

RIGHTS FOR NATURE: 20 ICONOCLASTIC THESES

“The old man said it was not a question of finding such a place but rather of knowing when it presented itself.”

Cormac McCarthy, *The Crossing*

1. The international (world-historical?) significance of the rights of nature idea does not lie in fetishizing, iconizing, reifying or Orientalizing *pachamama*, *sumak kawsay*, *kawsak sachá*, *buen vivir*, or indigenous “cosmovisions” and then recruiting the resulting reductions as “alternative world views”, handy “others” for “global capitalism”, contributions to academic theory or global policy debates, or essentialized magical keys to an environmental future.
2. Nor is it particularly useful to privilege the recent, rather narrow, US-centric legal debate surrounding standing. If this debate is to be made relevant, it will have to be brought into relation with larger social and political movements. Still less, of course, is it fruitful to regard rights of nature instrumentally, or merely as a new legal gimmick.
3. Analogies with human rights, similarly, have to be treated cautiously. This is in spite of the obvious usefulness of seeing the “universality” of the rights of nature (their indifference to national borders as well as the resistance of struggles involving rights of nature to being reduced to technical reforms unconnected with liberation)¹ on the model of the universality of human rights. The concept of human rights belongs to a different historical current. To the extent that this current involves a Cartesian or capitalist conception of nature, it is in some tension with the stream associated with rights of nature.
4. Rather than exoticizing rights of nature or *pachamama*, translating them into the terms of a nature/human dichotomy, or domesticating them by confining them to legal practice, it will be more conducive to movement-building to attempt (through trial and error) to understand them in their own (current and various) terms, relate them to their history, and, perhaps most of all, dialectically to connect the Andean, Amazonian or indigenous struggles of which they are most famously a part with much wider political, geographical, historical and nonindigenous contexts.
5. For many activists new to the rights of nature discussion, this will probably require reopening topics some may believe to have been closed. Talking about rights of nature is likely to mean reconsidering established dogmas about the agency of nonhumans and about intentionality, dialogue, permission, representation, territoriality, sovereignty, property and planning. It invites fresh looks at nature/society boundary-drawing, subject/object and interpretation/prediction dualisms, and so on.
6. For activists for whom, on the other hand, the art of keeping such topics open has always been the stuff of politics, the rights of nature discussion offers challenges of a different kind: to enrich, reweave and strengthen the net of alliances in which they are implicated and enrich their existing understanding of political possibilities.
7. Eduardo Viveiros de Castro describes an Amazonian world in which the “original common condition of both humans and animals is not animality but, rather, humanity” and which features, instead of a

“mutually implied unity of nature and multiplicity of cultures”, a “spiritual unity and a corporeal diversity.” Instead of “multiculturalism”, “multinaturalism” is the norm;² instead of cultural relativism and natural universalism, cultural universalism and natural relativism.³ Here the highest objective of learning is not to render everything, as far as is possible, as objects. Rather, “to know is to personify, to take on the point of view of that which must be known”⁴ in a process that is anything but easy. The guiding principle is that of “abduction of a maximum of agency” rather than a minimum,⁵ and interpretive success is seen as directly proportional to the magnitude of intentionality attributed. “An object is an incompletely interpreted subject,”⁶ and substantives are treated like kinship terms: relational, but universal. “Blood is to humans as manioc beer is to jaguars in exactly the way that my sister is the wife of my brother-in-law”.⁷

8. Lest the apparent difficulty of this kind of talk (without which the rights of nature discussion cannot be fruitfully conducted) lead inexperienced activists, particularly in remote locations such as Washington, DC, to reach for certain customary escape hatches – “This is philosophy”; “This is history”; “This is anthropology;” “This is only esoteric indigenous lore”; “This has little to do with practical campaigning” – it will no doubt be necessary to insist again and again in the coming years that, in their essence, none of these matters are in fact unfamiliar, exotic, merely “indigenous” or “Latin American”, nor separated from some of the most important political currents sweeping the world today. Cattle-raisers in the coastal region of Ecuador on the other side of the Andes from the Amazon, who would call themselves *mestizos* rather than indigenous, resist certain capitalist agrobusiness practices on the ground that they “violate the humanity of cows.”⁸ Indigenous island dwellers on Flores in Indonesia, like Prussian forest dwellers of the 1830s, recognize in the responses of springs, animals, trees and the weather an affirmation and validation of their resistance to commercial mining and logging. In metropolitan France, the distinguished sociologists of science Michel Callon and Bruno Latour agitate for repeal of the implicit “constitution” according to which denizens of contemporary industrialized societies are claimed to believe in a nature/society binary, Latour pointing out that in fact “we have never been modern” in this sense and calling for a “parliament of things”.⁹ Political scientist and Middle East specialist Timothy Mitchell, who inhabits the wilds of New York City, repeatedly emphasizes nonhuman agency, opening his pathbreaking book *Rule of Experts: Egypt, Technopolitics, Modernity*¹⁰ with a chapter entitled “Can the Mosquito Speak?” Other writers ranging from Octavio Paz to Martin O'Connor to Donna Haraway and even financial analyst Rick Bookstaber and sociologist Charles Perrow increasingly stress the political importance of indeterminacy and the “trickster” or “uncontrollable” aspect of nature as well as the “nonaccidental” nature of what a catastrophe-prone productivist ideology persists in believing are “accidents”.¹¹ Economists and geographers speak of “nature's resistance”¹² or the nature that capital cannot “see”¹³ as a constituent obstacle in the commodification process.

9. Still more significant are the manifest affinities between an emerging rights of nature discourse in Andean countries and a multitude of practices that will always be central to livelihood elsewhere in the global South. Random examples from Asia include the treatment of nonhumans as agents and interlocutors rather than “natural resources” in the *mueang faai* irrigation system of Northern Thailand and the *subak* system of Bali. Another example is the refusal, across the globe, of Cartesian or Malthusian conceptions opposing inexorably encroaching humans to a nonhuman “nature” – a refusal visible everywhere from fisherpeople on Guanabana Bay near Rio de Janeiro to Karen and other peoples working cyclic forest-field systems in upland mainland Southeast Asia. For activists concerned with practical movement-building in the South, one imperative is to understand why commons

movements are joining together with rights of nature activism in questioning “natural resources” as a question of survival.

10. Further reflection uncovers other affinities in the global North. Examples include animal rights and anti-factory farming movements; the enduring national refusal, in Sweden and Finland, to extend private property rights to berries and mushrooms; and widespread hostility, among today's suburban intellectuals as well as others, to Descartes' attitude toward animals or Bacon's view of science as rape.

11. It is easy to go still further. Whatever society they are born into, hunters have no choice but to adopt at least an impoverished version of what Daniel Dennett calls the “intentional stance” toward their prey.¹⁴ Because bears and frogs lack exposure to the “bath of words” in which humans are immersed, it would be stretch for members of industrialized societies to accept that they could know that Friday comes after Thursday or dream of holidays in Punta del Este – or, for that matter, regard a muddy waterhole as a ceremonial lodge, as indigenous Amazonians are said to claim that tapirs do. But hunters in every society constantly do tell themselves things like “seeing my shadow, the frog will want to get away, but believing I am right behind her, she won't see the net guarding the opening on the left, so she will jump left, thinking that's the way to escape.” Greater hunting experience generally tends to lead not to a more “scientific”, objectified idiom describing animal behavior, but, on the contrary, to the attribution to animals of a still richer spectrum of “humanesque” beliefs, theories, and desires; hence the familiar phenomenon of the best hunters “identifying” with their quarry. Here it perhaps has to be emphasized that “best” means not just “most respectful”, but also what a productivist would have to describe as “most efficient”. For Europeans, to talk of (say) thermostats as “knowing” the temperature is likely to be regarded as an optional shorthand for a more “objectivist” account (and already risks being stigmatized as “anthropomorphism”). But hunting frogs or bears without deploying such an intentional vocabulary would be as hopelessly clumsy an enterprise as building a supercollider without a mathematical knowledge of particle physics. When watching the TV news, we Europeans may cling to the idea that a nonhuman “nature” is the underlying matrix of everything, while “culture” is a variable overlay, but when we pick up a butterfly net or a hunting rifle we are already on our way to a different world.

12. By the same token, let us refrain from exoticizing the members of the Rukullakta nation in Ecuador who, alarmed at a disease decimating one of their staple palm species, solved the problem by withdrawing their fruits from the mass market, having concluded, after consultation, that the trees had been unhappy at being commodified in this way. In somewhat the same way, well-off English gardeners, working in the City of London during the week and returning to their suburban spreads in the Home Counties on weekends, learn from experience that plants “like” certain places but must be “coaxed” to take up residence elsewhere; that they “enjoy” the company of certain species but not others; that they protest and make their views known in all sorts of ways. Genteel rose hobbyists, like farmers, hunters and gatherers who depend for their lives on commons of land or water, usually grasp that an interlocutory stance is likely to get better results than a resource stance. No less than hunters in the forest, the more successful will probably be the ones who have developed the most extensive intentional vocabulary for understanding the subjects of their interest. To at least this extent, the notion that nature/society divides somehow operate “in the West but not the rest” – or, equally, that *pachamama*-esque conceptions only operate “in the rest but not the West” – proves, again, to be a bit of an Orientalist fantasy.

13. At least two observations seem to follow immediately. The first is that the soil for growing a political culture of explicit “rights of nature”, like that in which human rights grew in an earlier era, may be more widespread than is sometimes thought, facilitating the organization of a legal discourse of “universality”. The second is that the Latin American discussion about rights of nature is likely to be able significantly to enrich streams of practice outside its heartlands, and be enriched in return.

14. More specifically, developing the rights of nature discourse may well benefit from bringing it into closer contact with kindred aspects of the more general logic of commons, which operates everywhere, and most notably those aspects that continue to be most implacably opposed to the logic of capital and constitute a permanent source of resistance to it worldwide. These include, most obviously, (a) the right to live (subsistence for all) as a principle that, when the chips are down, trumps accumulation and “productivity”; (b) resistance to the dualism opposing humans to nature engineered by figures such as Malthus and most orthodox economists; and (c) the related concept of nonhumans as interlocutors rather than as passive resources. Such aspects of commons ground a perpetual, ever-renewing core of liberatory political struggle not only in indigenous rural Latin America but also in indigenous and nonindigenous urban and rural North America, Asia, Africa, Europe and Oceania.

15. Provided it does not take away from the need to study closely Andean, Amazonian and other conceptions, pursuing these associations, connections and reconnections may also help open our eyes both to the power of the rights of nature conception and to its radical nature (i.e., its resistance to being classified as an “alternative” or a mere “legal strategy”). One implication of this power and depth is that there is bound to be sharp political trouble ahead for the discourse as its fundamentally anti-accumulation, market-subordinating thrust, as well as its anti-objectifying vision of technique and science, slowly sinks in (note, e.g., Rafael Correa's growing hostility to his own Constitution, as well as Evo Morales's hedgings regarding extractivism). This likelihood of (for lack of a better term) growing polarization, far from being something that can or should be prevented, testifies to the force and importance of the issue. But it also signals a need to prepare for the coming conflicts. The rights of nature idea is the very antithesis of yet another twee, quaint “alternative” to be presented to the guardians of capital, private property law and big science for their grudging approval, appropriation and “mainstreaming”. It is never going to be adopted by the UN General Assembly or “big green” Washington NGOs.

16. Some years ago, Lord Peter Melchett, then Executive Director of Greenpeace UK and later a consultant for the public relations firm Burson-Marsteller, was asked whom Greenpeace spoke for. His answer was instantaneous: “We speak for nature.” Such cringe-inducing assertions – which are very often heard from natural scientists as well – will raise question marks in the minds of many thoughtful activists about any doctrine that treats nature as subject, agent, and bearer of rights. Too many abuses supposedly authorized by the voice of “nature” have taken place down the centuries – from the holocausts justified by Malthusianism to the devastations accomplished by conservationist policies and by neoliberalism – for these qualms to be taken lightly. Companies on the receiving end of legal accusations of violation of the rights of nature, such as BP, will not hesitate to raise similar questions, and follow them up with harassment or extortion lawsuits. Yet it is worth spending some time trying to locate exactly where the danger lies here. Positing nature as subject (rather than as a resource or object of capitalist “control”) does not in itself license anyone to “speak for nature” (or any bit thereof) any more than positing humans as subjects (as opposed to microbiological systems or Newtonian collections of molecules whose motions could in principle be predicted by physics) licenses anyone to

speak for humans (or any subgroup thereof).¹⁵ Treating nonhumans as interlocutors rather than resources does not, at least on the surface, imply ventriloquizing them, any more than recognizing human rights necessarily implies ventriloquizing other human beings. To assert the rights of nature, or even merely to suggest the importance of the intentional stance (and kindred stances, including what one might call the “magical stance”)¹⁶ when encountering nonhumans, is not to propose anyone as master interpreter – not environmentalists, not scientists, not indigenous peoples, not managers, not peasants – but merely to abandon the picture of nonhumans as passive mechanisms. People will, of course, continue to commit what Gilles Deleuze called “the indignity of speaking for others” in both the human and nonhuman cases. But the proper response to this eventuality is not to deny agency to either humans or nonhumans, but rather, through pursuing the politics of liberation, to move in the opposite direction. Adopting the intentional stance toward people entails the possibility of unreasonable and unfair interpretations just as it does the possibility of good ones; we should not expect anything different from adopting (something like) the intentional stance toward agents who are not people.

17. While perhaps on the right track, however, this response is slightly too glib. The right not to be spoken for by others may be logically compatible with, and indeed may reinforce and be reinforced by, both human rights and the rights of nature. But there are many cases in which that right is negotiated, suspended or relinquished. Legal systems demand that plaintiffs and defendants be represented by lawyers, at least within the narrow borders of a courtroom. If there is to be a bar of the rights of nature, someone other than the river must represent the river before it. More broadly, all translation or interpretation is representation, or speaking for others.¹⁷ The crucial issue here, however, is consent and resistance. Under what circumstances and to what extent does one allow oneself to be spoken for by others? How is the political process of making possible awareness of, and, if necessary, resistance to, being spoken for by others fostered or thwarted in the first place? How indeed are the boundaries of those who are to be considered as “others” negotiated? No one has any pat answers to these questions in the case of the rights of nature. But no one has ever had any pat answers to them when it comes to conventional or human rights law, either.¹⁸ These are questions of history and political struggle; the challenges, as with human rights, are practical rather than metaphysical. If there are to be fair and reasonable practices of representing nonhumans in court, they will have to be worked out through something like the hard slog by which any body of legislation, legal acts, and court decisions is worked out.

18. It is also worth spending some time inquiring where any novelty lies in extraterritoriality in the rights of nature case. While it is likely to be one of the first questions raised by outside observers what business an Ecuadorian court might have in defending the rights of the Gulf of Mexico over a thousand kilometres away, there is nothing new about “environmental” extraterritoriality as such. Free trade agreements such as NAFTA and a multitude of host government agreements regularly exempt foreign-owned companies from the environmental laws and even the constitutional requirements of other nations, following a number of precedents including the Opium Wars of the 19th century. Since at least 2005, all EU states have formally asserted extraterritorial jurisdiction over carbon-cycling capacity located in India, South Africa and Ecuador, which they use both for dumping their industrial emissions and for compliance with domestic emissions targets. Canada has asserted extraterritorial jurisdiction over offences involving nuclear material outside its borders. Citizens experiencing environmental harms that cross borders, or that are caused by foreign-based corporations, may seek relief using local courts. And so on.

19. There is also nothing new about cases in which extraterritorial jurisdiction is asserted not on grounds of the interests or responsibilities of citizens of the home country but rather on “universal” principle. Of course, in most instances of extraterritoriality there are domestic issues at stake. Anticompetitive practices may be affecting the home country's industry.¹⁹ Violations of domestic law by national citizens or corporations working abroad may motivate assertions of international jurisdiction over their actions on foreign territory (bribery, torture, child abuse or abduction). And so on. But in cases of human rights abuses, questions of the interests or responsibilities of national citizens or corporations need not be given deciding importance. The case brought against Augusto Pinochet in a Spanish court is one example. There would thus be little exotic, legally speaking, about Ecuador assuming the defense of the rights of the Gulf of Mexico even without arguing that its own citizens are harmed by their violation.

20. What is new in legal terms, then, appears to be neither extraterritorial environmental jurisdiction nor extraterritoriality based on violations of universal principle, but rather something like a fresh combination of the two. In coming to terms with this legal novelty, one central task, arguably, will be (once again) demystifying and de-exoticizing those rights of nature about which claims of universality will cluster, while at the same time guarding them against Cartesian and capitalist interpretations and rejuvenating and extending the existing body of law defending commons.

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- 1 See, e.g., Slavoj Žižek, “Ecology: A New Opium for the Masses”, 2008.
- 2 Eduardo Viveiros de Castro, “Exchanging Perspectives: The Transformation of Objects into Subjects in Amerindian Ontologies”, *Common Knowledge* 10 (3), 2004, pp. 463-84.
- 3 Elsewhere Viveiros de Castro has pointed out that, during the 16th century attempt by the Spaniards to decide whether or not indigenous peoples in South America had souls susceptible of being saved, the indigenous peoples were engaged in a parallel inquiry to decide if the Spaniards had bodies. Again, the assumption was that all entities share by default a fundamental human organization, and are differentiated mainly by bodies. Hence conquistador prisoners were immersed in water; if they did not drown or their flesh did not rot, they had to be purely spiritual entities, perhaps similar to shamans.
- 4 Op. cit, p. 469.
- 5 Ibid.
- 6 Op.cit, p. 470.
- 7 Op. cit, p. 473.
- 8 Here as elsewhere careful interpreters may want to keep in mind Viveiros de Castro's point that “[a]nimals and other nonhumans are subjects not because they are human (humans in disguise); rather, they are human because they are subjects (potential subjects)” (op. cit., p. 467). The point of view creates the subject or agent; the subject does not create the point of view.
- 9 Bruno Latour, *We Have Never Been Modern*, Cambridge, MA: Harvard University Press, 1994; *The Politics of Nature*, Harvard University Press, 2004.
- 10 Berkeley: University of California Press, 2002.
- 11 See especially Martin O'Connor, “Codependency and Indeterminacy: A Critique of the Theory of Production” and “On the Misadventures of Capitalist Nature”, both in O'Connor (ed.) *Is Capitalism Sustainable? Political Economy and the Politics of Ecology*, New York: Guilford Press, 1994.
- 12 O'Connor, op. cit., p. 136.
- 13 Morgan M. Robertson, “The Nature that Capital Can See: Science, State and Market in the Commodification of Ecosystem Services, *Environment and Planning D: Society and Space* 24 (3), pp. 367-387.
- 14 Daniel C. Dennett, *The Intentional Stance*, Cambridge, MA: MIT Press, 1989, p. 108.
- 15 No more, it might be added, does adopting the *nonintentional* stance of natural-scientific inquiry license scientists to “speak for nature”, although here, too, many succumb to the temptation to claim that that is what they are doing. Interpretation using a nonintentional stance is no less interpretation than that which uses an intentional stance. There are good and bad instances of both.
- 16 For the European elite attack on magic beginning in the 1500s and its connections with the growth of capitalism, colonialism and enclosure of commons, see Silvia Federici, *Caliban and the Witch: Women, the Body and Primitive Accumulation*, Brooklyn: Autonomedia, 2004.
- 17 More broadly still, since, in the words of W. V. Quine, “radical translation begins at home”, self-interpretation can be regarded as continuous in the most politically significant senses with interpretation of others. Practically speaking, we are constantly ventriloquizing ourselves as well as others (Quine, “Ontological Relativity,” *Journal of Philosophy* 65 (1968), pp. 200-01).
- 18 Evolving fair and reasonable ways of representing and interpreting nature in the laboratory is also a work in progress, one that has not been overwhelmingly successful despite several centuries of effort. If the rights of nature debate helps energize the critique of representation in new ways, that will be another of its virtues.
- 19 *Standard Oil of New Jersey v. United States* (1911).