



From Human Rights to Rights of Nature?

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Abstract: A novel approach to environmental protection has emerged in the law, known as Rights of Nature (RoN). RoN proponents claim that nature is a legal subject possessing inherent rights. This ecocentric discourse shows striking similarities with human rights law.

On 28 July 2022, the UN General Assembly [adopted](#) a resolution declaring the human right to a clean, healthy, and sustainable environment. This resolution is a significant example of how environmental protection is gaining importance on a global level. Nevertheless, the earth is still warming up rapidly. Should we rethink the relationship between humans and nature in a more fundamental way?

Rights of nature

In recent years, a novel approach to environmental protection has emerged in the law, known as Rights of Nature (RoN). The increasing importance of this new way of thinking, situated at the intersection of environmental law and ethics, is directly influenced by growing concerns about the climate and biodiversity crises we experience today. Supporters of this RoN-trend claim that the law is simply catching up on what is '[natural](#)'. Until now, the legal approach towards nature has been too 'anthropocentric', meaning that nature is perceived from a human perspective and as an *object* of law (e.g., as property or a source of raw materials). Therefore, RoN proponents aim for an ecocentric paradigm shift in our legal

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system. This implies transforming nature from a legal *object* into a legal *subject*, possessing its own inherent rights, regardless of its use for humanity.

This new legal current has manifested itself in practice in different parts of the world. In Colombia, both the Amazon Forest and the Atrato River have gained rights through [decisions](#) of the highest [courts](#), and in New Zealand innovative legislation has [recognised](#) the mountainous region Te Urewera and the Whanganui River as legal persons. In 2022, the Spanish lagoon [Mar Menor](#) became the first natural entity to be granted legal status as a person within Europe. The most conspicuous example of RoN to date is the [Constitution of Ecuador](#). Following a constitutional reform in 2008, the Ecuadorian Constitution enshrines the rights of *Pacha Mama* (an Inca-term for Mother Earth).

However, it would be wrong to think of the RoN movement as a homogenous whole with uniform strategies and ambitions. In the current debate on RoN, two different approaches emerge in answer to the question *why* nature should have rights.

An instrumental approach to RoN

A first position approaches RoN in a pragmatic way, meaning that the most efficient way to protect nature (specific rivers, trees or mountains, or even more complex ecosystems as a whole) is by granting it subjective rights. [Christopher Stone](#) is the most influential proponent of this approach. In short, Stone developed a legal argument based on already existing legal concepts (rights, standing, guardianship...) to attain a better protection for nature. Stone's legal argumentation is novel, thought-provoking and persuasive. It has exerted a profound influence on the field of environmental studies.

Stone [admits](#) that granting rights to nature is more likely to succeed when it is grounded in humanity's self-interest, instead of humanity's morality or empathy. Stone focuses on the outcome of his thought experiment (the protection of the environment and natural entities) rather than the ethical foundation (inherent value of nature or self-interest of humanity). Unsurprisingly, Stone's approach to RoN is described as being pragmatic or instrumentalist.

A spiritual approach to RoN

The second strand within RoN has a naturalistic and even spiritual character. Theologian Thomas Berry and environmental lawyer Cormac Cullinan are the most prominent founding fathers of this spiritual approach. In their work (e.g., [The Great Work](#) and [Wild Laws](#)), Berry and Cullinan developed a holistic theory called '[Earth Jurisprudence](#)', which essentially [strives](#) for the implementation of an ecocentric paradigm shift in all layers of society (governance, law, ethics...). This ecocentrism represents a worldview in which the inherent value of nature is at the centre, regardless of its utility to humans. A true ecocentric legal system *recognises* that nature already has inherent fundamental rights. This spiritual position has influenced the current dominant strand of RoN the most.

From natural rights to Rights of Nature?

During the Enlightenment, [modern natural law](#) formed the basis of the argument for individual natural rights and limitations on governments. It highlights that certain rights are *inherent* or *natural* to humanity as they are derived from human nature. This idea of natural rights clearly resonates within the spiritual understanding of RoN. It is here that important parallels emerge with the discourse on human rights.

Inherent rights

Spiritualists such as Berry and Cullinan convert the idea of inherent value into the idea of inherent rights. In ethical as well as in legal discourse, the term 'inherent' has a clear yet highly problematic meaning. It signifies a desire to subdue the human origins of ethical and legal systems and to *naturalise* our ideas on rights. This notion of inherent rights mirrors the basic assumption that also informs human rights discourse, namely that all humans possess certain rights unconditionally, simply in virtue of their humanity. This is most notably reflected in the preamble of the [Universal Declaration of Human Rights](#) which states that

'the recognition of the *inherent dignity* and of the equal and *inalienable rights* of all members of the human family is the foundation of freedom, justice and peace in the world' (emphasis added).

Self-evident rights

However, the attempt to find a foundation for these ethical values/rights beyond the human sphere amounts to what could be described as the auto-cancellation of human agency. That is to say, this approach to RoN is based on the *recognition* rather than the *ascription* of rights to nature.

Spiritualists employ an intellectual strategy not unlike the argument Thomas Jefferson developed in the opening lines of the [American Declaration of Independence](#), a key example of modern natural rights-philosophy:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness (emphasis added).

Jefferson's goal was to present a man-made argument as a universally valid truth, and, in doing so, to extricate it from the realm of human debate and discussion. Likewise, the effort to present rights as a given aims at rendering them absolute, that is, impervious to human questioning.

Anthropocentric rights

In addition to these formal similarities between the spiritualist RoN discourse and human rights discourse, a more substantive parallel can be drawn as well. Indeed, Thomas Berry and his supporters [argue](#) that three rights are fundamental to nature, namely the rights to exist, to have a habitat, and to evolve as part of the earth community. Interestingly, nature's fundamental rights show a striking resemblance to humans' fundamental rights, such as the rights to life, to liberty and to a dignified life. For a proclaimed ecocentric legal approach, these rights have a confusing anthropocentric ring to them.

Concluding remarks

Spiritualists aim to engender a radical ecocentric paradigm shift in our legal system. However, if human agency is erased from legal discourse, where do rights (of nature) come from? Berry and Cullinan re-conceptualise ideas from natural law to answer this question. Not only does this naturalist foundation show striking yet confusing parallels with human rights law, but it also obviates giving a reasoned justification for RoN.

The spiritual propensity to integrate an ecocentric ethic into an anthropocentric legal system is not convincing. Maybe there is more inspiration to be drawn from Stone's pragmatic argument that granting rights to nature might simply be in humanity's self-interest.