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RIGHTS OF NATURE: Evolving the Law towards an Ecologically Thriving World¹ April 2021

Summary: Law in the Web of Life

U.S. environmental statutes, passed 50 years ago in a different scientific era, are showing their age and limits. They have had some success around acute challenges, but struggle to address chronic decline. For example, the U.S. has long passed the Clean Water Act's 1985 deadline of eliminating pollutant discharges into navigable waters, but contamination continues, with no new goal in sight. And harm from global, chronic threats, such as climate change and biodiversity loss, is escalating.

The half-century experiment with an array of U.S. environmental statutes demonstrates that current laws can help slow degradation and create important pockets of success. However, they are not equipped to stop, let alone permanently reverse, the overall downward ecological slide. This result arises from their dependence on fundamentally flawed systems of law and economics that assume the natural world is property rather than partner. By contrast, systems-based science today definitively demonstrates we are fundamentally interconnected with nature. Intensifying 21st century environmental challenges demand new vision and action consistent with this science, one that safeguards both human rights and nature's own inherent rights to exist, thrive, and evolve.

Initiatives that advance the rights of nature, integrated with protection of human rights and the rights of indigenous peoples, are essential to shared well-being.

Governments, civil society, scholars, and communities across the globe are taking action now to help forge this new way forward, through nature's rights law and jurisprudence, as well as ecological economics and holistic science and technology. Nature's rights to date have been recognized in 17 countries, including in over 50 cities and counties across 14 U.S. states.

This white paper provides a brief backgrounder on the nature's rights movement, and offers representative ideas for action based on the expanding efforts of governments, practitioners, and communities worldwide.

¹ [Environment Now](#) was founded in 1999 to advance measurably effective efforts to protect and restore California's environment, with [groundbreaking successes](#) achieved by partners around coastal, inland waterway, forest, and air issues.

Introduction

We live on a small, shared planet. Nature's rules ultimately steer us. Our actions and governance systems must shift to recognize that fact if we are to survive and thrive. However, rather than guide humanity to act as responsible members of the community of life, contemporary governance systems entrench legal rights to exploit and degrade nature. After decades of effort to implement environmental laws, we are witnessing escalating threats to the fundamental well-being of people and nature, including climate change, biodiversity loss, habitat destruction, and water source drainage.

The burgeoning rights of nature movement seeks to build new legal and economic systems that recognize the inherent rights of ecosystems and species – including humans – to exist, thrive, and evolve. The movement is critical not only to ending environmental degradation, but also reversing it, towards thriving relationships among people and the natural world.

Current Law Ensures Continued Ecological Degradation

A half century after Earth Day and the passage of groundbreaking environmental laws, we have yet to protect the basic structure and integrity of Earth's ecosystems. Commonly blamed culprits include vigorous industry lobbying, under-funded and captured administrative agencies, a struggling NGO community, few meaningful opportunities for public engagement, and overworked courts. There is no doubt that we must continue efforts to implement and enforce existing environmental laws, address funding and other gaps, advance the science needed to support sound positions, and educate about needed changes.

But even full implementation of environmental laws will fail to ensure an ecologically flourishing planet, because the fundamental premise underlying them is that nature is ours to degrade.

The economic foundation of our environmental laws ensures nature's continued degradation.

Current legal and economic systems assume at their core that that the natural world is something to own, control, and degrade for human profit. This governance frame prioritizes the economic system that degrades nature. Environmental laws slow extraction and contamination of natural systems, but they cannot stop or reverse the trend.

The language we use to describe our environmental goals readily demonstrates our bias. "Natural capital," "green economy," "sustainable development" – each of these ostensibly positive, or at least neutral, terms focus on the economic noun: capital, economy, development. The environment is a mere secondary modifier (natural, green, sustainable).

The genesis of United States environmental agencies at the turn of the 20th century further illustrates this point. Gifford Pinchot, the first U.S. Forest Service Chief, articulated his mission as to "produc[e] from the forest whatever it can yield for the service of man." This frame assumes that the natural world should be maintained for the purpose of continuing human economic use. The inherent well-being of nature itself is tangential at best.

By contrast, Pinchot's contemporary John Muir embraced a frame of everything "hitched to everything else in the universe." He recognized nature not as object, but as interconnected subject of a larger whole, observing that "the rivers flow not past, but through us." American cultural historian Thomas Berry¹ contributed to this frame, articulating that Earth is a "communion of subjects, not a collection of objects." Under this worldview, nature is not merely a rights-less object existing merely to serve humans. Instead, all beings are subjects of what Berry termed a Great Jurisprudence,² or overarching law. Laws arising from this frame will prioritize attention to achieving shared eco-social well-being.

Evolving Law and Economics to Reflect the Science and Ethics of Interconnection

Ecological and systems science has evolved dramatically in the half century since our major environmental laws were enacted. Scientists now demonstrate more clearly the deep interconnections among humans, other species, and natural systems, and they call on decisionmakers and society to consider policy consistent with this science of connection.³

Evolving economic models such as ecological economics are beginning to reflect this science, "ground[ing] the global economy within a larger ecological reality" rather than the reverse.⁴ They purposefully seek to maximize interconnected social and ecological well-being, rather than short-term wealth generation for the relative few.

Such scientific and economic developments are generating new frames for our legal and governance systems. Rather than a vision of "sustainable development," we can seek to achieve goals such as "thriving communities," where "communities" includes nature as a full subject. Laws developed pursuant to such a frame would be more likely to improve relationships among humans and the natural world than those grounded in "nature as object."

Legal models have shifted with the evolution of science and ethics repeatedly in the past. Human rights in particular have increasingly been "found" over time and even declared "self-evident." As observed by Charles Darwin, human moral development has involved a continual extension of our "social instincts and sympathies." We are poised now to widen our circle of community once again, to include all life as subjects with moral and legal worth. Aldo Leopold presaged this expansion, writing that "when we see land as a community to which we belong," rather than "a commodity belonging to us," we can then "begin to use it with love and respect."

The current frame of "nature as economic resource" is both an ethical and legal assumption, one that pushes back on environmental well-being if economic interests are threatened. The U.S Endangered Species Act, for example, protects existing economic interests by activating only when species populations are headed toward extinction. Even then, a "God Squad" loophole protects those economic interests that enjoy political clout, even at the risk of extinguishing species forever.

By contrast, laws grounded in a recognition of the moral value of the natural world will more closely align with a goal of ecological well-being. For example, rather than an Endangered Species Act, recognition of the moral worth of the natural world would produce a "Healthy Species Act" with a goal of flourishing species populations, rather than a goal of merely avoiding extinctions.

Rights-based laws seek to implement a growing recognition of the moral worth of nature. They are better tailored toward preventing – rather than reacting to – the dangers we and nature collectively face, and they are designed to reverse the damage more effectively and aggressively than we have done. Further, by rejecting the prioritization of profit-forward economic systems, the nature’s rights revolution also better protects impacted human rights and rights of indigenous peoples.⁵

Laws have always evolved. They can shift again to better incorporate the science and ethics of interconnection. The nature’s rights movement is a response to this challenge.

Recognition of rights in the rightless always appears incredible at the start, as past movements for human rights illustrate.⁶ The success of past movements provides lessons for the current effort to widen the circle of community to include natural systems and species as rights-bearing entities.

A Brief History of Nature’s Rights Law

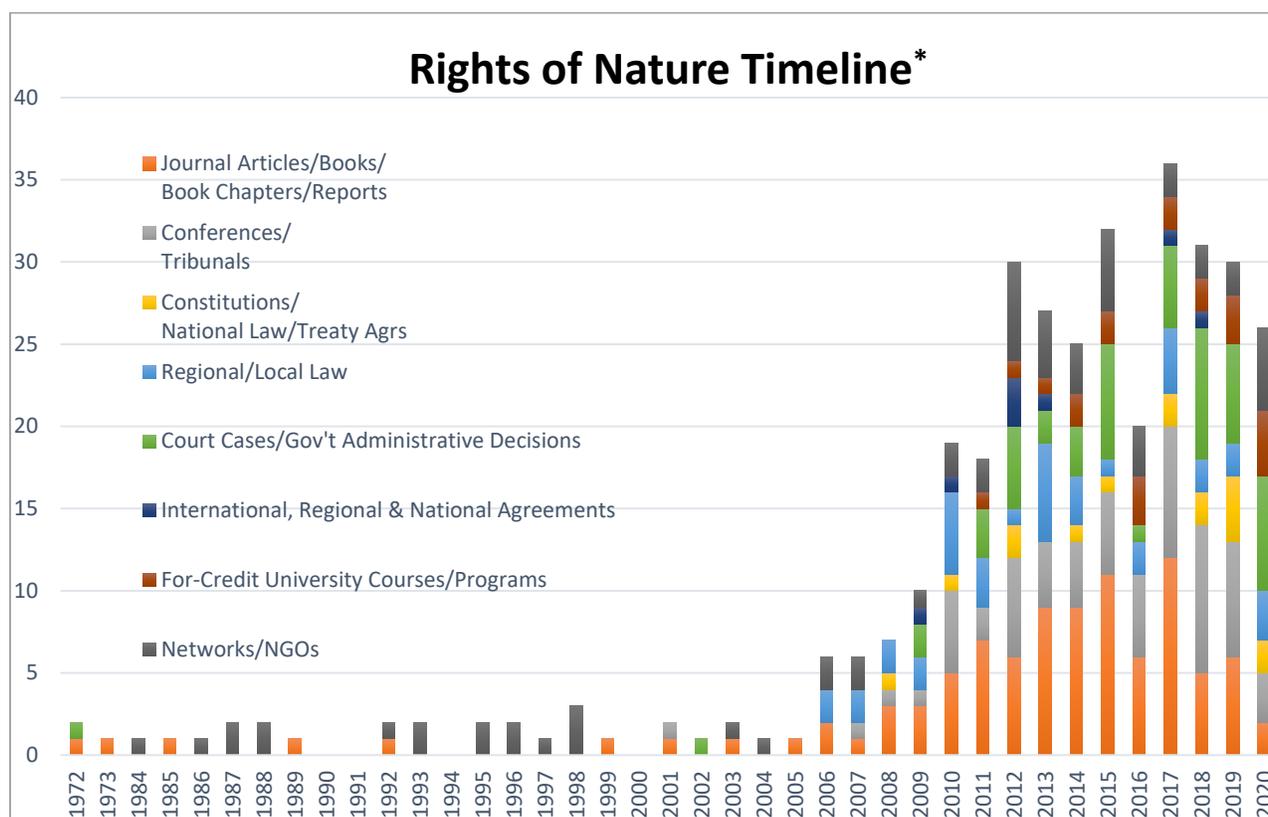
In 1948, the United Nations passed the Universal Declaration of Human Rights (UDHR),⁷ with its drafters affirming that the “supreme value of the human person” does “not originate in the decision of a worldly power, but . . . in the fact of existing.”⁸ The logic that fundamental rights arise from existence applies equally well to recognition of nature’s own inherent rights.

Decades later, University of Southern California law professor Christopher Stone acknowledged this logic in calling for recognition of the rights of the natural world. In his seminal essay “Should Trees Have Standing,” Prof. Stone described nature’s participation in human legal systems as including:

- Injuries subject to redress by a public body;
- Standing to institute legal actions (where guardians would act on behalf of nature);
- Redress calculated for nature’s *own* damages; and
- Relief running to the benefit of injured ecosystems or species, rather than solely their owners.

Drawing on the UDHR and Stone’s work, advocates developed a Universal Declaration of the Rights of Mother Earth (UDRME), which was adopted by representatives of 130 nations in 2010. Similar to the work of the UDHR drafters, the UDRME finds that the “inherent rights of Mother Earth are inalienable in that they arise from the same source as existence.”⁹ Work is underway to advance U.N. adoption of the UDRME or a similar Declaration, as was done for human rights over 70 years ago. Recognition of fundamental rights in such “soft law” offers numerous practical results: nations and sub-national governments worldwide have developed statutes, court decisions, regulations, and other bodies of law out of the UDHR that reflect and implement the human rights it champions.

While nature’s rights scholarship continued after Stone’s seminal work,¹⁰ it has been just over the last decade that the rights of nature movement has expanded well beyond theory into growing establishment and practice around the world. Law in the form of constitutional provisions, treaty agreements, statutes, local ordinances, and court decisions now exists in 17 countries,¹¹ seven Tribal Nations in the U.S. and Canada, and over 50 cities¹² and counties across 14 U.S. states, with numerous other nations in the wings. Researchers credit the dramatic increase in attention to the rights of nature to “a decade of network activation and mobilization.”¹³



*Data through mid-2020; <http://www.harmonywithnatureun.org/rightsOfNature/> and <https://www.therightsofnature.org/>.

The International Union for Conservation of Nature (IUCN), the world’s largest and most diverse environmental network, approved support for rights of nature in 2012,¹⁴ with the IUCN’s World Commission on Environmental Law expressing support for nature’s rights in 2017.¹⁵ The nature’s rights movement has increasingly been recognized before the U.N. General Assembly¹⁶ and examined at tribunals held in conjunction with the UNFCCC climate change conferences.¹⁷

A March 2020 landscape analysis identified almost 1,300 organizations and experts now working in some fashion on rights of nature, a remarkable growth pattern over the past 15 years.¹⁸ While the movement has expanded rapidly, the escalating threats posed by existing legal and economic structures call for even greater attention to and investment in such efforts.

Worldwide Actions Advancing the Nature’s Rights Movement

While work continues to enforce existing environmental laws, efforts to intensify research, education, and advocacy for the nature’s rights movement can be expanded in parallel. Targeted action in support of the exploding nature’s rights movement can generate enormous returns at this early stage.

The sample activities by nature’s rights advocates listed below are only a start. As the movement advances, new ideas and strategies will arise and be translated into meaningful action and demonstrable benefits worldwide.

Rights-Based Law

- Develop and adopt laws and legal systems that recognize the rights of nature at the local to national levels globally.
- Implement nature's rights-based laws and demonstrate the benefits of a rights-based approach. Numerous laws have been adopted, but comparatively few have been actively implemented outside of Ecuador, although that is beginning to change. Santa Monica's new groundwater ordinance, for example, cites the city's nature's rights law as support for protective action that far exceeds state groundwater law.¹⁹
- Create opportunities to give public recognition, visibility, and voice to the people and natural systems suffering violations of their fundamental rights and marginalized in the law. An example includes the International Rights of Nature Tribunals, coordinated by the Global Alliance for the Rights of Nature. The Tribunals bring together rights of nature, human rights, and rights of indigenous peoples experts in a process similar to the Permanent Peoples' Tribunals.²⁰
- Develop and disseminate model standards, criteria, and guidance grounded in nature's right to exist, thrive, and evolve.
- Research, and litigate as needed, cases that advance nature's rights. For example, the successful 2018 Amazon climate rights case in Colombia found violations of nature's rights, human rights, and the rights of future generations.²¹ The constitutional provision on which it was based, a *tutela* action, exists in some form in every Latin American country except Cuba, and may provide significant potential opportunities for advancement of similar rights-based claims.
- Draft and submit amicus briefs to provide expert support for nature's rights.
- Conduct trainings for judges that may address nature's rights claims. The judicial trainings by the IUCN World Commission on Environmental Law and Global Judicial Institute on the Environment may provide a useful model.

Ecological Economics

Ecological economics provides a crucial and timely answer to growing critiques of the role of neoclassical and neoliberal economics²² in injuring not only ecological but also human rights. Work continues to expand current research and other efforts to develop a global economic system nested within and serving the larger ecological reality.

Holistic Science

Current scientific investigation continues to trend reductionist, though shifts are occurring in examining the proverbial forest as opposed to merely the trees. Ecology was a relatively new discipline when our current environmental laws were passed a half century ago, as demonstrated by their siloing of affected systems by media and species. Scientific and technical research developments since then, not only in ecology but also systems science as well as vast advances in computer modeling, can now be applied to help answer such questions as, "What does a 'thriving ecosystem' look like?" Nascent efforts, such as work to define holistic ocean health,²³ provide examples that can lead to broader development of scientific inquiry that better reflects the complex systems within which we live.

Indigenous Leadership

- Lend support to indigenous leadership, including indigenous environmental defenders.
- Provide legal support to help inform development of the rights of nature movement with lessons from indigenous customary law (noting that the concept of "rights" itself can be colonialist).

- Highlight other indigenous perspectives in refining the nature’s rights movement and its implementation, including a focus on responsibility as opposed to rights, as well as better reflection of the wisdom of indigenous cosmology.
- Advance indigenous voices as expert witnesses in administrative and judicial actions.

United Nations/International Community Leadership

- Promote adoption of a U.N. Declaration on the Rights of Nature by the General Assembly.
- Advance and disseminate information through other U.N. General Assembly Dialogues and forums, Resolutions, and other pre-Declaration activities supporting nature’s rights, including discussion of model national and subnational legislation and implementation actions.
- Develop and enhance partnerships with international social movements in support of shared global struggles for rights. Examples include groups working on the human right to a healthy environment and the human right to water, and environmental defender groups fighting injurious extraction and contamination activities.

Education

- Train the next generation of lawyers, economists, scientists, philosophers, political scientists, and others in thought and research consistent with nature’s rights, through development of undergraduate and graduate programs and legal clinics. Programs have begun already throughout the world and can provide examples.
- Support and disseminate the results of research across disciplines that examines, identifies challenges to, and highlights opportunities to effectively advance the rights of nature.

Capacity Building

- Create and expand as needed new organizations, leaders, campaigners, researchers, communicators, and others to advance the rights of nature globally. Particularly ensure support for indigenous and frontline communities seeking bold, effective tools to safeguard and restore Earth’s natural systems.
- Ensure the continued well-being of existing NGOs taking action related to the movement.
- Organize and support convenings of rights of nature researchers and advocates globally, such as the successful Fall 2018 International Rights of Nature Symposium in Quito, Ecuador,²⁴ to allow for better information exchange and planning.
- Develop and support regional hubs of action, such as those developed by the Global Alliance for the Rights of Nature, to improve collaboration among those taking action.
- Develop and disseminate tools for community organizers around nature’s rights, and train civil society in rights-based movement building, leadership, and other techniques needed for success.

Solutions Development

- Accelerate technical, policy, and other solutions to practical questions such as “What does a world where humans live according to nature’s rights look like?” Examples of initiatives that may potentially be consistent with nature’s rights include the circular economy, decarbonization, habitat corridors, true cost food accounting, rewilding, and others. Further examination is needed.
- Ensure that nature’s voice is actively considered and incorporated into solution development, so that nature is an actual – rather than an assumed – direct, net beneficiary.

ENDNOTES

- ¹ <http://thomasberry.org/life-and-thought/brief-bio>.
- ² See, e.g., <https://www.gaiafoundation.org/areas-of-work/earth-jurisprudence/>.
- ³ See, e.g., Rapport, David *et al.* (eds) (1998), *Ecosystem Health* (Blackwell Science) (achieving ecosystem health requires decisionmakers to “identify the societal goals that are compatible with sustainable life systems, to identify and validate indicators of ecosystem function that are essential to its evolution and perpetuation, and to merge goals (societal values) with biophysical realities”). See also American Association for the Advancement of Science (Feb. 19, 2012), “Declaration of the Rights of Cetaceans: Ethical and Policy Implications of Intelligence” (AAAS Meeting Vancouver); at: <https://aaas.confex.com/aaas/2012/webprogram/Session4617.html>.
- ⁴ See, e.g., <https://www.uvm.edu/gund/ecological-economics>.
- ⁵ See, e.g., reports on co-violations of rights at: <https://www.earthlawcenter.org/co-violations-of-rights>.
- ⁶ Stone, Christopher D. (rev'd 2010 ed.), *Should Trees Have Standing? And Other Essays on Law, Morals, and the Environment* (Oxford University Press).
- ⁷ <https://www.un.org/en/universal-declaration-human-rights/index.html>.
- ⁸ <https://www.un.org/en/sections/universal-declaration/history-document/index.html>.
- ⁹ <http://pwccc.wordpress.com/programa/>.
- ¹⁰ See, e.g., Nash, Roderick (1989), *The Rights of Nature: A History of Environmental Ethics* (Univ. of Wisconsin Press).
- ¹¹ Kauffman, Craig (forthcoming 2021), “Rights of Nature: Institutions, Law & Policy for Sustainable Development,” in Sowers, Jeannie *et al.* (ed.), *Oxford Handbook on Comparative Environmental Politics* (Oxford Univ. Press), and <http://www.harmonywithnatureun.org/rightsOfNature/>.
- ¹² Santa Monica, California’s Sustainability Rights Ordinance (2013) was the first such ordinance on the West Coast; see: <https://bit.ly/2MOGwjO>. Implementation began shortly afterward through new City law and policy.
- ¹³ Kauffman, Craig (March 2020), “Mapping Transnational Rights of Nature Networks & Laws: New Global Governance Structures for More Sustainable Development”; at: <http://files.harmonywithnatureun.org/uploads/upload924.pdf>.
- ¹⁴ <https://portals.iucn.org/library/node/44067>.
- ¹⁵ IUCN (2017), “World Declaration on the Environmental Rule of Law”; at: https://www.iucn.org/sites/dev/files/content/documents/english_world_declaration_on_the_environmental_rule_of_law_final.pdf.
- ¹⁶ <http://www.harmonywithnatureun.org/dialogues/>.
- ¹⁷ <https://www.rightsofnaturetribunal.org/>.
- ¹⁸ See *supra* n. 13.
- ¹⁹ See Sheehan, Linda (Winter 2019), “Implementing Nature’s Rights through Regulatory Standards,” *Vermont Journal of Environmental Law* 20:3; at: <http://files.harmonywithnatureun.org/uploads/upload926.pdf>.
- ²⁰ <https://www.rightsofnaturetribunal.org/>.
- ²¹ Dejusticia (April 13, 2018), “Climate Change and Future Generations Lawsuit in Colombia: Key Excerpts from the Supreme Court’s Decision”; at: <https://www.dejusticia.org/en/climate-change-and-future-generations-lawsuit-in-colombia-key-excerpts-from-the-supreme-courts-decision/>.
- ²² See, e.g., Snower, Denis (Jan. 2021), “Economics Nears a New Paradigm,” *Economics*; at: <https://economics.com/why-behavioral-economics-cant-fix-a-broken-discipline/>.
- ²³ <https://www.opc.ca.gov/2014/10/healthy-ocean-california/>.
- ²⁴ <https://www.therightsofnature.org/10-years-of-rights-of-nature-in-ecuador-international-symposium/>.