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Justitia, the People's Power and Mother Earth

Democratic legitimacy of judicial law-making in European private law cases on climate change

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Publication date

2020

Document Version

Other version

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Citation for published version (APA):

Burgers, L. E. (2020). *Justitia, the People's Power and Mother Earth: Democratic legitimacy of judicial law-making in European private law cases on climate change*. [Thesis, fully internal, Universiteit van Amsterdam].

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VI.

EPILOGUE

BOUNDARIES OF IMAGINATION: NON-HUMAN ENTITIES

'It is no longer a matter of whether this legal revolution will occur, but only a matter of when and how. The environmental management paradigm is not sustainable.'

Randall S. Abate

A handful of earth, vast as a planet

Justitia: *I love the handful of the earth you are/
Because of its meadows, vast as a planet, /
I have no other star...*

The People's Power: O, Justitia! You make me blush.

Justitia: [sighs] Yes, beautiful, isn't it? One of Pablo Neruda's love sonnets.¹

The People's Power: If I am your only star, I am your sun.

¹ 'Sonnet XIV' in Pablo Neruda pseud of Ricardo Eliecer Neftalí Reyes Basoalto, *100 Love Sonnets* (Stephen Tapscott tr, University of Texas Press 1986).

Justitia: You are.

Mother Earth: But this should not be so.

Justitia: ...!?

The People's Power: Are you now going to spill our love affair?

Justitia: We just felt so nicely aligned!

Mother Earth: O darlings, no. I just wanted to point you to the first line of the poem. You both are a handful of... me! *Dust thou art and unto dust shalt thou return.* It is that mortal yet alive humanity of Neruda's beloved which touches him and makes him love her more forcefully.

The People's Power: ... so?

Mother Earth: You people are not the only ones that are a handful of earth. This epilogue challenges the thought of humans that they are separate from 'nature'.

The People's Power: 'Me people?'

Mother Earth: And Justitia.

Justitia: I am human, too.

Mother Earth: Precisely. But my planetary vastness encompasses so much more than humans alone. Many stars twinkle at you from the meadows...

A. INTRODUCTION

It is a truth universally acknowledged that a constitutional state in possession of democratic institutions must have been made by humans. Law more generally is a human construction. Indeed, we touched upon the criticism that the legal system is too anthropocentric.¹⁰⁹² However, in national legal systems across the globe, increasingly ‘non-human’ or ‘natural’ entities are being assigned legal personality: rivers, woods, mountains, even Mother Earth herself. This epilogue briefly deals with this fascinating movement, which merits attention of private law scholars in particular.

Before delving deeper into the technicalities of this development, however, some limitations should be noted. That is, the approach of this book is utterly anthropocentric, too, by piling all non-human entities together in only one chapter. This is, firstly, an oversimplification. Eva Meijer, referring to among the other thinker Derrida, points to the institutional violence in the use of the word ‘animals’. We speak of humans versus animals as if this were a dichotomy, whereas rabbits are different from cats, and also within the group rabbits a difference can be made between wild, domesticated and again wildered rabbits, rabbits that are kept for scientific experiments, or for their meat.¹⁰⁹³ I would like to add that individual cats or rabbits (or lions or rats for that matter) can also have different characters. The opposition ‘humans’ versus ‘animals’ therefore is unnatural, and certainly not neutral: “being human constitutes the norm, and everyone who deviates is the other”.¹⁰⁹⁴

Now in this epilogue I simplify even further, as I do not only want to speak of animals (non-human animals, as animal rights philosophers write normally to remind us that humans are but one of the many animal species), but also of other non-human entities, like woods, rivers and mountains. Thus, I speak of:

¹⁰⁹² See *inter alia* the discussion of the work of Stephen Gardiner above in Chapter II, Section F.1.

¹⁰⁹³ Eva Meijer, *De Soldaat Was Een Dolfijn: Over Politieke Dieren* (Cossee 2017) 35–37.

¹⁰⁹⁴ *ibid* 36.

- 1) *sentient beings*, i.e. the non-human animals;
- 2) *other life*, for example, trees; and
- 3) (from the perspective of Western biology) *non-living entities*, such as rivers and mountains.¹⁰⁹⁵

Consequently, although the very point of this epilogue is to challenge the contrast between human beings and the rest of nature, the design of the book is entirely embedded in an epistemology that dates from the enlightenment and sees humans as separate from nature. According to Bruno Latour, it is exactly this ‘insanity’ that withholds us from acting upon the great danger of climate change; we do not realise (enough) that we are part of nature, that we all live and are dependent on *Gaia*.¹⁰⁹⁶

My choice to treat all non-human entities together in one chapter is, therefore, epistemologically and morally unjustified. Yet this book is not primarily an epistemological research, nor purely an exercise in morality. Instead, it offers a reconstruction of democratic legitimacy of judicial law-making in the context of European private law, which is traditionally anthropocentrically bordered. Below, section B briefly addresses how non-humans suffer perhaps the worst from exclusion of our legal-political system, and how the European private law climate cases are pushing to different degrees for a solution to this problem. Section C provides some concluding reflections and unfolds my ambitions for future research.

B. BOUNDARIES OF IMAGINATION IN EUROPEAN PRIVATE LAW CLIMATE CASES AND BEYOND

Biological research shows that life on Earth has gone through five so-called mass extinctions, the most well-known of which is the fifth, when the dinosaurs were obliterated by a meteorite clashing onto our planet’s surface. Biologists put forward we have entered the sixth mass extinction, also known as the ‘Anthropocene extinction’ since it is caused by humans.¹⁰⁹⁷ In the journal *Nature* scholars have therefore called for more effective conservation

¹⁰⁹⁵ Indeed, these two are addressed separately in Abate (n 799).

¹⁰⁹⁶ Cf Latour (n 21).

¹⁰⁹⁷ Cf eg Elizabeth Kolbert, *The Sixth Extinction: An Unnatural History* (A&C Black 2014) 265.

measures.¹⁰⁹⁸ It goes almost without saying that the non-human world suffers the most from a lack of political efficacy and normative legitimacy of the public sphere. Nature (for lack of a better word) is objectified and has no political voice whatsoever; the public sphere is not inclusive towards non-humans – it lacks normative legitimacy for them. Non-humans are also unable to exercise constraint on the political centre, meaning the public sphere is not politically effective for them; human interests are systematically favoured over the interests of non-humans.

In his famous essay on two conceptions of liberty, Isaiah Berlin defines a lack of political negative freedom as being ‘prevented from attaining a goal by human beings’.¹⁰⁹⁹ Bearing this in mind, how severe are trees hampered in their negative freedom, prevented by humans to attain their most evident goal, namely to grow! According to a study on deforestation, ‘On average, an area of tree cover the size of the United Kingdom was lost every year between 2014 and 2018.’¹¹⁰⁰ The sixth mass extinction is larger than we know, for in these forests many species lived that we have not even discovered before we exterminated them in our hunger for fuel, construction materials, palm oil, and soy plantations to feed the cattle for our meat consumption.¹¹⁰¹

Indeed, Dryzek and Pickering claim that our era of the Anthropocene calls for planetary justice, which should encompass not only people from other nations and future generations, but also non-humans.¹¹⁰² So far, this book has aimed to show how climate cases in European private law, qua strong contributions to the public sphere, are pushing against the national and temporal boundaries of our legal-political system. This epilogue submits they are also pushing against our boundaries of imagination. For some time, I

¹⁰⁹⁸ Anthony D Barnosky and others, ‘Has the Earth’s Sixth Mass Extinction Already Arrived?’ (2011) 471 *Nature* 51.

¹⁰⁹⁹ Isaiah Berlin, *Two Concepts of Liberty* (Clarendon Press 1958).

¹¹⁰⁰ Ingrid Schulte, Charlotte Streck and Stephanie Roe, ‘Protecting and Restoring Forests: A Story of Large Commitments yet Limited Progress. New York Declaration on Forests Five-Year Assessment Report.’ (NYDF Assessment Partners, coordinated and edited by Climate Focus 2019) 15

<<https://forestdeclaration.org/images/uploads/resource/2019NYDFReport.pdf>> accessed 2 April 2020.

¹¹⁰¹ Cf eg David A Keith and Mark A Burgman, ‘The Lazarus Effect: Can the Dynamics of Extinct Species Lists Tell Us Anything about the Status of Biodiversity?’ (2004) 117 *Biological Conservation* 41.

¹¹⁰² See the discussion above in Chapter II, Section F.2.

thought of calling this epilogue ‘boundaries of empathy’, but the challenge that we are facing is not only about showing compassion with threatened species, but more about a total paradigm shift, delivering two understandings at the same time. Firstly, the undeniable importance of human action – if everyone uses fossil fuel driven cars, sea levels will rise, and secondly, a highly necessary modesty – we are only radars in a larger, planetary mechanism, without which we cannot exist and where we are not the only ones who count.

The climate cases in European private law push for the emancipation of non-humans, to varying degrees (sometimes also within one case), which I sort along a three-tiered continuum that I address hereafter in subsections. Firstly, there is the realisation that ‘We, the People’ are dependent upon Mother Earth – she is important because of her value for us. Secondly, there is the acknowledgement of the *intrinsic* value of the earth and all non-human entities – they are important as such. Lastly, there is the movement of the *rights of nature*, which truly tries to emancipate nature in our legal-political system.

1. People’s dependence on Mother Earth

Chapter II of this thesis submitted that the climate lawsuits are indicative of a legal development through which it is increasingly recognised that the environment forms a constitutional matter – a precondition for the constitutional democracy. This environmental constitutionalism reflects the realisation that we people are dependent on the earth with a stable climate. For example, the French constitutional Environmental Charter’s preamble includes the considerations that ‘the preservation of the environment must be sought at the same level as the other fundamental interest of the nation’ and that ‘the future and the very existence of humanity is inseparable of its natural environment’. The Environmental Charter was invoked in the climate case against Total.

In a similar vein, the claim in the *Urgenda* case opens with the sentence:

*The earth is heading towards significant, far-reaching climate change that will have severe consequences for the existing ecosystems on the planet – and thus also for humanity that must depend on these ecosystems for its existence.*¹¹⁰³

¹¹⁰³ Urgenda claim, §1.

Likewise, the Dutch Supreme Court in this case noted that the emission of greenhouse gasses leads to climate change, which *inter alia* leads to ‘an extensive deterioration of ecosystems’, to add immediately that such ‘will result in, among other things, the significant erosion of ecosystems which will, for example, jeopardise the food supply, result in the loss of territory and habitable areas, endanger health, and cost human lives’.¹¹⁰⁴ These were part of the facts that led the Court to rule that an insufficiently ambitious climate policy could violate the fundamental – human – rights to life and private life. Also, the claim against Shell summarises its lengthy elaboration on the facts saying that it renders clear ‘the dependency of humanity upon healthy ecosystems’.¹¹⁰⁵

Whilst the environment is constitutionalised and thus recognised as a foundation of society, this first move on the three-tiered continuum still can be called instrumental; its reasoning is that the Earth and the climate merit protection so we can save our own skin. Whereas Mother Earth thus exercises some political efficacy by means of her hurricanes, wildfires and sea level rises – as she thereby forces humans to reconsider how they organise their economies – the public sphere still lacks normative legitimacy for her; she is objectified and instrumentalised.

2. The intrinsic value of the non-human world

Here and there, the climate cases in European private law also recognise the intrinsic value of the non-human world, transferring the message that non-humans merit protection also where they are not of any ‘use’ to humans. For example, the Court of Appeal in the *Urgenda* case, where summarising the facts of the case, notes the damage done to ecosystems, flora and fauna and a loss of biodiversity, without linking this directly to a human interest.¹¹⁰⁶

Also, the claimants in the case against Royal Dutch Shell convey this message, for instance where they describe their statutory goals to prove that they have a sufficient interest in the case, which is required for standing. That is, Greenpeace calls itself an international network committed to a ‘green, peaceful planet’, aiming to combat ‘pollution and abuse of the earth’;¹¹⁰⁷ and

¹¹⁰⁴ Supreme Court *Urgenda*, §4.2.

¹¹⁰⁵ *Milieudefensie v Shell* claim, §453.

¹¹⁰⁶ Court of Appeal *Urgenda*, §44.

¹¹⁰⁷ *Milieudefensie v Shell* claim, §156.

the Dutch Wadden Association is ‘striving for the conservation, restoration and good management of nature, landscape and environment and of the ecological and natural-historical value of the Wadden area’, stressing that the Wadden sea is on UNESCO’s world heritage list because of its ‘unique geological and ecological value’.¹¹⁰⁸ The claim continues to elaborately describe how non-humans in the Wadden sea would suffer from dangerous climate change, without any reference to humans. Moreover, the claim repeats a few times that it is concerned with the violations of human rights *and* with damage to the environment.¹¹⁰⁹ The latter is thus presented independently from human damage.

A bit similar to the concern for the Wadden sea in the claim against Shell, is the concern of the Norwegian claimants in the *Arctic Oil* case for the ‘very special ecological area’ of the ice edge and the polar front.¹¹¹⁰ The Oslo Court of Appeal affirmed how special these particular natural phenomena are, noting how they are ‘particularly vulnerable to oil spills and have therefore been identified as particularly valuable and vulnerable areas’.¹¹¹¹

Another example is the introduction of the ecological tort the French legal system, which was invoked in the case against Total. This so-called ‘préjudice écologique’ (ecological damage) was developed in French case law and codified in 2006 by the legislature in Articles 1246 – 1252 French Civil Code. It imposes the private law duty on everyone who causes ecological damage to repair it.¹¹¹² This duty was introduced precisely to redress harm to the environment that is otherwise not translatable as human harm.¹¹¹³ It is, therefore, also called ‘pure’ ecological damage – thus showing it is ecocentric rather than anthropocentric.¹¹¹⁴ Pursuant to Article 1248 French Civil Code, this damage can be claimed by those who have the quality and the interest to

¹¹⁰⁸ *Idem*, §208.

¹¹⁰⁹ *Idem*, §520-521.

¹¹¹⁰ Cf Oslo Court of First Instance, *Arctic Oil*, §3.

¹¹¹¹ Court of Appeal, *Arctic Oil*, §3.4.

¹¹¹² Cf Article 1246 French Civil Code.

¹¹¹³ Cf eg the discussion of the *Erika* case, in which *préjudice écologique* was confirmed by the highest civil court in France, the *Cour de Cassation*: Jérôme Orlhac, ‘From the Legal Personality of Nature to the Recognition of Ecological Damages: An Analysis of the French Legal Reform after the Erika Oil Spill’ (McGill University 2014) 19 available at <<https://e4anet.files.wordpress.com/2014/08/jerome-orlhac-envr630-final-paper.pdf>> accessed 3 April 2020.

¹¹¹⁴ Cf eg Doro Gueye, *Le Préjudice écologique pur* (Editions Publibook 2016).

act, such as the State, the French agency for biodiversity, certain local authorities as far as their territory is concerned, and NGO's that aim to protect nature and to defend the environment. Thus, the French Civil Code renders justiciable complaints about damage to the environment, which comes very close to the last step onto the continuum, to be discussed in the next section.

The political efficacy for 'nature' gains where her intrinsic value is legally recognised; after all, more damage than only (indirect) damage to humans can be addressed and repaired through *inter alia* private law. The normative legitimacy, however, remains questionable. Surely, nature wins in so far as she is seen as meriting protection also where she does not directly support humans – yet even in this conception, nature remains objectified, internalized, yes, the *object* of human duty rather than a legal *subject* with her own rights.

3. Legal personality for nature

The subjectivity of nature is recognised where entities of nature are assigned their own rights that can be enforced in their name. Legal personality is a status the law can assign to an entity; it refers to the ability to bear legal rights and duties and to defend those in court. A 'legal revolution' commenced in 2008 in Ecuador, where the rights of Mother Earth – '*Pachamama*' – where enshrined in the constitution.¹¹¹⁵ In 2010, Bolivia proclaimed its *Ley de Derechos de la Madre Tierra* (the law of the rights of Mother Earth), making the earth a legal person in the Bolivian legal system as well. In Colombia¹¹¹⁶ and India,¹¹¹⁷ courts have recognised rivers as legal persons (though the Indian judgment was stayed by the Supreme Court).¹¹¹⁸ There are many more examples, the most detailed of which are probably the New Zealand statutes

¹¹¹⁵ A wonderful book on the topic is David Richard Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (ECW Press 2017).

¹¹¹⁶ Constitutional Court of Colombia (*Corte Constitucional, Republica de Colombia, Sala Sexta de Revisión*) 10 November 2016, Center for Social Justice Studies et al. v. Presidency of the Republic et al, case no T-622/16.

¹¹¹⁷ High Court of Uttarakhand at Nainital 20 March 2017, Mohd. Salim v State of Uttarakhand & others, writ petition no 126 of 2014.

¹¹¹⁸ Supreme Court of India, 7 July 2017, Petition for Special Leave to Appeal 016879/2017 in Mohd. Salim v State of Uttarakhand & others.

granting rights and legal personality to, respectively, the Te Urewera forest¹¹¹⁹ and the river the Whanganui.¹¹²⁰

It is not coincidental that these examples are all from outside Europe. As Ngaire Naffine aptly analysed, *Western* debates about legal personality are focussed on the borders of human life: where does it start? – a question relevant to the issue of whether and when abortion should be allowed; and where does it end? – a question relevant to issues relating to euthanasia and people in coma.¹¹²¹ This focus is the same for religiously inspired thinkers as well as those who Naffine calls rational humanists. In contrast, the New Zealand act on the Whanganui is inspired by a totally different paradigm – that of the worldview of New Zealand’s indigenous Maori people. The act enlists essential principles in their language as well as in English, for instance in Article 13: ‘Ko au te Awa, ko te Awa ko au: I am the River and the River is me.’ Also the South American developments are inspired by a perspective on the world that is far away from that of Western enlightenment – according to the latter, nature is there for us humans to conquer and exploit. In a modest tribute to such indigenous and more holistic worldviews I choose Mother Earth to feature so prominently in the title of this book.

It is likely that this very *un-Western* development of rights for nature is hard to apply on European soil. Indeed, in France, in the process of adopting the constitutional Environmental Charter, a proposal was made to include legal subjectivity for nature, but this was rejected.¹¹²² At first sight, the idea of rights for nature might even seem absurd for many people from the Western world, including Europe. When the animal rights activist Steven Wise started to litigate on behalf of animals in the United States – a country culturally very close to those in Europe – people ridiculed him by barking at him in the courtroom.¹¹²³

¹¹¹⁹ Te Urewera Act 2014, available at <http://www.legislation.govt.nz/act/public/2014/0051/latest/whole.html#whole> (last visited 4 April 2020).

¹¹²⁰ Te Awa Tupua (Whanganui River Claims Settlement) Bill, available at <http://www.legislation.govt.nz/bill/government/2016/0129/latest/DLM6830851.html> (last visited 3 April 2020).

¹¹²¹ Naffine (n 214).

¹¹²² Michel Prieur, *Droit de l'environnement - 8e éd.* (Daloz 2019) 73.

¹¹²³ He tells this in the 2016 documentary *Unlocking the Cage*.

At the same time, no one can deny that our legal system already has non-human legal persons: corporations, churches, municipalities, State, associations et cetera. Though legal personality might not be an ideal fit to capture the complexity of a splendid river such as the Whanganui, it is presumably the best option to capture within the law's rationality the notion that the river cannot be owned, but that it owns itself. (Elsewhere, I pondered the question whether legal personality might be a good fit for the North Sea, to conclude that very similar to Winston Churchill's remark about democracy, 'it is the worst of all political systems except for all the others', legal personality for nature might be the worst of all legal forms, except for all the others.)¹¹²⁴

Moreover, John Dryzek made an important point in a chapter entitled 'Green Democracy' in his book *Deliberative Democracy and Beyond*: namely, that in contrast to future generations, non-humans are actually able to deliberate with us now.¹¹²⁵ Obviously, this will not happen through our human language. Eva Meijer stresses in her book *When Animals Speak* how little we know about animal languages, but that the scarce research on the topic show an impressive linguistic ability of all kinds of non-human animals.¹¹²⁶ Dryzek submits that equality for non-humans (so not only animals, but also other natural entities) in a deliberative context means that they need to be represented equally and that they need to be equally listened to.¹¹²⁷ He is not very concrete in how to institutionalise such equality further, but to assign legal personality to non-humans is would, in my view, be one of possible responses to this question.

Now there is one case amongst the climate cases in European private law studied in this book that makes a wonderful genuine representative claim on behalf of non-humans, advancing that insufficient climate policy is also violating their rights. This is the Belgian *Klimaatzaak*, where two lawyers submitted an extra complaint in the name of 82 trees, alongside the other

¹¹²⁴ Laura Burgers, 'De duizelingwekkende reis van Sam de Zeeforel, of: van mensenrechten naar zeerechten', *De Stem van de Noordzee* (Boom 2020).

¹¹²⁵ John S Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford University Press 2002).

¹¹²⁶ Eva Meijer, *When Animals Speak: Toward an Interspecies Democracy* (NYU Press 2019).

¹¹²⁷ Dryzek (n 1125) 153–4.

claimants.¹¹²⁸ The trees are each specified so as to stress their individuality. The first one enlisted, for example, is the corded alder, living in the street called *rue de l'Arbre Benit* in the municipality of Ixelles, which forms part of the larger Brussels region.¹¹²⁹ The claim explains that she and the other trees 'want to avoid that their environment becomes an instable environment'.¹¹³⁰ It furthermore explains that these applicants are 'living beings, sensible to modifications to their environment' and 'cannot be reduced to a simple object'.¹¹³¹

The claim goes on to specify what rights the trees invoke: 'the right to the aerial and underground space that they need to realise their complete growth and reach their adult dimensions so they can reproduce.'¹¹³² A paragraph follows that merits full citation:

*The applicants are living beings whose average lifespan surpasses by far that of the human being. They need to be respected during their whole life, with the right to freely develop and reproduce, from their birth until their natural death, whether they are trees from the city or from the countryside. The applicants must therefore be considered as legal subjects, including in relation to the rules that govern human property.*¹¹³³

Thus, the *Klimaatzaak* claim is pushing the boundaries of imagination in European private law, aiming to make it inclusive to the non-human beings of these 82 enlisted trees. Should the Belgian courts accept their standing and rule in their favour, then the public sphere could be said to have significantly gained in political effectiveness and normative legitimacy for them. Whether this will actually happen remains to be seen, of course.

¹¹²⁸ *Requête en intervention volontaire, Art 813 du Code Judiciaire, au tribunal de première instance francophone de Bruxelles, Section civile, Numéro du role 15/4585/A*, hereafter: *Klimaatzaak* trees claim.

¹¹²⁹ Cf *Klimaatzaak* trees claim, p1.

¹¹³⁰ *Idem*, §1.

¹¹³¹ *Idem*, §6.

¹¹³² *Idem*.

¹¹³³ *Idem*, §7. Here the claim refers to the seminal work of Christopher Stone, in which he argued already in 1972 that trees should have standing. It was republished in Christopher D Stone, *Should Trees Have Standing?: Law, Morality, and the Environment* (Oxford University Press 2010).

C. CONCLUDING REFLECTIONS; FUTURE RESEARCH AGENDA

I opened chapter II of this book with the question how often you saw a lawyer weep just after he heard the court rule in his favour. It is rare, of course, but apart from Urgenda's Roger Cox, Steven Wise also cried when he obtained a victory in his so-called non-human rights project before the American courts.¹¹³⁴ It surely must be overwhelming if one's contribution to the public sphere is recognised by the courts as law. Tears of joy aside, there is little reason for environmentalists to be optimistic, to be fair. Yet many remain dedicated to further the emancipation of the non-human, 'natural' world. A UN network called *Harmony with Nature* keeps track of developments in this regard, and reports to the UN General Assembly every year.¹¹³⁵ Randall S. Abate thus notes that 'It is no longer a matter of whether this legal revolution will occur, but only a matter of when and how'.¹¹³⁶

Whatever the value of this prediction, the global development through which an increasing amount of natural entities are assigned legal personality is a fact, and environmentalists are working hard to transmit the ensuing paradigm to Europe. Apart from the Belgian *Klimaatzaak*, other initiatives exist, such as a Dutch collective of philosophers and artists who call themselves *Embassy of the North Sea* and advocate legal personality for the North Sea;¹¹³⁷ the Scottish Muir Trust Foundation considering to render the mountain the Ben Nevis into a legal person;¹¹³⁸ and many publications dealing with the topic of rights for rivers,¹¹³⁹ or even proposing to make the Wadden Sea a legal person.¹¹⁴⁰

It is my ambition to dedicate further research to the rights of nature. So far, literature on rights of nature is mostly produced by environmental law scholars, philosophers and political scientists. Yet there is an abundance of

¹¹³⁴ This is also featured in the 2016 documentary *Unlocking the Cage*.

¹¹³⁵ See www.harmonywithnature.org (last visited 4 April 2020).

¹¹³⁶ Abate (n 799) xv.

¹¹³⁷ See www.ambassadevandenoordzee.nl (last visited 4 April 2020).

¹¹³⁸ Cf Colin Robertson, 'Does Ben Nevis Have a "Personality"? Why Wild Lawyers Believe That Nature Should Have Legal Rights' *John Muir Trust Journal* (Autumn 2017) 28.

¹¹³⁹ See eg a special issue dedicated to the rights of rivers: Volume 44, issue 6-7, 2019 of the journal *Water International*

¹¹⁴⁰ Tineke Lambooy, Jan van de Venis and Christiaan Stokkermans, 'A Case for Granting Legal Personality to the Dutch Part of the Wadden Sea' (2019) 44 *Water International* 786.

private law questions that need to be addressed. Questions of contract law, for instance: what if a polluter pays damages to, say, a river, and the river hires a cleaning company but fails to perform? Do regular remedies apply? Questions of property law: who can be expropriated for the benefit of a ‘natural’ legal person and under what circumstances? Questions of insolvency law: can an entity of nature go bankrupt? Such questions will hopefully be addressed firstly in a conference which took place shortly after I finished the manuscript of this thesis, and in publications resulting from it.¹¹⁴¹

In the following years, I want to work in particular on three questions. Firstly, I want to address the relationship between animal rights and rights of nature, which I piled together in this epilogue. The animal rights movement is generally motivated by the sentience of non-human animals,¹¹⁴² which should be the criterion to be awarded legal personality – like Jeremy Bentham remarked: ‘The question is not, Can they reason?, nor Can they talk? But, Can they suffer?’¹¹⁴³ The movement of rights for nature, in contrast, is often religiously or spiritually motivated by the goal of environmental protection. Are these different rationales possible obstacles to realise both goals at the same time, or can they be reconciled?

Secondly, I want to delve deeper into the theories of representation, which I introduced above in chapter IV on future generations. In the available literature, nature and future generations are often mentioned in one breath. Relatively little attention is paid, however, at the conceptual, theoretical and practical differences between these two categories: future generations and nature. I want to address the differences between the two categories, building further on Dryzek’s remark that deliberation with nature might be easier than with future generations. I want to research in existing case-law in particular the effects of speaking of *group* rights of future generations versus *individual* rights of entities of nature.

Lastly, I want to further explore a point that to my own taste is under-developed in the present book, namely the relationship between political

¹¹⁴¹ The conference *Private Rights of Nature* 4-5 June 2020, Amsterdam Centre for Transformative Private Law (ACT), University of Amsterdam, the Netherlands.

¹¹⁴² Cf eg Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford University Press 2011).

¹¹⁴³ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation: Printed in the Year 1780, and Now First Published* (T Payne 1789) cccix.

autonomy and the exercise of private rights. Bruno Latour advanced the idea of the ‘parliament of things’,¹¹⁴⁴ but to be assigned rights does not automatically mean that space will be reserved in the institutions that form the centre of decision-making. Put differently, public and private autonomy are co-original according to Habermas, for public autonomy cannot be exercised without private autonomy. The question I want to address is the extent to which an increased private autonomy can lead to an increased public autonomy.

I am extremely grateful to Justitia, the People’s Power and Mother Earth that they guided the way for me to such exciting and inspiring research questions. I owe thanks to many more people, as I will elaborate on in the Acknowledgments that follow now.

* * *

¹¹⁴⁴ He introduced this idea in Bruno Latour, *We Have Never Been Modern* (Harvard University Press 2012). And the idea was reiterated in Latour (n 21).