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Are Rights of Nature Manifesto Rights (And is That a Problem)?

Patrik Baard[1]

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Abstract

That nature, including insentient entities such as trees, rivers, or ecosystems, should be recognized as right-holders is an enticing thought that would have substantial practical repercussions. But the position finds little support from moral conceptions of rights and moral distinctions that have judicial relevance in the sense of providing normative reasons for legislation and assessing existing laws. An alternative to viewing rights of nature as proper rights resting on valid moral claims that ought to be legally recognized is to regard them as 'manifesto' rights. Such rights are based on political demands and hold even if there is no one with a corresponding duty to fulfill them. I investigate whether rights of nature can be considered manifesto rights. Some objections to regarding rights of nature as manifesto rights will be considered, such as difficulties of delimiting the borders of an environmental entity and making successful analogies with existing (human) rights based on interests and needs. It will be suggested that while some of those challenges can be mitigated by custodianship, it is not clear what needs of insentient entities in nature would justify such claims. It is found that rights of nature depend substantially on legitimate custodians both for delineation of the entity in question and for establishing interest-like characteristics. But rights of nature are not manifesto rights when there is a legitimate custodian having the possibility of evoking duties in others. However, the need for a legitimate custodian in delimitation and establishing normatively relevant characteristics of specific environmental entities defeats universal appeals to rights of nature.

Keywords Rights of nature · Manifesto rights · Environmental justice · Relational values

✉ Patrik Baard
patrik.baard@ifikk.uio.no

[1] Department of Philosophy, Classics, History of Art and Ideas, University of Oslo, Blindern, P. O. Box 1020, 0315 Oslo, Norway

Introduction

Rights of nature (hereafter: RoN) may finally have come to fruition. Legislation in some nations are affirming the position, as is the United Nation's program *Harmony with Nature* (United Nations n.d.), communities and activist groups are demanding recognition of RoN (Kauffman and Martin 2021), authors discuss them (Powers 2018), and anthologies are published on them (Corrigan and Oksanen 2021). Even business organizations are getting warm to the idea, such as the *Sustainable Markets Initiative*'s suggestion of a 'terra carta' (Sustainable Markets Initiative n.d.). In short, there are many calls for RoN to be accepted, and it is generating increased interest.

In this article, RoN refer to the supposed rights of insentient entities, moreover primarily encompassing aggregates such as rivers or forests. Such rights are correlated by duties of moral agents to not damage the entities in question, or imperatives to contribute to restoration should damage occur, and ought to be reflected in legislation for moral reasons. While the relation between ethics and law is by no means straightforward, the following will assume that ethical reasons can play a role in legislation, both when new laws are established, and when assessing existing laws. Moreover, as will be discussed below, there are moral distinctions with legal relevance (Kramer 2001). The awkward concept 'entity' is motivated by how RoN encompass a diverse range of (inanimate and insentient) objects and systems, such as rivers. To successfully accept RoN as universally valid rights that there are reasons for everyone to accept (and that should eventually issue in corresponding legislation), requires us to radically re-conceptualize notions of rights and their supporting pillars. The entities in question differ so much from other right-holders such as natural persons, citizens, and even sentient animals that it becomes highly questionable whether the same conditions apply, or whether rights would mean the same thing that we conventionally understand by them, as a right-holder having rights by virtue of specific characteristics, and grounding others' duties. That is, current conceptualizations of moral rights with legal relevance are not applicable to natural entities. Rather, one must then settle for different criteria. Such re-conceptualization of rights is risky, given how current conceptions of rights, despite weaknesses of practical implementation, provide a ground for valid claims with substantial ethical, political, and legal importance. The risk is that right-holding, and the conditions upon which rights are ascribed, becomes unclear and too volatile to be practically implementable. This poses the choice to either reject RoN to keep existing conditions for justifying rights, or to accept RoN and reject existing conditions in favor of a model with greater flexibility.

Rather than these two options, I will investigate whether RoN can be considered 'manifesto rights'. Manifesto rights are claims that are not yet valid claims (Feinberg 1970), and towards which no one has a corresponding duty to fulfill the claims (Pogge 1995). Such valid claims are here understood as proper rights, consistent with conventional understandings of rights resulting in claims (Feinberg 1970; Raz 1986). Feinberg suggests that a 'claim' that is not yet valid refers

to needs, but not against any particular individual (1970, p. 254), which differs from proper rights that are valid claims resulting in duties of specific individuals. Manifesto rights are political calls for claims and needs to be recognized as valid, but which are not yet proper rights. To regard RoN as manifesto rights has the benefit of avoiding many of the objections to RoN as 'proper rights', while encompassing the intuition that a wrong is committed or interests are wrongfully neglected when a species goes extinct or habitat loss increases, even if it is not clear who is to do what.

Advocates of RoN suggest that they are proper legal rights or rights of more universal validity, often with reference to moral conceptions of rights, or axiological concepts such as intrinsic value (Stone 2010, 1972; Chapron et al. 2019). Though the relation between moral and legal rights is complex, to provide convincing arguments for moral conceptions of rights seems to be a strong part of a case for legal rights of nature. But as I will outline below, support from moral conceptions of rights is not available. Consequently, in this case, to regard RoN as manifesto rights provides a possible normative credential to RoN, and places them in the vicinity of rights through notions of claims that are not yet valid claims (Feinberg 1970), while also recognizing the calls from social movements and activists that RoN refer to an actual need that ought to be legally encoded. To justify RoN as 'manifesto rights' has the potential of providing support for a central contemporary discussion that will have practical implications for environmental law and governance, even if RoN cannot be considered proper rights.

Following this introduction, I will clarify how RoN are ill-fitted with conventional notions of rights. Sect. 'Manifesto rights' will survey manifesto rights. In Sect. 'Rights of nature as manifesto rights: Possibilities and objections', I will investigate whether RoN fulfill the conditions of manifesto rights, before ending with a concluding remark. This includes investigating the extent to which RoN refer to unfulfilled needs, and whether there is no one with a corresponding duty to fulfill that need. It will be concluded that RoN are reasonable when authorized or justified custodians represent that entity, the state it is to be in, and evoke corresponding duties of others. Thus RoN, under some conditions, are more like proper rights than manifesto rights, which defeat RoN as being general and universal rights applicable to wider sets of environmental entities.

Some Objections to RoN as Proper Rights

Here I will outline some reasons for why RoN cannot be considered proper rights which explains why RoN being 'manifesto rights' is the best available option under current conceptualizations of rights. In many cases, accepting RoN require either showing that conventional criteria and foundations for rights are insufficient and must be revised or showing that conventional criteria are flexible enough to encompass and justify RoN. This section will give an overview of why insentient beings cannot be considered moral right-holders, rejecting moral support for RoN (for fully spelled out arguments, see Baard 2021, 2022). The following will focus on distinctions in moral rights that have relevance to legal rights. I will focus on interest- and

will-based theories of rights. Consequently, I will not consider at length alternative foundations for RoN, such as intrinsic values. While it is suggested that 'rights-of-nature advocates makes a moral assertion that nature does have this intrinsic value' (Chapron et al. 2019, p. 1329), or that 'when an entity has rights (and duties, potentially) as intrinsically valuable as nature has, a court may indeed conclude […] that the entity in question is a legal person' (Epstein and Shoukens 2021, p. 225), few arguments are provided to solidify the connection between the axiological category of intrinsic value and rights. A lot more work is required to first provide clarity regarding which axiological categories that reasonably apply to the entities encompassed by RoN and, second, how those categories refer to rights. Neither issue is self-evident.[1]

According to will-based theories of rights, 'the holding of a right involves having control over a duty of another' (Kurki 2021, p. 51). That is, a right-holder can waive others' duties to the right-holder (Wenar 2021). Justifying RoN under will-based theories of rights seems like a long-shot—or, at the very least, it would be very difficult to make such a statement meaningful when applied to ecosystems. But it may be too quick to discard the will-based account. John Chipman Gray, for instance, suggested that a person can be authorized to act as a representative for persons with reduced, or even uncertain, will (Gray 1996, p. 25), and what that will consists of 'is not that of any definite individual, but that which is common to all, or the vast majority, of normal human beings' (Gray 1996, p. 25). This gives rise to the 'fiction' that the will, expressed by an authorized representative, is the will of the possessor of the right (Gray 1996, p. 25).

But there are normatively relevant differences between subjects such as children, that are commonly granted such wills, or animals, and entities such as rivers, ecosystems, or trees. Gray argues that 'the wills of human beings must be attributed to the animals' (Gray 1996, p. 28), since even if animals are legally protected, the persons calling for enforcement of statutes 'are regarded by the Law as exercising their own wills, or the will of the State or of some other organized body of human beings' (Gray 1996, p. 28). Hart suggests that a person may promise to supervise another's children, being a 'right-creating event' (Hart 1982, p. 84). Such events are 'created deliberately by human voluntary action' (Hart 1982, p. 83). A person can voluntarily grant another person the mandate to conserve or protect an environmental area. However, that would only be legally valid should that area be the property of the first person, and the person holds certain obligations with regards to it. In such cases, RoN per se are not accepted, because the rights of the entity are then only *indirectly* recognized through property ownership, or through the will of others.

Already with animals it becomes more difficult to accept the will theory of rights 'given that nonhuman animals cannot make decisions over the duties of others'

[1] Alternatives to conventional criteria exist, such as the principles of Earth jurisprudence according to which 'rights originate where existence originate' and that 'every component of the Earth community has […] the right to be, the right to habitat' (Berry 2006), granting rights to all living things (for a critique see Baard 2022).

(Kurki 2021, p. 51).[2] Gray suggests that while inanimate things can be the subjects of legal rights, 'the will of a human being must […] be attributed to it, in order that the right may be exercised' (1996, p. 29). It seems difficult to conflate the will of a representative with the 'will' of a natural site, and the 'fiction' thus fails. However, as will be discussed below, there are cases where justified custodians can justify RoN.

Turning to the interest theory of rights, such theories further a right-holder's interests (Wenar 2021). To some accounts of right-holding, interest functions as a necessary and sufficient condition of rights (Cochrane 2013, p. 657). To legal philosopher Joseph Raz, a person has a right if an aspect of 'well-being (his interests) is a sufficient reason for holding some other person(s) to be under a duty' (1986, p. 166). Some advocates of RoN rely on interest-based accounts, sometimes supplemented with intrinsic value (Chapron et al. 2019; Epstein and Schoukens 2021). Christopher Stone, an early proponent of RoN, stated that 'we make decisions on behalf of, and in the purported interests of, others every day; these "others" are often creatures whose wants are far less verifiable, and even far more metaphysical in conception, than the wants of rivers, trees, and land' (Stone 1972, p. 471). For example, Stone suggests that he can judge whether his lawn needs water with more certainty and meaningfulness than can the Attorney General 'judge whether and when the United States wants (needs) to take an appeal from an adverse judgment by a lower court' (Stone 1972, p. 471). In contrast, entities encompassed by RoN communicate interests to us when we assess their state (Stone 1972, p. 471). A lawn will need irrigation when the color and touch of the grass changes, but we can be less certain in judgments regarding the interests as the entity of concern becomes more encompassing (Stone 1972, p. 471). Thus, it is less certain what the interest of a whole ecosystem would be, already pointing to limitations of the interest-based accounts when applied to RoN.

Kramer suggests that from a purely *conceptual* standpoint, the interest theory may permit ascribing legal rights to inanimate natural entities, but will fail due to the central *moral* distinction between the animate and the inanimate or insentient (Kramer 2001, p. 40). A difference can be made between prudential and perfectionist values in well-being (Cochrane 2012). A prudential value concerns what is 'good for the individual whose life it is', whereas a perfectionist value 'concerns what makes an individual a good example of its kind' (Cochrane 2012, p. 37ff.). As suggested by Kramer, though 'grass and other plants respond to environmental stimuli in myriad ways, they do so without the mediation of consciousness', and 'they are not aware of their surroundings at all' emphasizing that there is a 'considerable moral significance attach[ed] to this distinction between living things that are conscious and living things that are nonconscious' (2001, p. 35). The purported interests of a lawn could perhaps be established by teleological theories of a species being a

[2] Moreover, some versions of the will-based theory exclude animals and children from the domain of right-holders (Kurki 2021, p. 51).

'good of its kind',[3] although, as it is not sentient, no action can make it better for the lawn itself. Inviolability is linked to sentience on many accounts of rights, including 'status-based' theories of right, where a right reflects the inviolability of right holders (Pepper 2018, p. 219). On Kamm's account of this view, a tree may count in the sense 'that it gives us reason to constrain our behavior toward it', but 'this is to be distinguished from constraining ourselves *for the sake of*' the tree (Kamm 2007, p. 228). We do not act for *its* sake whereas we, if we save a bird, act for the bird as it will 'get something out of continuing to exist' (Kamm 2007, p. 229).

Warnock (2012) suggests that if 'interest' is taken to mean 'what is good for', then one can speak of interests of trees, especially when incorporating Aristotelian beliefs regarding *telos,* in the sense of being a good specimen, similar to Cochrane's (2012) perfectionist value. Warnock does not 'see how one can go much further' as 'it must be human beings, and they alone, who make decisions about destruction or preservation of the natural world' (2012, p. 63). Even if one grants interests defined in a minimal way to insentient entities, there will still be human choices that need to be made and this adds little to the current situation with those natural areas that are encompassed by authorities and which people are ready to protect (Warnock 2012, p. 65). There are also reasons to object to such a generous conception of interests. Cochrane writes that a minimal definition such as 'for a state of affairs to be in X's interests, it must *improve X's condition*', would in turn 'allow for an enormous number of entities to be described as possessors of interests' (2012, p. 37).

Feinberg is illustrative in why neither individual specimens, nor species and ecosystems can be recognized as having proper rights, defeating the relevance of interest-based theories. Though he conceded that neither plants, nor trees, were 'mere things' (1974, p. 51), trees have 'no conscious wants or goals of their own, trees cannot know satisfaction or frustration, pleasure or pain', meaning that 'there is no possibility of kind or cruel treatment of trees' (Feinberg 1974, p. 52; see also Baard 2021). This view was extended to whole species, which 'cannot have beliefs, expectations, wants, or desires' (1974, p. 55).

But surely the interest of an ecosystem can be ascertained by how it strives to be in a specific state. Such a statement coheres with largely out-of-date ecological views on the balance of nature. The view has a long pedigree: Darwin, for instance, drew analogies between diversification of inhabitants of the same region, suggesting it to be 'the same as that of the physiological division of labor in the organs of the same individual body' (Darwin 1859, p. 115; see Justus 2021, p. 58). Furthermore, Darwin suggested that despite competition between species, 'in the long-run the forces are so nicely balanced, that the face of nature remains uniform for long periods of time' (Darwin 1859, p. 73; see Justus 2021, p. 58). This view has largely been 'supplanted with a recognition that nonequilibrium models with complex dynamics such as chaos, limit cycles, and so-called strange attractors may best represent many types of ecological systems' (Justus 2021, p. 60). It is even questionable whether

[3] A comparison with virtue ethics is possible in this regard. If one knows what form of life a specific entity is, such as a tree or flower, then one can determine the goodness of a member of the species. The relation between virtues and vices and rights will not be further investigated here, and has only tangentially been considered in RoN-related literature (Warnock 2012).

biological communities, forming some type of superorganism, exist, or whether they are more of an ephemeral 'collection of knick-knacks on a mantel' (Justus 2021, p. 53). Should the entity that RoN encompass be an ecosystem, one must confront the ontological issue of what an ecosystem is. Kurt Jax, for instance, argues that 'ecosystems are not given by nature as naturally delimited objects, but are strongly dependent on the perspective of the observer' (2010, p. 83). Consequently, there are problems of delineation when it comes to larger composite entities.

The above reasoning could result in at least two different outcomes. Either current conceptualizations of rights are accepted and RoN rejected because ecosystems do not fulfill the necessary conditions of right-holders, or the conceptualizations of rights that exclude RoN are rejected and a more flexible account that encompasses entities with vague delineation and uncertain interests is stipulated. The latter choice has been evoked by, for instance, environmental lawyers, stating that 'today's laws and institutions are antithetical to the rights of ecosystems and local communities' (Boyd 2017, p. 129), and that ecologically sustainable development 'require[s] adjusting human systems to be consistent with the scientific laws governing how natural ecosystems function' (Kauffman and Martin 2021, p. 212). Even if there was a reasonable manner to align scientific law and legislation without violating the distinction between is and ought, it is not easy to state what *interest* an insentient entity such as a river, lake, or place, has. Assumedly, also 'interests' must be either rejected or re-conceptualized in a similar fashion.

In summary, two main challenges for making sense of RoN in conventional readings of rights concern delineation and ascertaining interests or wills that underlie claims. However, there are many different views on the relevance of the interest-based view, and on the relevance of guardians. In Sect. 'Rights of nature as manifesto rights: Possibilities and objections', I will investigate potential reasons to preserve something akin to an interest-based view relevant to manifesto rights. As we will see, custodians play a central role there.

Manifesto Rights

Here I will outline Feinberg's (1970) conception of manifesto rights before moving on to how Pogge (1995) discusses manifesto rights in relation to social, cultural, and economic human rights. I will end the section with a brief discussion on whether it would be a problem if RoN are manifesto rights.

Two Accounts of Manifesto Rights

Joel Feinberg introduced the term 'manifesto right', a category of rights distinguished from rights as valid claims:

> The manifesto writers […] who seem to identify needs, or at least basic needs, with what they call "human rights", are more properly described, I think, as urging upon the world community the moral principle that *all* basic human needs ought to be recognized as *claims* (in the customary *prima*

> *facie* sense) worthy of sympathy and serious consideration right now, even though, in many cases, they cannot yet plausibly be treated as *valid* claims, that is, as grounds of any other people's duties […] Still, for all of that, I have a certain sympathy with the manifesto writers, and I am even willing to speak of a special "manifesto sense" of "right," in which a right need not be correlated with another's duty […] When manifesto writers speak of them as if already actual rights, they are easily forgiven, for this is but a powerful way of expressing the conviction that they ought to be recognized by states here and now as potential rights and consequently as determinants of *present* aspirations and guides to *present* policies. (Feinberg 1970, pp. 254–255)

Feinberg considers such claims based on needs alone, without a corresponding duty-bearer, to be 'permanent possibilities of rights', and 'the natural seed from which rights grow' (Feinberg 1970, p. 255). Though often having a polemical role, manifesto rights have a practical ambition to induce change (or, speaking as if change had already occurred in the desired direction) to the extent that claims are spoken of as already resulting in the valid claims that are rights.

Two conditions seem to be necessary for claims to be considered manifesto rights (in addition to being put forward by social reformers and manifesto writers). Such claims have as their core a moral principle that *all* basic human needs ought to be recognized as claims (Feinberg 1970, p. 254). A second condition is that there is no one with a correlative duty—that is, the need may be valid, but it is not a valid claim against any particular individual with a corresponding duty (Feinberg 1970, p. 254). Pogge asserts the following conditions of manifesto rights in a defense of social, economic, and cultural human rights, by suggesting that such rights do *not* fulfill the conditions (1995, p. 118):

(1) It is not now the case that all supposed rightholders have secure access to the object of the right; *and*
(2) (a) it is left unspecified who is supposed to do what in order to bring it about that all supposed rightholders have secure access to the object of the right
or
(b) the agents upon whom specific demands are made cannot reasonably meet these demands to the extent necessary to bring it about that all supposed rightholders have secure access to the object of the right

He exemplifies the discussion of manifesto rights with Article 25 of the UN Declaration of Human Rights. Article 25 states a right to the necessities of subsistence, including 'a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control'. Pogge's defense of the rights, such as Article 25, takes an institutional form. He states that 'it can be demanded even from a very poor society that it make everyone's access to the necessities of subsistence as secure as possible' (1995, p.

118). This saves Article 25 from the condition of manifesto rights 2(b) above, as it is then practically feasible to live up to the right. Regarding condition 2(a), Article 25 'seems merely to assert that it would be a good thing if […] all had enough to eat' (Pogge 1995, p. 119), but leaves unspecified who is supposed to bring this about. Pogge suggests that 'each member of society, according to his or her means, is to help bring about and sustain a social and political order under which all have secure access to the objects of their civil rights' (1995, p. 119). This is the core of Pogge's institutional understanding of rights, and why Article 25 is not a manifesto right.

In the following I will take the conditions proposed by Pogge as being necessary and sufficient conditions for considering a need a manifesto right.

Are Manifesto Rights a Problem?

Before we move on to the main question of this article a few words must be said regarding the second question in the title: would it be a problem if RoN were manifesto rights? It is difficult to give a categorical answer to that question. On the one hand, environmental protection is often outranked by other concerns. Given the alarming state of biodiversity loss this can generate sympathy for RoN. On the other hand, if accepting the category of manifesto rights as such, there is the risk of introducing unfeasible utopian aspirations to the very clearly delineated concept of rights and the claims and duties, both legal and moral, that they result in.

An analogy could be made with human rights. The social, economic, and cultural rights of the UN Declaration, which Pogge discussed, have generated criticism in the sense of being akin to manifesto rights. Cranston suggested that rights such as 'social security, an adequate standard of living, medical care, rest, leisure, and even "periodic holidays with pay"' (1983, p. 7; 2001[1967]) lacked the foundation in natural rights that the civil and political rights have, and the urgency and importance of the civil and political rights. A dividing line between the first 20 articles and the remaining articles of the UN declaration is that the first category could be readily legislated and were often rights *against* a government, whereas the remaining articles required further provisions to be practically implementable. Moreover, to Cranston the universal human rights should be restricted to rights of paramount importance such as rights to life, liberty, and conscience. Utopian aspirations were not suitable as rights, because while 'an ideal is something to be aimed at, but which […] cannot be immediately realized', a right 'is something that can and, from a moral point of view, *should* be respected here and now' (Cranston 1983, p. 14; see also O'Neill 1996 discussing manifesto rights from similar perspectives).

Manifesto rights are a much larger set than proper rights, with a lower and more permissive threshold, resulting in 'a fair hearing and consideration' (Feinberg 1970, p. 254). Even if, as Feinberg suggests, manifesto rights are 'permanent possibilities of rights' (1970, p. 255), I think it valid to accept (some) manifesto rights, but not to consider them as valid claims and thus rights. One reason is that manifesto rights are grounded in political movements. While the views of political movements are not to be necessarily accepted as legitimate lest rights are reduced to populist whims, it gives a sense of current concerns. Given the increase in social movements

pleading for strengthening climate and environmental policies, this lends acceptance to the possibility of RoN being manifesto rights. I concur with Feinberg that sympathy can be granted to manifesto writers' speaking as if some needs are already actual rights (1970, p. 255), and that there is nothing per se wrong with manifesto rights. At the very least, the claims made by such manifesto writers reflect the intuition that a moral and, possibly, legal wrong occurs when biodiversity loss accelerates, species go extinct, and habitats are polluted, even if not resulting in valid claims. In that regard, regarding RoN as manifesto rights could be a strength in the sense of establishing that a wrong is committed through environmental destruction, even if it does not result in valid claims and corresponding duties.

Rights of Nature as Manifesto Rights: Possibilities and Objections

In this section I investigate whether the above conception of manifesto rights encompasses RoN. For analytical purposes, I will follow the conditions posed above by first assessing the needs that go unfulfilled, and second whether there is someone with a corresponding and feasible duty. While it is unlikely that RoN can be justified with support from ethical conceptualizations of rights (Baard 2021, 2022), RoN as being manifesto rights would both place them in the vicinity of claims even if not yet valid claims as rights. This leads to recognition of the validity of RoN advocates and encompassing RoN in an existing normative concept leading to a fair hearing.

What Needs are Unfulfilled?

The objections to RoN as proper rights above addressing the underlying interests for needs largely fell in two categories: the problem of observer-dependent delineations of ecosystem, and the problem of estimating the interest or will of an ecosystem, river, or tree. In this section I will address two potential responses to these objections to establish whether RoN fulfill the first condition of manifesto right regarding unfulfilled needs. As was shown above, there are merits to discussing interests related to RoN when more nuances are provided to 'interests', and custodians are present (which will be discussed in Sect. 'Who is supposed to do what?: The importance of custodians for representing natural sites'), even if using a minimal definition. Here, I will attempt to strengthen that merit.

The Relevance of Metaphors

'Health' could be a candidate of what an ecosystem needs which parallels human rights.[4] Ecosystem health is primarily a metaphor, but metaphors have scientific credibility and use (Rapport 1989; Rapport 1995). However, the concept introduces

[4] I will limit myself to discussing the health of *ecosystems*, since it is often to complex dynamic systems that RoN is intended to be applicable. 'Health' may possibly be more viable regarding individual plants, evoking issues similar to teleology raised above, and Cochrane's (2012) distinction between prudential and perfectionist value.

uncertainties that are not as prevalent when speaking of human health, most primarily what health entails in the case of ecosystems, which is less uncertain when it comes to human health. But while it is often assumed that 'human health determinations are wholly objective—a simple matter of clinical test results' (Rapport 1995, p. 297) this is not indisputably the case as 'social values play a prominent role in *all* health assessments' (Rapport 1995, p. 298, emphasis in original). Rapport (1995, p. 291) suggests that three basic approaches are widely used when measuring ecosystem health:

- Absence of signs of ecosystem distress
- Counteractive capacity (resilience)
- Risks or 'threats'

It is indicators such as these[5] that could be utilized to assess the health of an ecosystem and whether needs are unfulfilled. The components do not omit the need for value judgment, as they are to be assessed relative to historic states or desired objectives (Rapport 1995, p. 290).

One may object that too much contingency is involved when it comes to ecosystem health, as two different observers may both delimit ecosystems differently and stipulate different indicators for them. Even if the two observers agree on a delineation of an ecosystem, they may judge differently whether the signs of ecosystem distress are at a too high a level relative to historical accounts. As suggested by Rapport, stating whether an ecosystem is healthy will require establishing norms and criteria for ecosystems, being an ongoing challenge (1995, p. 296). Stretching the metaphor may be possible, as it is not unimaginable that 'second opinions' and similar are also required when it comes to assessing human health. Conversely, the observers may agree on criteria for ecosystem health, but disagree on where to delineate an ecosystem or a river. When the uncertainty of what state of affairs an ecosystem is to be in is combined with the observer-dependency of delineation, there is still more contingency in ecosystem health than in human health, defeating the purpose of giving a clear response to the question of what a healthy ecosystem needs.

But maybe the discussion on health leads us up the wrong path to assess what potential needs are left unfulfilled. Health is only *one* aspect of potential rights. While it may not be impossible to make metaphors between land health and human health, and thereby securing at least one RoN-based right, what about other rights, such as liberty? Nash has suggested RoN to be consistent with, and a natural extension of, liberal principles (Nash 1989). Mark Woods (2017) suggests that wilderness rests on three conditions: naturalness, wildness, and freedom. Wildness 'can be thought of as an internalized capacity for autonomy' (Woods 2017, p. 255), and 'wild' as 'a capacity for authentic, autonomous, and spontaneous expression' (Woods 2017, p. 255), whereas freedom 'means a lack of external constraints or controls' (Woods 2017, p. 260). If liberty can be ascribed to nature, then why cannot

[5] Rapport's account is primarily used here as an example of stipulating non-arbitrary criteria for ecosystem health.

rights? Liberty and the capacity for autonomy are after all strong foundations for human rights.

But as with the case of health, this requires either making a successful comparison between the entities encompassed by RoN and those encompassed by conventional notions of health or liberty, or alternatively re-conceptualizing the criteria by which right-holding is conventionally ascribed to, making such criteria also applicable to nature. The metaphorical use is only with difficulty applied to the entities encompassed by RoN when it comes to concepts such as health or liberty, with the purpose of justifying the needs underlying manifesto rights.

Argument Through Analogy

Another possible strategy is to rely on analogies to support the needs underlying RoN. This is also a strategy suggested by Stone who states that 'legal rights are given to trusts, municipalities, partnerships, and even ships' (2010, p. 63). Others, such as Richard Tur, discussing legal personhood of idols, suggest that there is no difference between the idol having legal personhood, and a corporation having it (Tur 1987, p. 121). But there are noteworthy differences between corporations and the environment. While such entities arguably lack 'conscious wishes, desires, and hopes' and other necessary conditions such as conative life (Feinberg 1974, p. 55), there are other conditions that are fulfilled in the cases of ships or corporations making it sensible to talk about legal personhood. Feinberg suggests that an institution fulfills conditions that species (and ecosystems) do not, as 'an institution has a charter, or constitutions, or bylaws, with rules defining offices and procedures, and it has human beings whose function it is to administer the rules and apply the procedures' (Feinberg 1974, p. 56). Even if lacking will or interest, a corporation can thus have rights for these reasons. However, as will be discussed below, there are *some,* but far from all, ecosystems that fulfill these very criteria and that have been granted rights.

Another analogy that may justify RoN and give rise to interests and needs is to compare it with alternative conceptions of personhood. While corporate legal personhood is generally accepted as valid, it has been lamented that such views of personhood are at odds with a social understanding of what a person is and that the environment 'has a more compelling claim to personhood as it is socially understood' (Gordon 2018, p. 71).[6] Gordon takes a cue from an ontological turn in social science 'which has recognized that our "selves" are as contingent as "nature"' (2018, p. 77). As evidence Gordon suggests anthropological notions of 'the non-universality of familiar liberal conceptions of individuality' (2018, p. 78), and examples such as collective personality. Thus, what we may have thought was a clearly delineated entity—a person—is actually not stable and clearly delineated, and this conceptualization of personhood questions divisions between nature, people, and

[6] While conceptions of self are likely to have ethical repercussions (see Haidt 2012, ch. 5), it is uncertain whether it will affect who or what it is reasonable to ascribe rights to given an individualist view on rights. Relational or communal conceptions of self could lead to the same concept of human rights as more individualistic conceptions of self (see Taylor 1996).

things (Gordon 2018, p. 79). Instead of a unitary person, Gordon suggests 'holistic' and 'slippery' personhood (2018, p. 82ff.) immersed in complex relations.

According to Gordon, this alternative conceptualization of personhood opens up for alternative relations between nature and humans. Such a conception of personhood may be more permissive when it comes to assessing the needs underlying RoN as manifesto rights, if we assume that the slippery personhood is also encompassed by rights. But such a position seems to rely on analogies between the slippery personhood of humans and nature, and insists that rights do not require an underlying unitary person. These factors seem to reintroduce much of the same contingency and observer-dependency of delineating ecosystems and regarding the interests of these novel non-unitary selves if we assume that rights require a clearly delineated entity that has needs.

Summarily, it seems as if re-conceptualization of conditions and concepts are required before both accepting metaphors, such as health, or analogies with other inanimate entities having rights. The above discussion clarifies the challenges that must be managed to fulfill the first condition of the unfulfilled needs underlying manifesto rights.

Who is Supposed to do What?: The Importance of Custodians for Representing Natural Sites

One may assume that given the challenges of fulfilling the first condition regarding unfulfilled needs, there is little point in discussing the remaining conditions of manifesto rights, clarifying who is to do what to ensure that needs are met, and whether that is feasible. In contrast, I will suggest that reasoning about the second condition sheds new light on—and possibly a response to—the first condition regarding needs.

Custodians of Natural Sites

A pioneering example of custodianship is the Te Awa Tupua Act 2017 of New Zealand, granting legal personhood to the Whanganui river and being a model for other codifications of RoN (Kauffman and Martin 2021, p. 191). In the Act, Te Pou Tupua 'is to be the human face of the Te Awa Tupua' (Te Awa Tupua Act 2017, 18(2)), and should 'act and speak for and on behalf of Te Awa Tupua' (Te Awa Tupua Act 2017, 19(1)(a)), and promote and protect the health and well-being of Te Awa Tupua'. According to Article 20 of the Act, the office of Te Pou Tupua comprises two persons, one person nominated by the indigenous *iwi*, and one person nominated on behalf of the Crown. When nominating persons to such an office, 'a nominator must be satisfied that the relevant nominee has the mana, skills, knowledge, and experience to achieve the purpose and perform the functions of Te Pou Tupua' [Te Awa Tupua act 2017, 20(5)]. The Act is a legislative recognition of the Maori

relationship with the natural environment, and the importance the river has to their identity (Boyd 2017, p. 134; Kauffman and Martin 2021, p. 192). Another example that does not share a historical prelude similar to the New Zealand case is the Tamaqua Borough in Schuylkill County, Pennsylvania. The Community Environmental Legal Defense Fund assisted the county in drafting the Tamaqua Borough Sewage Sludge Ordinance, which acknowledged 'the legal rights of natural communities and ecosystems' (Boyd 2017, p. 113). The Ordinance also 'allows the borough or any of its citizens to file a lawsuit on behalf of nature for any harm done by the land application of sewage sludge' (Boyd 2017, p. 113). In contrast, the Te Awa Tupua Act is not restricted to reactive measures (Kauffman and Martin 2021, p. 192), but rather has a system established through custodians to oversee the state of the river.[7]

The central role of custodianship, while powerful, challenges RoN as non-derivative rights.[8] The Te Awa Tupua Act relies extensively on the impacts of environmental destruction on the *iwi* given the importance of the river to their culture and worldview, whereas the motivation for the Tamaqua Borough Sewage Sludge Ordinance was 'to protect the health, safety, and general welfare of the citizens and environment of Tamaqua Borough by banning corporations from engaging in the land application of sewage sludge' (Boyd 2017, p. 113). While this reliance should neither downplay their novelty, nor their important roles in strengthening environmental protection, such approaches conflate two different understandings of legal personhood which underlie rights: it designates 'both a bundle of legal positions and an entity that holds these legal positions' (Kurki 2019, p. 128). To Kurki, these two meanings are conflated in the case of RoN. The Te Awa Tupua Act is not equivalent to the physical Whanganui river. Rather, the Act is derivative of a legal platform involving quite conventional right-holders. This is similar to how a natural person can create a corporation in his or her name, but that corporation has a different bundle of legal relations than the person bearing the same name (Kurki 2019, p. 136ff.; see also Kurki 2022).[9]

Creating a legal platform enables stating that there are bundles of legal positions that a physical entity has, such as a river (see Kurki 2022). But the duties that this evokes is not to the river (as an insentient delineated physical object) itself, but rather to the individuals or creatures 'which have a certain joint or collective interest pertaining to the river' (Kurki 2019, pp. 151–152). Alternatively, the duties could 'be understood as preserving the ecological heritage and would thus be borne towards the whole of humankind or all sentient beings' (Kurki 2019, p. 152). Finally, one

[7] See also Buocz and Eisenberger (2022) for a discussion.

[8] It could be objected that the two examples discussed here do not represent the general claims of RoN advocates. I believe, however, that they are two exemplary and successful cases of RoN being accepted in legislation (see also Boyd [2017] and Kauffman and Martin [2021]).

[9] For a further discussion on legal personhood as bundles of norms, applied to non-human entities, see Buocz and Eisenberger (2022). It is there suggested that a statement such as 'Te Urewera owns or governs the Urewera lands' is a more efficient and concise variation of 'X human beings appointed by the Crown and Y human beings appointed by the Tūhoe iwi exercise governance of the Urewera lands' (2022, p. 20). However, it should be noted that the latter formulation, being more specific, does not cohere with the rhetoric of RoN, as it very clearly establishes two groups of human beings as appointed to exercise governance.

could argue 'that the duties are borne towards no-one at all' (Kurki 2019, p. 152). Kurki suggests that the last option would require diverging from Hohfeldian analyses of legal relations 'which presupposes the correlativity of claim-rights and duties' (Kurki 2019, p. 152). But it would not diverge from manifesto rights as such rights does not necessitate corresponding duties.

A few things can be noted regarding custodianship and creating legal platforms. First, restricting RoN to places with custodians is very limiting in the sense of being relevant to only a few places. This defeats more universalistic arguments for RoN. Second, to avoid arbitrariness, conditions must be established before a justified custodian can be ascribed to an area. That is, conditions that respond to the question of who is a *legitimate custodian*. Otherwise, the mere presence of a potential custodian, or any person claiming readiness to be a custodian, would suffice. Legitimacy of custodians must be assessed relative to both property rights of individuals and territorial rights of states.[10] Third, criteria and procedures would be required to solve potential conflicts between different custodians, or when rightly appointed custodians have conflicting views. These issues need not necessarily disqualify RoN, as such challenges can also be present in human rights where custodians are involved, without such rights per se being questioned.

Pogge's condition 2(b) could remain a problem even *if* conditions 1 and conditions 2(a) were responded to convincingly. A custodian cannot, by itself, cleanse a polluted river, nor necessarily protect it through eternity, or save an endangered species. But neither can an individual end famine. This does not lead us to reject Article 25, regarding rights to subsistence, of the UN Declaration of Human Rights, but rather provides the basis of an institutional understanding of rights (Pogge 1995). To Pogge, each member of society is to do as much as they can to contribute to the secure access required for fulfillment of economic, social, and cultural rights. Such demands can be specified:

> In a society in which domestic servants must often suffer inhuman and degrading treatment from their employers, citizens have a human-right-based obligation to help institute appropriate legal protections as well as perhaps a literacy program and/or unemployment benefits. (Pogge 1995, p. 119)

One could attempt to translate the specificity that Pogge suggests to the environmental context, along the following lines:

> In a society in which the environment suffers great detriment and pollution, citizens have RoN-based obligations to help institute appropriate legal protections as well as perhaps a conservation program and/or restoration funds.

But there are noteworthy differences between the human and environmental cases. We live off the environment in a way that we do not live off other people. Even quite demanding deep ecological principles permit modifying one's environment, but commends mitigating the extent of such interference (Næss and Session 1984, p. 6). But what degree of exploitation of nature is permissible if accepting

[10] It may be the case that legitimate custodians can restrict others' access to the area. I will not investigate this issue further here as it does not concern the issue of RoN's potential status as a manifesto right.

RoN? An example is the Te Urewera, formerly a national park in New Zealand that is currently managed by a board of trustees which is mandated 'to act on behalf of, and in the name of, Te Urewera' (Boyd 2017, p. 153). While the Te Urewera Act 2014 states that the purpose of the Act *inter alia* is to 'preserve as far as possible the natural features and beauty of Te Urewera' (4b) this does not preclude use of its natural resources. However, the effects on the Te Urewera should be minor, and the Act 'reflects the Maori worldview that human uses can form part of a flourishing natural world as long as they are properly managed' (Boyd 2017, p. 154).[11] Consequently, RoN become an expression of interdependency and reliance on nature.

The Relevance of Custodians to Assess the Desired State of Natural Sites

There is a potential in custodianship that refers to the first condition of manifesto rights. *If* custodianship is established, then there are possibly social norms and values, as well as ecological knowledge, that non-arbitrarily respond to the question of which state an ecosystem is to be in. This state, for example based on norms and values of the groups of legitimate custodians can serve as the foundation for unfulfilled needs—the very part that has been missing in the discussion above. But this should not be conflated with accepting RoN per se. Recall that Kurki concedes that one can 'create a legal platform—a bundle of legal positions—with the name of the idol or the river' (2019, p. 151; see also Kurki 2022). Custodians then have the responsibility of assessing the health of an ecosystem or the conditions of a place, preferably by some non-arbitrarily chosen standard. The relevance of custodianship to delineation is also evident in, for instance, the Te Awa Tupua Act 2017, where the Whanganui River itself is delimited (Te Awa Tupua Act 2017 (7)).

But an even stronger conclusion follows from the above: Custodianship, recognized in some non-arbitrary manner, is necessary for both delineating the entity in question, and to account for what state it is to be in. These two issues, requiring a legitimate custodian, respond to the questions of what it is that has a right, and what that right intends to fulfill. Custodianship enables stating that 'it is *this* place that matters to me or us in *this* manner', and the mandate such a proposition generates depends on the legitimacy of custodianship. Recognizing custodianship, and a bundle of legal positions, is very different from accepting RoN. It is the bundle of legal positions, with representatives for an entity such as a river that gives rise to claims. But the (insentient) river as such cannot be wronged. It can be in a worse or better state. That state may be assessed relative to ecological knowledge conjunct with the cultural significance of the entity in question. The group can form a legal platform for the entity, but that legal platform is not equivalent with the physical object to which the bundle of rights is ascribed.

From the need for custodians to make RoN reasonable, it follows that one of the central conditions of manifesto rights is not fulfilled. The custodian is a representative of an entity, expressing the demand that this entity should not be damaged.

[11] A comparison with property rights is possible to the extent that such rights include limitations on the liberty of the right-holder against harmful use of the property (Honoré 1961). But at the core of RoN is that the entity in question is not to be regarded as property.

When a justified custodian is in place and demands are expressed, this creates duties on others to respect the entity in question, and the custodian can, for instance, file suit if the entity is damaged, or alert relevant authorities to oversee its state, or demand that such authorities are available, as well as demand that legal protection, conservation programs, and/or restoration funds are available. But the central *moral* distinction between sentient and insentient or inanimate beings underpinning law (Kramer 2001) is still relevant. The need for custodians makes RoN stronger than mere manifesto rights in the cases where RoN is accepted, but weaker than proper moral rights with legal relevance.

Well, are they?: Some Summary Remarks

The issue of whether RoN can be considered manifesto rights requires assessing if RoN fulfill the conditions of an unfulfilled need, and whether someone has a corresponding duty. While the high levels of species extinction and habitat loss provide the seed for the judgment that a violation has occurred to an ecosystem per se, there are at least two challenges to establishing such a need in the case of RoN. First, there is the issue of delineation of the presumed right-holders, not being a challenge to human cases of manifesto rights. Second, there is the issue of assessing the 'needs' of that which has been delineated. Metaphors and analogies such as 'health', and even 'autonomy', could be of use, but it requires stretching those concepts relative to how they are conventionally understood. Here, it has been suggested that custodianship, through a legal platform, provides measures to face both challenges.

But are RoN manifesto rights, then? If RoN are reasonable when an authorized or justified custodian can represent the entity in question, through, for instance, a legal platform, then this substantially narrows the scope of RoN, and defeats them as universal rights applicable to environmental areas even if lacking custodians and legal platforms. By custodianship, if criteria are established for authorization and legitimacy, it is clear who is a representative for the state in which, for instance, a river is, and custodians have the possibility of ensuring that the duties of others to respect that entity, and to keep it in a desired state, are fulfilled. Such duties can include making environmental assessments, refraining from damaging and polluting the entity, and restoring it should it get polluted. Relating back to the first condition, the custodianship enables a specification of which state the entity is to be in. Legitimate custodianship established in some non-arbitrary manner is necessary to meet the challenges of delineation and interest-like conditions of the entities encompassed by RoN, as well as specifying the duties of others, violating the second conditions of manifesto rights stipulated by Pogge (1995). But RoN fail to be manifesto rights when a legitimate custodian is ascribed or where a legal platform is established for the entity in question. This speaks in favor of RoN, as they are then not 'merely' manifesto rights. Rather, when certain conditions are fulfilled, and it is reasonable to speak of a river, forest, or ecosystem having rights, something stronger is meant than a desirable but utopian change, even if those entities per se fail to fulfill the conventional conditions of rights as valid claims.

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