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The Rights of Nature Go from Theory to Reality

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The twentieth century, despite (or perhaps because of) being notably bloody and tumultuous, saw the beginning of a global rights revolution that we are still living through today. After World War II, many emancipation campaigns started taking the form of claims to rights, including social, civil, political, national, and regional varieties. It became almost unthinkable for a struggle for emancipation to be anything but a struggle for rights. In this context, advocacy on behalf of animals and other nonhuman entities also took a rights turn, with the publication of books like Peter Singer's *Animal Liberation* (1975) and Tom Regan's *The Case for Animal Rights* (1983).

Around the same time these treatises appeared, a new and surprising theory with a different focus was emerging. Published in 1972, law professor Christopher Stone's article "Should Trees Have Standing?—Toward Legal Rights for Natural Objects" is widely credited as the first consequential proposal for rights of nature. Stone called 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."

In no more than 40 years, rights went from being one tool among many to being acknowledged as the incontestable and unavoidable path to emancipation. This was an extraordinary development: the ascendancy of a legal framework that could encompass everything from future human generations to nature itself as rights holders.

As Stone argued, each new demand for rights will first provoke resistance and scorn before becoming accepted as common practice, and maybe even as common sense. The rights of enslaved people and of sovereign postcolonial nations, as well as animal rights, underwent this kind of journey. But what to make of the rights of nature? Can they go from an impossible idea to a common practice? And what would that even mean?

Theoretically speaking, the bases of the rights of nature were laid in the last decades of the twentieth century. There were lawyers, theologians, and philosophers besides Stone who argued that it makes sense to think of the natural world as a holder of rights. Each thinker offered different justifications. Stone thought that nature should simply have legal standing: the ability to sue in its own name and for its own benefit, much like corporations. If legal fictions like trusts and companies can be represented in court on their own behalf, why not trees?

Thomas Berry, a theologian, argued that nature is first and foremost a moral subject, meaning that it has intrinsic value. On this last point he was joined by American historian Roderick Nash, as well as a host of environmental philosophers who saw nature as having ends in itself, not just instrumental value for people. Berry differed from them in arguing that the moral standing of nature required legal standing to be fully and consequentially expressed in human societies.

Chilean lawyer Godofredo Stutzin made similar arguments, tying the intrinsic moral worth of nature to its expression in the law. For Berry and Stutzin, talking about moral values without a legal parallel was empty talk, like discussing the value of people without a basis in human rights. Others contributed to this exchange from different perspectives, and by the turn of this century there was already a growing body of theoretical texts proposing that nature should have rights.

But these arguments remained fairly obscure and were often ridiculed. The kinds of rights that nature should have, according to these and other thinkers, ranged from minimalist formulations like legal standing to more maximalist ones like

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the right to respect or evolution. Such proposals were easily derided as naïve, impossible, wishful thinking—beautiful dreams that could have no application in the hardnosed world of law and politics.

Theorists can argue all they want about what is possible, but in the end, the only test of a possibility is pragmatic: can it happen, and if so, what does it do? For a legal idea to become a reality, a law reflecting it must be enacted, and then that law must do something in the real world.

The first attempts to establish rights of nature were ordinances adopted by some US municipalities, but these measures proved ineffectual. They were followed by a breakthrough when Ecuador enshrined rights of nature in its constitution in 2008. This was quite an entrance for a radical and largely untested idea, almost straight from theory to a national constitution! At the time, Ecuador was experiencing a wave of reform, part of a wider regional shift to the political left in South America. Rewriting the constitution was supposed to put the country on a new and progressive path. The resulting text set out a broad spectrum of rights, including many applying to Indigenous affairs and struggles for recognition and autonomy.

Practice has far outpaced what theory saw as possible.

Among them, activists and politicians managed to squeeze in four articles that together spell out the first constitutional rights of nature in the world. These are the rights to respect, evolution, natural cycles, and restoration. The constitution also includes the human right to a healthy environment (which has only recently been recognized by the United Nations, in July 2022, as a fundamental human right). After voters approved Ecuador's new constitution in a September 2008 referendum, the rights of nature captured global attention. The Ecuadorian example made them suddenly thinkable in a practical way.

Questions about the applicability of these rights persisted. But the genie was out of the bottle, and it was not going back in. Other countries followed suit. In 2010, Bolivia passed a national Law of Mother Earth. Today, there are over 500 initiatives relating to rights of nature globally, at all levels of the law and in all stages of development.

Because of their constitutional status and timing, Ecuador's rights of nature have become a kind of exemplar. But the proliferation of related laws has generated a legal and political diversity that radically expands the potential meanings of the rights of nature. Ecuador is on an Ecuadorian path: its rights work in specific ways, constrained by national realities. Other places, such as Aotearoa/New Zealand, Colombia, Bangladesh, and Spain, have tried their own experiments that add variety to the potential meanings of granting rights to nature. Practice has far outpaced what theory saw as possible. To really appreciate the current state of affairs and the significance of this diversity, it is worth paying closer attention to some specific situations.

Developing Jurisprudence in Ecuador

In the decade after Ecuador's constitutional initiative, the rights of nature had a bumpy ride in the country. The constitution did not define who can sue to protect nature's rights, nor did it form any institution tasked with monitoring them. Constitutional rights were not followed up with any specific legislation. Environmental permitting did not fundamentally change, nor was the Ministry of Environment, Water, and Ecological Transition substantially reformed. This left only one path available for the deployment of these rights: lawsuits.

Given that anybody can sue on behalf of the rights of nature in Ecuador, a variety of actors did so, with varying degrees of success. Most notably, the Ecuadorian state pursued such cases against illegal mining, even though the state itself engaged in large-scale and unquestionably destructive resource extraction. There was also a difference between the rate of success achieved by the state (quite high) and by everyone else (quite low) in pursuing rights of nature cases to a favorable judgment. On the whole, the first decade of applying these rights in Ecuador looked patchy and opportunistic: judges were often reluctant to interpret them at all, and no real body of jurisprudence emerged to give some definition to what they meant in practice. Meanwhile, the state used them cynically to advance its extractivist agenda.

This changed in 2019, when a new Constitutional Court was appointed. Some of the judges had been deeply involved in academic research on the rights of nature and had a clear agenda for creating relevant jurisprudence. After selecting cases in which nature's rights had been invoked, the court passed a series of judgments in their favor.

One of the most famous of these cases involved a protected forest, Los Cedros, where the state had approved a permit for resource exploration. In November 2021, the court not only declared the permit illegal, but also ruled that Ecuador's environmental codes were unconstitutional because they failed to respect the rights of nature. In principle, this means that environmental regulation in the country needs to be entirely overhauled, though no significant reforms have yet occurred.

In other cases, the court has found that the rights of the Monjas River, which runs through the capital city, Quito, have been violated; that mangrove ecosystems have rights that trump those of industrial shrimp farmers; and that the Aquepí River's rights were violated by an approved irrigation permit, to name but a few. This extraordinary run of judgments has started to create precedents that other courts can turn to for guidance in deciding how the rights of nature apply in specific cases.

At every juncture of this story, we must situate ourselves in the Ecuadorian context in order to appreciate what is happening, from the genesis of the 2008 constitution in a specific political movement to the latest string of judgments, which depend on the way the country's judiciary works. Although rights of nature advocates have been pleased by the experience of Ecuador so far, there is no guarantee that developments will continue in the same direction, or that they will unfold in a similar way elsewhere.

One cause of concern is Ecuador's stark social inequality, which means that access to the law is not equally distributed. There are extremely powerful industrial lobbies, not least those representing miners and industrial aquaculture and fishing (particularly shrimp and tuna). Ecuador is also a politically volatile country that has had twenty constitutions to date. In this context, the rights of nature may be used to target anyone in the way of state- or industry-led projects. Community irrigation, for example, could be presented by the state as a violation of the rights of nature; poor communities that can hardly afford expensive legal battles could be cowed into compliance.

The string of Constitutional Court victories may well be reversed by future courts that are not as progressive or that have been corrupted by powerful interests. The verdicts might also be used to advance an environmental conservation agenda that advocates strict protection and deems human uses of a territory as illegitimate, potentially conflicting with Indigenous territorial rights also enshrined in the constitution.

These scenarios do not necessarily mean that constitutional rights of nature are a bad idea. Instead, they illustrate how the applicability and efficacy of such laws are always subject to local conditions and contexts. They can be used in different ways by different actors, according to their interests.

Arguably, the constitutional status and the vague formulation of the rights of nature in Ecuador are both assets and liabilities, since there is no appointed voice for nature's rights. The fact that the rights of nature are constitutional and look the way they do in Ecuador is itself the result of local historical conditions. That does not preclude drawing wider lessons or inspiration from this example. The Ecuadorian experience shows clearly that the way in which the legal text is written has everything to do with how it can be applied. It also shows that unequal power distribution has a strong influence on how these rights interact with human rights.

LEGAL PERSONHOOD IN NEW ZEALAND AND SPAIN

In other contexts, the rights of nature end up doing different things. Perhaps the situations that offer the clearest contrast with what has been seen so far in Ecuador are found in New Zealand. There, the former national park Te Urewera was granted legal personhood in 2014, followed by the Whanganui River (Te Awa Tupua) in 2017.

Te Urewera, a mountainous forest land, is the ancestral home of Tūhoe, a Māori descent group. It became a legal person through an act of Parliament in 2014. Already, two major differences with Ecuador appear. First, we are no longer talking about nature in general, but a specific place with a special history and relationship with a certain group of people. Second, we are talking not about rights, but about the idea of "legal personality."

This construct is a vehicle for having rights, just as companies are set up as legal persons in order to be able to enter into contracts, own property, file lawsuits, and so on. But the Te Urewera Act does not specify any rights as such; instead, it simply confers legal personhood on this piece of land. Since legal persons can own property, Te Urewera now owns itself. Therefore, it is no longer a national park or, strictly speaking, the property of the state.

These changes did not appear out of the blue—they were the result of a history of struggle between Māori and the Crown (the New Zealand

government) over Te Urewera. The historical context of Tūhoe–Crown relations led to the idea of self-ownership as a way to avoid vesting the land in either party—a kind of truce. The 2014 law specifies a governance structure that empowers Tūhoe communities to lead the way in representing the interests of the land—for example, in setting priorities for its use and issuing permits to this end.

Unlike in Ecuador, where anyone can sue on behalf of rights of nature, in New Zealand only the Board of Te Urewera (with majority Tūhoe representation) can speak on behalf of the legal person. The point of the law is not primarily to allow Te Urewera to have legal standing or to sue, but rather to inaugurate a new type of governance arrangement. In fact, ending up in court would be a failure of this arrangement, because the point is to facilitate a governance structure that defines the relationship between a specific tract of land and its traditional inhabitants.

This kind of situation far outstrips early theories of rights of nature and pushes at the borders of the concepts involved. Like the Ecuadorian situation, it cannot simply be imported elsewhere, as if offering a ready-made package for solving environmental problems. Yet the New Zealand experience sets a precedent for representing natural entities with the status of legal personhood so that they can own land, maintain a bank account, and enjoy a special relationship with certain people. Neither model can be transplanted wholesale, but both expand what can be imagined as possible in such situations.

Anybody can sue on behalf of the rights of nature in Ecuador.

One of the latest examples to join the rights of nature corpus is the granting of rights in 2022 to Mar Menor in Spain, the largest saltwater lagoon in Europe. This was done in legislation that resulted from a popular initiative and was passed with near unanimity by the Spanish parliament. The law gives Mar Menor the "right to protection, conservation, maintenance, and, where appropriate, restoration," as well as the right to exist and evolve naturally. It also provides for a council of guardians consisting of three different bodies, led respectively by citizens, scientists, and public officials.

Here we have elements seen in Ecuador and New Zealand, but also a specific history that is indispensable for understanding how these elements hang together in the context of Mar Menor. As in New Zealand, the case in Spain involves an act of parliament targeting a specific place with a name, a history, and a destructive relationship with industrial agriculture and real estate development. As in Ecuador, Mar Menor has been granted specific (and very similar) rights. But unlike the approaches used in those other cases, Spain's law sets up a guardianship model. Furthermore, it was motivated by a specific event, a massive die-off of fish that shocked the public. Local lawyers and advocates expertly rode the ensuing wave of popular indignation all the way to the national parliament.

This law was also a result of the inspiration that Spanish activists drew from the international diffusion of the rights of nature idea. Teresa Vicente, a professor of philosophy of law at the University of Murcia, played a crucial role in lobbying for and drafting the Spanish legislation. As with key Ecuadorian Constitutional Court judges, she was well versed in rights-of-nature scholarship and had learned from previous experiences of implementing such measures in other countries.

THE EU NATURE RESTORATION LAW

Advocates for the rights of nature around the world have been emboldened by this international diffusion of influence. Currently there are many different proposals for granting such rights in national and international contexts, including a UN declaration. Where the tide is going is impossible to predict, but not everyone is convinced that classical environmental law has to be replaced by this new paradigm.

After a slow start, European proposals are proliferating. In June 2024, the European Union passed a Nature Restoration Law (NRL), which was immediately hailed as a decisive step forward for environmental protection, and perhaps another model to follow. Yet it has little to do with the kind of right to restoration that exists in Ecuador or Spain.

In the EU law, there is no mention of the intrinsic value of nature, and restoration is presented not as a right but as a means to an end. No new legal persons are created. Instead, the law follows the logic of existing EU environmental protection policy, while adding the responsibility to restore damaged ecosystems to the to-do lists of member states. Each of them now must draft national restoration plans.

Whether this approach or the rights of nature model will be more successful depends on what we mean by success. The NRL is focused on climate change and emissions reductions, and it often presents nature restoration as a climate measure, in terms of both mitigation (via carbon sequestration) and adaptation (more resilient ecosystems). For their part, rights-of-nature approaches so far have not narrowly focused on climate change, though advocates increasingly present such measures as inherently useful for combating it. Which approach works better to reduce carbon emissions is an open question and will surely vary with local contexts.

Similarly, the NRL tackles biodiversity protection as an exercise in counting species and ensuring their "optimal" numbers for the sake of the ecosystem services they provide to people, such as pollinating crops. It is designed to do this without upsetting interests like industrial farming, fishing, or green-energy generation. And it relies on technological innovations proving able to square the circle of economic growth and ecological health.

Rights-of-nature approaches are also sometimes concerned with biodiversity, but they address it as a matter of the intrinsic value of creatures living in a place and their importance for ecological processes that offer services to nonhumans as well as humans. People need water, but so do all other creatures along a river. Often, these laws are written in opposition to economic development models that externalize environmental costs and have dire consequences for biodiversity. Their relationship with economic development as it has been understood in the past century is much more conflictual than it is in approaches like the EU's.

The NRL paradigm follows the logic of established environmental law, whereas the other examples are increasingly grouped together as ecological law. This latter category includes the rights of nature, but is not limited to them. It also includes measures dealing with ecocide and non-Western legal traditions that are not rights-based at all, but rather express a reciprocal environmental ethic. Again, what it means to be successful depends on what goals are set. In the case of New Zealand, success would mean that the new laws have the capacity to empower specific communities, not just to deliver the environmental results that advocates would like to see.

Despite the great distance between the NRL and ecological law, the international diffusion of the rights of nature may result in individual EU member states adopting a more ecological approach in their national restoration plans. After all, the NRL does not forbid consideration of intrinsic value or a more holistic understanding of social relations with nature, beyond carbon sequestration or biodiversity conservation. The opening that the NRL has created to promote restoration as a priority may be used by different actors to fight for a different model of law altogether.

NEW THINKING

After New Zealand's Te Urewera Act mandated a management plan for treating the former national park as a legal person, the Board of Te Urewera drafted the plan in a way that is devoid of the usual trappings of environmental management, including biodiversity targets or ecosystem services. It used the opening created by the law to introduce a new way of thinking that is neither exclusively ecocentric (that is, valuing nature entirely for its own sake) nor anthropocentric (valuing nature entirely for its services to people). These two perspectives, so often seen as opposites, are woven together in surprising ways in the management plan: "[P]eople need nature, land, waters for life, purpose and humanity. Nature enjoys people for their aspiration, endeavor and friendship."

Even though the Te Urewera Act offered ample opportunities for Tūhoe legal traditions to be invoked, there was no obligation to do so. The board could have drafted a conventional management plan. But the law provided a unique opportunity to express ideas that have been completely absent from the wider social imagination regarding the environment, and this opportunity was taken. Nature enjoying people for their friendship is not a figure of speech found in the law, but an eruption of a new kind of thinking through the space that the law made possible.

These opportunities for new thinking will vary in different places. What would it mean in a German, Spanish, or Romanian context to use the opening provided by the NRL to introduce a different imagining of the relationship between people and nature? Could we imagine national restoration plans that speak of the responsibility that people have toward nature, rather than the

services that nature provides? Might we make our way beyond the hegemony of strictly rights-based approaches?

These are open questions. But if anything can be learned from the global progression of alternatives to conventional environmental law, and specifically from the emergence of the rights of nature, it is to dare to make proposals that risk ridicule, if only as a step toward their becoming common sense. ■