

Rights of Non-Humans: A Note

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I. Introduction

With strong arguments being levelled in favor of rights of the non-humans, legal systems are responding in diverse ways. The *non-human* category of entities has emerged as a potent category for determining of moral and legal questions on rights and duties. The most prominent of the categories are entities in nature, robotic entities/machines, persons-posthumous, & persons to be born-future generations.

Multiple questions including - what is the status of forests or rivers? What is the capacity/nature of an animal? Can non-human species reflect sentience or intellectual capacity? What do we owe to a dead human being/corpse? What is the potential of a child not yet born? What is the moral capacity of machines? What do we owe to the future generations? etc., encompass a wide range of moral and legal concerns.

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It becomes pertinent to ask; to what extent has the idea of human rights expanded in order to accommodate the demands vis-à-vis the non-human entities?

II. Key Questions

Each of the categories mentioned is unique and a separate field of study. Nevertheless, in multiple contexts the categories have been referred to as embodying dignity or rights. Herein are a few broad questions on the topic;

1. What is the status of the non-human entities in law ?
2. Can all categories be spoken of in the same light? Including future generations, entities in nature, persons-posthumous, electronic persons.
3. What is the status of non-human entities in human rights?
4. How does one trace the evolution of legal norms regulating the status of non-human entities?
5. Is there an emergence of a new moral code revolving around the non-humans placing limits on human behavior and law making?

6. How does one coherently understand the expansion in the idea of human rights and entitlements vis-à-vis the non-human entities ?
7. What are the interrelations between the human and non-human that have become significant in law, politics and the process of socializing?
8. Is there a need for a new jurisprudence discerning the *potential* of the non-human vis-à-vis the traditional parameters associated with the human entities?
9. Are there any limits to the utilization of the concept of the juristic/legal person?
10. What is the existing local and global normative framework catering to the interests of the non-humans?

III. Importance of the subject

Debates on the *life and potentiality* of the non-human can be viewed as an attempt to enforce significant changes in law and human rights.

Take for instance rights and dignity of the dead. Several entities across the globe such as families of the deceased, states, and international tribunals have emerged as stakeholders in the recognition or preservation of the dignity

of the dead. Expressions such as human rights of “past generations”, or “rights of the predecessors”, or “rights of the unidentified/missing” are more pronounced than before. The initiations in this regard have manifested in declarations, resolutions, claims, and legal norms under the human rights framework.

Take another case, *entities in nature* have been conferred with rights and personhood. In the High Court of Uttarakhand in India in 2017 the rivers Ganga and Yamuna were declared as legal persons/living persons. In 2017 also, under the Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017 in New Zealand, the law declared the Whanganui River as a spiritual and physical entity, a living whole. The 2010 *Universal Declaration of Rights of Mother Earth* in the Preamble states Mother Earth is an indivisible, living community of interrelated and interdependent beings with a common destiny... affirming that to guarantee human rights it is necessary to recognize and defend the rights of Mother Earth and all beings in her and that there are existing cultures, practices and laws that do so.

Likewise, a series of other developments highlight the status of non-humans in law and human rights.

Let us look further into the rights of the dead; posthumous dignity.

IV. On Posthumous Dignity

While using expressions such as the rights of past generations, rights of the predecessors, or rights of the unidentified, reference is ordinarily being made to a set of norms governing the dignity of the dead.

The moral question being what do we owe to a dead person/corpse?

The idea of posthumous dignity or dignity of the dead in various contexts has given rise to concerns over the status of dead persons as bearer of rights, or those being worthy of respect and dignity. Existing moral and social obligations of respect and honor towards the dead are reflected in the customary practices and local norms of communities. More recent questions have emerged in light of situations including the handling of mass grave investigations, and posthumous defamation.

On a theoretical level, the concerns over the dead generate interest in understanding, yet again, the essence of “life form” or “existence” beyond the realm of the physical body. In many ways, posthumous dignity appears to be pulling human rights in a direction that transcends the established understanding of human life or more towards understanding the intricate and undeniable relationship

human life has with all of the “rest”. A few topics of interest on the topic include- (a) recognizing the vulnerability of the dead, (b) duties and limitation on disposal of bodies (c) protection of reputation through legal remedies (d) suitable and peaceful resting place for all (e) unearthing of graves and forensic investigation, (f) duties towards honour and regard.

V. Readings

1. Hilary Young, “The Right to Posthumous Bodily Integrity and Implications of Whose Right It Is”, Vol. 14 *Marquette Elders Advisor* 197 (2016). Available on HeinOnline.
2. Antoon de Beets, A Declaration of the Responsibilities of Present Generations towards Past Generations
3. Agbo Maria Charity, Posthumous Marriage in Igbo Land, Southeastern Nigeria and its Effect on Child Development and Education, Vol. 8 (3) *International Journal of Psychology and Counseling* 28-33 (March 2016).
4. Ian Hanson, “Forensic Archaeology and the International Commission on Missing Persons: Setting Standards in an Integrated Process” in *Forensic Archeology: A Global Perspective* by W.J. Mike Groen, Nicholas, Rob Janaway, Wiley Publishers
5. Mukesh Yadav, “Dealing with Unclaimed Dead Bodies: An Issue of Ethics, Law and Human Rights 29 (1) *JIAFM* 21 (2007).