

## **Los Derechos de la Naturaleza: Rights-Based Protection for Pachamama**

by Mari Margil

In 2008, Ecuador became the first country in the world to ratify a new constitution which recognizes the inalienable and fundamental rights of nature. In so doing, Ecuador became the very first country to base its system of environmental protection on *rights*, rather than on the idea that nature is *property* under the law.

In recognizing rights for what had for millennia been considered and treated as “property” – Ecuador joined with a dozen municipalities in the United States to take a major leap forward in expanding the body of rights to now include nature.

### **Expanding the Body of Rights to the “Rightless”**

In 1973, Professor Christopher Stone penned his famous law review article, “Should Trees Have Standing?” He explained this idea of Rights of Nature, and why it’s so difficult to think about those without rights – the “rightless” – as possibly having rights.

He described why every time a people’s movement is launched to recognize rights for the rightless – such as those in the United States including the Abolitionists who sought to end slavery and the Suffragists who fought for rights for women – the movements and the people involved are deemed treasonous and radical. Stone wrote:

“the fact is, that each time there is a movement to confer rights onto some new “entity” the proposal is bound to sound odd or frightening or laughable. This is partly because

until the rightless thing receives its rights, we cannot see it as anything but a thing for the use of “us” – us being, of course, those of us who hold rights.”<sup>1</sup>

For thousands of years women, children, religious and ethnic minorities, the poor, the disabled, gays and lesbians – all have struggled for civil rights including the right to free speech, the right to vote, the right to marry, the right to be free and independent people, the right to due process and equal protection of the laws. Each of these struggles requires changes in our laws as well as our culture – with law sometimes pushing culture forward, and other times the culture demanding and driving changes in law. To move our law and culture to consider a “rightless” entity as possibly possessing rights, requires a fundamental shift in consciousness, a shift that if it is to have meaning, must necessarily be codified into our fundamental governing frameworks – our constitutions – to be enforced and upheld.

Judeo-Christian theology teaches us that the earth and all its creatures exist for man. It is only in the past several hundred years that there has been any real consideration of nature and its non-human members as possibly existing for something other than the use of humankind. Governments have put in place environmental laws, laws protecting endangered species, international accords on fisheries and ozone, yet these laws are failing to protect nature and humankind continues to behave as though our dominion over the earth is sacrosanct. And as such, the world’s ecosystems have been pushed to the brink. By most every measure, the environment is in crisis, despite decades of environmental jurisprudence. Species around the world are disappearing at accelerating rates. Global warming is far worse than climate scientists

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<sup>1</sup> Stone, Christopher D., *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, William Kaufmann, Inc., California, 1974, Page 8.

predicted even a few years ago. Rainforests are being felled. Global fisheries are collapsing. Coral reefs are dying.

Yet we continue to adopt environmental laws and treaties, and negotiate new ones, even though they are not designed to protect and restore the species and ecosystems that are collapsing around us.

We must consider why this is. One can look to the time of slavery in the United States, particularly the early 1800s when the movement for abolition was beginning. Despite wave after wave of petitions to the U.S. Congress seeking the end of slavery, the House of Representatives and the Senate chose to ignore them. Most of the free people of the United States also ignored such pleas and strove to stifle any discussion of slavery. They turned a collective blind eye, rather than confront the brutality which with their silence they condoned and their own role in its continuance. For even in the Northern states where slavery was not allowed, the economy was integrally linked with that of the Southern slave states. If slavery were to end, if the slaves who were considered to be “property” under the law were suddenly recognized as “rights-bearing people,” what would happen to those whose livelihoods depended on the forced labor of slaves?

Do we not sit in a similar situation today? Slavery treated people as things to be exploited – and this was infused not only into the laws of the United States (and other slave nations) but also the culture. Slaves were considered inferior creatures, immoral and brutish. We treat nature and its creatures much the same way. Nature – through theology, philosophy, and even the use of science – is considered inferior to humankind. Much like science was used to “prove” that those of African descent were intellectually inferior to whites, we continue today

to question whether non-human animals are capable of feeling, communication, and intelligence. Doing so allows us to consider and behave as though nature is inferior.

The evidence is overwhelming that humankind has pushed many ecosystems and species past any possible recovery, yet countries and corporations continue to fight efforts to make change or to recognize that environmental laws are not working. Efforts to stop or ban environmentally damaging activities, such as gold mining or uranium mining, are fought by both governments and corporations, even though nowhere in the world are they conducted safely for workers, communities, or the environment. These laws continue to be instituted as though if we pass enough of them, they will work.

We turn a blind eye, like those who sought to suppress the efforts by Abolitionists to end slavery. Today those in power thwart any efforts which would change the relationship of humankind to nature. And why do they do so? Because, like the slaveholders and those in the Northern states in the U.S., they know that acknowledging the need for change will mean that their exploitation of nature must end. This they cannot allow to happen, and so they do everything in their power to stop it.

Corporations today spend billions of dollars to suppress efforts seeking any “real” protection of nature and our governments are helping. They do this by constantly calling into question science on global warming, for example, or disputing scientific studies that suggest uranium mining or oil drilling are harmful for the environment. They seek to distract us by advertising how they are protecting the environment – Nestle building a “green” factory or Wal-Mart reducing packaging of laundry detergent. All of this is done to cover up the ongoing destruction of the environment caused by their activities and which our environmental laws –

written and driven by industry – authorize. Thus we get to enjoy eating Nestle chocolate and shopping at Wal-Mart while feeling none of the environmental pain. In fact, quite to the contrary, we are meant to feel good about our consumption and the corporations that sell us their products. It's much like Abolitionist Harriet Beecher Stowe wrote of the Northern states in the U.S. while slavery continued in the South, that the North got to enjoy the fruits of the slave labor – “all of the benefits and none of the screams.”<sup>2</sup>

But in spite of their efforts, people and communities in the United States, Ecuador, and elsewhere are beginning to shift their thinking. They are beginning to recognize that our environmental laws aren't protecting the environment and we must fundamentally change the relationship of humankind and nature.

### **Moving Rights of Nature into Law**

Communities across the United States are fighting corporate development projects which threaten the environment – such as incinerators, coal mines, uranium mines, massive water extraction projects, factory farms, and sewage sludging. Traditional environmental activism has these communities appealing to their government environmental agencies for help to stop these projects. What they discover when they go to these agencies for help, however, is that under our environmental laws, government agencies are issuing permits to corporations to build the incinerators and the coal mines that the communities don't want. This is because *environmental laws and regulations don't actually protect the environment*. At best, they merely slow the rate

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<sup>2</sup> Farrow, Anne, John Lang, and Jenifer Frank, *Complicity*, Ballantine Books, New York, 2005, Page 108.

of environmental damage by requiring corporations to take certain precautions when mining or sludging, even though these activities are inherently harmful to the environment. Our laws are constructed this way because they are based on the idea that *nature is property*. Meaning our environmental regulatory laws merely *regulate* the rate at which nature is used.

Knowing this, it's not surprising to learn that the major U.S. environmental laws – such as the federal Clean Air Act and the Clean Water Act – were passed under the authority of the Commerce Clause of the U.S. Constitution. Thus laws treat the environment merely as a natural resource necessary for *commerce*, rather than as ecosystems to be protected in their own right.

Nature thus is considered *rightless*, and as such, communities trying to protect nature find that they cannot defend the rights of the ecosystems, because *there are no rights to defend*.

In 2006, municipalities in the United States began to adopt the first-in-the-nation laws recognizing the inalienable Right of Nature. Among the first communities to do so was the Town of Barnstead in the State of New Hampshire. Corporations like Nestle Waters North America are targeting communities across the U.S. for their water. In the Town of Nottingham, which neighbors Barnstead, the USA Springs corporation sought a permit from the state government to withdraw over 400,000 gallons of water a day from the local aquifer to bottle and sell overseas.

The people of Nottingham fought for seven years to stop USA Springs from coming in and privatizing their water. They appealed permits to the New Hampshire state environmental agency known as the Department of Environmental Services, circulated petitions, lobbied their elected officials, held protests, and filed lawsuits. They did everything “right” through

conventional, environmental grassroots organizing, but somehow they still weren't able to stop the proposed water extraction plan from going forward.

Barnstead and Nottingham examined why communities do not have the legal authority to protect their water from privatization by corporations. This focused on the critical question of why the state government – rather than helping communities protect their water – was instead granting permits to corporations to take it.

What they learned, as do thousands of other communities in the United States and around the world, is that environmental laws are put in place to determine *how much* we can harm or exploit nature. In the case of water, the environmental laws don't question *whether* corporations can siphon off massive quantities of water for profit, but rather they regulate how and how much water the corporation can take. Rather than seeking to protect water, governments are instead adopting laws which legally authorize water corporations to privatize it. This is the same, whether it's water, gold, uranium, or forests. Environmental laws simply put in place measures legally authorizing the exploitation of those resources, reaffirming that nature exists for the use of humankind.

The communities of Barnstead and Nottingham determined that a system of environmental laws that rest on the idea that nature is property was the wrong basis for trying to protect their water. The communities each adopted local laws, or ordinances, which effectively turn their back on the existing governing frameworks. These local laws not only ban corporations from engaging in the extraction of the water in those towns and eliminate the corporate constitutional "rights" that corporations use to undermine democratic decision making, but in addition recognize the inalienable Rights of Nature within those municipalities. Adopting

the ordinance in March 2006, Barnstead became the *first community in the United States to ban corporations from privatizing their water* and *one of the very first in the U.S. to recognize Rights of Nature*.

Section 5.1 of the Barnstead law reads:

All residents of the Town of Barnstead possess a fundamental and inalienable right to access, use, consume, and preserve water drawn from the sustainable natural water cycles that provide water necessary to sustain life within the Town. Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the Town of Barnstead. Ecosystems shall include, but not be limited to, wetlands, streams, rivers, aquifers, and other water systems.

Following in the footsteps of Barnstead and Nottingham, more and more communities in the United States are now adopting laws recognizing the Rights of Nature. This is the very beginning of a movement in the U.S. to fundamentally change the relationship between humankind and nature.

### **The Ecuador Constitution**

In 2007, Ecuador began the process of drafting a new constitution. For centuries, the people and landscapes of Ecuador have been exploited by outsiders. And in recent years, it was revealed that Texaco had dumped more than 18 billion gallons of toxic wastewater into the

Ecuadorian rainforest. The need to protect nature was foremost among concerns for many of the elected delegates to the Ecuador Constituent Assembly.

The Pachamama Alliance, a non-profit organization based in Ecuador and the United States, learned about the work of the Community Environmental Legal Defense Fund (CELDF) – a U.S. based non-profit which worked with communities such as Barnstead and Nottingham, New Hampshire, assisting those communities to draft and adopt laws recognizing Rights of Nature. The alliance invited representatives of CELDF to Ecuador to meet with delegates to the Constituent Assembly to share with them how communities in the U.S. were beginning to move from a property-based to a rights-based framework for protecting nature. In Ecuador as in the United States, the law treated nature as property.

At the request of delegates, CELDF developed draft constitutional provisions recognizing the Rights of Nature. The delegates shaped and expanded those provisions. In September 2008, through a national referendum, the people of Ecuador approved the new constitution, becoming the very first country in the world to recognize in its constitution rights of ecosystems to “exist, persist, regenerate, and evolve.”

### **A People’s Movement for Nature’s Rights**

Ecuador and the communities in the United States are now at the forefront of the movement to recognize the inalienable Rights of Nature in law. This work is expanding as more people in communities around the world are beginning to recognize that we cannot protect nature so long as we continue to treat it as property, much like we could not protect slaves so long as we treated them as property.

To drive this change forward will require a worldwide people's movement that begins in communities with people working to adopt local laws to build support for larger change. The 19<sup>th</sup> century British philosopher John Stuart Mill wrote, "Every great movement must experience three stages: ridicule, discussion, adoption." Indeed, rights-based movements are criticized and even mocked and those in power seek to stop them at any cost. Anticipating and understanding this, and being able to turn such attacks around to reveal why change is needed, will be essential for the movement's success.

Movements for rights seek change that comes neither quickly nor easily. There will no doubt be forces – such as species extinction or global warming – which may accelerate the movement for change, as no doubt there will be forces that successfully slow it by those who neither recognize nor desire the need for a fundamental change in the relationship of humankind and nature.

It will take generations for the idea of Rights of Nature to influence our laws and our cultures, and to be implemented and enforced as intended. In the United States, it took over a century after the end of slavery for the goals of the Abolitionists to be realized – to have the rights of freed slaves and their descendents secured and upheld – and even that work is not complete. It will similarly take decades to make fundamental shifts in human consciousness, our laws, and our cultures, to move nature from being considered to be property, as a thing to be exploited for our own enjoyment and use, to being recognized as having the inalienable right to exist and flourish. This is the work that is beginning and is necessary if the ecosystems and the creatures of the earth – human and non-human – are to survive and thrive.

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