

THE RIGHTS OF NATURE AGAINST PEOPLE'S SOVEREIGNTY?

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Reading time : **4 minutes**

In this article, Julien Bétaille presents his views on the recognition of the rights of nature and its implications for environmental protection.



Improving the legal protection of the environment in general is not simply a technical problem but raises political issues that deserve to be discussed democratically, not just by legal experts. For some years now, following the recognition of nature as a legal person in Ecuador's 2008 Constitution, a number of Western lawyers and scholars have been using their legal expertise to promote the "rights of nature" or the recognition of nature as a legal person. They present this type of reform as a simple legal technique, whose effects would nonetheless be spectacular...

It is true that this was originally a relevant idea. In the early 1970s, Christopher D. Stone proposed considering nature as a legal person. This would enable it to defend its procedural and substantive rights in court, through human "guardians" appointed to represent it. While this iconoclastic idea may have come as a surprise, no one today disputes its technical feasibility. It is legally possible to recognize the legal personality of nature. From then on, this issue was no longer a matter for debate between legal experts only. It entered the political arena.

Rather than knowing whether such recognition is possible, the question is to determine its possible usefulness to better protect the environment. It is on this point that the proposal may seem anachronistic in the European or North American context. Since the mid-1970s, other legal avenues have been used to fulfill the same functions. Access to justice has been widely opened up. Every day, nature is defended before the courts, notably by environmental NGOs, with no need to personify nature. The advocates of this personification seem to ignore it, and in so doing they are pushing an open door and, in a way, deceiving the general public.

This is a recurring theme. This is how they present the fact that Ecuadorian judges banned mining in a national park in the name of the rights of nature as a great legal advance. But let's be serious. This is certainly progress in Ecuador and it is of course important to welcome it, but using this argument to promote the personification of nature in Europe is simply inadequate. Traditional environmental law has

long used this type of prohibition in national parks. It is of course possible to prohibit economic activities in the name of environmental protection. There is no need to resort to the rights of nature. We should certainly create more national parks and protected areas, but this is not a question of legal technique.

The debate is also distorted when it comes to the supposedly superior performance of "nature's rights". There are few articles on this topic that do not begin by explaining that environmental law is incapable of properly protecting nature. However, where it does exist, and when it is properly implemented, it produces undeniable results. Just think of the progress that has been made over the last fifty years or so (reduction in pollution, return of large predators, surface of protected areas), even if this remains largely insufficient given the scale of environmental problems. The problem, then, is not to replace the techniques of traditional environmental law with those of the "rights of nature", as their supporters suggest. The real issue is the possible extension and radicalization of the rules that protect nature. There is no point in hiding this political issue behind a legal cloak. It is a question that should not be monopolized by legal experts, but should be debated in the political arena.

Indeed, the promotion of the "rights of nature" tends to push political issues into the background. Radicalizing the rules protecting the environment necessarily has consequences for individual and collective freedoms. It is therefore better to have an open democratic debate on this subject than to focus on a simple idea, too simple. Supporters of the "rights of nature" tend to deny it when they take part in public debate, but it is obvious that as soon as rights are recognized to nature, the question of how they compare with those of humans is raised. On the other hand, the preachers of this theory are more assertive about their project, following the example of the *Earth Jurisprudence* and *Wild Law* movements which intend, without any real nuance, to "redefine" human rights by subjecting them to a pseudo-natural order, nothing less...

What is most disturbing when reading these arguments is the common emphasis on the idea of "biological" laws or laws "based on the functioning of living organisms". So, there's no room for political choice, it is just a matter of following – without discussion – an injunction from nature. In other words, this is a return to the naturalistic fallacy, a deliberate confusion between the laws "of nature" and legal laws. But nature, as such, does not set any standards. Of course, humans observe nature and science describes regularities in it, deriving "scientific laws" from it. But there is nothing normative about these "laws". For example, science describes the decline in biodiversity and offers an explanation, but it does not prescribe the solutions to be adopted, at most it suggests them. By contrast, based on these scientific results, humans may (or may not) decide to impose legal standards on themselves, to the benefit of nature. It is then a self-limitation of humans in favor of nature, not the consequence of a "natural order". This is precisely what classic environmental law has been doing for a long time, on the basis of scientific findings but also as a result of democratic deliberation. This is the real "paradigm shift", which already took place with the affirmation of environmental law in the 1970s. Humans have collectively decided, albeit imperfectly and tragically inadequately, to limit themselves. But with or without "rights of nature", nature as such decides nothing.

This clarification is important because there is a great risk that this idea of "laws of nature" will be manipulated, especially in a context where we have to make radical decisions in favor of the environment. Indeed, history has taught us that we must be wary of arguments based on the "laws of nature", even when they are presented as liberal and well-intentioned. In his day, Aristotle justified slavery in this way. Today, some people oppose abortion or same-sex marriage in the name of these same "laws of nature". At the end of the day, these laws are an argument of authority used by a few to impose a prescription on the majority, hiding behind a pseudo normative "natural order". In the case of the "rights of nature", the risk is that a minority of nature's "guardians" will decide "in the name of nature" against most of the people. We would then be moving from the sovereignty of the people to a form of tyranny.