

The Lens of Ecological Law

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What is the Lens of Ecological Law?

An analytical tool for contrasting existing laws with ecological law to identify synergies and obstacles for a transition to ecological law.

Based primarily on:

- Bosselmann, Klaus. 2006. "Ecological Justice and Law," ch 5, in Benjamin J. Richardson & Stepan Wood, eds. *Environmental Law for Sustainability: A Reader*. Hart Pub: Portland, OR.
- Bosselmann, Klaus. 2008. *The Principle of Sustainability: Transforming Law and Governance*. Ashgate: Aldershot, England and Burlington, VT.
- Boyd, David R. 2004. "Sustainability Law: (R)Evolutionary Directions for the Future of Environmental Law. (Future Directions?)." *J Env L & Prac* vol. 14, 357.
- Cullinan, Cormac. 2011. *Wild Law: A Manifesto for Earth Justice*. Chelsea Green Pub.: White River Junction, VT.
- Garver, Geoffrey. 2013. "The Rule of Ecological Law: The Legal Complement to Degrowth Economics." *Sustainability* vol. 5, 316.
- Voigt, Christina, ed. 2014. *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law*. Cambridge University Press: Cambridge, UK.

What is the Lens of Ecological Law?...continued

Consists of three interconnected principles of ecological law—ecocentrism, ecological primacy and ecological justice—which

- state a core value that is critical to ecological law as an alternative to environmental law, and
- guide behavior toward ecological law's objectives of constraining the economy within ecological limits, restoring and preserving ecological integrity, and enabling an ecologically just society or mutually enhancing human-Earth relationship.

The Lens of Ecological Law

Ecocentrism

Recognize and respect the value of all beings and the interconnectedness among them, equitably promoting the interests of human and nonhuman members of the Earth community

Focuses on the law's ability to support and promote a worldview in which humans are part of nature and no more important than other life.

It aims at preventing decisions that disregard their ecological consequences and have a bias towards human short-term interests.

This principle is relational and conceptual: it centers on the view and understanding of the human-Earth relationship underlying the law.

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Ecological Primacy

Ensure that social and economic behavior and systems are ecologically bound, respecting planetary boundaries

Focuses on providing clarity about priorities to ensure human development is pursued without irreversibly impairing ecological integrity or crossing planetary boundaries, including the use of precaution with respect to these boundaries.

This principle has a material focus.

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Ecological Justice

Ensure equitable access to the Earth's sustaining capacity for present and future generations of humans and other beings, and avoid the inequitable allocation of environmental harms

Serves as ethical grounding for decisions about equitable use of the planet's sustaining capacity and the fair distribution of, and restraint on, wealth.

Its focus is relational, but in a practical and material way, aiming to translate respect for all beings into actual equitable access to the Earth's sustaining capacity.

How to use the lens of ecological law

Conceived for analyzing legal norms, but can be adapted.

Main steps:

1. Identify the norms in question, including but not limited to environmental law.
2. Spell out specific questions under each principle, considering the nature of the case and selected norms. E.g.:
 - Ecocentrism*-Does the law recognize the rights of non-human beings?
 - Ecological primacy*-Does it constrain economic activities based on ecological limits at the relevant scales (ecosystem/watershed, planetary)?
 - Ecological justice*-How is access to the Earth's sustaining capacity (water, habitat, pollution sinks, etc.) distributed within and across generations of all beings? Is access based on human needs?
3. Consider the selected norms from the perspective of each of the principles.
4. Identify synergies and obstacles.

Lens of ecological law case studies so far

- Compared analysis of the *Wildlife Acts* of Ontario and Nunavut
- *Amparos* by Indigenous communities against mining concessions in Mexico
- Ban on Metal Mining in El Salvador
- Proposed mining in Ontario's Ring of Fire
- Rights of Mother Earth and *vivir bien* in Bolivian law / Salar de Uyuni lithium project

Example: Bolivian lithium project

Selected norms:

Relevant provisions of the

- Constitution of Bolivia
- Rights of Mother Earth Law
- Framework Law of Mother Earth and Integral Development for Vivir Bien
- Law of Environment
- Mining and Metallurgy Law

Example...continued

Lens of Ecological Law Analysis:

Ecocentrism

The Rights of Mother Earth Law and the Framework Law recognize the rights of non-human beings in considerable detail and are consistent with this principle; the other norms do not mention the rights of Mother Earth or include provisions that are incompatible with ecocentrism.

Ecological primacy

The Framework Law requires that economic activities, including mineral extraction and industrialization, be carried out *in harmony and equilibrium with Mother Earth*, which amounts to requiring that they do not compromise ecological integrity.

Example...continued

Ecological justice

- The concept of *Vivir Bien* is consistent with ecological justice, including in its aim to fairly distribute and constrain wealth.
- Overall, the Bolivian framework emphasizes *intragenerational* equity, but also includes principles supporting intergenerational and interspecies equity. The concept of *integral development* aims to satisfy human needs “in harmony and equilibrium with Mother Earth.”
- However, the Constitution prioritizes resource extraction and treats nonhuman beings as property; while the Mining & Metallurgy Law rejects FPIC of indigenous peoples.

Example...continued

Salar de Uyuni lithium industrialization project:

- There is no (desktop) evidence that the Rights of Mother Earth Law and the Framework Law have been considered in the design, review or implementation of the Salar de Uyuni lithium industrialization project.
- The Salar de Uyuni ecosystem and its ecological limits are not well understood.
- Lithium carbonate production is driven by unsustainable consumption of energy and technology. For it to be consistent with *ecological justice* and supportive of a path toward *vivir bien in harmony with Mother Earth*, it would have to be, instead, driven by basic needs.

Mining Case Studies

Key Conclusions

An ecological law approach to mining would:

- Prioritize use of minerals (primarily from existing stocks) to satisfy basic human needs
- Permit extraction from new deposits only exceptionally, at human scales and with the strictest measures to prevent risks to human health (of miners and neighbors) and ecosystems
- Recognize indigenous jurisdictions and require the FPIC of indigenous peoples and the participation of local communities
- Not allow extraction in areas with high levels of ecological integrity or used for agriculture or water provisioning

THANK YOU!

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