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ARTICLE

The Illusion of Harmony: Power, Politics, and Distributive Implications of Rights of Nature

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Abstract
This article argues that the Rights of Nature (RoN) framework is compatible with various ideological outlooks and political options. As a result, those initiatives may translate into extremely diverse institutional implementations with contrasted outcomes in terms of power distribution. The institutional design of RoN has deep political implications for various social groups who hold conflicting claims over certain territories. Hence, rather than transforming human-nature relations, RoN primarily transform the power relations between human communities. I delve into three conceptual frameworks that could shape the recognition of RoN and explore their respective distributive implications: green colonialism, environmental justice, and the focus on Indigeneity. Through this critical engagement, I wish to warn against the illusion of a post-political ecology where an ecocentric legal declaration would deliver human-nature harmony without deep political battles, social tensions, and economic confrontations. RoN as an abstract notion does not offer a ready-made toolkit to dismantle the legal architecture of fossil capitalism; nor does it provide clear guidance on the distribution of costs and benefits of the green transition.

Keywords: Rights of Nature; Wilderness; Green colonialism; Environmental justice; Indigenous peoples; Strategic essentialization

1. Introduction

The movement advocating the rights of nature (RoN) is not homogeneous; rather, it encompasses a diverse range of actors across varied geographical and cultural contexts.[1] This transnational network is made up of environmental organizations and legal scholars, as well as Indigenous leaders, coming from the global north and the global south, all drawing from different theoretical inspirations and normative horizons.[2] Despite this great heterogeneity, it is possible to discern a common narrative in the discourses of prominent organizations, institutions, and scholars who are committed to the RoN advocacy.

[1] E. Kinkaid, 'Rights of Nature in Translation: Assemblage Geographies, Boundary Objects, and Translocal Social Movements' (2019) 4(3) *Transactions of the Institute of British Geographers*, pp. 555–70.

[2] C. Espinosa, 'Intelligibility and the Intricacies of Knowledge and Power in Transnational Activism for the Rights of Nature' (2019) 5(3) *Environmental Sociology*, pp. 243–54.

Their shared reasoning unfolds as follows. Mainstream environmental law is deeply anthropocentric and, therefore, inherently unable to achieve sustainability as it reproduces the very logic responsible for ecological collapse.[3] As Susana Borràs puts it, 'the weaknesses of our environmental laws stem in large part from the fact that legal systems treat the natural world as property that can be exploited and degraded, rather than as an integral ecological partner with its own rights to exist and thrive'.[4] In other words, existing environmental protection laws do not profoundly challenge the commodification and privatization of natural ecosystems perpetuated through the continuing enclosure of the commons for the sake of economic growth.[5] Consequently, rather than an incremental transition seeking to balance economic and ecological costs, modern societies require a profound ethical transformation that embraces the intrinsic value of non-human life. As the Global Alliance for the Rights of Nature (GARN), one of the most influential lobbying networks of the movement, argues: 'humans must reorient themselves from an exploitative and ultimately self-destructive relationship with nature, to one that honours the deep interrelation of all life and contributes to the health and integrity of the natural environment'.[6] Similarly, the United Nations (UN) Harmony with Nature Programme condemns the fact that current regulatory systems 'regard nature as property to be used for human benefit, rather than a rights-bearing partner with which humanity has co-evolved', and calls for the 'recognition that humankind and Nature share a fundamental, non-anthropocentric relationship given our shared existence on this planet'.[7]

I contend that there is a fundamental ideological ambiguity in the RoN discourses and initiatives. Indeed, I argue that embracing the 'intrinsic value' of nature does not provide clear guidance on an alternative governance model to articulate social and ecological concerns.[8] Similarly, the abandonment of 'anthropocentrism', if ever possible,[9] offers no toolkit to reshape the global economic order so as to deliver human prosperity and ecological protection. While proponents of this legal shift often emphasize its transformative goal, crucial questions remain unanswered: What is the intended destination of this transformation? Who stands to benefit from it? What are its potential social consequences?

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3 C. Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books, 2011).

4 S. Borràs, 'New Transitions from Human Rights to the Environment to the Rights of Nature' (2016) 5(1) *Transnational Environmental Law*, pp. 113–43, at 113.

5 See M. Petel, 'La nature: d'un objet d'appropriation à un sujet de droit. Réflexions pour un nouveau modèle de société' (2018) 80(1) *Revue interdisciplinaire d'études juridiques*, pp. 207–39.

6 See the website of Global Alliance for the Rights of Nature (GARN) 'Our Mission', available at: https://www.garn.org.

7 United Nations (UN), Harmony with Nature, 'Rights of Nature Law and Policy', available at: http://www.harmonywithnatureun.org/rightsOfNature.

8 For a critical perspective on intrinsic valuation see A. Battistoni, 'Bringing in the Work of Nature: From Natural Capital to Hybrid Labor' (2017) 45(1) *Political Theory*, pp. 5–31.

9 For the anthropocentrism of the RoN proposal see S. Jolly, '"Rights of Nature" Is a Faux Rights Revolution Entangled in Anthropocentrism', *The Wire Science*, 21 July 2022, available at: https://science.thewire.in/environment/rights-of-nature-anthropocentrism; J.-A. Reeves & T. Peters, 'Responding to Anthropocentrism with Anthropocentrism: The Biopolitics of Environmental Personhood' (2021) 30(3) *Griffith Law Review*, pp. 474–504.

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In this article I wish to demonstrate that the RoN framework is compatible with various ideological outlooks and political options. As a result, those initiatives may translate into extremely diverse institutional implementations with varied outcomes in terms of power distribution. In particular, as nature's rights require human agency for their implementation and enforcement, one of the decisive tasks is to determine which social groups may legitimately speak for nature. In the words of Arpitha Kodiveri, RoN thus raises a crucial governance issue: 'If nature has rights, who legitimately defends them?'.[10] The answer to this question has deep political implications for various social actors who hold conflicting claims and interests over territories and their natural resources. Hence, far from mainly transforming human-nature relations, RoN also disrupts the power relations between human communities.[11]

In the following sections I delve into three conceptual frameworks that could govern the enactment and enforcement of RoN, each leading to highly varied outcomes: green colonialism, environmental justice, and Indigeneity. In the green colonialism scenario (Section 2) I argue that RoN would reinforce exclusionary dynamics through the imposition of environmental policies at the expense of disenfranchised communities. The second scenario (Section 3) involves granting the power of nature's representation to local communities, with the aim of empowering them in asserting control over their territories and resisting corporate actors. However, this approach might lack efficacy if it fails to address the underlying political-economic factors that compel certain communities to support extractive industries because of a lack of viable alternative economic opportunities. In the third scenario (Section 4) Indigenous communities would act as the exclusive stewards of nature, based on their historical, cultural, and spiritual connections to their lands. Yet, there is a risk of perpetuating a problematic narrative that portrays Indigenous peoples as ecologically 'noble savages', potentially creating an implicit expectation for them to maintain a seemingly 'primitive' and 'symbiotic' relationship with nature in order to receive protection. Section 5 concludes by warning against the illusion of a post-political ecology where ecocentric legal declarations would suffice to deliver human-nature harmony without intense political battles, social tensions, and economic confrontations.

There are two precautionary notes. Firstly, the neat categories described above are, by design, somewhat reductive; they function as ideal types to demonstrate that RoN are sufficiently ideologically vague to encompass antagonistic environmental approaches. Actual instances of RoN around the globe will necessarily display complex institutional features reflecting idiosyncratic imaginaries. Only a case-by-case assessment that integrates power dynamics, historical backgrounds, and social hierarchies can deliver meaningful insights into the distributional consequences of RoN recognition.[12]

[10] A. Kodiveri, 'If Nature Has Rights, Who Legitimately Defends Them?', *Open Global Rights*, 21 Mar. 2019, available at: https://www.openglobalrights.org/if-nature-has-rights-who-legitimately-defends-them.

[11] For a comparable approach: M. Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (Transcript Verlag, 2022), pp. 16–7.

[12] This case study method has already been applied by authors to dissect the institutional framework of each recognition of RoN; see, e.g., E.L. O'Donnell & J. Talbot-Jones, 'Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India' (2018) 23(1) *Ecology and Society*, pp. 7–16.

Secondly, and relatedly, I do not claim that these conceptual distinctions offer a taxonomy of actual RoN enactments. Half a century after Christopher Stone first introduced the concept,[13] RoN are recognized in several jurisdictions across the globe following constitutional reform, legislation, or judicial decisions.[14] In addition, we also witness a surge of organizations using the RoN framing to articulate their ecological goals. A recent study estimates that there are 400 initiatives that seek to recognize nature's rights worldwide.[15] I will regularly rely on some of those concrete instances – either actual legal enactments or advocacy discourses – to exemplify the three categories that I intend to unpack. However, I have not conducted a comprehensive analysis of all such endeavours; nor have I sought to select representative case studies for my classification. My aim is narrower: I wish to demonstrate the fact that RoN may encompass projects with contrasting or even opposing social and environmental aims and outcomes. This, I hope, should prompt discussions that contribute to clarifying the ideological underpinnings of the RoN framework. What type of political, social and economic arrangements should arise from this legal innovation?

2. Past and Present of Green Colonialism

I will firstly trace the colonial inclination in the history of environmentalism to preserve or restore so-called 'pristine' territories, free from human interference, thereby perpetuating the wilderness myth (2.1). I will then show how this intellectual heritage could possibly infuse RoN enactments. As ecological threats continue to escalate, there might be a temptation to establish a legal hierarchy where nature's rights take precedence over human rights in certain areas, potentially disproportionately affecting marginalized communities. Regressive effects can also occur if RoN are employed by more privileged communities striving to safeguard their immediate environment, all while pushing environmental harm onto disenfranchised social groups (2.2).

2.1. The Colonial History of Wilderness Manufacture

Environmental movements emerged in the United States (US) in the 19th century with the central concern of protecting immaculate nature ('wilderness').[16] Witnessing the extremely rapid industrialization of the continent, novelists, philosophers, and adventurers demanded the preservation of chosen natural areas from irreversible degradation caused by economic expansion. Wilderness stood as 'an island in the polluted sea of

[13] C. Stone, 'Should Trees Have Standing? Towards Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review*, pp. 450–501.

[14] For a database of laws and policies recognizing RoN, see the website of the UN, 'Harmony with Nature', available at: http://www.harmonywithnatureun.org/rightsOfNature.

[15] A. Putzer et al., 'Putting the Rights of Nature on the Map: A Quantitative Analysis of Rights of Nature Initiatives across the World' (2022) 18(1) *Journal of Maps*, pp. 89–96 (stating that 'the requirement for an initiative to be included in our database is rather straightforward, as it "only" needed an accessible legal document containing a semantic expression referring to RoN').

[16] For a more complete overview see M. Oelschlaeger, *The Idea of Wilderness: From Prehistory to the Age of Ecology* (Yale University Press, 1991).

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urban-industrial modernity' and had to be preserved as 'the last remaining place where civilization, that all too human disease, has not fully infected the earth'.[17]

The organization that embodied this approach was the Sierra Club, founded in 1892 and first presided over by John Muir. Muir travelled the continent, revealing its extraordinary beauty and detailing the sublime experience of wilderness.[18] He called for the preservation of these 'natural cathedrals', for they enabled unique human experiences, especially connection to the divine. In other words, this environmental movement 'arises from the love of beautiful landscape and from deeply held values, not from material interests'.[19]

Jedediah Purdy labels this perspective as the paradigm of 'romantic epiphany' which, along with competing narratives, represents one of the historic guiding principles of US environmental law.[20] Driven by powerful aesthetic considerations, these environmentalists advocated natural parks where human activities would be strictly limited.[21] The Yosemite was declared in 1864 a federally preserved land – and was later, in 1890, established as a national park thanks to the advocacy of John Muir in Congress – while Yellowstone became the first true national park in 1872, paving the way for the entire National Park Service. As of today, more than 100 million acres of federal land are protected as statutory wilderness and 'form the largest legacy of romantic epiphany in the law'.[22]

The very idea of wilderness requires the absence of human traces. Indeed, according to the US Wilderness Act of 1964, wilderness is a place 'where man himself is a visitor who does not remain'.[23] Yet, pristine nature, free from past or present human interference, was a myth. Indigenous peoples already inhabited the vast American territories and had interacted with their natural environments for centuries before the arrival of settlers. Consequently, 'nature' had to be manufactured through its dehumanization. Following this line of reasoning, 'green museums' were created through the expropriation and displacement of Indigenous tribes who were inhabiting the chosen territories.[24] The same colonial logic was applied in Canada where the 'wild, uninhabited Canadian forests' were manufactured through the 'clearing of landscape'[25] from the presence of First Nations. In both countries, this conceptual and physical erasure of Indigenous tribes was justified by the fact the Indigenous populations were 'devoid of agricultural

[17] W. Cronon, 'The Trouble with Wilderness: Or, Getting Back to the Wrong Nature' (1996) 1(1) *Environmental History*, pp. 7–28, at 7.

[18] See J. Muir, *Our National Parks* (Gibbs Smith, 2018 [1901]).

[19] J. Martinez-Alier, *The Environmentalism of the Poor: A Study of Ecological Conflicts and Valuation* (Edward Elgar, 2002), p. 2.

[20] J. Purdy, 'American Natures: The Shape of Conflict in Environmental Law' (2012) 36(1) *Harvard Environmental Law Review*, pp. 169–228, at 199–206.

[21] Cronon, n. 17 above, p. 10.

[22] Purdy, n. 20 above, p. 174.

[23] Wilderness Act 1964, § 1131(c).

[24] V. Deldrève & J. Candau, 'Inégalités intra et intergénérationnelles à l'aune des préoccupations environnementales' (2015) 1 *Revue française des affaires sociales*, pp. 79–98, at 82.

[25] B. Guernsey, 'Constructing Wilderness and Clearing the Landscape: A Legacy of Colonialism in Northern British Columbia', in A. Smith & A. Gazin-Schwartz (eds), *Landscapes of Clearance: Archaeological and Anthropological Perspectives* (Routledge, 2008), pp. 112–24, at 112.

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practices, written laws and organized governments' and therefore 'out of civilization'.[26] Ultimately, wilderness was the result of human design,[27] which relied on 'sequestering large tracts of wilderness in a state of imagined innocence'[28] by deploying colonial violence. Soon, the national parks became touristic attractions as the wealthiest citizens longed for the wilderness experience. For those elites, 'wild land was not a site for productive labor and not a permanent home; rather, it was a place of recreation' where they could 'safely enjoy the illusion that they were seeing their nation in its pristine, original state, in the new morning of God's own creation'.[29]

This is the paradox of wilderness: while claiming authenticity, it is a historical production reflecting the cultural projections of its founders.[30] As William Cronon puts it, wilderness is a cultural invention that 'expresses and reproduces the very values its devotees seek to reject'.[31] Despite claiming to embody the closest relationship one can have with nature, this ideology rests on a dualistic vision where human and nature are separate and distinct.[32]

The myth of wilderness has persisted over the years. In his recent book, Guillaume Blanc exposes the continuation of land expropriation for the sake of ecological conservation, which he labels 'green colonialism', focusing on the African continent.[33] He explains the origins of the 'myth of the Wild Africa'[34] developed by the colonial administration, who argued – quite contradictorily – that the nature of the continent was both majestic and blossoming, which would logically imply that its inhabitants have managed the ecosystems in a sustainable fashion, and also in great danger because of the reckless behaviour of African tribes. Indeed, '[i]nstead of pointing to the colonial extractive industries to explain the loss of biodiversity, colonial administrators soon blamed the local communities' practices'.[35] As a result, the colonial mission was to 'save Africa from Africans'[36] and their supposedly destructive and archaic practices. Preserving the wildlife required the coercive 'dehumanization' and 'desocialization' of natural areas (prohibition of agriculture, removal of communities, and so on). As the West achieved unprecedented levels of economic growth, often at the expense of its wildlife, the African continent came to be seen as the natural jewel that

[26] P. Arnould & E. Glon, 'Wilderness, usages et perceptions de la nature en Amérique du Nord' (2006) 649(3) *Annales de Géographie*, pp. 227–38, at 228.

[27] E. Carr, *Wilderness by Design: Landscape Architecture and the National Park Service* (University of Nebraska Press, 1999).

[28] M. Pollan et al., 'Only Man's Presence Can Save Nature' (1990) 88(7) *Journal of Forestry*, pp. 24–33, at 24.

[29] Cronon, n. 17 above, p. 15.

[30] M. Spence, 'Dispossessing the Wilderness: Yosemite Indians and the National Park Ideal, 1864–1930' (1996) 65(1) *Pacific Historical Review*, pp. 27–59, at 27.

[31] Cronon, n. 17 above, p. 16.

[32] Ibid., p. 17.

[33] G. Blanc, *L'invention du colonialisme vert: Pour en finir avec le mythe de l'Eden Africain* (Flammarion, 2020).

[34] J.S. Adams & T.O. McShane, *The Myth of Wild Africa: Conservation without Illusion* (University of California Press, 1997).

[35] Blanc, n. 33 above, p. 59.

[36] R.H. Nelson, 'Environmental Colonialism: "Saving" Africa from Africans' (2003) 8(1) *The Independent Review*, pp. 65–86.

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had to be protected at all costs, even at the expense of the development of local communities, to offset the destruction of natural areas in industrialized countries.

2.2. Social Exclusion in the Name of Nature Protection

While colonial powers were the first to create nature reserves, these practices were maintained in the post-colonial context through the work of international conservationist organizations (World Wildlife Fund; UN Educational, Scientific and Cultural Organization) jointly with the national governments.[37] Under the banner of nature conservation, Western environmentalists perpetuated the neocolonial subjugation of local populations.[38] This colonial scheme was further reinforced by a neo-Malthusian belief, which linked the degradation of the environment to the overpopulation of the continent:[39] the (in)famous 'population bomb'.[40]

Just as the American settlers disregarded the human interaction of Indigenous communities with their environment, portraying it as a pre-civilizational state of nature, Western colonial powers ignored the fact that 'virtually every part of the globe, from the boreal forests to the humid tropics, has been inhabited, modified, or managed throughout our human past'.[41] As a result, so-called wild areas are actually artifacts resulting from human intervention which, far from leading to excessive exploitation of resources and the collapse of ecosystems, have managed to maintain ecological equilibria. Indeed, farmers and Indigenous communities worldwide have not only preserved but also actively contributed to the cultivation and preservation of the biodiversity.[42] Those populations are now threatened by coercive land grabbing, sometimes in the name of ecological considerations.[43] This reveals the persistence of the wilderness ideology that reinforces the historically constructed dualism between humankind and nature by drawing a clear line between civilized zones and wild areas.[44] Instead of shaping mutually fruitful interaction between human societies and their environment, the goal is to compensate the destruction caused by capitalist expansion by manufacturing pristine ecosystems.[45]

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37 Blanc, n. 33 above, p. 27.
38 Nelson, n. 36 above, p. 66.
39 Blanc, n. 33 above, p. 74.
40 See P.R. Ehrlich, *The Population Bomb* (Ballantine Books, 1968).
41 A. Gómez-Pompa & A. Kaus, 'Taming the Wilderness Myth' (1992) 42(4) *BioScience*, pp. 271–9, at 273.
42 Ibid., p. 274.
43 K. Lyons & P. Westoby, 'Carbon Colonialism and the New Land Grab: Plantation Forestry in Uganda and its Livelihood Impacts' (2014) 36 *Journal of Rural Studies*, pp. 13–21; J. Fairhead, M. Leach & I. Scoones, 'Green Grabbing: A New Appropriation of Nature?' (2012) 39(2) *The Journal of Peasant Studies*, pp. 237–61.
44 On that divide see P. Descola, *Beyond Nature and Culture* (University of Chicago Press, 2014).
45 In the realm of conservation politics, a persistent debate persists regarding the preference for either protected areas with limited human intervention or the cultivation of integrated spaces that encourage mutually beneficial interactions between humans and nature. For a comprehensive review of these ongoing debates in the contemporary context and for a compelling case for addressing the needs of both humans and non-human entities within equitable landscapes see B. Büscher & R. Fletcher, *The Conservation Revolution: Radical Ideas for Saving Nature Beyond the Anthropocene* (Verso, 2020).

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Following this ideological framework, RoN could further exacerbate the marginalization of disenfranchised communities, placing nature's rights above human rights in selected areas. For example, the recognition of the legal personhood of Bangladeshi rivers by the country's Supreme Court put poor communities at risk of eviction as they 'encroach' on the riverbanks.[46] Unlike cases in Colombia or New Zealand, where rights of rivers were a tool to protect the interests of local residents who depend on the ecosystem to survive, this ruling opened the door to the penalization of fishermen and farmers who have traditionally lived by rivers.[47] This example aligns with what Erin O'Donnell characterizes as the 'competition scenario' wherein RoN engender a contentious rivalry between humans and nature, pitting their respective sets of rights against each other. This opposition may, in turn, justify the dehumanization of natural ecosystems. In contrast, the 'collaboration scenario' envisions that RoN facilitate the articulation of both social and environmental needs, considering the interdependence between local communities and their ecosystems.[48]

However, arguably, the Bangladeshi example is an unfortunate isolated event that does not fairly reflect the priorities of the broader RoN movement. Indeed, dominant discourses produced by prominent RoN advocacy groups tend to stress the importance of local communities in conservation endeavours. The influential US organization, the Community Environmental Legal Defense Fund (CELDF), argues that its mission is to 'build a decolonial movement for Community Rights and the Rights of Nature to advance democratic, economic, social, and environmental rights'.[49] In the same vein, the Anima Mundi Law Initiative stresses that 'all living entities are inextricably interconnected' and that humans 'can be *active* agents towards the flourishing of all planetary life'.[50]

This does not entirely negate the risk that RoN would, on certain occasions, perpetuate 'green colonialism' – that is, 'the imposition of a culturally specific construction of 'nature' … by those in a position of dominance upon those who are in a subordinate power relationship'.[51] While the aforementioned statements emphasize the undeniable interdependence of human well-being and healthy ecosystems, primarily from a global and abstract perspective, they offer limited guidance on how to navigate the inevitable conflicts that will arise between human rights and nature's rights in concrete cases.[52]

[46] R. Chandran, 'Fears of Evictions as Bangladesh Gives Rivers Legal Rights', *Reuters Asia*, 5 July 2019, available at: https://www.reuters.com/article/idUSKCN1TZ1ZQ/#:~:text=BANGKOK%20(Thomson%20Reuters%20Foundation)%20%2D,them%2C%20human%20rights%20activists%20said.

[47] M.S. Islam & E.L. O'Donnell, 'Legal Rights for the Turag: Rivers as Living Entities in Bangladesh' (2020) 23(2) *Asia Pacific Journal of Environmental Law*, pp. 175–6.

[48] E.L. O'Donnell, *Legal Rights for Rivers: Competition, Collaboration and Water Governance* (Routledge, 2018).

[49] See Community Environmental Legal Defense Fund (CELDF), 'About CELDF', available at: https://celdf.org/about-celdf.

[50] I highlight the term 'active'; see Anima Mundi Law Initiative, 'Rights of Nature in Practice: Lessons from an Emerging Global Movement', Mar. 2021, available at: http://files.harmonywithnatureun.org/uploads/upload1129.pdf.

[51] E.L. O'Donnell et al., 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature' (2020) 9(3) *Transnational Environmental Law*, pp. 403–27, at 411–2.

[52] M.-C. Petersmann, *When Environmental Protection and Human Rights Collide: The Politics of Conflict Management by Regional Courts* (Cambridge University Press, 2022).

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This substantial gap leaves the door open to a range of possible interpretations and ensuing scenarios, including that where ecological integrity would prevail over the human prosperity of certain communities.

In any event, assuming that the threat of a violent process of wilderness manufacture was mitigated, exclusionary dynamics could take other forms. RoN could perpetuate existing social inequalities if deployed by privileged communities seeking to protect their local environment and secure access to its amenities while displacing environmental damage to disenfranchised social groups. The US provides a valuable context for examining the distributive implications of RoN.[53] In a recent study that examined more than 60 US communities where RoN ordinances were implemented, Ellen Kohl and Jayme Walenta reveal that such rights are often used to enhance the self-governance and individual empowerment of overwhelmingly white communities. Hence, according to the authors, RoN are 'not a paradigm shift that alters Western human understandings and relations with nature' but rather operate as a governance framework, 'reinforcing and naturalizing the White privilege embedded in the liberal rights system, perpetuating a White right to a clean environment'.[54] This empirical finding, however, is insufficient to conclude that RoN necessarily reinforce the power of privileged social groups in the US context. Abstractly equating white communities with privileged and homogeneous groups oversimplifies the complex dynamics at play. In reality, the emergence of RoN in the US was, in part, a response to fracking and its widespread toxicity, which disproportionately affects marginalized communities. Furthermore, another study concludes that 'despite these exclusionary legacies, RoN activists are experimenting with municipal law-making in ways that are bringing them into closer conversation with contemporary racial justice struggles'.[55] It is therefore crucial to conduct further studies on the sociological composition of those initiatives and their concrete social consequences.

In a similar vein, RoN can secure the power of dominant communities – favoured to act as custodians of nature – to access the resources of an ecosystem at the expense of marginalized groups. In 2013, the Supreme Court of India granted decision-making power over the Niyamgiri hills to the Dongria Kondh tribal community, based on its sacred bond with the ecosystem, excluding other groups such as the local *Dalits* (untouchable community in the Indian caste system) who also inhabited the hills.[56] A few years later, in 2017, the Uttarakhand High Court in India recognized that both the Ganga river and its principal tributary, the Yamuna river, were 'legal and living entities having the status of a legal person with all corresponding rights, duties and liabilities'.[57] The Court relied heavily on Hindu belief systems to justify its decision,

[53] See the empirical work conducted by S. Bookman, 'Nature's Rights as Political Resources' (unpublished manuscript on file with the author).

[54] E. Kohl & J. Walenta, 'Legal Rights for Whose Nature?' (2023) 113(1) *Annals of the American Association of Geographers*, pp. 274–90, at 285.

[55] E. Fitz-Henry, 'The "Rights of Nature" in an Age of White Supremacy?' (2023) 41(6) *Environment and Planning C: Politics and Space*, pp. 1166–82.

[56] Kodiveri, n. 10 above.

[57] *Mohd Salim* v. *State of Uttarakhand*, High Court of Uttarakhand at Nainital, Judgment for Writ Petition (PIL) No. 126 of 2014, 20 Mar. 2017.

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navigating 'between the sacred and the legal'.[58] The judges stated that the 'Rivers Ganga and Yamuna are worshipped by Hindus' for whom 'a dip in River Ganga can wash away all the sins'.[59] This reasoning excludes the claims over the rivers' resources of other communities, such as the Muslim minority or the lower-caste *Dalits*. Although the judgment was subsequently overruled by the Supreme Court, the ruling remains exemplative of a decision that could reinforce pre-existing marginalization dynamics. In the context of the rising tide of Hindu nationalism, RoN can potentially be weaponized to secure access to natural resources for the dominant community at the expense of other competing social groups.

Two factors make these exclusionary and regressive outcomes more likely. Firstly, despite a great variety of actors, Ariel Rawson and Becky Mansfield note that the transnational lobbying network of RoN is dominated by a 'select group of actors, primarily from the global North, who utilize western holism and jurisprudence to promote nature's rights as an Indigenous and organic alternative to western development'.[60] This sociological component could facilitate the reproduction of colonial patterns deeply rooted in certain strands of environmentalism. In addition, it is also possible to envisage that RoN would encounter an 'elite capture' in the sense of its appropriation by public or private entities that would empty the notion of its radical potential.[61] This is made more likely by the fact that, as ecological threats intensify, there is an increasing temptation for authorities to impose a state of 'environmental exception', with the ensuing suspension of democratic protocols and hostility towards the active and participatory role of all humans in finding a collective way out of this crisis.[62]

3. Environmental Justice: Local Resistance for Sustainability

I will firstly expose briefly the theory and practice of environmental justice that emerged in opposition to the racist and colonial legacy of some historical strands of environmentalism (3.1). For environmental justice activists, the objective was not to protect a pristine nature but to promote the living conditions of human communities.[63] In this framework, RoN would empower communities that are at the forefront of ecological struggles against corporate plundering, as their livelihoods depend on healthy ecosystems (3.2).

[58] E.L. O'Donnell, 'At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India' (2018) 30(1) *Journal of Environmental Law*, pp. 135–44.

[59] *Mohd Salim* v. *State of Uttarakhand*, n. 57 above, para. 11.

[60] A. Rawson & B. Mansfield, 'Producing Juridical Knowledge: "Rights of Nature" or the Naturalization of Rights?' (2018) 1(1–2) *Environment and Planning E: Nature and Space*, pp. 99–119.

[61] In the context of identity politics and racial capitalism see O.O. Táíwò, *Elite Capture: How the Powerful Took Over Identity Politics (And Everything Else)* (Haymarket Books, 2022).

[62] J. Sparrow, '"Climate Emergency" Endangers Democracy' (2019) 29(12) *Eureka Street*, available at: https://www.eurekastreet.com.au/article/-climate-emergency–endangers-democracy.

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

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3.1. Origins and Central Tenets of the Environmental Justice Movement

In the US, the first movements calling for environmental justice were driven by local communities fighting against polluting projects that negatively affected their quality of life. The precursory examples of the residents of Love-Canal and of Warren County protesting against the implementation of waste landfill facilities are frequently mentioned as the starting moment of this movement.[64] These struggles appeared within poor and predominantly African American communities.[65] In line with the civil rights movement, these minorities were resisting environmental racism – namely, the exclusion of ethnic minorities from decision-making processes and their unequal exposure to environmental degradation and pollution.[66] The object of protection was not the remote and purely recreational nature of the privileged classes but the homes of working people and marginalized communities.

Environmental justice then extended its field of action far beyond the US to become a reference within social movements around the world. While North American environmental justice originally stressed the link between ethnic origin and environmental pollution, this analysis eventually extended to all precarious populations.[67] In Europe, environmental justice focuses mainly on socio-economic rather than ethno-racial inequalities, although the two often overlap. As Susan Cutter puts it, 'environmental justice moves beyond racism to include others who are deprived of their environmental rights, such as women, children and the poor'.[68] Environmental justice became 'the first sector of the environmental movement to examine the human-human and human-nature relations through the lens of race, class, and gender',[69] considered all to be intrinsically linked. The environment becomes another site of domination, adding to the 'simultaneity of oppressions'[70] experienced by some social groups. In the global south, Joan Martinez-Allier uses the term 'environmentalism of the poor' to refer to the struggles of local populations in resisting the environmental costs of Western development that threaten their livelihoods (Indigenous communities against the mining industry, poor fishermen facing the industrial fishing industry, rural communities' struggles against land grabbing, and so on).[71] In general terms, 'these movements

[64] R.D. Bullard, *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* (Sierra Club Books, 2005); E. McGurty, *Transforming Environmentalism: Warren County, PCBs, and the Origins of Environmental Justice* (Rutgers University Press, 2007).

[65] R.D. Bullard, 'Environmental Justice in the 21st Century: Race Still Matters' (2001) 49(3/4) *Phylon*, pp. 151–71.

[66] L. Pulido, 'Rethinking Environmental Racism: White Privilege and Urban Development in Southern California' (2000) 90(1) *Annals of the Association of American Geographers*, pp. 12–40.

[67] R.D. Bullard, 'Race and Environmental Justice in the United States' (1993) 18(1) *Yale Journal of International Law*, pp. 319–35.

[68] S.L. Cutter, 'Race, Class and Environmental Justice' (1995) 19(1) *Progress in Human Geography*, pp. 111–22, at 113.

[69] D.E. Taylor, 'The Rise of Environmental Justice Paradigm: Injustice Framing and the Social Construction of Environmental Discourses' (2000) 43(4) *American Behavioral Scientist*, pp. 508–80, at 523.

[70] Ibid., p. 523 ('Although discrimination can arise from race, class, or gender bias, it can also arise from a combination of these prejudices. That is, the term simultaneity of oppression refers to the notion that discrimination can arise from multiple sources, and it can be interlocking and inseparable').

[71] Martinez-Alier, n. 19 above. For a study of environmentalism of the poor in the global south see also R. Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard University Press, 2011).

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represent a form of resistance to an industrial and neoliberal exploitation regime that destroys their means of survival'.[72]

According to the environmental justice framework, empowering local communities would lead to better ecological outcomes. The reasoning behind this lies in the likelihood that those communities would resist corporate attempts to exploit their lands as their well-being depends on the preservation of the natural ecosystems. Indeed, for these populations, environmental consciousness arises in resistance against the capitalist plunder of natural resources that is a direct assault to their homes.[73] According to Martinez-Alier, the poor and largely rural populations of the global south have a deeper understanding of the consequences associated with environmental degradation as their livelihoods are reliant on healthy ecosystems.[74] As a result, in 'many resource extraction and waste disposal conflicts in history and today, the poor are often on the side of the preservation of nature against business firms and the State'.[75] This claim is supported by the recent report from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) on the sustainable use of wild species: 70% of the world's poor depend directly on wild fauna and flora, and the massive extinction of species is a direct threat to their survival.[76]

3.2. Empowering Local Communities through the Institutional Design of the Rights of Nature

Following this framework, RoN endeavours should aim primarily at protecting the existing collective practices that have proved to enable fruitful relations between human societies and natural ecosystems.[77] Extractive capitalism rests on the legally permitted transfer of costs – social and environmental – onto more vulnerable individuals and communities. The objective of the RoN should be to combat power asymmetries, and to favour those whose well-being is closely intertwined with ecological integrity in contrast with profit-driven agents, who may simply enjoy the economic benefits without having to suffer the costs through the externalization process at the heart of global capitalism.[78]

This view seems to be shared by several actors in the RoN movement. When criticized for the possible regressive consequences of pitting human and ecosystems rights against each other, the promoters of the Lake Erie Bill of Rights argue that '[o]ur work is to elevate human and ecosystem rights above corporate greed, so we can avert a future of profit-driven water apartheid that favours the rich and wealthy at

[72] Deldrève & Candau, n. 24 above, p. 86.
[73] V. Wallis, 'Beyond "Green Capitalism"' (2009) 61(9) *Monthly Review*, pp. 32–48, at 39.
[74] J. Martinez-Alier, 'The Environmentalism of the Poor' (2014) 54 *Geoforum*, pp. 239–41, at 240.
[75] I. Anguelovski & J. Martinez-Alier, 'The "Environmentalism of the Poor" Revisited: Territory and Place in Disconnected Glocal Struggles' (2014) 102 *Ecological Economics*, pp. 167–76, at 169.
[76] IPBES, *Summary for Policymakers of the Thematic Assessment Report on the Sustainable Use of Wild Species of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (IPBES Secretariat, 2022), p. 5, available at: https://www.ipbes.net/sustainable-use-assessment.
[77] F. Ost, 'La personnalisation de la nature et ses alternatives', in A. Bailleux (ed.), *Le droit en transition: Les clés juridiques d'une prospérité sans croissance* (Presses de l'Université Saint-Louis, 2020), pp. 413–38.
[78] S. Lessenich, *A côté de nous le déluge: La société d'externalisation et son prix* (Broché, 2019).

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the expense of the poor and the nature world'.[79] In the same way, CELDF states that its mission is 'to build sustainable communities by assisting people to assert their right to local self-government and the rights of nature'.[80] More generally, nature's rights and human rights are often depicted as 'indivisible'. According to Cormac Cullinan, 'the human right to life cannot be protected without protecting the rights of the Earth Community to exist and function'.[81]

The desire to empower local communities through RoN has far exceeded the mere rhetorical posture. After reviewing several cases where rivers were recognized as legal persons, David Takacs concludes:

> Unlike the Deep Ecologists or some other environmentalists who promote biodiversity conservation no matter what the cost to humans, many of these initiatives give precedence to local and/or indigenous communities to speak for the nonhuman entities' rights and to regain some control over the natural ecosystems that sustain their communities.[82]

In more concrete terms, empowering vulnerable communities through the representation of nature can take two forms: (i) litigation, (ii) political participation. In the first scenario the designated human community can act on behalf of the natural ecosystem under its stewardship in judicial proceedings. In the second scenario local communities are enabled to participate in decision-making processes for any matter that may have an impact on the local ecosystem. These two options are not mutually exclusive. The political participation approach can complement the litigation option: local communities would not only be able to react judicially when projects may harm their environment but would be granted the power to decide on the future of the territory and therefore to reject extractive endeavours in the first place. The complementarity of judicial and political representations is evident in the enactments of rights of nature in New Zealand. The Te Urewera Park[83] and the Whanganui river[84] are represented by boards, composed of members of both the Māori communities and of the New Zealand government, endowed with substantial political decision-making power and the ability to initiate legal proceedings on behalf of the ecosystem. In a similar fashion, enhancing the political participation of local communities has become a common remedy of judicial decisions in enacting nature's rights, as the *Atrato River* case detailed below exemplifies.

Nevertheless, this proposition is founded on the belief that if local communities were granted more authority in environmental decision-making processes, they would prioritize development options that uphold the ecological integrity of ecosystems. This

[79] M. Miller & C. Jankowski, 'A Conversation with the Guardian', *CELDF Guest Blog*, 10 Dec. 2019, available at: https://celdf.org/2019/12/guest-blog-a-conversation-with-the-guardian.

[80] See CELDF, 'Our Mission', available at: https://celdf.org.

[81] C. Cullinan, 'The Legal Case for the Universal Declaration of the Rights of the Mother Earth', 2010, available at: https://www.garn.org/wp-content/uploads/2021/09/Legal-Case-for-Universal-Declaration-Cormac-Cullinan.pdf.

[82] D. Takacs, 'We Are the River' (2021) 2 *University of Illinois Law Review*, pp. 545–606, at 603.

[83] Te Urewera Act 2014, Public Act, No. 51, s. 21.

[84] Te Awua Tupua (Whanganui River Claims Settlement) Act 2017, No. 71. The Act recognizes previous agreements between the tribes and the government: 'Tutohu Whakatupua' of 30 Aug. 2012 and the Whanganui River Deed of Settlement 'Ruruku Whakatupua' of 5 Aug. 2014.

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assertion gains traction from the fact that numerous activities undertaken by extractive industries have profound detrimental effects on both ecosystems and the well-being of populations residing nearby. For instance, a comprehensive meta-analysis has estimated the existence of approximately 70,000 oil fields across 100 countries,[85] while another study estimates that 638 million persons in low- and middle-income countries live in rural areas close to oil reservoirs.[86] According to those studies, oil extraction causes soil, water, and air contamination, which lead to subsequent consequences for the health of local residents (such as cancer, liver damage, immunodeficiency, and neurological symptoms). Furthermore, the economic benefits accrued by local communities from these activities are meagre, as the profits flow predominantly to external actors, such as shareholders and directors of transnational corporations. Consequently, these communities bear the brunt of the costs associated with extractive projects while reaping minimal benefits. Such struggles are well documented in the Environmental Justice Atlas,[87] and draw significant scholarly attention.[88]

However, despite its apparent potential, this approach has a significant blind spot, which requires attention when seeking to articulate RoN and environmental justice. The key issue is that it remains very uncertain whether marginalized communities would opt for sustainable development projects. Some authors, drawing on participatory research with local communities residing near oil extraction sites in Ecuador, have documented what initially appears to be a paradox: although individuals are aware of the detrimental impacts of the oil industry on their well-being and local development, they express a desire for increased oil extraction in their communities.[89] Even if oil extraction has failed to deliver the 'economic miracle' promised, many communities reluctantly support the intensification of extractive industries in the region because of the lack of viable economic alternatives. Indeed, these extractive companies often serve as the primary source of employment for families. As the authors claim: 'the limited and partial benefits of oil-led development are in fact the only consolation individuals and communities that live around extractive industries have in the face of steady and extensive deterioration of their natural and social environments'.[90] In fact, extractive endeavours create a path dependency that crowds out other development options as a result of the destruction of the living environment.[91]

[85] J.E. Johnston, E. Lim & H. Roh, 'Impact of Upstream Oil Extraction and Environmental Public Health: A Review of the Evidence' (2019) 657 *Science of the Total Environment*, pp. 187–99, at 188.

[86] C. O'Callaghan-Gordo, M. Orta-Martínez & M. Kogevinas, 'Health Effects of Nonoccupational Exposure to Oil Extraction' (2016) 15 *Environmental Health*, article 56.

[87] L. Temper, D. del Bene & J. Martinez-Alier, 'Mapping the Frontiers and Front Lines of Global Environmental Justice: The EJAtlas' (2015) 22(1) *Journal of Political Ecology*, pp. 255–78.

[88] J. Martinez-Alier et al., 'Is There a Global Environmental Justice Movement?' (2016) 43(3) *The Journal of Peasant Studies*, pp. 731–55; M. Orta Martínez, L. Pellegrini & M. Arsel, 'The Squeaky Wheel Gets the Grease?' The "Conflict Imperative" and the Slow Fight against Environmental Injustice in Northern Peruvian Amazon' (2018) 23(3) *Ecology and Society*, pp. 7–20.

[89] M. Arsel, L. Pellegrini & C.F. Mena, 'Maria's Paradox: Oil Extraction and the Misery of Missing Development Alternatives in the Ecuadorian Amazon', in P. Shaffer, R. Kanbur & R. Sandbrook (eds), *Immiserizing Growth: When Growth Fails the Poor* (Oxford University Press, 2019), pp. 203–25.

[90] Ibid., p. 221.

[91] M. Arsel, B. Hogenboom & L. Pellegrini, 'The Extractive Imperative in Latin America' (2016) 3(4) *The Extractive Industries and Society*, pp. 880–7.

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It is essential to refrain from romanticizing the local residents, particularly when discussing Indigenous peoples, as I will further address in the following section. The subsistence and economic necessities of vulnerable and marginalized social groups, in specific circumstances, may take precedence over their ecological sensitivity, given their profoundly dire living conditions.

The case of the Atrato river exemplifies this daunting dilemma facing local communities. In 2016, the Constitutional Court of Colombia declared the legal personhood of the Atrato river, recognizing its rights to 'protection, conservation, maintenance, and restoration'.[92] The Constitutional Court deployed a reasoning that relied on a 'biocultural rights paradigm',[93] referring to an approach to biodiversity conservation that recognizes the 'profound unity between nature and the human species',[94] and requires the extension of 'the participation of human communities in the definition of public policies and regulatory frameworks and guaranteeing the conditions for the generation, conservation and renewal of their knowledge systems'.[95] To implement the decision, the Court required the state to design a collaborative governance scheme that would exercise the legal guardianship and representation of the Atrato river. The Commission of Guardians was subsequently created, composed of 14 'river guardians', respecting the principle of gender parity, drawn from seven local communities (the so-called Collegial Body) and the Ministry of the Environment.

Following a thorough socio-legal assessment of the decision's implications, Philipp Wesche notes that the most significant tangible effect of the ruling is the collective and participatory construction of public policies to restore the river's ecosystems. He stresses that 'the communities residing in the Atrato region gained a much stronger voice in policymaking in their role as community guardians'.[96] However, despite this increased participation, the socio-ecological impacts have thus far been limited. Although various action plans have been adopted – addressing issues such as environmental restoration, the eradication of illegal mining, and the revival of traditional subsistence practices – their actual implementation remains minimal. Numerous obstacles hinder progress, including the ongoing insecurity faced by environmental activists as a result of armed groups benefiting from illegal mining and the lack of financial resources available to support community guardians. Moreover, as Wesche contends, '[i]llegal mining does not only involve organised armed groups, corrupt public officials and foreign businessmen, but also the very same communities who suffer from its impacts, but lack other income opportunities'.[97]

[92] *Centro de Estudios para la Justicia Social 'Tierra Digna' y otros* v. *Presidente de la República y otros*, Corte Constitucional [Constitutional Court], Sala Sexta de Revision [Sixth Chamber] (Colombia) No. T-622 of 2016, 10 Nov. 2016 (*Atrato River* case).

[93] On the notion of biocultural rights see K. Bavikatte & T. Bennett, 'Community Stewardship: The Foundation of Biocultural Rights' (2015) 6(1) *Journal of Human Rights and Environment*, pp. 7–29.

[94] *Atrato River* case, n. 92 above, pp. 33–4.

[95] A. Álvez-Marín et al., 'Legal Personhood of Latin American Rivers: Time to Shift Constitutional Paradigms?' (2021) 12(2) *Journal of Human Rights and the Environment*, pp. 147–76, at 164.

[96] P. Wesche, 'Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision' (2021) 33(3) *Journal of Environmental Law*, pp. 531–56, at 548.

[97] Ibid., p. 543.

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He further argues that 'these communities do not all live in unity with nature, as rights of nature advocates sometimes romantically seem to assume, but are characterised by inner divisions, forming part of the problem, due to the lack of infrastructure and income opportunities'.[98] The dire economic situation of the Choco department exacerbates these challenges, with nearly half of the population living in extreme poverty and approximately 80% unable to satisfy their basic needs. In the absence of adequate public services and limited investment, the local economy relies heavily on illegal mining. As a guardian of the river testified in a recent interview, '[w]ater is essential. We don't feed ourselves on oil or copper. Yet, the mine is the only employer in the region'.[99]

This shows that RoN hardly constitutes a legal silver bullet for environmental justice if the political economy of those regions remains unchanged. Any recognition of RoN adopting an environmental justice lens should be coupled with a set of transformative socio-economic measures to accompany the desired changes. In short, the legal status of the natural resource may matter less than the macro political-economic agenda designed to enable the green transition.

4. Indigenous Communities as Nature's Guardians

Numerous organizations advocating RoN openly declare their profound inspiration drawn from Indigenous peoples. GARN, for example, stresses 'the special contribution of Indigenous peoples who have maintained cultures that respect Mother Earth and acknowledge their wisdom and leadership within the Alliance'.[100] In the same way, WECAN International acknowledges that 'Indigenous Peoples worldwide have already lived in accordance with the principles encapsulated by the Rights of Mother Earth for millennia'.[101] The Pachamama Alliance further argues that 'Indigenous people are the source of a worldview and cosmology that can provide powerful guidance and teachings for achieving our vision – a thriving, just and sustainable world'.[102] This perspective suggests that RoN should not necessarily grant equal authority indiscriminately to all local communities but rather should designate Indigenous peoples as the primary stewards of nature.

I argue that those statements tend to assert a universal alignment between RoN and Indigenous interests. This denies the diversity of both RoN initiatives and Indigenous peoples themselves. Indeed, such absolute claims rely on a representation of Indigeneity as a singular, unchanging reality, potentially contributing to the essentialization of Indigenous peoples as pre-civilizational and pre-modern, living in perpetual harmony with their environment.

To unpack these contentious issues, I will revisit the debate over whether RoN truly reflect Indigenous worldviews and interests (4.1); I show that RoN and Indigenous

[98] Ibid.
[99] Testimony collected by M. Delcas, 'En Colombie, les droits bafoués du fleuve Atrato', *Le Monde*, 20 Apr. 2022, available at: https://www.lemonde.fr/planete/article/2022/11/20/en-colombie-les-droits-bafoues-du-fleuve-atrato_6150741_3244.html.
[100] GARN, 'About GARN', available at: https://www.garn.org/about-garn.
[101] Women's Earth and Climate Action Network (WECAN) International, 'Our Work: Rights of Nature Advocacy', available at: https://www.wecaninternational.org/rights-of-nature.
[102] Pachamama Alliance, 'Mission and Vision', available at: https://pachamama.org/about/mission.

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interests are neither monolithic nor synonymous. I then stress the risk that making Indigenous self-determination contingent upon their capacity to serve as nature's guardians could put pressure on these communities to essentialize their relationship with nature, reinforcing the 'ecological noble savage' narrative (4.2).

4.1. Rights of Nature: Translation, Hybridization or Subjugation of Indigenous Cosmologies?

For many authors, what is at stake is fundamentally a *translation* operation: RoN express Indigenous cosmologies. Representing this position, Craig Kauffman and Pamela Martin consider that RoN codify Indigenous worldviews in legal terms.[103] Others claim that the underlying principles of RoN 'are closely aligned with many Indigenous philosophies and governance systems that emphasize the interconnectedness of humans and nature and treat nature as a partner and relative, rather than as property and a resource'.[104] Lidia Cano Pecharroman goes as far as to argue that RoN are not a new emerging paradigm but the recognition of already existing customary laws of Indigenous populations around the world.[105] Echoing this sentiment, Grant Wilson from the Earth Law Center considers that 'indigenous communities have long held through their traditions, religions, customs, and laws that nature (often called 'Mother Earth') is a rights-bearing entity, and that rivers in particular are sacred entities possessing their own fundamental rights'. Stefan Knauß notes that 'Indigenous pressure groups, their land claims and their longing for political representation contributed a lot to the juridical manifestation of the Rights of Nature'.[106]

Another position considers that RoN operate as a cultural bridge that uses Western legal terminology to express Indigenous cultural references, enabling a fruitful *hybridization* process. Philippe Descola has observed that many Indigenous communities lack a direct equivalent for the term 'nature', at least in the Western sense, which typically denotes a separate entity from human societies.[107] For example, Irene Watson – who belongs to the Tanganekald, Meintangk and Boandik Aboriginal First Nations Peoples in Australia – explains that '*Ruwi*' is a Tanganekald word meaning 'land', which is a living entity that includes the natural world, both human and non-human.[108] As Mary Graham from the Kombumerri Country and People puts it, 'the land is a sacred entity, not property or real estate; it is the great mother

[103] C.M. Kauffman & P.L. Martin, 'Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail' (2017) 92(C) *World Development*, pp. 130–42.

[104] H. Harden-Davies et al., 'Rights of Nature: Perspectives for Global Ocean Stewardship' (2020) 122 *Marine Policy*, article 104059.

[105] L. Cano Pecharroman, 'Rights of Nature: Rivers that Can Stand in Court' (2018) 7(1) *Resources*, pp. 13–27, at 13.

[106] S. Knauß, 'Conceptualizing Human Stewardship in the Anthropocene: The Rights of Nature in Ecuador, New Zealand and India' (2018) 31(6) *Journal of Agricultural and Environmental Ethics*, pp. 703–22, at 712.

[107] Descola, n. 44 above.

[108] I. Watson, 'Inter-Nation Relationships and the Natural World as Relation', in U. Natarajan & J. Dehm (eds), *Locating Nature: Making and Unmaking International Law* (Cambridge University Press, 2022), pp. 354–74.

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of all humanity'.[109] In the same way, many Indigenous communities would not spontaneously use the category of 'rights' to express the idea of connection and interdependence with the natural world.[110]

Hence, Knauβ argues that RoN represents a 'surprising collage of modernity based rights language and Indigenous beliefs',[111] operating as a 'transcultural tool'[112] and acting as a 'catalyst for the growing acceptance of systemic Indigenous worldviews'.[113] In a similar vein, Andrew Geddis and Jacinta Ruru (herself a Māori law professor of Raukawa, Ngāti Ranginui, Ngāti Maniapoto descent) consider that RoN enactments in New Zealand demonstrate 'the possibilities of laws acting as a bridge between worlds', that is, '[b]y adapting a concept from one legal tradition to incorporate the understandings of another, granting legal personality to Te Urewera and the Whanganui River has permitted the Crown and Iwi to reconcile over past Crown breaches of the Treaty and move their relationship forward'.[114] Stressing the pivotal role of Indigenous peoples in RoN recognition over the world, Erin O'Donnell and her co-authors argue that they use these legal categories ('rights', 'nature'), which are foreign to their worldviews, strategically to operate within the 'settler legal frameworks' and benefit from greater protection.[115]

Finally, a third strand of scholarship disagrees with the view which presents the recognition of RoN as 'a single, linear and unproblematic influence of "Indigenous cosmovisions" on the western conception of rights'.[116] Instead, they reveal the contradictions, tensions, and ambiguities that mark the encounter between Indigenous cosmologies and Western legal categories, sometimes even arguing that this imposes a *subjugation* process. Building on her legal ethnographic fieldwork with Indigenous peoples in Guatemala, Peru, Ecuador, and Colombia, Lieselotte Viaene doubts that the 'global circulating idea' of RoN has Indigenous origins.[117] She questions the potential of RoN to confront the colonial roots so deeply entrenched in Western legality that historically justified the legal and political subordination of native populations in Latin America. She considers that RoN 'in fact fits in the Western history of rights and universalizes Eurocentric colonial concepts of rights and legal personhood'.[118] In particular, she wonders whether litigating RoN would actually confront or redress the historical

[109] M. Graham, 'Some Thoughts about the Philosophical Underpinnings of Aboriginal Worldviews' (1999) 3(2) *Worldviews: Global Religions, Culture, and Ecology*, pp. 105–18, at 106.
[110] See P. Solon Romero, 'Les droits de la Terre-Mère', in *Des droits pour la nature* (Éditions Utopia, 2016), p. 63.
[111] Knauß, n. 106 above., p. 704.
[112] Ibid., p. 703.
[113] Ibid., p. 704.
[114] A. Geddis & J. Ruru, 'Places as Persons: Creating a New Framework for Māori-Crown Relations', in J. Varuhas & S. Wilson Stark (eds), *The Frontiers of Public Law* (Hart, 2019).
[115] O'Donnell et al., n. 51 above, p. 413.
[116] M. Tănăsescu, 'Rights of Nature, Legal Personality, and Indigenous Philosophies' (2020) 9(3) *Transnational Environmental Law*, pp. 429–53, at 431.
[117] L. Viaene, 'Can Rights of Nature Save Us from the Anthropocene Catastrophe? Some Critical Reflections from the Field' (2022) 9(2) *Asian Journal of Law and Society*, pp. 187–206, at 201.
[118] Ibid., p. 194.

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exclusion and marginalization of Indigenous knowledge, which has been portrayed as inferior superstitious beliefs.

Drawing from her study of inclusion of the rights of Mother Earth in the Bolivian legal system, Agnese Bellina contends that RoN replicates the specific modern Western conceptual categories of individual rights, private property, and state monopoly of power. In that sense, she argues that granting rights to ecosystems is in fact an instance of 'hyperpoliticisation', which she defines as the 'monopolisation of the political by the state', excluding alternative Indigenous ways of self-government.[119]

In July 2014, the New Zealand Parliament granted legal personhood to the 'Te Urewera' ecosystem[120] and, in March 2017, passed a bill that recognized the legal personhood of the Whanganui river.[121] In both instances a governing board was established to represent these natural entities, comprising representatives from the Māori communities and the New Zealand government. In this context, scholars have argued that recognizing rights of natural ecosystems was a process of decolonization to redress systematic deprivation,[122] paving the way for a 'reconciliation journey'.[123] In contrast, Brad Coombes, drawing on interviews with members of the Tuhoe tribe and associated Māori stakeholders, argues that 'rights-based models for claims settlement discursively control, hegemonize and silence decades of activism that sought Indigenous autonomy and repatriation of resources'.[124]

It is also plausible that RoN favour the interests of certain Indigenous communities over others. For example, Mihnea Tănăsescu notes the dominance of Kichwa – the largest Indigenous group in Ecuador among the six recognized Indigenous nationalities of the country – in the Ecuadorian constitutional process. Other groups were concerned that those rights would enable state intervention in Indigenous spaces that were previously outside any legality,[125] while some pointed to the risk that 'intercultural translation' would lead to 'Western appropriation of Indigenous thinking'.[126]

[119] A. Bellina, 'A Novel Way of Being Together? On the Depoliticising Effects of Attributing Rights to Nature' (2024 forthcoming) *Environmental Politics*, pp. 1–19, at 3, available at: https://doi.org/10.1080/09644016.2023.2209005.

[120] Te Urewera Act 2014, n. 83 above, s. 11.1.

[121] Te Awua Tupua (Whanganui River Claims Settlement) Act 2017, n. 84 above. The Act recognizes earlier agreements between the tribes and the government: 'Tutohu Whakatupua' of 30 Aug. 2012, and the Whanganui River Deed of Settlement 'Ruruku Whakatupua' of 5 Aug. 2014.

[122] E. Hsiao, 'Whanganui River Agreement: Indigenous Rights and Rights of Nature' (2012) 42(6) *Environmental Policy and Law*, pp. 371–5, at 371.

[123] J. Ruru, 'Tūhoe-Crown Settlement: Te Urewera Act 2014' (2014) 22(10) *Māori Law Review*, pp. 16–21, at 21.

[124] B. Coombes, 'Nature's Rights as Indigenous Rights? Mis/recognition through Personhood for Te Urewera' (2020) 1–2 *Espace populations sociétés*, p. 3.

[125] R. Merino, 'Law and Politics of the Human/Nature: Exploring the Foundations and Institutions of the "Rights of Nature"', in Natarajan & Dehm, n. 108 above, pp. 307–31, at 317 (quoting C. Valladares & R. Boelens, 'Extractivism and the Rights of Nature: Governmentality, "Convenient Communities" and Epistemic Pacts in Ecuador' (2017) 26(6) *Environmental Politics*, pp. 1015–34; M. Akchurin, 'Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador' (2015) 40(4) *Law & Social Inquiry*, pp. 937–68).

[126] Merino, ibid., pp. 317–8 (quoting K. Watene & R. Merino, 'Indigenous Peoples: Self-determination, Decolonization, and Indigenous Philosophies', in J. Drydyk & L. Keleher (eds), *Routledge Handbook of Development Ethics* (Routledge, 2018), pp. 134–47).

More generally, Roger Merino seeks to deconstruct the idea of a monolithic RoN movement that would result from 'new Western ecological consciousness inspired by Indigenous thinking'.[127] He instead unveils 'the tensions and contradictions inherent to the inclusion of the rights of nature within Western legality and argues that it is a space to mediate and negotiate Indigenous and Western critical views on the environment'.[128] For that purpose, he disentangles the various epistemological and political rationalities of four distinctive 'waves' of RoN. Regarding the third wave, where 'environmental activism' meets 'Indigenous politics', Merino warns that the 'formal incorporation of nature facilitates the entry of Indigenous politics into the state processes of law, but it does so at the price of channelling Pachamama into circuits of administration and governance, where nature is an object of extraction and management'.[129] The major first insight of his study is that Indigenous influence is not homogeneous across the movement, historically and geographically.[130]

These studies stress a crucial point: there is no singular, uniform alignment between RoN and Indigenous peoples. Any such absolute assertation would necessarily be unfairly generalizing, considering the heterogeneity of Indigenous groups as well as the diversity of RoN initiatives. In other words, it is quite possible that, depending on institutional design choices, granting rights to natural ecosystems empower Indigenous groups against competing claims or, on the contrary, enhance the power of public authorities over their lands.

4.2. The Revival of the 'Ecological Noble Savage' Narrative

If Indigeneity becomes a source of legal privilege in representing nature, which itself enables a community to enhance its self-determination over its territory, this can lead to a concerning outcome where certain communities feel under pressure to conform to Western stereotypes of 'primitive' societies, as historically defined through colonial representations. Indeed, the typical representation of Indigenous communities meshes together poorly defined criteria of 'firstness', 'authenticity', 'naturalness', and 'primitiveness'.[131] In the US, for example, scholars have noted that Native nations must pursue the imperative of 'cultural authenticity' – that is, to demonstrably look and act like the 'Natives' of US national narratives – to secure their legal rights and standing.[132] The required conformity with colonial expectations stifles the expression of the complexities, contradictions, and changing nature of Indigenous cultural identities. As Manvir Singh points out, 'centuries of colonialism have entangled Indigeneity with outdated images of simple, timeless peoples unsullied by history'.[133] Similarly, Mark

[127] Merino, ibid., p. 309.
[128] Ibid.
[129] Ibid., p. 318.
[130] Ibid., p. 330.
[131] M. Singh, 'It's Time to Rethink the Idea of the "Indigenous": Can the Concept Escape its Colonial Past?', *The New Yorker*, 20 Feb. 2023, available at: https://www.newyorker.com/magazine/2023/02/27/its-time-to-rethink-the-idea-of-the-indigenous.
[132] J. Barker, *Native Acts: Law, Recognition, and Cultural Authenticity* (Duke University Press, 2011).
[133] Singh, n. 131 above.

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Rifkin argues that cultural representations of Indigeneity freeze those communities in a 'simulacrum of pastness'.[134]

I fear that that using the RoN as a vehicle for Indigenous empowerment would reinforce the colonial dynamic and its coercive requirement of 'primitive authenticity'. In particular, communities would need to demonstrate a symbiotic relationship with nature to 'earn' the power to represent nature and enforce its rights. The political ecologist Tănăsescu analyzed the Ecuadorian constitutional reform process, which led to the enactment of a new Constitution in 2008 that recognizes RoN.[135] He noted that during this process Indigenous leaders used the RoN framework strategically as 'a springboard toward an outside world that otherwise would not listen'.[136] Hence, if the legal representation and protection of Indigenous groups is conditioned on their capacity to act as spokespersons of nature, this may compel them to reinforce the myth of the 'ecological noble savage'.[137] This concept refers to the assignment of certain communities to simpler and more primitive pre-civilized ways of living. According to this romantic view, which is common in environmentalist circles, these populations spontaneously adopt ecological lifestyles because of their innate goodness and frugality, and their lack of possessive desire.[138] This risks forcing such communities to adhere to supposedly monolithic and static ecological practices frozen in a mythical past to obtain the protection of their autonomy and self-determination.[139] As Brad Coombes argues in the New Zealand context, RoN 'realize only some of Tuhoe's interests because retention of preservationist conservation means that few will ever live or work on their homelands'.[140] Rebecca Witter and Terre Satterfield claim the 'danger here is that protections for Indigenous rights become contingent upon – and are thus eroded or taken away without – adherence to conservation outcomes'.[141]

Despite the focus on Indigenous self-determination in the RoN framework, the underlying danger of 'wilderness' still looms. In this scenario Indigenous communities are not forcibly removed from their territories; rather, they are incorporated into guardianship institutions. However, a troubling aspect emerges as they are compelled to adopt specific economic practices aimed at preserving the perceived 'integrity' and 'pristine' state of the ecosystem. This approach may inadvertently impose a romanticized

[134] M. Rifkin, *Beyond Settler Time: Temporal Sovereignty and Indigenous Self-Determination* (Duke University Press, 2017).

[135] For more on this see M. Tănăsescu, 'The Rights of Nature in Ecuador: The Making of an Idea' (2013) 70(6) *International Journal of Environmental Studies*, pp. 846–61.

[136] M. Tănăsescu, 'Nature Advocacy and the Indigenous Symbol' (2015) 24(1) *Environmental Values*, pp. 105–22, at 111.

[137] K.H. Redford, 'The Ecologically Noble Savage', *Cultural Survival Quarterly*, 3 Mar. 2010, available at: https://www.culturalsurvival.org/publications/cultural-survival-quarterly/ecologically-noble-savage.

[138] For a better view on this debate see R. Hames, 'The Ecologically Noble Savage Debate' (2007) 36 *The Annual Review of Anthropology*, pp. 177–90.

[139] M.J. Rowland, 'Return of the "Noble Savage": Misrepresenting the Past, Present and Future' (2014) 2 *Australian Aboriginal Studies*, pp. 2–14.

[140] Coombes, n. 124 above.

[141] R. Witter & T. Satterfield, 'The Ebb and Flow of Indigenous Rights Recognitions in Conservation Policy' (2019) 50(4) *Development and Change*, pp. 1083–108, at 1103.

and static view of nature, reminiscent of the wilderness ideal, which can constrain the autonomy and adaptive capacity of Indigenous communities.

Furthermore, those communities who seek to obtain institutional arrangements that would enhance their legal power over their territory in the name of 'nature' may have to engage in 'strategic essentialization', a term introduced by Gayatri Spivak.[142] This refers to a political tactic whereby diverse ethnic groups with strong internal differences temporarily depict themselves in a simplified and monolithic fashion to present shared political claims. The legal turn of Indigenous communities, especially their integration in international human rights governance, forced them to deny the geographical heterogeneity and temporal fluidity of their realities and beliefs in order to gain international recognition.[143] In the RoN context, Indigenous communities would need to produce a uniform appearance – obscuring internal divisions and conflicting views – of a symbiotic relationship with nature to secure political inclusion and legal protection.

There is a risk that the implementation of RoN could erode the self-determination of Indigenous peoples concerning their own environments. This risk emerges when the responsibility for ecosystem stewardship is placed in the hands of a third party, which may consist of experts, public authorities, or a combination thereof.[144] This would then create a conflict between nature's rights and Indigenous rights.[145] This concern can easily be addressed by making Indigenous representation a requirement for any entity empowered to speak for nature. However, this last section shows that the issue at hand extends beyond the selection of stakeholders to represent nature. Irrespective of those crucial institutional choices, there remains a concern that Indigenous peoples might be compelled to conform to a particular role within the settler legal framework as a precondition to exercise their stewardship functions.

5. Conclusion

This article seeks to contribute to the RoN debate by highlighting the ideological ambivalence of this discourse. RoN can theoretically encapsulate diverse environmentalist approaches with vastly different distributional implications, from the imposition of conservation measures by dominant groups to the empowerment of marginalized

[142] G. Spivak, *In Other Worlds: Essays in Cultural Politics* (Methuen, 1988).

[143] Viaene, n. 117 above, p. 199 (quoting S. Kirsch, 'Juridification of Indigenous Politics', in J. Eckert (ed.), *Law against the State: Ethnographic Forays into Law's Transformations* (Cambridge University Press, 2012), pp. 38–59; R. Sieder & A. Barrera Vivero, 'Legalizing Indigenous Self-Determination: Autonomy and Buen Vivir in Latin America' (2017) 22(1) *Journal of Latin American and Caribbean Anthropology*, pp. 9–26).

[144] See D. Curran, 'Independent Legal Personhood of Rivers or Relational Stewardship? A Perspective from 20% of the World's Freshwater (Canada) and the Indigenous-Colonial Legal Tensions that Govern It', *International Water Law Project Blog*, 23 May 2018, available at: https://www.internationalwaterlaw.org/blog/2018/05/23/independent-legal-personhood-of-rivers-or-relational-stewardship-a-perspective-from-20-percent-of-the-worlds-freshwater-canada-and-the-indigenous-colonial-legal-tensions-that-govern-it.

[145] V. Marshall, *Overturning Aqua Nullius: Securing Aboriginal Water Rights* (Aboriginal Studies Press, 2017).

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communities, in particular Indigenous peoples. As a result, it is vain to discuss the merits or limits of this idea in abstract terms precisely because the exact distributive outcomes will vary greatly depending on the institutional design chosen to implement nature's rights. RoN serves as a mechanism for determining who, among humans, holds the authority to define 'nature', to prescribe its acceptable uses, to shape the development models, and to strike the right balance between social and environmental concerns. These deeply political questions should be at the heart of the RoN discussion.

Furthermore, this contribution serves to caution against the notion of a post-political ecology that explicitly or implicitly underlies the majority of RoN discourses. I refer here to the belief that a formal legal revolution affirming values of human–nature harmony would circumvent the conflicting economic, social, and environmental interests at stake in ecological issues, and the complex political choices they entail.[146] In contrast, I contend that reframing ecological issues in rights language does not alleviate the deeper tensions that exist between sustainability and economic development. Similarly, the mere transformation of the legal status of nature does not challenge the deep structural roots of ecological destruction, nor does it provide a magic wand to resolve deep socio-ecological conflicts and guide the distribution of costs and benefits of the green transition.

As Cronon puts it, '[t]he wilderness dualism tends to cast any use as abuse, and thereby denies us a middle ground in which responsible use and non-use might attain some kind of balanced, sustainable relationship'.[147] This middle ground and what it entails are inherently political questions, which require complex arbitrations of various conflicting interests, not just between humans and non-humans but also within human societies among various social groups.

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[146] D.R. Boyd, *The Rights of Nature: A Legal Revolution that Could Save the World* (ECW Press, 2017).
[147] Cronon, n. 17 above, p. 21.

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