

Should nature have rights?

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After decades in the legal wilderness, the concept of rights for nature has re-emerged stronger than ever. Is it finally time to give Mother Earth her day in court?

It's funny how our views on rights often turn out wrong. In the late 1850s, a US court decreed that "the slave is not a person, but a thing". Meanwhile, Australian women weren't allowed to vote and Aborigines were still nearly a century away from citizenship. The suggestion that these people deserved full rights would have seemed preposterous at the time.

Fast forward to the 21st century, and the idea of equal rights for human beings is accepted almost without question. We've also granted limited rights to infants and animals. Yet when someone suggests rights for nature, the idea is immediately dismissed as radical and ridiculous.

But as it turns out, the broad premise of giving the environment a voice in court is neither new nor silly. It's been under consideration for decades and is even enshrined in at least one country's constitution. Our legal system can easily accommodate the concept – the question is, are we ready for it?

History of the "unthinkable"

The idea of legal rights for nature can be traced to Christopher Stone's 1972 essay 'Should Trees Have Standing?' In very simple terms, 'standing' means the right to sue. Under US law at the time it was not enough to be interested in a matter – if you wanted to go to court you had to prove you had something at stake. In practice, this meant that unpopulated wilderness had limited legal representation. Stone's idea was to give forests, mountains, streams and even trees the right to sue, with a guardian appointed to speak on their behalf.

As the essay acknowledged, the concept seemed "unthinkable". But then again, so did rights for women,

prisoners and animals just a few hundred years ago. In fact, the history of law shows a steady expansion of rights, so perhaps rights for nature could be the next logical step. Nor is it a stretch to see the environment as a legal 'person'. As Stone pointed out, the law sometimes treats corporations as people, even though they can't act or speak without a human representative. If a company – or an animal – can express its views in court, why not a tree?

In the past 10 years, the idea of rights for nature has evolved into a global movement, underpinned by a new legal philosophy called 'Earth Jurisprudence'. Coined by the cultural historian Thomas Berry, the term describes a system of laws that govern the whole community of life, not just human beings. Within this overarching framework there are human laws that help achieve environmental goals. South African author Cormac Cullinan has named this type of legislation 'wild law'.

It all sounds a bit theoretical, but there are now examples of how it works in practice. At the local level, around 25 communities in the US have passed ordinances to safeguard their environment from industries such as coal mining and gas drilling. The township of Blaine in Washington County, Pennsylvania, has legislated that local wetlands, rivers and streams "possess inalienable and fundamental rights to exist and flourish". This allows members of the community, NGOs and Aboriginal people to sue on behalf of the ecosystem being damaged, explains Peter Burdon, a lecturer at the University of Adelaide School of Law. "This approach builds on the existing concept of 'guardianship' which functions when, for example, directors speak on behalf of a corporation or parents speak on behalf of children."

At the national level, Ecuador enshrined rights for nature in its constitution in 2008. In March this year Mother Earth won her first case, gaining an injunction to stop the widening of a road along a river. Bolivia has also passed legislation that gives nature equal rights to humans and is now pushing for the UN to adopt a Universal Declaration of the Rights of Mother Earth, which, among other things, includes the right for nature to "regenerate its bio-capacity and to continue its vital cycles and processes free from human disruptions".

These laws are significant because they empower communities to reject government actions that threaten the environment. According to the Global Alliance for the Rights of Nature, people can step "into the shoes" of a mountain, stream or forest ecosystem and give the natural world a showing in court.

Nature rights down under

In some ways, the history of rights for nature goes back even further than Stone's seminal essay. "These principles have been adopted and used by indigenous people all over the planet for millennia, and Australia is a very good example of that," says Alessandro Pelizzon, associate lecturer in the School of Law and Justice at Southern Cross University.

Indigenous Australians have personal dreamings, or 'totems', explains Pelizzon. A person with a black cockatoo dreaming, for example, has a special relationship with that animal and is not allowed to kill or eat it. If a cousin slaughters too many black cockatoos, the person might intervene and argue on the animal's behalf. "It ties in this environmental and ecological awareness with a very complex political and regulatory regime."

Pelizzon has been involved in the Australian 'Wild Law' conferences, the first of which was held in October 2009. The third conference in Brisbane this September featured Chief Justice Preston from the NSW Land and Environment Court as a guest speaker, signalling that the topic is not just a fringe theory for radical conservationists.

One novel approach comes from Dr John Hadley at the University of Western Sydney. He argues that the existing conservation system isn't protecting biodiversity because habitat is viewed as vacant land. "To use an evocative expression we might say it's terra nullius in the sense that there is no direct representation for the animals that reside in the vegetation."

Dr Hadley's solution is to give animals property rights over their habitats, administered by a guardian. And no, this doesn't mean the cockroaches in your kitchen cupboard could serve you an eviction notice: the property rights would extend to endangered species, not common creepy crawlies. The theory is being tested in a pilot study on a dingo population near Sydney.

Putting it into practice

Believe it or not, Australia has already made practical progress in rights for nature. In NSW for example, most environmental legislation allows 'open-standing', meaning anyone can challenge a decision or seek to enforce the breach of a law. "In that respect we're not all that far away from Christopher Stone's formulation," says Jeff Smith, director of Environmental Defender's Office NSW.

Conservation organisations are, however, sometimes confronted with a High Court argument that 'intellectual' or 'emotional' interest isn't a good enough reason to bring the matter before the courts, explains Brendan Sydes, CEO of the Environment Defenders Office in Victoria. This has stopped some green groups from enforcing environmental legislation.

At a local level, councils have laws to prevent trees being cut down without a permit, and there's scope for other legislation to protect the environment. The problem, explains Sydes, is that state or federal laws could override local laws, and larger developments such as mining often come under state legislation.

On a national scale, rights for nature could become an important tool for advocates. The debate about Murray River water entitlements would make a good case study. “Rather than arguing about interstate water rights and the rights of irrigators to draw water, our attention could shift to the health of the River Murray as a whole,” explains Burdon. The River’s water rights would be placed first, rather than last.

However, if you think we’re going to follow Ecuador’s lead anytime soon and give Mother Earth a place in our constitution, think again. “In Australia, we don’t even have a bill of rights that guarantees certain fundamental human rights. An extension of rights to incorporate nature appears more distant,” says Burdon.

Perhaps the biggest obstacle is the status quo. People are resistant to the idea because it challenges the conventional wisdom that the planet is our plaything. “Don’t underestimate the power of mainstreamers and pro-development dudes to completely ridicule rights for nature and eco-centric approaches,” explains Michelle Maloney, convenor of the 2011 Wild Law conference at Griffith University. “At the heart of our society is the idea that humans can do whatever they want.”

Yet this obstacle is also an opportunity. The mere suggestion of rights for nature helps nudge society towards a new point of view where the environment does not exist solely for human consumption. Although a Universal Declaration of the Rights of Mother Earth is little more than a symbolic document, it could be an ethical benchmark, in the same way the Universal Declaration of Human Rights is used to hold governments to task.

History shows that societal values can change drastically. As our environment continues to deteriorate, and existing laws remain powerless to halt the worldwide degradation of the planet, the concept of rights for nature becomes increasingly relevant and necessary. Perhaps, in time, it won’t seem so strange to sue on behalf of a tree. After all, we once thought giving women the vote was a crazy idea too.

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