

**Environmental entities becoming juridical persons?
Towards a more efficient implementation of constitutional values**

Introductory notes

Hegel argues that 'the laws of right always refer to human beings'. for only the human person (especially in terms of self-conscious, autonomous, linguistically competent subject) able

... to become aware of and to articulate one's own will and normative claims:

I have a right to ...

... to recognize (or unrecognize):

I have a duty ...

... to **justify** (or dispute) related norms

... to **provide "the right-and-duty-bearing"** (Dewey 1926)

... to (usually) **represent oneself** in institutional contexts (e.g., in a court of justice)

However, Hegel's claim is easy to challenge already **in Hegel: alongside the human (natural, physical) legal person**, he mentions at least **one non-human entity to which specific 'laws of right' – and legal person status – can be assigned**

These are the so-called **'corporations'**; more commonly: **the corporate juridical persons**

Corporate legal personality has a long historical record – not only in terms of the corporate businesses, guilds, companies, etc. ()

We all represent such corporate legal persons – or ‚bodies‘, as in Gierke’s socioorganic (and old-fashioned) approach:

A „*universitas* [or corporate body]... is a living organism and a real person, with body and members and a will of its own. Itself can will, itself can act... it is a group-person, and its will is a group-will” (Gierke 1902)

(a bit Leviathan/macroperson-like in terms of C. Schmitt)

However, the subsequent history of artificial legal personality indicates that

what „person” or „natural person” „signify in popular speech, or in psychology, or in philosophy or morals, would be... **irrelevant**” (Dewey 1926)

for the **nonhuman and nonsocial entities which can (or even should) be given a legal person status**

It's about **natural entities, whose artificial legal personhood could protect their integrity, vital interests and destiny (including those of human inhabitants) against the hitherto *dominant* interests and rights of business corporations**

(beginning: e.g. Royal African Company 1660, South Sea Company ... the history continuous !)

Artificial legal personhood for nature has a short history; there is none in Poland yet – it has its

momentum

:: right now: Polish grassroots activists, experts, people of culture are campaigning for the recognition of the Oder River – contaminated since 2022 – as a *legal person*

1 Short history of legal personhood status and rights given to nature

2 Arguments: between post-essentialist natural subjectivity & integrity of environmental totalities and indigeneous environmental identities (German-Polish context as *determined by the ,Recognize the Oder River as a legal person' initiative*)

3 Granting juridical personhood environmental entities. **Thinking with constitution(s)**

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1 **Short history of legal person status and rights given to nature**

Stone Ch. D. (*Should Trees Have Standing? Toward Legal Rights for Natural Objects*, 1972) is considered to have pioneered *legal rights* and *personhood* of natural entities – and so the **biocentric jurisprudence**

Ideas for **nature rights, environmental legal personhood & ecocentric jurisprudence** followed (e.g., Stilt 2022; Kramm 2020; Bieluk 2020; Colwell et al. 2019; De Vries-Stotijn et al. 2019; Kaufmann & Martin 2018; Clarc et al. 2018; Cano Pecharroman 2018; Berros 2017; Iorns Magallanes 2017; Das 2017; Biggs 2017)

The ‚record‘ is short and the topic – ‚understudied‘ (Putzer et al. 2022)

An up-to-date taxonomy of the rights of nature according to Putzer et al. (2022):

| <u>Category</u> | <u>Classes</u> |
|------------------------|--|
| Basics | (i) date, (ii) location, (iii) title, (iv) status |
| Legal structure | (i) earth jurisprudence, (ii) habeas corpus, (iii) harmony with nature, (iv) legal entity, (v) legal personhood, (vi) legal standing, (vii) living entity, (viii) multiple rights, (ix) rights (of nature), (x) rights to exist, flourish, and naturally evolve, (xi) subject of rights, (xii) other |
| 'Meta' verb | (i) acknowledge, (ii) declare, (iii) establish, (iv) grant, (v) guarantee, (vi) have, (vii) is, (viii) possess, (ix) promote, (x) protect, (xi) recognize, (xii) respect, (xiii) shall be considered, (xiv) other, (xv) n/a |
| Legal type | (i) constitution, (ii) national law, (iii) court decision, (iv) local regulation, (v) policy [governmental/civil society/institutional], (vi) indigenous law, (vii) other official document |
| Distinction | (i) nature indistinctively, (ii) aquatic ecosystems [river/other], (iii) animals [collective/individual], (iv) plants [trees/other], (v) other |
| Governance | i) guardianship, (ii) right to petition, (iii) form of petition, (iv) redress, (v) n/a |
| Motivation | (i) (inter)national treaties/documents, (ii) indigenous beliefs, (iii) religious/other beliefs, (iv) human right(s) to a healthy environment, (v) anti-corporate/capitalist sentiments, (vi) contamination, (vii) disaster relief, (viii) beneficiaries, (ix) urgency, (x) other (<u>e.g. philosophical jurisprudence</u>); (xi) n/a |

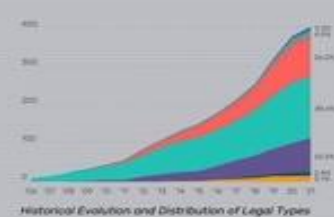
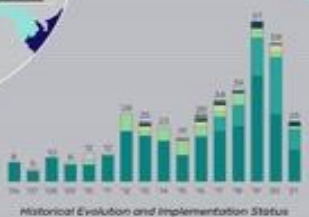
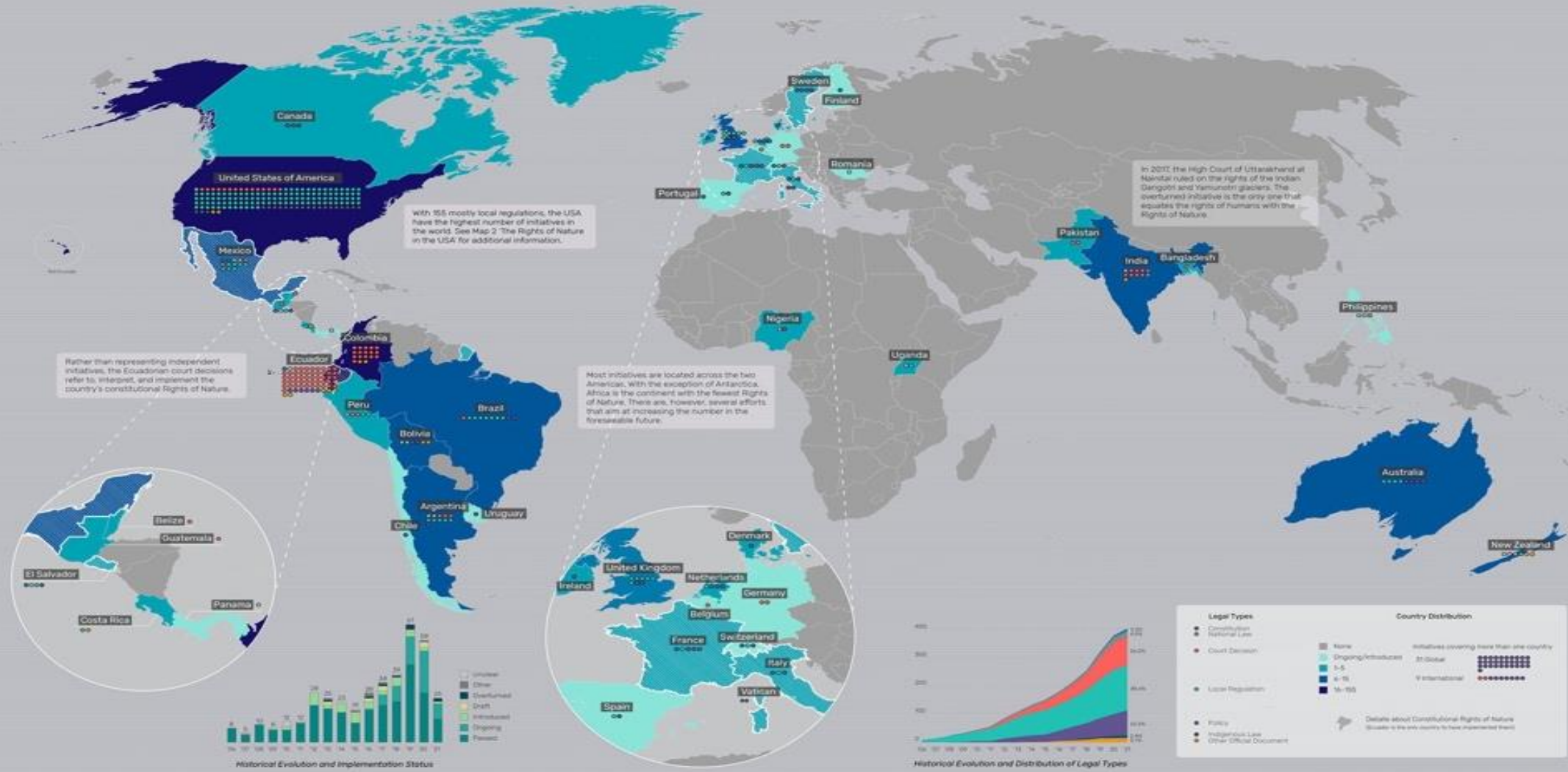
THE RIGHTS OF NATURE

MAPPING A GROWING MOVEMENT

Global legal Rights of Nature as of June 2021: 409
Each dot represents one initiative.



Declaration of the Rights of the Moon



Legal Types

- Constitutional National Law
- Court Decision
- Local Regulation
- Policy
- Indigenous Law
- Other Official Document

Country Distribution

- None
- 1-5
- 6-10
- 11-50
- 51-100
- 101-500
- 500+

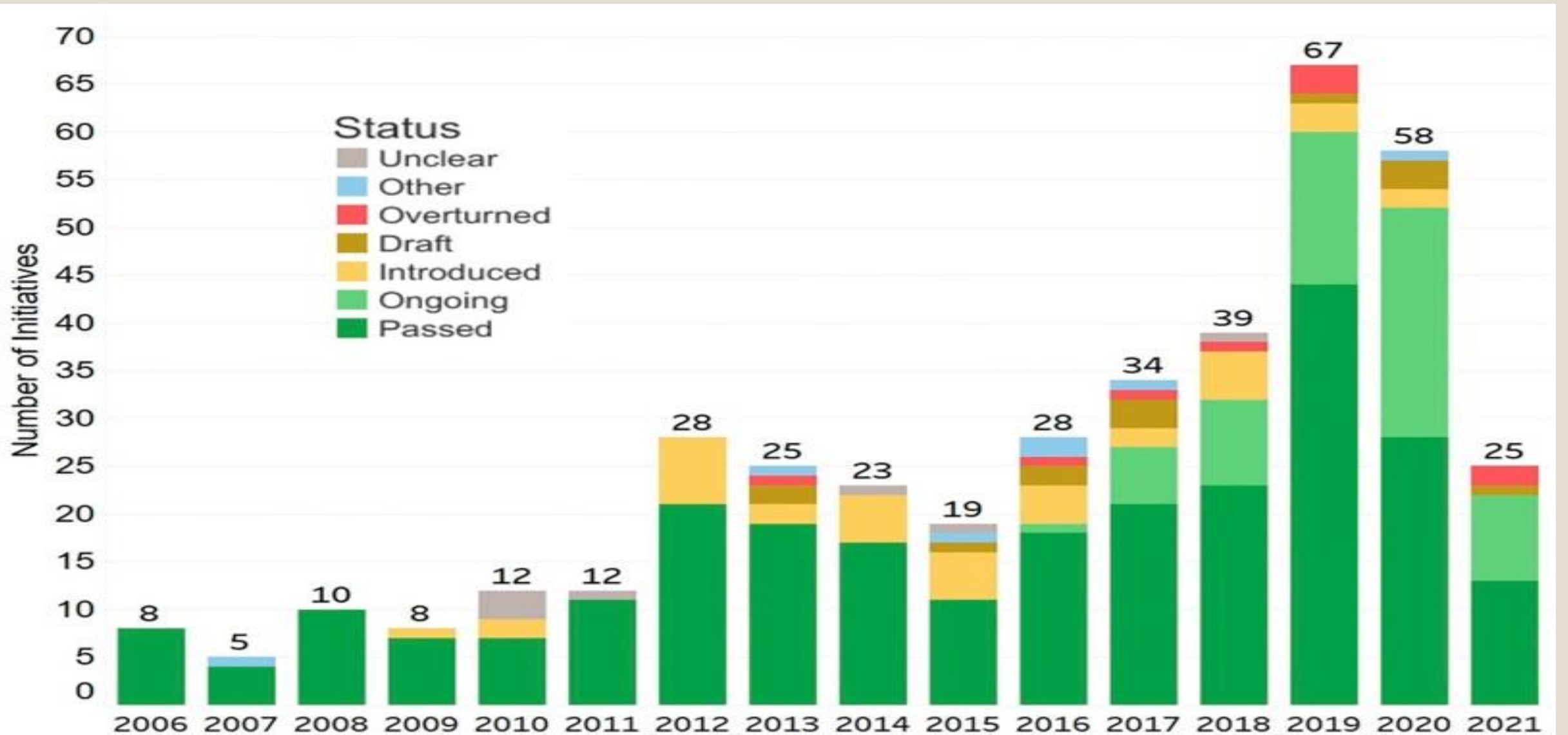
Initiatives covering more than one country: 21-Global, 1-International, 1-Local

Details about Constitutional Rights of Nature: Ecuador is the only country to have implemented them.



Source:
Putzer
et al.
2022

The overall number of legislative initiatives worldwide – nature's rights (source: Putzer et al. 2022)



Exploring the category ,OTHER': 22.04.2010 – The Universal Declaration of the Rights of Mother Earth

Article 1. Mother Earth

1. Mother Earth is a living being.
2. Mother Earth is a unique, indivisible, self-regulating community of interrelated beings that sustains, contains and reproduces all beings.
3. Each being is defined by its relationships as an integral part of Mother Earth.
4. The inherent rights of Mother Earth are inalienable in that they arise from the same source as existence.
5. Mother Earth and all beings are entitled to all the inherent rights recognized in this Declaration **without distinction** of any kind, such as may be made **between organic and inorganic beings**, species, origin, use to human beings, or any other status.
6. Just as human beings have human rights, all other beings also have rights which are specific to their species or kind and appropriate for their role and function within the communities
7. The rights of each being are limited by the rights of other beings and any conflict between their rights must be resolved in a way that maintains **the integrity**, balance and health **of Mother Earth**.

Article 2. Inherent Rights of Mother Earth

1. Mother Earth and all beings of which she is composed have the following inherent rights:
 - the right to life and to exist;
 - the right to life and to exist;
 - the right to be respected;
 - the right to continue their vital cycles and processes free from human disruptions;
 - the right to maintain its **identity and integrity as a distinct, self-regulating and interrelated being**;
 - the right to water as a source of life;
 - the right to clean air;
 - the right to integral health;
 - the right to be free from contamination, pollution and toxic or radioactive waste;
 - the right to not have its genetic structure modified or disrupted...., *etc.*

... not to mention the affinities with Hegel's approach –

... further **global** or **local (= glocal)**, **bottom-up/top-down/sideways** initiatives and motivations,

e.g., the Global Alliance for the Rights of Nature, The International Tribunal for the Rights of Nature: <https://www.rightsofnaturetribunal.org/about-us/> ... ,local parliaments of water' (Latour & Bourhis 1995; Whiteside 2013), ,River Parliaments' (e.g., of the Arvari River in the province of Rajasthan since 1998. It comprises representatives from 70 villages: <https://springs-rcc.org/attributing-legal-personhood-to-rivers/> , aquatic embassies...

not only to represent ,things' (Latour), but to transform 'things' into legal persons –

2 Arguments: between post-essentialist natural subjectivity & integrity of environmental totalities

and

**indigeneous environmental identity
(German-Polish context determined by the ongoing ,*Make Oder River to a legal person*' initiative)**

Hegel thematizes nature's immanent, wild laws in his *Philosophy of Right* – and for good reasons, he concludes there (to the disappointment of essentialists advocating for animal subjectivity):

„Animals... have no right to their life because they do not will it” (PhR §47)

(... do not claim, articulate it... want to become citizens of the Rechtsstaat, etc.)

Further, his comprehensive *Philosophy of Nature* offers a modern post-essentialist concept a *natural subjectivity running its intrinsic laws, aims, and rationality. Two classes of natural entities are to be distinguished:*

1) individual living organisms (= lower natural subjects)

2) transindividual, complex, relational, processual, inorganic-organic, organismic-organizational, self-determining environmental totalities or communities (= higher natural subjects) including the Earth

HEGEL

Combining ontologies (e.g., inorganic+organic), elements & functions, and grasping them into a '**Notion**' (*Begriff*) enabled Hegel to approach ecosystems in terms of **unity + integrity/indivisibility** in an unprecedented way – regardless of scale !

Hegel opposes unity & integrity to fractional accounts of nature in the natural sciences (from geology to medicine and technology)

(its speculative moment: **organisms and ecosystems immediately live/embody their ,Notions' or ,Ideas'**; human mind should recognize them together with their *laws*)

Starting with hydrogeology, Hegel addresses the Earth as „the living breeding”; permanent and dynamic unity of water, atmosphere, land, and life.

His focus on the **oceanic littoral** incl. vegetation absorbing solar light to explode with life and release oxygen into the atmosphere anticipates today's discoveries (photosynthesis in water plants)

Oceans & seas host “the overall vitality in a more immanent way than the land”; “the earliest accounts derive all life becoming from water” (Hegel, *Jenaer Realphilosophy III / Vorlesungen über die Philosophie der Natur*)

To sum: Hegel **ends** the era of **hostility between ,spirit' & 'nature'** and calls for their **reconciliation** (*Versöhnung*) **through:**

- 1 Appropriate cognition / understanding of nature's laws and wild laws
- 2 Recognition of vital interests and laws of nature, on which also human beings run (common natural destiny)
- 3 A post-essentialist and post-realist (no explicit ,will of life' declared) concept of *natural subjectivity* which challenges the legacy of *reification* of nature (although nature incl. living nature also has a thing/object-aspect)
- 4 While criticizing the alienation of the economic rules from the socionormative justification process (that makes the law to the law of right) and warning against the overuse of technology, he implicitly advocates for *socioenvironmental justice*
- 5 He brings nature's unity & integrity/indivisibility to the scope of ,**philosophical jurisprudence**' which suggests, it is time to include them in the regular Earth jurisprudence

The way for regulation of man-nature relationship is now opened (this relation is not reduced to liberal dimensions of resource, property, instrument)

OPTIONAL SLIDE:

J.-B. de Lamarck : waters constantly reshape the Earth by „continuous oscillation” (*le mouvement d'oscillation continuel*) (Lamarck 1801, 29; also Buffon, Hist. Nat. Suppl. V, 537-538)

Rivers change their own shape and size, as exemplified by Lamarck with the Rhine:

„Very close to the Rhine [in Neuwied] the remains of a Roman road have been discovered, which proves that the Rhine was not as wide as it is today” (cf., 175).

Waters ensure „l'énorme multiplicité” (cf., 77) of life (= **biodiversity**), „the modification of organisms” (= **evolution**) and “the power of life” (*le pouvoir de la vie*) (cf., 117) – not just short-term survival, but the *permanence/continuance of life*

„Waters are permanently changing the condition of raw material resources” (cf., 125)

Affinities between **Lamarck & Hegel due to their ,holistic’ approach**
”**Nature is... a living whole**” (Hegel, Naturphil. § 247)

The Oder River: 854 km length, spring: in Czechia, flows between Poland & Germany

Olga Tokarczuk = native of the Oderland, a Nobel-awarded writer with strong ecological touch warming up civic activism for granting legal personhood the Oder

She gives the ,voice to the river itself' and narrates its „mythosphere”, historical & cultural identity; she supports the ,**Oder Tribe**' (**Plemię Odry**) engaged in the **Marching for the Oder's recognition as a person (May 2023)**

**OLGA
TOKARCZUK**

**2018 Nobel Prize for
Literature**

„I have this river in my memory and my body cells ... the artery that bears water from the mountains ... reminds of the vascular or nervous system ... analogy to the liquidity of life, our position in the world ... rivers are most natural realms we live in ... more stable than political formations – after all, states are volatile beings ... the river is our extended body... We partake in it unconsciously ... body, landscape, environment are alive ... It's partaking in the environment” (Tokarczuk 2023, Interview by R. Rient)

Thus, the contamination and loss of the river would hit all local life and life conditions; here the relation is similar to that of ecocide (cf. Nowak 2022; 2023 in process)

From the perspective of the indigenous people, the river is a **maternal refuge**. It has no gender, but unconditional giving and feeding reminds on a „female „female strength” of the fertile "goddess Viadrina" (Tokarczuk, *Flights*)

Melioration is like „perforation of the river body” ;
Over-regulating the riverbed, overexploitation, contamination destroy the environmental living whole – but also the river's „identity”.

One easily recognizes affinities with beliefs of indigenous/native/Innu, according to which Nature is ‚Mother’ (e.g., Goldtooth 2017; Camp 2017; Finzer 2015; Weaver 1996; Kemf 1993) or native inhabitants are parts of a river's body –

Still, there is a difference between Tokarczuk's Oder-plot and, for instance, Quichua or Iroquais animist narratives:

“water has spirit and water has life – water is life – water has rights that are recognized by Indigenous peoples” (Goldtooth 2017, 15) which had impact on the constitutional amendments in Ecuador

To what extent does Tokarczuk's voice boost the campaign for granting legal personhood the Oder River?

In the short history (Ecuador 2008–) of granting legal personality to the rivers at constitutional, legislative, Supreme Court level) the indigenous communities' voice was critical for justification of related new legislations

It's not just a *symbolic, romantic, idealistic* voice (Kuszlewicz 2022), but one of the most influential

However, there are also non-indigenous residents of river deltas, lakes, etc. Some residents may voluntarily migrate when facing eco-disasters, while the indigenous may experience *migration as forced exile (and crime against humanity)*

Tokarczuk's narratives reach people regardless of their residential address: she speaks out of the integrity of nature – a concrete natural ecosystem ; she sparks international **multinormative reflection** on granting legal personhood crossnational environmental entities

See the legislation project draft (Gołębiowska, 6 May 2023; <https://osobaodra.pl/projekt-ustawy-o-uznaniu-osobowosci-prawnej-rzeki-odry/?fbclid=IwAR1UhVyH1cOGjciCkif9On1sgcW5jre5HlhFDkohEnfOtpSHKTSB4o2XV4I>)

„It’s quite easy to fall into the trap of humanizing when we wish to speak of the Oder River as a person. Try to identify the river as a person with a non-human quality. Let’s forget how it is managed, insistently handled as an object ... It is enough to ask what it needs ... What does the river access, and what does it want to access?“ (Lewicka, *Legacy of the Oder* 2023)

**3 Legal personhood for environmental entities. Thinking with
*constitution(s)***

A superior origin for validity of a law/convention granting legal personhood certain environmental entities would be the constitution. In Poland, the Constitution declares protection of natural environment in terms of 1) a distinct and independent geographic area, 2) a sustainable habitat for all, 3) a personal and universal natural good (of ,everyone‘):

The Constitution of the Republic of Poland of 2 April 1997 declares protection of inherent and mutually conditioning values *of man and nature*. Both deserve permanent ‘ecological security’. Accordingly,

Article 5 stipulates: “The Republic of Poland shall safeguard ... the integrity of its territory ... and ensure the protection of the environment, guided by the principle of sustainable development”.

Article 74 states: „Public authorities shall pursue a policy ensuring ecological safety for present and future generations. The protection of the environment is the duty of public authorities”.

Article 86 states: „Everyone is obliged to care for the environment and is responsible for the damage they cause to it. The principles of this responsibility are determined by law”.

(own transl.)

Constitutional
protection of
natural environment
for its
1/ intrinsic
2/ related
values

There is no mention of *nature's personhood, legal standing (= interests, rights, capabilities, etc.)* here;

however, the artificial legal personhood attributed to natural entities usually has a conventional basis: it is a construct (even 'fiction', as in Savigny)

Its justification may have a bottom-up social source : or both bottom-up and top-down.

For the constitution obliges each citizen to care for their environment, so if the effective form of care is to give legal personhood to environmental entities, then a bottom-up initiative to legitimize the legislation will implement the Constitution.

**Levels of
justification:**

**Top-down
(constitutional)**

**Bottom-up
(communal,
democratic)**

Attributing legal personhood to environmental entities does not require constitutional amendments – though certain states provided such amendments

However, effective legal institutions to enforce that environmental entities of critical importance (or endangered)

- 1) cannot be owned & regarded as 'a resource' (Kramm 2020, 312) due to 'legal personhood' status
- 2) have representatives/guardians/ombudsman defending their intrinsic interests & wellbeing (*indigenous synonyms: pachamama, suma qamaña..*)
- 3) can appear (be represented) in court of justice

seem more urgent to **prompt the implementation of values already declared in the constitution (see Gołębiowska 6 May 2023, references)**

Constitutional amendments not that necessary

as effective legal institutions to prompt the implementation of values already declared by the constitution

... in harmony

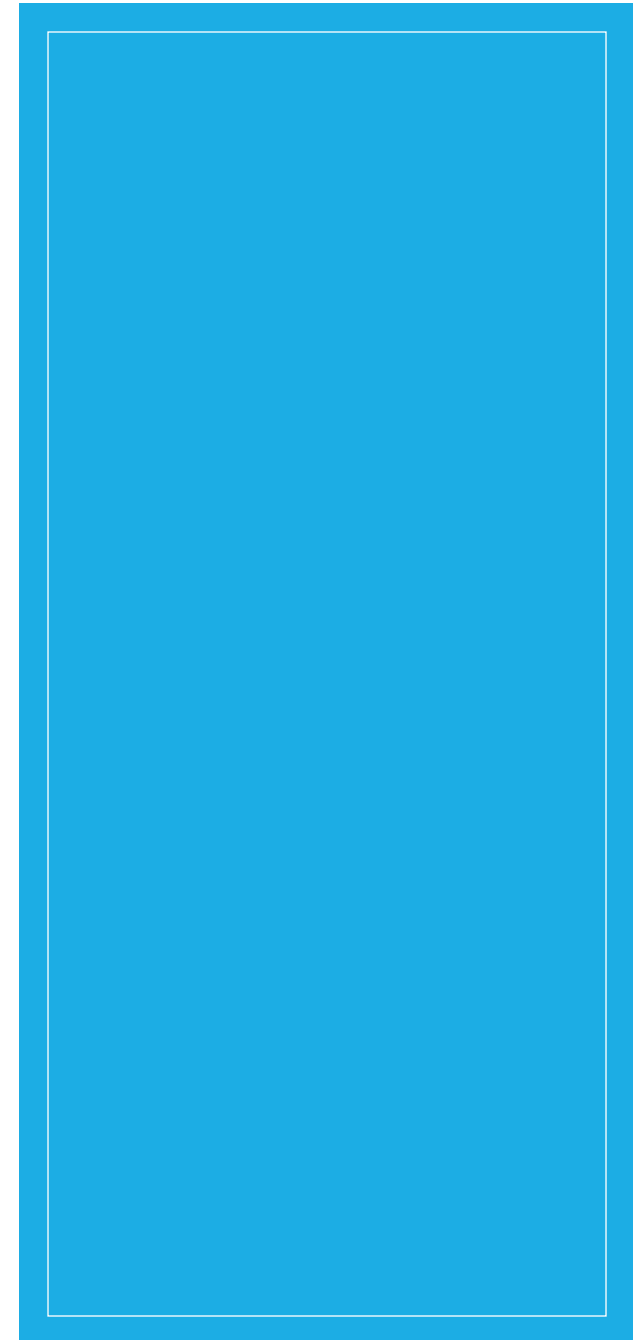
with the constitutionalization of environmental values in EU law (JURI Committee EU Parliament 2021)

but particularly with Bruno Latour's idea of
'Constitution' to include

„**humans** and **nonhumans**, their properties and
their relations, their abilities and their
groupings”

This Constitution isn't made by jurists and Founding Fathers – but by citizens able
to recognize and represent them, and to reconnect the two realms

„This is our Constitution, which attributes the
role of nonhumans to one set of entities, the role
of citizens to another...” (Latour 1993, 107)



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THANK YOU VERY MUCH FOR LISTENING
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