

Chapter 3

Rights of Nature to Protect Human Rights in Times of Environmental Crisis

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ABSTRACT

The well-being of humans and nature are inextricably linked. Nature is particularly mistreated in light of its characterization as merely “property” to be bought, sold, and ultimately degraded for profit. Reinforcing this misperception is the fact that modern environmental laws themselves implicitly accept this claim of “nature as property.” They legalize nature’s destruction by dictating how much of the environment can be exploited and degraded, rather than as an integral ecological partner with its own rights to exist and thrive. Instead, we need laws grounded in the inherent rights of natural world to exist, thrive, and evolve. The article focuses on the transition from the ‘right to the environment’ to a biocentric approach constructed around ‘rights of nature.’ This transition is evident in various new legal instruments, which serve as models for legal systems that can steer us towards more robust and effective environmental laws.

I. INTRODUCTION: FACING NEW CHALLENGES ON ENVIRONMENTAL PROTECTION¹

The possibility to recognize and protect the Rights of the Nature is, with no doubt, a brand new approach in the field of environmental law. Traditionally, legal systems have considered nature as a “property”, as an object over which human rights have been recognized and protected. Moreover, the promotion of laws and contracts to guarantee the property rights of individuals, corporations and any other legal entities as subjects of rights have been common. The consequence, therefore, is that environmental laws and regulations, despite their preventive approach, have been developed over the last years in a way that recognize and legalize environmental harm. The amount of pollution and degradation allowed in the environment has been regulated within the legal framework and in some cases foresee the potential for environmental degradation.

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Therefore, the human rights approach would offer a chance to protect the environment, conceiving it as a necessary dimension to enhance the most fundamental human rights. Certainly, the recognition of individual rights in relation to the environment has had a significant influence at supranational level. However, in general, the level of recognition of a human right to an adequate environment has not been without controversy: first of all, the protection of the environment through the configuration of a human right to an adequate environment rather than imposing obligations to protect the environment has no positive impact on the conservation of natural resources; secondly, the recognition of the protection of the environment is not really an individual right, but a programmatic norm lacking forcibility and, therefore, not required to the State (Bedoya, 2006).

Differently, a new approach is emerging, the recognition of the rights of nature, which imply a holistic approach to all ways of life, including all ecosystems. In recent years, a series of normative precedents have surfaced, which recognize nature has certain rights as a legal subject and holder of rights. These precedents contribute, together with greater sensitivity to the environment, to a reorientation of how to protect the environment, considering the Earth as the center where life takes place. Therefore, the rights of nature are recognized as a holistic concept comprising all kinds of life and their ecosystems.

Through this perspective, called “biocentrism”, Nature is not an object of protection anymore, but a real subject of rights, with fundamental rights as any other subject has, for example the right to exist, to survive and to maintain and regenerate vital cycles. The implication of this recognition is that human beings have the legal authority and responsibility to enforce these rights on behalf of nature. This concept is based on humans as part of life on earth having to live within its ecological limits, rather than being the center of environmental protection as the “anthropocentric” approach proposes.

Recognizing the rights of nature, Ecuador, Bolivia and a growing number of communities in the United States are basing their environmental protection policies on the premise that nature has inalienable rights, as have human beings. This premise is a radical but natural move away from the assumption that nature is a property under the rule of human law. Certainly, this view is a departure from Western culture and the development model which promotes the destruction of environment and life: climate change, disappearance of natural areas, indiscriminate surface felling of trees, desertification of new territories, dumping of toxic substances from industries into rivers, seas or lakes, oil slicks caused by ships and endless actions of a system that appears to legitimize environmental damage. This article, tracks the change in approach from anthropocentric to biocentric, which allows for an evolution in the legal protection of the environment: from human rights to the rights of nature. This new vision of environmental protection and how it is introduced into the different regulatory systems and its implementation is analyzed, including the recent trend in attributing a greater role to human responsibility in environmental protection. The article also discusses these new regulatory precedents, which undoubtedly mark an evolution in environmental law, both nationally and internationally. This new way of protecting the environment, due to the awareness of events, has led to the adoption of legislative measures on environmental law aimed at achieving an environmental policy more consistent with the conservation of natural resources, and establishing offenses and sanctions pointing more to the responsibility of those human beings who damaged nature. Nature meets its obligation to support life while humans increasingly take advantage of natural resources, causing irreversible environmental damage. This article explores how this recognition involves a number of issues to be resolved, as to who is able to claim these rights (on behalf of Nature) and how to make the legal system defend them.

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