

## SOCIAL AND POLITICAL PHILOSOPHY



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### International Trends in the Field of Environmental Management: Legal Potential and Procedural Justifications of Modern Environmental Policy

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#### Abstract

**Introduction.** Modern changes in the ecological paradigm entail the proclamation of the inalienable rights of nature. However, the provision of legal status to the environment and its elements casts doubt on all the achievements of mankind and the value-based guidelines of society which means revolutionary changes in the way of life, internal structure and worldview of people. The main objective of the study is to analyze and systematize foreign experience in the scope of environmental management in order to objectively assess the effectiveness of the Earth rights implementation taking into account significant political, legislative and socio-economic changes leading to conflict in the implementation of relations between man, government and nature.

**Materials and Methods.** Methodological tools focus on analytical building of ecosystem links in international environmental policy, modeling of a system for the development of adaptation management through the implementation of scientific knowledge and appropriate monitoring that identifies cases of environmental uncertainty.

**Results.** Environmental strategies of different countries offer variable concepts that consider nature as an object of legal protection, universal human heritage, a source of resources necessary for a man, or a legal entity endowed with inalienable rights and freedoms. Differences in legal approaches are determined by sociocultural specifics of society dictating certain environmental strategies. However, the effectiveness of environmental policy is determined not only by the legal status of nature but also by the combination of factors: legislative, procedural, economic, etc., which together allows achieving efficiency in the field of environmental policy without resorting to rewriting the constitution and radical restructuring of the legal system.

**Discussion and Conclusion.** Environmental management offers opportunities to modernize the relationship between man and nature building a harmonious paradigm that combines environmental values and human rights. In the scope of this concept, the issue of claiming the inalienable rights of nature remains open which gives rise to further research that allows us to assess advantages and disadvantages of the approach under consideration.

**Keywords:** environmental policy, environmental management, nature rights, environmental law, procedural law, ecocentrism

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## Международные тенденции в сфере экологического менеджмента: правовой потенциал и процессуальные обоснования современной природоохранной политики

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### Аннотация

**Введение.** Современные изменения в экологической парадигме влекут за собой провозглашение неотъемлемых прав природы, однако предоставление правосубъектности окружающей среде и ее элементам ставит под сомнение все достижения человечества и ценностные ориентиры общества, что означает революционные изменения в образе жизни, внутригосударственном укладе и мировоззрении людей. Главной задачей исследования является анализ и систематизация зарубежного опыта в рамках экологического менеджмента с целью объективной оценки эффективности имплементации прав Земли, учитывая существенные политические, законодательные и социально-экономические изменения, ведущие к конфликту в реализации отношений между человеком, правительством и природой.

**Материалы и методы.** Методологический инструментарий ориентируется на аналитическое выстраивание экосистемных связей в международной природоохранной политике, моделирование системы развития адаптационного управления посредством реализации научных знаний и соответствующего мониторинга, идентифицирующего случаи экологической неопределенности.

**Результаты исследования.** Экологические стратегии разных стран предлагают вариативные концепции, рассматривающие природу в качестве объекта юридической защиты, общечеловеческого наследия, источника необходимых человеку ресурсов или же правового субъекта, наделенного неотъемлемыми правами и свободами. Различия в правовых подходах обуславливаются социокультурной спецификой общества, диктующей определенные экологические стратегии, однако эффективность природоохранной политики определяется не только юридическим статусом природы, а совокупностью факторов: законодательных, процессуальных, экономических и т. д., что в совокупности позволяет достичь эффективности в сфере экологической политики, не прибегая к переписыванию конституции и радикальной перестройке правовой системы.

**Обсуждение и заключение.** Экологический менеджмент предлагает возможности модернизации отношений между человеком и природой, выстраивая гармоничную парадигму, объединяющую экологические ценности и человеческие права. В рамках данной концепции вопрос утверждения неотъемлемых прав природы остается открытым, что дает почву для дальнейших исследований, позволяющих оценить преимущества и недостатки рассматриваемого подхода.

**Ключевые слова:** экологическая политика, природоохранный менеджмент, права природы, экологическое право, процессуальное право, эгоцентризм

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**Introduction.** In the context of the global anthropocentric crisis, foreshadowing global environmental consequences (climate change, extinction of biological species, devastation of forests, etc.), an increasing number of environmental management activists are calling for universal recognition of nature rights aimed at transforming management systems towards sustainable development [1].

In recent years, the number of campaigns in the field of environmental management has exceeded 500 documented initiatives in more than 30 countries [2]. For comparison, in 2021, the number of legal provisions recognizing the rights of nature amounted to 185 initiatives in 17 countries covering 5 continents [1]. Legislative activity in this area focuses on predetermining models of interaction between man and environment in order to form strategic mechanisms to support the integrity and well-being of environmental systems [3].

Despite the urgency of the problem of international maintenance of biological diversity and recognition of Earth rights as a key environmental mechanism discussed at the level of international organizations (holding of the World People's Conference on Climate Change and Mother Earth Rights in 2010 [4]; activities of non-profit organizations in the field of nature rights: the International Union for Conservation of Nature and Natural Resources (IUCN) adopted the Resolution on Nature Rights in 2012 [5]; in 2017, the World Commission on Environment and Development approved the Declaration on the Rule of Environmental Law affirming nature's inalienable rights to existence, prosperity and evolution [6]), the question

of the formal consolidation of the legal status of nature in the legislation of different countries and at the international level remains unresolved.

In this connection, in the scope of this study, we are attempting to consider the environmental management system for the development of Earth rights in terms of variable scientific approaches, as well as to answer the question whether nature should be the bearer of exclusive rights and how they can be implemented.

Nowadays, theories are put forward in the scientific community that identify humans with other biological organisms (biocentrism) [7], within which nature has self-sufficiency and dominates people (ecocentric approach) [8]. On the other hand, many states still support the anthropocentric approach which affirms the process of environmental protection of the Earth as a condition for the realization of such human rights as the right to life, health and safe environment [8].

Thus, the discovery of political, legal and socio-economic justifications in the practical experience of different countries implementing the concept of the legal Earth and its ecosystems will identify the fundamental principles of development of environmental management and law taking into account the interests of all parties involved and the possibilities of overcoming environmental problems of our time.

**Materials and Methods.** In the context of the ecocentric approach, there are various structures focused on the development of ecosystems and biological diversity of the Earth, the analysis and systematization of which are presented in this study.

Consideration of generally accepted concepts in the field of sustainable development allows us to distinguish: ecosystem management, ecosystem approach and ecosystem-based approach [9].

According to E. Morgera, ecosystem management became the basis for the formation of other approaches appearing in the 1970s in North America as an alternative to sectoral approaches to nature conservation and as a way to integrate equity into environmental initiatives of that time [10]. The ecosystem approach gained popularity in the 1990s when the UN Convention on Biological Diversity adopted this approach as the guiding principle of international environmental policy [9]. The concept of ecosystem conservation (EBA) has appeared quite recently with the aim of integrating the rights of nature as a separate legal category.

As T.S. Kirkfeldt notes, the differences between these structures often overlap with complementary factors and a common task designed to strengthen the strategy of sustainable development [11]. Consequently, as emphasized in the scientific literature, the main features of ecosystem concepts are a combination of anthropocentric and ecocentric approaches, which consider the environment as a generator of resources necessary for man but at the same time recognize the intrinsic value of ecosystems in order to integrate traditional knowledge of indigenous peoples [10] and territorial environmental specifics.

Based on these concepts, the world community determines the basic rights of nature formulated at the World Conference on Climate Change and Earth Rights in Bolivia in 2010, including the right to exist, develop and reproduce, the right to proper habitat, the ability to participate in renewable processes of environment, protection against destruction, pollution and genetic modifications, the ability to interact with other representatives of the ecosystem, etc. [12].

Observing the change in international environmental policy, the question arises of significant differences in state interpretations of regulatory norms. To answer this question, we use pragmatic theories of institutional regulation or the creation of organizational infrastructures based on relevant research in the field of Earth's rights dissemination, as well as data from the International Environmental Monitoring (Eco Jurisprudence Monitor) for methodological assessment of relevant environmental decisions.

As C.M. Kauffman and P.L. Martin note, the norms spreading throughout the international management system in the field of ecology tend to be vague which makes it possible in many respects to modify their content and, thus, adjust it for various purposes [13]. This is consistent with pragmatic theories of institutional regulation that explain how legal environmental projects evolve through experimentation, adaptation, and modeling, encouraging government agencies to investigate the results of experiments in different contexts [13]. Similarly, the systematization of political initiatives of different states to implement the rights of the Earth in legislation and local regulations, procedural protection of ecosystems, leading to a change in unfavorable environmental processes, is being built.

Thus, the methodological base of the study focuses on the analytical building of ecosystem links in international politics, the development of adaptation management through the implementation of scientific knowledge and appropriate monitoring that identifies cases of environmental uncertainty.

**Results.** The emergence of a new regulatory framework in the field of international environmental management and law, which provides for the recognition of formal privileges of the Earth and natural ecosystems, is aimed at developing standard environmental principles that weakly counteract mass degradation of environment.

A key turning point in the history of environmental management development was the emergence of environmental jurisprudence as an independent scientific concept. This transition was marked by the inclusion of the nature's rights in the constitution of Ecuador in 2008 [14], as a result of which in 2010–2011, Bolivia adopted the law "On Mother Earth", which granted nature equal rights with people [15]. Another example of the realization of environmental interests is the

US environmental policy within the framework of which more and more tribal laws are approved at the subnational level of individual States [16].

Studying the environmental strategies of different countries, one can see that management systems offer various concepts that consider nature as an object of legal protection, universal human heritage, a source of resources necessary for a man, or a legal entity endowed with inherent privileges.

“The question of who or what we recognize as legal entities endowed with special rights is primarily a question of cultural traditions, as well as of political and socio-economic interests” [17, p. 10]. Let’s consider examples of nature’s rights implementation in the context of different regulatory approaches:

1. Legal status of the environment as a normative reflection of human rights. This approach is considered to be traditional and the most widespread around the world. In the context of this interpretation, nature has no legal status, but it is indirectly protected by subjective human rights [17] (the right to life and health, to a favorable environment, to physical integrity, etc.). Violation of the implied rights of the Earth, in this case, affects the inalienable rights of people which implies sustainable procedural support.

2. Protection of natural ecosystems as part of the universal human heritage. In the scope of international environmental conventions, natural objects are mentioned that contain exceptional environmental significance, as well as territories that make up the habitat of special species of animals and plants that need additional protection [18]. In Australia, the Australian Natural Heritage Charter is in force, designed to preserve, restore and develop the country’s natural heritage (biological and geological diversity) [18]. The legal regulation of the state of the environment in Australia does not imply giving nature a legal subject status, however, at the legislative level, a separate block of legal regulations for the management of environmental facilities is being implemented, obliging the authorities, citizens and visitors to follow the necessary environmental safety norms [19]. The main disadvantage of this approach is that it is limited in allocating natural areas, objects and resources as elements of the world heritage, thereby depriving the attention of other representatives of ecosystem.

3. Protection of nature as a guarantee of ensuring human rights to a favorable environment. The Constitution of the Russian Federation (Article 42) establishes the inalienability of the right of every man to a favorable environment, reliable information about its condition, as well as compensation for harm caused to health due to violations of environmental legislation. This approach goes beyond the traditional anthropocentric vision of nature by establishing environmental criteria as basic social values [20]. However, the theoretical declaration of ecocentric principles does not mean their practical implementation and procedural support, as a result of which we can talk about further opportunities for improving this environmental policy.

4. Granting individual natural objects of a legal entity status in order to assert their specific privileges. An example of this approach is the environmental initiatives undertaken in the United States and Colombia. The effectiveness of the procedural protection of the inalienable rights of water inhabitants in Washington State, USA, illustrates the importance of tribal laws in the scope of federal environmental policy (litigation of the Sauk-Suyuttle Indian tribe against the city of Seattle in order to assert the rights of salmon living in local water bodies to existence, reproduction and restoration of the species [13]). In Colombia, in 2018, there was a legal case on the rights of the Amazonia (legal proceedings against deforestation that contributed to climate change [21] in which the Supreme Court of Colombia declared the Amazonian lowland a legal entity and ordered the government to develop a plan for the restoration and protection of this territory [21].

5. Defining nature’s status as a legal entity. This approach is the most modern and innovative in the field of regulating relations between man and nature. In the context of absolute ecocentrism, the environment acquires the status of a legal entity endowed with inalienable rights and freedoms. Articles 71–74 of the 2008 Constitution of Ecuador are an example of the practical implementation of this approach [17]. According to the main provisions of article 71: “Nature, or Mother Earth, on which all life is reproduced and occurs, has the right to respect, maintain and restore its life cycles, structure, functions and evolutionary processes. People, communities, peoples and public authorities must ensure that the rights of nature are respected. The role of the state is to motivate individuals, legal entities and human communities to protect nature and promote respect for all elements of the ecosystem” [22].

The above-mentioned approaches, even in conditions of full international recognition of the legal capacity of nature, imply that any regulatory systems are a human artifact [23] aimed at coordinating and restricting the activities of legal entities and individuals to the extent available to them. The recognition of the incompetence of human systems for managing nature preserves the inevitability of anthropocentric elements due to the fact that political and legal structures are able to organize the activities of people in relation to the world around them but do not have power over the life of the inhuman world.

A natural compromise in this case is the combination of ecocentric and anthropocentric approaches of environmental management. The development of an effective eco-management system requires solving the problem of intransigence between these principles. By combining seemingly oppositional approaches, the world community will come to a new strategic complex that will contribute to the formulation of a conceptual framework for informing, protecting and implementing environmental justice systems that can respond to modern crises.

Current research confirms that people's acceptance of their inevitable anthropocentric state should not prevent the development of a more inclusive susceptibility to the value of the human species in the general ecosystem along with the establishment of a priori status for representatives of nature, and the development of a system of practical legal, social and political instruments [23] that can harmoniously combine all this into a single whole.

It is important to note that the accentuation of the environmental regulation mechanism on the implementation of individual rights of legal entities, as a rule, leads to multiple clashes of private interests. An example is a law passed by the Government of South Australia in 2005 with the aim of asserting the rights of the Murray River and the Lower Lakes to a healthy flow of water and conservation of biological species living in these reservoirs [25]. From the point of view of anthropocentrism, this law contradicts the previously existing rights of landowners, farmers and residents of nearby settlements to take water to meet their needs. The procedural regulation of this dispute focuses on the adversarial conflict of interests of the parties involved among which a legal hierarchy is established. The court should study the needs and rights of all parties of the conflict, as well as take into account the state of the ecosystem and the socio-economic situation that determines the development of such relations. In this example, the situation was resolved by establishing restrictions on water intake by farmers and citizens: such a result does not cancel their rights (water can be used to the extent that vital functions require it) but contextualizes their implementation and requires careful consideration of the rights of water bodies and biological species [25].

In this case, the greatest consequence of natural rights' recognition is the restriction of human property rights. It is implied that property owners consider nature as a resource to achieve their goals. In this connection, the recognition of the status of a legal entity for any representative of flora and fauna automatically gives them the right to autonomy and judicial protection which contradicts the full use of natural resources by humans.

In this direction, guided by the principles of environmental jurisprudence, the legal system can contribute to increasing environmental awareness and respect for natural objects and representatives of ecosystem. However, recognizing the rights of the Earth and granting nature the status of a legal entity entails significant structural and procedural changes. In fact, most environmental rights relate to "secondary norms" [24], while primary norms prescribe certain behavior patterns or suggest refraining from illegal actions which are controlled through the application of established sanctions [24]. In other words, the practice of environmental management is the foundation for building a sustainable development policy.

In reality, secondary norms do not work without corresponding primary norms. In a generalized form, the effectiveness of environmental policy is determined not only by the legal status of nature but also by a combination of factors: legal, socioeconomic, philosophical, cultural, etc. For example, there are many economic, legislative and procedural justifications that can be modernized (the introduction of environmental sanctions, the eradication of corruption, the stimulation of the impartiality of state bodies and judges, administrative inertia, careful execution of judgments, financing of environmental projects [24] and much more) without resorting to rewriting the constitution and radical restructuring of the legal system in order to achieve efficiency in the field of environmental policy.

Thus, by building a system of environmental management, humanity confirms its readiness and responsibility to immediately respond to emerging crises. However, we believe that the system of legal regulation of environmental problems of our time should be built in the most ethical and pragmatic way in order to maintain an effective balance between anthropocentric principles and ecocentric needs of the world.

**Discussion and Conclusion.** The study of practical implementation of environmental management system (Ecuador, Bolivia, USA, Colombia, Australia, etc.) shows that this concept fully requires a change in the legislative paradigm and significant economic, legal and social efforts on the part of government and population. Today, it is too early to talk about fundamental changes in the anthropocentric model of natural resource consumption but the intended vector towards ecocentrism allows us to model promising changes in human-nature relations.

The introduction of such a science as environmental jurisprudence (the doctrine of the rights of the Earth) will allow to accumulate the achievements of mankind aimed at improving the quality of life and maintaining the rights of people with the universal laws of nature which focuses in itself all animate and inanimate entities in need of development and protection.

As noted above, the task of implementing the rights of the Earth in the legislation of different countries is to overcome the environmental crisis and preserve the world for future generations of people and other living beings. However, not only the right-wing system is a solution to these issues, first of all, it is necessary to improve domestic environmental policy promoting the use of more effective tools to tackle environmental problems.

Environmental management itself offers opportunities to modernize the relationship between man and nature building a harmonious paradigm that combines environmental values and human rights bypassing revolutionary changes in the legal claims of the Earth and ecosystems. Of course, this requires deep changes in legislative, socioeconomic, procedural, executive and other regulatory structures, as well as work with the population and public organizations which will subsequently lead to the development of a harmonious system of interaction between anthropocentrism and ecocentrism.



Thus, the question of effectiveness of legislative consolidation of the nature's rights in the scope of improving international environmental management remains open and gives rise to further studies that make it possible to productively assess its consequences, benefits and disadvantages.

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