wealth, education, and power are distributed as they are, mainstream civil rights discourse suggests that once the irrational biases of race-consciousness are eradicated, everyone will be treated fairly, as equal competitors in a regime of equal opportunity"; Wendy Brown, *States of Injury: Power and Freedom in Late Modernity*, 96–134, esp. 99-118–21; Samuel Moyn, *The Last Utopia: Human Rights in History*, 223. [↑](#footnote-ref-15)
15. Ludwig Wittgenstein, *Philosophical Investigations*, §1-5. [↑](#footnote-ref-16)
16. Ludwig Wittgenstein, §66-71. [↑](#footnote-ref-17)
17. Ludwig Wittgenstein, §164. [↑](#footnote-ref-18)
18. Ludwig Wittgenstein, §66; also §93, 578. [↑](#footnote-ref-19)
19. However, we should not read Wittgenstein as establishing an equivalence between “the meaning of a word” and “the use of a word.” At points, he indicates that the meaning of a word might be its function in our language, or the goal of an interaction. This reveals not only that “meaning” itself is revisable, in the way that the meaning of all words are, but also that the activity of making, assigning and perceiving meaning is constantly in conversation with the purposes we pursue in living and using language. Ludwig Wittgenstein, §11, 8. [↑](#footnote-ref-20)
20. Stanley Cavell, *The Claim of Reason: Wittgenstein, Skepticism, Morality and Tragedy*, esp. 185-190. [↑](#footnote-ref-21)
21. Hanna Fenichel Pitkin, *Wittgenstein and Justice: On the Significance of Ludwig Wittgenstein for Social and Political Thought*, 132. [↑](#footnote-ref-22)
22. Ludwig Wittgenstein, *Philosophical Investigations*, §199-202; also see Steven G. Affeldt, “The Ground of Mutuality: Criteria, Judgment and Intelligibility in Stephen Mulhall and Stanley Cavell”; and Stephen Mulhall, “The Givenness of Grammar: A Reply to Steven Affeldt.” [↑](#footnote-ref-23)
23. Stephen Mulhall, “The Givenness of Grammar: A Reply to Steven Affeldt,” 33. [↑](#footnote-ref-24)
24. I use the word “rule” hesitatingly here, given Mulhall’s argument that, ‘The fact that the concept [of a rule] is used in any given account of grammar and criteria does not settle the issue of its accuracy either way; what is critical is rather how it is employed -- what understanding it embodies of such matters as the internal relations between rules and their applications and the independence of norms from that for which they are normative.’ I hope I have used rule in an illuminating sense. 42. [↑](#footnote-ref-25)
25. Linda M. G. Zerilli, “The Turn to Affect and the Problem of Judgment,” 276; Linda M. G. Zerilli, *A Democratic Theory of Judgment*, 23. [↑](#footnote-ref-26)
26. Stanley Cavell, *The Claim of Reason: Wittgenstein, Skepticism, Morality and Tragedy*, 182–83. [↑](#footnote-ref-27)
27. Stone, “Should Trees Have Standing?”; Sierra Club v. Morton, 405 U.S. [↑](#footnote-ref-28)
28. William M. Blair, “Supreme Court Sets Aside Suit of Sierra Club to Block Resort”; Sierra Club v. Morton, 405 U.S. [↑](#footnote-ref-29)
29. Alex Putzer et al., “Putting the Rights of Nature on the Map. A Quantitative Analysis of Rights of Nature Initiatives across the World,” 2. [↑](#footnote-ref-30)
30. Santa Monica, Cal., Mun. Code ch. 4.75 (2013) (repealed and reinstated as chapter 12 in 2019); Lafayette, Co., Code of Ordinances, Ordinance No. 2 §1, “Climate Bill of Rights,” (Mar. 21 2017); Orange County, Fl., County Charter §704.1 “Right to Clean Water, Standing and Enforcement,” (Nov. 3 2020); Mountain Lake Park, Md., Ordinance No. 2011-01 (Apr. 15, 2011) (regulating the extraction of natural gas within the town of Mountain Lake Park); Mora County, N.M., Ordinance 2013-01 (Apr. 29, 2013) (protecting water sources from oil and gas extraction); Newfield, N.J., Town of Newfield Water Ordinance § 5.1 (Feb. 10, 2009) (proposing an ordinance to grant natural communities and ecosystems inalienable and fundamental rights to exist and flourish); Wales, N.Y., Local Law No. 3-2011, § 4(b) (2011); Broadview Heights, Ohio, Ordinance No. 115-12, § 1 (Sept. 4, 2012) (“Natural communities and ecosystems . . . possess inalienable and fundamental rights to exist and flourish within The City of Broadview Heights. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.”); Yellow Springs, Ohio, Ordinance 2012-17, ch. 878, § 878.04 (2012) (“Ecosystems and natural communities possess the right to exist and flourish within the Village.”); Toledo, Ohio, Mun. Code ch. XVII, § 254(a) (2019) (establishing the rights of Lake Erie Ecosystem “to exist, flourish, and naturally evolve”), invalidated by Drewes Farms P’ship v. City of Toledo, 441 F. Supp. 3d 551 (N.D. Ohio 2020); Pittsburgh, Pa., Code of Ordinances art. 1 §104 (2011) (banning hydraulic fracturing); and Halifax, Va., Code art. VII, §30-156.7 (Feb. 7, 2008) (granting inalienable and fundamental rights to nature to exist and flourish). [↑](#footnote-ref-31)
31. Ho-Chunk Nation Constitution, Resolution 09-19-15 art. 10 §2 “Bill of Rights – Rights of Nature”; Province de Québec, Municipalité Régionale de Comté de Minganie, Résolution n. 025-21 “Reconnaisance de personnalité juridique et des droits de la rivière Magpie – Mutehekau Shipu,” Feb. 17 2021; Civil Complaint for Declaratory Judgment at 1–2, *Sauk-Suiattle Indian Tribe* v. *City of Seattle* (Sauk-Suiattle Tribal Court 2022) (No. SAU-CIV-01/22-001). [↑](#footnote-ref-32)
32. Community Environmental Legal Defense Fund, “Rights of Nature Timeline.” [↑](#footnote-ref-33)
33. Peter Dinzelbacher, “Animal Trials: A Multidisciplinary Approach”; Hobbes, *Leviathan: With Selected Variants from the Latin Edition of 1688*, Ch. XVI, 101-105; Kurki and Pietrzykowski, *Legal Personhood: Animals, Artificial Intelligence and the Unborn*. [↑](#footnote-ref-34)
34. Winona LaDuke, *Recovering the Sacred: The Power of Naming and Claiming*; Philippe Descola, *Beyond Nature and Culture*; Kelly Alley, “River Goddesses, Personhood and Rights of Nature: Implications for Spiritual Ecology”; Salmond, “Tears of Rangi: Water, Power, and People in New Zealand” add vivieros de castro, marisol de la cadena, Coulthard? [↑](#footnote-ref-35)
35. Mihnea Tănăsescu, “Rights of Nature, Legal Personality, and Indigenous Philosophies” The abstract reads, “This article investigates the relationship between legal personality for nature and Indigenous philosophies by comparing two cases: the Ecuadorian Constitution of 2008 and the 2014 Te Urewera Act of Aotearoa, New Zealand. Through these case studies the article considers the nature of Indigenous relations with the concept of rights of nature, arguing that this relation is primarily strategic, not genealogical. The article engages with the concept of legal personality and shows that it is not a direct translation of Indigenous conceptions, but rather a potential straitjacket for Indigenous emancipatory politics. The radical character of Indigenous ontologies is not fully reflected in the concept of legal personality...”; Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction*, 6:35–46. [↑](#footnote-ref-36)
36. Michel Villey, “La Genèse Du Droit Subjectif Chez Guillaume d’Occam”; Tuck, *Natural Rights Theories: Their Origin and Development*; Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*; Tierney, *The Idea of Natural Rights, Natural Law and Church Law, 1150-1625*. [↑](#footnote-ref-37)
37. Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*, 3. [↑](#footnote-ref-38)
38. Brett, 3. [↑](#footnote-ref-39)
39. Michel Villey, “La Genèse Du Droit Subjectif Chez Guillaume d’Occam,” 99–102; as quoted in Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*, 4. [↑](#footnote-ref-40)
40. Paolo Grossi, “Usus Facti. La Nozione Di Proprietà Nell’inaugurazione Dell’età Nuova”; Paolo Grossi, “La Proprietà Nel Sistema Privatistico Della Seconda Scolastica”; Tuck, *Natural Rights Theories: Their Origin and Development*, Chapters 1 and 2. [↑](#footnote-ref-41)
41. Tuck, *Natural Rights Theories: Their Origin and Development*, 10–16. [↑](#footnote-ref-42)
42. Tuck, 16–19. [↑](#footnote-ref-43)
43. Tuck, 19–22. [↑](#footnote-ref-44)
44. “Adam in statu innocentiae, antequam Eva formaretur, solus habuerit dominium rerum temporalium.” Tuck, 22. [↑](#footnote-ref-45)
45. Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*, 5–6. [↑](#footnote-ref-46)
46. NEED TO WORK ON THIS CITATION. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, esp. chs 7 and 8; Golder, *Foucault and the Politics of Rights*; Wenar, “Rights”; Campbell, *Rights*; Freeden, “The Morphological Analysis of Ideology.” [↑](#footnote-ref-47)
47. Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, esp. Chapter 6, "Justice and Minority Rights," and 113-115; Eric J. Mitnick, *Rights, Groups and Self-Invention: Group-Differentiated Rights in Liberal Theory*, 5–9; 27–40. [↑](#footnote-ref-48)
48. Karen Zivi, *Making Rights Claims: A Practice of Democratic Citizenship*, 16. [↑](#footnote-ref-49)
49. J.L. Austin, *How To Do Things With Words*, 109. [↑](#footnote-ref-50)
50. Ludwig Wittgenstein, *Philosophical Investigations*, 56. [↑](#footnote-ref-51)
51. Linda M. G. Zerilli, *Feminism and the Abyss of Freedom*, 144. [↑](#footnote-ref-52)
52. Linda M. G. Zerilli, *A Democratic Theory of Judgment*, 253; Ludwig Wittgenstein, *Philosophical Investigations*, 206–7, 218. [↑](#footnote-ref-53)
53. Linda M. G. Zerilli, *A Democratic Theory of Judgment*, 28. [↑](#footnote-ref-54)
54. Arendt, “Introduction into Politics,” 129; as cited in Linda M. G. Zerilli, *A Democratic Theory of Judgment*. [↑](#footnote-ref-55)
55. Linda M. G. Zerilli, *A Democratic Theory of Judgment*, 253. [↑](#footnote-ref-56)
56. “*Los Derechos de la Naturaleza, que constituyen “una hecatombe para la tradición li jurídica francesa-romanista”, fueron y son vistos aún como un “galimatías conceptual”... Para la abolición de la esclavitud se requería reconocer el derecho de tener derechos y se requería también un esfuerzo político para cambiar aquellas leyes que negaban esos derechos. Para liberar a la Naturaleza de la condición de sujeto sin derechos o de simple objeto de propiedad, es necesario un esfuerzo político que reconozca que la Naturaleza es sujeto de derechos. Este aspecto es fundamental si aceptamos que, como afirmaba Arnes Naess, el filósofo noruego padre de la ecología profunda, “todos los seres vivos tienen el mismo valor”. Esta lucha de liberación es, ante todo, un esfuerzo político que empieza por reconocer que el sistema capitalista destruye sus propias condiciones biofísicas de existencia." Alberto Acosta, “Derechos de La Naturaleza y Buen Vivir: Ecos de La Constitución de Motecristi,*” 23. [↑](#footnote-ref-57)
57. Margaret MacDonald, “Natural Rights,” 23–25, 28–30; Edmundson, *An Introduction to Rights*, 16–17; for seminal histories of natural rights theory, see Tuck, *Natural Rights Theories: Their Origin and Development*; Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*; and Tierney, *The Idea of Natural Rights, Natural Law and Church Law, 1150-1625*. [↑](#footnote-ref-58)
58. Theorists conceive of the relations of entailment between natural law and natural rights in different ways. See the primary source essays reprinted in Laing and Wilcox, *The Natural Law Reader* for a selection of viewpoints. [↑](#footnote-ref-59)
59. These are often contrasted to “political” approaches to rights. Etinson, “Introduction.” Also note that these arguments typically attribute status-based moral rights to humans that are not necessarily persons, such as infants and mentally incapacitated people. [↑](#footnote-ref-60)
60. Eckersley, “Liberal Democracy and the Rights of Nature,” 184. [↑](#footnote-ref-61)
61. Eckersley, 182–84. She cites Tom Regan, *The Case for Animal Rights*. Eckersley notes that animal rights theorists do not encounter a similar conceptual challenge, as their theories preserve the individualism of the rights discourse. [↑](#footnote-ref-62)
62. Mauricio Guim and Michael A. Livermore, “Where Nature’s Rights Go Wrong,” 1367 A few examples of questions that might arise are: if we grant a forest rights, do the animals that live within it count as the forest, or should they have different “animal” rights? How can we determine which air and water in the forest have rights, given that air and water constantly move through space and time? Would the invasive species in the forest enjoy rights? [↑](#footnote-ref-63)
63. Eckersley, “Liberal Democracy and the Rights of Nature,” 190. [↑](#footnote-ref-64)
64. Mauricio Guim and Michael A. Livermore, “Where Nature’s Rights Go Wrong,” 1351, 1383. [↑](#footnote-ref-65)
65. Global Alliance for the Rights of Nature, “What Are the Rights of Nature?” [↑](#footnote-ref-66)
66. James L. Huffman raised similar concerns in his earlier article “Do Species and Nature Have Rights?,” 63. Eckersley also wonders whether the framework of group rights, such as the rights of protected classes of people, might provide a way to think about nature’s rights (190). For example, the Endangered Species Act recognizes the rights of species to survival, a “group right” insofar as these rights do not protect individual members from perishing but protect the longevity of the species (James L. Huffman, 57.). However, group rights conjure up an aggregate of individual units who are members of the group. Interpreting nature’s rights as group rights does not do away with the conceptual entailment between rights and individuals, it only delays the point at which we must ask about the individual, in this case, the individual units of the group (particular plants and animals? all plants and animals? certain natural features?). This problem, however, is unlikely to arise because there are no real nature’s rights cases which frame these rights as group rights. [↑](#footnote-ref-67)
67. Mauricio Guim and Michael A. Livermore, “Where Nature’s Rights Go Wrong,” 1366. [↑](#footnote-ref-68)
68. I mean the broad, Western cultural understanding of nature as non-human – as that which we own and that which is not a member of our political community – insofar as it is codified in the (environmental) law of nation-states. [↑](#footnote-ref-69)
69. Feinberg, “The Rights of Animals and Unborn Generations,” 50–55. Feinberg goes on to say that corporations can bear rights only insofar as their doing so promotes the interests of the individual people who make up the corporation; I will return to this point. [↑](#footnote-ref-70)
70. Sagoff, “On Preserving the Natural Environment,” 222. [↑](#footnote-ref-71)
71. Mihnea Tănăsescu, *Environment, Political Representation and the Challenge of Rights*, 35; Matthew Kramer, N.E. Simmonds, and Hillel Steiner, *A Debate Over Rights*; Campbell, *Rights*. [↑](#footnote-ref-72)
72. Mihnea Tănăsescu, *Environment, Political Representation and the Challenge of Rights*, 72. [↑](#footnote-ref-73)
73. Grear, “It’s Wrongheaded to Protect Nature with Human-Style Rights”; Rodrigues, “Localising ‘the Rights of Nature,’” 180. [↑](#footnote-ref-74)
74. Mylius and International Association for Environmental Philosophy, “Three Types of Anthropocentrism,” 168. [↑](#footnote-ref-75)
75. Grear, “It’s Wrongheaded to Protect Nature with Human-Style Rights.” [↑](#footnote-ref-76)
76. Rodrigues, “Localising ‘the Rights of Nature,’” 179. [↑](#footnote-ref-77)
77. See e.g. Mathis Wackernagel and William E. Rees, *Our Ecological Footprint: Reducing Human Impact on the Earth*. [↑](#footnote-ref-78)
78. Ariel Rawson and Becky Mansfield, “Producing Juridical Knowledge: ‘Rights of Nature’ or the Naturalization of Rights?,” 115. [↑](#footnote-ref-79)
79. Michael Saward, “The Representative Claim,” 313; but see Hanna Fenichel Pitkin, *The Concept of Representation*, especially Chapters 4-6. [↑](#footnote-ref-80)
80. Miriam Tola, “Between Pachamama and Mother Earth: Gender, Political Ontology and the Rights of Nature in Contemporary Bolivia”; Akchurin, “Constructing the Rights of Nature”; Espinosa, “Bringing about the Global Movement for the Rights of Nature”; Shannon Biggs, “When Rivers Hold Legal Rights.” [↑](#footnote-ref-81)
81. See e.g. Burdon, “The Jurisprudence of Thomas Berry”; Berry, *The Great Work*; Cullinan, *Wild Law*. [↑](#footnote-ref-82)
82. Global Alliance for the Rights of Nature, “What Are the Rights of Nature?” [↑](#footnote-ref-83)
83. Ariel Rawson and Becky Mansfield, “Producing Juridical Knowledge: ‘Rights of Nature’ or the Naturalization of Rights?,” 100. [↑](#footnote-ref-84)
84. Ariel Rawson and Becky Mansfield, 105. [↑](#footnote-ref-85)
85. Colorado River v. State of Colorado part Complaint, 12-15. Page 2 of the Motion to Dismiss. [↑](#footnote-ref-86)
86. Colorado River v. State of Colorado part Complaint, 12-15. Pages 3-4 of the Complaint for Declaratory Relief. [↑](#footnote-ref-87)
87. Colorado River v. State of Colorado part Complaint, 12-15. Page 15 of the Motion to Dismiss. [↑](#footnote-ref-88)
88. Karen Zivi, *Making Rights Claims: A Practice of Democratic Citizenship*, 67; Hannah Arendt, *The Origins of Totalitarianism*. [↑](#footnote-ref-89)
89. Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought*, 5. [↑](#footnote-ref-90)