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GRANTING NATURE LEGAL RIGHTS

A Shift Towards an Ecocentric Conception of Nature in Germany?

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Abstract This interdisciplinary research paper is centred around the concept of environmental personhood as a means of tackling the impending climate crisis. More specifically, it focuses on how the implementation of legal personhood as a juridical tool could lead to a shift towards a more ecocentric conception of nature. A philosophical approach will highlight the underlying discussion of the worth we grant nature and its correlated socio-cultural tradition. A legal approach will set this into the context of the German constitution and examine this issue by proposing constitutional amendments.
Keywords: Environmental Personhood, Legal Personhood, Ecocentrism, German Constitution, Socio-cultural tradition

1 Introduction

In 2019, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem, (IPBES) released a report warning that "around 1 million species already face extinction, … unless action is taken" (2019, p.12). While there have been several attempts in the international community to reverse this trend, such as the Sustainability Goals of the United Nations, a tangible impact is far from

evident. Reasons for this include the dominance of national economic interests, large transnational corporations' deficiency of accountability, and a lack of political will (Fischer-Lescano, 2020). Given this, it seems legitimate to rethink what other measures we could adopt to tackle the climate crisis successfully. One approach is to create a legal basis for more comprehensive climate protection. This could be done by granting nature the status of a legal person.

In his influential essay *Should Trees have a Standing*, Christopher Stone (1972) first brought forward the idea of granting natural entities the right to stand in court. Stone argued that our conception of whom should have legal standing had continuously adjusted to societal change. Slaves, women, and children, for instance, had for a long time not been granted the right to stand in court. It seems justified to argue that in view of increasing environmental destruction, granting nature the status of a legal person could encourage a shift towards a more ecocentric approach to nature (Adloff & Busse, 2022). In light of this, this paper poses the question of how an ecocentric environmental approach could be implemented into the German legal system.

It argues that given the current unbinding nature of climate protection, implementing environmental personhood into the German constitution could create a necessary juridical instrument to address the climate crisis. Before diving into the current legal framework of the German constitution, the question of the worth we attribute to nature will be examined. Further, the historical and sociological origins of the anthropocentric worldview in Germany will be analysed and contrasted with an alternative approach to nature that has gained influence in countries of the Global South. Lastly, two legal suggestions of how environmental personhood could be implemented into the current German legal framework will be explained. These will serve as a basis for pointing out the chances as well as limitations of this initiative.

2 Philosophical Reflection on the Worth We Grant Nature

In light of the discussion of implementing environmental personhood into the German constitution, it first has to be examined how much worth we attribute to nature. Consequently, it can be decided how much protection we want to provide. Accordingly, philosopher Brend Ladwig (2022) argues that the worth we ascribe to something depends on its relation and usefulness to humans. The following section will address two contrasting approaches to this evaluation.

To begin with, there is ecocentrism, a philosophical branch that views nature as a living, dynamic, and complex whole with intrinsic and equal value to

humans. Ecocentrism ascribes value to nature independently from its usefulness to humans. The term was first coined in 1949 by philosopher Aldo Leopold who described nature as an integral part of human culture (Brennan & Norva, 2021). He argued that since the relationship between nature and humans is reciprocal and intertwining, humans have an ethical obligation to protect nature. Another philosopher of the ecocentric canon is Kurt Bosselmann (1986) who defends an ecocentric perspective by recognising a co-dependency between humans and nature. Therefore, he ascribes moral responsibility to humans to protect nature and pleads for the juridical emancipation of nature from humans. Even though Bosselmann published his work in 1986 his philosophical ideas are still relevant and applicable to the discussion today. However, one must keep in mind that his work does not include reflections on more recent amendments to the Constitution.

More generally, ecocentrism finds its roots in a lot of indigenous cultures such as the Maori people in New Zealand. Accordingly, nature and in particular rivers are understood to be an important part of the community's identity and are characterised by a certain obligation to protect and enhance nature (Kramm, 2020). As nature plays a crucial role in their community´s identity, natural objects such as rivers cannot simply be replaced, but are valuable for their own sake. To be even more precise, rivers are considered to be ancestors (*tupuna*) with whom individuals can have relationships and hence have a certain sense of accountability towards. In practice, this translates into a deep understanding and respect towards natural entities, as they are understood to be embedded in a broad network of relationships (Kramm, 2020). Since rivers, hills or mountains are understood as equal, a duty towards the human is subsequently presupposed. According to Kramm (2020), this must be seen through a historical lens. Since humans living in proximity to a river make use of it for their own needs, the river must be understood to have fulfilled its role in their relationship. Conversely, it is accepted that the river has fulfilled its function in the past, which subsequently implies peoples' responsibility to fulfil theirs. It is important to note that reciprocity must not be understood in an egalitarian way, but rather as a tool for cultivating a network of relationships (Kramm, 2020)

Contrarily to ecocentrism, the philosophy of anthropocentrism is human-centred and views humans as the only beings carrying intrinsic rights, thus making them superior to the rest of the natural world (Brennan & Norva, 2021). In anthropocentrism, nature is simply an object whose purpose is to be a means to an end for humans (Kopnina et al., 2018). Therefore, anthropocentrism manifests itself in prioritising human welfare and prosperity. Now that the philosophical foundation has briefly been laid down, the present legal environmental protection in Germany will be examined.

3 Current Protection of the Environment in the German Constitution

In a statement released in April 2021, the German Federal Constitutional Court declared the current climate policies unconstitutional. Accordingly, it was argued that binding resolutions regarding further emission reductions from 2031 onwards were missing and that "governing national climate targets [are] … incompatible with fundamental rights [own translation]" (Bundesverfassungsgericht, 2021b, para.1). Against this background, an examination of current environmental protection under the German constitution seems necessary to understand the current juridical character of nature.

The German constitution defines the fundamental relationship between the individual and the state. Interestingly, the words 'nature' or 'environment' are only mentioned in article 20a. It is laid down that "the state shall also, in its responsibility for future generations, protect the natural foundation of life and animals by legislation … and within the framework of constitutional order [own translation]" (Deutscher Bundestag, 2013, para.1).

In this context, two aspects of this formulation will be analysed: the explicit emphasis on the role of the legislative and the balance of this right with other constitutional rights. Consequently, these will reveal the juridical character of nature. First, the role and importance of the legislative branch are explicitly mentioned, which usually are considered to be self-evident. What is interesting about this emphasis is that the role of the government in climate protection is highlighted, thus making nature solely an object worthy of protection (Hofmann, 1988) This formulation underlines the duty of the government to protect the environment and hence implicitly states that nature is not granted the status of a legal subject. To put it differently, nature is not granted the right to stand in court. Instead, the government has to take on the responsibility of protection, which makes the rights of nature inherently dependent on the political motives of the current reigning coalition.

In that regard, the court's decision to declare current environmental policies unconstitutional can be understood as a critique of the non-binding and abstract nature of the state's obligations. To be more precise, the preservation of nature is merely laid down as a guideline or objective for the government and hence lacks clear indications of environmental standards or limits (Łaszewska-Hellriegel, 2022). Therefore, the court's ruling can be considered a call to action to expand the judiciary's role in successful climate protection.

Secondly, this law, like any other law, must always be balanced with other rights and freedoms. Even though the preservation of the "natural foundations

of life" is laid down in the Constitution, it does not enjoy unconditional priority over other laws but must be balanced with other fundamental constitutional (human-) rights and principles, such as the general freedom of action (art.2 para.1) or the freedom of profession (art.12 para.1)[1] as laid down in the Basic Law in Germany (Grundgesetz für Die Bundesrepublik Deutschland, n.d.). Consequently, these restrain its enforceability as they add considerable legal counterweight that has to be taken into account for every judicial decision (Bundesverfassungsgericht [Constitutional Court], 2021a). In practice, this means that actions emitting a lot of carbon dioxide, such as taking a plane, cannot simply be prohibited but must be interpreted with regard to other constitutional principles, such as freedom of action.

To conclude, the juridical character of nature can be understood as a tool worthy of protection for future generations. As stated by Article 1, human dignity and its protection are at the core of the German constitution, and hence environmental protection is merely understood as an instrument to ensure its compliance (Heinz, 1990). Furthermore, balancing other constitutional rights enforces this law's non-binding and abstract nature. Coming back to the philosophical reflections previously mentioned, the German constitution reveals an anthropocentric worldview in which human interests are of ultimate significance.

3.1 Roots of Anthropocentrism in Germany

To encourage a shift towards an ecocentric perspective, which would benefit overall climate protection, one first needs to understand the roots of anthropocentrism and its influence on German society. Against this background, it becomes evident that anthropocentrism is deeply anchored in the Western tradition. For this reason, the following section will analyse the cultural origins of anthropocentrism in Germany. While multiple historical and religious influences enforce this worldview, the frame of this essay only allows us to explore a handful.

One cause for the trend toward a human-centred belief system is the influence of religion (Sessions, 1974). The influence of Christianity on the establishment of an anthropocentric view in the Western hemisphere can be explained by the fact that the bible enforces the narrative of humans as the centre of creation. The story of creation describes man as a superior being and instructs humans to "multiply and fill the earth and subdue it, and have dominion over ... every living thing that moves on the earth" (English Standard Version Bible, 2009, Genesis 1:27-28). Some scholars argue that this anthropocentric worldview, and the cor-

[1] All articles mentioned in this paper refer to the German Basic law and can be retrieved via https://www.gesetze-im-internet.de/gg/BJNR000010949.html

responding lack of respect towards nature, are part of the problem behind insufficient environmental protection (White, 1967). For instance, Sessions (1974) describes the relation between anthropocentrism and the climate crisis as follows: "the environmental crisis is ultimately a manifestation of the serious distortion in our conception of the man-nature relationship brought about, in great measure of our Judeo-Christiann heritage" (p. 73).

Further, the idea of 'man as a creator' substantiated itself in European history and the instrumentalization of the environment. The scholar Motea (2022) argues that "during the 18th century ... the relationship between society and nature transformed" (p.60) due to the scientific revolution during the end of the Renaissance. This division carried on with the spread of Darwinism and the establishment of evolutionary theory, which encouraged an understanding of humans as the highest form of species, still felt today. Consequently, this narrative translated into the establishment of a 'survival of the fittest' mentality, which promoted the subjugation of nature by humans.

Moreover, as a result of the industrial revolution man tried to control nature through technology and established capitalism as the dominant economic system. This meant growth at the expense of exploiting natural resources. All of this culminated in anthropocentrism still being omnipresent in many areas of Europe and Germany, ranging from our society to economics and the German constitution.

In contrast to Germany, countries such as New Zealand have successfully implemented environmental personhood. It must be noted that especially countries with influential indigenous cultures have applied an ecocentric philosophy to their climate policies. Evidently, the dominance of an ecocentric philosophy has triggered a shift toward the establishment of environmental personhood in the legal framework and, thus, has positively affected climate protection. An example is the Maori group in New Zealand, which played a crucial role in granting the Whanganui River the status of a legal person in 2017 (Lillo, 2018). Until today this case remains a precedent case in the discourse of environmental personhood. It is essential to point out that the Maori based their claim for subjective rights on the ecocentric idea that rivers are living things and that the Whanganui River is an ancestor of theirs. In that sense, they embrace a spiritual connection to all natural entities called 'Te Kaitakitanga' which translates into an equal status between humans and nature. In this context, New Zealand is an exemplary case demonstrating how an ecocentric worldview can successfully be implemented in the legal sphere. Following this example, the question of how Germany could integrate environmental personhood into its constitution arises.

4 Implementing Environmental Personhood Into the German Constitution

Before turning towards two practical approaches to this project, it is essential to understand the importance of implementing environmental personhood into the constitution. Unlike ordinary law, constitutional principles lay down fundamental values or maxims and cannot be amended or repealed as easily (Tandon, 2022). Therefore, when aiming to overcome the current anthropocentric legal framework in Germany, it is crucial to change the legal status of nature so that it becomes equivalent to that of humans on a constitutional level.

According to Bosselmann (1986), one approach to shifting this worldview is to extend Art. 2 para.1 of the German constitution, which states that "every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law [own translation]." Accordingly, this article would have to be extended in a way that environmental integrity would additionally serve as a boundary to the freedom of development. This would be a significant step, as nature would be equal in legal status to humans and hence be granted positive rights, such as the right to sue or be sued (Kramm, 2020). Moreover, it would define the fundamental dynamic between the natural world and humans and thus be decisive for interpreting further laws. To be more precise, any other law, such as the freedom of action (art.2 para.2) would have to be interpreted in a way that complies with this principle. Consequently, destructive actions such as grand-scale deforestation could only be legitimised in so far as the integrity or intrinsic value of the forest is guaranteed.

Another approach would be to alter Art. 19 para.3, which currently states that "fundamental rights shall also apply to domestic legal persons to the extent that they are applicable to them by their nature [own translation]." In other words, this article currently states that the status of domestic legal persons does not only apply to humans but can also be extended to corporations, for instance. According to Kersten (2020), extending Art. 19 para.3 would also grant nature the status of a legal person. This would mean that just as with the case of current legal persons that are not human, each individual case would have to be examined in order to assess to what extent specific fundamental rights could apply to a specific natural object, such as a river. Consequently, rights such as the right to life and physical integrity (art.2 para.1) or the principle of inviolability of the home (Art.13 para.1) could be interpreted in a way that compromises and benefits the preservation of nature.

5 Analysis of Limitations and Benefits

In this section of the paper, some limitations and as yet unanswered questions shall be examined in order to assess the chances of environmental personhood. However, since taking every aspect into account would go beyond the scope of this paper, problems regarding the delimitation of rights, the influence of the human factor in the judicial process, and some technical considerations will have to suffice.

First, granting every living entity the same rights would simply be impossible if we want to maintain our current way of living. As Keller (1986) puts it: "How does[one] ... want to delimit centipedes, tigers and slipper animals, spurge plants and noble roses in their rights as subjects against each other [own translation]" (p. 339). While her statement might be provocative, her critique justifiably addresses an important unspecified question. In that regard, it remains unclear how killing animals could be legitimised if their physical integrity was to be equal to that of humans. Nonetheless, one argument against this assumption brought forward by James Rachel is the concept of "moral individualism" (May, 2014). Accordingly, the way an individual must be treated shall not be depended on his group membership but on consideration of his own characteristics, meaning that there would be different classifications of value for different animals. An example of this classification is an animal's ability to feel pain (Ladwig, 2022). While its application might be more complex than the theoretical framework behind it, this could be a basis for giving nature equal rights while still having room for nuance.

Additionally, one can not ignore that nature cannot speak for itself but will always depend on a human mediator, which implies the inevitability of the human factor influencing judicial outcomes and decisions. Moreover, Bétaille (2019) believes that granting nature rights would create a serious judicial counterweight that would inevitably lead to rivalry between nature's rights and human interests and rights. Consequently, the clear separation between both would revive, which clearly would not benefit an ecocentric worldview (Heinz, 1990).

Lastly, it is important to acknowledge the technical difficulties of implementing environmental personhood into the constitution. According to Article 79 of German law, amending the German constitution would require a two-thirds majority of the Bundestag [German Parliament] as well as the Bundesrat [German Federal Council]. Because this proposal is still met with a lot of scepticism, it remains questionable whether it would find enough political support. Further, in the face of the urgency of the crisis, it is uncertain whether this

amendment could be implemented fast enough to reverse the trend of environmental degradation. The Maori tribe, for instance, had fought for more than eight years before getting their proposed bill passed (Lillo, 2018).

Taking all of this into account, it is unarguable that there remain unanswered questions. Nonetheless, several reasons speak for implementing subjective rights of nature and a corresponding shift towards a more ecocentric approach. In the following section, the moral and societal possibilities will be addressed.

First, one needs to consider how a change in the legal framework would impact environmental protection. As mentioned above, if nature had subjective rights, the German government would have to set clear threshold values of how much damage nature could endure without irreversible consequences. To be more precise, before any severe interference with the natural environment, corporations would have to present and evaluate current environmental standards regarding soil or air quality. Consequently, the government would have to prioritise funding and support for environmental research (Bosselmann, 1986). Furthermore, a scientific inquiry would become the benchmark for concrete administrative regulations, which are currently being neglected and crucial for accurate climate protection. More importantly, a change in the legal framework would provide a legal counter-pressure to the current dominantly economic one (De Jong, 2022). The current legal foundation even lays down that the state shall maintain a macroeconomic balance (art.10 para.2), which subsequently implies economic growth, which is mostly linked to environmental destruction in the form of resource exploitation (De Toledo, 2020). Therefore, granting nature the status of a legal person would influence future policy decisions regarding environmental interventions.

Second, integrating environmental personhood would successfully address the prevailing demand for better climate protection in society. As previously mentioned, there is substantial proof that the political sphere has been failing to comply with resolutions regarding the reduction of emissions and hence its set climate targets. Nonetheless, calls for immediate action regarding environmental protection are becoming increasingly louder. Accordingly, the German Ministry for the Environment recently published a report that states that only an average of 26% of all German citizens rank the climate policies of the German government as ‘enough’ or ‘rather enough’ (Umwelt Bundesamt, [Environment Federal Office] 2022). In that regard, an amendment to the constitution would force the government to accurately represent its citizens’ calls.

Further, having the constitution reflect a more ecocentric perspective would encourage a general aversion to anthropocentric self-conception. Recognising the rights of nature ensures that we as humans take responsibility for the conserva-

tion and protection of nature and show awareness of the consequences of human destructive activity (Ladwig, 2022). In that context, a shift towards a more ecocentric perception of nature would encourage a society that acknowledges the well-being of our planet.

Third, legal frameworks should, to some extent, reflect societal needs and therefore be able to adjust to change in order to remain legitimate. In fact, amendments have always been inherently linked to the development of the German constitution. According to Kersten (2022), our current constitutional order is the product of two important revolutions. The first one defined the fundamental relation between the government and the individual citizen, resulting in the creation of a liberal constitutional state. The second one aimed at ensuring a more dignified life by incorporating more detailed provisions regarding health and working conditions and hence resulted in what we today refer to as the welfare state. Today, given the ever-growing calls for comprehensive environmental protection, it seems justified to reconsider whether a third 'ecological constitutional revolution' is necessary.

Last, when considering the implementation of environmental personhood, it is essential to acknowledge the urgency of the climate crisis. Accordingly, scientists formulated nine 'planetary boundaries', which, consisting of threshold values, define a safe operating space for humans in terms of environmental damage (Rockström et al., 2009). To be more precise, they include precise measurements in categories such as overfishing, global warming, and water pollution. If these tipping points are exceeded, irreversible and unforeseeable damage will occur. Considering that more than six of these nine boundaries have already been exceeded due to human pollution, finding new ways to put pressure on the political sphere seems more pressing than ever.

6 Conclusion

As can be seen, by the constitutional court's decision, the current German legal framework has been failing to address the looming climate crisis. Against this background, this paper explored how environmental personhood could be implemented into the German constitution. It was argued that despite unspecified questions regarding the delimitation of rights of natural entities as well as possible technical difficulties in the amendment of the German constitution, implementing environmental personhood could cause a shift towards a more ecocentric approach to nature, and thus activate a first step towards better protection of the environment. Accordingly, it was argued that granting nature the status

of a legal person could not only encourage environmental research by determining concrete threshold values of acceptable utilisation of natural resources, but also counterbalance our current economic system based on natural degradation. Further, it was claimed that applying environmental personhood could successfully address the prevailing demand for better climate protection in society. This was set into the context of different philosophical approaches to granting nature worth, as well as an examination of current climate protection.

The authors of this paper believe that despite Germany's anthropocentric cultural heritage, a shift towards a more ecocentric approach to nature is possible. While it will unarguably take some time before this project becomes fruitful, this should not be a reason to shy away. As can be seen from many historical examples, such as the women's movement, an egalitarian partnership cannot be achieved without legal equality. In that sense, granting nature legal rights is an attempt to rebalance the juridical power dynamic between humans and nature.

By implementing this clause into its constitution, Germany could become a precedent case for an ecocentric approach to environmental protection, motivating more countries to follow. Moreover, climate protection would no longer solely be a matter of the political sphere. Contrary to temporary governments and changing importance accorded to climate policies, an amendment of the German constitution would have a long-lasting effect on our conception of the environment and its protection and hence cause a shift towards an ecocentric worldview. After all, when labelling environmental personhood as a utopian idea, it might be helpful to remember that throughout ... history, each successive extension of rights ... has been ... unthinkable. We are inclined to suppose the rightlessness of rightless things to be a decree of Nature ... It is thus that we defer considering the choices involved in all their moral, social and economic dimensions. (Stone, 1972, p.453)

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