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ARTÍCULOS

FROM DOMINATION TO RECOGNITION: THE RIGHTS OF NATURE IN COMPARATIVE PERSPECTIVE

DE LA DOMINACIÓN AL RECONOCIMIENTO: LOS DERECHOS DE LA NATURALEZA EN PERSPECTIVA COMPARADA

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ABSTRACT

Western legal tradition has long been characterized by an anthropocentric paradigm that positions human beings as the sole subjects of law, relegating nature to the status of a mere object. This perspective, deeply rooted in the epistemology of domination, was reinforced by modern science, industrialization, and capitalist economies, which further distanced legal systems from ecological considerations. However, in the face of the Anthropocene crisis, this model is being challenged by the emergence of an ecocentric legal framework that recognizes nature as a subject of rights. This article explores the historical foundations of legal anthropocentrism, tracing its origins in Western thought and its consolidation through mechanistic and reductionist approaches. It then examines the global rise of the Rights of Nature as a counter-hegemonic legal paradigm, highlighting their philosophical underpinnings and practical applications, particularly in Latin America. The analysis also considers the challenges and criticisms of this movement, including its implementation difficulties and potential contradictions. Finally, the article reflects on the European legal landscape, where the recognition of legal personality for the Mar Menor lagoon in Spain represents a groundbreaking development. This case, alongside recent constitutional debates, suggests that European legal systems may be gradually opening up to a more ecocentric perspective.

KEYWORDS

Rights of Nature; Comparative Law; Cross-fertilization; Ecocentrism; Legal Antrhopocentrism; ecological constitutionalism.

RESUMEN

La tradición jurídica occidental se ha caracterizado durante mucho tiempo por un paradigma antropocéntrico que sitúa a los seres humanos como los únicos sujetos de derecho, relegando a la naturaleza al estatus de mero objeto. Esta perspectiva, profundamente arraigada en la epistemología de la dominación, fue reforzada por la ciencia moderna, la industrialización y las economías capitalistas, alejando aún más a los sistemas jurídicos de las consideraciones ecológicas. No obstante, ante la crisis del Antropoceno, este modelo está siendo desafiado por la aparición de un

marco jurídico ecocéntrico que reconoce a la naturaleza como sujeto de derechos. Este artículo explora los fundamentos históricos del antropocentrismo jurídico, rastreando sus orígenes en el pensamiento occidental y su consolidación a través de enfoques mecanicistas y reduccionistas. Luego, examina el auge global de los Derechos de la Naturaleza como un paradigma jurídico contrahegemónico, destacando sus fundamentos filosóficos y aplicaciones prácticas, particularmente en América Latina. El análisis también aborda los desafíos y críticas a este movimiento, incluidas las dificultades de implementación y las potenciales contradicciones. Finalmente, el artículo reflexiona sobre el panorama jurídico europeo, donde el reconocimiento de la personalidad jurídica de la laguna del Mar Menor en España representa un desarrollo innovador. Este caso, junto con recientes debates constitucionales, sugiere que los sistemas jurídicos europeos podrían estar abriéndose paulatinamente a una perspectiva más ecocéntrica.

PALABRAS CLAVE

Derechos de la Naturaleza; Derecho Comparado; fertilización cruzada; ecocentrismo; antropocentrismo jurídico; constitucionalismo ecológico.

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1. ANTHROPOCENE AND CONSTITUTIONAL TRANSFORMATIONS AT THE DAWN OF THE 21ST CENTURY: THE EMERGENCE OF NEW LEGAL SUBJECTIVITIES

At the beginning of the 21st century, humanity faces epochal challenges in ensuring its very survival. The transgression of the biophysical limits that sustain the Earth system, driven by anthropogenic impact, raises the specter of a true mass extinction[1]. This prompts a fundamental inquiry into the future of constitutionalism and the role law can play in curbing environmental degradation. To date, the failure of international and administrative law in redirecting human behavior toward more sustainable lifestyles and production methods compels legal science to seek innovative solutions[2]. The advent of the Anthropocene[3] necessitates the engagement of the highest level of the law, with the hope that its legal, symbolic, and pedagogical power can induce the paradigm shift required to halt environmental deterioration[4]. A radical constitutional transformation is

1 KOLBERT, E. The Sixth Extinction: An Unnatural History (New York 2014).

2 KOTZÉ, L.J. Global environmental constitutionalism in the Anthropocene (Oxford 2016).

3 KERSTEN, J. Das Anthropozän-Konzept. Kontrakt — Komposition — Konflikt (Baden-Baden 2014).

4 GARVER, G. Ecological law and the planetary crisis (Abingdon 2022).

increasingly necessary to permeate the entire legal system with ecological principles (the so-called ecological law[5]) and to create legal orders that effectively recognize and protect nature as a complex ecosystem[6]. The recent Covid-19 pandemic has further underscored the inextricable link between human, non-human animals, and nature well-being (One Health studies[7]). Ecology, with its holistic vision of relationships among living beings, thus becomes an indispensable element of contemporary democratic states (the so-called ecological constitutional state[8]), as evidenced by the emergence of substantive and procedural environmental protection clauses in most constitutions worldwide[9].

In this context, comparative law, with its subversive function[10], becomes a valuable tool for challenging the dogmas on which Western industrialist and extractivist culture was founded[11], while also uncovering previously unexplored theoretical paradigms[12]—such as those developed in the Global South[13]. In these regions, constituent power has established new legal orders based on an ecological social contract, recognizing nature as a constitutive element and a true subject of the state[14]. In a counter-hegemonic reaction to the colonialism and neocolonialism that shaped their modern and contemporary history, these legal systems have embraced an ecocentric conception of law[15]. They acknowledge that human beings are deeply dependent on and interconnected with other living beings and nature, necessitating self-imposed limitations. Within this profoundly relational perspective, human well-being is understood as contingent upon the biophysical balance of ecosystems, of which humans are an integral part. The recognition of nature's rights

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5 ANKER, K. ET AL. (eds.). From Environmental to Ecological Law (Abingdon 2021).

6 KERSTEN, J. Das ökologische Grundgesetz (München 2022).

7 GAUDIOSI, F. One Health: A New Intersectoral Approach and Its Legal Implications for Global Health Governance, in La Comunità internazionale 1 (2024) 73-95; PETERS, A. One Health — One Welfare — One Rights, in https://verfassungsblog.de/one-health-one-welfare-one-rights/, DOI: 10.59704/0e96426ad7c67295.

8 STEINBERG, R. Der ökologische Verfassungsstaat (Frankfurt am Main 1998).

9 MAY, J.R., DALY, E. Global environmental constitutionalism (Cambridge 2015); COLLINS, L. The ecological constitution (Abingdon 2021).

10 MUIR-WATT, H. La fonction subversive du droit comparé, in Revue internationale de droit comparé, 52-3 (2000) 503-527.

11 ACOSTA, A. Extractivism and neoextractism: two sides of the same curse, in LANG, M., MOKRANI, D. (eds.). Beyond Development Alternative visions from Latin America (Amsterdam 2013) 61-86.

12 AMIRANTE, D. Costituzionalismo ambientale: atlante giuridico per l'Antropocene (Bologna 2022).

13 DANN, P., RIEGNER, M., BÖNNEMANN, M. The Southern Turn in Comparative Constitutional Law, in DANN, P., RIEGNER, M., BÖNNEMANN, M. (eds.). The Global South and Comparative Constitutional Law (Oxford 2020) 1-38.

14 CARDUCCI, M. Nomos, Ethnos e Kthonos nel processo: verso il tramonto del bilanciamento? Spunti dal dibattito latinoamericano, in Federalismi.it — Focus America Latina 1 (2014); BALDIN, S. Il «buen vivir» nel costituzionalismo andino. Profili comparativi (Torino 2019).

15 KOTZÉ, L.J., FRENCH, D. The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene, in Global Journal of Comparative Law, 7-1 (2018) 5-36.

has emerged since the early 2000s[16]. In this framework, nature is acknowledged as a legal subject, fully integrated into the moral community.

The discourse on the Rights of Nature, while evolving parallel to animal rights and at times even appearing in opposition, in reality shares significant affinities with the broader study of new legal subjectivities[17]. The expansion of the moral community to new entities, in alignment with the evolution of social consciousness, challenges the boundaries of legal subjectivity. History demonstrates that legal subjectivity and juridical personality have historically functioned as instruments of political emancipation rather than as incontrovertible elements of legal orders, as illustrated by past recognitions granted to slaves, women, foreigners, corporations, ships, public entities, and even the state itself[18].

In the current period of radical transition, it is therefore unsurprising that there is growing advocacy for the liberation of non-human animals and nature from their status as mere objects (*res*) toward their recognition as persons (*personae*). This transformation, however, requires two critical clarifications. The first is that the recognition of legal subjectivity does not entail, as many mistakenly believe, an equivalence with an adult human individual. An entity can be a legal subject without necessarily being granted the same rights and obligations as a human adult. The second clarification is that the holistic protection of nature does not in any way diminish the legal safeguarding of human dignity. On the contrary, environmental justice—understood as the right to a healthy environment—and ecological justice—conceived as the right to preserve the biophysical balances that sustain the Earth's ecosystems and all forms of life—must integrate and cooperate to ensure the well-being of all living beings that inhabit the planet.

This contribution seeks to contextualize the recognition of legal subjectivity for the Mar Menor lagoon in Spain (the first such case in Europe) within the broader global movement for the Rights of Nature, which has, since the 1970s, sought to develop legal solutions that provide effective protection for nature. This case is particularly noteworthy not only because it represents a pioneering development within the European

16 TANANESCU, M. Understanding the Rights of Nature: A Critical Introduction (Bielefeld 2022).

17 TEUBNER, G. Rights of Non-humans? Electronic Agents and Animals as New Actors in Politics and Law, in Journal of Law and Society 33-4 (2006) 497-521; GREAR, A. Mind the Gap': One Dilemma Concerning the Expansion of Legal Subjectivity in the Age of Globalisation, in Law, Crime and History, 1-1 (2011) 1-8; KANSRA, D. Law and the Rights of the Non-Humans, in Iils Law Review 8-2 (2022) 58-71; JEFFERSON, D.J., MACPHERSON, E., MOE, S. Experiments with the Extension of Legal Personality to Ecosystems and Beyond-Human Organisms: Challenges and Opportunities for Company Law, in Transnational Environmental Law, 12-2 (2023) 343-365; ALVAREZ-NAKAGAWA, A. A Critical Introduction to Non-Human Rights, in ALVAREZ-NAKAGAWA, A., DOUZINAS, C. (eds.). Non-Human Rights. Critical Perspectives (Chelthenam 2024) 1-12.

18 VICENTE, M.T. Giro ecocéntrico en el ordenamiento jurídico español: El Mar Menor un ecosistema con derechos. El camino hacia la paz con la naturaleza, in PAPELES de relaciones ecosociales y cambio global, 161 (2023) 106.

Union, but also because authoritative voices had previously dismissed the feasibility of transplanting such a legal framework into the European context[19].

Following a historical reconstruction of the anthropocentric foundations of Western legal culture, this article analyzes the Rights of Nature both in their origins and in their concrete applications, attempting an initial taxonomy of these rights. Finally, turning once more to the Global North—specifically to Spain—it examines the significance of this recent legislative innovation, which has been the subject of intense domestic legal debate. The law in question has introduced an ecocentric legal institution into a traditionally anthropocentric system—an unexpected development that has nevertheless received validation from Spain's Constitutional Court.

2. ORIGINS OF THE EPISTEMOLOGY OF DOMINATION IN CONTEMPORARY WESTERN LEGAL SYSTEMS

The history of ideas provides contemporary scholars with analytical tools to examine the evolution of the fraught relationship between humanity and nature—a relationship that, at a certain point, experienced a fracture with devastating consequences for the planet[20]. In exploring how law—one of the most powerful instruments for shaping human behavior—can restore harmony between humanity and nature, it is essential to understand the origins of the division between the natural order and the legal order.

In ancient and medieval history, the legal dimension, whether explicitly anthropocentric or not, played a relatively minor role in relation to the natural world. Humanity's impact on its environment was relatively marginal compared to today. At that time, a unified cosmological vision prevailed, in which humans were seen as an integral part of nature, fully participating in the life of the natural world. It has been observed that: "In ancient and medieval cosmology, the ideas of matter, life, and mind were so closely fused as to be almost indistinguishable; the world, in its extension, was considered material; in its becoming, alive; in its order, intelligent."[21] This unity of all things was ensured by Reason, an element shared both by human beings and by existence in its entirety. It was believed that both the world and humanity were participants in the λόγος, a rational order. As has been explained: "Reason … existed not only in the individual mind but also in the objective world: in relationships between human beings, between social classes, in social institutions, in nature and its manifestations. …

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19 See: https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689328/IPOL_STU(2021)689328_EN.pdf. On the contrary, they believe that it is already possible to recognize the Rights of Nature in the European Union: EPSTEIN, Y., BERNET KEMPERS, E. Animals and Nature as Rights Holders in the European Union, in Modern Law Review, 86-6 (2023) 1336-1357.

20 See: BLUMENBERG, H. Paradigmi per una metaforologia (Bologna 1969).

21 COLLINGWOOD, R.G. The idea of nature (Mansfield 2014) 133.

The degree of human rationality depended on the extent to which it harmonized with totality; and the objective structure of this—beyond just humanity and its ends—served as the benchmark for assessing the reasonableness of thoughts and actions."[22]. From this perspective, the natural and legal orders were inevitably unified, as they were both governed by the same principle.

Both in Greek and Roman civilizations, dominant thought was grounded in an animist vision of nature, acknowledging its inscrutable workings.[23] The symbolic power of images circulated through literature and popular culture strongly influenced how individuals and societies approached the natural world. The Earth was conceived as a living, sentient organism—a generous "mother," a source of life and nourishment, and a guardian of infinite riches meant for the well-being, growth, and happiness of humanity.[24] This conception led to the belief that: "The Earth, as a living organism and a nurturing mother, imposed cultural constraints, limiting human actions. It is not easy to kill a mother, to dig into her womb in search of gold, or to mutilate her body… As long as the Earth was considered alive and sentient, any destructive act against it could be condemned as a violation of ethical norms. In most traditional cultures, minerals and metals were thought to mature in the womb of Mother Earth."[25] Mining activities, in particular, were equated with an outright "rape" of Mother Earth.[26] At the same time, nature was also perceived as a capricious "stepmother," responsible for catastrophic events and disasters. The Earth would punish violations of its innermost sanctuaries—where precious metals were hidden—with epidemics and death, warning of the corrupting influence of wealth and the dangers of human greed.

In those times and up until the modern era, moral censure was the most significant form of regulation in the human-nature relationship.[27] This ethical approach to nature inevitably influenced Greco-Roman law, which established various forms of regulation governing relationships between *res* (things) and individuals.[28] It has been noted that historically: "*Nomos* arose as a reaction to natural laws, as an expression of humanity's will to govern its own destiny through its own laws. The birth of law, the legal order of human beings, was realized in the awareness that what makes life human is not its

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22 HORKEIMER, M. Eclisse della ragione (Torino 1969) 12.

23 MERCHANT, C. La morte della natura (Milano 2022) 112. See also: BONDÌ, R., LA VERGATA, A. Natura (Bologna 2014).

24 Ibid., 108.

25 Ibid., 76.

26 Ibid., 75.

27 See: BONDÌ, R., LA VERGATA, A. Natura, cit., in part. 17-30.

28 THOMMEN, L. L'ambiente nel mondo antico (Bologna 2014) 136-137. See also: LYSTER, S. International Wildlife Law (Cambridge 1985) 29; MARUOTTI SOLIDORO, L. La tutela dell'ambiente nella sua evoluzione storica: l'esperienza del mondo antico (Torino 2009).

natural rooting, but the institutional mediation that, by imparting an artificial regularity, gives it its cultural and historical configuration."[29]

However, Greco-Roman animism was not sufficient to prevent the emergence of *an epistemology of domination*, which took root beginning with Greek philosophy and Judeo-Christian religious thought.[30] While some scholars argue that these traditions primarily emphasized the spiritual and inner life of humans, they nonetheless established a moral hierarchy that positioned humanity above the rest of existence.[31] The recognition that human beings possessed both a material form, shared with the terrestrial world, and a spiritual component, aligning them with the divine and the eternal, led to the instrumentalization of nature in service of human life. This focus on humanity's inner dimension, at the expense of external reality, inaugurated what has been termed "strong anthropocentrism" in Western civilization. Humanity was considered the measure of all things. As has been noted: "Aristotle himself intuited the deep correlation, indeed the authentic interpenetration, between the individual and the communal (hence human) context of reference… Man is *zoon politkón* 'because man lives in the polis and because, conversely, the polis lives in them,' allowing man to fully realize his nature… However, the strength of this interpretation is also its greatest limitation… it neglects the foundational premise that no social or political life could exist without the environment that sustains us."[32] The written law of the city (*graptos nomos*) in opposition to the unwritten law (*agraphos nomos*) inherent in natural laws is, after all, a foundational myth of Western legal civilization.[33]

While doctrine presents diverse perspectives on the contributions of ancient and medieval philosophy to the emergence of an epistemology of domination, there is broad consensus in identifying the advent of modern science—characterized by the mathematization of nature, reductionism, and mechanism—as the pivotal moment in Western thought when a genuinely dominative and manipulative approach to nature took hold.[34] In this view, the radical separation of man from nature inaugurated by modern science is seen as the origin of the socio-ecological crisis we now face. The reverence (*metus reverentialis*) for the natural world that characterized ancient and medieval times was replaced, from the early modern period onward, by human *hubris* (arrogance)—justifying the destruction of the Earth's resources to satisfy the ever-expanding desires of consumerist societies.

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29 CAMERLENGO, Q. Natura e potere: una rilettura dei processi di legittimazione politica (Milano-Udine 2020) 39. See also: CIARAMELLI, F. Consenso sociale e legittimazione giuridica (Torino 2013) 26.

30 MERCHANT, C. La morte della natura, cit., 75.

31 TALLACCHINI, M. Diritto per la natura (Torino 1966).

32 CAMERLENGO, Q. Natura e potere, cit., 49.

33 See: CIAMMARELLI, F. Il dilemma di Antigone (Torino 2017).

34 MERCHANT, C. La morte della natura, cit., 204-225. See also: ROSSI, P. Il tempo dei maghi. Rinascimento e modernità (Milano 2006).

This paradigm shift, which began in the 17th century, has been elucidated by scholars who argue that: "If the Judeo-Christian worldview is based on the antinomy between man—the king of creation and image of his Creator—and the subordinated beings around him, the Baconian scientific-modern conception places nature and other species at humanity's total disposal, with science enabling man to reclaim his dominion over the living world. Cartesian dualism, distinguishing *res cogitans* from *res extensa*, ultimately institutionalized a division between mind and matter, positioning rational humanity outside and above irrational nature, which was converted into an object of exploitation"—a conception of anthropocentric humanism.[35]

Francis Bacon's scientific method, emphasizing experimentation, repeatability, and verifiability, rendered reality controllable—subjugated to human needs and desires. Science demystified nature's sacredness by revealing the mechanisms underlying natural phenomena, regulating existence, and reproducing life itself. Bacon's philosophy, as scholars have noted, sought to establish a "harmonious union between human intellect and the nature of things… the intellect, freed from superstition, must command disenchanted nature. Knowledge, which is power, knows no limits—neither in the subjugation of creatures nor in its obedient acquiescence to the world's rulers… What humans wish to learn from nature is how to use it for their total domination."[36]

The reduction of existence—and, even more alarmingly, of life itself—to a mere instrument for guaranteeing human civilization's progress at any cost was not limited to the dissection and exploitation of nature. In Bacon's philosophy, this approach extended to the manipulation of organic life to make it increasingly functional to the expanding appetites and egotism of society. [37] Nature became an object, fully manipulable for human use and consumption.

Equally noteworthy in the philosophy of the father of modern science is the peculiar association of nature and matter with the feminine essence. For Bacon, nature was "a woman who must be tortured with mechanical inventions";[38] matter was "a common prostitute" that must be "forced and maintained in order by the dominant harmony of things… The vexations of art are certainly the bonds and shackles of Proteus, which betray the final struggles and efforts of matter… Nature takes orders from man and works under his authority."[39] In a historical period when imperialism and transcontinental trade were reaching unprecedented heights, Baconian epistemology of domination proved particularly functional in legitimizing new hierarchies of power, novel means of production and exchange, and vast territorial expansions of states. In

35 BATTAGLIA, L. Alle origini dell'etica ambientale (Bari 2002).
36 HORKHEIMER, M., ADORNO, T.W. Dialettica dell'illuminismo (Torino 1966) 12.
37 JONAS, H. Toward a Philisophy of Technology, in Philosphy Today, 15 (1971) 76-101.
38 MERCHANT, C. La morte della natura, cit., 358.
39 MERCHANT, C. La morte della natura, cit., 358-362.

Bacon's New Atlantis, the ideal society was hierarchical and patriarchal. The community was governed by an elite of scientists who guarded the secrets learned from scientific research. Bacon's fortune and the success of his scientific method were undoubtedly shaped by their alignment with the interests of a new dominant class—one that would remain powerful for a long time: textile manufacturers, merchants, mine owners, and the state.[40]

During the same period, alongside Bacon's reductionism, another intellectual movement emerged in England that would have a significant impact on Western thought: mechanism.[41] Mechanistic philosophy, in particular, served to assuage the anxieties of a society that had lost its traditional certainties. The Reformation, by allowing individual interpretation of the Scriptures, had generated an anarchy of ideas, leading to social conflicts and religious divisions. Mersenne, Gassendi, and Descartes sought to fill the void left by the collapse of long-established ecclesiastical hierarchies and doctrinal dogmas by proposing an original explanation of the cosmos and human biology. According to mechanism, the cosmos, society, and human beings were "ordered systems of mechanical parts subject to the rule of law and predictability through deductive reasoning. A new concept of the self as a rational master of passions contained within a machine-like body began to replace the idea of the self as an integral part of a tightly harmonized whole, connected to both the cosmos and society."[42] This new philosophy not only provided "an answer to the problem of social and cosmic order but also functioned as a justification for power and domination over nature."[43] This new philosophy not only provided "an answer to the problem of social and cosmic order but also functioned as a justification for power and domination over nature." In this sense, the concept of a mechanical cosmos, by replacing the previous animistic and personified vision of nature, made it morally and ethically easier to destroy nature for productive purposes. It has been effectively highlighted that: "For the Greeks, was both the totality of being in motion, including man, and the ideal basis, the essence of that being; yet the Greeks would never have conceived of opposing man to. This is precisely what happens in Descartes' concept of nature, whose dualistic opposition between *res cogitans* and *res extensa* forms the foundation of modern natural science."[44] The stark dualism inaugurated in the 17th century created a significant rift between subject and object, between man and nature, to the point where ethical and moral resistances that had previously discouraged a predatory approach to the natural

40 Ibid., 371.

41 See: ROSSI, P.A. I filosofi e le macchine, 1400-1700 (Milano 1962).

42 MERCHANT, C. La morte della natura, cit., 434. On the relationship between man, nature and science, in its historical evolution and thus also with reference to the advent of mechanism, see the valuable volume: HADOT, P. Il velo di Iside. Storia dell'idea di Natura (Torino 2006) in part. 99 ff.

43 MERCHANT, C. La morte della natura, cit., 435.

44 HÖSLE, V. Filosofia della crisi ecologica (Torino 1992) 47.

world gradually weakened and eventually disappeared. Humanity deluded itself into believing it had overturned the hierarchy in which it had once been subordinated to the forces of nature. As noted: "Purely natural, animal, and vegetative existence was, for civilization, the absolute peril. Mimetic, mythical, and metaphysical behaviors appeared one after another as outdated eras, and the fear of regressing to such a state was associated with the terror that the Self might revert to that nature from which it had estranged itself through immense effort—an estrangement that, for this very reason, inspired unspeakable horror. The living memory of prehistory… has been eradicated from human consciousness over millennia through the most extreme punishments."[45] Building upon Epicurean theories, mechanistic thinkers distanced themselves from the idea of an animated nature and envisioned a cosmos composed of incorporeal, impenetrable atoms endowed with internal energy that set them in motion. The concept of an orderly and rational universe, created by a supreme deity, conveniently served to justify and legitimize both the rigid hierarchical structures of French absolute monarchy and its compatibility with Catholic doctrine.

The influence of cosmology on legal and political thought is evident. The legacy of mechanistic philosophy was embraced by Thomas Hobbes, who carried it to its logical extreme, reducing even the soul, will, brain, and human impulses to matter governed by mechanical motion. Society was conceived as a mechanized structure rather than an organic entity. Leviathan, the "mortal god, to whom we owe, under the immortal God, our peace and defense,"[46] rescues human beings from the disorder and barbarism of the state of nature. Order, peace, and private property are guaranteed by the state and its laws—both the result of a social contract voluntarily agreed upon by individuals who renounce certain freedoms to escape a chaotic, savage, and violent natural state. The natural and legal orders are thus placed in opposition. As has been reconstructed: "Hobbes sought to regulate all aspects of human social life through the institution of an absolutist political authority that represents, on the level of social interactions, the transposition of the immense power that mechanical operations exert in governing nature."[47] Private property and state sovereignty, upheld in the 17th century by John Locke and Thomas Hobbes, respectively, became the two organizing principles of modern legal thought, also known to jurists as legal absolutism.[48] As Derham later wrote, following in Hobbes' footsteps: "We can, if necessary, plunder the entire globe, penetrate the bowels of the earth, descend into the depths of the abyss, travel to the most

45 HORKHEIMER, M., ADORNO, T.W. Dialettica dell'illuminismo (Torino 1966) 39.
46 MERCHANT, C. La morte della natura, cit., 430.
47 GARGANI, A.G. Hobbes e la scienza (Torino 1971) XII.
48 GROSSI, P. L'Europa del diritto (Roma-Bari 2016).

remote regions of the world to acquire wealth, increase our knowledge, or even merely to please our eyes and imagination."[49]

Similarly, mechanistic theories, based on an atomistic and rationalist vision of reality, found particular success both in the international legal thought of Hugo Grotius and Samuel Pufendorf and in the development of private property rights by John Locke and Jean Domat. The effect of these theories, which would exert a decisive influence on the evolution of Western law up to the present day, was to provide the legal foundation for legitimizing European imperial powers' domination over lands inhabited by indigenous peoples, which were considered *terrae nullius* (no man's land) in all respects.[50]

Between the 16th and 18th centuries, Western thought underwent a profound reversal of the cosmological and moral order that had characterized ancient and medieval philosophy. The dominant ideas of this period, closely aligned with absolutist forms of state power, laid the foundation for an epistemology of domination, which would later be exported worldwide over the following centuries. This epistemology of domination, due to its inherent characteristics, proved instrumental in accelerating capitalist economies while simultaneously justifying the unrestrained destruction of nature. Scholars have noted that during this period: "Capital and markets increasingly assumed organic attributes of growth, strength, activity, pregnancy, weakness, decline, and collapse, obscuring and confusing the new underlying social relations of production and reproduction that made social growth and progress possible. Nature, women, black people, and wage laborers were assigned the new status of 'natural' and human resources for the modern world system. Perhaps the ultimate irony of these transformations was the new name given to them: rationality."[51]

As the Frankfurt School pointed out, the Enlightenment's premise that the supremacy of reason would lead to unlimited societal progress was ultimately disproven by history. Progress turned into regression, and the Enlightenment's promise of advancement resulted in self-destruction. Regarding the Enlightenment's arrogance toward the non-human and its vision of absolute domination over nature, it has been observed: "The desacralization of nature and the subject-object dichotomy are the two key features that made the epistemology of domination possible. But the most significant aspect of domination is that it becomes an epistemology—a dominative method that, within science, produces a recursive cycle where the dominative attitude legitimizes techno-science, while technology confirms the validity of domination and science, to the point

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49 MERCHANT, C. La morte della natura, cit., 498.

50 See: ARNEIL, B. John Locke and America: the Defence of English Colonialism (Oxford 1996); BARDUCCI, M. Ugo Grozio, l'imperialismo anglo-olandese e la globalizzazione del diritto naturale, in Quaderni di scienza politica, 1, 2022, 73-94.

51 MERCHANT, C. La morte della natura, cit., 572. See also: BERGAMO, J.N. Marxismo ed ecologia. Origine e sviluppo di un dibattito globale (Verona 2022).

where domination becomes the ultimate self-justifying reality, beyond and above actual human needs."[52]

Except for a brief interlude marked by Romanticism in 19th-century Europe[53]—where an attempt was made to restore the "organic idea of an animating vital principle that connects the entire created world",[54] through an exaltation of wild nature and primitivism—the dawn of the 20th century definitively cemented the supremacy of rational-mathematical thought in the West. As John Stuart Mill observed in the late 19th century, the doctrine that humans should follow nature is both irrational and immoral: "Irrational, because all human actions, whatever they may be, consist of altering the spontaneous course of nature. Immoral because, since the course of natural phenomena is rife with actions that, when committed by humans, deserve the utmost abhorrence, anyone attempting to imitate nature's course in their behavior would be universally regarded as the most wicked of men."[55]

The 20th century marked the triumph of the idea of domination, accompanied by a rhetoric of conservation that portrayed nature as deserving of maximum protection because it embodied the essence of the people living in communion with their homeland. The appeal to the purity of nature as an expression of national spirit and its legal protection immediately evokes catastrophic historical experiences.[56] Memory should thus compel us to approach all legal protection claims based on the argument of nature conservation with extreme caution. In perfecting the manipulation of nature discussed above, humanity has been and remains capable of exploiting the argument of environmental protection to pursue objectives that have little to do with the noble ideal of ensuring a harmonious coexistence between humans and the natural world.[57]

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52 TALLACCHINI, M. Diritto per la natura, cit., 18.

53 FRIGO, G.F., GIACOMONI, P., MÜLLER-FUNK, W. (eds.). Pensare la natura. Dal romanticismo all'ecologia (Milano 1998).

54 MERCHANT, C. La morte della natura, cit., 238.

55 MILL, J.S. Saggi sulla religione (Milano 1953) 51-53.

56 BRÜGGEMEIER, F.-J. (ed.), How green were the Nazis?: nature, environment, and nation in the Third Reich (Athens 2007).

57 The rhetoric of the Rights of Nature can also be employed to pursue objectives that run counter to the noble ideals underlying this theoretical framework. This is particularly evident in Bolivia and Ecuador, where, in recent years, the discourse on the Rights of Nature has been instrumentally used by national governments to displace indigenous populations from their lands—ostensibly to preserve the absolute integrity of ecosystems—only to subsequently grant these lands to multinational corporations for the exploitation of mineral resources. Despite a certain reluctance in scholarly literature to acknowledge this regression in the Rights of Nature, see on this point: RICHARDSON, W., BUSTOS, C. Implementing Nature's Rights in Colombia: The Atrato and Amazon Experiences, in Revista Derecho del Estado 54 (2023) 227-275; VALLADARES, C., BOELENS, R. Mining for Mother Earth. Governmentalities, sacred waters and nature's rights in Ecuador, in Geoforum 100 (2019) 68-79.

Some scholars have recognized that, in the latter half of the 20th century, humanity underwent a crucial transformation due to the "pathologies of a subject who has lost, compared to modernity, all sense of limits, as well as the meaning and purpose of action: a subject subjugated to the imperative of technology, motivated by an unlimited hubris, unaware of the negative consequences of its actions."[58] The 20th century characterized by an "old-positivist vision of science, demonstrated a blind and providentialist faith in progress,"[59] even as it faced emerging issues such as pollution, nuclear risk, chemical warfare, resource depletion, genetic manipulation, behavioral control, and the potential extinction of humanity. Even at that time, however, some thinkers began to recognize that human actions denied the ontological primacy of being (*ontologische Vorrang*)[60], which logically precedes all other aspects of human life, including power structures, the formation of structured communities, and even the very concept of justice. As has been insightfully explained, these perspectives acknowledged that the natural order was "not merely an environmental backdrop for human affairs, but a reality that imbues human actions with existential meaning. Without the natural order, there would be no social order, as life itself is the indispensable premise of the relationships that animate different social consortiums."[61] With striking relevance to contemporary issues, it was also noted that: "On Earth, stockpiles of weapons of mass destruction are multiplying, with which the leaders of various ideological systems threaten mutual annihilation; this situation starkly illustrates the madness of quantitative and objectifying thought: the will to self-assertion of competing ideologies seriously conjures the specter of collective suicide for humanity and numerous other biological species, potentially transforming the Earth into a lifeless, subjectless object."[62]

Since the 2000s, the advent of globalization and the dominance of neoliberal capitalism over communist economies have marked another significant chapter in the history of relations between technological civilization and nature. The development of technology has reached a point where production (*Herstellen*) no longer coincides with the ability to foresee the effects of what has been created (*Vorstellen*). Consequently: "It is not entirely impossible that we, who manufacture these products, are on the verge of building a world with which we cannot keep pace and for which the demands placed on our imagination, emotions, and responsibility far exceed our capacities."[63] The paradox of rationalist-mathematical thought has thus resulted in the fact that humanity, once

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58 PULCINI, E. Filosofia sociale: critica del presente e prospettive per il futuro, in Politica e società 3 (2016) 311.

59 DRYZEK, J. La razionalità ecologica (Ancona 1998).

60 HEIDEGGER, M. Essere e Tempo (Tübingen 1967).

61 CAMERLENGO, Q. Natura e potere, cit., 69.

62 HÖSLE, V. Filosofia della crisi ecologica, cit., 63.

63 ANDERS, G. L'uomo è antiquato. 1) Considerazioni sull'anima nell'epoca della seconda rivoluzione industriale (Torino 2003) 51.

the *dominus* (owner) of the technological process, has now become its often-unaware and disoriented prisoner. The evocative and unsettling concept of "technological determinism" has been used to describe the phenomenon whereby, faced with self-reproducing processes that impose themselves as necessities, technology has fostered a system in which humans are nothing more than captives."[64] A paradigmatic example of technological determinism, combined with the epistemology of domination, is the promotion of monocultures in agriculture—farming systems capable of disrupting land balances and reinforcing social inequalities.[65]

Despite the current dominance of neoliberal trends and the legal structures that support them, the emergence in the 1960s of a widespread ecological consciousness, organized into so-called "environmentalist" social movements, has injected new vitality into public debate on how to shape humanity's relationship with the Earth. As has been rightly emphasized: "Ecology has been a subversive science in critically exposing the consequences of unchecked growth associated with capitalism, technology, and progress—concepts that, over the past two centuries, have been revered in Western culture."[66] With equal intellectual honesty, ideological barriers surrounding the so-called ecological question have been dismantled, highlighting how both capitalist and socialist systems—both effectively falling within the framework of "industrialism"[67]—, have proven to be highly polluting and recklessly destructive of the Earth's delicate balances. As has been pointed out: "Just as for Kant and Fichte nature holds no inherent moral value, so too in the economic thought of Smith, Ricardo, and Marx, nature is attributed no value."[68]

Despite the scientific evidence providing a clear framework for the destructive and irreversible impact of human activities on nature, by the 21st century, industrialized and industrializing civilizations have not adapted their lifestyles to practices compatible with the survival of life on Earth. The efforts made so far do not meet the most stringent criteria identified by science to prevent the collapse of the planet's equilibria. The history of ideas highlights how the concept of a *reified* nature has long been rooted in Western thought, long before the advent of consumerism, technology, and mass society. To restore a balance between society and nature, it is therefore necessary to reconsider humanity's relationship with the Earth, both at the individual and social levels. In this regard, legal doctrine is also called upon to rethink the fundamental structures of Western law, in order to make it compatible with the survival of life on this planet. The critical approach to law, since the 1970s, has provided legal scholars with conceptual tools

64 CAMERLENGO, Q. Natura e potere*,* cit., 79.
65 SHIVA, V. Monocultures of the Mind (New Delhi 2012).
66 MERCHANT, C. La morte della natura, cit., 65.
67 GORZ, A. La strada del paradiso (Roma 1984).
68 HÖSLE, V. Filosofia della crisi ecologica, cit., 118-119.

to directly address the core of legal structures, thereby enabling them to identify and dismantle those ancient, often hidden, components that not only hinder its adaptation to the needs and awareness we possess today but also place it in irreconcilable conflict with the values embraced by contemporary constitutionalism, which undoubtedly include, as will be further explored later, the protection of nature.

3. THE RIGHTS OF NATURE AS A GLOBAL LEGAL PARADIGM

3.1. The Origins of the Rights of Nature in Legal Doctrine

From a historical perspective, two major schools of thought — distinct from one another — underlie the creation of the Rights of Nature.

On one hand, there is the strongly pragmatic approach attributed to the American jurist Christopher Stone, who, in 1972, published an article titled Should Trees Have Standing? — Toward Legal Rights for Natural Objects.[69] His reflections emerged from a concrete legal case: Sierra Club v. Morton.[70]

Specifically, the United States Forest Service [a federal agency] had granted Walt Disney Enterprises, Inc. permission to build a resort complex—including hotels, restaurants, and recreational facilities worth thirty-five million dollars—in the Mineral King Valley, an area of natural interest[71] located within the Sequoia National Forest in California's Sierra Nevada mountains. The Sierra Club, as "an association with a particular interest in the conservation of national parks, wildlife reserves, and forests," challenged this decision in court, arguing that the construction would harm the aesthetic and ecological balance of the area. However, the Ninth Circuit Court ruled that the Sierra Club lacked standing. Upon appeal to the U.S. Supreme Court, the justices dismissed the Sierra Club's arguments, ruling that: "The impact of the changes made to the Mineral King Valley does not indiscriminately affect all citizens. The alleged harm would directly impact only those who make use of Mineral King Valley and the Sequoia National Park, and for whom the area's aesthetic and recreational values would be compromised by the construction of a highway and ski resort. The Sierra Club, however, has not asserted in its lawsuit that it or its members would be harmed in their activities or passions as a result of Disney's developments." Thus, the Sierra Club lacked legal standing, as it was not directly harmed by Walt Disney's activities.

Beyond the final decision, however, Stone's proposals captured the curiosity and attention of one Supreme Court justice, who felt compelled to issue a dissenting opinion

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69 STONE, C.D. Should Trees Have Standing? Toward Legal Rights for Natural Objects, in Southern California Law Review 45 (1972) 450-501.

70 SCOTUS, Sierra Club v. Morton, Secretary of the Interior, et al., 405 U.S., October Term, 1971.

71 Act of July 3, 1926, § 6, 44 Stat. 821, 16 U. S. C. § 688.

in favor of recognizing nature's rights—expressing hope that, in the future, the majority opinion might change.

Stone's approach to the issue was primarily pragmatic. Granting legal rights to nature was meant to achieve a dual effect. First, from a legal standpoint, it would enhance the protections available to natural entities both procedurally and substantively. Specifically, attributing legal personhood to these entities would facilitate their standing in court, ensuring procedural safeguards against harmful actions and recognizing substantive rights that would enable appropriate assessment of damages. Secondly, there would be a symbolic effect: by incorporating the Rights of Nature into the legal system, natural entities would not only be actively considered in balancing competing rights but would also play a pedagogical role in fostering an ethic of responsibility among citizens.

It is no coincidence that, during those years in the United States, alongside the civil rights movements advocating for liberation from an oppressive, racist, and patriarchal socio-legal system, Peter Singer's ideas about reconsidering the relationship between humans and sentient animals also gained traction.

Alongside Stone's thought, another current of thought regarding the Rights of Nature emerged, though grounded in fundamentally different ethical foundations. The principal theorist of this doctrinal school was the Chilean jurist Godofredo Stutzin.[72] He formulated an ecological imperative requiring humanity to recognize nature's legal personhood, thereby overcoming the self-destructive anthropocentric approach embedded in Western law. Aligning moral philosophy with the legal system, according to Stutzin, would foster a positive societal transformation aimed at rectifying ecological imbalances caused by human activities. In his view, nature should be understood as: "A legal entity under public law that can be assimilated to a 'Foundation for Life,' which has created itself (or was created, if one prefers, by a Creator) to make planet Earth a home for a universe of living beings… Like all foundations, nature has its own assets directed toward a purpose. The assets of nature include all elements of the natural world, both animate and inanimate, all of which, in one way or another, play a role in the 'enterprise of life.'"[73]

Regarding the consequences of recognizing nature's rights, Stutzin observed that such recognition would: "Influence collective thought and behavior. Elevating nature's legal status will undoubtedly improve its social status and, consequently, lead to the adoption of policies and rules of conduct that benefit it… Ecological law will project its conservationist inspiration into society and thus fulfill its educational function, which goes beyond mere legal compliance… A nature that has a say in human affairs will contribute to increasing humanity's chances of reconnecting with itself."[74]

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72 STUTZIN, G. Un imperativo ecológico: reconocer los derechos de la naturaleza, in Ambiente y Desarollo 1-1 (1984) 97-114.

73 STUTZIN, G. Un imperativo ecológico, cit., 105-106.

74 Ibid., 109.

The arguments developed by Stutzin have had an enormous impact on certain segments of legal scholarship, to the extent that they have become the foundation for a doctrinal current that has "theologized" nature's intrinsic value—even through legal frameworks. Among the most influential proponents of an eco-theological vision of nature's rights is Thomas Berry.[75] He, in particular, through a revival of natural law philosophy, advocated for the establishment of a new jurisprudence—earth jurisprudence—designed to defend nature's rights. Berry argued that every component of the Earth community possesses three fundamental rights: the right to exist, the right to habitat, and the right to fulfill its role in Earth's continuously renewing processes. In his view, the Universe itself is the source of all normative acts. The only law that humans should create and observe is one derived from the natural laws governing life on Earth.

Berry's thought, in turn, has decisively influenced contemporary doctrine, which—though in a minority position—continues to advocate, from a legal-philosophical perspective, for the recognition of legal personhood for natural entities based on their intrinsic value[76].

3.2. The Implementation of the Rights of Nature and Their Global Circulation

It is not possible, within the scope of this analysis, to examine individually each natural entity that has been granted legal subjectivity worldwide. However, to provide an overview of the widespread diffusion of the Rights of Nature movement, studies conducted between 2022 and 2023 mapped between 300 and 400 initiatives globally aimed at recognizing the Rights of Nature, involving at least 39 different countries.[77]

Although the Rights of Nature share a common denominator that allows them to be classified within a critical and alternative movement in relation to the predominantly Western tradition of environmental law, they prove to be highly heterogeneous, partly due to the different legal cultures in which they have been transplanted.

In an attempt to synthesize the complex historical and philosophical trajectory leading to the attribution of legal subjectivity to natural entities, scholars have observed that: "The Rights of Nature movement embodies the practical application of the principles embedded in Earth system law. Firstly, the focus on obtaining legal recognition for non-human natural entities—both individually and holistically—seeks to reshape the

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75 BERRY, T. The great work: our way into the future (New York 2013).

76 CULLINAN, C. Wild law: a manifesto for earth justice (White River Junction 2011); BURDON, P. Exploring Wild Law: The Philosophy of Earth Jurisprudence (Kent Town 2012).

77 PUTZER, A. ET AL. Putting the rights of nature on the map. A quantitative analysis of rights of nature initiatives across the world, in Journal of Maps 18-1 (2022) 89-96.

anthropocentric orientation of the law, making it more inclusive of a broader spectrum of entities deserving protection. Secondly, it respects the diversity of relationships that exist in the world, recognizing that entities do not exist in isolation but rather within intricate networks of interdependence. Finally, the movement embraces complexity, aiming to address the challenges of the Anthropocene through legal interventions that more accurately capture the dynamic nature of human-environment interactions. By incorporating these principles of Earth system law and rejecting the 'problematic' dualism of human and non-human nature, the Rights of Nature movement actively combats intergenerational, intra-generational, and interspecies injustices."[78]

Starting from this preliminary assessment, it becomes evident that a key driving factor behind the recognition of rights to nature across diverse legal systems is the growing awareness of vulnerability. This awareness binds humans and the living world into a shared community of destiny in response to the ecological imbalances affecting the planet.

Additionally, some scholars have emphasized that the genesis and functioning of the Rights of Nature cannot be fully understood without considering the dynamics of power and competing interests at play. On this point, it has been noted that: "The Rights of Nature are incomprehensible unless they are seen as a process of political representation of nature. A nature endowed with rights becomes, above all, a political subject, much like a corporation with its own legal rights."[79]

To properly frame the phenomenon of the Rights of Nature, it is also essential to clarify the relationship between environmental justice and ecological justice. Simplifying the distinction, environmental justice focuses on the human right to be protected from the harmful consequences of anthropogenic activities, such as the right to live in a healthy environment. It seeks to combat inequalities arising from excessive consumption, resource exploitation, and related disasters, including oil spills, deforestation, waste pollution, and water contamination. Ecological justice, by contrast, adopts an ecocentric perspective, embracing a holistic view of nature that includes ecosystems and all species, regardless of their neurological characteristics. Plants, waterways, land, and humans are all considered integral parts of a unified whole. In this regard, scholars have rightly highlighted that, despite originating from different perspectives and pursuing distinct objectives, environmental and ecological justice are not antagonistic but complementary, as both contribute to strengthening protections for the biosphere in the face of mounting anthropogenic pressures.[80]

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78 GELLERS, J.C. Earth system law and the legal status of non-humans in the Anthropocene, in Earth System Governance, 7 (2021) 4.

79 TĂNĂSESCU, M. Rights of Nature, Legal Personality, and Indigenous Philosophies, in Transnational Environmental Law 9-3 (2020) 429-453.

80 VEGA CÁRDENAS, Y., PARRA MEZA, N. The Epistemology of Nature's Rights Approach, in VEGA CÁRDENAS, Y. TURP, D. (eds.). A Legal Personality for the St. Lawrence River and other Rivers of the World (Montréal 2023) 49.

Another crucial point that must be clarified at the outset is that, similarly to the legal recognition of animal rights,[81] granting rights to nature does not imply equating the legal standing of humans and natural elements. The attribution of legal subjectivity to a natural entity can be modulated and graduated, conferring only specific rights. In the case of nature, these rights generally include the right to life, preservation, protection, respect for life cycles, and restoration to original conditions.

From a systematic perspective, an intriguing doctrinal approach distinguishes three models of Rights of Nature: poetic, mimetic, and resistance models. Poetic models establish ex novo the constitutive elements of the Rights of Nature (as seen in Ecuador, Bolivia, and New Zealand), creating a legal framework that is unique in origin, rationale, content, or effects. Mimetic models refer to legal systems that transplant the structures of poetic models into their own legal frameworks. Countries from five continents have adopted mimetic models, including Uganda and Nigeria in Africa; Colombia, Panama, Argentina, and Canada in the Americas; India, Bangladesh, and Pakistan in Asia; Spain in Europe; and Australia in Oceania. Finally, resistance models reject the recognition of the Rights of Nature and remain the dominant approach worldwide.

With regard to the constitutionalization of the Rights of Nature, scholars have observed that: "It aims to 'normalize' the legal reference to nature as a constitutive element of the legal order in general and preventive terms, not merely as a response to judicial cases. Only when the constitutionalization of the legal system (involving inter-individual organization, territory, rules, and consensus) aligns with the ecological order (encompassing interspecies relationships, ecosystem goods, and services) can the realization of rights and political action operate in 'harmony'—that is, compatibly with nature. As an alternative to the absolute subjectivity promoted by the discourse on the optimization of individual expectations through consensus or balancing, constitutionalized nature reminds us of the inherent finiteness of human subjectivities concerning species survival."[82] Furthermore, it has been noted that: "Constitutionalizing nature means subordinating the functioning of the human economy to the logic of nature, rather than merely balancing it with individual human interests. This principle applies not only in judicial settings, as pursued by litigation strategies, but also in all spheres where power is exercised, ensuring that the notion of sustainable development—whether in its 'strong' or 'weak' forms—yields to an approach that is not merely cultural but essential and physiological for species survival."[83]

A closer examination of the contexts in which the Rights of Nature have developed reveals that, beneath this highly evocative umbrella term, profound differences emerge. These

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81 RESCIGNO, F. I diritti degli animali. Da res a soggetti (Torino 2005).

82 CARDUCCI, M. Natura (diritti della), in Digesto delle Discipline Pubblicistiche (Torino 2017) 517.

83 Ibid.

differences suggest that the same paradigm lends itself to multiple interpretations, depending on the cultural framework and specific circumstances in which it arises and evolves.

3.3. Critical (Often Overlooked) Aspects of the Rights of Nature

It is necessary, first and foremost, to acknowledge the numerous factors that negatively impact and weaken the concept of nature as a subject of rights. A particularly noteworthy critique is that the Rights of Nature rely on the very language of rights—an offspring of Eurocentric political liberalism—from which they ostensibly seek to distance themselves.[84] Law, therefore, has failed, even in its most radical attempts, to transcend—beyond mere declarations of principle—the axioms on which Western legal systems are founded, despite the corrections introduced by various historical revolutions that have shaped constitutionalism in social and ecological terms.

The very notion of Mother Nature, exalted in legal systems that have embraced the Rights of Nature, sexualizes and reductively stereotypes cultural traditions that, across different continents, possess a much more complex understanding of reality and the relationship between humans and the natural world. The conceptualization of "Nature" in its totalizing essence (nature as totality) reflects a process of abstraction typical of a Cartesian rather than a relational-pragmatic approach. Consequently, some scholars argue that the constitutional incorporation of such expressions represents an act of "cultural appropriation,"[85] by hegemonic Western societies seeking to maintain their privileges and dominant position, which enable them to exploit both subordinate classes and the Earth itself. In this regard, it has been observed that: "Nature... is the quintessence of modernism and, despite the best intentions of many proponents, cannot help but perpetuate colonial relations aimed at cultural erasure. It is ironic that many advocates of the Rights of Nature oppose the concept of resources, as if the former recognizes something special while the latter merely flattens the world. In reality, these two notions share exactly the same structure, as they operate at the same level of abstraction. There is no Nature in itself, just as there is no 'resource'... The idea of Nature is a radical simplification of worlds (just as 'resource' is a radical simplification of properties)."[86]

From a pragmatic standpoint, it has also been demonstrated that Ecuador and Bolivia, even after recognizing the Rights of Nature, have significantly expanded extractive activities within their territories. Indeed, as has been highlighted, the rhetoric of the nurturing Mother, who provides for living beings (including humans), has enabled states

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84 GUZMÁN, J.J. Decolonizing Law and expanding Human Rights: Indigenous Conceptions and the Rights of Nature in Ecuador, in Deusto Journal of Human Rights 4 (2019) 59-86.

85 TĂNĂSESCU, M. Understanding the Rights of Nature, cit., 44.

86 TĂNĂSESCU, M. Understanding the Rights of Nature, cit., 63.

to dispossess indigenous communities of their lands, subsequently granting licenses that permit the exploitation of those areas. As evidenced in certain cases, particularly in New Zealand and Colombia, the Rights of Nature emerge as a compromise between different cultures, through which the state seeks to assert control over regions that, for various reasons, remain beyond its effective governance.

The rhetoric surrounding the Rights of Nature is further challenged by scientific evidence indicating that natural entities granted legal personality have not experienced any tangible improvements over time; in some cases, their conditions have even worsened. Additionally, concerns have been raised about the inadequacy of administrative structures responsible for safeguarding the rights of these entities. A handful of individuals, designated as guardians, are expected to ensure the integrity of vast territories plagued by complex issues and severe organized crime — challenges so formidable that even national militaries struggle to address them effectively.

Recently, a group of Dutch ecologists conducted a comprehensive analysis using multiple scientific indices to assess the potential effectiveness of granting legal personality to rivers.[87] They concluded that such an attribution does not necessarily improve a river's health. Instead, they emphasized the necessity of: "Accompanying the recognition with enforceable regulations, established through legislation, regarding priority-setting and the role of guardians across multi-jurisdictional hydrological scales and multiple institutional levels."[88] Some scholars argue that the Rights of Nature face the same challenges as traditional environmental law, including the difficulty of reconciling nature conservation with economic growth, the enforcement of regulations, and the lack of financial resources to implement restoration and rehabilitation programs These concerns are particularly pertinent in contexts marked by high levels of poverty, where natural resource extraction constitutes the most straightforward and profitable means of fostering economic development[89] and where state and administrative structures struggle to assert control over territories often dominated by organized crime.

On this point, it is widely recognized that, for instance: "Ecuador continues to rely heavily on oil, gas, and mining industries. Despite the Rights of Nature, the government has pursued controversial industrial projects, including the Mirador open-pit mine and oil exploration in Yasuni National Park ... Bolivia, like Ecuador, remains tied to natural resource industries."[90]

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87 WUIJTS S. ET AL. An Ecological Perspective on a River's Rights: A Recipe for More Effective Water Quality Governance?, in Water International 44-6/7 (2019) 664.

88 Ibid., 647 ff.

89 CALZADILLA, P.V., KOTZÈ, L. Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia, in Transnational Environmental Law 7-3 (2018) 1-28.

90 BOYD, D.R. Recognizing the Rights of Nature, in Natural Resources & Environment 32-4 (2018), 15. On the abuse of the Rights of Nature to strengthen mining extraction activities, see also: HUM-

Regarding the effectiveness of governing bodies tasked with administering natural entities, it has been aptly observed that: "In general, one or two guardians could easily become overwhelmed by the responsibility of protecting a river's interests and acting on its behalf. For example, the Atrato River in Colombia is 750 km long, the Coello River 1,899 km, the Ganges 2,600 km, and the Yamuna 1,076 km. Millions of people live near these rivers, extract water from them, and discharge waste into them. While in theory it may be easy to halt illegal activities, many of the practices that contribute to river degradation are legal because licenses were granted upstream. Halting such 'legal' activities is a complex task that would require years and undoubtedly mobilize far more human and financial resources than a mere handful of 'guardians' could provide."[91]

Simply granting rights to an entity that cannot defend itself is futile unless a legal and institutional framework is established to effectively empower its representatives to protect nature. [92]. This is considered one of the primary reasons why the Rights of Nature in Ecuador and Bolivia have been subject to manipulation and commercial exploitation. In the absence of institutional structures that ensure the genuine and effective enforcement of nature's rights, these rights become susceptible to appropriation by politically and economically dominant actors. The Rights of Nature, in this sense, function as empty vessels that can be filled with whatever is deemed convenient by those in positions of power.

3.4. Reflections on the Rights of Nature as an Expanding Legal Phenomenon

Having reconstructed the historical-philosophical, legal-dogmatic, and jurisprudential aspects of the Rights of Nature, it is now possible to outline some preliminary considerations. Legal scholarship is profoundly polarized concerning this emerging phenomenon: on one hand, its disruptive and revolutionary aspects are emphasized; on the other, its inefficacy is contested. Given such a divergence of opinions, it is not easy to draw definitive conclusions regarding a legal transformation that is as mutable, multifaceted, and at the same time radical as the elevation of nature to a subject of rights. Nonetheless, an initial interpretative framework will be attempted here.

In weighing the positive and negative aspects that have emerged concerning the recognition of the Rights of Nature, one cannot but reach an overall favorable assessment

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PHREYS, D. Rights of Pachamama: The emergence of an earth jurisprudence in the Americas, in Journal of International Relations and Development 20-3 (2017) 459-484.

91 KRÄMER, L. Rights of Nature and Their Implementation, in Journal for European Environmental & Planning Law 17 (2020) 68.

92 On the various models of institutional representation developed to uphold the Rights of Nature, an insightful analysis has been conducted by: KAUFFMAN, C.M. Guardianship Arrangements in Rights of Nature Legal Provisions, in ANTHONY, R. ET AL. (eds.). Earth Law: Emerging Ecocentric Law. A Guide for Practitioners (New York 2020).

of their role in promoting constitutional systems aimed at fostering harmonious relationships between human beings and the natural world.[93]

The progressive extension of legal subjectivity to entities beyond human individuals is the result of a historical-evolutionary process, including a moral dimension, that responds to the imperative of attempting to curb a civilizational model leading humanity toward extinction. The vitalistic energy that animates the assertion of the Rights of Nature in various legal systems worldwide represents a transformative force that, if properly channeled, can imprint a strongly ecological character onto contemporary constitutionalism. At the dawn of the Third Millennium, new challenges require, even at the constitutional level, innovative tools and languages capable of aligning both representative institutions and guarantees with emerging socio-ecological needs. In this regard, it has been observed that the paradigm of the Rights of Nature holds considerable promise to: "Compel humanity to reconsider the range of ideas worthy of inclusion in legal systems and the types of entities deserving of legal personality and rights. The prospects for achieving socio-ecological justice may depend on this kind of ontologically broad and epistemologically diverse alteration of the status quo."[94] Moreover, it has been affirmed that: "The rights of nature remain one of the most viable, and certainly exciting, perspectives for extending the law's attention to the non-human world and for bringing non-humans under the protective embrace of the law through innovative means that facilitate meaningful participation via roles of representation and guardianship."[95]

The critical aspects highlighted by legal scholarship should not hinder the recognition of the Rights of Nature and the powerful ecological orientation they can impart to society. Instead, they should prompt corrective interventions aimed at refining institutions that are still in an experimental phase. Furthermore, the difficulty of implementing the Rights of Nature in contexts where the state itself struggles to assert its authority does not seem to constitute a valid reason for discrediting them. Nor, as previously mentioned, can one expect to overturn a political-economic system that has been entrenched in most contemporary human civilizations for centuries through a single court ruling or academic article.[96]

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93 Similar conclusions, emphasizing the importance of constitutional engagement, have also been reached in the literature by, for example: MACPHERSON, E. ET AL., Where ordinary laws fall short: 'riverine rights' and constitutionalism, in Griffith Law Review 30-3 (2021) 438-473.

94 GELLERS, J. Earth System Law and the Legal Status of Non-humans in the Anthropocene, cit.

95 VILLAVICENCIO-CALZADILLA, P., KOTZÉ, L. Re-imagining Participation in the Anthropocene: The Potential of the Rights of Nature Paradigm, in Peters, B., Lohse, E.J. (eds.). Sustainability through Participation? Perspectives from National, European and International Law (Leiden 2023) 69.

96 ESTUPIÑÁN-ACHURY, L., PARRA-ACOSTA, L.A., ROSSO-GAUTA, M.C. La Pachamama o la naturaleza como sujeto de derechos. Asimetrías en el constitucionalismo del "buen vivir" de América Latina, in Revista Saber, Ciencia y Libertad 17-2 (2022) 42-69.

Nevertheless, there is no reason to exclude that the recognition of the Rights of Nature, with its symbolic and cultural potential, might serve as a significant catalyst in Global South contexts, encouraging the adoption of more stringent policies for safeguarding Earth's biophysical balances. Similarly, the possibility should not be underestimated that, when implemented in legal systems where the law is more effectively enforced—thanks in part to more robust legal infrastructures—the Rights of Nature could bring about radical changes in redefining the relationship between human beings and the natural world.

In the Third Millennium, the enthusiasm and commitment demonstrated by Global South legal experiences—despite the many obstacles that law encounters in these jurisdictions—in constructing ecological constitutional systems appear commendable and increasingly serve as an inspiration for Global North countries. In the 21st century, the protection of the biological-natural dimension of life seems indispensable for the future of constitutionalism, as evidenced by the growing inclusion of clauses protecting the planet's biophysical balances in constitutional texts worldwide. Concurrently, under the pressure of the Anthropocene and new constitutional axiologies, legal subjectivity is undergoing a transformation, extending in a disruptive manner to encompass new non-human entities.

The Rights of Nature, therefore, in their transnational essence, inaugurate in the Third Millennium an attempt to establish a global constitutional normative discourse aimed at the ecological transformation of legal systems (the foundation of a global ecological Grundnorm[97]) and a means to pursue ecological justice—beyond environmental justice—at the planetary level. In this sense, the Rights of Nature appear to be valuable constitutional instruments for enhancing the protection of vital systems in extreme vulnerability, in continuity with the emancipatory spirit that, as highlighted in this chapter, characterizes both the history of post-war constitutionalism and the evolution of legal subjectivity.

4. THE CASE OF THE MAR MENOR IN SPAIN: FROM THE PROPOSAL TO THE ADOPTION OF LAW NO. 19 OF 2022

The Mar Menor is the largest saltwater lagoon in Europe, located in the region of Murcia, Spain. It is separated from the Mediterranean Sea by a narrow sandbar called La Manga. Within the lagoon, there are five volcanic-origin islands, and to the north of La Manga, the Salinas and Arenales of San Pedro del Pinatar can be found. The lagoon and its peripheral wetlands are protected by various regulations, including international ones.

97 CARDUCCI, M., CASTILLO AMAYA, L.P. Nature as "grundnorm" of global constitutionalism: contributions from the global south, in Revista Brasileira de Direito 12-2 (2016) 154-165.

The United Nations has classified them as Specially Protected Areas of Mediterranean Importance (SPAMI). Additionally, they have been listed under the Ramsar Convention as Wetland No. 706.

Despite these protections, the ecological health of the Mar Menor has steadily deteriorated over time. Notably, in 1987, the Popular Party approved a regional land law that effectively sanctioned real estate speculation. Simultaneously, it encouraged the proliferation of illegal wells, irrigation systems, and wastewater discharges under the slogan "Water for all," with the complicity of the Segura Hydrographic Confederation, the Central Union of Irrigators of the Tajo-Segura Aqueduct (SCRATS), and the Murcia Business Association (CROEM). This political strategy led to what the Forum of Citizens of the Region of Murcia denounced in 2005 as "hydraulic nationalism": its ecological and social consequences have been deeply detrimental, yet it proved politically successful, allowing the Popular Party to maintain nearly uninterrupted control over the Murcia region for more than two decades.

Among the many abuses that contributed to the ecological collapse of the Mar Menor, the nitrate discharges from the agro-industrial sector in the Campo de Cartagena stand out. These discharges have caused the progressive eutrophication of the lagoon, resulting in the formation of a murky "green soup" and the loss of its rich terrestrial, aquatic, and avian biodiversity. Additionally, scholars have highlighted several key causes of the ecosystem's devastation, including "The expansion of urban and tourist developments; nautical activities; impacts from past mining operations; the discharge of waters contaminated with phosphates, nitrates, and waste from desalination plants; the expansion of irrigation; and the illegal occupation of land for agricultural purposes."[98]

On October 12, 2019, one month after the torrential rains that fell in southeastern Spain, the Mar Menor appeared to be covered by a blanket of dead fish, eels, and crustaceans. Images of this scene quickly spread worldwide, along with the public outrage of citizens. On October 30, approximately 55,000 people took to the streets of Cartagena under the slogan "SOS Mar Menor." The demonstration was organized by the Pact for the Mar Menor, a broad social platform that brings together various groups from the region, including fishermen, environmentalists, trade unionists, scientists, and others. Simultaneously, the regional Environmental Prosecutor's Office opened a judicial investigation known as the "Topillo case," in which political officials, public servants, and entrepreneurs in the agribusiness sector are accused. On February 19, 2020, representatives of the Pact for the Mar Menor and the organizations ANSE and Ecologistas en Acción filed a complaint with the European Parliament's Petitions

98 VICENTE GIMÉNEZ, T., SALAZAR ORTUÑO, E. La iniciativa legislativa popular para el reconocimiento de personalidad jurídica y derechos propios al Mar Menor y su cuenca, in Revista Catalana de Dret Ambiental, 13 (2022) 12.

Committee, which decided to request reports from both the European Commission and the Murcia Authorities.

The situation had become so dramatic that, on July 22, 2020, the Regional Assembly of Murcia approved, with the support of the PP, Ciudadanos (Cs), and the Partido Socialista Obrero Español (PSOE), a new law to protect the Mar Menor. At the same time, driven by activist groups associated with the "Pact for the Mar Menor" platform, on July 23, 2020, the plenary session of the Los Alcázares City Council approved a popular legislative initiative to grant legal personality to the Mar Menor.

The bill to grant legal personality to the Mar Menor lagoon in Spain was approved by both the Congress and the Senate with a majority of over two-thirds in both chambers, thus becoming law (Ley 19/2022, of September 30, 2022). This law is the result of a popular initiative that gathered over 600,000 signatures during the Covid period (with 500,000 being the required minimum). The initiative was presented by Professor Teresa Vicente, Chair of Human Rights and Nature Rights at the University of Murcia, within the discipline of philosophy of law.

It is the first law in Europe to grant legal personality and rights to a natural entity. Article 2 of the law establishes that the Mar Menor and its basin are entitled to protection, conservation, maintenance, and, where appropriate, restoration by local authorities and the inhabitants of the area.[99] Furthermore, it enshrines the lagoon's right to exist as an ecosystem and to evolve naturally. The law also creates a Committee of Representatives, a Monitoring Commission, and a Scientific Committee, which will act as guardians of the lagoon's rights and be empowered to defend it in court. Additionally, the law explicitly grants any citizen the legal standing to enforce the rights of the Mar Menor.

It remains to be seen whether this new level of protection will be effective in halting the severe degradation of this unique ecosystem, which continues to suffer from significant eutrophication due to agricultural runoff, intensive farming, and rampant urbanization.

Scholarly discourse has adopted a multiplicity of positions regarding the new law. A first school of thought welcomes the recognition of the rights of the Mar Menor, arguing that: "Article 45 of the Spanish Constitution recognizes the right of 'everyone' to 'enjoy an environment suitable for personal development, as well as the duty to preserve it' (section 1) and obliges public authorities to ensure 'the rational use of all natural resources.' This provision could be interpreted through a biocentric lens, wherein 'everyone' includes all living beings and elements of nature, along with their ecosystemic relationships."[100]

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99 For a scholarly commentary, see: MARTÍNEZ DALMAU, R. Una laguna con derecho a existir. La naturaleza como sujeto de derechos y el reconocimiento de la personalidad jurídica del Mar Menor, in Teoría y Realidad Constitucional 52 (2023) 357-375.

100 SANZ LARRUGA, F.J. El Mar Menor, ¿sujeto de derechos? algunas propuestas para la mejora de la aplicación del derecho ambiental, in TOLIVAR ALAS, L., HUERGO LORA, A., CANO CAMPOS T. (eds.). El patrimonio natural en la era del cambio climático (Madrid 2022) 229.

Furthermore, scholars have advocated for a genuine paradigm shift, beginning with the rewriting of the "social contract" in order to incorporate a transformative dimension into all social, legal, and political relationships—one that includes nature as a constitutive element[101]. In this regard, it has been emphasized that the breakdown of traditional anthropocentric frameworks in Spain has already been achieved through the recognition of animal rights.[102] The attribution of legal subjectivity to nature would therefore continue along this evolving legal trajectory.[103] Regarding the recognition of legal subjectivity for the Mar Menor, it has also been observed that: "The exercise of citizen participation and procedural rights should not serve merely to prosecute offenses and assign legal responsibility for an environmental disaster of such magnitude—one that has been described as 'ecocide'—but should also facilitate timely, effective management and proactive protection of such ecosystems through sufficient and accessible mechanisms. The empowerment of civil society in environmental protection, alongside the creation of legal mechanisms for shared responsibility that enhance oversight and monitoring of polluting activities and the authorities responsible for managing high-value ecosystems such as the Mar Menor, constitutes a legal advancement in terms of 'environmental democracy.'"[104]

A middle-ground approach embraces the introduction of nature's rights into Spanish law, albeit with a degree of caution, suspending judgment on their actual effectiveness. This perspective holds that, since the legal system has already recognized animal rights as a tertium genus between property and persons, nature's rights should not be dismissed a priori on the grounds of legal indeterminacy.[105]

Among the critical voices, it has been noted that the ecocentric perspective underpinning the recognition of the Mar Menor's rights disregards the role of the human component in environmental and ecosystemic realities, portraying it as an external aggressor[106]. This, it has been argued, carries legal consequences, particularly in terms of potential conflicts with the right to private property (Art. 33 Const.) and the freedom of enterprise (Art. 38 Const.), conflicts that the Constitutional Court will soon have to

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101 MARTÍNEZ GARCÍA, E. Retos de la función jurisdiccional para un mundo interdependiente y eco-dependiente, in TEORDER 37 (2024) 242.

102 Ley 17/2021, de 15 de diciembre, de modificación del Código Civil, la Ley Hipotecaria y la Ley de Enjuiciamiento Civil aggiornata successivamente con Ley 7/2023, de 28 de marzo, de protección de los derechos y el bienestar de los animales.

103 MARTÍNEZ GARCÍA, E. Retos de la función jurisdiccional para un mundo interdependiente y eco-dependiente, in TEORDER 37 (2024) 244.

104 VICENTE GIMÉNEZ, T., SALAZAR ORTUÑO, E. La iniciativa legislativa popular, cit., 13.

105 DE ENTERRÍA RAMOS, A.G. La personalidad jurídica de los entes naturales: ¿un cambio de paradigma?, in Legebiltzarreko Aldizkaria —LEGAL— Revista del Parlamento Vasco 4 (2023) 31.

106 GARCÍA GUIJARRO, P. El encaje jurídico-constitucional de la personalidad jurídica del Mar Menor y su cuenca, in Cuadernos Constitucionales 4 (2023) 118-119.

resolve by adopting either an ecocentric or anthropocentric paradigm.[107] Furthermore, it has been asserted that Law No. 19 of 2022 constitutes a veritable "legal deception" insofar as its preamble appears to alter the meaning of Article 45 of the Constitution, which, as is well known, does not recognize the environment as a fundamental right enforceable through amparo, but rather as a guiding principle of the legal system aimed at protecting a collective good or interest for the direct benefit of the community (see, inter alia, Const. Ct. rulings No. 82/1993, No. 84/2013, and No. 233/2015).[108] The gravity of the matter lies in the fact that Law No. 19 of 2022 attempts, through interpretative means, to modify the constitutional foundation of environmental protection, thereby subverting the historically anthropocentric principles of the legal system.[109]

It has also been criticized that Article 2 of Law No. 19 of 2022 fails to clarify the precise meaning of the expression "at the expense of." Such indeterminacy could lead to the absurd situation in which municipalities or local residents are burdened with the responsibilities and costs of restoring the Mar Menor, or even held liable for omissions in the absence of conservation and maintenance measures.[110]

Additionally, objections have been raised concerning the central government's lack of competence to legislate on environmental matters concerning a specific regional area, as jurisdiction over such matters would belong to the Autonomous Community. In particular, reference has been made to the recent precedent set by Const. Ct. ruling No. 112/2021 of May 13, which examined the constitutionality of Regional Law No. 3/2020 of the Murcia Regional Assembly on the Recovery and Protection of the Mar Menor, without identifying any constitutional infringement. In that decision, the Court affirmed that: "The autonomous regulation of conditions for agricultural activity and the environmental protection of the Mar Menor [...] falls within the competence of the Autonomous Community." Accordingly, part of the scholarly community has argued that the State lacks jurisdiction to declare the legal subjectivity of the Mar Menor, given that the lagoon is located within the territory of the Autonomous Community of the Region of Murcia and maintains ecological continuity with the terrestrial natural area.[111] Law No. 19 of 2022 would thus contravene Article 149.1.23 of the Constitution and established constitutional jurisprudence regarding the allocation of powers over protected natural areas.[112]

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107 Ibid.

108 LOZANO CUTANDA, B. La declaración del Mar Menor y su cuenca como persona juridica: un "embrollo jurídico", in GA_P Análisis, 18 ottobre 2022, 2-3.

109 Ibid.

110 SORO MATEO, B., ÀLVAREZ CAREÑO, S.M., PÉREZ DE LOS COBOS HERNÁNDEZ, E. El reconocimiento de personalidad jurídica y derechos propios al Mar Menor y su cuenca como respuesta a la crisis del derecho ambiental, in Anuario. Observatorio de políticas ambientales (2023) 1012.

111 LOZANO CUTANDA, B. La declaración del Mar Menor, cit., 8.

112 Ibid.

With regard to Article 6 of Law No. 19 of 2022, which grants a popular action mechanism for the protection of the Mar Menor, it has been contended that: "It is not the responsibility of individual citizens to ensure the proper functioning of the rule of law."[113] The recognition of such a legal action would, in particular, clash with the need—already acknowledged in other areas—to limit the abuses that can arise from its broad scope in terms of both standing and cost-effectiveness. It is well established in case law that popular actions are subject to no restrictions other than good faith. Therefore, granting such an action for the protection of the Mar Menor could significantly increase litigation.[114]

Criticism of the law has also focused on the vagueness of its provisions. It has been argued that: "Without providing any truly innovative tools to reverse the degradation of the Mar Menor, the law generates legal uncertainty for citizens, administrations, and judges, thereby directly impacting the rule of law."[115].

Consequently, some scholars have concluded that: "In line with Prieur, we believe that, despite years of inaction, the mere effective implementation of the existing environmental legal framework would be sufficient to yield a marked improvement in protective outcomes, which are currently lacking in nearly all areas of enforcement. The issue is not only governmental inaction but also a deficiency in political and social awareness." Furthermore, it has been argued that: "The personification and recognition of rights for the lagoon and its watershed do not, in themselves, contain any guarantees of environmental law's effectiveness, which remains the primary challenge at a global level."[116].

5. THE UNEXPECTED OPENING OF THE SPANISH CONSTITUTIONAL COURT TO THE RIGHTS OF NATURE: A FIRST STEP TOWARDS LEGAL ECOCENTRISM?

On January 10, 2023, fifty-two members of Congress from the Vox parliamentary group challenged Law No. 19 of 2022 before the Constitutional Court,[117] seeking its annulment on the grounds that it contravened several constitutional principles, including legal certainty, the right to private economic initiative (freedom of enterprise),

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113 SORO MATEO, B., ÀLVAREZ CAREÑO, S.M., PÉREZ DE LOS COBOS HERNÁNDEZ, E. El reconocimiento de personalidad jurídica, cit., 1010.

114 Ibid., 1011.

115 LOZANO CUTANDA, B. La declaración del Mar Menor, cit., 2.

116 SORO MATEO, B., ÀLVAREZ CAREÑO, S.M., PÉREZ DE LOS COBOS HERNÁNDEZ, E. El reconocimiento de personalidad jurídica, cit., 1019.

117 Appeal no. 8583-2023.

and the division of legislative competences between the State and the autonomous communities.[118]

In its judgment No. 142 of 2024, issued on November 20, 2024,[119] the Constitutional Court, sitting in plenary session, unexpectedly rejected the appeal, albeit not unanimously[120]. The Spanish Constitutional Court recognized, with reference to Article

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118 For a commentary on the decision, see, for example: MARTÍNEZ DALMAU, R. La costituzionalità dell'approccio ecocentrico nell'ordinamento giuridico spagnolo, in Osservatorio sul Costituzionalismo Ambientale — Dpce online, 14 febbraio 2025.

119 «BOE» núm. 311, de 26 de diciembre de 2024, pp. 180839-180869.

120 Particularly relevant is the dissenting opinion signed by five constitutional judges, who entirely contest the conclusions reached by the full bench of the Constitutional Court. Regarding the recognition of legal personality for a natural entity and the consequent adherence to an ecocentric paradigm, the dissenting judges argue that the Spanish Constitution, from its inception, has conceived environmental protection (Art. 45.1 Const.) as instrumental to personal development and the guarantee of a quality life—derivable from the right to life and physical and psychological integrity enshrined in Article 15 of the Constitution. The dissenting judges emphasize that the anthropocentric nature of environmental protection in the Spanish legal system necessitates an unavoidable balance with freedom of enterprise and private economic initiative, thereby embracing the paradigm of sustainable development. This model is based on the rational use of resources to ensure the quality of life for individuals.
In contrast to the comparative framework outlined by the majority, the dissenting opinion highlights that legal systems recognizing the Rights of Nature belong to a cultural perspective fundamentally different from the rationalism inherent in Western legal tradition. This tradition is grounded in the rule of law and the principle of secularism, including the rejection of any form of animism or magical cosmovision. Recognizing the Rights of Nature in Spain would therefore amount to transplanting an institution alien to Western legal culture, conflicting with the principles and constitutional values shared by the major European legal systems. These values, derived from a common adherence to political liberalism, include justice, freedom, security, the common good, equality, and political pluralism.
The dissenting opinion further asserts that Law No. 19 of 2022 constitutes an overreach by the national government into the competences of the Autonomous Communities. Additionally, the rights conferred upon the Mar Menor are defined in terms so vague that they generate significant legal uncertainty regarding their scope. Moreover, the law intervenes in a complex and intricate set of existing regulations specifically designed to protect the Mar Menor, thereby violating the principle of legal certainty (Art. 9.3 Const.). Beyond national legislation on water protection, coastal conservation, environmental safeguarding, natural heritage, and biodiversity, the Mar Menor was already subject to specific legal protection under Regional Law No. 3 of 2020 of the Murcia Region and a recent decree by the Government of Murcia (No. 259 of 2019). The latter designated the lagoon as a "Special Conservation Area" and a "Special Protection Area for Birds," also approving an "Integrated Management Plan for the Protected Areas of the Mar Menor and the Mediterranean Coastal Strip of the Region of Murcia" and a "Guidance Plan for the Use and Management of the Regional Park of the Salinas and Arenales of San Pedro del Pinatar." Additionally, the lagoon had already been recognized as a "wetland of international importance" under the 1971 Ramsar Convention and as a "Specially Protected Area of Mediterranean Importance" under the 1978 Barcelona Convention.
Finally, the dissenting opinion underscores the inconsistency of Law No. 19 of 2022 with European Union law, particularly its circumvention of the "polluter pays" principle (Art. 191.2 TFEU). The legislation on the Rights of the Mar Menor imposes a generic duty of restoration and reparation of

45 of the Constitution,[121] that: "No legal mechanism that may develop over time and through the evolution of legal theory is excluded from the constitutional model of environmental protection, provided that it serves the purpose of safeguarding and improving the quality of life and of defending and restoring the natural environment in which life unfolds."[122] Notably, the Court affirmed for the first time that human well-being is inherently dependent on the well-being of the ecosystems that sustain life. To this end, it invoked the recent case law of the European Court of Human Rights,[123] emphasizing the intergenerational dimension of environmental protection. Furthermore, it acknowledged that the recognition of legal personality for nature is not an unknown technique in comparative law; rather, it is part of a growing international movement over the past decade, which advocates for the development of innovative legal safeguards based on an ecocentric paradigm that coexists with the more traditional anthropocentric approach.

The Court further argued that granting legal personality to natural entities does not diminish but rather reinforces human dignity, as: "A dignified life is only possible in natural environments that are suitable for the lives of both present and future generations."[124] The concept of human dignity must therefore be understood in an integrated relationship with the natural world, as the preservation of the latter is essential to safeguarding the former.

With regard to the alleged violation of legislative competences, the Court, reaffirming its previous case law, held that a law enacted by the national Parliament under Article 149.1.23 of the Constitution may validly concern a specific portion of Spanish territory, particularly when, as in the case of natural parks, that territory possesses unique characteristics.[125] Moreover, the Court found no breach of the principle of legal certainty, as the substantive content of Law No. 19 of 2022 can be determined, as is always the case in legal matters, through the interpretation of sectoral legislation and the general principles of the legal system.

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environmental damage on the local municipalities and coastal residents, thereby shifting the burden away from the actual polluters.

121 Article 45 of the Spanish Constitution: "1. Everyone has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it. 2. Public authorities shall ensure the rational use of all natural resources in order to protect and improve the quality of life and to defend and restore the environment, relying on the indispensable collective solidarity. 3. Criminal or, where appropriate, administrative sanctions shall be established for those who violate the provisions of the preceding section, under the terms established by law, in addition to the obligation to repair the damage caused."

122 Dec. no. 142 of 2024, point 3.

123 In particular, the reference is to the decision Verein Klimaseniorinnen Schweiz and Others v. Switzerland, April 9, 2024, Case No. 53600/20.

124 Dec. no. 142 of 2024, 18.

125 Dec. no. 142 of 2024, point 4. In this regard, the Court refers to its own case law, and in particular: SSTC n. 147/1991, July 4, FJ 4 D); n. 146/2013, July 11, FJ 4); STC n. 99/2022, July 13, FJ 3).

Judgment No. 142 of 2024 carries particular significance for environmental legal protection in Spain, not only because it upholds the legitimacy of nature's rights within the Spanish legal system but also because, in a departure from its previous case law, it embraces a holistic, non-anthropocentric view of the human-nature relationship. Human dignity, the Court posits, cannot be ensured without first safeguarding the natural world in which human life takes place.

It remains to be seen to what extent this fundamental principle will be concretely implemented within the Spanish legal order and what comparative impact it may have on other legal systems within the European Union.

6. SPAIN AS A TESTING GROUND FOR THE RIGHTS OF NATURE IN EUROPE

In the logical and argumentative path followed in this contribution, we have sought to highlight how European legal culture is deeply embedded with a strong legal anthropocentrism, which has largely contributed to the current socio-ecological crisis we are experiencing. The worsening of ecosystem imbalances worldwide and the surpassing of the biophysical limits governing the Planet push humanity, along with all branches of knowledge, to find appropriate solutions to halt the environmental degradation process. Law, for its part, has long been engaged in this regard.

Among the main legal innovations for the protection of the Earth, the Global South, in an emancipatory movement against the Global North, has recognized legal subjectivity for elements of nature in order to affirm, within the legal sphere, their intrinsic value as a source of life, while also ensuring better protection for natural entities according to human rights rules. The paradigm through which the Rights of Nature have been constructed worldwide is manifold and varies greatly depending on the legal culture of origin, manifesting in different forms and for different reasons.

After the ecological disaster that occurred against the Mar Menor lagoon, Spain recognized, through a popular initiative law with broad citizen participation from residents in the area, subjective rights for this natural entity. It also established bodies tasked with representing and safeguarding the well-being of the lagoon ecosystem. The expansion of protections for the Mar Menor went as far as legitimizing any citizen's right to take legal action to assert the rights of the lagoon.

The doctrine in Spain has been highly critical of the recognition of the Rights of Nature. A group of opposition parliamentarians brought the matter before the Constitutional Court, inviting it to rule on the legitimacy of Law No. 19 of 2022. Surprisingly, the Spanish Constitutional Court acknowledged that the Constitution does not preclude the recognition of new forms of protection, including the granting of legal subjectivity to

elements of nature. In other words, anything that contributes to the protection of nature's well-being from a systemic and inter-relational perspective is welcomed.

While it is true that coordinating protections is absolutely necessary, as legislative chaos is certainly one of the most important causes of inefficiency, as this contribution has sought to demonstrate, environmental and ecological justice do not necessarily have to assume an antagonistic position. On the contrary, they can coexist and even cooperate in order to safeguard nature in its holistic dimension. The strong legal anthropocentrism that characterizes European culture does not represent an obstacle to the emergence of new forms of protection, especially the Rights of Nature, which can coexist with more traditional environmental law, reinforcing it.

It is certainly too early to determine whether the recognition of legal personality for the Mar Menor will be effective and lead to a tangible improvement in the lagoon's ecological condition. However, despite its experimental nature, this new initiative offers a promising prospect, as it grants citizens significantly broader legal tools for ecological protection.

The profound paradigm shift implemented by Spain has not only symbolic and pedagogical significance for the domestic legal system but also for all legal systems across the continent. This shift has the potential to produce not only direct effects on the well-being of the Mar Menor lagoon but also broader, more radical, albeit slower, indirect effects on the culture of citizens in all Europe and in the world in the Third Millennium, fostering the consolidation of an idea of community living in harmony with nature.

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