Sustainability and the Rights of Nature
An Introduction
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Other International Voices for the Rights of Nature

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Other International Voices for the Rights of Nature

New Zealand: A National Park, a River, and Indigenous Peoples

Independently of the Universal Declaration of the Rights of Mother Earth and the International Tribunal for the Rights of Nature, New Zealand created another facet of the emerging paradigm in two contrasting, but complimentary, ways.

In the Te Urewera Act of 2014, New Zealand granted its 821-square mile Te Urewera National Park the status of a person, citing its intrinsic worth and the integrity of its values. Instead of giving direct ownership to the Maori indigenous group (Tuhoe) who claimed the land as expressing their language, customs, and identity, the government and the Maori agreed to give the land itself legal personhood. This is the first national park in the world to receive such protection.

The revolutionary statute states, “Tuhoe and the Crown share the view that Te Urewera should have legal recognition in its own right, with the responsibilities for its care and conservation set out in the law of New Zealand.” The law seeks to assuage the grief of the Maori, who are most closely bound to Te Urewera, by giving the park a powerful means of protecting itself from future threats. As the statute describes it, Te Urewera is prized by all New Zealanders for its “outstanding national value and intrinsic worth; it is treasured by all for the distinctive natural values of its vast and rugged primeval forest, and for the integrity of those values; for its indigenous ecological systems and biodiversity, its historical and cultural heritage, its scientific importance, and as a place for outdoor recreation and spiritual reflection.”

The law then states, “Te Urewera is a legal entity, and has all the rights, powers, duties, and liabilities of a legal person.” These rights, powers, and duties are to be exercised by the Te Urewera Board. The land may not be alienated, mortgaged, or disposed of, except for such minor reasons as boundary adjustments if a parcel of land does not have the values to justify its further inclusion, or for concessions consistent with the Te Urewera management plan.

New Zealand, like Ecuador and Bolivia, is showing how the new paradigm can protect ecosystems more powerfully than regulatory environmental laws. The Te Urewera Act has caught the attention of Rights of Nature activists worldwide studying how to apply its principles, such as in American communities faced with hydraulic fracturing.

In India, the National Ganga Rights Movement advocates protection of the highly polluted Ganges under a rights-based system. The High Court of the Indian state of Uttarakhand in 2017 issued a ground-breaking ruling granting the Ganges River and its major tributary the Yamuna the rights of personhood. Then, in an expanded ruling responding to a citizen petition, the Court granted the entire Ganges ecosystem “the status of a legal person, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them.” The ruling describes the streams, springs, lakes,
air, jungles, meadows and forests on which the Ganges’ health depends. The Court thus conveys its fundamental point that it would be impossible to protect one part of the ecosystem without protecting the whole. Now, polluting the Ganges or harming its ecosystem is equal to harming a person—a dramatic paradigm change. How these provisions will operate in practice, such as who represents the Ganges ecosystem in which situations of environmental harm, will take time to determine. But the legal framework of respect for Nature’s right to flourish is in place.8

A similar, long-standing, unresolved situation in New Zealand faces the country’s third-longest river, the Whanganui. Negotiators are hammering out a potentially similar solution to Te Urewera, based on a creative and novel fusion of indigenous Maori concepts and Western legal frameworks. The framework centers around “rangatiratanga,” a Maori term that is exceedingly difficult to translate into English concepts. Perhaps it is best defined as Maori sovereignty asserted through a collective exercise of responsibilities to protect, conserve, and enhance places or processes for the security of future generations.

The Whanganui River of New Zealand—one of the country’s most iconic and revered waterways—will now be the beneficiary of a partnership between the Maori and the New Zealand government to protect it (Figure 3.1). As of an Agreement, finalized in 2012,

FIGURE 3.1
the Whanganui will become an entity, the first time in New Zealand—and possibly the world—in which a river has had a legal identity bestowed on it. The river will be defined and the activities will be governed by the Maori view of the river.

The Whanganui Iwi, the indigenous group that possesses rangatiratanga over the Whanganui River, is the local group whose entire history is tied to the River. Their definition has been adopted into the Agreement. The river will be considered “Te Awa Tupua,” a living and integral whole whose life is inseparable from the life of the Whanganui Iwi people whose lives, in turn, are so defined by the river.

The new Agreement, entitled “Tu-tohu Whakatupua,” essentially protects the rangatiratanga through a non-Maori guardianship model set up through a Western legal system construct in such a way that it allows the river to be considered a legal entity. It will be recognized as a person under the law, which will give it legally protected rights and interests. The Agreement was signed by the Crown, and by the Whanganui River Maori Trust, representing Maori groups for whom the river is not only home but also spiritual lifeblood. Guardians will be appointed to protect the river; one Guardian appointed by the Crown and one by the Whanganui Iwi. The guardians must focus not only on the river’s physical and ecological rights but also on assuring its spiritual and cultural rights.

This Agreement is not a court settlement with enforceable powers behind it, nor does it carry independent binding authority. But it has the moral force of negotiations over Maori rights that began between the Maori and the British Crown in 1840, via the Treaty of Waitangi. Courts in New Zealand have held that, although the specific duties under the Treaty change as times and needs shift, there is nevertheless a requirement of partnership that continues, one that imposes a duty of good faith and reasonable conduct between the Maori and the government. Among other things, this binds the government to protect Maori property rights and redress past wrongs that violated the spirit of the Treaty. This process requires the Maori to file a claim with the Waitangi Tribunal, which then leads to settlement talks and compensation for proven failures to live up the Treaty’s provisions or principles that have endured beyond specific, enumerated obligations.

Whanganui Iwi have struggled through the New Zealand legal system to have their rights and needs recognized by the Crown since 1873, and the Whanganui River agreement is a fruit of recent negotiations. The Tribunal issued a report on the Whanganui River in 1999. Talks between Whanganui Iwi and the government focusing on the River’s needs started in 2002, began again in 2009, and reached the stage of framing further negotiations in 2011. The on-the-ground details of the Agreement, and Whanganui Iwi claims under the Treaty of Waitangi, specific to the Whanganui River, have yet to be filed. Legislation to implement the Agreement, and to grant legal personhood to the River, as was done for Te Urewera National Park, became law in March 2017.

Tu-tohu Whakatupua holds tremendous promise for fusing indigenous concepts and Western legal concepts in order to protect the natural resources all humans depend on. According to the Agreement, the River will not be owned in any Western legal sense, but will be governed by the Whanganui Iwi’s understanding of the river as a living being, integrated and whole, whose survival means the survival of the group’s culture as well. Since all peoples depend on the local environment for survival, this model is one that could be widely adapted to provide, and given binding authority and powers of enforcement in other contexts far from New Zealand and the beautiful Whanganui River.
Pope Francis Speaks for the Earth: The Encyclical *Laudato Si*

On May 24, 2015, Pope Francis, head of the Roman Catholic Church, issued his encyclical *Laudato Si*—Latin for “Praise Be to You,” a line from the *Canticle of the Sun*, a famous hymn praising God for the handiwork of Nature, written by St. Francis of Assisi, who lived in 13th-century Italy.10

In the ancient Catholic Church, an “encyclical” referred to a letter sent to all the churches in a particular area about a given subject. But in more modern times, an encyclical is primarily the provenance of the Pope, the supreme pontiff of the Roman Catholic Church, whose seat is the Vatican in Rome. A Papal encyclical is a teaching document in the form of a letter sent out by the Pope to all Catholic bishops, often including such Catholic groups as clergy, monastic religious, or laypeople, and sometimes to a wider audience that includes “all people of goodwill.” Encyclicals are the result of intense prayer, study, thought, reflection, and often consultation with others, over long periods. Consequently, they are solemn documents for the Church and its members.

*Laudato Si* is different from other encyclicals because Pope Francis addressed it to every person on the planet, not just the 1.25 billion Catholics who might be expected to take the encyclical most seriously. Although encyclicals are primarily focused on Catholic religious doctrine, *Laudato Si* is unique. Though it contains many elements of Catholic teaching, the encyclical devotes much time to summarizing the world’s environmental problems from a scientific point of view (Figure 3.2).

Pope Francis invites all people to begin a dialogue about the world we share. Catholics, however, have an additional responsibility toward this encyclical. Despite the unique emphasis on scientific consensus concerning environmental dangers, the Pope is also speaking authoritatively on the faith and morals centered in Catholic doctrine. Catholics must consider these teachings carefully, as they are obligated to discern and contemplate them as part of their faith.

*Laudato Si* ranges widely across environmental problems in six chapters, beginning with a summary of current problems, exploring a Gospel of Creation and the human roots of the crisis at hand. Pope Francis then discusses “integral ecology,” by which he means any ecological concept will be incomplete that leaves humankind out of the equation (Chapter 4). His point is that such an omission produces failures in any social-environmental vision because humans and nature are an inseparable part of one another.11

Our human inseparability from Nature is based on the concept of “ecology.” In Greek, both “ecology” and “economy” have the same root, *oikos*, meaning “house.” *Ecology* is the knowledge or understanding of the house, and *economy* is the management of that house, and it is the same house—one that cannot be divided against itself and remain standing. That is to say, Nature’s environmental processes provide the energy that drives our economically competitive society—a fact misunderstood, forgotten, overlooked, or deliberately ignored in the way people treat the sustainability of such things as water catchments and the streams they provide.

With the understanding of what “ecology” means, we can expand the concept to “ecosystem,” which adds the interactions between the living and non-living parts of our environment. Grasping these interactions will help us take care of our “house” in a way that protects the sustainability of its long-term productive capacity for our benefit, that of our children, their children, and the generations yet unborn. These concepts are the foundation of Pope Francis’s vision.
Though the encyclical is based on ecologically oriented pronouncements of prior popes, especially Benedict XVI and St. John Paul II, Pope Francis ranges much more widely than his predecessors. He makes it clear that the basis of the created world is relationship:

The divine Persons are subsistent relations, and the world, created according to the divine model, is a web of relationships. Creatures tend towards God, and in turn it is proper to every living being to tend towards other things, so that throughout the universe we can find any number of constant and secretly interwoven relationships. This leads us not only to marvel at the manifold connections existing among

FIGURE 3.2
creatures, but also to discover a key to our own fulfillment. The human person grows more, matures more and is sanctified more to the extent he or she enters into relationships, going out from themselves to live in communion with God, with others and with all creatures.\textsuperscript{12}

This spiritual understanding leads the Pope to an analysis of current unsustainable consumerism, fed by feelings of instability, uncertainty, self-centeredness, and greed. He calls for a universal awareness that can metamorphose into more sensible and sustainable habits, linked to an environmental education that makes the “leap towards the transcendent, which gives environmental ethics its deepest meaning.”\textsuperscript{13}

The Pope’s clarion call is “For a new dialogue about how we are shaping the future of our planet. We need a conversation which includes everyone…”\textsuperscript{14} He also chastises those who fail to care about this deeply troubling set of problems out of indifference, self-interested opposition, quietist resignation or—a common problem in technological societies—blind faith in technological innovation.

The first part of \textit{Laudato Si} explores the many deep-rooted troubles affecting the planet, basing its summaries on the best available scientific consensus of the day. He begins with pollution and climate change, calling the latter, “a global problem with grave implications.”\textsuperscript{15} From there, he moves on to water, the most important natural resource for all peoples, but whose quality is frequently compromised so severely as to endanger life. He then discusses the loss of biodiversity. Boldly, the encyclical states:

\begin{quote}
It is not enough, however, to think of different species merely as potential “resources” to be exploited, while overlooking the fact that they have value in themselves. Each year sees the disappearance of thousands of plant and animal species which we will never know.... The great majority become extinct for reasons related to human activity. Because of us, thousands of species will no longer give glory to God by their very existence, nor convey their message to us. We have no such right.\textsuperscript{16}
\end{quote}

True to his intention of ensuring that human necessities—and the breakdown of human society as part of the ecological decline—are an integral part of his vision, the Pope next discusses the decline in the quality of human life, as part of the overarching carelessness toward both environment and society. This includes a discussion on global inequality, as the human and natural environments deteriorate in tandem; one cannot be separated from the other. Always, Pope Francis brings his vision back to the added burden placed on the poor of the world, who disproportionately bear the weight of environmental degradation.

Integrated into the Pope’s enumeration of current crises is a deeply religious and catholic (in the widest sense of the word) understanding of the problems. “Respect must also be shown for the various cultural riches of different peoples, their art and poetry, their interior life and spirituality. If we are truly concerned to develop an ecology capable of remedying the damage we have done, no branch of the sciences and no form of wisdom can be left out, and that includes religion and the language particular to it.”\textsuperscript{17}

The encyclical’s discussion of faith gives the Pope the opportunity to decisively reject the narrow interpretation of Genesis, in which the act of creation has so often been deemed to give humans “dominion” over the earth:

\begin{quote}
...nowadays we must forcefully reject the notion that our being created in God’s image and given dominion over the earth justifies absolute dominion over other creatures. The biblical text[s]...implies a relationship of mutual responsibility between human beings and nature...The responsibility for God’s earth means that human beings, endowed
\end{quote}
with intelligence, must respect the laws of nature and the delicate equilibria existing between the creatures of this world...  

The encyclical quotes the bishops of many regions of the world, ranging from Japan to Canada to Brazil, on the value of Nature, reaffirming that no creature is excluded from being a manifestation of God; that Nature’s myriad relationships reveal the infinite glory of God; and that Nature is a locus of God’s presence that continuously, unceasingly, calls humans into relationship with God. The Pope calls for human hearts to be open to universal communion with the rest of Nature.

The encyclical takes aim at the current plethora of perils that, in some ways, are themselves unique: technology’s creativity and power, and the problem of globalizing the technocratic paradigm—essentially, working toward the further development of technology in a one-dimensional, narrowly focused way. This robs people and societies of the ability to develop in their own richness outside of the straitjacket of technological thinking. Ironically, technocentrism has, in the Pope’s view, led to an even more dangerous anthropocentrism, in which the messages from individuals and society calling for change go unheeded. Instead, every new technological innovation is embraced uncritically.

Pope Francis devotes an entire chapter to integral ecology—the placing of human beings in the framework of Nature, in a wide-ranging discussion of human ecology that includes the uniqueness of each place’s cultural ecology, currently threatened by mass consumerist ideology, leaving both despair and degraded physical environments behind. The encyclical asks us to show special care for indigenous communities and their traditions because their traditional lands, sacred to their cultures and the resting place of their ancestors, are often under the most intense pressure of development worldwide.

In addition, he discusses the problems of poor living spaces, common areas, degraded housing, public transport, and the degradation of social-environmental sustainability through our human refusal to acknowledge a moral law, which is “inscribed in our nature.”

In discussing the principle of the common good, the Pope pinpoints its requirements of respect for the human person and a call for solidarity across cultural boundaries within our global society. But, more than this, the common good also extends across generations. “Doomsday predictions can no longer be met with irony or disdain. We may well be leaving to coming generations debris, desolation and filth.... Our difficulty in taking up this challenge seriously has much to do with an ethical and cultural decline which has accompanied the deterioration of the environment.”

Calling for many discussions between religion and science and between peoples of many cultures within the international community, Pope Francis culminates Laudato Si with a call for ecological conversion of those who, whether from pragmatism or opposition, refuse to recognize the magnitude of the problems confronting us. What is ecological conversion? It consists of gratitude, of recognizing that the world is God’s gift, and of loving awareness that humans are connected to other creatures in universal communion—along with the responsibility humans have by reason of their unique capacities. Uncompromisingly and boldly, the Pope states: “Care for nature is part of a lifestyle which includes the capacity for living together and communion.... Love, overflowing with small gestures of mutual care, is also civic and political, and makes itself felt in every action that seeks to build a better world.”

Laudato Si is so vast, and incorporates such a profoundly new vision of Catholic theology and traditional concerns, that it will no doubt take years for its effects to be fully felt throughout the international communities and the global environment. Several Catholic organizations have already begun the work of endorsing its principles and collaborating...
with Catholics and non-Catholics to widen the Catholic environmental message. Prominent among these is the Catholic Climate Covenant, which works to raise awareness, build a network of Catholics, make the moral case (especially the effects of climate change on the world’s poor) for limiting the carbon footprint, host campus and community events on these topics, and collaborate with parishes, monastic communities, and other Catholic organizations to take practical steps toward realizing Catholic values in the climate-change crisis and related environmental issues.23

As is often the case with a breathtaking shift in an old paradigm, the new ideas burst forth in a seemingly sudden, bewildering, and many-faceted complexity. The cascade of ideas and new relationships embrace all the narrow vistas of the old paradigm and ultimately obliterate them. Nevertheless, the new paradigm also grows out of the old, builds on it, enlarges its horizons, and makes novel approaches possible through a broader foundation than the preceding one.

Some religious traditions, such as Catholicism, have in their histories one or more ugly periods of exploitation and victimization. For example, Christopher Columbus’s 1492 encounter with the indigenous peoples of what was to become the Americas set in motion efforts within the Catholic Church, Spain, and later the Holy Roman Empire to define the rights of Spain and Portugal to the newly “discovered” lands.

Within the Catholic Church, these efforts (usually in the form of papal bulls and encyclicals) directly or indirectly defined the rights of the indigenous peoples, as a matter of what might today be considered international law. A papal bull is a formal proclamation issued by the pope and sealed with a “bulla,” which was originally a circular plate or boss of metal, so called because it resembled in a bubble floating on water.24 Though originally addressing the imperial claims of Spain and Portugal, these papal bulls also influenced the legal ethics applied to the claims of other European imperial powers and their relationships with the indigenous peoples of the Americas.

Political goals and pressures heavily influenced these papal pronouncements. Pope Alexander VI’s Bull, Inter Caetera Divinae (issued May 4, 1493), wasted no time in addressing the subject of Spanish imperial control in the Americas. It allocated the newly discovered lands to the king and queen of Castile and Leon (Spain) along with the responsibility of converting the indigenous peoples to the Catholic faith:

[W]e, of our own accord ... and out of the fullness of our apostolic power..., which we hold on earth, do by tenor of these presents ... give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenance, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south, no matter whether the said mainlands and islands are found and to be found in the direction of India or towards any other quarter, the said line to be distant one hundred leagues towards the west and south from any of the islands commonly known as the Azores and Cape Verde.25

By its terms, Inter Caetera purported to grant all the newly “discovered” lands to the Spanish Crown. Beginning in 1503, it granted them the right of encomienda (the right to demand tribute and forced labor from the indigenous inhabitants of an area), whereby the grantee (the encomiendero) was supposedly entrusted with the protection of a specified number of Natives, along with the responsibility to teach them Spanish and convert them to Catholicism. In exchange, the encomiendero had the right to use the Natives as slave labor. The encomienda was an adaptation of the European feudal system of tribute
Other International Voices for the Rights of Nature

employed by the Spanish Crown after the conquest of Granada. It granted the invaders, conquistadors, and colonial officials trusteeship over the very people they had conquered.

After the conquest of Mexico (1519–1521), the Spanish co-opted the administrative structures of the indigenous peoples, which allowed the king of Spain and the new colonial government to usurp the traditional revenues of the region. The directive from the king of Spain to Cortés in 1523 stated explicitly that the indigenous peoples must pay monetary tribute to Spain, to wit: “They will give and pay us for each year as much revenue and tribute as were given and paid until now to their priests and lords.” In order to accomplish this in terms of organization, the lower echelons of the indigenous administration had to be maintained and integrated into the structures of colonial government.

According to the wishes of the king, personal encomiendas were to be reserved only for the first generation of conquistadors, yet, following the lead of Cortés, these privileges were repeatedly expanded with the support of the colonial administration.

Although encomienda did not legally confer the rights of private property for land, the holders of the privilege received most of the earliest land grants and had the advantage of virtual slave labor during the seasons of planting and harvesting. As the system of encomienda was gradually reformed and phased out, farming, which included raising livestock, became the major source of income for the increasing number of rural Spanish squatters. By 1525, ownership of public lands was overwhelmingly given to officials, the military, and the colonial elite.

However, on May 24, 2015 (522 years after Pope Alexander VI’s Bull of May 4, 1493), Pope Francis issued his Laudato Si in which he outlined opportunities to speak for the Earth, represent its needs, and its rights to life. It is our obligation to encourage and nurture this newly emerging paradigm that it can replace the extant one of such narrowed vision that it is responsible for many social-environmental crises, the resultant suffering (both human and nonhuman), and the growing impoverishment of all future generations.

Islamic Declaration on Global Climate Change

A few months after Laudato Si and after more than a year’s work of refining drafts, a coalition of Muslim scholars, environmentalists, academics, and specialists unveiled the Islamic Declaration on Global Climate Change at a symposium held in Istanbul in August 2015. The driving force behind the Declaration was the United Kingdom-based Islamic Foundation for Ecology and Environmental Sciences, founded in 1994. They have concentrated on developing a knowledge base and producing educational material, training programs, and on-the-ground projects, as well as reaching out and networking with other nonprofit organizations and governments via seminars and conferences.

The Islamic Declaration begins by noting that, “The pace of Global climate change today is of a different order of magnitude from the gradual changes that previously occurred. … Moreover, it is human-induced: we have now become a force dominating nature.” The Declaration goes on to note that, since the Industrial Revolution, humans have used massive amounts of the Earth’s resources: “We are driven to conclude from these warnings that there are serious flaws in the way we have used natural resources—the sources of life on Earth. An urgent and radical reappraisal is called for.”
The Declaration affirms that Allah created each thing for truth and for right, and encompasses all of creation, as well as the corruption humans have caused by unceasing economic growth and consumption, the consequences of which range from global climate change to contamination of land, air, water, and oceans, which says nothing of the destruction of habitats, impairment of ecosystems, introduction of alien species and genetically modified organisms, and severe impacts to human health. In Section 2.6, the Declaration states, “We are but one of the multitude of living beings with whom we share the earth. We have no right to oppress the rest of creation or cause it harm.” Muslims are thus reminded: “We recognize that we are accountable for all our actions.” Furthermore, they have a responsibility to act according to the Prophet Muhammad’s example of frugal living, and his actions to protect the rights of all living beings.

The Declaration ends with a call to the parties to the “well-off nations and oil-producing states” to exercise leadership in drastically reducing greenhouse gas emissions and consumption, and “re-focus their concerns from unethical profit from the environment to that of preserving it and elevating the condition of the world’s poor,” as well as provide financial and technical assistance to less wealthy nations. The Declaration requests the leaders of other nations to commit to renewable energy, and to “realize that to chase after unlimited economic growth in a planet that is finite and already overloaded is not viable.” Finally, the Declaration calls upon all Muslims to tackle the root causes of climate change, environmental degradation, and loss of biodiversity, by following the example of Prophet Muhammad.

Endnotes

3. Ibid. (Part 1, Subpart 1).
4. Ibid.
5. Ibid. (Part 1, Subpart 3).
Other International Voices for the Rights of Nature


12. Ibid. (Chapter 6, Section VII, subsection 240).

13. Ibid. (Chapter 6, Section II, subsection 210).


15. Ibid. (Chapter 1, Section I, subsection 25).

16. Ibid. (Chapter 1, Section III, subsection 33).

17. Ibid. (Chapter 2, Section I, subsection 63).

18. Ibid. (Chapter 2, Section II, subsections 67–68).

19. Ibid. (Chapter 4, Section II, subsection 155).

20. Ibid. (Chapter 4, Sections IV–V).

21. Ibid. (Subsections 161–162).

22. Ibid. (Chapter 4, Sections IV–V, subsections 228 and 231).


26. Ibid.


31. Ibid. (Preamble, Section 1.3).

32. Ibid. (Section 2: 2.1, 2.2).

33. Ibid. (Section 2.5).

34. Ibid.

35. Ibid.

36. Ibid. (Sections 2.7 and 2.8).

37. Ibid. (Section 3.2).

38. Ibid. (Section 3.3).

39. Ibid. (Section 3.6).