Catalysts of Eco-Constitutional Evolution

Peru's Landmark Ruling Bridges the Gap Between Anthropocentrism and Ecocentrism

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On 15 March 2024, the Mixed Court of Nauta of the Supreme Court of Justice of Loreto ruled on a lawsuit brought forth by a women's association of the indigenous Kukama people (*Corte Superior de Justicia Loreto, Resolución Número 14 Expediente 00010-2022-0-1901-JM-CI-01*). The association sought recognition of the intrinsic rights of the Marañón River. In the ruling, the court not only grants the river legal subjectivity, but also acknowledges several specific rights and recognizes the Peruvian state, the regional government of Loreto and indigenous organizations as guardians, defenders and representatives of the river. The judgement is a milestone in Peruvian constitutional jurisprudence and the first of its kind. It is part of a broader constitutional trend towards recognizing nature's own rights, especially those of rivers. This movement is notably being driven by Latin American nations where indigenous perspectives on nature emphasize the intrinsic link between a healthy environment and the realization of human rights, thereby softening the adversarial stance between anthropocentrism and ecocentrism. As such, this jurisprudence may serve as catalyst for the ecological constitutional evolution of Western legal systems.

Sacred River Threatened by Pollution

The Marañón is the second longest river in Peru and one of the two headwaters of the Amazon. Originating in the Andes, it flows to the north-west, traversing regions inhabited by indigenous communities and rural settlements. Among these indigenous groups, such as the Kukama, the Marañón is a crucial natural resource, not only as a source of livelihood but also as the center of their cultural identity. For the Kukama, the river embodies a profound spiritual essence, symbolizing the core of their cosmological worldview. It is therefore considered sacred.

In 1978, the "Oleducto Nor Peruano", an oil pipeline, was installed along the Marañón River. However, since the installation a series of oil spills has occurred, such as in 2014 in the province of Loreto or in 2016 in the provinces of Bagua and Datém del Marañón. These spills have resulted in pervasive contamination of the Marañón, posing severe threats to the livelihoods of nearby indigenous communities that depend on the river ecosystem. This prompted the "Huaynakana Kamatahuara Kana" association, a Kukama women's organization, to take legal action.

In September 2021, the president of the association filed an application for amparo proceedings against the state oil company Petroperú, the Peruvian Ministry of the Environment and other respondents. The writ of amparo, according to article 200 (2) of the Peruvian Constitution, is a judicial action aimed at protecting the constitutional rights of citizens who have been violated by the actions or omissions of public authorities, officials or other persons. Among other requests, the petitioner sought the recognition of the Marañón River and its tributaries as legal entities.

During the hearing, the respondent argued that the Peruvian constitution is anthropocentric. The entire legal system is orientated towards this anthropocentrism, as shown not least by the list of legal subjects in the Civil Code, which does not list nature as such. Therefore, recognizing the legal subjectivity of nature would not only contradict the Peruvian legal system but also be unconstitutional. Nonetheless, the court did not endorse this argumentation.

What the Court said

The court initially observes that the Peruvian Constitution does not yet incorporate the rights of nature, nor does it recognize rivers as legal entities in any form. Nevertheless, this does not prevent the court from introducing an ecocentric perspective into its decision-making. The court points out that the invoked right to a healthy environment is indeed grounded in ecocentric principles, affirmed both by international standards and constitutional law. In terms of binding international instruments, the right to a healthy environment as interpreted by the Inter-American Court of Human Rights (IACHR), acknowledges the intrinsic values of nature. The interpretation provided by the IACHR is integrated into the Peruvian constitutional jurisprudence through the mechanism of "control of conventionality". Additionally, the Kunming-Montreal Global Diversity Framework provides a foundation for integrating nature's values. In the same vein, Peru's constitutional jurisprudence supports an ecological interpretation of applicable norms. In a preceding case, the Constitutional Court affirmed that the Peruvian Constitution is not confined solely to safeguarding nature in terms of human interests and needs but must also take nature into account in its biocentric and ecocentric scope.

The court then introduces another component of the right to a healthy environment: in accordance with the interpretation of the IACHR, this right demands observance of the so called precautionary principle. According to this principle, which is also enshrined in Peru's General Environmental Law (Law No. 28611), the state is obliged to take precautionary measures in the face of imminent damage to health or the environment, even if there is no scientific certainty about the causes and effects of the environmental hazard.

Applying these principles to the specific case at hand, the court states that the indigenous communities residing along the riverbanks are adversely impacted by the oil contamination, impeding their right to a healthy environment. To safeguard this right, the court recognizes the state's positive obligations following from the precautionary principle. In line with this principle, the court may employ measures to safeguard nature itself, irrespective of direct human benefit. As such, the court transforms a seemingly anthropocentric safeguard into an ecocentric one and eventually acknowledges the Marañón as a legal entity. It recognizes the river's right to flow in order to maintain a healthy ecosystem, the right to flow free of any pollution, the right to feed itself and be fed by its tributaries, the right to native biodiversity, the right to its restoration, the right to the regeneration of its natural cycles, the right to the preservation of its ecological structure and functions, the right to protection, conservation and restoration and the right to be represented. Furthermore, the court appoints the state and indigenous organizations as guardians, defenders and representatives of the Marañón and its tributaries.

Anthropocentrism and Ecocentrism as Unexpected Allies

The Peruvian judgement forms part of an international judicial trend towards recognizing the rights of rivers. The Atrato River in Columbia, the Whaganui River in New Zealand, the Turag River in Bangladesh and the Magpie River in Canada have all been recognized as legal entities. It is no coincidence that precisely those rivers are sacred in indigenous cultures: Andean and indigenous cosmovisions play a major role in recognizing nature's own rights. Their conceptions of nature espouse an ecocentric or holistic ethical framework, diverging from the anthropocentrism prevalent in Western democracies. While anthropocentric worldviews regard the protection of the environment solely as a means for human benefit, ecocentric and holistic beliefs recognize the intrinsic value of nature itself and as a whole, independent of its utility to humans. In democracies lacking indigenous communities with such views of nature and where anthropocentric ideologies of nature predominate, individuals often find themselves increasingly detached from nature. Consequently, the extent to which a healthy environment influences the exercise of human rights becomes less apparent.

By demanding respect for nature in legal proceedings, indigenous groups seek to make the profound

interconnectedness between human rights and the preservation of a healthy environment legally visible. Because they live so closely with nature, the realization of their human rights is directly linked to the maintenance of a healthy environment. The anthropocentric foundation of such claims (the exercise of constitutionally safeguarded individual protection rights) is intended to be realized through an ecocentric mechanism (the recognition of nature's inherent rights). Consequently, their pursuit for the recognition of the intrinsic value of nature cannot be entirely disconnected from anthropocentricism. In this context, ecocentrism and anthropocentrism are mutually intertwined.

By continuing the international "rights of nature" jurisprudence, the decision of the Peruvian court has the potential to further broaden the discourse on the rights of non-human entities within constitutions orientated toward anthropocentrism. The way in which the indigenous claimants strategically combine the anthropocentric basis of individual rights with ecocentric protection mechanisms challenges the supposed dichotomy between anthropocentric and ecocentric reasoning. In nations where anthropocentric worldviews prevail, the discourse on the rights of nature is predominantly guided by attempts to deduce nature's rights logically from the doctrinal requirements of the constitution, rather than by appealing to the intrinsic value of nature. For instance, the philosopher Tilo Wesche has demonstrated such a path for the German constitution. The reference to ratified international instruments demonstrates that an ecological interpretation of the constitution can be derived from international law, aligning with those attempts of logical deduction of rights of nature arguments. International instruments ratified by Western democracies are paving the way for this evolution. As such, the UN General Assembly has acknowledged the right to a healthy environment as a universal human right. Additionally, the ECtHR has developed extensive case law concerning the correlation between human rights and environmental pollution. The reasoning of the Peruvian court could prompt the utilization of these international instruments to facilitate constitutional evolution. The emphasis placed by these international instruments on the inseparable link between a healthy environment and the fulfillment of human rights, which also underlies the Peruvian court's reasoning, might encourage Western democracies to incorporate an ecocentric aspect into their anthropocentric-orientated constitutions. This incorporation should not be interpreted as a break with the constitutional tradition, but rather as an evolution of individual protection rights on the basis of an anthropocentrism intertwined with ecocentric aspects.

Similar constitutional evolutions have already occurred for corporate entities: initially perceived as incongruent with legal systems geared towards protecting individual interests, it now seems intuitive to recognize corporate entities as (fictitious) legal "persons". The discomfort associated with any perceived "novelty", as described by Christopher D. Stone, a seminal figure in the discourse on nature's rights, must similarly be overcome for the rights of nature: "There will be resistance to giving the thing 'rights' until it can be seen and valued for itself; yet, it is hard to see it and value it for itself until we can bring ourselves to give it 'rights' – which is almost inevitably going to sound inconceivable to a large group of people".

Court decisions in Latin America like those of the Peruvian Court already acknowledge the value of this "thing". By elucidating the correlation between the exercise of human rights and environmental pollution, such recognitions bridge the perceived antagonism between anthropocentrism and ecocentrism. They open up anthropocentric-orientated constitutions for the recognition of rights of nature. In this way, ecocentric indigenous beliefs emerge as a primary catalyst for various global eco-constitutional evolutions.

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