



Nature's right to damages in the event of civil liability?

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ABSTRACT: Treating nature as a subject of law is a topic of contention in the contemporary era. A significant number of states, if not the majority, continue to refrain from recognising the protection of nature in this sense. This is because the essence of legal personality is attributed solely to individual or collective persons. However, some countries have already begun to approach environmental protection from the perspective of nature without being exclusively focused on human rights. This study is based on civil liability law in Portugal and seeks to verify the relevance of attributing legal personhood to nature. The research results indicate that the configuration of this instrument, which recognises the subjective rights of nature, could help improve environmental protection. However, it is not, in legal terms, the most appropriate way forward. From a human and non-human relational perspective, attributing a 'status' to nature may be preferable through existential heritage.

KEY WORDS: Personhood · Common resources · Existential heritage · Ecological damage · Civil liability

1. INTRODUCTION

The degradation of the environment, driven by natural resource extraction and other human interests, is a global issue that demands immediate attention. In this context, the attribution of legal personhood to nature is of paramount importance. This legal status would enable actions to be taken on behalf of nature and bring about civil liability for environmental damage, ensuring global protection for our environment.

This article discusses some specific cases of countries that have already recognised the legal personhood of the environment, not as a whole but in certain specific situations. The granting of legal personhood to more than human interests has emerged as an alternative to the Western approach to environmental issues and management (Good 2013, Pietrzykowski 2018, Studley 2018, O'Donnell & Macpherson 2019, Pain & Pepper 2021). Specifically, the aim is to identify the context in which the subjective rights of nature are recognised and to understand the strategies

adopted by states that already have instruments to protect and recognise this right in an attempt to find solutions in Portuguese law to award compensation for ecological damage in civil liability.

However, it is important to distinguish between the rights of nature and the legal personhood of nature; even if the movements that have developed around these 2 concepts do not have the protection of nature as their main objective, they provide the tools and framework to achieve this. By applying them, we can guide practices and policies that promote environmental preservation and sustainability, as well as realise compensation for ecological damage. 'Rights of nature' seem to have been articulated mainly under the aegis of 'ecocentric themes' (Clarke & Rossini 2016, p. 139), while legal personhood has been articulated mainly under 'post-human themes' (Vaccari 2012, p. 169). Underlying 'rights of nature' is the idea that nature, including ecosystems, species, and natural elements, has rights of its own, such as the right to exist, thrive, and regenerate, regardless of the value

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attributed to it by human beings. This implies that nature must be protected and respected and that humans are responsible for ensuring its integrity. Legal personhood, on the other hand, is the attribution of legal status to entities other than natural persons, enabling them to have rights and obligations recognised by law. Nature's 'personhood' refers to the idea that certain elements of nature (such as rivers or trees) can be considered 'persons' under the law. In other words, legal personhood seeks to acknowledge non-human entities as legal persons, endowing them with rights, duties, and protections comparable to those of human beings. In some jurisdictions, this notion has been broadened to encompass additional legal subjects, such as spirits (as seen in *Mullick v. Mullick* 1923, <https://indiankanoon.org/doc/290902/>), along with sacred rivers and mountains.

The 'rights of nature' and 'personhood of nature' movements have different philosophical approaches, although they share common goals of environmental protection and the recognition of nature. The rights of nature emphasise the interconnectedness of all beings and the idea that nature has intrinsic value independent of human use. This approach challenges the anthropocentric view of human beings as central and superior (Stone 1972, Berry 1999, Burdon 2011). Many indigenous cultures already recognise a sacred and respectful relationship with nature, where natural elements are seen as entities with their own agency. Legal personhood is a legal construct that allows non-human entities to be treated as subjects of rights. This approach is more pragmatic and focuses on how the law can be used to protect nature. Although it recognises nature as a 'subjects', this movement leads to a deconstruction of anthropocentrism, as it seeks to challenge the idea that only human beings can have rights and responsibilities. The concept of legal personhood or 'juristic personhood' refers generally to 'a legal subject that is not a human being, but one which society has decided to recognise as a subject of certain rights, protections, privileges, responsibilities and liabilities' (Studley 2018, p. 7).

The most significant distinction between the rights of nature and the legal personality models is the former's acknowledgement of ecosystems as holders of distinctive rights, whereas the latter posits the extension of human rights to ecosystems (Kauffman & Martin 2021) or certain important rights held by human beings (Kurki 2022). It is important to recognise that the notion of legal personality extends not only to nature as ecosystems, but also to nature spirits because the term 'ecosystem' does not align with the cosmocentric and pluriversal worldview of indigenous peoples.

From our perspective, the study of the subject provides an opportunity for further reflection on the new rights of personality and the responsibility of states to defend them, intending to ensure that, through appropriate national and international instruments, the environment is protected through the attribution of the concept of legal personhood which enables a specific individual, for instance, to represent the land or a river in a court of law. This is achieved by the former acting on behalf of the latter against the public bodies responsible for environmental safety in instances where harmful events occur.

The legal personhood attributed to nature requires a new approach to the concept of personality law in Europe, particularly in Portugal, although some legal systems already provide legal solutions for such cases. For example, Ecuador, New Zealand (Whanganui River), and India (Ganga and Yamuna Rivers) have established legal frameworks for dealing with the rights of nature. These examples are rooted in the indigenous concept of personhood, which is holistic and relational. This concept emphasises the interconnection with the community, nature, and the spiritual world (Hallowell 1960). The case of *Mullick v. Mullick* (1923) helped solidify the idea that spiritual objects or entities can be recognised by the law and have certain rights. This case is historically significant because it was one of the first times that the British legal system, under the jurisdiction of colonial India, legally recognised the possibility that spiritual objects or entities, such as an idol, could be treated as having a position in the legal system, as if they were 'persons' with the capacity to own property or rights. English law played an important role in establishing the concept of 'legal personality' (Juridical Personhood), especially in contexts involving non-human entities or spiritual figures. One of the main people responsible for establishing the concept of 'legal personality' in English law was Salmond (1902) in his work 'Jurisprudence', and in the case of *Mullick v. Mullick* (1923), Lord Shaw referred to Salmond's work to support the idea that an idol (a non-human religious entity) could be treated as a 'legal person'.

In the Portuguese context, the Constitution of the Portuguese Republic (CRP) enshrines environmental protection in Articles 9, 52, 65, 66, and 90. However, it does not recognise any rights of nature or give nature legal personhood. The recognition of rights is limited to that of human beings. This highlights the necessity for further reflection and the potential adoption of new legal measures to address this gap and guarantee adequate environmental protection.

2. THE RIGHT TO A HEALTHY ENVIRONMENT

The defence of the environment involves conceptualizing, characterising, and defining potential protection solutions in different legal systems. Firstly, the term 'environment' should be conceptualized.

The environment and quality of life consist of everyone's right to a human, healthy, and ecologically balanced living environment and the duty to defend it. Within the framework of sustainable development, the State is responsible for guaranteeing this through its bodies and citizens' involvement and participation.

The right to a healthy environment is considered a fundamental human right, analogous to the rights to moral and physical integrity, health, and a balanced and ecologically healthy quality of life. These rights are enshrined in Articles 25, 64, and 66 of the Constitution of the Republic of Portugal and 70 and 81 of the Portuguese Civil Code. They can be exercised against anyone, strengthening their application against public inertia of the authorities.

The environment is a vital resource for human beings, providing the necessities for survival, including food, water, and shelter. The environment is also a source of inspiration and recreation, offering many natural attractions such as animals, beaches, rivers, and land. The intrinsic link between human beings and the environment is evident in the fact that the environment is considered a fundamental right of every individual.

The right to a healthy environment is legally recognised as a human right, and its protection must be extended to legal representation before courts and other bodies. Despite legal instruments, the content of the right to a healthy environment and the obligations associated with this right are difficult to determine due to their indeterminable and intrinsic nature. The right to a healthy environment is recognised as a subjective right since it integrates other constitutionally enshrined fundamental rights, such as the right to life and health.

The environment is defined as a legal good (Francario 1990, Antunes 1998), encompassing natural environmental goods and human-made elements. These include natural elements such as air, fauna, flora, land, water, and elements resulting from human activity in the surrounding environment (Portuguese Law no. 19/2014, of 14 April). As stated in Principle 1 of the Stockholm Declaration of 16 June 1972, 'Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-

being, and he bears a solemn responsibility to protect and improve the environment for present and future generations' (UN 1973, p. 4). In other words, environmental law protects everyone's right against acts and omissions by man himself that could threaten human existence. This right is universal and obligates all individuals to engage in actions that safeguard and defend the environment.

Article 66 of the Portuguese Civil Code states that 'everyone has the right to a human, healthy and ecologically balanced living environment and the duty to defend it' (no. 1) and that this duty must be fulfilled 'with the involvement and participation of citizens' (no. 2). Article 52, paragraph 3, of the Portuguese Constitution (CRP) grants 'everyone the right to take popular action, including the right to demand that the injured party or parties receive appropriate compensation, in order to promote the prevention, cessation or prosecution of offenses against the quality of life and the preservation of the environment'. The right to the environment is thus enshrined as a supra-individual right that is common to all and whose protection can, therefore, be triggered by popular action.

On the other hand, states maintain their sovereignty over natural resources (Principle 21 of the Stockholm Declaration; UN 1973), which makes it difficult to protect the environment, favours economic groups, and promotes projects with a significant environmental impact, thus jeopardising some international agreements on environmental issues.

Although environmental law protection is essentially preventive, the measures are only sometimes sufficient, applied, or, even when applied, achieve the desired objective. Consequently, civil liability for environmental damage operates as a repressive response to the commission of an unlawful act. Regarding damage, the legal literature distinguishes between environmental damage and ecological damage. The former is a concrete injury to the legal environmental asset that has repercussions on the property of a private individual. The damage in question is caused directly to people, whereby there is damage to concrete legal goods through particular emissions or a set of emissions emanating from a set of emitting sources (Canotilho 1992, Leitão 2010). In the latter case, we are dealing with damage to the integrity of a natural environmental asset (Amado Gomes 2008).

According to Canotilho (1992), ecological damage is defined as intense injuries caused to the natural ecological system without violating individual rights. This definition raises several difficulties regarding imputing civil liability for ecological damage. First, there may not be a specific injured party. Second, not

all environmental damage is caused by the violation of human rights (Desgagné 1995).

Article 483 of the Civil Code states that anyone who, with intent or mere fault, unlawfully violates the right of another or any legal provision intended to protect the interests of others shall be obliged to compensate the injured party for the damages resulting from the violation. Ecological damage cannot be compensated without an individual injured party, a specific agent, or a causal link between the event and the damage. Nevertheless, following the stipulations of Law 83/95, of 31 August, on the right to procedural participation and popular action, there is the possibility of establishing overall compensation for the infringement of the interests of non-individually identified owners (Article 22, no. 2). In the case of strict liability, the claimant is not required to prove fault or unlawfulness. Rather, once the damage and the causal link are established, the defendant may only avoid liability by demonstrating that the damage did not result from an activity deemed objectively dangerous. This regime is in accordance with Article 23 of the Popular Action Act, which establishes liability irrespective of fault whenever protected rights are harmed as a result of objectively dangerous activities.

Decree-Law no. 147/2008, of 29 July, on the Legal Framework for Liability for Environmental Damage, defines the causal link in the following terms: 'The assessment of the proof of the causal link is based on a criterion of verisimilitude and probability that [...]'. The harmful event must have been capable of producing the injury, taking into account the circumstances of the specific case and considering, in particular, the degree of risk and danger and the normality of the harmful action, the possibility of scientific proof of the causal path and the fulfilment, or not, of duties of protection (Article 5).

In this regard, Martins da Cruz (1996) posits that truth is replaced by verisimilitude and certainty gives way to probability, placing the burden on the injured party to demonstrate a substantial probability, supported by scientific evidence, that the conduct can produce the damage that occurred. This facilitates the verification and realisation of this assumption of civil liability.

Nevertheless, not all forms of environmental damage can be remedied by the mechanism of civil liability. In such cases, it will still be necessary to determine, among other things, who the injured parties are, who is entitled to compensation, and what the specific damage is. It should be emphasised that, given the specific nature of ecological damage, the problem is that no individual injury or damage was

caused to a specific person. The term 'ecological damage' is defined in Article 11(1)(d) of Decree-Law 147/2008 of 29 July as 'an adverse and measurable alteration of a natural resource or a measurable deterioration of the service of a natural resource that occurs directly or indirectly'. Ecological damage can be further classified into 2 categories: damage to the environment itself, which can be either actual or imminent (Article 2(1) and Article 11(1)(b)).

Directive 2004/35/EC of the European Parliament and of the Council of 21 April and Decree-Law 147/2008 preclude the possibility of natural or legal persons claiming compensation for ecological damage through civil liability actions. Genuine ecological damage is always an orphan: its prevention and reparation can only be carried out by representatives of the community, in courts specializing in public-legal matters (Amado Gomes 2009). Only public law can intervene in the absence of identifiable individual victims and in the context of global interest in environmental defence (Leitão 2010).

When the complexity and confrontation of the environmental issue came into the debate, the awareness of the scarcity of natural resources and the difficulty of compensating for ecological damage made it necessary to build a new environmental ethic. In opposition to anthropocentrism, ecocentrism emerged, criticizing the consumption patterns of modernity and proposing a reconciling environmental ethic in which man and nature enter into a harmonious relationship (Leopold 1949, Naess 1973, 1984, 1989, de Spinoza 1996). It should be noted that many Western conservationists support ecocentrism as an alternative to anthropocentrism. However, this perspective is not in line with the worldview of indigenous peoples, who are more centred on a 'cosmocentric' pluriversal and relational perspective. Ecocentrism is one of several alternatives to anthropocentrism. Other perspectives, like cosmovision, posthuman relational theory, relational ontologies, and the pluralocene, offer different ways of understanding our relationship with the environment, emphasising interconnectedness, multiple realities, and non-human agency. However, the focal point of this study is the ecological damage, particularly the harm inflicted upon ecosystems, and the subsequent compensation thereof.

Ancient man saw himself as an integral part of a world in which the human, the divine, and the natural were intertwined, and he lived in harmony with the environment (Jonas 2008). This original harmony was shattered by the definitive affirmation of an anthropocentric culture that made man the measure of every-

thing. The protection of nature has been incorporated into the defence of human rights according to a logic of instrumentalist rationality that sees nature as man's property. It is through the construction of a human right to an environment with specific characteristics (such as healthy, balanced, or sound) that environmental protection has been justified and legitimised, always emphasising how the environment serves humanity (Burdon 2013). The ecological crisis is the product of this anthropocentrism, and the question is whether a world marked by the systematic favouring of human interests to the detriment of the interests of the non-human world can survive its implications. In opposition to anthropocentrism, ecocentrism arises, which criticizes the consumption patterns of modernity and proposes a reconciling environmental ethic in which man and nature establish a harmonious relationship. However, there are still those who find factors that reveal the importance of human rights for environmental protection (Kotzé & Daly 2019), even if claims of rights violations in climate change litigation do not necessarily result in formally successful judgments (Peel & Osofsky 2018). It is true that a healthy environment is necessary for the enjoyment of a wide range of human rights and that environmental damage interferes with human rights.

In order to deal with the complexity of the environmental issue, there seems to be no alternative but to abandon a strictly anthropocentric vision, characteristic of Western thought, and to give way to a conception based on a different ethical and even scientific stance, ecocentrism. There are international environmental protection documents that point to the need to overcome anthropocentrism, such as the World Charter for Nature, approved by the UN General Assembly in 1982, which declares principles for the construction of a global environmental ethic: 'every force of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action'. However, even so, opting for ecocentrism is not as simple and easy as it might seem at first glance.

Contrary to the rights of nature, the human right to nature is widely recognised (Alves et al. 2023). When human rights to nature are primarily defined in terms of access and benefits, there is a risk of justifying the exploitation of natural resources for human use. This utilitarian perspective may result in short-term gains without considering long-term ecological health and damage, which may not be fully compensated. Focusing only on human rights to nature can lead to neglecting non-human entities in legal and social

debates. The rights of nature framework seeks to give a voice to rivers, forests, and other natural elements, allowing them to be legally recognised as stakeholders in their own right. This change could promote a greater sense of human responsibility, and more meaningful conservation efforts to give nature a voice and pave the way for compensation for ecological damage, particularly in Portuguese civil liability law (Article 483 of the Civil Code). Pereira da Silva (2002) believes that while it is true that nature must also be protected in its own right, as a value in itself, this should not mean either the 'legal personalization' of natural realities or the pseudo-attribution of 'subjective rights' to nature.

Recognising nature's rights and personhood can be a powerful tool for advancing environmental justice. When it comes to compensation for ecological damage, legal personality and the rights of nature have a common interest: strengthening environmental protection and recognising ecosystem rights. However, the concept of legal personhood for nature involves granting legal status to natural entities, and the rights of nature movement encompasses a broader philosophical and legal approach that asserts that ecosystems possess inherent rights that must be recognised and protected. In the first case, legal personhood attributes rights to nature. In the second case, nature is considered to possess inherent rights analogous to those that are inherent to the condition of human beings and should be recognised. In other words, the aim of legal personhood is to establish a legal framework that grants non-human entities rights, responsibilities, and the ability to carry out legal activities. The aim of 'rights of nature' is to legally recognise and protect the intrinsic rights of ecosystems, natural entities, and species to exist, thrive, regenerate, and evolve, regardless of their value to human beings.

The concept of acknowledging the rights of nature has a long historical precedent, and the idea of conferring legal personhood upon nature has also been evolving, since at least 1923, when British judges in India granted standing to enspirited idols, and the concept gained further attention in the 1970s, with Stone's advocacy for granting standing to elements of nature. However, its actualization in legal terms is a relatively recent phenomenon (Kauffman & Martin 2021). From a Western legal perspective, attributing legal personhood to nature is often seen as a more tangible and practical approach to recognising nature's rights. Legal personhood is already enshrined in legislation and has a lengthy history of being applied to non-human entities, so it is more readily transferable between legal systems.

The movement to attribute legal personhood or rights to nature is no longer just a theoretical debate; it has become a reality. Its application to the environment will encompass the right of rivers, land, and other natural elements to be preserved, enabling the community to represent nature more effectively in the fight against ecological damage.

3. THE RIGHTS OF NATURE

The attribution of legal personhood to nature is an emerging and controversial concept from the perspective of environmental law (Cano Pecharroman 2018, Eckstein et al. 2019). This approach recognises nature as a subject of rights, capable of having duties and holding legal actions before the courts. In practice, this means treating nature as a legally recognised entity with rights that can be protected and defended in court.

The legal personhood of nature is intended to protect ecosystems and natural resources better, thereby enabling them to be defended more effectively against environmental damage, degradation, and over-exploitation. This approach acknowledges that ecosystems possess an intrinsic value beyond their utilitarian value for human beings and deserve protection regardless of economic potential. The World Charter for Nature (UN General Assembly 1982, p. 17) emphasised a more ecological, non-anthropocentric, conception of the relationships between humans and non-humans, by explicitly recognising the intrinsic value of things on earth and the importance of maintaining their sustainable viability, independently of their value for humans: 'Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients'.

From the perspective of environmental law, the legal personhood of nature can facilitate a paradigm shift, shifting the focus from exclusively anthropocentric considerations to a more holistic approach centred on protecting natural systems as an end in themselves, in the sense of having rights and autonomy, rather than being used to serve man's needs. It should be noted that there are several currents that provide the foundation of the rights of nature or legal personhood, such as late modern law (Mod er 2016), posthuman turn (Clarke & Rossini 2016), pluriversal turn (Kothari et al. 2019), or the polycentric turn in law (Grzeszczak & Karolewski 2012) and governance (Nagendra & Ostrom 2012). Doctrinal constructions represent one important element that must be re-

spected, and all of these should be recognised. Nonetheless, understanding a specific legal system, in this case the Portuguese one, is a separate endeavour, even as we remain mindful of those theses.

This approach to the rights/legal personhood of nature has the potential to recognise the right to compensation for environmental damage and emphasises the prevention and restoration of ecosystems. Furthermore, it enables natural or legal persons to claim compensation for ecological damage on behalf of nature, which has damaged its rights. However, attributing legal personhood to nature raises several questions and challenges, including issues of practical applicability, defining nature's rights and duties, and balancing human and environmental interests. Furthermore, this approach may necessitate substantial alterations to existing legal and cultural frameworks in order to be effectively implemented. In Portugal, for example, the legal system is anthropocentric, which means that nature and its components are treated as resources that can be owned, whether publicly, privately, or cooperatively. As a result, they do not receive the same legal protection as entities with rights, such as individuals and companies. Although environmental protection laws exist, they have proved ineffective in preventing or repairing the ecological damage. It is acknowledged that there are academics who believe that the judiciary already possesses the requisite legal instruments to safeguard the natural world (Totten 2015), and litigation has been initiated on behalf of non-human entities (e.g. *Sierra Club v. Morton* 1972, <http://files.harmonywithnatureun.org/uploads/upload684.pdf>).

The legal personhood of nature from the perspective of Portuguese environmental law would represent an innovative and potentially transformative approach to protecting and managing natural resources. This approach seeks to guarantee preservation of natural resources and ecological balance for the benefit of present and future generations. Some have proposed compensating ecological damage through the civil law system of future damage enshrined in Article 564(2) of the Civil Code. However, according to Amado Gomes (2009), the primary issue is the difficulty of imposing an obligation on the offender to compensate for hypothetical future moral damage. This is because such an obligation is inherently punitive and, therefore, unlikely to be enforceable without specific legal provisions.

Consequently, Amado Gomes (2009) concludes that the operability of environmental damage to future generations is doomed for now. However, if

the approach taken by the Supreme Court of the Philippines in the case of *Minors Oposa v. Secretary of the Department of Environment and Natural Resources (DENR)* of 30 July 1993 (The Philippines 1994) is extended to other courts (n. 1999.001.19840, Court of Justice of the State of Rio de Janeiro 2000), it could have significant implications for the rights of future generations. In 1999, the instrument of the rights of future generations constituted an additional weapon, but only a preventive one, in the hands of individuals and, above all, environmental non-governmental associations, to limit any abuse by public authorities who are more sensitive to immediate financial profits than nature's rational management (Scovazzi 1995).

In this matter, the Supreme Court of the Republic of the Philippines granted a petition by a group of minors against the Secretary of the Department of Natural Resources to cancel all existing timber licence agreements in the Philippines and to cease from receiving, accepting, processing, renewing, or approving new timber licence agreements (G.R. No. 101083 July 30, 1993). In holding for the petitioners, the Court held the following:

'While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights,....these basic rights need not even be written in the Constitution, for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation but also for those to come—generations which stand to inherit nothing but parched earth incapable of sustaining life.'

The preventive function of the rights of future generations is of great importance, although it is not the subject of this study. Figueiredo Dias (2007, p. 15) states:

'...prevention has an extraordinary relevance in environmental law due to the particular nature of the goods being protected: the environment, especially in terms of its natural components, has a unique nature that makes its 'recovery' extremely difficult if not impossible. The considerable difficulties associated with 'natural' restoration are compounded by the exorbitant costs, which often cannot be imposed on polluters. Consequently, the most crucial aspect of environmental legislation is to prevent environmental damage and aggression, rather than attempting to remedy it.'

We now return to the issue of compensation for damage inflicted on the natural world, which depends on the attribution of rights or legal personhood to these entities. In Portuguese law, indemnity is typically understood to correspond to natural reconstitution, as provided in Articles 562 and 566, no. 1, of the Civil Code (Pereira da Silva 2002). The concept of compensation corresponds to the principle of natural recovery, which is enshrined in Articles 562 and 566(1) of the Portuguese Civil Code. This principle restores the situation of the party concerned to that which existed before the damage. The situation is more complex when it comes to ecological damage. In cases where nature is harmed, such as pollution or habitat destruction, the traditional framework for compensation needs to be adapted. Nature's lack of legal personality casts doubts on the legitimacy of a claim for compensation for ecological damage. In such cases, the legal system could recognise nature's rights and leave it to private individuals, associations, etc., to represent nature's interests, with the power to claim compensation on behalf of the environment in the context of civil liability under private law. The compensation could later be used to restore the environment by reforestation or cleaning up pollution. However, it is also true that 'the traditional remedies of damages may not be able to put right the environmental damage done. No amount of money can, for example, bring back to life an extinct species or a destroyed ecosystem' (Sharom 2005, p. 64). The attribution of legal personality to natural entities, or the establishment of rights of nature, can be a new instrument for compensating for ecological damage or preventing such damage in the context of civil liability under private law.

Considering that nature can be a law subject is an innovative concept for the law rooted in Europe and Portugal. There is a classic distinction between the object and the subject of law (the 'Summa divisio'). Subjects of law are natural or legal persons, and an object of law, also known as a 'thing', in legal jargon, is anything that is not considered by law to be a person. Although, in the tradition of Article 17 of the Universal Declaration of Human Rights, property is defined as an absolute, sacred, and inviolable (natural) right, the limitations to this absolute character are manifold. There are many examples of legal restrictions imposed on property owners in the name of a wide range of 'general interest' or 'public necessity' reasons, or to protect the individual rights of third parties. The concept of 'abuse of property rights' is emblematic of this relativity of individual property. However, if the 'general interest' has been more eco-

nomic than ecological, then nature (rights) must be given a voice in order to restore the original balance. Attributing legal personhood to a natural entity is thus tantamount to making a U-turn, since nature, previously an object of law (over which persons had rights), suddenly becomes a subject of law, in the same way as a natural or legal person, and henceforth has rights of its own.

The idea of nature's rights is based on the belief of indigenous peoples that we are an inseparable part of nature, just like animals and plants, even though 'the concept of 'rights' is a construction that comes from outside the indigenous context' (Sólón 2018, p. 109). Despite this, granting legal rights to nature and its entities does not contradict indigenous worldviews; rather, it reflects a recognition of the existence, role, and ecosystem services that nature provides. By acknowledging these rights, we begin to reimagine our relationship with nature, affirming that natural entities, like ourselves, deserve legal recognition and protection. Granting entities the same rights as people enables them to protect themselves and advocate for their interests. This approach safeguards the natural entity from harm, prioritizing its intrinsic value and interests over those of humanity.

For many authors, the rights of nature express indigenous cosmologies (Kauffman & Martin 2017). They codify indigenous worldviews in legal terms as 'closely aligned with many indigenous philosophies and governance systems that emphasize the interconnectedness between humans and nature and treat nature as a partner and a kin rather than as a property and a resource' (Harden-Davies et al. 2020, p. 122), and they are a recognition of the existing customary laws of indigenous peoples around the world (Cano Pecharroman 2018). From a social, cultural, and legal point of view, the concept of nature's rights does not converge with this for the West. This is why, when we try to attribute rights to nature, we think concretely of its personification, the attribution of legal personality to nature. Of course, understanding nature as a person, whether sacred, spiritual, or legal, has only one objective: the attribution/exercise of rights. It would also be a solution in Portuguese law to ensure that ecological rights are compensable since the injured party would be personified by nature.

Let us consider some landmark cases and see how rights have been recognised or attributed to nature. At the outset, it is important to note that the concept of granting legal personality to natural entities for the purpose of protecting their rights is not new within environmental theory, but it is a novel approach in positive law. The first time such a proposal was made was

by Stone (1972) in his article, *Should trees have standing? — Toward legal rights for natural objects*, in which he suggested that the natural environment should have rights. In order to achieve this objective, he advanced the notion that natural entities should be regarded as 'persons' or holders of rights, thus enabling them to be represented in a court of law by legal guardians. Furthermore, he underscored the necessity for courts to consider the damage inflicted on the natural environment rather than on individuals utilising it. The conferral of legal status upon the environment (through granting rights or personhood) would consequently entitle it to receive compensation.

The following examples illustrate how the law can be used to implement and incorporate indigenous cosmologies into a Western society and legal system, better protecting the natural environment and broadening the scope of civil liability for ecological damage.

4. THE RIGHTS OF NATURE: SOME EXAMPLES

Several countries have granted rights to certain natural entities within their borders, including Te Urewera National Park and the Whanganui River in New Zealand, the Ganga River in India, Lake Erie in the USA, and the Magpie River in Quebec, Canada. In 2008, Ecuador's Constitution established rights for Nature (Article 10) and granted several rights to Pachamama/Mother Earth, a mother goddess and a Huaca (Derks 2009, Tatay 2021), including the right to exist, maintain, and regenerate its vital cycles, structure, functions, and evolutionary processes, and the right to restoration in case of damage. Furthermore, any individual, community, people, or nation has the right to appeal to public authorities to ensure that these rights of nature are respected (Articles 71 to 74). It should be emphasised that the Huaca concept is central to Andean cosmology. In *Comentarios Reales de los Incas*, written in 1609, de la Vega (1943) described the Huaca as a 'sacred thing', a term that reflects the Andean worldview of entities and phenomena with spiritual or supernatural significance. Mountains, rivers, lakes, trees, and rocks could all be considered Huacas. These elements were viewed as the dwelling places of spirits or gods. Idols, statues, and other religious artefacts were also regarded as Huacas, as they were believed to embody a divine essence or to be inhabited by spirits. Beyond natural objects and elements, phenomena such as storms, eclipses, and natural disasters were often interpreted as manifestations of Huacas.

The concept of Huaca as numina spirits in Andean cosmology links the idea of Huacas to numina — spiritual forces or powers inherent in natural elements, objects, or phenomena. These numina spirits are not abstract or distant deities; rather, they are immanent, present in the world around people, and actively influence daily life. They play a crucial role in everyday existence, affecting everything from spirituality to the workings of government and justice. In legal matters, Huacas are associated with the notion of spiritual powers that govern the laws of nature and society.

The Constitution's Preamble of Ecuador expresses the importance of Pachamama, an ancient female deity venerated by the indigenous peoples of the Andes and the Amazon, symbolising Mother Earth, which we are a part of, to our existence (Gudynas 2019). It also states that the people have chosen to create a new form of civic life that is diverse and in harmony with nature to achieve the good life, 'sumak assay' (Kotzé & Villavicencio Calzadilla 2017). In Ecuador, Pachamama has already initiated around 30 lawsuits, almost all of which have been won: for example, sharks from the Galapagos Islands succeeded in convicting a Chinese shipowner (Accion Penal 20331-2017-00179 - The case of the Fu Yuan Yu Leng 999).

In 2021, 2 mining permits granted in the Los Cedros Park in Ecuador were cancelled by a judge following requests from scientists, local authorities, and affected towns. 'The Los Cedros ecosystem is the holder of the rights to the existence of animal and plant species, as well as the right to the maintenance of their cycles, structure, functions, and evolutionary process.' This is how the Constitutional Court of Ecuador (2021) ruled in Case No. 1149-19-JP/21 of 10 November 2021. The judge ordered the local authorities to organise a public debate to rewrite the development plan for the area.

This legal action demonstrates the practical implementation of citizen participation and protecting the rights of nature. Establishing this framework has been instrumental in preventing the emergence of new conflicts by ensuring respect for human rights and the rights of nature at the source. 'However, despite mining within the protective forest being prohibited outright in the decision, the mining concessions covering the Reserve remain active in the official registry of the regulatory entity [...], and the mining companies continue to be active in the region, though not within the limits of the Reserve' (Vandegrift et al. 2023, p. 3).

Ecuador is the only country to date that has recognised the rights of nature in its Constitution.

However, other nations have followed suit through various means, including Bolivia's enactment of the Law of the Rights of Mother Earth in 2010, which was later augmented by the Framework Law of Mother Earth and Integral Development for Living Well in 2012.

In the case of Bolivia, the Constitution's right to a healthy, protected, and balanced environment determines that exercising this right must enable the regular and permanent development of present and future generations (Bolivia 2009). Furthermore, Article 34 states that any person, individually or on behalf of a collective, can bring legal actions to defend the right to the environment. Article 30(II)(10) gives indigenous nations and peoples, among others, the right to live in a healthy environment. In reality, the application of this right is hampered by technological development. In theory, the Pachamama's right is to not have her organisms and elements modified. However, the issue of genetically modified maize is acute, especially in South American countries. If genetic modification were banned to respect the Pachamama's rights, 90% of Bolivian agriculture would be affected.

In Ecuador and Bolivia, although some court rulings have been based on the rights of nature and have had positive environmental results, both countries have continued to implement environmentally damaging policies (Kotzé & Villavicencio Calzadilla 2017). There are, however, those who emphasise the practical limitations of the rights of nature (Bétaille 2019), namely because the courts in Ecuador, the country with the most experience in defending these rights, have found it challenging to use the concept of rights of nature in a non-arbitrary way (Guim & Livermore 2021).

In March 2017, the Uttarakhand High Court (UHC) declared the Ganga (Ganges) and Yamuna Rivers legal persons. India's Ganga was granted legal rights based on moral duty towards the river (O'Donnell 2018a,b, O'Donnell & Talbot-Jones 2018). However, in mid-2017, the Supreme Court of India stayed the decisions of the Supreme Court of Uttarakhand (India, Supreme Court, Special Leave Petition No. 16879/2017, 7 July).

In Quebec, Canada, the Innu Council of Ekuanitshit and the Minganie Regional County Municipality granted legal personhood to the Magpie River/Muteshekau Shipu (in Innu) through the adoption of twin resolutions (Conseil des Innus de Ekuanitshit 2021). Thus, the river is assigned 9 rights, and potential legal guardians are primarily responsible for ensuring these rights are respected.

Recently, and for the first time in Europe, by virtue of a law passed on 30 September 2022 (Agencia Estatal

2022), a Spanish saltwater lagoon, the Mar Menor, located in southeast Spain, became the first natural area in Europe that had been guaranteed juristic personhood. This case illustrates the limits sometimes encountered by environmental law: despite its extensive protection, the Mar Menor is in danger of disappearing. The lagoon is protected in more ways than one: it is a wetland, a specially protected area of importance for the Mediterranean (Barcelona Convention), a special protection area for birds, and a site of importance for conservation belonging to the Natura 2000 network. Despite this, it is suffering from severe pollution caused by the intensification of agriculture and the over-fertilization of the soil around it. It is important to note that the 2022 Law recognises the legal personhood of the Mar Menor Lagoon and, as such, grants it rights (Krämer 2023). The defence of the rights of the Mar Menor is a shared responsibility among various entities, public administration, environmental organisations, and local communities. The law is a dynamic instrument that can be modified, as the Spanish case shows, and the possibility of similar adaptations in other countries, such as Portugal, could respond to the urgent environmental challenges we face. The interdependence between humanity and nature is paramount, and it is essential to recognise this relationship in order to develop effective legal frameworks.

New Zealand and Colombia granted legal rights to particular natural elements, with New Zealand declaring, in 2017, the Whanganui River (Argyrou & Hummels 2019, Kramm 2020) and, in 2014, the Te Urewera National Park, a legal person. Colombia granted a similar status to the Atrato River in 2016 (Wesche 2021). The judicial decision on the Atrato River appears to have failed to promote environmental and ecological justice due to several obstacles, including the escalation of armed conflict scenarios and the practice of impunity and non-compliance (McNeish & Socha 2024). However, an analysis of the Atrato approach reveals several important factors that could be employed to enable more comprehensive and balanced justice (Richardson & Bustos 2023).

On 20 March 2017, the New Zealand Parliament passed legislation recognising the Whanganui River as legal. Insofar as the river is perceived as a living being with which the indigenous populations have a family relationship, it cannot be appropriated. The river is seen as an 'ancestor of the tribes that live alongside it' (Waitangi Tribunal 2011, p. 105) or as an 'umbilical cord' linking the tribes that live on its banks (Waitangi Tribunal 2011, p. 23). The Maori tribes perceive themselves as part of a relationship with the world based on the 'whanaungatanga' principle. This principle posits

that the living and the dead, the animate and the inanimate, are interconnected and permanently 'endowed with life'. This is because they are animated by a spirit, a living essence ('mauri'), through an ancestral genealogical relationship (known as 'whakapapa').

The Waitangi Tribunal (1999, p. 46) wrote in the Whanganui River Report:

'...though they had possession and control in fact, they did not see it in those terms; rather, they saw themselves as users of something controlled and possessed by gods and forebears. It was a taonga [a treasured possession of spiritual or ancestral significance in Māori culture] made more valuable because it was beyond possession. [...] On this view of things, the river was not a commodity, not something to be traded. It was inconceivable that such a thing could be done [...].'

The legal existence of the river is affirmed through the establishment of a distinct entity named 'Te Awa Tupua'. This entity encompasses the Whanganui River in its entirety, from the mountains to the sea, inclusive of its tributaries and all physical and metaphysical elements, forming an indivisible and living whole: 'Te Awa Tupua is an indivisible and living whole comprising the Whanganui River from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements' (Te Awa Tupua 2017, s. 12).

The law endows the river with the ability to initiate legal proceedings and represent itself, declaring 'Te Awa Tupua' as a legal person vested with all the rights, powers, duties, and responsibilities thereof. These functions are to be carried out by 'Te Pou Tupua', an entity serving as the 'human face' and guardian of the river:

'Te Awa Tupua has the rights, powers, duties, and liabilities of a legal person / The rights, powers, and duties of Te Awa Tupua must be exercised and performed on behalf of, and in the name of Te Awa Tupua by Te Pou Tupua; The purpose of Te Pou Tupua is to be the human face of Te Awa Tupua and act in the name of Te Awa Tupua' (Te Awa Tupua 2017, ss. 14(1) – (2), 18(a)).

These measures have also been applied to Te Urewera Park, which has spiritual value for the Tūhoe. According to the Te Urewera Act 2014, n. 51, July 27:

'§4. The purpose of this Act is to establish and preserve in perpetuity a legal identity and protected status for Te Urewera for its intrinsic worth, its distinctive natural and cultural values, the integrity of those values, and its national importance, and in particular to (a) strengthen and maintain the connection between Tūhoe and Te Urewera; and (b) preserve as far as possible the natural features and beauty of Te Urewera, the integrity of its indigenous ecological systems and biodiversity, and its historical and cultural heritage; (c) provide for Te Urewera as a place for public use and enjoyment, for recreation, learning, and spiritual reflection, and as an inspiration for all.' (Tūhoe Claims Settlement Act 2014)

In practical terms, granting rights to nature would enhance existing environmental law, providing a new foundation for reintegrating our society into a more equitable balance with the environment we depend on. Environmental law has traditionally been built on an anthropocentric vision, serving human needs and interests. It defines nature solely through a utilitarian prism as a collection of exploitable goods and resources without inherent rights. The concept of the rights of nature challenges the traditional view that nature is merely an object to be exploited by humans. Instead, it recognises that natural entities such as rivers, forests, and living creatures have inherent rights. This ethical shift transforms nature from an object into a subject with fundamental rights, promoting mutual respect and a desire to coexist rather than exploit or destroy the environment.

Nevertheless, some researchers are not very optimistic about the practical implementation of the rights of nature movement due to an excessive identification with indigenous knowledge systems, with the associated risks (Celermajer et al. 2020, Fitz-Henry 2022), and also due to the political context in which the rights of nature has flourished (Reeves & Peters 2021, Tanasescu 2021). Others have focused on the potential for extending agency to non-human entities and on the use of the rights of nature as a tool for political change (Winter 2021).

Although the Mar Menor has rights in Spain, it is not easy to attribute rights or personality to nature in the light of European legal systems since, in principle, only humans have personality and rights. However, it is worth remembering that the UK has recognised the rights of personality of non-human persons since 1923. The concept of legal personality is of paramount importance, as Wise (2000), an American lawyer and professor of animal law, pointed out that without legal personality, you are invisible to the civil law. Kurki (2019) challenges the traditional Western view of legal personhood. He argues that this orthodox view is flawed for 2 reasons. First, it has not kept pace with advances in legal theory. Second, there are no clear criteria for determining whether an entity can be regarded as a legal person. Kurki (2019) proposes the bundle theory of legal personhood, which posits that legal personhood is a cluster property consisting of a bundle of active and passive 'incidents' held by legal persons. Kurki's theory differs from the orthodox view in that it sets out criteria for determining who can be considered legal. Furthermore, it divides personhood into discrete parts, concluding that being a 'legal person' means falling on a spectrum from full personhood to borderline person-

hood. This framework allows for more precise boundaries to the extension of legal personhood and a more nuanced approach to classification.

Since legal personality is a legal fiction, it would always be possible to attribute personality to nature. Legal persons who are not human also have personalities. The legal personhood of entities allows organisations such as corporations, associations, and non-profits to operate as separate entities from their members or founders. This concept means that these organisations can hold rights, sue, and be sued in their name. This means that the rights and obligations of the entity are distinct from those of the individuals involved. Basically, the legal personality of the environment is therefore not purely 'legalistic', as is the case with the personality of legal entities. Such entities are composed of and represented by the people who constitute them. Legal persons are nothing without people, precisely because the legal person (associations, companies, foundations, the State itself) is not an entity that exists by itself, but by and through human beings and is not a person by analogy with the human being (Ascensão 2008, Frada 2012, Pais de Vasconcelos 2017), and is therefore not endowed with the essential dignity recognised in the human being.

It is evident that these arguments are open to question when viewed from a post-anthropocentric or post-human perspective. Nevertheless, the concept of legal personality in Western law is inextricably linked to anthropocentric visions. However, advocates of the personhood of nature have the potential to challenge jurists to adapt to the law and recognise that nature is a juristic person.

Although human beings are the 'original identity' of legal personality, positive law can extend legal capacity to non-human entities, such as corporations. This is a legal fiction, however, as it does not derive from the concepts of law and personality embedded in the people's spirit (von Savigny 1840).

5. JURIDICAL PERSONHOOD OR 'EXISTENTIAL HERITAGE'

In order to understand the legal status of nature, it is first necessary to examine the concept of 'rights' and 'personality.' As a legal term, 'personality' refers to the capacity of an entity to be the holder of rights and obligations. Rights and obligations are inextricably linked: one cannot exist without the other. However, in public debate, the status of nature often appears to be reduced to the mere attribution of rights. This

narrow perspective is both inaccurate and incomplete from a legal point of view. Indeed, 'personality' entails a corollary of 'responsibility'. The Western theory of legal personality holds that an important internal characteristic of a 'legal person' is someone or something that is the holder of rights and/or duties (Kurki 2019). However, in the application of modern theories of rights, where legal personality has also been granted to entities that do not possess these required internal characteristics, it can be observed that the external and internal characteristics can vary depending on the understanding of rights and personhood.

Under civil law, the attribution of rights to persons or entities is associated with personality and is accompanied by the obligation to fulfil specific responsibilities. The fact is that societies understand the relationship between humans and non-humans in different ways, leading to different ontological categories (Descola 2005). Where rights are attributed to nature, it is not naturalism that dominates, but animism and totemism. Naturalism is the dominant perspective in Western thought, where human beings are seen as distinct from other beings. Animism is often found in indigenous cultures, where humans and non-humans are seen as having agency and subjectivity. Nature is imbued with spiritual meaning, and relationships are based on kinship and reciprocity. It does not seem necessary to attribute personhood to it, as this would be natural. Totemism emphasises a symbolic relationship between groups of people and certain non-human entities (totems). These totems are seen as ancestors or guardians and foster a sense of community and identity.

When a river has a legal personality and subsequently causes devastating floods, it is clear that the entity responsible (administrators, the guardians, etc.) for flood prevention must be held liable for the resulting damage, not the river itself, as if it were a type of indirect responsibility. Therefore, it is reasonable to argue that the representatives of nature (the guardians) initiate or respond to lawsuits that may be brought against nature rather than nature directly. This is similar to the relationship between parents and children, where the parents represent the children. Bourg & Whiteside (2010, p. 73) propose the concept of a 'metarepresentative ecological democracy'. It is important to note that in most of the examples I have given of the rights of nature, there seems to be no need to establish rights and responsibilities for human beings about nature because of the regime of 'spiritual governance' (Studley & Bleisch 2018). In spiritual governance, spirits are seen as having total

power and authority over all the natural resources in their area (Mills 2003, Studley 2005). The numina are seen as responsible for setting the objectives of governance and how they should be achieved, with intermediaries playing a crucial role in the decision-making process (Studley 2018). This means that the behaviour seen in places where spirits are believed to live does not fit with the Western idea of governance. Instead, it is guided by daily rituals and annual ceremonies (Studley & Jikmed 2016) that aim to honour and appease the spiritual or non-human world. This unique form of governance and the associated cultural and ritual practices have been referred to as 'spiritual governance' by Studley & Horsley (2018) and Studley (2018) used the term 'spiritual governance' to describe the governance of the numina on the Tibetan Plateau. This concept has gained recognition in academic literature (Meir 2021, Verschuuren et al. 2021, Sinthumule 2022), and it is important to understand that, typically, indigenous people have legal and contractual relationships with spirits (Coggin & Hutchinson 2006, Petrażycki 1955).

What is certain is that attributing legal personhood to nature has some advantages. For example, it allows for the possibility of obtaining compensation in the event of ecological damage. This recognition of personality should ensure that these natural entities are considered by the positive law of countries that do not humanise nature, or rather, parts of nature. This recognition can also facilitate the transposition into Western legal frameworks of indigenous cultural and mental categories that have, at the very least, the merit of defending a connection or interdependence between human beings and the objects of the natural world in the sense of ecocentrism.

Nature's legal capacity gives it the right to take legal action. This is the main advantage of legal personality (de Toledo 2021). However, the success of legal actions depends on the country, and obstacles remain, such as the cost of justice. In Ecuador, for example, 64 cases are listed on the website of the Observatorio Jurídico de Derechos de la Naturaleza (<https://www.derechosdelanaturaleza.org.ec/casos-ecuador/>), of which at least 23 have been successful (Eco Jurisprudence Monitor database: <https://ecoju.risprudence.org/dashboard/?map-style=political>). However, it seems that, far from illustrating a revolution in the law, the Ecuadorian Constitution and the way it is applied by the courts does not offer a higher degree of protection than the so-called 'traditional' systems (Belaidi 2018).

For some authors, recognising legal rights to nature is a moral imperative (Rawson & Mansfield 2018).

However, what is meant by the term 'nature', and what rights are at stake? Chapron et al. (2019, p. 1393) propose that 'a solution may be to identify ecologically informed criteria through which natural entities become rights holders'. Furthermore, they propose that it may be more straightforward to scientifically define species or populations than to define the concept of 'Mother Earth'. However, this approach risks simplifying the complexity of the issues at stake, thereby ignoring the plurality of actors, interests, and worldviews that are involved in and affected by legislation (O'Donnell & Macpherson 2019). Should not the way forward be different?

The need for change is obvious, given the urgency of action to halt ecological damage and hold the perpetrators to account. In addition to the solutions I have presented (rights of nature and legal personhood of nature), there are other solutions that could be called 'hybrid'. The concept of hybrid nature assumes that nature is neither a person nor a thing. From this perspective, we can analyse nature in terms of an 'almost person' (Carbonnier 2001), nature preserved for future generations (Jonas 2008), nature as a project (Ost 1995), and the common heritage of mankind (Kiss 1985, Joyner 1986, Wolfrum 2012, Baslar 2024).

Safeguarding a person or entity is not defined by the legal status conferred on it but by the allocation of human, technical, and financial resources as part of a public protection policy. Simply attributing legal personhood to nature will not protect it from the violations it suffers unless the fundamental legal principles governing property rights are challenged, updated, and remodelled. The essential thing is not to endow nature with rights while paradoxically imposing human duties on it, thereby creating an absurd and ineffective obligation. On the contrary, it is imperative to establish rights and responsibilities for humans about nature. These rights should exist within a framework dedicated to the sustainable management of natural resources, combined with strict obligations to safeguard and preserve our natural heritage. If these rights are not respected under the law, or if these obligations are neglected, those whose actions towards nature deviate from the social agreement established on this issue must bear responsibility. They will assume responsibility as long as there is someone who represents nature and can legally act on its behalf. In the context of civil liability, as we have seen, this role can be assigned to guardians and administrators. However, the task of nature's representatives may not be easy when it comes to ecological damage, since the damage is diffuse.

To ensure a reasonable utilisation of nature and its sustainable exploitation, would it not be a more prudent strategy to consider nature as an existential heritage, a common heritage, as a potential alternative to conferring legal personhood upon it?

Article 62 of the CRP enshrines the central and generic system for protecting the right to private property. It states: '1. Everyone is guaranteed the right to private property and its transfer in life or death under the terms of the Constitution. 2. Requisition and expropriation for public utility may only be carried out on the basis of the law and upon payment of fair compensation.' Positioning Article 62 apart from the list of rights, freedoms, and guarantees and within the chapter on economic rights and obligations carries significant implications. Evidently, the constitutional enshrinement of the right to private property does not legitimise the owner's private interest in the same way that an absolute guarantee would. In liberal constitutions, this responsibility was exclusively that of the owner. Instead, it implies an injunction to compose the order of goods, in which this interest must be balanced in a regulatory manner with the interests of third parties or the community in general, which are also constitutionally accredited. Property rights 'must be reconciled with other constitutional imperatives, subject to the limitations imposed by those imperatives' (Tribunal Constitucional 2009).

Thus, in the right to the environment and quality of life, enshrined in Article 66 of the CRP, social interests and values must be weighed when in conflict with the right to private property. This precept sees the environment as a genuine fundamental right, formally and materially constitutional, a truly autonomous right distinct from, for example, the right to life, the right to health, or the right to property (Canotilho 1991, Miranda 2016). Judgement no. 194/99 stated that the need to preserve the environment and town and country planning 'is, in the constitutional balance of values, a concrete manifestation of the right to property, which, strictly speaking, does not constitute a limitation of this right, but merely a prerequisite or condition for its proper exercise' (Tribunal Constitucional 1999).

Had it been agreed that a sound and stable climate is our common heritage, today's situation would likely be different. The absolute right of ownership, consisting of 'usus', 'fructus', and 'abusus', is a general principle of law, and common ownership is the exception. However, it would be interesting to imagine the opposite, i.e. a common heritage for all environmental goods (water, air, soil, biodiversity, etc.). Instead of drawing up a list of protected species,

rivers, and nature reserves, a common heritage would make it possible to establish a principle of non-availability, with exceptions, of goods common to humanity. The defence of the environment is, in short, the defence of a common interest of humanity, i.e. the defence of the fundamental right to life and to existence, and life/existence includes all biotic and abiotic elements. The idea of nature as an existential heritage emphasises the intrinsic value of the natural environment in shaping human existence and identity.

Nature is seen as valuable in its own right, not merely for the resources it provides. Rolston (1999, 2010) explores the genesis of natural value in great depth. He posits that intrinsic value exists objectively in nature, just as it does in humans. This is because natural value — lifeforms pursuing their own intrinsic good — has driven the persistence of life on Earth for over 3.5 billion years, independently of any human subjects. This perspective acknowledges that ecosystems and biodiversity have significance beyond economic utility. As we have seen from the cases presented, many cultures are deeply connected to their natural surroundings. Landscapes, plants, and animals often hold spiritual and cultural meanings that contribute to a community's identity.

Viewing nature as an existential heritage implies a moral obligation to protect and preserve it. This encompasses stewardship and advocacy for sustainable practices that honour the rights of nature and can potentially facilitate civil liability actions in the event of ecological damage.

Existential heritage is a collective asset belonging to humanity (human and non-human beings). When its existence is threatened, the survival of each individual is also at risk, both in the present and in the future. For example, Bergdahl & Langmann (2022, p. 412) state that 'climate change is closely related to the existential anxiety of losing something valuable and irreplaceable — here: the planet earth as our only home — generating feelings of worry, helplessness, and hopelessness among both adults and children'. According to Cullinan (2010, p. 1), 'the human right to life cannot be protected without protecting the rights of the Earth Community to exist and function'. The rights of nature and the rights of humanity converge in the right to exist. This is why, in conceptual terms, we prefer to analyse the relationship between man and nature through what we call the existential heritage rather than the common heritage of humankind.

In legal terms, the concept of the common heritage of humankind is characterised by non-appropriation,

peaceful use, the impossibility for any state to claim or exercise sovereignty, and the inalienability of resources (see Gorove 1972, Scholtz 2008, Noyes 2012, Wolfrum 2012). Based on the recognition of a higher common good of humanity as a subject of international law, the concept is derived from the identification of a common interest of humanity that is superior to the interests of states and constitutes an instrument capable of limiting the sovereignty of states in order to seek a fair distribution in the sense of universal destination of goods. It has subsequently been used to protect the planet's resources (environment, natural resources, etc.). The concept of common heritage is certainly useful for protecting the environment. However, in European legal systems, heritage is owned, whereas the aim of common heritage was precisely to avoid appropriation, hence the ambiguity of the concept. Of course, the meaning of 'non-appropriation' needs to be clearly understood. The purpose of the common heritage is not to exclude its contents from trade, but to impose an international management regime that prevents states from claiming it or acquiring sovereign rights over it. The aim is to ensure, through international management, the peaceful and rational use of resources with a view to their conservation or renewal. The principle of non-appropriation does not, therefore, mean that the content of the common heritage is intrinsically inappropriate but rather that a state cannot appropriate it.

The great diversity of ways of protecting nature and the environment calls for a more flexible framework, which could be associated with an existential heritage rather than the common heritage of humanity, underpinned by a collective and diverse interest. In ideological terms, the common heritage of mankind still seems too close to an anthropocentric vision. Existential heritage also implies a functional analysis of heritage. It is no longer just an object of property rights, but also a vector of environmental functions. Soil, for example, fulfils a number of essential ecosystem functions that need to be preserved, and its owner(s) cannot legitimately claim to be jeopardising its collective and existential functions. The legal configuration of a property, therefore, has both an existential and collective dimension and an individual dimension.

The way in which the existential heritage is managed is the key issue for sustainability. It is crucial to acknowledge the distinction between common property (shared property rights) and open access regimes (without property), as well as common resources and common property regimes (Ostrom 2001). In Ostrom's view, the effective management of common resources is contingent upon establishing robust gov-

ernance by small user groups that adhere to mutually respected and accepted rules, with institutions operating at various levels. These resources, essential for all as sources of income and means of production and vital for human well-being, must be sustainably managed. The principal challenge lies in the governance of these commons at a large scale, extending beyond the boundaries of a single village or country. This is analogous to the management of a vast river basin.

The anthropocentric vision that underpins the prevailing socio-economic system has resulted in the emergence of numerous environmental threats. Consequently, it is imperative to reassess the contemporary role assigned to nature, moving away from the perception of it as a mere instrument at the service of humanity towards a more integrated understanding of it as an intrinsic component of an ecosystem in which humans are merely one part.

We need to recover a vision of life that gives us an integrated, grateful, and hopeful view of the future. Everything is interconnected and interdependent, and the human, social, cultural, economic, and environmental dimensions of life and the crises we are experiencing are not separate.

The dignity of each person can only be expressed in a logic of relationship with other people and with the world. This relationship is not one of domination, imposition, or competition but one based on an ethic of care, cooperation, and reciprocity (Francis 2015). Such care is shared by people of all generations, regardless of gender, class, ethnicity, culture, or faith. This vision is expressed through existential heritage and challenges us to transform, in a collaborative and inclusive way, our relationships with our planet and with the rest of humanity. Our duty to care for the environment is not rooted in our duty to care for the well-being of others, nor in our right to live in a healthy environment, but rather in our duty to respect and promote the rights of nature.

The concept of the rights of nature could provide a framework for societies to organise themselves to avoid irreparable environmental destruction. However, defining nature and applying the rights that would be granted to it presents significant challenges. While some limited approaches have been proposed, they have not yet been fully developed and may raise more questions than they answer. It is necessary to establish a connection between the protection of nature, ecological damage aimed at defending nature itself, the right to take legal action, and existential heritage or common pool resource (Ostrom 1990), taking into account Ostrom's management rules.

Reportedly, Ostrom's conceptualization of property is particularly noteworthy. She proposes an innovative framework for understanding property as a 'bundle of rights' (Orsi 2014) rather than as a simple entity. These rights include the following:

- The right to access: the ability to utilise a resource.
- The right to extract: the ability to derive benefits from the resource.
- The right to manage: the capacity to engage in decision-making regarding the resource.
- The right to exclude: the ability to exclude others from utilising the resource.
- The right to alienate: the capacity to transfer or sell rights over the resource.

Although Ostrom's approach (Ostrom 1990, Schlager & Ostrom 1992) has been influential and innovative, it is not without criticism. However, such debates enrich our understanding of common pool resource management and invite us to explore further perspectives.

In order to ensure the sustainability of natural resources, Ostrom, along with other scholars in the field, proposes the implementation of polycentric governance (Andersson & Ostrom 2008, Galaz et al. 2008, Bixler 2014, Nagendra & Ostrom 2014, Pahl-Wostl & Knieper 2014). Thus, '...a polycentric political system would be composed of (1) many autonomous units formally independent of one another, (2) choosing to act in ways that take account of others, (3) through processes of cooperation, competition, conflict, and conflict resolution' (Ostrom 1991, p. 225).

A study carried out by the World Resources Institute (Stevens et al. 2014) investigated cases in 14 countries across Latin America, Africa, and Asia (Bolivia, Brazil, Colombia, Ecuador, Guatemala, Honduras, Indonesia, Mexico, Nepal, Nicaragua, Nigeria, Papua New Guinea, Peru, and Tanzania) and found that forests (a common resource) are less deforested when managed by traditional communities. According to the study, indigenous peoples and local communities can avoid the destruction of forests and the carbon dioxide emissions associated with this practice (Stevens et al. 2014). It found that deforestation rates within community forests with legal recognition and government protection are much lower than in forests outside these areas (Stevens et al. 2014).

It is not a given that personhood would halt uncontrolled 'development,' but it would provide all who wish to take on the responsibility of being a protector and guardian of nature with ways to do so legally.

The idea that non-humans have historically enjoyed the status of legal subjects in various forms of customary law is a compelling and multifaceted con-

cept (Studley & Bleisch 2018). Some legal traditions, such as in New Zealand, have set a precedent for recognising natural elements like rivers, forests, and mountains as legal persons. The Whanganui River, for instance, has been granted the status of a legal person, a groundbreaking move that acknowledges its intrinsic value and rights.

Despite some advancements, many legal systems struggle to fully integrate non-humans as legal subjects. This tension often arises from competing economic interests and traditional views on property and ownership. Modern activism advocating for environmental protection is driving a re-evaluation of laws to grant non-humans' legal recognition. This reflects a growing acknowledgment of ethical considerations in treating other beings. As awareness of ethical, environmental practices, and non-human rights evolves, there is a significant potential for a paradigm shift in legislation. This shift could lead to broader recognition of legal rights for non-human entities, fundamentally altering our legal landscape and promoting a more harmonious coexistence.

Any recognition of the rights of nature must be accompanied by a set of transformative socio-economic measures. In short, the legal status of nature may be less important than the macro-political—economic agenda to enable the ecological transition. The path is necessarily multidisciplinary and multilateral, involving states, communities, and environmental organisations. The solution will require complex arbitrations of various conflicting interests, not only between humans and non-humans but also within human societies between different social groups.

In cases of ecological damage, the question of the injured party and the right to seek compensation is a complex issue that varies from country to country. In Portugal, for instance, the injured party is often considered to be the ecosystem or nature itself. This means that, technically, the plants, animals, and natural resources affected are the 'injured parties'. However, it is important to note that human communities that depend on a specific ecosystem (such as fishermen, farmers, or indigenous populations) can also be considered injured parties. Environmental degradation affects their ways of life, health, and well-being, underscoring the broader implications of ecological damage.

The successful management of the commons is linked to the participatory, cooperative, and democratic form of governance of local, national, and international communities (Ostrom et al. 1999), with rules established and accepted by all and with the involvement of institutions at different levels.

Compensation for ecological damage in Portuguese law is an easier task. It would be enough to confer status to existential heritage, through the institute of legal personality extended to nature or the rights of nature (enshrined, for example, in the constitution) in which nature would be represented by guardians.

6. CONCLUSION

The recognition of countless non-human entities as subjects of law, such as nature, a national park, a river with its metaphysical elements, trees, etc., exposes significant gaps in the legal systems in force in the West and prompts interpretations capable of finding alternatives to the current legal rationality.

The idea of a legal personality of elements of nature could contribute to changing the relationship between humans and nature in the long term and ensure that more people are mobilised in favour of better protection of nature. These initiatives could also encourage legislators to strengthen environmental legal frameworks, which is desirable and necessary. Finally, this approach offers a means to reconcile some of the tensions between Western and non-Western legal systems regarding the protection of nature.

The article discusses the concept of giving legal personality to nature as a means of addressing environmental damage within civil liability. It argues that nature can be considered a legal person based on its inherent rights. This perspective promotes the idea of a pluralistic and fair understanding of the relationship between humans and nature while also acknowledging the value of ecosystems. The article suggests that Ostrom's approach to polycentric governance can be used as a framework for managing natural resources and protecting the existential heritage—nomenclature that I consider more appropriate than the common heritage of humankind because the rights of nature and the rights of humanity converge in the right to exist.

Granting legal personhood to nature aims to establish a system that is more inclusive and harmonious, taking into account different legal systems and cultures that intertwine in the modern world. Overall, this approach aims to compensate for ecological damage and promote a balanced and sustainable relationship between humans and the natural world. The conferral of legal status upon nature, or the recognition of its rights, also serves to facilitate the ability of those responsible for its management to resort to legal means in its defence. Furthermore, it rectifies the shortcomings of the existing environmental legal framework.

Law is not just a body of rules. This means that legal systems are free to choose between different legal concepts to solve ecological problems, i.e. they can apply the concept of a legal personhood to nature and thus assign it subjective rights to solve the problem of ecological damage.

Acknowledgements. I would like to express my sincere gratitude to the anonymous referee, as well as to M. Lofredo and R. Moorth, for their insightful and constructive comments, which proved invaluable to the completion of this work.

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*Editorial responsibility: Darryl Macer,
Scottsdale, Arizona, USA*

Reviewed by: M. Lofredo, R. Moorthy and 1 anonymous referee

Submitted: June 10, 2024; Accepted: February 17, 2025

Proofs received from author(s): May 24, 2025

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