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Freshwater resources are under increasing pressure. A substantial amount of the environmental flow, i.e., the water the aquatic ecosystem requires in order to thrive, has already been appropriated in rivers around the world (Acreman, 2010; Gerten et al., 2013). The 2030 Water Resources Group (2009) has predicted a 40% gap between freshwater demand and availability. It is expected that climate change will have a substantial impact on the hydrological cycle and freshwater resources. The risk of droughts and flooding in many areas is likely to increase as a result of intensifying precipitation patterns (Bates et al., 2008). The vulnerabilities related to freshwater resources lie in the combination of physical pressures and human development and decisions, such as economic development, increased population and urbanization, (in)sufficient governance (including funding and planning), ageing infrastructure, and so forth (Gain, Giupponi, & Wada, 2016).

Given these increasing pressures, resilient and effective river basin management is paramount and one of the key components of sustainable development (Gerten et al., 2013; Rockström et al., 2009; Steffen et al., 2015; Suykens, 2015; Van Rijswick, Edelenbos, Hellegers, Kok, & Kuks, 2014). The institutional, regulatory, financial and administrative arrangements to manage and govern the river and allocate its use and resources can be referred to as the 'law of the river' (Suykens, 2018).[1] This governance framework aims at providing water security and sustainable use of the river, taking into account hydrological, ecological, economic and social values. But this traditional approach appears inappropriate to protect the ecological and some of the social values, especially for ecologically vulnerable groups and indigenous people (Misiedjan, 2019). In the past few years, a wave of legislative and judicial initiatives around the world have opened up new perspectives on how to better protect rivers, which go well beyond theoretical concoctions and which have caused a whirlwind of debate and excitement. These initiatives have opened up new possibilities in the legal and governance landscape of water management, which we happily explore in this very special special issue: Is there a move from the law of the river to the rights of the river, and is it a sustainable one?

Let us dive right in. In March 2017 New Zealand granted legal rights to the Whanganui River through legislation, and the Uttarakhand High Court in India declared the Ganga, Yamuna and their tributaries living entities (although soon after, the Supreme Court of India stayed this judgement, leaving it currently *sub judice* [Salmi v State of Uttarkhand and others, 2017]). Two months later, the Constitutional Court of Colombia granted legal rights to the Atrato River (n T-622). The commonality in these different legal developments is the consideration that conservation efforts for water resources need

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to be expanded, for the river itself and often combined with the rights of indigenous people or other environmentally vulnerable groups.

The possibility of granting '(human) rights to a non-human entity' and, specifically, its implications for river basin management have been underexplored in the literature. The challenges associated with granting such rights are multifaceted and touch on several disciplines, in science and in social science and the humanities. The common theme throughout this special issue is that the authors aim to identify 'what the river needs' and whether and how rights-based regimes can help fulfil these needs beyond the possibilities of existing, more traditional river basin management set-ups. All of the articles in this special issue look at legal personhood from the perspective of specific rivers and countries, going beyond theoretical ideas and giving us a unique insight into the different DNAs of river basins and their respective governance landscapes. Approaching the topic from different angles, we obtain a holistic view of what the shift from the 'law of the river' to the 'rights of the river' actually entails.

As passionate advocates for the well-being of rivers, we want to start from the perspective of the river's health: what does a river need to be healthy? Wuijts et al. (2019) have dived deep into the meaning of a 'healthy river' by identifying the ecological requirements for naturally functioning rivers. The authors look at the physical, chemical and biological characteristics of a river and tease out the various direct and indirect stressors that impact the health of a river. They then add a layer to the analysis by linking rivers' needs from an ecological perspective to conditions of governance. They find that the transfer of legal rights to a river could have the added benefit of giving a stronger voice to its needs, although such a transfer does not necessarily resolve important issues in river basin management. For example, legal requirements often are not easily matched with complex biological responses associated with rivers' realities. Furthermore, within a river basin many interests are at stake and have to be combined. Granting legal rights to these rivers would not change this reality.

In fact, several articles in this special issue demonstrate that granting legal rights to rivers would not necessarily, *à priori*, overcome the limitations of existing instruments, but could have added value if the right frameworks are in place.

Two articles in this special issue take a step back and approach the topic of river rights regimes conceptually. Kang (2019) investigates the social conditions that determine whether river rights will be successful, employing the context of hydropower development in the Mekong region. Kang puts forward the six fundamental values of the Grant Wilson Universal Declaration of River Rights: the right to flow; the right to perform essential functions in its ecosystem; the right to be free from pollution; the right to feed and be fed by sustainable aquifers; the right to native biodiversity; and the right to restoration. He argues that the strategy of insisting that such river rights have unlimited moral validity, which does not properly account for the consequences of associated decisions, is unlikely to succeed. The way forward is through procedural legitimacy. The article ends with a brain teaser, which we do not want to withhold from the reader:

> Only if the social environment of systems calls for positive ecological reputation (Thematic dimension), will law and politics show leadership to implement river rights (Social dimension), but when negotiating the specifics, it is the perceived risk of the future where authority is found (Temporal dimension) – and whose guesses about the future validity of river rights are correct, well that is a question of who is in power. .

Wilk, Hegger, Dieperink, Kim, & Driessen (2019) further conceptualize the rights of rivers by zooming in on different categories of substantive and procedural river-related rights, and use the Rhine as an example to guide the reader through their analysis. They analyze the transformational power of granting rights to the Rhine and look at path dependency and conflicting interests: stronger ecological voices conflicting with vested interests in flood protection and navigation. They rightly wonder whether an ecocentric approach can be achieved by granting rights to rivers, as humans will need to interpret what the river might want. This brings us to the next article.

One of the key issues in river rights regimes is custodianship. If a river becomes a legal person, it can in principle sue (to protect its health, for example) and be sued. Therefore, the river needs to be represented by a custodian to defend and enforce its rights. The question of custodianship is explored in depth in the article of Gilissen et al. (2019) through the lens of the Scheldt and Ems multijurisdictional rivers. If legal personality is given to a non-human entity such as a river, as with corporations, a custodian or representative needs to be appointed, which proves to be a significant challenge. Indeed, in the current legal and governance landscape, for example in the European Union, it is quite clear that the concept of governance through hydrological units exists more in theory than in practice (Suykens, 2018; Van Rijswick, Gilissen, & van Kempen, 2010). Although the introduction of river rights regimes could be a valuable next step in river basin management, it would greatly depend on the good will of states that share transboundary rivers to put the river basin level front and centre and equip the custodian with a clear mandate and enforceable responsibilities.

These findings can be tested by looking into legal and governance regimes in countries where river rights regimes have actually been introduced, or will potentially be introduced (or possibly annulled, in the case of India), through (case) law, in particular in New Zealand, the Netherlands, India and Australia.

In this regard, an article that reads almost as a pamphlet against introducing rights-based regimes is the one by Chaturvedi (2019). She gives us insight into the Ganga and Yamuna Rivers. The Uttarakhand High Court delivered a judgement conferring legal rights on these two rivers. In contrast to the articles mentioned above, Chaturvedi does not believe in the added value of river rights regimes. She argues that an adequate regulatory framework for deterring pollution is already in place in India through a combination of existing environmental principles, e.g., the precautionary principle, anti-pollution laws and court orders. The problem lies in deficient implementation and enforcement and a lack of adequate capacity of regulatory authorities. Resources and effort should thus be put into remediating these conditions instead of creating yet another governance regime.

De Vries et al. (2019) looked at the added value of rights-based regimes in overcoming the limitations of private property rights to protect rivers in the Netherlands and New Zealand. Private property rights have their place in nature and specifically conservation, if often to a limited extent, as where a river cannot be privately owned, such rights are not commonly used as instruments of protection. In the Netherlands and New Zealand, (limited) property rights have been used to protect rivers, with the major restrictions being that the water itself cannot be privately owned, and neither can the riverbed. In the Whanganui River in New Zealand, the ownership of the riverbed by the Crown has been

transferred to the river itself. These may no longer be alienated, which could lead to more sustainable nature conservation.

Argyrou and Hummels (2019) have also looked into the Whanganui River, not from the perspective of private property regimes but from the perspective of social entrepreneurship. They applaud the set-up of the Te Awa Tupua Act as the basic framework enabling the river's sustainable economic well-being. But they also point out that Māori social and community entrepreneurship is still underdeveloped. Thus, it is crucial that the principle of prior consent from the Māori is implemented properly: a development should not take place without the consent of its leadership.

Whereas the discourses in New Zealand and India focus on creating rights for rivers, the Yarra River in Australia has been granted a 'voice of the river' through the establishment of a statutory-based independent voice. O'Bryan (2019) demonstrates the distinction between the two legal constructions through a comparative exercise of the relevant legislation, case law and policy in Australia and New Zealand. The Yarra River is now treated as a living and integrated natural entity that should be protected, whereby Indigenous perspectives should be thoroughly reflected. Indeed, Aboriginal values are explicitly acknowledged in applying the protection principles. The Birrarung Council, which is the River's dedicated 'voice', should have two Aboriginal members. That the relevant legislation does not give an independent legal status to the river or legal capacity in the Birrarung Council (e.g., to seek redress in court) does not make the shift in river basin management any less meaningful, O'Bryan argues, especially taking into account the more meaningful role for 'traditional owners'.

Lastly, Lambooy, van de Venis, and Stokkermans, (2019) explore the possibility of granting legal personality and 'self-ownership' to the world's largest interconnected tidal flats and wetland system, the Wadden Sea. A UNESCO World Heritage area, the Wadden Sea is home and foraging ground to large populations of birds, seals and other wildlife, and therefore highly valued for its rich biological diversity. But economic activities and fragmented governance structures pose constant threats to the region. Inspired by the international trend of granting rights and legal personality to rivers and building on concrete developments in Dutch legislation, the article introduces and discusses the concept of 'natureship' (*natuurschap*) as a promising legal construction and governance arrangement to protect the Wadden Sea ecosystem. In this think piece, Lambooy et al. aim to inspire Dutch, German and Danish policy makers and academics worldwide to find new legal arrangements to better protect aquatic ecosystems.

One more contribution to this special issue must be acknowledged. Gabriel Eckstein, Ariella D'Andrea, Virginia Marshall, Erin O'Donnell, Julia Talbot-Jones, Deborah Curran and Katie O'Bryan (2019) have prepared a series of essays in response to the move from the law of the river to the rights of the river. The compilation, which first appeared in the blog of the International Water Law Project (www.internationalwaterlaw.org), offers insightful and often provocative analyses, and serves as a thought-provoking and complementary companion to the longer pieces in this issue.

To conclude, this special issue challenges all of us to think further on the idea of granting rights to rivers and aquatic ecosystems. Of course, this is easily said, but it is difficult to implement, as many aspects have not been elaborated on before. The

multidisciplinary approach gives a unique perspective, and hopefully brings the current discussion a step further.

Note

1. This phrase originally relates to the legal framework of the Colorado River. We use it to refer to the multi-levelled rules and regulations applicable to rivers.

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