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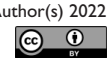

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Rights of nature, human species identity, and political thought in the anthropocene

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Abstract

While much has been written about the efforts in multiple jurisdictions to recognize nature and natural features as rightsholders, there has been relatively little research into the relationship of these Rights of Nature developments to the Anthropocene. This article uses historian Dipesh Chakrabarty's argument for the adoption of a human species identity in the Anthropocene as a jumping off point to analyze how legal rights for nature, such as those enacted in the Ecuador and New Zealand, can help address what Chakrabarty identifies as the challenges the Anthropocene presents to contemporary political thought. These pressing challenges include how to politicize relations between humans and non-humans, extend justice and the sphere of human morality to non-humans, cope with human limitations on our abilities to represent non-humans, and to initiate a withdrawal from a human-dominated world that is a common though uneven legacy of imperialism, capitalism, and globalization. The article argues that by providing responses to these challenges, Rights of Nature laws may also further the development of a human species identity. However, it also qualifies this conclusion in several important regards. First, the more expansive of these protections, embracing all of nature within political boundaries and relying on a remedial approach to justice and broad notions of representation in fact may hinder the adoption of the kind of species identity for which Chakrabarty has called. Second, as a cosmopolitan identity, this identity may be inhibited by continued circumscription of Rights of Nature by notions of state sovereignty.

Keywords

cosmopolitan identity, environmental law, Indigenous law, rights of nature, species identity

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Introduction

More than a decade ago, Dipesh Chakrabarty (2009) called for the cultivation of a human species identity as a crucial feature for humans' confrontation with "the planetary," as he termed it (p. 213). He suggested the cultivation of a lived, shared, and empowered human identity as a species would facilitate the reframing of political thought to encompass the human—nonhuman relations that have previously lacked political recognition but have been rendered inescapable by the conditions and consciousness of the Anthropocene. Chakrabarty identified several challenges for contemporary political thought that the notion of a human species identity brings into focus. This article examines four of these challenges that have been suggested and developed by Chakrabarty and other authors. The first challenge is a reconsideration of modernist conceptions of relations between human and non-human entities. This challenge yields a second: the provision of justice to those entities whose relations with humans gain acknowledgment in the political realm. The third is the matter of representation, both the representation of the non-human interests that such acknowledgment may entail as well as the representation of a human species identity and sensibility. The fourth is a confrontation of the legacies of a globalizing imperialism and the recognition of the justice of the aspirations of many who aspire to the standards of living associated with modern consumption. This article makes two arguments. First, that contemporary efforts to recognize nature as a rights-bearing entity provide examples of possible pathways for how these challenges may be addressed; second, that in doing so, rights of nature may foster a human species identity.

Rights of Nature (RoN) is an umbrella term, referring to the different measures taken in a variety of jurisdictions to treat either all of nature within state boundaries or specific natural features such as rivers and mountains as legal actors with rights. The notion of recognizing the right of collectives of non-humans has contributed to ecological thought since at least the mid-twentieth century, when Aldo Leopold suggested a "biotic right" for ecosystems (Nash, 1989: 70). In 1972, Christopher Stone argued that natural entities should have standing in their own right in legal cases involving their protection (Kauffman and Martin, 2021: 8). However, legal initiatives that sought to translate this ecocentrism into law did not occur until the early 21st century. There is no single unified theory of RoN, although it is informed to a significant extent by Earth Jurisprudence (EJ), which holds that human systems should fit within natural systems (Kauffman and Martin, 2021: 4). According to legal scholar Takacs (2021: 550–551), despite their differences, the various initiatives to extend rights to natural non-humans share a common "aim to enshrine in the law the fundamental symbiosis between human and nonhuman ecological health, and to empower suitable stewards who will nurture that symbiosis."

These developments have not necessarily taken shape as responses to the Anthropocene. They have often been impelled by Indigenous efforts for self-determination and environmental activism in different places around the world. Mihnea Tănăsescu (2020), for example, has pointed out (p.446) that the arrangements arrived at in two of the most prominent examples of Rights of Nature, those in Ecuador and New Zealand, were principally inspired not by "environmental concerns, but rather by power relations" existing between state governments and Indigenous peoples. Conflicts over sovereignty and self-determination have at times afforded opportunities for the incorporation of Earth Jurisprudence legal approaches advocated by transnational NGO networks such as U.S.-based Community Environmental Legal Defense Fund (CELDF). Nevertheless, it has been suggested by scholars (Bleby, 2020: 67) that RoN has the potential to dampen the threat of the Anthropocene to non-human species.

As is the case with other approaches to remaking environmental law for the Anthropocene, such as the creation of common asset trusts, RoN reflects the notion that "assets created by nature or by

the whole society should belong to everyone," even those yet unborn (Costanza et al., 2021: 2). Other scholars like Peter Burdon (2020: 310), however, have argued that RoN's reliance on rights means that it cannot help humans to make the sorts of legal and cultural transitions necessary to navigate the paradoxes and perils of the Anthropocene. In its ambiguous position in relation to what the Anthropocene demands, RoN is similar to the notion of a species identity. Both have been criticized by some and advocated by others. It is for this reason that their potential intersection deserves our attention. Despite the lively debate about species identity, there has been little that relates it explicitly to Rights of Nature. By developing this connection this article applies a different analytical lens to nature's rights than has typically been the case, with the purpose of highlighting the contributions that RoN and human species identity can make to a deeper understanding of one another.

Chakrabarty's *The Climate of History* does not evaluate potential responses to the Anthropocene and takes little note of non-human rights. To the extent that it does (Chakrabarty, 2021: 134), it is to dismiss the relevance of the extension of rights to "certain animals" who pass over the "threshold of sentience." Legal scholar Joshua Gellers (2021: 66) has pointed out that "properties-based approaches to animal ethics have largely dominated the debate over animal rights." That is, the extension of rights or legal protections depends on the divination of animals' possession of characteristics sufficiently similar to humans. Sentience, understood (Gellers, 2021: 66) as "the ability to experience suffering or happiness," can be considered a relatively broad criteria for belonging within animal rights thought. It is nonetheless not nearly expansive enough to encompass the varieties of entities that populate the planet. Chakrabarty (2021) considers such an extension indispensable, noting that that "our concern for justice cannot any longer be about humans alone" (p. 178). He states, however, that humanity is at a loss so far to include within that concern the "universe of nonhumans" beyond those certain species thought to meet criteria for sentience, beholden as humans are to outmoded notions of "the political" (2021: 178). Such obsolete assumptions preserve a focus on the individual rightsholder and her or his happiness (Chakrabarty, 2021: 212). *The Climate of History* does not appear dismissive of rights as such, as it suggests that the extension of rights to certain "sentient" non-humans is too limited to be effective at generating new political consciousness. Rights of Nature initiatives, which include not only particular species but nature more broadly and identify collective rightsholders (Youatt, 2017: 40) may in contrast have the potential to do so.

This article clarifies the role that different forms of RoN may play in advancing a human species identity. Their capacity for doing so rests on how the arrangements established to implement those rights simultaneously address the challenges that Chakrabarty has highlighted as essential for political thought to address in the Anthropocene. The more expansive of these forms, embracing all of nature within political boundaries and relying on a remedial approach to justice and broad notions of representation in fact may make it more difficult to encourage the adoption of a species identity. The article also identifies some of the restraints that come along with the placement of RoN within state political and judicial structures. Despite their different forms, RoN arrangements ultimately are circumscribed by prerogatives of state sovereignty, which may limit those arrangements' ability to affirm and facilitate a species identity universally available to humans across political boundaries. This article first examines the aforementioned four challenges identified by Chakrabarty that the Anthropocene presents for political thought and identifies the role that the cultivation of a species identity plays in how these challenges may be addressed. The article next analyses RoN developments in Ecuador and New Zealand in relation to those four challenges to illustrate how those developments may foster a sense of human species identity. The article finally offers some thoughts on the implications of the differences between New Zealand's and Ecuador's examples for the development of this identity.

Political thought and species identity in the anthropocene

In a series of articles beginning in 2009 Chakrabarty (2009: 217) asked how a human species identity could help us to make sense of the Anthropocene. He suggests (2021: 45) that the Anthropocene encourages the adoption of a universal category of belonging. Skeptical of the ability of any universalism to, as Ursula K. Heise (2016: 222) has described it, "avoid simply generalizing one particular perspective," Chakrabarty emphasizes the importance of losing sight of neither the perniciousness of universalism nor the differentiated human histories that helped produce the Anthropocene. Chakrabarty's initial and subsequent articles generated responses from scholars in different fields. While there is no unanimity regarding the definition, implications, or indeed wisdom of the adoption of a species identity, a rough outline of its characteristics nevertheless comes into focus by dint of this interdisciplinary and ongoing discussion revolving around species. As we shall see, a human species identity tends to be conceptualized as relational. It privileges human and non-human interactions and explains these actions through interdependence. As a consequence, the species identity trains our focus on obligations as they arise in local contexts, even as scholars recognize both the global networks within which particular places are embroiled and the planetary force of humanity. This section considers how this discussion of human-as-species may impact the challenges for political thought in the Anthropocene that have emerged from Chakrabarty's work and notes the somewhat ambiguous relation of Rights of Nature to each of these challenges.

The first challenge is a reconsideration of modernist conceptions of relations between human and non-human entities. The decline in biodiversity has prompted recognition, Chakrabarty (2021: 127) notes, of the need to devise a political imagination rooted in an identification of humans "as a species deeply embedded in the history of life." The implications of this embeddedness are shaped by scholars' orientations toward the two poles of a key paradox of the Anthropocene: its tendency to highlight both humans' distinctions from other species as well as their inescapable involvement "within a network of interdependency that is ongoing" (Adams, 2020: 119). Interdependence has been central to how scholars have understood human species identity, including for those, like Clive Hamilton, who have argued against the promotion of this identity. Acknowledging human embeddedness within nature should not come at the expense of the recognition of human specialness, Hamilton (2017) claims. He suggests that a species identity threatens this recognition by training our sights on commonalities between humans and non-humans rather than the singularity of the former (p. 62). In contrast to Hamilton, other scholars have raised concerns about the possibility that a species identity may reinforce a sense of human exceptionalism. Elizabeth DeLoughrey (2015) points out (p. 362) that "human exceptionalism may be embedded in a concept of 'species thinking' in which the only articulated species is the human," although DeLoughrey suggests that this need not necessarily be the case. Gerda Roelvink has similarly voiced concern (2013: 53) that presumptions of the capability of humans to exert control over nature will not be dislodged by a species identity. Despite this concern, Roelvink points out that Chakrabarty formulates a relational form of species understanding that emphasizes the sustaining and transformative connections between humans and others. Roelvink (2013) himself has contributed to this perspective (p. 59) by reinterpreting Marx's own idea of "species-being" to draw out the ways in which the concept contributes to the insight that "the human species is fundamentally interdependent with others in a way that affects our very humanity and self-awareness."

Roelvink's reinterpretation tracks with a broader interrogation underway in multiple disciplines of "ontologies, epistemologies and methodologies founded on human exceptionalism" (Adams, 2020: 19–20). According to Matthew Adams (2020: 21), these efforts have sought to encourage an analytical framework capable of considering "human and nonhuman as distinct but mutually constitutive and interdependent." Scholars not directly responding to Chakrabarty have

also emphasized interdependence in species-making. Some of this work has undermined assumptions of a static and independent species identity by pointing out the porous nature of species. By examining the "species interdependence" that characterizes relations between entities, Haraway (2008) highlights the relations that make species and allow them to participate in "the worlding game on earth" (p.19). This species interdependence, Anna Lowenhaupt Tsing suggests, troubles the notion of a discrete species whose development and evolution comes from within, self-regulating and self-contained. Such an assumption, as Tsing (2012: 144) states, inaccurately presumes a static constancy to "the practices of being a species." Recent research on evolution, has demonstrated instead numerous entities' reliance on exchanges with other species for their own elaboration (Tsing, 2015: 141). Tsing therefore considers "human nature" to be "an interspecies relationship" (2012: 144) and therefore variable. Tsing observes that "[w]e change through our collaborations both within and across species" (2015: 29). These interactions are not between already formed entities; instead, the interactions and the entities are inseparable. Tsing argues that "[f]or living things, species identities are a place to begin, but they are not enough: ways of being are emergent effects of encounters" (2015: 23). Recognizing a species identity can direct our attention, then, to the many relations that go into making our species. As we shall see, RoN may facilitate a focus on relations between humans and other entities. At the same time, an approach that solely seeks to rectify the harm which humans do nature "out there" risks obscuring these interspecies connections and recapitulating the perceptions of humans as somehow existing outside of nature.

This interdependence between humans and non-humans has implications for a second challenge that emerges in Chakrabarty's work: the provision of justice to non-human entities. Roelvink notes that Chakrabarty effectively calls for a species identity that can act as a foundation for "a political collective" (2013: 54). While the notion of humans as connected to and "inextricable from other forms of life and nonlife" may be "an emancipatory horizon of thought," Chakrabarty (2021: 118) warns that, this perception cannot be currently translated into politics. The environmental emergency which humans have generated invites the expansion of "ideas of politics and justice to the nonhuman, including both the living and the nonliving" (Chakrabarty, 2021: 13). This task would bring together parts of humanity that have been split by what Chakrabarty (2021) identifies (p. 134) as a "tradition" in the humanities that separated "our 'moral' and 'animal' (i.e. biological) lives." Chakrabarty (2021: 134) asks how humans might "use the resources of their moral capacity to regulate their life as a biosocial species among other species." This call to join together these different dimensions of humanity again suggests the salience of a species identity to political thought in the Anthropocene.

Scholars who take human/non-human interdependence as a starting point for how to reorganize political life in the Anthropocene help to illuminate the implications of species identity for the provision of justice to non-humans. Acknowledgment of the interdependence which informs understandings of species identity trains our focus on notions of obligation and on specific places where interactions occur rather than abstract, universal space. Scholars in a recent special issue of *Law and Critique* on "Laws for the Anthropocene" have suggested that law should reinforce human obligations to human and non-human others. The focus on obligation reflects the recognition both of human/non-human interdependence and human species' singularity. Peter Burdon draws on Kylee McGee's and Simone Weil's insights to locate obligations in "a deeply felt connection to place and the bonds of dependence that are created in a collective" (2020: 320). The sense of obligation that he argues is necessary to inculcate in the Anthropocene itself arises from the concrete, local contexts central to ecological thought. At the same time, Burdon also describes humans as part of a system planetary in scale rather than solely within a specific locale (2020: 321). Earth Systems Science, which helps to produce a sense of the Anthropocene and of what it means to be

human in the Anthropocene, comprehends human action simultaneously as embedded and constrained within local networks and as capable in the aggregate of changing the Earth as a planetary entirety (Burdon, 2020: 325). Writing in the same special issue, Kathleen Birrell and Daniel Matthews likewise reference Simone Weil's work in pointing out that "obligations draw attention to forms of relationality, opening a sensitivity to the ligaments or bonds that connect actors in the lively networks that are essential to communal life" (2020: 284). Birrell and Matthews (2020), moreover, suggest the political ramifications that may emerge from this recognition of "the intrinsic relationality between the human and nonhuman" (p.284). They hold (2020: 276) that highlighting "questions of *need, dependency and relationality*" can generate novel sorts of human subjects whose selfhood is attuned to the "nonhuman forces" that are increasingly impossible to escape. These authors particularly seek to reshape the individual rightsholder associated with liberalism whose prospering was the professed goal of modern states. Because law helps to fashion "a world of meaningful relations" (2020: 277), reimagined subjectivities based on obligation rather than rights can contribute to an expanded political collective whose non-human members, like its human members, are entitled to justice. As these authors' work demonstrates, acknowledging obligation as an organizing principle emphasizes the importance of local contexts as sites for the extension of justice to non-human entities, even while the Anthropocene draws us to the planetary. By continuing to emphasize rights, RoN would seem to have little to offer an approach that emphasizes obligation, and has been criticized as such by Burdon, as noted earlier. As this article demonstrates, though, tools that reflect the primacy of rights can reinforce obligations. For example, legal personhood has created opportunities for Indigenous Maori iwi to instill obligation as a guiding ethic for the care of particular ecosystems.

Any attempt to make human relations with non-human entities a subject of political thought and to therefore consider what acting justly toward these entities may entail leads to a third challenge which Chakrabarty discusses: the possibility of representation. There are two aspects: the representation of a human species identity and the representation of non-humans in a political collective informed by that identity. Chakrabarty is skeptical that either is realizable. First, Chakrabarty questions the ability of humans to adequately represent nature, which cannot speak for itself in the anthropocentric institutions humans have established to adjudicate the demands of human values. While not specifically addressing RoN, Chakrabarty (2021: 148) does address the suggestion of Amartya Sen that due to their influence, humans had a "fiduciary responsibility for other creatures." However, the ability of humans to represent non-humans is unclear. We could do so, he predicts (2021: 148) only "imperfectly." The difficulty posed by the identification of the proper subjects of representation would also cloud humans' ethical responsibilities to those subjects. Other scholars share Chakrabarty's concern. RoN scholar Tănăsescu (2016: 20), for instance, highlights the epistemological restrictions on how humans can represent non-humans. Limited in what we can know about non-human entities, we cannot be confident regarding "*how* this being is to be represented." It is best to acknowledge that we do not know "what non-human subjects *are really like*."

Chakrabarty also holds that there is no way for humans to register the lived reality of humanity as either a geologic force or as a species (2021: 43–45). Scholars have questioned this doubt regarding the experiential basis for species identity, pointing to the different technologies, institutions, and perceptions that can facilitate the experiences of a human species identity. For instance, Scott Hamilton argues that scientific knowledge provides an underpinning to the species identity. According to Hamilton (2019), "the incredibly complex technological foundations of" Earth System Science serves as a basis for a possible, and pernicious, collective species identity (p. 622). He holds that an emerging "phenomenology" of a species identity is buttressed by this discipline which produces but one certainty about the future amidst proliferating uncertainties: "'We' are only

recognizable in this geological timescale as a collective species" (2019: 622). While Hamilton has pointed out how emerging scientific-technological ways of knowing the world may facilitate opportunities to experience a species identity, other scholars have pointed to the array of institutions, laws, and other tools that underlie modern identities. Heise, for instance, points out (2016: 224) that many kinds of identities, such as national identities, are not lived and "experienced" without the "institutions, laws, symbols, and forms of rhetoric that establish such abstract categories as perceptible and livable frameworks of experience." Ian Baucom, who has subjected Chakrabarty's ideas to what the latter called the "most sustained, generous, and yet resolute" analysis of any scholar (2021: 232), reframed the question Chakrabarty originally posed. It is not so much, Baucom (Baucom, 2020 avers, "whether we have access to some form of 'experiencing' ourselves. . .as 'nonontological'" (pp. 70–71). Baucom suggests instead we ask whether there is some way to perceive "ourselves non-disjunctively across those" geological, biological, and social "forms-of-being" whose simultaneous presence Anthropocene consciousness reveals (2020: 71). Baucom answers in the affirmative to the latter question and looks to a renovated concept of freedom to describe how we may come to know our "compound ways of being human": freedom cannot be only the impulse to seek security from the "biological, and the zoëlogical, and the geological, cosmological, and theological orders and times of planetary life." Rather, it must also encompass the determination to reshape our ways of being and living "in relation to" and through those "forces and forcings of planetary life" (2020: 71). This freedom must be compatible with the recognition of the interconnection of all entities (2020: 97). Implicit in this understanding of freedom is a sense of responsibility for the flourishing of those interconnections.

The representation and knowability of a human species identity and representation of non-human interests are intertwined. This is suggested by Chakrabarty's partial refutation of Heise's point regarding the crucial role of cultural and legal dimensions of lived identities. Chakrabarty (2021: 44) hypothesizes that an as-yet nonexistent "United Organization for Multi-Species Governance" offering a forum for animals to accuse humans of mistreatment and ask for redress would be the kind of institution necessary to translate the identity category of species into lived experience. RoN may ask humans to play both roles, or at least represent a non-human entity whose interests are impacted by humans. By generating procedures for the representation of nature's interests in conflict with humans, or by charging humans with the responsibility for creating management plans that take those interests into account, RoN laws and their representational responsibilities may then help to bring to the fore a relational concept of freedom that acknowledges human and non-human entanglements.

The desire to remake rather than abandon notions of freedom in the Anthropocene highlights a fourth challenge explored by Chakrabarty. He suggests that the legacies of a globalizing imperialism have to be confronted while acknowledging the justice of the aspirations of many who aspire to the standards of living associated with modern consumption. One impulse he identifies (2021: 203) animating responses to our crisis is to "work toward a planet that no longer belongs to the human-dominant order that European empires, postcolonial and modernizing nationalisms, and capitalist and consumerist globalization created over the last five hundred years." Any retreat from the "human-dominant order" that is a legacy of empire, capitalism, and globalization would be a product of the intertwined politicization of human and non-human relations, the representation of those relations within the arrangements that institutionalize this politicization, and the notions of justice empowered by this politicization. To pull back from the human-dominant order, then, ultimately may entail the adoption of a species identity. RoN's relationship to this challenge is ambiguous, in part because of its reliance on rights and states to enforce those rights. RoN initiatives have almost exclusively occurred in postcolonial states, often in conjunction with the advocacy of Indigenous people for greater autonomy within state structures. RoN has the capacity to mediate

Indigenous demands for self-determination in ways that may seem less threatening to states whose institutions and negotiators are accustomed to guarding territorial sovereignty. Moreover, RoN may in some contexts contribute to and in others diverge from the "modernizing nationalisms" that characterized many postcolonial states in the twentieth century. The next section focuses on the two most prominent examples of RoN in New Zealand and Ecuador. It analyses these examples, which provide strikingly different manifestations of RoN, in terms of how they address the four challenges for political thought identified by Chakrabarty.

Political thought in rights of nature

Ecuador

Politicization. The process of creating a new constitution for Ecuador in 2007 represented what Craig Kauffman and Pamela Martin have referred to as a "window of opportunity" for multiple groups to press their desires for significant change. Indigenous and environmental organizations that had engaged in protracted struggle to prevent environmental harm to their lands advocated a constitutional commitment to a different kind of development (Kauffman and Martin, 2021: 71). Specific language and provisions of RoN were influenced by the input of non-governmental organizations like the U.S.-based Community Environmental Legal Defense Fund (CELDF), which was invited to assist in the drafting of the rights of nature protections in the 2008 Constitution by another transnational NGO, Fundación Pachamama (Humphreys, 2017: 470–471). Organizations which advocate for the implementation of Earth Jurisprudence principles, like CELDF, have argued that it is important to recognize the rights of natural non-human entities. This argument is based in part on the importance of rights, which have historically helped anchor entities' claims to political recognition. Those who belong to liberal democratic polities are those with rights. While EJ envisions wholesale legal, social, and political changes, rights recognitions of nature are one step that can be done within current systems. However, the implementation of such a step absent a larger commitment to EJ can lead to unexpected and unproductive consequences, such as "making guardians of natural ecosystems liable for damage done to humans in the course of regular ecosystem functioning" (Kauffman and Martin, 2021: 205). This incorporation of rights of natural non-human entities into legal systems enables nature to be a subject rather than object in the regular work that courts do—what one EJ scholar and advocate identified (Cullinan, 2012: 13) as the weighing of "all rights against one another." It has been pointed out (Tănăsescu, 2020: 436) that the particular rights codified in Ecuador's 2008 constitution "are very similar to those proposed by" EJ proponent Cormac Cullinan. These rights include the right "to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes," as well as the "right to be restored." These rights apply to all of the nature that lies within the state boundaries. The rights protections therefore heed "the western obsession with totality" criticized by Tănăsescu (2020: 450), which severs the relationships between people and particular places.

As one observer has noted, this rights-based approach implicitly considers rights to be an instrument that will have equal force no matter what subject it adheres to or the system in which those rights are recognized. Peter Burdon (2020: 316) notes that RoN strategy rests on the assumption of "rights as a tool that can be shaped into any form" and wielded with equal impact, allowing rights-based protections for the environment to wield same influence as rights for human persons or corporations. The state here is crucial, and, indeed, scholars point out (Echeverria and Romo Leroux, 2020: 286) that Ecuador's Constitutional Court asserted "the State's duty of guardianship" for the rights of nature. However, the weighing of rights in Ecuador and elsewhere cannot occur in a political vacuum. Indeed, one of the initial difficulties for RoN activism in Ecuador identified by

Kauffman and Martin (2021: 114) was the politicization of the rights, although they point out that this process also "arguably contributed to RoN jurisprudence by raising its profile." This politicization has been shaped by the possibilities of representation generated by the embrace of what Tănăsescu (2020: 450) criticizes as this translation of Indigenous conceptions of Mother Earth into a "universal nature."

Representation. The model of representation at work in Ecuador is similar to that envisioned by EJ advocates in such venues as Rights of Nature tribunals. Since 2010, these tribunals have served as non-binding venues for the airing of nature's rights. Introducing the 2021 European Tribunal in Defense of Aquatic Ecosystems organized by the non-governmental organization Global Alliance for the Rights of Nature, Natalia Greene (GARN, 2021) noted that the tribunal offers a model for how courts may treat "the interests of non-human beings to be equal in importance to the human interests." By placing these in a supposed relationship of equality, the Tribunal suggests ways of thinking about humans as one among many species, however predominant. Natural formations such as glaciers are represented in the Tribunal's proceedings by prosecutors who press their claims. In Ecuador, anyone, including the state or civil society actors, may claim to "speak" for nature by defending its rights and interests. There is an abstract, legal relationship between the representative and the represented. The representation of nature is materially unattached and available.

The ability to represent nature has been picked up by different actors with diverging motives. The state has been accused of using it cynically and to further what Eisenstadt and West (2019: 181) term its' leaders' commitments to "extractive populism." As Kauffman and Martin (2021: 115) point out, the government was content to use RoN "instrumentally" when it served its purposes. Before 2017, the government did not lose a RoN case, while civil society plaintiffs lost more than half of the cases they brought. Furthermore, the government has attempted to monopolize or at least create obstacles to the practice of this open field of representation. For instance, Kauffman and Martin, (2017: 133) point out that despite constitutional assurances that the legal system would recognize any citizen's ability to represent nature, the government sought in 2015 to force all complaints alleging infractions of nature's rights through the government ombudsman's office charged with defending human rights. The government sought to arrogate this generalized representational ability. These scholars also point out (2017: 136) that courts have also at times refused to recognize the ability of NGOs to represent nature in lawsuits.

Kauffman and Martin (2017: 139) have maintained that the politicization of RoN cases at first helped the state, which prevailed when the judicial process drew attention to these cases. They nevertheless point to an unexpected dynamic that has emerged as a consequence of this politicization: the creation of precedent and diffusion of knowledge of RoN among judges. Judges have taken it upon themselves to learn more about the law and to apply it in other cases even when plaintiffs do not themselves base their arguments on RoN. In relation to Heise's (2016: 224) identification of the importance of rhetoric and institutions in enlivening identities, it is significant that institutions to defend nature's rights have yet to be fully established in Ecuador (Echeverria and Romo Leroux, 2020: 279). Nevertheless, the constitutional provisions have changed how judges reason in their decisions, prompting them to, in the finding of Kauffman and Martin (2017: 139), "re-frame decisions in terms of living harmony with nature, rather than strictly in anthropocentric terms." The judges' opportunities to do so is in part, as the authors point out, a result of the state's assumption of (by no means exclusive) representational responsibility and "instrumental" use of RoN to achieve its preferred goals.

Justice. The manner of this representation and the universal nature that is capable of being represented each impact the extension of justice to non-humans. Much as Gellers noted about RoN

jurisprudence more generally (2021: 128), legal actions taken under RoN provisions in Ecuadorian courts have largely redressed specific harms or conflicts affecting specific ecosystems or sites. A 2012 case is useful for illustrating the kind of justice that this model has most readily enabled. The case began when the Ecuadorian mining authority suspended its approval for a mining operation. The mining had been permitted under certain conditions and with particular manual methods that would enable only "small-scale" operations (Echeverria and Romo Leroux, 2020: 287). The agency found that the machinery being used did not meet these standards. When the operator disputed this revocation, a lower court reversed the decision of the agency to revoke the permit, ruling as Echeverria and Romo Leroux (2020): 287–288) have observed "from the perspective of the right to property and work." The decision of the Constitutional Court in 2015 addressed several issues relevant to the provision of justice to non-human life.

As Echeverria and Romo Leroux (2020: 288) point out, the decision noted that respect for nature's rights "'must come before any individual economic interest.'" Thus the Court laid out a constitutionally-defined logic of justice and order for its distribution. The Court also addressed what the right of restoration might entail. The verdict, these scholars note (2020: 288) mandated that the harm generated by the illegitimate mining be determined and quantified as a prelude to the affected area's "restoration." In their estimation, as of 2020 this decision alone has "concretely and correctly" identified what is involved in implementing nature's right to restoration. Reparation, they hold (2020: 288), is often mistaken for restoration, as the former "is an obligation that arises from environmental damage." Other decisions they note have taken this reparative approach, such as a 2015 decision that required a monetary payment as indemnity for damage to biodiversity.

Despite their differences, rights to restoration and reparation depend upon the production of particular knowledge. As Echeverria and Romo Leroux (2020: 288) observe, due to "the complexity of biodiversity restoration," restoration rests on "in situ research and other scientific and technical responses" conducted at a habitat to determine what is required for the reintroduction of species at that specific site. One of the challenges for this process emerges from the geographic scope of the Rights of Nature protection. Unclear is the extent to which there would be knowledge about an ecosystem prior to the injury done to its constituents, and how that knowledge might be constructed after that harm has occurred. The decision thus highlights the importance of the production of knowledge to the form that justice takes within this rights regime.

The limitations of this remedial and restorative form of justice noted by scholars also have implications for the nurturing of a species identity. One limitation is the delay between a decision and its enforcement, which scholars such as Tănăsescu (2020: 439) have observed in judgments in favor of such as the Rio Vilcabamaba case where a court mandated that those responsible for building a road subsidize the restoration of a river harmed by their construction efforts. Identities can be restrictive, as Chakrabarty (2021: 125) observes. However, the halting enforcement may undermine the opportunity for the law and its mediating institutions to support a species identity. In Ecuador a specific action may be judged to violate nature's rights, but a comprehensive vision of what it means to act as one among many species remains elusive, in part because of the lack of institutions charged with formulating such a vision as well as the ad-hoc nature of legal actions. This is a piecemeal approach, in contrast to New Zealand, as we shall see.

Second, the focus on restoration draws attention to what Tănăsescu (2020: 451) has identified as a feature which may work against the "dynamism implied in relational ontologies" reflected in Amerindian cosmovisions that provided the foundation for Ecuador's Rights of Nature law. Tănăsescu (2020: 451) argues the model of justice adopted by Ecuador's constitutional provisions suggests a conception of nature as "an unchangeable form" rather than a dynamic system. The right to restoration may not permit "other-than-human beings their own autonomy in changing" (Tănăsescu, 2020: 452). The work of forms of life may be denied by rights of nature protections,

suggesting a narrow view of nature that does not acknowledge its characteristic fluidity. RoN protections in Ecuador might therefore recapitulate some of the previous assumptions that located humans outside of nature, limiting perceptions of a human species identity based on interdependence.

Retreat from a human-dominant world. RoN in Ecuador have been enmeshed in the overlapping but ultimately diverging anti-colonial views of Indigenous activists and populist political leaders. Its development has intersected with efforts of Indigenous peoples to renegotiate their place in the postcolonial state. As Guzmán (2019: 62) has observed, the same constitution that recognized those rights also recognized Indigenous collective rights and the plurinational character of the state. Tănăsescu (2020: 436) has also pointed out that RoN "were conceived of together with the" territorial rights of the six Indigenous nationalities within Ecuador. While opposed to the RoN provision, the president at the time RoN was recognized in the 2008 Constitution, Rafael Correa, "sought both to 'speak for nature'" while simultaneously depending on revenue from extractive industry to underwrite social initiatives (Eisenstadt and West, 2019: 73).

The state's role in representing nature and defending its rights—opportunities created by the broad criteria for representation and broad scope of nature apprehended by the RoN constitutional provision—has yoked RoN uneasily to the developmental priorities of the state government. Correa has claimed that in order to escape neocolonial relationships, Ecuador had to take control of its national resources and receive appropriate proceeds from their "development" and commodification. In keeping with the rhetoric of what scholars have termed "extractive populism," the state would employ these revenues for the people's benefit. RoN is a potential threat to the development programs favored by Correa and his successor that depend on revenues from extractive projects. The government has also sought to ignore or render unthreatening other measure of the 2008 Constitution meant to distribute power more widely throughout the country, such as prior consent, which as scholars point out (Eisenstadt and West, 2019: 80) is "the primary mechanism" for Indigenous peoples to communicate their views on extractive projects affecting their lands.

In the last several years, there are indications that RoN jurisprudence in Ecuador has the potential to serve as an impetus not only for the restoration of harmed ecosystems but the formulation of management plans that take nature's rights into consideration, thereby shifting the extractivist course accelerated by Correa. First, in the past several years lawsuits originating from non-governmental sources have found greater success, achieving even the cessation of mining activities approved by the state. Such protective action was "something unheard of" in the first few years after the constitutional recognition of nature's rights there (Kauffman and Martin, 2021: 82). In a 2019 decision concerning a government-granted concession to an electric company on the Piatua River, the Provincial Court of Pastaza found that "natural resources can only be used when RoN is protected" (Kauffman and Martin, 2021: 110). Moreover, there is evidence that RoN can be used not only to seek restoration after damages, but also as something that must be considered when planning and managing land use. In late 2021, the Constitutional Court ordered the cancelation of mining concessions granted the state mining company in the Los Cedros Forest, based on the legal reasoning that the ministry which granted the concessions transgressed both rights of nature as well as the right of people to substantive consultation (Corte Constitucional Del Ecuador, 2021: 78). As part of the remedy, the Court ordered the offending ministry to create "a participatory plan for the management and care" of the forest. The Court specified the stakeholders whose input should be reflected in the plan: residents of nearby communities, regional government authorities, and academic investigators with experience studying the forest (Corte Constitucional Del Ecuador, 2021: 80). In addition to ascertaining the success of protective efforts for the forest and restoring damaged areas, this management plan is also meant to encourage "economic activities for

the surrounding communities that are in harmony with the rights of nature." This mandate for a management plan demonstrates the potential of RoN jurisprudence in Ecuador to transcend a reactive paradigm that seeks to repair damage and instead consider ways in which human activity can be compatible with rights of nature in specific ecosystems. This suggests a path forward to a retreat from human domination envisioned by Chakrabarty.

New Zealand

Politicization. Rights of Nature developments in New Zealand emerged out of long-term efforts by Maori tribes (iwi) to reclaim self-determination and contest colonial treaties that imposed Western notions of sovereignty upon them and upon disputed lands. The Crown government has in the last decade come to agreements with two Maori iwi regarding two such areas. These agreements have been codified in parliamentary legislation which provides legal personhood to these particular places "of cultural and environmental significance" (Eckstein et al., 2019: 806). In 2014 the government recognized the legal personhood of the land previously designated Te Urewera National Park, and empowered the Tūhoe Iwi of the Maori to represent this ecosystem. The Whanganui River has also been recognized as a legal person known as Te Awa Tupua since 2017. Legal personhood confers legal standing, permitting an entity through its representatives "to take legal action to protect itself" (Eckstein et al., 2019: 810). People are appointed to protect the interests and rights of each legal entity. For example, the Whanganui Iwi and the Crown each appoint a guardian for the river; these guardians themselves are located "within a new, collaborative, integrated watershed management body" that encompasses multiple government and civil society stakeholders (Kauffman and Martin, 2021: 75). While Erin O'Donnell has observed that legal rights for bodies of water may in fact make cooperation to stem pollution more difficult to achieve, she notes that in New Zealand the rights of the Whanganui "have been the focus of renewed collaboration" among multiple parties (Eckstein et al., 2019: 812).

Notions of obligation have shaped the politicization of human-nonhuman relations in New Zealand. While legal personhood is often perceived as a grant of rights to entities, this capacity was not necessarily its most important feature for the Maori iwi involved in the negotiations. As Kauffman and Martin (2021: 74) note, the discussions between the Tūhoe and the Crown government created the "opportunity for codifying Maori conceptions of nature, and humans' responsibility to it, into New Zealand law." These authors (2021: 74) point out that the Tūhoe "do not emphasize the rights of Nature concept," as the idea of rights has its roots in Western legal thought and practice. Instead, they focus on the potential of legal personhood to promote "their responsibility of guardianship" for this specific ecosystem. The exercise of this responsibility enables them to uphold their kinship with Te Urewera.

These arrangements thus resonate with the previously noted advocacy of Burdon, Birrell and Matthews for an approach focused on, as Burdon (2020: 321) put it, "the obligations we owe to each other and the broader living system" rather than rights. Political arrangements for the administration of specific ecosystems and natural legal entities reflect this shift. That is what has happened in the settlements between the Maori and the Crown government. Despite their use of the tool of legal personhood, by providing Maori iwi with administrative agency, the settlements facilitate Maori focus on responsibility and reciprocal, relational obligation rather than rights when managing land. Indeed, legal scholar Takacs (2021: 561) has suggested that the developments in New Zealand amount to a transition in "legal forms" from "an anthropocentric notion of rights (what can nature provide *me*?) to an anthro-ecocentric notion." In the latter, "the law is still first and foremost a reflection of human beliefs and human needs, but the law situates those needs in a web of interrelatedness," thereby implicitly understanding humans as one among many species. In

Takacs' interpretation, RoN law will continue to express the importance of human aspirations while considering them in light of human-non-human relations.

Representation. This emphasis on responsibility impacts notions and schemes of representation. Scholars (Tănăsescu, 2020: 446) have criticized the tendency of others to read Western concepts of "guardianship" into the New Zealand arrangements. Kauffman and Martin have expanded upon the meaning of guardianship in the Te Urewera arrangement. They note (2021: 153) that its practice differs from the model associated with "Western law," where someone considered unable to govern themselves has to cede their power to make choice about their own life to another. Instead, the authors argue that "the Tūhoe's approach to guardianship focuses more on creating a system designed to listen to what Te Urewera is 'saying' and using this information to manage human impacts." What is actually being guarded, Kauffman and Martin (2021: 153) suggest, is "the relationship between people and Nature."

The Tūhoe scheme of representation perhaps helps to address the doubts regarding the ability of humans to represent nature voiced by Chakrabarty. Representation, according to Kauffman and Martin (2021: 155) is "networked," as its work carried out by different actors, who each perform an important role. There is the Board, which speaks for the area "from a legal and philosophical basis." The Board lays down "general principles for people management" in the area. These speech acts are themselves informed by those who work in "bush crews," which "speak more directly" for Te Urewera. They dwell within the forest and witness "its natural order and evolution, paying attention to signs the forest is giving them, and communicating this to" four squads that aggregate these observations. The "operational decisions for the forest as a whole" that these teams make are thus informed by these direct observations.

Justice. Those decisions, according to Kauffman and Martin (2021: 152), tend to "reject the Western conservation view of nature as a museum that is to be seen but not touched." The supposed zone of untouched wilderness and the zone of unfettered human access to nature each, in their own way, prevent human self-consciousness as species and prevent close examination of human-non-human relations; each facilitate their own particular fictions but rely on one another for affirmation. Kauffman and Martin (2021: 158) find that the Tūhoe have, however, introduced some restrictions on human use, such as placing the lake within the territory off limits to "'tired boats' that leak oil and gas." Largely, however, they argue (2021: 152) the Tūhoe focus on the "reciprocal relationships" that exist between humans and non-humans. In their understanding, these relationships fostered a "responsibility for humans to limit their activities such that they will not overwhelm other members of the ecosystem." That is, an understanding of human role and responsibility within a particular ecosystem may provide something akin to a self-conscious recognition of humans as a species.

Steps to enact this responsibility constitute, within this context, a form of justice. Unlike in Ecuador, where justice is remedial and applied to all of nature, the Whanganui and Tūhoe Iwi can define human responsibilities in relation to specific ecosystems and the actions those responsibilities prohibit or necessitate. The dynamics of representation and management of particular ecosystems make possible, in Kauffman and Martin (2021: 16) judgment, proactive action, "reducing the need to turn to the courts." Kauffman and Martin (2021: 155) describe one example of "Earth Jurisprudence in practice" in Te Urewera: the management of possums, which were introduced to the ecosystem in the 19th century and lack non-human predators. The Tūhoe work to place limitations on possums by hunting and trapping them, rather than by spraying them with poison, a cheap but environmentally destructive method. The Tūhoe relate to the possums differently than had the state government, as hunting the animal affords families "a sustainable livelihood," as they

consume its meat and convert its fur into products which are then sold (Kauffman and Martin, 2021: 157). In the authors' interpretation, humans' roles as the only natural predator in that ecosystem is important. The Tūhoe voice "a duty to help maintain the possum population at a level that will not overwhelm the ecosystem and cause other important species to go extinct," a possibility if the possum population goes unchecked. The health of the ecosystem concerns the Tūhoe, who according to Kauffman and Martin (2021: 157) recognize themselves as "part of the forest ecosystem and must live off the land." Thus, the Tūhoe recognize humans' relational place within an ecosystem and at the same time humanity's unique capabilities. This acknowledgment helps to address Burdon's concern that RoN arrangements do not adequately account for the singular power of humans in the Anthropocene (Burdon, 2020: 310–311). This approach also appears to echo the counsel of those, like Baucom, who advocate a reconstructed perception of freedom that acknowledges the interconnectedness of all entities as an expression of human species identity (2020: 71). As Kauffman and Martin point out, people gain from their relationship with the land. However, the realization of people's interests depends on the way they regulate their own actions so as to safeguard "the entire ecosystem by recognizing the intrinsic value of each member of the biotic community and ensuring its right to exist and responsibility to contribute its part to the system" (2021: 160). This management is predicated on a relational ethic and is by no means a one-way transaction, where benefit flows exclusively to non-human nature. Finding within this responsibility for self-management a form of freedom embedded within and through the interconnections that animate an ecosystem can help to enliven a human species identity.

Retreat from a human-dominant world. The use of the instrument of legal personhood and its bundle of rights has concerned observers who consider it a further imposition of Western culture and law. The hegemony of rights is a colonial legacy, and Kauffman and Martin (2021: 141) observe that rights such as those to property have themselves previously functioned as tools "used to marginalize" the Maori and other Indigenous peoples. Other scholars have noted (Takacs, 2021: 568) that some Maori responsible for negotiations with the Crown government have maintained that to seek rights of ownership over the river would unrecognizably distort Maori concepts. Legal personhood avoided this danger by making it possible to treat the river itself as a living being, but as Erin O'Donnell (2020: 644) has pointed out, the outcome of such transpositions "may obscure or undermine the rights of Indigenous peoples."

Indeed, the tool of legal personhood has allowed the Crown government of New Zealand to satisfy Maori aspirations to some extent without violating its commitment to territorial sovereignty. This tool of legal personhood, associated with liberal legal thought, provided a way out of what had been the main obstacle to a settlement between the Crown and the Maori Tūhoe. Kauffman and Martin (2021: 145) have demonstrated that the Crown initially assumed that the "Tūhoe's demand for the return of Te Urewera" could only be fulfilled by the transfer of title, that is, ownership. This characteristic of territorial sovereignty the state was unwilling to surrender. However, at some point it became evident that the Tūhoe were not asking for ownership, but rather, as Kauffman and Martin (2021: 146) put it, "the return of the land." This might be equivalent in Western traditions of sovereignty, but to the Tūhoe they were not the same. According to Kauffman and Martin (2021: 146), Crown envoys suggested the fiction of legal personhood as a means of avoiding conflict over legal possession. The authors observe (2021: 146) that the Tūhoe settled for this tool as "the best possibility within a European legal framework" for realizing their aspirations. This solution is itself clearly implicated in those legacies from which Chakrabarty argues we must withdraw. However, Kauffman and Martin's (2021: 148) interpretation suggests that the agreement effected at least a partial withdrawal from the legal traditions that enabled human domination. The settlement and its supporting arrangements "removed the preexisting legal framework, providing space

for the Tūhoe to create a new governance system rooted in Tūhoe culture and the principles of Earth Jurisprudence." It was this possibility that made the agreement acceptable for the Tūhoe, rather than the presence of any rights affixed like appendages to the legal person. In this instance, the recognized legal personality of the ecosystem served as "a legal firewall" that created space where the anthropocentrism of the legal establishment could not operate as it previously had (2021: 142).

As with the former national park, the 2017 agreement between the Maori Whanganui Iwi and the Crown government that recognizes the legal personhood of the Whanganui River is anchored by, as O'Donnell (2020: 662) has pointed out, "an institutional framework, and funding, to give the new legal arrangements force and effect." O'Donnell (2020: 661–662) finds that this institutional embedding, which as Heise suggested may foster human species consciousness, tends to be absent in the recognition of other rivers' legal personhood that have occurred in other countries. However, the Whanganui shares something with these other rivers in Columbia, India, and Bangladesh: they do not own the water that runs through them. Control of water is a state prerogative, a characteristic of territorial sovereignty under the Public Trust Doctrine, which confers on the state the prerogative of maintaining natural resources like waterways and water sources for public benefit (Wood, 2010: 200). The Public Trust doctrine has, in the hands of Mary Christina Wood and others, been reimagined as a "transformative framework" termed Nature's Trust, capable of reigning in state administrators so that they do not permit violations to nature's laws (2010: 172). Nonetheless, if not part of such a reimagination of environmental law, what Miguel Vatter (2020) terms the "filial-legal scheme" in which the trust tradition is embedded serves to bolster a concept of sovereignty that considers alternate sources of authority to be encroachments on the state's prerogatives (p. 233). Calls by Indigenous peoples for states to recognize their people's collective responsibility for water resources, then, contests established legal frameworks, as Sue Jackson (2018: 3) has observed. The lack of possession of water rights, scholars point out (O'Donnell, 2020: 662) means that "it is hard for the voice of the river to be heard in participatory processes of bureaucratic policy making." The legal personality endorsed by the states does not impinge upon the powers considered consonant with sovereignty.

Discussion

As different as they are, RoN in Ecuador and New Zealand may both support the adoption of a species identity. However, each evolving situation may provide such support in distinct ways and consequently foster distinct rather than uniform human species identities. This development would perhaps not be unexpected. Ernst M. Conradie, for example, borrows from Michel Serres to point out (Conradie, 2021: 3) that "a recognition of the universal does not necessarily give rise to uniformity." The traditions, assumptions, and boundaries of state sovereignty may limit both how these challenges are addressed and the extent to which they can encourage a cosmopolitan species identity.

Much appears to rest upon the relative geographical and representational narrowness or expansiveness of RoN provisions. New Zealand's laws based on treaty agreements affect specific ecosystems and spaces, compared to the Ecuadorian attempt to make all state territory covered under its RoN provisions. However, to suggest that "scale" is an adequate way of organizing their differences is to posit a common denominator between them, or that Ecuador is simply a larger version of New Zealand, and as scholars have pointed out (Tănăsescu, 2020: 432), this is not the case. Or rather, the different spatial scales on which they operate are not incidental but indicative of two different approaches; these differences have ramifications for how we might consider their respective likelihood of fostering a species identity.

To encompass nature within state boundaries is to encourage certain representational conditions. Making the protected nature consonant with state boundaries suggests the criteria for representation is abstract rather than concrete. Anyone can claim to represent nature's interests and defend its rights. This is a significant difference from the criteria for representation specified in the New Zealand settlements, which rest on claims of a specific people's relationship to a specific land. Moreover, the state-wide scope of the Ecuadorian law also, as noted previously, emphasizes remedial rather than proactive measures, which in turn encourages a focus on the defense that rights can offer. Despite this, recent jurisprudence like the aforementioned *Los Cedros* case suggests the potential for the formulation of management strategies that seek to promote human actions that compatible with nature's rights (Corte Constitucional Del Ecuador, 2021: 80). Such "proactive" plans offer the opportunity to focus on other commitments, such as the obligative approach counseled by Burdon (2020: 310), even if rights remain an indispensable language for potential legal contests over the content of those plans.

Moreover, the state-wide scope also reinforces the imbrication of RoN with state institutions and state sovereignty, which ultimately may obstruct RoN-type initiatives from the opportunities to intervene in everyday life that can support a new identity. If a species identity is indeed a kind of cosmopolitan identity, as Heise (2016: 224) has also suggested, then state-anchored institutions may limit the adoption of this identity by their ultimate subservience to the imperatives of state sovereignty. The instrument of legal personhood may provide a way for states to address Indigenous desires for self-determination without necessarily violating foundational claims of sovereignty. In New Zealand this has thus far occurred in specific ecosystems due to specific relationships that specific iwi claim with those ecosystems. There, the space impacted by these settlements is circumscribed. In Ecuador, the affected space is supposedly identical to the space claimed by state sovereignty. The totalizing and abstract features of Ecuador's RoN guarantees may be reason to question the extent to which they can foster this kind of identity; they should also make us question whether a species identity will be accessible through the sorts of institutions that proved useful for creating national identities. The agreement in New Zealand suggested a decolonizing vision that opened up some political space for RoN and human self-recognition as one among many species, while in Ecuador different anticolonial perspectives framed RoN as a threat to the people's welfare. Nevertheless, in both cases state sovereignty defines the limits of RoN.

Conclusion

Burdon (2020: 316) is correct that RoN thus far has had very little impact. It is perhaps too soon to come to any final judgments about RoN's impact on human identity as a species or, indeed, much else about these developments. As scholars of Ecuador's RoN law have noted (Echeverria and Romo Leroux, 2020: 279), "there is still no certainty about the effectiveness of the Rights of Nature language" in that country. The recent *Los Cedros* decision's cancelation of state approved mining permits suggests that RoN may curb the state's extractivist agenda, while its mandated creation of management plans provides a means for formulating ways in which nature's rights and human activity are compatible. It nonetheless remains to be seen how consequential the decision will be for the evolution of rights of nature constitutional jurisprudence. In New Zealand, as Takacs (2021: 571) has pointed out, both Whanganui Maori and Crown government representatives involved in the negotiations believe that the relocation of power transmission cables and the installation of a bridge for bicycles constitute "muscle flexing to show seriousness and strength." More consequential tests await the Whanganui agreement, including the impending re-authorization of a hydroelectric power system that takes a large majority of the Whanganui's water. Thus far the Whanganui Maori exhibit, as O'Donnell (2020: 662) puts it, "a reluctance to rely on the power of

the rights to protect the river." One of the reasons for this preference for non-juridical resolution processes is that judges may not yet "be properly socialized." Takacs (2021: 571) notes the perception of Gerrard Albert, a Whanganui Maori negotiator, that Te Awa Tupua is engaged in "'reconditioning a community and nation to speak as we speak.'" Albert's awareness of the importance of communicating an identity to a broader audience again raises the question of scope. Ecuador's RoN constitutional provision and its encompassing scope are imagined mechanisms for diffusing particular values which the state and civil society is charged with defending. The provision and mechanism for the Whanganui to reorient the broader populace is less clear.

Given these uncertainties regarding the course of rights of nature, it is entirely possible that RoN developments amount to a transitional effort to a more ecological law, as Geoffrey Garver (2021: 91) has suggested. Garver, whose own preferred approach of extending "naturehood" to people" would bolster a human species identity, views with suspicion (2021: 94) the rights framework which RoN adopts due to its contributions to the preeminence and particular meaning of freedom and personhood. Even as a "transitional" effort, it may yet contribute a great deal to a species identity by making novel use of the familiar tool of rights. Identities are perhaps reworked as much as they are invented. The features of RoN that Garver believes will limit it to a transitional role are also those that may provide it with a role in fostering a species identity for humans. That is to say, in a transitional role it may well be able to foster such an identity precisely because it uses tools implicated in the previous anthropocentric legal and political organization. Rights have served to construct a particular human identity resting on notions of capability and freedom, but used differently they may instead highlight humans' vulnerability and interdependence. Similar to the counsel of Burdon, Matthews, and Birrell discussed above, Garver (2021: 94) proposes that a corollary of rights, duties, may be a more useful means of framing human responsibilities toward nature, as that ultimately is what RoN attempts to enforce. With these propositions in mind, the examples of New Zealand and Ecuador suggest that rights may in fact be used to foster a commitment to responsibilities and duties.

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