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SYMPOSIUM ON SHOULD INTERNATIONAL LAW RECOGNIZE RIGHTS OF NATURE?

NATURE DOES NOT HAVE OR NEED HUMAN RIGHTS

*Dinah L. Shelton**

Introduction

In his widely cited and influential article, "Should Trees Have Standing?," Christopher Stone argued for conferring legal personality and rights on the environment because, as a rights-holder, the natural object would "have a legally recognised worth and dignity in its own right, and not merely to serve as a means to benefit 'us.'"[1] In his dissenting opinion in *Sierra Club v. Morton*,[2] Justice William O. Douglas similarly argued that "inanimate objects" should have standing to sue in court.[3] Neither of these esteemed authors posited *human* rights for nature, but the Inter-American Court of Human Rights (IACtHR) delivered an advisory opinion on May 29, 2025 that does so.[4] Contrary to the Court's finding, "rights for/of nature" do not exist in international human rights law nor are they likely to become part of this field or of international environmental law. Moreover, in my opinion, it is unnecessary to advocate for nature's rights because existing constitutions, legislation, and legal doctrines will provide equivalent protections if they are properly enforced.

The Inter-American Advisory Opinion

In its advisory opinion, the IACtHR examines states' human rights obligations with respect to "the climate emergency." The Court focuses much of its attention on the right to a healthy environment, which it had indicated previously is one of the rights protected by Article 26 of the American Convention on Human Rights.[5] It reiterates the statement from its 2017 advisory opinion on human rights and the environment that the right to a healthy environment protects the components of the environment, such as forests, rivers, and seas, as legal rights in themselves, even in the absence of certainty or evidence of the risk to the individual.[6]

In elaborating on the protection of nature as a subject of rights, the Court relies on its understanding that degradation or alteration of any component of an ecosystem may have a negative impact on other species, including human beings, who are part of such a system. From this, the Court finds that a recognition of "Nature's right to conserve its essential ecological processes contributes to strengthening a truly sustainable development model that respects planetary limits and ensures the availability of crucial resources for present and future

* *Manatt/Ahn Professor (Emerita), George Washington University Law School, Washington, D.C., United States.*

[1] Christopher D. Stone, *Should Trees Have Standing? Towards Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

[2] 405 U.S. 727 (1972).

[3] *Id.* at 741–43.

[4] Climate Emergency and Human Rights, Advisory Opinion AO-32/25, Inter-Am. Ct. H.R. (ser. A) No. 32 (May 29, 2025).

[5] Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, paras. 57, 64 (Nov. 15, 2017).

[6] *Id.*, para. 273.

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generations."[7] Progressing toward the recognition of rights inherent in ecosystems is "fundamental for the protection of their long-term integrity and functionality, and it provides coherent and effective legal tools in relation to the triple planetary crisis to prevent existential harm before the latter becomes irreversible."[8]

The Court appears to envisage the recognition of rights for nature as a progressive action in international law, *lege ferenda* not *lex lata*. It refers to "transcending inherited legal concepts" and sets forth policy arguments for recognizing rights in nature, emphasizing the essential role of nature in balancing conditions that make Earth habitable and efforts aimed at achieving sustainable development.

The Court seems to see itself as proposing something that does not currently exist in international human rights law. Nevertheless, in its view, the recognition of nature's rights is a development that does not introduce content alien to the Inter-American *corpus iuris*. Rather, it represents "a contemporary expression of the principle of the interdependence between human rights and the environment."[9] The Court observes that this interpretation is also aligned with advances in international environmental law aimed at preserving the integrity of ecosystems, and notes jurisprudence at the national level and United Nations resolutions and reports that "reflect the increasing recognition of the case law on the Earth and the rights of nature at the global level."[10]

Analyzing the Court's Advisory Opinion

The Court's analysis goes beyond the fundamental rules of treaty interpretation. The American Convention and indeed all human rights treaties are for the protection of the rights of human beings, not other species or nature as a whole. Writing in dissent, Judge Patricia Pérez Goldberg observes correctly that if states want to extend the scope of the treaty in this way they can and should amend the treaty to do so.[11] Absent such amendment, the Court is acting outside its jurisdiction to create a new category of protected entities with unspecified rights. Notably, the Court cites only soft law instruments, like the World Charter for Nature, in proposing legal status and rights for nature. The dissent again correctly notes that no hard law recognizing such rights exists in international law.[12]

Yet the Court finds "a growing tendency in legislation and case law to recognize nature as a subject of rights."[13] It cites six cases from Latin American courts, one from Germany and several from India as evidence of this "growing tendency." Several examples of domestic legislation are cited, but apart from two instances, they all concern either rights guaranteed for an identified Indigenous People, or protection provided for a single resource, like a river. The well-known example of Ecuador's Constitution, which recognizes Mother Earth or Pacha Mama as having rights, is almost unique.[14]

Although there is little support for codification of rights of nature, the Court finds it necessary to counter the "risks of an existential nature," through a universal and effective legal response. The Court thus asserts a

[7] *Id.*, para. 279.

[8] *Id.*

[9] *Id.*, para. 281.

[10] *Id.*, paras. 284–86.

[11] Climate Emergency and Human Rights, Advisory Opinion AO-32/25, Opinion of Judge Pérez Goldberg, Inter-Am. Ct. H.R. (ser. A) No. 32, 14–15 (May 29, 2025).

[12] *See id.* at 9–19.

[13] Advisory Opinion AO-32/25, *supra* note 5, para. 286.

[14] Constitución de la República del Ecuador, Art. 71, Registro Oficial 449, Oct. 20, 2008; *see also* Ley No. 287, que reconoce los derechos de la naturaleza y las obligaciones del estado relacionadas con estos derechos [Recognizes the Rights of Nature and the Related Obligations of the State with These Rights], Gaceta Oficial, Feb. 24, 2022 (Pan.).

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biological necessity to create nature's rights, viewing "the balance of conditions for healthy life in the common ecosystem" as a requirement for the present and future habitability of the planet.[15] Therefore, the Court concludes, legal protection for rights of nature is essential to ensure the protection of human rights.[16]

What Is the Difference Between Human and Natural Rights?

Distinguishing between human and natural rights provokes the question: what distinguishes a human from other entities? "Natural persons," the term used to refer to human beings, have certain legal rights adhering automatically upon birth. An entity labeled a natural person is genetically human. A legal or "juridical" person refers to an entity that is not a human being, but one on which society has decided to confer specific rights and obligations. In international law, states and intergovernmental organizations have legal personality; in domestic law, business and charitable organizations, municipalities, and other government bodies are recognized as legal persons.[17]

One basis for personhood rests on the interests of the entity in question. Another basis considers the interests of human persons as a baseline for comparison.[18] Persons have rights, duties, and obligations; things do not.[19] According to the legal philosopher Joel Feinberg, an entity must have interests to have moral status.[20] Bonnie Steinbock adds that "interests" is a term of art which refers to the capacity of an entity to have a stake in things, and this capacity is contingent on the entity being sentient, or consciously aware.[21] "Interests" in this sense refers to an entity having "a sake or welfare of its own" and "the expression . . . is intended to emphasize the stake that conscious, sentient beings have in their own well-being."[22] If an entity does not have interests in the sense identified above, then a determination of legal personhood must be based on the protection of the interests of others.

The idea that the law might exclude from legal status an entity that meets all the requirements for equal moral status with currently recognized persons, but that is not genetically human, raises the question of why humanness matters.[23] It seems inconsistent to argue for the extension of legal protection to a non-sentient multi-celled human organism in the beginning stages of development (i.e., an embryo) and withhold such protections from fully developed sentient, and perhaps even rational, non-human animals.[24] If genetics is the sole basis for legal personhood, there must be some explanation as to why this characteristic is so important.[25] Thus far, as Jessica Berg comments, no one has provided a satisfactory argument.[26]

[15] Advisory Opinion AO-32/25, *supra* note 5, para. 290.

[16] Even less justifiably, and in disregard of Article 53 of the Vienna Convention on the Law of Treaties, the Court then elevates the state obligation not to create irreversible environmental damage to the status of a *jus cogens* norm. *Id.*, paras. 287–94.

[17] Jessica Berg, *Of Elephants and Embryos: A Proposed Framework for Legal Personhood*, 59 HASTINGS L.J. 369 (2007).

[18] *Id.*

[19] *See* WESLEY NEWCOMB HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS 75–76 (Walter Wheeler Cook ed., 1923) (stating that all rights of persons are against other persons, and that there is no such thing as a right against a thing).

[20] JOEL FEINBERG, HARM TO OTHERS 34 (1984).

[21] BONNIE STEINBOCK, LIFE BEFORE BIRTH: THE MORAL AND LEGAL STATUS OF EMBRYOS AND FETUSES 40–41 (1992).

[22] *Id.* at 18–20.

[23] *See generally* PAOLA CAVALIERI, THE ANIMAL QUESTION: WHY NONHUMAN ANIMALS DESERVE HUMAN RIGHTS 3–12 (Catherine Woollard trans., 2001); ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds., 2004).

[24] *See* BERNARD ROLLIN, ANIMAL RIGHTS AND HUMAN MORALITY 33–34, 50 (2d ed. 1992).

[25] *See* L.W. SUMNER, ABORTION AND MORAL THEORY 32–33 (1981).

[26] Berg, *supra* note 17, at 403.

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The concept of nature's rights and legal personality has been proposed in a variety of formulations. In some cases, elements of nature such as rivers have been protected with rights language. Giving legal recognition to the intrinsic value of the whole of nature, by adding it as a new subject of law, is a more far-reaching proposal.[27]

Procedures and Limitations

Those in favor of rights for natural entities argue that allowing nature to sue in its own right would mean that more individuals who have previously escaped liability may face sanctions for their destructive behavior, and provide a plaintiff for cases involving environmental degradation. This raises the question of who can speak on behalf of nature.

Conferring legal personality on any part of nature should allow legal action to be brought in the name of the rights-holder through a "guardian *ad litem*." Representation by the government may not serve to protect the intrinsic value of the environment, especially where the government's short-term interests conflict with more long term ecological interests. Governments normally issue mining and forestry licenses, control water rights, and decide on oil exploration and exploitation permits. Such licenses and permits may generate considerable revenues for the state. Moreover, because governments are responsible to the whole population, they may be willing to permit a certain level of environmental degradation in the name of sustainable development.

One way to address such issues is by providing representation, in whole or part, to Indigenous Peoples. A well-known agreement established legal personhood for the Whanganui River, with the river's rights to be enforced through judicial action by appointed guardians.[28] The local Maori Iwi (tribe) and hapu (sub-tribes) hold the river sacred and consider the entire river system to be a living being, *Te Awa Tupua*. The river itself has been the subject of a longstanding native title claim by the Iwi, who claim possession of the river, its resources, and the continued existence of *rangatiratanga* (chieftainship or ownership) over the river and its *taonga* (treasured tangible and intangible items). The Iwi and the New Zealand government reached an agreement, codified into law in 2017, recognizing *Te Awa Tupua* as having "all the rights, powers, duties, and liabilities of a legal person."[29] The law creates the office of *Te Pou Tupua* "to be the human face of Te Awa Tupua and act in the name of Te Awa Tupua," including by promoting and protecting the health and well-being of *Te Awa Tupua* and performing landowner functions for and on behalf of *Te Awa Tupua*.[30] The office is composed of two persons, one nominated by the Iwi and one by the government.[31]

The fact that this agreement concerns an Indigenous group likely affected the outcome of the negotiations, especially in the light of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).[32] Indeed, it is not obvious how recognition of the rights of *Te Awa Tupua* differs significantly in effectiveness from recognizing the rights of the Indigenous People in their ancestral land.

Are Rights of Nature Really Necessary?

I think that they are not. Nature is already protected through a variety of laws and legal constructs, although they often fall short of adequate enforcement. Protecting Indigenous rights such as those set out in UNDRIP is one such possibility. Of course, not all parts of nature are home to Indigenous Peoples.

[27] *See, e.g.*, James A. Nash, *The Case for Biotic Rights*, 18 YALE J. INT'L L. 235 (1993) (proposing a Bill of Biotic Rights for nature).

[28] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (N.Z.).

[29] *Id.* Sec. 14(1).

[30] *Id.* Secs. 18–19.

[31] *Id.* Sec. 20.

[32] GA Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

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Another alternative to recognizing rights of nature is to declare nature or key parts of it to be a public trust. From Roman law antecedents,[33] early English common law distinguished between private property which could be owned by individuals and common resources which were held in inalienable trust for present and future generations. Many U.S. courts have applied this concept to a variety of resources, holding that the government may not destroy or alienate property within the public trust.[34]

In the early 1970s, the public trust doctrine began to be applied to wildlife and public lands, and incorporated in state constitutions in the United States.[35] Pennsylvania adopted the first constitutional recognition of protection of nature through the public trust doctrine.[36] The author of the proposal said that he intended to "give our natural environment the same kind of constitutional protection that [is] given our political rights."[37] The proposed amendment was approved overwhelmingly by voters in the state on May 18, 1971.[38] Many other state constitutional provisions refer to long-established doctrines of public trust.[39] Hawaii's constitution, for example, creates a public trust over all of the state's natural resources "for the benefit of present and future generations; all public natural resources are held in trust by the State for the benefit of the people."[40] Other state constitutional provisions are less direct, but rely on aspects of public trust doctrine such as conservation and common use.[41] The public trust doctrine emphasizes the duties of the trustee to preserve the corpus of the trust for the future rather than the individual rights of the beneficiaries.[42] It thus takes a long term, transgenerational approach.

Notably, most of the constitutional amendments were enacted because the ordinary political process was failing to protect what the public viewed as the fundamental value of a healthy environment. Public trusts, like national parks and other protected areas, establish a preferential legal status for specific ecosystems or their components, but they normally are constituted for the beneficial use of humans, not necessarily for the direct and primary benefit of the ecosystem or its elements. Public trusts have the advantage over protected areas that the former are normally given constitutional status, while the latter are established by ordinary legislation and can be abolished or diminished in the same way.

Conclusion

In conclusion, nature does not have human rights under existing human rights law and does not need to have such rights. What it does need is vigorous enforcement of existing laws and constitutional provisions, including doctrines such as those declaring public trusts over nature. If the existing constitutional and legislative provisions

[33] JUSTINIAN, THE INSTITUTES OF JUSTINIAN, § 2.1.1. (Thomas Sanders trans., 2d. ed. 1859).

[34] *See* Illinois Central Railroad Co. v. Illinois, 146 U.S. 387 (1892); City of Milwaukee v. State, 214 N.W. 820 (Wis. 1927); Commonwealth v. Newport News, 158 Va. 521, 546, 164 S.E. 689, 697 (1932).

[35] For a listing of all environmental provisions in state constitutions, see Bret Adams et al., *Environmental and Natural Resources Provisions in State Constitutions*, 22 J. LAND RESOURCES & ENVTL. L. 73 (2002).

[36] *See* Matthew Thor Kirsch, *Upholding the Public Trust in State Constitutions*, 46 DUKE L.J. 1169 (1997).

[37] Franklin L. Kury, *The Pennsylvania Environmental Protection Amendment*, PA. B. ASS'N Q., at 85, 87 (Apr. 1987), *quoted in* Kirsch, *supra* note 36, at 1170.

[38] The vote was more than 3–1 in favor of the amendment, with close to two million voters. *See* Franklin L. Kury, *The Environmental Amendment to the Pennsylvania Constitution: Twenty Years Later and Largely Untested*, 1 VILL. ENVTL. L.J. 123, 123–24 (1990).

[39] *See, e.g.*, Ala. Const., Art. VIII; Cal. Const., Art. X, § 2; Fla. Const., Art. II, § 7; La. Const., Art. IX; Mass. Const., § 179; Mich. Const., Art. IV, § 52; Mont. Const., Art. IX, § 1; N.M. Const., Art. XX, § 21; N.Y. Const., Art. XIV; N.C. Const., Art. XIV, § 5; R.I. Const., Art. 1, § 17; Tex. Const., Art. XVI, § 59.

[40] Haw. Const., Art. XI, § 1.

[41] *See, e.g.*, Alaska Const., Art. VIII, § 3; N.M. Const., *supra* note 39, Art. XX, § 21.

[42] *See, e.g.*, Alaska Const., *supra* note 41, Art. VIII, § 3.

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were to be fully enforced, they could achieve the same ends as would rights of nature, without the complications raised by enacting the new concept. In the reverse scenario, rights of nature could achieve many equivalent results as would existing constitutional and legislative provisions and the doctrine of public trust, but only if rights of nature were properly defined and limited rather than based on wholesale guarantees for the entire biosphere. The confusion likely to result from placing this concept alongside human rights argues for keeping the focus on human rights for human beings.

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