

The Implementation of Rights for Nature

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Transforming environmental protection from a model based on the recognition of nature as merely a natural resource to be carefully exploited with equal access to that exploitation by humans; to a model based on the recognition of nature as consisting of ecosystems endowed with the fundamental right to exist, flourish, and evolve, represents a complete shift from a dominant paradigm. As such, when implementing a new paradigm shift that has implications for the conventional structure of law, enforceability and implementation of a new structure of law will have to be forced into being, as well as the initial legal framework. In doing so, communities will be confronted with a variety of legal doctrines that have emerged from the dominant paradigm that must be dismantled.

Among those, under U.S. law is the conventional legal filter of "standing" which requires that the human pursuing litigation be "injured" prior to filing suit. These new rights of nature laws represent a significant departure from existing law because no human injury is necessary for a cause of action to result from the violation of the rights of an ecosystem. Thus, the laws grant people - even if not injured by the action itself that causes injury to the ecosystem - to sue on behalf of the ecosystem. That tenet will run up against the constitutionally-anchored "standing" jurisprudence, which refuses to "see" any injuries that are not caused to humans. In that sense, it represents a re-engineering of standing and injury law, at least as it stands in the United States.

Linked to that legal theory is the conventional view of compensation that arises when a community or individual brings a typical environmental lawsuit. Compensation is measured the same as injury, in that the compensation is measured by the amount of injury suffered by the individual or community. These new laws change that inquiry - and require that the compensation measurement be taken from the damage caused to the ecosystem itself, and not the damage caused to an individual or human community.

Another hurdle - this one cultural and economic in nature - is the identification of who rightfully can bring suit on behalf of an ecosystem.

Although the laws have been carefully written to be redemptive only, e.g., the only one who can bring suit on behalf of an ecosystem is someone safeguarding and defending the right of the ecosystem to exist, flourish, and evolve, there is a possibility that a developer or corporation would bring suit, contending that it was in the best interest of the river to be diverted, or used, or put to some other "higher and better" purposes. As with language resulting from the Abolitionists via the Civil War - the 13th, 14th, and 15th Amendments, these laws do not stand by themselves, but must be vindicated by the communities who believe in the laws and who drive them for their execution and enforcement.

Although Ecuadorian constitutional law reflects some of U.S. constitutional law, the primary difference between the Ecuadorian constitutional amendment and the ordinances in the United States, is that Ecuador has an opportunity to embed the rights of nature at a constitutional level - which thus directly challenges many of the legal doctrines dealing with standing, injury, and compensation at the same constitutional level. In the U.S., our municipal governments must struggle with federalism, preemption, and other doctrines that make it difficult for a groundswell to arise that actually changes the structure of law.

Hence, and as part of their work challenging the system of law, some municipalities are now talking about the need for constitutional change, that would liberate both their human and natural communities to protect themselves from worldwide and localized environmental degradation.