Thanks for this thoughtful and engaging discussion. I have read Femke Wijdekop’s piece and the comments with great interest. My own experience over years of legal advocacy has led me to the conclusion that our governance systems are fundamentally flawed. We are an integral part of the natural systems on our planet, and yet our legal and economic systems fail to recognize this fact. Our environmental challenges cannot be remedied without addressing that disconnect.

The increasing commodification of nature by an economic system premised on nature as property, rather than partner, is accelerating the destruction of ecosystems and species globally. The economic strategies touted as solutions themselves demonstrate our fundamental biases. The terms sustainable development, green economy, natural capital, etc., illustrate our focus on the nouns of development, economy, and capital. Sustainable, green, and natural are just tangents, and they always will be without a fundamental reordering of our priorities.

I agree with Femke Wijdekop that we must “transform our understanding of nature from property to an equal partner with humans in building sustainable societies”—where “societies” includes the natural world, and not just humans imagined as separate from the natural world. Enacting a law of ecocide is one step in this process, and such a law can help expand the discussion from nature as property to nature as rights-bearing entity. But it cannot be the only step, or it too will become a tangent in the larger construct of economic growth at all costs.

How are we to move forward then in developing governance that reflects our integration with the natural world? If the problem is separation, then we can start by building relationships, both with people and with the place in which we live. Adam Smith has been assigned responsibility for our current economic system, but just as our economic system has been taken out of its context within the Earth, so has Smith been removed from the context of his larger worldview, which was grounded in community. It is rarely acknowledged that Smith also wrote that the “wise and
A "virtuous" person is one who is “at all times willing that his own private interest should be sacrificed to the public interest of his own particular order or society.” He further offered that the “chief part of human happiness arises from the consciousness of being beloved.” Smith recognized the importance of relationships to our well-being. Nurturing those relationships should be the cornerstone of our governance systems.

We can choose the culture and ethical foundation for our laws. Will we choose to continue to uphold a culture of separation and greed, or seek one of relationship and caring? We humans are all of these things, and there is no reason that we cannot state which ethics we want our laws and economic systems to support. The fact that our current economic system holds so tightly to our collective psyches that we cannot see its deepest flaws should not dissuade us. As Pablo Solon and others have said, why should it be easier to imagine the destruction of nature than the fundamental reordering of our economic system to respect people and planet?

We have taken great strides in the last century to recognize the inherent rights and dignity of people. The next step is to expand our recognized community further, to embrace the inherent rights and dignity of the natural world. The Universal Declaration of Human Rights, Article 1 recognizes that “[a]ll human beings are born free and equal in dignity and rights.” As articulated by the Declaration’s Drafting Committee, “the supreme value of the human person…did not originate in the decision of a worldly power, but rather in the fact of existing.” Just as we protect humans’ inherent rights from the excesses of potentially harmful governing bodies, so too should we protect our partners on Earth from the excesses of humans and human governance systems. The rights of all beings, including our own, are limited to the extent necessary to maintain the integrity, balance, and health of the larger whole.

Fortunately, examples of such nature’s rights laws are increasing. In 2008, Ecuador adopted a constitutional provision endowing nature with inalienable, enforceable legal rights to exist, thrive, and evolve. These constitutional provisions have been successfully upheld in a number of judicial and administrative actions already. Bolivia has enacted two national laws on nature’s rights. New Zealand is also moving forward in this area, through court agreements between Maori iwi and the Crown government recognizing the independent legal rights of the Whanganui
River and its tributaries, as well as Te Urewera National Park. Strategies for implementation of these agreements are being developed now.

Finally, roughly three dozen municipalities around the United States, from Pittsburgh, Pennsylvania, to Santa Monica, California, have passed local laws that create enforceable rights for “[n]atural communities and ecosystems…to exist and flourish.” This may prove to be the swiftest path to demonstrating initial success. For example, Santa Monica is considering the potential for a groundwater management ordinance consistent with the right of the aquifer to be “healthy,” a far more stringent standard than under state law. Santa Monica further has set a goal of becoming 100% locally self-sufficient in water by 2020, recognizing its relationship with the natural systems on which it relies.

I would like to make two final points. First, if we and nature are connected, then the inherent rights of ecosystems and species are inextricably tied up with our own, human rights. The murder of Goldman Environmental Prize winner Berta Cáceres this year is just one of an increasing number of violent and illegal actions by government and corporate actors against defenders of the environment and those impacted by mega-projects that devastate communities. More can be read on this topic in a report we released late last year on such “co-violations” of nature’s rights and human rights.

And second, we need to think not just about the substance of the law (e.g., whether to enact nature’s rights or ecocide into law), but also about the structure of the law and legal system, and its reflection of nature’s systems. This is where the valuable discussion of restorative justice can weigh in, for example. The law should further be allowed to arise from the practice of living in concert with the Earth—through local restoration of natural systems, support for sustainable local economies, experiential education and teaching, and numerous other actions. The structure of law as external to us needs to shift toward a system of law that is part and parcel of our daily lives, in community with each other and the Earth.