

Terraforming Earth

Background reading

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Het Nieuwe Instituut

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DEFINITIONS: THE NATURAL PERSON VS. THE LEGAL PERSON

Natural person:

- “a human being as distinguished from a person (as a corporation) created by operation of law”.¹
- “a human being, naturally born, versus a legally generated juridical person”.²

Legal person:

- “corporate bodies are persons in so far as they have legal rights analogous to those held by individual human beings”.³
- “a body of persons or an entity (as a corporation) considered as having many of the rights and responsibilities of a natural person and especially the capacity to sue and be sued”.⁴

Explanatory excerpt:

- “A person is juridically classified in two groups: natural persons and juridical persons. The first group refers to a human being, who is an individual being capable of assuming obligations and capable of holding rights. The second group refers to those entities endowed with juridical personality who are usually known as a collective person, social person, or legal entity.”⁵

DIFFERENT FORMS OF THE LEGAL PERSON

There are many different types of legal personalities. Two of these are corporations and foundations. The way in which they share some of the legal rights and responsibilities enjoyed by natural persons can be found written into law in various ways. Below are some examples.

- United States: described in United States Code Title 1.1.⁶

“In determining the meaning of any Act of Congress, unless the context indicates otherwise—

[...]

the words “person” and “whoever” include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;”

- The Netherlands: described in Burgerlijk Wetboek Boek 2.⁷

“Verenigingen, coöperaties, onderlinge waarborgmaatschappijen, naamloze vennootschappen, besloten vennootschappen met beperkte aansprakelijkheid en stichtingen bezitten rechtspersoonlijkheid.”

- New Zealand: described in New Zealand Bill of Rights Act 1990, chapter 29.⁸

¹ Merriam-webster.com. (2018). *Legal Definition of NATURAL PERSON*. [online] Available at: <https://www.merriam-webster.com/legal/natural%20person> [Accessed 26 Apr. 2018].

² The Law Dictionary. (2018). *NATURAL PERSON*. [online] Available at: <https://thelawdictionary.org/natural-person/> [Accessed 26 Apr. 2018].

³ Teichman, J. (1985). The Definition of Person. *Philosophy*, 60(232), pp.175-185.

⁴ Merriam-webster.com. (2018). *Legal Definition of LEGAL PERSON*. [online] Available at: <https://www.merriam-webster.com/legal/legal%20person> [Accessed 26 Apr. 2018].

⁵ Elvia Arcelia Quintana Adriano, The Natural Person, Legal Entity or Juridical Person and Juridical Personality, 4 Penn. St. J.L. & Int'l Aff. 363 (2015). Available at: <http://elibrary.law.psu.edu/jlia/vol4/iss1/17>

⁶ Available here: <https://www.law.cornell.edu/uscode/text/1/1>

⁷ Available here: <http://wetten.overheid.nl/BWBR0003045/2018-01-03>

⁸ Available here:

http://legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html?search=sw_096be8ed80b62589_legal+persons_25_se&p=1#DLM225532

"... the provisions of this Bill of Rights apply, so far as practicable, for the benefit of all legal persons as well as for the benefit of all natural persons."

- Germany: described in German Constitution Article 19(3).⁹

"Basic rights also apply to domestic corporations to the extent that the nature of such rights permits."

Corporation vs. Foundations

Two of the many types of legal persons are the corporation and the foundation. These can generally be differentiated between in that corporations are for-profit and foundations are not.

In the United States, a corporation is a legal entity created through the laws of its state of incorporation. The law treats a corporation as a legal person that has standing to sue and be sued, distinct from its stockholders. The legal independence of a corporation prevents shareholders from being personally liable for corporate debts.¹⁰ A foundation is a type of charitable organization – either a private foundation or a public charity. A private foundation is funded by an individual, a family or a corporation. Public charities raise money from the general public. In the United States foundations are required to pay out 5% of their previous year's net average assets each year in qualifying distributions, which include charitable donations as well as certain administrative expenses.

B Corporation is a private certification issued to for-profit companies by B Lab, a global non-profit organization with offices across the world. To be granted and to maintain certification, companies must receive a minimum score on an online assessment for "social and environmental performance", satisfy the requirement that the company integrate B Lab commitments to stakeholders into company governing documents, and pay an annual fee ranging from \$500 to \$50,000. More information can be found on the B Corps website: <https://www.bcorporation.net/what-are-b-corps>

In Dutch law, a foundation is primarily distinguishable from a standard corporation because they must serve a particular goal. A foundation does not have members like a *vereniging* (association). The people on the board of a foundation cannot profit financially from their position. More information on foundations in The Netherlands, in English: <https://business.gov.nl/starting-your-business/choosing-a-legal-structure/foundation/>

In many places, contributions to the foundation are tax deductible, under the premise that they are doing some kind of social good. This is another key distinguishing factor between foundations and corporations.

SPECIAL CASES OF NON-HUMANS GRANTED THE RIGHTS OF NATURAL OR LEGAL PERSONS

Rivers Ganges and Yamuna in India

- Background article:
<http://www.bbc.com/news/world-asia-india-40537701>

In India, a higher court overruled the earlier decision that the Ganges and the Yamuna are persons as this was believed to be legally unsustainable.¹¹ Lower courts that initially were responsible for this ruling were to appeal the decision, but it seems like this has not happened or has not been successful.

⁹ Available here: http://www.servat.unibe.ch/icl/gm00000_.html

¹⁰ Taken from: <https://www.law.cornell.edu/wex/corporations>

¹¹ BBC News. (2017). *Key India rivers 'not living entities'*. [online] Available at: <http://www.bbc.com/news/world-asia-india-40537701>; BBC News. (2017) *India's Ganges and Yamuna rivers are 'not living entities'*. [online] Available at: <http://www.bbc.com/news/world-asia-india-40537701>

The Whanganui River in New Zealand

- Background article:
<https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being>

The Whanganui in New Zealand is still considered a person, although a legal person and not a natural person. The ruling which confirms this is called the Te Awa Tupua (Whanganui River Claims Settlement) Bill. It can be found here:

<http://www.legislation.govt.nz/bill/government/2016/0129/latest/DLM6830851.html>

Of particular interest is Part 2, Clause 14, which states the following:

“14 Te Awa Tupua declared to be legal person

(1) Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person.

(2) The rights, powers, and duties of Te Awa Tupua must be exercised or performed, and responsibility for its liabilities must be taken, by Te Pou Tupua on behalf of, and in the name of, Te Awa Tupua, in the manner provided for in this Part and in Ruruku Whakatupua—Te Mana o Te Awa Tupua.”

Orangutan Sandra in Argentina

- Background article:
<https://www.scientificamerican.com/article/argentina-grants-an-orangutan-human-like-rights/>

The legislation on which the decision was based:

*BOOK ONE – OF THE PEOPLE
FIRST SECTION – OF PEOPLE IN GENERAL
TITLE II*

Of people of visible existence

Art. 51. All the entities that present characteristic signs of humanity, without distinction of qualities or accidents, are persons of visible existence.

Art. 52. Persons of visible existence are capable of acquiring rights or contracting obligations. All those who in this code are not expressly declared incapable are said to be such.

Art. 53. All acts and all rights that are not expressly forbidden to them are allowed, regardless of their status as citizens and their political capacity.¹²

- Court document about the case (in Spanish):
<http://www.ijudicial.gob.ar/wp-content/uploads/2015/10/Sentencia-Orangutana.pdf>
- Court document about the case (in English, translated with Google Translate):
<https://docs.google.com/document/d/18KS3J5zB9vTNAFMGIAHIIDffoEzThZymZZ-4f5L-wE/edit?usp=sharing>

Cetaceans as natural persons

Based on scientific evidence showing that cetaceans have sophisticated intellectual/emotional abilities many have argued that they should be treated as persons – irrespective of their species or whether the law recognizes it. In fact, it has been argued that these rights already exist and that it is now up to humans to 1) recognize these rights and 2) protect these rights.

In other words, by recognizing cetaceans as non-human persons (rather than objects/property), we can engage in a whole new discourse of ethics in the animal protection realm – thereby respecting their right to life, forbidding their captivity, etc. This movement began a few years ago (2010) – when the Declaration of Rights for Cetaceans was written up in Helsinki:

Declaration of Rights for Cetaceans: Whales and Dolphins

¹² Available here: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/105000-109999/109481/texact.htm>

*Based on the principle of the equal treatment of all persons;
Recognizing that scientific research gives us deeper insights into the complexities of cetacean minds, societies and cultures;
Noting that the progressive development of international law manifests an entitlement to life by cetaceans;*

*We affirm that all cetaceans as persons have the right to life, liberty and wellbeing.
We conclude that:*

1. *Every individual cetacean has the right to life.*
2. *No cetacean should be held in captivity or servitude; be subject to cruel treatment; or be removed from their natural environment.*
3. *All cetaceans have the right to freedom of movement and residence within their natural environment.*
4. *No cetacean is the property of any State, corporation, human group or individual.*
5. *Cetaceans have the right to the protection of their natural environment.*
6. *Cetaceans have the right not to be subject to the disruption of their cultures.*
7. *The rights, freedoms and norms set forth in this Declaration should be protected under international and domestic law.*
8. *Cetaceans are entitled to an international order in which these rights, freedoms and norms can be fully realized.*
9. *No State, corporation, human group or individual should engage in any activity that undermines these rights, freedoms and norms.*
10. *Nothing in this Declaration shall prevent a State from enacting stricter provisions for the protection of cetacean rights.¹³*

In 2013, India became the 4th country to ban the capture of cetaceans for purposes of commercial entertainment on the basis of arguments of this nature. The implications that fully recognizing cetaceans as natural persons (or, non-human persons) would have, have been explored only in theory. The following is a short overview of the types of cultural/legal/social/industrial issues that come to the fore if this were to be implemented. It is mainly argued that the reasons for recognizing them as non-human persons does not really correspond with recognizing them as legal entities.

- Communication is a major barrier between humans and cetaceans. Some argue that the qualities of dolphins of being sentient is not enough to grant them the title of personhood, or for them to become a legal entity as they cannot engage with humans sufficiently.
- To overcome this barrier a model has been thought up in which no communication is required, instead simply providing them with human-like legal protection. But then there is still a distinct difference. This would mean they lack the legal capacity and education humans are provided with. They would essentially be treated as minors.
- In a full consideration of cetaceans as non-human persons:
 - civil rights would be transferred to them – however, if we believe ourselves to be responsible for ensuring that those excluded are included as much as possible: e.g. if we don't force disabled people to stay indoors - we should not force dolphins to stay in the water. In other words: how far do we go? Do we provide them with prosthetics to be able to exist on land?
 - Cetaceans would receive voting rights, could run for office, etc.
 - Videos of cetaceans mating would be considered pornography. Whale songs would be copyrighted, just like the songs of human artists.
 - They would be required to help out wherever possible – those who are awarded rights have obligations.

¹³ Available here: <https://www.cetaceanrights.org/>