A Rights Revolution for Nature

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Scientific evidence indicates that the global environmental crisis is accelerating, and that current anthropocentric environmental laws have not been able to reverse the trend [1, 2]. In response, a radically different discourse that recognizes nature as a rights holder has emerged. Recognizing rights of nature acknowledges that existing environmental policy instruments regulate rather than halt the destruction of the natural world [3]. Instead of trying to incrementally reform such instruments, rights of nature advocates urge a rights revolution for nature. Rights for nature have been recognized or enacted in multiple countries and cities around the world (Figure 1) and momentum for the movement seems to be growing. To understand its potential, it is necessary to unpack the concept of rights and what rights do.

Ideas about rights have changed over time. The modern idea that there exist some universal human natural rights that do not come from governments and cannot be taken away emerged during the Enlightenment. Governments cannot therefore grant natural or moral rights, only enact laws to recognize and protect them. For example, the 1776 American Declaration of Independence famously held that the rights to life, liberty and the pursuit of happiness were "self-evident". The 1789 French Declaration of the Rights of Man and of the Citizen announced that the purpose "of all political associations is the preservation of the natural and imprescriptible rights of man," such as the right to liberty.

These recognitions did not immediately lead to liberty for all; in fact some people remained property for many years afterwards. But the expression of natural human rights provided a vocabulary for arguing that slavery and other rights violations were wrong, and inspired future movements leading to rights expansions. Following the devastating human rights violations of World War Two, the United Nations adopted the Universal Declaration of Human Rights, recognizing the "inherent dignity" of all humans and a broad array of rights including rights to life, liberty, property ownership, and recognition as a person. While many of these rights are not yet a reality for many people, the Declaration provides a moral blueprint for more just societies.

Rights of nature advocates posit that environmental devastation is a moral wrong that ought to be stopped. This claim is not grounded in scientific evidence; however it is not less valid than the assertion that harming humans is a moral wrong. Neither human rights nor nature rights can be demonstrated through a scientific process, but we can make inferences based on what we know to be necessary for the flourishing of humans or of nature [4].

While the rights of nature movement is in some ways similar to the animal rights movement in that it seeks to promote the rights of non-human life, it differs significantly in that animal rights, like human rights, traditionally prioritizes the individual. Animal rights philosopher Tom Regan [5] asserted that all individual living beings, whether human or non-human, are worthy of dignity and deserve rights by virtue only of being alive. Rights of nature go beyond the animal rights discourse, focusing on rights of animal communities, ecosystems, or other natural subjects that are alive or sustain life. Parallels can

be made with collective rights, such as the rights of a nation to self-determination, or a right to cultural protection [6].

Rights for collectives, rights for animals and rights of nature may be most easily grounded in the interest theory of rights. According to the influential formulation of that theory by philosopher Joseph Raz, a person or other entity has a right if and only if they are capable of having rights, and some aspect of their interest or well-being is "a sufficient reason for holding some other person(s) to be under a duty."[7] Determining what these interests are is not easy, and even less so for collectives such as nation states or species or ecosystems. Some interests of nature that have been argued to be sufficient to produce rights include existence, habitat, and fulfilling ecological roles [8, 9]. The interest theory itself does not resolve whether nature is capable of having rights, but Raz suggests entities that have value for their own sake, rather than for the value they provide others, can have rights [7]. Rights of nature advocates make a moral assertion that nature does have this intrinsic value.

Other rights arguments stem from religion or spirituality. While Enlightenment human rights theories often identified God as a source of human rights, non-Western religions and especially indigenous spiritualities infuse rights of nature. The rights of nature movements frequently blend Western rights concepts with non-Western spirituality, sometimes as a corrective to prior usurpation of nature from another peoples' use. New Zealand's recognition of the Whanganui River and surrounding area as the legal person Te Awa Tupua arose out of a treaty settlement with a Maori tribe and that tribe's spiritual connection to the river. In another example, the Ecuadorian constitution recognizes the rights of Pacha Mama, an indigenous earth goddess.

Another important appeal of a rights discourse lies in its incompatibility with economic or utilitarian approaches to valuing nature that aim to maximize some aggregate utility. Destroying natural areas may indeed be a rational calculation to maximize economic wealth. Rights language has often provided a moral bulwark to defend the vulnerable against these sorts of calculations. For instance, child labor is no longer considered the right thing to do even if it would result in a society being wealthier overall. On the other hand, utilitarian arguments may also support the enactment of rights for nature, if rights for nature is an efficient way to protect the environment for the benefit of all, especially vulnerable human communities that suffer the most from environmental destruction.

While whether nature can have moral rights is likely to remain debated, it is clear however that it can have legal rights, and it does so in jurisdictions that have explicitly recognized, granted or enacted them. Legal rights exist not because they are moral, but because they are part of a legal system. Legal rights of nature have stemmed from a variety of sources, including constitutions, laws, and court decisions [3].

Rights advocates believe that rights recognitions offer stronger protection than regulations alone. For example, the Endangered Species Act protects listed species. However, it does not give species a right to be protected and species can be removed from protection at the whim of the legislature [10]. If instead species rights were recognized, they could respond when harmed even when not protected by regulations. As with other type of rights, this may be interpreted as an attempt by one interest group to impose its will on others, however rights are frequently claimed when regulations fail to correct injustices.

The granting of legal rights to non-humans is not in itself revolutionary or even unusual. While moral considerations often influence the enactment of legal rights, legal rights need not have a moral basis. The law can give rights to all kinds of entities if it finds reason to do so. Corporations, trade unions, trusts, and states are all examples of non-human entities that can have rights and duties under the law.

They have rights to litigate if they are injured, and similarly have duties not to violate the rights of others. In the last two decades, the US Supreme Court has expanded corporate rights, holding e.g. that corporations have the same free speech rights as humans to unlimited spending on political advertising, and that closely held corporations have the religious freedom to exclude birth control from employee health care plans. The legal system has no difficulty adjudicating non-human rights.

Thus far however, attempts to defend the rights of nature through the legal system have not yielded impressive results. Neither of the pioneering South American countries has been able to slow their environmental degradation. Although a few court decisions have rested on the rights of nature and resulted in positive outcomes for the environment, these countries have continued to implement policies irreconcilable with rights of nature [11]. Several US court cases invalidated ordinances recognizing rights of nature [3]. Further, rights of nature are vulnerable to being used pretextually to promote various interests other than nature protection. Some commentators raised concerns, for instance, that the granting of legal personhood to the Ganges and Yamuna rivers may have been motivated by Hindu nationalism. The Ecuadorian government sent the army to evict artisanal miners accused of violating the rights of nature by polluting rivers, shortly before allowing Ecuador's largest open-pit copper mine [12]. These shortcomings do not justify discarding rights of nature however. After all, in the early years following the 1789 Declaration, revolutionary France saw a regime of terror and mass executions, which discredited for some observers the idea of human rights for years afterwards. Rights of nature may be equally as accepted as human rights in time. There are nevertheless several conceptual questions that have to be faced as these rights develop so that they can achieve their best conservation potential.

One question is how to define the rights bearer. Examples of types of entities whose rights have been recognized include mother earth, Pachamama, rivers, ecosystems, natural communities, geographically defined areas (such as glaciers), species, and the animal kingdom. Each of these comes with its own definitional problems. A solution may be to identify ecologically informed criteria through which species, populations and ecosystems can become rights holders [13], similarly to the process in which companies can become legal persons through incorporation. Species or populations may be more easily scientifically defined than ecosystems or mother earth, and therefore may be easier to endow with rights, but other conceptions of the rights bearing natural entity may be more compatible with particular legal systems.

A second question relates to what rights nature will have. Some laws declared natural entities to be legal persons, allowing them to bring legal claims, others recognized property rights, or rights to exist and flourish or be restored. As with many human rights, it is not immediately clear how such rights will be defined, for example to what type or quality of restoration natural entities may be entitled. Scientists as well as philosophers and jurists will be instrumental to interpreting what these rights entail. This leads to the next question of how nature may claim its rights. Guardians with appropriate expertise could be appointed as representatives, similarly to how guardians are appointed for incapacitated humans [14]. Alternately, the public may be empowered to bring litigation on behalf of natural entities. Either way, interdisciplinary approaches will be needed to determine when the rights of natural entities are violated and how rights violations can be remedied.

Another central issue will be how conflicts between rights of nature and corporate or human rights will be adjudicated. How these rights will be weighed will determine whether rights of nature will be effective. Although rights of nature are not intended to bring all human activities to a halt, they are intended to render the most environmentally destructive human activities morally illegitimate or illegal. One test might be that if harm to nature would be irreparable, the harmful activity would not be

allowed. A threshold could be borrowed from the Environmental Modification Convention which bans the military use of environmental modification techniques having "widespread, long-lasting or severe effects." If koala populations, for example, have rights, the massive bulldozing of koala habitat in Queensland is a great wrong even if permitted by existing environmental laws.

Resolving conflicts between rights of nature and human activities will be controversial, however no more so than conflicts between, for example, human rights to free expression and non-discrimination. Conflicts between nature and human activities happen on a massive and systematic scale. When people and corporations have rights and nature does not, nature frequently loses, as evidenced by the continuing deterioration of the environment. Rights of nature may prevent this one sided outcome.

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Figure 1: Multiple jurisdictions have recognized rights of nature or of natural entities. Some of these legal changes have occurred through a constitutional assembly (Ecuador), legislative processes (Bolivia), court rulings (Colombian, India), treaty settlements (New Zealand) or municipal ordinances (USA).

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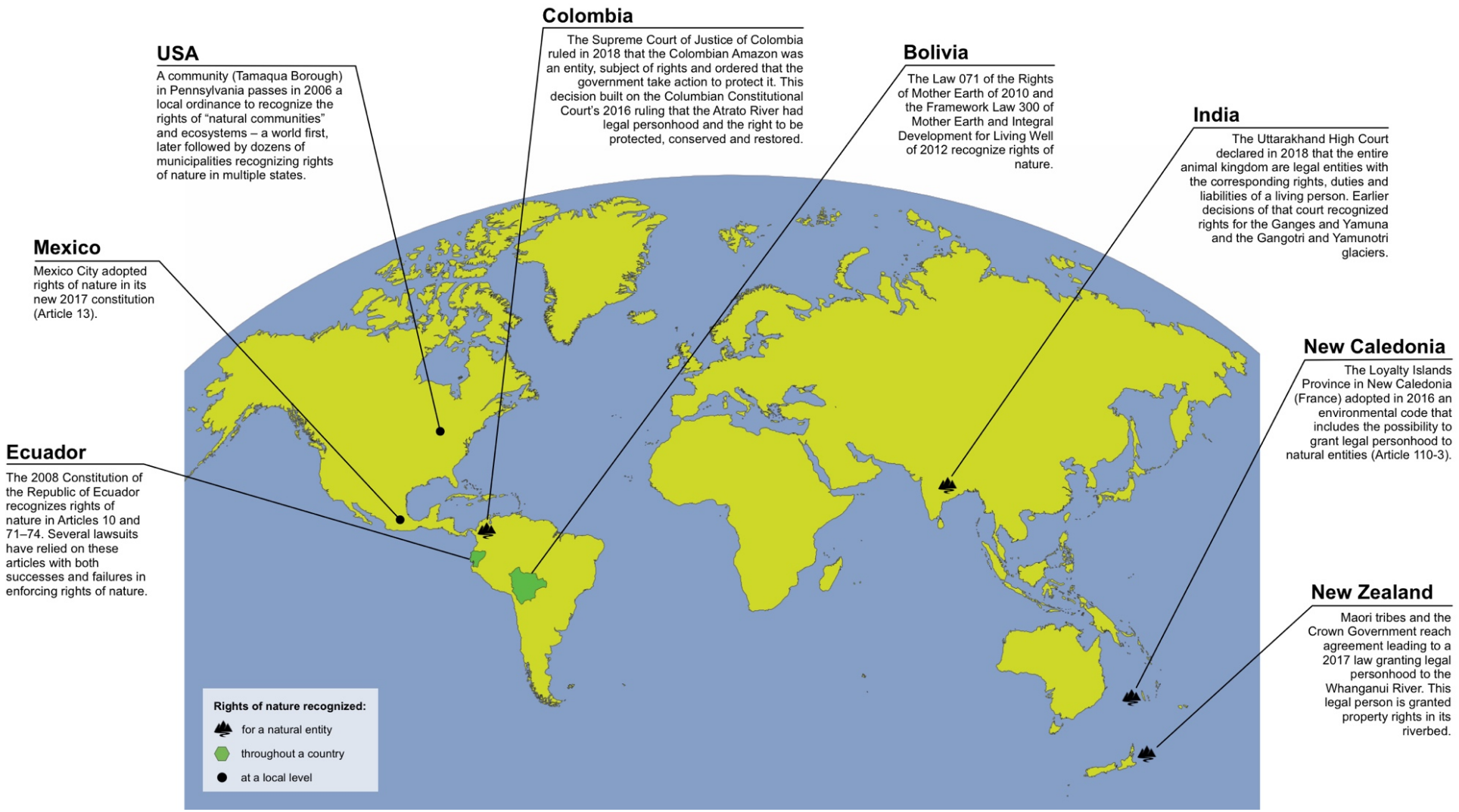
USA
A community (Tamaqua Borough) in Pennsylvania passes in 2006 a local ordinance to recognize the rights of "natural communities" and ecosystems – a world first, later followed by dozens of municipalities recognizing rights of nature in multiple states.
Colombia
The Supreme Court of Justice of Colombia ruled in 2018 that the Colombian Amazon was an entity, subject of rights and ordered that the government take action to protect it. This decision built on the Columbian Constitutional Court's 2016 ruling that the Atrato River had legal personhood and the right to be protected, conserved and restored.
Bolivia
The Law 071 of the Rights of Mother Earth of 2010 and the Framework Law 300 of Mother Earth and Integral Development for Living Well of 2012 recognize rights of nature.
India
The Uttarakhand High Court declared in 2018 that the entire animal kingdom are legal entities with the corresponding rights, duties and liabilities of a living person. Earlier decisions of that court recognized rights for the Ganges and Yamuna and the Gangotri and Yamunotri glaciers.
Mexico
Mexico City adopted rights of nature in its new 2017 constitution (Article 13).
New Caledonia
The Loyalty Islands Province in New Caledonia (France) adopted in 2016 an environmental code that includes the possibility to grant legal personhood to natural entities (Article 110-3).
Ecuador
The 2008 Constitution of the Republic of Ecuador recognizes rights of nature in Articles 10 and 71–74. Several lawsuits have relied on these articles with both successes and failures in enforcing rights of nature.
New Zealand
Maori tribes and the Crown Government reach agreement leading to a 2017 law granting legal personhood to the Whanganui River. This legal person is granted property rights in its riverbed.
Rights of nature recognized:
for a natural entity
throughout a country
at a local level