Rights of Nature in Transatlantic Perspective

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Paper abstracts

Who needs rights of nature?

Jens Kersten

There has been an evolution in the development of legal concepts of nature, which reflect very different constellations of social, economic, and ecological interests. First, nature can have a reflexive status, wherein nature is protected to save the health and life of humans. Second, the common heritage concept argues that certain particularly desirable parts of nature should be protected with respect to future generations. Third, the protection of the environment as a constitutional objective means nature is protected to serve as the ecological living condition for humans. Fourth, the human right to a “favorable” nature says that every human has a subjective legal interest to an environment favorable to their needs. Finally, the rights of nature posit the idea that nature has subjective rights to protect itself.

The Privileges of Being Human in the Rights of Nature Discourse

Anna Leah Tabios

Traditional environmental legal discourse often overlooks non-human stakeholders, such as animals, trees, and future human beings. Even referring to them as “stakeholders” is fraught with quandaries. Are these “stakeholders” capable of self-determination? Can they hold rights? Do their physical existence and capacity to sue and be sued matter in the framework of rights? Contemporary development of environmental law has forwarded rights that transcend the basic human right to a healthy environment, namely rights of nature and rights of future generations. Both sets of rights challenge the conservative metes and bounds of environmental rights, mainly by recognizing other important participants in the dialogue and assigning rights beyond the traditional sphere of human rights-holders.

My presentation explores the rights conferred by rights of nature and generational rights to the environment, and identifies key congruence and differences in their legal foundations. It also examines the enforcement measures used, critiquing the privilege given to present-day humans in choosing which rights to enforce and interests to protect. I enjoin participants to consider the question: Does the framework of rights diminish the actual entitlements and elements of the rights of nature and intergenerational environmental equity?

Rights of Nature: Recent Developments of Regulations and Jurisprudence

María Valeria Berros

Since the recent legal proposals from Ecuador and Bolivia, a number of tools and novel legal arguments have become available to defend *Pachamama*, the rights of Mother Earth as a legal entity. This paper aims to reconstruct the meaning given to this legal and constitutional recognition through an analysis of the judicial cases where these arguments first became mobilized. The first case involved a proposal to alter the natural course of the Vilcabamba River in Ecuador. A decision was passed in favor of the rights of the river on March 30, 2011. Since then, these arguments have started to appear in other judicial cases.

But the judicial field is not the only space where innovative strategies can be observed. Institutional structures are also relevant and this is the focus of the second part of this presentation. Institutions inspired by particular southern worldviews have begun to be created; for example, the Bolivian Mother Earth Defender, the Plurinational Council for Living Well in Harmony and Balance with Mother Earth, and the Plurinational Authority of Mother Earth created by the Framework Act on Mother Earth and Holistic Development for Live Well in 2012, or the project to create the first court for defending the rights of nature in Galápagos in 2013. The focus on the institutional developments brings up a number of important challenges that must be addressed in order to think about the heterogeneous "builders" of these proposals where the idea of rights of nature is embedded in a diversity of knowledge and alternative perspectives.

Finally, I will look at how these ideas are circulating from these southern countries to other ones in Latin America and beyond.

Recent Developments in Rights of Nature and the Precautionary Principle

Atus Russell

The Rights of Nature movement should not be thought of as isolated from other attempts to reform environmental law and decision-making. In this talk I will discuss important similarities between the Rights of Nature movement and the well-established, though increasingly threatened, Precautionary Principle. I show that both of these approaches share a rejection of the increasingly monolithic, anthropocentric, self-defeating, cost-benefit analysis approach to environmental valuation. I argue that the Precautionary Principle can provide both a strong justification for, and a vital defense of, a truly robust set of rights for nature's ecosystems. I also discuss the Green Party of England and Wales' adoption of Rights of Nature into their policies and how that provides a model for integrating Rights of Nature laws and thinking into European politics. By grounding the ideas of Rights of Nature and the Precautionary Principle upon a firm critique of cost-benefit analysis, and presenting them as an alternative, we can help move these exciting ecological decision making processes beyond grass-roots activism to the chambers of political decision-making.

The Constitutions of Bolivia and Ecuador: Buen Vivir and Rights of Nature

Thomas Fatheuer

The concept of Buen Vivir has made it into the constitutions of Ecuador and Bolivia. This anchoring in legal structures means that Buen Vivir is no longer just a theoretical construct, but has made a major step towards becoming a basis for legitimating political and legal practice. It is marked by a specific historical moment of democratization in both countries. The concept breaks new ground and attempts to set out an alternative to both traditional socialist visions and capitalist development models. In the Bolivian constitution Buen Vivir is primarily a principle for orientation, but in Ecuador's constitution it is connected with a set of rights that are strongly suggestive of economic and social human rights. Both constitutions emphasize the importance of protecting nature; Bolivia has even established a government ministry to protect the rights of Mother Earth.

Today the constitutions and the concept of Buen Vivir are still highly controversial. Although the rhetoric of Buen Vivir and Rights of Nature is now highly present in public discourse, these ideas are at odds with the current, prevalent "extractivist" development model.

Fish-as-Food: The Ethics behind Fishing and Fisheries under the *Buen Vivir* Paradigm

María José Barragán Paladines

Fish has long been an important protein source of protein for many human societies. The importance of small-scale fisheries to food systems, food security, and food sovereignty is widely recognized at local, regional, and global levels. Fisheries, whether large or small, wild or farmed, commercial, artisanal, or subsistence-based make important contributions in various ways to the lives and livelihoods of billions of people world-wide. However, concerning issues still surround fish-as-food and fishing communities' access to it. This presentation addresses fish-as-food, in the context of the *Buen Vivir* (*Sumak kawsay*) paradigm, which has ruled the Ecuadorian national development plan in the last decade. It explores to what extent the national fisheries policy tackles the fish-as-food issues concerning the food sovereignty of small-scale fishing communities. Fisheries governance has largely been inspired by biophysical scientific arguments, leaving behind ethical and moral aspects of fishing. There is a disconnect between the rhetoric and the praxis applied to the governability of the small-scale fisheries sector. I also argue that the *Buen Vivir* paradigm has a limited scope regarding the marine dimensions of food, since it does not explicitly recognize the food sovereignty implications of fisheries and the small-scale fisheries sector governance. Further interest should be allocated to explore means of increasing the governability of small-scale fisheries by integrating local small-scale fishing communities' participation. With this perspective it will be easier to achieve sustainability and viability of small-scale fisheries and fishing communities.

Are Legal Rights of Nature Helpful in Environmental Liability Litigation?

Christian Lahnstein

If the rights of nature debate is discussed in isolation, without contextualizing it in the history of environmental law and litigation, we risk overstating the novelty of the concept. This paper will begin with a brief overview of such existing structures, namely: how nature is protected under private law as a legal object, and the role of nature in some important cases of environmental litigation. Subsequently, we turn our attention to the own rights of nature – that is, nature as a legal subject. Indeed, in some cases, it might be useful to involve nature as a party, acting in its own cause where no individual party is affected, or to support affected traditional farmers or fishermen, or just to hear a range of opinions "in the name of nature," and to consider longer-term prospects in court trials and other decision-making processes. However, there are certain basic challenges connected with rights of nature: who represents "nature" – the fish, not fishing rights; the lake, not the people interested in the supply and quality of drinking water; the climate, not the victims of climate change? Regardless of whether nature is represented by state authorities, NGOs, independent ombudsmen or whoever, their perspective remains unavoidably anthropocentric, selective and mired in all manner of interests.

Tree Rules and Urban Ideals in Auckland

Jeannine-Madeleine Fischer

New Zealand is represented as an abundance of pristine landscapes, as "clean and green" and "100% pure." These images are transferred to the urban context of Auckland, which is the biggest agglomeration in the country and home to nearly one third of all New Zealanders. The city is associated with beautiful nature and a clean environment and the geographical setting amidst bush and beaches adds to this perception. Nevertheless, the steady population growth of Auckland challenges the ideal of urban nature. The demand for more housing and more efficient planning opens up value discussions about how a good city and good life should look. The conflicting debate is not only about green space versus built space or rights of city dwellers versus rights of nature, but specifically about nativeness.

I argue that the idea of saving trees is interwoven in social constructs of urban identity and spatial belonging in the city. Conflicts about caring for native species don't reflect nature as inherently valuable, but rather point to sociocultural negotiations about appropriating "Aucklandness" as a particular space, identity and lifestyle.

Initially the so-called tree rules regulated the protection of native trees in the city, however, the current message from the Auckland Council is not to save trees, but to "check before you chop" to ensure the legality of felling. Disagreements about how to handle trees in a "good" urban environment have arisen among different groups of city dwellers, as well as between them and urban planners. Drawing on my field research based on participant observation, qualitative interviews and group discussions, my talk will focus on sociocultural interconnections of saving trees and belonging in Auckland.

River Rights and the Rights of Rivers: The Case of Acheloos

Sophia Kalantzakos

The Rights of Nature discussion is a welcome addition to the wider conversation about life in the Anthropocene. It originated in Latin America and comes from of the idea that nature is sacred. This interpretation of the world and its legal applications provides an alternative frame through which to view nature in cultures that have extensively embraced utilitarian views of nature. For Europe more specifically, the rights of nature discourse has entered the political realm with some parties adopting it as part of their party platform. In my paper, I will be looking at the specific legal case of the proposed diversion of the second largest Greek river, the Acheloos, and the grounds on which both sides argued for and against the project. I will also discuss how rights of nature arguments may have informed policy choices and helped move them in a different direction.