

“Rights of Nature: The Evolution of Personhood Rights”

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Recently, there has been a growing movement to grant rights to certain aspects of nature among indigenous tribes and their supporting advocates in the United States as well as other places throughout the world.¹ These rights are specifically called “Rights of Nature,” and are essentially a tool being used to grant legal standing to various aspects of nature because of past failures in third-party attempts at representing nature in court.² Advocacy for this movement can be seen in case law from as early as the 1970s in *Sierra Club v. Morton*, 405 U.S. 727 (1972),³ and such rights are being utilized around the world to defend waterways, species, and more from human threats.⁴ This is a “growing international movement that recognizes species and ecosystems not simply as resources for humans to use, but as living entities with rights of their own.”⁵ The Rights of Nature is a ground-breaking legal development which has altered the way in which we view personhood rights and our surroundings; it is essential that we incorporate the recognition of these rights into our legal system. This article will first offer an explanation of the Rights of Nature and the role that they have played in recent years, discuss the prevalent case law, and will conclude by offering an opinion on why the Rights of Nature should be permanently incorporated into our legal system.

By preserving nature, the grant of these rights has led to increased support of indigenous groups who view nature as a vital organ of their everyday lives.⁶ The development of these rights has not only been a furtherance of respect for indigenous groups with whom we live side by side,

¹ Emily Lavang, “Can We Protect Nature by Giving it Legal Rights?,” *MinnPost*, MinnPost, February 2020, n.1.

² Lavang, *supra* n.2.

³ *Sierra Club v. Morton*, 405 U.S. 277 (1972), n.3.

⁴ Emily Lavang, “Can We Protect Nature by Giving it Legal Rights?,” *MinnPost*, MinnPost, February 2020, n.4.

⁵ Lavang, *supra* n. 5.

⁶ Emily Lavang, “Can We Protect Nature by Giving it Legal Rights?,” *MinnPost*, MinnPost, February 2020, n.6.

but it has also led to increased respect for our natural surroundings. Subsequently, those advocating for this unique worldview have stated that this movement is founded upon “balancing what is good for human beings against what is good for other species, what is good for the planet as a world.”⁷ Nature in all life forms indeed has “the right to exist, persist, maintain, and regenerate its vital cycles.”⁸ As human beings we have the duty to enforce these rights on behalf of nature.⁹

These rights function in a significantly different manner than the typical environmental laws to which we are generally accustomed in three major ways.¹⁰ First, in establishing rights of nature, communities are working together outside of the regulatory system in order to develop those legal rights, while in other conventional environmental protection movements communities tend to vary in approach.¹¹ Second, Rights of Nature are enforced differently than other environmental protections since in dealing with Rights of Nature “a community bill of rights is adopted into law, and a guardian is designated to enforce the rights of an ecosystem”; the adoption of a community bill of rights and appointment of a guardian is atypical in the enforcement of other environmental protections.¹² Finally, environmental protection is typically viewed through a lens in which a hierarchy of human beings is placed above and in control of nature, but here there is a sense of reciprocity between human beings and their natural

⁷ What is Rights of Nature?,” *Global Alliance for the Rights of Nature*, The Rights of Nature, n.7.

⁸ Global Alliance, *supra* n.8.

⁹ Global Alliance, *supra* n.9.

¹⁰ Emily Lavang, “Can We Protect Nature by Giving it Legal Rights?,” *MinnPost*, MinnPost, February 2020, n.10.

¹¹ Lavang, *supra* n.11.

¹² Lavang, *supra* n.12.

surroundings.¹³ This movement is all about the recognition and honoring of the rights sustained by nature¹⁴; the movement recognizes that ecosystems are entitled to rights just like humans.¹⁵

The enforcement of these rights by United States case law and the recent development of Rights of Nature laws throughout the world demonstrates that this is an international movement which is consistently growing.¹⁶ New Zealand and Ecuador support the movement for the Rights of Nature,¹⁷ and, in the United States, about three dozen communities in Oregon, California, New Mexico, Colorado, Virginia, New York, and New Hampshire have developed laws that provide legal rights to parts of their ecosystems.¹⁸ Additionally, similar work has been occurring in Toledo, Ohio and on a more local scale, in Grant Township, Pennsylvania.¹⁹

United States Case Law Has Expanded Upon the Rights of Nature:

The Rights of Nature are further supported by a few examples of recently developed case law. For instance, the Yurok Tribe has successfully created a resolution which allowed cases to be brought in tribal court on behalf of the Klamath River, on the basis of personhood rights.²⁰ Also, in *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999), Rights of Nature were provided to “manoomin” (wild rice)²¹ because the Supreme Court of the United States sustained a treaty which had granted the Chippewa Indians hunting, fishing, and gathering rights – specifically including the right to gather wild rice.²² Furthermore, Ohio voters recently

¹³ Lavang, *supra* n.13.

¹⁴ “What is Rights of Nature?,” *Global Alliance for the Rights of Nature*, The Rights of Nature, n.14.

¹⁵ Global Alliance, *supra* n.15.

¹⁶ Emily Lavang, “Can We Protect Nature by Giving it Legal Rights?,” *MinnPost*, MinnPost, February 2020, n.16.

¹⁷ Lavang, *supra* n.17.

¹⁸ Lavang, *supra* n.18.

¹⁹ Lavang, *supra* n.19.

²⁰ Smith, Anna V. “Some Indigenous Communities Have a New Way to Fight Climate Change: Give Personhood Rights to Nature.” *Mother Jones*, Mother Jones, 29 Sept. 2019, n.20.

²¹ Alex Brown, “Cities, Tribes Try a New Environmental Approach: Give Nature Rights,” *Pew Trusts*, Pew Trusts, October 2019, n.21.

²² *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999), n.22.

passed a law which grants personhood rights to Lake Erie; this has notably been referred to as the “Lake Erie Bill of Rights.”²³ This “Bill of Rights” has declared “irrevocable rights for the Lake Erie Ecosystem to exist, flourish, and naturally evolve,” in order to grant Lake Erie legal standing.²⁴ Finally, the Ponca tribe, in 2017, was one of the first tribes in the United States to join in the movement of enacting Rights of Nature law²⁵ by creating a statute based on an anti-fracking claim²⁶ which constituted an attempt to prevent earthquakes, cancer, and asthma.²⁷ Although this is a relatively new movement, support for this cause has been steadily increasing over recent years.²⁸

Case law, often originating in tribal court and making its way through the United States Supreme Court, lends substantial support to the Rights of Nature movement.²⁹ Since the story behind such case law begins in tribal court, it is important to recognize the relevance of tribal courts in the United States justice system.³⁰ Tribal courts are courts of general jurisdiction, and they are known for their broad criminal jurisdiction.³¹ There is a need for these tribal courts because states have no jurisdiction over the activities of Native Americans and Native American tribes that reside in designated Native American reservations.³² Throughout the United States, there are about four hundred tribal justice systems.³³ Tribal sovereignty is protected by means of

²³ Alex Brown, “Cities, Tribes Try a New Environmental Approach: Give Nature Rights,” *Pew Trusts*, Pew Trusts, October 2019, n.23.

²⁴ Brown, *supra* n.24.

²⁵ Brown, *supra* n.25.

²⁶ Intercontinental Cry. “Ponca Nation of Oklahoma to Recognize the Rights of Nature to Stop Fracking.” *Intercontinental Cry*, 31 Oct. 2017, n.26.

²⁷ Alex Brown, “Cities, Tribes Try a New Environmental Approach: Give Nature Rights,” *Pew Trusts*, Pew Trusts, October 2019, n.27.

²⁸ Emily Lavang, “Can We Protect Nature by Giving it Legal Rights?,” *MinnPost*, MinnPost, February 2020, n.28.

²⁹ Alex Brown, “Cities, Tribes Try a New Environmental Approach: Give Nature Rights,” *Pew Trusts*, Pew Trusts, October 2019, n.29.

³⁰ Ncsc. “Tribal Courts Resource Guide.” *NCSC*, National Center for State Courts, 18 Feb. 2016, n.30.

³¹ Ncsc., *supra* n.31.

³² Ncsc., *supra* n.32.

³³ “Tribal Court Systems.” *Indian Affairs*. United States Department of the Interior, n.33.

either the tribal justice system or by means of traditional United States courts.³⁴ Finally, it is important to note that most tribes have their own tribal justice system, and for those tribes who do not have their own tribal justice system such services are provided through the Court of Indian Offences.³⁵

The first case offering support to the Rights of Nature movement is *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999). The issue in this case was whether the Chippewa Indians currently maintained the rights that were granted to them through a treaty created in 1837.³⁶ Under the 1837 Treaty, the Chippewa Indians ceded land in what is now Wisconsin and Minnesota to the federal government.³⁷ In return, the federal government guaranteed the Chippewa Indians certain hunting, fishing, and gathering (specifically wild rice) rights on the ceded land.³⁸ It is important to note that while the treaty was essentially removing the Chippewa from their land, the main right that they asked for in return was the ability to continue to hunt, fish, and gather wild rice; this shows just how essential this was in the lives of the Chippewa.³⁹ In this case, the Chippewa Indians argued that the rights the 1837 Treaty granted to them still exist.⁴⁰ Meanwhile, the state of Minnesota argued that three events caused the Chippewa Indians to lose those rights: an Executive Order issued in 1850, an 1855 Treaty, and the admission of Minnesota into the Union in 1858.⁴¹ Ultimately, the Supreme Court reached the decision that despite the historical references asserted by the state of Minnesota, the Chippewa

³⁴ Indian Affairs, *supra* n.34.

³⁵ Indian Affairs, *supra* n.35.

³⁶ *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 175 (1999), n.36.

³⁷ *Id.* at 175, n.37.

³⁸ *Id.* at 175, n.38.

³⁹ *Id.* at 175, n.39.

⁴⁰ *Id.* at 176, n.40.

⁴¹ *Id.* at 176, n.41.

Indians did in fact retain the hunting, fishing, and gathering rights granted in the 1837 Treaty.⁴² The Court reached this conclusion by reasoning that there was no subsequent treaty, executive order, or congressional act that ever took away the rights of the Chippewa Indians.⁴³

Another relevant case is *Baley v. United States*, 942 F. 3d 1312 (2019). In that case, the main issue was whether the Bureau of Reclamation had infringed upon the Yurok Tribe's water rights specifically regarding the Klamath River Basin.⁴⁴ The Yurok Tribe includes several distinct indigenous groups: the Klamath Tribe, the Moadoc Tribe, and the Yahooskin Band of Snake Indians.⁴⁵ Collectively, the Yurok Tribe is a federally recognized tribe that has used the Klamath River Basin for over a thousand years for activities including hunting, fishing, and foraging.⁴⁶ Preceding this case, the Bureau of Reclamation temporarily halted water deliveries originating in the Klamath River Basin.⁴⁷ The Yurok Tribe thereby alleged that the Bureau's action constituted a taking of water rights without just compensation to the tribe.⁴⁸ On appeal, the United States Court of Appeals for the Federal Circuit, in its holding, sustained recognition of the federally reserved water rights of the Yurok Tribe because of the historical essential use of the river on the reservation.

The final case, *Sierra Club v. Morton*, 405 U.S. 727 (1972), demonstrates how other, non-indigenous groups have attempted to bring advocacy claims in federal courts in an effort to preserve nature which is such an essential aspect in lives of individuals including tribes throughout the country.⁴⁹ The issue there was whether the Sierra Club had standing to bring a

⁴² *Id.* at 176, n.42.

⁴³ *Id.* at 208, n.43.

⁴⁴ *Baley v. United States*, 942 F. 3d 1312, 1316 (2019), n.44.

⁴⁵ *Id.* at 1322, n.45.

⁴⁶ *Id.* at 1322, n.46.

⁴⁷ *Id.* at 1316, n.47.

⁴⁸ *Id.* at 1316, n.48.

⁴⁹ *Sierra Club v. Morton*, 405 U.S. 277 (1972), n.49.

claim against the United States Forest Service even though they had not been directly affected as a result of the actions taken by the Forest Service.⁵⁰ In this case, the Forest Service entered into a contract with Walt Disney Enterprises, Inc., which permitted Disney to build a resort in the Mineral King Valley, located in the Sierra Nevada Mountains.⁵¹ The Supreme Court reasoned that “aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process.”⁵² However, the Court went on to state that “a mere ‘interest in a problem’ no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization ‘adversely affected’ or ‘aggrieved’ within the meaning of the Administrative Procedure Act.”⁵³ In conclusion, the Court held that the Sierra Club lacked standing to maintain this action because even though the Sierra Club had a cognizable interest in the preservation of the Mineral King Valley, the Court explained that the claim ultimately needed to fail because the Sierra Club did not have standing to bring the claim.⁵⁴ Although the Sierra Club lacked standing to bring such a claim, preservation of nature is a key aspect for indigenous worldviews; thus by means of this lawsuit the Sierra Club has helped to pave the way for the future advocacy of nature.⁵⁵

The Impact on the Evolution of Personhood Rights:

For legal purposes, a driving need behind the Rights of Nature movement has been to grant legal standing or, as an alternative, guardianship to elements of nature so as to avoid the

⁵⁰ *Id.* at 732, n.50.

⁵¹ *Id.* at 729, n.51.

⁵² *Id.* at 734, n.52.

⁵³ *Id.* at 739, n.53.

⁵⁴ *Id.* at 741, n.54.

⁵⁵ Emily Lavang, “Can We Protect Nature by Giving it Legal Rights?,” *MinnPost*, MinnPost, February 2020, n.55.

result of *Sierra Club*.⁵⁶ In efforts to incorporate the Rights of Nature, there is potential to use either a judicial or legislative approach.⁵⁷ Turning to the polls or the courts, there is “international precedent” to aid this revolution within the United States as Rights of Nature have been incorporated in other countries throughout the world through several avenues including case law, voting initiatives, and constitutions.⁵⁸ If the federal government were to recognize the Rights of Nature it would help to avoid the complications of third-party standing, give recognition to tribal culture, and provide protective safeguards for natural resources in the United States from which we would all benefit.⁵⁹ The Rights of Nature has been a growing movement throughout the world by means of court systems, legislation, and grassroots initiatives in various countries and several international organizations such as the European Union and the International Union for the Conservation of Nature; it is about time we jump aboard this sweeping revolution.⁶⁰

While the Rights of Nature may seem like quite a foreign concept, its importance should not be underestimated. Notably, when most citizenship rights were first developed in this country, most of those rights were created through a very narrow lens. Many indigenous groups who live in this country view nature through a broader lens. In those indigenous cultures, nature plays an essential role. Even if we do not view nature in the same way, we should respect the culture of these indigenous groups; that respect should include our acceptance of the idea that nature does in fact deserve certain citizenship rights. This will likely aid the relationship between

⁵⁶ Meredith N. Healy, “Fluid Standing Incorporating Indigenous Rights of Nature,” *Colorado Natural Resources, Energy and Environmental Law Review*. 340 (2019), n.56.

⁵⁷ *Id.* at 341, n.57.

⁵⁸ *Id.* at 346, n.58.

⁵⁹ *Id.* at 350, n.59.

⁶⁰ Kaitlin Sheber, “Legal Rights for Nature: How the Idea of Recognizing Nature as a Legal Entity can Spread and Make a Difference Globally,” *Hastings Environmental Law Journal*. 161 (2020), n.60.

indigenous groups and the rest of the United States. Given the history of these relationships, the impact that this movement will have is nothing less than monumental.

The development of the Rights of Nature will no doubt lead to an expansion of the conceptual beliefs behind American citizenship rights. Typically, when the American people discuss citizenship rights, they refer to defining moments in American legislative history such as the Founding Fathers developing the Bill of Rights, the Civil Rights Movement, or the Women's Suffrage Movement. In everyday life, we do not often consider the significance of the personhood rights that we possess. We especially do not think about designating such rights to nature.

Even though the appeal of the Rights of Nature movement is evident, it is a curious inquiry as to where the line will be drawn as far as the granting of those rights by the judiciary. As previously discussed, such rights have been given to the Klamath River, wild rice, and Lake Erie, to name a few recipients. In the course of this research, there does not seem to be any guidelines as to which aspects of nature should receive these Rights of Nature. Although the case law in this area is relatively new and there is still much to be discovered, these rights must be incorporated into the legal system because we owe such respect to indigenous groups and the nature that surrounds us.

The emergence of this movement will greatly expand the scope of our understanding of personhood rights in the United States. As these new practices develop, courts will need to set distinct guidelines and explain the standard for when such rights should be granted. This is an exciting moment in the legal field, but in an effort to establish durable precedent so that the grant of these rights can be further pursued, the issuance and explanation of such guidelines are crucial.

In conclusion, the Rights of Nature must be recognized by the United States federal government – either through the legislative or judicial branch – to avoid the results of *Sierra Club v. Morton*. Without the Rights of Nature, standing in Federal Courts is nearly impossible to achieve – which makes environmental protection unnecessarily difficult. A flourishing environment is essential for all cultures in this country to survive, and our current strategies to protect the environment are proving to be insufficient. Thus, recognizing the Rights of Nature is essential. It is time we stop sitting on the sideline, take these few examples of the adoption of such rights and incorporate them into our own legal system.