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Rights of Pachamama: Environmental justice and the emergence of an Earth jurisprudence in the Americas

Earth jurisprudence represents an alternative approach to the law based on the belief that nature has rights. In this view a river has the right to flow, species have the right to continue to exist in the wild, and ecosystems have the right to adapt and evolve over time. Proponents of Earth jurisprudence argue that by treating nature as exploitable resources contemporary legal systems actively promote environmental harms. Recognising the rights of nature, they argue, will transform core values and inspire social changes that promote economic development that respects nature's limits. Since 2006 rights of nature have been recognised by some sub-federal public bodies in the United States and by the governments of Ecuador and Bolivia. Based on a literature synthesis that encompasses scholarship on environmental law, social movements and political economy in Latin America this presentation sets out to answer two questions: First, what has led to the recognition of rights of nature in Ecuador and Bolivia? It is argued that the recognition of rights of nature as legal (rather than merely moral) rights in Ecuador and Bolivia needs to be understood in the context of resistance and opposition to grievances such as inequality, poverty and what many Latin American citizens and intellectuals see as the historical exploitation of the continent. In both countries charismatic political leaders (Evo Morales in Bolivia and Rafael Correa in Ecuador) gained political support from social movements by adopting a narrative that was anti-establishment and anti-neoliberal, promising both populist policies and a more prominent role for indigenous groups in national level politics. Their election enabled them to pursue a political strategy that rejected the individualist emphasis of neoliberalism and provided fertile ground for Andean debates on the rights of nature to flourish. Second, what are the constraints that currently impede a broader recognition and implementation of rights of nature? Amongst these constraints, it will be argued, is that Ecuador and Bolivia continue to pursue an extractivist economic development model with assertions of national sovereignty over natural resources tending to prevail over Earth jurisprudence and environmental conservation, and ideas of economic justice trumping notions of environmental justice. The adoption of rights of nature in the two countries should, not, therefore be seen as unfettered or unconditional. The new norms of rights of nature are colliding with pre-existing norms on top down development and within the governments of the two countries the contradictions between the two appear to be unacknowledged and unexamined.