Chapter I: Introduction

Rights are ubiquitous in our world. In theory, if not always in practice, they belong to a growing number of subjects: humans have them, as well as inanimate objects (monuments and patrimonial goods), fictitious collective entities (corporations and states), and sometimes animals (usually the charismatic ones, though even then, not always). Rights provoke strong advocacy and inspire passionate struggle. Increasingly, for better or worse, they are seen to be an obligatory mechanism of emancipation. And lately, a new entity has come to be seen as a potential subject of rights: nature itself. Since the beginning of the 21st century, rivers, mountains, and whole landscapes have received rights and, with them, a new legal status.

The theory and practice of applying rights to nature usually goes by the catch-all phrase *the rights of nature*. This book is about them, and particularly about trying to understand where they come from and where they may lead. With the growing number of cases[1] of rights granted to nature comes a growing public awareness of this phenomenon, usually reflected in increasing media coverage of striking examples: the constitutional rights of nature in Ecuador, the Law of Mother Earth in Bolivia, the legal personality of Whanganui river in Aotearoa, New Zealand, or the rights of rivers in Colombia, India, and Bangladesh, to mention but a few.[2]

1 I will use case in the colloquial sense, not the technical one used in jurisprudence. Where I do use the technical term, the context should make it obvious.

2 Rights of nature proposals are currently being drafted in many different places, for example in Bangladesh, Mexico, Uganda, Australia, to name but

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The underlying assumption is often that all of these cases are fundamentally similar – part of a nature rights movement – and that they are (at least in theory) a radical solution to environmental degradation.

But practice has not yet proven that these kinds of rights are a good mechanism of environmental protection. Instead, it has demonstrated that these rights are of various kinds, have appeared in different contexts, and embody tensions and contradictions that predate them. The variety of cases to date begs for critical examination, one that aims to understand these rights as dispassionately as possible. This is what this book tries to accomplish, by engaging in a critique of the theory and practice of rights for nature. This may also help their future.

The context within which a trend is placed matters greatly for how it may be understood. The rights of nature appear at a historical moment unlike any other, one where human and geological history become intertwined (Chakrabarty 2009). To be precise, they appear at the intersection of two events that are really part of a delicate unity: the intensification of human pressure on the environment and the expansion of liberalism in the guise of increasing numbers, and kinds, of rights. Crucially, this later expansion is largely inseparable from the concomitant history of colonialism and Indigenous[3] subjugation.

Let's start with the latter. Since at least the 18th century, European philosophy, political, and legal practice has undergone several massive shifts towards a human world conceived of essentially in terms of rights and obligations. This has become so dominant that it is hard to imagine just how revolutionary this has been. Indeed, the French and American revolutions are rightly seen as paradigmatic examples of human rights applied on the basis of membership in the human species alone, without any consideration of social

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a few. In Europe, these are present in some form in Sweden, the UK, Spain, and the EU as such.

3 In line with widely accepted international norms, Indigenous People will be capitalized. When referring to indigeneity in any other way but specific people, 'indigenous' will be used, as in 'indigenous thought'.

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class, gender, ethnicity, and so on. This, of course, was the theory. In practice, human rights have never been equally distributed and continue to be a highly unequal tool (Douzinas 2000).

Concomitantly with the rise of rights as not only a salient, but also an increasingly important, category, the Western world invented a mode of political economy defined by the perpetual expansion of capitalism. Political liberalism therefore became split between two mutually reinforcing poles: stressing the importance of individual rights and stressing the necessity for free movement of capital. The ideological explanation has been for quite some time that one is indispensable to the other. During the cold war the 'free world' made the argument that its freedom passed through both its upholding of individual rights and its economic liberalism. With the end of that bipolar world, in the early 1990s, the victory of liberalism was hastily announced. The proponent of the "end of history" thesis (Fukuyama 1989) has since changed his mind (to his great credit), but the ideology that unites individual rights with economic liberalism has endured.

I cannot do justice to this long and complex history, and that is not what I am setting out to do. Others have done a superb job already (among others, Charbonnier 2020, Malm 2016, Mitchell 2011). What I do want to point out is that the rights of nature are best understood in the context of this double movement of rights expansion and intensification of human pressure on the environment through capital flows. In *Carbon Democracy*, Timothy Mitchell shows how the exploitation of coal reserves and the creation of a workforce able to exploit it was inseparable from political revolutions that secured rights for workers (that were, because of the material properties of coal, in a position to interrupt capital flows). On the other hand, Andreas Malm demonstrates, in *Fossil Capital*, how the transition to fossil fuels was elaborately designed precisely in order to control labor and concentrate it in places and around schedules that suited capital accumulation and expansion. Later on, the availability of artificially cheap energy became inseparable from a series of social transformations, including the creation of consumer cultures able to absorb excess production.

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The political economic transformation of the past centuries has been, ecologically speaking, a train wreck long in the making. Usually though, the story of capitalist expansion is told as a separate story from that of the liberal expansion of rights. It is more helpful to instead look at the connections, and one way to see them clearly is by exploring briefly the way in which the contemporary dominance of a globalized economy works on the basis of an increased number of rights, selectively applied. One of the ways to see this connection comes, perhaps surprisingly, from chemistry. In 2000, Paul Crutzen, a leading geochemist, and biologist Eugene Stoermer, proposed that the planet had entered a new geological era, one termed the Anthropocene. This would replace the Holocene, the era that corresponded with the mild climate that is usually credited to have been instrumental in the development of civilizations in the past 12000 years or so.

The Anthropocene, in geochemical terms, simply means that future geologists will be able to discern a layer of human-made materials at the top crust of the Earth. Therefore, they would be entitled to conclude that the boundary between Holocene layers and the new materials was the boundary between two different times, marked by different geological processes (Waters et al 2016). In other words, Crutzen and Stoermer suggested that human activity had become a form of geological activity in terms of its transformational potential, on par with volcanic eruptions and tectonic movements (also see Crutzen 2002, 2006, Zalasiewicz et al 2011). Officially, the geological community has not yet adopted the term as fact. This notwithstanding, it has had a tremendous influence, because it captures a qualitatively different time, not just a geologically different one.

Climate change is but the most visible, and most discussed, of Anthropocene problems. But it is not the only one. Biodiversity loss, land use changes, fresh-water use, the nitrogen cycle – all of these are equally important processes that have been formidably altered by human activity. Critical scholars have rightly pointed out that the idea of an Anthropocene focuses too much on 'humanity' having influenced 'the planet', when instead what is truer is that a select number of people, and the processes of accumulation that they have

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set in motion, have altered the planet for everyone. Jason Moore, for example, has therefore proposed the Capitalocene as an alternative name (Moore 2017, 2018). I have proposed the term Ecocene (Tănăsescu 2022) as an alternative that focuses on the political importance of ecological processes themselves. Beyond the terminological discussion, it is important to see that the era of human geological influence has come into being as both a radically unequal process (most CO2 emissions are highly concentrated in some places, for example), and on the basis of a culture of expanding rights.

Some of the scholars responsible for introducing the Anthropocene have also been very active in trying to understand when it began (Zalasiewicz et al 2016). There are several candidates, usually placed around the industrial revolution, though others have implied that the Holocene itself was always already the Anthropocene, as humans have modified environments for a long time indeed (Ellis et al 2021). The most useful and, in a sense, obvious date for the beginning of the new era is 1945. Two things are put in motion at that time that will come to be overly important for the ways in which the planet is modified. On the one hand, 1945 inaugurates the atomic era, with explosions and tests that have left a clear mark on the upper crust of the Earth. On the other hand, the end of World War II ushered in the era of the Great Acceleration: a time in history where a select number of societies (mostly Western, but increasingly not so) started producing and consuming stuff at an exponentially growing rate, all predicated on the availability of fossil energy.

Graphs showing the settling in of the Great Acceleration are striking: for a great number of things, there is a J shaped curve from the end of the second world war until today, both in terms of its production and consumption (energy, consumer goods, food stuff – particularly chicken, fertilizers, cement, plastics, and so on). During the same time though, the liberal heritage of rights, with foundations in earlier revolutions against monarchy, really came into its own. The period of the Great Acceleration is also the period of the Universal Declaration of Human Rights. But the exponential increase in churning Earth's stuff is not some natural process that humans cannot but obey. Instead, it has been a deliberate program of political economy that has managed to put together two seem-

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ingly disparate movements: one towards increasing exploitation of resources and labor (both in the form of increasing extraction of raw materials and of their processing for consumption) and one towards increasing human liberty.

This is the genius of the current system of globalized, intense exploitation: it doesn't merely tolerate the expansion of rights discourses; it uses it to its advantage, even though the indefinite production of stuff exemplified most strikingly in the doctrine of infinite economic growth cannot but exploit human resources as much as natural ones. The way in which this hegemonic system of production/consumption accomplishes this feat is through the power of the nation state to selectively apply rights in a way that matches with the interests of global capital expansion. This collusion between the *national* state and capitalist expansion is not a recent invention, but there from the beginning of nations themselves (Sharma 2020). Without it, much of the structure on which the Great Acceleration depends would collapse.

The fact that the correct (one may even say utopian) application of rights would be existentially threatening to global capitalism does not mean that rights are *the* tool of emancipation. In fact, their having become the go-to tool of emancipatory politics has so far helped capitalist expansion and the indefinite production that characterizes it. This is an argument that I will weave throughout the book. I wanted to start the discussion of rights for nature by setting it in an appropriate context, one where it is almost never set, partly because of the naïve belief that rights are a good in themselves.

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This book has a simple goal: it aims to introduce the idea of rights for nature from a critical perspective. Recognizing that times of great uncertainty can elicit unwarranted enthusiasm for universal solutions, I cannot present the rights of nature as an inherent cure for contemporary and future problems. Instead, I opt to present it critically, which means that I want to spend some time understanding where this idea comes from, and what it can be applied to with reasonable expectations of success. I am also interested in thinking

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about what 'success' may mean, what it may look like in practice. In other words, this is not the book of a believer, though I like to think that it would be good for believers as well.

It will become clear throughout that the guiding question of this book – what the rights of nature mean – does not have a single answer. Instead, the argument will spend some time developing the multiple answers demanded by a critical perspective. It is not a matter of competing answers, as if one could find, if only enough effort were spent, the correct one. Instead, the rights of nature have both multiple histories and multiple meanings, all coexisting and mutually determining the continuing evolution of ideas and practices. It is this multiplicity that is most interesting, and the best route towards some level of understanding.

Fortunately, there are already enough cases of rights granted to nature to be able to present the multiplicity of theory and practice. Showcasing this multiplicity is not an end in itself, but has two very clear goals. On the one hand, it is meant to counter what I call "rights of nature orthodoxy", a view of these rights as inherently positive constructions (or, at worst, benign) that are going to save 'the environment' from rapacious 'humans'. I will show that this is at best an unfounded belief, and at worst an actively dangerous one. Its propagation risks derailing the evolution of rights for nature towards a diversity of views that can tackle a diversity of situations.

On the other hand, my goal is to empower practitioners, general readers, as well as future scholars by presenting some critical tools that can help in the necessarily long-term and patient work of building alternative ways of living (which will themselves be multiple). Critical scholarship has already provided a series of insights that remain mostly ignored by many advocates invested in defining a mainstream. My argument is not that rights for nature are unhelpful or dangerous, but rather that we need to be much more reflective in how and why they are used. In this, it helps to be clear about the different intellectual genealogies present in different cases, and how these influence outcomes irrespective of the desires of their proponents. It also helps to be clear as to why different versions of these rights may be deployed, and by who.

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I think it's helpful to start by giving the conclusions away. At this point they may not convince, but that is not the idea behind presenting them up front. Rather, I wish to clearly delineate the structure of the critical engagement with the rights of nature, such that often-repeated tropes about them are exorcised before we begin. Together, the following propositions are indispensable for thinking about the rights of nature:

1. *The rights of nature are both theoretically and practically possible*. They make theoretical sense and, largely because of this, they have been adopted in different places. It is important to realize right away that the claim that rights cannot be predicated of nature is both theoretically and practically untrue; they can, they have, and they will continue to be predicated. It is pointless to argue that the rights of nature are nonsense.
2. *The rights of nature are not a monolith*. Despite the often-repeated claim that the rights of nature constitute a movement, there has been very little reflection on what the movement is made of, and what it means for the expansion of these rights to be thought of as a movement. In many cases, they have taken the form of an elite proposition in search of a grassroots, and not the other way around. Rights of nature legislations have appeared in different places and in radically different ways. There has been international diffusion of this idea, to be sure, but this does not mean that all cases can be subsumed under a unifying label propagated by a broad movement. The internal diversity of the idea, and of its practice, deserves being foregrounded, as it is a valuable asset going forward.
3. *The most useful frame for understanding the rights of nature is political, not legal*. One cannot understand what the rights of nature are *doing* without thinking about them in terms of power relations. All too often, strictly legal interpretations forget that legal norms are as good as their implementation, which necessarily passes through political power. This may be true in general, but in the particular case of rights for nature it is extremely important. Specifically, the question of who has the power to represent a nature with rights is central to understanding their potential.

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This does not mean that local legal contexts do not matter; they matter greatly! But what ultimately gives the rights of nature practical purchase is the political process that leads up to them, and that makes or breaks their implementation.

4. *The rights of nature are not primarily about nature*. This may seem counterintuitive, but it follows from proposition 3 above. The rights of nature are neither a universal solution to environmental harm, nor uniquely placed to solve such harm. In fact, they are not primarily about the environment at all, but about creating new relations through which environmental concerns may be differently expressed. What 'environmental concerns' look like is entirely dependent on the power configuration that births them.
5. *How rights of nature laws/provisions/regulations are drafted matters a lot!* This follows from proposition 4. I will attend to some of the differences and variations in legal texts so far and show how these variations are not just legal minutiae but crucial for understanding. What on the face of it look like similar cases will end up, after attending to the details, to be wildly different. These differences matter.

Let us begin.

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