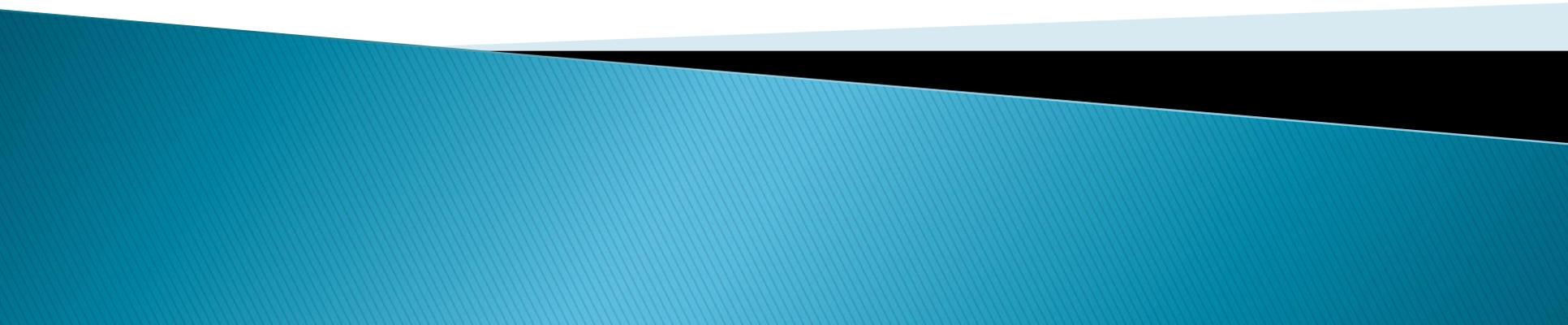


Legal Personality for Nature: a concept for implementing rights of nature in law

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1.Introduction

Universal Declaration on the Rights of Mother Earth (UDRME)
proposed **rights for nature**.

But how can they be fitted into legal systems in practice?

Each of the 'UDRME' rights needs to be analysed, but what to hang them on to? Vagueness?

Convert rights to 'duties' imposed on people and companies to protect nature? Yes..... But.... **That approach is not working**.

Environmental Law needs rethinking....as Ecological Law?

One approach: recognise elements of **nature as a 'legal person'**.

2. Concept of legal Personality

Humans are persons. Physical, living, with mass...

Persons have needs, interests to be protected...

People organise socially, collectively, around tasks, activities, funds...

The law invented a term to help them: 'legal person'.

'Legal Personality' is a concept; useful, but a 'legal fiction'.

(You cannot touch a legal fiction as it exists in the mind; semiotic.)

It allows organised groups to do business through representatives.

The law treats a legal person like a physical person in many ways and allows it to sue, be sued and invoke its interests as it wishes....

Nature is physical, living, with mass, but not a person

3. Legal Personality for Nature

Recent **court decisions** have recognised legal personality in rivers

(New Zealand: River Whanganui; India: Ganges, Yamuna; Colombia: Atrato...)

Recent legislation has recognised legal personality for a river:

(New Zealand: Te Awa Tupua (Whanganui River Claims Settlement) Act 2017)

So the concept is feasible and has been explicitly adopted by both courts and a legislature.

(The NZ law has worked out many details to study...)

An article on the Personality of Ben Nevis mountain in Scotland has since created immediate interest in newspaper and radio.

Lesson: the public are interested. Right time now.

4. Rights vest in Persons and Legal Persons

Rights are a form of **property**.

They give entitlement and benefits.

They allow the owner to act and take **initiatives**.

They allow the owner to protect their interests, assert their needs, and **defend** themselves.

Rights means duties and **obligations on others** to respect the holder of the rights.

These advantages are recognised in **legal persons**.

If nature is a legal person **it too** can defend its interests and take initiatives.

Moreover, rights of nature find connection with a legal owner of them.

They become real, **effective**, and not simply abstract.

The duties and obligations of others to nature can be **enforced** directly.

5. Legal Persons have Representatives

Being a mental concept, a 'legal person' **cannot physically appear**.

It requires authorised **representatives** to act for it; they transact its business on its behalf.

Nature as legal person also has representatives for its needs and interests.

Nature has its own **language**; it needs humans to interpret, explain, translate into human language(s) for the purpose of human law.

(Urbanised humans may not understand nature in future...)

Unborn babies can have representatives. Why not nature?

The details need to be worked out.....

Who can act, what conditions? What elements of nature?

(Rivers: already.... Mountains? Ecosystems? Oceans?)

The *Te Awa Tupua* (Whanganui River Claims Settlement) Act 2017) shows the way.

6. Persons are Present in all Forms of Law

Persons and legal persons have a central place in **all branches of law** and in all types and levels of law.

So, we find 'persons' in domestic national law: civil law, administrative law, criminal law..., as well as 'legal persons' ...

Similarly in International law, EU law, etc. We find 'persons' and 'legal persons'

The crime of **ecocide**, and ecocide law, find a place as part of criminal law: protecting nature as legal person, its interests and rights.

Humans benefit: **healthy ecology=healthy life=sustainable economy**.

There is a direct link between rights for nature and **human rights**.

A '**virtuous circle**' in favour of ecological health, human health, and sustainable economies can be brought into being.

7. Nature as Participant/Stakeholder =efficiency

Nature as legal person ‘**simplifies**’ things and enhances ‘**efficiency**’ of decision-making, as ‘**externalities**’ are brought inside decision-making.

Nature ceases to be an ‘**external variable**’ that can be disregarded and abused: it can fight back. It becomes like a third party to a contract, with rights....

Representing itself, it frees others to focus on their activities and interests; decision-makers can receive better information as to effects; courts hear arguments from nature’s representatives, entitled to intervene and defend interests...

However, nature has no ‘money’. It gives freely, but demands **payment in non-monetary ways**. It also punishes disobedience

If we wish nature to participate actively in **human law** then we must find ways to provide it with human ‘**money**’ to pay humans on its behalf. That is an issue.

8. Framework to embed Rights of Nature

Legal Personality for nature is part of a framework.

1. Rights of Nature to be respected.

2. Representatives to watch, protect, defend.

3. Legal personality to bind things together.

4. Effects flow through the legal system, adapting it gradually to nature's personality.

5. Many questions and issues arise.

(What elements of nature? Can nature have a bank account? Can it have duties, owe a debt...?)

But lawyers are imaginative and creative...

9. Conclusion

1. Our legal methods to protect nature need **rethinking**.
2. Looking at the **whole picture** is essential.
3. **Externalities** must be included in the picture.
4. Nature as externality must be brought **inside as partner**.
5. **Legal Personality** for elements of nature brings them inside.
6. Nature becomes holder of rights, **stakeholder**, participant.
7. Nature rights are exercised through **representatives**.
8. Nature representatives participate in **all** levels and branches of law.
9. Nature representatives protect the **needs and interests** of nature.
10. Nature representatives **translate** nature's language into human language.
11. Legal Personality enhances **efficiency** and sustainable development.
12. Legal Personality for Nature enhances **Justice**.

These all form part of Ecological Law: the way forward...

The End....

but also...

The Beginning....

We can have a future if we want....