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RIGHTS OF NATURE AS A POTENTIAL FRAMEWORK FOR THE TRANSFORMATION OF MODERN POLITICAL COMMUNITIES

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Abstract

This article focuses on the present context of the climate and environmental crises and how these fundamentally challenge the inherently anthropocentric norms, conceptions and practices of international politics and IR. I argue that, in order to confront the hegemonic, anthropocentric mode of relationship with non-human nature that has led to these crises, alternative frameworks need to be developed that might lead to a gradual transformation of modern political communities. Departing from Critical IR Theory, I suggest that Andrew Linklater's and Robyn Eckersley's critiques of Westphalia and proposals for its transformation might be useful to understand how the emergent Rights of Nature movement may promote such transformation. I look at two paradigmatic cases from the Rights of Nature movement – the Whanganui River case in Aotearoa New Zealand, on a local level; and Ecuador's 2008 Constitution, on a national level – to briefly reflect on the alternative understandings of concepts such as community, subjecthood, agency, voice, rights, participation and representation that they encourage. By expanding these concepts as to include the more-than-human world, these RoN frameworks invite a transformation of modern systems of thought and practice, and – to a certain extent – constitute a potential for the transformation of modern political communities in ways that might enable a better response to the global climate and environmental crises.

Keywords

International Relations; Political Community; Rights of Nature; Non-Human Beings; Climate Crisis.

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Introduction

The climate and environmental crises pose significant challenges to international politics and International Relations (IR). Global-warming, sea-level rise, extreme weather events, ecosystem destruction and the sixth mass extinction phenomenon all render the inseparability and interdependence of human societies and non-human life undeniably clear. These processes of rapid global change directly challenge the Cartesian dualism that arose in Europe during the Enlightenment period (Merchant, 1980) and that views humanity as separate from and in control of nature – a belief which has been central to IR and its study of world politics ever since the development of the modern-states system and of the capitalist world economy (Kavalski and Zolkos, 2016; Tickner, 1993). The lack of timely, concerted and robust responses to these interweaving crises and all of their ecological, social, economic and political impacts is not indissociable from the pervasive anthropocentrism that perceives human beings as the central point of reference in world processes; and of the dominant economic system associated with it which conceives of non-human nature as a passive object for endless human exploitation and consumption (Pereira and Saramago, 2020). The present context therefore calls for post-anthropocentric proposals for the transformation of this hegemonic mode of relationship with non-human nature, which has arisen primarily in the industrialised nations of the Global North.

It is important to note that the transformation of this mode of relationship may inevitably promote a gradual transformation of modern political communities – or the Westphalian system of nation-states – which have, from the start, been fundamentally informed by anthropocentric conceptions of the world and its agentic beings. In fact, the defining norms of Westphalia – e.g., sovereignty, territoriality, citizenship, nationality – are all inherently anthropocentric given that they establish the ontological, moral, legal and political boundaries of community almost exclusively around human beings (Pereira, 2017). Calls for some form of *interspecies relations* (Youatt, 2014); for a new understanding of *planet politics* instead of international politics (Burke et al., 2016); for inclusive, intersectional and cosmopolitical frameworks for *multispecies justice* (Celermajer et al, 2021); for new kinds of political community (e.g., *zoopolis*) which embrace non-human animals as co-citizens, denizens or sovereigns (Donaldson and

Kymlicka, 2014) – among others – have been appearing over the last two decades in response to the exclusive character of world politics and IR, and their inability to adequately respond to the climate and environmental emergencies. In fact, as Joana Castro Pereira argues, "IR should abandon the traditional grounds upon which it is based because the current 'international' notion demands not only a holistic conception but also new ontologies, epistemologies, and methodologies" (Pereira, 2017: 5). Part of this process would necessarily include the recognition of the world's multiple agentic beings, which – I would add – would also involve recovering and/or learning from *old* ontologies, epistemologies and methodologies, such as those held and shared by Indigenous peoples.

Another proposal with the potential to affect and perhaps reshape modern political communities is that of the emergent Rights of Nature (RoN) movement, generally understood to have been first advanced in the 1970s through Christopher Stone's article, "Should Trees Have Standing? – Toward Legal Rights for Natural Objects" (Stone, 1972). Since then, and mainly during the last twenty years, the RoN movement has been evolving within different frameworks, cultures and geographies, arguing for the recognition of non-human nature's inherent rights, either to nature as a whole or to particular ecosystems and species. Although many small, localised legal and political transformations have started being enacted under the RoN umbrella over the past few years, some of its most paradigmatic achievements include Ecuador's 2008 Constitution (the first in the world to recognise RoN); the draft for a Universal Declaration of Rights of Mother Earth written during the World People's Conference on Climate Change and the Rights of Mother Earth in 2010 in Cochabamba, Bolivia; or Aotearoa New Zealand's Te Awa Tupua Act of 2017 (the first in the world to attribute legal personhood status to a river).

Despite the fact that it most directly pertains to the universe of law, the RoN movement holds profound and potentially radical implications for human societies on multiple levels, including politically. As Cormac Cullinan states: "While the regulatory function of law is easy to see, we often overlook the fact that law plays an equally important role in constituting and forming society itself" (Cullinan, 2011: 55). Indeed, law shapes and informs society by defining what should be the multiple relationships between individuals, groups, and society as a whole, as well as between different societies (Cullinan, 2011). These legally defined relationships determine, for instance, how a society is ordered and how power is exercised within it (Cullinan, 2011). As such, "law is used by a society as a means of creating and defining itself in accordance with its worldview" (Cullinan, 2011: 57). By advancing the idea that non-human nature has inherent rights to live and thrive, the RoN movement rejects the foundational Eurocentric paradigm created by Cartesian dualism: it views humanity as deeply embedded in and interdependent with the more-than-human world; and challenges dominant conceptions of political community, subjecthood, agency, voice, rights, participation and representation. It should also be understood as attempting to bring together some of the tools of the contemporary international system (e.g., modern or international law) with ecocentric or nature-centred worldviews that are closer to Indigenous cultures and knowledge systems (Stewart-Harawira, 2012). Indeed, it may be argued that the idea of nature's rights is not new at all, having been shared among native cultures for thousands of years through

their own relationships with the land and non-human beings (Lake, 2017); which is the reason why I argued that the evolution of IR's understanding of the world and its agentic beings requires both *new* and *old* ontologies, epistemologies and methodologies. To clarify, then, when I refer to the *emergent* RoN movement, I refer to these new initiatives, campaigns, and evolutions in law that seek to recognise rights and/or legal personality status to non-human beings and ecosystems.

Critical IR Theory is useful to understand the RoN movement's potential to gradually push modern political communities in a post-anthropocentric direction. Therefore, in the second section of this article, I will briefly look at Andrew Linklater's and Robyn Eckersley's critiques of Westphalia and proposals for its transformation. In the third section, I will reflect on how they might apply to two cases from the RoN movement that were mentioned above: the Whanganui River case in Aotearoa New Zealand (representing RoN on a local level); and Ecuador's 2008 Constitution (representing RoN on a national level). Through critical discourse analysis, I will look at the official documents from each case (the Te Awa Tupua Act of 2017; and Ecuador's Constitution) and see how their language and narrative potential encourage an alternative reading of concepts like community; subjecthood; agency; voice; rights; participation; and representation. In the last section I present some concluding remarks, namely that – by significantly broadening these concepts as to include the more-than-human world – the emergent RoN movement indeed encourages different frameworks for the potential transformation of modern political communities beyond anthropocentric Westphalia.

Beyond Westphalia

Linklater's call for the transformation of modern political communities is associated with his criticism of the Westphalian states-system as one premised on the inclusion of those deemed as "insiders" or "citizens" and the exclusion of those deemed as "outsiders" or "aliens" – a premise derived from the process of state-formation and that is part of the nation-state's "totalising project" (Linklater, 1998: 6). The success of modern states over other forms of political organisation promoted the development of a powerful discourse combining the concepts of sovereignty, territoriality, citizenship and nationality, based on the belief that "ideally, all citizens should subscribe to one national identity conveyed by a common language and culture" (Linklater, 1998: 29). From the beginning, then, the Westphalian states-system was one which tried to erase difference within and beyond its national boundaries; and for Linklater, the essential problem of modern political communities is precisely their *exclusion of difference and otherness* – both between "citizens" and "aliens", and between "citizens" and subaltern groups within the state (Linklater, 1998).

Nevertheless, the Westphalian state and its totalising project do not go unchallenged. According to Linklater, sovereign political communities are challenged on two fronts by, on the one hand, "morally universalistic claims that call for amplifying the role of authorities above the nation-state"; and, on the other hand, by the "politics of recognition" of Indigenous groups and minority nations, which call for "reducing the influence which sovereign states exert over local communities and subordinate cultures"

(Linklater, 1998: 26-27). The tendencies of globalisation and fragmentation that have evolved in opposition to and in response to each other in latest decades, along with the social and economic changes they produced, have been having serious impacts on the modern state's capacity to perpetuate its totalising project (Linklater, 1998). Indeed, by promoting the homogenisation of international society, globalisation actually fuels the politics of identity and community: where there is no convergence between cultural and political boundaries (e.g., in the case of Indigenous peoples living in colonial settler states), there have been increasing pressures to transform "traditional conceptions of community and citizenship which are hostile to the creation of group-specific rights" (Kymlicka, 1989 apud Linklater, 1998: 32). Minority nations, migrant communities and Indigenous peoples therefore promote the "politics of recognition", relying also on "transnational political activity" that is made possible by globalisation, and thus seeking "global support for their project of reconstructing national communities" (Linklater, 1998: 32). The growing prominence of the politics of recognition is, in Linklater's view, a central indicator of movement beyond the Westphalian era (Linklater, 1998).

Linklater's proposal for overcoming the social deficits brought about by the Westphalian nation-state's totalising project involves the widening of the moral boundaries of political community in order to include previously excluded "others". This expansion of boundaries is part of Linklater's envisioned triple transformation of political community, one that seeks to "secure greater respect for cultural differences, stronger commitments to the reduction of material inequalities and significant advances in universality" (Linklater, 1998: 3). According to him, such transformation may be achieved through the establishment of dialogic relations, or the construction of some form of universal communication community, that engage both "citizens" (*all* citizens) and "aliens" in dialogue about matters of vital interest to all. Indeed, the dialogic ideal "envisages post-nationalist communities which are sensitive to the needs of the systematically excluded within and outside traditional borders", making it "one of the principal ethical foundations of the post-Westphalian era" (Linklater, 1998: 51). In Linklater's view, making dialogue central to social life would essentially mean being "troubled by the ways in which society discriminates against outsiders unfairly by harming their interests while denying them representation and voice" (Linklater, 1998: 7). In these communities, then, new social bonds may develop which can "unite citizens around the common aim of eradicating unjustifiable exclusion and promoting deep diversity" (Linklater, 1998: 83).

Still, as appealing as it may be for the inclusion of those subjects whose voices, needs and concerns are traditionally excluded from political decision-making, Linklater's proposal seems unable to extend to non-human nature. This is partly because his understanding of normative validity, which is inspired by Habermas' conception of discourse ethics, rests on the notion of communicative competence; or the fact that norms should be considered valid *insofar* as all those potentially affected by them participate in rational discourse and can (or not) give their consent to those norms (Linklater, 1998; Eckersley, 2004). Such a provision that apparently instantly excludes non-human beings is the result of an anthropocentric system of theory and practice that does not even consider non-human nature as part of the picture. After all, "outsiders", "aliens" and subordinate/subaltern groups within the Westphalian states-system refer to *human* groups such as the global poor, refugees, minority nations or Indigenous peoples

(Linklater, 1998). Insofar as non-human nature is rendered invisible in the dominant world-picture (Burke et al., 2016), no significant transformation of modern political communities to embrace the more-than-human world may be achieved *within* Westphalia, or as long as they adhere to its hegemonic norms and conceptions.

In such context, one might ask: what are the implications of thinking about these "aliens" or "others" beyond the species boundary of the human? In a planet that is currently experiencing a global climate emergency, with unprecedented levels of ecosystem destruction, species extinction and catastrophes affecting both human *and* non-human beings, are we not indeed harming everybody's interests by denying the latter representation and voice in the course of decision-making? What would happen if people *were* troubled by the ways in which modern human societies tend to continuously dismiss the needs and interests of non-human nature – something which may be said to lie at the centre of the climate and environmental crises? Viewing non-human nature as part of the group of systematically excluded and devising frameworks for engaging in dialogue with its multiple beings may be a crucial first step in order to overturn the current situation.

Eckersley does this through her proposal for an ecological democracy, or some form of post-Westphalian green state, which builds on Linklater's work but goes importantly further. Her politically challenging proposal for the transformation of modern states establishes that: "All those potentially affected by a risk should have some meaningful opportunity to participate *or otherwise be represented* in the making of the policies or decisions that generate the risk" (Eckersley, 2004: 111). This formulation is closely aligned with Linklater's claim that dialogue promotes moral progress, especially when one understands it as an expansion of the circle of subjects who have rights to participate in dialogue, and the commitment that only those norms can be regarded as universally valid that have (or could have) the consent of all those potentially affected (Linklater, 1998). However, Eckersley's formulation steps outside the anthropocentric cage by suggesting that the opportunity for participation or representation should be extended to *all those* potentially affected, including *all* of nature, non-human beings, and future generations (Eckersley, 2004).

To engage with non-human beings in the dialogic relations that may enable the development of more inclusive, fair, and ecological societies, Eckersley transforms Habermas' conception of normative validity – the one which claims that norms should be considered valid *insofar* as all those potentially affected participate in rational discourse (Eckersley, 2004). By replacing the word "insofar" with "as if", Eckersley suggests that although many non-human beings may not be able to consent to proposed norms, acting *as if* they were may help to ensure that their needs, interests and well-being are respected, regardless of how useful they are to human beings (Eckersley, 2004). This alternative perspective gives much more importance to the role of *representation* in the democratic process. In fact, Eckersley claims that "representative claim making on behalf of nature" is "ultimately an exercise in persuasion, concerned with exposing practices of exclusion and defending practices of inclusion"; and it can therefore be seen "as an effort to extend or radicalize democracy rather than curtail it" (Eckersley, 2011: 241).

In Eckersley's formulation of an ecological democracy, the demos is "no longer fixed in terms of people and territory", providing "a challenge to traditional conceptions of democracy that have presupposed some form of fixed enclosure, in terms of territory and/or people" (Eckersley, 2004: 113). Here one can see how her proposal may directly challenge Westphalia's central (anthropocentric) norms of territoriality, sovereignty, citizenship or nationality, since the "relevant moral community" that should be considered when making risk-generating decisions is neither ontologically, geographically nor temporally bounded (Eckersley, 2004: 113). Instead, it should be understood as that which is "tied together not by common passports, nationality, blood line, ethnicity, or religion but by the potential to be harmed by the particular proposal" (Eckersley, 2004: 113). The boundaries of the political community would thus "rarely be determinate or fixed but instead have more of the character of spatial-temporal zones with nebulous and/or fading edges" (Eckersley, 2004: 113). This proposal might be better suited to respond to planetary, borderless phenomena, such as climate change, instead of a dominant world-picture of separate, autonomous states that can respond to the crisis each at their own pace and will.

Of course, such a proposal carries many significant and complex challenges (in theory and in practice). Although this is not the place to reflect on them, suffice it to note how challenging Eckersley's formulation is to the Westphalian states-system's main norms and principles, notably because "it does not regard the boundaries of the nation-state as necessarily coterminous with the community of morally considerable beings" (Eckersley, 2004: 114). Regarding the question of how to include non-human beings (and future generations) in the dialogic processes of decision-making, Eckersley proposes the concept of political trusteeship, whereby persons and groups are chosen to represent the needs and interests of those who may not be able to speak for themselves. This closely resembles Christopher Stone's suggestion for the designation of guardians (or a system of guardianship) who can speak on behalf of ecosystems in order to uphold their legal rights (Stone, 1972). The representatives taking on this trusteeship role should include those with firsthand knowledge or experience of non-human nature, including Indigenous peoples, environmental organisations, scientific experts, etc. (Eckersley, 2004).

Naturally, cases of uncertainty, complexity or conflict may arise which can render the decision-making process more difficult. In these cases, Eckersley claims that the green democratic state must not be neutral. Environmental justice in an ecological democracy necessarily requires "rights and decision rules that positively favour the disadvantaged (…) over well-resourced and strategically oriented economic actors" (Eckersley, 2004: 135). One way to achieve this would be through the creation of green democratic constitutions that might recognise, protect, and reward "ecologically responsible social, economic and political interactions among individuals, firms and communities" (Eckersley 2004: 140). In effect, such democracy would encourage states to assume a form of "ecologically responsible statehood" (Eckersley, 2004: 2). The development of a diverse and wide-ranging green public sphere that can inspire practices of transboundary democracy, working towards common goals of ecological, climate and social justice on a global level, is another important aspect (Eckersley, 2004).

Linklater's and Eckersley's proposals for the transformation of modern political communities beyond their traditional modes of exclusion may therefore pave the way for the inclusion, representation and participation of non-human nature, namely through the development of some form of post-Westphalian green states. I will now turn to the RoN movement and analyse how it may suggest a potential transformation of certain communities in this direction.

The Rights of Nature movement

The RoN movement was born from a common perception that existing governance systems are by themselves incapable of responding to the current trends of ecosystem destruction, biodiversity loss and climate change, given competing interests from different actors (e.g., industries; corporations; states) and the fundamental rules of the contemporary economic and political system (Barcan, 2019). As such, "environmental law has become a fertile site for creative experiments", one of which includes the recognition of non-human nature's subjecthood, agency and voice, and fundamental rights (Barcan, 2019: 5). As Youatt claims, the particular feature of RoN seems to be that "they name new, collective, legal and political subjects that are mostly nonhuman" (Youatt, 2017: 2). This can constitute "the latest round of an outward expansion of rights to the previously marginalized, building on the recognition of rights along the axes of race, class, gender, and species" – reminding us of Linklater's proposal (Youatt, 2017: 2). In such scenario, through initiatives and movements like RoN, non-human nature can increasingly acquire actorness or political subjecthood in global life.

Furthermore, the RoN movement has often (although not exclusively) been spearheaded by Indigenous peoples and communities, which is corroborated by the fact that some of its best-known successes (e.g., Ecuador's 2008 Constitution; Aotearoa New Zealand's Te Urewera and Te Awa Tupua Acts) have been taking place in countries with Indigenous populations and active grassroots mobilisation for the recognition of Indigenous voices, claims, and rights. This is tied to the fact that non-Western, Indigenous modes of relationship with non-human nature have historically been radically different from the capitalist, anthropocentric mode of relationship prevalent in the Western world. Actually, despite their diversity in cultures, ontologies and epistemologies, Indigenous peoples around the world tend to share a core set of principles of relationality, interdependence, intercommunication, respect and harmony with the Earth and all beings (e.g. Heinämäki, 2009; Stewart-Harawira, 2012; Inoue, 2018). One significant difference between Western, hegemonic and Indigenous, counter-hegemonic understandings of nature is that between looking at ecosystems (e.g., forests, mountains, rivers) as landscapes, natural resources or carbon sinks – or as "worlds in and of themselves" (Inoue, 2018: 28). This latter understanding underlies Indigenous ontologies that view humans as caretakers of the Earth, explaining why – in spite of comprising less than 5% of the world human population – Indigenous peoples protect and preserve around 80% of the planet's remaining biodiversity (IUCN, 2019). Indigenous cultures and knowledge systems have therefore tended to reject anthropocentric notions of community, subjecthood, agency, voice, and rights long before the modern RoN movement was born. We will now see how

these alternative understandings of such concepts have been advanced through this movement on two different scales.

1. The Whanganui River case

In 2017, the Te Awa Tupua Act became the world's first piece of legislation to declare a river to be a legal person (Collins and Esterling, 2019). It resulted from a long effort by the Maori people, since 1873, to have their right to ownership of the Whanganui River restored – a right which was taken from the Whanganui tribes by the Treaty of Waitangi, through which the British Crown annexed the territory of Aotearoa (New Zealand) in 1840 (Rodgers, 2017; Collins and Esterling, 2019). The attribution of legal personality to the Whanganui represents the latest legal tool being used for the protection and management of rivers; but it also represents a political settlement acknowledging Maori *tikanga* (customary law) and viewing the river and its tributaries in a broad, holistic perspective (O'Donnell and Macpherson, 2019).

As demonstrated in pages 14 and 15 of the Act[1], Te Awa Tupua is defined as "an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements" (Te Awa Tupua Act, 2017: 14). Tupua Te Kawa refers to all the intrinsic values that represent the essence of Te Awa Tupua, including "Ko au te Awa, ko te Awa ko au: I am the River and the River is me", which in turn means that "the Iwi and the hapü of the Whanganui River have an inalienable connection with, and responsibility to, Te Awa Tupua and its health and well-being" (Te Awa Tupua Act, 2017: 14-15). The Act reflects a Maori ontology by identifying Te Awa Tupua (the whole of the river) as including both the river and the people, the Whanganui tribes, "as a single unit, not just as a matter of recognition but also as a matter of governance" (Youatt, 2017: 11). This conception of community consequently views humans as inseparable from and interconnected with the more-than-human world (the river and all other beings inhabiting it). It also represents an attempt to dismantle systems of governance built by Western colonial powers that use language, discourse and law to govern human and non-human nature according to their objectives and worldviews (Youatt, 2017).

This Indigenous view of the Whanganui River as a broad community is in line with Eckersley's proposal for an ecological democracy in which the boundaries of the demos are redrawn to include a larger moral constituency; one that challenges the Westphalian nation-state's traditional norm of territorial sovereignty as a fundamentally nationalist and anthropocentric one (Eckersley, 2004). In this case, the Whanganui River – although being geographically located within the borders of the state of Aotearoa New Zealand – belongs not to the state *but to itself*, which includes the Maori tribes and the non-human beings living in interdependence with the river. Ownership would in this case be better understood as guardianship. As noted by Rodgers, "traditional Maori concepts of stewardship reflect a different relationship (…) to that in most Western legal systems" (Rodgers, 2017: 270). The difference lies in the Maori concept of *kaitiakitanga*, whose

[1] The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 can be consulted here: https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html

main premise is "the understanding that people live in a symbiotic relationship with the earth and all living organisms and have a responsibility to enhance and protect its ecosystems" (Rodgers, 2017: 270). An example of this is clearly illustrated by the phrase "I am the River and the River is me" (Te Awa Tupua Act, 2017: 15).

The next pages of the Act show what it establishes in terms of the recognition of legal personality to Te Awa Tupua and the defined system of guardianship. The Whanganui River is thereby declared to be a "legal person and has all the rights, powers, duties, and liabilities of a legal person" (Te Awa Tupua Act, 2017: 15). Te Pou Tupua are its appointed guardians, in accordance with Eckersley's concept of trusteeship, to ensure that the interests and needs of non-human nature are represented and upheld. The appointed guardians are to be the "human face of Te Awa Tupua and act in the name of Te Awa Tupua" (Te Awa Tupua Act, 2017: 17). This system of guardianship consists of naming one member of the Whanganui tribes and one member of the Crown to act as trustees or spokespersons, and to uphold the intrinsic values (Tupua te Kawa) that represent the essence of the whole of the river. By electing both one Indigenous and one non-Indigenous New Zealander as representatives, the Act may be understood to try to promote a convergence of cultural and political boundaries, thereby encouraging what Linklater advocates as a transformation of political community that seeks to secure greater respect for cultural differences and a greater universality (Linklater, 1998).

It also effectively broadens the scope of representation in the political community that is the state of Aotearoa New Zealand, regarding this local ecosystem, by including both: 1) traditionally marginalised human communities (the Maori); and 2) non-human nature (Te Awa Tupua). Ultimately, the conception of humanity's relationship with non-human nature that underlies this Act is radically different from the one that permeates dominant narratives in the modern states-system. It: a) recognises legal and political subjecthood to a river; b) claims that the physical and spiritual community formed by Te Awa Tupua is made of both human and non-human beings, thereby crossing the territorial and ontological boundaries of the river; c) establishes that Te Awa Tupua is *its own sovereign;* d) and attempts to ensure that the river's voice is heard, even if through its appointed human guardians. Hence, regardless of potential challenges to its practical implementation (which are likely to exist, since it marks such new ground in Western law and politics), it clearly promotes counter-hegemonic conceptions of community, subjecthood, agency, voice, rights, participation and representation that are non-anthropocentric and better suited to respond to the current context of environmental destruction exacerbating the climate crisis. The transformative potential of the Act is also that, even if on a local level, the inscription of this piece of legislation into the institutions of the state indeed creates a precedent for a new system of governance and pushes it toward a form of ecologically responsible statehood (Eckersley, 2004).

2. Ecuador's 2008 Constitution

We now turn to that which is perhaps the world's most famous example of the RoN movement on a national level. In 2008, Ecuador became the first country in the world to officially enshrine RoN into its Constitution, recognising nature in its whole as a rights-

bearing entity. In fact, it may be argued that this is the "hitherto most radical constitution of the world" in what concerns RoN (Lalander, 2016: 624). Chapter 7, through Articles 71 to 74, describes the concept and its legal and political implications for the state[2].

The Constitution claims that "Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes" (Constitution of Ecuador, 2008). Here, then, nature is defined as a whole, recognising no separation between human and non-human worlds and highlighting the interdependence of human and non-human beings. Through these words, one can see recognition of nature's legal and political subjecthood as a living universal entity with inherent rights and inherent agency. The 2008 Constitution can thus be seen as an example of Eckersley's "green democratic constitutions" (Eckersley, 2004: 140).

The inscription of RoN into the Constitution might also be seen as an example of Linklater's claim that transitioning to a system where new forms of political community arise does not necessarily imply the disappearance of conventional state structures, but rather the fact that "states should assume a number of responsibilities which have usually been avoided in the past" (Linklater, 1998: 4). One of these, laid out in Article 72, is that the state must ensure nature's right to restoration (from severe or permanent environmental harm) and establish proper mechanisms to "eliminate or mitigate harmful environmental consequences" (Constitution of Ecuador, 2008). Furthermore, Article 73 explicitly holds the state accountable for applying "preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles" (Constitution of Ecuador 2008). By making it clear that the state is responsible for enforcing RoN, the Constitution seeks to cast it in the new role of "ecological steward" (Eckersley, 2004: 2).

Obviously, whether or not the state acts accordingly is another matter, but the language and narrative potential underlying Chapter 7 describe this new framework for state practice in a way that invites a critical reflection on the concepts of community, subjecthood, agency, voice, and rights in a non-anthropocentric perspective. The Constitution indeed defines an enlargement of Ecuador's moral, legal and political boundaries to include non-human actors who have become repositories of rights that must be ensured by the state – and thus represents a potential post-Westphalian (post-anthropocentric) transformation of this particular political community.

Concerning the selected system of trusteeship, Article 71 establishes that "all persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature" (Constitution of Ecuador, 2008). This means that, in a sense, anybody can act as a guardian or trustee and speak on behalf of non-human nature to make its needs and interests heard. Such provision also broadens the potential scope of representation of non-human nature by naming not only individual but also collective actors (communities and nations) that are part of a rather indeterminate overall community. Besides, the Constitution not only has this more representative dimension regarding non-

[2] The 2008 Constitution of Ecuador can be consulted here: https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html

human nature but also regarding Indigenous peoples, who are part of the traditionally excluded subaltern groups or "aliens" referred to by Linklater.

This is evident in the preamble and corroborated by Youatt's remark that "the rise of indigenous political forces in Ecuador (…) clearly shaped the particular language in these articles, especially the use of Pachamama and *sumak kawsay*" (Youatt, 2017: 10). The preamble refers to Pacha Mama, the Kichwa word generally translated as Mother Earth, and to the sovereign people of Ecuador's commitment to "building a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the sumak kawsay" (Constitution of Ecuador, 2008). The inclusion of an Indigenous paradigm such as sumak kawsay or buen vivir – which represents an alternative to the Western concept of (economic) development – may thus represent an attempt to bring political and cultural boundaries into convergence, in line with Linklater's proposal. The use of concepts such as Pacha Mama and sumak kawsay (which would deserve a far longer article focused solely on their meanings and implications) in the Constitution consequently infuses it with an Indigenous worldview based on notions of interdependence, interrelationship, harmony and respect between humans and non-human beings. According to Eduardo Gudynas, the 2008 Constitution promotes a *biocentric posture*, where both human and non-human lives have value in themselves (Gudynas, 2011); and it therefore rejects a mechanical, reductionist, instrumentalist view of nature, which has been central to the processes of development of the state and the market and hence inherent to modern political communities (Tickner, 1993).

Nevertheless, it is important to note that the Constitution emerged out of a very particular political and social context. It was approved "in the aftermath of a period of profound political turmoil", at a time when leftist president Rafael Correa had just been elected with promises of fundamental changes for the country, including a greater representativeness of Indigenous rights and attention to environmental concerns (Espinosa 2019: 608). An analysis of the implementation of RoN in the country shows that, despite being a radically new step taken by a state, upholding Rights of Nature in Ecuador has not become common practice since 2008 (Lalander, 2016; Laastad, 2019). There are contradictions within the Constitution itself, namely on what concerns the state's responsibility for the country's economy (highly dependent on extractivism and on the exploitation of non-renewable resources); and its duty to uphold RoN (Lalander, 2016). These find a parallel in the state's practice, which continues to rely heavily on resource extraction despite calls for the protection of nature (Lalander, 2016). Considering that Ecuador is one of the poorest countries in South America, the state seems to be trapped between the need to rely on extractivist industries for social welfare; and the need to protect its ecosystems and beings. This apparent dilemma means that "in practice, strategic economic and political interests of the State clash with indigenous and environmental rights" (Lalander, 2016: 625).

It might be tempting to argue that this difficulty in upholding RoN in Ecuador casts doubt on the potential success of the entire movement. However, what is particularly interesting here is how the language used – and its underlying understandings of the political community, of nature's subjecthood and rights – point at least to the *possibility* of transforming Ecuador's boundaries and system of governance in a post-

anthropocentric direction. There are, after all, signs that including RoN in the national Constitution has indeed promoted a growing ecological conscience within civil society (Laastad, 2019). Perhaps it is also connected to some recent achievements in Indigenous and environmental rights' movements, such as the decision by the Constitutional Court of Ecuador in late 2021 to refuse mining concessions in the protected forest of Los Cedros – a decision based on the understanding that such activity would violate the rights of nature of this particular ecosystem (Global Alliance for the Rights of Nature, 2021). As stated in the documentary *The Rights of Nature: a Global Movement*, "the rights of nature are thus represented as less of a legislative tool than an instrument to change how people think and act" (Goeckeritz, Crimmell, and Berros, 2020). A change in consciousness can thus represent the first step towards transforming state practice.

Secondly, the fact that it seems impossible to uphold RoN in the current economic and political system highlights how this system is not built in a way that genuinely allows for the protection of non-human nature, as it is necessarily premised on the continuous exploitation of ecosystems, peoples and beings. As long as modern political communities are built on hegemonic conceptions of the world and its agentic beings, and rely on an economic system that demands the exploitation and destruction of a nature viewed as passive object, it may not be possible for these communities to become ecologically balanced and to effectively respond to the climate and environmental crises. Given that these crises are rapidly worsening, and that they hold such devastating potential to transform global society, looking at the dilemmas that countries such as Ecuador seem to face while trying to uphold RoN and still play by the rules of the current system may propel a call to action towards the transformation of political community beyond its capitalist and anthropocentric structures.

Concluding Remarks

Having analysed these two paradigmatic RoN cases, I would argue that the movement is aligned with Linklater's and (especially) Eckersley's proposals for the transformation of modern political communities beyond their traditional exclusionary character. Both the Te Awa Tupua Act of 2017 and Ecuador's 2008 Constitution seem to be good examples of the politics of recognition that seek to achieve a greater convergence between cultural and political boundaries; that encourage members of the two political communities to be sensitive to the needs and interests of the systematically excluded (in this case, with a particular focus on non-human beings and ecosystems); and that promote deep diversity by extending the moral boundaries of the community to very different "others" – all in line with Linklater's proposal (Linklater, 1998). They also hold important representative dimensions that attempt to create spaces (either through a new legislative Act, or through the national Constitution) for non-human nature's voice to be heard, even if through appointed human guardians or trustees; and encourage practices of ecologically responsible statehood, either locally or through the development of what might be considered a green constitution – in line with Eckersley's proposal (Eckersley, 2004).

Still, two important observations should be made. While these two cases focus on a local and on a national level, I believe that thinking of the RoN movement on a potentially

global scale indicates that the discussion surrounding nature's rights probably becomes more abstract, complex, and harder to implement in practice as one moves from a local to a national to a global level. Suffice it to think of how challenging it would certainly be to try to turn the Universal Declaration of Rights of Mother Earth that was written in 2010 in Cochabamba, Bolivia, into an "international normative framework" similar to the Universal Declaration of Human Rights of 1948 – as was the intention of its proponents when they presented it to the UN General-Assembly (Espinosa, 2014: 393). The fact that the Declaration was not yet accepted as an official framework speaks for itself. Attempting to establish RoN on a global scale poses far greater challenges, as they would have to be accepted by a much larger and more diverse set of actors (with different economic circumstances, political regimes, cultures, needs and interests); and they would directly challenge some of the foundational structures, norms and rules of the contemporary international system, including the capitalist world economy. On the other hand, although questions, challenges and tensions exist in both the Whanganui River case and regarding the Ecuadorian Constitution, and perhaps more evidently in the latter, RoN frameworks were officially adopted in both instances and they are to some extent already having an impact. What this suggests is that the RoN movement might potentially achieve greater success by first focusing on smaller, localised changes and gradually, potentially encourage a growing network of RoN frameworks. Working on paradigmatic change or consciousness raising on smaller levels might contribute to spreading counter-hegemonic conceptions and systems of practice through a grassroots, bottom-up approach.

Secondly, it is important to note how the contexts in which the RoN movement has had more success until now are in the Global South, and specifically in regions with Indigenous peoples and active Indigenous mobilisation (or struggle) for the recognition of their cultural, political, and legal rights. Some of the cases where the RoN frameworks seem to have been more boldly introduced so far, in Ecuador and in Aotearoa New Zealand, involved very particular circumstances through which Indigenous peoples made their voices and their claims (and therefore their cultures, ontologies, and language) heard and incorporated into official legislation. What this seems to suggest is that, in those spaces where the moral boundaries of political community are widened to the extent that they allow for a greater inclusion, participation and representation of traditionally marginalised human communities (particularly Indigenous peoples), one can expect to more easily see a corresponding expansion of those boundaries to include systematically excluded non-human nature. This makes sense, in fact, if one thinks of Indigenous peoples' traditional relationships to the more-than-human world; and it also suggests that the development of more inclusive political communities can be a good scenario for both human *and* non-human beings. If it enables a more timely, concerted, and robust response to the climate and environmental crises, it certainly will.

Finally, regardless of potential challenges to its practical implementation, I would argue that the RoN movement does indeed hold the potential for (at least) a gradual transformation of political community in a post-anthropocentric, post-Westphalian direction. Through their language and narrative potential, RoN frameworks invite a critical reflection on concepts of community, subjecthood, agency, voice, rights, participation and representation that have almost exclusively centred around humans; and

consequently push for an enlargement of the moral, legal and political boundaries of community as to include the more-than-human world. By inviting a transformation of a prevailing, exploitative, anthropocentric mode of relationship with non-human nature, the RoN movement also enables a potentially robust, more representative, inclusive, fair, and ecological response to the climate and environmental crises.

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