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The Nomos of the Water: Indigenous Narrative Identity Claims to Justify Granting Legal Personhood to a River

Abstract: This article, anchored in Indigenous narratives, identifies the core arguments for granting juridical personhood to rivers and appointing Indigenous citizens as their legal guardians. The core arguments are as follows: for Indigenous peoples, dwelling on riverbanks is a matter of identity. This identity manifests itself through various interpersonal practices, including language – thus, narratives – and caring. The analysis of sampled narratives has uncovered valid rationales for granting legal personhood to rivers due to identities common for rivers and their dwellers, rivers' specific capabilities, and their actantial features (rivers can act). Both legal personhood for rivers and Indigenous dwellers being in the role of their legal guardians are unique legal institutions to fulfil the critical interests and capabilities of rivers at a time when these fragile ecosystems are under threat. We illustrate this by using the Amazon and Oder rivers as examples and referring to the Yanomami's and Olga Tokarczuk's narrative accounts.

Keywords: Amazon and Oder rivers, dwelling, granting legal personhood to rivers, indigenous narrative identity, Yanomami and Tokarczuk narratives

Introduction

Celestial Law [Nomos] [...] the seal which stamps whatever the earth contains, and the liquid plains [...] for thy command and alone, of all that lives, order order and rule to every dwelling gives. (Orphic Hymn 63 to Law [Nomos])

In this article, we argue in favour of giving legal personhood to rivers whose guardians would be the Indigenous inhabitants of the riverbanks. We want this idea to be accepted and no longer considered absurd (Jonas, 1984). *Ribeirinhos* are the native inhabitants of dwellings identical to riparian *oikoi*, i.e. dwellings at the interface between land and a river. In Indigenous contexts, belonging to these specific *oikoi* takes on a unique sense and stands for non-anthropocentric identities expressed in related narrative practices. In turn, the concept of *nomos* could be useful in addressing why a human's belonging to a specific habitat is rooted in natural law (Cajete, 2000; Saile, 2000), as is increasingly noticed by legal institutions. For Schmitt (2006), the concept of *nomos* is irreducible to law and norm; it encompasses the 'law of life', the 'soul of the whole', a 'circle of people', and a 'spatially concrete unity' (see also Ronda, 2013). Nonetheless, we do not wish to explore Schmitt more broadly, as he glorified the supremacy of 'the European spirit' in the context of colonial *occupatio*, thus outlawing and – in terms of spatiality – displacing Indigenous peoples from their primordial *nomoi*.

Indigenous identity is indissociable from the habitat or *oikos* as well as from the natural law governing individual and communal life forms in that habitat (rather than, for example, being displaced from and dispossessed of it). This inseparability finds articulation in Indigenous narratives. The life worlds and life forms cultivated in dwelling in such places include a variety of interhuman practices, including language – thus, narratives – and caring (Peters & Irwin, 2002), in terms of environmental stewardship and river management. Because the 'narrative identity mediates between "what is" and "what ought to be" [...] it occupies a middle ground between neutral description and ethical prescription' (Laitinen, 2002, p. 58).

In this respect, narratives are essential for justifying the rights of nature in the campaign for granting legal personhood to rivers and the appointment of their native dwellers as their legal guardians. At the same time, these narratives must not be decontextualized (and, respectively, appropriated) by universal narratives or theories of law (Herb, Falardeau & Talano, 2023; Ioris, 2019; Johnson & Larsen, 2013; Pearce & Pualani, 2008; Smith, 1999; Stedman, 2003). We will examine examples of Indigenous narratives in their original semantic horizons to identify valid arguments in

favour of granting legal personhood to rivers and making Indigenous citizens their legal guardians. Once granted legal personhood, the river is protected and humans cannot readily destroy its ecosystem, as the river is presumed to be a vital part of both cultural identity and the Earth's hydro – and biodiversity.

1. Why narratives?

Indigenous narratives contain unique imaginaries, values, and truths about an Indigenous community's belonging to its unique natural habitat. Narratives are not only integral to a community's identity and place in the world (Iseke, 2013; Norman, 2017); they also include original legal traditions (Goldtooth, 2017; Napoleon & Friedland, 2016) and offer normative arguments to challenge existing legislation when the latter fails to deal with serious environmental degradation (Fabio, 2023; Garnett, Burgess, Fa et al., 2018; Morris & Ruru, 2010; United Nations, 2009) or socio-economic and cultural devastation striking Indigenous communities (Lear, 2006).

Approximately 5,000 Indigenous people groups live worldwide (476 million people – around 6.2% of the global population). Indigenous narratives voice 'the quest for self-determination' (Kramm, 2020, p. 311). This occurred over centuries in colonial circumstances, whereas in postcolonial contexts, 'Indigenous legal traditions are fundamentally about Indigenous citizenry, self-determination, and governance. They contain the intellectual resources and tools for public reason and deliberation essential for addressing the internal and external challenges that Indigenous communities face today' (Napoleon & Friedland, 2016, p. 727). The campaign for reinvigorating Indigenous legal traditions is gaining momentum (Sujith, Jacobs, Waboose et al., 2021), which is meaningful because dominant or majority interests continue to violate bonds and belonging. These violations are both economic and ecological, such as establishing conservation areas at the cost of the displacement and dispossession of, and discrimination against, native inhabitants.

It is thus imperative that the validity of Indigenous narratives be recognized if legislation on Indigenous territories – including complex and fragile aquatic ecosystems – is to be more democratic. In this regard, 'nonrecognition or misrecognition [of Indigenous reasons] can inflict harm [and] can be a form of oppression, imprisoning one in a false, distorted, and reduced mode of being' (Taylor, 1992, p. 26). Understanding and recognizing the narratives in question (Akhtar, 2023) would be a preliminary step towards a more democratic and decolonized justice free from epistemic and hermeneutic injustice (Fricker, 2007; Helenius, 2016; Taylor, 2012). Addressing the recognition of rights, philosophy itself becomes a 'discourse of recognition' (Ricoeur, 2005, p. xi). Besides identities and belonging, the narratives in question articulate responsible attitudes of native dwellers towards their *oikoi*. Self-governance and legal institutions founded on the recognition of such narratives include local,

regional, and global river or water parliaments and aquatic embassies that involve native citizens (Berros & Brara, 2022; Liedloff, Woodward, Harrington et al., 2013; Whiteside, 2013).

2. Why rivers?

Many rivers still bear colonial names. This hydronymy (a branch of toponymy, the naming of geographical features, dealing with the study of the proper names of water) has become the subject of hydrocritical studies (Baumgartner, 2022; Hofmeyr, 2019; Hofmeyr, Nutall, & Lavery, 2022; Moraña, 2022; Winkiel, 2019; Biolik, 2018). But, in addition, rivers are at risk of destruction by companies and policies interested in extraction from rivers located in Indigenous territories – especially mining, the damage from which, in regions like the Amazon, is associated with drug trafficking and environmental crimes, including the assassination of Indigenous leaders and human rights defenders.¹

Further invasive factors are rapid industrialization (Rabelo Quadra, Oliveira de Souza, Dos Santos Costa et al., 2017; Roveri, Guimarães, Toma et al., 2020), urbanization (Duarte-dos-Santos, Cutrim, Ferreira et al., 2017; Montagner, Jardim, Von der Ohe et al., 2014), and agriculturalization (Storck, Blank do Amaral, da Cruz et al., 2022). As the land's natural resources run out, the next in line for extraction are river basins and the seabed. With an example, knowing the length of the rivers (e.g. the Amazon, at 6,387 km; the Paraná, at 3,998 km; the Iguazu, at 1,320 km) and the number of First Nations (ca. 300) in Brazil, one may realize the scale of the problem. Today in Brazil, there are more than 100,000 km of polluted and contaminated rivers (Montiel, 2023), while at the same time, river basins belong to the most important Indigenous areas. The 1977 Water Law (9433/97) attributed only economic value to water, while conveniently forgetting that a river's water also has ecological, social, cultural, and spiritual value.

The 1988 promulgation of the Constitution of the Federative Republic of Brazil did not amend this anthropocentric perspective (Arts. 170, 225), and the right to use rivers for economic purposes was reiterated (Art. 43). This right was also extended in the same way to Indigenous people (Art. 231). Rivers are generally protected, albeit only because of their economic value. In addition, Law No. 12651 of 25 May 2012, also known as the new Forest Code, established general rules on the protection of native vegetation; its original text was soon changed, however. Environmentalists' criticisms of these changes concerned, among other things, the reduction of riparian forests (on riverbanks), which would directly harm the life of rivers.

1 Examples include the assassinations of Chico Mendes, Sister Dorothy Stang, and, more recently, journalist Dom Phillips and Indigenous activist Bruno Pereira in June 2022, not coincidentally while navigating the Itacoai River in the Javari Valley, Amazonas, where their bodies were hidden.

Poland's river resources are proportionally more modest than Brazil's (the two longest rivers in Poland are the Vistula, at 1,047 km, and the Oder, at 854 km), but the scale of danger is comparable. Communities and activists have been campaigning for the legal personhood of Polish rivers since 2022, when nearly 90% of life in the Oder was destroyed by a massive golden algae bloom stimulated by saline discharges from mines (Szlauer-Łukaszewska, Ławicki, Engel et al., 2024). The Polish Water Law of 20 July 2017 'rules the management of water by the principle of sustainable development, in particular the shaping and protection of water resources, the use of water and the management of water resources', but it has utterly failed in the face of the ecological disaster of summer 2022 (Sutowski, 2022).

3. Legal personhood for non-human entities

The legal personhood of corporate and organizational bodies, companies, municipalities, and so on has been recognized since ancient Rome in terms of 'business and non-business entities' (Patterson, 1983, p. 87), *universitas*, *societas*, and *corpus* with 'inherent and granted rights'. The 'Roman corporate formula saw these nonhuman legal entities afforded capacity of action, judicial capacity, proprietary capacity, and tortious capacity' (Gramitto, 2018, pp. 9, 11). Modern scholars have continued to confirm the conventional nature of non-human legal personhood: 'The corporation body (*Körperschaft*), as a real collective entity, is not only legally competent, but also capable of will and action' (Gierke, 1887, p. 603). To Dewey, 'what "person" signifies in popular speech, or in psychology, or in philosophy or morals, would be [...] irrelevant from the perspective of the real personality of corporate bodies' (1926, pp. 656–657). We mean here 'persons' other than physical human individuals (i.e. abstract and conventional ones); Gierke (1887) gave the example of a university able to act coherently as one organism. Conventionality means that the constitutionalization of legal personhood and standing (Stone, 1972), or so-called 'environmental constitutionalism' (Darpö, 2021, p. 11) for environmental entities, is not necessary. Also, there is no need to amend a constitution, which is a vital point of fact in instances where legal systems resort to this alleged barrier to prevent such changes (for instance, in Poland).

Since 2017, the Earth Law Center and the Universal Declaration of the Rights of Rivers have encouraged states, communities, and Indigenous peoples to take the initiative to legislate for the juridical personhood of rivers: 'Aware that all people, including Indigenous communities and other local communities of all spiritual faiths, have long held through their traditions, religions, customs, and laws that nature [...] is a rights-bearing entity, and that rivers in particular are sacred entities possessing their own fundamental rights', the Declaration states that all rivers are entitled to the fundamental rights to flow, perform essential functions within its ecosystem, be free

from pollution, feed and be fed by sustainable aquifers, and to have native biodiversity, regeneration, and restoration.

To ensure full implementation and enforcement of these rights, each river shall be entitled to the independent appointment of one or more legal guardians that acts solely on behalf of the river's rights and who may represent the river in any legal proceeding or before any governmental body empowered to affect it, with at least one legal guardian being an indigenous representative for those rivers upon which indigenous communities traditionally depend. (Art. 3)

The legal institutions capable of effectively implementing and enforcing these rights precisely include the legal personhood of a particular river. In turn, rights, interests, and capabilities make up the legal standing of the river (Putzer, Lambooy, Jeurissen et al., 2022). In this context, rivers should be defined as (a) integral organic-inorganic wholes (Universal Declaration of the Rights of Mother Earth, 2010) and (b) hydro-social wholes (to be discussed below). Indigenous people of the river basins play a prominent role in setting up this institution. Many countries have already granted inherent rights and legal personhood to certain rivers, following the voices of Indigenous citizens as both justifiers of the rivers' rights and 'guardians' or 'nature advocates' representing them *ad litem* (Takacs, 2020, p. 47–55; also see Eckersly, 2011; Berros, 2017; Blake, 2017). Brazil (Second Brazilian Forum on the Rights of Nature, 2023) and Poland (Bieluk, 2023; Bieluk, 2020) are struggling to achieve comparable legislation, with activists developing draft bills on legal personhood for the Oder, signing petitions, and appealing to legislators and the president (Osoba Odra, n.d.a; Osoba Odra, n.d.b).

4. Indigenous narratives on rivers in Brazil

In Brazil, despite 300 Indigenous groups and the enormous diversity of nature, socio-environmental narratives were for a long time overshadowed by colonial narratives. Many original narratives have only recently come to voice, as Indigenous people advocate for environmental justice while taking into account their right to their native *oikoi* and the rights of these *oikoi* as such (Sato, Silva & Jaber, 2014). A distinct voice of this kind belongs to the Yanomami people, who have a unique narrative regarding the birth of rivers. In the opening of the book *The falling sky*, the shaman Davi Kopenawa recalls how the rivers are linked to the very conception of the origin of his people. The Yanomami are descendants of the rivers: 'I am a child of the inhabitants of this land from which the rivers flow, of these people who are the children, sons-in-law, and daughters-in-law of Omama' (Kopenawa & Albert, 2013, pp. 12–13; also see p. 82). Omama is a demiurgic force responsible for the creation of the universe, said to have an intimate relationship with the aquatic monster Tëpërësiki, the owner

of plants. The first shaman is Omama's son; the voice of the father, therefore, guides him. For the Yanomami people, not only do rivers have spirits, but the shaman also establishes a direct relationship with them, and he can see the magnificent images of ancestral rivers (Kopenawa & Albert, 2013, p. 25). We can see how the Yanomami narratives reinforce the idea of rivers as their origin and, at the same time, express the idea that the voice of Indigenous peoples is nothing other than the voice of the rivers themselves, which speak through the shamans guided by the spirits (*xapiri*). Omama tells us to care for and not destroy nature (Kopenawa & Albert, 2013, p. 24).

Ironically, just as rivers are sources of life, they can also bring death, as they are the path taken by colonizers (e.g. navigators and conquistadors like Vicente Yáñez Pinzón on the Amazon in 1500, missionaries, prospectors, and all the 'whites'): '[W]ithout our knowledge, outsiders decided to travel up the rivers and penetrated our forest' (Kopenawa & Albert, 2013, p. 17). It was through the river that the colonizers arrived, and with them, the epidemics. With the diseases, the Indigenous people die, and the shamans die, meaning they are no longer able to heal their people. The death of the river ultimately leads to the 'falling of the sky' precisely because there is no longer anyone to sustain it.

The origin story, in this case, transforms into a narrative of death, a story of destruction, according to which people die because the rivers and the forest have died. The Yanomami, deprived of their rivers that give them life, tell the story of their own death:

But the white people ignore that. They cut down and burn all the trees to feed their cattle. They dig in the beds of the watercourses and destroy the hills to look for gold. They blow up the big rocks that stand in the way of opening their roads. Yet hills and mountains are not simply put down on the ground, as I have said. These are spirit dwellings created by Omama! But these are words that the white people do not understand. They think that the forest is dead and empty, that 'nature' is there for no reason and that it is mute. So they think that they can take it over to destroy the houses, paths, and food of the *xapiri* as they wish. (Kopenawa & Albert, 2013, p. 390)

These are narratives of a feeling of dread in the face of the death of nature, like Calmet's (2018) *solastalgia* (suffering from the degradation of nature and the loss of the sense of belonging to it) and the 'suffering of destruction', the opposite of 'topophilia' (Albrecht, 2019; Albrecht, 2020; see also Schultz, 2023). The meaning of these narratives of origins has been revived by Krenak, a Brazilian Indigenous writer. He states that rivers are endowed with a 'magical force', which is particularly evident in the case of the River Amazon, *who* (not *which*) 'carries in itself many other rivers, but also the water that the forest offers to the clouds, and that the rain returns to the

earth, in that marvelous cycle in which the waters of the rivers are those of the sky, and the waters of the sky are those of the river' (Krenak, 2022, p. 10).

It is worth noting that such Indigenous narratives consider rivers as endowed with life, spirituality, and personhood (Krenak, 2020a, p. 40; Krenak, 2022), shared with the whole of nature. Further, rivers are endowed with agency, which also explains their vulnerability to human intervention. According to Indigenous narratives, who (not what) are the rivers? They are the ancestors of the people native to the riverbanks; they are embodied beings capable of uttering (Krenak, 2020b, p. 20; Krenak, 2022, pp. 8–12).

Indigenous narratives regarding rivers as *persons* challenge Brazil's present-day legislative framework, which still deals with the problematic effects of the 'modern revolution' that both removed humanity from nature and disregarded nature's intrinsic vitality, validity, and personhood, thus setting the conditions for its exploitation (Krenak, 2020a, p. 49; Krenak, 2022, p. 12). By voicing rivers' identities and agency, Indigenous narratives provide an alternative path to imagining and designing our future beyond modern reductionism (Krenak, 2022, p. 8).

What do the rivers tell us? Rather than teaching us something about *them*, they help us understand *ourselves*. They mirror who we are and who we wish to become (Krenak, 2020b, p. 42). This entails substituting an ego-centred view of the subject with a relational one that is also capable of revitalizing and conscientizing humanity. 'Beyond the idea of "I am nature", the awareness of being alive should pass through us in such a way that we are able to feel that the river, the forest, the wind [...] are our mirror in life' (Krenak, 2020b, pp. 99–100). For this and related Indigenous narratives, one can easily find a philosophical *pendant*. Heidegger addressed dwelling with proximity and belonging to earth, as well as with caring for it, saying:

'on the earth' already means 'under the sky'. Both of these *also* mean 'remaining before the divinities' and include a 'belonging to men's being with one another'. By a *primal* oneness the four—earth and sky, divinities and mortals—belong together in one. Earth is the serving bearer, blossoming and fruiting, spreading out in rock and water, rising up into plant and animal. When we say earth, we are already thinking of the other three along with it, but we give no thought to the simple oneness of the four. [...] Mortals dwell in that they save the earth—taking the word [...]. Saving does not only snatch something from a danger. To save really means to set something free into its own presencing. To save the earth is more than to exploit it or even wear it out. Saving the earth does not master the earth and does not subjugate it, which is merely one step from spoliation. (1971, p. 147-148)

5. Indigenously inspired literary narratives on rivers in Poland: Olga Tokarczuk

Olga Tokarczuk joined the civic campaign I Recognize the Oder River as a Legal Person after the 2022 ecological disaster on the Oder (Szlauder-Lukaszewska, Ławicki, Engel et al., 2024). The Nobel laureate believes that the importance of the river for life, history, and culture cannot be fully articulated in ‘realistic or pragmatic language’. In contrast, the ‘metaphorical, analogous [...] totemic’ storytelling could unveil more. The essentials of the river can be identified 1) in its ‘natural structure’ and ‘natural community’ of the fluvial life, 2) in the language of the river and the creatures living in it, and 3) in the river’s ‘mythosystem’ and ‘some kind of spirit’ in which ‘we participate as humans’. She says that the Oder has a ‘memory’ and ‘a history to tell. [...] If only we could understand its language [...] The fish, the beavers, the birds would have a different, nonhuman but as powerful and significant story as ours’ (Tokarczuk, 2023, 4:27–11:50; 18:24–18:30; 19:24–19:38)². Humans can hear the Oder’s voice insofar as they *are* nature. ‘It also gives life to various mythological entities’ (Tokarczuk, 2023, 17:55–17:57). However, it is not the river itself but human creativity that generates its unique sense in literature, art, and philosophy and that creates ‘new language’ and opens ‘new doors’ (Tokarczuk, 2023, 34:35–34:42) to ‘unveil something hitherto unnoticed’ (Tokarczuk, 2023, 36:46–36:49). Tokarczuk advocates new literature, philosophy and art that have already left behind dualistic assumptions about man and nature and develop new tools to revise our thinking about nature as something chaotic, worthless, or radically different from man. The writer herself sets out to find such a new point of view in each of her upcoming books.

Being native to the Lower Silesia and the Oderland, Tokarczuk believes that the river’s organism – its ‘wetlands, meanders and deadlands’ – transcends an individual animal or plant organism. This extended living totality embraces humans and communities that were supposed to exclude themselves from nature for centuries, according to anthropocentric and dualistic doctrines. ‘The river is our larger body [...] we unconsciously take part and are embodied in it [...] the body, the landscape, the environment is alive’ (Tokarczuk, 2023, 13:32–13:40). Similarly, the river itself is alive. She confides:

I have the same river in my memory and body cells [...] the blood vessel that carries water from the mountains [...] resembles a nervous system or a vascular system [...] an analogy to the liquidity of life itself, our position in the world. [...] Are they not the most natural lands in which we live, more stable than extremely

2 The selection and translation of extracts from the interview conducted by Robert Rient with Olga Tokarczuk (2023) were made by the authors of the article. Once English subtitles appeared in the interview, the translation was revised.

fleeting states, politics, things invented by man? (Tokarczuk, 2023, 2:19–3:34; also see Tokarczuk, 2003 and 2022).

Tokarczuk further explains that the river's feminine nature derives from its watery element. Any technical perforation of the body of a river to regulate its current, bed, banks, etc. impairs its integrity. Noticeably, compared to many indigenous narratives, for Tokarczuk, the river – not the earth – is considered 'Mother', the 'maternal refuge', and the godlike 'power' (Tokarczuk, 2023; also see Finzer, 2015).³ The Oder 'has no gender, yet she is relentlessly and unconditionally feeding and giving' (Tokarczuk, 2023), which characterizes the fertile, caring, feminine element. The feminist perspective is visible in Tokarczuk's association of the Oder's drying meanders and the old bed with passing and dying. Overregulation, exploitation, and contamination destroy the river's existence and identity.

In her essay *The power of the Oder*, Tokarczuk (2003) addresses the governance of the river. It is not time and space that govern it; it is the river who governs us and keeps the land in a stable, safe place. In *Flights*, she refers to the Oder as a viscountess compared to the Amazon, who is considered the queen of rivers: 'It wasn't a big river, only the Oder, but I, too, was little then. It had its place in the hierarchy of rivers, which I later checked on the maps – a minor one, but present, nonetheless, a kind of country viscountess at the court of the Amazon Queen' (Tokarczuk, 2017, p. 14). Tokarczuk gave both her native and her literary voice to the Oder to support the grassroots campaign in favour of granting the river legal personhood. Both native and poetic narratives are rooted in dwelling in *oikoi* (Peters et al., 2002). From Tokarczuk's narrative emerges the multiple yet non-anthropomorphic identity of the river in terms of an integral and inalienable Oderland to offer dwellings to humans and non-humans. The narratives dedicated to the Oder have usually been historical (Fontane, 1987), political (Ławicki, 2023), ethnographic (Herrmann, 1830; Horoszko, 1997; Simonides & Smolińska, 2018), or fictionalized (Springer, 2023).

In contrast, Tokarczuk displays the river as, to quote Smith, 'part of human culture, human religion, and daily life, and yet its influence is not a human invention. It is hydro-social' (i.e. it connects water with society while respecting inherent power relations) (2017, p. 2; also see Swyngedouw, 2009; Immovilli, Reitsma & Roncucci, 2022), as so many Indigenous stories depict it. Nevertheless, it is not about any water, but a specific river with which Tokarczuk identifies as a native dweller at a time when Indigenous identity narratives have been muted by the region's turbulent demographic history. Furthermore, for Tokarczuk, the river (and water) manifests its agentic and actantial features. As a sidenote, Latour (1996; 1998) posits that agency

3 'To write about women and water is really impossible' (Kattau, 2006, p. 114); however, new materialist (Smith, 2017), ecofeminist (Darling, 2012; Gaard, 2001), and indigenous accounts promote hybrid ontologies.

can be extended to non-humans, called *actants*, thus removing the role of intent that is part of human agency. 'In short, *water acts* [without intent]. Following Latour, *water is an actant*. Furthermore, other non-human things act upon water: other species, urban infrastructure, biogeochemical cycles, and so on' (Schmidt, 2014, p. 221). In parallel, according to Indigenous wisdom, rivers and water manifest actantial features (e.g. Rosiek, Snyder, & Pratt, 2020). Relationships between the actants are complex and require effective legislation – without discriminating against water. After all, the law is relational in nature (Jeuland, 2023). The change in cognitive perspective towards nature in literary storytelling, philosophy, art – and science – addressed in Tokarczuk's interview – clearly leads in the same direction: 'the European tradition is that when we grow out of a law, then we write a new law [...] in the case of such a new law [...] it is effective to argue [...] we can also appeal and apply arguments such as I tried [...] to do, namely psychological, ecological, mythological, spiritual' (Tokarczuk, 2023, 40:08–45:27).

6. Dwelling as an Indigenous capability

Capabilities can be identified and conceptualized when people embody a certain preference whose fulfilment is relevant to their well-being, flourishing, and quality of life (Nussbaum, 2006). Flourishing (i.e. active engagement with life and realization of human potential) rather than welfare (i.e. a judgement of how personally satisfying a result is for someone, its subjective utility) is supposed to be an indicator of justice. A distinct capability requires access to specific goods, opportunities, and entitlements. Not simply housing but rather *dwelling* belongs to humans' key preferences, and its fulfilment can be critical. Dwelling may include material (e.g. utility, comfort, and luxury), environmental, relational (Deplazes-Zemp & Chapman, 2021), symbolic, cultural, spiritual, and existential values (Cloud & Redvers, 2023), as the previously mentioned Indigenous narratives demonstrated.

The Declaration on the Rights of Indigenous Peoples (United Nations, 2007) recognizes 'the urgent need to respect and promote the inherent rights of Indigenous peoples which derive from their political, economic and social structures and their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources [as well as their control] over developments affecting them and their lands, territories and resources'. Accordingly, states shall redress for 'any action which has the aim or effect of dispossessing them of their lands, territories or resources' (Art. 8). The Declaration continues: 'Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return' (Art. 10). The UN also emphasizes that 'Indigenous Peoples are in-

heritors and practitioners of unique cultures and ways of relating to people and the environment' (United Nations, 2023).

On the entitlement side, international conventions safeguard the Indigenous ability to dwell in native *oikoi*. However, only domestic legislation can effectively help to fulfil this capability. That said, it is possible to address the capabilities of nature itself. Although Nussbaum (2022) operationalizes a capability approach (CA) for animals, basic capabilities, such as a detoxification capability (Reid, Mooney, Cropper et al., 2005, p. 117) or the more general ecological health capability, can also be identified for vulnerable ecosystems, in particular hydro-social ones (Linde, Sjödin, Parida et al., 2021). These vulnerable ecosystems are inhabited by multi-species sentient creatures (Nussbaum, 2022). In aboriginal riverine ecosystems, a symbiosis of many human and natural capabilities occurs per se, and 'the capabilities of people [...] act in accordance with their esteem for natural entities' (Deplazes-Zemp et al., 2021, p. 21).

Although legislation should safeguard this accordance from discord, it is deficient if it does not protect greater and integral *oikoi*. 'The by-products of our industrial life do harm to many species, including our own, but at what point does this rise to the level of wrongful damage?' (Nussbaum, 2022, p. 51). Because an *oikos* and its dwellers can suffer harm and injustice, they need a 'multivalent justice' (Edwards, Reid, & Hunter, 2016) that is sensitive to individual *and* joint capabilities. At the same time, collective and shared capabilities are 'more than the sum capabilities' (Schlosberg & Carruthers, 2010, p. 17). The latter aligns with the original CA limited to individuals – however, 'environmental injustice is not simply an individual experience' (Schlosberg & Carruthers, 2010, p. 17). Ecosystems with juridical personhood get individualized status within a pluralized justice system (Schlosberg, 1999).

7. Justifying legislation for water due to its actantial features

In general, the justification for legislation in favour of granting legal personhood to a river can be at least twofold. First, it can be top-down, and within that, it can be 1) international, in terms of the Declaration on the Rights of Indigenous Peoples (as shown in the previous section), and 2) constitutional, if the constitution already imposes certain obligations on citizens. Second, granting legal personhood can be bottom-up, communal, and democratic, once the constitution obliges each citizen to care for their environment. This is the case in Poland (Art. 86 of the Constitution of the Republic of Poland). Thus, if the effective form of care is to grant legal personhood to environmental entities, then a bottom-up initiative to legitimize the legislation will implement the constitution. Both justifications would meet halfway if a law granting juridical personhood to a river were enacted. Even if the state legislature enacts laws excluding the interests of native populations and their *oikoi* (Abers & Keck,

2013; Oliveira, de Souza, Vasconcelos et al., 2023), such as distinct aquatic ecosystems, these same Indigenous populations can autonomously initiate the enactment of appropriate legislation. Such a solution, in terms of constitutionalism, federalism, and legal pluralism, has already been implemented in several states to break with ‘the legal Anthropocene’ (Burdon & Martel, 2023).

Regarding the legal personhood of rivers and their rights, at least two approaches can be distinguished. The first is a right in the sense of a wild right, e.g. one that allows the river to take its natural, unregulated course. This option would correspond to Earth jurisprudence, according to which the latter ‘is not a human creation [...] it is “natural”, something that already exists in nature. An Earth jurisprudence is implicit in the laws of nature’ (Bell, 2003, p. 77). However, many rivers have already been regulated and cannot be returned to their natural shape. A second approach is thus the hydro-social account, which is similar to accounts present in Indigenous narratives and related philosophies. ‘The moderns think they have succeeded [...] only because they have carefully separated Nature and Society [...], whereas they have succeeded only because they have mixed together much greater masses of humans and nonhumans’ (Latour, 1993, p. 41; also see Latour, 1998).

When it comes to juridical personhood and legal entitlements for natural entities, there is no need to follow Latour’s idea of ‘the Parliament of Things’ and a ‘transcendental constitution’ (1993, pp. 84, 144), for they programmatically have no effect on legal institutions. Following the route of hybridization and pluralization of law would be democratic enough if achieved through legal personhood for rivers based on native inhabitants’ narratives. ‘Natures are present, but with their representatives, scientists who speak in their name. Societies are present’ (Latour, 1993, p. 144; see also Descola, 1993; Whiteside, 2013).

Canadian, Australian, and Brazilian pluralist legal systems show affinities with Latour’s constitution, which ‘does not separate us significantly from others’ (Latour, 1993, p. 107; see also Bowles et al., 2019), when it comes to rivers’ (and water’s) actantial features.⁴ Nonetheless, appropriate legislation is needed to preserve multi-source socio-environmental justice (Schiff Berman, 2020; Norman, 2014). Also, a pluralist legislative agenda would herald the depoliticization of granting rights to nature (Bellina, 2024; Latour, 1998). Granting juridical personhood and specific rights to rivers has a thoroughly transformative potential. Among other things, it proves that people (without excluding anyone) and nature have the right to persist and grow, that the new legislation effectively protects all these entities, and that such hybrid legislations can develop (Willems, Lambooy, & Begum, 2021, p. 10).

4 It is worth mentioning that the legal systems in Brazil and Poland are based on the civil law model. As a federation with numerous First Nations, Brazil has additional foundations for legal pluralism (Parola et al., 2019; Ryan, 2020).

Conclusions

We have strived to demonstrate that native (Indigenous) narratives on dwelling in and symbiosis with their riverine *oikoi* are *vehicles* of their essential life forms and functioning, identities, vital interests, and rights. All narratives are intertwined with the river's inherent and relational features, values, and rights. We have also addressed *dwelling* (see United Nations, 2008) as proximity and belonging to a distinct native *oikos* and a relevant capability (Yap & Yu, 2016). We have reasoned that Indigenous narratives comprise valid justifications for granting legal personhood to rivers and for reinforcing Indigenous peoples' rights to choose a riverine habitat – a right that covers a distinct capability and protects individuals and communities from displacement, identity erosion, and so on, which manifests when an anthropocentric (and in particular an economic) approach to nature prevails.

In his *Imperative of responsibility*, Jonas (1984, p. 8) asks about the possibility of a *right* specific to nature. For him, the evidence shows that asking this question has ceased to be absurd. Giving rights to nature requires a new vision of ethics (with 'green' care, capabilities, and responsibility at the forefront) and, obviously, law and legal practice. It is no longer just about human good, but about the inherent good of everything that, in his words, has 'ends in itself', meaning everything that lives but also, we can add, the beings that are directly connected with life, such as the rivers. Hearing 'a silent plea for sparing its integrity' (Jonas, 1984, p. 8) is part of the new moral and legal obligations of all those who realize the seriousness of the facts of the environmental emergency that affects all beings – humans and non-humans alike.

What are the core benefits of juridical personhood for a river? Above all, it affords legal competence, including articulation and defence of a river's interests, rights, well-being, and capabilities in court processes (Cano, 2018) and entering contracts. Juridical personhood means that the river is no longer regarded as a *thing*, significantly changing its ontological and normative status. This results in two practical correctives: first, the river cannot be reduced to private property, capitalized and exploited (Kramm, 2020, p. 312). De Vries-Stotijn, van Ham and Bastmeijer (2019) argue that property rights can protect bodies of water effectively against expropriation. Considering, for example, President Joe Biden's initiative to conserve 30% of US waters and lands by 2030, at the cost of displacement and expropriation of native inhabitants, the question of property rights is essential. The second practical corrective concerns the river being reintegrated in and returned to its socio-environmental context, ensuring that industrial, agricultural, and urban actors respect its status, rights, and capabilities. By association, the way a river is regarded and managed undergoes a shift from anthropocentric to eco-centric justice, with a focus on ecological and 'hydropolitical vulnerability' (Wolf, 2007, p. 64). Recall the risk of disputes over transboundary waters, as between the Brazilian and Paraguayan communities affected by the Itaipu Dam on La Plata (Wolf, 2007, p. 55; also see Norman, 2014).

It is worth noting that Poland is currently one of the most water-poor countries in the world (Zalewski, 2024). Granting legal personhood to its rivers is a timely paradigm shift. As a comprehensive normative effect, 'a shift from a philosophy of control and dominion over nature, and its legal system of property rights regimes, to a relationship of understanding and respect for the Natural Laws' (Horinek, 2014, p. 13) would engender environmental legal personhood. This shift would seriously challenge anthropocentric accounts of jurisprudence in Poland or any nation with a sufficient forward-looking vision to afford rivers (and, in fact, any aquatic ecosystems threatened by humans; see Pacific Islands Forum, 2022) agentic and actantial features.

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