# The EU Charter on Rights of Nature – Colliding Cosmovisions on Non/Human Relations

Marie-Catherine Petersmann

## Abstract

How are 'rights of nature' conceptualised in the proposed EU Charter on the Fundamental Rights of Nature, and how does this relate to Indigenous cosmovisions whom the experts invoke in their draft text? One the one hand, we find a relationality that focuses on entangled agencies between humans and non-humans. Embedded in particular Andean cosmologies that informed postcolonial, plurinational, and re-constitutional processes in Latin America, this relationality played a major role in advancing 'rights of nature' in Ecuador and Bolivia, which the EU experts take as examples when advocating for an EU Charter. On the other hand, we find a relationality that connects pre-existing human and non-human entities, aimed at enabling the former to better protect the latter. These conceptualisations speak to distinct modes of living-with non-humans, each inscribed in particular historical, cultural, and socio-political contexts. Acknowledging these divergences is key to understand the struggles behind 'rights of nature' today.

**Keywords:** EU Charter on the Fundamental Rights of Nature, Rights of nature, Andean cosmologies, relationality, entanglement.

## Introduction

The movement of granting 'rights to nature' has become prominent in academic debates. Much has been written on the self-proclaimed 'revolutionary' potential that 'rights of nature' present to overcome the destructive world-ecology brought about by capitalist modes in inhabiting the Earth.[1] Granting rights to 'nature' has been described by some as a practice of 'legal animism',[2] and by others as one of 'shamanic magic'.[3] This is partly due to the fact that animistic Indigenous cosmologies informed activist movements that today call for a legal 'paradigm shift' to re-connect humans with non-humans, including through the recognition of 'rights of nature'.[4] Such developments are increasingly perceived as responses to fundamental preoccupations of the 'Anthropocene'.[5] At stake in these preoccupations are also colliding understandings of how best to protect 'nature' – and what 'nature' means in the first place – with different proposals being advanced to (re)configure human–non-human relations in both critical and mainstream institutional spaces. It is these distinct understandings of relationality – of how humans (ought to) relate to non-humans – that I want to retrieve and explore in this chapter, with an emphasis on different 'rights of nature' paradigms.

Recent developments in the United Nations (UN) are illustrative of these dynamics, where discourses on 'rights of nature' have transitioned from the critical margins to the centre stage of policy advocacy. In April 2009, under the leadership of the newly (re)constituted Plurinational State of Bolivia, the UN General Assembly (UNGA) proclaimed 22 April as the 'International Mother Earth Day'.[6] In December of the same year, the UNGA adopted its first resolution entitled 'Harmony with Nature', requesting the UN Secretary-

[1] See, e.g., David R. Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (ECW Press, 2017); Guillaume Chapron et al., 'A Rights Revolution for Nature' (2019) 363:6434 Science 1392-1393. The notion of 'world-ecology' comes from Moore, for whom a world-economy based on the appropriation, extraction, and exploitation of 'nature' underpins this world-ecology. Cf. Jason W. Moore (ed.), *Anthropocene or Capitalocene? Nature, History, and the Crisis of Capitalism* (PM Press 2016).

[2] Such 'animistic' practices, however, underpinned modern law too: 'modern law is essentially "animist," populated by right-holder entities whose personhood is a product of legal fiction. Corporations, for example, are defined as "fictitious persons," and under various international statutes and national constitutional provisions have their own specific rights in a manner similar to human citizens – the ultimate fetish of capital made real by law'. Paulo Tavares, 'Nonhuman Rights', in Forensic Architecture, *Forensis: The Architecture of Public Truth* (Sternberg Press & Forensic Architecture, 2014), 533-572, 565.

[3] Cf. Alexis Alvarez-Nakagawa, 'Law *as* Magic: Some Thoughts on Ghosts, Non-humans, and Shamans' (2017) 18:5 *German Law Journal* 1247-1276.

[4] See, e.g., Mihnea Tănăsescu, 'Rights of Nature, Legal Personality, and Indigenous Philosophies' (2020) 9:3 *Transnational Environmental Law* 429; Iván 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 Kirsten Anker et al. (eds), *From Environmental Law to Ecological Law* (Routledge, 2020) 119; and Idelber Avelar, 'Amerindian Perspectivism and Non-Human Rights' (2013) 31 *Ciencia y Cultura* 255. For a critique of the co-optation of Indigenous worldviews in mainstream governance discourses today and the exoticized framing and invocation of an 'Indigenous being', see also David Chandler and Julian Reid, *Becoming Indigenous: Governing Imaginaries in the Anthropocene* (Rowman & Littlefield, 2019).

[5] See, e.g., Alice Bleby, 'Rights of Nature as a Response to the Anthropocene' (2020) 48:1 *University of Western Australia Law Review* 33; Joshua C. Gellers, 'The Rights of Nature: Ethics, Law, and the Anthropocene', in *Rights for Robots: Artificial Intelligence, Animal and Environmental Law* (Routledge, 2020), 104-139.

[6] A/RES/63/278 declaring 22 April as 'International Mother Earth Day', at <www.un.org/en/observances/earth-day> accessed 17 February 2022.

General (UNSG) to issue a report on this theme.[7] More than a decade later, twelve resolutions have been adopted by the UNGA, with ten reports issued by the UNSG and ten interactive dialogues held among various stakeholders on Harmony with Nature.[8] The overall objective of this policy framework is to define a 'newly found relationship based on a non-anthropocentric relationship with Nature', where 'the construction of a new, non-anthropocentric paradigm in which the fundamental basis for right and wrong action concerning the environment is grounded not solely in human concerns'.[9] Unsurprisingly, 'rights of nature' figure centrally in this reformist agenda. As proclaimed by the UNSG: '[r]ights of Nature is grounded in the recognition that humankind and Nature share a fundamental, non-anthropocentric relationship given our shared existence on this planet, and it creates guidance for actions that respect this relationship'.[10] In this context, the Harmony with Nature agenda is advocating a new relationality aimed at re-connecting humans to non-humans. A break from Enlightenment-based legacies of modernist ideals of mastery over an externalised 'nature' amenable to human control is evident.[11]

In line with this UN agenda, itself inspired by the experience of plurinational re-constituted states in Latin America – notably Ecuador and Bolivia – an increasing number of states worldwide are today integrating 'rights of nature' into their domestic legal systems or jurisprudence. As of 2022, thirty-nine countries adopted constitutional, legislative, or policy measures recognising either 'nature' as a whole or particular ecosystems as subjects of rights or as legal persons.[12] While the vast majority of these countries are situated in Latin America, European countries like Portugal, France, Spain, Switzerland, the United Kingdom, the Netherlands and Belgium are also pushing this agenda further.[13] In this chapter, I am interested in exploring how the incorporation of 'rights of nature' in European states and the proposal to introduce them in the European Union's (EU) legal order is underpinned by a particular understanding of relationality. More specifically, I explore how the EU Charter on the Fundamental Rights of Nature – which was drafted by a group of experts and submitted to the European Economic and Social Committee in December 2019 – both utilises and

---

[7] A/RES/64/196, available on the website of the UN Harmony with Nature, at <www.harmonywithnatureun.org> accessed 17 February 2022.

[8] Ibid., at <www.harmonywithnatureun.org/chronology> accessed 17 February 2022.

[9] Ibid.

[10] Ibid. This statement would deserve critical attention on its own. Not only does the 'shared existence' of 'humankind' reproduce the same universalising and totalising understanding of a supposedly shared and generalised human experience that critics of the 'Anthropocene' have repeatedly denounced; it also reinscribes a disconnection between humans and non-humans by speaking of an inter-connection between separated 'humankind and Nature' that 'share a relationship' with one another. As will become clear throughout this chapter, this statement is antithetical to entangled relationalities. For a critique of universalising and totalising accounts of liberal promises to save 'humanity' and 'the world', see also Audra Mitchell and Aadita Chaudhury, 'Worlding Beyond "the" "end" of "the world": White Apocalyptic Visions and BIPOC Futurisms' (2020) 34:3 *International Relations* 309.

[11] On this modernist Enlightenment worldview, see Nathaniel Wolloch, *History and Nature in the Enlightenment: Praise of the Mastery of Nature in Eighteenth-Century Historical Literature* (Routledge, 2016). On how this modernist Enlightenment worldview was rejected in non-Western traditions, see Julietta Singh, *Unthinking Mastery: Dehumanism and Decolonial Entanglements* (Duke University Press, 2018).

[12] Alex Putzer et al., 'Putting the Rights of Nature on the Map: A Quantitative Analysis of Rights of Nature Initiatives Across the World' (2022) *Journal of Maps* 1-8, 1.

[13] 'Rights of Nature: Law and Policy', at <www.harmonywithnatureun.org/rightsOfNature> accessed 17 February 2022.

departs from Andean Indigenous cosmologies. The main argument is that while the EU Charter explicitly relies on these cosmologies to justify the importance of recognising 'rights of natue', it strategically side-lines the particular Andean onto-epistemological relational footing to opt for a rather different relations between humans–non-humans. This, the chapter argues, grounds the relationality at stake into a distinctively European way of vieweing 'humans as part of nature', but simultaneously risks disavowing the Indigenous, Afro-descendent, Maroon, and Native decolonial stuggles that drove the very movement of granting 'rights to nature' against European settler colonial modes of inhabiting the Earth.

The argument proceeds in three steps. First, I explore how 'rights of nature' were constitutionally recognised in plurinational states in Latin America, with a particular focus on Ecuador and Bolivia. Second, I analyse the movements of granting 'rights to nature' that are now unfolding in Europe by drawing, among others, on these particular Andean cosmologies. Finally, I attend to the distinct and arguably opposite understandings of relationality at stake in these approaches, and reflect on how invocations of Indigenous cosmologies to grant 'rights to nature' in Europe conflates and obscures these important differences. These invocations risk disavowing the historical subjugation of Indigenous peoples and their onto-epistemologies by Western colonial states. Overall, the analysis sheds light on the politics, imaginaries, and world-making effects performed by articulations of 'rights of nature' that draw on Indigenous cosmologies to advance their implementation in Europe today.

## 1. Plurinational Re-constitutions and 'Rights of Nature' in Latin America

The first legislative recognitions of 'rights of nature' within domestic constitutions came about in 'plurinational' countries, namely Ecuador and Bolivia. Like all countries in Latin America, Ecuador and Bolivia's histories are nested within legacies of colonialism. Since gaining their independence, the inherited political, economic, and racial structures of countries in Latin America remained tainted by the logic of their former colonial powers. As Tavares observes, this logic was sustained by 'a double and entangled form of violence: the exhaustive exploitation of natural resources and the exclusion of native culture from political representation'.[14] Merino speaks of the 'new republican order' that was born with the independence of states in Latin America as one that 'rejected differentiated political recognition of the Indians'.[15] Native Indigenous peoples (or 'Indians') remained on the margins of legality, as they were considered 'citizens in name only, with most elites maintaining deeply racist attitudes toward them'.[16] Against this marginalisation, a process of re-constitution of states as 'pluri-national' polities emerged. This process formally materialised in 2008 in Ecuador and in 2009 in Bolivia, when the enduring presence and constituent power of multiple cultures and nationalities was constitutionally recognised. Indigenous peoples, Afro-descendant, Maroon, and Native communities continued being abused as 'cheap labour' throughout the second half of the century even after independence,

[14] Tavares (n 2) 567.
[15] Roger Merino, 'Reimagining the Nation-State: Indigenous Peoples and the Making of Plurinationalism in Latin America' (2018) 31:4 *Leiden Journal of International Law* 773-792, 777.
[16] Ibid.

in a colonial-style economy that exploited a 'cheap nature' conditioned by the demands of a global market for natural commodities.[17] The transnational organizing and uprisings of these exploited communities were key to forge the pluri-constituency of Ecuador and Bolivia.[18] This *re*-constitutional process was therefore a corrective exercise – a *re*-action against centuries of enduring repression, subjugation, and exploitation of marginalized communities, and *re*-cognition of their (dis)constituent power. In September 2008, a new and inclusive constitution was adopted in Ecuador, which established a united 'Plurinational and Intercultural State' recognising 11 Indigenous nationalities and cultures as equal and ethnically diverse.[19] The following year, in January 2009, Bolivia adopted its new constitution recognising the multicultural nature of Bolivia and the inclusion of the Indigenous peoples of 36 cultural nationalities. In their *re*-constitution, Ecuador and Bolivia also recognised 'nature' as a subject of rights.[20]

An evident link exists between this first constitutional recognition of 'rights of nature' and the fact it emerged from plurinational and multicultural states. The subordination of Indigenous, Afro-descendant, Maroon, and Native communities, the spoliation and exploitation of their lands, and the plunder of common resources, had pushed ecological issues at the centre of political struggles in both Ecuador and Bolivia.[21] At stake in these struggles were radically conflicting worldviews and modes of inhabiting the Earth. These conflicting worldviews revolved around, on the one hand, a modernist, neo-liberal, and colonial economic and societal model that treated 'nature' as a commodity – a view that John Law qualified as Western 'mononaturalism'[22] – and, on the other hand, diverse cosmologies nurtured by different Indigenous cultures and nationalities that acknowledge the force and wisdom of modes of living not *on* but *with* the Earth.[23] If a 'plurinationalisation' of Ecuador and Bolivia implied a recognition of multiple cultures and nationalities within these states, it also implied a recognition of different understandings of and imaginaries about 'nature', which fundamentally rejected the modernist, colonial-based, and 'mononaturalist' view of 'nature' enacted by the Ecuadorian and Bolivian governments after their independence.

---

[17] On how capitalism created cheap labour, cheap food, cheap energy and cheap raw materials or 'cheap nature', see Moore (n 1).

[18] Tavares (n 2) 567-568. On this 'pluri-constituency' as a 'Creole legal consciousness' that emerged through Indigenous peoples' transnational organising as opposed to the 'whitening' of the states, see also Merino (n 15) 777-778 and 781.

[19] Cf. 'Latin America is moving towards Plurinationalism, slowly but definitely' (25 February 2022), at <https://peoplesdispatch.org/2022/02/25/latin-america-is-moving-towards-plurinationalism-slowly-but-definitely> accessed 7 July 2022.

[20] Cf. Constitution of the Republic of Ecuador 2008, Articles 71-74, 86(3), 396-397. In 2010, Bolivia adopted a Law of the Rights of Mother Earth.

[21] Tavares (n 2) 568.

[22] John Law, 'What's Wrong with a One-world World?' (2015) 16 *Distinktion: Scandinavian Journal of Social Theory* 1, 1. Law critiqued the dominant and hegemonic 'Northern' strategies that naturalise mononaturalism – or the natural/physical character of the world, disconnected from the cultures, peoples, and beliefs that form the multicultural character of the world – and reduce Indigenous realities to beliefs which may be discounted. Law denounced how the Global North enacted this 'mononaturalism' while inhabited by 'multiple-natures'.

[23] See, e.g., Rosemary J. Coombe and David Jefferson, 'Posthuman Rights Struggles and Environmentalisms from Below in the Political Ontologies of Ecuador and Colombia' (2021) 12:2 *Journal of Human Rights and the Environment* 177; and Maria Akchurin, 'Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador' (2015) 40 *Law and Social Inquiry* 937.

The adoption of 'rights of nature' was more the result of an attempted formal inclusion – yet not a pure translation – of 'non-modernist' cosmologies into the re-constitutional processes of Ecuador and Bolivia, rather than a recognition of 'nature' as a subject of rights by the modernist, neo-liberal, and (post)colonial states as such.[24] As Tavares recollects from an interview with Ecuadorian activist Esperanza Martínez: 'it was necessary to take into account multiple forms of conceiving of and relating to nature – that is, to acknowledge by law the existence of, quite literally, different natural worlds'.[25] This opening to diversity and inclusion of non-modernist worldviews in what remains an essentially modernist model of the nation-state functioning, did not stop the latter from commodifying, exploiting, and plundering natural 'resources',[26] but enabled those contesting this mode of relating to 'nature' to resist its prominence by protecting 'nature's rights' against an appropriative economic model.[27] What emerged in plurinational states was therefore an enactment of multiple yet also conflicting legal protection and regulation of 'nature', and not a replacement of the modernist regulation of 'natural resources' in (post)colonial state law by 'non-' or 'pre-modern' Indigenous cosmovisions about 'rights of nature'.[28]

My objective, here, is not to delve into the conception of 'rights of nature' as enacted by the re-constitutions of plurinational states in Latin America. This part of the story is important to recount, however, before turning to an analysis of 'rights of nature' in Europe today, since most domestic constitutions or legislative acts that recognized 'rights of nature' did so by way of including and recognizing local Indigenous peoples, Afro-descendant, Maroon, and Native communities' own normativities and modes of relating to and with non-

[24] The question of how and to what extent Indigenous cosmovisions aligned with the liberal understanding of 'rights' formulation is a question I do not address here. I do not claim that Indigenous cosmovisions were neatly translated into the constitutions of Ecuador and Bolivia, nor that all Indigenous peoples across Ecuador and Bolivia endorse the instrumental and strategic translation of their struggles into 'rights' claims. On the inherent tensions in the translation of Indigenous cosmovisions in legal systems based on universalist values, with a particular emphasis on 'rights of nature' in Ecuador and Bolivia, see Leah Temper, 'Blocking Pipelines, Unsettling Environmental Justice: From Rights of Nature to Responsibility to Territory' (2019) 24:2 *Local Environment* 94-112. What is more, translating Indigenous cosmovisions into 'rights' claims disregards *how* tribal peoples actually *become* Indigenous peoples only when they performatively inscribe the 'rights discourse' into their way of life. See Stephen M. Young, *Indigenous Peoples, Consent and Rights: Troubling Subjects* (Routledge, 2020) 32.

[25] Tavares (n 2) 568.

[26] As Merino (n 15) 787 reckons, '[a]lthough the Bolivian and Ecuadorian constitutions are seen as post-neoliberal and post-multicultural because of their emphasis on market regulation, rights expansion and political agency of social collectives, and their recognition that Indigenous peoples are nations with territorial rights, these projects maintain racialized and colonial notions of sovereignty and state power on Indigenous territories, demonstrating an intrinsic tension between the construction of national identities, national development policies, and Indigenous self-determination'.

[27] See, e.g., the recent judgment issued by the Constitutional Court of Ecuador that relied on the constitutional provision on 'rights of nature' to safeguard the Los Cedros protected forest from mining concessions. Constitutional Court of Ecuador, Sentencia No. 1149-19-JP/21, Caso No. 1149-19-JP/20, 10 November 2021.

[28] The dichotomy of 'modern' and 'non-' or 'pre-modern' modes of relating to non-humans or 'nature' is problematic in and of itself. This relates to the risks of 'essentialising' Indigenous cosmovisions (or what Chandler and Reid refer to as 'ontologising Indigeneity') and the dangers of generalising and totalising particular cosmovisions as being 'Indigenous'. On how questions of 'non-modern' traditionality or ancestrality tend to be opposed to 'modern' conceptualisations of living in environmental litigations involving indigenous peoples before human rights courts, see Marie-Catherine Petersmann, 'Contested Indigeneity and Traditionality in Environmental Litigation: The Politics of Expertise in Regional Human Rights Courts' (2021) 21:1 *Human Rights Law Review* 132-156.

humans – as also exemplified in Australia, New Zealand, or India.[29] The 'rights of nature' movement is therefore indissociable from cosmologies that preceded the mainstreaming of a colonialist, mononaturalist, and extractivist mode of inhabiting the Earth that came about with capitalist slavery and the enduring aftermath of its 'plantation logics', where subjugated lands and peoples' exploitation go hand in hand.[30] It is due to this subjugation of 'non-' or 'pre-modernist' onto-epistemologies of Indigenous peoples, Afro-descendant, Maroon, and Native communities following the arrival of settler colonial powers that the 'rights of nature' movement gained traction in former colonial states, to acknowledge the enduring presence of these communities, counter their endemic onto-epistemological erasure, and come to terms with the historical violence exercised against them and their lands in implementing and sustaining a mononaturalist worldview. Against this backdrop, what does the increasing recognition of 'rights of nature' in Europe imply, and for whom, when former European colonial powers who subjugated a 'thinking-feeling with the Earth'[31] of the colonised, are today invoking them as new templates of civilisation?[32] To answer this question, I turn to a succinct overview of the movement of granting 'rights to nature' in Europe, before assessing the distinct relationalities that underpin these approaches in the third and final part of this chapter.

## 2. Toward 'Rights of Nature' in the EU?

A number of European countries have taken action to recognize and integrate 'rights of nature' into their domestic legal systems. Whether through litigation on behalf of trees in Belgium,[33] through constitutional reforms for a more 'Earth-centred constitutional process' in France, a proposed 'rights of nature' amendment to the constitution of Sweden,[34] a recognition of 'Nature' as a legal entity in Switzerland,[35] a motion on special rights for the

[29] Erin L. O'Donnell et al., 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature' (2020) 9 *Transnational Environmental Law* 403; Erin L. O'Donnell and Julia Talbot-Jones, 'Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India' (2018) 23:1 *Ecology and Society* 7; James D. K. Morris and Jacinta Ruru, 'Giving Voice to Rivers: Legal Personality as a Vehicle for Recognising Indigenous Peoples' Relationships to Water?' (2010) 14:2 *Australian Indigenous Law Review* 49-62.

[30] On 'capitalist slavery', see Eric Williams, *Capitalism and Slavery* (Chapel Hill, 1944). On 'plantation logics', see Kathryn McKittrick, 'Plantation Futures' (2013) 42 *Small Axe* 42 1.

[31] Arturo Escobar, 'Thinking-feeling with the Earth: Territorial Struggles and the Ontological Dimension of the Epistemologies of the South' (2016) 11:1 *Revista de Antropología Iberoamericana* 11-32.

[32] As Chandler and Reid warn regarding 'Indigeneity' as a governing imaginary for the Anthropocene: '[i]n contemporary constructions, indigeneity is often abstracted from specific struggles and contestations over rights and responsibilities and instead becomes an alternative way of being in and relating to the world, one which does not reproduce the problems of modernist anthropocentrism'. Chandler and Reid (n 4) 17.

[33] 'Requête en intervention volontaire: l'aulne à feuille cordée et l'ensemble des 81 autres arbres', at <http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20191216_2660_na.pdf> accessed 17 February 2022.

[34] 'Amendment for the Rights of Nature in the constitution of Sweden' (15 May 2019), at <https://naturensrattigheter.se/2019/05/15/amendment-for-the-rights-of-nature-in-the-constitution-of-sweden/> accessed 17 February 2022.

[35] In France, see 'Amendement n°CL786 Déposé le vendredi 22 juin 2018', at <www.assemblee-nationale.fr/dyn/15/amendements/0911/CION-DVP/CD38>, and in Switzerland, see 'Rhein und Rigi sollen vor Gericht ziehen dürfen', at <www.bernerzeitung.ch/rhein-und-rigi-sollen-vor-gericht-ziehen-duerfen-988012964068> accessed 17 February 2022.

Wadden Sea in the Netherlands,[36] a legislative recognition of 'Rights of Nature' in Northern Ireland,[37] or a granting of a legal personhood status to the threatened saltwater lagoon of Mar Menor in Spain,[38] all these developments point towards an expansion of the liberal category of right-holders beyond the human, thereby giving rise to what some scholars have called 'posthumanist' articulations of rights.[39]

This objective also lies at the heart of the 189-page long proposal for an EU Charter on Fundamental Rights of Nature, which was drafted by a group of ten experts and submitted to the European Economic and Social Committee in December 2019 to push for legislative action within the EU.[40] This initiative builds on the 2017 European Citizens' Initiative (ECI) Draft Directive for Rights of Nature, which advocates for a recognition of 'rights of nature' in the EU to regulate 'legal relationships between society and nature, based on principles of applied ecology'.[41] While not explicitly defined, a sense of what this 'applied ecology' entails can be distilled from the definition given of 'rights of nature' and what they cover, namely:

> the right to life and to exist, the right to maintain the integrity of living systems and natural processes that sustain them, the right to habitat, the right to naturally evolve and to diversity of life, the right to life sustaining water, the right to life sustaining air, the right to equilibrium, the right to restoration of living systems, and the right to live free from torture or cruel treatment by humanity.[42]

---

[36] Tineke Lambooy, Jan van de Venis and Christiaan Stokkermans, 'A Case for Granting Legal Personality to the Dutch Part of the Wadden Sea' (2019) 44:6-7 *Water International* 786-803.

[37] 'Northern Ireland Council "first on these islands" to recognise the "rights of nature"', at <www.belfastlive.co.uk/news/belfast-news/northern-ireland-council-first-islands-20897949> accessed 17 February 2022.

[38] 'Spain Grants Personhood Status to Threatened Mar Menor Lagoon', at <www.thelocal.es/20220922/spain-grants-personhood-status-to-threatened-lagoon/> accessed 27 October 2022.

[39] Posthumanist approaches aim at dismantling both the gendered, racial, and class-based hierarchies between humans, and the hierarchies between humans and all other living and non-living, animate, and inanimate entities. By expanding the 'right' category beyond the human and thereby de-centring the human as the exclusive category of right-holders (or at least the privileged category of right-holders, if one considers that private corporations also own rights), 'rights of nature' can then be understood as posthumanist. See Emily Jones, 'Posthuman International Law and the Rights of Nature' (2021) 12:1 *Journal of Human Rights and the Environment* 76-101; Coombe and Jefferson (n 23). Yet, as I argue elsewhere, if granting 'rights to nature' may well disrupt the modernist binary between humans and non-humans, it leaves intact the problematic subject/object dichotomy that undergirds any right claim. Maintaining the category of the 'subject' as right-holder (i.e., 'nature' as a subject of rights) leaves in place the racial structure that sedimented the liberal understanding of the subject as an autonomous, free, and self-possessed white human being. The question, then, is how to conceive a mode of be(com)ing beyond or besides the 'subject'. Cf. Marie-Catherine Petersmann, 'In the Break (of Rights and Representation): Sociality Beyond the Non/Human Subject' (2023) *The International Journal of Human Rights* (forthcoming).

[40] Michele Carducci et al., 'Towards an EU Charter of the Fundamental Rights of Nature' (European Economic and Social Committee, 2019), at <www.eesc.europa.eu/sites/default/files/files/qe-03-20-586-en-n.pdf> accessed 17 February 2022.

[41] Draft Directive ECI for Rights of Nature by Mumta Ito, para. 49, at <https://natures-rights.org/ECI-DraftDirective-Draft.pdfat> accessed 17 February 2022. Ito is one of the co-authors of the EU Charter of the Fundamental Rights of Nature. See also Mumta Ito, 'Nature's Rights: Why the European Union Needs a Paradigm Shift in Law to Achieve its 2050 Vision', in Cameron La Follette and Chris Maser (eds), *Sustainability and the Rights of Nature in Practice* (CRC Press 2019).

[42] Ibid., para. 49.

If notions of 'integrity', 'natural evolution', and 'equilibrium' would deserve critical attention on their own, what I wish to highlight is that 'nature' is here expressed in a variety of forms, whether animate or inanimate, fixed or fluid, static or flowing. It refers both to human and non-human animal as well as plant life. What emerges from this understanding, in other words, is that 'rights of nature' ought to be protected for 'nature's life-sustaining qualities: not only with regard to the existential value it brings to human life, but to the life and vitality of all organisms with which human life-forms are entangled.[43] According to many, it is precisely in this redress against anthropocentrism that 'rights of nature' find their most emancipatory potential to counter Anthropocenic living conditions.[44]

Indeed, the EU Charter on the Fundamental Rights of Nature starts by proclaiming that '[t]he present moment offers the potential, born of crisis, to transform the way humans inhabit Earth'.[45] To tackle this crisis, 'rights of nature' are perceived as promising a 'radical transformation of current law through a new paradigm of relations between human beings and the rest of Nature, therefore between human laws and the laws of Nature'.[46] The ECI Directive for Rights of Nature similarly argued that 'rights of nature' are 'essential to achieving sustainability, harmony, and balance between humankind and the natural world of which we are an intrinsic and interdependent part'.[47] Yet, if these proposals attempt at de-centring the human and its exclusive agency by recognizing non-humans' vitality and interdependent agency, 'rights of nature' remain stuck in an anthropocentric relation to and representation of non-humans. Indeed, according to the ECI Directive for Rights of Nature, '[a]ny physical person, government, or nongovernmental organisation should be entitled to act *on behalf of* nature for the purpose of protecting or defending a right of nature pursuant to this Directive'.[48] The proposal further specifies that '[w]here there is no representative to *speak for* nature, the court should be able to appoint a legally qualified person [an Ombudsman] as amicus curiae to present arguments regarding the implications of the proceedings for nature'.[49] This method combines a universal standing approach (where everyone could in principle file a case or *actio popularis* on behalf of 'nature' before a court, regardless of whether direct harms have been suffered by the applicant) and an elected

[43] This understanding aligns with Mignolo's call for a shift from 'human rights' to 'life rights', which demands that 'we abandon the western distinction and separation between the natural and human order and also the interests of industrialized and developed countries in which the paradigm of human rights originated'. 'Life rights' capture instead how 'the human body and nature are intertwined' and therefore a 'violation of "the rights of nature" amounts to a violation of "human rights" and therefore of "life rights"'. Walter D. Mignolo, 'From "Human Rights" to "Life Rights"', in Costas Douzinas and Conor Gearty, *The Meanings of Rights: The Philosophy and Social Theory of Human Rights* (Cambridge University Press 2014) 161-180, 168.

[44] See, e.g., Jones (n 39).

[45] Carducci et al (n 40) 4.

[46] Ibid. 9. Concretely, the Charter purports to 'include the interests of all living beings as subjects of the law rather than objects or property […and therefore] ensure that Nature is represented in the EU system of law as a "stakeholder" in its own right, given legal personality and rights at constitutional level along with an implementing framework set out in key legislation', 63. As further specified, the Charter aims to 'grant legal personality to Nature' by conferring it 'autonomous rights (e.g. not dependent on human rights)', 69. What this 'autonomy' means and implies is assessed in the following part 3 of this chapter.

[47] Draft Directive ECI for Rights of Nature (n 41), para. 32. Here, too, what 'sustainability, harmony, and balance between humankind and the natural world' concretely means and implies, as well as the totalising 'we' position assumed in the statement, would warrant critical attention.

[48] Ibid., para. 56 (emphases added).

[49] Ibid., para. 57 (emphases added).

guardian, steward or trusteeship approach (here, an Ombudsman, though it could also be an environmental NGO, or an Indigenous community that is 'trusted' with the protection of 'nature' in the public interest, as has been the case in non-European jurisdictions[50]) who would represent 'nature' in court.

The EU Charter on the Fundamental Rights of Nature envisages a similar procedure. In advocating for 'rights of nature', the experts relied heavily on the 2008 Constitution of Ecuador mentioned in the first part of this chapter. Indeed, the Charter refers to the innovative nature of the Ecuadorian Constitution's Article 71, which provides that 'all persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature'.[51] As with the ECI Directive, here too the proposal overcomes the strict and narrow victim status requirement for a rights-claim to be held admissible before a court. Instead, *any* and *all* persons can act for 'nature' when nature's interests are hampered (and thereby the interests of humans too). This logic moves away from the highly individualist nature of liberal rights centred around the need for victims to be 'individually concerned', as upheld through the 'Plaumann doctrine' decided by the Court of Justice of the European Union (CJEU) as early as 1963[52] and reiterated ever since – with the same rationale and justification underpinning also the case law of the European Court of Human Rights (ECtHR) in relation to natural ecosystems, as illustrated with the *Kyrtatos* case.[53]

In addition to Article 71, Article 396 of the Ecuadorian Constitution was also explicitly invoked in the EU Charter on the Fundamental Rights of Nature to suggest the doctrine of '*in dubio pro natura*' as a key principle (to which the experts of the EU Charter added '*et clima*'). Article 396 of the Constitution of Ecuador states that '[i]n case of doubt about environmental impact stemming from a deed or omission, even if there is no scientific evidence of the damage, the State shall adopt effective and timely measures of protection'.[54] Finally, and in line with Article 397 of the Ecuadorian Constitution, it is stated that '[t]he burden of proof regarding the absence of potential or real danger shall lie with the operator of

[50] See, e.g., O'Donnell and Talbot-Jones (n 29); Morris and Ruru (n 29).

[51] Constitution of the Republic of Ecuador 2008, Article 71 (n 20). Article 397(b) also grants the right for 'any natural person or legal entity, human community or group, to file legal proceedings and resort to judicial and administrative bodies without detriment to their direct interest, to obtain from them effective custody in environmental matters, including the possibility of requesting precautionary measures that would make it possible to end the threat or the environmental damage that is the object of the litigation'.

[52] *Plaumann* v. *Commission*, Case 25/62, [1963] ECR 95. The CJEU clarified the meaning of the condition foreseen by Article 173 of the Treaty of Rome (EEC) (today Article 263 of the Treaty on the Functioning of the EU) and held that: 'Persons other than those to whom a decision is addressed may only claim to be *individually concerned* if that decision *affects them* by reason of certain attributes which are *peculiar to them* or by reason of circumstances in which *they are differentiated from all other persons* and by virtue of these factors *distinguishes them individually* just as in the case of the person addressed'. Ibid., at 107 (emphases added).

[53] *Kyrtatos* v. *Greece*, App No 41666/98 [2003]. The ECtHR rejected the applicant's attempt to hold the state responsible for the damages its actions and omissions caused to a wetland and its associated wildlife in the vicinity of her property which, according to the court, had no direct impact on the right to private and family life protected under Article 8 of the ECHR as the individual link requirement was not fulfilled. The ECtHR stated that: 'the crucial element which must be present in determining whether, in the circumstances of a case, environmental pollution has adversely affected one of the rights safeguarded by paragraph 1 of Article 8 is the existence of a harmful effect on a person's private or family sphere and not simply the general deterioration of the environment' and, more crucially, recalled that '[n]either Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such'. Ibid., para. 52.

[54] Constitution of the Republic of Ecuador 2008 (n 20) Article 369.

the activity or the defendant'.[55] The experts justified this reversal of the burden of proof by reckoning that 'Nature is a living but voiceless entity' which 'cannot produce evidence of harm'.[56] The meaning of 'living but voiceless entity' comes to light when the experts held, earlier in the text, that '[i]n order to learn from Nature and understand its rules, we must become eco-literate and engage other ways of knowing: feeling, sensing and intuition'.[57] Here, it is important to unpack and contextualise this statement in what the experts advocate as a passage from 'rights' to 'rights relationships': '[u]nderpinning this new framework [of 'rights of nature'] will be a reframing of the notion of rights to equate with "right relationship"' between 'humans' and 'nature'.[58] This sheds light on the 'we' at stake in the sentence reported above, as a broad reference to humanity as a whole, with which 'Nature' as a 'living but voiceless entity' inter-acts. In other words, 'eco-literate' humans should learn from 'nature's own rules' by feeling, sensing and intuiting 'nature' differently. What is implied with 'nature's *own rules*' is not specified, and here again the degree to which rules (of 'humans' and of 'nature') can ever be conceived as separate and autonomous (i.e., as 'own'), manifests a particular understanding of relationality, which will be further explored in the next and final part of this chapter.

## 3. Colliding Cosmovisions on Non/Human Relations

From the set of provisions analysed in the preceding part, the drafters of the EU Charter on the Fundamental Rights of Nature concluded that the latter should enact a 'proactive right of nature', which differs from the 'participation rights' introduced by the Aarhus Convention.[59] This 'proactive right' is conceived as (i) independent of other (human) rights, since it is exclusively connected to 'rights of nature'; (ii) autonomous and self-executing, since it does not impose a burden on behalf of the subject seeking enforcement; (iii) general, since it refers to any environmental impact or procedure; and finally (iv) independent, since it does not solely rely on the information produced by public authorities.[60] The qualification of this proactive rights as a 'right relationship' – between humans and 'nature' – that is autonomous and independent seems counter-intuitive at first, since a relation necessarily implies dependence and hence a lack of strict autonomy. Yet, what matters in this invocation of autonomy is not a call for *agential* autonomy, but an autonomy in terms of interests and harms. What is at stake, in other words, is a *de*-centring of anthropocentric interests and harms when it comes to the fulfilment of the victim status requirement in environmental cases, which as it stands is a necessary admissibility criterion to bring a case concerning an

[55] Ibid. Article 397.
[56] Carducci et al (n 40) 82.
[57] Ibid. 52.
[58] Ibid. 69-70. Earlier in the text, the experts clarify: 'a "right relationship" [is] one that supports the wellbeing of the whole', 5.
[59] Article 9(2) of the Aarhus Convention demands that 'a sufficient interest and impairment of a right' is at stake to challenge the substantial and procedural legality of any decision, act, or omission subject to the public participation on decision-making in environmental matters. UNECE Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, 2161 UNTS 447; 38 ILM 517 (1999).
[60] Carducci et al (n 40) 82.

alleged right violation before a (European) court. What comes to light is therefore a particular understanding of relationality that underpins the 'rights of nature' paradigm as advocated in Europe, which differs from the Andean Indigenous cosmologies that have informed the re-constitutional processes of Ecuador and Bolivia as described in the first part of this chapter.

Indeed, the 'rights of nature' proposed by the EU experts are conceived as 'right relationships' between humans and 'nature'. In this conception, both 'humans' and 'nature' are posited as separate and pre-existing entities with their 'own rules', thereby paradoxically recalling a distinctively modernist understanding of humans' relations to 'nature'. Yet, it is precisely to overcome these hallmarks of modernity that the drafters of the EU Charter are envisioning 'rights of nature' and insist on 'human' and 'nature's '*interconnection and interdependence*'.[61] The *inter* of interconnection and interdependence is revealing here. It points to relations between pre-existing entities, where the existence or state of these entities will change according to the state of the other.[62] These related entities are animated by separate individual agencies that precede each inter-action between them. The drafters' call to recognise humans and non-humans' interconnection and interdependence aligns therefore with the 'relational turn' in social sciences, which since the 1970s, has challenged the modernist separation between 'humans' and 'nature' and the exclusive attribution of agency to humans.[63] Here, instead, 'nature' has its 'own rules' – its own agency and normativity.

Also in environmental law, this recognition is far from new, as many scholars and activists have advocated for the recognition of relations between humans and 'nature' and the *embeddedness* of the former as part of the latter.[64] Indeed, as the proposed EU Charter emphasises, the '"*ratio*" of this "inclusion" [of Nature in human rights] comes from the common "vulnerability" of Nature and humans in the era of ecological and climate emergency', and it is this 'ratio' that – according to the drafters – identifies 'rights of nature' not as 'external subjects to the human being but as an element of the biosphere (to safeguard the entire biosphere, the EU must recognise equal dignity to all living subjects of its biosphere)'.[65] What this sentence highlights is that since humans and non-humans are included into 'nature' (or the biosphere) and their relation is key to ensure the flourishing of all living beings within this biosphere, then 'nature' must also be included in 'human rights' law. In other words, humans and non-humans should be recognised as equal subjects of law. Here again, however, both humans and 'nature' emerge as pre-constituted parts that are connected to and dependent upon one another. This understanding seemingly differs from the Indigenous cosmologies that first informed the recognition of 'rights of nature' in plurinational states like Ecuador and Bolivia.

---

[61] 'This necessary step will involve the legal recognition of the Rights of Nature on all levels and a shift from a purely anthropocentric worldview to a more ecocentric worldview that sees humanity as one species within a radically interconnected web of life, where the wellbeing of each part is dependent on the wellbeing of the Earth system as a whole'. Carducci et al (n 40) 6-7 (emphases added).

[62] See the definitions of 'interconnected' and 'interdependent' in the Cambridge Dictionary, at <https://dictionary.cambridge.org> accessed 17 February 2022.

[63] For a general overview of this 'turn', see Simone Drichel (ed), *Relationality* (Routledge 2021).

[64] See, e.g., Klaus Bosselmann, *Im Namen der Natur – Der Weg zum ökologischen Rechtsstaat* (Scherz, 1992); Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books 2003); Peter Burdon (ed), *Exploring Wild Law – The Philosophy of Earth Jurisprudence* (Wakefield Press 2011).

[65] Carducci et al (n 40) 113.

Indeed, as the drafters of the EU proposal reckon explicitly: 'the recognition of equal dignity of all living beings is not an expression of a cosmovision [adding in a footnote: 'As in the Andean constitutionalism (Ecuador and Bolivia)'] but of a common reality for the survival of European generations'.[66] The 'expression of a cosmovision' (here of Andean peoples) is contrasted to that of a 'common reality' (here of European peoples). This observation echoes the critique raised by Townsend that legal and judicial experts tend to interpret the 'worldviews' of Indigenous peoples not as 'descriptions' of the environment – as Indigenous peoples intend it – but as mere 'cultural beliefs', whereas in contrast, the descriptions provided by experts tend not to be considered as expressing their beliefs but as describing the 'environment' as such. As Townsend puts it: courts treat 'expert claims as claims that speak to some objective reality and indigenous claims about the state of the environment as being, exclusively, claims about a belief system'.[67] A similar dynamic seems to linger in the contra-position of the Andean 'cosmovision' and Europeans' 'reality' here.

Yet, this formulation also reflects a careful positioning from the part of the drafters of the EU Charter as a strategic distantiating from the Andean cosmosivions that drove the re-constitutionalisation of the plurinational states of Ecuador and Bolivia. Indeed, if the experts would have claimed that the EU Charter on the Fundamental Rights of Nature *is* an expression of a cosmovision akin to Andean plurinational constitutionalism, they would have risk to both essentialise and ontologise the Andean peoples' modes of existence,[68] and disavowed the particular postcolonial historical context in which these modes of existence are embedded – and from which an Andean cosmovision cannot be disentangled. In other words, had the EU experts qualified the promotion of 'rights of nature' in Europe as an expression of Andean Indigenous cosmologies,[69] they would have co-opted and appropriated the very modes of being, knowing, and acting-with non-humans that their former settler colonial powers subjugated for their world-ecology to dominate. By qualifying the relationality that underpins the EU Charter on the Fundamental Rights of Nature as 'a common reality for the survival of European generations' and *not* as a 'an expression of a cosmovision [as in the Andean constitutionalism]',[70] the experts tactically situated their proposal into a shared European mode of existence to provide a specifically European grounding to this proposal. The 'common reality' that humans and non-humans are co-constitutive of 'nature' or the biosphere transcends, of course, a European 'reality'. In framing the issue as such, however, the EU experts used a vernacular familiar to European states to legitimise and provide more impetus for their proposal, while also tapping into the 'momentum' that 'rights of nature' gained thanks to the successful struggles of Andean peoples by explicitly relying on the provisions of the Ecuadorian and Bolivian constitutions.

---

[66] Ibid. 113.

[67] Dina Lupin Townsend, 'Silencing, Consultation and Indigenous Descriptions of the World' (2019) 10 *Journal of Human Rights and the Environment* 193, 203-204.

[68] As Chandler and Reid argue, this equates to a Western 'ontologisation of indigeneity as a mode of being', which draws on pluriversal politics with the purpose 'of provincialising the Western canon in terms of epistemological methods and approaches'. As they conclude: this 'has become the basis upon which much more essentialising claims [of Indigenous being] are being made'. Chandler and Reid (n 4) 84-85.

[69] Indeed, if not all Indigenous peoples support 'rights of nature', clearly 'most transformative cases of rights of Nature have been consistently influenced and often actually led by Indigenous peoples. O'Donnell et al (n 29).

[70] Carducci et al (n 40) 113.

Yet how precisely the experts understand the term 'cosmovision' remains unclear. They relate it to 'different economic models and styles of life', which are based 'on scientific premises from ecology and natural sciences, but also deeply rooted in ancestral cultures, that have not forgotten their original dependence on Nature'.[71] As they elaborate, because 'rights of nature' 'translate into legal terms different cosmovisions from all around the world' – with a footnote referring here to Kothari's edited volume on the *Pluriverse*[72] – 'it means they are part of a deeper cultural discourse, that can be spread into all branches of human knowledge'.[73] By reducing these 'different cosmosvisions' to mere cultural discourses and human knowledge, the material, embodied, and experiential practices that enact these cosmovisions are somehow disregarded. In doing so, the experts reinscribe again a modernist dichotomy between mind and body, being and knowing, culture and nature. In a similar vein, the experts identify a Western 'mind-set' as the main 'contemporary cultural obstacle' against the 'conceptual framework' of 'rights of nature' in Europe, and deplore that the latter 'have been claimed as superior interests on individual rights only by Indigenous communities (characterised by "Cthonic" legal tradition), symbiotically linked to Nature'.[74] Here, too, these cosmovisions are reduced to mere 'interests', with the everyday lived experience of these enduring struggles being sidelined.

My objective here is not to define what 'cosmovisions' are (or not), neither is it to contest that Andean plurinational constitutionalism is indeed embedded into a particular understanding of human and non-human relations that could be defined as 'symbiotic'. This was already argued by Indigenous scholar Salmón more than two decades ago in relation to how the Rarámuri people in Mexico view the life surrounding them as kin or relatives, therefore enacting a 'kincentric ecology'. In Salmón's words:

> With the awareness that one's breath is shared by all surrounding life, that one's emergence into this world was possibly caused by some of the life-forms around one's environment, and that one is responsible for its mutual survival, it becomes apparent that it is related to you; that it shares a kinship with you and with all humans, as does a family or tribe. A reciprocal relationship has been fostered with the realization that humans affect nature and nature affects humans. This awareness influences indigenous interactions with the environment. It is [this] living with a place, that are manifestations of kincentric ecology.[75]

Salmón's insistence on living *with* – rather than *on* – a place, attends to the embodied and lived experience of thinking, acting, and being that is entangled with one's environment. This understanding strongly resonates with what Indigenous scholar Watts calls 'place-thought', which is based on the premise that the land is alive and thinking, and that humans and non-

[71] Ibid. 99-100.
[72] Cf. Ashish Kothari et al (eds), *Pluriverse: A Post-Development Dictionary* (Columbia University Press 2019).
[73] Carducci et al (n 40) 100.
[74] Ibid. 94. For a critique of the essentialisation that takes place when Western experts on environmental human rights refer to unqualified or unspecified Indigenous peoples as living 'symbiotically with Nature', see also Petersmann (n 28).
[75] Enrique Salmón, 'Kincentric Ecology: Indigenous Perceptions of the Human-Nature Relationship' (2000) 10:5 *Ecological Applications* 1327-1332, 1331-1332.

humans derive agency through the extensions of these thoughts.[76] The impossibility to disentangle the question of being from the ability to think and act with(in) one's milieu implies first and foremost that this milieu is active in its own way – (re)active not *to* but *with* humans' agency. Agency is therefore not just a human ability, but a quality that is manifest in all aspects of life.

This understanding also aligns with feminist theorist and physicist Karen Barad's 'agential realist' account of existence, where '[p]ractices of knowing and being are not isolable [but] mutually implicated'.[77] The mutual implication of practices of knowing and being signals that the very agencies of humans and non-humans are entangled with one another. In contrast to the usual 'interaction' between entities – which assumes separate individual agencies that would precede each action between them – Barad works with the neologism of 'intra-action' to signify the mutual constitution of entangled human–non-human agencies.[78] This view rejects the assumptions of Newtonian physics that see the world as made-up of entities with stable characteristics that stand in relations of externality to one another.[79] Against the modernist worldview that posits human and non-human agencies as unfolding *on* the world, it is *matter* itself that is here conceived as 'a dynamic expression/articulation *of* the world in its intra-active becoming'.[80] This agential realist understanding shares similarities with what Indigenous scholar Watts referred to as 'place-thought' and Salmón as a 'living with a place', namely 'that one's breath is shared by all surrounding life, that one's emergence into this world was possibly caused by some of the life-forms around one's environment, and that one is responsible for its mutual survival'.[81] Being, thinking, and acting are entangled *within* the world[82] – or one of the multiple worlds that are being enacted in their differential becoming, depending on the positionality of the entity that is investigating that world in its ongoing intra-activity.[83] The entanglement of

[76] Vanessa Watts, 'Indigenous Place-Thought and Agency amongst Humans and Non-humans (First Woman and Sky Woman go on a European World Tour!)' (2013) 2:1 *Decolonization: Indigeneity, Education and Society* 20, 21.

[77] Indeed, 'we know because we are of the world. We are part of the world in its differential becoming. The separation of epistemology from ontology is a reverberation of a metaphysics that assumes an inherent difference between human and nonhuman, subject and object, mind and body, matter and discourse'. Karen Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter* (Duke University Press 2007) 185.

[78] Ibid. 33.

[79] On how modern environmental law is based on Newtonian understandings of physics, see also Fritjof Capra and Ugo Mattei, *The Ecology of Law: Toward a Legal System in Tune with Nature and Community* (Berrett-Koehler Publishers 2015).

[80] Barad (n 82) 392-393 (emphasis added).

[81] Watts (n 81); and Salmón (n 80). On how Indigenous studies literature on agent ontologies (e.g., Salmón and Watts) have strengths in precisely some of the places where new materialist social sciences (in particular, Barad's agential realism) is facing challenges, see Jerry Lee Rosiek, Jimmy Snyder and Scott L. Pratt, 'The New Materialisms and Indigenous Theories of Non-Human Agency: Making the Case for Respectful Anti-Colonial Engagement' (2020) 26:3-4 *Qualitative Inquiry* 331.

[82] Barad (n 82) 184. As Barad insists, the 'in' of with*in* the world, however, should not be misunderstood as implying that 'the human is *in* Nature, as if Nature is a container'. The world (or 'Nature') is not something external to the human, but the human is one constitutive component of it that co-articulates the world in its becoming. Both humans and non-humans, as such, have no exteriority in any final or definitive sense.

[83] To quote Barad in full: '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 pre-exist their interactions; rather, individuals emerge through and as part of their entangled intra-relating'. Barad (n 82) ix.

agency goes hand in hand with a distribution of accountability and 'response-ability' – or the ability to respond to the violence and harms inflicted.[84] This is 'not about right response to a radically exterior/ised other, but about responsibility and accountability for the lively relationalities of becoming of which we are a part'.[85] To account for power asymmetries is to insist that response-abilities are differently distributed across humans and non-humans co-implicated in intra-active relationalities.

The notion of entanglement furthers therefore a particular understanding of relationality, which attends to a related agency between human and non-human entities not as a process of interaction – which reinscribes a dichotomous understanding of human and non-human agency as being *inter*-acting, in line with the understanding of 'autonomy', 'independence', and 'interconnections' between humans and 'nature' advanced in the EU Charter on the Fundamental Rights of Nature – but as a process of *intra*-action, where relations emerge from the mutually constituted human–non-human agency and thereby constitute the world in its becoming.[86] To take a contemporary example, Covid-19 did not exist as a discrete entity prior to 2019, but emerged from human–non-human intra-actions across space and time to become a cross-species infectious disease – a 'multispecies entanglement'.[87] The pandemic illustrates the difficulty of disentangling human from non-human agency, and the impossibility of describing the former independently from the state of the latter. Hence, in contrast to the 'right relationship' proposed in the EU Charter to re-connect 'humans' and 'nature',[88] the notion of entanglement complicates the idea of re-connection by suggesting that the relation is not a connection between separate entities, but an enactment of mutually constituted agency between humans and non-humans. This necessarily *de*-centres the human as sole agential subject and recognises that the agency of humans co-emerges with(in) that of non-humans.

In light of the above, it seems therefore that the specific understanding of relationality that underpins the 'rights of nature' proposed by the drafters of the EU Charter on the Fundamental Rights of Nature works with an understanding of discrete, bounded, and separate entities – 'humans' and 'nature' – which ought to be more strongly connected to one another in light of their *inter*-dependent interests and harms. This understanding seemingly differs from the agential ontologies that informed the 'rights of nature' movements in Ecuador and Bolivia. Whether based on specific Andean or particular posthumanist, new materialist or quantum understandings of how life emerges and is sustained throughout space and time, an *intra*-active perspective on human–non-human relations complicates the metaphysics of individualism and atomism that the EU Charter suggests for protecting 'rights of nature'. Attending to these differences is important in times where generic 'rights of

[84] Haraway defines 'response-ability' as a practice of ongoing collective knowing and doing, where the duty to respond to harms is inherently joined with the question of differentiated ability. Donna Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (Duke University Press 2016). See also Marie-Catherine Petersmann, 'Response-abilities of Care in More-than-Human Worlds' (2021) 12:1 *Journal of Human Rights and the Environment* 102-124.
[85] Barad (n 82) 393.
[86] Ibid. 33.
[87] Anne Aronsson and Fynn Holm, 'Multispecies Entanglements in the Virosphere: Rethinking the Anthropocene in light of the 2019 Coronavirus Outbreak' (2022) 9:1 *The Anthropocene Review* 24-36.
[88] Carducci et al (n 40) 69-70.

nature' are being advocated worldwide, with little attention paid to the specific understandings of relationality underlying these claims and the particular historical, cultural, and political contexts in which these claims are grounded.

## Conclusion

While 'rights of nature' are being increasingly invoked before courts,[89] and their potential discussed in both mainstream and critical circles,[90] little attention has been paid to the different understandings of relationality that underpin such formulations, depending on their definitions of relations that tie humans to non-humans. This chapter focused on the EU Charter on the Fundamental Rights of Nature drafted by a group of European experts on EU environmental law, constitutional law, comparative public law, and ecological activists, and submitted to the attention of the European Economic and Social Committee in December 2019.[91] By attending to the particular understanding of 'rights of nature' promoted in the EU Charter, the analysis highlighted how the experts extensively engaged with and relied upon existing constitutional recognitions of such provisions, notably in Ecuador and Bolivia. In the first part of this chapter, I looked at these constitutional recognitions, by re-contextualising them within broader socio-ecological struggles led by Indigenous peoples, Afro-descendant, Maroon, and Native communities who re-constitutionalised the modernist nation-state in which they were enclosed as plurinational and multicultural states of which their form part. While showing how the recognition of 'rights of nature' in Andean constitutionalism cannot be disentangled from the cosmovisions of the Indigenous peoples, Afro-descendant, Maroon, and Native communities that fought for these re-constitutional processes, I argued that European movements that advocate granting 'rights to nature' ought to be careful not to appropriate Indigenous struggles. Indeed, this would both essentialise and co-opt particular relations that specific communities maintain with their lands, but also disavow the enduring violence suffered by such communities ever since European settler colonial powers subjugated their cosmovisions. The trend observed in European literature on 'rights of nature' to 'become indigenous' must therefore be cautiously resisted.[92]

In the second part of this chapter, I assessed how the experts who drafted the EU Charter partially reproduced such problematic positions. By relying on the 'rights of nature' movements that animated the re-constitutional processes of plurinational states in Latin America – especially Ecuador and Bolivia – the experts advocated for a 'transition of the EU into an intercultural form of State' in order to generate a 'new inclusive and sustainable lifestyle [that] will bridge the historical gap between Western culture and Indigenous and

[89] As recent as 19 April 2022, the Madras High Court in the Tamil Nadu state, India, ruled that 'Mother Nature' has the same legal status as a human being, which includes 'all corresponding rights, duties and liabilities of a living person', at <https://insideclimatenews.org/news/04052022/india-rights-of-nature> accessed 17 February 2022.

[90] See, e.g., the UN Harmony with Nature agenda (n 6-10). For a succinct overview of the debate regarding 'rights of nature' in critical legal circles, see Anna 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> accessed 17 February 2022.

[91] Cf. Carducci (n 40).

[92] Cf. Chandler and Reid (n 4).

other older cultures and worldviews'.[93] What is concerning, here, is not only the invocation of an essentialised 'Indigeneity' to reach a 'sustainable life' in Western states and culture – and bridge the gap with 'Indigenous and other older cultures and worldviews' – but that no mention is made of the violent subjugation and erasure of these very 'Indigenous and other older cultures and worldviews' by the Western powers who today want to 'include' them into their legal frameworks. The emancipatory struggles that subjugated peoples had – and still have – to endure to be recognised into existence in plurinational re-constituted states is also not mentioned. Such framings and formulations leave the impression that the recognition of these worldviews was a top-down act of inclusivity by the institutional authorities that metabolised pre-existing structures of coloniality, rather than a bottom-up fight for subsistence against these very structures lead by those subjugated by them.

What is more, the EU is already an 'intercultural form of State', the constitutive cultures of which have however a monolithic understanding of 'nature'. The experts express an aspiration to change this 'mononaturalism' by taking inspiration from non-European cultures. A universalist and neo-colonialist impetus lingers, however, in the hope that '[t]he discussion about a new sustainable style of life, in harmony with Nature, that will be generated in Europe by the introduction of the Charter of Rights of Nature will be able to affect the rest of the world and inspire all the world society'.[94] By formulating the movement as being 'generated in Europe' and capable of 'inspiring all the world society', non-European cosmosivions and practices risk being erased, once again. To avoid the dangers of either appropriating and/or erasing the knowledge and experience of those from whom the EU experts take inspiration to advocate 'rights to nature' – namely the 'Indigenous and other older cultures and worldviews' – a closer look into what fundamentally distinguishes these approaches could be useful. These differences, as I showed in the third part of this chapter, lie *inter alia* in the diverging relationalities at hand – or how humans (ought to) relate to non-humans. While the Andean Indigenous peoples that the EU experts referred to tend to view these relations as intra-actions, the EU experts consider them as inter-actions. As such, the 'rights of nature' suggested in the EU Charter entail an understanding of relationality that is deprived of an agential ontology characteristic of Andean constitutionalism.[95] These distinctions matter, since they enact different onto-epistemologies and bring different worlds into existence – or not.

[93] Carducci et al (n 40) 110.
[94] Ibid.
[95] Cf. Coombe and Jefferson (n 23); Akchurin (n 23). See also Emille Boulot and Joshua Sterlin, 'Steps Towards a Legal Ontological Turn: Proposals for Law's Place beyond the Human' (2022) 11:1 *Transnational Environmental Law* 13-38.