BUCHBESPRECHUNGEN / BOOK REVIEWS

Andreas Gutmann, **Hybride Rechtssubjektivität – Die Rechte der „Natur oder Pacha Mama" in der ecuadorianischen Verfassung von 2008**, Contributions on Comparative Public Law and International Law, Vol. 307, Nomos, Baden-Baden 2021, 309 pages, Hardcover, 89.00 Euro, ISBN 9783848782451.

The idea of granting rights to nature has been debated by legal scholars and practitioners for almost half a century. Much has happened since *Christopher Stone's* groundbreaking article "Should Trees Have Standing?"[1]. After decades of theoretical debate, rights of nature have been recognized by legislatures and courts in numerous countries, particularly in the Global South, over the past 13 years. The breakthrough in legal practice came with Ecuador's new constitution in 2008, which recognizes "Nature or Pacha Mama" as a legal subject and grants substantive rights to it in Articles 10 and 71 et seq. Not least in view of the global trend of implementation efforts, which also seem to experience a renaissance in Europe,[2] it is therefore worthwhile – in *Gutmann's* words – "to look for traces of a (...) rearrangement [of subjective rights] in the Ecuadorian constitutional order" (p. 16). The aim of his investigation is to find out how the Ecuadorian constitution "provides space and procedures for the negotiation of the rights of nature" (p. 49).

In his introduction, *Gutmann* initially warns against the dangers of ethnocentrism on the one hand and cultural relativism on the other when comparing constitutions, so as not to reproduce colonial patterns of interpretation (pp. 19 et seqq.). This said, *Gutmann* examines the colonial origins and elements of the Ecuadorian constitution and its rights of nature and places them in the postcolonial discourse, by also using indigenous examples and concepts

1 *Christopher Stone*, Should Trees Have Standing? Toward Legal Rights for Natural Objects, Southern California Law Review 45 (1972), pp. 450 et seqq.

2 In 2019 for example, a draft constitutional amendment to recognize the rights of nature was introduced into the Swedish parliament, for which the Ecuadorian constitution served as a model; in Germany, the Federal Working Group on Ecology of the Green Party in 2020 made the proposal to include the call for rights of nature in the party manifesto; in Bavaria, a petition for a referendum is currently being launched to enshrine the rights of nature in the Bavarian constitution; in German legal scholarship, too, the rights of nature are again increasingly being discussed and advocated, see e.g. *Michael Schröter*/*Klaus Bosselmann,* Die Robbenklage im Lichte der Nachhaltigkeit, Zeitschrift für Umweltrecht 16 (2018), pp. 195-205; *Andreas Fischer-Lescano*, Nature as a Legal Person: Proxy Constellations in Law, Law & Literature 32 (2020), pp. 237-262; *Jens Kersten*, Natur als Rechtssubjekt, Aus Politik und Zeitgeschichte 70 (2020), pp. 27-32; *Jasper Mührel*, Eigenrechte der Natur: Baustein für einen ökologischen Liberalismus im Anthropozän?, in: Mirko Bange (ed.), Rechtsfragen zum gesellschaftlichen und wirtschaftlichen Wandel im Jahr 2020, Göttingen 2020, pp. 179-196; *id*., Standing for Piglets: The Locus Standi of Non-Human Beings Under the German Constitution, Verfassungsblog, 09.06.2021; *Jula Zenetti*/*Hasso Suliak*, Sollten Wälder und Flüsse selber klagen dürfen?, LTO, 09.07.2021; *Elena S. Ewering/Andreas Gutmann*, Gibt Bayern der Natur Rechte?, Verfassungsblog, 10.09.2021.

such as the "ch'ixi" (pp. 34 et seq.). *Gutmann* concludes here that the Ecuadorian constitution re-contextualized Western concepts such as nature or legal subjectivity "in order to fundamentally transform their meaning by connecting them to concepts from indigenous cosmologies of the Andean and Amazonian regions" (p. 35). Against the background of the interculturality of the Ecuadorian constitution and its interpretation, the rights of nature or Pacha Mama were thus in permanent construction and only at the beginning of a process of negotiation (pp. 44 et seq.). The introduction especially exemplifies *Gutmann's* sensitivity for social contexts and thus his differentiated approach, which is indispensable for a fruitful comparative legal analysis, especially in the context of (post-)colonialism.

The first of six chapters deals with the background of Ecuador's rights of nature. After an overview of the constitution's genesis and, in particular, the process of incorporating the rights of nature into the 2008 constitution, in which *Gutmann* emphasizes the heterogeneity of the actors involved (pp. 60 et seq.), he identifies three currents influencing the rights of nature: (1) Latin American *neoconstitucionalismo*, which distances itself from pure individualism and attaches greater importance to the environment; (2) the heterogeneous concept of *sumak kawsay/buen vivir*, which *Gutmann* interprets as a hybrid and indigenous concept (pp. 81 et seq.); and (3) the global rights of nature movement, which began with *Christopher Stone's* article and which with the seal case[3] also left its mark in Germany. Regarding the global movement as an influencing factor, *Gutmann* even states that the emergence and shaping of the Ecuadorian rights of nature were "the product of a global discourse" (p. 84).

Since the Ecuadorian constitution in Art. 71 (1) only speaks of "Nature or Pacha Mama" as a rights holder and does not contain any definitions of these two concepts, *Gutmann* devotes the second chapter to specifying the natural entity that is entitled to rights according to the Ecuadorian constitution. At the outset, with reference to the wording that explicitly puts nature and Pacha Mama side by side, he makes clear that "neither only an indigenous nor only a Western understanding of nature or non-human environment can be taken as a basis" (p. 103). In the following description and contextualization of the concept of Pacha Mama ("Mother Earth" or "Mother Cosmos", cf. pp. 110 et seqq.) *Gutmann* takes a critical distance to the natural sciences by placing indigenous cosmovisions at the same level with "western [sic] natural sciences" as an explanatory model for the environment, without, however, going into detail about their differences in the acquisition of knowledge. Thereby it also remains unclear why the indigenous conception of nature as a goddess should be more than a concept based on faith (p. 109). *Gutmann* then argues, on the basis of a rather ideological-religious assumption of Pacha Mama's far-reaching ability to communicate, that it was more obvious to grant rights to her "than to the abstract and ultimately diffuse concept of 'nature'" (p. 119). At the same time, however, he states that Pacha Mama was an "extremely complex term that can hardly be translated" (p. 111).

3 *Hamburg Administrative Court*, decision of 22.09.1988, Neue Zeitschrift für Verwaltungsrecht 7 (1988), pp. 1058-1061.

In contrast to the Pacha Mama concept, *Gutmann* defines "nature" in the sense of the Ecuadorian constitution as a Western, scientific concept and, according to a systematic interpretation, identifies the legal subject of nature as the entirety of ecosystems, of which also humans were part.

Gutmann's critical distance from the natural sciences is most explicit in the negotiation of the different views of the non-human environment that concludes the chapter, in which he warns against "[e]pistemic violence through scientization of indigenous knowledge" (p. 138). Through scientization, "Western science" would claim interpretive sovereignty over indigenous, "subaltern" forms of knowledge and thus violently suppress them. However, not only the role of non-Western, including Ecuadorian, natural science remains undiscussed. Above all, what is missing is a basic examination of the questions of what is to be understood by "forms of knowledge", whether there are even several of them, and how they differ from one another. What distinguishes natural science from indigenous knowledge or indigenous cosmovisions? Because of the different epistemological approaches, are there also several differing truths or alternative facts concerning nature? (How) do knowledge and belief, truth and worldview differ? – These are questions that are currently shaping debates in science, philosophy and politics worldwide and are also relevant for the basic concern and understanding of the present work. Not least because of the practical relevance of these questions for environmental protection, but also in order not to expose oneself to the accusation of cultural relativism, against which *Gutmann* himself warns (p. 20), a discussion and contextualization of epistemological approaches would have been of great benefit.

At the conclusion of the second chapter, despite the identified contrasts between nature and Pacha Mama, *Gutmann* manages to relate the different perspectives on the nonhuman environment to each other rather than contrasting them in isolation. To do this, *Gutmann* emphasizes the commonality of the scientific ecosystem approach and the Andean thinking in relations to protecting interdependencies between natural entities. Against this background, the rights of nature in the Ecuadorian constitution entitled different natural entities as wholes and their internal equilibrium or the continuity of their reproductive processes (p. 144).

Chapter 3 then addresses the question of what legal form this entitlement takes. The starting point for this analysis is the ambiguous relationship under the Ecuadorian constitution between the "diffuse and ubiquitous" Pacha Mama and the Western concept of legal subjectivity, which is characterized by definability and delimitability (p. 145). *Gutmann* analyzes this concept comprehensively, adopts a modern technical and relational understanding of legal subjectivity detached from the human being, and provides evidence of this understanding in the Ecuadorian constitution. Consistently, he concludes that the Ecuadorian constitution had succeeded in "appropriating and creatively expanding the [colonial] concept of the legal subject" by extending it to elusive entities such as nature or Pacha Mama (p. 179).

Chapter 4 examines the representation of nature in asserting its rights under the Ecuadorian constitution. In doing so, *Gutmann* makes clear that in the "intercultural state" of the Ecuadorian constitution, to enable the articulation of different forms of knowledge, there should not be a single form but rather multiple forms of representation (p. 183). *Gutmann's* skepticism towards "Western scientists" is also evident here, as he warns against their possible claim to speak on behalf of nature, which would risk creating a sovereignty of definition and thus creating "a certain nature" (p. 183). Here, too, however, a simple reference to "special knowledge" of shamans omits a definition and contextualization of (forms of) knowledge.

With reference to the many potential representatives of nature or Pacha Mama entitled by Art. 71 (2) of the Ecuadorian constitution, and assuming that the supposed interests of nature are first defined and constructed by the respective human representative (p. 194), *Gutmann* concludes "that the representation of nature or Pacha Mama (before the court) always creates a human-nature hybrid", that nature was only constituted through representation, and that in this way the number of (represented) natures "can multiply ad infinitum" (p. 198). Following on from the criticism above, the question arises here whether "nature" is indeed something humanly conditioned and constructed and thus something infinite. Thus, the impression remains that, depending on the worldview, anyone can construct his or her "own" nature and then represent it.

Gutmann attentively points out the danger of abuse inherent in representation and the dependence on financial means, and therefore, using the example of Colombian jurisprudence, calls for a "radical plurality in the presentation of the legal subject nature" (p. 204), the concrete form of which he discusses in chapter 6.

After Chapter 5 analyzes the substantive content of the rights of nature or Pacha Mama on the basis of the different provisions of Articles 71 et seq. of the Ecuadorian constitution, Chapter 6 deals with the practical arrangement of the relationship between the rights of nature and other constitutional rights. Clarification of this relationship is necessary because the new rights of nature or Pacha Mama may conflict with other rights and therefore require legal delineations and balancing (p. 224). In the first part of the chapter, *Gutmann* points out general dangers of the juridification of nature. For example, the (legal) subjectification of nature could lead to a reinforcement of the colonial human-nature dichotomy or to its exploitation, if it were subjected to market logics and seen only as a service provider. *Gutmann* then shows in the second part of the chapter, however, that the Ecuadorian constitution overcomes these "pathologies" by not simply expanding the circle of rights holders, but by reordering the understanding of (subjective) rights. Thus, rights of nature and human rights were not simply isolated and dichotomously juxtaposed, but put in relation to each other (p. 245). This admittedly resulted in a tension between the greatest possible consideration of all parties involved and the reduction of complex conflicts to enable appropriate legal decision-making (p. 250). However, with reference to instruments of the open and participatory Ecuadorian (procedural) law, *Gutmann* then illustrates how Ecuadorian law created a space for the fruitful negotiation of the complex conflicts.

In the concluding section, *Gutmann* highlights that the rights of nature of the Ecuadorian constitution negotiated irresolvable contradictions and thereby hinted at the "transformations that a postcolonial law (...) can initiate". Through their plurality, interdependence, lack of hierarchy, and processuality, they irritated the law as a whole and stimulated a redefinition of outdated concepts (p. 264). *Gutmann* thus succeeds in nothing less than defining and conveying a fundamental expansion of the legal horizon. Not least the high proportion of evaluated Latin American literature and jurisprudence already shows that *Gutmann* offers a comprehensive and in-depth analysis of the rights of nature in the Ecuadorian constitution, which are often cited in other non-Spanish-language literature, but rarely examined in detail. Thirteen years after the adoption of the Ecuadorian constitution, *Gutmann's* "Hybride Rechtssubjektivität" thus represents a novelty that already ranks among the indispensable German-language works on the rights of nature. And although *Gutmann* deliberately limits himself to Ecuador (p. 99), he opens the perspective for the further global negotiation of the rights of nature. After all, and as *Gutmann* also suggests (pp. 98 et seq., 264), these have considerable potential, via transnational dialogue, to reshape the hitherto unbalanced, Western-dominated human-nature relationship in the Anthropocene, for which the states of the Global South and their legal systems can serve as models.

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