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Rights of Nature Through a Legal Expressivist Lens: Legal Recognition of Non-Anthropocentric Values

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Abstract
The shortcomings of existing legal tools to abate species extinctions and habitat losses raise the attractiveness of recognizing rights of nature (RoN), in effect granting legal standing directly to non-human entities and collectives. RoN have been recognized in several domestic legislations and attract increasing popularity and enthusiasm. Yet, from an analytical and general perspective RoN rely on a contentious relation between concepts such as intrinsic value and interests, respectively, as justifying RoN. Consequently, a general analytical defense of RoN has not been provided and recognition hitherto has been constrained to the contingent factors of domestic legislations. Here, I will provide an examination of RoN by way of expressive theories of law where law expresses (some) ethical values. Expressive theories of law have not previously been related to RoN. I will examine whether such theories have the potential of defending RoN as rights that legislatures have strong general reasons to recognize. The examination of RoN through the lens of expressivist legal theories provide a better understanding of RoN, and the analytical and conceptual commitments they presuppose, including the relation between ethics and law and the values underpinning RoN to be expressed by law.

Keywords Rights of nature · Expressivist theories of law · Environmental values

1 Introduction

Rights of Nature (henceforth RoN) is a group of legal innovations where environmental entities such as, but not limited to, rivers, forests, or ecosystems are given the status as legal rights-holders. Since 2006 there have been over 400 initiatives in 39 countries for RoN where 'natural entities are conceived as subjects with intrinsic value independent of human

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interests' (Putzer et al. 2022: 89). While calls for RoN does not represent a monolithic movement (Tanasescu 2022), what they share are calls for the recognition of new relations to nature. Ecuador and Bolivia, in 2008 and 2010, respectively, 'recognized all of Nature as having legal rights' (O'Donnell et al. 2020: 404). In 2017, the legislation of New Zealand recognized the Whanganui River as a legal person. This was followed by similar recognitions in India, Colombia, and Spain. The recognition of such legal personhood in New Zealand in the Te Awa Tupua Act 2017 has been described as codifying 'the intrinsic values of the river ecosystem according to the Māori worldview' (Kauffman and Martin 2021: 192).

By recognition of such intrinsic value, law sends a message and expresses that the entity in question is to be respected which give rise to duties among potentially culpable agents – individuals, states, corporations. By granting standing, the entity is permitted to stand as a plaintiff in court and face defendants who allegedly has injured the entity (Warnock 2012). On a more general view, RoN express the recognition of the great value ascribed to an entity, and that it ought not be conceptualized merely as a resource whose instrumental value is contingent upon its contribution to human well-being. In many cases of RoN, it is also expressed that Indigenous worldviews matter and ought to be respected. Often, this respect is the primary driver (Beckhauser 2023; Akchurin 2015). According to Cribb, Macpherson and Borchgrevink, discussing the cases of New Zealand, 'legal personhood comes not from community values, but from the need to settle Indigenous rights issues' (2024: 15).

Enthusiasm for RoN notwithstanding, it is not a given that RoN can be justified by conventional legal or philosophical foundations for holding rights. The assumptions that a solid ground for RoN can be granted by interest- or will-based theories (Baard 2021, 2023), or by references to legal personhood (Kurki 2019, 2022) have all been criticized, leaving recognition of RoN to the contingent conditions of domestic legislations.

In contrast, my aim is to examine an analytical and general defense of RoN by examining them from the viewpoint of legal expressivist theories. The following argument provides the framework for my examination:

P1. Law expresses justified values.

P2. There are justified environmental values.

P3. Rights are appropriate for expressing such values.

This gives rise to the conclusion that law ought to express justified environmental values in the form of rights. Drawing on the resources of legal expressivist theories has not been done before in scholarship about RoN.

Following this introduction, I will outline expressivist theories of law and how the environment has prefigured in such theories. I will then argue that there are environmental values that we could reasonably expect that law expresses. Lastly, I will show that there are good reasons for why 'rights' are appropriate for expressing such environmental values.

2 'Law Sends a Message': How Law Expresses Justified Ethical Values

I will here give an overview of expressive theories of law, and what role the environment has until now played in such theories. This substantiates the first premise above.

2.1 Expressive Theories of Law and the Environment

Legal expressivism as referred to here is a group of theories about the foundations and functions of law (Anderson 1995; Anderson and Pildes 2000; Cooter 1998; Koppelman 2001; McAdams 2000, 2015; Sunstein 1996). It is not uncommon to hear expressions such as 'law sends a message'. That 'legalizing medicinal marijuana will convey to teenagers the harmlessness of smoking pot, that strengthening drunk driving or domestic violence laws will articulate the grave harm those behaviors cause', or that 'law can work by changing the "social meaning" of a behavior' (McAdams 2015: 11). Such messages are intended to reverberate throughout a community and show that law expresses that certain behaviors have a normative status.

To McAdams, one form of expressive theory of law entails 'that the normative status of law depends on its meaning' (McAdams 2015: 13). McAdams describes this category of legal expressivism as entailing normative commitments wherein, for instance, law is evaluated 'by whether it expresses appropriate equal respect for individuals' (McAdams 2015: 15). As examples, McAdams cites this view as interpreting 'the Equal Protection Clause of the Fourteenth Amendment as condemning laws that express superiority or inferiority of a class of individuals' (McAdams 2015: 15). Another example is found in theories of punishment. Drawing on Feinberg, McAdams suggests that punishment expresses 'attitudes of resentment and indignation, and of judgments of disapproval and reprobation' (Feinberg 1965: 400). A basic tenet of expressive theories of law that is relevant here is that law expresses something normative through legislation and that coherence with normative arguments and concepts plays some role in the assessment and legitimacy of law.

Anderson and Pildes argue that 'what makes an action morally right depends on whether it expresses the appropriate valuations of (that is, attitudes toward) persons' and 'substantive values' (2000: 1504). Expressive theories of law 'say that various agents ought to *express* certain attitudes' (Anderson and Pildes 2000: 1566). The state is for instance expected to express equal respect and concern toward citizens. Failing to express such attitudes or cohere with substantive values can create expressive harms (Anderson and Pildes 2000: 1527). Consequently, a central tenet of expressive theories of law is that law should express the proper attitudes regarding the value of persons and substantive values.

The expressive content of law is commonly understood *normatively* rather than *descriptively*. That is, the material that is to be expressed through law are not to be understood as 'statistical averages' of public attitudes, but rather as referring to obligations and what one ought to do (Cooter 1998; Koppelman 2001). To expressivist theories, law does not merely descriptively reflect the values that members of a given community hold. In a society where a large majority hold racist or sexist values, laws that express those norms may reflect the public sentiment but would fit highly uneasily with justified ethical judgments and would

thus violate substantive values such as equality.[1] Such laws would express improper attitudes and unjustified values.

Expressivist theories of law stand in contrast to theories according to which a law is justified by its efficiency in deterrence or for consequentialist reasons (Anderson and Pildes 2000; see also Anderson 1995; McAdams 2000). Law motivated by consequentialist reasons would put the locus of legal justification on the outcomes of a potential law, inviting means-end reasoning. Stressing the nonconsequentialist dimension of expressivist legal theory, Sunstein writes that there is a class of cases where 'the relevant law announces or signals a change in social norms *unaccompanied by much in the way of enforcement activity'* (Sunstein 1996: 2032, italics in original). As examples he gives 'laws that forbid littering and laws that require people to clean up after their dogs' (Sunstein 1996: 2032). While such laws are rarely enforced (or have very mild penalties), someone who fails to live up to them 'may then be showing disrespect or even contempt for others' (Sunstein 1996: 2032). This can lead to 'norm cascades' and 'reputational incentives' that shift behavior to compliance, even if they are rarely enforced (Sunstein 1996: 2033). In international criminal justice, it has been claimed that for long times 'expression without enforcement was all that occurred' (Amann 2002: 121), as condemnation per se of norm violations is important (Stahn 2020: 46).

The environment has been discussed in examples of expressive laws, sadly lacking much in the way of justification. To Sunstein, in the environmental context public interest groups carry out the role of norm entrepreneurship 'by pressing private conduct in environmentally desirable directions, sometimes by providing new grounds for both pride (a kind of informal social "subsidy") and shame (a kind of informal social "tax")' (Sunstein 1996: 2031). While Sunstein does not expand on these views in the environmental case, he briefly mentions animal rights. He suggests that they 'need not entail the further claim that animal life is infinitely valuable' but 'is best taken as a recommendation for a shift in norms governing the treatment of animals, accompanied by a judgment that the new norms will have consequences for what human beings do' (Sunstein 1996: 2044). I take this to mean that advocates of animal rights law and laws for stricter regulation do not necessarily expect others to commit to beliefs or judgments such as animals being 'subjects-of-a-life' (Regan 2004) or similar, but rather that norms should change through legislation to norms that express respect for animal lives and regulate human conduct accordingly. That is, laws change social norms.

Another take on expressive theories of law and the environment is provided by Hedman (1990). According to Hedman, the 1960s and 1970s saw a transition in many Western societies towards an increasing emphasis on *inter alia* environmental protection, and an increasing hope in using law as a mechanism for expressing such values. Though she refrains from including environmental law in criminal law, she concludes that 'if environmentalists seek to legitimate criminal sanctions, they ultimately will have to rely on criminal law's unique capacity to express moral outrage' (Hedman 1990: 896). This highlights the expressivist legal function of expressing moral outrage.

[1] According to Adler (2000), *legal* expressivism (in contrast to *moral* expressivism) presupposes moral cognitivism and moral truths. I do not presuppose moral cognitivism for my argument, but understand legal expressivism as suggesting that law ought to express reasonable or justified values. This will be discussed in Sect. 2.2 and throughout Sect. 3.

In summary, there are several reasons for accepting our first premise. Law has an expressive foundation by way of expressing attitudes that are to be consistent with justified values. But there are also challenges to this assumption.

2.2 Critique of Expressive Theories of Law

Matthew D. Adler provides substantial criticism to expressivist theories of law. To Adler, an expressive theory of law 'claims that the action of a legal official or official body can indeed be meaningful, and that the meaning thus attached to an official action is relevant to, if not determinative of, the moral status of that action' (Adler 2000: 1364). Adler's most fundamental objection to expressivist theories consists of an investigation of the possible 'moral criteria governing (or plausibly governing) legal decision', by starting from 'simple core of preference-utilitarianism and then adding new moral considerations or refining existing ones', to see whether the theory at any point becomes genuinely expressive and whether law expresses something ethically, which it never does (Adler 2000: 1462).

But Adler faces objections of his own. Adler's argument is only as strong as the alternative moral theories that he utilizes, which is where his account fails. To Koppelman, 'a major strand of Western moral and political thought, led by Rousseau and Hegel, is entirely ignored by Adler's survey' (Koppelman 2001: 781). What Koppelman specifically has in mind is recognition. Understood as a human need, lack of recognition result in insult, which ' is a wrong even if it is accompanied by no tangible harm' (Koppelman 2001: 781). This makes recognition central to understand expressive harms. Drawing on Rousseau and Hegel, Koppelman argues that recognition is a fundamental part of being human, and of human relations. Through the state the desire for recognition is transformed into a right for recognition, and for both Rousseau and Hegel the 'point and purpose of government was to set up a framework whereby each person's desire for recognition was satisfied' (Koppelman 2001: 783). Consequently, racist laws are unjust for (at least) two reasons. First, it is insulting to the extent that it denies the equal worth of persons. Second, 'the insult is made more serious by the fact that it emanates from the state, the entity that exists precisely in order to accord to person's recognition' (Koppelman 2001: 784). At the very least, there are reasons to be doubtful of Adler's objections to expressivist theories.

But doubts may persist regarding our first premise, despite Koppelman's critique of Adler's objections. Recognition seems ill-suited for RoN as recognition is based on human intersubjectivity. While Koppelmann criticized Adler's approach for only being as strong as the moral theories he uses for testing if expressive harm comes up, we can note that both are constrained to intersubjective human ethical theories. Perhaps we can concede that laws regulating intersubjective human conduct ought to be consistent with core substantive values such as equality and respect between humans, but beyond that?

Consider veganism. There is a large body of ethical research rejecting eating meat, and the position seems to cohere with a wide variety of ethical theories.[2] But should we expect the law to prohibit eating meat or the use of animal products, or at least when pain or exploitation are involved in production? This would express a respect for animals which is ethically substantiated. Maybe, but an absolute prohibition risk jeopardizing or conflicting with other rights, such as individual liberty and cultural rights, both which may require

[2] See for instance Singer (2023) and Regan (2004). In general, there are few ethicists who argue in favor of meat eating.

some liberty in dietary choices. However, we can expect of legislations that they regulate meat production and slaughter in ways that, in reasonable manners and consistent with ethical judgments, express respect for animals.[3] Despite expressing respect for animals, such legislations would concede that liberty in dietary choices rank higher than animal life, but animal welfare is respected until the point in time of slaughter. Failing to recognize such laws entails a failure to recognize the moral status of animals. Such legislations express two normative judgments: that respect for animals is required through careful regulation to minimize harm, but also that the life of animals has less ethical weight than liberty of dietary choices.

While expressivist theories of law go to the core of the fundamentals of law, we do not need to commit to arguments about the foundations of law, but only concede that the legitimacy of some laws are to be assessed expressively. Laws of equality are perhaps the most fundamental of such laws having expressive content and function. The value and dignity of human beings must be recognized by the state. That value and dignity ought to be respected and legally expressed. However, we could also expect that law ought to include respect for, for instance, animals due to the ethical arguments requiring it.

Though we saw above that the environment sometimes is provided as an example of expressive laws, little has been said to give us confidence in premise 2 of our argument, to which we now turn. Are there environmental values which we can expect law to express?

3 There are Justified Environmental Values

Here, I will argue that there are several values, of which environmental values play a central role, that there are *pro tanto* reasons to express legally.

3.1 Environmental Values and Law

What should law express when it comes to the environment? One intuitive starting point is to start with values. It seems reasonable that law ought to express that if something is justifiably valuable, it ought to be granted the special protection that legislation provides. RoN seemingly intend to grant legal standing to environmental areas per se. See for instance how Putzer et al. write that RoN entail that 'natural entities are conceived as subjects with intrinsic value independent of human interests' (2022: 89). Thus, we seem to be looking for some form of intrinsic values that we could expect legitimate law to cohere with. The reason is that granting standing to environmental areas per se means that such standing is not derivative on the relevance of the areas to the fulfilment of the valid claims of more conventional rights-holder, such as human or animals.

How do we determine what value the environment has? One possibility is to assess how people value nature. Leiserowitz et al. report that a majority of US citizens agree with the statement 'Nature has value within itself regardless of any value humans place on it', and that 'Humans have moral duties and obligations to plants and trees' (Leiserowitz et al. 2005). However, the conclusions have been criticized as the first claim can be interpreted in

[3] Singer (2023) emphasizes how law is, on occasions, more or less consistent with ethical judgments when stricter regulations are set in areas such as animal testing, and factory farming. He also notes that the European Union in law has recognized animals as sentient beings (Singer 2023: 19).

different ways (Odenbaugh 2017). It can either mean that nature is considered to have intrinsic value, or that nature has value – whether intrinsic or instrumental – regardless of humans (Odenbaugh 2017). Consequently, the conclusion that a majority of US citizens consider nature to have intrinsic value is not warranted. In contrast, when asked directly about RoN, 62% of approximately 11,000 respondents in EU countries, reply that they would support such laws (Epstein et al. 2024). Yet, that does not indicate what types of RoN laws (such as positive rights to restoration, or negative rights to not disturb a baseline, set in some non-arbitrary fashion), how to solve potential trade-offs, and what rights actually would entail (Epstein et al. 2024).

However, to reiterate, expressive theories of law do not assume that legislation ought statistically to reflect sentiments of a population. Thus, a different standard of justification than polls is required, which is where ethical arguments potentially enter. Given that expressivist theories of law strive to be consistent with substantive values, standards of ethical justification can provide one alternative to legislation reflecting public sentiments.

Fortunately, environmental ethics provide a substantial resource for clarifying and justifying intrinsic value. The concept has also been directly discussed related to RoN. Epstein and Schoukens suggest that 'when people talk about obligations to natural entities as rights held by those entities, they implicitly acknowledge the intrinsic value of those entities, and when they talk about rights of natural entities in litigation, they give courts the opportunity to do the same' (Epstein and Schoukens 2021). We also saw other examples of law expressing intrinsic value through RoN in the Introduction (Putzer et al. 2022; Kauffman and Martin 2021: 192). Turning to environmental ethics could justify the conclusion that nature has intrinsic value, and that it is this value that should be expressed in law given the ethical foundations of expressivist law.

Unfortunately, there are several risks for expecting environmental ethics to provide a more robust standard of justification of environmental values than public sentiments. Quite the opposite of providing a solid conclusion that nature has intrinsic value, there is a plurality of axiological positions in environmental ethics where views arguing for, but also rejecting, the intrinsic value of ecosystems, species, or individual animals, all prevail.

Even if there was a strong set of public attitudes regarding environmental values, theories of expressive law assume that law does not merely reflect public attitudes, and even if environmental ethics would substantiate a valid set of norms, environmental ethicists have no privileged way to influence law. Stressing that point, there is a divide between environmental law and environmental ethics, further defeating the possibility of relying on more metaphysical arguments for RoN. While they generated increased attention at the same time, Purdy (2013) observes that the two fields parted ways. While environmental philosophers 'moved boldly' into questions such as 'what kind of value the natural world presents and how humans should approach it […] environmental lawyers, and others with their feet on the ground, largely ignored the questions that philosophers were pursuing' (Purdy 2013: 860). The focus on the substantial axiological issues significantly reduces the relevance of environmental ethics to environmental law.

Relying on public attitudes is contentious because it is not certain what those public attitudes are, but even if they were of one single character expressive legislation does not merely reflect public attitudes. Environmental ethics seem hardly to support a specific set of values in support of RoN, and furthermore, legislation is not to passively rely on the arguments of moral philosophers. There are thus central challenges to our second premise.

3.2 Non-Anthropocentric Intrinsic Values and Other Factors

What we need to get our argument going is that there are some environmental areas that can only problematically be reduced to their instrumental value, which law ought to express. Areas and places may be of importance to some groups, such as the Whanganui River to the Māori (Kauffman and Martin 2021), or the Ganga and Yamuni rivers in India, being highly important to Hindu beliefs (O'Donnell et al. 2020), all which have been recognized as having rights. The areas in question seem clearly to not be reducible to their instrumental value due to how conservation of and access to such areas are prerequisites for manifesting the culture that such groups have the right to protection of. They carry a substantial value beyond mere instrumental value. They have for instance 'constitutive value' as they are critical valuable meaning-bearing components of cultural identity and expression (James 2022). That is, they are not merely conducive of a specific end, even if the value depends on persons.

However, the above would only justify non-instrumental[4] anthropocentric value. Even if such environmental entities are of substantial importance they are still anthropocentrically valuable. Protection of such areas through rights puts the justificatory locus on humans and their relations to the area, rather than on features of the area per se.

But despite claims regarding the intrinsic value of nature independent of human interests, recognized through RoN, intrinsic anthropocentric values can, but need not, be expressed through RoN. If a group has a right to X – such as expression of their cultural practices – and X can only be fulfilled by accessing and preserving an environmental area, then that environmental area ought to be protected (James 2022). We do not need to involve non-anthropocentrism in such rights despite the area having non-instrumental value. But while non-instrumental value could be expressed through RoN, it need not be as we could also think of other ways in which such value ought to be legally recognized, such as through increased environmental protection laws that refer to the cultural group rights, without involving RoN at all.

If intrinsic values play a central role in motivating RoN, we seem to face a choice. Either:

(1) RoN express non-instrumental but anthropocentric values of some form, or.
(2) RoN express non-anthropocentric intrinsic value in the sense of an environmental area per se having value.

While the rhetoric around RoN suggests (2) (Epstein and Schoukens 2021; Kauffman and Martin 2021; Putzer et al. 2022), practical recognitions of RoN seem to be based on (1). This has prompted some to argue that RoN is not even about nature, but about politics (Tanasescu 2022). O'Donnell et al. go as far as suggesting that RoN 'is inherently anthropocentric' (2020: 409). Takacs views RoN as a legal innovation that is neither ecocentric nor anthropocentric (2021: 604), thus balancing between (1) and (2).

Adopting (1) can, but need not, be a justification for RoN. But arguments can be made for environmental values which advances us towards (2). The dissensus amongst environmental ethical views should not be exaggerated as many share a non-anthropocentric core, or at the very least one that questions the reduction of nature to both anthropocentric and instrumen-

[4] Though intrinsic value is conceptually contrasted to extrinsic value, and instrumental is contrasted to final value, I here use non-instrumental and intrinsic as equivalent (see Baard 2019, 2022).

tal values. There are several arguments in environmental ethics from which to justifiably draw the conclusion that nature, or at least parts of nature, has intrinsic and non-anthropocentric value. A classic example is the 'last man on Earth'-argument (Routley 1973):

> **The last man**: The last man surviving the collapse of the world system lays about him, eliminating, as far as he can, every living thing, animal or plant (but painlessly if you like, as at the best abattoirs). What he does is quite permissible according to basic chauvinism, but on environmental grounds what he does is wrong (Routley 1973: 207).

Other examples and variations of this argument exist (Baard 2022).[5] At the very least it seems intuitively reasonable that some areas have substantial intrinsic value that is non-anthropocentric. But there are several reasons for being cautious about accepting this conclusion. First, it is not agreed-upon, and controversial, whether the environment – and which parts of it – has non-anthropocentric value; second, an argument such as Routley's primarily give rise to intuitions that what the last man is doing is wrong, which is a somewhat shaky ground for legal recognition, to say the least; lastly, there is no necessary connection between intrinsic value of any sort and rights.

Despite these shortcomings, it seems reasonable to assume that, at the very least when it comes to some areas, they carry value that exceeds their usefulness to humans (thus being non-anthropocentric) – they may inspire awe, or most aptly be described as sublime – and regarding some areas, they can only problematically be reduced to their instrumental value (thus being non-instrumental). As we saw above, non-instrumental but anthropocentric value can, but need not be, recognized through RoN, whereas RoN seem primarily to refer to non-instrumental and non-anthropocentric value.

Yet, both instances of intrinsic value would only be relevant to some environmental areas, and rest on shaky grounds to justify RoN. But these forms of intrinsic values can be supplemented by other factors, strengthening the case for what we expect law to express. Perhaps they must be, given that intrinsic non-anthropocentric values are disputed, or primarily relevant only in a few cases. Though we risk getting ahead of the discussion in Sect. 4, a few words must be said about the relation between intrinsic non-anthropocentric values and their relation to rights here as it concerns what values that are relevant to legal recognition.

While we may entertain the thought that 'rights' is a legal parallel to the ethical intrinsic value – both guide practice and label actions prohibited or obligatory – to many legal scholars there is no necessary connection between intrinsic value and holding rights (Raz 1986; Baard 2021). Stated differently, even if we show that there are some areas that have intrinsic value of either kind, there is no necessary relation to rights. Yet, even interest theories of rights suggest that intrinsic values give rise to duties, providing an important piece in rights-holding. Two examples are found in legal scholars Joseph Raz and Ronald Dworkin, respectively:

> 'Imagine that I own a Van Gogh painting. I therefore have a right to destroy it. I have an instrumental reason not to do so. I can sell it for a large sum. Furthermore many

[5] See Peterson and Sandin (2013) for criticism of Routley's thought experiment, and how it can give rise to other intuitions based on minor variations.

> would derive great pleasure and enrichment if they could look at it. But no one has a right that I shall not destroy the painting. Nevertheless, while I owe no one a duty to preserve the painting I am under such a duty, at least in the weak sense that I ought to preserve it. The reason is that to destroy it and deny the duty is to do violence to art and to show oneself blind to one of the values which give life a meaning' (Raz 1986: 212).

> 'Paintings and great trees have no interests of their own, and hence no moral rights to protect their interests, but it is still inconsistent with recognizing their intrinsic value to destroy them' (Dworkin 2011: 377).

Taking stock: it is sometimes reasonable to state that environmental areas or nature have intrinsic value of either anthropocentric or non-anthropocentric kinds. Moreover, that intrinsic value at the very least give rise to duties that are weaker than the valid claims of a rights-holder.

But even with duties on board, we are not yet at the level of rights. However, we could imagine additional criteria that make rights appropriate such as environmental areas providing unique resources, and there being substantial threats of destruction which RoN can mitigate (Baard and Mancilla 2024).[6] Alongside intrinsic value in both anthropocentric and non-anthropocentric forms giving rise to duties, such components give rise to rights to some areas. That is, we can concede that sometimes anthropocentric intrinsic value, in the form of for instance constitutive values, can be recognized through RoN, as well as – when that is reasonable – non-anthropocentric values for areas that are only problematically reduced to their relevance to human interests.

There are such supplementary values that we expect law to express, strengthening our case. There are reasons to for instance provide a more nuanced account of instrumental value (Baard 2019). If something is a unique means to something that is highly valuable, the bearer of value can be said to reflect that intrinsic value. The unique resources provided by ecosystems and environmental areas can often be said to be of such kind, especially when it comes to Global Systematic Resources being 'geographic areas of the earth that provide key water or ecosystem services, or help to regulate the climate system, so that their loss would greatly jeopardize the lives of human beings on earth' (Mancilla 2016: 138). Thus, in addition to the two forms of intrinsic value, substantial and unique instrumental value provide an additional piece for recognizing RoN.

Recurrent threats to interests or claims of great importance is often an early step to justify rights in the human case (Nickel 2007: 70ff). Given the dire state for much of nature, sometimes described as the 'sixth mass extinction', coupled with substantial habitat losses, 'recurrent threats' to that which are valuable in both intrinsic anthropocentric (constitutive value) and non-anthropocentric senses, and which has unique instrumental values, we are approaching the values we wish law to express.

In summary, if RoN is conceptually understood as non-anthropocentric, its core justification ought to be non-anthropocentric intrinsic values. However, such values are primarily justified through reasoned intuition, and there is no necessary link between intrinsic value

[6] I wish to acknowledge the importance of discussions I have had with Alejandra Mancilla in working out this argument, which also played a role in our joint publication where it is applied to Antarctica (Baard and Mancilla 2024).

and holding rights, even if intrinsic value can give rise to duties. Consequently, such intrinsic values ought to be supplemented by a set of other reasons to support our second thesis. I have suggested three: anthropocentric intrinsic – or constitutive – value, a greater consideration of the instrumental value of nature as a resource, and recurrent threats. While neither of these are decisive unto themselves, they in conjunction provide *pro tanto* reasons for accepting our second premise that there are environmental values we expect law to express.

4 Rights are Appropriate for Expressing Environmental Values

Even if we accept the first two premises, the values we expect law to express need not necessarily be in the form of rights. I will here continue the discussion from the last section and argue that there are instances when 'rights' is an appropriate concept.

4.1 'Do We Really Have to Put It That Way?': Practical and Theoretical Challenges

Even if we accept the first two premises, is rights the proper concept? In the words on Christopher Stone, an early advocate of RoN, 'do we really have to put it that way?' (1972: 487). If there are values that justify increased legal environmental protection, those values can be expressed through other means than RoN. While there are obvious differences in domestic legislations and implementation, the environment is usually surrounded by some form of legal protection. On an international scale, there are both the UN 'Stockholm Declaration' of 1972, and the Convention on Biological Diversity of 1992. What can RoN add to this in practice? Call this 'the practical challenge' to RoN.

There are also analytical challenges to RoN. Analytically and conceptually, purely anthropocentric but intrinsic values of nature – such as constitutive value or when an area has substantial cultural meaning – may be best expressed by means other than RoN. The reason is that the justificatory kernel of conserving such areas lay in its importance to humans, and for instance their rights to cultural expression. This may, but need not, be expressed through RoN.

Furthermore, RoN sits badly with conventional justifications of 'rights', such as will-, interest-, or status-based theories (Baard 2021, 2023). Chapron, Epstein and López-Bao suggest – with reference to Joseph Raz – that RoN 'may be most easily grounded in the interest theory of rights', that 'Raz suggests that entities that have value for their own sake […] can have rights', and that 'rights-of-nature advocates make a moral assertion that nature does have this intrinsic value' (Chapron et al. 2019: 1392). Even if comparatively easier, there are substantial challenges to this defense. Raz (1986) states that intrinsic value is not sufficient for being a rights-holder, instead basing right-holding on ultimate value (Raz 1986: 177ff). At the center of the distinction between ultimate and intrinsic value lay how some things may be *intrinsically but derivatively valuable* (Raz 1986: 178), similar to the anthropocentric intrinsic value discussed above as choice 1 in Sect. 3.2. Thus, justifying RoN with an appeal to intrinsic value does not hold as there is no necessary connection between the axiological concept of intrinsic value and rights. Yet, as we saw above, even Raz concedes that intrinsic value has the potential to give rise to duties.

There are also others who, while accepting non-anthropocentrism and the intrinsic value of nature, reject that rights are appropriate, among them several environmental ethicists

(Routley 2003[1973]; Taylor 2011[1986]). Perhaps most strongly, Holmes Rolston claims that 'using the language of rights for rocks, rivers, plants, and animals is comical, because the concept of rights is an inappropriate category for nature' (1993: 256). A weak contrast is provided by environmental ethicist Arne Næss, stating that there is a 'universal right to live and blossom' (Næss 1989: 164ff). Affirming the reluctance of other environmental philosophers in recognizing rights, Næss ultimately concedes that 'it is the best expression I have so far found of an intuition which I am unable to reject' (1989: 17). Similarly, Paul W. Taylor suggests that societies which recognize legal rights for wild animals will cohere more completely with valid moral principles (Taylor 2011: 224).

One possibility for responding to such criticism is by invoking conventional criteria to rights-holding but suggest that they are also relevant to the environment. Consider the notion of interests. Some suggest it reasonable to apply the notion of interest to environmental entities. Christopher Stone's (1972; 2010) constructive and Mary Warnock's (2012) critical discussions of RoN are instructive. Stone suggests that 'natural objects *can* communicate their wants (needs) to us' (1972: 471), which to him form a basis for interests:

> 'The lawn tells me that it wants water by a certain dryness of the blades and soil – immediately obvious to the touch – the appearance of bald spots, yellowing, and lack of springiness after being walked on' (Stone 1972: 471).

Similarly, Warnock rejects that sentience is a necessary condition for interests. She states that 'if we take an "interest" to mean "what is good for" something, then things look different' (Warnock 2012: 62). She clarifies that she feels 'no discomfort at all in saying such things that it is the interest of my lawn to have the sprinkler on'. She bases her account on a teleological view of interests, stating that for instance the cleaned-up Thames 'now displays the virtues or excellences peculiar to rivers, of being clean, strong flowing, and a suitable home for fish', which is 'what rivers are *for'* (Warnock 2012: 63). Even if Warnock accepts interests and therefore moral status, she rejects that it leads to *rights*. Stone, for his part, replies that 'anything with interests has more than is needed for standing in law' (2012: 108).

But there are several reasons to be reluctant about accepting such a generous account of interests if also assuming that it plays the same role in justifying rights-holders. For instance, Cochrane (2012) identifies two conceptualizations of interest, one perfectionist and one prudential. While the latter requires sentience, the former is more closely related to Warnock's teleological account of interest. Such well-being concerns 'what makes an individual a good example of its kind' (Cochrane 2012: 37). While it may be conceptually possible to state that 'for a state of affairs to be in X's interests, it must improve X's condition', such a view would allow for an enormous number and types of entities to be considered as having interests. However, from a normative perspective, this neglects the important moral distinction between those (sentient) beings who can themselves be benefitted by states of affairs (Cochrane 2012: 37).

Summarily, there are challenges to the concept of 'rights' being applicable, even if we concede that the environment holds substantial value.

4.2 The Appropriateness of 'Rights'

Here, I will outline why 'rights' is an appropriate legal expression of the value of the environment, continuing the discussion at the end of Sect. 3.2. Some find the motivation for RoN in the on-going and accelerating rates of habitat loss and species extinction, related to the 'practical challenge'. In the human case 'recurrent threats' is among the conditions that motivates rights (Nickel 2007; Baard and Mancilla 2024). Thus, Takacs suggests that 'we *could* achieve ecosystem resilience without granting legal personhood to a given nonhuman entity: we just haven't, hardly ever, hardly anywhere' (2021: 602). This statement reveals a lack of confidence in alternatives to legal personhood of nature while also being overconfident in RoN.

Takacs' confidence in RoN is questionable. When cases have been brought up in domestic legislations that have recognized RoN, the results do not offer a clear sight of whether RoN is successful. Even if there have been cases in nations such as Ecuador where RoN has been successful, Gordon suggests that 'it is notable that the losing cases tend to be ones versus large extractive interests' (Gordon 2018: 85; see however Epstein et al. 2023). To Tanasescu, RoN 'are neither a universal solution to environmental harm, nor uniquely placed to solve such harm' (2022: 17). The possible success of RoN in actual cases will become clearer as more cases are brought forward, but currently there are reasons to be cautious about Takacs' claim.

There are motivations for RoN that are not as constrained to the practical challenge, but rather focus on expressive and nonconsequentialist aspects, and thus fit the expressivist legal theory. Tanasescu argues that RoN appear at the intersection of, on the one hand, intensified human pressure on the environment and, on the other, 'expansion of liberalism in the guise of increasing numbers, and kinds, of rights' which is 'largely inseparable from the concomitant history of colonialism and Indigenous subjugation' (Tanasescu 2022: 10). This keeps RoN in the human domain and makes it a part of recognition and reparation of colonial harms.

At a more general and theoretical level, Tanasescu suggests that RoN is about 'creating new relations through which environmental concerns may be differently expressed' (Tanasescu 2022: 17). Christopher Stone states that 'the strongest case can be made from the perspective of human advantage for conferring rights on the environment' (Stone 1972: 492), suggesting that RoN may be good for us. Gilbert (2023) and Gilbert et al. (2023) suggest that RoN has the power to stress relational aspects to nature, rather than dominance. Recognizing environmental entities as rights-holders establishes care 'for living, dynamic, related ecosystems, often drawing on Indigenous belief systems and reinforcing Indigenous authority and jurisdiction' (Gilbert et al. 2023: 65–66). In the end, RoN, and the values they seek to express legally, depend necessarily and decisively on human relations, if this is the sole motivation for RoN. This is in line with interpretation (1) in Sect. 3.2 which could, but need not, be expressed through RoN.

However, to restrict justification of RoN to anthropocentric interests 'distorts what we are really doing, discouraging the development of a more accurate and noble discourse' (Stone 2012: 109), pointing towards interpretation (2) of RoN in Sect. 3.2. Rather, what Stone calls for is a shift in consciousness about nature and relationships to nature, as 'we are cultivating the personal capacities *within us* to recognize more and more the ways in which nature […] is like us (and we will also become more able realistically to define, confront,

live with, and admire the ways in which we are all different)' (Stone 1972: 498). This leads to a 'radical new conception of man's relationship to the rest of nature' (Stone 1972: 495).

But it seems unclear whether relationality is a motivation for or an outcome of RoN. That is, whether RoN is motivated when a group of people have a specific relation to an area (similar to choice (1) in Sect. 3.2), or whether RoN changes our relation to an area after it has been recognized thus being based on something other than existing relations. If relying too greatly on justifying RoN based on how it is apt to express existing relations, this makes RoN dependent on relations as recognition then becomes derivative of people's relations to an area. While this may sometimes be reasonable, there could also be other alternatives than RoN to recognize such relations. Moreover, as stated in Sect. 3.2, justifying RoN with reference to existing human relations seem to depart from the intention and ambition of RoN.

Law neither passively reflect public sentiments or norms, nor express (possibly disputed) ethical conclusions. Rather, law draws both from reasonable normative arguments it can feasibly implement and plays a role in shaping values. We can draw inspiration from Purdy (2013) for casting light on our expressive argument of RoN and understanding a productive relation between law, ethics, and justified norms. This highlights how rights are appropriate to shape experiences and alter behaviors in ways consistent with intrinsic non-anthropocentric values, substantial and unique instrumental values, intrinsic anthropocentric values and existing relations, and the urgency of mitigating recurrent threats to these meaningful and value-bearing environmental entities.

To Purdy, law has a function by contributing to the development of environmental values, in ways that are highly relevant to the expressive defense of RoN. Purdy states that the productive relation from law to ethics may occur for two reasons. First, there are changes in experience and perception that include changes in the values that motivate political and legal action and, second, 'the most important role of law in the development of environmental values may well be in shaping experience itself, which is a crucible of ethical change' (Purdy 2013: 886). He exemplifies how law 'creat[es] a geography of experience' (2013: 887), first by how US law worked to turn Americans to economically productive settlers through laws such as The Homestead Acts promoting a mode of activity and experience and, second, the development of a Romantic moral vocabulary in American life, 'helping to drive the massive reservations of public land for recreation' (Purdy 2013: 889). To Purdy, by the establishment of the 1964 Wilderness Act, advocates of preserving wilderness 'found words for their own experience and in turn made that experience more fully available to others' (2013: 890).

The productive relation between law and ethics proposed by Purdy enables iterative processes and critically including social practices of a wide array of actors and groups. To Purdy, ethics 'do not tell people what they must or cannot think', but this does not mean that 'it is involved simply in scrupulous application of what they already think' (2013: 931). Rather, ethics offer critical normative scrutiny of justifications of normative positions. This includes scrutiny of the foundations for RoN, and under what conditions recognition of such rights are reasonable. A similar approach, often neglected, is also found in the writings of Christopher Stone who on several occasions discussed the intricate but dynamic relationship between ethics and law (1987; 2012), often highlighting the centrality of ethics, but also the difference to law.

This is how RoN would enable 'a more noble discourse' (Stone 2012: 109), and recognize the non-anthropocentric intrinsic values of nature, its meaning to groups of people

through constitutive values, its unique instrumental value as a resource, but also recurrent threats to it. Taken together, these components justify RoN. Through recognizing RoN, law would make a normatively substantiated move that can influence our relations to some environmental places. This would, at the very least, provide strong *pro tanto* reasons for accepting that some environmental places ought to be ascribed rights. Few other concepts in environmental legislation express the same urgency and strength as rights, and a concern for environmental entities per se.

Law has the possibility of shaping experiences and a productive relation between law and ethics can benefit justifications of RoN. By 'rights' law has the potential to cohere with intrinsic values of both anthropocentric and non-antropocentric kinds, the unique resources in nature, and the urgency of recurrent threats to the environment. 'Rights' shape experiences and relations and has unique potential to express urgency of mitigating threats to environmental entities carrying substantial value.

5 Summary Remark

I have here sought an alternative approach relative the existing literature on RoN to justify it. I have suggested that law sends a message, and in the environmental context that message should be that (some) environmental entities ought to be ascribed rights based on justified intrinsic values of both anthropocentric and possibly non-anthropocentric kinds, unique instrumental values, and recurrent threats.

I have argued that there are good reasons for some legislation to be assessed according to their relation to ethical concepts and substantive values. This may be most relevant to laws that allow discrimination, which rejects equality and recognition. I have argued that there are intrinsic values in both anthropocentric and non-anthropocentric forms, as well as uniquely instrumental values. 'Rights' can express such values, impact on how we perceive the environment, and legally regulate our relations and conduct in ways consistent with justified ethical judgments. Law, in fruitful conversation with both ethics and social practices of *inter alia* Indigenous groups, has the power to express these factors of nature through rights.

The specific rights that nature may have, on which this article has been silent, may be overridden and RoN only provide *pro tanto* reasons for conservation. But they require attending to and providing reasons for why overriding them is justified. This is a message we can expect law to send in the form of RoN.

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