

Inquiring Minds topic – 8 May 2020

Jim Goodale, Moderator

Rights of Nature

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As you read through this paper, consider the following points:

- 1) Do local governments have the legal right to pass and defend RON laws?
- 2) Wouldn't adopting a RON amendment in a town or county charter result in huge litigation costs ultimately falling on the shoulders of taxpayers?
- 3) To a large degree, our water problems are the results of pollution north of Lee County. How would a Caloosahatchee River Bill of Rights in Lee County change that?
- 4) How do you think big agriculture would react to RON laws and if their response was negative, what steps would they take to oppose the legislation?"
- 5) What about personal property rights of residents looking to make money by contracting with a corporation to frack or site a landfill? What about the vineyard that wants spray toxic pesticides from an aircraft to protect their crops? Don't their rights count?

Currently, although we love nature, we regard it as something separate from and subordinate to our human world, that its value is in how it serves us. Too often we think the well-being of the economy matters more than that of the earth it depends upon, such as when at the last News-Press Water Summit one panelist said of last year's horrific algal blooms, "It wasn't *just* an environmental issue, it was an economic issue."

This mindset has brought us our water crisis and the climate and mass extinction crises now confronting all mankind. Granting legal rights to nature, as rights have been granted to corporations, is the fundamental change we need. It transforms the paradigm of man as master and nature as subject to one of mutually beneficial balance, compelling us to live sustainably within nature's laws and the limitations.

Several years ago, Lake Erie was hit by a toxic blue-green algae bloom, the result of fertilizer and manure run-off from upstream farms under minimal state regulation. For two years, citizens of Toledo, Ohio tried unsuccessfully to get the state to fix the problem. Eventually, they realized their right to clean water was dependent upon the legal recognition of the lake's right "to exist, flourish, and evolve naturally." They crafted a Lake Erie Bill of Rights, got it on the ballot, and 61% of voters turned it into law. The way people and corporations can take another party to court for violation of their rights, Toledoans were now able take polluters to court for violating the rights of the lake and their right to clean water and healthy ecosystems.

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Several months later, however, at the urging of the Ohio Chamber of Commerce, the state legislature effectively nullified the new law and preemptively all rights of nature initiatives throughout the state. Political actors prevailed not only over nature's interests, but over those of Toledoans on so basic an issue as water. In August of 2019, the lake again suffered widespread blue-green algae blooms.

But that fight is not over, and this is an idea that is not going away.

More than three dozen municipalities in the United States, Pittsburgh being the largest, have adopted Rights of Nature (RON) laws. Nations are incorporating rights of nature clauses in their national constitutions. In Florida, citizen groups in nine Florida counties have been working to establish Rights of Nature for key waterways, including the Caloosahatchee River here in Lee County. These nine groups have recently formed the first statewide RON effort in the nation, the Florida Rights of Nature Network, with the additional purpose of adding a Rights of Nature amendment to the state constitution.

What follows is a concise and clear explanation of Rights of Nature from the legal team that has been at the vanguard of the movement, the Community Environmental Defense Fund (<https://celdf.org/2016/03/rights-nature-faqs/>.)

What do we mean when we say that nature has rights?

Under the current system of law in almost every country, nature is considered to be *property*. Something that is considered property confers upon the property owner the right to damage or destroy it. Thus, those who "own" wetlands, forestland, and other ecosystems and natural communities, are largely permitted to use them however they wish, even if that includes destroying the health and well-being of nature.

When we talk about the Rights of Nature, it means recognizing that ecosystems and natural communities are not merely property that can be owned. Rather, they are entities that have an independent and inalienable right to exist and flourish.

Laws recognizing the Rights of Nature change the status of ecosystems and natural communities to being recognized as *rights bearing* entities. As such, they have rights that can be enforced by people, governments, and communities on behalf of nature.

Why do we need to adopt new legal structures recognizing Rights of Nature?

By almost every measure, the environment today is in worse shape than when the major environmental laws were adopted in the United States over forty years ago. Since then, countries around the world have sought to replicate these laws. Yet, species extinction is accelerating, global warming is far more advanced than previously believed, deforestation continues around the world, and overfishing the world's oceans has caused the collapse of many fisheries.

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These environmental laws – including the federal *Clean Air Act*, the *Clean Water Act*, and similar state laws – *legalize* environmental harms. They *regulate how much pollution or destruction of nature can occur under law*. Rather than preventing pollution and environmental destruction, our environmental laws allow and permit it. In addition, under commonly understood terms of preemption, once these activities are legalized by federal or state governments, local governments are prohibited from banning them.

Laws recognizing the Rights of Nature begin with a different premise: Ecosystems and natural communities have the right to exist and flourish. People, communities, and governments have the authority to defend those rights on behalf of ecosystems and natural communities.

Where have laws recognizing the Rights of Nature been adopted?

The first laws establishing legal structures that recognized the Rights of Nature were adopted by local municipalities in the United States in 2006. Tamaqua Borough, Schuylkill County, Pennsylvania, was the first community to enact the Rights of Nature. Since then, more than three dozen communities have adopted such laws. In November 2010, the City of Pittsburgh, Pennsylvania, became the first major municipality in the United States to recognize Rights of Nature. In September 2008, Ecuador became the first country in the world to recognize Rights of Nature in its constitution. Bolivia has also established Rights of Nature laws.

Doesn't recognizing Rights of Nature just add an additional layer of regulation?

No. Current environmental regulatory structures are mostly about “permitting” certain harms to occur, such as fracking, mining, and factory farming. They act more to legalize the harmful activities of corporations and other business entities than to protect our natural and human communities.

Although people have been talking about “sustainable development” for decades, very little has been done to change the structure of law to achieve that goal. Laws recognizing the Rights of Nature finally codify the concept of sustainable development. They disallow activities that would interfere with the functioning of natural systems that support human and natural life.

What happens when the Rights of Nature and human rights conflict?

When different human rights conflict, a court weighs the harms to the interests, and then decides how to balance them. The same thing happens when the Rights of Nature conflict with human rights.

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Given that ecosystems and nature provide a life support system for humans, their interests must, at times, override other rights and interests. Otherwise, we wouldn't have a habitable planet to support our continued existence.

Of course, humans are part of nature as well, which means that human needs must also be considered when the rights and interests of ecosystems come into conflict with ours.

Furthermore, many nations have expanded their body of legal rights to recognize a **human right to a healthy environment**. This includes a number of European nations, including Spain, France, Portugal, Greece, and Finland.

The recognition of such rights should mean that the highest legal protection is implemented and enforced. However, over recent decades, as ecosystems and species around the globe have been pushed toward collapse and global warming has accelerated, it has become increasingly clear that *fulfilling the human right to a healthy environment is unachievable without a fundamental change in the relationship between humankind and nature*.

Thus, *implementing and fulfilling a true human right to a healthy environment is dependent on the health of the natural environment itself*. The human right to a healthy environment can only be achieved by securing the highest protections for the natural environment – by recognizing in law the right of the environment itself to be healthy and thrive.

Recommended reading: ***Noah's Second Voyage: The Rights of Nature as Law***, by Oliver Houck, co-author of the Clean Water Act. This offers a comprehensive but very readable overview of the Rights of Nature movement.

<https://www.occompt.com/wordpress/wp-content/uploads/2019/08/2019-08-08-Noahs-Second-Voyage-The-Rights-of-Nature-as-Law.pdf>