The "No Interest" Argument and the Rights of Nature

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Abstract

Awarding rights to rivers, forests, and other environmental entities (EEs) is a new and increasingly popular approach to environmental protection. The distinctive feature of such rights of nature (RoN) legislation is that direct duties are owed *to* the EEs.

This paper presents a novel rebuttal of the strongest argument against RoN: the *no interest argument*. The crux of this argument is that because EEs are not sentient, they cannot possess the kinds of interests necessary to ground direct duties. Therefore, they cannot be legitimate rights-bearers. After considering and rejecting standard responses to this argument, the paper challenges its fundamental assumption: that rights-correlative duties must be grounded in the interests of the rights-bearer. The paper then presents the RoN critic with a dilemma. The critic must either accept that EEs are legitimate rights-bearers, or delegitimise many well-established rights-bearers along with EEs. Either way, the no interest argument loses its force.[1]

Keywords: Rights of Nature; Environmental Law; Interest Theory; Natural Rights; Direct Duties; Legal Rights

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1. Introduction

Can a river have the right to be free of pollution? Can a forest have the right to not be destroyed? Over the last fifteen years, rights of nature (RoN) initiatives have been introduced around the globe to shield environmental entities (EEs) from exploitation and destruction. These initiatives include enshrining nature's rights in constitutions (Ecuador, 2008), assigning legal personhood to specific EEs (Aotearoa New Zealand, 2014; Spain, 2022), and aspirational community-led declarations and charters (UK).[2] Though these initiatives differ depending on the legal and cultural context, they all share a commitment to the idea that EEs have (or should have) *rights*.

Awarding rights to EEs mean that we posit *direct duties* owed to them. This is what makes RoN legislation distinctive. Traditional environmental protection laws – such as laws restricting the pollution of rivers – posit *indirect* duties *regarding* EEs. They are not owed to EEs, but to other parties (e.g., the public) who have an interest in that EE being protected. In contrast, RoN holds that we owe duties of protection *to* the river, and that the violation of these duties *wrongs* the river.[3] This follows from a Hohfeldian analysis of claim rights.[4] Claim rights describe a necessarily *relational* or "bipolar" situation: if one party, X, has a right, R, then another party, Y, has a duty owed *to X* to respect R.[5] For this reason, RoN treat EEs as members of our normative community, and supporters of RoN hail them as a paradigm shift, towards a less anthropocentric way of relating to the environment.[6]

However, the recent proliferation of RoN initiatives has been matched by several academic commentators sounding a note of caution. Though some criticisms focus on the practical problems resulting from awarding rights to EEs, the most damning arguments against RoN legislation focus on the very feature which makes it distinctive: the idea that we can owe direct duties *to* EEs. In this paper, I aim to rebut the strongest and most prominent form of this criticism, which I call the *No Interest Argument* (NIA). In essence, this argument contends that, because EEs are not sentient, they do not have welfare interests of the kind which ground direct duties, and therefore they cannot be legitimate rights-bearers.[7]

In the next section (§2), I present NIA, and then (§3) explore some existing attempts to rebut it. I argue that all of these attempts have significant drawbacks. In the next section (§4) I present a new strategy for rebutting NIA. My reply to NIA attacks the assumption that the

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[2] See (Boyd, 2017) and (Kauffman & Martin, 2021) for overviews of the RoN "movement" and the major global cases. I use "environmental entity" (EE) as a neutral term to describe any non-human and geographically located entity – river, forest, lake, etc. – which has been or could be awarded legal rights within a given context. I remain neutral on what Corrigan (2021) calls the distinction between "cosmopolitan" and "domestic" accounts of RoN. Cosmopolitan accounts – such as Corrigan's own – hold that if we are justified in granting one specific EE rights, all similar EEs must also be justified rights-holders. Domestic accounts hold that RoN are specific to certain EEs, and are justified solely within particular legal, political, and cultural contexts (see, e.g., Tănăsescu, 2021).
[3] In legal terminology, we grant the environmental entity "legal standing" in its own right. See (Stone, 2010).
[4] (Hohfeld, 1917)
[5] See (Darwall, 2012)
[6] E.g., (Kauffman & Martin, 2021, p. 7).
[7] Versions of this argument can be found in e.g., (Baard, 2021; Kurki, 2022; Pepper, 2018).

directness of a rights-correlative duty must be grounded in the rights-bearer's interests. I argue that this assumption presents the RoN critic with a dilemma. If they accept this assumption, they must also reject the legitimacy of a host of other well-established rights. Or, if the critic rejects this assumption, NIA fails. I end with a comment about the implications of my rebuttal of NIA, and the distinction between naturally- and institutionally-directed duties (§5).

2. The "No Interest" Argument

Though there are several theories which aim to explain the function of rights, or to justify their application, those who wish to extend rights to include non-human entities typically favour the *interest theory* of rights. This is primarily because other theories tend to require that rights-bearers possess characteristics which can only be attributed to adult human persons (such as autonomy, self-respect, or the capacity to demand fulfilment), and consequently rule-out non-human entities as potential rights-bearers. By contrast, the interest theory of rights appears to be less anthropocentric, holding that any entity which has an *interest* can, by that token, be a potential rights-bearer.[8]

For these kinds of reasons, advocates of RoN often (explicitly or implicitly) appeal to interest-based accounts of rights. A prominent example of this occurs in Christopher Stone's seminal article "Should Trees Have Standing", commonly seen as the first published legal argument in favour of RoN. Stone tells us that 'natural objects *can* communicate their wants (needs) to us, and in ways that are not terribly ambiguous' (Stone, 1972, p. 471; 2010, p. 11). Such "wants" can be classed as interests, upon which we can base our judgements of what will benefit or harm natural objects.[9] RoN legislation and declarations also appeal to interest-based accounts of rights. For instance, the Universal Declaration of the Rights of Rivers maintains that 'rivers shall have their best interests … assessed and taken into account' (2020, sec 6).[10]

On the interest theory of rights, rights function to protect those interests which are vital to the well-being of the entity in question. The classical articulation of this point can be found in Raz: 'X has a right if X can have rights, and, all other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty' (Raz, 1986, p. 166). We can think of an "interest" in this sense as an aspect of well-being which is sufficiently strong to ground another person's direct duty. A violation of a right then constitutes a serious harm to the well-being of the rights-bearer. Consider an example. My right to not be tortured is mirrored by the duty which others owe (to me) to refrain from torturing me, and this duty is grounded in the strong interest I have in not experiencing suffering. Notice that in this description, my interest functions not only to ground **the** other's duty not to torture, but also explains why that duty is owed *to me*. Because it is my welfare

[8] See (Baard, 2021, pp. 160–164; Pepper, 2018, pp. 218–220) for discussion.
[9] See also (Chapron et al., 2019) and (Johnson, 1991). Stone later seems to move away from an interest theory of rights, holding that interest and welfare are difficult concepts when applied to natural entities (Stone, 2010, p. 168).
[10] See, also the Te Urewera Act (2014, sec. 18: 1 (g)).

which is affected by torture, duties to refrain from torture are owed to me (rather than to the State, God, or some other third-party), and failure to meet those duties wrong *me*. That is, my welfare interest also operates to explain the *directedness* of the duty.

It follows that the interest theory of rights neatly delimits the set of entities which can be thought of as legitimate rights-bearers. Any entity that can have its welfare affected positively or negatively by others' actions (i.e., can be benefited or harmed) might have interests which are sufficient to ground direct duties, and so is a plausible candidate for bearing rights. Any entity which cannot be thought of as having a well-being or interests in this sense, cannot be considered a plausible rights-bearer. For this reason, many philosophers hold that the set of entities which can be rights-bearers and the set of entities which can have (welfare) interests are co-extensive.[11]

The crux of what I am calling the "no interest" argument (NIA) against RoN hinges on precisely this point. Given the above analysis, concepts such as *welfare*, *well-being*, *harm*, and *benefit* must be meaningfully attributable to any rights-bearing entity. NIA suggests that EEs are *not* the kinds of entities for which this is true, and so EEs cannot possess (welfare) interests of the kind sufficient to ground direct duties, and so rights.

The main issue for RoN is that *sentience* is commonly taken to be a necessary requirement for an entity to have interests in the relevant sense, and EEs are not sentient.[12] This point is most frequently made by proponents of animal rights. The interest theory of rights allows that sentient non-human animals are plausible rights-bearers, for the same reasons as humans are, without too much disruption to the theoretical support for those rights. Consider, for instance, the following passage from Peter Singer:

> To have interests, in a strict, nonmetaphorical sense, a being must be capable of suffering or experiencing pleasure. If a being suffers, there can be no moral justification for disregarding that suffering, or for refusing to count it equally with the like suffering of any other being. But the converse of this is also true. If a being is not capable of suffering, or of enjoyment, there is also nothing to take into account (Singer, 2002, p. 171).[13]

Singer's position here and elsewhere is a utilitarian one, in that wellbeing is specifically linked to enjoyment and suffering. But the importance of sentience is not unique to utilitarianism. More deontological thinkers also hold that only sentient subjects have interests of the relevant

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[11] As Joel Feinberg puts this point: 'the sorts of beings who *can* have rights are precisely those who have (or can have) interests' (Feinberg, 1974, p. 51). Kenneth Goodpaster similarly argues that for some entity to be morally considerable, it must have interests in the sense of being capable of being benefited or harmed (Goodpaster, 1978, p. 323).

[12] As Bryan Norton puts this point: 'collectives such as mountain ranges, species, and ecosystems have no significant analogues to human sentience on which to base assignments of interests' (Norton, 1982, p. 35). Similarly, Mary Anne Warren argues that ecosystems cannot have (moral) rights because they do not possess sentience. (Warren, 1983). Gary Varner argues that 'it makes no sense to speak of what is in nature's interests where the reference of "nature" is a species, biotic community, ecosystem, or other holistic entity … [because] only individual living organisms have interests' (Varner, 2002, p. 8).

[13] Elsewhere, Singer explicitly connects this with sentience: 'the limit of sentience … is the only defensible boundary of concern for the interests of others' (Singer, 2002, pp. 8–9).

kind, as they are the only entities capable of valuing features of their environment.[14] If possessing sentience is required to have interests, and interests are a condition to have rights, then this generates a simple and powerful argument against RoN.[15]

In standard form, NIA looks something like this:

> P1. *X* can be a rights-bearer iff *X* is the kind of entity which has *interests* (which are sufficient to place others under a *duty*).
> P2. *X* can possess *interests* (sufficient to place others under a duty) iff *X* is the kind of entity which can have welfare.
> P3. *Sentience* is a necessary condition for *x* to have welfare.
> P4. Environmental Entities (EEs) do not possess sentience.
> P5. Therefore (from P3 and P4), EEs do not possess welfare.
> P6. Therefore (from P2 and P5), EEs do not possess interests.
> C. Therefore (from P1 and P6), EEs are not rights-bearers.

Faced with a valid argument of the above kind, we must either accept the conclusion or refute one of the premises.

Given the strength and simplicity of NIA, RoN advocates might feel compelled to accept it. This need not be a death knell for RoN as a political movement. Given the ways in which our political system is organised, it might be the case that declaring nature to have rights is a quick and effective way to protect it from human exploitation. RoN discourse would then be defended by its rhetorical usefulness rather than its moral justification.[16] Alternatively, RoN could be analysed politically, primarily as claims made by local and indigenous communities to regain control over their local environment. On such an account, duties are not owed to environmental entities at all, but to groups who set themselves up as speaking on behalf of nature.[17] These kinds of positions do not fall foul of NIA precisely because they reject the key feature of RoN: that EEs can have rights which correspond to direct duties. But this is a serious cost: it involves rejecting the defining feature of RoN discourse. In what follows, then, I will

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[14] (Korsgaard, 2018; Regan, 2004).

[15] Alasdair Cochrane connects these points together in a very clear way: '[t]he *prima facie* case for viewing all sentient creatures as rights-holders is extremely simple and draws upon two conventional ideas in moral and political philosophy. The first is that interests are the necessary and sufficient conditions for the possession of rights. … As such, on this view, all and only interest-holders possess rights. The second conventional idea is that sentience is the necessary and sufficient condition for the possession of interests. … As such, on this view, all and only sentient creatures possess interests. When these two conventional views are combined then, the *prima facie* case is complete: all [and only] sentient creatures, as possessors of interests, are possessors of rights' (Cochrane, 2013, p. 657).

[16] This is the position of James A. Nash, who holds that RoN is best understood as a 'generic metaphor' which is 'defensible as a rhetorical convenience but not as an ethical concept' (Nash, 1993, p. 236). More recently, Stefan Knauβ has argued for a '*rights as shortcut* approach', in which RoN are justified solely as a 'means of [reaching] reasonable social goals' (Knauß, 2018, p. 720).

[17] Tănăsescu states this position very clearly: 'the rights of nature are not about nature, but rather about the political relations between different groups of people'(Tănăsescu, 2021, p. 69). See also (Tănăsescu, 2022).

consider the ways in which the RoN advocate might respond to this argument by refuting one of the premises.

3. Challenging P3 and P4 of the No Interest Argument

The NIA seems inferentially valid, and so the RoN advocate who wishes to maintain what is distinctive about RoN must challenge one or more of its premises. In this section, I summarise existing attempts to rebut NIA in this way. None of these attempts, I argue, are successful.

One option is to challenge P4 – the claim that EEs are not sentient. If P4 is false, then the conclusion of NIA does not follow, as EEs would then welfare interests of the relevant kind. Indeed, the RoN advocate would then be able to rely upon the powerful interest theory of rights to support RoN, as on this theory any sentient entity is a plausible candidate for rights. Existing RoN legislation often reference indigenous worldviews which attribute something analogous to sentience to the entities in question. On a Māori worldview, for instance, rivers and mountains have *mana me mauri* – a living and spiritual force, and Māori relationships with these entities are kin-relationships.[18] From within such a worldview, we might challenge P4 of NIA. However, outside of indigenous worldviews, this argumentative strategy comes with a significant metaphysical burden. Against a background of widely accepted naturalism and materialism, it is difficult to imagine how rivers, mountains, and forests might be considered to have the capacity to experience the world around them. Such entities possess none of the characteristics which are commonly used to identify sentience in other creatures, such as the presence of a nerve-system, or behavioural correlates such as aversion or attraction.[19] Though there are resources within the western tradition from which a richer metaphysical account of EEs might be developed, having the resulting accounts widely accepted by philosophers, policy-makers, or the general public such that they might underpin RoN legislation is a monumental philosophical task.[20]

A less metaphysically ambitious strategy available to the RoN advocate would be to challenge P3 – the claim that sentience is necessary for an entity to be a welfare subject. Sentience certainly seems *sufficient* for attributing states such as *benefit*, *harm*, and *welfare* to an entity, but it might not be *necessary*. Some environmental philosophers argue that having *teleology* or *goal-directedness* is sufficient for a being to possess welfare-states.[21] Features of an entity which allow

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[18] The cosmology of the Tūhoe iwi (tribe) of Māori, for instance, is clearly stated in the Te Urewera Act (2014) which grants legal personhood to the Te Urewara Forest. Lead negotiator Kirsi Luke states the kinship relation clearly – '[T]he land is not real estate … that land out there, that earth mother of yours, is your parent. It's amoral of you to cut up your parent and say you own it' (quoted in Crimmel & Goeckeritz, 2020, p. 565).

[19] See, e.g., (DeGrazia, 1996).

[20] For instance, see (Plumwood, 1993), who argues for "weak panpsychism" as a way of viewing environmental entities as possessing intentionality, and so a kind of mind, rather than sentience. See (Andrews, 1998) for a criticism of this view: 'most parties … would regard it as a reductio if their accounts of intentionality implied that rivers, mountains and places were capable of mental states' (Andrews, 1998, p. 390).

[21] See, for instance (Attfield, 1981; Goodpaster, 1978; Taylor, 2011). See also (Wienhues, 2017) who argues that the capacity to flourish is sufficient for an entity to be a recipient of justice.

us to recognise it as goal-directed include: tendencies to grow towards or away from certain stimuli; self-regulating homeostatic functions; and self-organisation and self-maintained integrity over time. When an entity displays these kinds of characteristics, we might plausibly say that it is benefited or harmed by certain states of affairs. Consider the plant on my desk, for instance. Though it lacks sentience, it still seems to demonstrate goal-directedness. Independent of any human intention, the plant grows towards the sunlight and draws nutrients from the soil. At the time of writing, the plant is performing these functions well: its leaves are green, and it is putting out new sprouts. These indications suggest that the plant is *flourishing*. Conversely, were I to lock the plant away from the light, or deliberately poison it, I would seem to *harm* it. As such, we might say that the plant is the kind of entity which can have interests in certain states of affairs, and can be harmed or benefited by my actions, even though it is not sentient.

Arguing that sentience is not necessary for the attribution of interests to an entity is sufficient to replace premise 3 with the following:

> P3*. *Sentience* is a sufficient (but not necessary) condition for *x* to have welfare.

As such, the conclusion does not follow. But the RoN advocate has only bought themselves a short reprieve. After all, their opponent can simply replace P3* and P4 with:

> P3**. *Sentience* or *goal-directedness* are necessary conditions for *x* to have welfare.
> P4*. EEs possess neither sentience nor goal-directedness.

Now the burden is placed back onto the RoN advocate to argue that goal-directed states can meaningfully be attributed to EEs. Possible candidates for such states might be characteristics like *stability* over time, self-maintained *balance* or *equilibrium*, or ecosystem *health*. These kinds of states sound like they are goal-directed. Damaging the stability of an ecosystem by, say, actively damaging its biodiversity might constitute a *harm* to its *well-being*. As such, we might be led to say that such entities possess interests sufficient to ground direct duties, without attributing sentience to them.[22] However, it is harder to attribute goal-directed states to EEs than to individual organisms, such as the plant on my desk. The apparently goal-directed activity of ecosystems might be better thought of as "behavioural bioproducts" of the goal-directed actions of the individual organisms which comprise that entity.[23] Stability, on this view, is not a *goal* of the system itself, but rather an emergent *product* of each organism and their interactions. Moreover, modern ecology has challenged the idea that equilibrium or self-maintained stability over time *is* a feature of ecosystems, replacing a stable notion of

[22] Lawrence E. Johnson is an example of an environmental philosopher who argues for ecosystem interests along these lines: '[A]n ecosystem can suffer stress and be impaired. It can be degraded to lower levels of stability and interconnected complexity. It can have its self-identity ruptured. In short, an ecosystem has wellbeing interests – and therefore has moral significance' (Johnson, 1991, p. 217).
[23] As Harley Cahen makes this point: 'ecosystems cannot be morally considerable because they do not have interests' (1988, p. 195).

ecosystems with a more dynamic one.[24] As such, this method of challenging NIA relies on attributing properties to EEs which are both philosophical and ecologically contentious.

This strategy also entails a second problem: P3** would seem to expand the list of potential rights-bearers to include not only environmental entities, but also technological entities. After all, machines also have purposes and goals defined by the working of their system and can be damaged in ways which can impede those purposes. So (according to P**) technological entities would also count as having welfare interests sufficient to ground direct duties and so rights. This might be a potential *reductio ad absurdum* for the RoN advocate. After all, most environmentalists would balk at the idea that cars, radiators, and machine learning algorithms can be considered potential rights-bearers in the same way that rivers, mountains, and forests can be. So, P3** seems to burden the RoN advocate with the need to find a non-arbitrary way of excluding artificial goal-directed entities from being legitimate rights-bearers, without thereby excluding environmental entities.[25] One of the benefits of drawing the line of moral concern at sentient entities is that it is (relatively) easy to determine which entities do or do not meet the requirements for being considered sentient. Goal-directedness as the minimum requirement for moral concern, by comparison, threatens to include a bewildering range of entities into our normative community. [26]

[24] See (Woods, 2017, p. 160). See (Baard, 2021, pp. 162–163) for discussion of this point in relation to RoN.

[25] Not all RoN advocates resist the inclusion of technological entities into our moral and legal community. Joshua C. Gellers (2021), for instance, argues that 'artefactual non-humans' including Siri and robotic dogs should be considered proper recipients of justice, and could be legitimately awarded legal personhood. See also (Plumwood, 1993, p. 136). Of course, the environmentalist should recognise any technological entity which is genuinely capable of feeling pain or rationally setting its own goals to be a plausible rights-holder on existing theories of rights. See (Taylor, 2011: 125) for comment. My thanks to an anonymous reviewer for raising this point.

[26] A possibility not discussed here is rejecting P2: that to possess interests, an entity must be capable of being harmed and benefited in relation to its welfare. Challenging this premise is an argumentative possibility, but does not seem like a very live one, considering the close connection between the notions of interest and wellbeing on most accounts. One exception to this might be Matthew Kramer's expansive conception of "interest" (Kramer, 2001, 2010). On Kramer's account, any being which can be improved or damaged counts as an interest-holder. This would include all living creatures, collectives, objects, and artefacts. For this reason, Kramer suggests his theory might be better described as a "benefit" theory (see, for instance, Kramer's comments in McBride & Kurki, 2022, p. 371). However, Kramer does not think that all interest-bearers are potential rights-bearers. To be a rights-bearer on Kramer's account, an entity must *also* have a certain moral status. As sentience is one of the key indicators of this moral status, Kramer's theory is extensionally identical with more restrictive accounts of interests (see Kramer, 2001, pp. 33–36). See (Bowen, 2022) for discussion of Kramer's view, and a useful overview of distinctions within interest theories.

4. Challenging P1 of the No Interest Argument

The comments in the previous section do not rule out the possibility that NIA might be successfully challenged through refuting P3 or P4. They simply establish that both strategies entail significant difficulties and complications. In this section, I will suggest a new and more fundamental strategy – challenging P1, or the idea that a rights-bearer's interests are the necessary ground for direct duties.

All (claim) rights have, by definition, corresponding duties. When X has a right, some other party (Y) must owe a duty *to X*. As we have seen above (§2), the interest theory of rights purports to explain both the *ground* of Y's duty and the *directedness* of that duty by appeal to X's interests. When X has an interest of sufficient importance to place Y under a duty, then Y has a duty *to X* as the rights-bearer, not to any other party (such as the government, the public, or God).

Recently, Rowan Cruft (2019) has argued that on Raz's commonly accepted version of interest theory, there are two available interpretations of when X's interest is sufficient to ground Y's direct duty. On the first interpretation – which we might call the *radical* interpretation – X's interest grounds Y's duty *only* when X's interest is of sufficient importance *to X*, independent of any other party's interest. On the second interpretation – which we might call the *permissive* interpretation – X's interest can ground Y's duty when X's interest is of sufficient importance to X *or* to other parties who stand to be benefited by X's interest being met.[27] These two possible interpretations of interest theory, I suggest, present the RoN critic with a dilemma. On the radical interpretation, the critic successfully rejects EEs as legitimate rights-bearers but must also reject a wide swathe of other well-established rights-bearers as legitimate. On the permissive interpretation, these well-established rights-bearers are held to be legitimate rights-bearers, but the critic loses the ground upon which they reject RoN. Either way, the NIA fails.

Let us first consider the radical interpretation of interest theory. We can represent this interpretation by reformulating P1 as follows:

> P1* [radical]. *X* can be a rights-bearer iff *X* is the kind of entity which has *interests* which are of sufficient importance *to X* to place others under a duty, independent of any other party's interest.

As we have seen, NIA holds that possessing such an interest requires an entity to be a welfare subject (P2) and be sentient (P3). The main problem with the radical interpretation is that

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[27] (See Cruft, 2019, p. 13-20). In places, Raz himself endorses a version of the permissive interpretation (Raz, 1986, p. 179). Cruft suggests that this permissive interpretation is essentially the same as Kramer's account of interest theory (Cruft, 2019, p. 19n29). Kramer's "non-justificatory" theory rejects the idea that X's interest must be of sufficient importance to *ground* Y's duty, holding instead that X has a right when Y's duty to X would typically serves beings like X's interests (Kramer, 2001, 2010, see footnote 28). See (Bowen, 2022) for an overview of justificatory and non-justificatory accounts of rights in relation to Kramer's theory.

there are many existing rights-bearers which do *not* meet the sentience criteria. For instance, we routinely recognise the rights of corporations, businesses, universities, states, nations, governments, and cultural groups. None of these entities seem to be sentient, and attributing "interests" to such entities is at least as difficult, if not *more* difficult, than attributing them to EEs.[28] Accepting the radical implications of this interpretation, then, the interest theorist might be led to affirm the following version of the argument:

> P3. *Sentience* is a necessary condition for *x* to have welfare.
> P4**. Environmental Entities (EEs), corporations, states, cultural groups, etc. do not possess sentience.
> [...]
> C*. Therefore, EEs, corporations, states, cultural groups, etc. are not rights-bearers.

On the radical interpretation, NIA successfully rejects EEs from being legitimate rights-bearers, but at the expense of also rejecting a wide range of established and non-contentious rights-bearers. Of course, it is open to the RoN critic to "bite the bullet" here and accept that many entities which are currently recognised as rights-holders should not be. However, as those pressing NIA are motivated by the thought that existing rights claims are legitimate (and perhaps need to be extended to include non-human animals), this collateral damage seems likely to dissuade all but the most stubborn of RoN critics from accepting the radical interpretation of NIA. Of course, it is open to the critic to argue that these other entities (corporations, states, cultural groups, universities, and the like) are in some way significantly different from EEs, such that RoN can be rejected without rejecting these existing non-sentient rights-bearers. Whether or not these attempts would be successful, they would likely involve abandoning the simplicity – and so much of the intuitive force – of NIA.

The second, and more permissive, interpretation of the interest theory of rights holds that a direct duty can be grounded in the interest of one party, not only when it is of independent importance to that party, but also when meeting that interest stands to benefit the interests of other parties. Some examples will clarify this point. Consider a journalist's right to protect their sources. The journalist has a professional interest in protecting their sources, but this interest is only considered important enough to ground a direct and enforceable duty (and so a right) because of the benefit brought to the public in having a free press. Similarly, corporations have the right to hold property, and this right protects the economic interests of those corporations. But these economic interests are themselves only considered important enough to ground a direct and enforceable duty because of the societal good which is supposed to result from protecting those interests. In these examples, a duty is owed to party X, but the interest of party X is only considered important enough to ground a direct duty because of the interests of party Y.[29]

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[28] As Stone makes this point: 'I am sure I can judge with more certainty and meaningfulness whether and when my lawn wants (needs) water, than the Attorney General can judge whether and when the United States wants (needs) to take an appeal from an adverse judgement by a lower court' (Stone, 2010, p. 11).
[29] These examples are drawn from (Raz, 1986, p. 179).

The permissive interpretation of the interest theory is more plausible than the radical interpretation precisely because it does not involve rejecting other non-contentious entities from the class of legitimate rights-bearers. But by adopting this form of the interest theory of rights, NIA ceases to be valid. We can represent the permissive interpretation by reformulating P1 as follows:

> P1** [permissive] *X* can be a rights-bearer iff X is the kind of entity which has interests which are sufficient to place others under a duty to X, OR if other parties (Y) stand to be sufficiently benefited by X's interests being met.

Notice that the conclusion of NIA – that EEs cannot be considered legitimate rights-bearers – does not follow from P1**. The radical interpretation of the interest theory requires that rights-bearing entity itself must have welfare interests which are sufficient to ground direct duties. The permissive interpretation simply requires that the welfare interests of *some party or parties* (Y) are furthered or protected by granting an entity right. Consider the following amendments to NIA, in line with the permissive interpretation:

> P2*. *X* can possess *interests* sufficient to ground duties iff *X* (or Y) are the kinds of entity which can have welfare (*X* (or Y) must be capable of being benefited and harmed).
> P3***. *Sentience* is a necessary condition for *X* (or Y) to have welfare.

Clearly, the conclusion that EEs cannot be rights-bearers does not follow from these premises. So, on the permissive version of the interest theory, the fact that EEs do not have welfare interests because they are not sentient does not disbar them from being legitimate rights-bearers.

In summary, P1 of NIA entails a dilemma, due to two available interpretations of the interest theory of rights. Interpreting the interest theory radically will successfully disbar EEs from being legitimate rights-bearers, but at the costly expense of also disbarring many other existing rights-bearing parties. Alternatively, interpreting the interest theory more permissively will avoid the expenses of the radical interpretation, but means that NIA fails to reach the conclusion that EEs are not legitimate rights-bearers. Either way, NIA loses its intuitive simplicity and force.

5. Nature's Non-natural Rights

The analysis of the previous section showed that NIA entailed a serious dilemma for the RoN critic. As the aim of this paper is to assess the NIA and offer a novel strategy for rebutting it, this subsequent analysis is sufficient to meet these aims. However, before the RoN advocate celebrates, it is worth noting that this strategy has consequences for how we think about RoN. As we have seen, on the radical interpretation of interest theory, EEs (along with other established rights-bearers) cannot possess rights. On the permissive interpretation, EEs *can* have rights, but only at an apparent cost: the duties owed to EEs are partially grounded in the interests of other parties. Just as the journalist's right to protect their sources entails duties owed to them but ultimately grounded in public interest, so too would a river's right to (e.g.) be free from pollution entail duties owed to the river but at least partially grounded in some other parties' interests.

This is not a *practically* problematic requirement. There are plenty of parties who would benefit from duties to EEs being met. These parties could include: indigenous peoples and local communities who use the EE for their practical, psychological, and cultural needs; the wider community (including future generations) for whom diverse and stable ecosystems are necessary requirements for wellbeing; and the collection of individual organisms that reside within, rely upon, and partially comprise the EE in question.

However, this move does seem to involve a *conceptual* concession. Previously (§3), I noted that the distinctive feature of RoN discourse is that rights correlative duties are owed *to* the EE itself, not to other interested parties. On the permissive interpretation of interest theory, duties are still *owed to* EEs, but the interests *of* EEs are not of sufficient weight to ground those directed duties, and we must also appeal to other parties' interests. RoN advocates might think that this concedes too much, makes RoN derivative on human interests, and weakens the very feature which sets RoN initiatives apart from other forms of environmental protection and conservation. As such, unless I want this strategy for rebutting NIA to be considered something of a pyrrhic victory, I owe the RoN advocate a response to this concern.

We first need to draw a distinction between *naturally directed* and *institutionally directed* duties. All rights, by definition, have corresponding duties which are directed in the sense of owed *to* the rights-bearer (§2). Naturally directed duties occur when X's interest is sufficient to ground a duty *to* X, independent of legal or social institutions.[30] Consider my duty to not to torture Joe, for instance. I owe this duty *to Joe*, because *Joe's* welfare would be severely impacted by torture, and Joe's welfare would be sufficient to place me under this duty even if we lived in a dystopian society which did not legally recognise Joe's right not to be tortured. In short, Joe has a *natural right* or a *moral right* not to be tortured, even in the absence of any institutional

[30] I am paraphrasing Cruft here: 'when the good of a party … naturally brings a duty into existence (rather than through legal or social construction), then – and only then – is the duty naturally owed to that party' (Cruft, 2019, p. 105).

recognition. As it is difficult to argue that EEs possess welfare interests (§3), it is also difficult to argue that we owe them duties which are naturally directed in this sense.

When a duty is institutionally directed, on the other hand, this means that it is legal or social institutions which make it the case that a duty is owed *to* X. Absent these institutions, there might be no duties owed *to* X, because X naturally possesses no characteristic sufficient to place other parties under a direct duty. This is not to say that X lacks moral importance, or that we don't have *undirected* duties involving X (more on this in a second). It is just to say that the *direction* of the duty – that it is owed *to X* – is at least partially an institutional creation. According to the more radical interpretation of interest theory, only those who are owed *naturally directed* duties are legitimate rights-bearers. This excludes EEs (and other conventionally accepted rights bearers) (§4). As Cruft points out, taken as an account of *moral* rights (or naturally directed duties), this radical interpretation of the interest theory is satisfactory. Taken as an account of all *legal* rights, however, it is overly restrictive.[31] This paper suggests that even if the RoN advocate accepts that EEs lack interests sufficient to ground *naturally directed* duties, the NIA still fails because EEs can be legitimate rights-bearers through *institutionally directed* duties.

To clarify this point further, we can consider a distinction in human rights literature between *orthodox* and *political* justifications of rights. Orthodox accounts of (human) rights hold that legal rights must be grounded in moral rights, and fundamental (human) interests. Political accounts of (human) rights, on the other hand, hold that rights are justified within institutional contexts and by appeal to the considered judgements of practitioners. It is important to note that such considered judgements can – and often do – involve the consideration of moral principles, fundamental interests, and other normative concepts. But there is no claim that legal rights must be grounded in natural or moral rights. The suggested rebuttal of NIA accepts that EEs cannot possess natural rights, and so adopts a "political" approach to RoN.[32]

With these distinctions in place, there are three things to say to the RoN advocate who considers this move too much of a concession. The first is to note that institutionally directed duties are *a priori* no more or less important than naturally directed duties. There are naturally directed duties which are too weak to generate rights (such as my duty to express gratitude to a friend who bought my lunch), and institutionally directed duties of significant moral importance. For instance, a parent's right to child support is partially grounded in the interests of a third party (the child) but *owed to* the parent through institutional recognition.[33] As such, the distinction between natural and institutionally directed duties does not imply a moral hierarchy.

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[31] (Cruft, 2019, pp. 19–20).
[32] See (Beitz, 2009; Rawls, 1999) for foundational texts on political accounts of human rights. See (Follesdal, 2017) for a useful articulation and comparison with orthodox accounts.
[33] The "radical" interpretation of the interest theory also cannot account for these kinds of cases. See (Cruft, 2019, p. 16).

Secondly, a duty's being institutionally *directed* is not the same as a duty's being institutionally *created*. Some duties are naturally occurring but undirected. For example, Onora O'Neill argues that – though there is a general duty to provide services such as education and health care – this duty is 'amorphous' until we create institutions who clearly bear the obligation to fulfil that duty. Until that time, the "right" is merely rhetorical. Given that rights require *direct* duties, the natural but undirected duty to provide necessary services does not take the form of a *right* until it is institutionalised.[34] In a similar way, we might recognise duties to protect, respect, and restore EEs which are naturally occurring but undirected. For instance, we might recognise the moral importance of protecting EEs, but be unclear to *whom* we owe that duty (to the EE, future generations, non-human organisms, etc.). Or we might recognise the EE as having non-instrumental value of significant strength to generate a duty which was (because EEs lack welfare interests) undirected. In either case, recognising that we have natural but undirected duties of significant weight might justify the creation of institutions which direct duties *to* the EE – for pragmatic or non-instrumental reasons. In such a case, the *directedness* of our duty – and so the right – would be institutionally created, but the duty and moral significance would be independent of that creation.

Finally, we should clarify that accepting that duties owed to EEs are institutionally directed does not commit us to understanding RoN in the rhetorical or instrumental way discussed earlier (§1), or as derivative on human interests. On this account, duties are still owed *to* EEs, rather than to other parties. It is just that a) the directedness of our duties to EEs are created by institutions, rather than naturally occurring, and b) the ground of these duties is established by something other than the welfare of that entity. There is no reason to assume that this alternative ground needs to be instrumental human interest. We might choose to direct duties to EEs for several reasons, instrumental (perhaps direct duties are the best way to encourage community action, or the best way to hold certain agencies to account), or non-instrumental (perhaps rights are the best way of showing due respect to EEs or meeting our undirected moral duties).

[34] (See O'Neill, 2000, pp. 98-105).

6. Conclusion

The distinctive feature of RoN initiatives, compared with other forms of environmental protection, is the recognition that duties are owed directly *to* EEs, rather than to other interested parties (§1). This paper has offered a novel refutation of the strongest argument against RoN: the "no interest" argument (NIA). In essence, this argument holds that only entities which possess sentience can have the kinds of independently important interests sufficient to ground directed duties, and thus claim rights. As EEs are not sentient, they do not have interests, and so are not rights-bearers (§2).

The paper presents and considers the existing responses to NIA, finding that they all entail significant complications and problems (§3). The paper then articulates a new response to NIA, focusing on the fundamental question of how interests ground direct duties. The RoN critic was presented with a dilemma. Either NIA is interpreted in a radical way, which excludes many non-controversial rights-bearers along with EEs from being legitimate rights-bearers, or it is interpreted in a permissive way, which allows for RoN. In either case, the intuitive force of NIA is refuted (§4). As such, EEs can be legitimate rights-bearers according to the interest theory of rights.

However, as a result, the RoN advocate must make a concession, and hold that direct duties owed to EEs are not *naturally* directed and are at least partially grounded in the importance of other parties' interests, rather than in the interests of the EEs themselves (§5). The RoN advocate who feels that this permissive interpretation is too much of a concession and does not capture the distinctiveness of RoN has two options. They might return to one of the strategies that I set aside in §3, and try to show that EEs are sentient, goal-directed, or in possession of some other characteristic which grants them independently important interests sufficient to ground direct duties. Or they might abandon the interest theory altogether and attempt to justify RoN through an appeal to an alternate theory of rights.[35]

[35] As previously discussed (§2), the interest theory of rights seems like the most plausible candidate for RoN advocates who wish to extend rights to EEs, but there are other options available which I do not consider here. One is the *will* theory, which holds that rights correspond to duties owed to entities who can make autonomous choices over the enforcement of that duty. However, will theories often require that legitimate rights-bearers possess the capacity to understand and exercise their free will, and so is more stringent than interest theories (See, e.g., Hart, 1982; See Jones, 1994 for the distinction between interest and will theories of rights). As such, this and related theories seem unlikely to help the RoN advocate argue for the rights of non-sentient entities (Though see Woods, 2017, pp. 255–260, for the possibility that "wildness" is sufficiently analogous to "autonomy"). Alternative theories of rights suggest that they are justified by the non-instrumental *status* of the entity in question. RoN advocates might, then, argue that EEs possess non-instrumental status which should be reflected in awarding claim rights. However, most status theorists hold that sentience is a requirement for an entity possessing such a status (e.g., Kamm, 2007, p. 229; see Pepper, 2018, p. 220 for discussion). And even theorists who wish to extend rights to include non-sentient, goal-directed organisms, on the basis of them possessing a certain non-instrumental status resist the claim that ecosystems possess this status (e.g., Nash, 1993).

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