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SCHRÖDINGER'S RIGHTS OF NATURE. THE PARADOX OF THE EARTH JURISPRUDENCE

Abstract

From the realist-positivist point of view, rights of nature are merely an instrument of environmental justice. It is a political and economic reality, along with implementing provisions, that determines their effectiveness, not the shifting ideology behind them. Thus, in certain conditions, the environmental law may do more for nature than the rights of nature. In an analogy to thin rights of animals, a concept developed, among others, by Saskia Stucki, we propose to seek the thin rights of nature: rights that are not explicitly vested in nature by an act of law, but result from a broad protection, its enforceability and claimability, and are recognized by a public authority. Our thesis is: thin rights of nature are theoretically normatively possible, and are, in fact, valid in practice. Only ideological factors determine that certain institutions of environmental law are interpreted anthropocentrically. In our reading of the Polish environmental law, national parks could be seen as vested with TRON, despite the lack of legal personhood for nature.

KEYWORDS

rights of nature, national parks in Poland, thin rights

SŁOWA KLUCZOWE

prawa natury, parki narodowe w Polsce, wąska koncepcja praw zwierząt

I. INTRODUCTION

The philosophical idea and the legal doctrine of the rights of nature (RON) is perceived mainly as one of the most burgeoning trends in contemporary jurisprudence.[1] Due to the totemic role of subjective rights in the Western (hence, international) legal culture and potentially higher effectiveness in environmental protection, the recent years have seen a constant flow of the new RON initiatives. Agnostic to whether the institution will result in bio-salvation, we propose a realist take on them.

Looking from the theoretical perspective of legal realism and legal positivism, we take RON as merely an instrument of environmental justice. Not only do they come in diverse normative models, but they may also be employed in various contexts to different ends.[2] Thus, even though RON are regarded as a key institution of the Earth jurisprudence and biocentrism in law,[3] as opposed to the conventional environmental law and anthropocentrism, there is nothing necessarily biocentric in the ideas of granting nature a legal personhood or subjective rights. Depending on the ideological and axiological context, RON may protect indigenous heritage or simply an ecosystem for humans' sake. It is a political and economic reality, along with implementing provisions, that could make RON a breakthrough that they supposedly are.

No disregard to the symbolic and rhetorical potential of subjective rights, it appears that without the necessary political will, legal RON would do little to

[1] See, e.g., Craig M Kauffman, 'Rights of Nature. Institutions, Law, and Policy for Sustainable Development' in Jeannie Sowers, Stacy D VanDeveer, Erika Weinthal (eds), *The Oxford Handbook of Comparative Environmental Politics* (New York: Oxford University Press 2023) 499–517; Kauffman, 'Global Patterns and Trends in Rights of Nature Legal Provisions: Insights from the Eco Jurisprudence Monitor' in César Rodríguez-Garavito (ed), *More Than Human Rights. An Ecology of Law, Thought and Narrative for Earthly Flourishing* (New York: NYU Law 2024) 183–211; Kauffman, Pamela L Martin, *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (Cambridge-London: The MIT Press 2021) 1–59, 211–235.

[2] To quote Mihnea Tănăsescu, 'the rights of nature are not primarily about nature (…). In fact, they are not primarily about the environment at all, but about creating new relations through which environmental concerns may be differently expressed' (Tănăsescu, *Understanding the Rights of Nature. A Critical Introduction* (Bielefeld: Transcript Verlag 2022) 18).

[3] See Cormac Cullinan, *Wild Law. A Manifesto for Earth Justice* (Devon: Green Book 2011) 123–136.

realize philosophical RON and the aims of the RON movement. The deficit is apparent in the case of RON with no implementing regulations and public standing.[4] Thus, paradoxically, the environmental law, especially in an efficiently run State, could do more to preserve nature than even the most ambitious version of RON.[5] Moreover, even in legislations with enforceable hard-RON and a favorable ideological setting, a shift in politics may result in a turnover and neutralization of the institution's potential.

Since the realization of the Earth jurisprudence relies on a biocentric approach, RON are susceptible to changes in the social context, from public morality to the economic capacity of a State. Hence, in a way, RON exist like a cat in Erwin Schrödinger's thought experiment – they both exist, and do not exist, and law does not create them but rather employs them as long as they serve the interests recognized by human actors (either their own, or Earth's).

We propose to consider this paradox in reverse thinking: why not seek the realization of Earth jurisprudence without explicit legal RON. Usually, the adherents of RON propose to establish specific laws allowing them to act on behalf of and/or in the name of nature, either as constitutional amendments or legal bills. However, in some cases – such as, e.g., cases of the Atrato River in Colombia[6] or the Turag River in Bangladesh[7] – it was the litigation that served the purpose, and RON were declared upon already binding peremptory norms (constitutional principles, precedents, or equity). The question arises, then, is it possible to derive RON from the environmental law, hitherto interpreted as anthropocentric and ecologically shallow (especially relevant in civil law systems).[8] In other words, are thin rights of nature (TRON), analogous to thin rights of animals[9] (TROA), possible?

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[4] E.g., despite the introduction of RON into Ecuadorian constitutional law (Art 10; 71–74 of the Constitution of Ecuador, Constitución de la República del Ecuador, Decreto Legislativo 0, Registro Oficial 449 de 20 Octubre 2008) in 2009, the courts were initially very reluctant to accept arguments based on nature's subjective rights. The trend shifted in 2019. See: Martin Kauffman, 'How Ecuador's Courts Are Giving Form and Force to Rights of Nature Norms' (2023) 12(2) Transnational Environmental Law 366–369.

[5] To quote Mihnea Tănăsescu again, 'The most useful frame for understanding the rights of nature is political, not legal. One cannot understand what the rights of nature are doing without thinking about them in terms of power relations' (Tănăsescu (n 2) 17).

[6] Constitutional Court of Colombia, Judgment in Case T-622 of 2016, Proceeding T-5.016.242.

[7] Supreme Court of Bangladesh, *Human Rights and Peace for Bangladesh and others v Secretary of the Ministry of Shipping and others*, Writ Petition No 13989 of 2016.

[8] See Arne Naess, 'The Shallow and the Deep Long Range Ecology Movement' (1973) 16 Inquiry 95–100.

[9] For the avoidance of doubt, if the context does not indicate otherwise, by 'animals' we mean non-human animal individuals, not all animal individuals, or species.

We seek the solution to this problem through a philosophical analysis of the concept of thin rights (TR) and its referral to the doctrine of RON. Then, we propose to test our conclusions in practice, by normative reinterpretation of Polish environmental law. Our thesis is: thin rights of nature are theoretically normatively possible, and are, in fact, valid in practice. Only ideological factors determine that certain institutions of environmental law are interpreted anthropocentrically.

Consequently, our paper is composed of two parts, concentrating respectively on the theory of law and positive law. In the first one, we start by explaining briefly what we mean by RON. Then we introduce the concept of TR and assess the theoretical possibility of TRON. In the second part of the text, we conduct a case study of the institution of a national park in Polish environmental law. Employing dogmatic normative methods, we attempt to derive TRON from provisions already in force.

The literature that is known to us utilizes the concept of TR mostly in the animal rights law and rarely mentions RON in this regard. Neither the tracker of ecological jurisprudence provided by Eco Jurisprudence Monitor, and supported by the Global Alliance for the Rights of Nature,[10] nor the literature mention TRON as a category of RON,[11] although Yaffa Epstein and Eva Bernet Kempers reviewed EU environmental law from the perspective of TRON.[12] Our approach differs from Epstein's and Bernet Kempers's, however, by not only applying the concept to Polish law, but also (and primarily) considering the possibility of declaring the indirect legal personhood of nature as a matter of law. Consequently, the paper supplements the legal research and proposes a novel interpretation of the environmental law. Concerning the ideological aspects of RON, perhaps the most comprehensive monograph comes from Mihnea Tănăsescu, according to whom, RON are both theoretically and practically possible. While there is no single concept of RON, the most useful frame for understanding them is still political, not legal.[13] Similarly, Matthias Petel argues that RON is a framework compatible with various ideologies and political options.[14] We share this perspective. Regarding the theory of TROA, it has been developed mainly by Saskia Stucki.[15] The former will form

[10] Eco Jurisprudence Monitor, <https://ecojurisprudence.org> accessed 18 July 2025.
[11] See, e.g., Alessandro Pelizzon, *Ecological Jurisprudence. The Law of Nature and the Nature of Law,* (Singapore: Springer 2025) 216–219.
[12] Yaffa Epstein, Eva Bernet Kempers, 'Animals and Nature as Rights Holders in the European Union' (2023) 86 (6) The Modern Law Review 1336–1357.
[13] Tănăsescu (n 2) 16.
[14] Petel, 'The Illusion of Harmony: Power, Politics, and Distributive Implications of Rights of Nature' (2024) 13(1) Transnational Environmental Law 12–34.
[15] Saskia Stucki, 'Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights' (2020) 40 (3) Oxford Journal of Legal Studies 533–560.

an important component of our argument. In terms of the theory of rights and personhood, we rely on the works of Tomasz Pietrzykowski and Visa Kurki.

II. THE MANY FACES OF THE RIGHTS OF NATURE

Let us start by claiming that vesting nature with rights is possible, both conceptually and practically. After all, there exist many legal doctrines that recognize the legal personhood of either an ecosystem or the whole Earth. From Ecuador,[16] through Spain,[17] to New Zealand,[18] more than 40 countries have adopted legislation or witnessed a court ruling introducing a protection of the ecosystems through subjective rights effective *erga omnes*.[19]

Consequently, we do not engage in the dispute over whether nature has moral rights and, therefore, should have legal rights. We are also indifferent here to the problem of what can be a legal person (especially, the so-called 'everything goes approach').[20] We are interested in neither a comparison of various models of RON's juridization, nor an analysis of different ideologies that propose them.[21]

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[16] Constitución de la República del Ecuador, Decreto Legislativo 0, Registro Oficial 449 de 20 Octubre 2008.

[17] Ley 19/2022 de 30 de septiembre, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su cuenca, Boletín Oficial del Estado núm. 273, posición 16019.

[18] Tūhoe Claims Settlement Act 2014, Public Act 2014 No 50; Te Urewera Act 2014, Public Act 2014 No 51; Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, Public Act 2017 No 7.

[19] See, a list composed by the UN Harmony with Nature Programme: harmonywithnatureun.org/rightsOfNature/ accessed 18 July 2025.

[20] The idea comes from the positivist tradition, taking a legislator as the creator of law, and law as a social institution employing abstract constructs. Consequently, legal personhood is a legal fiction serving the interests of natural persons. After all, a corporation or a State can be a legal person capable of having rights, though neither of them materially exists, and essentially serves owners and citizens, respectively. See, e.g., Ngaire Naffine, 'Liberating the Legal Person' (2011) 26 (1) Canadian Journal of Law and Society 194; Erin O'Donnell, *Legal Rights for Rivers. Competition, Collaboration and Water Governance* (London-New York: Routledge 2019) 31–32. Some scholars challenge this notion, not only by ideologically motivated legal naturalists, but also philosophers set in the analytical tradition, such as Visa AJ Kurki 'Can Nature Hold Rights? It's Not as Easy as You Think' (2022) 11(3) Transnational Environmental Law 525–552; Idem, *A Theory of Legal Personhood* (Oxford: Oxford University Press 2019) 127–152.

[21] E.g., Visa Kurki frames legal personhood of nature into a dichotomy of instrumental and symbolic rationale (Kurki ibid 527–530). The former blatantly presents legal personhood as merely a normative construct, allowing environmentalists to protect nature's interests effectively. Whereas the latter personifies nature and refers to it as if it were a natural person, due to a worldview or belief. See, Godofredo Stutzin, 'Un imperativo ecológico: reconocer los derechos de la naturaleza' (1984) 1(1) Ambiente y Desarrollo 97–114; James Lovelock, *Gaia: A New Look at Life on Earth*

We are agnostic to the 'rights of nature' – 'human rights for nature' divide too.[22] Nevertheless, to and assess the possibility of TRON, we need to explain at least briefly what we mean by RON.

From the outset it should be clear that we distinguish between (moral, political, or ontological) philosophy of RON, legal RON, and a corresponding social movement.[23] Simply put, the ideology of Earth jurisprudence that its adherents propose may be realized through the legal institution.[24] In our understanding, this legal RON comes down to vesting collective rights (e.g., to life, to the diversity of life, to water, to clean air, to equilibrium, to resolution, to pollution-free living)[25] in a natural collective entity. The term 'nature' works here as a polysemy since the rights at hand may be vested in either an ecosystem, like a river, a forest, and a mountain, or a species, or even in the whole Earth (but not a single entity, such as a rock, if RON are to remain a coherent institution, and not just a 'catch all' phrase).[26]

Based on this characteristic, we can set a criterion necessary to determine whether a subjective right may be vested in nature. First, nature – either 'the Nature', or an ecosystem – is to be either emancipated into a legal person, or represented by a conventional legal platform (e.g., a foundation, a trust, an agency) capable of having subjective rights. The former may be called – as Visa AJ Kurki did

(Oxford: Oxford University Press 1982). While the legal personhood of the Mar Menor lagoon in Spain may serve as an example of the instrumental rationale, Ecuadorian emancipation of *Pachamama*, or Mother Earth, is certainly symbolic.

[22] Kauffman, Martin (n 1) 14–22.

[23] See Kauffman (n 1) 503–506; Tănăsescu (n 2) 139–145.

[24] E.g., Ecuadorian constitutional reform was influenced by the *Sumak Kawsay*, or *Buen Vivir* ideology (Arts 12–28; 275–277 of the Constitution of Ecuador), see: Joe Quick, James T Spartz, 'On the Pursuit of Good Living in Highland Ecuador: Critical Indigenous Discourses of Sumak Kawsay' (2018) 53(4) Latin American Research Review 757–769; Marc Becekr, 'Correa, Indigenous Movements, and the Writing of a New Constitution in Ecuador' (2011) 38(1) Latin American Perspectives 54.

[25] As in the Art 7 of the Ley de Derechos de la Madre Tierra, ley no. 071 de 21 de diciembre de 2010 (Bolivian 2010 Law on the Rights of Mother Earth). Other lists include the right to be, the right to a habitat, and the right to fulfill its role in the re-renewing process of the Earth Community (Cormac Cullinan, *Wild Law. A Manifesto for Earth Justice* (Devon: Green Book 2011) 101; or Kauffman, Linda Sheehan, 'The Rights of Nature: Guiding Our Responsibilities through Standards' in Stephen J Turner and others (eds), *Environmental Rights: The Development of Standards* (Cambridge: Cambridge University Press 2019) 342ff). Perhaps the most unique approach was taken by Christopher Stone, who proposed only a court legal standing as the only right of nature (Stone, 'Should Trees Have Standing? – Toward Legal Rights for Natural Objects' (1972) 45 Southern California Law Review 450–501).

[26] Craig Kauffman and Pamela Martin go even as far as to distinguish between the models of 'rights of nature' (rights of an ecosystem) and 'Nature's rights' (rights of the Earth): Kauffman, Martin (n 1) 15.

– 'direct', and the latter – 'indirect'.[27] However, in the case of TRON, as we are going to demonstrate, no legal personhood whatsoever is required. Second, the rights ought to be collective. We do not exclude the possibility of individual rights (such as property) serving the interests of nature; however, we believe that such entitlements could be vested only in a platform established to represent nature's interests. There is no direct connection between nature's interest and, e.g., property. Third, RON ought to serve the interests of nature. Such a statement sets the institution in the interest theory of rights – in our opinion, the only relevant, since nature is not an individual capable of having will, not to mention expressing it. Hence, the necessity of representation and indirect agency.

It is important to bear in mind that these broad criteria are indifferent to diverse ideological and axiological contexts of RON. The perspective allows us to refer synthetically to various forms of the institution. Now, before we consider the possibility of TRON, we need to introduce the concept of TR.

III. THE CONCEPT OF THIN RIGHTS

The concept of TR comes from the animal rights law theory. In her seminal paper 'Towards a Theory of Legal Animal Rights', Saskia Stucki argued that even though ideally animals would be vested with fundamental and hard rights (explicitly codified and easily enforceable), it is still beneficial to their protection to deduce certain animal rights from animal welfare laws already in force. While this extraction is conceptually and practically possible due to the weak character of TR, their recognition is far preferable to simply manifesting a need for codification of animal rights, not to mention referring to purely moral obligations.[28]

Even though, Stucki calls these rights 'simple', or 'animal welfare rights', other scholars refer to such entitlements as 'thin'.[29] Stucki's theory of TROA is in a way sophisticated argument of Cass Sunstein, who claimed that protection of animals resulting out of animal welfare law amounts to 'legal rights',[30] and is similar to

[27] Kurki (n 20) 527ff. According to Kurki (527), every direct legal personhood of nature ultimately collapses into indirect legal personhood since nature does not have autonomy and cannot be wronged.
[28] Ibid 543–552.
[29] Raffael N Fasel, Sean C Butler, *Animal Rights Law* (Oxford-London-New York-New Delhi-Sydney: Hart 2023) 83ff.
[30] Cass R Sunstein, 'The Rights of Animals' (2003) 70(1) University of Chicago Law Review 389–392.

Kramer's ethical argumentative theory drawing from Wesley Newcomb Hohfeld's framework of rights.[31] Unlike Alasdair Cochrane, though, who also theocratized about a minimal set of animal rights in the *status quo*, Stucki claims that animals are already subjects of legal rights, and do not present them as 'moral, to be realized in law'.[32] Thus, in a way, the concept of TROA is yet another proposal designed to clearly distinguish between moral and legal rights of animals, which only makes it more relevant to the case of RON (as assumed in this paper, they are highly susceptible to ideological, i.e., also ethical, influences).

The feasibility of deducing TROA comes from the axiology of animal welfare law, which expresses a humanitarian sentiment towards animals. The branch relies on a recognition of the intrinsic value of animal welfare, if not life as well.[33] Animals are protected from suffering, or at least 'unnecessary suffering', abuse, and lack of necessary care by humans. Infringement upon norms setting this protection is either a misdemeanor or a felony, and is punishable by the State as such. This perspective fully resonates in the dereification of animals, that is, excluding them from the legal category of 'things'. Now, since animal welfare law sets various obligations and restrictions on behavior towards animals, the latter may be taken as beneficiaries of such norms. E.g., a human duty not to inflict harm is an animal's claim-right not to be harmed. In contrast, a constitutional (or a federal) clause recognizing an inherent value of animals would amount to animals' immunity from various infringements of their interests.

Granted, not every legal duty is (to speak in Hohfeldian terms) a correlative of a right, yet because of the humanitarian sentiment described above, this is the case of animals. Animal welfare law protects their interests. At the same time, animals do not have to be able to perform any duties, as the doctrine of reciprocity may be refuted through an argument from marginal cases, or simply by introduction of active and passive agents.[34] Consequently, as Stucki claims, animal welfare must

[31] Matthew H Kramer, 'Rights Without Trimmings' in Kramer, Nigel E Simmonds, Steiner Hillel (eds), *A Debate Over Rights. Philosophical Enquires* (Oxford: Oxford University Press 1998) 78–102; Kramer, *Do Animals and Dead People Have Legal Rights?* (2001) 14(1) Canadian Journal of Law & Jurisprudence 29–55.

[32] See, Alasdair Cochrane, *Animal Rights Without Liberation Applied Ethics and Human Obligation*, (New York-Chichester: Columbia University Press 2012) 14–15.

[33] See, e.g., Arts 1, 5 of the Ustawa z dnia 21 sierpnia 1997 r. o ochronie zwierząt (Dz.U. z 2023 r. poz. 1580, z późn. zm.) (Polish Act of 21 August 1997 on the Protection of Animals, hereinafter referred to as 'Polish Animal Protection Act'); para 1 of the Tierschutzgesetz in der Fassung der Bekanntmachung vom 18. Mai 2006, Bundesgesetzblatt I S. 1206, 1313 (German Animal Welfare Act in the version published on 18 May 2006).

[34] Human agents who cannot perform their duties (e.g., a permanently unconscious newborn baby) are not deprived of their rights (and in the example above, not only dignity, but also their interests, would be considered when deciding whether to sustain their life).

have been recognized as an intrinsic value to which animals have a right, and many animal welfare laws must translate to rights.[35]

Importantly, according to Stucki's reasoning, TROA are not 'created' by a particular reading of the law. They are the law since implied animal rights presuppose human duties.[36] It is especially relevant in continental tradition countries, such as in Poland, where juridical creation of law is indirect at best, that TR would be derived without the creation of a new norm. Stucki also insists that TROA are a reconfiguration of law, instead of 'simply importing moral animal rights into the legal domain'.[37] To speak of such rights, they should be 'at least legally recognized (if not claimable and enforceable)',[38] that is a public authority, such as a court, should deem them as a part of the law, and preferably protect them upon an intervention of a natural person with a standing.[39]

In other words, TROA entail a reinterpretation of an animal welfare law. That, in turn, means the protection of animals through TROA would not come without limitations. Their scope would be set out by animal welfare law. As such, they are certainly prone to criticism of animal (hard) rights theorists, such as Gary Francione.[40] At the same time, TR could certainly change the legal language, which in turn – e.g., according to the theory of linguistic relativism – may influence the way humans perceive human-animal relations. This change could, in turn, lead not only to a higher moral status of animals in public morality, hence, an openness to a more protective animal welfare law (or even to the introduction of hard animal rights), but also to stricter enforcement of existing regulations. The very realization that there exist rights of animals, though thin at the moment, could influence judges' and public officers' perspectives when balancing the interests of humans and non-humans.

IV. THIN RIGHTS OF NATURE

Conceptualizing TRON ought to start with recalling criteria set out for RON. Such entitlements could be vested in nature understood as a collective, and because of

[35] Stucki (n 15) 546.
[36] Ibid 546-548.
[37] Ibid 534.
[38] Ibid 548.
[39] See also, Stucki, *Emerging Animal Rights and their Pluralistic Foundations: Anthropocentric, Zoocentric, and Ecocentric Rationales*, forthcoming in A Peters, K Stilt, S Stucki (eds), *Oxford Handbook of Global Animal Law* (Oxford: Oxford University Press 2026), 2ff.
[40] Gary L Francione, *Animals, Property, and the Law* (Philadelphia: Temple University Press 2007) 17ff.

the logic of the environmental law – rather an ecosystem, or a species, than the Earth. TRON would also be a collective right working in the interest of the said collective.

As for legal status, TRON does not require any personhood. Since TRON are implied, it seems rather improbable that they would be attributed to a direct legal personhood, though this is not excluded. Take the first years of the RON in Ecuador for example, a country with laws personifying nature, but with insufficient provisions of statutory law allowing efficient claiming and enforcing RON. More probable is the case of indirect personhood, where organizational platforms are legally established to manage and protect the environment (e.g., forest departments).

However, most often TRON would be vested in natural collectives with no legal personhood, which begs an explanation, since jurisprudence generally holds extra-statutory creation of legal persons as inadmissible. A possibility of such attribution comes from theoretical and practical concepts of subjecthood (being a subject of rights) without personhood (being a legal or natural person). For example, in his non-personal doctrine of rights, Tomasz Pietrzykowski rightly points out that neither natural persons have always been subjects of rights, nor a subject of rights might have to be a person.[41] It is thus theoretically sound to devise a subject of rights without legal personhood. Rights of such subjects would protect solely their interests, without being vested with any liberties.

Visa AJ Kurki is yet another scholar who proposes to reconceptualize the legal person by splitting up the Hohfeldian bundle of rights and vesting them according to political and ethical preferences of a society in different kinds of subjects, without any expectation of reciprocal respect for those rights (i.e., holding an ability to consciously perform legal duties as a condition for being a subject of rights).[42] Consequently, TRON requires neither recognition of the environment or its ecosystems as persons, nor granting them legal personhood.

To add to Pietrzykowski's and Kurki's analyses, in practice Polish law includes a category of entities that are subjects of rights, but not legal persons (e.g., investment funds, limited liability partnerships, or communities of property owners). What is more, it also includes a class of subjects that are neither things, nor per-

[41] Tomasz Pietrzykowski, 'The Idea of Non-personal Subjects of Law' in Kurki, Pietrzykowski (eds), *Legal Personhood. Animals, Artificial Intelligence and the Unborn* (Cham: Springer 2017) 64 ff.

[42] Kurki, 'Why Things Can Hold Rights. Reconceptualizing the Legal Person' in Kurki, Pietrzykowski (eds), *Legal Personhood. Animals, Artificial Intelligence and the Unborn* (Cham: Springer 2017) 82ff; Kurki (n 20) 91–125.

sons, but sentient beings with axiologically recognized interests, i.e., animals,[43] while natural force is deemed by the civil law as un-reificated, non-individual (and non-personal, of course).[44]

The rest of elements constituting TRON come from an analogy to TROA. Hence, TRON would require protection of nature for nature's sake, or a recognition of the interests of nature in environmental law. This criterion poses a problem: while humanitarianism in animal welfare law stems from a respect of animals' interest as having an intrinsic value, the nature protection in the environmental law has an anthropocentric aspect to it (blatant in the case of the sustainable development doctrine, less evident in case of protection of natural areas). However, in purely legal aspect (and TRON is supposed to be a legal concept), motivations for the protection are irrelevant. Moreover, claiming otherwise would lead to a higher standard for rationale of TRON than RON, since in many instances RON serve anthropocentric goals of protecting indigenous heritage.[45] Thus, the very protection of the environment from human disturbance is sufficient to meet the requirement of protection of nature's interests.

Furthermore, the provisions of the environmental law amounting to TRON would have to be legally recognized, claimable, and enforceable. We believe these criteria are clear enough in general and become more meaningful in case studies.

Bear in mind, we do not propose a *contra legem* interpretation of law and its extra-constitutional creation. It is essential to distinguish here between reinterpretation of law, consistent with a legal text and a legal culture, and a blatant instrumentalization of law. TRON are neither a new hard-law, nor a soft-law instrument, acknowledging nature's interests.[46]

A clear example of TRON would be a right to exist and a right to not be harmed extracted from provisions on ecocrimes, or – in more severe cases – ecocides. Usually, penal laws concerning the environment take the public as the victim of crimes

[43] Art 1, sec 1 of the Polish Animal Protection Act.

[44] Art 2, sec 2 of the Ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody (Dz.U. z 2024 r. poz. 1478, z późn. zm.) (Polish Act of 16 April 2004 on Nature Conservation, hereafter referred to as the 'Nature Conservation Act'), see Krzysztof Gruszecki, *Ustawa o ochronie przyrody. Komentarz*, (LEX/el. 2025), commentary to Art 2.

[45] See the New Zealand legislation referred to in footnote No 17; Vincent O'Malley, 'Historical Background' in Māori Law Review. Special Issue – The Tūhoe-Crown Settlement, Carwyn Jones, Craig Linkhorn (eds), October 2014, 3–7.

[46] As, e.g., Universal Declaration of the Rights of Mother Earth from World People's Conference on Climate Change and the Rights of Mother Earth, Cochabamba, Bolivia, 22 April 2010, <garn.org/universal-declaration-for-the-rights-of-mother-earth/> accessed 18 July 2025.

against the environment (as in the public trust doctrine).[47] Ecocide is a deliberate or negligent large-scale destruction of the environment by humans, recognized either at the level of international law (preferably due to transborder character of natural forms),[48] or in a national law. Thus, not only the international community (in the Roman Statute of the International Criminal Court), but also a number of States, such as France, Russia, Moldova, Georgia, or Vietnam, have adopted provisions on ecocide.[49] Take a Georgian regulation for example: 'Ecocide i.e. contamination of the atmosphere, soil, water, resources, mass destruction of fauna or flora, or any other act that could have led to an ecological disaster, shall be punished by imprisonment for a term of twelve to twenty years'.[50] In Georgia, the environment is protected as a value whose violation may lead to serious consequences for nature. Yet, one can derive TRON of atmosphere, soil, water, resources, or flora to be free from contamination, or destruction leading to an ecological disaster. The situation is not so different in Ecuador, where RON are a part of the legal system. Crimes against the environment and nature are stipulated in the Title IV, Chapter Four of the Ecuadorian Penal Code.[51] Take Article 245 for example: 'Anyone who invades areas of the National System of Protected Areas or fragile ecosystems shall be punished with imprisonment for one to three years'. One can see similarities between these legal regulations. In both cases, the environment was recognized, albeit for different reasons, as a value that should be protected in its own right. Whereas in Ecuador, the penal law is a result of RON, in Georgia one may use it to derive TRON. What is more, a punishment for crimes against the nature may be more severe in legal systems where nature was neither vested in rights, nor recognized as a person, a 'Pacha Mama' (the case of Ecuador).

If one takes *actio popularis* as one of the key elements of the concept of RON, as Jan Darpö does,[52] (e.g., under Ecuadorian law, anyone has the legal standing

[47] Poly Higgins, Damien Short, Nigel South, 'Protecting the Planet. A Proposal for a Law of Ecocide' (2013) 59(3) Crime Law Social Change 252.

[48] Art 8, sec 2, letter b, pt iv of the Roman Statue of the International Criminal Court, International Criminal Court, the Hague 2021. Admittedly, it is debatable whether responsibility for ecocide in international law extends outside the sphere of war crimes. See, Liana G Minkova, 'Ecocide, Sustainable Development and Critical Environmental Law Insights' (2024) 22(1) Journal of International Criminal Justice 81.

[49] The full, updated list is available at <ecocidelaw.com/existing-ecocide-laws> accessed 18 July 2025.

[50] Art 409 of the Sakartvelos siskhlis samartlis kodeksi (№ 2287-rs 1999 ts') (Criminal Code of Georgia, Law No 2287 of 22 July 1999).

[51] Title IV, Chapter Four of the Código Orgánico Integral Penal, Registro Oficial No. 180 del 10 de febrero de 2014 (Comprehensive Organic Penal Code).

[52] Jan Darpö, *Can Nature Get It Right? A Study on Rights of Nature in the European Context*, Policy Department for Citizens' Rights and Constitutional Affairs, JURI Committee, European Parliament, Brussels 2021, 53. See also, Tănăsescu, *Environment, Political Representation, and*

in favor of nature[53]), a proponent of TRON may argue that the environmental law in force already include similar institutions). As we will try to demonstrate, for example, the Polish regulations on prevention of environmental damage and its remediation[54] include provisions allowing NGOs to act in certain situations as custodians of the ecosystems in national parks. This is further reaffirmed by the Aarhus Convention,[55] a treaty obliging the signatory States to grant citizens access to information, participation in decision-making, and access to justice in environmental cases. A further analysis of the EU law identifying a possibility of TRON was conducted in this context by Yaffa Epstein and Eva Bernet Kempers.[56]

Prima facie, a potential disadvantage of TRON, and a question to what purpose are they formulated, is their weakness. If they are not created but derived through interpretation of legal norms already in force, the practical effect of recognizing their legal existence would be limited. Not only would the environmental law be unaltered, but also a natural person responsible for the care of the nature's interests would probably be a government-appointed official, not an activist, a panel, or democratically elected committee, not to mention every concerned citizen (*actio popularis*). However, in our view, such a critique would be superficial. In favorable political and economic conditions, even an official of a hollowed-out State might do more, from the enforceability perspective, than an NGO or a board appointed as a guardian of an ecosystem. Since governmental resources are incomparably larger than NGO's and private citizens', RON would necessarily exceed TRON only in a favorable setting.

Furthermore, TRON could make a difference in cases of a conflict between nature's wellbeing and human interests – as 'rights trump interests' (taken seriously, they are not subject to the utilitarian calculus). Of course, since neither TRON, or TROA for that matter, are fundamental rights, and especially not constitutional fundamental rights, they would have to give way to hard-rights of humans. Nevertheless, when balancing the non-rights based interests, courts and

the Challenge of Rights. Speaking for Nature, (Houndmills-New York: Palgrave Macmillan 2016) 129–154.

[53] Art 71 of the Constitution of Ecuador.

[54] Ustawa z dnia 13 kwietnia 2007 r. o zapobieganiu szkodom w środowisku i ich naprawie (Dz.U. z 2020 r. poz. 2187, t.j.) (Act of 13 April 2007 on the Prevention of Environmental Damage and Its Remediation, hereinafter referred to as 'Prevention of Environmental Damage Act').

[55] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted on 25th June 1998 in Aarhus, Denmark in *Treaty Series*, Vol 2161, 447–539.

[56] Epstein, Bernet Kempers (n 12) 1355–1357. See also, Epstein, Hendrik Schouckens, 'A Positivist Approach to Rights of Nature in the European Union' (2021) 12(2) Journal of Human Rights and the Environment 205–227.

public authorities would have to take the protection of the environmental law as preeminent.

Take animal species protection for example. Even though it is an expression of values (biodiversity) that for some special reason have been recognized by humans, in a case of a collision of interests with other protected values, where human rights are left out of the equation, there would be a preference for interests of nature. Consider this situation: an entity plans to conduct an investment, e.g., construction of a road, or tree cutting in a habitat area of a species under strict protection. Before starting the work, it is necessary to verify whether the planned activities interfere with the animals' important breeding, resting or migration sites.[57] Take a wildcat (*Felis silvestris*) as an example of a species under the strict protection.[58] If the investment is impossible to carry out without violating the prohibitions, and there are no alternative ways, the investor may apply for a variance and conduct an investment harmful to wildcat's habitat granted if one of the following criteria are met: either plants', animals', or fungi's species benefit from the investment, or the need to conduct it arise from the need to limit serious damage, or the investment serves the purpose of public health or safety, or it is necessary for the implementation of scientific and educational research.[59] Formulating animal species protection as TRON could, in this case, result not in granting a broader legal protection, but securing a stronger protection through taking animals' interest seriously in the interpretation of legal norms and subsumption, conducted both by investors, officers of Regional Directorate for Environmental Protection, and judges (if complaint was filed). For example, Regional Director for Environmental Protection would be less keen to grant a variance, and would be stricter in applying the variance conditions.

What is more, since TRON exist as a matter of law, courts might choose to impose harsher sentences for crimes against nature. For example, a sad reality in Poland is a tendency of judges to impose suspended sentences in cases concerning crimes against the environment, thus leading to formation of liberal lines in case law.[60]

[57] Art 52 sec 7 of the Nature Conservation Act.

[58] § 2 in connection with the position 4 of the Appendix 1 to the Rozporządzenie Ministra Środowiska z dnia 16 grudnia 2016 r. w sprawie ochrony gatunkowej zwierząt (Dz.U. z 2020 r. poz. 2380, t.j.) (Regulation of the Minister of the Environment of 16 December 2016 on the Protection of Animal Species).

[59] Art 56 sec 4 of the Nature Conservation Act.

[60] E.g., Monika Sewastianowicz, Patrycja Rojek-Socha, Regina Skibińska, 'Władza surowością kar chce pokryć nieudolność w ochronie środowiska', Prawo.pl 25 August 2022, <prawo.pl/prawnicy-sady/przestepstwa-przeciwko-srodowisku-2015-2021-wykrywalnosc-kary,516926.html> accessed 18 July 2025.

V. THE CASE OF NATIONAL PARKS IN POLAND

Testing the above reasoning in practice, let us look at the national parks in Poland, the most restrictive form of nature conservation in Polish law.[61] Now, by examining the relevant provisions of the Nature Conservation Act regarding the national parks, we present TRON acting in practice. To this aim, first, we analyze the national park as a legal institution, and then we put it in the framework criteria of TRON, which we established above. We demonstrate the collective character of rights vested in nature, and that they are claimable and enforceable, though not yet recognized.

Let us start by considering the reasons for creating national parks in Poland. First, they preserve biodiversity, natural resources, formations, and components of inanimate nature, or a landscape. Second, they re-establish a proper state of natural resources and natural components. Third, they restore deformed natural habitats, or plant, animal, and fungi habitats.[62]

Perhaps the most important legal instrument designed to serve these purposes is the protection plan for national parks, developed under Article 18 of the Nature Conservation Act. A regulation of the minister responsible for the environment introduces a protection plan for a national park. It indicates ways of protecting and restoring nature in a specific area of a national park. It takes into account, among others: characteristics and evaluation of the state of nature; identification and evaluation of existing and potential internal and external threats, characteristics and evaluation of social and economic conditions; analysis of the effectiveness of previous methods of protection, characteristics and evaluation of the state of land use and the results of a landscape audit.[63]

According to the jurisprudence, the underlying creation of national parks lies in the anthropocentric public interest, represented particularly in aesthetic, historical, memorial, health, social, or sightseeing reasons.[64] However, this perspective is only an interpretation. The law states quite simply that a national park has three distinctive features: it is an area distinguished by exceptional natural,

[61] Art 6 of the Nature Conservation Act distinguishes between ten forms of nature conservation: national parks; nature reserves; landscape parks; protected landscape areas; Natura 2000 areas; nature monuments; documentation sites; ecological utilities; nature and landscape complexes; and species protection of plants, animals, and fungi.

[62] Art 8 sec 2 of the Nature Conservation Act.

[63] Art 20 sec 1 of the Nature Conservation Act.

[64] See Gruszecki (n 44); commentary to Art 8; Daria Danecka, Wojciech Radecki, *Ustawa o ochronie przyrody z komentarzem do wybranych przepisów* (Warszawa: Dilfin 2023) 51–141.

scientific, social, cultural and educational values, with an area of not less than 1,000 hectares; in this area, the entire nature and landscape values are protected.[65] Furthermore, under Article 8 section 2 of the Nature Conservation Act, a national park is established to protect and restore nature in the park's area. The list of its responsibilities in this regard is open-ended, and includes conducting nature conservation activities (1); providing access to the area of the national park according to rules set in a protection plan (referred to in the Article 18), or protection tasks (referred to in the Article 22), and orders of a director of the national park (2); conducting educational activities (3).[66]

The only body of a national park is the director of a national park, who is appointed and dismissed by the minister responsible for the environment.[67] The director manages the national park and represents it externally. According to Article 8e of the Nature Conservation Act, the director implements a park's protection plan by conducting protective tasks and decides how a park is to be accessible to the public. Moreover, the director has the power to conduct proceedings; to participate before common courts as a public prosecutor; and to appeal against the decisions and rulings of these courts in cases of misdemeanors against the nature located in a park she runs.

Tasks related to nature conservation, scientific research, and educational activities, as well as the protection of a national park's property and the suppression of crimes and offenses against nature in a park, are carried out by the National Park Service, an auxiliary force.[68]

Now, let us translate the provisions concerning national parks in Poland into TRON using the criteria established above. First, it cannot be denied that the preservation of biological diversity and natural resources concerns nature as a collective. Hence, provisions concerning the park's protection or restoration, in a way, grant nature a collective right to be preserved or restored. When any ecosystem component in a national park is degraded, the law secures its right to timely and scientifically guided restoration to at least its pre-disturbance condition.[69]

Moreover, TRON can be derived not only from the Nature Conservation Act. Let us take the Tatra National Park Protection Plan as an example.[70] Point 1.2 section

[65] Art 8 sec 1 of the Nature Conservation Act.
[66] Art 8b sec 1 of the Nature Conservation Act.
[67] Art 8c sec 1 and 2 of the Nature Conservation Act.
[68] Art 103 sec 1 of the Nature Conservation Act.
[69] Art 8b sec 1 point 1 of the Nature Conservation Act.
[70] Rozporządzenie Ministra Klimatu i Środowiska z dnia 6 lipca 2021 r. w sprawie ustanowienia planu ochrony dla Tatrzańskiego Parku Narodowego (Dz. U. z 2021 r. poz. 1462) (Regulation of the

II of Chapter 7 of the Tatra National Park Protection Plan, among the types of strict protection activities, mentions 'cleaning forest ecosystems of waste'. Therefore, a right of the forest ecosystem within the Tatra National Park to be cleaned of wastes may be derived. One can follow the Giant Mountains National Park Protection Plan[71] as another example. Point 1 section 1 letter c of Chapter 5 of this legal act stipulates that dry heathlands (*Calluno-Genistion*, *Pohlio Callunion*, *Calluno-Arctostaphylion*) are under strict protection, ensuring the functioning of natural processes. It could be argued that the park holds the right to have its dry heathlands secured, thus allowing undisturbed existence and flow of natural ecological processes.

When it comes to TRON being claimable, the key figure is a director of a national park. As we have noted, the director has the power to conduct proceedings in cases of misdemeanors in the field of nature protection and to participate in proceedings before common courts as a public prosecutor, and to appeal against the decisions and rulings of these courts. These proceedings take place before relevant departments (criminal or civil) of the courts of common pleas. The Nature Conservation Act includes criminal provisions, also applicable to national parks.[72] These are offenses prosecuted under the general principles of misdemeanor law.[73] Moreover, Polish law penalizes the already-mentioned environmental crimes, which may target national parks. These are criminal offenses prosecuted *ex officio* by the public prosecutor's office.[74] In this respect, it is also necessary to note the mechanism enshrined in Article 44 of the Act of 3 October 2008 on access to information on the environment and its protection, public participation in environmental protection, and environmental impact assessments[75] that stipulates that environmental organizations which, by reference to their statutory objectives, express their desire to participate in proceedings requiring public

Minister of Climate and Environment of 6 July 2021 on the Establishment of a Protection Plan for the Tatra National Park, hereinafter referred to as 'Tatra National Park Protection Plan').

[71] Rozporządzenie Ministra Klimatu i Środowiska z dnia 25 marca 2025 r. w sprawie ustanowienia planu ochrony dla Karkonoskiego Parku Narodowego (Dz.U. z 2021 r. poz. 882) (Regulation of the Minister of Climate and Environment of 25 March 2021 on the Establishment of a Protection Plan for the Giant Mountains National Park, hereinafter referred to as 'Giant Mountains National Park Protection Plan').

[72] Arts 127–131 of the Nature Conservation Act.

[73] Gruszecki (n 44); comment to Art 127.

[74] Arts 181–188a of the Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (Dz.U. z 2025 r. poz. 383, t.j.) (Act of the 6 June 1997– Penal Code).

[75] Ustawa z dnia 3 października 2008 r. o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko (Dz.U. z 2024, poz. 1112, z późn. zm.) (Act of 3 October 2008 on access to information on the environment and its protection, public participation in environmental protection, and environmental impact assessments).

participation, and provided they have been carrying out statutory activities in the field of environmental protection or nature conservation, shall be entitled to participate therein with full party status. Such organizations may be said to be custodians of national park ecosystems.

Consequently, the TRON of national parks are also claimable. Granted, there is no specific *actio popularis*; however, Article 24 section 1 of the Prevention of Environmental Damage Act stipulates that the environmental protection authority is obliged to accept a report of an imminent threat of environmental damage or actual environmental damage from any person. Indeed, this mechanism can be used to secure the TRON of national parks as well. Moreover, anyone who learns about a crime committed against nature not only may notify a prosecutor or the Police, but also has an obligation to do so.[76]

Enforceability of TRON is the following criterion presented by us. A director of a national park and the National Park Service are responsible for enforcing legal provisions on protection and restoration of natural resources located in national parks. The director participates in various activities aimed at achieving the statutory objectives of a national park, such as adopting protection plans, and thus indirectly provides enforcement of TRON. Also, orders issued by the director can be an instrument of putting TRON into force. When it comes to the protection of property and combating crimes and offenses, Park Guard officers who are a part of the National Park Service may be said to enforce TRON as well.

The last criterion is a legal recognition of TRON. Provisions concerning the establishment and operation of national parks (including those from which TRON can be derived) are contained in the Nature Conservation Act, and protection plans, being regulations of the Minister of Climate and Environment. In the Polish system of legal sources, statutes are the most important sources of law after the Constitution and ratified international treaties, while regulations, issued upon a statutory authorization, serve to implement statutes. Both the statutes and regulations are generally applicable and effective *erga omnes*.

Nevertheless, the relevant acts of law do not contain the phrase ‘rights of nature’ (if that be the case, we would discuss RON, not TRON, in Poland). Similarly, Polish case law, just as the EU case law, do not use the term, or portray the State’s or the public’s obligations towards nature in national parks as a counterpart to nature’s rights.[77] Thus, the only piece of a TRON puzzle is recognition of nature’s rights as such, even if they were to be indirect rights, named as such by the

[76] Art 304 § 1 of the Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego (Dz.U. z 2025 r., poz. 46 z późn. zm.) (Act of 6 June 6 1997 Code of Criminal Procedure).
[77] See also, Epstein, Bernet Kempers (n 12) 1355–1356.

judiciary, or even the jurisprudence. Since legal protection of national parks is both claimable and enforceable, it seems that it requires only a mental shift of lawyers to introduce TRON into the Polish legal system. As said before, TRON requires that the unique rights are derived from the specific provisions of the environmental law, instead of extending general personhood to the environment, or establishing a particular legal person. However, in the case of a national park in Poland, the TRON of a national park are left to be represented by a legal entity (state's legal person) named 'national park' (Article 8a section 1 of the Nature Conservation Act). Thus, even though ecosystems in national parks in Poland are not explicitly emancipated, their special (moral) status is somewhat alluded to by establishing a legal platform responsible for the conservation of ecological components located in a park, and the representation of the interests of a park. In our view, this only reinforces the TRON perspective.

VI. CONCLUSIONS

To conclude, the realist-positivist perspective allowed us to distinguish between philosophical and legal RON and, consequently, describe TRON. We successfully confirmed our thesis: TRON are conceptually and practically possible. They require the provisions of the environmental law to recognize the need for protection of nature perceived as a collective, but also said that protection is claimable and enforceable, and applied by public authorities.

To get back to the initial metaphor of Schrödinger's cat: in many instances, nature seems more alive through TRON than RON. In our reading of the Polish environmental law, national parks could be seen as vested with TRON, despite the lack of legal personhood for nature. The interpretation came down not to the law as it should be, but to the law as it is. Alternatively, it could be interpreted differently than so far.

To be clear, in this paper we are indifferent to the idea of RON, and especially the emancipatory, post-Enlightenment narrative of philosophical RON concerning extending moral and legal rights to non-humans.[78] Nevertheless, one cannot see some potential advantages of TRON in taking the environmental law seriously by judges and public officers, and potentially raising the status of nature in public morality.

[78] Roderick F Nash, *The Rights of Nature. A History of Environmental Ethics* (Madison: The University of Wisconsin Press 1989) 161–215.

David Boyd once famously declared RON 'a legal revolution that could save the world'.[79] Even if that is so, TRON appear to be a rather reformatory instrument. Nevertheless, even an evolution entails moving in some direction, either good or bad. Surely then, this potential of the thin rights of nature must be of value for the Earth jurisprudence.

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[79] David R Boyd, *Rights of Nature: A Legal Revolution That Could Save the World* (Toronto: ECW Press 2018) 280.

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