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## Who Needs Rights of Nature?

From a legal perspective, there is more than one answer to this question: we, living humans, as well as future generations or Nature itself, might need Rights of Nature. The law offers very different concepts with which to frame nature and we can see an evolution of these legal concepts: from treating nature as an object which has to be protected, to regarding Nature as a subject or legal person that can exercise its own rights.

To get an idea of this development in the normative perception of nature, we have to turn to the concept of the legal person. Law is the body of norms that regulates the relationships between persons or between persons and things. In the traditional legal understanding, nature is a thing or—even more technically—all parts of nature except humans are things. Things (e.g., animals, plants, or stones), have no rights. They are goods, which can be owned and used, destroyed or protected. In this traditional framework, subjective rights were reserved for humans, organizations, or economic actors, for example firms or trusts. These legal persons were and are able to exercise their rights, and to enforce them in negotiations or in court trials.

Law is, however, not just a body of norms. It is highly constructive as well. This means that legal systems are free to choose between different legal concepts in order to solve social, economic, and ecological problems. The legal system of a country can still use, for example, the traditional approach and might understand nature as an object or good, the value of which can/must be quantified. On the other hand, it can apply the concept of legal personhood to Nature and thus give Nature subjective rights in order to solve ecological conflicts. To implement this innovative approach, a legal system will appoint legal agents (e.g., NGOs) which will act for Nature in representative actions.

The recognition of nonhuman actors as legal persons with subjective rights is nothing peculiar. We do it all the time in the economic sphere. Over centuries, we have gotten accustomed to the idea that firms or trusts are legal persons with rights and obligations. Nobody questions this. Today, we are getting used to the idea of Nature or parts of Nature as legal persons. Of course, the application of the concept of the legal person to Nature is the subject of controversial discussions and polemical challenges. If you favor

an Aristotelian or Kantian understanding of the person, you will be very reluctant to accept, for example, an animal, a plant, or a stone as a (legal) subject. In this case, you will similarly have problems with the subjective status of firms or trusts in legal systems, too. Such heavily loaded deliberations are rarely a problem, however, in the world of law: with respect to the concept of the (legal) person, lawyers travel with very light luggage. They do not carry the burden of Aristotelian or Kantian philosophy. Quite the contrary: they use the concept of the legal person simply when it is appropriate, practical, or fair in solving conflicts. But even though lawyers might not carry the burden of philosophical concepts, they do carry the burden of critique.

The question of who or what we recognize as a legal person with specific rights is very much a question of traditions and, of course, of social and economic interests. You will realize this straight away if you ask yourself why we traditionally accept an accumulation of money—for example, in the form of a firm or a trust—as a legal person, but not animals or plants. So the concept of the legal person is very much interest-driven. To give and to withhold the status of a legal person to somebody or something is a question of power. If animals and plants were legal persons, it would be much more difficult to kill or to destroy them: they would have subjective rights then, which could be enforced in court. Against this background, we can understand that the real arguments against the Rights of Nature do not come from philosophy, but from those actors of social welfare and those with invested economic interests, who want to own, use, pollute, or destroy Nature without noteworthy obstacles.

In "premodern" societies, we can see that "things" had legal rights and obligations. In the European Middle Ages, for example, there were court cases and lawsuits against things, like animals and trees, which thus had the status of a legal person. Although "modern societies" have problems with this animistic provocation, today we discuss the possibility of legal personhood for robots, autonomous machines, and computerized agents—for example, in the context of economic trade or ambient assisted living. We can see, as indicated above, a legal evolution in recognizing Nature or at least parts of Nature as legal persons. Although these differing ways and extents to which people have sought to recognize and represent Nature's legal personhood are governed by their own motivations and interests, they are guided by five possibilities for framing Nature within our legal system.

*First, the legal status of nature as a normative reflex of human rights.*

In this traditional concept, nature has no legal status of its own, but is protected indirectly by the subjective rights of humans. Lawyers call this kind of indirect protection a "legal reflex": human subjects have rights to life, to physical integrity, and to property. If nature is polluted or destroyed in a way that would affect one of these rights, the affected human subjects have the right to be protected—and nature is protected indirectly by this legal mechanism, too.

*Second, the legal status of nature as common heritage of humanity.*

The common heritage of humanity is a concept from international law that can guard the environment by setting up international institutions for the protection of nature and the governance of knowledge. This concept was developed with respect to the ocean floor and the Antarctic. The heritage concept is, however, a very limited one: it is constrained to charismatic parts of nature and it does not protect nature or its resources from being exploited. Alongside the heritage concept, international law came up with the idea of the common concern of humanity. We can find it in the United Nation's Convention on Biodiversity from 1992. This convention announces in its preamble that the conservation of biodiversity is a common concern of humanity. This idea of the common concern of humanity is even weaker than the heritage concept: the sovereign states were afraid that Nature having a strong legal status could prevent them from exploiting "their" natural resources.

*Third, the legal status of nature as a constitutional objective to protect the environment.*

In this concept, the state has the constitutional obligation to protect nature. An example of this is Article 20a of the German Constitution (The Basic Law). It reads: "Mindful also of its responsibility toward future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order." Article 20a of the German Basic Law is a very restrictive norm: it does not convey any subjective rights, neither to citizens nor to nature. This is the main reason why Article

20a of the Basic Law has no real relevance in day-to-day legal business. If you read the text of Article 20a carefully, you can see at once that its legislator was even afraid of nature and its potential power if provided with such legal status. It does not say straight away that the environment and animals have to be protected. The legislator added an "Angstklausel"—a disclaimer—which shows his political, social, and economic fear that the protection of nature could go too far. That is why he stresses that the protection of nature has to be validated/defensible by "legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order."

*Fourth, the legal status of nature as a human right to a favorable environment.*

This legal concept gives human beings a subjective right to a favorable environment. An example for this is Article 42 of the Constitution of the Russian Federation (1993). It reads: "Everyone shall have the right to a favorable environment, reliable information on the state of the environment, and compensation for damage caused to his/her health and property by violations of environmental laws." We can see here a combination of three human rights to protect nature directly and indirectly: the right to a favorable environment, the right to information on the environment, and the right to recover damages. Although this framework is very anthropocentric, it already goes far beyond the traditional approaches, which were and are used to frame nature in legal systems. According to Article 42 of the Constitution of the Russian Federation, every citizen has rights to foster the environment. This innovative legal concept faces, of course, a very tough on-road test with respect to the severe ecological problems of the Russian Federation.

*Fifth, the legal status of Nature as a legal subject and person.*

This latest approach is the most inspiring framework law can offer Nature and society: Nature is a legal person itself and has subjective rights. An example of this approach can be found in Article 71 to Article 74 of the Constitution of Ecuador (2008). The essential regulation of Article 71 reads:

> Nature, or Pachamama, where life is reproduced and occurs, has the right to in - tegral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes. All persons, communities, peoples, and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate. The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.

Article 71 of the Constitution of Ecuador thus recognizes Nature as a legal person, with subjective rights that can be enforced by legal agents. Even so, the innovative character of this concept of Pachamama (or Mother Earth) cannot be disputed. Legal realism is important, too: giving subjective rights to Nature or parts of Nature does not mean that these rights will always prevail or win in every single case. The rights of Nature have to be balanced with social and economic interests. Therefore, the advantages of this concept are that it leads to hard but fair legal conflicts between society and economy, with Nature as a nonpassive actor.

Who, then, needs Rights of Nature? We have seen that both humans and nonhumans, as well as Nature itself, could benefit (directly or indirectly), depending on the way in which nature is constructed in the legal context. If it comes to the recognition of the rights of Nature, we lawyers are not just part of the problem, but part of the solution, too. We can offer different frameworks for the legal status of nature. "Lawyers have," says Bruno Latour, "always been polite enough to admit their relativism and constructivism without making a big affair out of that." Despite the challenges accompanying the evolution of legal frameworks for Rights of Nature, it is most important that we do not fall back on nature's indirect legal status under the human right to a favorable environment. Rather, we should imagine the possibilities of Nature as a legal person with its own rights as the most innovative and inspiring concept to save our planet, and ourselves.