Vegetation is not only part of the ‘living beings’ category but is also one of its main protagonists since it allows its other members to live. Without vegetation, the Earth would be unbreathable, just like thousands of other inert planets in the universe.

However, despite that key role in the succession of circumstances that allowed life’s emergence and maintenance on Earth, vegetation is not always protected nor has inalienable rights. Rather, in the last centuries of voracious development, it has been understood as a resource to be exploited, instrumentalizing its role in service to the human species and industrializing its presence on the face of the Earth. It has only been
protected through the definition of special zoning – reserves – as if they only served as a backup when there is nothing left to exploit.

Therefore, in the debate section of this issue of *ARQ* magazine, we asked about the possibility of considering plants and trees subjects of rights, especially having the new constitution as a horizon. From there, we can also question whether those more-than-human entities can possess a legal subjectivity that protects them in themselves and not only under the category of ‘reserve.’
It is indisputable that the environmental crisis has become transversal and that immediate action must be taken to stop it. In Chile, the pandemic and constitutional reform have put the current system in check, and concrete and urgent decisions must be taken. Following this, one of the great environmental debates is whether nature can be subject to constitutionally recognized rights. The above entails much more than the mere discussion about whether nature can be understood as an entity protected by the legal system, demanding a paradigm shift, where the regulation on the environment can no longer be approached ‘in parts’ – water, forests, emissions, economy, communities – but must be understood as an interrelated whole that converges in nature.

This will lead to rethinking the relationship between environment and economy, of course, but also between nature and law ("eco-legal breaking points," as the EU’s European Economic and Social Committee has called it).

In this context, which seeks to highlight the importance of the environment and adapt the human position as a part of a complex system of care relationships, one of the first issues to be elucidated is whether nature can, in itself, be the subject of rights, to demonstrate that its legal understanding as an object has contributed to the degradation of ecosystems.

There is no doubt that one of the main discussions of the Constitutional Convention will be related to fundamental rights. Our current charter establishes in its article 19 a list of rights recognized to ‘all people,’ opening the debate on nature as a subject of rights from an eco-centric perspective. Currently, the only article that refers to the environment is 19, N°8, assuring all people “the right to live in an environment free of pollution,” from a perspective of protection towards the person.

Conceiving nature as a subject of constitutional rights can provide a protection status that can be litigated in courts. This finds precedent in foreign legal systems. Thus, for example, the Ecuadorian constitution establishes that “Nature or Pacha Mama, where life is reproduced and carried out, has the right to have its existence fully respected, as well as the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes.” For its part, New Zealand recognized the rights of the Whanganui River following a
conflict with local communities, who were designated as its guardians.

The advantages of recognizing nature as an entity endowed with rights relate, firstly, to promoting the paradigm shift towards a legal system in which everything is interconnected and where transversal public policies must be adopted (i.e., there is no use in promoting renewable energies if their development generates local conflicts due to a lack of clarity in the territorial ordering). Furthermore, the legal recognition of nature protection generates a psychological effect on society. As Geoffrey Stutzin states, “those who enjoy rights are respected, while those who lack them are despised,” which, in turn, encourages cultural change from decision-makers, companies, and civil society.

However, from a traditional legal perspective, the discussion has not been without debate, since devising rights to entities that lack a certain personality that allows them, for example, to defend themselves, implies that the intercession of people will be required and, consequently, that there will inevitably be a chain of interests. Nor it is clear what the difference would be between giving nature a subjective character and strengthening the constitutional recognition of the right to live in a healthy or balanced environment, in similar terms to those currently recognized. Added to the above is the argument of those who assert that the conservation, protection, and restoration of nature can be consecrated through principles or constitutional bases without the need to grant it subjective rights.

Although there are positions in favor and against it, the truth is that environmental protection has been installed at the center of the national debate and gone are the days when our courts understood that only the neighbors directly affected could appeal or that, if there was no norm regulating a pollutant, there could be no pollution. There is currently jurisprudential, social, and political recognition regarding the preservation of our planet for present and future generations, the pro-natura principle, the precautionary principle, and the responsibility that all actors in society have regarding the impact of their actions. The way to establish the above, and the place of human beings within this relationship, remains to be decided by the constituent debate. It is left for the constituent debate the way to enshrine the above and the place chosen to locate the human person.

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