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# In the break (of rights and representation): sociality beyond the non/human subject

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**ABSTRACT**

Nonhuman interests are today routinely articulated in a register of 'rights'. 'Rights of nature' and 'animal rights' have expanded the vernacular of liberal rights beyond the human subject, thereby arguably entering the realm of 'post-human rights'. For such rights to be enforced, however, they must be recognised within a legal order and mediated by human subjects speaking on behalf of nonhuman 'right-holders'. This article focuses on the modes of representation and subjectification of nonhumans – whether natural entities, animals, or ecosystems – that underpin this reconfiguration. While granting rights to nonhumans de-centres the human figure at the heart of liberal legal orders, it remains focused on the category of the subject. Taking on the questions of the symposium on '*After Rights? Politics, Ethics, Aesthetics*', I argue that granting rights to nonhumans might well enable a move beyond or 'after *human* rights', but not 'after human *rights*'. To think the possibility of an '*after rights*', I turn to practices of sociality as articulated in works of critical Black studies that refuse the category of the subject as such. What emerges are modes of living in escape from violent subjections to racialised, colonial, and liberal inscriptions of worlding through 'rights', whether humans or nonhumans.

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## Introduction

The steady increase – both in degrees and in frequencies – of ecological catastrophes is threatening the Western lifestyle as known throughout modernity. In reaction to this existential threat, the liberal complex of 'white saviourism' is being rearticulated in novel ways. It is, this time, not (solely) oriented at 'saving' the Global South, where the predicted apocalypse has in many ways already happened, as much as it has happened for Native, Black, Indigenous, and People of Colour in the Global North.[1] It is, rather, the modernist world as such that 'white saviours' now promise to rescue from climate-induced collapse by reconfiguring distinct ways of inhabiting this world, including different modes of relating to nonhumans.[2] Today, this reconfiguration of human-non-human relations is prominently advocated by recognising 'animal rights' and granting

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'rights to nature'. According to the current UN Special Rapporteur on human rights and the environment, David Boyd, 'rights of nature' constitute nothing less than 'a legal revolution that could save the world'.[3] This position also aligns with liberal critiques of human exceptionalism and human supremacism that transitioned from the margins to the centre of international human rights law over the past decades. Indeed, the 'rights of nature' and 'animal liberation' movements emerged as early as the 1970s, coinciding with the time when, following Moyn, a 'genuine social movement around human rights made its appearance'.[4] After decades of advocacy, 'post-human' interests are today routinely framed in a register of 'rights'.[5] Critical legal scholars tend to see in this a progressive and emancipatory potential, as the increasing deployment of rights to nonhumans – whether natural entities, animals, or ecosystems – counters the anthropocentric nature of liberal human rights frameworks.[6]

In this article, however, I argue that such developments actually reinforce – rather than curtail – modernist cuts between humans and nonhumans. The post-human movement of granting rights to nonhumans emphasises indeed the interactions that (dis)join humans and nonhumans, yet maintains a subject-centred ordering that constrains (legal) relations in problematic ways. This has to do with the mode of representation and recognition through which any liberal rights framework operates, and which is reproduced even when extending its inclusive and protective politics towards a greater integration of nonhuman interests. In attending to what it means and what it would imply to think the possibility of an '*after rights*' by figuring relations between humans and nonhumans outside of the circuits of liberal politics of representation, I turn to critical Black studies to rethink modes of relating in different terms, not only beyond the human but also and most importantly beyond the liberal subject as right-holder.

Black studies offer unique insights on the politics, ethics, and aesthetics of an 'after rights'. This is so because the lived experience of Blackness rests on a historical passage from being a legal object as chattel slave, turned into a legal person or human 'subject' following the formal abolition of slavery. The process of inclusion of (Black) commodified property as once non- or in-human legal objects, now recognised as legal subjects, resonates in today's turning of nonhuman animals or natural entities into legal subjects and right-holders within given legal orders. I am not suggesting, here, that contributions from critical Black studies can be applied to different contexts, cultures, and geographies than those from which they emerged and are entangled with.[7] Yet, as this article is concerned with how granting rights to nonhumans is being clamoured by many legal scholars in response to existential threats posed to the Western world – a world built by the structures of early modernity shaped by the Middle Passage, slavery, and colonialism – I consider it key to deconstruct and undo the anti-Black foundations on which this world was erected and still rests. Careful not to appropriate a lived experience of Blackness that evades me, I want to question the often self-proclaimed 'decolonial' nature of movements that advocate for a recognition of nonhuman rights today, and consider the risks of rehabilitating colonial and anti-Black institutions that underlie such claims. If works from critical Black studies are not primarily addressed to me, my positionality in this anti-Black world – being born into it as a white subject, having inherited its way of living and relating, and benefitted from its white privileges – drives my engagement with anti-Blackness and my attempt

at understanding my complicity with/in it. It is, as such, a thinking not *as* but *in relation* to Blackness that I am engaging with here.

Against this backdrop, I ask: at what costs, and for whom, ought this world built by the structures of thought of early modernity be saved? My aim and positionality in engaging with this question is to attend to the anti-Blackness of this world and the reproduction of these foundations when attempting to 'saving it' with the master's tools. To *unworld* the anti-Black foundations of this world, insights from critical Black studies appear key at two complementary and intertwined levels. First, contributions from critical Black studies enable to problematise the anti-Black world of modernity and its dominant onto-epistemology that (legally) orders the world as we know it. Second, they allow to interrogate the conceptualisation and categorisation of the subject(s) inhabiting this world, and the racial underpinnings that inform this category. This applies both to human subjects and to nonhuman ones, or what is considered as such when nonhumans are granted rights today. What emerges from engaging with critical Black studies are possibilities of *de*-worlding – or 'worlding otherwise'[8] – beyond or beneath the liberal non/human subject and the politics of inclusion this subjectification enacts.

This article aims to contribute to and intervene in the debates on nonhuman rights to open up a mode of thinking human-nonhuman relations without the subjectification associated to rights-holders. Like many in this special issue, I am interested in exploring non-liberal logics of subjectivity, rather than proposing a 'polemical provocation to relinquish human rights as legal entitlements', as Odysseos puts it.[9] To move 'after rights', then, is to move towards other grammars and relations that attend to and repair enduring harms. Critical Black studies foreground modes of collective being and becoming in refusal of the liberal terms of subjecthood, of freedom, and of autonomy as inherited from the post-Enlightenment aesthetic tradition. Fundamentally, however, I am not calling for a 'becoming Black' but attending to the 'Blackness of becoming' when thinking human-nonhuman relations against the violence of subjection and subjectification.

The article unfolds in three sections. I start by engaging with the politics of representation that underlie the liberal 'nonhuman rights' framework and – inspired by Lindahl's critique of representation – question its suitability to reconfigure modes of collective action in more-than-human worlds. I then pause with the creation of legal subjectivity that underpins the recognition of 'post-human' rights, and how it allocates and occludes power to humans and nonhumans differently. Here, it is the categories of the 'human' and the 'nonhuman', their differential yet entangled agencies, and the racialised worlding enacted by way of their subjectification that I problematise. Finally, I explore how practices of Black sociality that refuse such subjectification enable re-thinking human-nonhuman relations not only beyond the human but also beyond the liberal subject. This, I contend, opens up a distinct way of (re)imagining a sociality '*after rights*'.

## 1. Non/Human Rights and the Politics of Representation

In (international) law, 'natural entities' have mostly been regulated as commodified 'natural resources' or 'property',[10] or as forming the 'human environment' which ought to be protected for the benefit of 'the condition of Man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights'.[11] 'Natural entities', 'natural resources' or the 'environment' have thus traditionally been relegated

as objects of legal relations between such subjects. Yet, over the past decades, such entities started being recognised as subjects of law or legal persons, to whom 'rights' have been granted across various jurisdictions.[12] In (international) legal scholarship, granting 'rights to nature' has generally been welcomed as a way to overturn the appropriative, extractive, and exploitative approach to natural resources characteristic of modern capitalist societies and their destructive 'world-ecology'.[13] Akin to an application of posthuman theories to law in practice, as Jones argues, 'rights of nature' have the potential to challenge the anthropocentrism of (international) law.[14] Since Indigenous cosmologies across the world inspired the constitutionalisation of 'rights of nature' – as exemplified with the inscription of Andean cosmologies in both the Ecuadorian and the Bolivian constitutions[15] – a recognition of nonhuman rights bears also the potential to reckon with relational ontologies of Indigenous peoples who long rejected, refused, and resisted the Enlightenment-based modernist separation between humans and nonhumans.[16]

Tensions concerning the translation of Indigenous cosmovisions into 'rights of nature' formalised within liberal human rights systems have, however, also been denounced, as these frameworks tend to rest on universalist values by positing rights as 'applicable everywhere and in all times'.[17] Translating Indigenous cosmovisions into human rights claims risks therefore to disregard how tribal Native peoples actually *become* Indigenous peoples only when they performatively inscribe the human rights discourse into their way of life.[18] What is more, the invocation of particular Indigenous ways of inhabiting more-than-human worlds to legitimise granting 'rights to nature' risks also to mould a distinctive Indigenous worldviews into given, pre-determined, and Western-based legal relations and entitlements.[19] Contemporary calls to '*become indigenous*' against the backdrop of the Anthropocene further tend to exoticize Indigenous knowledges and practices, thereby 'ontologizing indigeneity'.[20] These concerns all point to possible pitfalls when legitimising 'rights of nature' by linking them to Indigenous modes of being and knowing with the purpose of decolonising rights discourses. Against this backdrop, many are therefore cautious when it comes to the protection of nonhumans through 'rights' claims. On the one hand, the *inclusion* of nonhumans in liberal rights frameworks by recognising nonhumans as right holders *expands* the category of the subject by recognising not only humans but also nonhumans as part of it. On the other hand, in so doing, the figure of the 'human' that historically informed the autonomous, free, and self-possessed subject – as well as the racial, class, and gender pre-suppositions that underpin this figure – are left intact.

Indeed, as Jackson warns, a hasty 'move beyond the human' presents the risk of 'mov[ing] *beyond* race, and in particular blackness'.[21] The tendency by some posthuman scholars to overcome the category of the 'human' without, first, 'desedimenting' the liberal understanding of the 'subject' that constitutes it, risks disavowing the fundamental question of race that underlies these conceptualisations.[22] Central here is the figure of the 'slave', which at the dawn of modernity turned Black being(s) into nonhuman objects appropriated by White human subjects. As I will elaborate below, racial categorisations were co-constitutive of both the 'human' figure and its corollary the 'nonhuman'. In this article, I therefore engage with Blackness as a category of thought that is key to understand how 'non-' and 'in-human' being came to be in the first place.[23] More precisely, and in line with the provocations of the

symposium on '*After Rights? Politics, Ethics, Aesthetics*',[24] I question the politics of representation that condition the granting of rights to non/humans and reflect on whether and to what extent this opens up an '*after rights*'.

To start with, the process of granting rights always establishes a relation between an authority – usually the state – that affords rights to subjects under its jurisdiction. As such, rights are legally enforceable claims, or 'practical entitlements which make a difference to the lives of those who hold them'.[25] To be legally enforceable, rights must be recognised institutionally.[26] It is to such authoritative institutions that right-holders address their claims for protection. To this end, the rights at stake must first have been recognised as part of a system of rules within a given legal order, against the background of which both the right-holder and the duty-bearer act.[27] To *claim* a right, then, pre-supposes that both the right claimer and the duty bearer already exist and are recognised as such. The subject of the right, in other words, is already *given* – as if it pre-exists the right it will claim. Lindahl, in contrast, has taken issue with this liberal assumption that posits subjects as existing prior to the rights assigned to them. For Lindahl, the representational process that is triggered when claiming a right paradoxically creates the legal subjectivity – both at the individual and at the collective level – in the very process of claiming to do no more than articulating a subject that is already given. Hence, whereas legal *orders*, qua social orders, are traditionally ascribed to a pre-given four-fold bounded unity of a group perspective, a system of rules, a pragmatic order, and a common world; it is actually the very process of legal *ordering* that creates what is portrayed as given.[28] Thus, the group perspective that Lindahl refers to – the 'collective "we"'[29] – emerges from (and is continuously undermined through) representational processes of a putative collective unity that materialises by way of a doubly asymmetrical representational practice. As Lindahl contends indeed, representation is always asymmetrical since there is no original representation of collective unity without a *de*-presentation of other configurations (or counter-representations) of collective unity, and therefore without a *mis*-representation of these other configurations.[30] It is therefore both the Other's demand for recognition (or claim of a right) within a collective that is asymmetrical, and the collective's response governed by that group perspective that is asymmetrical with respect to the demand of the Other.[31] What is more, for Lindahl, 'processes of collective self-identification are also always processes of collective self-differentiation: we identify ourselves as *this* – rather than as *that*'.[32] The 'that' at stake, here, signals the plurality of legal and political orders and the existence of alternative 'collective "we"' that do not necessarily demand an inclusion and recognition within *this* or *that* other 'collective "we"' but in fact, seek to escape, refuse, and contest such inclusion and recognition. These de- and mis-representations, self-identifications and self-differentiations, have worldmaking effects. Lindahl speaks of processes of enworlding and deworlding: 'the enworlding of joint action brought about by (narrative) representations of collective unity goes hand in hand with a deworlding of what those representations marginalise, precipitating, in extreme situations, the loss of a world'.[33] Being 'granted' rights, then, paradoxically *creates* a legal subjectivity – both individually and collectively – that brings a particular world into existence, at the expense of other worlds. While merely scratching the surface of these debates in this article, what interests me is the extent to which granting rights to nonhumans amounts to a recognition of nonhuman 'others'

as part of a 'collective "we"', thereby enacting a form of 'first-person plural perspective of law-making', as Lindahl puts it.[34]

This question relates to the possibility of representation of nonhumans and their participation in the legal and political orders at stake. Compositional politics or politics of attachments with nonhumans have long been advocated in distinct ways and registers to enable nonhumans to appear and participate into the political sphere of human affairs.[35] Despite all their differences and nuances, what these suggestions share is a recognition of nonhumans not as passive objects or inert matter on which humans can *act on*, but as active subjects and agential beings that humans *act-with*.[36] These affective and material sensibilities tend to rely on a mode of 'recognitive representation', which is well captured in Plumwood's assertion that '[r]ecognizing earth others as fellow agents and narrative subjects is crucial for all ethical, collaborative, communicative and mutualistic projects'.[37] This recognition of nonhumans as bearers of agency exhausts the modernist, Western, and Enlightenment-based illusion that humans were ever strictly separate and autonomous from 'natural objects'.[38] This intimates two particular observations. First, as Lindahl notes, if representational practices invoke the first-person plural perspective of a 'we', then collective representation of nonhumans implies a recognition of nonhumans as part of this 'collective "we"', thereby enabling a passage from *human* to *more-than-human* collectives.[39] Second, if representation implies a recognition of nonhumans as 'fellow agents', as Plumwood would have it, then this demands to recognise nonhumans' ability to act as entangled with humans' own agency, thereby suggesting a mode of *co*-agency between humans and nonhumans.[40]

Hence, when legal scholars advocate to grant rights to nonhumans, they arguably recognise nonhumans as part of the 'collective "we"' of the legal order at stake. Lindahl, however, usefully distinguishes between three constitutive 'we-positions' as part of a 'collective "we"': the 'we-spokespersons', the 'we-at-stake', and the 'we-authors'.[41] Thinking with Lindahl's three constitutive 'we-positions' in relation to the granting of rights to nonhumans such as animals, rivers, or trees within a given legal order, one could argue that such nonhumans are being included within yet spoken on behalf of a particular collective action ('we-spokespersons'), and are being considered as part of those who matter, those who count, and those who are affected by that collective action ('we-at-stake').[42] Yet how, if at all, could nonhumans enter the realm of the 'we-author', Lindahl asks, to be(come) considered as '*co*-agents' within more-than-human collectives?[43]

This interrogation goes to the heart of the question of nonhuman agency, which is too often limited in political and ecological debates to a *participative* instead of *constituent* power.[44] The participative agency of nonhumans is arguably recognised in legal orders when ever regulatory measures or legal relations are extended to nonhumans, including through protective actions like granting them 'rights'. As per a liberal understanding, the rights that nonhumans 'claim' – and the interests they represent – are deemed to be 'heard', translated and affirmatively responded to by the 'collective "we"' of the legal order at stake, thereby recognising 'them' as part of the 'we-at-stake' and the 'we-spokespersons'.[45] A praxis of collective (self-)reflexivity – or more accurately of reflexivity *as* a more-than-human 'collective "we"' formed by and through humans and nonhumans – is thereby allegedly enacted.

But what modalities are needed, if at all possible, for nonhumans to *co-author* legal orders as 'we-author', thereby *acting-with* humans? Put slightly differently: if granting 'rights to nature' transpires as a powerful heuristic to *de*-anthropocentre the modernist binary between human subjects and nonhuman objects of law, how could nonhumans' agency be registered within processes of legal 'co-authoring'-with nonhumans? As it stands, possible answers and configurations haven't been established yet.[46] For now, and as long as a form of co-agency between humans and nonhumans cannot be legally established, a perpetuation of a modernist objectification of nonhumans risks being reinscribed whenever humans grant rights to nonhumans, limiting their role to a participative rather than constitutive agency.

This opens up a number of important interrogations about the modalities and implications of granting rights to nonhumans. First, the very formulation of *granting* 'rights' *to* nonhumans – whether a river, a lake, or an elephant, as done across different jurisdictions[47] – assumes that nonhumans *claim* or demand that their 'rights' be protected *by* human subjects within established legal orders;[48] the same legal orders that objectified and relegated them to the realm of 'natural resources' or 'property' fit for appropriation, extraction, and commodification. Second, and most importantly for our purposes, what positions, connections, and roles for both humans and nonhumans are thereby enacted as part of the legal order at stake?[49] To answer this question, it is useful to assess first how humans and nonhumans (can) *act* within given orders. Assessing how the agency of and between humans and nonhumans – and hence their relationality – is configured shows how their becoming 'subject' cannot be disentangled from the liberal, individualist, and racialised underpinnings of this category.

## 2. Non/Human Agency and the Racialised Underpinnings of the Subject

The turning of nonhuman objects into subjects of 'rights' within given legal orders has historical precedents. As Zalloua noted, the passage of chattel slaves from legal objects into legal persons during the Reconstruction era in the United States led to a formal 'inclusion of blacks under the umbrella of the human'.[50] Extrapolating this to the contemporary post-human movement of granting rights to nonhumans, Zalloua observes how this tendency transmutes nonhumans 'into the "new blacks" in need of emancipation, placing posthumanists in the position of the "new abolitionists"'.[51] The names of the animal 'liberationist' and animal 'abolitionist' movements – as animal rights-based movements opposed to all animal use by humans – testify to such tendency.[52] Yet, '[b]eing posthuman', Zalloua contends, 'cannot bracket the question of race, conceptualizing it away as a correlational holdover'.[53] What is at stake, here, is the need to 'desediment' the liberal category of the subject and its racialised underpinning, before and perhaps rather than extending it by including nonhumans into it.[54] In this spirit, politics of refusal have long been articulated by Native, Indigenous, Black and Brown communities who actively resisted liberal politics of recognition and rejected being included into the legal orders of settler collectives who objectified, exploited, and valued them as capital over the course of history.[55]

If not all human collectives demand a recognition nor want to be protected as part of a dominant legal order, it seems wrongheaded to assume that necessarily all nonhumans are 'claiming' for their inclusion into such a legal structure.[56] Actively refusing being

integrated into a dominant 'collective "we"' to become assimilated as 'one of them' appears, then, as the only way not to disavow – as Saidiya Hartman emphasises, and as I elaborate in the next section – the 'racial domination and liberal narratives of individuality [that are] utterly enmeshed in … emancipatory discourses of rights, liberty, and equality'.[57] As long as granting rights to nonhumans rests on a liberal politics of recognition – where benevolent human subjects include nonhumans yet recognise them as 'voiceless' entities on whose behalf one must act[58] – a replication of violence occurs by the very inclusion of nonhumans into universalist rights frameworks. This inclusion risks reinforcing the humanist objectification of nonhumans and disavow the racialised underpinnings that originally co-constituted the categorisations of 'humans' as self-possessed, rational, and autonomous *subjects* and of 'nonhumans' as owned, appropriated, and exploited *objects* – not only nonhuman animals, plants, minerals and land, but also inhuman chattel slaves, Native and Aboriginal peoples.[59]

What forms of legal relations binding humans with nonhumans could be configured, then, if against the enclosure of subjective, individualist, and racialised 'rights', a reckoning with 'opacity' as irreducible singularity of being,[60] would act as starting point of legal orderings?[61] Questioning the relationality between humans and nonhumans that is assumed in 'nonhuman rights' is particularly salient in light of the increasing use of the term 'entanglement' to emphasise the connections that bind humans and nonhumans. Indeed, the term 'entanglement' is *en vogue* to counter the modernist separation between humans and 'nature' and stress that the former are only one part of the latter.[62] But the term 'entanglement' should be used with caution, as it suggests a particular mode of relating between humans and nonhumans.[63] In line with Barad's agential realist understanding of 'entanglement', the term refers to the mutually constituted agency of human and nonhuman entities.[64] In contrast to the usual 'interaction' – which assumes separate individual agencies of discrete entities that precede each action – Barad uses the neologism of 'intra-action' to signify the mutual constitution of entangled human-nonhuman agencies.[65] Simply put, while the prefix 'inter-' means *among* or *in the midst of*, the prefix 'intra-' means *within*. When two entities *intra*-act, they do so in co-constitutive ways: their ability to act emerges from within their relation. This implies that entities do not exist as such *prior* to their encounter but emerge *through* this encounter. As Barad puts it:

> To be entangled is not simply to be intertwined with another, as in the joining of separate entities, but to lack an independent, self-contained existence. Existence is not an individual affair. Individuals do not preexist their interactions; rather, individuals emerge through and as part of their entangled intra-relating.[66]

The question of whether and how *legal* relations could be enacted as entangled intra-relatings exceeds the purpose of this article.[67] It suffices to note, here, that thinking human-nonhuman relations as intra-actions would imply that 'rights' are not granted *by* an existent collective *to* a discrete and individuated pre-existing entity, whether human or nonhuman. Rather, 'rights' – and obligations[68] – would be viewed as emerging *anew* within each intra-action taking place depending on the multiple entities at stake in this relation and their differential and asymmetrical yet entangled agencies within it.[69] This would inevitably pressure the assumed stability, fixity, and prediction of liberal legal orders when granting 'rights' and foreseeing, governing, and managing their

anticipated and pre-established effects. The process of relating would then neither be coterminous with nor depend upon a prior determination of human and nonhuman relata.[70]

The reader might well be wondering why and how this digression on 'entanglement' matters for the subjectification of both 'humans' and 'nonhumans' and the racialised underpinnings of these categories. But reconfiguring human-nonhuman relations by way of entangled intra-actions matters because it exhausts the modernist assumption about pre-determined, static, and fixed boundaries between pre-existing and strictly separate humans and nonhumans. This, however, is far from implying that boundaries between humans and nonhumans do not exist at all. As Neyrat has argued, a separation must be maintained to act politically.[71] Intra-actions, as such, are 'boundary-making practices that produce "objects" and "subjects" and other differences *out of, and in terms of, a changing relationality*'.[72] What transpires is a powerful critique of the modernist illusion of the self-possessive individuality and autonomy of subjects, whether human or nonhuman. As Barad notes: '[h]olding the category "human" ("nonhuman") fixed (or at least presuming that one can) excludes an entire range of possibilities in advance, eliding important dimensions of the workings of agency'.[73] What emerges is nothing less than a radical rethinking of the protection of human and nonhuman life-forms without the modernist enclosure of thought into 'rights' afforded to pre-figured, individuated, and self-possessed human or nonhuman subjects. It is here that a possibility of thinking an '*after rights*' appears.

As I argue in the next and final section, at the forefront of such thinking '*after rights*' or rather 'after the liberal subject' lies the work of critical Black studies. In common here is the question of 'ontological indeterminacy' that Barad retrieves from quantum physics,[74] yet which Black folks have uniquely endured and embodied ever since the enactment of an anti-Black world through capitalist slavery in early modernity.[75] In what comes next, I therefore elaborate how works from within the Black radical tradition might open up a social life or sociality '*after rights*'.

## 3. *A Sociality* 'After Rights?'

In this section, I draw on works from critical Black studies that are articulated against the backdrop of an anti-Black world, where anti-Blackness is constitutive of the 'human' category and its singular experience of the 'world' as we know it.[76] Blackness, then, is what exceeds, what refuses, and what escapes this singular experience of the world as such.[77] Works from critical Black studies enable to rethink human-nonhuman relations in a distinctive way, by reworking the categories of the 'human' and 'nonhuman' as subject and object of legal relations within given legal orders. As Blacks *embodied* a passage from human subjects into nonhuman objects through chattel slavery,[78] the lived experience of Blackness highlights distinct possibilities of life '*after rights*'. The '*after rights*' at stake, here, is rooted in the refusal by Black humans once considered less-than-, in- or non-human, to claim liberal rights to be admitted into existence in a legal order that first objectified them to death. It is, in other words, a refusal to beg for recognition and inclusion into a legal order, after having been refused access to it and violently deprived therefrom during slavery and imperial colonialism.[79] As Harney and Moten put it: 'We have to love our refusal of what has been refused (to us)'.[80] The objective,

then, is not to correct humanist exclusions in relation to any-*thing* nonhuman and expand the universalist rights framework, but to retrieve the possibility of living outside or '*after rights*' that have originally been refused to Black and nonhuman beings.[81]

In this regard, the category of the 'inhuman' has gained traction to speak of the blurring in Blackness between human subjects and nonhuman objects. As Yusoff – who popularised the term within critical Anthropocene studies[82] – contends: '[i]n the forced alliances with the inhuman, a different mode of subjective relation is forged, where Blackness is a name for nonnormative subjectivity'.[83] Likewise, for Brown, 'being categorized as inhuman, or not quite human, is a privileged position from which to undo the assumptions not only of race thinking but of the other systems of domination with which race thinking is linked'.[84] The social life of inhuman subjectivities transpires as a sociality that bypasses the possessive individuality of the liberal subject and its ontological cuts that enworlded anti-Blackness.[85] In the spirit of Black feminism, this sociality is a generative struggle, as it continuously strives for life-with-others where life is interdicted to these Others. From a Black optimist or Afro-futurist tradition – and against the Afro-pessimist one that works with an abyssal negation of Black life suffered by Blacks 'by way of "social death"'[86] – for Moten, Black social life is here lived as a '*political* death' within and towards the modernist anti-Black polity, or 'in the burial ground of the subject by those who, insofar as they are not subjects, are also not, in the interminable (as opposed to the last) analysis, "death-bound"'.[87] *To* the anti-Black world and its subject, Blackness remains a 'zone of nonbeing'[88] – what Zalloa refers to as 'black ~~being~~': a '(non)being devoid of any relationality' to the anti-Black world and its subject.[89] But Black life and sociality survive (within) anti-Black worlds, outside of the category of the liberal 'subject'. It is in resistance to the social death that anti-Black worlds inflict on Black life, that Blackness is generatively performed and lived experimentally as 'life in escape from the order of things'[90] – or, in Hartman's words: as 'productive, creative, life-saving deviations from the norm'.[91]

Black sociality is therefore above all an aesthetic practice, which 'might provide some experiential and theoretical resources for the renewal of a certain affective, extrapolitical sociality – the new international of insurgent feeling'.[92] The aesthetics of Black sociality are like black music: improvisational, generative, and sensuous.[93] As Lloyd articulates it, the performativity of Blackness – this 'capacity to invent out of nothing and out of the constraints that proclaim one's nothingness' – is 'not an ontological essence nor an originary identity but a constant process, a performativity that is necessarily non-performance insofar as it is never subjected or given over to institution, to the dismay of interpretation'.[94] The sociality that unfolds therefrom manifests new genres of existence, where those excluded from the category of the 'human subject' and untethered from the emancipatory hope of 'rights' experiment with distinct modes of sociality striving for Black life.[95]

Set against the background of an anti-Black world, the aesthetic sociality of Blackness enables to remain alive *in the break* between 'necessity' – or the law – and 'chance'.[96] It is the chance seized by those who strive for a life in flight away from the 'Black social death' inherent to an anti-Black world, akin to the fugitive communities of the maroon during slavery.[97] In this spirit, Moten speaks of the lived experience of 'fugitivity' as a 'paraontology', where being fugitive is both *ante*-ontological qua a modernist ontology – where

being is being a political subject and bearer of rights, and where the ontological reign is exclusively reserved to the normative subjectivity and singular experience of the liberal White human subject – and *anti*-ontological qua a modernist ontology, since fugitivity refuses the anti-Black foundations that came to constitute the nature of being throughout European modernity as being an autonomous, self-possessed, free political subject and bearer of rights.[98] The 'para-' of paraontology emphasises a superposition or rather appositionality of living conditions, where a fugitive sociality happens within the 'undercommon' space of the anti-Black world and its modernist ontology.[99] In an anti-Black world, then, the paraontology of fugitivity is what keeps open the possibility of Black life in refusal of being assimilated and forced into becoming a 'human' subject included into an anti-Black polity. As Moten insists: 'our resistant, relentlessly impossible object is subjectless predication, subjectless escape, escape from subjection, in and through the paralegal flaw that animates and exhausts the language of ontology'.[100] The language of modernist ontology rests indeed on what Meillassoux calls the 'Kantian correlational machine', or the idea of a transcendental thinking-subject correlating to the world.[101] Yet for Moten, such a co-relationality is always 'an expression of power, structured by the *giveness* of a transcendental subjectivity that the black cannot have but by which the black can be had'.[102] Black sociality is then what strives beyond or rather 'beneath' the *given* that is naturalised as universal in an anti-Black ordering of the world.[103] As Zalloua notes, *in fine,* paraontology infuses Blackness with (im)possibility: with '*possible* moves that can only appear as *impossible* from within the present ontology of the human'.[104]

What transpires from critical Black studies is therefore not a *post*-humanism but a *de*-humanism, which focuses – as Jackson insists – on the violence of humanisation or 'the burden of inclusion into a racially hierarchized universal humanity'.[105] It is an affirmation and a celebration of the 'inhuman' that Blacks and animals share in their *flesh*.[106] This *de*-humanism opens up 'possibilities of transspecies identification and cross-species solidarities and the queer collectivities that can form through active, unmasterful forms of self-dispossession'.[107] Black studies conceptualise and practice life without self-possession or rather without possession of the self, whether human or nonhuman. This offers an anarchic 'sociality performed by non-sovereign movements of the dispossessed moving in solidarity'.[108] Here, the solidarity that moves Blackness and its sociality extends beyond anthropocentric horizons.

Indeed, in *Being Property Once Myself,* Bennet contends that the shared fleshliness between Blacks and animals during chattel slavery – as both subjected to a violent embodiment of their flesh as property – opens up a 'profoundly ecological' vision about interspecies empathy and solidarity.[109] In a different register, in *Becoming Human,* Jackson defends a 'symbiotic view of life' against the liberal perspective of sovereign, autonomous, and self-possessed individual subjects, since any material body is always embedded within multispecies assemblages.[110] Yet, Jackson retraces how the emergence of this symbiotic view of life was forged through racialised human-animal distinctions in Western scientific and philosophical discourses and material practices of enslavement and colonialism that encompass both human and nonhuman life-forms.[111] Jackson retrieves the co-constitutive process of 'animalization of Blackness' and 'racialization of animality' to show how a 'Blackened animality' underpins the abjection of the 'human' category in relation to Black people.[112] Against this backdrop, Jackson speaks of an 'ontologized

plasticity of Blackness', for Black existence is endlessly malleable: resilient, fungible, and experimenting with unruly and dissident ways of being, knowing, and feeling existence in an anti-Black world.

What, then, could those invested in exploring the possibility of an '*after rights*' learn from critical Black studies, in relation to one of the main movements of going beyond or 'after *human* rights' by granting 'rights' to nonhumans? What comes to light is a shared yet differential violence endured by way of an ontological indeterminacy imposed on Black and nonhuman beings throughout modernity. After refusing to recognise Blacks and nonhumans as part of the modernist reign of subjectivity, appropriating their flesh and turning it into possessed and commodified bodies, liberal legal orders are now expanding their protective schemes to include those formerly subjugated as non/in-human. Yet, instead of reconfiguring the boundaries of subjectivity by implementing corrective expansions to include the latter, I argued that it is the subject-formation of the liberal 'human' category itself that ought to be interrogated first or, as Karera puts it: it is 'the very foundations of becoming – of this "we" to come' that ought to be disedimented first.[113] Only without this liberal 'subject' can the question of an '*After Rights?*'[114] and its politics, ethics, and aesthetics be meaningfully (re)configured.

## Conclusion

With this article, I intended to raise more questions than answers – to open up distinct ways of problematising the question of an '*after rights*'?, rather than proposing alternative 'solutions' to the immediate problem of how to better protect non/human life-forms. Inspired by works from critical Black studies, I sought to 'remain in the problematic [I] engage with rather than seeking resolution and exit'.[115] With the climate catastrophe amplifying year after year and the ongoing sixth mass extinction well on its way, reconfiguring human-nonhuman relations is key to rethinking modes of co-existence and co-habitability, including through law. One way of reworking legal relations between humans and nonhumans has been through the expansion of the liberal rights frameworks towards 'nonhuman rights', whether natural entities, animals, or ecosystems. This approach has mostly been lauded in legal scholarship in response to the pressing need to dismantle the anthropocentrism that orders legal relations between humans and nonhumans.[116] Yet, nonhuman rights have also been critiqued for providing a distinctive humanist answer in attempting to swiftly move beyond the human while remaining stuck with/in a liberal frame of representation.[117]

Taking on the invitation from this symposium's editors to imagine an '*after rights*', what emerges from the analysis is nothing less than a profound reconfiguration of the polysemic meaning of the 'after' in '*after rights*', which can both refer to a preposition that expands the right-holders beyond the human – as in 'after *human* rights' – and to a temporal conjunction that implies an exhaustion of rights – as in 'after non/human *rights*', or simply '*after rights*'. As much as thinking post-humanism through a consideration of the 'post-' highlights the necessity of 'thinking *with and against* humanism',[118] in this article I argued that thinking post-human rights '*after rights*' equally highlights the necessity of thinking *with and against* non/human rights. I argued that granting rights to nonhumans may well disrupt the modernist binary between humans and nonhumans, yet leaves the problematic subject/object dichotomy that undergirds any right claim

intact. This has to do with the liberal politics of representation that underpin this process, as elaborated in the first part of this article. Whilst expanding the category of the subject by 'welcoming' nonhumans within it – and thereby expanding also the 'collective "we"' of the legal order at stake, as Lindahl argues, by turning it from a human into a more-than-human collective – the very category of the 'subject' and its emergence in racialised discourses and material practices cannot be disavowed. As I argued in the second part of this article, maintaining the category of the subject as right-holder leaves in place the racial structure that sedimented the understanding of this figure as an autonomous, self-possessed, and free human being.[119] What is more, recognising nonhumans as liberal 'subjects' of law is far from implying a recognition of their agency or normativity, as Davies contends[120] – or as potential 'co-authors' of laws, with Lindahl[121] – nor does it do away with the anti-Black grounding that founded the very definition of the figure of the liberal 'subject'. As Zalloua puts it: '[a] rejection of anthropocentrism does not index a departure from whiteness and antiblackness'.[122] A move beyond the human and the subject at its centre must therefore first (re)orient critical attention to the problem of race. Against this backdrop, in the third part of this article, I juxtaposed the liberal politics of representation that tend to bring nonhumans into existence within and as part of pre-existing legal orders by recognising their 'rights', with the possibility of thinking a sociality '*after rights*' in line with the sensibilities, aesthetics, and solidarity that move and animate works in critical Black studies.

To conclude, and in responses to the interrogations of this symposium,[123] to the first central question on whether '*we can, and should, imagine an "after rights"?*', my intervention responded in the positive. While the rhetoric of rights remains a strategic leverage of protection against all sorts of enduring violence inflicted on vulnerable, disenfranchised, and marginalised beings, claiming rights necessarily establishes a relation with a centre of authority (with usually the state as ultimate duty-bearer). This pre-supposes an identification of the right-holder(s) and hence, its recognition and inclusion into the state's legal order. The individual(s) are thereby making themselves transparent to the legal order's pre-established schemes of protection – which is not to say that the legal order succeeds in ever achieving a total transparency. Indeed, there is always an excess in the interests that individual(s) seek in claiming rights, a potentiality that cannot fully be accounted for. Yet, the legal ordering of relations into right claims, I argued, tames this excess and disavows its opacity. Works in critical Black studies have creatively lingered with/in this opacity, where sociality and fugitive modes of collective being and becoming unfold beneath the ground of the liberal legal order, to strive for life '*after rights*'. Here, the 'after' is not a temporal marker. The aesthetics of Black sociality are not practiced following a failed pursuit of rights. It is what emerged as movements of solidarity by, between, and for those who were never recognised as right-holders in the first place and who – whilst today being formally granted access to this liberal category – refuse and reject what has been refused to them.

To the second central question on '*what comes "after rights"?*', I took inspiration from scholars and activists in critical Black studies working on human-nonhuman relations. Distinct modes of sociality emerged from the analysis, which can inform a reconfiguring of collective action and solidarity between humans and nonhumans '*after rights*', outside of the register of the liberal non/human 'subject' and its 'rights'.

Finally, in response to the last central question on what '*the political, ethical and aesthetic/poetic implications of thinking "after rights" [are]?*', I argued that the aesthetics of Black sociality unlock the possibility of 'creating a grammar for thinking and feeling beyond the law' as given, as Judy formulates it.[124] If granting rights to nonhumans falls back onto humanist modalities whereby the modernist category of the subject remains pivotal to render the protection actionable – even on behalf of nonhumans integrated within the legal order at stake – then thinking '*after rights*' beyond the law qua modernity opens up modes of sociality freed from the violence of the order of things. Against the liberal understanding of freedom as the autonomy of the self-possessed individual, freedom is here recalibrated as a constant escape, a movement, a deconstructive 'becoming other than the given'.[125] It is a potential 'freedom' not to be in humanist terms.[126] The implications are multiple and diverse. This is not a political agenda with a pre-determined teleology. There is no script to such sociality, nor is it an actionable programme. The practice of such a sociality might well be all there is '*after rights*', far away from a recuperation of the legal form of the subject and its rights.

## Notes

1. A. Mitchell and A. Chaudhury, 'Worlding Beyond "the" "end" of "the world": White Apocalyptic Visions and BIPOC Futurisms', *International Relations* 34, no. 3 (2020): 309.
2. On the 'white saviour' trope in climate justice narratives, see J. Thomson, 'A History of Climate Justice' (Solutions, 2016). https://thesolutionsjournal.com/2016/02/22/a-history-of-climate-justice/.
3. D. R. Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (ECW Press, 2017).
4. S. Moyn, *Human Rights and the Uses of History* (Verso, 2014), at 82-83. See also C. Stone, 'Should Trees Have Standing? Toward Legal Rights for Natural Objects', *Southern California Law Review* 45 (1972): 450; and P. Singer, *Animal Liberation: A New Ethics for Our Treatment of Animals* (HarperCollins, 1975).
5. Throughout this article, I distinguish post-human from post-humanism to stress that, in many ways, the 'rights of nature' and 'animal rights' movements expand indeed the rights framework beyond the human, thereby enacting a post-human approach, yet do so without desedimenting the category of the humanist 'subject', i.e. without enacting a post-humanist approach. Understood as such, a post-human approach stabilises the category of the subject by retaining it as the determining focal point of analysis. As will become clear throughout this article, my understanding of post-humanism is embedded in a refusal of humanist commitments to the category of the liberal (human) subject as an autonomous, free and self-possessed agent. As such, my working with post-humanism is to be distinguished from legal activists who use it to inflate the category of the subject beyond the human without questioning the values of humanism at its core. By way of illustration, Stucki argues that 'human rights turned into (human and nonhuman) animal rights are *post-human rights* – not "rights of posthumans", nor an anti-humanist regression, but rather, a post-humanist progression of human rights'. S. Stucki, *One Rights: Human and Animal Rights in the Anthropocene* (Springer, 2023), at 99. In such accounts, post-humanism is reduced to post-anthropocentrism. While post-anthropocentrism is key to my understanding of post-humanism, I want to rethink relations between humans and nonhumans against or beyond humanist modes of representation and subjectification to think a sociality without violent subjections to racialised, colonial, and liberal inscriptions of subjective 'rights', whether humans or nonhumans.
6. See, e.g., E. Jones, 'Posthuman International Law and the Rights of Nature', *Journal of Human Rights and the Environment* 12, no. 1 (2021): 76-101; B. Schippers, 'Towards a

Posthumanist Conception of Human Rights?', in *Critical Perspectives on Human Rights* ed. B. Schippers, (Rowman and Landfield, 2019), 63-85; K. Sanders, '"Beyond Human Ownership"? Property, Power and Legal Personality for Nature in Aotearoa New Zealand', *Journal of Environmental Law* 30 (2018): 30.

7. As will become clear throughout this article, the anti-Black world 'we' live in was enacted by and through capitalist slavery and colonialism and cannot be disentangled therefrom. Slavery and its enduring afterlife are what (legally) orders the modernist world and its mode of living. *Cf.* E. Williams, *Capitalism and Slavery* (Chapel Hill, 1944). Hartman calls 'the afterlife of slavery' the unrelenting anti-Black violence of the enduring inequalities that are structuring the world, from limited access to health care and education, to incarceration, premature death, and impoverishment. S. Hartman, *Lose Your Mother: A Journey Along the Atlantic Slave Trade Route Terror* (Farrar, Straus and Giroux, 2007), at 6.
8. *Cf.* T. Lethabo King, J. Navarro and A. Smith, *Otherwise Worlds: Against Settler Colonialism and Anti-Blackness* (Duke University Press, 2020). On practices of *de-* and *en-*worlding, see also Lindahl, *infra* note 32.
9. *Cf.* L. Odysseos, 'After Rights, After Man? Sylvia Wynter, Sociopoetic Struggle and the "Undared Shape"', in this special issue. Several authors work with politics of affirmative or abolitionist refusal to explore 'what might become intelligible if we move outside the perspective or reference frame of rights?', as Pham puts it. See Q. N. Pham, 'Nông Dân Being Wronged: Fighting for the World in a Place'; 'After Property? The Haitian Revolution and Abolitionist Foundations for a Universal Right to Freedom from Enslavement'; K. Lalor, 'Queer Refusals of the Predictable Present: The Untethered Futures of 'After' LGBTQI Rights'; and S. Abdelkarim, 'Freedom "After Rights": Abolitionist Praxis and the Palestinian Struggle for Self-Determination', in this special issue.
10. See U. Natarajan and K. Khoday, 'Locating Nature: Making and Unmaking International Law', *Leiden Journal of International Law* 27 (2014): 573. The turning of nonhumans into property is still present in the growing body of literature arguing for a 'living property' (or similar) status for animals. See, e.g., A. Fernandez' 'Not Quite Property, Not Quite Persons: A "Quasi" Approach for Nonhuman Animals' *Canadian Journal of Comparative and Contemporary Law* 5, no. 1 (2019): 155. I thank Iyan Offor for pointing this out to me.
11. UNGA A/RES/2398 (XXIII), Problems of the Human Environment (3 December 1968), preamble. See also the Stockholm Declaration on the Human Environment (16 June 1972) UN Doc.A/Conf.48/14/Rev.1 (1973) 11 ILM 1416 (1972). This is epitomised with the recognition by the UN General Assembly on 28 July 2022 of a 'human right to a healthy environment'. www.ohchr.org/en/press-releases/2022/07/historic-day-human-rights-and-healthy-planet-un-expert.
12. E.L. O'Donnell and J Talbot-Jones, 'Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India', *Ecology and Society* 23 (2018): 7. See also C. M. Kauffman and P. L. Martin, *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (MIT Press, 2021), and *supra* note 6.
13. As argued by Moore, a world-economy based on the appropriation, extraction, and exploitation of 'nature' underpins this world-ecology. J.W. Moore (ed.), *Anthropocene or Capitalocene? Nature, History, and the Crisis of Capitalism* (PM Press, 2016). See also U. Natarajan and J. Dehm (eds), *Locating Nature: Making and Unmaking International Law* (Cambridge University Press, 2022).
14. Jones, *supra* note 6.
15. I explore how contemporary calls to recognise 'rights of nature' in Western legal orders (especially in the EU) draw on Indigenous cosmovisions (especially Andean ones) in M-C. Petersmann, 'The EU Charter on Rights of Nature: Colliding Cosmovisions on Non/Human Relations,' in *Non-Human Rights: Critical Perspectives*, eds. C. Douzinas and A. Alvarez-Nakagawa, (Edward Elgar, forthcoming).
16. I. D. Vargas Roncancio, 'Conjuring Sentient Beings and Relations in the Law: Rights of Nature and a Comparative Praxis of Legal Cosmologies in Latin America', in *From*

*Environmental Law to Ecological Law*, eds. K. Anker et al., (Routledge, 2020), 119. On Indigenous cosmovisions and post-humanist rights of nature, see *supra* note 6.

17. Consequently, those who claim rights appear as pre-legal natural subjects of international law. See S. Young, 'The Temporal Trap of Human Rights' in *The Times and Temporalities of International Human Rights Law*, eds. K. McNeilly and B. Warwick, (Hart, 2022), 67-84. On how the 'rights of nature' framework collides with Indigenous worldviews, see also S. Young, *Indigenous Peoples, Consent and Rights: Troubling Subjects* (Routledge, 2020); and L. Temper, 'Blocking Pipelines, Unsettling Environmental Justice: From Rights of Nature to Responsibility to Territory' *Local Environment* 24, no. 2 (2019): 94-112.
18. Young (2020), ibid., at 32. For Young, this presupposes that 'Indigenous peoples' pre-exist international legal discourse and are somehow naturally and universally identifiable as 'Indigenous peoples' without regard for the *construction* of tribes, First Nations, states, empires, international legal discourse or any legal discourse. As such, there is no concern with *when* and *how* tribal peoples *become* identifiable or *constituted* as 'Indigenous peoples'. Rather, it produces seemingly 'a-temporal and a-historical subjects'. Young (2022), ibid., at 76-77.
19. *Cf.* M-C. Petersmann, 'Contested Indigeneity and Traditionality in Environmental Litigation: The Politics of Expertise in Regional Human Rights Courts' *Human Rights Law Review* 21, no. 1 (2021): 132-56.
20. Calls to 'become indigenous' abound in governing imaginaries for the Anthropocene, from Latour's analogy of 'becoming Earthbound' by 'learning this from [Indigenous peoples]', to Danowski and Viveiros de Castro's argument that in the Anthropocene, 'we would thus all be indigenous, that is Terrans, invaded by Europeans, that is Humans'. *Cf.* D. Chandler and J. Reid, *Becoming Indigenous: Governing Imaginaries in the Anthropocene* (Rowman & Littlefield, 2019), 7-9. Chandler and Reid warn against the tendency in 'ontopolitical anthropology' that exoticize Indigenous knowledges and practices and thereby 'ontologise indigeneity' when advocating for 'non-modernist' approaches to being in the Anthropocene.
21. Z. I. Jackson, 'Outer Worlds: The Persistence of Race in Movement "Beyond the Human"' *GLQ: A Journal of Lesbian and Gay Studies* 21, no. 2-3 (2015): 215-18, at 216. In a similar vein, Karera argues that the focus on posthuman relationalities in critical Anthropocene studies 'obscure[s] a deeply fragmented ethos unequipped to account for the suffering of racialised bodies'. A. Karera, 'Blackness and the Pitfalls of Anthropocene Ethics' *Critical Philosophy of Race* 7, no. 1 (2019): 32-56, at 39.
22. On the 'desedimentation' of the subject, see Chandler, *infra* note 54. The emergence of capitalist slavery led to the invention of 'Blackness' and 'Whiteness' by exclusively reserving the figure of the human subject to the latter yet needing the figure of the former to justify this process. As Chandler shows, Du Bois anticipated Fanon's concern with the de – or transformative pressure that Blackness puts on the ontological category of the human subject. *Cf.* N. D. Chandler, *X – The Problem of the Negro as a Problem for Thought* (Fordham University Press, 2013). On how this categorisation of the 'human' also gave form to the category of the 'animal' (and how the abject animality of Blackness is constitutive of and defines the white human), see Z. I. Jackson, *Becoming Human: Matter and Meaning in an Antiblack World* (New York University Press, 2020); and J. Bennett, *Being Property Once Myself: Blackness and the End of Man* (Harvard University Press, 2020). On how endangered (mammal) species share attributes of Black life-forms, such as remaining fugitive from Western modes of appropriation, knowledge and control in order to protect ones living, see also A. P. Gumbs, *Undrowned: Black Feminist Lessons from Marine Mammals* (AK Press, 2020).
23. Although I do not engage with concrete practices and material struggles of Black being(s) in this article, I by no means intend to reduce Blackness to a concept, since it is first and foremost the lived experiences of Black, Brown and Indigenous peoples that are nested within 'the afterlife of slavery', its plantation logics, and its enduring aftermath, that are at stake. *Cf.* K. McKittrick, 'Plantation Futures' *Small Axe* 42 (2013): 42 1. On 'the afterlife of slavery', see Hartman, *supra* note 7.

24. *Cf.* 'CfP: After Rights? Politics, Ethics, Aesthetics'. https://criticallegalthinking.com/2021/05/26/cfp-after-rights-politics-ethics-aesthetics.
25. S. James, 'Rights as Enforceable Claims' *Proceedings of the Aristotelian Society* 103, no. 2 (2003): 133-47, at 133.
26. I intentionally refrain from entering into jurisprudential debates about the nature and extent of such 'institutional' recognition. As argued by Martin, 'full-bodied human rights are ways of acting or ways of being treated that have sound normative justification, that have authoritative political recognition or endorsement, and that are maintained by conforming conduct and, where need be, by governmental enforcement'. R. Martin, 'Human Rights', in *A System of Rights* (Oxford University Press, 1997), at 73.
27. The notion of 'background' can be understood here as defined by Lindahl, namely as conditioning the 'everyday practices, capacities and assumptions into which participants [of joint action within a legal order, here right-holders and duty-bearers] are socialised yet which are not themselves thematised in the course of joint action'. H. Lindahl, 'Intentionality, Representation, Recognition: Phenomenology and the Politics of A-Legality', in *Political Phenomenology: Experience, Ontology, Episteme*, eds. T. Bedorf and S. Herrmann, (Routledge, 2020), 262.
28. I refer here to the phenomenologically inspired account of collective action that Lindahl developed as 'institutionalized and authoritatively mediated collective action [IACA]' model of law. *Cf.* H. Lindahl, *Authority and the Globalisation of Inclusion and Exclusion* (Cambridge University Press, 2018). The politics of inclusion and of exclusion referred to by Lindahl concern situations of 'a-legality', namely political disruptions or forms of resistance to legal ordering that elude, exceed, and withdraw from a legal norm that supposedly grasps that situation. 'A-legal' situations are both *inside* and *outside* a legal order: they are *excluded* by how the legal order *includes* these situations. This calls into question how legal orders order (or unify) by drawing boundaries that include and exclude. *Cf.* H. Lindahl, *Fault Lines of Globalization: Legal Order and the Politics of A-Legality* (Oxford University Press, 2013).
29. As Lindahl elaborates on this group perspective of a 'collective "we"': '[w]hile the English grammar favors the active verbal form – collective $A_1$ enacts φ, or collective $A_2$ refuses to ρ – the passive verbal form expresses more accurately the nature of collective agency: collective $A_1$ is deemed to have enacted φ; collective $A_2$ is deemed to have refused to ρ. Collective acts are acts by individuals or groups of individuals *ascribed* to a collective as its own acts; representations are representational *claims*, which is why collective unity is always putative: defeasible and contingent'. Lindahl, *supra* note 27, at 264.
30. Ibid., at 266.
31. H. Lindahl, 'Inside and Outside Global Law: The 2018 Julius Stone Address' *Sydney Law Review* 41, no. 1 (2019): 1-34, at 21.
32. H. Lindahl, 'A-Legality, Representation, Constituent Power: Reply to Critics' *Etica & Politica / Ethics & Politics* (2020): 1825-5167, at 436.
33. Lindahl, *supra* note 27, at 266.
34. When engaging with the movement of granting rights to nonhumans, I am not ascribing these positions to Lindahl. As will become clear, his critique of 'rights of nature', which he aims to elaborate in his current research on 'Geoconstitutionalism: Reimagining Authoritative Lawmaking in the Anthropocene', takes issue precisely with the disjunction between humans as subjects and nonhumans as objects of legal relations that is perpetuated within claims about 'rights of nature'.
35. The literature on material processes and nonhuman agency in the social and political fabric is vast. See, i.a., J. Bennett, *Vibrant Matter: A Political Ecology of Things* (Duke University Press, 2010); B. Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford University Press, 2007); D. Haraway, 'Manifesto for Cyborgs: Science, Technology, and Socialist Feminism in the 1980s', *Socialist Review* 80 (1985): 65-108. For a critique of coexistence as composition, see also L. Odysseos, *The Subject of Coexistence: Otherness in International Relations* (University of Minnesota Press, 2007).

36. *Cf.* D. Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (Duke University Press, 2016). As Haraway argues, becoming is always a 'becoming-with', which offers an onto-epistemology grounded in connection instead of separation.
37. V. Plumwood, *Environmental Culture: The Ecological Crisis of Reason* (Routledge, 2002), at 175.
38. *Cf.* N. Wolloch, *History and Nature in the Enlightenment: Praise of the Mastery of Nature in Eighteenth-Century Historical Literature* (Routledge, 2016). This analytical premise was rejected in many Indigenous and decolonial traditions. *Cf.* J. Singh, *Unthinking Mastery: Dehumanism and Decolonial Entanglements* (Duke University Press, 2018).
39. *Cf.* H. Lindahl, 'Place-Holding the Future: Intergenerational Justice in More-than-human Collectives', *Rivista di Filosofia del Diritto* 2 (2021): 313-30.
40. On this process of 'co-agency' as articulated by Lindahl and Petersmann, see F. Fleurke et al., 'Constitutionalizing in the Anthropocene' *Journal of Human Rights and the Environment* (2023), (forthcoming).
41. Lindahl (2018), *supra* note 28.
42. Lindahl, *supra* note 39, at 315. In this article, Lindahl focuses on the question of intergenerational (in)justice within more-than-human collectives through the example of Manly's Little Penguins' struggle to breed. While he does not elaborate on the 'we-positions' in relation to the liberal movement of granting rights to nonhumans, the reification of 'nature' throughout such a process will be the critical focal point of his current research (*supra* note 34). For examples of such 'nonhuman rights', see O'Donnell and Talbot-Jones, *supra* note 12.
43. Lindahl defines the 'we-author' as '"we" who authorize – or disavow – representational claims made on "our" behalf'. Ibid., at 327. Lindahl raises the question of nonhumans as 'we-authors' in a way that acknowledges them as speaking and acting on behalf of the whole, that is, as representing the collective. He intends to develop this through a phenomenological account of embodiment that rests on inter-corporeality and inter-affectivity as a possible way to enact collective action within more-than-human collectives. Lindahl, *supra* note 34.
44. See, e.g., B. Latour, *Politics of Nature: How to Bring the Sciences into Democracy* (trans. C. Porter, Harvard University Press, 2004). For an example of how Latour's 'Parliament of Things' has been experimented with to grant 'rights to nature' and make natural entities 'sovereign', see also The Embassy of the North Sea, at www.embassyofthenorthsea.com.
45. Lindahl, again, critiques the liberal movement of granting 'rights to nature' and develops a distinct reconfiguration of intergenerational justice within more-than-human collectives. He speaks of 'collective self-affirmation', whereby nonhumans matter not only *to* us but *as part of* 'us' (or the 'collective "we"'). As he puts it: 'to recognize the claim of [nonhumans] means to acknowledge an obligation towards them, an obligation to which "we" respond by granting them a right to a place and time of their own – hence also legal subjectivity and authorized act-contents – in our collective [legal order]'. Lindahl also stresses that 'the "more" of more-than-human collectives is not merely shorthand for a collective composed of humans and nonhumans [but] speaks to the *excessiveness* of the [nonhumans]'s demand for justice'. This excessiveness is twofold: a 'recognitive excess' on the one hand ('the unordered and unorderable for a given legal order') and an 'excess beyond recognition' on the other hand ('the unordered and unorderable for law' itself, since 'justice exceeds what the law can say and do'). Lindahl, *supra* note 39, at 323 and 325.
46. A question Lindahl takes to be the following step to work out in his research project, *supra* note 34.
47. On the granting of rights to the Whanganui River in New Zealand and the Ganges and Yamuna rivers in India (though this decision was later overturned by India's Supreme Court), see O'Donnell and Talbot-Jones, *supra* note 12. In February 2019, the Lake Erie became a legal person in the US. The Colombian Amazon was also granted rights in the Ecuadorian Constitution in 2008. On this development, see Jones, *supra* note 6; and

Vargas Roncancio, *supra* note 16. On the litigations to grant rights to chimpanzees and elephants, see the Nonhuman Rights Project at www.nonhumanrights.org.

48. Instead of assuming that such 'claim' is constitutive of the demand by nonhumans, Lindahl insists that the demand that is raised by the 'Other' is something more and other than how that demand is couched and responded to by a collective. Lindahl, *supra* note 39, at 324.
49. Going back to Lindahl again, in relation to more-than-human collectives: 'the "more" of more-than-human collectives is not merely shorthand for a collective composed of humans and nonhumans. It concerns the *excessiveness* of the [nonhumans]' demand for justice'. Lindahl, ibid., at 325.
50. Z. Zalloua, *Being Posthuman: Ontologies of the Future* (Bloomsburry, 2021), at 145. See also *infra* note 75.
51. Ibid., at 145.
52. On 'animal liberation', see Singer, *supra* note 4. On animal abolitionism, see G. L. Francione and A. E. Charlton, *Animal Rights: The Abolitionist Approach* (Exempla Press, 2015). On how 'critics of anthropocentrism often proceed by humanizing animals in forms of rights, welfare, and protection without questioning how advocates are constructing themselves in this process', see also Jackson, *supra* note 22, at 15.
53. Zalloua, *supra* note 50, at 156. We are reminded, here, of Jackson's warning that a posthuman move beyond the human risks equating a hasty move beyond race (and blackness in particular). Jackson, *supra* note 21.
54. I draw on the understanding of 'desedimentation' as developed by Chandler, for whom to desediment the category of the liberal subject is 'to make tremble [this ontological category] by dislodging the layers of sedimentated premises that hold it in place'. Chandler, *supra* note 22, at 137. By attending to Du Bois's 'problem of the color line', Chandler shows how Du Bois desidemented the category of the subject by 'desediment[ing] the fact that according to his most intimate genealogy [as neither 'African' nor 'American'], the *other* is, quite literally, *himself*. And this is *true* in a double sense: (1) he is other than himself … and (2) that which he thought was *the other, is he, himself*', at 105. This desedimentation of the subject leads to what Du Bois called a 'double-consciousness' as the sense of being (i.e., the experience of a racialised life where one sees itself from the perspective of whiteness as the putative subject in contrast to its own perspective as precarious object). Ibid., at 119.
55. Although these works differ in significant ways, their approaches converge around 'politics of refusal' of liberal recognition. See, e.g., G. S. Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press, 2014); A. Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Duke University Press, 2014). This aligns with Lindahl's take on 'collective *self*-recognition', which deploys a process of identification and differentiation, *at once*: '[t]he self-identification – hence self-inclusion – that takes place in self-recognition is also always a self-differentiation – hence a self-exclusion'. Lindahl, *supra* note 27, at 269. Lindahl applies his analysis to the Mabo 2 ruling of the Australian High Court issued in 1992 (*Mabo v Queensland 1992*), at 270-274.
56. *Cf.* A. Grear, 'It's Wrongheaded to Protect Nature with Human-style Rights' (AEON, 19 March 2019), at https://aeon.co/ideas/its-wrongheaded-to-protect-nature-with-human-style-rights. This 'refusal' from the part of sentient animals is well captured in the 2014 Hungarian film 'White God' directed by K. Mundruczó. On how endangered marine mammals have protected their living existence by becoming fugitives, hiding from scientists and other mechanisms of control, see also Gumbs, *supra* note 22, at 110.
57. S. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in 19th Century America* (Oxford University Press, 1997), at 116.
58. *Cf.* R. S. Abate, *Climate Change and the Voiceless: Protecting Future Generations, Wildlife, and Natural Resources* (Cambridge University Press, 2019). See also M. Brown, 'Speaking for Nature: Hobbes, Latour, and the Democratic Representation of Nonhumans', *Science & Technology Studies* 31, no. 1 (2018): 31-51; and M. Tănăsescu, *Environment, Political Representation, and the Challenge of Rights* (Palgrave, 2016).

59. As Wynter holds: '[t]he indigenous, the unchosen, was to be transformed from the *human subject* of his own culture into the *inhuman object* of the European culture'. S. Wynter, 'Black Metamorphosis: New Natives in a New World' [1970s], at 10 (original emphases). https://monoskop.org/log/?*p* = 22948.
60. 'Opacity' as 'irreducible singularity' is here referred to against the 'transparency' that liberal legal orders configure. As Glissant puts it: 'I thus am able to conceive of the opacity of the other for me, without reproach for my opacity for him. To feel in solidarity with him or to build with him or to like what he does, it is not necessary for me to grasp him. It is not necessary to try to become the other (to become other) *nor to "make" him my image*'. É. Glissant, *Poetics of Relation* (The University of Michigan Press, 1997), at 190 and 193 (emphases added).
61. Returning to Lindahl, this irreducible opacity of selfhood that precludes self-identity and self-transparency (whether individual or collective) resonates with what he describes as a twofold 'excessiveness': a 'recognitive excess' and an 'excess beyond recognition'. Lindahl, *supra* note 45.
62. By way of illustration, Connolly speaks of an 'entangled humanism' to describe the multiple entanglements between nonhuman and human forces and (in)actions. *Cf.* W. E. Connolly, *Facing the Planetary: Entangled Humanism and the Politics of Swarming* (Duke University Press, 2017). See also M. Davies 'Material Subjects and Vital Objects: Prefiguring Property and Rights for an Entangled World', *Australian Journal of Human Rights* 22, no. 2 (2016): 37. I review different understandings of 'entanglements' in Petersmann, *supra* note 19.
63. D. Lisle, 'A Speculative Lexicon of Entanglement', *Millennium Journal of International Studies* 49, no. 3 (2021): 435-461.
64. K. Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter* (Duke University Press, 2007), at 33.
65. Ibid., at 392-393.
66. Ibid., at ix. Note that many 'agent ontologies' like Barad's quantum-based 'agential realism' are, with different premises, inherent to Indigenous traditions of thought. As Rosiek, Snyder and Pratt contend, scholars interested in agential realism 'risk becoming colonialist caricatures by reinscribing long-standing patterns of erasure of Indigenous peoples and thought when they disregard Indigenous studies literature on agent ontologies'. J. Rosiek, J. Snyder and S. Pratt, 'The New Materialisms and Indigenous Theories of Non-Human Agency: Making the Case for Respectful Anti-Colonial Engagement', *Qualitative Inquiry* 26, 3-4 (2020): 331, at 342. See also P. Orellana Matute, 'Alternative Global Entanglements: "Detachment from Knowledge" and the Limits of Decolonial Emancipation', 49, no. 3 (2021): 498-529.
67. Barad does not engage with law and how entangled intra-active relations could operate as *legal* relations.
68. On the prioritising of obligations over rights, see D, Matthews, 'Law and Aesthetics in the Anthropocene: From the Rights of Nature to the Aesthesis of Obligations', *Law, Culture and the Humanities* (2019): 1.
69. This 'anew' also resonates with the paradox of the creation of the given that Lindahl articulates with regard to the collective that emerges *through* the granting *by* the collective. Lindahl, *supra* note 28.
70. For an elaboration of this notion of 'entangled agency' and how is speaks to ecological issue, see also M. Petersmann, 'Becoming Common – Ecological Resistance, Refusal, Reparation ', in M. Arvidsson and E. Jones (eds), *International Law and Posthuman Theory* (Routledge, forthcoming).
71. *Cf.* M-C. Petersmann, '*The Unconstructable Earth: An Ecology of Separation*, by Frédéric Neyrat, New York, Fordham University Press, 2018, translated from French by Drew S. Burk, 256 pp, $105.00 (hardback), ISBN 9780823282586', *Law and Humanities* 15, no. 1 (2021): 134-141.
72. Barad, *supra* note 64, at 93 (emphases added).

73. Ibid., at 178.
74. 'Agential cuts' enact ontic determinacy within a state of ontological indeterminacy: '[t]he agential cut enacts a resolution within the phenomenon of the inherent ontological (and semantic) indeterminacy'. Ibid., at 335.
75. I am not saying that 'ontological indeterminacy' is reserved to Black peoples, but that the lived experience of Blackness is without analogue due to the ontological void that the Middle Passage created. As Zalloua puts it: '[t]he Middle Passage generated nothing short of a "new ontology": racial blackness, an ontological paradox, a kind of (non)being devoid of any relationality'. Zalloua, 'Black ~~Being~~', *supra* note 50, at 143-185, and 164. Moten also notes how 'blackness is the anoriginal displacement of ontology, [] it is ontology's anti – and ante-foundation, ontology's underground, the irreparable disturbance of ontology's time and space'. F. Moten, 'Blackness and Nothingness (Mysticism in the Flesh)', *South Atlantic Quarterly* 112, no. 4 (2013): 737-780, at 739.
76. As Chipato and Chandler note: '[m]uch of the work of Black studies scholars has focused on understanding the relationship between modernity and antiblackness, and the foundations of the modern world in a conceptualisation of the ontology of the subject or the Human via the disavowal of the racial cut of the ontological Colour Line'. F. Chipato and D. Chandler, 'The Black Horizon: Alterity and Ontology in the Anthropocene', *Global Society* 37, no. 2 (2022): 157-75, at 167.
77. To be sure, Blackness as used in this article does not refer to a property that belongs only to people with a darker skin pigmentation, but to any normativity that exists outside of the White subjectivity exclusively reserved to the category of the 'human'. Native, Indigenous, Brown or (more controversially) White folks that do not identify themselves in this normative White subjectivity can therefore claim Blackness. As Moten puts it: 'everyone whom blackness claims, which is to say everyone, can claim blackness'. F. Moten, *Stolen Life (consent not to be a single being)* (Duke University Press, 2018), at 159. An anti-Black world, consequently, refers to the world that designates the single point of experience of a normative White subjectivity, which 'overdetermine[s Blackness] from the outside'. As Fanon puts it: 'Aucune chance ne m'est premise. Je suis sur-déterminé de l'extérieur'. F. Fanon, *Peau noire, masques blancs* (Editions du Seuil, 1952), at 93.
78. On the transformation of '[t]he indigenous, the unchosen' from 'the *human subject* of his own culture into the *inhuman object* of the European culture', see Wynter, *supra* note 58. The notion of 'embodiment' is important, here, since the Black *body* as 'inhuman object' follows from the imposed enslavement of their *flesh* as property. This inhuman objectification or *embodiment of the flesh* as property and possession is shared with nonhuman animals, also appropriated by human subjects. See Jackson, *supra* note 22; and Bennett, *supra* note 22. Importantly, inhuman slaves objectified as nonhumans were later transformed back into human 'subjects' after the formal abolition of slavery. The point here is that this granting of humanity after having been de-humanized never materialised in the 'afterlife of slavery'. On this point, see Hartman, *supra* note 7.
79. As Hartman elaborates: 'the slave is neither civic man nor free worker but excluded from the narrative of "we the people" that effects the linkage of the modern individual to the state. (…) The everyday practices of the enslaved occur in the default of the political, in the absence of the rights of man or the assurances of the self-possessed individual'. Hartman, *supra* note 57, at 65.
80. S. Harney and F. Moten, *All Incomplete* (Minor Compositions, 2021), at 46.
81. As Lloyd puts it with regard to Moten: '[t]o refuse the poisonous gift of an autonomy or a citizenship or a right that is always withheld is also to refuse the tortured logic that apprehends racialisation'. D. Lloyd, 'The Social Life of Black Things: Fred Moten's *consent not to be a single being*', *Radical Philosophy* 2, no. 07 (2020): 79, at 82.
82. Yusoff speaks of the 'Inhumanities' as a way to 'understand Blackness as a historically constituted and intentionally enacted deformation in the formation of subjectivity, a deformation that presses an inhuman categorization and the inhuman earth into intimacy'.

K. Yusoff, *A Billion Black Anthropocenes or None* (Minneapolis, MN: University of Minnesota Press, 2018), at 11.

83. Ibid., at 19.
84. J. Brown, *Black Utopias: Speculative Life and the Music of Other Worlds* (Duke University Press, 2021), at 112. As Brown asks: '[w]hat would it look like to take as our provocation the idea that we embrace our inhumanness? (…) What would it mean to let go of the assumption of human superiority and open up to new forms of sociality and modes of being?', at 133.
85. On thinking beyond the proprietorial self to enact a freedom otherwise (though social relations against property) see T. Borowetz, 'After Property? The Haitian Revolution and Abolitionist Foundations for a Universal Right to Freedom from Enslavement', in this special issue.
86. F.B. Wilderson III, 'Without Priors', in K. Ferguson (ed), *The Big No* (University of Minnesota Press, 2021), 85-103, at 90. Arguably, Wilderson takes the Fanonian 'blackness as nothingness' literally. As Fanon held: 'Le Noir n'a pas de resistance ontologique aux yeux du Blanc. (…) Pour le Noir, il n'y a qu'un destin. Et il est blanc', to later conclude: 'Le nègre *n'est pas*'. Fanon, *supra* note 77, at 89, 185, 187 (emphases added). See also D. Marriott, *Whiter Fanon? Studies in the Blackness of Being* (Stanford University Press, 2018), at 167 and 215. On how Moten's take on black sociality differs from Afro-pessimists such as Wilderson, Sexton and Marriott, for whom Blackness amounts to social death, see Moten, *supra* note 75, at 768.
87. F. Moten, *The Universal Machine (consent not to be a single being)* (Duke University Press, 2018), at 194, in reference to O. Patterson, *Slavery and Social Death: A Comparative Study, with a New Preface* (Harvard University Press, 2018), as cited by Lloyd, *supra* note 79, at 84.
88. Moten, *supra* note 75, at 768.
89. Zalloua, 'Black ~~Being~~', in *supra* note 50, at 143-185, especially at 164. As Zalloua concludes in the section on 'Living a Nonhuman Life': 'In a Heideggerian vein, a black is a non – or improper *Dasein*; a black ~~being~~ is "poor in world" (as in the case of animals)', at 158.
90. R. A. Judy, *Sentient Flesh: Thinking in Disorder, Poiēsis in Black* (Duke University Press, 2020), at 249.
91. 'How Saidiya Hartman Retells the History of Black Life' (*The New Yorker,* 19 October 2020), at www.newyorker.com/magazine/2020/10/26/how-saidiya-hartman-retells-the-history-of-black-life.
92. Moten, *supra* note 77, at 216. Moten speaks here about the Palestinian struggle for BDS against Israel.
93. F. Moten, *In the Break: The Aesthetics of the Black Radical Tradition* (Minnesota University Press, 2003), at 24. Moten focuses on the improvisatory jazz of John Coltrane, Ornette Coleman, Charles Mingus and others, arguing that all black performance (culture, sexuality, identity, and Blackness itself) is improvisation.
94. Lloyd, *supra* note 81, at 83 and 84.
95. On practices of 'black utopias' that refuse the terms of liberal humanism and explore new states of being, doing, and imagining in Black culture and consciousness, from Sojourner Truth to Alice Coltrane, Sun Ra or Octavia Butler, see Brown, *supra* note 84. Other concrete examples are offered by Harris who explores the aesthetic sociality of Blackness in the experimental performances and collective gatherings organised by and around C. L. R. James and Hélio Oiticica. *Cf.* L. Harris, *Experiments in Exile: C. L. R. James, Hélio Oiticica, and the Aesthetic Sociality of Blackness* (Fordham University Press 2018). Another example is Judy's analysis of Juba dancing as a resistance performed by slaves rhythmically beating their enslaved bodies to retrieve a creative engagement with their flesh, thereby working with (instead of against) their flesh and enacting what Judy calls a *poiēsis in black. Cf.* Judy, *supra* note 90. Yet another example is provided with Hartman's exploration of Black women who, at the beginning of the 20th century in Philadelphia and New York, strived for a queer existence qualitatively different than the one that had been scripted for them. *Cf.* S. Hartman, *Wayward Lives, Beautiful Experiments:*

*Intimate Histories of Riotous Black Girls, Troublesome Women, and Queer Radicals* (Norton, 2019).

96. *Cf.* Moten, *supra* note 92. As Judy puts it, Black sociality is a '[r]elation between forces that are materially immanent in the world – chance – and historical human institutions and thought and practice – law'; it is, in other words, 'what gets underway in the break between law and chance'. Judy, *supra* note 90, at 86 and 423.
97. In contrast to Afro-pessimists for whom Blackness amounts to social death, Black sociality is a celebration of Black social life – a survival to a pre-determined death by living as fugitives in anti-Black worlds, as elaborated above, *supra* note 86.
98. Moten takes the notion of 'paraontology' from Chandler, as elaborated in *supra* note 54. As Zalloua puts it: paraontology consists in '*first* seeing ontology as the problem, to see the problem of antiblackness *ontologically*'. Zalloua, *supra* note 50, at 170. There are nuances and differences between Chandler's and Moten's understandings of 'paraontology'. As Karera succinctly puts it: '[t]he difference is that Chandler thinks that blackness *poses radical questions about ontology*, whereas the other paraontological methods begin from the bewildering conceit that blackness *puts ontology radically into question*'. A. Karera, 'Paraontology: Interruption, Inheritance, or a Debt One Often Regrets' (2022) 10:2 *Critical Philosophy of Race* 158-197, at 183.
99. *Cf.* S. Harney and F. Moten, *The Undercommons: Fugitive Planning & Black Study* (Minor Compositions, 2013). It is 'a being of but not in the world', as Da Silva puts it. D. F. Da Silva, *Unpayable* Debt (Sternberg Press, 2022), at 293 (in reference to Barad, for whom '[p]henomena are not in the world but of the world'. Barad, *supra* note 64, at 7-8. Similarly, one could say that para-ontology is 'being not *in* but *of* relations'. *Cf.* E. Manning, 'The Being of Relation' (e-flux, April 2023). This fugitive para-ontology suggests not only an '*after rights*' but perhaps more broadly an '*after law*' as given qua modernity, where the 'undercommons' appear as a refuge against the law.
100. F. Moten, *Black and Blur (consent not to be a single being)* (Duke University Press, 2017), at vii.
101. In a different register, Meillassoux suggests instead a non-correlational ontology that breaks with the 'requirement of the Moderns' according to which 'to be, is to be a [human/world] correlate', and proposes a non-situatedness of thought (i.e., the possibility to think the world prior to life itself, since the world exists as anterior to the emergence of life and of human thought – that is, as anterior to every form of phenomenological relation to the world). Q. Meillassoux, *Après la finitude. Essai sur la nécessité de la contingence* (Seuil, 2006, rééd. augmentée en 2012), at 18-19 and 56. A rejection of 'correlatonism' as such is antithetical to a strong sense of relationality based on entanglements, as in Barad's agential realism, where practices of knowing and being are inseparable. Barad, *supra* note 64, at 47, 55. Barad's agential realism, however, is an equally strong critique and rejection of a Kantian understanding of correlationsim.
102. Moten, *supra* note 75, at 749.
103. The 'beneath' here echoes Odysseos notion of 'underlife' to speak of the life that disrupts the ground of the modernist world. L. Odysseos, 'Stolen Life's Poetic Revolt', *Millennium: Journal of International Studies* 47, no. 3 (2019): 341-72. The 'beneath' also resonates with life in the 'undercommons'. Harney and Moten, *supra* note 99.
104. Zalloua, *supra* note 50, at 163 (emphases added).
105. Jackson, *supra* note 22, at 18.
106. On the distinction between 'flesh' and 'body' – and how 'before the "body" there's the "flesh", that zero degree of social conceptualization that does not escape concealment under the brush of discourse or the reflexes of iconography', see H. J. Spillers, 'Mama's Baby, Papa's Maybe: An American Grammar Book', in *Black, White and in Color: Essays on American Literature and Culture* (University of Chicago Press, 2003), at 206. As Bennett puts it: 'black people and animals are co-constructed as living flesh but never as *bodies*'. Bennett, *supra* note 22, at 7. Bennett speaks of a desire not to escape but to refuse the black body to celebrate the living flesh. This celebration resonates with Judy's

'*poiēsis* in black' as a performance of *fleshly sentience*. Judy takes the example of the Juba rhythms and dance that slaves played by beating their flesh to speak of an active 'counter-investment in the conceptualized body', which enable them to express what he calls 'a body in free-play' – a semiosis of the flesh in flight from the body. Judy, *supra* note 95.

107. Singh, *supra* note 38, at 126. On 'transspecies identification' as a 'process through which we expand our empathy and the boundaries of who we are become more fluid, because we *identify with* the experience of someone different, maybe someone of a whole different so-called species', see also Gumbs, *supra* note 22, at 8 (original emphases).
108. Lloyd, *supra* note 81, at 90.
109. Bennett speaks of a 'fundamentally black ecology'. Bennett, *supra* note 22, at 7-8. On 'Black kinship with marine mammal and the possibility of solidarity', see also Gumbs, *supra* note 22, at 131.
110. Jackson, *supra* note 22, at 128-158. Jackson draws on Barad's notion of 'intra-action' to argue that there is no predetermined body with fixed boundaries and properties that precedes its measurement. Barad, *supra* note 64.
111. Ibid., at 23.
112. For Jackson, critical Black studies must therefore 'challenge animalization on at least two fronts: animalizing discourse that is directed at people of African descent, and animalizing discourse that reproduces the abject abstraction of "the animal" more generally because such an abstraction is not an empirical reality but a metaphysical technology of bio/necropolitics applied to life arbitrarily'. Ibid., at 15.
113. Karera, *supra* note 21, at 45.
114. 'CfP: After Rights? Politics, Ethics, Aesthetics', *supra* note 24.
115. Lloyd, *supra* note 81, at 79.
116. See, e.g., O'Donnell and Talbot-Jones, *supra* note 12; Jones, *supra* note 6; Vargas Roncancio, *supra* note 16.
117. See, e.g., Tănăsescu, *supra* note 58; Grear, *supra* note 56; and J. Norman, 'Commitment to Rights', in *Posthuman Legal Subjectivity: Reimagining the Human in the Anthropocene* (Routledge, 2021), at 81-85.
118. Zalloua, *supra* note 50, at 23.
119. As Jackson reckons: 'The elusive [universal humanity] – the formal, symmetrical extension of European humanism – makes *achieving* its conception of "the human" a prerequisite of equitable recognition, yet its conception of humanity already includes the African, but as abject, as plastic'. Jackson, *supra* note 23, at 33.
120. On how nonhuman agency or normativity is co-constitutive and 'co-becoming' with human normativity or law, see M. Davies, *EcoLaw: Legality, Life, and the Normativity of Nature* (Routledge, 2022). Rather than 'expand legal subjectivity to animals and other natural objects', Davies aims to 'position law and normativity in general as ontologically prior to the designation of subject and object within plural normative relationships' or 'multiple [human-nonhuman] *normative* worlds', at 2 and 21 (original emphasis).
121. Lindahl, *supra* note 43.
122. Zalloua, *supra* note 50, at 160.
123. 'CfP: After Rights? Politics, Ethics, Aesthetics', *supra* note 24.
124. Judy, *supra* note 87, at 52. This opens an important question about whether the symposium's main question of the possibility of an '*after rights?*' is not just about being after rights, but after law.
125. Chandler, *supra* note 21, at 153.
126. On how this 'freedom' is radically different from a modernist understanding, since Blackness exists as a condition of long emancipation within a state of (juridical) unfreedom, see R. Walcott, *The Long Emancipation: Moving toward Black Freedom* (Duke University Press, 2021). See also T. Borowetz, 'After Property? The Haitian Revolution and Abolitionist Foundations for a Universal Right to Freedom from Enslavement'; and S. Abdelkarim, 'Freedom "After Rights": Abolitionist Praxis and the Palestinian Struggle for Self-Determination', in this special issue.

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