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Theoretical Impulses + Case Studies

Interdisciplinary Perspectives on the Interplay between Human Rights and Sustainability

Prof. Dr. Milena Valeva,
Prof. Dr. Kathrin Nitschmann (Ed.)

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Institut für Internationale & Digitale Kommunikation

Trier University of Applied Sciences
HOCHSCHULE TRIER

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Preface

The following collection of manuscripts emerged from an interdisciplinary virtual exchange held during the Winter semester of 2023/2024 at the Environmental Campus Birkenfeld, organized by Prof. Dr. Milena Valeva and Prof. Dr. Kathrin Nitschmann. Additionally, Prof. Dr. Héctor Bombiella Medina, a lecturer of anthropology in the Department of World Languages and Cultures at Iowa State University, contributed to the virtual exchange and supervised case studies 3 and 4, bringing his extensive experience in this field and facilitating the international exchange. Within the elective module on Human Rights, students from the Bachelor's programs "Nonprofit and NGO Management" and "Environmental and Business Law," as well as the Master's program "Energy and Corporate Law," explored the interconnections between human rights and sustainability.

In an era marked by unprecedented environmental challenges and profound social transformations, the intersection of human rights and the rights of nature has emerged as a critical area of inquiry and debate. Today, as we face the dual crises of climate change and biodiversity loss, the traditional boundaries between human and environmental rights are increasingly blurred. This confluence demands a fresh, interdisciplinary approach to understanding and addressing the complex and interrelated issues at hand.

Human rights, fundamental to the dignity and freedom of individuals, are deeply impacted by environmental degradation. Communities worldwide are experiencing firsthand the devastating effects of polluted air, contaminated water, and deforested landscapes, all of which undermine basic human rights to health, livelihood, and well-being. Conversely, recognizing the rights of nature — the intrinsic value of ecosystems and species — challenges us to reconsider our legal, ethical, and philosophical frameworks. It calls for a paradigm shift from an anthropocentric worldview to one that embraces the interconnectedness of all life forms.

Engaging in robust discussions and research on these topics is essential in today's context. By exploring interdisciplinary perspectives, we can forge innovative solutions that honor both the rights of individuals and the integrity of nature. This special issue aims to contribute to this vital discourse, providing insights and fostering dialogue on how we can collectively navigate the complex landscape of human rights and environmental sustainability.

The first chapter „Human rights and SDGs in the context of democracy“ examines the significance of international human rights in today's context and links them to new value systems like sustainability.

The second chapter, the case study „Rights of Nature“ explores the concept of granting legal rights to nature itself by comparing laws from various countries to show how it combats environmental exploitation.

The third chapter, the case study „Traditional coca leaf consumption and drug trafficking in Colombia“ delves into the complex issues surrounding coca cultivation in Colombia, highlighting its economic, social, and political impacts.

The fourth chapter, the case study „The artisanal fishing community of Chorrillos, Peru“ aims to provide theoretical insights and recommendations for improving the livelihoods of artisanal fishing communities in Peru, considering legal, ethical, and environmental perspectives as well as how economic liberalization, privatization, and deregulation affect the community's socio-economic conditions.

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Case study
Rights of Nature

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Ecology and the protection of fundamental rights: status quo and development potential in the light of the precautionary principle

Author: Prof. Dr. Kathrin Nitschmann

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1 Introduction

Already more than 50 years ago, against the backdrop of the "earth science" findings of the time, voices could be heard in the legal literature expressing concern about the planet's carrying capacity, calling for consistent political rethinking and action and explicitly questioning consumer behavior and the ongoing pursuit of economic growth (Rehbinder, 1970). The realization that the limits of environmental resources must be respected, and that growth must be shaped effectively within this framework has therefore been omnipresent not only since the "Our Common Future" report by the "World Commission on Environment and Development", or "Brundtland Commission" for short, in 1987 (United Nations General Assembly, 1987). Nevertheless, the current planetary status quo shows that the era of environmentally friendly economic development has by no means been effectively ushered in since then; on the contrary, implementation deficits or a lack of effectiveness of environmental protection measures against the excessive use of ecological resources are to be deplored. The demand for an ecological transformation of society is one of the most urgent on the political agenda and continues then as now, albeit partly with new terminology, at the level of jurisprudence: Currently, it is discussions about intertemporal freedom rights, nature's own rights and the greening of law that dominate the picture. However, the demand for ecologically oriented protection of fundamental rights is not new: the idea of protecting nature from excessive human behavior - also with a view to the generations of tomorrow and their chances of realizing a life in freedom in the future - is reflected not least in the precautionary principle, which is internationally

> The demand for an ecological transformation of society is one of the most urgent on the political agenda and continues then as now, albeit partly with new terminology, at the level of jurisprudence.

recognized as a legal principle. Its ecological potential will be briefly explored below, culminating in an overview of constitutional tendencies towards an ecologically oriented protection of fundamental rights from a German perspective. This overview at the same time serves as an introduction for selected legal, ethical and social aspects of case studies in Latin America done by students in the context of a Human Rights interdisciplinary seminar in Wintersemester 2023/2024.

2 The precautionary principle as a corrective with potential in ecological contexts

"Better safe than sorry" - this approach, which has been much discussed at European and international level, has played an explicit role as a guiding principle in global environmental and climate policy since the 1970s and can be found as the "precautionary principle" both in relevant declarations and framework conventions of the United Nations (UNFCCC, 1992; Rio Declaration, 1992) and at European level in the Treaty of Maastricht in Art. 191 TFEU, where it is linked to sustainability via the integration clause in Art. 11 TFEU. In Germany, the precautionary principle has also been emphasized as a guiding principle of environmental policy since the 1970s and has been continuously substantiated in environmental reports; as a normative requirement for dealing with ecological impact limits, it is intrinsic to the state protection objective of Art. 20a GG or substantiates it and can be found in numerous provisions of German environmental law (Calliess, 2001; Calliess, 2022a).

In this way, the precautionary principle transports the findings of earth system science on planetary boundaries into law as a normative component and can contribute to ensuring an "ecological subsistence minimum" recognized under constitutional law by aiming to avoid critical burdens and tipping points and not to exhaust ecological limits (Calliess, 2021a, p. 19 et seq.). Applied in consistent and transparent interaction with the relevant sciences, it is thus able to make a contribution to approaching the "equality of the starting point as an opportunity to realize freedom" in general and goes beyond the formula of reconciling the freedom of one person with the freedom of another by including the freedom-related question of realization - in our context also for future generations or the "expected number of inhabitants" (Böckenförde, 1991 esp. p. 266, 270 et seq.; Calliess, 2021b, p. 329).

On closer inspection, the precautionary principle and its national and international formulation give rise to several questions of both a legal and practical nature, including, for example, the scope of its content, the resulting obligations and limits of action for the responsible actors and the interaction with the principle of proportionality.

The potential of the precautionary principle to give full weight to ecological interests within the framework of a fair balancing of interests seems immense, but this "fair" framework also proves to be its biggest stumbling block. This is because traditionally, except in the case of mandatory legal requirements, no interest is to be given preference; at best, a planning *optimization requirement* can be derived from Article 20a of the Basic Law, according to which the natural foundations of life are to be protected as well as it is legally and factually possible without making the realization of other public tasks impossible (Murswiek, 1997). However, environmental impairment can regularly be justified under certain circumstances with another conflicting objective. This is probably not least because the precautionary principle always involves a certain degree of uncertainty in terms of prognosis.

At the same time, however, precisely this uncertainty component inherent in the principle can prove to be its strength if it is brought to bear in a future-oriented manner in favor of the natural foundations of life as the Federal Constitutional Court did in its much-noticed 2021 climate decision. The court refers to the special duties of care arising from the state objective of Art. 20a of the Basic Law by explicitly pointing out that, despite existing scientific uncertainty about environmentally relevant causal relationships, the possibility of serious or irreversible adverse effects must be considered if there is reliable evidence (BVerfGE, 2021, para. 229). The decision of the Federal Constitutional Court manifests the dependence of law on other sciences - in this case climate or earth science - in the sense of a structural link in order to constitute the legal decision in the first place.

Article 20a of the Basic Law opens literally door for science into the law; in this sense, the BVerfG states: *"Article 20a of the Basic Law imposes a permanent duty on the legislature to adapt environmental law to the latest developments and findings in science (BVerfGE, 2021, para 212)."*

3 German tendencies towards an ecologically oriented protection of Human Rights

The reception of the precautionary principle in German legislation and its development in literature and case law are exemplary indications that the lamentably hesitant implementation of environmental and climate protection and the failure to fully develop the steering potential of legal regulations in the last quarter of the 20th century are not fundamentally due to a lack of positive legal regulation or even legislative awareness.

The latter is hardly conceivable in view of the recurring political calls since the 1970s for positive legal concepts to strengthen environmental protection under constitutional law, with reference to the increasingly obvious ecological damage and enforcement deficits. On the background of political and legal rejection of a fundamental right to environmental protection (Calliess, 2021b; Calliess, 2022b Art. 20a, para. 10-18; see Wolf, 1984) - the Federal Administrative Court explicitly stated in 1977: *"Under federal constitutional law, there is no 'fundamental environmental right' that provides more extensive protection under subjective law than that provided by Basic Law Art. 2 et seq. in favor of specific protected goods."* (BVerwGE, 1977) - efforts at least led to the introduction of the state objective of environmental protection in Art. 20a of the Basic Law in 1994 (Federal Law Gazette, 1994).

The discussion about a "fundamental ecological right" or a "fundamental right to environmental protection" picked up speed again in 2021 with *Ferdinand von Schirach's* proposal to include a fundamental right to environmental protection in the UN Charter of Fundamental Rights (agreeing Klinger, 2021; critically referring to Callies, 2021b; also Kersten, 2022; critical Wegener, 2022). In view of the legal-dogmatic difficulties of such a fundamental right, the proposal has been received in the academic literature as a "sympathetic and justified climate policy plea", but at the same time, similar to a "human right to healthy climate", which is being discussed in the context of climate lawsuits, it gives rise to adjustments (Calliess, 2021, p. 323). All in all, such impulses should in any case be beneficial to the further discussion on the ecological development of the law.

Regarding the lack of determinability of a fundamental right to the environment, *Calliess* (2021) points out that the fundamental right to an ecological minimum subsistence level can be used here, which, derived from Art. 1 para. 1 in conjunction with Art. 2 para. 2 and Art. 20a GG, can be interpreted as being aimed at preserving a viable and liveable environment (BVerfGE, 2021, para. 113-115; critical Calliess, 2021b). This would result in a judicially controllable mandate to act, which - in line with the precautionary principle - obliges the responsible parties to develop an effective and long-term protection concept, among other things (Calliess, 2021).

In favor of a substantively effective fundamental right to the environment, *Callies* explains, with recourse to the function of fundamental rights as duties to protect, how a substantively effective fundamental right to environmental protection can be constructed as an environmentally protective partial guarantee of individual fundamental rights such as life, health and property. In the context of environmental impairments, this focuses in particular on the right to life and physical integrity under Article 2 (2) sentence 2 of the Basic Law and once again draws a link to the precautionary principle. This is because effective health protection as a duty of the state under Art. 2 para. 2 sentence 1 includes not only current impairments, but also preventive health care (Calliess, 2021b; with reference to BVerfG, 2009). *Calliess* (2021b, p. 331) emphasizes the idea of a procedural environmental law in view of the difficulties of a substantively conclusive determination of a fundamental right to environmental protection and with a view to the impetus of international and European law: *"Everyone has the right to a clean and healthy environment, as well as its preservation and protection. This is guaranteed by the right to information, participation in administrative proceedings and effective access to justice."*

Kersten's (2022) recent proposal for an ecological German Basic Law, which should be cosi-

> Turning away from the decades-long primacy of the pursuit of material prosperity is long overdue and a natural resource- and risk-based lifestyle change in line with the precautionary principle is urgent.

dered in the context of the international debate on the rights of nature, shows that there is still room for mankind to move towards more ecology in law, starting at the constitutional level. The natural state of the Anthropocene, into which humans have manoeuvred themselves through their ecologically irresponsible actions, requires a social contract to be concluded with nature and its rights to be recognized; a challenge that he sees as similar to that of declaring "capital" to be legal persons, which is therefore acceptable. *Kersten* (2022, p. 52) consistently argues for an ecological constitutional order that overcomes the distinction between anthropocentric and ecocentric nature conservation and provides "rules, concepts and institutions for the Anthropocene". He drafts such an order on the basis of the preamble, which has been expanded to include the principle of ecological responsibility and explicitly recognizes mankind's responsibility for nature as a task for the future, thus creating a powerful example of an ecological transformation of law at the highest national level (Kersten, 2022, p. 63 et seqq.).

Finally, in the context of the national discussion on improving the legal protection of natural resources, German legal literature also includes the demand for nature's own rights, which emerged on a global level in the 1970s (see Wolf, 2022; Gutmann, 2019; Mührel, 2022). The need for nature to be granted subjective rights is understood from a holistic naturalistic perspective in view of the natural interconnectedness of humans and nature and is discussed internationally in some societies at a political level with recourse to indigenous ideas and cosmovisions of an animated nature, and in some cases institutionalized at a legal level. Prominent examples with an impact that have been discussed internationally include the New Zealand Whanganui River, the Colombian Río Atrato and, most recently, the Mar Menor in Spain or the "Pacha Mama", which is revered by indigenous cultures in South America and can probably be understood with various nuances as an expression of a holistic cosmovision (Hsiao, 2022; Doran and Killean, 2022). The latter is legally enshrined at the highest level in the Ecuadorian constitution: the existential significance of the "Pacha Mama" is already stated in the preamble and humans are named as part of it; in Art. 71, the "Pacha Mama", again vividly and processually described as the source of life, is ascribed a legal status that goes hand in hand with the right of everyone to claim this right: *"La naturaleza o Pacha Mama, donde se reproduce y realiza la vida, tiene derecho a que se respete integralmente su existencia y el mantenimiento y regeneración de sus ciclos vitales, estructura, funciones y procesos evolutivos. Toda persona, comunidad, pueblo o nacionalidad podrá exigir a la autoridad pública el cumplimiento de los derechos de la naturaleza."*

While it may be possible to understand such a development as an expression of anti-colonial cultural tradition and as a response to modern industrial societies and their arrogant treatment of nature, the question is rightly raised as to how such an ecocentric or biocentric counter-image can be integrated into legal systems that are traditionally based on an anthropocentric understanding of nature without causing distortions that could ultimately impair the coherence of these humanistic systems (Wolf, 2022; Mührel, 2022). At this point, it will be necessary to reflect on a "certain cultural relativism" or the "cultural underpinning of every legal system", which, although not fundamentally opposed to a normative consensus of the global community, nevertheless calls for "interdisciplinary research into the genesis and implementation of norms"(see Jung, 2009). If the phenomenon of "nature as a legal subject" is to be successfully adopted, then only on the basis of the assumption that law is also a cultural phenomenon (Jung, 2017, p. 1 et seqq.; Seelmann, 2007, p. 121 et seqq.) and on the basis of careful comparative law, taking into account cultural circumstances - without re-

sorting to an excessive cultural comparison-, state structures, policies, institutions and sources of law (Schmidt-Aßmann, 2018; Kraski, Prityi and Münster, 2019). Nevertheless, it must be admitted that such an approach certainly has its appeal and that initiatives in the direction of ecocentrism, such as those being promoted in Germany, are worthy of note and should stimulate reflection and further discussion (Ewering and Gutmann, 2021). From the perspective of modern industrial societies and perhaps in general, it remains true that the core issue is the control of human behavior for the purpose of preserving its natural conditions of existence. The above-mentioned draft of an ecological constitution is an approach for such an ecological precaution, with a view to preserving opportunities for freedom in the future and the possibility of making the entire system more ecological.

Although since the introduction of Article 20a of the Basic Law, the mandate to the legislator to enact suitable environmental protection regulations that safeguard the civil liberties of future generations in line with the precautionary principle has been accentuated under constitutional law, it was for a long time partly considered ineffective and lacking in control (Calliess, 2022b, para. 139; Kersten, 2022). However, it was not until the Federal Constitutional Court's climate protection ruling of 29.04.2021 (BVerfGE, 2021) that the effectiveness of the state objective in conjunction with the principle of proportionality "like a hitherto closed flower" (Schlacke, 2021, p. 915) was developed in a precautionary manner in the sense of the freedom-related question of realization: *"Under certain conditions, the Basic Law obliges to secure freedom protected by fundamental rights over time and to distribute opportunities for freedom proportionately over the generations (BVerfGE, 2021, para. 173)."* The Federal Constitutional Court fully applies the precautionary principle in conjunction with Article 20a of the Basic Law and the rights to freedom by recognizing that cumulative, uncertain and long-term impairments of fundamental rights are also conceivable and that, in the worst case, namely in the event of serious, irreversible damage, fundamental rights protection could be rendered ineffective in the future (Ekardt, Heß and Wulf, 2021). The court thus addresses the factual intertemporal connection between environmental earth systems and their significance for the individual and points to the need for fair intertemporal allocation (Siebert, 1986). *"The protection mandate of Article 20a of the Basic Law includes the need to treat the natural foundations of life with such care and to leave them to posterity in such a condition that future generations cannot continue to preserve them only at the price of radical abstinence (BVerfGE, 2021, para. 193)."* This finding is implemented in terms of legal doctrine at the level of intervention in the light of Article 20a of the Basic Law by linking the defensive and protective duty dimensions of civil liberties and the explicit addition of the intertemporal component and thus overcoming the presentness criterion in conjunction with the standards of evidence control; without, of course, fundamentally affecting the fundamental right dogma of the duty to protect (BVerfGE, 2021, para. 169, 186 et seq.; see Schlacke, 2021). In concrete terms, the Federal Constitutional Court succeeds with the construction of an "intervention-like pre-effect" (BVerfGE, 2021, para. 183) in moving the objective-law intergenerational protection obligations of Article 20a of the Basic Law into a subjective-law dimension and creating a new future-oriented fundamental right to intertemporal freedom protection, which has met with a broad positive response in the literature (Schlacke, 2021; Kersten, 2022; Faßbender, 2021; Ekardt, Heß and Wulf, 2021; Britz, 2022; Breuer, 2022; Hofmann, 2021). *Kersten (2022, pp. 35-39) summarizes* this in the fundamental rights formula: *"Art. 2 para. 1 GG (as a subjective dynamization factor) + Art. 20a GG (as na objective dynamization factor) = intertemporal safeguarding of freedom."* It remains to be seen how the new dogmatic figure will develop and whether it should be transferable to other areas (Franzius, 2022; Schlacke, 2021; Uechtritz and Rutloff, 2022).

4 Conclusion

It is to be expected that government decisions in the ecological context will in future more and more likely also imply the necessity of renunciation and thus the restriction of fundamental freedoms and the status quo which has become taken for granted in western industrial societies; a consequence that will by no means simply reflect a social consensus. Turning away from the decades-long primacy of the pursuit of material prosperity is long overdue and a natural resource- and risk-based lifestyle change in line with the precautionary principle is appropriate. Such a step cannot be expected through legal control alone, but must also be based on cooperative, consensual, informational processes involving society. A law that is consistently shaped human rights orientated could contribute to changing the awareness of society if the law becomes the living expression of an ecologically and socially fair constituted state. An assumption that could be made for any nation, which leads to the announced selected aspects from the student's international case studies.

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Endnote

For more on the understanding, see Gutman (2019), p. 613 et seq.; Bachmann and Navarro (2021), p. 357 et seq.; O'Bryan (2022), p. 769 et seqq.; Epstein S./Dahlén, M./Envist, V. and Boyer E. (2022), Liberalism and Rights of Nature: A Comparative Legal and Historical Perspective, Law, Culture and the Humanities; Kraski, Prityi and Münster (2019), p. 127 et seqq.; for Europe see European Parliament Study requested by the JURI committee (2021) Can Nature get it right? A Study on Rights of Nature in the European Context, PE 689.328.

Introduction

In order to protect the pristine and invaluable nature, a tool has emerged in recent years - the granting of rights to nature itself. To ensure the protection of not only the living species within a river, but also of the river itself, some may give it the status of a legal entity, with the right to legal representation and with interests that must be taken into account. This chapter discusses the underlying relationship between humans and nature, and compares existing laws from different countries to show ways to combat the exploitation of nature.

The first part of this paper portrays our current perspective on nature, how it developed and what distinguishes it from animism. Our perception of nature will be debunked, and strong advocacy will be made for a more sustainable human-nature relationship. Select nations have taken unprecedented steps to acknowledge nature as a subject with inherent rights, transcending the conventional view of the environment as mere property. This term paper dives into the evolving landscape of environmental jurisprudence by exploring the inclusion of nature's rights in the constitutional frameworks of Ecuador, Bolivia, New Zealand, Colombia and India. Through a comparative analysis of these distinct cases, we unravel the diverse approaches these countries have adopted to recognize and protect the rights of nature, examining the legal, cultural, and ecological implications of this transformative concept. From the constitutional enshrinement of Pachamama's rights in Ecuador to the legal personification of the Whanganui River in New Zealand, this paper sheds light on the global movement for the rights of nature and its potential impact on environmental conservation and societal harmony. Over the last years the discussion about rights for nature have also increased in Germany. The first part gives an overview about the current status of natural rights all over the world.

The second part deals with the rights of nature in Germany and how these have developed in recent years, for example through the citizens' initiative in Bavaria, which addresses the rights of nature and makes them the subject of a referendum.

The third part deals with the decision of the Federal Constitutional Court. This decision in March 2021 on the issue of climate protection marked a significant milestone in the context of the global climate crisis and finally the class action lawsuit.

Decoding the Environmental Crisis: A Historical Analysis of Human-Nature Relationships

Author: Johannes Hagemann

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1 Introduction

When we want to understand why the laws of nature and nature itself are currently in such bad condition, we need to look at our way of seeing the world. When we want to stop the rapid deforestation, climate change, mass extinction, and other catastrophic impacts we have on our environment, we need to figure out at what time and why they started. There are fundamental differences between an anthropocentric worldview, where humans are above all other species, and an animist worldview, where humans are a part of nature. Due to people acting accordingly to their perception of the world, we need to understand why these perceptions differentiate so much and why people from the imperial core, respectively, the exploiting countries, think in a hierarchical pattern.

Our disconnectedness from nature has reached a shocking extent. People living in big cities see nothing but concrete and cars; the plants they have in their homes are made out of plastic; and the only time they see animals is when they go to a zoo, where they are crammed in little enclosures and alienated from their natural habitat. Children growing up these days spend more time watching ads on TV or social media than they spend in nature. No wonder that many people know more brands than tree species, despite the fact that just one of those two keeps them alive. It is high time to question this development and to ask ourselves how we ended up here.

Interestingly, there are still elements of a human-nature relationship visible in our modern capitalist society. Some people see their dog or cat as part of the family and talk to them; others care for plants as well as they do for their own children. And even in movies, a world is a portrait where the birds talk to the people and plants are alive. Therefore, the idea of nature being alive rather than just some material resource still prevails in our subconscious and in our fantasy to this day.

The first part of this paper portrays our current

perspective on nature and how it developed. From Plato's Allegory of the Cave to the scientific revolution initiated by Francis Bacon and the dualism founded by Descartes, many theories influenced our perception of the world. The term Anthropocene is widespread, but it is rarely discussed or narrowed down when used. It will be discussed and elaborated on how the rise of capitalism is related to the accelerating exploitation of nature.

The second part is about defining animism, the initial view of humans as a part of nature, which is still prevalent in indigenous culture. Cartesian dualism will be challenged, and other philosophical theories will be examined. The concept and theory of ecological feminism are going to be introduced, and the underlying analyses will be conducted in the context of animism. Our perception of nature will be debunked, and strong advocacy will be made for a more sustainable human-nature relationship.

2 Historical development of the Anthropocene in Europe

The term Anthropocene was first introduced by Paul Crutzen and Eugene Stormer in 2000. Originally, it just referred to the geological era but it was quickly adapted by other scientists to describe the era, in which humans have a significant impact on the whole planet. Per definition, not necessarily negative, the word is nowadays mainly used to describe the different areas of destruction humans have on planet Earth, for example, climate change, ocean acidification, radioactive waste, or soil erosion. The term is highly discussed because there is no clear start to this era or a distinct indicator of what makes it special. Some argue that the start of the industrial revolution marks the beginning; others point to the importance of globalization in the form of colonization. Fundamental for this new era, however it is defined, is a new way of thinking in which humans are not a part of the environment but superior. The following section will examine some theories, why and how this way of thinking emerged, and who benefited from this narrative (Neilson, 2024).

2.1 Plato and the Allegory of the Cave

The foundation for the anthropocentric worldview was laid by the Greek philosopher Plato. He was the first to describe life as dualism and drew a distinct line between the earthly realm and the transcendental realm. In his famous Allegory of the Cave, he described people only seeing the shadows of reality. They are having fake experiences that feel real but are only shadows of reality. One of the prisoners breaks out, leaves the cave, and figures out what is causing these shadows. When he comes back to the others, he cannot see the objects pictured by the shadows because he has gained the knowledge that these are nothing but shadows and sees them just as that. The other people in the cave might, therefore, think he lost rather than gained knowledge. According to Plato, we can just access the intellectual realm through reason. Our initial experience is only in an earthly, embodied manner, so with the help of our intellect, we can grasp *the idea in itself* (D'Olimpio 2023).

2.2 Francis Bacon

Plato's ideas, especially the one of the world being split in two, were adopted by the transcendental philosophies during the Enlightenment. They built on the idea that intellect is the core essence of knowledge. Therefore, humans are given a special place above the rest of creation. The first one to call for this dualism was the English philosopher Francis Bacon. He was a significant contributor to the 'scientific method' that laid the foundation for empiricism. While describing science as a way of observing events in nature, he called for science to be used to enslave nature. The idea of a living world seemed absurd to him because, for him, it was just a chaotic mass that needed to be sorted. He went as far as saying that science should torture nature to reveal its secrets. For him, science is more than a tool to observe; it is a weapon to fight nature and subdue it (Hickel, 2020; Scalercio, 2018).

His ideas might sound brutal, but their consequences were way more devastating. Not only did he, as Attorney General under King James I, use torture against peasants and work to legitimize this practice, he also had a big influence on how the colonialists conducted themselves. The human domination of nature and the sham to sort out this chaos that is present in every part of the world were two of the most important reasons why the colonization of every part of the world was justifiable. In the understanding of nature that was prevailing in the 16th century, other human beings were part of this wild nature, which had to be tamed as well. The term 'uncivilized', which is shockingly still used sometimes, was omnipresent at the time of Bacon and described the characteristics of people living in harmony with nature. Therefore, the conquering of new lands and within the humans who lived on them, was not seen as the brutal subjection as we recognize it today, but as a favor and doing good (Hickel, 2020; Scalercio, 2018).

Despite the fact that he was calling for this aggressive treatment and exploitation of nature, he did not establish a philosophical concept to justify this proposal for a new behavior. There are some indications of Bacon being the pioneer of the disenchantment of nature, but the main part of this theory was characterized by René Descartes (Hickel, 2020).

2.3 René Descartes

René Descartes reflected back on the idea of Plato and broadened the concept of gaining knowledge just by intellect. In this point, he was contrary to Bacon, for whom experimenting and observing the scientific method of gaining knowledge was. But what they shared was the vision of nature as a dead matter that has no influence on humans or the way they behave. According to Descartes, humans are the only beings with a soul, which has a special connection with God. Every other creature was like a machine without thoughts or intentions. They are just a mass of flesh with some instincts, and in his opinion, they do not even have feelings. He tried to prove this point by cruelly dissecting living animals. After torturing them and cutting them in pieces, he insisted that what seemed like pain and sentience was only the appearance of it. The animals are nothing but flesh, muscles, and nerves, and they just act accordingly. What came to be known as mechanical philosophy was nothing else than objectifying animals and even the human body. He split the human being into two parts. The body is just machinery that has to be controlled by the soul, which is what actually makes us humane. Therefore, the body was pictured as weak and had to subdue the brain. If people were poor, they had to be lazy, and the reason for this was the deficiency of willpower to make the body obey the brain. Normal human instincts like sleeping and hunger were portrayed as unnatural and signs of weakness (Harrison, 1992).

According to Descartes, humans are the only beings with a soul, which has a special connection with God. Every other creature was like a machine without thoughts or intentions. They are just a mass of flesh with some instincts, and in his opinion, they do not even have feelings.

According to Jason Hickel, who analyzed the destruction of the human-nature relationship and the role Descartes had in it, this philosophy was imbibed by the early capitalists. They propagated his philosophy because it allowed them to exploit people and nature as much as they wanted. The work was stripped of its meaning and mastery and became a purpose in itself. Not the actual manufacturing of things was the achievement, but the working and productivity by themselves. Land became property, and living ecosystems became resources. This gave the landowners permission to exploit and destroy whatever they liked. The role of Descartes in the development of capitalism should not be underestimated and played right in the hands of landowners. The church also had an interest in the creation of a dualist worldview because it legitimized humans as the image of God to rule over every other creature. The spiritual realm, which is not observable, was co-aligned with the existence of God and justified the power of the church in this new epoch (Hickel, 2020).

Carolyn Merchant, an environmental historian and ecofeminist, also concluded that the shift from an animistic worldview to a mechanistic worldview significantly accelerated the exploitation of nature. She analyzed the parallels between the man-women hierarchy and the human-nature

hierarchy. Before the scientific revolution, people spoke about 'mother nature' as the origin of all life. Tellingly, Bacon speaks of nature as female and calls for putting her under constraint, so she takes orders from men. In addition, many jobs previously done by women changed into meaningless jobs under capitalism (Merchant, 1980). Her work was the first philosophical analysis of history from an ecofeminist perspective. Therefore, she is seen as a mentor by many, and numerous case studies and research papers are based on her work (Nichols, 2021).

2.4 Cheap nature

For many historians, the roots of the problem are not the existence of the human species. The earliest traces of mankind date back 40,000 years, around the time when the first homo sapiens came to Europe. And for all of history, humans have had impacts on nature, but most historians argue that the Anthropocene started between the 17th and 19th centuries (Wilford, 2002). Due to the emergence of capitalism at this time, some argue that we live in a Capitalocene (Moore, 2016).

In a capitalist system, the main goal is making profit rather than providing a decent life for the people, which has been the main goal before. Capitalism is based on internalizing resources and paying as little as possible for their usage or exploitation. The damages done to the environment get externalized, so the polluter does not have to pay for them. Creating value in a capitalist system is highly dependent on appropriating raw materials and putting a price tag on them. The value that ecosystem services, such as rivers providing fish, produce, is not paid for, at least not in the right amount. So-called profit is nothing else but surplus value squeezed out of nature or the workers. When companies want to increase their profit, they have to either earn more income or reduce cost. In reality, this cost reduction often means paying workers less or damaging ecosystems beyond the point where they can repair themselves (Think That Through, 2022).

Moore calls this a capitalized separation between society and nature, but as a matter of fact, all are one and of the same nature. This separation is just an ideological one, because even the people arguing for it cannot draw a clear line between what is nature and what is society. The economy can only exist and thrive in a healthy ecological environment. As said before, at the beginning of capitalism and colonialism, most of the indigenous people were seen as part of nature and could be internalized. In Moore's opinion, economics is just a way to differentiate which part is given a monetary value and which part is not. The soil and the plants are free, as are the slaves, so in theory, the owner makes money from nothing. When the soil loses fertility, it has to be fertilized to get roughly the same amount of crops over time. In this case, the external cost has become an internal one because the owner of the plantation has to pay money to maintain it. Due to this new cost, it would be cheaper to buy new lands, or ideally get them for free, so the owner can just use the fertile soil. Therefore, the profits of capitalism are nothing but the damage done to the environment or humans (Moore, 2016).

The entire world is full of living persons, and no matter if they are human or non-human, they deserve respect. Other beings like animals, plants, or rivers influence us as much as we influence them, so we are all in a relationship with them. Therefore, animism is more naturalist and human-nature-based than metaphysical.

3 Animism as an ontology

3.1 Definition

The English anthropologist Edward Burnett Tylor first introduced the term animism and defined it as the characteristic religious belief in spirits. For him, animism was the first and most basic religion because animists think everything is inhabited by souls. In his Handbook about Contemporary Animism, Graham Harvey questions this definition as too vague. He also criticizes the prejudice of the egocentric view that 'they believe but we know' because it hinders understanding the animistic worldview. For a deep comprehension of animism, it is necessary to be open-minded and to respect their way of seeing the universe as much as any other religion (Harvey, 2015).

The most widely used application of animism is to describe humans participation in a multi-species community. The entire world is full of living persons, and no matter if they are human or non-human, they deserve respect. Other beings like animals, plants, or rivers influence us as much as we influence them, so we are all in a relationship with them. Therefore, animism is more naturalist and human-nature-based than metaphysical. In some cases, animism is also used to characterize religions, the interrelation of all matter and all being itself, or to describe human-animal relationships, e.g., if someone sees their pet as a part of the family. All these definitions and meanings have the same core, which is trying to understand what activates and motivates the way lives are lived (Harvey, 2015).

3.2 Closeness in Human-Nature relationships

In his book on Ontology, Neil H. Kessler argues that the ecological catastrophes happening in the Anthropocene are just the symptoms of an underlying root problem – the faulty relationship humans have with other beings. He criticizes concepts like planetary boundaries, which aim to limit the destruction of nature to a 'save' extent, because they still imply that humans can pollute the planet. Sustainable development does not mean less destruction, but non at all. Every tree cut down and every plastic bottle thrown in the ocean indicates how we treat nature and the beings around us. Due to ontology being the study of the nature or essence of being or existence, Kessler looks at the small and big scale of human-nature relationships.

A good human-nature relationship does not guarantee the end of destruction because humans are sometimes insidious to each other. But when this mistreatment happens, it can never be moral or justified, so that should apply to the destruction of nature as well. This could fuel an improvement in treating the earth, not just to survive but to be respectful. Due to this possible improvement, the author takes a deeper look into the history of animism and questions the reason why many people find animism strange. Prejudices and assumptions about more-than-humans not having the capacity to form a relationship can negatively influence the research about the human-nature relationship; therefore, the author tries to be as unbiased as possible. The first problem he encounters before writing this philosophical paper is the term 'nature' in itself. By referring to nature, many humans mean every non-human being at once. This plural distorts the fact that these are many individual beings and pigeonholes them. Due to the widespread use of the word 'nature' in this context, it is impractical for him to refrain from this word. Especially when analyzing the creation of human-nature dualism, it would be rather confusing to use an unbiased term that includes humans and everything that we call 'nature'.

When the way of finding a definition for the human-nature relationship is just done through already inherent knowledge, in isolation, and without feeling or believing, then this definition is not a definition of a relationship but of a self-conception. Due to this method of defining the relationship already being anthropocentric, it is impossible to get a balanced outcome. The only way a river becomes alive is by humans treating it as if it were. If they think it is dead, it will forever appear dead to them, no matter what they examine. This is similar to other religions because just if someone, e.g., speaks prayers, they can be answered, and their belief will be reinforced. To change the worldview of a dead world that many people nowadays have, the author thinks correcting mistakes in the worldview is more efficient than offering an alternative worldview. Many aspects of animism seem not to fit into our modern worldview, but the author argues that this is not a question of false religion or perception of the world, but of a flawed ideology. When we take for granted that indigenous people know that everything is alive, the question of compatibility is in reality more one of accuracy and misconception.

He favors and builds up on the Ecofeminist conclusion that the root causes of the anthropocentric stance are human-nature-dualism. Ecofeminists like Carolyn Merchant (mentioned in

2.3) analyze the human-nature hierarchy as a form of dualism because, just like in the man-women hierarchy this distinction is made up and both are of the same matter and soul. The most remarkable parallel is 'Passive Object vs. Active Subject Dualism'. Describing nature or women as objects denies their role in the world and limits their significance and equality in life. They are portrayed as a thing without a will or feelings that just exists but doesn't act on itself. Another parallel is a significant value dualism. By valuing nature only as the means to achieve human goals, it is being stripped of its self-purpose as a being. So when we see nature just as resources or as something existing for us to survive, it loses its independence and is determined by whether we need it or not. The same happens when humans are seen as 'human capital' or women are seen as 'birth machines' they get reduced to their utility for society. This rhetoric can be extremely dangerous as it disowns people's right to exist and be treated with dignity (Kessler, 2018).

In this hierarchy of value, the subordination of women was not only justified, but men were also called upon to subjugate women and appropriate them. Through societal norms and cultural practices, this justification was enforced and strengthened because the longer people lived under these norms, the more they did not question them. Ecofeminists argue for understanding and completely dismantling these oppressive concepts. The logic of domination not only justifies the subordination of women and nature but also other forms of discrimination like racism, classism, and heterosexism. The goal of all struggles against discrimination should be the eradication of this logic. Marily Frye advocates for overcoming discrimination against humans and nature by shifting from an 'arrogant perception' to a 'loving perception' where non-human beings are valued and respected. The human-nature relationship then becomes one of care, love, and closeness.

Overall, ecofeminism opposes any form of domination or discrimination. It is a contextualist form of ethics, which defines relationships between beings rather than rules and sees humans as a part of nature. An important part of the past and further development of ecofeminism is the Inclusivity of different perspectives, e.g., indigenous and marginalized groups. Only through the diversity of perspectives and opinions is it possible to create a model for just ethics. Furthermore, ecofeminism challenges abstract and hyper-individualism because humans are being shaped by their relationship with other humans and nature. Individualism is embracing an anthropocentric worldview that omits other perspectives and therefore has to be limited. So ecofeminism analyzes every aspect of the logic of domination and its effects and is thus a holistic approach to ethics (Warren, 1990).

Despite the Cartesian dualism being omnipresent in our society, there are still examples of 'modern' humans describing their relationship with plants and forests as intimate. For example, children, interestingly, do not think in this dualism but of people and the environment being in a mutually sustaining relationship. When asked about nature, their perception is more like that of an inter-human relationship. Children playing in the forest or in the fields feel close to this part of nature. They develop feelings related to their environment and trees and are sad if they are cut down. Additionally, everyone seems to have had a favorite place in nature as a child, where they were connected to it and were 'one with nature'. For some, it is climbing trees; for others it is building something in the forest or running through the fields. Many children explore nature, embark on an adventure, or fantasize about nature interacting with them. The author suggests that children do not lack knowledge but are more free in feeling and accepting than adults, who tend to hide their imagination behind reason. While growing up, many children get told that their perception and joy of nature are wrong and they should stop feeling connected to it. This objectification is easy for some but pretty difficult for others (Hoffman, 1992).

Neil H. Kessler elaborates that human-nature-relationships require material conditions, but they do not start with them. This implies a criticism of materialism as a way of analyzing the world. Due to materialism being 'a priori' because the material has been inserted before observation, which means materialists have a presumption of the world, they reject findings that do not fit into this worldview. For example, children's experiences to closeness with nature cannot be explained by materialist philosophy; thus, they have to be fake. In

science, truth is what we observe and which theory the observation solidifies, but in philosophy, truth comes from experiences and their interpretation. A school of thought always deals with experiences made by the one thinking about them or other humans. If some of these experiences do not get taken into account because they vary from what we believe, this school of thought is inaccurate or even wrong.

The author reveals that most monist materialists claim to be free from Cartesian dualism, but they are in fact reproducing it. By getting rid of the spiritual realm, they do not value humans and nature the same but deny spiritual experience with nature, which they can't explain. However, this spiritual sense is what makes humans value nature the same as themselves and what it means to be an animist. The only way to get rid of Cartesian dualism is by seeing both nature and humans in the materialist as well as in the spiritual realm. They both are made out of matter, and they both can have a spiritual connection with each other or among themselves. This is why they originally (before the scientific revolution) were in both categories. These connections and spiritual beings can have inherent feelings, consciousness, and meaning. Hence, Cartesian dualism creates a contradiction between our experiences with the world and the imposed worldview.

Accordingly, the author has proven that the lack of closeness in human-nature relationships does not originate in human-originated culture and can be identified purely through the analysis of mistakes in perception and conception that modern societies make. Instead of trying to adopt the animist view of indigenous people because it is more environmentally friendly, he questioned our worldview. This has the big advantage of not being in danger of appropriating the animist culture. Experiences someone makes with nature do not have anything to do with culture but with emotions, feelings, and closeness (Kessler, 2018).

A famous example of emotions felt in connection with nature is the relatively new forest therapy. In such therapy, participants visit a forest or do some forest-related activities with the help of therapeutic personnel, which can significantly improve adults mental health. Especially for people from big cities, forest therapy, compared to control groups, decreased stress, depression, anxiety, and anger levels (Lee, 2017). Thus, it is scientifically proven that humans need the forest for their mental health, independent of how they see the forest and if it has a soul in their perception.

Forest therapy; a famous example of emotions felt in connection with nature, in which participants visit a forest or do forest-related activities with the help of therapeutic personnel, which can significantly improve adults mental health by decreasing stress, depression, anxiety, and anger levels..

4 How our view of nature influences laws

The goal of ecofeminist philosophy and other philosophers exploring the human-nature relationship is to prevent destruction and pollution by defining better morals. This does not necessarily involve writing new laws because, in a perfect society where everyone behaves morally correctly, there would not be a need for laws. If everyone sees the destruction of nature as unethical, not because it endangers our future but because it harms other beings, people and companies doing so would be boycotted on a large scale. Our system would be one of harmony and mutual respect, and our economy would be very different. Instead of destroying our planet and exploiting workers to pursue the goal of profit, which is meaningless, our goal would be an economy of sufficiency and postscarcity (Hickel, 2020). Because this goal is far off, a reasonable step in the right direction would be implementing (better) rights of nature.

Rights of Nature are a legal instrument that enables ecosystems or species to have inherent rights like people and corporations do. Such rights include the legal right to exist, thrive, and regenerate. This enables the defense of nature in court,

not for the benefit of people who rely on these ecosystems but for the sake of nature itself. Contrary to our current legal system, in which even the environmental protection measures are anthropocentric, Rights of Nature are ecocentric and focus solely on the environment. It addresses complex issues, e.g., deforestation, at the systemic level, thereby enforcing proactive action and effective restoration projects (IPBES Secretariat).

5 Conclusion

However we call this era of human domination over nature, one of the biggest misguided developments was the dualist world view. Through this, a hierarchy of humans over nature and men over women was trying to be justified. Due to its rising popularity in the scientific revolution, it had catastrophic impacts on everyone and everything that was not defined as a subject in the Cartesian sense. Women were subjected, nature was exploited, and during colonialism, indigenous people were seen as things just because they did not fit in the picture of European civilization. The logic of domination over nature and even over marginalized people is still present to this day.

The only way to get rid of this logic is by actively questioning it and exploring the flaws it has in its argumentation. We should realize that neglecting the experiences humans all around the globe have about the nature that surrounds them is inconsistent. Philosophy is the school of thoughts and experiences and should therefore take any experiences into consideration, even the ones that may vary. Our worldview is not based on reason but on a wrong assumption made centuries ago that became embedded in our society. So when we think of nature as something to subdue, we are not progressive but holding on to a tradition of dominance.

Ecofeminism laid out an excellent analysis of the parallels of discrimination against nature and against women; hence, they call for combining efforts to abolish them. A successful fight against discrimination should be universal and seek to eliminate not one form of discrimination but the entire logic of domination. A very important part of this is the inclusiveness of different perspectives, especially those of marginalized groups. For some, it might seem helpful to look at the indigenous way of living, but we need to comprehend that cultural appropriation is not the solution but instead a shift in our worldview due to our renewed perception.

Rights of Nature can be a complementary measure to effectively defend nature in our current system. A shift from exploitation and capitalism to a world of mutual respect will certainly take its time, and in the case of the climate crisis, we have absolutely no time to lose. Therefore, the fight for a better future should have a vision of what needs to be overcome and what we want to archive, but it also has to take direct action by defending every other being.

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Rights for Nature in selected states

Author: Sahar Mallak

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1 Introduction

In recent years, a paradigm shift in environmental ethics has given rise to a groundbreaking concept granting legal rights to nature itself. As the global community grapples with escalating environmental challenges, select nations have taken unprecedented steps to acknowledge nature as a subject with inherent rights, transcending the conventional view of the environment as mere property. This term paper dives into the evolving landscape of environmental jurisprudence by exploring the inclusion of nature's rights in the constitutional frameworks of Ecuador, Bolivia, New Zealand, Colombia and India. Through a comparative analysis of these distinct cases, we unravel the diverse approaches these countries have adopted to recognize and protect the rights of nature, examining the legal, cultural, and ecological implications of this transformative concept. From the constitutional enshrinement of Pachamama's rights in Ecuador to the legal personification of the Whanganui River in New Zealand, this paper sheds light on the global movement for the rights of nature and its potential impact on environmental conservation and societal harmony.

2 Rights for Nature in selected States

The following section focuses on selected countries such as Ecuador, Bolivia, New Zealand, Colombia, and India. In these countries, nature successfully gained rights.

2.1 Ecuador

Ecuador adopted a new constitution in 2008 (Gutmann, 2019). The Latin American country is the first and so far, only country in the world to include the rights of nature in its constitution (Johns, 2023). With this step, Ecuador laid the foundation for the inherent rights of nature. The Constitution de la República del Ecuador (CRE) stood up for the rights of nature. The CRE is a hybrid structure in which various influences are combined. This formerly colonized country rejects any capitalist economic models and development concepts from the West that are growth oriented. However, it does incorporate elements of the legal system of

the former colonial powers and Western concepts of constitutional protection into its development. Their aim is to have a form of society in which nature and people can live together in solidarity and harmony (Gutmann, 2019). This form of society is intended to create mutual acceptance between cultures. Something different does not automatically mean that it is bad. It can be seen as an opportunity to constantly learn from others. Article 71 of the Ecuadorian Constitution attributes the following rights to nature:

"Nature or Pachamama, which realizes and reproduces life, has the right to have its existence, the preservation and regeneration of its life cycles, structure, functions and development processes fully respected." (Wolf, 2022, p. 451). It is also noted that any person can demand from public authorities that the rights of nature be respected (Wolf, 2022). But what does the word "Pachamama" mean? The term Pachamama means Mother Earth in the most widespread non-European language of the Andean region. The Pachamama is considered the goddess of fertility in the Andean cosmovision. It is the source of all life and gives humans everything they need to survive. As a result, there is no separation between human beings and nature, as the cosmos is perceived as living in its entirety (Gutmann, 2019). The principle of realization is the relationships between non-human and human components of the cosmos, which exist because of this vitality. This leads to dependence. It means that people are perceived through their relationships with the community and the cosmos. In other words, when humans harm nature, they harm themselves. It is important to create and maintain balance and harmony. In practice, it means building and maintaining a relationship with the Pachamama, just like a relationship with a human being (Gutmann, 2019).

Ecuador as the first, and so far only country in the world, included the rights of nature in its new constitution in 2008. With this step, the Latin American country laid the foundation for the inherent rights of nature. The "Constitution de la República del Ecuador" is a hybrid structure in which various influences are combined. The formerly colonized country rejects any capitalist economic models and development concepts from the West that are growth oriented.

Nature has acquired rights under the Constitution and is designated as a legal subject under Article 10(2) of the CRE (Deutscher Bundestag, 2021). In Ecuadorian practice, there are decisions in which environmental interests are weighed against human interests.

The CRE sees the nature as an ecosystem. Many regulations are defined in which the protection of ecosystems is seen as a public interest. Even after environmental damage, the restoration of the affected ecosystems should be required. This is essential to maintain the balance within the ecosystems (Gutmann, 2019). In this way, the CRE incorporates an indigenous understanding of the relationship between humans and nature into law (Deutscher Bundestag, 2021).

In the political process, nature's own rights at a constitutional level are more permanent than a simple regulation (Johns, 2022). Not only the state but also private individuals are bound by the Ecuadorian rights of nature. The majority of environmental damage is caused by private individuals. Therefore, all Ecuadorians are obliged by Article 83 No. 6 CRE to respect the rights of nature (Gutmann, 2019). However, the Constitution does not provide any information on the procedural approach or the representation of nature (Johns, 2023).

2.2 Bolivia

In 2009, the Bolivian constitution came into force, in which many articles are related to the environment. Just like in Ecuador, the Pachamama is recognized as an important component and is included in the preamble. In contrast to Ecuador, however, nature in Bolivia has no inherent rights at the constitutional level.

One year later, the "Law on the Rights of Mother Earth" was enacted. The aim of the Article 1 Ley 071 is to recognize the rights of Mother Earth, also known as Madre Tierra, as well as the duties of the state and respect for these rights in society. To protect Madre Tierra's rights, it is defined as a collective subject of public interest in Article 5 of Ley 071. The rights of Mother Earth can be found in Article 7 of Ley 071. Article 8 of Ley 071 outlines the obligations of the state to guarantee these rights. A natural or legal person who represents Madre Tierra and brings a legal action in court (Johns, 2023).

2.3 New Zealand

The agreement, which was concluded in 2012 between the Maori of the Whanganui River and the New Zealand government, is a historic step towards recognizing the river as a living being and a legal entity. The Whanganui River Agreement in New Zealand is about recognizing the rights of indigenous peoples and the rights of nature. The indigenous people struggled for environmental sovereignty and a permanent connection between the Whanganui Iwi and the river.

The historical context reveals more than a century of legal battles in which the Whanganui Iwi fought against Crown laws and policies that eroded their customary rights over the river. The 1999 Waitangi Tribunal report recognized Maori interests in the river and emphasized their authority over the river's land, water, and fisheries. The legal recognition paved the way for negotiations that resulted in the 2012 Tūtohu Whakatupua Agreement, which granted the Whanganui River its own legal personality and recognized it as Te Awa Tupua, a living entity with its own legal status.

The importance of this recognition in the broader context of the movement for the rights of nature draws parallels with international efforts, such as Bolivia's constitutionalizing of the rights of Mother Earth. The ongoing negotiations are about appointing a guardian for the river and developing a strategy for the river to manage its ecological, social, cultural, and eco-nomic aspects (Hsiao, 2012).

The case of the Whanganui River is presented as a transformative story of decolonization, highlighting its potential influence on other jurisdictions and contribution to the global movement for the rights of nature.

2.4 Columbia

In 2016, the river Rio Atrato was granted the right to protection, conservation, maintenance, and reforestation after the Colombian Constitutional Court dealt with illegal mining activities. The river was protected by members of the government and the local population as guards (Johns, 2022).

The river Rio Atrato has rights regarding hydraulic engineering projects and the extraction of mineral resources after indigenous and Afro-American communities stood up for it (Wolf, 2022).

2.5 India

The religion of Hinduism dominates in India. Because of the strong spiritual connection to the rivers Ganges and Yamuna a court in India has granted both rivers' rights (Deutscher Bundestag, 2021).

3 Legal perspectives

In our society, it is difficult to imagine that people do not have rights that protect them. Why can't the right to life, liberty, and security of person from the Article 3 of the Human Rights Convention also apply to nature? At the end of the day, we are not only harming ourselves but also the nature when we shamelessly exploit it. Article 4 of the Human Rights Convention prohibits slavery in all its forms. This prohibition and the prohibition of torture in Article 5 of the Human Rights Convention should not only apply to us humans, but also to nature.

4 Conclusion

In conclusion, the exploration of rights to nature in Ecuador, Bolivia, New Zealand, Colombia and India reveals different approaches and perspectives in recognizing the intrinsic value of our environment. Ecuador is a pioneering example that enshrines the rights of nature in its constitution and promotes a holistic vision of a society where nature and humanity coexist harmoniously. The indigenous concept of "Pachamama" reflects the interwoven relationship and reminds us that harming nature is inherently harmful to ourselves.

Bolivia, while recognizing the importance of Pachamama, is taking a different path by adopting

the "Law on the Rights of Mother Earth". This distinct legal framework designates Mother Earth as a collective object of public interest and emphasizes the social obligation to respect her rights. The New Zealand case of the Whanganui River Agreement demonstrates the historic struggle for environmental sovereignty and indigenous rights that culminated in the river being given legal personality as Te Awa Tupua.

Colombia, facing ecological problems with the Rio Atrato, demonstrates the role of legal intervention in protecting the rights of nature. The granting of rights to the river, together with the active involvement of local communities, highlights the importance of grassroots movements in ensuring environmental justice.

The absence of procedural details or mechanisms for the representation of nature in some constitutional frameworks during this examination prompts further reflection on the practical aspects of the implementation and enforcement of these rights. As we celebrate these milestones, it is essential to critically examine potential challenges and ensure that the rights-of-nature paradigm effectively contributes to environmental protection without undermining human interests or creating legal ambiguity.

The global movement for the rights of nature witnessed in these selected states offers a transformative narrative of decolonization and environmental stewardship. As we navigate the complexities of the twenty-first century, these legal advances underscore the importance of redefining our relationship with the natural world, not as a resource to be exploited, but as a partner with rights of our own. The ongoing dialogue on the rights of nature serves as a beacon to guide nations towards a future where environmental sustainability and human prosperity come together.

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Rights for Nature in Germany

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1 Introduction

In the last decades, the development of the rights of nature has become a significant issue in various parts of the world. This emerging approach views nature not only as a resource for human use, but as a value in its own right that must be protected and respected. Over the last years the discussion about a rights for nature have also increased in Germany. This paper takes a look at the current state of the debate on natural rights in Germany. The first part gives an overview about the current status of natural rights all over the world. The second part deals with the rights of nature in Germany and how these have developed in recent years, for example through the citizens' initiative in Bavaria, which addresses the rights of nature and makes them the subject of a referendum. The third part deals with the decision of the Federal Constitutional Court. This decision in March 2021 on the issue of climate protection marked a significant milestone in the context of the global climate crisis and finally the class action lawsuit.

2 The current status of nature rights

The discussion about the inherent rights for nature has recently become increasingly important in law. But what is the aim behind giving the nature its own rights and why is it so important? The aim of this concept is to provide the nature with more effective and powerful protection by granting it legal personality and individual rights, and at the same time to initiate a fundamental change in the perspective of nature. The aim is to move away from the idea that nature is merely an exploitable resource and to create a sustainable relationship between humans and nature. The first initiation for the concept of recognition of nature rights came from Christopher Stone. In his book "Should trees have standing" in which he illustrates the extension of rights that were previously only available to a certain group of individuals to legal entities and all persons in a company. According to Stone, progress in this direction was previously unimaginable and the next step in the legal sphere would be for animals and plants to be recognizes as living being (Johns, 2023). The questions whether the nature should be granted its own rights

has especially increased in third world countries such as Ecuador, Guatemala, and Bolivia. Ecuador was the first country in the world to give nature its own rights and recognize it as a legal entity in its constitution in 2008 (Wolf, 2022). Ecuador not only grants nature or pacha mama the right to respect its existence and the conservation and regeneration of its life cycle, but also establishes that any person, community, nation, or nationality may request the legitimate public authority to realize the rights of nature (Steinberg, 2023). Bolivia had a similar evaluation in 2010 and in 2019, river residents in Guatemala argued in the constitutional Court of Guatemala that they have a cultural and spiritual relationship with water, which they see as a living being that should not be killed by pollution (Wolf, 2022). Because of the influence of the indigenous population more than 23 counties already recognized nature rights (Bangert, 2021).

3 Rights for nature in Germany

The discussion about a fundamental environmental right in Germany began in the 1970s and has increased ever since. There are incomplete efforts to introduce subjective rights in relation to people and nature recognizable in some state constitution but there are no subjective rights for nature itself in Germany. Recognizing nature as a legal entity would be a new development in the German legal system. This could especially collide with the anthropocentric Basic Law, as it prioritizes the individual and human dignity. Enforcing nature's own rights would ensure a development away from an anthropocentric approach to create a sustainable relationship between humans and nature. Such stricter environmental protection would be prominently anchored in the law through the recognition of natural rights. The significant symbolism is a clear advantage that would result from this. These rights could be claimed by anyone individually in court, which is expected to make the regulation highly effective (Johns, 2023). Even today, the demand for nature's own rights still moves society. For example, a citizens' initiative in Bavaria has once again raised the issue of nature's rights and made it the subject of a referendum. The regional court in Erfurt also dealt with nature's rights by referring the question to the European Court of Justice as to whether nature's own rights can be justified based on European fundamental rights. The demand for nature's own rights criticizes the fact that the anthropocentric interpretation of the regulations leads to loopholes in the protection of common ecological goods that are without rights and defenseless. Christopher Stone's book "should trees have standing" was fundamental to this. In it, he describes humans, animals and plants as equal living beings. Animals in particular are seen as the bearers of these rights, as they are of the same nature as humans. However, not everyone views it this way. Opponents of such approaches see humans as unique and not comparable to animals. There is also a constitutional objection that equating animals and humans would conflict with the human dignity standardized in Article 1 of the Basic Law (Wolf, 2022) Even if environmental protection is not yet part of the Basic Law, sub-matters of environmental protection are regulated in the competence provisions. Although no constitutional mandate or specific obligation can be derived from these, it would not be correct to say that the Basic Law is not environmentally aware. There are some Basic Laws, above all Art. 2 Abs.1 and 2 and Art. 14 GG (basic law), which contain important partial environmental protection guarantees. Art.1 Abs.1 GG is also of great importance, as an anthropocentric basic idea of the Basic Law is derived from it in connection with the preamble, which is intended to ensure that environmental protection is not regarded as irrelevant to human beings (Heinz, 1990). However, there are also some important environmental laws in Germany that ensure the protection of nature. These include, for example, the Federal Nature Conservation Act. The Federal Nature Conservation Act, for example, has some significant approaches that go beyond an anthropocentric focus. §1 Abs.1 BNatSchG (The Federal Nature Conservation Act) protects nature and the landscape as the basis of human life. Furthermore, § 1 Abs.1 No. 4 BNatSchG makes it clear that nature and the landscape are protected for the sake of "diversity, character and beauty". The Federal Nature Conservation Act is not based on the conventional anthropocentric-mechanical view of the world, as the definition of nature conservation goals such as diversity, uniqueness etc. goes beyond the mere recognition of ethical concepts. It makes it clear that the Nature Conservation Act

Till the present day, there are no subjective rights for nature itself in Germany. Recognizing nature as a legal entity would be a new development in the German legal system. This could especially collide with the anthropocentric Basic Law, as it prioritizes the individual and human dignity.

also considers the resilience and regenerative capacity of the respective ecosystems as protection priorities (Heinz, 1990). In addition, there is the Environmental Impact Assessment Act, which includes an environmental impact assessment that is applied to projects that have a particular impact on the environment (StMUV Bayern, 2024) and the Climate Protection Act, which, with reference to the Paris Climate Protection Agreement, contains the obligation to limit the increase in the global average temperature to below 2 degrees and to 1.5 degrees if possible compared to preindustrial levels and to pursue greenhouse gas neutrality by 2050 as a long-term goal (Mührel, 2022).

4 The decision of the Federal Constitutional Court

Against the background that the measures already taken to protect the climate, their livelihoods and their future freedom are not sufficient, the Federal Constitutional Court attracted particular attention in March 2021 with its climate protection ruling. This addressed three key points. Firstly, the state's duty to protect life, health and property from damage caused by climate change. Secondly, the content of Art. 20a GG as a climate protection requirement, as well as the intertemporal safeguarding of freedom through a proportionate distribution of the burdens from the reduction in the consumption of gas, oil and coal through to climate neutrality (Christ, 2023).

4.1 The fundamental right to protection

In the climate resolution, the Federal Constitutional Court deals with the Climate Protection Act, which the grand coalition launched in 2019. The aim of the law is to bring German greenhouse gas emissions into line with the obligations under the Paris Agreement and to create the legal framework for the implementation of the European Union's Climate Protection Regulation (Jahn, 2022). The Federal Constitutional Court has assumed that the state, in cooperation with other countries, has an obligation to take measures to ensure global climate protection by reducing climate-damaging emissions, especially CO2. There is an everincreasing risk that fundamental rights will be severely impaired by the rising temperature of the earth in the form of heat waves, flooding and much more. This results in the duty to protect climate neutrality. CO2 emissions into the atmosphere should therefore be reduced to zero, as CO2 is not broken down in the atmosphere. The rise in the earth's temperature can therefore only be stopped if at some point no additional CO2 is released into the atmosphere. Precautions relating to climate change must also be taken. These include, for example, the strengthening and raising of dykes and the retention of buildings in areas with a higher risk of flooding. In order to avoid urban heat islands, fresh air corridors and green spaces should be created, or agriculture and forestry should be adapted to changing climate conditions.

4.2 Art. 20a of basic law

In its climate protection ruling, the Federal Constitutional Court clarified the significance of the climate protection requirement in the environmental article Art. 20a GG (basic law). According to Art. 20a GG, the state also protects the natural basis of life for future generations through laws and their implementation and through jurisdiction. According to Art. 20a GG, it is the responsibility of the legislator to specify the protection of the climate as the natural basis of life. Therefore, the courts have no authority to develop concepts for the implementation of constitutionally prescribed climate protection and must implement the legally stipulated climate protection within their scope of interpretation and application.

4.3 Intertemporal protection of freedom

The intertemporal protection of freedom, which results in Art. 20a GG in conjunction with the right to freedom of action in Art. 2 I GG has received a high reputation. The BVerfG (Federal Constitutional Court) concluded that the binding limitation of the rise in the Earth's temperature to well below 2 degrees Celsius and if possible, to 1.5 degrees Celsius, as stipulated in Art. 20a GG, results in a global CO2 residual amount due to the scientific correlation between the CO2 concentration in the atmosphere and the Earth's temperature (Steinberg, 2023). Action must be taken in a way that protects fundamental rights and is therefore forward-looking, so that the opportunities for freedom guaranteed by fundamental rights can still be maintained and protected for future generations through a proportionate distribution of the obligation to reduce CO2 emissions (Schlacke, 202).

5 The class action lawsuit

Another way to enforce nature rights is through class action lawsuits. Associations and societies have the opportunity to review the legality of administrative decisions in the name of nature and the environment. This often occurs, for example, in the case of construction projects that have a negative impact on the environment and nature as a result of their implementation. Environmental and nature conservation associations can take legal action, even if their rights have not been violated (Nabu, 2020). According to § 2 Abs.1 S.1 UmwRG (environmental law), "domestic or foreign association(s) recognized in accordance with Section 3" are entitled to bring an association action. According to §2 Abs.2 S.1 UmwRG, an association that is not yet recognized may also bring an action, but only if the requirements for recognition are met and an application for recognition has been submitted. The prerequisites for recognition in accordance with §3 Abs.1 S.2 UmwRG are that the association does not only temporarily promote the objectives of environmental protection, has been in existence for at least three years at the time of recognition and has been active in the sense of No. 1. As well as the guarantee of an appropriate fulfillment of tasks and the pursuit of charitable purposes and that any person can join as a member (Deutscher Bundestag, 2018).

> Environmental and nature conservation associations have the opportunity to review the legality of administrative decisions in the name of nature and the environment, as well as to take legal action, even if their own rights have not been violated.

6 Conclusion

The concept of granting nature its own rights have become enormously important in German law. While Country's such as Ecuador and Bolivia have set very high standards regarding nature rights, more Country's including Germany have been slowly following their example. Christopher Stones Book "Should trees have standing" was the first initiation for the concept of giving nature rights. There are also some basic laws such as Art.2 Abs.1 and 2 and Art.14 that contain important partial environmental protection guarantees and the Federal Nature Conservation Act includes some important approaches that extend beyond an anthropocentric focus. The Federal Constitutional Court also attracted attention in 2021 with its climate protection ruling. These include the state's duty to protect life, health and property from damage caused by climate change, as well as the content of Article 20a of the Basic Law as a climate protection requirement and the intertemporal safeguarding of freedom. In addition, associations and societies can use class actions to review the legality of administrative decisions in the name of nature and the environment. Even though there are efforts to introduce subjective rights in relation to people and nature recognizable in some state constitution but there are no subjective rights for nature itself in Germany and even if the recognition of nature as a legal subject would be an innovation in the German legal system, it could come into conflict with the anthropocentric system, which gives priority to the individual and human dignity. The question is to what extent Germany will be able to incorporate the rights of nature into the system in the upcoming years without conflicts arising and thus create a healthy relationship between humans and nature.

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Conclusion

In this paper we analyzed the flawed human-nature relationship and the inadequate legal framework resulting from it. With a change of perception of nature, not as resources but as a partner with rights of their own and an improvement of rights we can solve the environmental crisis.

In the first part the development of the dualist worldview and the hierachial thinking of humans as superior was described and debunked. When we think of nature as something to subdue, we are not progressive but holding on to a tradition of dominance. A shift from exploitation to a world of mutual respect will certainly take its time, and in the case of the climate crisis, we have absolutely no time to lose. Therefore, the fight for a better future should have a vision of what needs to be overcome and what we want to archive, but it also has to take direct action by implementing practical rights of nature.

In the second part of the exploration of rights to nature in Ecuador, Bolivia, New Zealand, Colombia, and India, we discover diverse approaches and perspectives towards recognizing the intrinsic value of our environment. Ecuador stands out as a pioneering example by enshrining the rights of nature in its constitution and advocating for a society where nature and humanity coexist harmoniously. The indigenous concept of "Pachamama" illustrates the interconnected relationship between humans and nature, emphasizing that harming nature ultimately harms ourselves. Bolivia, while also valuing Pachamama, has taken a different approach by implementing the "Law on the Rights of Mother Earth," which designates Mother Earth as a collective object of public interest and stresses the social responsibility to respect her rights. The case of the Whanganui River Agreement in New Zealand showcases the historic struggle for environmental sovereignty and indigenous rights, resulting in the river being granted legal personality as Te Awa Tupua. In Colombia, facing ecological challenges with the Rio Atrato, legal intervention has played a crucial role in protecting the rights of nature. Granting rights to the river and involving local communities demonstrate the significance of grassroots movements in ensuring environmental justice. The global movement for the rights of nature observed in these countries offers a transformative narrative of decolonization and environmental stewardship. As we navigate the complexities of the twenty-first century, these legal advancements underscore the need to redefine our relationship with the natural world – not as a mere resource to exploit but as a partner with inherent rights. The ongoing discourse on the rights of nature serves as a guiding light for nations striving towards a future where environmental sustainability and human prosperity go hand in hand.

The last part addresses the rights for nature in Germany. Over the past years the concept of granting nature its own rights have become enormously important in German law. While Country's such as Ecuador and Bolivia have set very high standards regarding nature rights, more Country's including Germany have been slowly following their example. Christopher Stones Book "Should trees have standing" was the first initiation for the concept of giving nature rights. There are also some basic laws such as Art. 2 Abs. 1 and 2 and Art. 14 that contain important partial environmental protection guarantees and the Federal Nature Conservation Act includes some important approaches that extend beyond an anthropocentric focus. The Federal Constitutional Court also attracted attention in 2021 with its climate protection ruling. These include the state's duty to protect life, health and property from damage caused by climate change, as well as the content of Article 20a of the Basic Law as a climate protection requirement and the intertemporal safeguarding of freedom. In addition, associations and societies can use class actions to review the legality of administrative decisions in the name of nature and the environment. Even though there are efforts to introduce subjective rights in relation to people and nature recognizable in some state constitution but there are no subjective rights for nature itself in Germany and even if the recognition of nature as a legal subject would be an innovation in the German legal system, it could come into conflict with the anthropocentric system, which gives priority to the individual and human dignity. The question is to what extent Germany will be able to incorporate the rights of nature into the system in the upcoming years without conflicts arising and thus create a healthy relationship between humans and nature.

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