Michigan Journal of Environmental & Administrative Law

Volume 11 | Issue 1

2021

Nature's Rights

Christiana Ochoa
Indiana University, Maurer School of Law, Bloomington, IN

https://doi.org/10.36640/mjeal.11.1.natures

NATURE'S RIGHTS

Christiana Ochoa[+]

Do forests and rivers possess standing to sue? Do mountain ranges have substantive rights? A recent issue of The Judges' Journal, a preeminent publication for American judges, alerts the bench, bar, and policymakers to the rapidly emerging "rights of nature," predicting that state and federal courts will increasingly see claims asserting such rights. Within the United States, Tribal law has begun to legally recognize the rights of rivers, mountains, and other natural features. Several municipalities across the United States have also acted to recognize the rights of nature. United States courts have not yet addressed the issue, though in 2017, a plaintiff brought a suit claiming rights for the Colorado River ecosystem, although the case was dismissed. Meanwhile, several countries outside the United States have extended standing and substantive rights to nature, and that number is growing quickly. This international trend matters because U.S. Supreme Court Justices, including Sonia Sotomayor and Stephen Breyer, have argued that American courts should note and address cutting-edge legal developments in foreign jurisdictions.

This Article provides the key foundational and theoretical basis for recognizing the rights of nature. It explores the intellectual and precedential basis for accepting nature's rights, surveying developments in the natural sciences, social sciences, and humanities, and providing a survey of select legal systems that currently recognize such rights. It traces the geographic, theoretical, and practical development of the idea of nature's rights, illustrating that human thought regarding the intrinsic value and rights of nature has evolved significantly since our common law on the issue was established. This Article thus provides the intellectual, moral, and philosophical foundation for students, clerks, judges, and lawmakers facing questions about extending rights to nature.

[+] Professor of Law and Herman B Wells Class of 1950 Endowed Professor, Indiana University Maurer School of Law, Bloomington, IN. This Article benefited greatly from a workshop of the Max Planck Institute for Comparative & International Law, particularly the comments from Justice Manuel José Cepeda, Marina Brilman, Armin von Bogdandy, and Franz Ebert. This article also was improved by the generous comments provided by Jayanth Krishnan, Austen Parrish, Christian Freitag, Dianna Lynch, Christiana Zilke, and Melanie Chamberlain, as well as by the guidance through the literatures in anthropology, provided by Todd Ramón Ochoa and Shane Greene and philosophy, provided by Gary Ebbs and Indiana University President, Michael McRobbie. I am also indebted to Kacey Cook and Hanna Weil for their invaluable research assistance and contributions, and to the research librarians at the Indiana University Maurer School of Law.

TABLE OF CONTENTS

> *Each time there is a movement to confer rights onto some new "entity," the proposal is bound to sound odd or frightening or laughable. This is partly because, until the rightless thing receives its rights, we cannot see it as anything but a thing for the use of "us" – those who are holding rights at the time.*[1]

INTRODUCTION

In October 1971, having had an impromptu epiphany while teaching his first year Property class, a young professor at the University of Southern California's law school set about dashing out a law review article launching his idea. He hoped to finish the manuscript in time to allow the possibility that clerks and justices on the Supreme Court might rely on it in connection with their upcoming consideration of *Sierra Club v. Morton*, a case on review from the Court of Appeals for the Ninth Circuit.[2] Through this case, the Sierra Club sought to enjoin the conversion of the Mineral King Valley, an esteemed wilderness area, into a Walt Disney tourism and recreational attraction. The Supreme Court, upholding the Ninth Circuit's decision to dismiss the case because the Sierra Club lacked standing, stated that "the 'injury in fact' test requires more than an injury to a cognizable interest. Instead, it requires that the party seeking review be himself among the injured."[3] As such, the Court held that the Sierra Club lacked standing to enjoin the park's construction.

Although the Sierra Club lost the case, much was gained from the effort.[4] The young professor had, in fact, managed to get his just-finished article in front of Justice William Douglas, who was persuaded by what he read. In the article, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, Christopher Stone argued for giving "legal rights to forests, oceans, rivers and other so-called 'natural objects' in the environment – indeed, to the natural environment as a whole."[5] The argument convinced Justice William O. Douglas, whose dissent, stated in part:

---

1. Christopher Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 455 (1972) [hereinafter "Stone (1972)"].

2. CHRISTOPHER STONE, SHOULD TREES HAVE STANDING? LAW, MORALITY, AND THE ENVIRONMENT xi-xiv (3d ed. 2010) [hereinafter "STONE (2010)"].

3. Sierra Club v. Morton, 405 U.S. 727, 734-35 (1972).

4. In addition to the paradigmatic shifts in legal conceptions of nature that are the inspiration for this Article, the legacy of the case has been significant. Despite the Supreme Court's decision, the case opened the door to plaintiffs with a cognizable interest in a natural area, and a potential harm if it is developed, to sue for the protection of the location. This strategy has been successfully employed for environmental protection since that time by the Sierra Club Legal Defense Fund (which was founded to litigate the Mineral King Valley Case and continues today as Earthjustice), and many others (*but see*, *infra* Part II.A.2 regarding current standing doctrine). *See, e.g.*, Nathan Masters, *Disney's Lost Plans to Build a Ski Resort in Sequoia National Park*, KCET, (Feb. 20, 2018), https://www.kcet.org/shows/lost-la/disneys-lost-plans-to-build-a-ski-resort-in-sequoia-national-park; *Our History*, EARTHJUSTICE, https://earthjustice.org/about/our_history (last visited Nov. 10, 2021).

5. Stone (1972), *supra* note 1, at 456.

> The critical question of standing would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated . . . in the name of the inanimate object to be despoiled, defaced, or invaded . . . Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects for their own conservation . . . .
>
> Inanimate objects are sometimes parties in litigation [e.g., ships and corporations with legal personality] . . . . So it should be as respects valleys, meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all life it sustains or nourishes . . . who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it . . . .
>
> The voice of the inanimate object, therefore, should not be stilled . . . .
>
> Perhaps they will not win. Perhaps the bulldozers of "progress" will plow under all the aesthetic wonders of this beautiful land. That is not the present question. The sole question is, who has standing to be heard?[6]

At the time, both Justice Douglas' dissent and Professor Stone's article were met dismissively in publications and court opinions.[7] Now, however, their innovative arguments seem prescient. The idea that nature can be recognized as a juridical person, extended standing, and granted its own actionable rights is ready to be taken seriously.

The nascent shift in legal ordering—beyond the expansion of personhood, standing, and rights to all humans and toward natural, non-human actors[8]—is the

---

6. Sierra Club v. Morton, 405 U.S. at 741.

7. STONE (2010), *supra* note 2, at xiv-xv (citing ridiculing poems published by the Journal of the American Bar Association and by the Oakland County Michigan Appeals Court).

8. The term "actor" is used here as an alternative to other options. This term, together with "agent," has been used in social theory, particularly with respect to Actor Network Theory, to denote that the natural and social world exist within constantly shifting, non-hierarchical, networked relationships. *See e.g.*, BRUNO LATOUR, REASSEMBLING THE SOCIAL: AN INTRODUCTION TO ACTOR-NETWORK-THEORY 10-11 (2007). While this Article may occasionally use "objects" or "entities," these terms are less preferable as they either re-entrench the idea that natural agents are material things (objects) or attach a sort of spirituality (entities). This Article aims to do neither, trying instead to discuss recent legal developments and the intellectual antecedents for the expansion of personhood, standing, and rights, to natural agents, regarding them with "neutral" terminology.

subject of this Article. In about a decade, a notable number of national constitutions, statutes, court decisions, and international court opinions, have recognized the standing, personhood, and independent rights of natural non-human actors, including rivers, lakes, mountains, and forests.[9]

A large and rapidly growing number of countries[10] have recognized the legal personhood,[11] standing, and rights of rivers, forests, and other natural "things" within their jurisdictions. Given the activity described above and the cross-pollination between foreign and domestic law,[12] United States courts may increasingly engage with this possibility. Indeed, Justice Stephen Breyer has repeatedly noted that legal developments in other countries are significant for America's courts,[13] a sentiment shared by other Supreme Court justices.[14] Although no United States court has yet taken the step of extending its protections to non-human natural actors in this way, advocates have raised the possibility in United States courts, before legislative bodies, and in municipal ordinances and voter referenda.[15]

This Article will contribute to the emerging legal field of "nature's rights," or the "rights of nature." It demonstrates that, while Professor Stone's innovation may have been born into an unready audience, law is now exploring the idea that humans and the natural world are not so separate, and that nature has intrinsic value that can, and should, be recognized and protected. Law, a latecomer to this idea, has been acting as it should–cautiously, to give structure to changing conceptions of what

---

9. *See supra* Part III.

10. *Id.*

11. *See* William Twining, *Chapter 15: Some Basic Concepts*, online supplement to WILLIAM TWINING, GENERAL JURISPRUDENCE: UNDERSTANDING LAW FROM A GLOBAL PERSPECTIVE (2009) at 1-2. Legal persons are also sometimes known as "legal units", "legal subjects" and "legal entities."

12. *See, e.g.*, Anne-Marie Slaughter, *Judicial Globalization*, 40 VIRGINIA J. INT'L L. 1103, 1113-14; 1116-19; Anne-Marie Slaughter, *A Global Community of Courts*, 44 HARV. INT'L L.J. 191,192-94 (2003).

The same holds for the influence of foreign law on the domestic legal systems of other countries. *See, e.g.*, LAW LIBRARY OF CONGRESS, *The Impact of Foreign Law on Domestic Judgements* (March 2010), https://tile.loc.gov/storage-services/service/ll/llglrd/2013417620/2013417620.pdf.

13. *See, e.g.*, STEPHEN BREYER, THE COURT AND THE WORLD: AMERICAN LAW AND THE NEW GLOBAL REALITIES (2016).

14. *See, e.g.*, Justice Ruth Bader Ginsburg, Associate Justice, Supreme Court of the United States, Speech at the International Academy of Comparative Law, American University: "A Decent Respect to the Opinions of [[Human]kind": The Value of a Comparative Perspective in Constitutional Adjudication (July 30, 2010), http:// www.supremecourt.gov/publicinfo/speeches/viewspeeches.aspx?Filename=sp_08-02-10.html (last visited Nov. 21, 2021); *See* Manu Raju, *Kagan: Foreign Law Can Provide 'Good Ideas'*, POLITICO NOW BLOG, https://www.politico.com/blogs/politico-now/2010/06/kagan-foreign-law-can-provide-good-ideas-027844 (June 29, 2010).

15. The phenomenon has also grabbed the attention of some legal scholars who have conveyed and analyzed portions of this development. *See, e.g.*, Laurence H. Tribe, *Ways Not to Think About Plastic Trees: New Foundations for Environmental Law*, 83 YALE L.J. 1315 (1974); Jedediah Purdy, *Our Place in the World: A New Relationship for Environmental Ethics and Law*, 62 DUKE L.J. 857, 927-30 (2013); Kristen Stilt, *Rights of Nature, Rights of Animals*, 134 HARV. L. REV. F. 276, 281 (2021) https://harvardlawreview.org/wp-content/uploads/2021/03/134-Harv.-L.-Rev.-F.-276.pdf; Gwendolyn Gordon, *Environmental Personhood*, 43 COLUM. J. ENV'T. L. 49, 71 (2018).

deserves legal protection. Nevertheless, it is increasingly clear that changed understandings of the natural world require a paradigm shift that recognizes nature's intrinsic value and protects its rights.

This Article has three major goals. First, the Article seeks to briefly explore the conceptual antecedents to expanding legal recognition to non-human natural actors. For decades, rapidly growing subfields in the social sciences and humanities, including philosophy, history, and anthropology, have been wrestling with the paradigmatic division and hierarchy separating the human and the natural worlds. Second, the Article hopes to provide readers with an understanding of the entities that have advanced this legal theory and what has prompted them to do so. It introduces the communities of advocates for whom this theory holds promise. Third, the Article aims to provide detailed examples of the existing law establishing the standing, personhood, and rights of non-human natural actors.

With these objectives in mind, the Article proceeds in four Parts. Part I surveys the development of the idea that humans are merely a part of, rather than apart from, nature. This Part explores the emergence of this idea in the social sciences and humanities literatures. The evolving views of the human relationship with nature, and nature's status, within the fields of history, philosophy, and anthropology support the assessment that humans are not so separate from nature that they should be the only natural beings possessing rights under the law. Fields outside of law have been grappling with this idea for long enough that it has become a part of their canons. This material is essential reading for anyone hoping for a well-reasoned view of the rights of nature.

Part II considers the utility of expanding legal recognition and rights to natural actors. This section explores why this expansion seems necessary to the legal systems that have employed it, and how it has been used. A full commitment to human rights, the robust appreciation of indigenous rights, including opening space in the law for differing epistemologies and ontological perspectives, has required this shift. Environmental protection, the preservation of ecosystems, efforts to reduce climate change, the full recognition of indigenous peoples (and their ways of experiencing and knowing the world), the protection of human rights, and the realization of the rights of future generations have combined with the ever-improving understanding of the natural world, and the symptoms of its degradation, to encourage the recognition of nature's rights. Changing popular understandings and attitudes regarding nature requires legal consideration of these shifts. The confluence of these academic and legal fields, as well as the harms and needs experienced by humans and by the non-human natural world have exposed the insufficiency of current law. Nature's rights have become the medium for channeling hope and encouraging change in legal structures that have been failing to ensure the sustainability of life on earth.

Part III provides a detailed review of the constitutional, statutory, and jurisprudential actions that make up the new field of nature's rights. Some readers may wish to proceed immediately to Part III for an orientation to the legal reordering

occurring in various jurisdictions. The Article will deliver a description of the developments within several emblematic countries adopting novel approaches to nature's rights. It will also present a summary and analysis of current international law in this area. No court, no country, moving in this direction will be alone, as this Part makes clear.

Part IV concludes the Article by reflecting on the germination of the idea that nature has standing and can be imbued with rights. It will also look forward toward the possibility that nature's intrinsic value will be recognized by law in countries, like the United States, that have not yet moved to do so.

Ultimately, the Article recognizes that there is increasing pressure in the United States to recognize nature's rights. This Article aims to provide the conceptual and practical grounding for courts and legislators considering this possibility.

I. CONCEPTUAL PRECURSORS

A. Nature as Subject

Long before courts issued the opinions recognizing the standing, personhood, and rights of nature that will be discussed at length in Part III of this Article, ethnographers, historians, and philosophers had observed that the Western conception of humans as separate from nature was quite different from the conceptions of non-Western cultures. Over the course of the past 50 years, the social sciences and humanities have expanded Western understandings of these cultural and conceptual divides. In the process, the academic disciplines explored in this Part have themselves re-oriented and begun to reflect changing Western attitudes and relationships with nature. While this Part does not explore the contributions of the natural sciences to changing understandings of the agency of nature, natural scientists have been a source of inspiration (and contestation) for many of the social scientists discussed herein.[16]

Among the observations in this literature is that the idea that nature, animals, plants, and geological features in nature, possess the potential of being seen as subjects.[17] This is substantially different than the Western view, where they are viewed as mere material objects, susceptible to the dominion of humans and available for commodification and exploitation by them.[18] Within each discipline discussed here, the idea that humans are separate and superior, or regarded as part of a social order, rather than a natural one, is disintegrating. In the detritus of the disintegration, one is left wondering, within each discipline: what qualifies humans to be subjects, while nature is regarded as a material object? Reflexively, one has immediate, perhaps

16. *See* Latour, *supra* note 8.

17. These ideas will be explored in greater depth in Part I.

18. *See, e.g.*, *infra* notes 27-52.

impetuous, responses: humans are sentient; humans have conscience and reflective thought; humans have some common ethics; humans bear responsibilities and thus also bear rights. However, as this Part will explain, the humanities and social science literatures suggest that even these responses are steeped in a particular modern, Western way of seeing and understanding the world.

For example, in accordance with the epistemological and ontological orientations of many cultures, non-human agents such as animals, plants, and features of the terrain, were originally human.[19] Therefore, no such separation between the human and the non-human natural world exists. This view holds that "having been people, animals and other species continue to be people behind their everyday appearance."[20] As such, they hold the qualities we normally identify exclusively with humans; they form part of social networks, they relate, they have views, just as humans do. In other words, "to personify them is to attribute to nonhumans the capacities of conscious intentionality and social agency that define the position of the subject."[21] Current scientific understandings also demonstrate that the bases on which our current legal ordering was structured with respect to nature has been outstripped.[22]

Exploring how it came to be that humans set themselves apart from – and above – non-human, natural actors is valuable. It can help us consider why, and for how much longer, Western-modern humans can hold fast to the view that they remain separate and above the non-human world. When this historical work is combined with recent contributions from philosophy and anthropology, what comes into view is that the very question of what or who is a valid subject, at law or otherwise, is highly contested among the ontological and epistemological understandings of the societies that currently occupy the world.[23] A more earnest consideration of alternative conceptions of nature may provide Western legal systems with additional creative options for protecting ecological systems.

What follows is a brief description of some aspects of environmental history that will help to explain how humans came to see themselves as separate from and in a position of power over the natural world. It will then proceed with a discussion of relevant features of ecological theory and philosophy, which explores the ethics and

---

19. *See* Viveiros de Castro, *Cosmological Deixis and Amerindian Perspectivism*, 4 J. ROYAL ANTH. INST. 463-84 (1998) (citing Gerald Weiss, *Campa Cosmology*, 11 ETHNOLOGY 2, 169-70 (1972)); *see also, e.g.*, MARILYN STRATHERN, PROPERTY, SUBSTANCE, AND EFFECT: ANTHROPOLOGICAL ESSAYS ON PERSONS AND THINGS 239 (1999) ("The same convention requires that objects of interpretation – human or not – become understood as other persons; indeed, the very act of interpretation presupposes the personhood of what is being interpreted."); Nurit Bird-David, *'Animism' Revisited: Personhood, Environment, and Relational Epistemology*, 40 CURRENT ANTHROPOLOGY 67-89 (1999).

20. Viverios de Castro, *supra* note 19, at 466.

21. *Id.* at 467.

22. For a lay introduction to current scientific knowledge regarding nature, see generally, PETER WOHLLEBEN, THE HIDDEN LIFE OF TREES (2016).

23. *See infra* notes 89-123 and accompanying text.

morality of human relationships with the natural world. This Part will end with an exploration of what anthropology can teach us about alternative epistemic and ontological orientations toward the natural world.

B. The Objectification and Re-Subjectification of Nature

1. Environmental History

Environmental history seeks to understand "human beings as they have lived, worked, and thought in relationship to the rest of nature through the changes brought by time."[24] It recognizes that humans are intrinsically and intricately interwoven with nature. "Indeed, environmental history can be seen as a corrective to the prevalent tendency of humans to see themselves as separate from nature, above nature, and in charge of nature."[25] While there are a variety of themes within environmental history, the most relevant aspect of environmental history for the purposes of this Article seeks to understand how humans have thought and related to the natural environment through time.

Among the first works to explore this theme within environmental history was Roderick Nash's Wilderness and the American Mind.[26] Now in its fifth edition, the book continues to be a cornerstone of environmental history. It explores how American ideas about nature shifted from thinking of wilderness as a resource for consumption (at best), and an enemy (at worst), to an object of concern for preservationists and recreationists. It further examines how modern-Western people created the concept of the wilderness and how our relationship to the concept changed over time.[27] As Nash describes it, for most of human history:

> Everything natural was simply habitat. People understood themselves to be part of a seamless community. Nothing was 'wild' because nothing was tamed. Lines began to be drawn – on the land and in human minds – with the advent of herding, agriculture, and settlement some ten thousand years ago. After that it made sense to think of those parts of nature that had their own 'will' and those that had been bent to follow the will of people. The word 'wild' is a contraction of 'willed'; literally, wilderness means self-willed land.[28]

---

24. J. DONALD HUGHES, WHAT IS ENVIRONMENTAL HISTORY? 1 (2015).

25. *Id.* at 5.

26. *Id.* at 8.

27. *See* RODERICK NASH, WILDERNESS AND THE AMERICAN MIND, xx-xxi (5th ed. 2014). Another very useful overview of the history I summarize here can be found in PETER COATES, NATURE: WESTERN ATTITUDES SINCE ANCIENT TIMES (1998).

28. NASH, *supra* note 27, at xx. A more thorough etymology of the "wilderness" contemplates that the original meanings of wilderness captured the idea of "will-of-the-land" and included the concept that

This notion, that the wilderness pertains to the natural world imbued with willpower was related not just by Nash, but also earlier by students of Celtic culture.[29] The human creation of the notion of wilderness gained traction at the time of the literal cordoning-off of the civilized world from the wild. As fences and walls demarcated fields and towns, humans began to see themselves as different from – and superior to – nature. The concept of the wilderness took hold as well. The wilderness was that part of nature—both animate and inanimate—that was not controlled; it was the part of nature *with its own will*.

Nash demonstrates that this distinction between the civilized and the wild was not neutral. Indeed, "wilderness became dangerous, even evil . . . . It easily became an adversary, a target and an object for exploitation."[30] It was imbued with "fear and loathing" and was accompanied with the idea that there were also people—indigenous people—who, like the wilderness, were not civilized. In the Americas, for the European arrivals, the wilderness and the indigenous people who inhabited it were similarly seen as objects to be controlled, dominated, exploited, or eliminated.[31]

But while wilderness, in the traditions of the modern-West, was predominantly viewed as evil and dangerous,[32] there has also long been an appreciation for the religiosity, solitude, and divinity to be found there.[33] From the start of the Christian and Jewish traditions, the wilderness bore both danger,[34] as well as the potential for spiritual refuge, salvation, and revelation.[35] This binary with respect to nature – as either wildly evil or paradisaically divine – has continued nearly undisturbed.

A prominent exception is St. Francis of Assisi, who believed that natural actors had souls that must be regarded as equals with humans. Despite the dominant paradigms of Christianity, he advocated an alternative view; one that held that all creatures, human, non-human, animate and inanimate, are equal and autonomous in

---

nature that is imbued with "will-force—willed, willful, uncontrollable — and with spirit." Jay Hansford Vest, *Wilderness Solitude: The Sacred Will-of-the-Land*, 38-39 (1984) (Ph.D. dissertation, University of Montana) (a more thorough etymology of the "wilderness" contemplates that the original meanings of wilderness captured the idea of "will-of-the-land" and included the concept that nature that is imbued with "will-force—willed, willful, uncontrollable — and with spirit").

29. Vest, *supra* note 28, at 37-38.

30. NASH, *supra* note 27, at xx-xxi.

31. *Id.* at xxi, 7. A more complete telling of the story of how modern-Western humans came to regard themselves as separate from nature can be found in *id.* at 8-10.

32. *Id.* at 9.

33. *Id.* at 18.

34. The Old Testament of the Bible refers to wilderness or its analogues hundreds of times, marking a delineation between good lands, where there was water in the area round Jerusalem, and the badlands, that were uninhabitable, deadly, and were demarcated as the wilderness, desert, and waste lands – cursed and wicked. *See id.* at 14.

35. *Id.* at 17.

spirit.[36] These views were denounced as heretical[37] which perhaps is unsurprising, given the importance of the separation of humans from nature in Judeo-Christian traditions. Some have gone so far as to state that: "Christianity, in absolute contrast to ancient paganism and Asia's religions . . . not only established a dualism of man and nature but also insisted that it is God's will that man exploit nature for his proper ends."[38]

Christianity thus neutralized the wills and spirits that occupied pagan epistemes and previously protected the natural world. As a result, "[m]an's effective monopoly on spirit in this world was confirmed, and the old inhibitions to the exploitation of nature crumbled."[39] Humans were now freed to reap the bounties of the natural world without care for the "feelings of natural objects."[40]

In histories of the Middle Ages, in Europe, the relationship of humans to nature can be told through the technological innovations allowing a shift from the two-ox scratch plows used in subsistence farming to the new eight-ox vertical plows. Historian Lynn White states that at this moment:

> [m]an's relation to the soil was profoundly changed. Formerly man had been part of nature; now he was the exploiter of nature. Nowhere else in the world did farmers develop any analogous implement. Is it any coincidence that modern technology, with its ruthlessness toward nature, has so largely been produced by descendants of the peasants of northern Europe?[41]

The early history of the modern-Western relationship with nature is helpful in understanding how it came to pass that nature and the wild became, predominantly, an enemy to fight and subdue[42] and a set of objects to be put to use to satisfy our whims and appetites.[43] This attitude permitted, for example, the exploitation of tracts of land, plants, and animals, that the majority of the cultures of human history would have identified as either equal with humans or sacred.[44]

---

36. *Id.* at 19. *See also* Lynn White, *The Historical Roots of Our Ecological Crisis*, 155 SCIENCE 1203-07 (1967), https://www.cmu.ca/faculty/gmatties/lynnwhiterootsofcrisis.pdf.

37. NASH, *supra* note 27, at 19.

38. White, *supra* note 36; *see also Genesis* 1:28, 1:29 ("Be fruitful and increase in number; fill the earth and subdue it. Rule over the fish in the sea and the birds in the sky and over every living creature that moves on the ground . . . . I give you every seed-bearing plant on the face of the whole earth and every tree that has fruit with seed in it. They will be yours for food.").

39. White, *supra* note 36.

40. *Id.* at 1205.

41. *Id.*

42. *See* NASH, *supra* note 27, at 23-43.

43. *See* White, *supra* note 36, at 1203-07.

44. *Id.* at 1205. This Article will explore the work of anthropologists with respect to the ideas and knowledge of other cultures. *See infra* Part I.B.3. The focus here on the history of modern-Western culture

Historians generally believe that hunter-gatherer societies kept close kinship-type relationships with the non-human world which often were founded on respect.[45] For many indigenous cultures, their natural "surroundings were aware, sensate, personified. They could feel and be offended so that they must 'at every moment, be treated with respect . . . . For most hunter-gatherers this separation between humans and nature does not exist."[46] This was the predominant state of the human/non-human relationship until the time of European colonization.[47]

The colonial era decimated native populations, killing on the order of 50 million native people, just in the Americas, through military conquest, enslavement, and disease.[48] By the time the global colonial era was formally over, the hunter-gatherer societies, which had occupied the majority of the globe for all of human history,[49] were relegated to more and more isolated and remote locations.[50] In order to better understand the relationship humans have had with the non-human natural world, a more thorough understanding of these prior orientations, and a more open-handed comprehension of existing indigenous communities becomes essential. Part I.3 (*infra*) will provide insights from anthropology about the communities that retain the knowledge and world views that vastly predominated prior to colonization.

Beyond the history of the modern-Western relationship with nature, important work in environmental history has explored the effects humans have had on the environment.[51] Historians have accessed and recounted the concerns of early colonial settlers and officials and can trace the enduring anxiety over the unsustainable human engagements with nature; the concern that humans were outstripping nature's abilities to recover.[52] This historical writing is helpful in

---

is purposeful, as this is the culture that has predominantly held and advanced a view of nature that results in the objectification and commodification of non-human natural actors.

45. IAN G. SIMMONS, GLOBAL ENVIRONMENTAL HISTORY: 10,000 BC TO AD 2000 38 (2008).

46. *Id.* at 39.

47. *See generally* J. DONALD HUGHES, NORTH AMERICAN INDIAN ECOLOGY (2d ed. 1996).

48. SIMMONS, *supra* note 45, at 38; *see also* ALFRED CROSBY, THE COLUMBIAN EXCHANGE: BIOLOGICAL AND CULTURAL CONSEQUENCES OF 1492 (30th Anniversary ed. 2003) (1972).

49. SIMMONS, *supra* note 45, at 43 ("[H]unter gatherer people represented at least 90 percent of human evolutionary history.").

50. *See id.* at 38, 44. Notable accounts of the displacement of hunter-gatherer populations include, e.g., PEDER ANKER, IMPERIAL ECOLOGY: ENVIRONMENTAL ORDER IN THE BRITISH EMPIRE, 1895-1945 (2001); ECOLOGY AND EMPIRE: ENVIRONMENTAL HISTORY OF SETTLER SOCIETIES (Tom Griffiths and Libby Robin eds., 1997); RICHARD P. TUCKER, INSATIABLE APPETITE: THE UNITED STATES AND THE ECOLOGICAL DEGRADATION OF THE TROPICAL WORLD (2000).

51. Readers with an interest in the development of environmental history as a subfield could look to e.g., HUGHES, *supra* note 24, at 35-51 (citing, e.g., CAROLYN MERCHANT, THE COLUMBIA GUIDE TO AMERICAN ENVIRONMENTAL HISTORY (2002); WENNER-GREN FOUNDATION FOR ANTHROPOLOGICAL RESEARCH, MAN'S ROLE IN CHANGING THE FACE OF THE EARTH (William Thomas Jr. ed., 1956); CROSBY, *supra* note 48, and many others).

52. For an excellent annotated bibliography of this literature, see HUGHES, *supra* note 24, at 29-31, (citing, e.g., RICHARD GROVE, GREEN IMPERIALISM: COLONIAL EXPANSION, TROPICAL ISLAND EDENS AND THE ORIGINS OF ENVIRONMENTALISM, 1600-1860 (1995); Richard Grove, *Origins of Western*

understanding that despite a concern for sustainability that has existed for centuries, the persistent belief of Western traditions that nature is merely an object, while humans are the subject, has resulted in centuries of depletion of the natural world.[53]

Finally, there has been a trend to attempt to trace the recent shifts in modern-Western attitudes toward nature. This trend suggests that within our own culture, humans increasingly see themselves as imbedded in the natural world: part of it, rather than separate from it.[54]

2. Philosophy

Nearly 50 years ago, philosopher Richard Sylvan (then Richard Routley), published *Is There a Need for a New Environmental Ethic?* This article, together with articles in the same year by Peter Singer and Arne Naess (discussed *infra*), is widely believed to have firmly initiated the field of environmental ethics.[55] In solo-authored work and also co-authoring with Val Plumwood (then Val Routley), Sylvan and Plumwood shone light on what they called "human chauvinism"—the paradigm under which humans are uniquely imbued with inalienable and natural rights[56] and called for a new environmental ethic.[57] Responding to H.L.A Hart and the classical theorists informing Hart's conception of human-centered natural rights,[58] Sylvan

---

Environmentalism, 267(1) SCIENTIFIC AMERICAN 42 (1992); GEORGE PERKINS MARSH, MAN AND NATURE (David Lowenthal ed., 1864) (1965)).

53. Given the uncomfortable relationship law is often asked to negotiate between economic imperatives and human rights and environmental protection, readers might be well advised to also consult the field of ecological economics. For a useful bibliography of this literature, see HUGHES, *supra* note 24, at 109.

54. *See* SIMMONS, *supra*, note 45, Table 6.2 at 242.

55. It is generally recognized that Aldo Leopold and Rachel Carson provided two earlier sparks for these initial works in Western environmental philosophy. *See* ALDO LEOPOLD, A SAND COUNTY ALMANAC, AND SKETCHES HERE AND THERE (1949) (stating, e.g., "There is as yet no ethic dealing with man's relation to land and to the animals and plants which grow upon it . . . . The land-relation is strictly economic, entailing privileges but not obligations." Also urging that "[t]he land ethic simply enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively: the land."); *id.* at 203-04; *see also*, RACHEL CARSON, SILENT SPRING (1962) (detailing the dangers of DDT and calling for an environmental ethic that considers the interconnectedness of nature and the potentially detrimental and immoral effects of human activity).

56. Richard Routley (Sylvan), *Is There a Need for a New Environmental Ethic*?, PROCEEDINGS OF THE XVTH WORLD CONGRESS OF PHILOSOPHY 205-10 (1973). Under the principle of "basic human chauvinism," "humans, or people, come first and everything else a bad last." *Id.*; *see also* Richard Routley (Sylvan) & Val Routley (Plumwood), *Human Chauvinism and Environmental Ethics*, in Mannison, McRobbie & Routley (Sylvan) eds., ENVIRONMENTAL PHILOSOPHY (1980).

57. For a keen articulation of the views of human's relationship to nature at the time, *see* JOHN PASSMORE, MAN'S RESPONSIBILITY FOR NATURE (1974) (articulating the Majority Western view which held that there were no restrictions on human's treatment of nature, while also articulating two minority views under which humans are either responsible to care for nature as its stewards or, alternatively, humans were responsible for bringing nature to its highest and most perfect state).

58. Routley (Sylvan), *supra* note 56, at 209.

argued that under prevailing Western views, humans' relationship with nature was primarily to tame nature and to make it productive.[59]

> The dominant Western view is simply inconsistent with an environmental ethic; for according to it nature is the dominion of man and he is free to deal with it as he pleases (since – at least on the mainstream Stoic-Augustine view – it exists only for his sake), whereas on an environmental ethic man is not so free to do as he pleases.[60]

Sylvan goes on to argue that the dominant Western ethic required a new environmental ethic to be introduced; one that would call to action a rethinking of important components of ethical systems. He argues that under ethical analysis, social contract, social justice, or Kantian perspectives, the base class (i.e., the traditional class of concern for philosophers - humans) must be extended in order to avoid injustice, given the basic devaluation humans make on the non-human natural world. Still, Sylvan ultimately stops short of arguing for the extension of natural rights to nature[61]

Arne Naess went further.[62] In his articulation of deep ecology, he expressed (among other principles), a rejection of the "human in environment image" and instead argued for an image in which organisms – including humans – are in intrinsic and complex relationships with one another. This relationship demands what he called "biospherical egalitarianism" that envisions that all organisms are equal: "the equal right to live and blossom is an intuitively clear and obvious value axiom. Its restriction to human beings is an anthropocentrism with detrimental effects upon the life quality of men and women themselves."[63]

These essays birthed the field of environmental ethics.[64] Within a decade, philosophers published several anthologies and manuscripts that filled in many of the spaces that the articles had left open.[65] Among the dominant themes relevant for the

---

59. *Id.* at 209.

60. *Id.* at 206.

61. *Id.* at 210.

62. Arne Naess, *The Shallow and the Deep, Long-Range Ecology Movement: A Summary*, 16 INQUIRY 95-100 (1973). A copy printed in 2005 is available here: https://openairphilosophy.org/wp-content/uploads/2018/11/OAP_Naess_Shallow_and_the_Deep.pdf.

63. *Id.* Peter Singer, the third in the triad of philosophers issuing calls for action in 1973, similarly argued that speciesism was resulting in a discriminatory disposition that resulted in great animal suffering. While he favored a new ethical status for animals that would reduce their suffering, he also stopped short of arguing that animals should be imbued with rights. *See* Peter Singer, *Animal Liberation*, NEW YORK REVIEW OF BOOKS (April 5, 1973).

64. For a useful account of the emergence of the field of environmental ethics in Australia in the late 1970s, and insight into the persistence of the questions that philosophers were then struggling with, see Routley (Sylvan) & Routley (Plumwood) *supra* note 56.

65. *See, e.g.*, *id.*

current consideration of nature's rights are the questions of moral standing and value. With respect to moral standing, the philosophical question refers to the scope of human and non-human actors that matter and need to be considered in decision-making, such that they are deserving of moral respect. Kenneth Goodpaster, and others since, has long articulated the view that:

> neither rationality nor the capacity to experience pleasure and pain seem . . . necessary (even though they may be sufficient) conditions on moral considerability . . . . Nothing short of the condition of being alive seems to . . . be a plausible nonarbitrary criterion. What is more, this criterion . . . could admit of application to entities and systems of entities heretofore unimagined as claimants of our moral attention (such as the biosystem itself) . . . . Our paradigms of moral considerability are individual persons and their joys and sorrows. I want to venture the belief that the universe of moral consideration is more complex than these paradigms allow.[66]

While Goodpaster stopped short of equating moral considerability with legal rights (as he was concerned more with philosophical frameworks than with applications), he also stated that he doubted "whether it is so clear that the class of rights-bearers is or ought to be restricted to human beings."[67] He persuasively argues that all things that have interests deserve moral considerability.[68] Under this view, even plants or ecosystems, with characteristics and conditions that benefit or harm them, have interests and should therefore be morally considered or have rights.

Paul Taylor, writing three years after Goodpaster, similarly asserted that all living things have interests and equal inherent value, irrespective of their humanity or the ends to which they might be put.[69] Some philosophers have continued to address the question of how, practically, to integrate a recognition that all living things deserve moral consideration with the impracticability of recognizing all living things. One such effort proposes a matrix that permits cogent recognition of all living things, while reflecting the possibility of a hierarchy among individual living things (e.g., self-conscious animals, sentient animals, insentient animals, plants) and also recognizes the intrinsic value of ecosystems, which arises from their role in hosting and giving life to individual organisms.[70] Others have argued that, while we might

---

66. Kenneth Goodpaster, *On Being Morally Considerable*, J. OF PHIL. 310 (1978).

67. *Id.* at 311.

68. *See id.* at 319.

69. Paul Taylor, *The Ethics of Respect for Nature*, 3 ENV'T. ETHICS 197-218 (1986), *reprinted in* MICHAEL ZIMMERMAN ET AL., ENVIRONMENTAL PHILOSOPHY: FROM ANIMAL RIGHTS TO RADICAL ECOLOGY (1993).

70. Holmes Rolston III, *Challenges in Environmental Ethics*, in ZIMMERMAN, *supra* note 69, at 11.

regard members of more familiar organisms (i.e., humans) as more important than more unfamiliar organisms (e.g., pink river dolphins), we should also take into account the question of greater vs. lesser interests, such that if the river dolphin as a species is facing extinction because of human activities in its Amazon habitat, priority must be given to the greater interest (the pink river dolphin's continued existence) over the human interest.[71] Sylvan made this potentially unmanageable assertion workable by establishing that for environmental ethics, whole systems such as species, ecosystems, and the biosphere are the object of concern. Consequently, the focus on each individual insect or plant can recede.[72]

***

Where historians have addressed the question of when humans became divorced from the rest of nature,[73] philosophers, including ecological-feminist philosophers, have played a key role in asking why "had nature, in the Western tradition, been instrumentalized, stripped of moral considerability, and subjugated in the first place?"

"Their answer was that this subjugation was conceptually of one piece with other political subjugations, and particularly the subjugation of women."[74] Given the insights of historians, one would have to hold in sharp focus the subjugation of colonized peoples as well. These thinkers argue, from a variety of perspectives, that humans and non-human natural actors are all part of a single biotic community, and many argue that there is no moral or ethical justification for the subjugation of non-human natural actors.[75] Meanwhile Freya Mathews, in *The Ecological Self*, attributed "self" status not only to individual organisms, but also to systems, including ecosystems and the biosphere. Under her view, "selves" were characterized by a tendency to grow or increase, if permitted.[76] Without ascribing a consciousness to such systems, she ascribed intrinsic value to them, because by their own replication they demonstrated that they valued themselves.[77] This line of thought abuts what is termed new animism.

Like anthropology, new animism is informed greatly by indigenous peoples who either have not been alienated from the natural world or whose alienation is at

---

71. *See* Callicott, in ZIMMERMAN, *supra* note 69, at 5-15.

72. ZIMMERMAN, *supra* note 69 at 7 (citing Routley (Sylvan), *supra* note 56).

73. *See supra*, Part I.B.I

74. *See* Freya Mathews, *Environmental Philosophy*, in Nick Trakakis and Graham Oppy eds., A COMPANION TO PHILOSOPHY IN AUSTRALIA AND NEW ZEALAND (2010), https://www.freyamathews.net/ downloads/EnvironmentalPhilosophy.pdf at 5; *see also* VAL PLUMWOOD, FEMINISM AND THE MASTERY OF NATURE (1993).

75. *See, e.g.*, *supra* notes 62-82 and accompanying text.

76. *See generally* FREYA MATHEWS, THE ECOLOGICAL SELF (1991).

77. *See* Mathews, *supra* note 74, at 5.

least less than that of modern Western cultures. New animists have posited that the extraction of animated souls or personhood from natural actors has allowed for a lack of accountability toward the natural world. In other words:

> When a forest is no longer sacred, there are no spirits to be placated and no mysterious risks associated with clear-felling it. A disenchanted nature is no longer alive. It commands no respect, reverence or love. It is nothing but a giant machine, to be mastered to serve human purposes. The new animists argue for reconceptualizing the boundary between persons and non-persons. For them, "living nature" comprises not only humans, animals and plants, but also mountains, forests, rivers, deserts, and even planets.[78]

Ultimately, philosophical animism aims at assisting in answering the question of what nature is. [79] This literature is greatly informed by indigenous people's conceptions, and ultimately asserts that non-human, natural actors have their own sort of sentience and agency.[80] Accordingly, because of the sentience and agency of all its components, nature is constituted of a "community of persons."[81]

3. Anthropology

The recognition of nature's rights is in large part being driven by the decision to recognize the ontologies of other cultures but there is a tremendous disconnect between the anthropology literature and the law literature and legal opinions. It is crucially important for these two communities to know of the developments in the other. The purpose of this section is to assist the legal community in understanding what anthropologists are coming to know about other cultures and their ways of orienting to nature.

---

78. Andrew Brennan and Yeuk-Sze Lo, *Environmental Ethics,* in STANFORD ENCYCLOPEDIA OF PHILOSOPHY at 3.3 (2002, revised 2015), https://plato.stanford.edu/entries/ethics-environmental/.

79. *See generally* Deborah Bird Rose, *Val Plumwood's Philosophical Animism: Attentive Interactions in the Sentient World*, 3 ENV'T. HUMANITIES 93-109 (2013).

80. *See* Mathews, *supra* note 74, at 7; *see also* Bird Rose, *supra* note 79, at 93-109; Val Plumwood, *Nature in the Active Voice*, 46 AUST. HUMANITIES REV. 111-28 (2009).

81. *See* Mathews, *supra* note 74, at 7; *see also* Bird Rose, *supra* note 79, at 93-109; Plumwood, *supra* note 80, at 111-28.

a. Subject-status

Within anthropology, there is a significant shift afoot to recognize that non-human natural things are social. As the discussion below will demonstrate, there are effectively two strands of this literature.

The first strand shifts how we view non-human natural things from objects to subjects. The work here is focused on understanding how non-human natural things – as subjects – inform and effect human cultures and lives to find methods to think about non-human natural actors in ways that are "ontologically inclusive but also practical in political, economic, and legal terms."[82] This approach, while centering non-humans as a focus of study, does so while maintaining the ultimate anthropocentric purpose of understanding human cultures and institutions.

A second approach attempts to see non-human natural things not just as subjects, but also as actors, or agents; to see them in the way many non-modern, non-Western people see them.

b. Animism

Philosophers have recognized that "modern" thought has been imbued with "a dualistic conceptual system organized around mutually defining pairs of opposed and differentially ranked categories, such as nature/culture, human/animal, mind/body, reason/emotion, spirit/matter, civilized/primitive, theory/practice, science/superstition, mental/manual, white/black, masculine/feminine."[83] This Article has already explored the difficulties within environmental philosophy to break through these dualisms. Anthropology has similarly moved toward a more inclusive and egalitarian view of the human relationship to non-human natural actors.

Historically speaking, animism within anthropology has been associated with the attribution of a "belief that all life is produced by a spiritual force, or that all natural phenomena have souls."[84] Sir Edward Burnett Tylor, thought by many to be the founder of anthropology, employed the notion of animism to note that many cultures "attributed life and personality to animal, vegetable, and mineral alike."[85] For Tylor, this attribution was the result of a childlike, or even delusional, inability to "distinguish the animate from the inanimate."[86] Tylor's work was characteristic of modernist constructions of the world: in seeing these differences, he saw them as

---

82. JOHN WAGNER ET AL. EDS., ISLAND RIVERS: FRESH WATER AND PLACE IN OCEANIA 6 (2018).

83. *See* Mathews, *supra* note 74, at 5.

84. Nurit Bird-David, *"Animism" Revisited: Personhood, Environment, and Relational Epistemology*, 40 CURRENT ANTHROPOLOGY (Supplement) S67, S67-S91 (Feb. \1999), *https://www.jstor.org/stable/10.1086/200061* (citing WEBSTER'S NEW WORLD DICTIONARY (1989)).

85. *Id.* at S67.

86. *Id.* at S69 (quoting EMILE DURKHEIM, THE ELEMENTARY FORMS OF RELIGIOUS LIFE 53 (New York Free Press 1915)).

evidence for divisions along the civilized/uncivilized, human/nature, matter/spirit, science/superstition divides, with the former always being superior to the latter. These perceptions and descriptions of cultural difference were emblematic of the social sciences and humanities of the time, and in anthropology they imbedded a long-lasting chasm between the human and the non-human world, preserving spirituality, souls, and personhood exclusively to humans.[87]

The dichotomous, dialectical relationship between human and non-human, between the social and the natural, was thereafter entrenched in anthropological epistemology. This perspective, which seeks to understand why some cultures animate what Western culture considers to be inanimate, has persisted in anthropology through a long line of influential contributors, from Claude Levi-Strauss through to Stewart Guthrie. These anthropologists have regarded animistic thinking as a universal perceptual strategy by which we attribute life to the non-living (animism), or attribute human characteristics to the non-human (anthropomorphism).[88] Later, anthropology characterized animism as an intellectual or linguistic practice by which other cultures spoke in metaphors, such that the idea that non-human actors are not "really" persons remains stable. In other words, "the hunter was talking 'as if' animals were persons is to say that his story should not be taken in a literal way but instead seen as a symbolic statement."[89]

Recently, anthropology has increasingly opened itself not just to the epistemologies of the cultures under its consideration but also to their ontological orderings. This is resulting in a substantial literature that critically reconsiders the dialogic human/non-human, nature/culture paradigms discussed above and opens level space for the cultures they study. In doing so, they have started to take seriously the idea that non-human natural actors really can be persons and can have souls capable of thought, intention, and relationships.[90] The result is a view that allows for human relations with the non-human natural world as a set of communicative engagements in which the human is imbedded in the world through a set of relationships, including social relationships.[91]

---

87. *See id*. at S70 (citing Emile Durkheim, *The Dualism of Human Nature and Its Social Conditions* (1914), in ESSAYS ON SOCIOLOGY AND PHILOSOPHY (1960)) (arguing that all humans have a dualistic model of conceiving the human and the non-human, or the social and the natural).

88. *See id*. at 70 (citing STEWART GUTHRIE, FACES IN THE CLOUDS: A NEW THEORY OF RELIGION 62 (1993)). Bird-David levels a strong critique of Guthrie's theory for its uncritical assertion of modernist boundaries on the terms "life," "nonliving," and "human" as naturally given, and for failing to respect non-Western epistemologies. *Id.* at 70-71.

89. RANE WILLERSLEV, SOUL HUNTERS: HUNTING, ANIMISM, AND PERSONHOOD AMONG THE SIBERIAN YUKAGHIRS 2-3 (2007).

90. *See, e.g, id*. at 21.

91. *See generally* Tim Ingold, *Hunting and Gathering as Ways of Perceiving the Environment*, in ANIMALS AND THE HUMAN IMAGINATION (2012) (suggesting that we consider the human condition to be one of being "immersed from the start, like other creatures, in an active, practical, and perceptual engagement" with the other constituents of the world).

c. Thought and Intention

In, *How Forests Think: Towards an Anthropology Beyond the Human*, Eduardo Kohn urges anthropologists to seriously consider non-human natural actors in a way that decenters humans. In his work, he aims to address "the ways in which we have treated humans as exceptional – and thus as fundamentally separate from the rest of the world,"[92] by articulating the possibility that forests think. He situates his work in the "analytical framework that can include humans as well as nonhumans"[93] that has emerged within scientific and technological studies, and anthropology over the past 44 years.[94] Although he recognizes that "[i]t is very difficult from within our contemporary analytical frameworks to understand the biological world as made up of living thoughts,"[95] Kohn urges readers to recognize that humans are not the only actors that use signs that are comprehensible to others and, as a result, humans are not the only actors capable of cognition.[96] Ultimately, he argues that humans are "not the only selves in this world"[97] that can intelligently learn, grow, and improve as a result of lived experience[98] and he aims to "create the conditions for new thoughts" among humans.[99]

d. Personhood

Once the retaining wall that reserves animated life and thought for humans alone has been perforated, personhood comes spilling forward quickly in the anthropology literature. Eduardo Viveiros de Castro, a current force in anthropology, opens one of his best-known contributions: "[t]his article deals with . . . the conception, common to many peoples of the [American] continent, according to which the world is inhabited by different sorts of subjects or persons, human and non-human, which apprehend reality from distinct points of view."[100]

---

92. EDUARDO KOHN, HOW FORESTS THINK: AN ANTHROPOLOGY BEYOND THE HUMAN 7 (2013).

93. *Id.* at 6.

94. *Id.* at 7.

95. *Id.* at 89.

96. *Id.* at 9.

97. *Id.* at 72.

98. *Id.* at 77-78.

99. *Id.* at 10 (citing MARILYN STRATHERN, THE GENDER OF THE GIFT: PROBLEMS WITH WOMEN AND PROBLEMS WITH SOCIETY IN MELANESIA 20 (1988)).

100. Viveiros de Castro, *supra* note 19, at 469.

This same perspective is conveyed by many anthropologists, in a variety of ways, reflecting on field work in Siberia,[101] North America,[102] South America,[103] and India,[104] among other locations. While there is significant variation in the theoretical bases and always space for agreements and disagreements among the authors contributing to this literature, what is clear is that the acceptable methods in anthropology now include sincere efforts to respectfully convey the ontological orders of non-Western people.[105] In many cases, the result is an understanding of how to see the world differently, where nature is not separated from culture and where personhood "is open equally to human and non-human animal (and even non-animal) kinds . . . qualities of personhood are likewise assigned to humans, animals, spirits and certain geophysical agents."[106]

e. Relationships

Bruno Latour, a philosopher, anthropologist, sociologist, and scholar of the science of technology, has been a vital contributor to the breakthroughs in each of these disciplines, aiming to earnestly see beyond the human/non-human, nature/culture divide[107] and, at the same time, to recognize that humans and non-human agents form a dynamic network, rather than a hierarchy.[108] Latour's contributions to intellectual engagements with the epistemologies and ontology of

---

101. *See* WILLERSLEV, *supra* note 89.

102. *See, e.g.*, Ingold, *supra* note 91; Christine S. VanPool & Elizabeth Newsome, *The Spirit in the Material: A Case Study of Animism in the American Southwest*, 7 AMERICAN ANTIQUITY 243-62 (2012; JULIE CRUIKSHANK, DO GLACIERS LISTEN? LOCAL KNOWLEDGE, COLONIAL ENCOUNTERS, AND SOCIAL IMAGINATION (2005).

103. *See* Viveiros de Castro, *supra* note 19; Eduardo Kohn, *supra* note 92.

104. *See* Bird-David, *supra* note 19.

105. For a discussion of the move from epistemic to ontological questions in anthropology, see Eduardo Viveiros De Castro, *Who Is Afraid of the Ontological Wolf?: Some Comments on an Ongoing Anthropological Debate*, 33 CAMBRIDGE J. OF ANTHROPOLOGY 2 (spring 2015), https://www.jstor.org/stable/10.2307/26370550.

106. Ingold, *supra* note 91, at 131; *see also* WILLERSLEV, *supra* note 89, at 2 ("Among the Yukaghirs, however, a different assumption prevails. In their world, persons can take a variety of forms, of which a human being is only one. They can also appear in the shape of rivers, trees, souls, and spirits.").

107. *See, e.g.*, BRUNO LATOUR, WE HAVE NEVER BEEN MODERN (Catherine Porter trans., Harvester Wheatsheaf 1993) (1991); BRUNO LATOUR, POLITICS OF NATURE: HOW TO BRING THE SCIENCES INTO DEMOCRACY (Catherine Porter trans., Harv. Univ. Press 2004); LATOUR, *supra* note 8 at 90, 110, 114-15, 260; *see also* Marilyn Strathern, *No Nature: No Culture: The Hagen Case*, in NATURE, CULTURE, AND GENDER 174 (Carol P. MacCormack & Marilyn Strathern eds., 1980).

108. In particular, Latour and collaborators at the Centre de Sociologie de l'Innovation, developed the concept of Actor Network Theory (ANT) to reconceptualize social theory such that the nature/culture divide is collapsed and replaced with a conceptualization of all objects and concepts in nature and culture existing in a non-hierarchical network. For an excellent introduction to ANT and its literature, *See* LATOUR *supra* note 8, at 10-11; *see also* Lancaster Univ.Ctr. for Sci. Stud, The Actor Network Resource: Thematic List Version 2.2 (Apr. 2000), http://wp.lancs.ac.uk/sciencestudies/the-actor-network-resource-thematic-list/ (last visited Nov. 10, 2021).

modern Western thought[109] and the non-human natural world are copious and beyond the scope of this Article. His influence is nearly omnipresent in the current work of the historians and philosophers engaged in this discourse, just as it is in the work of the anthropologists discussed here.

In additions to Latour's insights that have facilitated the shift in anthropology to accept the ontologies of the people anthropologists aim to understand, Latour's contributions also include the insistence that all engagements are part of a complex network (among the tenets of Actor Network Theory). Under this theory, each instance where a human cosmology includes non-human natural actors having life, spirit, personhood, and thought, the relationship between the humans and non-humans is dynamic and substantial.[110] Thus: "Humans, animals, spirits, and some geophysical agents are perceived to have qualities of personhood. All persons act in a reciprocally communicative reality. Human persons are not set over and against a material context of inert nature, but rather are one species of person in a network of reciprocating persons."[111] Anna Tsing, for example, reminds us that:

> interspecies entanglements that once seemed the stuff of fables are now materials for serious discussion among biologists and ecologists, who show how life requires the interplay of many kinds of beings. Humans cannot survive by stomping on all the others.[112]

Scholarly inquiries informing our understanding of the non-human natural world, its sentience, and its innumerable relationships do not stop at the doors of the disciplines discussed here, of course. The discussion in this Part has merely illustrated the richness of the discussion with respect to these topics. Economics and political science are engaged in similar discussions, though with their own discursive traditions. Similarly, the natural sciences, as the quote from Tsing suggests, are newly intrigued with the complex processes and relationships of non-human natural actors.

General audience authors are also quickly filling shelves with books informing readers of the heretofore underexplored vibrancy of nature, more and

---

109. *See, e.g.*, BRUNO LATOUR, AN INQUIRY INTO MODES OF EXISTENCE: AN ANTHROPOLOGY OF THE MODERNS, (Catherine Porter trans. Harv. Univ. Press 2013) (2012).

110. *See, e.g.*, RANE WILLERSLEV, *supra* note 89 at 11 ("[W]hen the hunter seeks to bring an elk out into the open by mimicking its bodily movements, he is inevitably put into a paradoxical situation of mutual mimicry. As a result, the bodies of the two blend to a point that makes them of the same kind.").

111. Colin Scott, *Knowledge Construction Among Cree Hunters: Metaphors and Literal Understanding*, *Journal de la Société des Américanistes* 75, 193, 195 (1989) *quoted in* Ingold, *supra* note 91, at 131. Other instantiations of this type of relationship are found throughout the writings of the authors cited in this Part.

112. ANNA LOWENHAUPT TSING, THE MUSHROOM AT THE END OF THE WORLD: ON THE POSSIBILITY OF LIFE IN CAPITALIST RUINS vii (2015).

more in a language that regards non-human natural actors as animate and relational. Reading publics are avidly interested in these topics.[113]

The shifts in academic thought and knowledge, together with the appetite for additional ways of seeing the human relationship to the non-human natural world suggest are providing momentum for engaged citizens, plaintiffs, lawyers, and judges to consider what role law can play in reflecting these changing relationships with the non-human natural world. As the next Part will discuss, an assemblage of interests has begun to see the practical importance of these scholarly ideas. Law is playing a pivotal role in the transformation of these ideas from theory into practice.

II. UTILITY: NON-HUMAN NATURAL ACTORS AS RIGHTS HOLDERS

It is not surprising, then, given the significant developments in the natural and social sciences, humanities, and trade literatures that general consciousness about the non-human natural world has begun to shift. With that shift, traditional approaches to environmental protection, including the reach of environmental law, have begun to be supplemented with claims to rights—not for the humans—but for non-human natural actors. This Part explores the literature and social movements that have ushered in the shift from claiming that such actors are persons to claiming that, whether they are further recognized as legal persons or not (a question on which there is debate),[114] non-human natural actors have—or should have—rights.

A. Confluence of Interests

As Part I demonstrated, scholarly understandings of nature have dramatically shifted. In the natural and social sciences and humanities, tremendous effort has been devoted to better understandings of nature itself, of humans' place in nature, of humans' effects on nature, and of the human relationship to nature, through time and across cultures.

At the same time, social movements and movement lawyering have worked together in areas that relate to the rights of nature. Broadly speaking, the confluence of human rights (including the important role of indigenous rights), environmental concerns, and scientific knowledge have brought about much greater space for the realization of nature's rights. These movements, and the lawyers that represent them, have identified the vast opening left by Western-anthropocentric law, and their hope and strategy has joined in the concept of nature's rights.

---

113. *See, e.g.*, RICHARD POWERS, THE OVERSTORY (2018); JENNIFER ACKERMAN, THE GENIUS OF BIRDS (2016); PETER WOHLLEBEN, THE HIDDEN LIFE OF TREES (2016); ROBIN WALL KIMMERER, BRAIDING SWEETGRASS: INDIGENOUS WOMEN, SCIENTIFIC KNOWLEDGE, AND THE TEACHINGS OF PLANTS (2013). All of these books were either in the Amazon bestseller list or the Editor's Pick lists as of the time of this writing.

114. *See infra* Part II.B.

1. Human Rights and Indigenous Rights

Human rights, especially its founding commitments to indigenous rights, women's rights, and children's rights (and, through them, the rights of future generations), as well as social, economic, and cultural rights have provided the necessary toeholds for lawyers to open legal imaginations with respect to what it really means to recognize these sets of rights. As recently as the early 2000s, the nexus between a clean environment and human rights was attenuated at best. It was not until 2009 that the Inter-American Court for Human Rights, for example, recognized "an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights."[115] The European Court of Human Rights has similarly recognized the importance of a clean environment to the full realization of human rights and well-being.[116] The United Nations Human Rights Council has also very recently recognized that environmental harms may have an impact on the rights to life, health, food, water, housing, and self-determination.[117] Until very recently, most courts, to the extent they were willing to discuss environmental protection in terms of rights, did so by way of discussing the human right to clean water,[118] or clean air, etc.[119] It is certainly the case that a depleted, polluted, degraded environment makes life on earth harder for human beings. But for the nature's rights effort, the terminology of human rights and its confinement to anthropocentric framings do not provide sufficient tools to protect nature, for nature's own benefit. Under the human rights framing, so long as humans are not affected, harms that may kill off whole species, even entire ecosystems, are invisible before the law.

The indigenous rights movement has persistently gained traction within international and domestic legal spaces, especially in countries with large current-day

---

115. *See* Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights), Advisory Opinion OC-23/17, (Ser. A) No. 23, ¶ 47 (Inter-Am. Ct. H.R. Nov. 15, 2017) (citing Kawas-Fernández v. Honduras, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 148 (Apr. 3, 2009)).

116. *See, e.g.*, Öneryildiz v. Turkey, European Ct. of Human Rights, App. No. 48939/99, 2004-XII Eur. Ct. H.R. ¶¶ 71, 89, 90, 118.

117. Inter-American Court of Human Rights Advisory Opinion OC-23/17, *supra* note 115 (citing Human Rights Council, Preliminary *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, John H. Knox*, ¶ 19, U.N. Doc. A/HRC/22/43 (Dec. 24, 2012).

118. *See* G.A. Res. 64/292, The Human Right to Clean Water, ¶ 1 (July 28, 2010) (UN resolution recognizing a human right to clean water).

119. *See, e.g.*, David Boyd (Special Rapporteur on the Human Rights Council), Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, ¶¶ 14, 95, U.N. Doc. A/HRC/40/55 (July 19, 2018).

indigenous populations. In 2007, the United Nations General Assembly adopted a Declaration on the Rights of Indigenous Peoples, with 144 countries voting in favor of the declaration (Australia, Canada, New Zealand, and the United States voted against and 11 countries abstained).[120] Importantly, the preamble to the Declaration recognizes that "respect for indigenous knowledge, cultures and traditional practice contributes to sustainable and equitable development and proper management of the environment," and the Declaration recognizes a right to "the conservation and protection of the environment and the productive capacity of their lands or territories and resources."[121] In the time since the Declaration, indigenous peoples have been active in international and domestic dialogues regarding pertinent subjects such as climate change, the rights of children, and human rights in general.[122]

Modern human rights doctrine, both international and within many domestic legal orders, recognizes the rights of indigenous people and communities.[123] However, for the most part, these rights are recognized within the modern and Western conceptions of what counts as a "human" and what counts as a legitimate legal subject. If, instead, the epistemics and ontological perspectives of indigenous communities are to be fully regarded, such that indigenous understandings of the relationship of the human and the non-human in nature are to be incorporated into dominant juridical thought and jurisprudence when claims regarding nature are at issue, legal ordering can no longer maintain the view that humans are the only legitimate subjects of law, with animals and other non-human agents always occupying the position of material object. Indeed, in many of the constitutions, legislation, and cases described in Part III *infra,* the documents recognizing nature's rights often honor the ontological views of domestic indigenous communities and recognize the importance of opening a plural space for these ontological views to be reflected and protected by law.

2. Environmental Law Concerns

The absolute urgency of environmental concerns has caused three generations to worry about the collapse of species-diversity, climate change, the proliferation of plastics, and ozone layers among other things. To many environmental activists and environmentally minded people, it may feel as if

---

120. *See* Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html (last visited Nov. 9, 2021).

121. *Id.* at 2, 15, 21.

122. *See e.g.*, Fleur Te Aho, *Indigenous Peoples' Rights Under International Law*, 14 N.Z. Y.B. OF INT'L L. 242 (2016).

123. *See generally* U.N. High Commissioner for Human Rights, *Indigenous Peoples and the United Nations Human Rights System: Fact Sheet No. 9*, 9-10 (2013), https://www.ohchr.org/documents/publications/fs9rev.2.pdf (last visited Nov. 9, 2021).

environmental law was either never adequately equipped or has been outstripped, proving itself incapable of addressing the gravity of current environmental concerns.

a. Restrictive Standing Doctrine

In the United States, a plaintiff must show that they have met the requirements of Article III of the Constitution to attain standing in federal court. The requirements of Article III include showings of a) an injury in fact b) that is concrete and actual or imminent (rather than hypothetical), and there must be "a causal connection between the injury and the conduct complained of."[124] Finally, the plaintiff must show that it is "'likely,' rather than merely 'speculative' that the injury will be 'redressed by a favorable decision.'"[125] Given these requirements, while it is *possible* for plaintiffs to bring claims on behalf of nature, the likelihood of success is increasingly narrow.[126] Under current Article III doctrine, there is no avenue for plaintiffs to win claims for entire river systems or forests, in the manner that is now possible in the courts of the many foreign jurisdictions that will be discussed in Part III *infra*.

---

124. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992) (footnotes and citations omitted).

125. *Id.* at 561.

126. *See* Stacey Jane Schaefer, *The Standing of Nature: The Delineated Natural Ecosystem Proxy*, 9 GEO. WASH. J. ENERGY & ENV'T. L. 70, 73 (2018), stating:

> At first blush, the legislative authorization of ordinary citizens to bring claims to enforce environmental protection laws would appear to be a powerful tool for the humans and organizations seeking to protect nature. These plaintiffs, however, often have difficulty convincing the courts they have a "direct stake" in the litigation that confers standing. This has rendered citizen suit provisions and any potential standing under the APA impotent to prevent or stop the very injury that the applicable law was designed to prevent . . . . To compound the problem, the injuries the Court has recognized to establish standing often are short-term and comparatively inconsequential "economic," "recreational," or "aesthetic" injuries.

Id.; see also, e.g., Hope M. Babcock, *A Brook with Legal Rights: The Rights of Nature in Court*, 43 ECOLOGY L.Q. 1 (2016) (discussing challenges with standing for nonhuman actors but suggesting that it is not impossible to grant nature direct access to the courts); Allison Katherine Athens, Note, *An Indivisible and Living Whole: Do We Value Nature Enough to Grant it Personhood?* 45 ECOLOGY L.Q. 187, 207-10 (2018) (describing the challenge of Article III and difficulties with F.R.C.P. Rule 17, which have been used to deny nature standing because of a stipulation that a "proper party is one that can sue and be sued," despite the possibility of being represented by a guardian, or conservator, etc.).

b. The Human Paradigm of the Public Trust Doctrine

Also in the United States,[127] the common law public trust doctrine asserts that states hold the beds and waters of navigable waterbodies in trust for the public.[128] With roots in the English common law, and some argue as far back as Roman law, the doctrine has long served as a means of protecting public interests in navigable waterways and holding state governments accountable for their management of these shared resources.[129] The common law doctrine is still alive and well in the state courts and has since also been incorporated into various state constitutions and environmental statutes.

The public trust doctrine has traditionally protected a triad of public trust uses: commerce, fishing, and navigation. However, with a resurgence of the doctrine in the 1970s, states expanded its protection to additional modern uses, such as recreation and even conservation.[130] The Supreme Court of California, for example, has recognized a number of potential ecological uses under the doctrine, including "the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area."[131] In this way, the public trust, although rooted in anthropocentric understandings of the human use of nature, presents a potential

---

127. Public trusts in natural resources and waterbodies have also been recognized in various forms by countries all over the world. *See* Michael C. Blumm & Rachel D. Guthrie, *Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision*, 45 U.C. DAVIS L. REV. 741, 741 (2012).

128. In the U.S. and Canada, the public trust doctrine has also been applied to protect wildlife (via the protection to the rights of people to hunt and fish) in both aquatic and non-aquatic ecosystems. *See* THE WILDLIFE SOC'Y, THE PUBLIC TRUST DOCTRINE: IMPLICATIONS FOR WILDLIFE MANAGEMENT AND CONSERVATION IN THE UNITED STATES AND CANADA 9 (Sept. 2010). The U.S. has also seen efforts for the recognition of a federal public trust in a stable climate, most notably in the *Juliana* case. *See* Mary Wood, *Atmospheric Trust Litigation and the Constitutional Right to a Healthy Climate System: Judicial Recognition at Last*, 6 WASH. J. ENV'T. L. & POL'Y 633, 642-48 (2016).

129. *See* Illinois Cent. R.R. Co. v. State of Illinois, 146 U.S. 387, 435 (1892). *Ill. Central* notes:

> It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tide waters, within the limits of the several states, belong to the respective states within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the states.

Id.

130. *See, e.g.*, Borough of Neptune City v. Borough of Avon-By-The-Sea, 294 A.2d 47, 55 (N.J. 1972) ("[S]tates have readily extended the doctrine, beyond the original purposes of navigation and fishing, to cover other public uses, especially recreational uses.").

131. Marks v. Whitney, 6 Cal.3d 251, 259-60 (Cal. 1971).

avenue for increased ecological protections for waterbodies and ecosystems. Currently, however, in most U.S. states, the doctrine has been very narrowly construed to protect limited anthropocentric uses of navigable waters, and the level of protection provided from industry and privatization vary significantly by state.[132]

3. The Value of Nature

a. The Value of Cultivating Human Closeness to Nature

Beyond the very practical political and social movement contributions detailed above in this section, the development of nature's rights has been assisted by the reconceptualization of the relationship between humans and the environment, as a matter of ethics, and because of the seemingly constant realizations that the devastating consequences of climate change, unregulated plastics, and the like are already upon us. Fires, hurricanes, floods, droughts, animals losing their habitats, or literally choked out by the detritus of human activity are a constant reel of images for our eyes and consciences. In the face of this, humans yearn for a new reconciliation between how human ethics regards nature and how the law recognizes and protects it.[133] Our changing environmental awareness would suggest that environmental law is no longer on solid ground; it no longer reflects the human ethos.

b. Nature's Own Value

An alternative manner to engage the ethical questions regarding nature is, again, to remember that nature is not *about* humans, rather humans are merely a part of nature. In other words, environmental ethics is not, or ought not to be focused on human values and the value of nature to humans. Rather, a true environmental ethics would look to nature and "attempt to see and honor accurately the value present in the natural world."[134] The law would then reflect and protect that intrinsic value.

As discussed in Part I, this perspective is increasingly reflected in the social sciences and humanities. And nearly every day, the natural sciences provide greater evidence of the interconnectedness, the inner life, the communication, and the

---

132. Robin Kundis Craig has provided invaluable surveys of the public trust doctrine in the Western and Eastern United States. *See* Robin Kundis Craig, *A Comparative Guide to the Western States Public Trust Doctrines: Public Values, Private Rights, and the Evolution Toward an Ecological Public Trust*, 37 ECOLOGY L.Q. 53 (2010); Robin Kundis Craig, *A Comparative Guide to the Eastern Public Trust Doctrines: Classifications of States', Property Rights, and State Summaries*, 16 PENN ST. ENV'T. L. REV. 1 (2007); *see also* Joseph Regalia, *A New Water Law Vista: Rooting the Public Trust Doctrine in the Courts,* 108 KENTUCKY. L.J. 1 (2019).

133. *See* Jedediah Purdy, *Our Place in the World: A New Relationship for Environmental Ethics and Law*, 62 DUKE L. J. 857, 927-32 (2013) (reflecting, in particular, on JOHN RAWLS, A THEORY OF JUSTICE 512 (1971) and Laurence H. Tribe, *Ways Not to Think About Plastic Trees: New Foundations for Environmental Law*, 83 YALE L.J. 1315 (1974)).

134. Purdy, *supra* note 133, at 928.

sentience of non-human animals and also of "inanimate" trees, rivers, forests, ecosystems, and the biosphere. It is also reflected in the writings of John Muir over a century ago: "Nature's object in making animals and plants might possibly be first of all the happiness of each one of them, not the creation of all for the happiness of one."[135]

B. A Word About the Rights of Non-Human Animals

Efforts to establish the legal personhood and rights of animals through litigation in the United States have, for the most part, held firm to the idea that non-human animals do not possess independent rights and standing in court.[136] There are a few notable perforations in the strong position, that "[a]nimals, including chimpanzees and other highly intelligent mammals, are considered as property under the law".[137] To date, despite strong advocacy to recognize the inherent rights of non-human animals, "they are accorded no legal rights beyond being guaranteed the right to be free from physical abuse."[138]

A few examples of softness in the doctrine include the allowance to include pets and companion animals in protective orders,[139] estate law,[140] and a series of cases discussing dogs, cockatoos, goldfish, and other pets as occupying a "special status" somewhere between property and persons.[141] To the extent that there is judicial sympathy for recognizing the legal status or independent rights of animals, it is best represented by the 2018 opinion of the Court of Appeals of New York in which Judge Eugene Fahey stated: "The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching.

---

135. John Muir, *Man's Place in the Universe*, in JOHN MUIR, A THOUSAND-MILE WALK TO THE GULF (1916), https://vault.sierraclub.org/john_muir_exhibit/writings/mans_place_in_the_universe .aspx.

136. *See, e.g.*, Cetacean Cmty. v. Bush, 386 F.3d 1169, 1175-78 (9th Cir. 2004); People *ex rel.* Nonhuman Rights Project, Inc. v. Lavery, 998 N.Y.S.2d 248, 251 (App. Div. 2014) (finding that a chimpanzee is not a "person" and thus cannot hold rights because, unlike humans, corporations, and municipalities, non-human animals cannot bear any legal duties or be held accountable for their transgressions).

137. Nonhuman Rights Project, Inc. v. Lavery, 76 N.Y.S.3d 507, 509 (Sup. Ct. 2018). In *Lavery*, the New York Supreme Court acknowledges that

> [t]o treat a chimpanzee as if he or she had no right to liberty protected by habeas corpus is to regard the chimpanzee as entirely lacking independent worth, as a mere resource for human use, a thing the value of which consists exclusively in its usefulness to others. Instead, we should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect . . . .

Id.

138. See, *e.g.*, Nonhuman Rights Project, Inc. v. Stanley, 16 N.Y.S.3d 898, 912 (Sup. Ct. 2015).

139. *See, e.g.*, N.Y. FAMILY COURT ACT § 842 (McKinney 2020).

140. New York estate law provides that trusts may name domestic or pet animals as beneficiaries. N.Y. EST. POWERS & TRUSTS LAW § 7-8.1 (McKinney 2010).

141. Nonhuman Rights Project Inc. v. Stanley, 16 N.Y.S.3d at 913.

It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it."[142] Recognizing the necessity of overcoming procedural impediments to granting standing to non-human animals, and non-human actors generally, a 2004 Ninth Circuit decision makes clear that Congress could, if it chooses to do so, grant Article III standing to non-human animals, just as it does to other non-human entities, such as corporations, trusts, etc.[143]

Despite the difficulties in establishing legal recognition and rights for non-human animals in the United States, constitutions,[144] legislation[145] and jurisprudence[146] in several other countries have begun to recognize non-human animals as sentient beings, entitled to a set of rights. The literature on the rights of

---

142. *Id*. Mot. for Leave to Appeal, In the Matter of Nonhuman Rights Project, Inc. on behalf of Tommy, Appellant v. Patrick C. Lavery, et al., Respondents; In the Matter of Nonhuman Rights Project, Inc., on Behalf of Kiko, Appellant v. Carmen Presti et al., Respondents, No 2018–268, at 7; *see also* People v. Graves, 78 N.Y.S.3d 613, 617 (Sup. Ct. 2018) (stating that "it is common knowledge that personhood can and sometimes does attach to nonhuman entities like corporations or animals").

143. Cetacean Cmty. v. Bush, 386 F.3d 1169, 1175-76 (9th Cir. 2004). The plaintiff in this case was the cetacean community, consisting of the world's whales, porpoises, and dolphins, which was complaining about the United States' use of a particular sonar system. *Id.* The plaintiff was denied standing because Article III does not define "persons" and no precedent established that animals have standing to sue in their own name. *Id.* Nonetheless, the court stated that Article III standing is not necessarily limited to humans and established that Congress can act to grant standing for non-human natural actors in Court, because

> we see no reason why Article III prevents Congress from authorizing a suit in the name of an animal, any more than it prevents suits brought in the name of artificial persons such as corporations, partnerships or trusts, and even ships, or of juridically incompetent persons such as infants, juveniles, and mental incompetents.

Id. at 1176.

144. *See, e.g.*, Constitution of India, 2020, art. 51 § A(g) (requiring citizens to "have compassion for living creatures").

145. In Colombia, Law 1774 of 2016 establishing special protections for non-human animals and establishing duties on behalf of the government and all citizens are required to assist and protect animals. Notably, Article 3 of the Law, also set of guaranteed freedoms akin to early human rights iterations. L. 1774, enero 6, 2016, Diario Oficial,
https://www.animallaw.info/sites/default/files/8.%20LEY%201774%20DE%202016.pdf.

146. *See, e.g.*, the Supreme Court of India's decision in Animal Welfare Board of India v. A. Nagaraja & others, (2014) 7 SCC 547 (holding that a traditional form of bullfighting is unconstitutional due to the duties owed by humans to animals under the Indian Constitution and the corresponding rights for non-human animals derived therefrom). In subsequent, high courts in India have established personhood for non-human animals, with humans declared as serving in loco parentis to assure their welfare. *See, e.g.*, Rajesh K. Reddy, *Groundbreaking Litigation Seeks to Extend Formal Personhood Status to India's Animal Kingdom*, Sept. 9, 2020, *https://law.lclark.edu/live/news/44234-groundbreaking-litigation-seeks-to-extend-formal*; Narayan Dutt Bhatt vs. Union of India and Others (July 4, 2018) at 55, *http://www.indiaenvironmentportal.org.in/files/horse%20cart%20Nepal%20India%20Uttarakhand%20High%20Court%20Judgement%20Narayan_Dutt_Bhatt.pdf*; c),
http://files.harmonywithnatureun.org/uploads/upload820.pdf (Brazil's Superior Court of Justice also recognized that non-human animals, and nature more generally, are valid legal subjects, in need of legal recognition of their intrinsic dignity).

non-human animals is robust. Indeed, it is a field all unto its own.[147] However, the limitations of law review formats require that the remainder of this Article focuses on the rights of those parts of nature which modernist Western thought regards as inanimate: trees, rivers, lakes, and the like.

C. Legal Persons or Legal Natural Actors

1. Nature as Legal Person(s)

In most Western and Western-influenced legal systems, humans have historically been the only legally cognizable subjects of the law. Municipalities have subsequently become recognized as legal persons (although with vastly divergent powers)[148] and now trusts and corporations have also come to be seen as legal persons.[149] The ability to recognize non-human actors as legal persons has thus provided one categorical conception of how to think of non-human natural actors. If corporations can have personhood, and be conferred rights, why not non-human natural actors, too?[150]

There are important distinctions between human and non-human natural actors that require consideration. Lakes, rivers, and forests cannot speak for themselves, are not conscious of their rights-as-rights, cannot represent themselves in court and cannot bear duties. [151] While these are important distinctions, advocates point to the ability to appoint advocates to represent and speak for nature. This is what we do for infants and those otherwise incapable of representing themselves, and it is also what corporations do, after all.[152]

As will be discussed in greater detail below, many countries that recognize nature's rights have done so in response to the pressing need to fully recognize their

---

147. A Lexis+ search for "nonhuman" within 5 words of "animal" turned up over 1000 articles, with roughly half of all work produced in the area having been produced in just the past 10 years. *See, e.g.*, Douglas Linder, *Animal Rights Debate: Peter Singer vs Richard Posner*, SLATE (June 2001), https://famous-trials.com/animalrights/2601-animal-rights-debate-peter-singer-vs-richard-posner (describing debates of Peter Singer and Richard Posner); ANIMAL RIGHTS 229-330 (Cass R. Sunstein and Martha Nussbaum eds., 2004) (describing debates of Martha Nussbaum and Cass Sunstein); Stilt, *supra* note 15.

148. *See, e.g.*, Gerald Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1062-3, 1080-120 (1980).

149. *See, e.g.*, Elizabeth Pollman, *Reconceiving Corporate Personhood*, 2011 UTAH L. REV.1629 (2011); Gwendolyn Gordon, *supra* note 15 (providing a thoughtful argument for why the concept of personhood is better fitted to the social understanding of nature than is the corporation).

150. Gwendolyn Gordon, *supra* note 15, at 62-71.

151. Recognizing nature's needs may seem controversial but does not need to be. *See, e.g.*, Hope M. Babcock, *A Brook with Legal Rights: The Rights of Nature in Court*, 43 ECOLOGY L.Q. 1, 49 (2016) (citing Stone (1972), *supra* note 1, at 471) ("[N]atural objects can communicate their wants (needs) to us, and in ways that are not terribly ambiguous.")

152. *See, e.g.*, *id.* at 40 (indicating that many of the countries that recognize nature's rights appoint guardians, or otherwise allow humans to represent nature); *infra* Part III. More difficult to overcome is the fact that, indeed, it would be difficult to sue a forest or a river.

indigenous communities. Recognizing, even, their ontological or metaphysical perspectives, in which nature is a person, or natural actors are persons. With this being the case, recognizing the legal personhood of nature may be the most effective route to bestow rights on nature. As Gwendolyn Gordon has noted:

> [D]espite the many ways in which corporate personhood may be useful in theorizing environmental personhood, perhaps there is one very fundamental difference between the two: while corporate personhood might be imagined as merely legalistic, the regimes outlined here each imagine something more. For example, the notion of nature as living is not merely legalistic for any of the indigenous worldviews important to ushering in these regimes in Latin American and New Zealand. The rights of nature regimes here described seem both to require and to generate new ways of looking at the relationship between human beings and the natural world.[153]

2. Nature as Legal Natural Actor(s)

Another possibility for legal cognizability of nature is to shed the requirement that legal actors fir into the definition of "persons." Authors advocating this position argue that to fully recognize the rights of nature, it is essential to begin to de-center humans such that humans and non-human actors become more fully "co-constituted and entangled."[154]

Under this conception, we should not be thinking about human's rights for non-humans, but instead should focus carefully on legal cognizability and, most importantly, on recognizing that non-human natural actors will, *in se,* have their own set of "needs" that must be protected. What is called for may be a consideration of rights that is contextual so as not to obscure the uniqueness of non-human natural actors.[155] We might do well to grant "'river rights' to rivers, tree rights to trees, or ecosystem rights to ecosystems."[156] At the very least, the idea here would be to grant non-human natural actors the rights to "exist, flourish, and naturally evolve."[157]

---

153. Gwendolyn Gordon, *supra* note 15, at 49, 89.

154. Astrida Neimanis, *Alongside the Rights to Water, a Posthumanist Feminist Imaginary*, 5 J. HUM. RTS. & THE ENV'T 5 (2014).

155. See Anna Grear, *It's Wrongheaded to Protect Nature with Human-style Rights*, AEON (Mar. 19, 2019), https://aeon.co/ideas/its-wrongheaded-to-protect-nature-with-human-style-rights.

156. *Id.* (citing Stone (1972), *supra* note 1).

157. This was the minimum protection required under the Lake Erie Bill of Rights, discussed *infra* note 226. The Yurok Tribal Council used this exact language and added to it in declaring rights for nature in their jurisdiction. *See infra* note 218. More robust formulations can be found, e.g., in *Declaration on Human Rights and Climate Change*, THE GLOB. NETWORK FOR HUM. RIGHTS AND THE ENV'T, https://gnhre.org/declaration-human-rights-climate-change/ (last visited, Feb. 20, 2021).

III. NATURE'S RIGHTS ON THE GROUND

An increasing number of domestic and international legal institutions have been shifting toward recognizing nature's rights. This Part will first treat domestic legal systems by detailing the developments, constitutions, legislation, and court decisions of a number of foreign legal systems. It will then turn to international institutions, including the United Nations and the Inter-American Court of Human Rights (IACtHR), among others.

A. Domestic Legal Systems

This section will present the shift in a set of the domestic legal systems that have moved in this direction. The examples below represent a set which, taken individually and collectively, demonstrate the variety of methods countries have utilized to open standing, personhood, and rights to non-human natural actors. The material that follows provides a rough chronology[158] of the development of nature's rights throughout the world and, thus, moves through space across the globe and back again, rather than focusing on one region of the world and then proceeding to another. This is because the concept of non-human natural actors having rights has spread quickly and globally such that a global chronology seems most sensible. A few countries have been omitted from this discussion due to space constraints, though they are mentioned at the end of this Part.

1. Ecuador

a. Constitutional Protection

In 2008, Ecuador's new constitution became the first in the world to recognize nature's rights following a debate about whether or not strengthening existing environmental law would be sufficient.[159] The resulting rights of nature are placed in equivalent value with conventional human rights and protected by the weight of enforcement which that status provides.[160] Specifically, Chapter 7 of the

158. This section will use the dates on which the constitution was enacted, the legislation was passed, or the court's decision was issued as the most relevant date for purposes of chronological ordering. Of course, the development and turn to the idea of nature's rights, as a legal matter rather than merely a conceptual one within a domestic legal system, takes time such that chronologies are imperfect. In addition, readers will note that the first appearance in practice of the rights of nature was in a local ordinance was by the Navajo Nation in 2003, followed by Tamaqua Borough, Pennsylvania in 2006. *See infra* notes 207 and 224 and accompanying text.

159. Hugo Echeverría, *Rights of Nature: The Ecuadorian Case*, 9 REVISTA ESMAT 77, 79 (2017), http://esmat.tjto.jus.br/publicacoes/index.php/revista_esmat/article/view/192/178.

160. CYRUS R. VANCE CTR. FOR INT'L JUST. ET AL., RIGHTS OF RIVERS: A GLOBAL SURVEY OF THE RAPIDLY DEVELOPING RIGHTS OF NATURE JURISPRUDENCE PERTAINING TO RIVERS 35 (2020),

Constitution of Ecuador is entitled "The Rights of Nature," and Articles 71-74 bind government and private actors to the recognition and proliferation of the rights of nature.[161] The inclusions of nature's rights in the Ecuadorian constitution was influenced by a combination of indigenous concepts and values and a progressive political agenda.[162]

b. Domestic Jurisprudence

Following the adoption of the rights of nature in the Constitution in 2008, the new constitutional order was successfully tested in the national court system, although the long-term enforcement of the court rulings remains unclear. In 2011, a suit was brought on behalf of the Vilcabamba River to enjoin the use of heavy machinery that was being used to build a road on the banks of the river.[163] Though the lower court dismissed the case on procedural grounds, the appeals court reversed that dismissal and cited Articles 71-74 in determining that protection was appropriate. The court further established a precautionary principle for further cases involving potential pollution, requiring potential polluters to prove they would not cause significant harm to the environment and allowing the court's understanding of environmental damage to be influenced by the possibility of harm.[164]

The precedent set forth in the Vilcabamba ruling has been subsequently upheld. In May 2018, the Constitutional Court of Ecuador recognized the rights of nature as a means to address pollution from agricultural companies. The suit was filed because of a failure of the companies to comply with a 2009 court order. In recognizing the rights of the Alpayacu River, the court cited the protections guaranteed to nature under the constitution.[165]

The developments in Ecuador are not impervious to critique. For example, commentators have questioned whether the objective of embedding the rights of nature in the constitution was the result of a political bargain between President

---

https://static1.squarespace.com/static/55914fd1e4b01fb0b851a814/t/5f760119bde1f0691fc7c7e0/1601569082236/Rights+of+Rivers+Report_Final.pdf.

161. *See* CONSTITUCION DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, arts. 71-74, in *Political Database of the Americas: Republic of Ecuador,* GEORGETOWN UNIV. EDMUND A. WALSH SCH. OF FOREIRN SVC., https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html (establishing the concept of Pachamama and detailing the rights of nature to be respected, protected, restored, and for "restrictive measures on activities that might lead to the extinction of species" or result in harm to ecosystems and natural cycles).

162. CYRUS R. VANCE CTR. FOR INT'L JUST. ET AL., *supra* note 161.

163. Natalie Greene, *The First Successful Case of the Rights of Nature Implementation in Ecuador*, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE 1, https://www.earthlaws.org.au/wp-content/uploads/2016/07/RON_Vilcabamba-Ecuador-Case-complete.pdf.

164. CYRUS R. VANCE CTR. FOR INT'L JUST. ET AL., *supra* note 161.

165. CORTE CONSTITUCIONAL DEL ECUADOR [Constitutional Court of Ecuador] May 16, 2018, sentencia No. 023-18-SIS-CC, caso N.o 0047-09-IS, http://portal.corteconstitucional.gob.ec:8494/FichaRelatoria.aspx?numdocumento=023-18-SIS-CC.

Rafael Correa and indigenous leaders who, in turn, supported Correa's expansion of presidential powers in 2008. In addition, Articles 71-74 give the Ecuadorian government effective control over Ecuador's natural resources, potentially limiting the actual enforcement of the rights of nature.

2. Bolivia

a. Constitutional Protection

President Evo Morales was elected as Bolivia's first indigenous president in 2006. One of Morales' campaign promises was to convene a constitutional assembly to address issues of inequality and social injustice, especially as they impacted indigenous communities.[166] In 2009, the Bolivian Constitution was amended to include a number of provisions reflecting the worldview and values of Bolivia's indigenous majority, recognizing environmental human rights, and laying the foundation for statutes that enumerate and protect specific rights of nature under Bolivian law.

The Preamble to the 2009 Constitution makes clear the central role of Pachamama in the country's worldview and constitutional order.[167] Similar to the principle of "Buen Vivir" or "Sumak Kawsay" in the Ecuadorian Constitution,[168] "Suma Qamaña,"[169] "Vivir Bien"[170] are embedded in Chapter 2 of the Constitution

---

166. *See* David Mercado, *Bolivia Approves Constitutional Draft amid Clashes*, REUTERS (Nov. 24, 2007), https://www.reuters.com/article/idUSN24344043; *see also* Maral Shoaei, *MAS and the Indigenous People of Bolivia* (2012) (Master's Thesis, University of South Florida), https://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=5597&context=etd.

167. The original text of this section of the Preamble reads: "Cumpliendo el mandato de nuestros pueblos, con la fortaleza de nuestra Pachamama y gracias a Dios, refundamos Bolivia." REPÚBLICA DEL BOLIVIA CONSTITUCIÓN DE 2009, Feb. 7, 2009, preámbulo ¶ 7, in *Political Database of the Americas: Republic of Bolivia*, GEORGETOWN UNIV. EDMUND A WALSH SCH. OF FOREIGN SVC., https://pdba.georgetown.edu/Constitutions/Bolivia/bolivia09.html.

168. In Ecuador the application of "Buen Vida" (loosely translated to "living well" or "the good life") is rooted in the Quechua worldview of "sumak kawsay," which "describes a way of doing things that is community-centric, ecologically-balanced and culturally-sensitive." Oliver Balch, *Buen Vivir: the Social Philosophy Inspiring Movements in South America*, THE GUARDIAN (Feb. 4, 2013), https://www.theguardian.com/sustainable-business/blog/buen-vivir-philosophy-south-america-eduardo-gudynas.

169. Suma Qamaña is an Aymara term that "emphasizes harmonious relations with nature, providing a link to sustainability that dominant conceptions of well-being fail to make and marking a transition from an anthropocentric to a biocentric understanding of humans as part of nature." Kepa Artaraz & Melania Calestani, *"Suma qamaña" in Bolivia: Indigenous Understandings of Well-being and Their Contribution to a Post-Neoliberal Paradigm*, 42 LATIN AMERICAN PERSPECTIVES 216, 217 (Sept. 2015), https://www.jstor.org/stable/24574878?seq=1.

170. Vivir Bien is "a concept that is deeply rooted in indigenous traditions, which affirms the need to live in harmony with Mother Earth and in equilibrium with all forms of life," Paola Villavicencio Calzadilla & Louis J. Kotzé, "*Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia*," 7 TRANSNAT'L ENV'T. L. 397, 403 (2018),

and represent a biocentric, rather than an anthropocentric, understanding of humans as part of nature. Article 33 states that "everyone has the right to a healthy, protected, and balanced environment. The exercise of this right must be granted so that individuals and collectives of present and future generations, as well as other living things, may develop in a normal and permanent way."[171] This provision is significant in its inclusion of future generations and of non-human natural actors, "implying that human beings should act as caretakers to exercise the right on behalf of Mother Earth."[172]

Through these provisions, the Constitution "recognizes at the highest constitutional level the importance of ecological integrity, which enables people to create a new future for themselves through a new constitutional framework."[173] In this way, although the language in the Constitution does not explicitly "entrench the rights of nature as does its Ecuadorian counterpart,"[174] it provides an important framework for the country's two statutory laws on the subject, which themselves recognize seven explicit rights of nature and require the implementation of the systems necessary to ensure their proper protection.[175]

b. Legislation

The 2010 Law of the Rights of Mother Earth has as its stated purpose the recognition of "the rights of Mother Earth, as well as the obligations and duties of the plurinational state and of society to ensure respect for these rights."[176] Article 7 of the statute details seven rights held by Mother Earth: the right to life, biodiversity, water, to clean air, to equilibrium, to restoration, and to live free from contamination.[177] The second statute, the Framework Law of Mother Earth and the Integral Development for Living Well of 2012[178] "aims to operationalize the rights

---

https://www.cambridge.org/core/journals/transnational-environmental-law/article/living-in-harmony-with-nature-a-critical-appraisal-of-the-rights-of-mother-earth-in-bolivia/C819E1C4EE0848C3F244EFB0C200FE65.

171. The original text reads: "Artículo 33. Las personas tienen derecho a un medio ambiente saludable, protegido y equilibrado. El ejercicio de este derecho debe permitir a los individuos y colectividades de las presentes y futuras generaciones, además de otros seres vivos, desarrollarse de manera normal y permanente." REPÚBLICA DEL BOLIVIA CONSTITUCIÓN DE 2009, *supra* note 168, at art. 33 ¶ 1.

172. Calzadilla & Kotzé, *supra* note 171, at 402.

173. *Id.* at 403.

174. *Id.* at 399.

175. LEY NO. 71 DE DERECHOS DE LA MADRE TIERRA (Dec. 21, 2021) (Bolivia), https://www.lexivox.org/norms/BO-L-N71.xhtml?dcmi_identifier=BO-L-N71&format=xhtml; LEY NO. 300 DE LEY MARCO DE LA MADRE TIERRA Y DESARROLLO INTEGRAL PARA VIVIR BIEN (Oct. 15, 2012) (Bolivia) http://www.fao.org/fileadmin/user_upload/FAO-countries/Bolivia/docs/Ley_300.pdf.

176. LEY NO. 71, *supra* note 176, at Art. 1.

177. *Id.* at Art. 7.

178. LEY NO. 300, *supra* note 176.

of Mother Earth set out in the former law in the context of the so-called integral development for Vivir Bien (living well)."[179]

3. New Zealand

a. Legislation

In 2014, New Zealand became the first country in the world to create, by way of legislation, legal personhood for a non-human natural actor. The Te Urewera Act of 2014 grants legal identity on Te Urewera (a mountainous, forested area in the Central-Eastern region of New Zealand's North Island), with "all the rights, powers, and liabilities of a legal person."[180] The Act further recognizes that, as a non-human natural actor, Te Urewera cannot speak for itself and thus appoints the Te Urewera Board (also created by the Act) to represent Te Urewera.[181]

In a separate landmark case, there is the Whanganui River, which is New Zealand's longest river, beginning at Mount Tongariro and extending for 290 km to the Tasman Sea. The river has long held enormous cultural and practical value for Whanganui iwi, the region's Maori tribes. For more than 700 hundred years, Whanganui tribes controlled, cared for, and relied on the river, referring to it as *awa tupua,* or the river of sacred power.[182] However, the arrival of European settlers in the 1800s undermined Whanganui authority over the river and created a familiar colonial power disparity. From the 1880s to the 1920s, the Government of New Zealand (referred to as the Crown) with minimal tribal input or consultation, established a steamer service that ran the length of the river, extracted minerals from its bed, and depleted traditional fisheries.[183] Despite generations of petitioning, beginning in the 1870s, by Whanganui iwi to various courts and the Waitangi

---

179. Paola Villavicencio Calzadilla & Louis J. Kotzé, *supra* note 172, at 399.

180. Te Urewera Act 2014, § 11 (N.Z.), https://www.legislation.govt.nz/act/public/2014/0051/latest/whole.html.

181. *See id.* §§ 11, 16. Section 16 establishes the Board and empowers it to act in the name of the river. Its functions include drafting and implementing a management plan for the river, proposing acquisitions for annexing additional land to the protected area, and reviewing and authorizing activities within the protected area. The Board was comprised of 4 Crown and 4 Tūhoe representatives for the initial 3 years, after which it would be comprised of 3 Crown and 6 Tūhoe members. For further details, see ENVIRONMENT FOUNDATION, *Te Urewera Act*, ENVIRONMENT GUIDE, (Nov. 17, 2017 2:39 PM), http://www.environmentguide.org.nz/regional/te-urewera-act/.

182. Kennedy Warne, *A Voice for Nature*, NATIONAL GEOGRAPHIC (Apr. 25, 2019), https://www.nationalgeographic.com/culture/2019/04/maori-river-in-new-zealand-is-a-legal-person/. For an anthropological account of the linguistic expression of the Whanganui iwi demonstrating an ancestral interconnection between land, the river, ancestors, and the living, see Anne Salmond, *Tears of Rangi*, 4 J. ETHNOGRAPHIC THEORY 285, 290-96 (2014).

183. New Zealand Parliament, Pāremata Aotearoa, *Innovative Bill Protects Whanganui River with Legal Personhood* (Mar. 28, 2017), https://www.parliament.nz/en/get-involved/features/innovative-bill-protects-whanganui-river-with-legal-personhood/.

Tribunal asserting the river's spiritual and substantive significance, the Crown maintained control over the river and the exploitation of its resources.[184]

However, seeking to remediate centuries of injustice, the Crown is now attempting to restore custodianship over the river to Whanganui iwi, employing nature's rights as a tool toward achieving this goal and granting legal personhood for the Whanganui River. Te Awa Tupua, otherwise known as the Whanganui River Claims Settlement Bill, was passed into law by the New Zealand Parliament on March 20, 2017. The law confers legal personhood onto the Whanganui River, granting it the same rights and responsibilities as a person under New Zealand law. The stated purpose of Te Awa Tupua is bestowing the river with a legal personality to provide for the river's long-term protection and restoration.[185] However, the law is also meant to explicitly acknowledge the special relationship between the Whanganui River and Whanganui iwi, recognizing an "inalienable connection" between the two.[186] Additionally, the law posits to "record the acknowledgements and apology given by the Crown to Whanganui iwi."[187]

Substantively, Te Awa Tupua provides a comprehensive agenda for establishing personhood and custodianship of the river and meting out $80 million NZD in reparations to Whanganui iwi to redress previous "actions and omissions" of the Crown.[188] Furthermore, Te Awa Tupua grants another $1 million NZD to the establishment of a legal framework to support the Whanganui River.[189] Essential to this framework is the creation of Te Pou Tupua, or the human face of Te Awa Tupua, which serves as a body representing and acting on behalf of the interests of the river in its capacity as a legal person. Te Pou Tupua consists of a singular role executed by two people, one appointed by the Crown and one appointed by Whanganui iwi with interests in the Whanganui River.[190] The law also establishes the Te Awa Tupua Fund, or Te Korotete o Te Awa Tupua, which consists of a $30 million NZD grant to be put toward the support of the "health and wellbeing of the river."[191]

Te Awa Tupua is innovative for several reasons, not the least of which is the method in which legal personhood was granted to the Whanganui River. There is no precedent in the Constitution Act of 1986 or the Treaty of Waitangi, New Zealand's founding documents, nor in court rulings for the legal personality of

184. *Id.*

185. Te Awa Tupua [Whanganui River Claims Settlement] Act 2017, part 1 § 3(a) (N.Z.) https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html#DLM6831461.

186. *Id.* at part 2 § 13(c).

187. *Id.* part 3 subpart 1.69.

188. New Zealand Parliament, Pāremata, *supra* note 184.

189. *Id*.

190. Whanganui Deed of River Settlement 2014, § 3.9 (N.Z.).

191. *Id.* § 7.2.

rivers.[192] Rather, Te Awa Tupua was conceived and passed by a modern Parliament as a means of reckoning with past harm caused by the Crown to Whanganui tribes. The Act further aims to recognize the Maori understanding of the river as an "indivisible and living whole" that cannot be fragmented.[193] Still, granting the Whanganui River legal personality leaves it under the control of the Crown rather than the Maori, and passage of the law is recent enough that it remains to be seen whether legal personhood is an effective means of river protection.[194]

Also, in 2017, the Crown entered negotiations toward a Settlement Act regarding Mt. Taranaki, or Taranaki Maunga that, as of this writing, is in its final stages.[195] Once the Settlement Act is finalized, the mountain will be recognized as an ancestor and will have legal personality, similar to that granted to the Whanganui River and the entire Te Urewera region. The rights of Taranaki Maunga will also be administered by a joint Crown-Iwi governance entity like the one established for the Whanganui River.[196]

4. Colombia

a. Domestic Jurisprudence

Through opinions written in response to tutela actions,[197] the Constitutional Court and the Supreme Court have advanced a biocentric and eco-centric vision of Colombian constitutional law. It was through a tutela action, for

---

192. *See* Elizabeth Macpherson et al., *Where Ordinary Laws Fall Short: 'Riverine Rights' and Constitutionalism*, GRIFFITH L. REV. 1, 19-21 (2021).

193. *See id.* at 22.

194. *See* i*d.* at 24.

195. Deena Coster, *Taranaki Maunga: Settlement Looms on Horizon, with Changes in the Wind* STUFF (Dec. 12, 2020), https://www.stuff.co.nz/pou-tiaki/123597917/taranaki-maunga-settlement-looms-on-horizon-with-changes-in-the-wind.

196. Blanton Smith, *Mt. Taranaki to Become Legal Personality under Agreement between Iwi and Government*, TARANAKI DAILY NEWS (Dec. 21, 2017), https://www.stuff.co.nz/taranaki-daily-news/news/100085814/mt-taranaki-to-become-legal-personality-under-agreement-between-iwi-and-government?rm=m.

197. Article, 86 of the 1991 Colombian Constitution, together with Decree 2591 of 1991 created the *tutela* legal action, which provides an avenue for redress to any judge for immediate protection of fundamental rights guaranteed by the Constitution. The Colombian Constitutional Court's jurisprudence has, in the ensuing years, interpreted the *tutela* to permit actions based on civil and political rights as well as social, economic, and cultural rights. The tutela protects individual rights and has increasingly been used to protect group rights (when the infringement of collective rights represents the failure to primarily protect individual fundamental rights). Corte Suprema de Justicia [Supreme Court], Sala de Casacion Civil abril 5, 2018, M.P.: L. A. T. Villabonda, STC4360-2018, 10-13 (Colom.), https://cortesuprema.gov.co/corte/wp-content/uploads/2018/04/STC4360-2018-2018-00319-011.pdf.
The tutela emulates the *amparo* action. For an introduction to the amparo and tutela in Latin America, see Gloria Orrego Hoyos, *Update: The Amparo Action in Latin American Jurisdiction: And Approach to an Empowering Action*, GLOBALEX (2017), https://www.nyulawglobal.org/globalex/Amparo1.html.

example, that the Constitutional Court recognized the public right to a healthy environment over twenty years ago.[198] And it was a *tutela* action that resulted in the Constitutional Court's issuing its transformative decision in the Atrato River case.

The Atrato River Basin is home to numerous indigenous and Afro-Colombian communities, including the populations that worked with the Center for Social Justice Studies "Tierra Digna," to use the tutela mechanism to petition for the protection of fundamental human rights connected to the Atrato River: life, a healthy environment, food, water, and health. In response, the Court took the unprecedented step of declaring that the Atrato River is itself a subject of rights in order to effectuate its protection, conservation, maintenance and restoration.[199] In doing so, the Court stated that it is time to move toward a realization of the view that humans are "an integral part and not the simple dominator of nature" so that we can more adequately regulate our effects on the environment.[200] The Court also pointed to the emergence of the rights of nature in foreign and international tribunals as a basis for its decision.[201]

The Court further recognized the rights of the Afro-Colombian and indigenous communities in the Atrato River region as primary guardians of the river, with the capacity to protect the river in accordance with their customs, uses and traditions.[202] The decision thus includes these communities in the governance of the river far beyond the role they had previously held with respect to the river.[203]

Building on the Atrato River decision, Colombia's Supreme Court later recognized the Colombian Amazon as a subject of rights and further recognized the rights of future generation.[204] The decision, which was premised on the government's duties under the Paris Climate Agreement to eliminate deforestation by 2020, required various ministries to create an action plan, within four months of the decision, to eliminate deforestation in the Amazon.[205] It also required the government to work with the petitioners, affected communities, environmental researchers and other interested parties to create, within five months of the decision, an "intergenerational pact for the life of the Colombian Amazon."[206]

---

198. Corte Constitucional [Constitutional Court], noviembre 14, 2000, Sentencia T-1527/00, ¶ 5.3 and Section III (2000), https://www.corteconstitucional.gov.co/relatoria/2000/T-1527-00.htm.

199. Corte Constitucional [Constitutional Court], noviembre 10, 2016, Sentencia T-622/16, ¶ 9.32

200. *See id.* ¶ 9.30.

201. *Id.* ¶ 9.28.

202. *Id.* ¶ 9.32.

203. *Id.* ¶ 9.30.

204. Corte Suprema de Justicia [Supreme Court], abril 5, 2018, Sentencia 4360-2018, ¶ 14 (Colom.). Colombia's Supreme Court is co-equal with the Constitutional Court and holds authority over the interpretation of administrative law.

205. *Id.*

206. *Id.*

Furthermore, in the years since, lower provincial courts have adopted the Atrato River case's "ecological constitution" framework to recognize rights for the Cauca, La Plata, Magdalena, and Otún Rivers.[207] In 2018, the Constitutional Court also recognized the rights of the Páramo de Pisba, a high-altitude ecosystem in North-Central Colombia.[208]

5. The United States

Currently, traction for the establishment and enforcement of nature's rights has failed to materialize at the national level in the United States. However, the development of the rights of nature has advanced in the U.S. tribal system and in local ordinances and referenda.

a. Tribal Law

At least six Native American nations have implemented the rights of nature.[209] Under the theory that Native nations "have the ability and authority to legislate rights of nature under their respective laws, to have those rights adjudicated in Tribal Courts and upheld in federal courts,"[210] the shift toward recognizing nature's rights by Native tribes may soon come before federal courts for reconciliation.

The Navajo Nation has embedded the rights of nature into the Navajo Nation Code as of 2003, with Title I § 205 asserting that "all creation" has its own laws, rights, and freedoms.[211] This provision places a responsibility on Navajo Nation's executive agencies: "all persons and entities, including agencies, departments, enterprises and other instrumentalities of the Navajo Nation itself and agencies of other governments, can and do affect the environment, and that it is the policy of the Navajo Nation to use all practicable means to create conditions under which humankind and nature can exists [sic] in productive harmony."[212]

Similarly, in September 2018, the Ho-Chunk Nation "voted overwhelmingly" in favor of the addition of the Rights of Nature to its tribal

---

207. Elizabeth Macpherson et al., *Constitutional Law, Ecosystems, and Indigenous Peoples in Colombia: Biocultural Rights and Legal Subjects*, 9:3 TRANSNAT'L ENV'T. L. 1, 4 (July 2020).

208. Corte Constitucional [Consitutional Court], mayo 30, 2017, Sentencia T-361/17 (Colom.). https://www.corteconstitucional.gov.co/relatoria/2017/t-361-17.htm.

209. *See* CYRUS R. VANCE CTR. FOR INT'L JUST. ET AL., *supra* note 161, at 39.

210. Geneva E.B. Thompson, *Codifying the Rights of Nature: The Growing Indigenous Movement*, 59 JUDGES J. 12, 13 (Spring 2020).

211. Navajo Nation Code Ann., Tit. I § 205(C) (2010), https://www.nnols.org/wp-content/uploads/2021/02/V0010-1.pdf.

212. CYRUS R. VANCE CTR. FOR INT'L JUST. ET AL., *supra* note 161 (citing Navajo Nation Code Ann., Tit. I § 205).

constitution.[213] In addition to ascribing ecosystems, natural communities, and species within Ho-Chunk Nation territory with inalienable rights to existence and proliferation, the constitutional amendment also prohibits hydraulic fracturing, fossil fuel extraction, and genetic engineering.[214] Furthermore, in 2017, the Ponca Nation of Oklahoma also passed a statute specifically recognizing the rights of nature in response to the environmental harms caused by fracking.[215]

Other U.S. tribes have taken a more targeted approach, declaring the legal personhood and rights of specific non-human natural actors rather than nature as a whole.[216] In 2019, the Yurok tribe granted legal personhood to the Klamath River under tribal law, the first in the United States to do so.[217] According to the Yurok Tribal Council, the river now has the right to "exist, flourish, and naturally evolve; have a clean and healthy environment free from pollutants; [and] to have a stable climate free from human-caused climate impacts."[218] The river has been afforded new status in accordance with traditional Yurok understandings of the river as essential to the existence of the tribe, as well as in response to the negative impacts of climate change and pollution on the river's salmon populations.[219]

In a related vein, in 2018, the White Earth Band of Ojibwe in Minnesota enacted a law recognizing the natural rights of manoomin, or wild rice.[220] The law establishes a legal basis for the protection of manoomin and its ability to flourish, deeming its protection essential to the health and welfare of the White Earth Band, as well as to its economic security.[221] In addition to the grain itself, the law also

---

213. Stacey Schmader, *Press Release: Ho-Chunk Nation General Council Approves Rights of Nature Constitutional Amendment*, COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND (Sept. 17, 2018), https://celdf.org/2018/09/press-release-ho-chunk-nation-general-council-approves-rights-of-nature-constitutional-amendment/.

214. *Id.*

215. Alex Brown, *Cities, Tribes Try a New Environmental Approach: Give Nature Rights*, PEW CHARITABLE TRUSTS (Oct. 30, 2019), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/10/30/cities-tribes-try-a-new-environmental-approach-give-nature-rights#:~:text=In%202017%2C%20the%20Ponca%20Nation,rising%20cancer%20and%20asthma%20rates.

216. *See* CYRUS R. VANCE CTR. FOR INT'L JUST. ET AL., *supra* note 161, at 39.

217. Thompson, *supra* note 211, at 12 (citing Yurok Tribal Council, *Resolution Establishing the Rights of the Klamath River*, Resolution 19-40 (May 9, 2019)); *see also*, *Tribe Gives Personhood to Klamath River*, NPR (Sep. 29, 2019), https://www.npr.org/2019/09/29/765480451/tribe-gives-personhood-to-klamath-river#:~:text=A%20Native%20American%20tribe%20has,status%20on%20the%20Klamath%20River.

218. CYRUS R. VANCE CTR. FOR INT'L JUST. ET AL., *supra* note 161, at 39.

219. Anna V. Smith, *The Klamath River Now Has the Legal Rights of a Person*, HIGH COUNTRY NEWS (Sep. 24, 2019), https://www.hcn.org/issues/51.18/tribal-affairs-the-klamath-river-now-has-the-legal-rights-of-a-person

220. White Earth Reservation Business Committee Res. No. 001-19-010, (Dec. 31, 2018), https://static1.squarespace.com/static/58a3c10abebafb5c4b3293ac/t/5c3cdbfe352f53368c1449bf/1547492352265/White+Earth+Rights+of+Manoomin+Resolution+and+Ordinance+combined.pdf.

221. *Id.*

protects the fresh water habitats in which it grows and prohibits their endangerment by the State of Minnesota or others.[222]

b. Legislation, Referenda, and Ordinances

In 2019, in the face of increasing lake water pollution and incidences of toxic algae bloom,[223] 61% of citizens of the City of Toledo, Ohio voted to pass a Referenda to Amend the City's Charter which would include a section entitled "Lake Erie Bill of Rights" (LEBOR).[224] LEBOR reads, in part: "we, the people of the City of Toledo, declare and enact this Lake Erie Bill of Rights, which establishes irrevocable rights for the Lake Erie Ecosystem to exist, flourish and naturally evolve, a right to a healthy environment for the residents of Toledo, and which elevates the rights of the community and its natural environment over powers claimed by certain corporations."[225] In February of 2020, a federal judge found LEBOR to be unconstitutional due in part to vagueness, asserting it was unclear from the document what "conduct infringes the rights of Lake Erie and its watershed to 'exist, flourish, and naturally evolve.'"[226] The State legislature has also since passed language in an appropriations bill which purportedly serves to nullify LEBOR.[227]

Other communities have attempted to use local ordinances and municipal legislation to open space for nature's rights in the United States. For example, Tamaqua Borough in Pennsylvania, in 2006 adopted a local ordinance in response to coal mining practices recognizing that: "[b]orough residents, natural communities, and ecosystems shall be considered 'persons' for the purposes of the civil rights of those residents, natural communities, and ecosystems."[228] Similar ordinances have been passed in dozens of cities in the United States, recognizing nature's rights in some form.[229]

---

222. *Id.*

223. *See generally NOAA, Great Lakes: Harmful Algal Blooms*, NAT'L OCEAN SERV., https://oceanservice.noaa.gov/hazards/hab/great-lakes.html#:~:text=Cyanobacteria%20blooms%20(blue%2Dgreen%20algae,both%20human%20and%20ecosystem%20health (last visited Nov. 10, 2021).

224. Timothy Williams, *Legal Rights for Lake Erie? Voters in Ohio City Will Decide*, NEW YORK TIMES (last updated Feb. 27, 2019), https://www.nytimes.com/2019/02/17/us/lake-erie-legal-rights.html.

225. Lake Erie Bill of Rights, Charter of the City of Toledo, Ch. XVII, §§ 253-60 (added Feb. 26, 2019), https://codelibrary.amlegal.com/codes/toledo/latest/toledo_oh/0-0-0-158818 [hereinafter "LEBOR"].

226. Drewes Farms Partnership v. City of Toledo, 441 F. Supp. 3d 551(N.D. Ohio 2020).

227. Erin West, *Could the Ohio River have rights? A Movement to Grant Rights to the Environment Tests the Power of Local Control*, ENVIRONMENTAL HEALTH NEWS (Feb. 4, 2020), https://www.ehn.org/ohio-river-nature-rights-2645014867.html.

228. CYRUS R. VANCE CTR. FOR INT'L JUST. ET AL., *supra* note 161, at 40 (citing Com Tamaqua Borough, Schuylkill County, Pennsylvania, Ordinance No. 612 of 2006, Art. 7.6).

229. *Id.* at 40 (citing David R. Boyd, *Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution?*, 32 NAT. RESOURCES & ENV'T. 13, 17 (2018)). A partial list of these local regulations can be

c. Domestic Jurisprudence

Many cases that have been brought before courts in the United States addressing the conferral of rights of nature are challenges to the above-described local ordinances. However, there have been a few attempts to establish nature's rights through the courts alone.

For example, in 2017, a Colorado district court dismissed a case brought on behalf of the Colorado River Ecosystem requesting legal personhood for the ecosystem and a recognition of the ecosystem's rights to "exist, flourish, regenerate, be restored, and naturally evolve."[230] The defendants and, later the plaintiffs (under threat of sanctions), filed motions to dismiss.[231] In support of dismissal, the government cited a failure to overcome the protections of Sovereign Immunity, a lack of standing, a failure to claim actual or imminent injury traceable to actions by the state that would be redressable by recognition of rights in the Colorado River. [232]

d. Legislative Reactions

In reaction to the developments detailed above, some state legislatures have recently begun introducing legislation preventing the recognition of standing or rights in nature, as well as prohibiting the ability of human persons to take legal action on behalf of or representing nature. Florida[233] and Missouri[234] are among the first states to introduce such legislation.

---

found at *Rights of Nature, Law Policy and Education*, UN HARMONY WITH NATURE http://files.harmonywithnatureun.org/uploads/upload1055.pdf (last visited, Nov. 9, 2021).

230. Am. Compl. at 27, Colorado River Ecosystem v. Colorado, No. 17-cv-02316-NYW, 2017 WL 9472427 (D. Colo. Nov. 6, 2017).

231. P.'s Mot. to Dismiss, Colorado River Ecosystem v. Colorado, No. 17-cv-02316-NYW, 2017 WL 4699840 (D. Colo. Dec. 3, 2017); Def.'s Mot. to Dismiss, Colorado River Ecosystem v. Colorado, No. 17-cv-02316-NYW, 2017 WL 4699840 (D. Colo. Dec. 1, 2017); *see also* Lindsay Fendt, *Colorado River 'Personhood' Case Pulled by Proponents*, ASPEN JOURNALISM (Dec. 15, 2017), https://www.aspenjournalism.org/colorado-river-personhood-case-pulled-by-proponents/.

232. *See Colorado River Ecosystem v. Colorado*, No. 17-cv-02316-NYW, 2017 WL 4699840.

233. Clean Waterways Act, S.B. 712 § 24, 2020 Reg. Sess. (Fla. 2020).

234. The Missouri house bill died in committee after 25% progression. H.B. 54, 101st. Gen. Assemb., Reg. Sess. (Mo. 2021), https://legiscan.com/MO/bill/HB54/2021.

6. Other Countries

India,[235] Bangladesh,[236] and Peru[237] have all taken substantial steps towards granting rights to nature, although these measures have faced significant challenges. As of this writing, Argentina, Australia, Bangladesh, Brazil, Canada, Guatemala, Mexico, Spain, and Uganda have also moved in the direction of recognizing nature's rights. National-level proposals for legislation or constitutional amendment are under consideration in El Salvador, France, the Netherlands, Nigeria, and Portugal.[238]

B. International Tribunals and Institutions

In addition to the growing number of countries recognizing nature's rights, international bodies and tribunals are also increasingly moving in this direction. For example, at the global level, the United Nations General Assembly, in connection with its Seventh Interactive Dialogue on Harmony with Nature: stated that "recognition of nature's rights in local, national, and international law" will aid in reaching the 2030 Sustainable Development Goals.[239]

---

235. In March 2017, two days after Te Awa Tupua was passed granting legal personhood to the Whanganui River in New Zealand, the High Court of the state of Uttarakhand declared the Ganges River and its main tributary, the Yamuna, to be accorded the status of living human persons. Mohd. Salim v. State of Uttarakhand, Writ Petition (PIL) No. 126 of 2014, ¶ 19 (India March 20, 2017), http://www.ielrc.org/content/e1704.pdf. The Uttarakhand High Court also bestowed legal personhood to all animals in Haryana. Narayan Dutt Bhatt vs. Union of India and Others Writ Petition (PIL) No. 43 of 2014, ¶ 98 (India July 4, 2018), https://indiankanoon.org/doc/157891019/?__cf_chl_tk=meX_Z7P2fQvnWG0qiLTyrAM_co2Lv7_oNxfXEpBEuV8-1637782102-0-gaNycGzNB6U.

236. In 2019 the High Court of Bangladesh, the country's highest non-appellate court, held that all rivers in the country are "living entities" with legal personhood. *See* U.N. Doc. A/74/236, *Report of the Secretary-General for Harmony with Nature* 4 (2019), https://undocs.org/en/A/74/236. This High Court decision was subsequently upheld by the highest court in the country, the Supreme Appellate Division of Bangladesh, in 2020. This decision followed on a 2009 decision by the Supreme Court of Bangladesh that created Bangladeshi National River Protection Commission (NRPC), which was established in the National River Protection Commission Act of 2013. *See* CYRUS R. VANCE CTR. FOR INT'L JUST. ET AL., *supra* note 161, at 47; *see also Rights for All the Rivers and Watercourses of Bangladesh*, INITIATIVES FOR THE FUTURE OF GREAT RIVERS (Aug. 27, 2019), https://www.initiativesrivers.org/actualites/rights-for-all-the-rivers-and-watercourses-of-bangladesh/#:~:text=In%20Bangladesh%2C%20a%20country%20that,character%20to%20better%20protect%20them.

237. On January 21, 2021, Bill #6957-2020 CR recognizing the Rights of Mother Nature, Ecosystems and Species was introduced in Congress. If passed, the Bill would provide all citizens the right to bring legal action on nature's behalf. *See Rights of Nature, Law Policy and Education*, *supra* note 230.

238. *Id.*

239. Linda Sheehan (Executive Director, Planet Pledge), *The Role of Nature's Rights in Achieving Sustainable Development Goals*, INTERACTIVE DIALOGUE OF THE GENERAL ASSEMBLY ON HARMONY WITH NATURE (Apr. 21, 2017), https://dx4hlv40u7fad.cloudfront.net/wp-content/uploads/2017/04/The-Role-of-Natures-Rights-in-Achieving-the-SDGs-Sheehan.pdf.

At the regional level, recent developments in the Inter-American Court for Human Rights (IACtHR) will bear on the legal systems of each of the states that are party to the Organization of American States, especially those that have submitted to the Court's jurisdiction. The IACtHR first recognized environmental human rights as falling under Article 26 "Progressive Development" of the American Convention in an Advisory Opinion responding to questions from Colombia regarding state responsibility to ensure environmental human rights in the face of transborder pollution.[240] The Court's opinion "reaffirmed that human rights depend on the existence of a healthy environment" and the Court held that "states must take measures to prevent significant environmental harm to individuals inside—and outside—their territory."[241]

For the first time, the Court also recognized an "autonomous" right to a healthy environment, under Article 26 of American Convention (Progressive Development).[242] The Court stated that this autonomous right protects forests, rivers, seas, and other ecological areas as having juridical interests in themselves, even when the rights of humans are not at issue.[243] It also recognized the emergence of jurisprudence and constitutions recognizing the juridical personhood of nature.[244] The Advisory Opinion went on to recognize the importance of procedural environmental rights to the protection of human rights. This includes the rights to access to information,[245] to public participation in decisions regarding the environment,[246] and to access to justice with respect to the violation of environmental rights.[247] In recognizing these procedural rights, the Court also referenced the progress within Latin America toward the realization of a treaty establishing these procedural environmental rights, as well as specifically implementing state obligations to protect the rights of individuals and groups advocating environmental rights.[248]

In the landmark contentious case *Indigenous Communities Members of the Lhaka Honhat Association v. Argentina*, the IACtHR applied its previous reasoning to acknowledge environmental human rights as falling under Article 26 of the Charter. Importantly, the Court went a step further to recognize rights of nature, stating that the right to a healthy environment includes a duty to protect "components of the environment, such as forests, seas, rivers, and the other natural features, as interests

240. Advisory Opinion OC-23/17, *supra* note 115.

241. Maria L. Banda, *Inter-American Court of Human Rights' Advisory Opinion on the Environment and Human Rights*, 22 AM. SOC'Y INT'L L. INSIGHTS (May 2018).

242. Advisory Opinion OC-23/17, *supra* note 115, ¶¶ 62-63.

243. *Id.* ¶ 62.

244. *Id.* ¶ 63.

245. *Id.* ¶¶ 213-25.

246. *Id.* ¶¶ 226-32.

247. *Id.* ¶¶ 233-40.

248. *Id.* ¶¶ 217-18.

in themselves, even in the absence of certainty or evidence about how it affects individual people."[249]

CONCLUSION

In the fifty years since Professor Stone's article was published, thought on the intrinsic value of nature, on humans' relationship to nature, and the practicality of recognizing nature's rights has expanded. The idea that nature itself possesses rights has been translated into actionable law by various countries, and the pressure to follow suit in the United States is mounting. This Article has aimed to provide the conceptual and practical grounding for courts and legislators considering this possibility.

The legal traditions, historical orientations, and philosophical scaffolding of Western countries lacking vibrant indigenous politics and dialogue have not yet opened a space for seeing how Western legal orders can shed the paradigm in which nature is a thing – property for exploitation – even though it has become clear that the current state of the law has dire consequences. This Article thus connects legal audiences to more robust understandings of nature as developed in the literatures of anthropology, and Western history and philosophy, to illuminate paths toward the recognition of nature's rights. Finally, it has described the confluence of interests that have resulted in this paradigmatic shift, unfathomable just a few years ago.

Ultimately, whether United States courts and legislatures will recognize nature's rights is an open question. If this happens, law will be transformed. It will also further transform social understandings of nature, much as our understandings of the corporation are undeniably changed by the legal cognizability of the corporate form.

The intellectual fuel for this transformation is present and there is also a strong convergence of interests that indicate that nature's rights can be recognized. This is aided by a fundamentally changed orientation and ethics toward the natural world since the time our common law developed. There are ample foreign and international precedents for recognizing nature's rights. Courts within the United States regularly look to the courts of foreign countries for good ideas, and in the case of nature's rights, there are a multitude of examples from which to draw.

Whether the development of nature's rights will fulfill the hopes from which they spring is impossible to say. At this moment, with the natural world in such a precarious position, the question is not so much "*will it save nature?*", as it is "*can it change our imaginations*?" Toward this more modest hope, one can feel more optimistic.

---

249. *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina*, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 400, ¶ 203 (Feb. 6, 2020), https://www.corteidh.or.cr/docs/casos/articulos /seriec_400_esp.pdf. For further discussion of the case, see generally Maria Antonia Tigre, *Inter-American Court of Human Rights Recognizes the Right to a Healthy Environment*, 24 AM. SOC'Y INT'L L. INSIGHTS (June 2020), https://www.asil.org/insights/volume/24/issue/14/inter-american-court-human-rights-recognizes-right-healthy-environment.

For all the legitimate critique that civil rights and human rights have left vulnerable communities unattended, and that rights for humans have not fulfilled their promise, few would argue that we would be better off without the basic concept that humans have intrinsic value and indelible rights. The idea of rights – as applied to humans – has changed our orientation toward the many wrongs humans still suffer. For all the shortcomings of rights, there have been undeniable victories won due to rights rhetoric. If nature were to also be recognized and valued by law, and imbued with intrinsic rights, this more than any other route currently available might change our imaginations, and it may change our options.

This Article has revealed that the natural sciences, social sciences and humanities are undergoing a transformative paradigm shift, transforming nature from an object to a subject.[250] Similarly, social movements and popular imaginations have appreciated the value in nature's rights. [251] A large number of legal systems throughout the world have also undertaken undeniable shifts: they now see rivers, trees, mountains, and ecosystems as valid subjects of law, imbued with intrinsic value and rights. Will United States legislatures and courts follow suit? Will we be able, in time, to see things differently?

In memory of Christopher Stone, 1937-2021

---

250. Theorists studying the intellectual endeavor we will have to undertake to assure the sustainability of life on earth have pointed to three orders of learning, all of which are urgently necessary. *See* Verena Winiwarter, *Perspectives on Social Ecology: Learning for a Sustainable Future*, in SOCIAL ECOLOGY: SOCIETY-NATURE RELATIONS ACROSS TIME AND SPACE (Helmut Haberl et al. eds., 2016); Gregory Bateson, *The Logical Categories of Learning and Communication* in STEPS TO AN ECOLOGY OF MIND 279-308 (2000). These orders comprise

> First-order change seeks effectiveness and efficiency, is conformative and can be summarized as 'Doing things better.' Second order learning seeks to examine and change assumptions. It is reformative and can be described as 'Doing better things.' The third type of learning, epistemic learning, leads to a paradigm shift and is transformative. It can be summarized as 'Seeing things differently.'

Verena Winiwarter, Gertrud Haidvogl, & Stefano Brumat, *Interdisciplinary Research for the Sustainable Development of the Danube River Basin*, in DANUBE: FUTURE INTERDISCIPLINARY SCHOOL PROCEEDINGS 2017 21 (Christian Hanus & Gerald Steiner eds., 2019).

251. *See generally* Edwardo Viveiros de Castro, *Exchanging Perspectives: The Transformation of Objects into Subjects in Amerindian Ontologies*, 10 COMMON KNOWLEDGE 463-84 (2004).