

LEGAL ETHNODEVELOPMENT AND ENVIRONMENTAL PROTECTION

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ABSTRACT

We live in a world in which we pay the consequences of the damage caused by overexploitation of natural resources. In this article, the author analyses the interesting solution found by the Andean States, which, listening to the voice of indigenous peoples, rediscover in the ancient knowledge the route to follow at present. In this way, an invisible line links past, present and future. The Constitutions of Ecuador and Bolivia find inspiration in the values of the Andean cosmovision, *buen vivir* and *vivir bien*. Nature is subject of rights and as such must be defended, protected from any possible damage to it. This paper consists of two parts. In the first part, the author analyses the influence of ancestral knowledge and tradition in the construction of the environmental protection system of Ecuador and Bolivia. In the second part, he examines the main elements of the solutions of the two Countries in order to evaluate the advantages and observe the possible perplexities. Following this method, the author wants to underline how the culture of the ancestors can contribute to the legal development of the Countries, also through the construction of a system that effectively protects the environment.

Keywords: Indigenous people; Nature; Subject of rights; Pachamama.

ETNODESARROLLO JURÍDICO Y PROTECCIÓN DEL MEDIO AMBIENTE

RESUMEN

Vivimos en un mundo en el que se pagan las consecuencias de los daños causados por la sobreexplotación de los recursos naturales. En este artículo el autor analiza la interesante solución encontrada por los Estados andinos, que escuchando la voz de los pueblos indígenas redescubren la sabiduría antigua en el camino para el presente. De esta manera, una línea invisible une el pasado, presente y futuro. Las Constituciones de Ecuador y Bolivia se inspiran en los valores de la cosmovisión andina, en el buen vivir y vivir bien. La naturaleza es sujeto de derechos y como tal debe ser defendida, protegida contra cualquier daño. El presente trabajo consiste en dos partes. En la primera, el autor analiza la influencia del conocimiento y tradición ancestrales en la construcción del sistema de protección ambiental de Ecuador y Bolivia. En la segunda, él examina a los principales elementos de las soluciones de los dos Países para verificar sus méritos y observar sus posibles perplejidades. Siguiendo este método, el autor quiere subrayar cómo la cultura de los antepasados puede contribuir al desarrollo jurídico de los Países, también mediante la construcción de un sistema que proteja eficazmente el medio ambiente.

Palabras clave: *Pueblos indígenas; naturaleza; sujeto de derechos; Pachamama.*

INTRODUCTION

In recent years, globalization has achieved incredible results in the sense of uniting distant and different peoples. You can buy products from around the world, the shops of skilled artisans work the metal material extracted on the other side of the world, you can use furniture made from plants that have their origins in several kilometers away from our house. It is a continuous journey of goods and new technologies. Unfortunately, however, not everything that shines is gold, although the globalized capitalist economy has brought many benefits, the other side of the medal must be observed. The overexploitation of the territories, the extraction of minerals without rest, the intensive agriculture with the use of pesticides, deforestation and pollution are endangering the health of the planet. To avoid this, you have to look for solutions. In Latin America in recent years interesting proposals are emerging. In particular, indigenous peoples are bringing their sensitivity to environmental issues in national and international settings. The most innovative initiatives came with the constitutionalism of Ecuador and Bolivia, which have conferred rights to nature, it is no longer the object but a real subject of rights. The voice of indigenous peoples is increasingly strong and brings new inspirations and solutions in the political and legal landscape. This shows how the meeting of different cultures can give new life to the law and offer useful tools to protect nature. The idea that is at the base is that of good living or living well, living in fullness, in harmony both among men and of each human being with nature. Sometimes in life it is like in chess, to move forward and win the game against environmental damage it is necessary to take a step back and look at the ancestral cultures that had a very attentive respect for the balance of nature, destined for coexistence harmonious of man with nature.

1 ETHNODEVELOPMENT AND THE RIGHTS OF NATURE

The first part of this work is dedicated to the role that the ancient knowledge, tradition and culture of the ancestors have had in the creation of the environmental protection system of Ecuador and Bolivia.

1.1 The voice of indigenous peoples

The voice of indigenous peoples is not heard in the same way in all States and for this reason there are social movements that demand the affirmation of their rights at the national and international levels.

Ted Moses, of the Canadian indigenous movement, affirms that it is difficult to be identified as a people and that this fact prevents, therefore, the recognition of the rights and, especially, the right to self-determination of indigenous peoples¹.

At the international level, numerous steps have been taken in recent years. José Ricardo Martínez Cobo (MARTÍNEZ COBO, 1983; CAMMARATA, 2004, p. 11-12; PERRA, 2016, p. 1-2), Special Rapporteur for a general and comprehensive study of the problem of discrimination against indigenous peoples, appointed in 1971 by the United Nations Subcommission on Prevention of Discrimination and Protection of Minorities, has given one of the most important definitions of indigenous collective identities. The communities, peoples and nations are those that have a historical continuity with the societies that lived in their territories before the colonial invasion, which identify themselves as distinct from other sectors of the society of the States to which they belong. They are concerned with preserving, developing and transmitting to their descendants their ancestral territories and their ethnic identity, in order to continue their stock of peoples. You can belong to indigenous peoples through two criteria:

- self-identification as indigenous;
- the recognition of a member of the same group.

There is no single definition of indigenous peoples, but it is noted that there are three elements to which reference is made. These peoples have their own identity, their own language and their own culture. They are the descendants of the cultures that existed before the European colonizer.

¹ Ted Moses (1993) says: “*All peoples have the right of self-determination. The States that object to the recognition of this right, seek to circumvent the application of international law to indigenous peoples in order to avoid the obvious and undeniable conclusions that flow from international standards. In order to avoid the implications of existing international law, they have hit upon a simple strategy: They have decided that our rights as peoples will not exist if they simply avoid referring to us as “peoples”. They have called us “populations”, “communities”, “groups”, “societies”, “persons”, “ethnic minorities”; Now they have decided to call us “people”, in the singular. In short, they will use any name they can think of, as long as it is not “peoples” with an “s”. They are willing to turn on their head to avoid recognizing our right to self-determination*”.

They feel part of a civilization inserted in a larger, regional, state, planetary entity.

Indigenous peoples have survived European colonialism, discrimination, marginalization. In the last fifty years, with their bodies, they have invoked in major international organizations the recognition and protection of their rights.

In the indigenous culture there is an unbreakable bond with the environment, to which human beings belong, and for this reason many of the proposals refer to the welfare of the environment and sustainable development.

The Declaration on the Rights of Indigenous Peoples of the General Assembly of the United Nations, of September 13, 2007, has been a turning point. In particular, international regulations are being produced.

This declaration has given a strong impetus to reflections on the Rights of Indigenous Peoples.

These rights can be traced essentially to three categories (ZALAUQUETT DAHER, 2008, p. 140):

- collective rights to self-determination or to particular forms of autonomy and participation in State policy;
- collective rights to land, natural resources, protection of the environment and biodiversity;
- the right to the preservation of culture.

Of these categories of rights, José Zalaquett Daher (2008, p. 143) specifies that:

The States in whose territories these people live find less difficulty in accepting those of a cultural nature, greater problems in effectively recognizing rights related to land and natural resources, and harbor very serious reluctance regarding the collective rights of self-determination or status political autonomy.

1.2 Multiculturalism and the plurinational State

Many States faced with the cultural differences that make up them have tried to find a solution to the conflict between different cultures, social conflicts and social marginalization, which were operated against some people.

The idea of multiculturalism considered in political philosophy is taken as reference. This point of view considers man based on identity and belonging to a particular culture and its objective is the recognition of all cultures. The multiculturalism in the practical application implies a challenge: to establish institutions and a State that recognize and protect the cultural diversity and that allow the political dialogue and the participation of all the people in the decisions directed to the common welfare.

Some States have seen in the dialogue between different cultures a valuable source of cultural enrichment and the inspiration of reflections aimed at solving general problems, such as the protection of the environment, the human condition², human rights.

Sometimes getting to the practical application of multiculturalism was not quick, sometimes after a time of economic and political crisis. The contribution of indigenous social movements that demanded recognition by the State and clamored for the affirmation of their rights was decisive. In the sixties of the twentieth century, in some countries the emergence of associations and organizations that advanced claims of political, legal and cultural autonomy was observed. They also demanded participation in public life and access to citizenship rights.

In some states, over the years, for the same needs, indigenous parties are born (MANCUSO, 2013, p. 104-105), capable, in some cases, through their activities of influencing national political life. An increasing recognition of indigenous communities, of human rights has been developed over time and the fight against racism has intensified. The idea, which reigned in the nineteenth century and much of the twentieth century, according to which indigenous peoples had to be incorporated into the national state in which they lived, totally depersonalized from their ethnic identities and its languages, it has been abandoned. Currently, little by little, the idea of a multicultural State (consisting of several cultures) or a Plurinational State (composed of several nations) has been reached.

1.3 Ethno-development, good living or living well

The Andean Countries are rediscovering the ancient knowledge of indigenous peoples, their worldview, in order to find normative solutions to environmental problems. Using the words of Fernando Huanacuni Mamani (2010, p. 24) it can be affirmed that:

² Such as, for example, the construction of the field of intercultural health in Chile and the reform of the health system in Bolivia. In this regard, see BOLADOS GARCÍA (2012); RAMÍREZ HITTA (2014).

All cultures have a way of seeing, feeling, perceiving and projecting the world. The set of these forms is known as Cosmovision or Cosmic Vision. The grandparents and grandmothers of the ancestral peoples flourished the culture of life inspired by the expression of the multiverse, where everything is connected, interrelated, nothing is out, but on the contrary “everything is part of ...”; the harmony and balance of one and all is important for the community. Thus, in many of the peoples of the Andean region of Colombia, Ecuador, Bolivia, Peru, Chile and Argentina, and in the ancestral peoples (First Nations) of North America survives the Ancestral Cosmovision or Cosmic Vision, which is a form of to understand, to perceive the world and to express oneself in the relationships of life. There are many nations and cultures in the Abya Yala, each with its own identities, but with a common essence: the community paradigm based on life in harmony and balance with the environment.

In particular, the phenomenon of ethnodesarrollo that Guillermo Bonfil Batalla analyzes is observed. He writes (BONFIL BATALLA, 1982, p. 133):

Ethnodevelopment is understood as the exercise of the social capacity of a people to build their future, taking advantage of the lessons of their historical experience and the real and potential resources of their culture, according to a project that is defined according to their own values and aspirations.

The indigenous peoples with their values have influenced the Andean constitutionalism. In particular, we can not forget the contributions that some traditional concepts of the Quechua and Aymara cultures have given to the Constitutions of Ecuador and Bolivia. These points of view have raised a series of reflections on the relationship between man and nature, the exploitation of natural resources and development.

The development model that is derived from the Andean cosmovision, is assumed and interpreted as the solution to environmental catastrophes, climate change and, more generally, for the survival of the Earth.

It is the search for collective well-being that can only be achieved with the harmony of the human being with everything that surrounds him and that does not endanger the balance of the *Pachamama*, the value that is sought is the good living [*sumak kawsay*] or live well [*suma qamaña*].

The Constitution of the Republic of Ecuador, in fact, aims to build: “a new form of citizen coexistence, in diversity and harmony

with nature, to achieve good living, *sumak kawsay*”. The choice of this Constitution is to protect and defend human rights together with those of nature. The good living finds its affirmation in a balanced, healthy life and is characterized by the use of sustainable resources (GUDYNAS, 2011a, p. 88-89).

The Political Constitution of the State of Bolivia establishes that the value of living well will direct its public policy (HUANACUNI, 2010, p. 18; PERRA, 2017b, p. 196-198). This Constitution also speaks of the industrialization of natural resources as the end of the State. At first glance it may seem like a contradiction, but it is not like that. The two values of good living and the industrialization of resources must be complemented, united, can not be separated from each other, that is, there must always be a balance between these two values, between these two purposes constitutionally planned.

Diana Milena Murcia Riaño (2012, p. 92) points out that in Bolivia, harmony with nature is manifested in international relations, in the industrialization of natural resources and the integrity of native indigenous agricultural land.

1.4 The participation of indigenous peoples

Some States have rethought development policies and the issue of indigenous peoples and, often, these thoughts have gone together, initially, with intellectual, social and political debate.

Since the eighties of the twentieth century, attention has been paid to the damage that could be caused by the construction of roads, dams and the exploitation of underground resources and the destruction of forests. Often, many of these works were aimed at the creation of new pastures, as an object of reform to combat the poverty of native indigenous populations. Many large-scale projects were carried out in the name of economic development and progress, but for the natives they have demonstrated only attacks on their territories and inflicted on their cultures: indigenous peoples often withdraw from their territories, have not had more access to natural resources for their subsistence and have suffered the effects of environmental pollution.

The projects of the States, aimed at attracting foreign investments and increasing new capital in order to alleviate the external debt and improve the economy, invaded the territories of the indigenous peoples.

ILO Convention 169 and the Declaration on the Rights of Indigenous Peoples of 2007 affirmed the possibility for indigenous peoples to participate in decision-making with special procedures in the activities that affect them.

The consultations, which must be carried out in good faith, have to reach an agreement on economic and development projects. The rights of indigenous peoples over natural resources (utilization, administration and conservation of resources) must be protected. On the other hand, States must contribute to prepare forms of participation and the natives must be compensated in case of damage caused by mining activities or the use of natural resources.

The 2007 Declaration establishes prior consultations, where the indigenous peoples concerned are represented. This mode of action is officially accepted by the countries that have ratified ILO Convention 169 and a number of multilateral organizations and associations for development and cooperation for development.

Some Latin American countries have engaged in indigenous participation and consultation in decision-making through national law legislation. The current situation has changed compared to the past, when the first call and participation were reduced to a simple information gathering of the people. Now the natives are appealing to the Constitutional Courts and the Inter-American Court of Human Rights.

1.5 The rights of nature and natural resources

In the protection of the environment, there are two States that have offered an hyper-protection, introducing in their Constitutions and ordinary laws the values of the indigenous worldview.

The rights of nature expressed by the Constitutions of Ecuador and Bolivia and their laws are essentially divided into two categories:

- the rights of Mother Earth to life, to the conservation of the components of nature;
- the rights to recovery in case of environmental damage.

All citizens can act in defense of the rights of nature to the restoration, which alone can not exercise. The system that is used is to act in the name of Mother Earth.

The problem implied by this innovative concept refers to natural resources, that is, whether it is legal or not to use natural resources, to take ownership of them and to what extent. This means rediscovering ancient knowledge to achieve balance and harmony with nature. For this purpose it is necessary to overcome the anthropocentric vision in favor of the biocentric, where all natural entities have their own dignity and go together with man in a living whole and the wellbeing of each part contributes to the general welfare.

The recognition of nature as a subject of rights, writes Eugenio Raúl Zaffaroni, is to define it as “third party assaulted when it is illegitimately attacked” (ZAFFARONI, 2011a, p. 25; 2011b, p. 134) and this will open important questions because property of animals could be restricted. The owners of the animals can commit illegitimate abuse when the animals suffer without reason. Farmers must be careful in the use of monocultures so as not to cause damage to biodiversity or create danger for the species. The judges will be called to establish the limits between legitimate and non-legitimate human actions.

2 REFLECTIONS ON THE SYSTEMS FOR THE PROTECTION OF THE ENVIRONMENT OF ECUADOR AND BOLIVIA

The second part of this work analyzes the main elements of the environmental protection systems of Ecuador and Bolivia. The novelties of the legal solutions of the two Countries will be examined to understand their merits and perplexities.

2.1 The biocentric vision

Without leaving room for doubt, the main novelty of the system of nature protection that Ecuador and Bolivia have created is characterized by the transition from anthropocentric to biocentric vision. To believe that it is a minor change or a simple passage would be completely wrong.

The majority of legal systems, present today in the world legal scenario, is based on anthropocentrism. Everything is designed according to man, the human being is the measure of everything. Man is the person par excellence of these systems. It is the entity to which the system chooses to confer rights and obligations. Nature, in an anthropocentric conception, is an object and man can use it to achieve his goals. This vision, daughter of

the Romanist tradition, has been questioned by the constituent assemblies of Ecuador and Bolivia.

The change of vision constitutes in this sense the first challenge to the constitutional tradition³ or perhaps the most significant, complex and attractive reform in this regard. It is a radical change in which Ecuador and Bolivia have shown that the anthropocentric vision can be undermined without losing the coherence of the entire legal system.

The attribution of the quality of subject to entities, which previously were considered objects, is not an absolute novelty in law. The legal system chooses who or what is a subject of rights.

In Roman times, slaves were understood as *res* speakers. It is only with the passage of time that they were released from their object qualification. The slavery in our days is something abominable and nobody would dream with thinking that a juridical order recognizes that some human beings are objects.

Ecuador and Bolivia have opened a new path. The recognition of nature as a subject is relatively recent, we are in the first decade since the affirmation of this qualification in the two legal systems.

It is a road still under construction (MARTÍNEZ, ACOSTA, 2017, p. 2938). The fact that nature has become these two countries in a subject with its own rights constitutes the “gateway to another possible world”⁴.

Like all roads, thinking that there are no obstacles to overcome would be unrealistic.

Among these obstacles, the challenge becomes important: it is necessary to gain the adjustment of the previous arrangements of the anthropocentric matrix. It is necessary to change the way we conceive ourselves and the world around us. Now, man is no longer the one who must dominate nature for his needs. Human beings form a living whole with the other entities that make up the planet.

At this point, we must ask ourselves why this enormous change has been based on the values of the culture of the ancestral peoples, of the ancestors.

³ The expression “challenge to the constitutional tradition” is taken from the title of the article by Luis Fernando Macías Gómez (2011). These words used by Macías Gómez, referred to environmental constitutionalism in the Constitution of Ecuador, offer a clear definition of what happened in Ecuador and Bolivia. In particular, there has been a real change in the traditional anthropocentric way of writing a constitution.

⁴ The expression “gateway to another possible world” is taken from the title of the article by Esperanza Martínez and Alberto Acosta (2017).

The affirmation of the rights of nature implies obligations for individuals and institutions at all levels of the State. Therefore, there are necessary limitations to the possibility of the human being to act in a certain way, while the same activities were completely legitimate in the old legal approaches.

The recovery of the values of the ancestors and affirming that the new model is the same one used by the ancestors serves so that everyone feels that this change is good and fair. The legal practice and the Courts teach that the greatest challenge of the law is relative to the effectiveness of the norm. As Norberto Bobbio (2001, p. 47) writes, in order to verify the effectiveness of a norm, it is necessary to observe if the recipients follow the norm and if, in case it has been violated, it is enforced by the authority that issued it. In light of this, there is no better way to promote compliance with a norm, than to make it perceived as belonging to society and its cultural values. The nature protection system of Ecuador and Bolivia, as a product of the culture of the populations that make up the two countries, will undoubtedly have a better chance of being respected and accepted.

2.2 The benefits of the introduction of the rights of nature

The introduction of the category of rights of nature is an important novelty. First, it must be borne in mind that these are rights that are directly related to nature as a subject. It is not necessary that human rights be infringed because nature receives prompt and effective protection.

Secondly, it should be noted that the rights of nature include both those related to the regular existence of nature and its components, and those related to restoration when damage has occurred.

In particular, this is observed in the Constitution of Ecuador, where in article 71 there are those related to the respect for existence, the preservation of life cycles and in article 72 there are those that refer to restoration, regardless of the obligation to compensate individuals or groups, to which the State and natural and legal persons are obliged.

Article 7 of the Law on the Rights of Mother Earth of Bolivia enshrines the rights of Mother Earth. In particular, they are:

- the right to life;
- the right to the diversity of life;
- the right to water;

- the right to clean air;
- the right to balance;
- the right to restoration;
- the right to live free of pollution.

From these forecasts of the two Countries, it is already clear that the two systems deal not only with cases in which there is damage, but also contemplate all situations relating to the life of Mother Earth as worthy of protection. These protect the normal life cycles of nature and their perpetuation. It is evident that these provisions do not leave much room for chance. It is an integral protection, since it mentions all possible hypotheses and focuses on nature, understood as a living being.

The Law on the Rights of Mother Earth in Bolivia states that having enshrined these rights does not affect the existence of others and more rights. This means that it is not a closed list of rights, but there is the possibility of extending the rights of nature if the Legislator warns of the need for new and more forecasts. Consequently, the all-encompassing nature of the entire environmental protection system is underlined.

In the system of nature protection in Ecuador and Bolivia, in addition, the State has the obligation to actively work to identify the most appropriate tools for restoration (Article 72, CONSTITUTION OF ECUADOR, Art. 15, n. 9 and Art. 16, n. 8, LAW FRAMEWORK OF THE MOTHER EARTH AND INTEGRAL DEVELOPMENT TO LIVE WELL FROM BOLIVIA). Attention to prevention is also significant when the two Countries affirm that the State must regulate, through precautionary measures and restrictive measures, activities that may destroy or alter natural cycles or lead to the extinction of species (Article 73, CONSTITUTION OF ECUADOR, Art. 8, n. 1, LAW OF RIGHTS OF MOTHER EARTH OF BOLIVIA).

Another issue that arises is related to how the rights of nature are placed in relation to human beings and their rights. In Ecuador, if on the one hand the rights of nature seem to have the same dignity as other rights, in accordance with the provision of section 6 of Article 11 of the Constitution of Ecuador, on the other hand, it is stated that the protection system environmental will not affect the lives of human beings. Human beings can benefit from the environment and natural resources to achieve good living, without appropriating environmental services, but always under the supervision of the State that will regulate production, supply, use

and exploitation (Article 74, CONSTITUTION OF ECUADOR).

Bolivia places collective rights in the life systems of Mother Earth as a limit to the exercise of the individual rights of human beings and in the case of conflicts between rights, a solution must be chosen that does not irreversibly compromise the functionality of the systems of life (Art. 6, LAW OF RIGHTS OF MOTHER EARTH).

From the observation of these dispositions of the two Andean countries, it should be noted that the biocentric vision manifests itself in a safe manner. The rights of nature are not hierarchically inferior to those of human beings. They find space among the other rights, placing themselves on an equal level.

2.3 The representation

You can not think about the rights of nature, without addressing the question of who can act for their defense.

The legal systems of Ecuador and Bolivia have declared that the rights of nature can be affirmed by the human beings acting on their behalf.

The rights of nature are, therefore, defended, protected and carried out by governments and people, with the introduction of the concept of representation.

In the Constitution of Ecuador, Article 71 provides that “every person, community, people or nationality may require the public authority to comply with the rights of nature.”

According to article 2, n. 4 of Law n. 71 of December 21, 2010 of Bolivia [Law on the Rights of Mother Earth] the State and each individual or collective must respect, protect and guarantee “the rights of Mother Earth for the Living Well of current and future generations.”

With reference to the legitimacy to act, Article 34 of the Constitution of Bolivia establishes that:

Any person, individually or on behalf of a community, is entitled to exercise legal actions in defense of the right to the environment, without prejudice to the obligation of public institutions to act *ex officio* in the face of attacks against the environment. (Art. 34, CONSTITUTION OF BOLIVIA)

Then, article 39 of Law n. 300 of October 15, 2012 of Bolivia [Framework Law of Mother Earth and Integral Development for Living Well], says who the legitimated subjects are. These are:

- Public authorities, at any level of the Plurinational State of Bolivia, within the framework of their competencies;
- The Public Ministry;
- The Defender of Mother Earth;
- Agro-environmental Court;
- The people directly affected.

Finally, it should be noted that there is a duty for individuals or groups who have knowledge of the violation of the rights of Mother Earth, within the framework of integral development to Live Well, to denounce this fact before the competent authorities.

The question that arises immediately from the observation of the mechanism of representation refers to the possibility of applying this tool. That is, we must ask ourselves if this tool can be applied to nature.

Nature can exercise its rights related to its existence and perpetuate its life cycles without any external intervention. The issue emerges, however, whenever there is damage and it is necessary to take adequate measures for restoration. It is obvious that nature can not act alone in this regard. For this reason, the legal systems of the two countries find the solution to overcome this “incapacity” with the instrument of representation.

Representation is not a new tool in law. The representative joins or substitutes the incapable person in the realization of certain legal acts and, more generally, in the care of the interests of the incapable person, because he can not face only his needs.

A reflection moves quickly with respect to the legal person: the legal person is a fictitious person in which a representative protects the interests and manages their legal situations. It would be illogical to think that representation can be applied to the legal entity, which is a person created by the legal system, and can not be applied to nature, which is actually a living entity (ÁVILA SANTAMARÍA, 2011, p. 201). The representation, therefore, can be the tool to remedy the inability of nature to protect their interests in judicial and administrative seats. The application of this tool seems to be consistent with the provisions of legal systems and should not raise insurmountable dogmatic or conceptual problems.

CONCLUSION

In the present work, the author has examined the complex environmental protection systems of Ecuador and Bolivia. The decision to face together the examination of the two systems was dictated by the fact that both countries have based the legal evolution on the cultural values of the ancestral peoples. It was not an obvious path for the two Andean States and this is confirmed by the fact that they are placed in a plan of pure legal innovation.

The main novelty that arises from the reading and analysis of constitutional and normative texts is, undoubtedly, the ennoblement of nature in the eyes of the legal system. This new qualification has allowed the attribution to Mother Earth of real rights. The emphasis has been placed repeatedly on the fact that it is not an imaginative construction of the Legislators of Ecuador and Bolivia. All the construction of the environmental protection system has been based on the cultures of the peoples that make up the two countries. Specifically, there was the phenomenon known as legal ethno-development. This is the mechanism through which a people, exercising their social capacity, builds their future thanks to the teachings of their historical experience and taking advantage of all the potential offered by the culture of their ancestors. This process was possible in light of the affirmation of the equal dignity of all the cultures that make up the State. Indigenous peoples have managed to bring their values of respect for nature and life in harmony with all beings on the planet to academic, political and legal debates. Nature is not a hostile entity that man must dominate. Nature is not an object that the human being can use beyond all reasonable for his own purposes. Nature is rediscovered as a mother, *Pachamama*, and the well-being of all its components goes to the benefit of man. Man is part of a living whole with each entity of nature. Obviously, all new legal solutions can raise questions and the author has found and analyzed the main ones in the second part of this work.

In particular, the first questions refer to the affirmation of the biocentric vision. Most of the current legal systems are anthropocentric and the change towards biocentrism is a real challenge in progress. Once this way of doing right is used, it is necessary to observe if it is an option that maintains the coherence of the system, if it is a possible change. It is

true that, although we are only in the first decade of these changes, the two systems seem to have resisted the change of perspective and the change seems to be determined by the solid foundations of the ancestral culture.

The second issue addressed is related to the analysis of the benefits of the introduction of the nature rights category. A fundamental character arises from the examination carried out: this new category covers all possible hypotheses. Specifically, this broad category of rights seems to contemplate every hypothesis that may occur and covers very different aspects. Without leaving room for doubt, the thought goes to the fact that both the rights related to the existence of nature and those that provide for reparation are contemplated in cases where environmental damage occurs.

The third question is dedicated to the exercise of the rights of nature. It has been observed that Mother Earth can safely exercise her rights related to existence, while she is incapable of acting on her own for rights that refer to reparation when harm occurs. The response of the legal systems of Ecuador and Bolivia is that human beings can act to enforce the reasons of nature. In this case, as in the case of incapable subjects and legal persons, the mechanism of representation comes into play. The application of this tool seems consistent with the function assigned by the right to this instrument. The representation is commonly designed to face the care of the interests of another person. The question analyzed is whether the representation can be used in this context. The author pointed out that, in this regard, this mechanism fulfills its function and there is no reason to exclude it. Therefore, it would be illogical to have a legal system that provides for the application of the instrument of representation to deal with the interests of legal persons that are fictitious persons and the non-application in defense of nature.

The nature protection systems of Ecuador and Bolivia show a new path in the defense of the environment. This is not a point of arrival, but a new beginning and a good omen for the protection of the environment. These solutions have the merit of having put biocentrism, derived from the Andean cosmovision, as a basis for building the complex system of environmental protection, although for this it had to challenge the traditional way of writing constitutions and laws. To this end, new categories of rights have been created and it has been asserted that nature is subject to rights. This was the biggest innovation in the legal field that jurists have attended. At present it should be considered that we are only in

the first decade since this change of perspective and we will have to check whether the positive signs that are observed today, even in the judgments of the Courts, would be confirmed by the good results in the long term with regarding the effectiveness of new environmental protection systems of the two countries.

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