

Is water only a resource ? Or how to protect water through law

“Is water simply a flow? Exploring an alternative mindset for recognizing water as a legal person” is an article written by Alexandre Lillo, a law teacher at the Université du Québec in Montreal and a specialist on water law and environmental governance. In this article, he raises the question of making water a legal person. After a quick run-down of previous similar experiments, and based on several existing paradigms, he delves into the feasibility of such an undertaking.

#1 First, the author underlines the hybrid character of water, which is both a natural and sociological object. This twin dimension has risen through the sixties and seventies, when environmental ethical theory, built upon the relationship between nature and mankind, also rose to prominence. This approach aims to distance itself from the former binary view centered on domination of mankind on nature and intends to give an inherent value at everything that is not human. By extension, this framework would make it possible to grant water the status of a legal person, which would be built on the hypothesis that it has its own individuality, health and soul, distinct from mankind.

#2 Granting legal personhood to water is not unprecedented, as the author recalls by mentioning the cases of the Wanganui river in New Zealand and of the Gange and Yamuna rivers in India. These examples were built upon the cultural bond which united these entities to the local human populations. Here, rivers are looked at not only from a geological, but also from sociological point of view. By doing so, in the event of potential prejudice to the health of the river, the river can be legally represented before any the relevant courts. Modern legal systems (be it *common law*¹ or civil code) already attribute legal personality to non-human entities (companies for instance), but how and which entity it applies to tends to vary according to cultural and historical backgrounds.

#3 The author underlines some questions he deems essential when one aims to grant legal personhood to such an entity as water. First, should we give legal personhood to water as a whole? According to him, a case-by-case approach should be privileged. Granting legal personhood to water as a whole could lead to practical issues and would also ignore its social dimension. Lastly, he underlines the difficulty to define material frontiers of what exactly one would give legal person status to: where does a river begin and where does it end? For him, legal characterization should take into account the whole natural system in which it is embedded.

In Corsica, associations are fighting to protect the Tavignavu river

A group of NGOs has proposed to make water a legal person in order to protect the Tavignavu river in Corsica, which is currently threatened by a waste burying project. They symbolically issued a « bill of rights », including the right for the river not to be polluted. This approach aims for everybody to be able to go to court in case of pollution. It could later be extended to other natural entities. In France, water currently has the status of a *res communis*, meaning that nobody owns it: its use is thus common to all. With this new approach, other rivers, seas and even oceans could gain efficient protection means against pollution risks.

Pauline Bureau's opinion, vice-chair at LFE

« The legal status of water is a matter to delve into. Beyond that, it challenges us to rethink how we apprehend things and deal with what is non-human, calling for a paradigm shift, to go from destructive exploitation to constructive collaboration »

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¹**Common law** is a legal system based on case law: judges are interpreting and applying law based on previous cases, which allows for a more flexible evolution of law on a case-by-case basis. It is different from civil law which relies more on comprehensive written legal codes (such as in France).