

On Rights of Nature

Moral and Legal Considerations

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The Plundering of Nature

- over-exploitation of natural resources
- destruction of habitats, loss of soil fertility, ocean acidification
- decline of biodiversity
- Rapid expansion of land-use developments
- poisoning of the earth, seas, and air
- spread of zoonotic diseases
- global heating, extreme weather events

Strategy 1: Moralizing Nature

- Attribute moral worth to nature through particular worldview
 - Example: Greater Yellowstone Ecosystem in Wyoming, Montana, Idaho
 - Utilitarian moral view: best use of it for all
 - Spiritual moral view: aesthetic beauty, personal experience, obligation
 - Biocentric moral view: intrinsic value of living ecosystems
 - New Values - autonomy of nature, respect for nature, domination of nature

Purpose of Moralizing Nature

- The purpose of moralizing nature is to develop strong normative guidelines that can orient action towards our threatened environmental conditions of existence, for our sake and for the sake of other living things
- To change our relation to nature is to change our behavior towards each other through new forms of recognition, approval and disapproval, sanctioning, praise, disgust, and other moral emotions.
- Moralizing wilderness is thus analogous to moralizing smoking, or moralizing trash. It is a way of incorporating moral standards into practices which have hitherto gone ethically underdetermined

Problems of Moralizing Nature

- Anthropocentric vs. Eco-centric
- Particularist vs. universal
- Community-centric vs. Individual belief
- Requires a more comprehensive metaphysical worldview
- Arbitrary wish
- Cannot be required of anyone

What's Driving Plunder of Nature?

- Not Greed - Not Accidental - Not Bad People
- Plundering nature is deeply embedded in economic processes, irrespective of one's individual moral views.
- Example: a green, climate conscious person who drives electric, eats vegan, recycles, cares for animals—but whose day job at IT company depends on global value chains whose individual parts are dependent on over-exploitation of resources, energy—or else it won't make returns.
- Thus: need a stronger strategy of protecting ecosystems, not dependent on moral views of individuals as 'consumers'

Strategy 2: Legalizing Nature

- What does it mean to legalize nature?
 - incorporating nature as a subject into the legal architecture of modern societies.
- Which nature?
 - Ecosystems, wildlife, forests, rivers, mountains
- What kind of subject?
 - Legal Personality – human, states, NGOs, corporations
- Rights of Nature: protected legal subject independent of human interests

Examples: over 400 Rights of Nature initiatives

- New Zealand, Australia
- Ecuador, Bolivia, Colombia. Argentina, Peru
- USA, Canada, Mexico
- Spain, Germany
- India

Ethical Problems of Rights of Nature

- Rights of nature have so far emerged mostly in indigenous communities with very specific cosmological and epistemological frameworks
- How to make them compatible with normative frameworks of secular legal constitutions
- The normative framework of Pachamama, for example, cannot simply be “applied” to another community, which its own moral framework for the interpretation of relations between humans and nature

Legal Objections

- Rights serve to protect individual and collective interests, but because nature, unlike humans, has no interests, it has no rights.
- Whoever has rights also has duties, but nature cannot act, which is why it has no duties and, to that extent, no rights.
- Freedom forms the normative core of our most important rights, but since nature is not free, having its own rights is wishful thinking without any normative basis.
- Rights protect claims and vulnerabilities, but that which feels no pain, has no needs, and lacks self-awareness – such as rivers, animal species (as distinct from individual animals) and landscapes – cannot be a bearer of rights.

Normative Justification of Rights of Nature

- Example: Tilo Wesche, *Die Rechte der Natur* (2023)
- What makes rights of nature valid, that is legitimate?
 - Validity conditions of rights of nature: have to be same as validity conditions of other rights. But which ones?
- More like human rights or more like property rights?
 - Problems of human rights model: weakly enforced
- Property Rights as stronger:
 - Property vs. Property
 - Many different justifications of property in different goods
 - Labor Theory of Property + Ecosystem Services = Nature has right to its own property

Problems of the Legalization of Nature

- Problem of competing interests
- Problem of incommensurability
- Problem of backfiring:
 - Creating new rights of nature might lead to even more forms of plundering, if those rights can be traded, invested, decoupled (Pistor, Code of Capital)
 - Creating a right vs. opening the door to many competing claims
 - Who owns the rights of nature?

Strategy 3: Socializing Nature?

- Begin not with the question of moral right or legal right but ownership
- Who owns nature?
- To socialize (GG Art 15) means to create common property through democratic legal institutions for the common good
 - e.g. housing referendum in Berlin
 - Socializing ecosystems as a means of sustainability:
 - Embedding rights of nature within social institutions tasked with ecological transition and multispecies flourishing

Thank you