

## INDIGENOUS LAW SPEAKER SERIES 2016

"How emerging counter norms strengthen: Lessons from Ecuador's rights of nature lawsuits"



**Professor Craig Kauffman**

How do emerging counter-norms strengthen? Institutionalization is important, but laws reflecting new counter-norms often are not implemented. Building on the human rights-based literature, Professor Kauffman explains variation in the implementation of Ecuador's pioneering Rights of Nature (RoN) laws, created to institutionalize emerging global counter-norms regarding sustainable development.

Professor Kauffman compares 13 Ecuadorian RoN lawsuits using an original framework for analyzing the pathways and strategies norm entrepreneurs (and their opponents) use to build (and counter) momentum behind judicial processes meant to buttress the enforcement of emerging counter-norms. The findings reveal less obvious pathways of influence involving a symbiotic process among civil society, state agencies, and the courts. Surprisingly, civil society pressure was the least successful pathway. Activists lost high-profile lawsuits, but facilitated judicial momentum by working "below the radar" on un-politicized local cases and training lower-level judges. Instrumental use of RoN laws by the state produced unintended consequences, including educating judges. Knowledgeable judges are unilaterally applying RoN in their sentencing, even when neither claimants nor defendants allege RoN violations, citing a professional responsibility to apply the law in its entirety.

The cases demonstrate how emerging counter-norms can be strengthened through "weak" laws, even when state executives have no intention of enforcing them.

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12.30PM-1.30PM, SOCRATES RM, LEVEL 2,  
LAW FACULTY, VICTORIA UNIVERSITY OF WELLINGTON