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Impulses + Case
Studies

Interdisciplinary Perspectives on the Interplay between Human Rights and Sustainability

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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 world-

view 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.

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

Author: Nergiz Dogan

Table of contents

| | |
|---|-----------|
| 1 Introduction | 79 |
| 2 The current status of nature rights | 79 |
| 3 Rights for nature in Germany | 80 |
| 4 The decision of the Federal Constitutional Court | 81 |
| 4.1 The fundamental right to protection..... | 81 |
| 4.2 Art. 20a of the Basic Law..... | 81 |
| 4.3 Intertemporal protection of freedom..... | 82 |
| 5 The class action lawsuit | 82 |
| 6 Conclusion | 82 |

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 recognized 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

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.

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).

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 anthropocen-

tric 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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