

# ***CAN NATURE GET IT RIGHT?***

## ***Rights of Nature in a European Context***

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**Presentation at a workshop at  
Université Panthéon-Assas**

***Comment l'émergence des Droits  
de la Nature en Europe est-elle  
possible?***

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# ***What is RoN today?***

***A wide school of thought, containing (ao):***

- ★ Legal-philosophical aspect, from an anthropocentric to an ecocentric paradigm...***
- ★ Environmental constitutionalism...***
- ★ The representation issue, from natural object to natural subject...***
- ★ A means for indigenous peoples to uphold their rights to traditional use of natural resources...***
- ★ Linked to a Human right to a healthy environment (climate cases)***
- ★ Ecocide...***

# ***RoN in Legal Philosophy***



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- **The dire situation for the environment requires new thinking** (climate, mass extinction of species, food shortages, etc)...
- **Environmental law is part of the problem, legitimizes exploitation...**
- **Earth law and Earth (Great) jurisprudence** (Nash, Cullinan, Berry), **Rule of law for nature** (Bosselmann)
- **“Subjectification”, cf development of other rights** (slaves, ethnicity, women, LGBTQIA, children)...
- **Harmony, although Nature at the apex...**



# ***Critical viewpoints on RoN***

- **Deep ecology  $\leftrightarrow$  Trias politica; “electoral blackmail”...**
- **RoN rests on three main assumptions:**
  - ✱ **Current law cannot solve the environmental challenges of today, an urgent need a shift of paradigm...**
  - ✱ **The introduction of legal personhood for natural entities is the key factor (scientific evidence)...**
  - ✱ **The RoN concept is better suited to solve the most pressing issues of the future, such as climate change and biodiversity losses...**



# ***Critical viewpoints on RoN***

- **A lot of political symbolism, lack of clarity:**  
*The contents of the Charter must establish the concept of a natural nested hierarchy of rights that follows the order of hierarchies in natural systems that operate to sustain life leading to a reframing of the notion of 'rights' from adversarial to 'right relationship' i.e.: synergistic and complementary.*
- **The same cases oao (anecdotal evidence)...**
- **No arguments taken...**
- **Omits to take into account the specific legal and cultural circumstances...**



# ***Critical viewpoints on RoN***

- **The low success rate; bylaws in the USA, Vilcabamba-Mirador, Uttarakhand, Colorado River, etc...**
- **Quick fix for the enforcement; “guardians for the natural entity”; Ganges, Atrato...**
- **Competing rights and interests; hydro power/forestry  $\leftrightarrow$  biodiversity, rare earth elements  $\leftrightarrow$  Sami land rights...**
- **Different ecosystems on different scales, all species (stone marten in Sweden)?...**
- **Romantic view on indigenous peoples...**



# ***Critical viewpoints on RoN***

- **Obsessed with rights = “legal transplant”..?**

**BUT STILL (in the EU):**

- 1. Representation issue...**
- 2. A Charter on Nature...**
- 3. Nature in secondary legislation**
- 4. Enforcement-enforcement-enforcement...**



# ***“Rights” and representation in the EU***

It follows more generally that the last sentence of the third paragraph of Article 10a of Directive 85/337 must be read as meaning that the **‘rights capable of being impaired’** which the **ENGO** are supposed to enjoy **must necessarily include the rules of national law implementing EU environment law and the rules of EU environment law having direct effect.**

C-115/09 *Trianel* [2011], para. 48





# ***Direct Effect of EU Environmental Law***

A forceful tool for the implementation of environmental obligations in EU law in the MS, with two main components, namely that **provisions which are unconditional and precise;**

- **Overrules national law, “dis-apply” or “set aside”, and**
- **Carries “rights” for ENGOs concerning administrative “obligations”...**



# **= *Wide Access to Justice in National Courts!***

**Since 2007: C-240/09 *Slovak Brown* (2011) → C-873/19 *Kraftfahr-Umweltsamt* (2022)**

- **A rapid and very strong development in most Member States courts...**
- **In contrast with "direct action" in CJEU...**



# ***RoN in EU primary law..?***

***Would a constitutional provision on Nature make a difference?***

- **Principles in a Charter on the value of Nature:**
  - ✱ **Recognition of the intrinsic value of biodiversity (CBD)...**
  - ✱ **Non-regression...**
  - ✱ **Ecological integrity...**



# ***RoN in secondary EU law ..?***

- **Stronger adaptivity requirements, for example in permits...**
- **Wider use of legal-technical standards...**
- **Reform of EU Nature directives: scientific basis for the listing...**
- **Reform of ELD; Definition of environmental damage, limitations, ENGO access, damages on behalf of the environment, remediation funds...**
- **Ecocide...**



# ***Effectiveness and enforcement***

- **Regulate the independence, competence and power of the national enforcement authorities...**
- **To avoid ping-pong; *commissario ad acta*...**
- **The experience and education of the national courts (environmental courts or benches?)...**
- **Preliminary rulings (2008-2020: DE: 38, SE 10, 6MS O), EU Ombudsman, ...**



# ***Ley Mar Menor 2022***

- **A nature reserve...**
- **Three committees: Representatives, scientific, Supervision/enforcement...**
- **Actio Popularis...**

Soro Mateo, B & Álvarez, S: ***The Mar Menor Lagoon Enjoys Legal Standing: and now, what?*** Verfassungsblogg 2022/10/14

Peñalver i Cadré, A: ***The first case recognizing the rights of nature in Europé: Spanish Parliament's brave step towards ecocentrism.*** Chemins Publics 16/11/2022



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**....and finally...**

**THANK YOU FOR LISTENING..!**



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