

ARTICLE

# Rights of Nature: An Adequate Response to the Environmental Crisis?

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## Abstract

No one disputes the fact that the current environmental crisis requires a response. The subject of this paper is a relatively novel response that is gaining increasing traction: the rights of nature (RoN) approach. Proponents of RoN claim that if we recognize that natural objects and ecosystems are not things with which we may do as we like, but in fact are subjects of rights that place limits on the scope of permissible actions, then we might have a shot at addressing the environmental crisis in a satisfactory manner. This paper sets out to assess this claim, concluding that RoN is (1) morally problematic (it either leads to endless rights conflicts (biocentrism), or it problematically subordinates individual organisms to the biological whole (ecocentrism), (2) conceptually flawed (because rivers, mountains, and ecosystems are not the sorts of things that can bear rights), and (3) inefficacious in practice (appeals to RoN have typically failed in court and the instilment of environmental virtue in us will require more than just good laws). Two alternative approaches are discussed that combined could secure fundamental rights for humans regarding the environment, cultivate the appropriate character traits in them, *and* protect nature in the process.

**Keywords:** Rights of nature; human rights; virtue ethics; philosophy of human rights

## A. Introduction

The summer of 2024 has made it clearer than ever that we urgently need to formulate a response to the environmental crisis (I use the term “environmental crisis” rather than simply “climate change” to signal the fact that the crisis goes beyond a changing climate caused by emissions and also includes such things as deforestation, overfishing, declining numbers of pollinators, an expanding human population, and loss of biodiversity): This summer was the warmest on record,<sup>1</sup> China was hit with massive floods—following scorching temperatures—forcing 100,000 people to be evacuated,<sup>2</sup> hurricane Beryl caused widespread destruction in the Caribbean earlier than ever in the hurricane season,<sup>3</sup> and typhoon Yagi was one of the most intense to ever strike northern Vietnam.<sup>4</sup>

<sup>1</sup>Simon King, *Summer 2024 Was World’s Hottest on Record*, BBC (Sep. 6, 2024), <https://www.bbc.com/weather/articles/c93p5kz9elro>.

<sup>2</sup>Simone McCarthy & Joyce Jiang, *Summer of Devastating Floods Shows Steep Challenge for China as It Grapples with Extreme Weather*, CNN, <https://edition.cnn.com/2024/07/22/china/china-floods-climate-change-intl-hnk/index.html> (last updated July 22, 2024).

<sup>3</sup>Richard Luscombe, *After Hurricane Beryl’s Destruction, Climate Scientists Fear for What’s Next*, THE GUARDIAN (July 13, 2024), <https://www.theguardian.com/environment/article/2024/jul/13/hurricane-beryl-climate-scientists>.

<sup>4</sup>*Typhoon Yagi Death Toll over 200 as Vietnam Searches for Survivors, Flooding Hits Thailand and Myanmar*, CBS NEWS (Sep. 12, 2024), <https://www.cbsnews.com/news/yagi-typhoon-2024-vietnam-death-toll-thailand-myanmar-floods-landslides/>.

Nor has this been the first extreme summer. The summer of 2022 saw some extreme events as well. For example, the polluting of the Oder river with a substance that caused high salt levels in the river, exacerbated by hot temperatures and low river levels, resulted in hundreds of tons of dead fish.<sup>5</sup> Just before that summer, some cities in India and Pakistan saw temperatures of up to 50 degrees Celsius, with the scorching temperatures leading to damaged crops and school closures.<sup>6</sup> In Italy, a glacier collapsed due to extreme heat. In late August 2022, a historic flood submerged a third of Pakistan's surface.<sup>7</sup> Tens of thousands of Sydney residents had to flee their homes following floods in July.<sup>8</sup> Millions faced hunger in the Horn of Africa due to extreme drought—among other causes.<sup>9</sup> Of course, these events do not affect only humans, but also the flora and fauna living in the affected areas as well as ecosystems as a whole.

It is thus abundantly clear that this crisis requires a response. Gaining in prominence is an approach to the crisis based on the rights of *nature* (RoN). In brief, this approach would spur us to action because of the threats the environmental crisis poses not just to human beings and their interests, but also to nonhuman nature apart from its value for us humans. Essentially, the main claim of the present Article is a negative one: Though it is clear why those wishing to do something about the environmental crisis would resort to this rights-based approach, ultimately it fails to provide an adequate answer to the threats facing the environment. Specifically, I argue that this approach suffers from moral, conceptual, and practical issues. It thus fails to meet the desiderata for a successful approach to the environmental crisis, which I will use to assess the RoN approach. Note that I do not claim these desiderata are exhaustive, but do believe that any convincing response to the environmental crisis must meet at least these. Thus, any response to this crisis needs to be (1) morally convincing. In other words, the approach's prescriptions may not be morally reprehensible and it must be possible for agents to comply with its commands. Furthermore, it must be (2) conceptually coherent. A concrete example: If it is the case that only certain beings can have rights, and ecosystems are not such beings, any approach arguing for the rights of ecosystems will be conceptually incoherent. Lastly, any approach to the environmental crisis must be (3) efficacious in practice, that is, it must succeed in bringing about changes in political policy and legislation as well as individuals' actions and dispositions.

Accordingly, the Article will proceed in the following fashion: Section B will discuss the promise of the RoN approach, explaining its appeal. Section C will then examine whether the RoN approach meets the three desiderata. In brief, the conclusion will be that it does not, as its prescriptions are morally undesirable, its understanding of rights-bearers is conceptually flawed, and its success in practice is very limited. Finally, Section D will discuss two alternatives to RoN. Both a human rights approach and environmental virtue ethics possess significant advantages over RoN without exhibiting any flaws as serious as those involved in RoN—though they do have some problems of their own. Section E concludes that, given the failure to meet any of the desiderata and the availability of more convincing—or, at least, less problematic—alternatives, RoN cannot be said to provide a convincing response to the environmental crisis.

<sup>5</sup>Jenny Hill, *Oder Mass Fish Deaths: Searching for Clues to Polish/German Border Mystery*, BBC (Aug. 27, 2022), <https://www.bbc.com/news/world-europe62688036>.

<sup>6</sup>Lianne Kolirin, *Climate Change Is Making Record-Breaking Heatwaves in India and Pakistan 100 Times More Likely*, CNN (May 18, 2022), <https://edition.cnn.com/2022/05/18/asia/climate-india-pakistan-heatwave-intl/index.html>.

<sup>7</sup>Leo Sands, *Pakistan Floods: One Third of Country Is Under Water—Minister*, BBC (Aug. 29, 2022), <https://www.bbc.com/news/world-europe-62712301>.

<sup>8</sup>Renju Jose, *Australia Floods Worsen as Thousands More Flee Sydney Homes*, REUTERS (July 6, 2022), <https://www.reuters.com/world/asia-pacific/australia-floods-worsen-thousands-more-sydney-residents-evacuate-2022-07-05/>.

<sup>9</sup>*Drought and Food Security in the Greater Horn of Africa*, WORLD HEALTH ORG., <https://www.who.int/emergencies/situations/drought-food-insecurity-greater-horn-of-africa> (last updated July 30, 2024).

## B. The Promise of the Rights of Nature

Over the past twenty years, an increasing number of countries have legally recognized “rights of nature” (RoN). Article 71 of Ecuador’s Constitution, for example, states that “Nature, or Pacha Mama ... has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.”<sup>10</sup> Bolivia has adopted a Law of the Rights of Mother Earth, conferring upon Mother Earth rights to, amongst others, life, water, clean air, and freedom from contamination.<sup>11</sup> New Zealand has recognized the Whanganui River<sup>12</sup> and Mount Taranaki<sup>13</sup> as legal persons with all the rights and duties that go with such personhood. In total, as of January 2021, there are at least 178 legal provisions recognizing RoN worldwide—these vary from constitutions and laws to court rulings.<sup>14</sup> In a nutshell, proponents of RoN claim that, by granting legal personhood and/or fundamental rights to nonhuman nature, these entities—trees, rivers, ecosystems<sup>15</sup>—are recognized to have rights of their own that can be enforced against other legal persons. Nonhuman nature will then no longer be an object to use as we please, but a subject with rights.

Kauffman and Martin distinguish between two RoN approaches: The *nature’s rights model*—applied in such countries as Ecuador, Bolivia, and the United States—ascribes rights to nature as a whole, such as the right to exist, persist, and to flourish. These laws empower, but do not oblige, any person to speak on nature’s behalf. As a consequence, this model tends to be reactive in nature: People will attempt to defend nature’s rights in court when violations of those rights have already occurred or are deemed imminent.<sup>16</sup> The alternative is the *legal personhood model*—chosen by, inter alia, Colombia, India, and New Zealand—whereby legal personhood is granted to particular ecosystems, rather than assigning rights to nature as a whole, so that these ecosystems enjoy the same rights as all legal persons—that is, people and corporations. The legal personhood model involves the creation of specific representational mechanisms: Guardians are appointed to speak on the new legal person’s behalf and are *obliged* to act in its interests.<sup>17</sup> This model is proactive; the guardians are expected to act on the ecosystem’s behalf not during only court proceedings, but also in environmental decision-making outside of court.

The RoN approach claims several important advantages: First, it can explain our intuition that our behavior towards nonhuman nature is constrained by morality, as demonstrated by the “last person standing” argument. Imagine a postapocalyptic world in which but one human being has survived who decides to spend his remaining time on Earth by destroying, for recreational purposes, as many living beings as he can find, thus eliminating great numbers of animal and plant life. His behavior involves no harm to other human beings—there are none—yet most would likely share the intuition that this person’s actions are morally wrongful. A RoN approach can explain why: Nonhuman nature, like human beings, possesses intrinsic value. It thus deserves moral consideration and places moral constraints on our behavior. A second advantage follows as

<sup>10</sup>Constitución de la República de Ecuador [Constitution of the Republic of Ecuador], Oct. 20, 2008, tit. II, ch. 7, art. 71, English translation available at <https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

<sup>11</sup>Law No. 071, Ley de derechos de la Madre Tierra [Law of the Rights of Mother Earth] art. 7, Dec. 21, 2010 (Bolivia).

<sup>12</sup>Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, ss 14–15 (N.Z.).

<sup>13</sup>Record of Understanding for Mount Taranaki, Pouākai and the Kaitake Ranges Between Ngā Iwi o Taranaki and the Crown, Dec. 20, 2017, art. 5 (N.Z.).

<sup>14</sup>CRAIG M. KAUFFMAN & PAMELA L. MARTIN, THE POLITICS OF RIGHTS OF NATURE: STRATEGIES FOR BUILDING A MORE SUSTAINABLE FUTURE 2 (2021).

<sup>15</sup>The attentive reader will notice that I do not include nonhuman animals here, though at times these are included in RoN discourse. However, I consider the question of animal rights to be sufficiently distinct from the question of rights for natural entities to warrant separate consideration. Therefore, from this point onward, whenever I use the term “nonhuman nature” or “nonhuman entities,” I do not intend to include nonhuman animals. From time to time, I will have something to say about nonhuman animals and rights, but in this Article I wish to focus on nonhuman *nature*—as I have limited the term—also because it has received far less sustained philosophical attention than the question of animal rights.

<sup>16</sup>KAUFFMAN & MARTIN, *supra* note 14, at 15.

<sup>17</sup>*Id.* at 16.

a practical consequence of the first: As a bearer of rights, nonhuman nature ought to have a place of prominence in our moral, political, and legal deliberations. As with conventional rights-bearers, nature's interests will need to be taken into account when deciding what individual actions to perform and what laws and policies to draft. This will result in decisions that are less harmful or even beneficial to nature. Third, this practice of considering nature's interests will bring about a moral transformation *in us*:<sup>18</sup> We will cease to view nature as mere sump and source and start to view it instead as a being, or beings, deserving of respect. It will thus rid us of our old paradigm of thinking—which, so the argument goes, is reflected in our legal systems, which is why our current laws fail to truly address the environmental crisis—namely, that human beings are separate from the rest of the interconnected web of life, that only human beings have moral value, that all nonhuman beings are mere things for us to use as we wish, and that human beings alone are legal subjects whereas everything else is reduced to the status of thing.

These are ambitious claims. There are, however, some serious downsides to this approach, which render RoN both undesirable and implausible. It is to these downsides that I will turn next.

### C. Problems with Rights of Nature

Let us start with the notion that nonhuman nature possesses value independent from the value it has for human beings. This idea runs into several difficulties. First, it seems to involve a conflation of what Ronald Sandler has called “subjective final value” with “objective final value.”<sup>19</sup> Something possesses *instrumental value* to the extent that it is useful for attaining the goals of others. Something that possesses *final value* is valuable independently of its use for others in attaining their goals. However, a thing may possess final value in one of two ways: Something that has *objective final value* is valuable in and of itself, independent of human valuers. Humans do not create such value, but discover it. By contrast, something that possesses *subjective final value* is not independent of human valuers. Rather, it is created by their judgments and preferences. To illustrate the aforementioned conflation, let us briefly return to the earlier mentioned “last person” argument. Imagine the last person on Earth, instead of eradicating as many plants and animals as she can, decides instead to spend her remaining days by vandalizing great works of art. Would we not view her smashing Michelangelo's *David* to bits and cutting Monet's *Water Lilies* paintings to pieces wrong as well? But surely these works of art are only valuable because they are valuable to human beings? Their aesthetic qualities are such that only we respond to them. What the “last person” argument uncovers, in other words, is not necessarily value independent of humans, or objective final value. Rather, it is subjective final value. Such non-instrumental, final value, is also possessed by nature, but conferred on it by human valuers.<sup>20</sup>

Second, given this confusion between subjective and objective final value, there is a very real worry that assigning rights based on final—or, more ambiguously, intrinsic or non-instrumental—value would implausibly lead to granting rights to artworks or knowledge as well, as these also possess intrinsic value.<sup>21</sup> Failing specification of a certain *kind* of value that warrants talk of rights—think of the Kantian who ascribes only objective final value to those beings who possess reason—assigning rights based on non-instrumental values risks being overly permissive.<sup>22</sup>

<sup>18</sup>See, e.g., THOMAS BERRY, *THE GREAT WORK: OUR WAY INTO THE FUTURE* x–xi (1999); Peter R. Burdon, *A Theory of Earth Jurisprudence*, 37 AUSTL. J. LEGAL PHIL. 28, 29 (2012); DAVID R. BOYD, *THE RIGHTS OF NATURE: A LEGAL REVOLUTION THAT COULD SAVE THE WORLD* xxii (2017); Louis J. Kotzé & Duncan French, *The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene*, 7 GLOB. J. COMPAR. L. 5, 7 (2018).

<sup>19</sup>RONALD SANDLER, *THE ETHICS OF SPECIES: AN INTRODUCTION* 18 (2012).

<sup>20</sup>JOSEPH HEATH, *PHILOSOPHICAL FOUNDATIONS OF CLIMATE CHANGE POLICY* 24–25 (2021).

<sup>21</sup>Patrik Baard, *Fundamental Challenges for Rights of Nature*, in *RIGHTS OF NATURE: A RE-EXAMINATION* 156, 168 (Daniel P. Corrigan & Markku Oksanen eds., 2021).

<sup>22</sup>Matthias Kramm, *A Tale of Two (and More) Models of Rights of Nature*, 47 ENV'T ETHICS 159, 162 (2025).

Third, it is notoriously difficult and contested to establish that nonhuman nature possesses value independent of human valuers. At the basis of such claims concerning nature's objective final value by RoN proponents, there is a typically unspoken commitment to value realism that not all find convincing. Value realism is, in brief, the view that moral values exist as independent facts, irrespective of our beliefs, judgments, and preferences. However, absent a convincing argument demonstrating that value does indeed exist independently of human beings, that we have epistemological access to such independent value, and that nature possesses such value, one of the foundational claims of the RoN movement rests on metaphysically shaky ground.<sup>23</sup> This metaphysical difficulty, O'Neill observes, "cannot be overcome by the merits of the cause which real environmental values are supposed to support."<sup>24</sup> In Section C.II dealing with conceptual issues, I will illustrate that arguments like the "last person standing" argument do not demonstrate that nature possesses objective final value.

Finally, even if it were true that nature possesses value independent of human valuers, who is to say we would agree concerning the *locus* of that value?<sup>25</sup> As we will discuss more at length shortly, *biocentrists* maintain that the locus of value lies in individual organisms, whereas *ecocentrists* argue that it rests instead with ecological wholes, such as ecosystems. Mark Sagoff, for this reason, characterized the relationship between proponents of animal rights and environmentalists as a "bad marriage" destined to lead to a "quick divorce."<sup>26</sup> The return of the wolf, for example, to many areas in Europe is welcomed by environmentalists, as the return of this apex predator renders ecosystems complete, but it seems proponents of rights of individual animals should be dismayed at the prospect of many deer, boar, and rabbits—not to mention sheep and other livestock—dying a violent and premature death. Similarly, environmentalists will typically advocate for the killing of individual members of an invasive species—say, rabbits in Australia—whereas proponents of animal rights abhor the idea.<sup>27</sup>

These preliminary remarks put some pressure on the value commitments of RoN proponents underlying their normative claims. The latter, however, also face difficulties of their own.

### I. Moral Issues

In its *biocentric* guise, the RoN approach maintains that all individual organisms have rights.<sup>28</sup> An important worry regarding this great proliferation of right-holders is that it would increase the number of rights conflicts considerably. The reply that rights conflicts among *human* rights are also quite common and so that this is nothing new simply will not do. In a world where humans, nonhuman animals, and flora all have rights "to exist, flourish, and naturally evolve"<sup>29</sup> and so place limits on our permissible behavior, we are bound to routinely violate our duties to some of these rights-bearers. Even meeting our most basic needs would involve rights violations: Trees are killed to build houses and plants are harmed when harvested for food, thus violating their rights to exist and flourish. Yet, my children have a right against me that I house and feed them. So it seems I must either fulfill my rights-based duties towards my children or I must fulfill my rights-based duties owed to trees and plants at the cost of violating those I owe to my children. How plausible is

<sup>23</sup>Toby Svoboda, DUTIES REGARDING NATURE: A KANTIAN ENVIRONMENTAL ETHIC 13 (2015).

<sup>24</sup>Onora O'Neill, *Environmental Values, Anthropocentrism and Speciesism*, 6 ENV'T VALUES 127, 128 (1997).

<sup>25</sup>Thomas E. Hill, Jr., *Ideals of Human Excellence and Preserving Natural Environments*, 5 ENV'T ETHICS 211, 214 (1983).

<sup>26</sup>See generally Mark Sagoff, *Animal Liberation and Environmental Ethics: Bad Marriage, Quick Divorce*, 22 OSGOODE HALL L.J. 297 (1984).

<sup>27</sup>Sagoff, *supra* note 26, at 304.

<sup>28</sup>See generally GARY E. VARNER, IN NATURE'S INTERESTS? INTERESTS, ANIMAL RIGHTS, AND ENVIRONMENTAL ETHICS (1998); Kenneth Goodpaster, *On Being Morally Considerable*, 75 J. PHIL. 308 (1978).

<sup>29</sup>See TOLEDO, OHIO MUN. CODE ch. 17, § 254(a) (2023) (declaring the right of Lake Erie and the Lake Erie watershed to "exist, flourish, and naturally evolve," which is a common formulation of the rights granted to nature).

a normative approach that routinely throws such dilemmas at us? Because the RoN approach, in its biocentric guise, entails granting rights to trillions of organisms, such conflicts are bound to be constant. Furthermore, normative theories are typically expected to be action guiding, but if biocentrism prescribes behavior which is impossible for agents to comply with, then it is not a viable normative theory. We cannot avoid harming plants for food, we require wood for housing and furniture, and we cannot avoid ceaselessly killing bacteria with our immune system. If the implication of biocentrism is that meeting our needs for food, shelter, and health involves either killing or damaging rights-bearers, then biocentrism is wholly implausible.<sup>30</sup>

Proponents of RoN as far back as Christopher Stone have of course foreseen this difficulty. Their reply, however, is unconvincing. Stone argues that nonhuman entities need not have all the rights humans have, because of course that would be wholly implausible—why would a tree need a right to freedom of religion?<sup>31</sup> Berry maintains that “trees have tree rights, insects have insect rights, rivers have river rights, [and] mountains have mountain rights.”<sup>32</sup> Presumably, the argument is that conflicts will not be so frequent because the list of rights nonhuman nature has is far more limited than that of human beings. But if the list of tree rights does not even include a right to life—understood in the most negative fashion as the right not to be killed—then what rights *does* a tree have? Often, authors advocating for RoN seem unwilling to bite the bullet and conclude categorically that trees, rivers, and ecosystems may not be treated in certain ways. Instead, they argue that RoN are of a different kind, or perhaps that the rights are less weighty. But then the concept of “rights” loses all meaning. Most scholars would agree that one typical characteristic of rights is their peremptory force: The assertion of a right is not just another consideration to take into account, but a particularly weighty one that, in principle, cuts off further debate concerning what is to be done.<sup>33</sup> This understanding of rights seems to be lost here. Perhaps proponents of moral consideration of nonhuman nature should use the word “reason” instead: We have moral *reasons* to treat trees, rivers, and ecosystems in certain ways, but not rights-based duties. Rights require actions that are *owed* to another moral or legal subject, whereby the duty-bearer has no discretion in whether or not to perform the duty, and non-performance *wrongs* the rights-bearer. The idea of RoN threatens to undermine this understanding of rights.

A different reply to my objection—that biocentrism would imply that we routinely violate rights just by going about our ordinary daily business and is therefore implausible as a normative theory—would be to say that rights *infringements* do not necessarily entail rights *violations*: Say I see someone drowning in the water, quite far from where I’m standing. Next to me is a motorboat with the keys still in the ignition. I decide to take the boat without the owner’s permission as I know it is the quickest way to get to the person in need. My actions may have *infringed* the owner’s property rights but, being justified, do not amount to a rights *violation*. In other words, the infringement of the rights of a tree by felling it for wood for my table does not amount to a violation because a balancing exercise would demonstrate that our interest in furniture outweighs the tree’s right to life. This reply might perhaps succeed in taking away the worry that biocentrism condemns us to committing constant rights violations, but in the process it risks stripping the idea of rights of nature of any real normative content: If I can justify killing a rights-bearer because I need it to eat my dinner on, then its rights do not amount to much. Furthermore, the way we typically decide whether an infringement amounts to a violation is by going to court. It is entirely unfeasible to do this every time we infringe the rights of trees, plants, blades of grass, or bacteria, as each one of us infringes these “rights” multiple times per day as a matter of course.

<sup>30</sup>SVOBODA, *supra* note 23, at 22.

<sup>31</sup>Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 457–58 (1972).

<sup>32</sup>See BERRY, *supra* note 18, at 5. See also Peter D. Burdon, *The Rights of Nature Reconsidered*, 49 AUSTL. HUMANS. REV. 69, 79 (2010).

<sup>33</sup>RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 269 (1977).

Given this problem with the biocentric approach to RoN, one might opt instead for an *ecocentric* approach, granting rights to biological aggregates such as ecosystems, rather than to individual organisms.<sup>34</sup> Yet, this approach has problems of its own. Tom Regan famously dubbed this view “environmental fascism.”<sup>35</sup> What matters for the ecocentrist is the thriving of the ecological whole. If that goal is best realized by sacrificing individual organisms, then that is justified. The “fascism” of this approach thus lies in its subordination of individual beings to the biological aggregate. Because those beings might also be humans, ecocentrism seems to countenance the wronging of human beings in order to promote the ecological whole. Herein lies its misanthropy.<sup>36</sup> Because the proper subjects of rights, according to this view, are ecological wholes, the individual beings making up those wholes seem to become mere instruments in ensuring the flourishing of the ecological whole, a conclusion wholly unacceptable to anyone who endorses *individual* rights.

I therefore conclude that the RoN approach to the environmental crisis is not morally desirable. The first desideratum for an adequate response to the environmental crisis has therefore not been met.

## II. Conceptual Issues

Next to these sundry moral difficulties with the RoN approach, there are also several conceptual issues which render it problematic. First, the ecocentric variety of RoN suffers from serious definitional problems: How does one draw the boundaries around a particular subject of rights—in other words, an ecological whole—on this account? Where does one ecosystem end and another begin?<sup>37</sup> As Dale Jamieson observed: “It makes sense to say that a little ecosystem has emerged on the north side of the large rock in my garden. But it also makes sense to say that my garden is an ecosystem, and so is the valley in which I live, and so on.”<sup>38</sup> There is no self-evident way for drawing the boundaries around biological aggregates, which might very well lead to the courts having to solve this thorny issue for which they do not possess the relevant expertise. Consequently, whether a particular policy decision is deemed to promote or violate RoN will depend on an arbitrary decision concerning the identification of rights-holders—that is, concerning the contours of the ecological wholes. It is conceivable that a particular policy will have a negative effect on a local ecosystem, but a net positive effect for the larger biological aggregate of which it is a part such as a biome. Depending on how one has defined the biological aggregates that are to be subjects of rights, this policy will therefore either be deemed impermissible because it involves rights violations or desirable because it promotes the rights of the biome, respectively. Furthermore, one and the same policy might affect different individual animals within the same ecosystem differently: The decision to build a road through a forest, for example, may have adverse effects for small mammals being run over, but positive effects for scavengers who get to feast on the roadkill.<sup>39</sup> How does one determine whether the construction of this road constitutes a

<sup>34</sup>See J. Baird Callicott, *Animal Liberation: A Triangular Affair*, 2 ENV'T ETHICS 311, 324 (1980) (arguing that the “integrity, stability, and beauty of the biotic community” is to be understood as the “*summum bonum*.”); ALDO LEOPOLD, *A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE* (1949) (inspiring the work of J. Baird Callicott).

<sup>35</sup>TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* 362 (2d ed. 2004).

<sup>36</sup>SVOBODA, *supra* note 23, at 25.

<sup>37</sup>Matthias Kramm, *A Tale of Two (and More) Models of Rights of Nature*, 47 ENV'T ETHICS 159, 161 (2025).

<sup>38</sup>See DALE JAMIESON, *ETHICS AND THE ENVIRONMENT: AN INTRODUCTION* 151 (2008). See also Elizabeth Cripps, *Saving the Polar Bear, Saving the World: Can the Capabilities Approach Do Justice to Humans, Animals and Ecosystems?*, 16 RES PUBLICA 1, 13 (2010).

<sup>39</sup>Mauricio Guim & Michael A. Livermore, *Where Nature's Rights Go Wrong*, 107 VA. L. REV. 1347, 1383 (2021) (providing the example of building a road through a forest to demonstrate the different consequences of the project for biological individuals).

violation of the rights of the ecosystem? Incidentally, the biocentric approach would have difficulty dealing with such a case as well.

A second conceptual worry is whether plants, rivers and ecosystems are the sorts of beings/things that can have rights. Here, proponents of RoN might attempt an extensionist strategy. Basically, one would argue that, just as human beings have rights because they possess some objective final value-grounding feature—for example, autonomy, agency, sentience—nonhuman nature also has rights to the extent that they possess that feature as well. But the objection to such a strategy is that the extension is not convincing.<sup>40</sup> It is obvious that natural objects such as rivers or mountains and biological aggregates like ecosystems cannot act autonomously. But what about plants? We know that plants perform amazing feats. For example, they have mechanisms to protect themselves from damage—for instance, some plants, when being eaten by insects, emit special chemicals that attract specialized wasps that feed on the insects. Some emit odors to attract both pollinators and, in the case of carnivorous plants, prey. Plants can “communicate” with each other by emitting chemicals, and they even possess a form of sense perception—roots “feeling” their way in the soil for nutrients and water, plants “perceiving” they are in the shade of a neighboring plant and so growing taller to receive the sunlight required for photosynthesis, and a carnivorous plant “feeling” an insect touch a triggering hair and snap closed to trap the prey.<sup>41</sup> Plants are truly a marvel of nature and perfectly adapted to their surroundings. But does all of this mean that plants are capable of performing actions, in the sense of engaging in intentional and therefore purposive, conscious, and subjectively meaningful activity? This does not seem to be the case. Rather these are examples of automatic or reflexive behavior.<sup>42</sup>

But perhaps plants’ form of “sense perception” does amount to *sentience*? If so, and we hold that sentience is all that is required for rights-possession, not only humans and nonhuman animals could possess rights, but plants as well. Yet, because plants do not have a nervous system, we have no indication of them having conscious experiences or being capable of experiencing pain, which would also not make much sense, because plants are immobile and unable to flee from danger.<sup>43</sup> Therefore, even if we employ sentience instead of autonomy or agency as the rights-grounding feature, it would seem we must still conclude that the extensionist strategy cannot yield rights for plants and a fortiori for biological aggregates.

The same point can be made in a different manner. According to the will theory of rights, if we want to know whether X can possess rights, we need to know whether X can exercise effective normative control—that is, whether X is capable of claiming and waiving rights.<sup>44</sup> Plants, natural objects such as rivers, and ecosystems are not capable of such normative control, as they are not beings capable of free choice, and therefore they cannot have rights. Or is this too quick? After all, in response to the critique that the will theory cannot recognize infants as rights-bearers because they are incapable of normative control, a proponent of this approach might argue, as Hart did, that infants, or other persons not *sui juris*, *can* have rights—though they are incapable of free choice—through guardianship. Would this approach not also work for nature? If we appoint guardians to act on behalf of a river, could we not say that rivers can have rights as well?<sup>45</sup> Well, Hart points out, first, that “what such representatives can and cannot do by way of exercise of such

<sup>40</sup>Gianfranco Pellegrino, *The Value of Plants: On the Axiologies of Plants*, in *PLANT ETHICS: CONCEPTS AND APPLICATIONS* 13, 17 (Angela Kallhoff, Marcello Di Paola & Maria Schörgenhumer eds., 2018).

<sup>41</sup>STEFANO MANCUSO AND ALESSANDRA VIOLA, *BRILLIANT GREEN: THE SURPRISING HISTORY AND SCIENCE OF PLANT INTELLIGENCE* (Joan Benham trans., 2015) (providing an elaborate description of the various impressive characteristics of plants, though the authors do tend to anthropomorphize).

<sup>42</sup>Tatjana Višak, *Utilitarian Plant Ethics*, in *PLANT ETHICS: CONCEPTS AND APPLICATIONS*, *supra* note 40, at 30, 32.

<sup>43</sup>*Id.* at 31.

<sup>44</sup>H.L.A. Hart, *Are There Any Natural Rights?*, 64 *PHIL. REV.* 175, 180 (1955).

<sup>45</sup>Te Awa Tupua Act 2017, ss 14 and 19 (N.Z.) (describing how legal personhood is granted to the Whanganui River in New Zealand. Guardians were appointed to represent the river’s interests, aiming to make it possible for this novel legal person to exercise effective normative control).

power is determined by what those whom they represent could have done if *sui juris*.”<sup>46</sup> But this thought experiment—“What would the river do if *sui juris*?”—does not work in the case of the river, as the river cannot act. Hart goes on to say that, second, this representation is temporary: The representatives may exercise the infant’s rights only “during the period of disability.”<sup>47</sup> The river, however, will never become *sui juris*. The infant who cannot yet exercise her rights herself is the same person who, as an adult, *will* exercise her rights herself. Nothing similar can be said of the Whanganui River. The solution found for infants, therefore, cannot be applied to nature.

According to the interest theory of rights, however, X can have rights if X has interests and those interests provide a sufficient reason for imposing duties on others.<sup>48</sup> Having established, however, that plants, rivers, and ecosystems are not sentient, we must conclude that they are not the kinds of beings that have interests. Consequently, they cannot have rights. This makes sense because “without sentience, there is nothing for morality to take into account, for nothing that happens to an organism that is incapable of pleasure or pain matters to it.”<sup>49</sup> Plants, rivers, and ecosystems do not have any conscious desires or ends of their own. For that reason, they can experience neither satisfaction nor frustration, neither pain nor pleasure. Consequently, it is not possible to mistreat them. Any talk of rights for these natural entities is, therefore, out of place, according to the interest theory.

But what of our intuition that it would be wrong for the last person standing to spend her remaining days destroying as much of nature as she could? Surely, if we deem it wrongful, it must be because nature possesses objective final value, and if it possesses objective final value, then it has rights? That would be too quick. As Sandler points out,<sup>50</sup> the intuition can also be accounted for by the fact that people alive now might simply care about the state of nature when they are no longer living, just like many people care about the state of the world generally after they are gone for the sake of their great-grandchildren, for example. Alternatively, we could say that the wanton destruction of nature is expressive of a defective character and that’s why it’s wrong. Thomas E. Hill Jr., for example, argues that such destruction demonstrates a lack of certain virtues we deem important, such as humility or gratitude.<sup>51</sup> Consequently, the judgment that the wanton destruction of nature by the last person standing is wrongful does not necessarily involve the claim that nature possesses objective final value. It is possible to affirm the former and deny the latter.

Still, proponents of RoN might argue that if we can grant legal personhood to corporations—with all the accompanying rights and duties—why can we not do the same for nature?<sup>52</sup> Yes, nature cannot claim or waive rights, but the same is true of a corporation. And ecosystems do indeed not possess sentience, but neither do corporations.<sup>53</sup> In response, we may say that corporations are indeed both legal things and legal persons; they are both the object of rights—they can be owned—and the subject of rights—they can own things themselves. Being owned is precisely what makes it possible for corporations to act as legal persons: “[T]he owners contribute to the group agency of the corporation in much the same way as members or delegates can contribute to the group agency of an association.”<sup>54</sup> Nothing similar can be said of an ecosystem or a mountain. Ecosystems and mountains do not contain agents that together constitute its group agency. Corporations can have rights because they consist of multiple human agents that together

<sup>46</sup>See H.L.A. HART, *ESSAYS ON BENTHAM: JURISPRUDENCE AND POLITICAL THEORY* 184, n.86 (1982). See also N.E. SIMMONDS, *Rights at the Cutting Edge*, in *A DEBATE OVER RIGHTS: PHILOSOPHICAL ENQUIRIES* 113, n.226 (Matthew H. Kramer, N.E. Simmonds & Hillel Steiner eds., 2000).

<sup>47</sup>HART, *ESSAYS ON BENTHAM*, *supra* note 46, at n.184.

<sup>48</sup>See, e.g., Joseph Raz, *On the Nature of Rights*, 93 *MIND* 194, 195 (1984).

<sup>49</sup>JAMIESON, *supra* note 38, at 147.

<sup>50</sup>SANDLER, *supra* note 19, at 31.

<sup>51</sup>Hill, Jr., *supra* note 25.

<sup>52</sup>See, e.g., Stone, *supra* note 31, at 464.

<sup>53</sup>BOYD, *supra* note 18, at 119.

<sup>54</sup>Visa Kurki, *Animals, Slaves, and Corporations: Analyzing Legal Thinghood*, 18 *GERMAN L.J.* 1069, 1086 (2017).

form one rational agent.<sup>55</sup> From the granting of rights to corporations—or universities, or churches—therefore, it does not follow that we should also grant rights to, say, mountains. Mountains do not consist of multiple human agents that together form one rational agent. The RoN movement wishes to grant rights to “trillions of organisms and innumerable ecosystems that cannot themselves express their interests but would nonetheless be positioned to assert far-reaching rights that have no precise legal meaning.”<sup>56</sup> That is not the same as granting rights to a corporation, which consists of several human agents that together make up one rational agent that can clearly formulate the corporation’s interests. The analogy does not hold.

Furthermore, it is unclear whether proponents of RoN should want to take the case of corporation rights as a model for RoN. They typically argue that nature possesses value in itself, apart from its value for human beings. Corporations, however, possess no such objective final value. Instead, a corporation’s worth is *extrinsic* and “stems from the benefits flowing to the natural individuals involved: the shareholders, the consumers, the employees,” et cetera.<sup>57</sup>

Moreover, we should resist the argument that because legal personhood is a mere legal fiction we can assign it to anything we wish, and so also to ecosystems, mountains or rivers. The reason is that this argument is overly permissive: We might then also grant rights to the keys of the keyboard on which this article is being written and the paper on which it is read. Legal fictionalism—the view that legal personhood can be entirely distinct from moral personhood and that legal rights need not track moral rights—risks creating an undesirable gap between legal and moral rights, between our intuitions concerning morality and the content of the law.<sup>58</sup>

Finally, supporters of RoN may want to resist the conclusion that nature cannot have rights by arguing that it is only in our Western worldview that natural objects cannot be viewed as persons. In certain indigenous ontologies, by contrast, mountains, rivers, and nature as such are endowed with agency.<sup>59</sup> Perhaps if we were more receptive to such ontologies, we would conclude that nature *can* have rights. Māori, for example, view their relationship to nature in a manner similar to their relationship to their human ancestors: A relationship characterized by reciprocity and mutual obligations.<sup>60</sup> One way for humans to perform their obligations toward nature is to appoint guardians who are to safeguard nature’s interests. This was in fact the model adopted in the Te Awa Tupua Act, which granted the Whanganui River in New Zealand “all the rights, powers, duties, and liabilities of a legal person.”<sup>61</sup> Many scholars who argue for RoN have been similarly inspired by indigenous worldviews.<sup>62</sup> On the one hand, it may make sense for the government of New Zealand to mix the Western legal framework with Māori traditions in the Te Awa Tupua Act because the very Act had the function of realizing conciliation between the Māori and the government.<sup>63</sup> Similarly, in countries like Bolivia and Ecuador, where the indigenous peoples have been suppressed for centuries, it may make sense to take their cosmologies—in

<sup>55</sup>Jens David Ohlin, *Is the Concept of the Person Necessary for Human Rights*, 105 COLUM. L. REV. 209, 226 (2005).

<sup>56</sup>Noah M. Sachs, *A Wrong Turn with the Rights of Nature Movement*, 36 GEO. ENV’T L. REV. 39, 61 (2023).

<sup>57</sup>Ohlin, *supra* note 55, at 227.

<sup>58</sup>Kramm, *supra* note 37, at 163.

<sup>59</sup>See *id.* at n.162 (cautioning that when referring to Amazonian-Andean or Māori ontology as support for RoN, one should be careful not to generalize and overlook the great diversity of ontologies that exists among indigenous peoples: “The idea of Pachamama (Mother Cosmos), for example, is an abstraction from the diversity of ways in which Indigenous peoples in Ecuador and Bolivia relate to Nature.”).

<sup>60</sup>Jacinta Ruru, *Listening to Papatūānuku: A Call to Reform Water Law*, 48 J. ROYAL SOC’Y N.Z. 215, 215 (2018).

<sup>61</sup>Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14 (N.Z.).

<sup>62</sup>BOYD, *supra* note 18 (beginning the Introduction with a quote from a Native American chief); KAUFFMAN & MARTIN, *supra* note 14, at 10 (emphasizing repeatedly the importance of making Western paradigms more compatible with indigenous cosmologies).

<sup>63</sup>See, e.g., Andrew Geddis & Jacinta Ruru, *Places as Persons: Creating a New Framework for Māori-Crown Relations*, in THE FRONTIERS OF PUBLIC LAW 255, 256–57 (Jason N.E. Varuhas & Shona Wilson Stark eds., 2020) (arguing that the granting of legal personhood to the Whanganui River was more, or primarily, about settling a dispute between the Crown and the local Māori regarding past Crown breaches of treaties than about improving the environmental protection of the river).

which nature is viewed as a mother with which humans maintain relationships<sup>64</sup>—into account when drafting legislation.

At the same time, however, the strategy to base RoN on such indigenous ontologies is also problematic. Presumably, if nature does indeed have objective final value and therefore rights, this should be the case the world over, just as the recognition of human rights entails that humans all over the world have rights. This universal aspect of fundamental rights renders the basing of RoN on specific, local ontologies problematic, because these worldviews are not shared by all. If we want to say that nonhuman nature has rights the world over, then basing such rights on a particular comprehensive doctrine of a very specific community, not shared by many others in the world, seems problematic. It would be similarly problematic if the Universal Declaration of Human Rights stated that we all have human rights because the Christian god created people in his own image. If the aim is to have RoN recognized worldwide, then basing them on particular indigenous ontologies does not seem a fruitful approach.

Given the problems discussed above, I conclude that the RoN approach to the environmental crisis is conceptually flawed. The second desideratum has, therefore, also not been met.

### III. Practical Issues

Practically speaking, RoN proponents make two claims: (1) Recognizing RoN will lead to a better protection of nature, because nature now has rights that it can claim; and (2) Recognizing RoN will bring about a change in *us*: It will change the way we view nature as well as our relation to it. Let us examine both claims, starting with the first: Has recognition of RoN led to a better protection of nature? Has it contributed to legal or policy changes beneficial to the environment? A natural place to start looking for an answer to this question is Ecuador, as this country was the first to recognize RoN in its constitution in 2008. In an exhaustive analysis of applications of RoN in Ecuador between 2008 and 2016, Kauffman and Martin conclude that every time important infrastructural projects were challenged in court by appealing to RoN, this resulted in failure.<sup>65</sup> Even the case involving open-pit mining in a part of the Amazonian province Zamora-Chinchipe—known as Condor Mirador, one of the most biodiverse areas on the planet—was lost by the plaintiffs who challenged the permits granted to the mining company by the government. This was in spite of the mining company's own environmental impact study concluding that the mining would cause grave environmental damage, including the total removal of certain ecosystems and the likely extinction of certain endemic species, thus causing clear violations of the constitutional RoN. The judges essentially argued that the public interest in development enjoyed precedence over the RoN.<sup>66</sup>

More recently, Kauffman and Martin have claimed there have been more successful RoN cases in Ecuador.<sup>67</sup> It seems, however, that the reason these cases have been more successful is not due to appeals to RoN, but instead to the appeal made to indigenous rights. In the *Cofán Sinangoe* case they discuss, for example, Ecuador's Provincial Court of Sucumbios canceled fifty-two gold mining concessions and prohibited the granting of new such concessions in the territory of the Cofán indigenous group. The reason, however, was not that such activities would violate the rights of the ecosystem, but principally that the mining activities had serious detrimental effects on the Cofán community in terms of health and in terms of maintaining their traditional way of life.<sup>68</sup> It was, in other words, largely viewed as a matter of *human* rights rather than rights of *nature*.

<sup>64</sup>Kramm, *supra* note 37, at 4.

<sup>65</sup>Craig M. Kauffman & Pamela L. Martin, *Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail*, 92 WORLD DEV. 130, 135–36 (2017).

<sup>66</sup>KAUFFMAN & MARTIN, *supra* note 14, at 91.

<sup>67</sup>*Id.* at 115–16.

<sup>68</sup>*Id.* at 107–08.

In Bolivia, according to Kauffman and Martin's exhaustive research, RoN success rates are even lower and RoN jurisprudence has been largely ignored.<sup>69</sup> Proponents of RoN, furthermore, often mention the example of India, where the High Court of Uttarakhand first granted legal personhood to two rivers, the Ganges and Yamuna, and subsequently to the entire associated ecosystem. Yet, they often neglect to point out that India's Supreme Court then undid that decision, arguing that rivers cannot be considered living entities.<sup>70</sup> Similarly, advocates for nature's rights draw our attention to several communities across the United States that have passed local laws recognizing such rights, but they often skip over the fact that courts have struck down many of these community RoN ordinances because they are inconsistent with state or federal law.<sup>71</sup> As Sam Bookman puts it: "The data reveal ten challenges to the validity of enacted rights of Nature laws. In all ten cases, the laws have been struck down. Furthermore, no rights of Nature law has ever been successfully used in enforcement litigation by local governments or private citizens."<sup>72</sup>

Of course, I do not pretend—nor did I aim—to have provided by any means an exhaustive overview of the RoN case law. Rather, I have discussed a number of cases from several different countries that together render the statement that RoN have led to more environmental protection doubtful, to say the least. Given the conceptual problems discussed in the previous Section, this should not surprise us. For instance, how is a court to assess the impacts of a particular industry on an ecosystem when defining the boundaries of an ecosystem is inherently problematic? How is a court to decide whether the effects of industry on living organisms constitute a violation of RoN when some organisms might benefit, and some suffer from the same activities? Moreover, when rights of nature are phrased in such vague terms as the rights to "exist, flourish, and naturally evolve,"<sup>73</sup> it is not surprising that judges lament the lack of guidance provided by RoN legislation, as did Judge Jack Zouhary who struck down Toledo's Lake Erie Bill of Rights (LEBOR):

What conduct infringes the right of Lake Erie and its watershed to "exist, flourish, and naturally evolve"? How would a prosecutor, judge, or jury decide? LEBOR offers no guidance ... Countless ... activities might run afoul of LEBOR's amorphous environmental rights: catching fish, dredging a riverbed, removing invasive species, driving a gas-fueled vehicle, pulling up weeds, planting corn, irrigating a field—and the list goes on. LEBOR's authors ... employed language that sounds powerful but has no practical meaning. Under even the most forgiving standard, the environmental rights identified in LEBOR are void for vagueness.<sup>74</sup>

Earlier we mentioned that normative theories need to be action-guiding and we discussed how the RoN approach runs afoul of this requirement. Similarly, in law, we demand that statutes be clear so that they may guide our behavior; we need to know what we may and may not do so that we can shape our lives accordingly. The vagueness of RoN laws, however, does not meet this standard. For this reason, the court invalidated LEBOR under the vagueness doctrine of the United States Constitution's Fourteenth Amendment. If ordinary people are unable to figure out the requirements of a law, then that law violates due process and is, therefore, unconstitutional.<sup>75</sup> Here

<sup>69</sup>*Id.* at 138.

<sup>70</sup>See Guim & Livermore, *supra* note 39, at 1361, n.62. See also Jan Darpö, *Can Nature Get It Right? A Study on Rights of Nature in the European Context*, at 21, PE 689.328, EUR. PARLIAMENT, POL'Y DEP'T FOR CITIZENS' RTS. & CONST. AFFS. (March 2021), [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689328/IPOL\\_STU\(2021\)689328\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689328/IPOL_STU(2021)689328_EN.pdf).

<sup>71</sup>BOYD, *supra* note 18, at 129.

<sup>72</sup>Sam Bookman, *The Puzzling Persistence of Nature's Rights*, 2025 UTAH L. REV. 165, 180 (2025).

<sup>73</sup>TOLEDO, OHIO MUN. CODE ch. 17, § 254(a) (2023).

<sup>74</sup>*Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551, 556 (N.D. Ohio 2020) (citations omitted).

<sup>75</sup>Sachs, *supra* note 56, at 57–58.

we see a very concrete example of how RoN's conceptual defects can cause difficulties in legal practice, leading to problems concerning RoN's effectiveness.<sup>76</sup>

Furthermore, the multiple rights conflicts that a court will have to face, particularly in developing countries, between RoN and socio-economic *human* rights is enough to confound even the greatest legal minds.<sup>77</sup> Similarly, there may be conflicts between RoN and the construction of infrastructure required for mitigating climate change: Renewable energy projects, charging stations for electrical vehicles, and improved and expanded public transportation. Apart from the serious legal challenges that such conflicts present, it is also conceivable that the blocking of such projects in order to protect RoN may result in reduced support for environmental protection generally.<sup>78</sup>

A further aspect of the RoN approach that can affect its effectiveness is the large role granted to courts, at least in the nature's rights model. Recall that this model grants rights to nature as a whole and empowers any person to speak on nature's behalf.<sup>79</sup> The downside of this approach is that it is reactive: Protecting local nature against a polluting factory, for example, would be entirely dependent on individuals coming forward to sue the factory. The court would then have to ascertain whether the factory's emissions are indeed unlawful. If the court finds that nature's rights have indeed been violated, appeals are likely to follow. In the meantime—which could add up to years—irreversible damage can occur.<sup>80</sup> Furthermore, generally speaking, remedies bind only litigants, meaning that other parties may proceed with similar polluting activities until the moment someone brings suit against them as well and a court finds in favor of the plaintiff. Presented with the option of such a backward-looking and ad hoc approach,<sup>81</sup> it becomes clear why some scholars have instead preferred an environmental law approach to protecting nature. This regulatory approach relies on trained, specialized staff rather than generalist judges, is prospective rather than backward-looking, and comprehensive rather than limited to litigants in a specific case.<sup>82</sup>

Finally, the effectiveness of the nature's rights model is negatively affected by the fact that anybody is allowed to speak on nature's behalf. It is thus possible to have sundry plaintiffs—governmental, private, or from civil society—who all make mutually incompatible claims, supposedly on nature's behalf. This is bound to lead to significant confusion which ultimately hinders the protection of nature.<sup>83</sup>

The alternative to the nature's rights model—the legal personhood model—solves some of these problems, as it is not a backward-looking approach and does not allow simply anyone to speak for nature. Rather, only a particular ecosystem's appointed guardians may—indeed, are obliged to—speak on the ecosystem's behalf, and they are expected to do so not only during court proceedings, but also in environmental decision-making outside of court. Regarding effectiveness, however, this model runs into a problem of its own, namely that much turns on who is appointed guardian. Whoever is appointed to speak for an ecosystem will inevitably bring their own biases

<sup>76</sup>Miglani v. State of Uttarakhand, Writ Petition (PIL) No. 140 of 2015 (Mar. 30, 2017) 63 (High Court of Uttarakhand) (India) (utilizing vague and unhelpful language when arguing that the “[p]lucking of one leaf, [or] grass blade also damages the environment universally,” language that is more likely to produce confusion rather than adequate protection for the environment).

<sup>77</sup>Guim & Livermore, *supra* note 39, at 1411.

<sup>78</sup>See Sachs, *supra* note 56, at 76 (providing a clear description of the risk of political backlash).

<sup>79</sup>See *supra* Section B.

<sup>80</sup>Sachs, *supra* note 56, at 72 (contrasting this with an environmental law approach:

[T]raditional prescriptive regulation can be more protective of nature because it gives notice to humans, *ex ante*, of exactly what activities are prohibited. The Clean Air Act and associated regulations, for example, alert a factory to the emissions limits that will apply for toxic pollutants long before the factory begins operation. In contrast, under a rights-based approach, companies could make billion dollar investments in equipment and buildings and emit thousands of tons of pollutants before a court tells them, years later, that their air emissions violated the rights of nature).

<sup>81</sup>Bookman, *supra* note 72, at 186.

<sup>82</sup>*Id.* at 187.

<sup>83</sup>Guim & Livermore, *supra* note 39, at 1410.

and convictions to the manner in which they represent the ecosystem. Erin Ryan et al. provide the following example of how this might matter in practice:

[D]ifferent people might come to very different conclusions about how to prioritize the interests of other members of the biotic community. Many believe that to protect nature, we must act quickly to foster wind energy generation to stabilize the climatic foundations of the overall biotic community . . . while others believe wind turbines cause unacceptable harm to vulnerable populations of birds and other wildlife whose habitat they disrupt.<sup>84</sup>

The ecosystem not having a voice of its own, it is very difficult to argue that either position is mistaken. How an ecosystem's interests are represented thus hinges, to a great degree, on the personal convictions, preferences, and biases of the person(s) appointed guardian(s). Whether an ecosystem's interests are promoted effectively, therefore, hinges to a great degree on who the guardian is.

Still, proponents of RoN might argue that the simple fact that such rights have proven ineffective in the sense that they have often failed in court does not mean the idea of RoN is without merit and should be jettisoned. Because what *really* matters is that the RoN discourse brings about a change in our characters and dispositions; what is important is that we start to view ourselves, nature, and our relationship in a new light. The RoN movement can make us view nature differently: As a being with moral standing. As far back as Christopher Stone's seminal article, proponents of nature's rights have argued that recognition of such rights will "contribute to a change in popular *consciousness*."<sup>85</sup> Let us now turn to this second claim concerning the efficacy of RoN: Can the RoN discourse bring about the desired change in our dispositions?

It is a staple of the republican tradition especially to point out that good laws require good morals, or, as Machiavelli put it, when "custom is corrupted, good legislation is of no avail."<sup>86</sup> Rousseau similarly argued that "[n]o constitution will ever be good and solid unless the law rules the citizens' hearts. So long as the legislative force does not reach that deep, the laws will invariably be evaded."<sup>87</sup> Even John Rawls—not the most republican of thinkers—recognized that just laws and institutions are in need of a widespread sense of justice among the citizenry.<sup>88</sup> The idea is that no just democratic order can be stable if the majority of its citizens will withdraw their compliance with the laws whenever that best serves their self-interest.<sup>89</sup> Proponents of RoN seem to recognize the truth in this, which is why they highlight the capacity of the RoN discourse to change our dispositions, to alter the way we view ourselves and nature for the better. But how does it hope to bring such change about?

<sup>84</sup>Erin Ryan, Holly Curry & Hayes Rule, *Environmental Rights for the 21st Century: A Comprehensive Analysis of the Public Trust Doctrine and Rights of Nature Movement*, 42 CARDOZO L. REV. 2446, 2572 (2021) (citations omitted).

<sup>85</sup>See Stone, *supra* note 31, at 500. See also Kauffman & Martin, *supra* note 14, at 7 ("[T]he ultimate goal of the RoN movement is a paradigm shift: to change the way people understand humans' relationship with nature [and] change their behaviors in a way that is more ecologically sustainable.").

<sup>86</sup>NICCOLÒ MACHIAVELLI, *THE DISCOURSES*, bk. 1, ch. 17. (Leslie J. Walker trans., Penguin Books 1970).

<sup>87</sup>Jean-Jacques Rousseau, *Considerations on the Government of Poland and on Its Projected Reformation*, in *THE SOCIAL CONTRACT AND OTHER LATER POLITICAL WRITINGS* 177, 179 (Victor Gourevitch ed. & trans., 1997).

<sup>88</sup>JOHN RAWLS, *A THEORY OF JUSTICE* 435 (1999).

<sup>89</sup>See Tom R. Tyler, *WHY PEOPLE OBEY THE LAW* 22 (2006). Indeed, this intuition is confirmed by studies in the field of social sciences, concerned with compliance with legal norms, such as Tom R. Tyler's classic *Why People Obey the Law*. He distinguishes instrumental reasons for complying with the law, which amount to a weighing of the probability that one will be punished if one does not comply, from normative commitments. These, in turn, can be divided between personal morality (obeying the law, because one considers it just) and legitimacy (obeying the law, because one retains that the law enforcing authority has the right to prescribe actions). Tyler's research clearly points out that relying on coercive measures alone (and thus solely on instrumental reasons) is not at all conducive to the stability of a state. His findings are backed up by an entire body of existing research indicating "that in democratic societies the legal system cannot function if it can influence people only by manipulating rewards and costs" (Tom R. Tyler, *Why People Obey the Law* (Princeton University Press 2006) 22). Such societies are, furthermore, under constant threat of instability.

Generally, through *law*. If we would only legally recognize RoN, this change in our worldview will follow naturally. Thus, the Independent Expert Panel for the Legal Definition of Ecocide holds that the legal recognition of the “crime of ecocide could contribute to a change of consciousness.”<sup>90</sup> This method of instilling virtue has a long and venerable tradition. Aristotle, for example, maintained that we can be made good by good laws.<sup>91</sup> Similarly, Kant argued that by preventing “the outbreak of unlawful inclinations,” the law actually greatly facilitates “the development of the moral predisposition to immediate respect for right.”<sup>92</sup> The laws thus influence not only our external actions, but also the internal disposition that accompanies those actions. In other words, “the good moral education of a people is to be expected from a good state constitution.”<sup>93</sup>

The problem is that this liberal model of character formation or consciousness shift relies on ideal circumstances: Virtue will develop if the institutions are just, remain stable over time, and all willingly cooperates in maintaining them. But, in more realistic, non-ideal circumstances, many cooperate for mere prudential reasons—say, because they wish to avoid punishment or because, for now, it serves their private interests—and do no more than is legally required of them. In such circumstances, furthermore, institutions are not entirely just, and the political community suffers from instability. It is unlikely that under such circumstances the law will be able to do the work supporters of RoN envision for it, namely functioning as a source of virtue. For such reasons, at other moments in history, proponents of fundamental rights have been more conscious of the need for more than just the recognition of legal rights. In the Proclamation of the Universal Declaration of Human Rights, for example, the drafters state that the aim of the document is a formative one: “[T]hat every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms.”<sup>94</sup> Similarly, Article 26(2)—the first paragraph of which recognizes the universal right to education—enjoins the addressees to direct education “to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”<sup>95</sup> Education should, therefore, teach not only language and mathematics, but should also produce a certain kind of citizen—one that, in short, respects human rights. The drafters were thus conscious of the fact that the promotion of virtue in citizens requires more than just promulgating legal rights, as proponents of RoN seem to hope. It requires, among other things, education and explicit attention to virtue.<sup>96</sup>

Furthermore, there is also the risk—touched upon briefly already—that the implementation of RoN might actually lead to *less* support for environmental protection. One can imagine how the presentation of nature as a competing rights-bearer whose rights could come into conflict with and even limit one’s own rights, and with whom one could even face off in court, could actually strengthen the image of nature that the RoN movement seeks to overcome: Namely that of nature as something separate, over against human beings, and how this might lead to decreased support for environmental protection.<sup>97</sup> Moreover, as mentioned already in the Section C.I on moral issues, if one considers all of nature to possess fundamental rights, this is bound to lead to countless violations by human beings of nature’s rights as they simply go about their daily business. This makes the risk of political and social backlash against environmental protection far from imaginary, precisely the opposite of what the RoN approach intended.

<sup>90</sup>THE INDEP. EXPERT PANEL FOR THE LEGAL DEFINITION OF ECOCIDE, COMMENTARY AND CORE TEXT 3 (June 2021), <https://www.stopecocide.earth/legal-definition>.

<sup>91</sup>ARISTOTLE, NICOMACHEAN ETHICS 1130 b24 (Harris Rackham trans., 1934).

<sup>92</sup>Immanuel Kant, *Toward Perpetual Peace. A Philosophical Project*, in PRACTICAL PHILOSOPHY Ak 8:375–6n (Mary Gregor ed. & trans., 1996).

<sup>93</sup>*Id.* at Ak 8:366.

<sup>94</sup>G.A. Res. 217 (III) A, Universal Declaration of Human Rights, Preamble (Dec. 10, 1948).

<sup>95</sup>*Id.* at art. 26(2).

<sup>96</sup>ERIC R. BOOT, HUMAN DUTIES AND THE LIMITS OF HUMAN RIGHTS DISCOURSE 98 (Springer 2017).

<sup>97</sup>Sachs, *supra* note 56, at 76.

I, therefore, conclude that the RoN approach is not likely to be very effective in practice—neither in terms of leading to a better protection of nature nor in terms of bringing about a change of consciousness—thus not meeting the third desideratum either.

#### D. What Then?

So far, I have proceeded entirely in a negative fashion: I have shown how the RoN approach runs into sundry problems. We could also, however, explore a positive argument: There are other normative approaches to the environmental crisis that are more convincing than the RoN approach. If these alternative approaches do indeed prove to be more convincing than the RoN approach, that would constitute an additional argument against RoN: The RoN approach suffers from three problems—it is morally problematic, conceptually flawed, and inefficacious in practice—and in addition, there are other views out there that seem more promising. So why stick with the RoN approach? This is the structure of the argument to be developed in this Section. In the little space remaining, therefore, I will briefly explore two alternative normative approaches to the environmental crisis: *Human rights* and *environmental virtue ethics* (EVE). To continue where we ended in the previous Section: If a shift in consciousness or character formation is your goal, then why not opt for a more direct virtue-based approach? In general terms, virtue ethics specifies morally right and harmful acts in terms of the virtues and vices.<sup>98</sup> Virtue ethics holds that ethical living is not about abiding by moral rules, as deontology maintains, nor is it about optimizing outcomes, as consequentialists argue, but it is rather about cultivating virtue or moral character. Virtue is hereby understood as the disposition to desire, choose, and act in specific ways and for specific reasons. The reason, for example, why one should give to charity is not because it is prescribed by a moral rule, nor because it would have beneficial consequences, but simply because it is charitable and charity is a virtue. It is, furthermore, not sufficient to merely act in accordance with certain virtues. Rather, one ought to also act from virtue—for example, because donating is charitable. A specifically environmental virtue ethics will thus evaluate our actions and policies regarding the environment in terms of virtues and vices. Furthermore, it will emphasize the cultivation of specific environmental virtues, understood as those dispositions that are conducive to the flourishing of both human and nonhuman beings.<sup>99</sup> The main idea is that by cultivating environmental virtues, we will come to respond—emotionally, practically, and in terms of our will and moral evaluation—in ways that are conducive to both our own flourishing and that of others, including nonhuman beings.

EVE can avoid several of the more problematic aspects of RoN. First, the problem of moral considerability. Any patient-centered approach will have to deal with the difficult question of who counts morally: Who can be the subject of rights? Only human beings? Or animals as well? What about microbes, then? And what about non-animal life, such as plants and trees? And might ecosystems not be bearers of rights? By shifting focus to the moral development of the agent herself, EVE can avoid such tricky discussions of moral considerability, thus also steering clear of, second, difficult metaphysical questions concerning the objective final value of, for example, rivers and ecosystems. Third, EVE can also avoid tricky issues of attributing responsibility with which the environmental crisis confronts other moral theories: Due to the overdetermined nature of this crisis, both Kantian and utilitarian theories have difficulty explaining why it's morally wrongful to, say, take your gas-guzzler for a drive just for fun.<sup>100</sup>

<sup>98</sup>Rosalind Hursthouse, *Environmental Virtue Ethics*, in *WORKING VIRTUE: VIRTUE ETHICS AND CONTEMPORARY MORAL PROBLEMS* 155, 159 (Rebecca L. Walker & Philip J. Ivanhoe eds., 2007).

<sup>99</sup>Ronald Sandler, *Environmental Virtue Ethics: Value, Normativity, and Right Action*, in *THE OXFORD HANDBOOK OF ENVIRONMENTAL ETHICS* 223, 227 (Stephen M. Gardiner & Allen Thompson eds., 2016).

<sup>100</sup>Walter Sinnott-Armstrong, *It's Not My Fault: Global Warming and Individual Moral Obligations*, in *PERSPECTIVES ON CLIMATE CHANGE* 285, 289–95 (Walter Sinnott-Armstrong & Richard B. Howarth eds., 2005).

After all, the behavior seems to be universalizable: The maxim is “I will drive my SUV for fun” and having harmless fun—“harmless” because just my driving does not make the environmental crisis perceptibly any more severe—is perfectly universalizable. Also, refraining from driving will not make the environmental crisis any less severe, leaving the utilitarian at a loss to explain why you should not drive your SUV for fun. Virtue ethics does not run into these problems and can simply condemn the behavior as exhibiting the vice of wastefulness. Its focus on character is a real advantage when facing a collective action problem: EVE provides reasons to continue doing one’s part in solving the crisis even when others fail to do theirs. Finally, EVE can avoid what some would view as problematic anthropocentrism, which would argue that because nonhuman nature has no moral standing we may do whatever we wish with it. But virtue ethics, even a variety that grants only humans moral standing, would still condemn the wanton destruction of natural objects, for example, even if no humans are harmed in the process. A virtue-based approach would have us ask: What kind of person would wantonly destroy, say, a forest?<sup>101</sup> Such behavior, a virtue ethicist could argue, is wrongful because it reflects the absence of human traits that we admire and regard as morally important.

EVE thus has some very real advantages. Yet, it also has its weaknesses. A frequent critique is that what really matters is what Rawls called the basic structure, not individual characters. Environmental problems are the outcome of collective behaviors and so what matters is changing institutions and laws, not focusing on the character of all the individuals involved.<sup>102</sup> Another known problem with virtue ethics is its difficulty in telling us what exactly we ought to do: In the case of EVE, specifically, the critique is that all we get are certain quite general prohibitions of selfish and greedy consumption and of destruction of natural resources, but this seems insufficient moral guidance for navigating such a complicated moral problem as the environmental crisis which is mired by countless complex moral dilemmas. Finally, proponents of RoN are likely to point out that virtue ethics misses the bite of legal rights that can be enforced. As Kant put it, virtue requires free self-constraint—*Selbstzwang*<sup>103</sup>—but there are no consequences if one fails to exercise that restraint apart from moral reprobation.

If one is not entirely convinced by EVE, one might instead, or additionally), endorse a human rights approach to the environmental crisis. This approach has some important advantages. First, there is already an elaborate institutional architecture in place that supports human rights, meaning this approach can wield real political and legal power. Second, human rights discourse is particularly commanding and has a strong emancipatory function. When I claim something has violated my right, then I am conveying that an important moral wrong has been committed against me and that the rights-violating practice needs to cease immediately. Human rights thus function as side constraints, placing limits on the scope of permissible actions. Third, human rights are, contrary to RoN, widely accepted.<sup>104</sup>

Given such advantages, many scholars have employed human rights discourse to tackle the environmental crisis, typically by framing the problem in terms of traditional human rights—for example, rights to life, health, and subsistence—<sup>105</sup> by arguing for a separate right to a clean, healthy, and sustainable environment,<sup>106</sup> or by appealing to the fundamental rights of indigenous

<sup>101</sup>Hill, Jr., *supra* note 25, at 211.

<sup>102</sup>Benjamin Hale, *Rights, Rules, and Respect for Nature*, in *THE OXFORD HANDBOOK OF ENVIRONMENTAL ETHICS*, *supra* note 99, at 211, 218.

<sup>103</sup>Immanuel Kant, *The Metaphysics of Morals*, in *PRACTICAL PHILOSOPHY* Ak 6:383 (Mary Gregor ed. & trans., 1996).

<sup>104</sup>JAMES W. NICKEL, *MAKING SENSE OF HUMAN RIGHTS* 179 (2d ed., 2007).

<sup>105</sup>Simon Caney, *Climate Change, Human Rights, and Moral Thresholds*, in *CLIMATE ETHICS: ESSENTIAL READINGS* 163, (Stephen M. Gardiner et al. eds., 2010).

<sup>106</sup>See James Nickel, *The Human Right to a Safe Environment*, 18 *YALE J. INT’L L.* 281 (1993) (arguing for a separate right to a clean, healthy, and sustainable environment); *UN General Assembly Declares Access to Clean and Healthy Environment a Universal Human Right*, *UN NEWS* (July 28, 2022), <https://news.un.org/en/story/2022/07/1123482> (discussing an adopted UN General Assembly resolution providing for the universal recognition of the right to a healthy environment).

peoples.<sup>107</sup> One could argue that real protection of human rights will bring about changes that will greatly benefit nonhuman animals and ecosystems as well. To give an example, protecting mangrove forests is an effective way to protect against flooding in low-lying coastal areas. In so doing, we will thus protect people's rights to life, health, and subsistence as well as the forest itself and the animals inhabiting it without having to make problematic claims concerning the objective final value of mangrove forests or the personhood of ecosystems. In the previous Section, furthermore, we saw that protecting the human rights of indigenous communities also has beneficial consequences for the ecosystems they call home.<sup>108</sup> As an additional example of how indigenous rights and environmental protection intersect, consider the following comments by the Inter-American Court of Human Rights:

The culture of the members of the indigenous communities directly relates to a specific way of being, seeing, and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein, not only because they are their main means of subsistence, but also because they are part of their worldview, their religiosity, and therefore, of their cultural identity.<sup>109</sup>

Protecting both the socio-economic and cultural rights of the Yakye Axa indigenous community thus necessarily involves protecting the environment in which they exercise their cultural rights and on which they depend for their subsistence.

As a final example, consider how habitat loss, climate change, and the use of harmful pesticides have resulted in a worrying decline of pollinators, which poses grave risks to our food security, thus threatening the rights to subsistence and health. Ensuring our food supply by putting an end to habitat loss, mitigating climate change, and banning harmful pesticides will contribute to the realization of the human rights to subsistence and health,<sup>110</sup> but also greatly benefit many animal species and ecosystems.

This brief sketch of how respect for human rights and the protection of the environment can, and often do, go hand in hand demonstrates that we do not need RoN to realize that we are not separate from nature and cannot thrive if nature languishes. Nor do we need RoN to have very good reasons to protect nature. Thus, it is sufficient to adequately protect human rights.<sup>111</sup> Moreover, proponents of RoN should be wary of making the argument that human rights law and environmental law are inherently flawed because they have been unable to stop the deepening of the environmental crisis. Considering its track record—discussed in Section C.III—one could level the very same critique at RoN.

<sup>107</sup>Jérémie Gilbert, *Human Rights & the Rights of Nature: Friends or Foes?*, 47 FORDHAM INT'L L.J. 447, 459–70 (2024) (discussing the three ways in which human rights and the protection of nature intersect).

<sup>108</sup>Jillian Kestler-D'Amours, *Indigenous People Seek Leadership, Respect in Biodiversity Battle*, AL JAZEERA (Dec. 9, 2022) <https://www.aljazeera.com/news/2022/12/9/indigenous-people-seek-leadership-respect-in-biodiversity-battle> (discussing a growing consensus, as recently demonstrated at the UN Biodiversity Summit in Montreal, COP 15, that the protection of indigenous rights is the most effective way to protect fragile ecosystems).

<sup>109</sup>*Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, para. 135 (June 17, 2005).

<sup>110</sup>See generally Hilal Elver (Special Rapporteur on the Right to Food), Rep. of the Special Rapporteur on the Right to Food to the Hum. Rts. Council on Its Thirty-Fourth Session, U.N. Doc. A/HRC/34/48 (Jan. 24, 2017) (outlining the negative consequences that the widespread use of pesticides has had on human health, the environment, and society more broadly).

<sup>111</sup>See generally Julien Bétaille, *Rights of Nature: Why It Might Not Save the Entire World*, 16 J. EUR. ENV'T & PLAN. L. 35 (2019) (demonstrating how modern environmental law can actually do a lot to protect the environment without having to make the contentious claim that natural objects and ecosystems ought to be granted legal personhood. For example, he argues, modern environmental law can recognize the final value of nature, provide compensation for pure ecological harm, and enable the representation of nature in court. He concludes that most of the objectives of the RoN movement can be realized with modern environmental law and is unconvinced that only RoN will lead to an “ecological utopia.”).

Of course, critics have pointed out problems with the human rights approach to the environmental crisis as well. First, it is often held that human rights are immune to tradeoffs. If, for example, greenhouse emissions result in rights violations, then they should stop, whether doing so will be expensive or not. In Dworkin's famous words, rights function as trumps, meaning that once a right has been claimed, that settles the matter of what is to be done: Even if some social aim would be better served by infringing the right, the right ought to be respected.<sup>112</sup> This resistance to tradeoffs has traditionally been viewed as a strength of rights discourse as opposed to utilitarian thought. However, some point out that tradeoffs are inevitable with environmental policy.<sup>113</sup> Compromises often play a central role in drafting climate policy—for example, allowing poorer countries to continue emitting given the important goal of reducing poverty—so such a strict rejection of trade-offs is problematic.

Second, applying a human rights approach to the environmental crisis runs into accountability issues. An important strength of human rights discourse has always been that it holds people accountable for rights-violations: If a state or a business violates the rights of an individual, that individual may go to court and demand compensation and reform. Due to the collective nature of the environmental crisis, however, it becomes very difficult to connect an identifiable agent's actions—taking the plane twice per year, taking the car several times per week, et cetera—to an identifiable individual's deprivation—say, violation of a right to health caused by air pollution. We cannot even tie large groups of heavy polluters, such as the citizens of wealthy countries, to specific rights violations, raising the question whether a rights-approach is suitable.

Our response to these first two criticisms of the human rights approach to the environmental crisis may be brief: They may lay bare weaknesses of this approach, but they do little to further the cause of RoN, as it too is a rights-based approach.

Third, critics—including, but not limited to, proponents of RoN—will point out that the human rights approach is problematically anthropocentric.<sup>114</sup> Why should we recognize only *human* rights? What about the profound impacts of the environmental crisis on other lifeforms? The human rights approach is anthropocentric in that it considers environmental damage a problem only if it results in human rights violations. To illustrate the problem, Gardiner encourages us to imagine a scenario in which all of the remaining humans live under a biodome with all their rights intact and needs met, while the rest of the Earth, including most animal and plant life that is of no direct use to us, has been reduced to an utter wasteland hostile to any form of life.<sup>115</sup> In such a case, many of us would likely share the intuition that our handling of the environmental crisis has not been a great success, but a human rights approach has no tools to explain why, as all human rights are fulfilled. Supporters of RoN will be quick to point out that a RoN approach can explain this intuition: Nonhuman nature, like human beings, has moral standing. It thus deserves moral consideration and places moral constraints on our behavior. In response, I would invoke Henry Shue's observation that "artificial cases make bad ethics."<sup>116</sup> Such a precisely tailored example may yield an intuition in line with RoN, but that is not sufficient to conclude that, therefore, the RoN approach to the environmental crisis is morally desirable, conceptually plausible, and effective in practice.

In brief, both EVE and the human rights approach have significant advantages over the RoN approach, though they also come with their own sets of problems. The two approaches combined would certainly go a long way in securing fundamental rights for humans regarding the environment, cultivating the appropriate character traits in them, and protecting nature effectively

<sup>112</sup>RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 269 (1977).

<sup>113</sup>See, e.g., Stephen M. Gardiner, *Human Rights in a Hostile Climate*, in *HUMAN RIGHTS: THE HARD QUESTIONS* 211, 223–24 (Cindy Holder & David Reidy eds., 2013).

<sup>114</sup>See, e.g., Kerri Woods, *Environmental Human Rights*, in *OXFORD HANDBOOK TO ENVIRONMENTAL POLITICAL THEORY* 333, 336 (Teena Gabrielson, Cheryl Hall, John M. Meyer & David Schlosberg eds., 2016).

<sup>115</sup>Gardiner, *supra* note 113, at 221.

<sup>116</sup>Henry Shue, *Torture*, 7 *PHIL. & PUB. AFFS.* 124, 141 (1978).

in the process. It, therefore, seems prudent to employ Occam's razor here: Confronted with competing approaches, we should opt for the simpler one, the one with the fewest problematic claims. And the RoN approach, I have shown, has quite a few such problematic claims without presenting any real advantage over competing theories.

## E. Conclusion

This Article had set as its task to assess whether the RoN approach can provide an adequate answer to the threats facing the environment. The introduction laid out the desiderata for such an "adequate answer": Any approach to the environmental crisis will need to be (1) morally convincing, (2) conceptually coherent, and (3) efficacious in practice, meaning that it succeeds in bringing about the necessary changes in political policy, legislation, and our dispositions. We found the RoN approach did not meet any of these desiderata. The RoN approach is morally undesirable because under a biocentric understanding, it leads to endless rights conflicts and condemns us to routine rights violations just by going about our ordinary daily business. Furthermore, under an ecocentric understanding, it problematically subordinates individual organisms to the biological whole. It is conceptually flawed because rivers, mountains, and ecosystems are simply not the sort of things that can bear rights. Finally, it has not delivered in practice: Appeals to RoN have typically failed in court, and the instilment of environmental virtue in us will require more than just good laws.

As alternatives, I have briefly discussed the human rights approach and EVE. Both come with problems of their own, but they also possess significant advantages over the RoN approach, and together they promise to provide a more effective response to the environmental crisis without falling prey to the conceptual and moral issues that render the RoN approach so problematic. Therefore, given the availability of more promising alternatives<sup>117</sup> as well as the significant difficulties attached to RoN itself, we must conclude that it does not provide a convincing response to the threats facing the environment. Such criticism of RoN, however, should not be understood to entail the belief that the protection of nature is not important. We can acknowledge humans' dependence on and embeddedness in nature and at the same time reject the claim that the most convincing way to protect nature is by giving fundamental rights to every living organism or entire ecosystems.

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<sup>117</sup>See *supra* notes 78, 80, 106 (discussing environmental law, which is a further alternative approach in addition to the human rights approach and environmental virtue ethics).