Desde la escasez hacia la reasignación social y ambiental del agua

Da escassez à reafetação social e ambiental da água

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ÍNDICE

Agua y agricultura: diálogos sobre la interdependencia entre socioecosistemas hídricos y agrarios/ Água e agricultura: diálogos sobre a interdependência entre a água e os socioecossistemas agrários

Paisajes del agua: la inaplazable asignatura pendiente / Paisagens aquáticas: um assunto tão urgente quanto inádiavel

RIGHTS OF NATURE IN WESTERN LEGAL SYSTEMS: THE MAR MENOR EXPERIENCE

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1.Introduction

The Mar Menor is the largest saline lagoon in Europe. The lagoon is situated in the south-eastern region of Spain and serves as a defining natural feature of the Murcia region, imbued with significant environmental, cultural, historical, landscape and heritage value (Salazar Ortuño & Vicente Giménez, 2022; Vicente Giménez & Salazar Ortuño, 2022). Nevertheless, the environment has undergone significant modifications in terms of landscape and biodiversity as a result of socio-economic development in the area. Human activities have resulted in alterations to the ecosystem's fauna and flora (Cabello & Brugnach, 2023; Salazar Ortuño & Vicente Giménez, 2022; Vicente Giménez & Salazar Ortuño, 2022).

The modifications to the ecosystem, including the transition from traditional agriculture to intensive irrigation, have resulted in the loss of The Mar Menor's capacity for self-regulation due to an eutrophication (Cabello, 2024). Following three distinct episodes of eutrophication[1] , the public administrations and society collectively sought a solution. In order to address the issue, the regional government enacted an autonomous law, currently in force, known as Law 3/2020. In contrast, the Ministry of Ecological Transition adopted a different approach, establishing a framework of priority actions aimed at the recovery of the Mar Menor. The aforementioned measures are to be developed through the establishment of a technical office for the Mar Menor, which was created in 2022.Furthermore, an agreement has been reached between the central and regional governments for the establishment of a joint management body, which will be supported by a scientific advisory committee.[2] These various impulses illustrate the vital importance of restoring this wetland area for the people of Murcia and for Spanish society at large. However, the objective of this study is to focus on the solution

[1] In 2016' with the phytoplankton boom known as 'green soup', In October 2019 after a major flood event an episode of euxinia. In August 2021 an anoxia episode.
[2] It should be noted that the aforementioned council has yet to be established and is not yet operational.

proposed by a popular legislative initiative, namely the granting of legal personhood to the Mar Menor and its basin.

Despite challenges, this initiative was a success. The Law 19/2022 on the recognition of the legal personality of the Mar Menor lagoon and its basin came into force on 30 September. However, an appeal for unconstitutionality was admitted the following year. This was dismissed in November 2024, but the law still requires the establishment of representative bodies for the Mar Menor.

The legal personality of the Mar Menor is based on the idea of the rights of nature (hereinafter RoN). The concept of RoN represents a legal solution based on the recognition of nature as a subject of rights (Stone, 1972). This implies that nature is acknowledged for its intrinsic value, rather than the value ascribed to it by human beings. This allows for the formation of an 'autonomous' part of legal systems (Burdon, 2010; Kurki, 2022; Stone, 1972).

The application of this legal concept has been subject to variation according to the geographical location, the legal system and the cultural context in question. It is important to note, however, that its origins lie in the indigenous struggle and non-Western worldviews. From the initial RoN ordinance in a small community in Tamaqua (Pennsylvania, USA) (Burdon, 2010; Yanquiling et al., 2024) in 2006 to the inaugural constitutional rights of nature in Ecuador in 2008 (Ayllón Díaz-González, 2023; Kauffman & Martin, 2023; Tanasescu, 2013), the movement has proliferated across continents. Many of these RoNs have waterscapes as subjects, for example some countries have granted legal personality to specific water bodies, such as the Whanganui River in New Zealand, (Kawharu, 2000; Stewart-Harawira, 2020; Te Aho, 2019) the Magpie River in Canada, the Atrato River in Colombia (Cano Pecharroman, 2018; Vicente Giménez, 2020). One of the most significant and valuable attributes of RoNs is their capacity to adapt to a diverse array of specific cases and cultural contexts.

1.1.Objectives

This study examines the establishment of the RoN in the Mar Menor and how it has travelled to Murcia and Europe. What factors led society to choose the RoN? What is the structure of the representative bodies? Is the general public aware of the implications? What are the challenges of implementing RoN in Spain?

2 .Methodology

The following study has been conducted using the following research tools:

2.1. Literature review

2.1.1. Search strategy

A comprehensive search was performed across online academic and institutional databases, as well as general search engines (e.g., Google Scholar), utilizing specific terms in various combinations with Boolean operators (AND, OR). The search methodology employed keywords and phrases including "Mar Menor," "Rights of Nature," "Mar Menor" AND "Rights of Nature," "Mar Menor" AND "legal personhood," "Mar Menor" AND "environmental conflict," "Mar Menor" AND "Spanish legal framework," "Rights of Nature" OR "Spanish legal framework," and "Rights of Nature" AND "indigenous cosmovision's" to encompass a wide range of literature. This included publications from peer-reviewed journals, conference proceedings, and grey literature. All retrieved records were rigorously screened for duplicates and systematically organized using reference management software (e.g., Zotero).

2.1.2. Inclusion/Exclusion criteria

Inclusion and exclusion criteria were used to filter all articles at the title and abstract level. An effort was made to incorporate the most recent studies and articles related both to the Mar Menor and to those addressing RoN. However, other articles that, while not as recent, had a significant connection to the topic of study (Spanish environmental law or indigenous cosmovision's) were also considered. This aspect of the systematic review methodology necessarily limited the number of relevant studies included for critical appraisal, data extraction, and final analysis. Studies focusing on the rights of nature, particularly in the specific case of the Mar Menor, were included. These encompassed legal frameworks, policy implications, case studies, or theoretical perspectives. Data Extraction, Legal and Comparative Analysis.

Using the specific case of Mar Menor, which was granted legal personhood in September 2022, this work aims to analyze how this legal personhood was attributed and examine the consequences of using the RoN for the first time in a European legal system. In addition to selecting studies based on their theoretical and epistemological relevance to the RoN concept, an analysis of Spanish laws and legal frameworks, especially those concerning the Mar Menor, was also conducted.[3]

[3] For this purpose, the following relevant organizational websites and institutional databases concerning Spanish legislation and RoN initiatives were consulted: (i)Boletín Oficial del Estado (BOE), (ii)Centro de Documentación Judicial (CENDOJ), (iii)Eco-Jurisprudence Monitor, (iv) the United Nations (UN) Harmony with Nature website, and (v) the Rights of Nature Library of the Centre for Democratic and Environmental Rights.

The analyzed documents were limited to laws and judicial decisions relevant to, or directly impacting, the legal personhood of the Mar Menor. However, other cases where the legal solution of RoN, like Atrato River or Whanganui River, has been applied were also examined to enable a comparative study with the situation in Spain. In summary, different legal documents from various countries were reviewed to extract the following information: mode of formalization of RoN, actors involved in the institutionalization of RoN, the status accorded to nature, guardianship arrangements, and governance structures established to safeguard RoN. This information essential for gaining a clearer understanding of the Mar Menor case and determining whether the implementation of a RoN approach in a European legal system led to different results compared to its application in other states with different legal systems.

In addition, the legal analysis of Law 19/2022, of 30 September, which recognizes the legal personality of the Mar Menor and its basin. It was also analyzed the Decree (not yet approved), which develops the normative configuration of the legal personality, and the opinion of the Council of State on this document. Finally, the Constitutional Court's ruling has been included in the analysis, which has removed any doubts about the possibility of incorporating this figure into our legal system.

2.2. Interviews[4]

Qualitative data was gathered from key informants through semi-structured interviews. The respondents included members of the platform that launched the legislative initiative to give legal personality to the Mar Menor, University professors, public officials and town councillors, environmental lawyers and citizens from the Mar Menor community. Furthermore, interviews will be conducted with indigenous communities and experts in the rights of nature. This is to gather testimony and incorporate knowledge into the application of this figure in other parts of the world, and to acknowledge the original proponents of this legal instrument.

3. Preliminary results

Importance of recognition: There is scarce mention or recognition of the original promoters of the RoN, both in the testimonies of the advocates of this solution for the Mar Menor, and in the Law and other legal texts that endow the lagoon with legal personality. We observe that the absence of recognition is not inadvertent and represents a substantial critique of this particular case. While the advent of RoNs in the Spanish and European legal systems is a laudable and encouraging phenomenon, it is imperative not to overlook the fact that their

[4] At the time of drafting this abstract, six of the proposed interviews have been conducted, with a further fifteen scheduled.

genesis is not inherently Western. It is only equitable to acknowledge that the genesis and evolution of these legal instruments have emerged not only from the indigenous struggle to defend their land, water nature, alternative worldviews, and people but also to recuperate alternative modes of thought and law that diverge from those ones characteristics of the West. Lack of representation: In instances of environmental degradation, such as that observed in the Mar Menor due to processes such as eutrophication, it is evident that societal discourse is characterized by division and the proliferation of competing narratives. Rather than seeking a unified solution, these narratives tend to focus on attributing blame to external parties, hindering the pursuit of a collective and effective approach to environmental challenges. The conferral of legal personality upon the Mar Menor represents merely the initial phase in the process of affording the lagoon a voice and ensuring that its rights, including those pertaining to existence, protection, conservation and restoration, are upheld in a manner that deviates from the conventional approach. Nevertheless, this raises further questions. Who can speak for the Mar Menor? Is it possible to understand the Mar Menor without precise the subjects that are deteriorating it?

Rights of Nature is not enough: As has been previously indicated, the genesis, evolution and utilization of the RoN are predicated upon conceptual frameworks and worldviews that are distinct from those espoused in the Western world. It is therefore evident that failing to acknowledge the provenance of the idea and attempting to import it without due consideration will inevitably result in greater challenges and difficulties than benefits. It has been demonstrated that the design and implementation of the RoN can vary significantly depending on the specific ecosystem, society, and legal system in question. It is therefore crucial to refrain from merely importing these figures without attempting to adapt them and, most importantly, without a thorough comprehension of their ultimate implications.

4. Discussion

The enactment of Law 19/2022, which confers legal personality upon the Mar Menor, represents a significant step forward in the development of regulations that prioritize an eco-centric approach. This will facilitate a re-evaluation of our relationship with the environment in the Western world. Nevertheless, for this transformation to become embedded in the cultural and legal consciousness of Murcia, Spain, and Europe more broadly, it is vital to ensure that the origins of RoN are not overlooked. The implementation and efficacy of RoN as a means of environmental protection and restoration in Western states necessitates, not only a normative development, but also a pedagogical and deconstructive effort on the part of our society as a whole.

The process of conferring legal personality upon the Mar Menor is still underway, and it is challenging to assess its actual impact. RoN permits the members of the political community in which this natural space is situated to restore not only the wetland, but also their relationship with it. However, this can only be achieved by influencing the knowledge and worldviews that inform these entities, rather than merely focusing on the protection tools.

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