

Granting Legal Personhood to the Dutch Wadden Sea?

IWRA WEBINAR *Rights of the River*; 5 December 2019

Prof. dr. Tineke Lambooy LL.M. (Nyenrode Business University; Utrecht University; Universitas Airlangga); Worldconnectors: Lab Future Generations

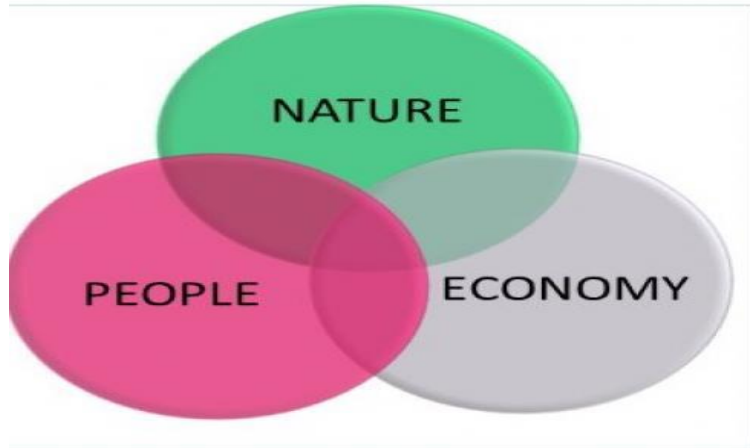


Leadership • Entrepreneurship • Stewardship



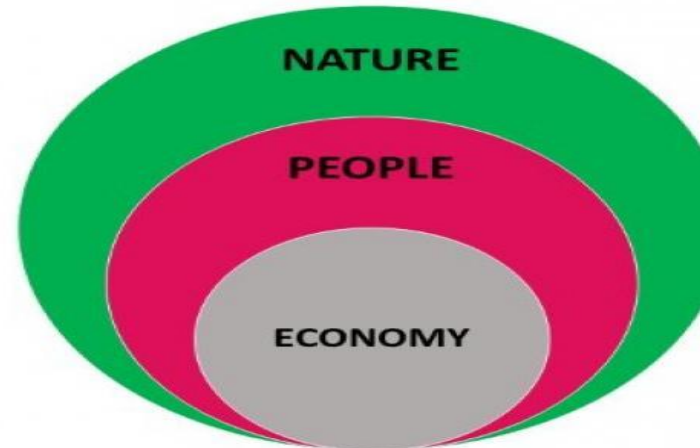
Hierarchy of Rights

CURRENT SUSTAINABILITY MODEL



Valuing nature for its utility to human beings as resources, property or natural capital – rather than seeing it as the source of life

RIGHTS OF NATURE MODEL

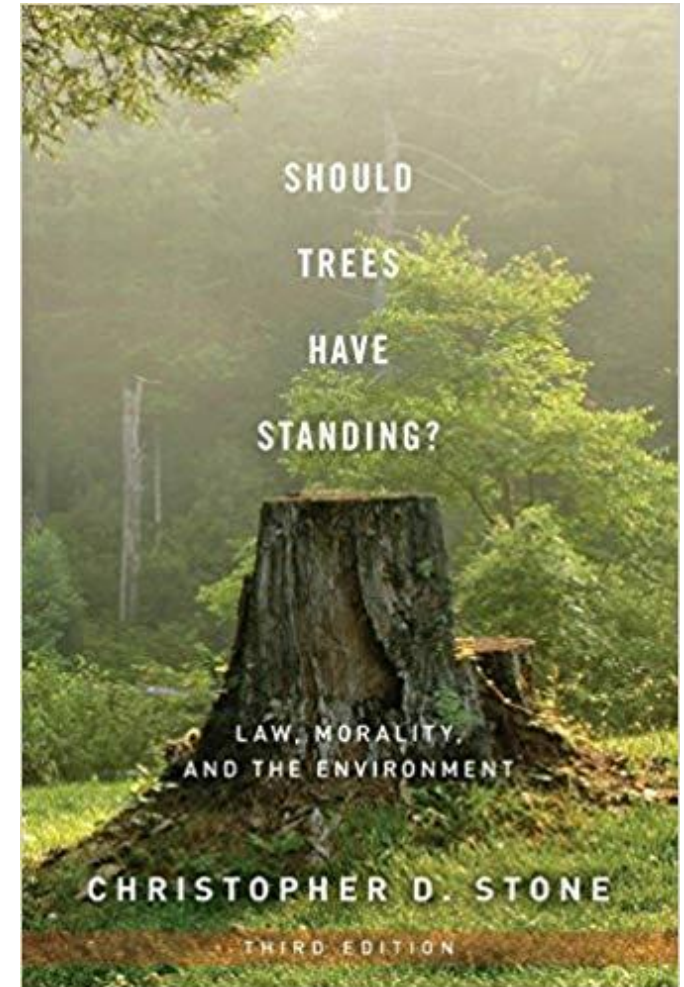


Natural hierarchy of systems because without nature there's no people and without people there's no economy.

Movement: Rights of Nature

- Global Alliance for the Rights of Nature (Ecuador 2010) - Aim: recognition and honoring that Nature has rights
- Rather than treating nature as property under the law, rights of nature acknowledges that nature in all its life forms has the *right to exist, persist, maintain and regenerate its vital cycles*
- And we – the people – have the legal authority and responsibility to enforce these rights on behalf of ecosystems
- For *indigenous cultures* around the world recognizing rights of nature is simply what is so and consistent with their *traditions of living in harmony with nature*

<https://therightsofnature.org/what-is-rights-of-nature/>;
<https://theecologist.org/2017/may/09/natures-rights-new-paradigm-environmental-protection>



ISBN-13: 978-0199736072

ISBN-10: 0199736073

International Precedents

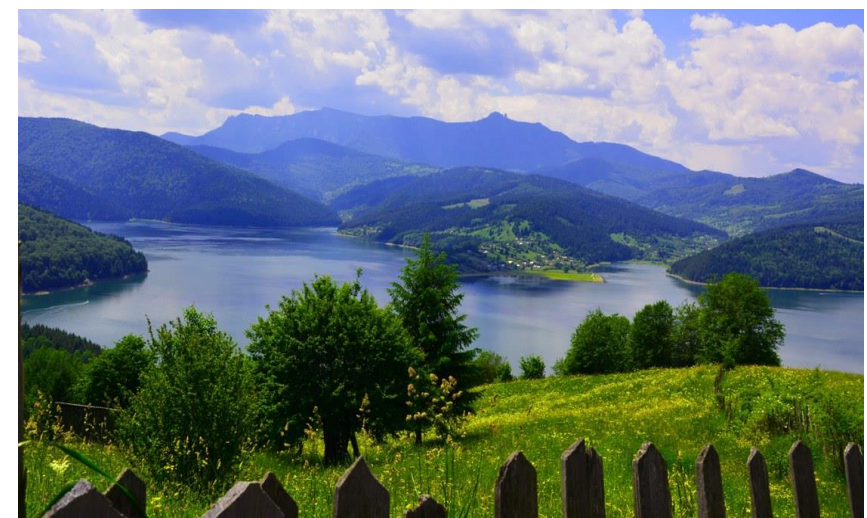
- **Legislation New Zealand:** 3 natural areas have been granted **legal personality**: Mount Taranaki (= 'Mount Egmont'; 2017); Whanganui River (Whanganui River Claim Settlement Act 2017) and National Park Te Urewera (2014)
- **High Court North Indian State of Uttarakhand (2017):** the rivers Yamuna and Ganges, the glaciers that provide the water and the adjoining ecosystems have the **same rights as humans: legal person**
- **Supreme Court Colombia (6 April 2018; STC4360-2018, p. 21).** 25 young plaintiffs successfully invoked their **right to a healthy environment**: the government's failure to stop the destruction of the Amazon jeopardised their futures and violated their constitutional rights to a healthy environment, life, food and water. The court confirmed the importance of protecting the rights of future generations and **recognised Colombia's Amazon area as an 'entity subject of rights', having the same legal rights as a human being.**
- **Ecuador 2008; Constitution (art. 71); Nature is given its rights by analogy to people:** nature 'to exist, persist, maintain and regenerate its vital cycles.'
- **Bolivia (2010) Legislation;** Ley de Derechos de la Madre Tierra, Law 071, ch. II (art. 5); Mother Earth holds certain rights ensuring protection for her and her life-systems; **nature is defined as a legal entity** that 'takes on the character of collective public interest'.

EU Policy and Legal Measures

- Conference in the European Parliament on Rights of Nature (2017): EU begins to look into possibilities of adoption; Draft Directive (2017); 7th Environment Programme
- Hans Bruyninckx, Executive Director of the European Environment Agency - keynote speech:

“We believe that the rights of nature framework will be a powerful ally in achieving this goal by providing a legal imperative for systemic transformation - so that humanity flourishes in harmony with nature for generations to come.”

<http://natures-rights.org/ECI-DraftDirective-Draft.pdf>; https://therightsofnature.org/eu-parliament-natures-rights/?cli_action=1571744448.512



Research Project: Wadden Sea → Nature Legal Person?





Wadden Sea - Dangers

- Intensive human activity: shipping (including ports), recreation, agriculture, military activity, mining (gas and salt), and fishing
- Dangers: Birds (bird migration report East Atlantic Flyway); Seals (chemicals, noise, boating); Over-fishing; Sea level rising



Protection Nature? Legal Status

- Biosphere reserve by UNESCO (entire Wadden Sea 1986); UNESCO World Heritage List (NL and Germany: 2009; Denmark: 2014)
- Convention for the Protection of the Marine Environment of the North-East Atlantic of 1992 (OSPAR) (protecting the marine environment)
- Trilateral Wadden Sea Cooperation (NL; Germany; Denmark 1982)
- Agreement on the Conservation of Seals in the Wadden Sea (NL; Germany; Denmark 1990)
- Convention on Wetlands of International Importance especially as Waterfowl Habitat of 1971 (RAMSAR) (protecting certain wetlands)
- EU Water Framework Directive, the Habitats Directive, and the Birds Directive: form the basis for the EU's 'Natura 2000' ecological network
- NL: Wadden Sea Zoning Framework (Third Wadden Sea Memorandum, 2007): protection natural area and co-usage – 2 Ministeries responsible!
- Unlike the Danish and German parts of the Wadden Sea area: Dutch part as a whole - no national park status under local law – some parts have

Natureship as Novel Form of Governance?

- Dutch Civil Code, Book 2 Legal Persons, Article 2:1(1) Public Legal Person:

“The State, the Provinces, the Municipalities, the Water Boards [Watership] and all other bodies to which legislative power has been granted under the Dutch Constitution have legal personality.”

- In Dutch: ‘Watershap’ – legal person; connected to an area; has a function; and it represents the oldest form of democracy in the Netherlands
- Akin: Natureship → Advantages: rights-based position in discussions about its use and destiny; statutory purpose clause of the legal person is leading (more prominence to nature, balancing interests)
- Governance (should be reflective of the purpose): Which governance bodies? How to appoint or elect? Which stakeholders?

To Be Continued: Thank You

