Nature’s Rights: Rivers, Trees, Whales, and Apes

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The Global Movement Toward Obtaining Rights for Nature

There is a growing movement to provide a legal framework whereby natural entities have the right to exist and thrive. Advocates of nature’s rights, ranging from those who use the law to defend communities’ natural environments to indigenous peoples of the Andes, believe that nature should be recognized in systems of law in order to be given the attention and legal protection it deserves. Like an individual, a family, or a corporation, they argue, nature should be granted rights and protections as a legal entity unto itself.

These advocates hope that the philosophy behind the movement will result in a change in the relationship humans have with the earth: from one of domination and exploitation to one of integration and symbiosis. Because the movement for nature’s rights is relatively new (though reverence for nature is ancient), the outcomes of its uses are either non-existent or not yet publicly documented. That said, activists, politicians, academics, and others working within the nature’s rights movement see a common thread in their advocacy for the rights of animals, humans, and nature: a right to live that extends beyond human instrumentality, and a need to change the popular belief that human beings are superior to other species and can freely exercise their dominion over them. Interrelationships between animal rights advocates and environmentalism provide channels for the nature’s rights movement. These channels can be seen through various global efforts that have been taken to provide trees, rivers, apes, and whales with rights.

Expansion of Rights Beyond “Man”

One of the first documents arguing that a natural entity deserves rights was Christopher D. Stone’s groundbreaking essay, “Should Trees Have Standing?,” published in the Southern California Law Review in 1972. The essence of Stone’s case was that if slaves, women, children, and prisoners gained rights, trees could, too.¹ Stone argued that a certain allowance for “guardianship” should be present in our laws, so that when a “friend” of some entity perceived it to be endangered, that individual or group could act on its behalf.² Stone had earlier prepared an article on the notion that such things as trees and rivers might have legal rights. He hoped to influence the U.S. Supreme Court in its

¹ Stone, Christopher D. 1972. “Should Trees Have Standing?”
² Stone, Christopher D. 1972. “Should Trees Have Standing?”

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deliberations about the Mineral King Valley case. (Sierra Club v. Morton) William O. Douglas in his dissenting opinion asserted that natural resources ought to have standing to sue for their own protection. The suit arose when the United States Forest Service permitted development of Mineral King near Sequoia National Park. The case illustrated the point that nature was not just a conglomeration of objects that could be owned, but was a subject that itself had legal rights and the standing to be represented in the courts to enforce those rights.

The question that has echoed through current discourse on the rights of nature has been: If plants, animals, mountains, and bodies of water are given rights, who shall argue for these voiceless entities in a courtroom or on a legislative floor? Justice Douglas proposed, “Those inarticulate members of the ecological group cannot speak. But those people who have so frequented the place as to know its values and wonders will be able to speak for the entire ecological community.” This is similar to the argument proposed by David Wolfson, an animal rights lawyers based in New York. Wolfson argues that currently existing civil law can be used to protect animals and nature. For example, an individual wishing to protect an elephant in a circus from being abused—an animal who is currently considered the property of the circus and not a being with independent rights—could seek legal redress for the suffering she or he experienced in seeing the elephant under those conditions.

Ecuador: A New Constitution

Ecuador stepped to the forefront of the nature’s rights movement when it became the first country to include the rights of Mother Earth (Pachamama) in its constitution, which was ratified in 2008. The document states, “Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain, and regenerate its vital cycles, structure, functions, and its processes in evolution.” Nature is a “rights-bearing entity that should be treated with parity under the law.” Citizens are given the power to sue on behalf of nature, now a legal entity.

Bolivia: Following in Ecuador’s Footsteps?

Bolivia is another South American front in the nature’s rights movement. In 2009, the government banned the use of all animals in circuses, the first prohibition of its kind in the world. Several countries, such as India, outlawed the use of wild animals in circuses, but Bolivia was the first nation to outlaw both wild and domestic animals. Although Bolivia’s ban is framed within an animal rights perspective, the country’s leaders have—at least since 2010—shown great interest in the nature’s rights movement. This may be a crucial opportunity to shape an alliance between nature’s rights and animal rights, by drawing attention to the parallels between the use of wildlife in circuses and in other human activities (such as exotic pets and in zoos and entertainment). On April 20, 2011, Bolivia passed the Law of Mother Earth, due in great part to President Morales, a champion of the rights of indigenous peoples and the environment. This law grants rights similar to those in Ecuador’s constitutional chapter, granting nature “the right to exist, persist, maintain and regenerate its vital cycles, structure, functions
and its processes in evolution.” As Bolivian Vice President Alvaro Garcia Linera put it, the law “establishes a new relationship between man and nature, the harmony of which must be preserved as a guarantee of its regeneration.”

**Industrial Agriculture: The Key Intersection of Rights for Animals and Nature?**

In the United States and other parts of the world, livestock production is becoming increasingly dominated by concentrated animal feeding operations (CAFOs). CAFOs present an alarming amount of damage to the environment as well as unnecessary harm to the animals. In a CAFO, animals are crammed by the thousands or tens of thousands, often unable to breathe fresh air, see the light of day, walk outside, peck at plants or insects, scratch the earth, or eat a blade of grass.⁸ Not only does the industry by definition treat living beings as objects instead of subjects of a life, but it also requires unethical treatment of those beings to meet the demands of mass production. Animals are subjected to cramped and unhealthy living conditions and fed hormones and antibiotics to speed their growth and combat the repercussions stemming from diseases exacerbated by close confinement. Evidence of the cruelty of factory farming has been well-documented, but this system doesn’t only affect animals. Joyce Tischler, Founder and General Counsel of the Animal Legal Defense Fund (ALDF), states: “The closest connection animal law has to nature’s rights is in wildlife protection/rights work, as well as our CAFO lawsuits, which, if successful, support clean water, clean air and a healthier, more natural environment.”⁹

**Whanganui River Legal Rights**

In 2012, a preliminary agreement between the government of New Zealand and the Whanganui River iwi granted legal personhood to the Whanganui River. (An iwi is a nation or tribe of Maori people in New Zealand.) The covenant identified the river (which is sacred to the Whanganui River iwi) and all of its tributaries as one legal entity, known as Te Awa Tupua, endowed with rights, interests, and the ownership of its own riverbed.

The Whanganui River people had been vying for the river’s legal protection since the late nineteenth century and the agreement was groundbreaking in New Zealand—as it is for the rights of nature around the world. Cormac Cullinan, author of “Wild Law,” described a fundamental river right would be the right to flow. “From a perspective of a river, building so many dams across it and extracting so much water from it that ceased it to flow into the sea, would be an abuse of its Earth rights.”¹⁰ Unlike those in Ecuador and Bolivia, this pact does not recognize the rights of all nature or natural entities, but specifies one particular entity as a non-human person with rights. Once the agreement is finalized, and its implications realized, the compact may serve as a crucial comparison:

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⁹ Email correspondence 1 July 2013
Which approach will be more successful—legislation that bequeaths rights to all of nature, or individual laws that protect specific entities, one by one?

Policy Recommendations

The nature’s rights movement, still in its early years, is waiting for success stories: When will these laws be tested and prove inarguable? When will corporations who challenge the rights of nature, claiming that they infringe upon their own rights as corporations, be denied in a court of law? It is unlikely that these true success stories will be fast to emerge, as that is contradictory to the general practice of government. But while current laws and ordinances are waiting to be tested, and nature’s rights lawyers are fighting drawn-out court battles, new bills will be written for small communities, states, and countries; the movement will continue. While the “success” of the movement may still be questionable to many, its progress is undeniable. Local grassroots efforts will shape the nature’s rights movement triggering further action.

Seeds for the Mind:

- How different would our human societies, economics, and legal system look if nature were given rights?
- Why have Bolivia and Ecuador stepped up in the nature’s rights movement?
- Should science be used as evidence to provide higher order mammals such as orcas rights?
- Why does the intensification of climate change impacts make the rights of nature more important? Are the rights of nature more important in developing vs. developed countries?