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A post-humanist and anti-capitalist understanding of the rights of nature (with a coda about the commons)

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Abstract

I will raise the question of whether it is conceptually acceptable and practically useful to speak in terms of rights of Nature. I will answer positively: we may talk about rights of Nature with complete legitimacy. In addition, I will argue that we must do so from an anti-capitalist and postcolonial perspective; that is, not as a metaphor or a legal fiction, but considering that for some peoples of the world, natural entities genuinely have a personality worthy of protection through rights. I will also defend that the expression "rights of Nature" goes beyond the problem of the entitlement (Nature or Earth as "new holders"). Indeed, the emergence of the rights of Nature implies a radical change in the actual concept of rights; a change which compels us to move from humanism to post-humanism. This in turn leads us to dismantle the individualistic, anthropocentric, Eurocentric and ownership-based perspective of rights.

Key words

Anti-capitalism; rights of Nature; postcolonialism; post-humanism; ecological justice; biocentrism; commons

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Resumen

El objetivo de este artículo es plantear la pregunta de si hablar de derechos de la naturaleza resulta conceptualmente aceptable y prácticamente útil. La respuesta es positiva: podemos hablar de derechos de la naturaleza con total legitimidad. Además, se defenderá que debemos hacerlo desde un enfoque anticapitalista y postcolonial, es decir, no como una metáfora o una ficción jurídica, sino tomando en consideración que, para algunos pueblos del mundo, las entidades naturales tienen genuinamente una personalidad que merece protección a través de derechos. También se sostendrá que la expresión "derechos de la naturaleza" va más allá del problema de la titularidad (la idea de la Naturaleza o la Tierra como "nuevos titulares"), ya que, en realidad, la emergencia de los derechos de la naturaleza implica un cambio radical en el mismo concepto de los derechos; un cambio que nos obliga a transitar del humanismo al post-humanismo. Esto, a su vez, nos debería llevar a abandonar la perspectiva individualista, antropocéntrica, eurocéntrica y propietarista de los derechos.

Palabras clave

Anticapitalismo; derechos de la naturaleza; poscolonialismo; post-humanismo; justicia ecológica; biocentrismo; bienes comunes

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1. Introduction

The aim of the following pages is to reflect upon one of the most fascinating issues of the theory of fundamental rights: the rights of Nature. We have to keep in mind that *rights* were originally theorised as "subjective" rights or as "human" rights. However, these adjectives seem ill-fitting when used in the matter at hand, since neither Nature nor her parts are subjects in the traditional sense of the term. This happens because those rights that we used to conceive as "human" are beginning to transcend the limits of the species, in order to join an array of new subjects not belonging to our *demos* (Míguez 2018). And such series of subjects is becoming increasingly heterogeneous. This poses a threat to many typologies that have helped us to make sense of the cosmos and our place in it for centuries, not to say millennia. Let us consider, for instance, non-human animals and natural entities, but also robots, cyborgs or other "subjects" endowed with artificial intelligence (Braidotti 2015, p. 108 ff). As it might be expected, the rights of these new subjects have been typically described as "aberrations" or "nonsense" by the legal and philosophical canon (Ferry 1992).

The complexity of the problem sticks together with the fact that the rights of Nature have appeared as a response to the socio-ecological crisis, which is one of the faces of the global capitalist order. In this regard, the debate raises several issues that not only affect the intellectual construct of rights in an accidental way, but also entail a total rethink of our legal structures and our epistemological framework. In other words, talking about the rights of Nature requires questioning some age-old mental patterns such as the distinction between nature and culture, or between subject and object. Likewise, we will have to reconsider the relationship that human beings have with Nature (Ost 1996, p. 13), as well as the productivist understanding of progress, and the ownership-based perspective of rights.

In this context, the matter of the rights of Nature requires careful consideration about what we mean by "rights" and what we mean by "Nature". In the following pages I will raise the question of whether it is conceptually acceptable – and practically useful – to speak in terms of rights of Nature. The answer is a positive one: we may talk about rights of Nature with complete legitimacy. In addition, I will argue that we must do so from an anti-capitalist and postcolonial perspective; that is, not only as a *metaphor* or a *legal fiction*, but seriously considering that for some peoples of the world, natural entities *genuinely have a personality* worthy of protection through rights. I also will defend that we must talk about the rights of Nature from a post-humanist standpoint. This means that the expression "rights of Nature" goes beyond the problem of the *entitlement* – Nature or Earth as "new holders". Indeed, the emergence of the rights of Nature implies a radical change in the actual *concept* of rights; a change which, as I will try to claim, compels us to move from humanism to post-humanism.

I shall proceed as follows: firstly, I will outline the transformation we are witnessing in our epistemological and legal models, which is laying the foundations of a new biocentric paradigm (section 2). Secondly, I shall consider the meaning of Nature when talking of the rights of Nature, and the theoretical frameworks which have been used to address the issue so far (section 3). Thirdly, I will address the question of whether it is conceptually possible to use the expression "rights of Nature": I will start discussing the

criticisms that this notion has received, and I will end with some notes about the link between the rights of Nature and the commons (section 4).

2. Towards a biocentric paradigm in the Anthropocene Age

2.1. On biocentrism: "Chthonic" and ecological views

When talking about the relationship between human beings and Nature, it is common to refer to anthropocentrism, which would be the defining feature of the Modern Era, and biocentrism, which refers to at least two different things.

1) On the one hand, we talk of biocentric cultures to refer to those civilisations that the comparatist Patrick Glenn calls "chthonic" – from the Greek *kthonios*, relating to the earth (Glenn 2010, pp. 61–95) –, whose defining feature is concerned with a holistic view of the world. According to this worldview, human beings are not to be found at the centre of the universe, nor do they represent a higher stage of it. They are only one among the multiple manifestations of Nature, to which we belong in equality with other species.

Nevertheless, these civilisations have been subjected to different forms of colonialism, so that several cultural strata coexist in them. Some of these respond to biocentric worldviews, while others respond to anthropocentric perspectives influenced by the Western mindset (Glenn 2010, p. 84 ff.). Finally, it is worth mentioning that Western history and its heterogeneous depictions have not been exempt from either episodes or institutions that are similar to that of "chthonic" civilisations (Glenn 2010, pp. 71–72). Indeed, despite the hegemony of the ownership-based view of Nature during the last two centuries, in the West there have been some collectivist, communitarian and usufructuary legal types of relationship with the Earth (Altamira 1981).

2) Additionally, we hear of biocentrism from some perspectives related to *deep ecology*. According to these theories, the *environmentalist* stance typical of *shallow ecology* adopts a merely *green* perspective, which tends to only partially "ecologize" our political, economic, and cultural practices. Thus, it does not modify the structural relationship that we have with Nature, which is ultimately the cause of the environmental plundering and ecological crisis in which we find ourselves. The ideas of deep ecology are rooted in the original approach of the Norwegian Arne Naess (1972), but have been further developed by numerous authors.

The basic idea of the movement states that the environmental crisis is deeply rooted in an anthropocentric worldview, which was established during the Renaissance, and which gave birth to an extractivist conception of Nature. According to this conception, Nature can be taken privately and commodified, and thus become a resource to be exploited for our benefit. In order to modify the economic practices that have led to the current environmental collapse, it would not be enough to introduce "ecological" audits, "eco-friendly" products or "sustainable" companies – the so called "free-market environmentalism" (Padilla 2006, Ost 2006). On the contrary, a radical transformation of our worldview would be needed, consisting of placing Nature in the centre, recognising her intrinsic value and not merely as a means to certain aims. This change would entail a shift from environmentalism, whose legal embodiment were third generation rights – as instruments of a healthier environment for human comfort –, to deep ecology, whose legal embodiment would require a new category of rights of Nature.

These two versions of biocentrism often converge in the discourses and practices of contemporary activism but are by no means equivalent. Indeed, the relationships between environmentalism and Indigenism have always been tense. Firstly, while European movements have tended to emphasise future generations as the recipients of environmental policies, for native peoples, ecological issues are very current issues. Due to the geopolitics of capitalism, the most severe ecological damage occurs in Southern countries, because of the uncontrolled commercialisation and exploitation of resources – forests, water, and seeds –, which are basic for the subsistence of Indigenous communities (Shiva 2007). It is not by chance that, in these cases, we speak of "environmental racism". Secondly, the biocentric worldview of many "chthonic" cultures see the Earth as a source of life and an object of veneration, but this does not necessarily fit with animal abolitionism, which is typical of many forms of Western environmentalism: the use and consumption of animals, while it does not occur on an industrial scale, it is common among Indigenous peoples in many parts of the world. Thirdly, many cults of Nature in Indigenous peoples are often regarded by the West as manifestations of an "esoteric" religiousness, which is eventually difficult to reconcile with the views of European ecological movements (Antona Bustos 2016, p. 12).

2.2. On anthropocentrism: Western or universal?

We have already seen that different approaches lay behind the notion of biocentrism. Now I would like to dwell on the concept of anthropocentrism and the qualifying of the Modern Era as an anthropocentric paradigm, since I believe that certain misunderstandings lie behind both ideas.

To begin with, there are several inconsistencies when identifying the appearance of this paradigm. It is most common to characterise anthropocentrism as a trait of the Modern Era, which emerged during the Renaissance and triggered a Promethean view of the human. Likewise, we may often read that this process is an exclusively Western phenomenon, although it later travelled to other latitudes through imperialism and colonialism. Both claims are only partially true:

1) Firstly, as for dating anthropocentrism, there are discrepancies among the authors. Peter Singer argues that the concept of the human being as the centre of the universe is in fact *prior* to the Modern Era, as it can be found both in the Hebrew civilisation and in Ancient Greece, a claim he supports in a number of texts from the *Book of Genesis* and Aristotle's *Physics* (Singer 2009, p. 266). It is worth quoting a fragment from the *Book of Genesis* that is particularly adequate to visualise the relationship between anthropocentrism and extractivism: "And God blessed them. And God said to them, 'Be fruitful and multiply and fill the earth and subdue it and have dominion over the fish of the sea and over the birds of the heavens and over every living thing that moves on the earth'".

If Singer is right, we may then claim that Western civilisation is marked, from its very beginning, by an essentially anthropocentric view, which goes back to the early stages of our culture, although it becomes extraordinarily powerful during the Modern Era. Indeed, it is quite illustrative that Thomas More's *Utopia* – one of the masterworks of Humanism – emerged from its author's concern about the practice of privatising common land, the exploitation of which had remained thus far in relative ecological

balance (Mattei 2012, p. 44 ff.). We may draw a lesson from this: although the anthropocentrism of the Western culture is an important factor in understanding the contempt for Nature and the corresponding plundering that it has suffered, the true catalyst of the environmental crisis is not the exaltation of the human – as this is a long-standing phenomenon –, but the unfolding of an increasingly extractive capitalism from the 16th century onwards.

2) Secondly, concerning the presumably Western nature of the anthropocentric mentality, we may also want to clarify a few points. Let us take Pico della Mirandola as an example. He wrote the classic *De dignitate hominis*, a text widely considered to be prototypical of Renaissance anthropocentrism. One of the most revolutionary features of Pico's outlook is the cultural pluralism of the sources on which he based the defence of an intrinsic dignity of human beings. Far from merely invoking biblical or ancient Greco-Latin texts, Pico also included references to Zoroaster and to the Chaldean tradition, the Kabbalah, or Muslim writers such as Averroes or Avicenna (Pico della Mirandola 2007). The purpose of that methodological pluralism was precisely to show that the idea of human dignity is not just from a Western lineage, but an underlying principle of many cultures.

We can delve further into this pluralist outlook, adding other traditions to Pico's analysis. Let us mention, for example, the classical work of the epic poetry of the Nordic peoples, the *Kalevala*, in whose landscapes the author refers to the ploughing of forests as raising humans to a higher level in Nature, in so far as they are capable of taming it (*Kalevala* 1999, pp. 17–18). We may also recall some texts from the Chinese mythology, which recount Boyi's feats, "capable of ruling over the plants and trees, the birds and four-legged animals (…) on Earth" (Shun, in García-Noblejas 2004, p. 136). Lastly, we could appeal to the foundational story of the K'iche' culture, which outlines an intuitively "evolutionist" view of natural history. According to this story, humans would occupy a higher stage in Nature, followed by apes, then beasts and other natural entities. In this account, the gods created plants and animals, but soon realised that these were incapable of worshipping them, so they produced "those monkeys that currently live in the rainforests". These "monkeys", however, did not manage to develop an articulate language and they were unable to face "the flood", "the dark rain, rain by day, rain by night" (*Popol-Vuh* 1973), the pre-Colombian version of the Flood. In other words, they were not intelligent enough to withstand natural disasters.

The two previous clarifications are not aimed at exonerating humanism or Western civilisation from the ecological emergency. Rather, they aspire to assess responsibilities adequately, to avoid turning into caricature-like views and, above all, to prevent defeatist views of our ability to subvert the course of events. I believe, following Rosi Braidotti, that it is wise to transcend humanism in order to face the ecological challenge of our time, as there is a certain correlation – not causal – between humanism and the steamrollering mentality that is at the very centre of the environmental collapse. However, as Braidotti herself claims, we do not necessarily have to renounce a humble humanism to accept conceptual transformations like those that are the object of this study (Braidotti 2015, p. 22).

This is why, as mentioned before, the cause of the environmental plundering is not so much the recognition and the exaltation of humanity, but rather the unfolding of an

extractive capitalism whose credo is based on the need for permanent growth, despite the fact that this implies the exhaustion of resources, the destruction of the Earth's ecosystems, and the annihilation of entire peoples.

2.3. On biocentrism again: A paradigm in progress

Beyond the fact that the Promethean view of humanity may be found in other cultures outside the West, it is also important to emphasise the fact that the West is not a monolithic reality, but rather a cultural space ripe with diverse and irregular itineraries, with internal disagreements and conflicting stories. We shall not review all those historical paths, but we can indicate that not all the traditions that have shaped Western civilisation have agreed on the distancing of humanity from Nature.

Let us mention, for example, the Aristotelian notion of humans as *naturally* social animals, or Hume's "naturalistic" view of human cognition, which has been recently rescued by the ethologist Frans de Waal to criticize the alleged binomial differentiation between human-rational and animal-emotional (De Waal 2016, p. 299). Or let us consider some views related to pantheism, such as that of pre-Socratic philosophers, or Spinoza's in modern times. Spinoza's case is particularly noteworthy, as it has been claimed by several contemporary currents that are trying to rebuild the Western tradition from a materialistic, but not dialectic, perspective. Spinoza's metaphysics did in fact recognise the importance of the corporeality, the animal nature of human beings, or the indistinct continuity between humanity and Nature. At the same time, it rejected the well-known dualisms – body/mind, nature/culture, subject/object – which have contributed to strengthen an artificial boundary between the human and the natural (Braidotti 2015, pp. 71–73, Dahlbeck 2018).

All of these philosophical traditions are being currently recovered, precisely as a consequence of the biocentric turn which we have been witnessing in recent decades. The neuroscientist António Damásio, for instance, published in 2003 his well-known *Looking for Spinoza* (2004), in which he tried to change the course of classical studies on cognition, emphasising the fundamental role of emotions and denying the alleged mind-body duality. In a more radical sense, the philosopher of science Peter Godfrey-Smith published his research *Other Minds* in 2016, in which he draws astonishing analogies between human consciousness and brain processes in octopuses and other cephalopods. Let us also include the suggestive appreciations that Donna Haraway makes on the surprising intelligence of doves – they are able to recognise themselves in a mirror, just as humans over the age of two, as well as some apes, dolphins, magpies, and elephants – and the curious human-animal interaction we have had with such "creatures" since time immemorial (Haraway 2019, p. 41).

Godfrey-Smith's and Haraway's attention to octopuses or doves is important in how it erodes one of the steadiest traits of the anthropocentric paradigm: anthropomorphism. Indeed, ethology and neuroscience have generally tended to equate the human with those species which are phenotypically closer to us, that is, with other hominids such as gorillas or chimpanzees. The range of our empathy includes, at most, those mammals that, because of their cognitive qualities and certain patterns of behaviour similar to humans – elephants, orcas, dolphins (Casal 2018) –, can be compared to us and brought

slightly closer to our status. Although this helps us to transcend speciesism, it keeps us trapped in an anthropomorphism that has an uncertain moral relevance.

In this regard, Haraway's argument is doubly interesting. Beyond how significant her attention to non-anthropomorphic animals is, her aim is not to simply look for animals "so intelligent" that they "deserve" to be raised one stage higher. She also questions the whole idea of supremacy and supports a "multi-species" type of egalitarianism, a concept similar to the "zoe-centred" egalitarianism that Braidotti argues for (2015, p. 77). Furthermore, the heed that Haraway has paid to animals such as dogs or doves aims at diluting the boundaries between natural and social, and between animal and cultural. Indeed, let us consider the dense and complex ties that those species have forged with human societies, thus shattering the assumed boundaries between nature and culture. It is important to underline that Haraway's philosophical project does not concern itself so much with vegetables or animals that relate to each other mechanically, as individuals that reach out to other individuals. Rather her project emphasises the existence of a "natural-cultural" continuity of "creatures" – a "compost" –, with social and natural stories that are deeply and mutually entangled (Haraway 2019).

The research of entomologist Edward O. Wilson – one of the leading exponents of socio-biology – can also be read along these lines. His studies on ants and termites have for years been pointing at the troubling hypothesis that social intelligence and sophisticated systems of organisation may not be an exclusive human quality (Wilson 2012). But the most extraordinary contribution in this context is neurobiologist's Stefano Mancuso, who has turned the age-old humankind-animal kingdom-vegetable kingdom hierarchy on its head. And he has done so by claiming that plants may also possess intelligence worthy of being considered as such. According to Mancuso himself, what happens is that these entities are so different to us, that accepting the idea that they also may be intelligent places us in the face of something that implies renouncing any trace of anthropocentrism (Mancuso and Viola 2017).

All these contributions have not occurred simultaneously by chance, but because we find ourselves in the middle of a paradigm shift that gradually penetrates many areas of science and culture, as well as forms of social awareness. It is therefore quite revealing that the style guidelines of *The Guardian* have recently changed in order to promote the use of vocabulary that is more aware of the human responsibility towards the environmental crisis – "climate emergency" instead of "climate change", "global heating" in place of "global warming". It is also revealing that such a change in style encourages the use of terms such as "fish populations" rather than "fish stocks". This is nothing but a sign of the fact that the forms of subjectivity are gradually starting to include entities that, until not long ago, we considered as mere objects of appropriation.

3. The rights of nature: What do we talk about when we talk about nature?

3.1. Biocentrism and the rights of nature as an anti-capitalist reaction

All the previous considerations justify our discussion of a biocentric paradigm in progress. The emergence and broadcasting of the concept of "rights of Nature" is one of its most notable manifestations. Yet, there are different epistemological frameworks within this paradigm *in fieri*: from environmental ethics to deep ecology, from

resurrected versions of Natural Law to post-humanist theories. Before we look into this question, I would like to summarise three key ideas of what has been said so far.

1) Biocentrism is complex and contradictory because it draws from both Western and non-Western sources. In this sense, Anglo-Saxon authors such as Cullinan or Haraway have emphasised the importance of Indigenous worldviews as an "inspiration" for epistemological frameworks that are better equipped for rebuilding harmonious forms of relationship with all other natural beings (Cullinan 2011, p. 88, Haraway 2019, p. 140). However, not all Indigenous cultures in the world have an identical concept of Nature, nor are their mindsets always biocentric. Similarly, the biocentrism of many Indigenous cultures is not always realised in a series of priorities equivalent to the European environmentalism[1]. In my view, it seems more promising to think of biocentrism as an irregular horizon in which we are all involved, with different expressions and with transcultural equivalences that can work together, but not as an essential attribute of certain subjects or peoples, nor as a homogeneous movement with precise and perfectly outlined aims. For example, the Western theories of commons can converse with the Andean notions of *sumak kawsay* or *suma qamaña* – living well –, despite they are concepts with different histories and references (Belotti 2014).

2) Although a good deal of the biocentric turn revolves around the idea that humanity must stop taking a central position, such a shift is necessary to amend the ways of today's turbo-capitalism, and not necessarily to an *in toto* challenge to humanism. I believe that humanism must be seriously de-constructed. At the same time, I think that it is difficult to separate humanism from capitalism, both from a historical point of view and from a cultural and political perspective. Nonetheless, I also believe that the key to explaining the ecological collapse are neither Leonardo da Vinci, nor Diderot and D'Alembert's *Encyclopaedia*, but an extractive capitalism that tends to colonise all spheres of life, and shamelessly over-exploits natural resources. It would thus be worth talking of Capitalocene rather than Anthropocene, as Jason Moore has suggested (2016). The idea underlying this terminological change is that our problem is not the *anthropos*, but the particular type of *anthropos* that we have shaped from the capitalist inflection. Moreover, the concept of Anthropocene unfairly dilutes the responsibility of the ecological crisis in the chaotic magma of the species, or makes the problem vanish by making a generic critique of human arrogance.

3) Blaming extractive capitalism is important, because it helps us to explain the contradictions of numerous social movements that, despite relying on arguments critical of anthropocentrism, they are unable to escape the productivist logic. Let us consider the constitutional processes in Bolivia and Ecuador (2008 and 2009), which were driven by the Indigenous peoples of both countries, and which were successful in imposing certain notions of the Andean worldview on their respective constitutional texts. However, at

[1] Eduardo Gudynas distinguishes ecocentrism and biocentrism. Both ideas react against anthropocentric utilitarianism, as this conception would only be willing to protect the environment as a way of guarding human interests. However, ecocentrism is a position that, although it recognizes certain ecosystems as worthy in themselves, it does so by projecting on Nature typically human representations. This results in the fact that an unusual importance is given to the protection of certain species or habitats at risk of disappearing, only because of human preferences. Biocentrism, on the other hand, would assign an equal value to all the natural beings, regardless of whether they are individuals, species or ecosystems, and tends to rely on non-Western worldviews (Gudynas 2015, pp. 55-58).

the same time some of these movements demanded the recognition of typically capitalist principles: economic growth, industrialisation, etc. All of this has been supported by the state policies carried out during the second decade of the 21th century. And so, we encounter new social and political processes, supported by biocentric Indigenous views, that have nevertheless been trapped in the grip of contemporary capitalism, even in the case of supposedly progressive governments (Acosta 2016).

In light of the above, a thorough understanding of biocentrism and the rights of Nature demands that we see them as a reaction against the global capitalist order. This is why the appearance of the rights of Nature entails something much deeper than the emergence of a new "legal subject". Thus, it is not accurate to consider it by the same yardstick as, say, when the legal personality of companies was accepted. Indeed, the defenders of the rights of Nature do not support them metaphorically – that is, they do not intend to create one more legal fiction –, but instead aspire to transform, from the root, our traditional views of law, re-orienting the logic of rights in an anti-capitalist, post-humanist and postcolonial sense.

I will explore this thesis from two perspectives: firstly, I will analyse some of the most emblematic cases in which Nature has been granted rights; and secondly, I will outline a series of theoretical models that have been suggested to understand the biocentric turn. The aim of both incursions is to better understand what we mean when we talk about Nature and what it means for her to hold rights.

3.2. Nature in search of a new status: Person, thing, or hybrid?

The rights of Nature are now more than a chimera. In fact, the catalogue of milestones in which rights have been recognised to Nature is increasingly larger. It is not my intention to review all these episodes, or to analyse in detail all the cases to date. Rather, I intend to bring to light a continuity that seems to emerge from all of them and that, as I will try to argue, puts us before something more than a "new" holder of rights.

The instances of subjectification are complex and do not occur overnight. The attribution of subjectivity entails far-reaching cultural processes in which numerous spheres of human activity are involved. In this sense, the appearance of the phrase "rights of Nature" is the result of a long process of "ecologisation" of our *episteme*. Marie-Angèle Hermitte has documented several of the "subtle mechanisms of personification" that, despite retaining the definition of "animals, vegetables and various elements of Nature as things", have contributed to paving the way towards a more explicit personification of Nature (Hermitte 2011, p. 175). Indeed, we may find many legal texts, both national and international, that have adopted mechanisms for a "substantial" personification of natural beings. This means, according to Hermitte's terminology, that legal institutions have gradually transferred some aspects that were once regarded as exclusively human to certain animals, habitats or species. In doing so, some analogies have been drawn that tend to establish a form of equivalence between human and non-human entities.

At the same time, other forms of subjectification have emerged, which Hermitte calls "procedural", and which do not necessarily demand "anthropomorphising" (Hermitte 2011, p. 197 ff.). In such cases, the aim is to open channels for legal claims through which animals and other natural entities can be part of the process, in case their integrity is jeopardised. This has symbolic legal effects that suggest a qualitative leap regarding their

classical consideration as passive subjects. Hermitte encourages us to remember Gayo's view, according to which the law concerns not only *persons* and *things*, but also *actions*. Indeed, the *summa divisio* of modern thought, influenced by Descartes, had raised the subject-object distinction to a universal status (Míguez 2018, pp. 15-24), neglecting the element of *action*; an element which is however decisive in the sphere of law. Animals and other natural entities may not be persons in the anthropomorphic sense. But it is not desirable to continue regarding them as things, since they are not things. However, they can certainly be the concern of law via the tool of procedural action, which does not force us to adopt a categorical stance over its ontological status, but rather offers the more pragmatic possibility of opening a door to enter the fortress of law.

Besides, it is in the action – not in the person – where we may find the source of subjectivity: the action produces the subject, establishing *what* counts as a *who* for the legal system. Therefore, the opening or closing of procedural channels constitutes a fundamental device for personifying and de-personifying. Moreover, its effects transcend the legal sphere: let us remind that, for Foucault, the law was one of the main instruments of subjectification of the Modern Era. On the other hand, even if there were no metaphysical doubts about the quality of being a person in a given entity, it is in an action where a *person* becomes a *subject* and acquires the ability of agency in legal terms. In this context, to use Hermitte's words, "For the coherence of law, it would be much more disturbing to introduce a *sui generis* category, a *tertium* between persons and things, than to add new entities to the category of person" (Hermitte 2011, p. 202).

We are now getting closer to the idea that I want to emphasise: the fact that, in most situations in which rights have been attributed to Nature, this has not happened through the drawing of new boundaries between persons and things. Rather, it has happened through the postulating of new categories beyond the subject-object and the nature-culture dualisms. In almost all the recent cases, there has been no strict personification of Nature, but instead a resizing of the natural-cultural distinction. According to this view, we may not speak of Nature and culture as separate realms, but as a *continuum* in which animals, plants, and humans gradually forge ecosystems in a symbiotic way. Somehow, the idea that humans and non-humans live together in a space that incessantly oscillates between the given and the created, prevails. This space would have emerged as the result of the constant interactions between humankind and Nature, and has woven a warp too complex for us to trace boundaries between "state of nature" and "social state" (Braidotti 2015, Haraway 2019).

3.3. The rights of nature in comparative law

Let us look at some of these cases. We could start with the two Magna Cartas of the Andean constitutionalism, the 2008 Constitution of Ecuador and the 2009 Constitution of Bolivia[2]. In both texts there is a reference to the Pacha Mama as the source of life, as a support and inspiration of human cultures and as a model for its laws and policies. In the Ecuadorian text, the wording is more emphatic, as rights are explicitly granted to Mother Earth (arts. 71-73 *et al.*). At the same time, there is a much more detailed regulation on the proceedings that must be followed in order to safeguard the cycles of

[2] A more detailed overview of the cases and processes of attribution of rights to nature in the Latin American context, both in constitutional law and in case law, can be found in: Berros and Carman 2022.

Nature in case of damage, as well as on the subjects who are legitimised to trigger those proceedings, and the correlative duties of the State. In the Bolivian case, the references are more unsystematic. However, if we include the 2010 Law n. 071, or the 2012 Law n. 300, "of Mother Earth and the comprehensive development for living well", the biocentric approach is clear: these laws are devoted to the embodiment of the rights of Nature – which are made explicit one by one –, together with a set of legal principles, as well as dispositions concerning economic policies.

I would like to focus on the section of definitions in Law n. 071: "in order to protect and shield her rights, Mother Earth adopts the quality of a *collective subject of public interest*. Mother Earth *and all her components, including human communities*, are holders of all the inherent rights recognised in this Law". At the same time, Article 4.4 of Law 300 says: "... [T]he damages to the components of Mother Earth, *including environment, biodiversity, and human health and the cultural intangible values* (...)". It is worth highlighting that in both formulations we find the idea of the natural-cultural *continuum* mentioned in previous paragraphs: human communities and cultures are defined as manifestations of the Pacha Mama, as parts of Nature, from which they emanate and on which they display their practices.

In both constitutional processes the idea of the rights of Nature is intertwined with the notion of *sumak kawsay* – living well –, which establishes that the production and reproduction of human communities must be kept within a modest scale, in a form that is sustainable with the environment (Acosta 2015). Even though the idea of *living well* has similarities with the Western notion of *common good*, it is rather a post-anthropocentric, relational concept that refers to the *doing* of human beings regarding Nature, not so much to the safeguarding of Nature as a universal common *good* (Zaffaroni 2011). In other words, the concept of *living well* relies in the verb *to live*, whereas the expression *common good* relies in the noun *good*. The notion of common good is static: it evokes the idea of a state of things that must be reached and shielded. The idea of living well, by contrast, is dynamic: it refers to acting in a synergistic cooperation with the cycles of Nature, so that a mutually beneficial cohabitation emerges between natural ecosystems and human communities.

The concept of community is important for the current reasoning. Indeed, far from the Western anthropocentric perception of the word "community", the Andean worldview understands community not only as a group of people, but also of living beings – animals, plants –, elements of the land – lakes, mountains –, and the spirits of the deceased (Gudynas 2015, p. 142). Something similar is incorporated into the Mapuche concept of *lof*, which includes both cultural and natural dimensions. We tend to think of a *lof* as populated by a human group which recognises the same authority, and which is structured by a series of rules that govern that jurisdiction. But this is an anthropocentric approach to concepts that originate in "chthonic" cultures and that can only be apprehended through a specific biocentric view. The *lof* is not demarcated by "boundaries" that divide the territory, since land is perceived as a continuous whole that has no separations, although it appears in heterogeneous ways (Melin *et al.* 2017, pp. 18-20). In turn, different forms of society and normativity emerge from this heterogeneity of the land: the practices, the customs, the rules – the *Az* – cannot be the same atop the

mountain range as on the seashore, because the demands of the environment are different, and so are the cultures that grow under its wing (Melin *et al.* 2016).

Let me introduce a consideration about the way in which subjectivity and rights are understood in the Mapuche worldview. Anthropologist Jesús Antona has carried out a "re-translation" of the Mapudungun version of the Universal Declaration of Human Rights into Spanish. That is, he has translated the text in Mapudungun (which had previously been translated from English) into Spanish, in order to detect any biases that may have occurred when adapting a Western text into a language that had neither the words nor the institutions that were captured in the 1948 Declaration. I shall not go into the conclusions of his study, but I do want to examine the idea of the subject of rights. In contrast with the use of the expression "individuals" in the preamble to the original text, the re-translated Spanish version mentions "living beings" or "living entities", from the Mapudungun "che". Something similar happens in Article 1, in which there is a reference to "living beings" instead of human beings. It is worth giving the floor to Antona himself:

> [A]ll the Mapuche who cooperated in this endeavour were aware of the fact that the only possible legal subject in the Declaration is the human being (…). However, unlike with other concepts, no one was surprised or uncomfortable when the term *che* was translated as 'entity' or 'lving being' in Spanish. This is because it seemed natural to them, since for the Mapuche the term 'human being' is vague and alien, and is different in nature to the term *che.* (Antona 2014, p. 435)

In other words, the legal subjectivity, according to *Az-Mapu*, is not anthropocentric, but rather includes different forms of life, both human and non-human.

I would like to provide two more examples. The first concerns the Whanganui River in New Zealand. As opposed to the Constitutions of Bolivia or Ecuador, which mentioned the Pachamama in general, in the case of New Zealand a specific natural entity was considered as a legal subject. However, if we look closely at the Parliament Act of 2017 (Te Awa Tupua 2017), things are more complex. To begin with, the normative document by which the river is considered a legal entity is called "Te Awa Tupua Act", which only when mentioned in English does it take the name "Whanganui River Claims Settlement". Hence, it is the Te Awa Tupua that is granted a legal personality, not the Whanganui River. This is relevant because, according to the Maori worldview, Te Awa Tupua is not a river understood in purely physical terms. It does not even only refer to a river basin in its integrity, that is, the riverbed, the banks, the vegetation, the subsoil, etc. Te Awa Tupua is, in fact, a "natural-cultural" notion similar to others that we have described in the previous paragraphs, inasmuch as it encompasses physical, spiritual, social, and cultural elements.

> Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical Elements (…) Te Awa Tupua is a spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and well-being of the iwi, hapū, and other communities of the River (…) I am the River and the River is me (…). Te Awa Tupua is a singular entity comprised of many elements and

> communities, working collaboratively for the common purpose of the health and well-being of Te Awa Tupua.[3]

Something similar can be seen in the case of the Atrato River in Colombia. The difference lies in the fact that the New Zealand Act is markedly biocentric, as it has assumed the epistemological framework of the Maori people and has attempted to capture it in the legal text. Conversely, in the case of the Atrato River, the ruling of the Constitutional Court of Colombia alternates between anthropocentric arguments – based on the well-being of the human communities, the protection of several clauses of the social State, the violation of certain fundamental rights, and constitutional principles such as pluralism – and more decidedly biocentric claims.[4] Moreover, in the case of the Atrato, the tutelage of the river is not only granted to the communities affected – as planned in *Te Awa Tupua* –, but the legal representation of the river ultimately falls onto the State, which will take on the task of protecting, conserving, and restoring the ecosystems that depend on the river basin, although with the participation of the Indigenous communities involved.

Despite the difference in their approaches, we also find in the Colombian case a conception that avoids the sharp bipartition between Nature and culture. It does so, via an interesting terminological device: the idea of "biocultural" rights, an expression adopted by the Court in order to understand the multifaceted identity of this new type of rights.[5] Indeed, these are rights which, on the one hand, protect the nature of the river basin – its bed, its fauna and flora, its tributaries, the lands it irrigates –, but, on the other hand, they protect the Indigenous and the farming communities that live off the river and that have forged complex forms of inter-dependency with it. Above all, the concept of biocultural rights was introduced as an attempt to conceptualise the status of certain rights that cannot be apprehended by simply including Nature in the category of "subjects":

> The so-called *biocultural rights*... refer to the rights held by ethnic communities to autonomously *administer and exercise tutelage* over their territories (…) and the natural resources that make up their habitat, where their culture, their traditions, and their *way of life* flourish based on the special relationship that they have with the environment and with biodiversity. Indeed, these rights emerge from the recognition of the deep and intrinsic connection between Nature, its resources, and the culture of the ethnic and Indigenous communities that inhabit it, all of which are interdependent. (Point 5.11)

Shortly after, in point 5.13, the Court expounds on the consequences of this "bioculturality". From its own wording, the Court is perfectly aware that the attribution of subjectivity to the river entails a significant political and epistemological change: 1) on the one hand, it requires giving prominence to the Indigenous communities in the management of public policies intended to protect the river, with important effects in terms of recognizing cultural and legal pluralism; additionally, 2) there is a shift towards post-anthropocentrism, inasmuch as the Court suggests a correlation between biodiversity and cultural diversity, and highlights the importance of the "ecocentric"

[3] Arts. 12, 13 (a), (b), (c), (d). The text in Maori language has been omitted.

[4] Sentence T-622 of 2016 (Atrato River). The sentence itself acknowledges this when it comments on the concept of environmental Constitution (points 5.6, 5.7, 5.8, 5.9) and differentiates between anthropocentric, biocentric, and ecocentric approaches, although it understands these concepts in a way that is different from this article's view.

[5] The Court was inspired, among others, in Bavikatte and Bennett 2015.

conception, with an explicit rejection of the utilitarian approach; finally 3) the Court admits the need to move towards an economic model which is not based on unrestricted growth: even though extractive undertakings are not categorically rejected, the commitment to biocultural rights lead to anti-capitalist approaches that the Court could have embraced had it followed the reasoning to its logical conclusion.[6]

3.4. Some theoretical models to explain the biocentric inflection

So far, we have presented a series of cultural changes that point to the genesis of a biocentric paradigm in progress. I have then tried to analyse some landmarks that account for this change in the legal sphere. It follows from this analysis that, far from a phenomenon of personification of Nature, we are dealing with the deletion of the once rigid boundary between humanity and Nature.

This means that the challenge of the rights of Nature entails an epistemological breakdown, as it threatens the legal paradigm of the Modern Era (Capra and Mattei 2017). In fact, our understanding of Nature as a subject of rights implies considering it to be no longer a passive background on which classical legal forms – property, person, State – are outlined, and starting to see it as just another player that enters the law, blurring the lines of many legal institutions. Let us focus on some of those forms and consider to what extent they are built on the distinction between Nature and culture. Firstly, the notion of property was justified from the beginning of the Modern Era as a title over things whose legitimacy resides in the work that humans perform to transform Nature. Secondly, the idea of person rises above the assumption that the human goes beyond its animal matter through a kind of "second nature" that makes us superior to natural beings. And thirdly, the concept of State is based on the social contract theories, which see it as an improvement over an idea of Nature that is conceived as a radical "other", both in vegetative terms (Nature as a thing) and in animal terms (Nature as a beast) (Haraway 1999).

This explains the fact that several theoretical models have gradually emerged to provide a new meaning to the relationship between the natural and the human. It is not my intention to offer an exhaustive list of such proposals, but it is worth to distinguish between two main kinds of theories. On the one hand, there are some views that I would qualify as *natural law conceptions*; on the other hand, we could speak of *post-naturalist* views. They both nourish each other and share the impulse of an eco-political and non-anthropocentric project, but they do so from different approaches.

To begin with, natural law conceptions can be split into two identifiable groups:

1) Firstly, we can talk of natural-law views to characterise many chthonic cultures that, like the *Az Mapu* of the Mapuche, think that Nature includes immanent norms from which principles and forms of organisation of human communities are derived. It is, thus, a conception that clings to a non-Western biocentrism and that, for the reasons presented above (section 2.1.), does not always agree with the environmentalism of the Global North. From this point of view, the relationship of human cultures with Nature does not occur in terms of veneration, but rather of complementarity and reciprocity:

[6] In point 5.15, for example, long quotations by anthropologist Arturo Escobar are included. In these quotes Escobar is critical with the productivist approach of Western economics (Escobar 2010).

Nature as a natural-cultural space of which we are part and in which we actively intervene, transforming it and transforming ourselves, but always to a sustainable degree, which allows for the reproduction of ecosystems (Gudynas 2015, p. 139 ff.). Accordingly, Nature is not automatically transformed into a new "subject" of rights, since Nature is not an "other" that becomes an "us", nor is it an object that becomes a subject. Instead, it is a ubiquitous substance in which we flourish and from which we are an inseparable part: as stated in the Te Awa Tupua Act, "I am the River, the River is me".

From the perspective of these natural law views, the expression "rights of Nature" can be seen as a compromise. It uses the Western language of rights to translate a chthonic mindset that, in principle, was not supposed to be considered in such terms. Consequently, the concept of rights of Nature becomes a hybrid, halfway between two cultures, which is consistent neither with the Western *episteme* nor with the *episteme* of the native peoples. To use the terminology of Benoît Frydman, it would be one of those "ULOs" – unidentified legal objects – that have gradually swelled the list of hybrid concepts of "global law" (Frydman 2012). A warning must be introduced: the fact that a concept lies in a border territory does not make it incorrect or inadequate. It means that, to fully understand it, it is not enough to simply analyse it from a Western epistemological framework, nor from a chthonic paradigm. We must instead adopt a postcolonial perspective that takes into consideration the fact that the travel of concepts is not unidirectional, but a two-way endeavour, and that the metamorphosis of legal institutions does not cause their emptying: it merely fills them with different contents (Lloredo and Cristancho 2020).

2) Secondly, we could talk of some new Western natural law conceptions, which try to dignify Nature by enthroning it. Accordingly, these theories also tend to define Nature as a new subject of rights. I am referring to certain variants of *Deep ecology*, which have designed a biocentric metaphysics based on the personification of Nature as a gigantic organism. A good example is Leonardo Boff, who has devoted a great deal of his work to consider the environmental question from Christian premises, a task that he shares with other Franciscan theologians (Hart 2006):[7] "The Earth has her own identity and autonomy like an extremely dynamic and complex organism. She fundamentally presents herself as the Great Mother who nourishes and transports us. She is the great and generous Pacha Mama (Great Mother) of the Andean cultures, or the living super organism, the Gaia, of Greek mythology and modern cosmology" (Boff 2011, p. 9). It is a natural law approach that seeks to form alliances with other worldviews, but that arises from Western theological foundations. This results in a tendency to personify Nature, understanding it as a great deity. It also leads to the misconception of the Pachamama in planetary terms, when in truth it is a concept that is always "localised" (Gudynas 2011, p. 143). This is a fruitful intellectual operation, since it has garnered widespread support in Latin America and has carried out an admirable work of activism with environmental movements. However, it is based on a rather idealised view of Nature.

These Western natural law conceptions have developed into theories that, despite being inspired by theological views, perform better in the legal arena, and do not fall into the error of deifying Nature. In this sense, they adopt a position that better matches the natural law theories of chthonic cultures. I am referring to Cormac Cullinan's "Wild

[7] It is worth mentioning that John Hart uses the expression "Nature's natural rights" (Hart 2006, p. 117).

Law". Cullinan's suggestion finds inspiration in Thomas Berry's doctrine, the famous theologian who devoted his life to developing an environmental view of spirituality. What is interesting to our current work is that both Berry and Cullinan think in terms of rights. It is not by chance that the former even suggested a Decalogue of rights, in which he reflected on the "origin, the distinction, and the role of rights", and in which he explicitly established the appropriateness of employing such a language in relation to natural entities: "the universe is a communion of subjects, not a collection of objects. As subjects, the component members of the universe can have rights (…). All rights are species-specific and limited. Rivers have river rights. Birds have bird rights. Insects have insect rights. Humans have human rights. Difference of rights is qualitative not quantitative. The rights of an insect would be of no value to a tree or a fish" (Berry 2001 cited Cullinan 2011, p. 103).

As for the case of Cullinan, the strategy of the rights of Nature – "Earth rights", in his own words – becomes one more tool, among other legal and political measures, that would be advisable to enact, in order to assert the principles of the so called "Great Jurisprudence":

> The Great Jurisprudence is 'written into' every aspect of the universe. Everything about our species, from the size of our brain, the shape of each tooth, and our sense of beauty and colour has been shaped by our interaction with the universe and the plants, animals, and microbes with which we have danced in the intimacy of co-evolution (…). Since we humans are part of that universe, it seems logical to me that we also have the capacity to understand the principles of the Great Jurisprudence by empathetic engagement with nature and by introspection. In other words, unlike the classic understanding of 'natural law' (…), there are other routes to discovering the Great Jurisprudence besides using 'reason' (at least in the narrow sense of the term). (Cullinan 2011, p. 79)

It is easy to recognise numerous aspects of the classical natural law theories in this passage, although Cullinan offers a timid counterpoint to them when emphasising empathy and intuition as paths to reveal the principles of the "Great Jurisprudence". By this meta-ethical assumption, he moves away from the rationalist exponents of natural law. But we must consider that these have certainly not been the only views in the long history of natural law: Spinoza's view, Scottish empiricism or idealism, in versions such as Schelling's, moved along similar lines. Beyond these similarities, or precisely because of them, the "Wild Law" approach mirrors the theories of immanent natural law characteristic of the chthonic views: they both defend the existence of regularities in Nature that we must detect in order to create a social organisation that tends towards an ecological balance. What makes them different is that the rhetoric of rights is much more naturally embraced in the case of Wild Law, since it originates in a Western framework. At the same time, the view of Nature and culture as a *continuum* seems hazier in Cullinan's model than in the chthonic idea of the rights of Nature.

This latest point allows me to introduce the next set of theories that can be distinguished by the way in which they regard the rights of Nature. I have called them *post-naturalist*, adapting a term frequently used by Braidotti (2015, p. 12). Braidotti's philosophical project aims at reflecting on the transformations that are leading to the "decentering of Man", that is, to the abandonment of the anthropocentric view found in humanism. Humanism was, in Braidotti's view, a political programme based on the liberation of

humanity through education and culture; a programme that, despite the admirable fruits that it brought about, relied on several oppressive dichotomies: mind/body, man/woman, human/animal... These conceptual dualities ultimately resulted in the corresponding practical dominations, which are now being challenged by many critical movements: feminism, anti-racism, ecologism, postcolonialism, and-so-on. Braidotti's purpose is to reconsider subjectivity in non-essentialist terms, understanding the subject as a crossroads of natural, cultural, and technological dimensions, and as being "nomadic", that is, fluid and organic. In short, the subject only exists as a contingent deposit of superimposed surfaces along which it circulates dynamically: "We need to visualize the subject as a transversal entity encompassing the human, our genetic neighbours the animals, and the earth as a whole." (Braidotti 2015, p. 10).

This metaphysical formulation, openly Spinozian in its approach, results in what Braidotti calls "zoe-centred egalitarianism" (2015, p. 112),[8] a notion not unlike that of Haraway's "multispecies entanglement". Both expressions indicate a non-anthropocentric view of reality, and suggest that we abandon "human exceptionalism", that is, the idea that humans constitute an unrepeatable rupture in the order of matter, a unique "event" in the cosmos, in order to embrace a post-anthropocentric and post-naturalist view. From this stance, the issue is not whether we drop the arrogant idea of the human as the "measure of all things", in order to turn to an ecstatic experience of a holistic pantheism that would romantically worship Goddess Nature (Braidotti 2015, p. 79). Rather, the challenge is to develop new and imaginative ways of reflecting upon human-natural interaction: the notions of "multispecies entanglement", of "sympoiesis" as opposed to "autopoiesis", or of "Humusities" as opposed to Humanities (Haraway 2019, pp. 62-63), are but a few suggestions in that direction.

These two authors seek to avoid what Braidotti calls "compensatory humanism", which consists, precisely, in humanising what was originally conceived as "other": Indigenous peoples, women, animals, or Nature. In other words, compensatory humanism consists in dignifying "others" by elevating them to the same status of the *anthropos*, removing them from the periphery and placing them on *this* side of the border. To return to Hermitte's categories, compensatory humanism equates to the strategy of "substantial" legal personification. In contrast to this approach, which still belongs to a humanist logic in decline, the conception supported by Braidotti or Haraway aims at reclaiming new epistemological frameworks. This move is interesting because it fits with the challenge posed by the rights of Nature. Ultimately, such rights constitute a conceptual novelty that does not conform to the traditional dichotomies and that, as we have seen in the rulings of the Atrato or the Te Awa Tupua Act, is better understood through hybrid categories. Donna Haraway would probably not object to a view of rights of Nature as *cyborgs*.

Something similar can be deduced from the last contribution that I would like to invoke. I am referring to François Ost's approach, who has indeed described ecology as a

[8] Warning: the concept of "zoe-centered" does not stem from the Greek *zoo* (animal), but from the term *zoé*, that is, life understood as a feature shared by all living beings, as a property of living matter, and not as *bíos*, i.e., the life of specific individuals. Zoe-centred egalitarianism is therefore an ethical proposal for the coexistence of humans, animals, plants, and other beings under egalitarian principles.

"science of hybrids" (Ost 1996, p. 17) and who offers a beautiful way of viewing Nature "as a project", beyond the constraining dichotomy of subject and object:

> Lo and behold, here is our hybrid, quasi-object or quasi-subject, as you wish, which shall point at the bonds and draw the limits. We shall not think in terms of 'environment' (nature-object: man at the centre, surrounded by a nature viewed as a deposit of resources, and which can be employed and subdued at will), nor in terms of 'nature' (nature-subject in whose bosom man finds himself, and where no-one recognises his uniqueness). In the 'gap' between Nature and artifice, we shall give shape to that field of reciprocal transformations the human by the natural and vice versa. This is why we talk of 'nature-project': what Nature does unto us and what we do unto Nature. (Ost 1996, p. 18)

4. The nature of rights: What do we talk about when we talk about rights?

In my view, the most adequate epistemological framework to understand the rights of Nature is to be found somewhere between *chthonic* natural law theories and post-human conceptions. This is, at least, for two reasons. Firstly, both approaches commit to the gradualist view of the Nature-culture *continuum*, which coherently fits with the processes of granting rights that I have analysed. Secondly, both post-humanism and *chthonic* cultures adopt an anti-capitalist approach, which is essential to take the rights of Nature seriously. Otherwise, they will remain nothing but an outburst of lyricism among the minutiae of legal texts.

To tie both approaches together, it may be convenient to remind Haraway's latest work: *Staying with the Trouble: Making Kin in the Chthulucene*. The book stems from the idea that the target of the ecological critique must be capitalism, not humanism taken in the abstract. However, Haraway argues that we ought to move beyond the *Capitalocene*, from a destructive to a constructive approach, and that such a move should try to detect the existing customs, contexts, identities, and alliances into which, albeit timidly, new ways of living are already being woven. This is the age of *Chthulucene* – from *kthónios*, the same root as the word *chthonic* –, the age of earthly beings, human and not human, that "romp in multicritter humus but have no truck with sky-gazing Homo. Chthonic ones are monsters in the best sense; they demonstrate and perform the material meaningfulness of earth processes and critters." (Haraway 2019, p. 20).

Haraway's prose is captivating, enthralling, and visionary, but sometimes irritating in its taste for the baroque. So, let us step down and face the legal challenge of the matter at hand: what happens when we decline the word Nature in the language of rights? Do rights become void? Do they acquire new meanings? I shall start by presenting the liberal denial of the rights of Nature and offering a few criticisms to such a view (section 4.1.). Then, I shall stop at another type of denial, halfway between post-humanism and pragmatism (section 4.2.). Finally, I will suggest a view of the relationship between rights, duties, and commons that, in my opinion, proves useful to portray the rights of Nature (section 4.3.).

4.1. The liberal denial of the rights of nature

The history of human rights is full of denials. The concept of rights has indeed been attacked from conservatives like Burke, liberals such as Bentham, socialists such as Marx, or catholic authors such as Villey (Peces-Barba 1999, p. 59 ff.). There are also partial

denials that reject a certain kind of rights. Let us recall the case of social rights, or the dispute over the specification of rights: of the Indigenous peoples, of the disabled, of women... By and large, a certain assumption has become commonplace. According to that assumption, we may have entered a phase of "disintegration" of rights that will eventually lead to their becoming void: for rights to be considered as such, and for their own efficiency, they must be few. The opposite would inevitably lead to inflation, and inflation results in a loss of value (Laporta 1987, Ignatieff 2001).

I believe this view to be mistaken as, if we truly aspire to the efficiency of rights, we must make them concrete and aware of the material needs of specific subjects. Generality and abstraction are of no use when fighting oppressions that are not theoretical, but unequivocally real. Moreover, generality and abstraction are feckless in counteracting dominations that have different and often invisible *modi operandi*. Such view of generality and abstraction relies on a questionable principle that owes much to a certain Promethean impulse, namely the idea that rights are warranties in favour of autonomy and independence, that is, a humanity free of constraints. However, from a post-humanist perspective, it would be more advisable to promote a change in approach. Henceforth, we should consider, negatively, that the aim of rights is not to achieve autonomy (in the singular) but to protect us from oppressions (in the plural). Especially if we concentrate on the rights of Nature, the focus should shift from the notion of autonomy – which is difficult to apply to non-human beings, unless we adopt anthropomorphic views of Nature – to the idea of inter-dependency. This would result in another change of approach: from the individualist logic of *self-realisation* to the political principle of *mutual aid.*

Let us now turn to the denials of the rights of Nature. The most evident criticism comes from liberal positions. According to this thesis, rights are the result of the liberal culture, which was shaped in Modern Europe, and arose from an ineradicable individualistic logic. From that point of view, it only makes sense to talk about rights when referring to subjects endowed with agency, and self-determination. Therefore, the idea of rights of Nature would be a legal fiction of arguable usefulness or, in the worst-case scenario, a poetic outburst that has inappropriately intruded into the rational architecture of law. This view is supported by a rigid dialectic of subject and object. Indeed, while it may be true that Nature demands protection, the typical liberal stance argues that such a safeguard must be provided in terms of human *duties* towards certain natural *goods*, i.e., as an act of tutelage conducted by a human *subject* over an inanimate *object*. It is also an anthropocentric criticism that categorically denies the idea of the "intrinsic" values of Nature and thus justifies environmental policies as instruments aimed at improving living conditions for humans. However, what is most troubling for the exponents of this thesis is that, in their view, promoting the rights of Nature entails an ecological "fanaticism" that places the protection of the environment above anything else: according to Luc Ferry, the "hatred of modernity", and "anti-individualism" of certain ecological movements jeopardises the great accomplishments of Western liberalism and may prove to be an open door for totalitarianism (Ferry 1992).

This liberal-conservative criticism shares some points with another typically leftist criticism, which equates the defence of the rights of Nature with irrationalism, anti-modernism, conceptual inconsistency, or frivolity, and supports an anthropocentric

view of the protection of Nature. Such is the case of Jean-Marie Harribey, militant ecologist, president of Attac between 2006 and 2009, and thus an exponent of an ideological trend very different from the latter (Flipo 2012):

> Je dirais mon accord complet avec la démarche de travailler à instaurer le bien vivre à la place de l'american way of life, mais aussi mon opposition à certaines justifications théoriques, d'une part non nécessaires pour poser des choix éthiques et politiques, d'autre part le plus souvent incohérentes. Au mieux, la thèse avancée par Eduardo Gudynas et beaucoup d'autres aujourd'hui est-elle une fiction, un nouveau mythe fondateur pour transformer la réalité. Gare à ce que cela ne soit pas une pure idéologie. (Harribey 2012)

The paradoxical fact that authors from such disparate traditions agree on this criticism is the result of a burden that is still very much part of the whole ideological spectrum: colonialism. Indeed, if we analyse Harribey's words, the idea of the rights of Nature is accepted solely as a kind of "myth" not to be taken seriously, as it emerges from ideas that are incompatible with "scientific" rationality. I would like to reject this conclusion by way of two considerations, which I shall offer from a postcolonial perspective, and which should lead us to accept the concept of rights of Nature as something more than a fiction with decorative effects.

The first consideration is related to something we have already showed. For Westerners, the idea of the individual has acquired the consistency of raw facts. We believe, as Descartes once did, that we can successfully erect all our intellectual structures on such a self-evident proposition. Any suggestion of considering a subject that deviates from it – people, nation, or community – tends to be regarded as fiction. Sometimes, such fiction is tolerated – there are no problems in considering the State as a subject of international law – and other times it is condemned, based on criteria that are far from being uniform. However, things are not thus for other worldviews. In the Mapuche culture, the concept of "self" is expressed with the word "iñche", a term made up of two particles: the lexeme "che", which means "living being", and the prefix "iñ", which has collective echoes and is significantly used in words such as "taiñ": "nation" (Melin *et al.* 2017, pp. 19-20). In short: for the Mapuche culture, the self is intrinsically social: it emerges from and thanks to the group in which the living being exists. And this, paradoxically, would imply that the Western idea of the individual is a fiction for the Mapuche worldview. Accordingly, the phrase "rights of Nature" does not cause friction when interpreted from the *episteme* of many Indigenous peoples, but it does strike as extravagant to the Western eye. The conclusion is clear: the concept of rights of Nature could only be rejected if we considered the West to have some exclusive rights to broaden or interpret the catalogue of fundamental rights.

The second consideration concerns how the imposition of the Western scientific model results in excluding many forms of knowledge that tend to be relegated to the category of irrational. This leads to phenomena of domination that we often perceive as neutral, but which are the result of a colonial mentality. Boaventura de Sousa Santos offers a curious example that I would like to mention, because it shows how the Western environmental approach often perpetrates acts of "epistemic violence" (Spivak 1988).

> In the 1960s, thousand-year-old irrigation systems in the rice fields of Bali were replaced by scientific irrigation systems promoted by the partisans of the Green Revolution. The traditional irrigation systems were based on ancestral, religious knowledge and were

> managed by the priests of a Hindu-Buddhist temple dedicated to Dewi-Danu, the goddess of the lake (…). It so happened that their replacement had disastrous results in rice yields, with crops declining more than 50 %. The results were indeed so disastrous that the scientific systems of irrigation had to be abandoned and the traditional system restored. (Santos 2014, pp. 47-48)

What this anecdote teaches us is that we must be cautious when assessing the concepts of non-Western cultures, as they may thrive in epistemic contexts, which are unattainable to us. Indeed, despite how untenable they might seem to us, they may be less unreasonable than expected. As for our object of study, the phrase "rights of Nature" and the corresponding view of Nature as a natural-cultural, collective living being, should not be disdained as an irrational metaphor. We may feel inclined to consider it from our most conventional perspectives and we ought not to condemn those who do so. It would be ridiculous to ask that we embrace the cultural heritage of worldviews different from ours, and that we compel ourselves to talk of "Pachamama". If we did so, we would probably incur an equally reprehensible cultural appropriation. But this must not lead to dismiss the concept without further ado, on the basis that it emerges from a mythological idea, because this is not the case when considered from other perspectives.

In other words: we may conceptualise the rights of Nature as a legal fiction, so long as we are also aware that this is but *one* in a series of possible ways of viewing them; certainly not the only, nor the most appropriate one. I return to something that I already mentioned: biocentrism is a paradigm in progress that drinks from many different sources, both Western and non-Western, and it constitutes a sort of blurry horizon in which we are all involved. Accordingly, there is not a canonical way of understanding the rights of Nature. However, I believe that we must accept a postcolonial approach that contemplates the emergence of those rights as strongly connected to the chthonic views of rights and, consequently, as not necessarily equated to a legal fiction in the Western sense.

4.2. The post-humanist and pragmatic denial of the rights of nature

The second denial of the rights of Nature comes from two sources that I chance to group together, as they both converge in their rejection of the "strategy of rights", though they disagree on their foundations and on their alternative proposal. On the one hand, we have the post-humanist position of authors such as Braidotti, who has suggested that we replace the "moral philosophy of rights" with an "ethics of sustainability" (Braidotti 2015, p. 112). In her view, the agenda of the "post-human ethics" must find an alternative to the right-based strategies, namely the ethics of responsibility and the pragmatist project of cultivating and spreading networks of affectivity that are not constrained to human beings, but rather applicable to all living matter. This means that we would have to shape a new type of post-human subjectivity in which the *anthropos* does not see itself as the cornerstone of the cosmos and in which we would therefore be obliged to establish bonds of empathy with all other living beings. Something similar may be concluded from reading other texts where she develops the idea of "nomadic ethics": "post-structuralist ethics is consequently concerned with human affectivity and passions as the motor of subjectivity, not so much with the moral content of intentionality, action or behaviour or the logic of rights" (Braidotti 2006, p. 13). Briefly, neither Braidotti nor Haraway have developed a theory of rights, because they do not see them as an

instrument of emancipation. This is coherent with their philosophical stance, since human rights are one of the most notable milestones of anthropocentrism.

On the other hand, there is a wide range of approaches that are suspicious of the rights of Nature for pragmatic reasons: they do not believe it to be an appropriate way of articulating a protection of the environment. They do not necessarily share the post-humanist diagnosis of the historical condition in which we are, nor do they distrust the strategy of rights in general. Essentially, they believe that the concept of rights of Nature does not contribute to the contemporary ecological cause, and it is thus preferable to explore other routes to contain the environmental collapse. These currents are usually committed to the ecologist movement and the ecological struggles of many Indigenous peoples, frequently from a postcolonial view. In this sense, they are not to be equated with the liberal approaches considered in the previous section. They quite simply claim that the concept of rights of Nature is either a counter-productive innovation or that it has no influence in real life. mirrors

It is useful to exemplify this position in Jaria i Manzano's outlook, who has criticised the inclusion of the rights of Nature in Ecuador's Constitution. According to Jaria, the approach of rights is unavoidably entangled to possessive individualism, and insofar is incompatible with the ecological imperative of the Andean perspective of *living well*. According to him, mixing these two elements causes an institutional short-circuit that neutralises the supposed radicality of the concept. In Jaria's view, the Ecuadorian Constitution is characterised by a piercing contradiction between an extraordinarily dense and promising catalogue of rights, artificially imbued with the rhetoric of the Andean philosophy, and an economic structure that tends to strengthen the European model of the welfare state: state ownership, productivism, consumerism, etc. (Jaria i Manzano 2013). In this context, according to Jaria, the disappointing extractive policies that have been in place since 2008 are not the result of "post-constitutional" malpractice, but of the fact that the legal and political contract was corrupted from its very origin (Jaria i Manzano 2013, p. 50).

Jaria's approach has two possible interpretations. According to the first, Latin American constitutionalism has frequently made the mistake of adopting long bills of rights, without simultaneously promoting a substantial change in the "organic" parts of its constitutions. I am referring here to Roberto Gargarella's "engine room of the constitution" (2019), which insists on the need to analyse institutional arrangements by which political power is organised. By so doing, we will be able to verify how, on numerous occasions, bills of rights are smoke screens with merely symbolic effects, which contribute to deactivate social protests, and which are used as an alibi to perpetuate the *status quo*. The second interpretation of Jaria's approach has to do with the nature of rights. In his view, rights are inevitably dependent on the possessive individualism, which gave rise to them. This nature would make impossible any attempt to use them as an instrument of emancipation from capitalism. Jaria concludes that it is unnecessary to institute the rights of Nature, as there are already other legal tools that can be used to tackle situations of environmental plunder. More importantly, he claims that we ought to embrace a version of constitutionalism of responsibility that will focus on the *duties* that we humans have towards natural ecosystems.

Thus, we have two different approaches based on disparate principles, which agree on their rejection of the strategy of rights. The difference lies in that post-humanism pays no attention whatsoever to the legal perspective, whereas the pragmatic stance does consider the law to be a possible form of intervention. However, instead of the paradigm of rights, it invites us to embrace the approach of duties. In both positions there is a mistrust of the "grammar of rights", which is thought to be a Trojan horse teeming with anthropocentrism, individualism, and colonialism. I believe them to be partially correct, since rights are a double-edged sword. Firstly, because the constitutional embodiment of rights does not simply dissolve the oppression that boosted their emergence. In this sense, we should be cautious and not limit social struggle to the adoption of a right, as promulgation often leads to demobilisation. Secondly, because the procedural architecture of rights remains essentially individualistic: rights are designed to be activated by specific subjects who have seen them jeopardised, and the answer of the judge will only have an effect regarding that claiming subject. Finally, because the logic of rights implicitly carries a certain idea of "possessiveness": rights are like objects that are owned, and they establish a competitive dynamic – rights opposable to other rights –, which contrasts with the reciprocity that should guide our relationship with Nature. Despite all those risks, there are other ways of understanding rights, and they can prove to be a fine instrument to face the ecological challenge. I will justify this opinion by means of three arguments.

Firstly, the history of rights usually asserts that they were spearheaded by the bourgeoisie who triumphed in the liberal revolutions, but in truth they were the result of complex negotiations, not always explicit, with several ideological sectors, including the colonies (Lloredo and Cristancho 2020). It is therefore a mistake to grant the hegemonic discourse the assumption that rights were, and are, exclusively a product of Western liberalism. This would imply squandering a valuable historical capital that we ought not to dispense with: the revolution of black Jacobins in Haiti, the communalist demands of *diggers* in the English Revolution, the struggles of Olympe de Gouges for women rights, the battles of the Indigenous peoples for the right to self-determination, etc. All of these are chapters in the evolution of rights that point to the idea that, rather than a unique model, there is a network of discourses, which are intertwined though not always in agreement about what those rights may be. In this sense, we should see them as a land in dispute whose boundaries are constantly being blurred and redrawn. In other words, the "nature" of rights has mutated over the years and, although they still bear a liberal imprint, other ways of understanding them have come in play.

This is precisely the case of the rights of Nature. Ávila Santamaría has suggested the metaphor of "stretching our feet as far as the blanket will go", with which he tries to fit the idea of the rights of Nature in the conceptual frameworks used in the West: dignity, subjective right, ability, or equality. According to Ávila, we always can find a way to redirect the rights of Nature to each of these foundations. Nonetheless, also according to him, it is easier to harmonise everything if we "walk happily towards the source" and we ground them in the Andean worldview: relationality, reciprocity, correspondence, complementarity (Ávila 2011). However, due to the interdependence of rights, this underlying philosophy cannot simply be pushed into a corner as the isolated basis of the rights of Nature, but instead has a deep impact on our understanding of all rights. In

other words, the emergence of the rights of Nature changes the discourse on rights and contributes to reframing its classical liberal tendency (Rodríguez Palop 2017).

Secondly, the approaches offered by post-humanism and pragmatism tend to limit the idea of rights. Evidently, including the rights of Nature in a legal text does not simply produce the existence of strong guarantees that will ensure their observance. It is also true, at first sight, that the inclusion of these rights may seem to amount to little more than window dressing that has no effect whatsoever on the core of an extractive economic system. But rights live beyond their legal dimension, since they are part of the culture *lato sensu*. Therefore, their inclusion in legal texts arises from a broader social and political process. As Juan Ramón Capella beautifully puts it, rights are "pieces of a cultural collective imagery" (Capella 2013, p. 40). This means that the recognition of a right contributes to this process as one more piece, which is neither the only, nor the main one, but helps to provide legal and political density and, by doing so, draws attention to the debate. Therefore, the proliferation of cases in which the rights of Nature have been granted has played that part rather efficiently and constitutes one of the most prominent indicators of a "legal ecology" in progress.

This problem was already brought to light in Christopher Stone's renowned article: *Should trees have standing?* Stone argued that the formulation "having rights" better captures the meaning of obligations than the definition of a certain issue in terms of "legal rules". One of the reasons that he puts forward to justify this preference is that some legal expressions, among which we find "legal rights", have meanings in ordinary language that determine their context of application in the legal praxis, which would favour positions more inclined to the respect of the environment by judges (Stone 1972, p. 487). In short, in 1972 Stone was already invoking arguments that appealed to the symbolic power of law: "such a manner of speaking by courts would contribute to popular notions, and a society that spoke of the 'legal rights of the environment' would be inclined to legislate more environment-protecting rules by formal enactment" (p. 489). Stone ended by maintaining that a society that used expressions like "rivers have legal rights" would evolve more easily towards an ecological system than a society that never used such formulation, even though they both shared an identical set of rules in terms of environmental protection.

Thirdly, rights cannot be seen as precise and single legal dispositions, but rather as bundles of correlative duties, as batches of principles that can be applied to other norms, or as synthesis of other connected rights, which find a horizon of meaning in the macro-right that shelters them (Laporta 2004, p. 300). Let us think of the right to work. It is a right that encompasses different legal positions: the freedom to choose an occupation or trade, the right to unionisation, unemployment benefits, the right to state protections that materialise in safety measures in the workplace, a minimum wage, etc. This bunch-attribute, which applies to all fundamental rights, is also applicable to the rights of Nature, since these actually comprehend a set of sub-rights and legal principles. Let us look at the sentence on the Atrato River (point 5.12): "biocultural rights seek to integrate in one place scattered provisions regarding rights to natural resources and the culture of ethnic communities, which in our Constitution appear in articles 7th, 8th, 79, 80, 330 and 55. In other words, biocultural rights are not new rights for ethnic communities; instead,

they are a special category that unifies their rights to natural resources and culture, understanding them as integrated and interrelated."

Something similar happens if we pay attention to Bolivia's Law n. 071, where "the rights of Mother Earth" are materialised in a set of specific sub-rights, such as the right to the integrity of the systems of life, the right to biodiversity, the right to water, the right to clean air, the right to restoration, etc. All of these are, in turn, linked to a series of duties that fall to some institutions whose function is to oversee the observance of the above. What I intend to argue is that the strategy of rights has been judged as irrelevant or inane perhaps too hastily. It is true that the guarantees associated with these rights are still weak, and it is also true that the praxis has been quite unsatisfactory in many ways. But this has occurred throughout history with many other rights and the same may be said of a fair number of rights even today. Therefore, the challenge is to enforce the different rights that emanate from the generic recognition of rights to Nature, and to increase its guarantees. But, above all, the aim is to generate an ecological legal culture or, better yet, an ecology of law that radically modifies our bond with the environment. To do so, we certainly need many things, but the rights of Nature are a good starting point.

4.3. To conclude: Legal ecology between rights, duties, and commons

I have just mentioned the need to move towards an ecology of law, which is a concept that goes beyond ecological law. The latter entails generating a set of legal rules aimed at limiting some economic activities to protect certain ecosystems. To do so, it finds its basis in the criterion of harm to human interests. By contrast, the ecology of law supports a substantial transformation of the legal culture (Capra and Mattei 2017). This conversion demands changes at many levels, both normative and epistemological, and it is something that cannot be achieved overnight. However, if we view the rights of Nature as I have suggested, they are a relevant innovation to reach that goal, because they involve re-conceptualising the other rights in the light of the ecological principle: not just the right to property, but also the right to health, the right to food, and the right to water, as well as cultural and political rights should be reviewed from an eco-legal perspective.

As in every moment of transition, the boundaries of the new paradigm are not clearly defined. These pages are committed with a materialistic approach and my proposal does not aspire to offer a finished idea of the eco-legal transformation to come. Instead, we shall be content with examining the traces afforded by the changes in course and with categorising those evolutions within intelligible theoretical frameworks. From these methodological premises, it is necessary to emphasise that the rights of Nature are triggering a general metamorphosis. It is not a new subject that fits into the classical logic of rights, but rather a rethinking of those rights in a relational way. This means that all rights must be seen as both natural and cultural devices, that is, as dispositions that we constitute while, on the other hand, they also constitute us. Moreover, they are not to be understood as external resources to fulfil individual goals, but instead as spaces of political, legal, social, and cultural deliberation, in which the needs of a community and of its individuals are tensely compromised. This tension between individual and community deserves some *in extremis* consideration.

Let me put it this way: if the rights of Nature are beyond the individualistic liberal logic, and if the subject of said rights is not a human being, nor a community of human beings, nor a purely "physical" natural being, then it is a rather strange subject that does not conform to common patterns. The concept of ecosystem may be useful in glimpsing at it: the subjects of rights of Nature would essentially be ecosystems, insofar as they are dynamic groups of human communities and "natural" environments that interact with each other. It is these ecosystems that must be protected through the strategy of rights, not the isolated natural entities nor the individual humans that live with and off them. This makes the link between rights and duties more complicated than usual: on the one hand, ecosystems have "rights" to a series of immunities and benefits; on the other hand, the humans that live in those ecosystems have correlative duties to guarding such rights. However, these rights also benefit them, insofar as they are part of those ecosystems. As a result, the humans that live in an ecosystem have duties that are correlative to the rights of that ecosystem; rights to which they are also entitled, because they belong to the same ecosystem. These duties become therefore "self-duties" or, better still, duties of "self-care". A *self-care* that, paradoxically, has effect on the *collective* well-being.

If we look closely, we will see that something quite amazing has happened: the duty to guard and to take care of other living beings has been transformed into a right that also assists and benefits me, as an individual, and the imperative to take care of others has become a "right-duty" to self-care. It could not be otherwise: if the subject-object and nature-culture distinctions collapse when considering Nature from the post-humanist approach, then something similar was bound to happen to the right-duty antagonism. All our rights hang, visibly and invisibly, from a myriad of ties of duties that we are, at the same time, forced to fulfil in order to satisfy our own rights. Ultimately, what happens is that the right-duty dichotomy has turned out to be insufficient when trying to grasp the complexity of these rights. This should lead us to abandon the idea of rights as external *individual goods* that protect us and understand them as a *collective responsibility* to assist and care. A good deal of the dispute between a rights-based ecologism and a duties-based ecologism is, in fact, a consequence of the entanglement between rights and duties. In other words, the clash between those who prefer the strategy of duties and those who insist on the importance of the rights of Nature is nothing but a dead end.

However, we are missing a piece if we want to adequately articulate the tension between the individual and the collective, and to untangle the conceptual mess we found ourselves in a moment ago. The missing piece is that of *commons*, a notion which Capra and Mattei have claimed to be the core notion of their eco-legal proposal (Capra and Mattei 2017, p. 167 ff.). The concept of commons has manifold meanings, both dependent on the historical period and the ideological affiliation (Lloredo 2020). This is not the time to explore them all, but it is necessary to clarify that the commons are not goods whose intrinsic features prevent their commodification – the sun, the air, the digital space. Indeed, the experience of the last years shows us that everything can be commodified in the context of today's capitalism – even the sun or the air. Rather, commons are such, because of the shared organisation that groups of people choose to weave around a given good or activity. In other words, certain spheres of life become common, as long as there are self-organised groups of people that involve themselves in *commoning* the practices surrounding those spheres.

This definition of commons as co-activity has been particularly emphasised by Pierre Dardot and Christian Laval, who have also contributed to the discussion at hand. In an article published in the magazine *Possibles*, they stated as follows:

> Un commun fluvial n'est pas un fleuve, il est le lien entre ce fleuve et le collectif qui le prend en charge. Par conséquent, l'inappropriable, ce n'est pas seulement le fleuve pris comme chose physique, c'est le fleuve en tant qu'il est pris en charge par une certaine activité et c'est donc aussi cette activité elle-même. En ce sens le concept de 'communs' rompt avec la polarité du sujet et de l'objet, d'un objet offert à la prise souveraine du premier (ainsi dans la relation du *dominus* à la *res*), polarité si souvent reconduite dans une certaine tradition juridique et philosophique. (Dardot and Laval 2015)

Thus, we see how Dardot and Laval resort to the notion of commons to explain the complex knot of relationships existing between natural ecosystems and the cultures that inhabit them: it is not only the river, the forest, or the glacier that we protect when we attribute rights to natural entities, but the complex of natural-cultural links that are formed in the interaction. This gives us a valuable clue to thread the relationship between rights and duties more adequately.

My proposal is to integrate rights, duties, and commons as pieces of the same design that explain each other, and in which the notion of commons acts as a hinge between rights and duties. Seen in this light, the above linguistic puzzle becomes much clearer: what we have are *duties* to care for a particular *common*, which could be a river, a forest, a mountain, and so on. At the same time, these duties are not individual – because then we would be dealing with a private good –, but constitute a network of positions that we must perform in a coordinated and deliberative manner, in order to successfully carry out the shared activity involved in that common: the administration of an urban garden, of an irrigation ditch, etc. On the other hand, performing well in these collective care tasks – channelled through reciprocal duties of the "commoners" – has an impact on the existence of certain rights that determine the well-being of the living beings – both human or non-human – that make up the natural-cultural community. Conversely, the rights of those living beings that are part of a given ecosystem are rights to the *use* – not the ownership – of a particular common, understood as such and cared for as such on the basis of a series of collective duties.

The consequences of this approach for the theory of rights are far-reaching, because the introduction of commons defuses the individualistic undercurrent that, as we saw earlier, seemed to be at the basis of the "grammar of rights". At the same time, the development of commons via the procedural idea of *commoning* means that, beyond the case of the rights of Nature, we can ask ourselves about the possibilities of *commoning* the language of rights in general. However, to develop this line of argument would require much more space. The possibilities opened by this approach provide a field of research that can hardly be exhausted in a single incursion.

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