

Living in harmony with nature: environmental politics, the rights of nature and avoiding the hothouse earth

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Abstract

The following essay builds on work that explores the divisions between human and non-human nature and the associated rights and protections. It argues for a divergence from a human-centred environmental politics and a rethinking of humans as just a part of a lively materiality rather than as the masterful centre. This is in part due to the threat of the hothouse earth trajectory in which human activity has the potential to lead to irreversible climate change and environmental degradation. In addition, the essay places particular emphasis on biocentrism and the idea that all aspects of the earth have intrinsic value, the overall argument being for an increased incorporation of nature's interests into environmental law. This involves the re-evaluation of natural rights and an increased focus on nature's agency, specifically the allocation of legal personhood to certain aspects of nature in the pursuit of natural protection. The campaign for rights for nature presents a non-anthropocentric approach to protecting aspects of nature, offering a potential solution to combating climate change. In order to prevent irreparable damage to the earth, it is crucial to engage with rights of nature, transform social values and reorientate the human relationship with the environment towards a more harmonious coexistence.

1. Introduction

In 2009, April 22nd was declared *International Mother Earth Day*. Since then, numerous countries, including Ecuador, Australia and New Zealand, have enacted laws and amended constitutions to recognise the rights of nature (Boyd, 2017). These rights include granting ecosystems the right to 'exist, flourish, and naturally evolve', in an attempt to slow environmental degradation (GARN, 2019). Recognition of rights of nature is often associated with critiques of environmental laws as anthropocentric and insufficient in minimising negative human impacts on the environment (Mace *et al.*, 2018). Advocates for rights-of-nature argue that environmental degradation is a moral wrong and calls for sufficient natural rights have proliferated in global discourse (Nussbaum, 2006; Rawson and Mansfield, 2018). We must rethink

who and what has legal rights and protections if more ethical relations between human society and non-human nature are to flourish. A more Earth-centric approach to environmental politics is required in environmental law, with emphasis on the idea that all aspects of the earth have intrinsic value (Vilkkä, 1997). This entails rethinking the human in environmental law as a relational creature “whose genesis, existence and development is irrevocably bound up with and dependent upon a limitless jumble of constitutive relations” (Metzger, 2019, p.191). The rights-of-nature and associated social value transformation are crucial to reorientating relationships with nature and preventing irreparable damage to the earth.

2. Hothouse earth

Scientific observation suggests that human impacts on the Earth system have pushed it into a new geological epoch: the Anthropocene (Crutzen, 2002). Although not officially formalised by the stratigraphic community, it appears that current conditions transgress those of the Holocene (Waters *et al.*, 2014). Steffen *et al.* (2018) argue that there is a risk that human activity, combined with biophysical feedback processes, could play a more significant role in restricting the range of potential trajectories than originally assumed. Feedbacks (e.g., permafrost thawing) could significantly accelerate global warming; most of these changes are likely irreversible on timescales important to societies. One criticism of the IPCC reports is the lacking consideration for the large uncertainties in warming projection feedback estimates (Hausfather and Betts, 2020). Human activity means that feedbacks could contribute to a warming that is 25% higher than predicted in main IPCC projections.

Steffen *et al.* (2018) propose that the Earth system could be driven towards a planetary threshold that prevents the stabilisation of the climate at intermediate temperature increases. The continued warming of the Earth system may lead to a hothouse earth pathway of irreversible damage. The study warns that with a temperature rise of 3-4°C, the Earth system’s biophysical self-reinforcing feedbacks, coupled with the degradation of the biosphere caused by humans, could increase the temperature further. This would pose severe risks to ecosystems, economies and societies globally (Ripple *et al.*, 2019). For example, fluctuations in the hydroclimate disrupt water supplies and agricultural production, resulting in extreme weather conditions (Steffen *et al.*, 2018). Some scholars (e.g., Stirling, 2018) criticise the implication that the hothouse earth is inevitable. However, numerous academics (e.g., Lenton *et al.*, 2019) corroborate the possibility of the hothouse earth pathway. Avoidance requires ‘deliberate management of humanity’s relationship with the rest of the Earth system’ (Steffen *et al.*, 2018, p.8258), including a transformation of social values, to evade inflicting

irreversible environmental damage. Notably the latest IPCC projections suggest it is unlikely the Earth system will reach the upper-end scenarios (IPCC, 2021), however this does not render the warning insignificant.

3. Legal rights for nature and earth jurisprudence

Over the 1960-70s, protecting ecosystems through juridical process gained momentum as necessary for protecting nature and reducing human impacts on the environment (O'Donnell and Talbot-Jones, 2018). Environmental law emerged as a distinct discipline and a variety of legal tools were established and implemented to reduce the impact of human activity on the environment (Gunningham, 2009; Fisher, 2014). Most of environmental law prioritises human interest rather than interests of nature. For instance, the public trust doctrine (Sax, 1970) does not stress natural protection but the public use of natural resources (O'Donnell and Talbot-Jones, 2018). Rights-of-nature advocates argue that existing laws regulate rather than prevent ecosystem degradation (Chapron *et al.*, 2019). Innovative measures within environmental law are needed to reverse this trend and put the protection of nature at the forefront.

Chapron *et al.* (2019) state that the 'introduction of legal rights for nature could protect natural systems from destruction' (p.1392). One way of grounding the rights of nature is in the interest theory of rights. Raz (1986) claims that any entity has rights if they are capable of having rights. Although interest theory is not conclusive on whether nature is capable of having rights, Raz indicates that nature qualifies by claiming that entities that have value for their own sake can have rights. This is compatible with the argument made by rights-of-nature advocates: nature has intrinsic value and, therefore, is worthy of having rights (Chapron *et al.*, 2019). For Berry (2011b), nature deserves rights like any component of the Earth community, claiming that '[r]ights originate where existence originates. That which determines existence determines rights' (Berry, 2006, p.149). This suggests a de-centring of humans within the Earth community (Humphreys, 2017). This is exhibited in the 2008 Constitution of Ecuador, the first national constitution to recognise legally enforceable rights-of-nature (Republic of Ecuador, 2008). Consistent with the concept of *buen vivir* ('living well'), the text aims to inspire harmony between nature and society (Martin, 2011). Gerlach (2017) highlights that the Constitution's recognition of nature's rights is on the foundation of an ontological division between human society and non-human nature, which is perhaps contradictory to *buen vivir*. Nevertheless, this does not undermine the argument that an Earth-centric shift is paramount for natural protection.

A concept that recognises nature's intrinsic worth is Earth jurisprudence: a philosophy based on the idea that humans are only part of a wider community

of beings, all of which are dependent on the Earth's welfare (Cullinan, 2011). Earth jurisprudence is a way of living in relation to the Earth that upholds a set of moral rights and core principles (Gaia Foundation, 2020). It presents a critique of mainstream legal approaches and promotes the assembly of human and Earth laws (Berry, 2011a). In addition to not addressing the cause of environmental problems, Earth jurisprudence advocates argue that laws legitimise environmental exploitation, for example by authorising deforestation (Berry, 2006). The same systems then criminalise those who protest such environmental harms (Humphreys, 2017). Moreover, environmental problems are treated as anthropocentric concerns. Instead of viewing nature as valuable to humans, for example natural resources, Earth jurisprudence accepts ecosystems as entities with rights (Koons, 2009). This challenges the dominance of human interests within the mainstream legal system and the idea that nature comprises objects with the primary purpose of resource provision (Humphreys, 2017). Treating nature as subjects, rather than objects subject to property rights, acknowledges its intrinsic value.

In terms of the legal representation of nature, one approach that has been used to address the overuse of water resources and insufficient regard for ecosystem health in environmental law is the establishment of legal personhood in order to protect water systems (O'Donnell and Talbot-Jones, 2018). Stone's (1972) proposal that nature could be personified in law gave legal 'standing', or *locus standi*, to trees, effectively granting them rights of protection from harmful actions. Those wishing to protect trees could act as guardians possessing the ability to pursue legal action against those who cause them harm (Humphreys, 2017). This enables the creation of an identifiable legal entity that possesses all necessary rights for granting the non-human entity its own personality (O'Donnell and Talbot-Jones, 2018). For example, in Australia a hybrid form of the legal rights for nature concept has been used to protect rivers. The Victorian Environmental Water Holder (VEWH) is 'an independent statutory body responsible for holding and managing Victoria's environmental water entitlements' (VEWH, 2020). It was created with the capacity to hold water rights and acts as a guardian for the Victorian rivers and water-dependent ecosystems (O'Donnell and Talbot-Jones, 2018). This approach improves representation of nature in decision making.

Some scholars argue against legal standing for nature, claiming that recognising intrinsic value of nature does not necessitate the granting of legal standing (Warnock, 2012): rights are inherently anthropocentric, thus can only be applied to humans or human-made institutions (Humphreys, 2017). Although Warnock's argument draws on the ineluctable fact that humans make decisions, the representation of nature through human guardians with suitable expertise means that they can act on nature's behalf. Moreover, critics

observe that the plaintiff power of personhood becomes a liability risk (Macfarlane, 2019). Legal standing means ‘the right to sue or be sued in court’ (O’Donnell and Talbot-Jones, 2018). As a river can sue a factory for environmental damage, such as pollution, does this permit the suing of a river by developers if flood waters damaged the housing stock? Grear (2015) argues that the law should develop a new framework in which humans are not the masterful centre but entangled in a lively materiality. Rather than the rights-of-nature movement adapting to the current human-centred law framework, the law should work to include nature more constructively. Boyd (2017) supports this: laws evolve to reflect societies’ changes in attitudes and values. Law changes can reinforce the shift in values needed to protect nature.

Earth jurisprudence rejects anthropocentrism and human exceptionalism in favour of more biocentric perspectives, which are common in many indigenous cultures (Boyd, 2017). The eleventh resolution on Harmony with Nature, adopted by the UN General Assembly in 2019, stresses the importance of looking to indigenous cultures of environmental protection (UN General Assembly, 2020). For example, negotiations between the Māori people and national government have contributed to New Zealand becoming a pioneer in acknowledging the rights of nature. This was exemplified in a 2011 treaty settlement which recognised the Whanganui River as having the rights of a legal person (O’Donnell and Talbot-Jones, 2018). For the Māori, every element of nature is kin and people have a responsibility of protection (Boyd, 2017). Unlike the Western legal system, the Māori put nature at the heart of sustainability. The Whanganui River, now owned by itself, is represented by a new entity comprised of one member from the government and one from the Whanganui tribe (*iwi*), which acts as its guardian (*ibid.*). The river and associated water ecosystems are treated as living beings as opposed to simply functional ecosystems. Scholars such as Latour (2004) understand humans as relational creatures, not separate from their environments but entangled in a dynamic *mélange* of relations (Metzger, 2019). The redefined relationship between the legal system and environment is not only constructive in natural protection, but crucial in sustainable societal development.

4. Conclusion

It is crucial to actively move towards ‘coexistence of humankind in harmony with nature’ (UN General Assembly, 2020, p.5). Scientific observation proves that human activity is driving the trajectory of the Earth system towards potentially destructive conditions (Steffen *et al.*, 2018). Thus, many are calling for the ‘development of institutional arrangements that incentivise a change in the behaviour of organizations and individuals’ (O’Donnell and Talbot-Jones, 2018, p.1). The rights-of-nature campaign addresses an ontological claim; rather than being simply a collection of ecosystems, nature has the

capacity to be considered as living entities. Granting legal personhood to nature has the potential to protect aspects of nature, as evidenced by the VEWH and Whanganui River cases. Adjudicating conflicts between human activities and rights of nature will likely be controversial. However, when rights-less nature is put against people or corporations with rights, nature commonly loses (Chapron *et al.*, 2019). Protecting nature directly means increasing global attention to rights-of-nature, with those most responsible for environmental damage taking the lead. In the meantime, the growing rights-of-nature movement means an increasing number of individuals or groups standing up and speaking on behalf of aspects of nature (Morris and Ruru, 2010). Decentring humankind, transforming social values and reorientating our relationship with nature are critical to prevent environmental degradation. We must put the earth at the fore to protect all life: humans and nature alike.

From a personal perspective the next linked area of research could be to look at the concept of the 'resource curse' within Nigeria, as the impact of oil has been noticed within conflict and politics.

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