2021

We Are the River

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The New Zealand Parliament has recently granted the Whanganui River and the Te Urewera mountain ecosystem rights as legal persons, with a Māori governing board to speak for the nonhuman entities, based upon traditional cultural precepts. Far from an isolated precedent, in what the U.N. Secretary General calls "the fastest growing legal movement of the twenty-first century," legislatures, courts, or voters in Australia, Colombia, Ecuador, Bangladesh, India, Uganda, and the U.S. have also declared that rivers and other living systems have legal rights.

This Article chronicles the movement to grant nonhuman entities legal rights. I analyze the statutes and judicial opinions driving this legal evolution, drawing extensively from interviews I conducted with key figures negotiating and advocating for these initiatives. I explain what the current and developing laws and judicial opinions seek to achieve. Deriving from disparate historical, philosophical, and legal backgrounds, they pursue disparate goals; yet all of the moves to grant legal rights to nonhuman entities aim to enshrine in the law the fundamental symbiosis between human and nonhuman ecological health, and to empower suitable stewards who will nurture that symbiosis. I describe how newly vested spokespersons for nature seek to turn novel legal theories into real legal work that protects human and nonhuman communities. I explain who now represents the nonhuman entity and discuss what improvements—for human and nonhuman communities—they hope will redound that would not have resulted from more traditional legal protections. I also discuss early results that have emerged from grants of legal personhood to nonhuman entities.

As these laws inscribe new legal relationships between people and nature, they ask: what does it mean to convert from "we own the River" to "we are the River?" I conclude that by sanctifying the interdependent relationship between human needs and healthy ecosystems, granting legal

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rights to rivers may contribute to reversing ecological degradation in this century and beyond.

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I. INTRODUCTION

"Human survival on a healthy planet is not a soft liberal pipe dream; it is sound global management and the deepest of religious impulses."
–Bruce Pascoe, *Dark Emu*[1]

1. BRUCE PASCOE, DARK EMU: ABORIGINAL AUSTRALIA AND THE BIRTH OF AGRICULTURE 34 (2018).

In 2017, the New Zealand Parliament passed a law, with scant opposition, granting the Whanganui River full legal personhood.[2] The legislation protects the entire River as "an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements."[3] The legislation includes funds to redress the local Māori people for past wrongs, and to support work to establish the legal framework for this new governance form.[4] The law requires two formal appointees—one representing the New Zealand government and one representing the local Māori—who will speak for the inherent rights of the River.[5]

This is not an isolated event. A recent article in *Science* proclaims, "A rights revolution for nature."[6] In 2014, the New Zealand government gave legal rights to the land that previously comprised Te Urewera National Park.[7] In one management change, the Māori board selected to speak for Te Urewera's interests required that rather than applying for a traditional permit, businesses wanting to operate in the area must negotiate friendship agreements that detail how they will "demonstrate loyal affection to Te Urewera values and her need to continue her complex balancing act among living systems."[8] The government of Victoria, Australia has created a governing council (including indigenous representatives) that will speak for the Yarra River's interests in planning and in legal disputes.[9] Indigenous activists and other local citizens in Australia are lobbying to similarly designate the Margaret River, Fitzroy River, and Great Barrier Reef as entities

2. The Whanganui River is 180 miles long, the third longest River in New Zealand. DAVID R. BOYD, THE RIGHTS OF NATURE: A LEGAL REVOLUTION THAT COULD SAVE THE WORLD 141 (2017).

3. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, pt 2, s 12 (N.Z.).

4. *Id.* at pt 3, s 70.

5. *Id.* at pt 2, s 20; *see Whananui River Legally Recognized as Living Entity, New Zealand*, ENV'T JUST. ATLAS (June 19, 2017), https://ejatlas.org/conflict/rights-of-nature-new-zealand [https://perma.cc/GV44-Z7YZ]; Eleanor Ainge Roy, *New Zealand River Granted Same Legal Rights as Human Being*, GUARDIAN (Mar. 16, 2017, 12:50 AM), https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being [https://perma.cc/5RB9-HVRM]; *First Te Pou Tupua Appointed,* SCOOP INDEP. NEWS (Sept. 12, 2017, 12:39 PM), http://www.scoop.co.nz/stories/PA1709/S00132/first-te-pou-tupua-appointed-4917.htm [https://perma.cc/MQU6-YDKT].

6. Guillaume Chapron, Yaffa Epstein & José Vicente López-Bao, *A Rights Revolution for Nature*, 363 SCI. 1392, 1392 (Mar. 29, 2019).

7. Te Urewera Act 2014, pt 1, s 7 (N.Z.).

8. TE UREWERA BOARD, TUHOE, TE KAWA O TE UREWERA 53, www.ngaituhoe.iwi.nz/te-kawa-o-te-urewera (last visited Jan. 25, 2021) [https://perma.cc/GKD8-526Y]. The legislation notes that the mountain and surroundings are "ancient and enduring, a fortress of nature, alive with history; its scenery is abundant with . . . remote beauty." Te Urewera Act 2014, pt 1, s 3 (N.Z.). The Māori Board's initial guidelines stress that it "is about the management of people for the benefit of the land. It is not about land management. It raises hope for a renewed collective responsibility for our people [sic] impact on the land and foresees our disciplined response to those impacts." TĀMATI KRUGER, TUHOE, TE KAWA O TE UREWERA 7, http://www.ngaituhoe.iwi.nz/te-kawa-o-te-urewera (last visited Jan. 25, 2021) [https://perma.cc/PJS5-MX5B].

9. *Yarra River Protection (Wilip-gin Birrarung murron) Act 2017* (Vict.) pt 1, s 1 (Austl.); Government of Victoria, Minister for Water, *New Body to Protect and Promote the Yarra River*, PREMIER OF VICT.: THE HON. DANIEL ANDREWS (Sept. 18, 2018), https://www.premier.vic.gov.au/new-body-protect-and-promote-yarra-river [https://perma.cc/2TGV-S2VL].

bearing legal rights, with formal representatives (primarily Aboriginal Australians) to act as guardians *ad litem* for them.[10]

The Colombian Constitutional Court has ordered government entities to recognize the rights of the Río Atrato, including developing a plan to reverse degradation of the River; similar to the New Zealand precedent, the Court required appointment of one government and one community delegate to represent the rights of the River.[11] Courts in India, Bangladesh, and Ecuador have also recognized rivers' legal rights, with concomitant orders to governments to fulfill those rights by remediating and preventing pollution.[12] In the United States in March 2019, citizens in Toledo, Ohio voted to give Lake Erie legal personhood, connoting the Lake's right "to exist, flourish, and naturally evolve," with a full charter that lays out the rights thus granted to the Lake.[13] Similar "rights of nature" initiatives have been passed in various municipalities in the U.S.[14]

This exercise in creative environmental law remained largely within the realm of speculation until very recently: we now seem to be in a watershed moment[15] in the drive to grant legal rights to rivers, lakes, and mountains. Why

10. *See* Fitzroy River Declaration (Nov. 2–3, 2016), https://d3n8a8pro7vhmx.cloudfront.net/environskimberley/pages/303/attachments/original/1512653115/fitzroy-river-declaration.pdf?1512653115 [https://perma.cc/FD4L-953E]; Jane Gleeson-White, *It's Only Natural: The Push to Give Rivers, Mountains, and Forests Legal Rights*, GUARDIAN (Mar. 31, 2018, 10:33 PM), https://www.theguardian.com/australia-news/2018/apr/01/its-only-natural-the-push-to-give-rivers-mountains-and-forests-legal-rights [https://perma.cc/R3RQ-P74G]; Legal Rights of the Great Barrier Reef Bill 2018 (Queensl.) pt 1 s 3 (Austl.).

11. Corte Constitucional [C.C.] [Constitutional Court], noviembre 10, 2016, Sentencia T-622/16, Relatoría de la Corte Constitucional [R.C.C.] (§ 10.2) (Colom.), *translated in* Dignity Rts. Project, Del. L. Sch., Judgment T-622/16 (The Atrato River Case) 110 (2019), https://delawarelaw.widener.edu/files/resources/riveratratodecisionenglishdrpdellaw.pdf [https://perma.cc/2RCL-TCLC]; David R. Boyd, *Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution?*, 32 NAT. RES. & ENV'T 13, 17 (2018).

12. *R.F. Wheeler and E.G. Huddle v. Attorney Gen. of the State of Loja*, Corte Provincial de Justicia de Loja [Loja Provincial Court of Justice] Mar. 30, 2011, Judgment No. 11121-2011-0010 (Ecuador); Michael Safi, *Ganges and Yamuna Rivers Granted Same Legal Rights as Human Beings*, GUARDIAN (Mar. 21, 2017, 7:44 AM), https://www.theguardian.com/world/2017/mar/21/ganges-and-yamuna-rivers-granted-same-legal-rights-as-human-beings [https://perma.cc/Z325-FERE]; Rina Chandran, *Fear of Evictions as Bangladesh Givers Rivers Legal Rights*, REUTERS (July 5, 2019, 2:26 PM), https://www.reuters.com/article/us-bangladesh-landrights-rivers/fears-of-evictions-as-bangladesh-gives-rivers-legal-rights-idUSKCN1TZ1ZR [https://perma.cc/8R54-FT9W]. *But see India's Ganges and Yamua Rivers Are 'Not Living Entities'*, BBC NEWS (July 7, 2017), https://www.bbc.com/news/world-asia-india-40537701 [https://perma.cc/6PVZ-X753].

13. The initiative passed with 61.39% of the vote. Timothy Williams, *Legal Rights for Lake Erie? Voters in Ohio City Will Decide.*, N.Y. TIMES (Feb. 17, 2019), https://www.nytimes.com/2019/02/17/us/lake-erie-legal-rights.html [https://perma.cc/V5B3-6L4P]; *see* Tom Henry, *Lake Erie Legal Rights Gets Approval from Toledo Voters*, TOLEDO BLADE (FEB. 26, 2019, 9:48 PM), https://www.toledoblade.com/local/politics/2019/02/26/Lake-Erie-Bill-of-Rights-gets-approval-from-Toledo-voters/stories/20190226159' [https://perma.cc/N4RK-7HYL]. A lawsuit challenging the constitutionality of the initiative has been filed; similar efforts in the U.S. have been rendered meaningless or struck down by courts. *See, e.g.*, Peggy Kirk Hall, Ellen Essman & Evin Bachelor, *The Lake Erie Bill of Rights Ballot Initiative,* OHIO ST. UNIV. EXTENSION: IN THE WEEDS (Feb. 8, 2019), https://farmoffice.osu.edu/sites/aglaw/files/site-library/Lake%20Erie%20Bill%20of%20Rights.pdf [https://perma.cc/L6V2-XJ3F].

14. *See* Hall et al., *supra* note 13.

15. A bit of environmental law humor there.

give legal rights to rivers? How to avoid making this, in the words of a *Wired* article, "a patchouli-soaked Gaia fantasy translated into legalese?"[16]

Indigenous cultures around the world are guided by creation stories that sanctify relationships between human and nonhuman communities;[17] written into local lore and thus local law, these stories are themselves ecological adaptations that encourage stewardship to avoid despoiling the ecosystems that upon which these cultures directly depend.[18] Until now, though, such lore and laws have found little purchase in modern, Western[19] legal systems. In his now-famous 1972 law review article,[20] *Should Trees Have Legal Standing?*, Christopher Stone addresses the title question and declares: "I am quite seriously proposing that we give legal rights to forests, oceans, rivers and other so-called 'natural objects' in the environment…,"[21] a proposition that at least one U.S. Supreme Court justice has enthusiastically endorsed.[22] Until very recently, however, the idea did not take root in the real world.[23]

In this Article, I examine this burgeoning phenomenon and ask: what is now going on here? What does it mean to give a river or lake or mountain legal rights, and what meaningful legal work does this do that could not be accomplished with more traditional legal mechanisms? Who is advocating for this, and why? Given that the idea has been floating around for decades, why and how is it achieving legal success *now*? And, ultimately, what does it mean for our relationship with the Earth and for human and nonhuman communities?

While humans have gradually expanded the circle of entities to which we owe ethical, and thus legal, obligations,[24] giving rights to rivers promotes a more expansive ecological democracy:[25] as part of the legal implementation of these

16. Brandon Keim, *Nature to Get Legal Rights in Bolivia*, WIRED (Apr. 18, 2011, 6:10 PM), https://www.wired.com/2011/04/legal-rights-nature-bolivia/ [https://perma.cc/48HQ-L7K5].

17. *See, e.g.*, *India's Ganges and Yamua Rivers Are 'Not Living Entities'*, *supra* note 12.

18. *See* Gleeson-White, *supra* note 10.

19. I have chosen "Western" as opposed to "Northern," "developed," or "industrialized." Each formulation has its shortcomings, but "Western" does not offend those in Australia/New Zealand, does not suggest that in some ways some nations have completed some perfect path (in fact, this paper suggests that those of us who think we live in "developed" nations may still have a long road to travel), and does not define one cluster of nations by their means of economic production.

20. Sometimes not an oxymoron!

21. Christopher D. Stone, *Should Trees Have Standing?–Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 456 (1972).

22. *See* Sierra Club v. Morton, 405 U.S. 727, 741–42, 749–50, 750 n.8 (1972) (Douglas, J., dissenting).

23. *See* Boyd, *supra* note 11, at 13.

24. In his *Sierra Club v. Morton* dissent, Justice Douglas cites both Christopher Stone, *supra* note 21, and pioneering wildlife biologist and environmental ethicist Aldo Leopold's "Land Ethic" from *A Sand County Almanac* (1949), see *Morton*, 405 U.S. at 741–42, 752, whose core quote has become a famous environmental maxim: "A thing is right when it tends to preserve the integrity, stability, and beauty, and stability of the biotic community. It is wrong when it tends otherwise." ALDO LEOPOLD, A SAND COUNTY ALMANAC: AND SKETCHES HERE AND THERE 224–25 (1949). In the influential *The Rights of Nature* (1989), environmental philosopher Roderick Nash writes that "Ecology widens the circle" of ethical obligations to include nonhuman species and entities such as Rivers. RODERICK NASH, THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS 55 (1989).

25. For an explication of ecological and environmental democracy, see David Takacs, *Whose Voices Count in Biodiversity Conservation? Ecological Democracy in Biodiversity Offsetting, REDD+, and Rewilding*, 22 J.

new rights, governments are devolving legal guardianship[26] to local citizens, often those who have historically been excluded from controlling their own essential ecological resources.[27] While science and the experts who deploy it will continue to play important roles in determining the parameters of ecosystem health when naming what a river might want or need, this movement prioritizes new voices (or voices that have been silenced) to speak for and sustain Earth's life-support resources. For example, in New Zealand, the movement to grant the Māori these legal rights and responsibilities is part of a broader, formal legal movement to atone and compensate for past colonial depredations.[28] Thus, not only does the Whanganui River or Te Urewera gain rights of their own, but the disenfranchised, colonized Māori now also have equal (or dominant) voices at the table when deciding the fate of the River.

For a sustainable—or any—human future, I believe we need a fundamental shift in how we view the natural world and our relationships with it.[29] Our ideas about the nonhuman world themselves become ecological actors, shaping our ethics and therefore our behaviors towards the nonhuman world.[30] Legal solutions that reflect and reinforce an expanded circle of moral concern tilt the balance more towards stewardship and restoration over use and degradation.[31] A remade planet further shapes our ideas about the nonhuman world around us.[32]

In this Article, I chronicle the current movement to grant rights to rivers, lakes, mountains, and other ecosystem elements.[33] In addition to analyzing the statutes and judicial opinions driving this legal evolution, I draw extensively from interviews I have conducted with those who have fomented and are implementing these legal initiatives.[34] I explain what the current and developing laws and judicial opinions seek to achieve.[35] Deriving from disparate historical, philosophical, and legal backgrounds, they pursue disparate goals; yet all of the moves to grant legal rights to nonhuman entities aim to enshrine in the law the

ENV'T POL'Y & PLAN. 43, 45 (2020); David Takacs, *Environmental Democracy and Forest Carbon (REDD+)*, 44 ENV'T L. 71, 71 (2014).

26. See discussion *infra* Section III.A.5 for why some groups do not like the term "guardianship."

27. For this perspective on the Whanganui settlement, see Katherine Sanders, *'Beyond Human Ownership'? Property, Power and Legal Personality for Nature in Aotearoa New Zealand*, 30 J. ENV'T L. 207, 231 (2018).

28. Catherine J. Iorns Magallanes argues that by recognizing the rights of the Whanganui River and Te Urewera mountain and National Park, the government was really offering formal legal recognition of Māori cosmology, with concordant control of resources that had been robbed from them during colonization. Catherine J. Iorns Magallanes, *Nature as an Ancestor: Two Examples of Legal Personality for Nature in New Zealand* 16 (Vict. Univ. Wellington Legal Research Paper No. 54/2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3532319 [https://perma.cc/MK7J-JUYP]. My interviews with Gerrard Albert and Christopher Finalyson confirmed this interpretation.

29. Even that sentence needs rethinking: It poses a dualism between us and the natural world: We are apart from it, not a part of it.

30. This is one of the main theses of my book, DAVID TAKACS, THE IDEA OF BIODIVERSITY: PHILOSOPHIES OF PARADISE 119 (1996).

31. *See id.* at 20.

32. *See id.* at 156.

33. *See infra* Part III.

34. *See id.*

35. *See id.*

fundamental symbiosis between human and nonhuman ecological health, and to empower suitable stewards who will nurture that symbiosis.[36] I describe how newly vested spokespersons for nature seek to turn novel legal theories into real legal work that protects human and nonhuman communities.[37] I discuss what advancements—for human and nonhuman communities—the legal guardians hope will result that would not have resulted from more traditional legal protections, and discuss early repercussions that have emerged from grants of legal personhood to nonhuman entities.[38] I conclude by speculating that by sanctifying the interdependent relationship between human needs and healthy ecosystems, granting legal rights to rivers may contribute to reversing ecological degradation in this century and beyond.[39]

In other words, as these laws inscribe new legal relationships between people and nature, they force us to ask: what does it mean, practically, to move from "we *own* the River" to "we *are* the River?"

II. BACKGROUND: WHERE DID THIS MOVEMENT COME FROM?

According to the U.N. Secretary General's *Harmony with Nature* report, "Earth jurisprudence can be seen as the fastest growing legal movement of the twenty-first century. The most significant consequence of acknowledging human interconnectedness and inextricability from the rest of the world has been casting the non-human world as a legal subject . . . ."[40] In the moves to grant rights to nature, we see extensive cross-pollination across jurisdictions in deriving these legal innovations, a kind of ecological interrelationship or flow of legal energy among legal systems responding to the evolving belief that human-nonhuman interdependence must be enshrined in the law.

The number of environmental laws has grown thirty-eight-fold since 1972, with legislation included in virtually every nation.[41] Eighty-eight nations grant their citizens the right to a healthy environment, and sixty-two have these rights enshrined in their Constitutions.[42] But for all of the legal advances we've made on behalf of environmental protection, Earth's life support systems continue to erode at an alarming rate.[43] Humans are causing a synergism of unchecked (greenhouse gas and otherwise) pollution and species extinction, which will continue to redound to our detriment.[44] The human population is projected to

36. *See id.*
37. *See infra* Part IV.
38. *See id.*
39. *See infra* Part V.
40. U.N. Secretary-General, *Harmony with Nature,* ¶ 129, U.N. Doc. A/74/326 (July 26, 2019).
41. *Dramatic Growth in Laws to Protect Environment, but Widespread Failure to Enforce, Finds Report*, ENV'T LAW INST. (Jan. 2019), https://www.eli.org/news/dramatic-growth-laws-protect-environment-widespread-failure-enforce-finds-report [https://perma.cc/M3N8-Y8AT].
42. *Id.*
43. *Id.*
44. *Id.*

grow to nine billion by 2050 and likely to 11 billion by 2100,[45] while the average person's buying power and consumption will grow by 150%.[46] The International Union for Conservation of Nature (IUCN) forecasts more than 28,000 species threatened with extinction, *i.e.* 27% of all the species they have assessed: 40% of amphibian species, 25% of mammal species, and 14% of bird species face grave extinction threats.[47]

The movement towards a jurisprudence rooted in respect for the interdependence between humans and nature posits that in order to survive and thrive going forward, in a world of 7 or 11 (or however many) billion people, we must stop pretending that our existences as individuals, as communities, as a species does not fundamentally depend on the nonhuman world.[48] This means a radical—to the roots—rejiggering of our legal system towards sanity. As Thomas Berry puts it, "We need legal structures and political establishments that will know that our way into the future is not through relentless industrial development but through the living forces that brought us into being and are the only forces that can sustain us in the coming centuries."[49]

Mainstream, anthropocentric environmental law often conceives of, and thus, regulates nonhuman ecological entities and processes as malleable at our behest: the natural world is a buffet of resources to fulfill human desires, and we regulate accordingly.[50] If, as the laws I chronicle here purport to do, we viewed nature as an independent entity with inherent value and thus, inherent rights, with which we are symbiotically entwined, we would ask: what does this river or lake or mountain require to achieve its full potential? Human needs would then necessarily be constrained to fit within the bounds of functional ecosystems. Or we would recognize as the only sensible and sustainable way forward the essential symbiosis between human and nonhuman, and we would ask: how do we reconfigure our laws to recognize and thus regulate both human and nonhuman communities in interdependent, synergistic relationship?

Most of the ideas I describe in this Article are not new. In fact, they are very, very old, as their proponents consistently point out, formulated and

45. I find those figures difficult to believe, given how we are undercutting our systems of life support. Damian Carrington, *World Population to Hit 11bn in 2100—With 70% Chance of Continuous Rise*, GUARDIAN (Sept. 18, 2014), http://www.theguardian.com/environment/2014/sep/18/world-population-new-study-11bn-2100 [perma.cc/G7BQ-J33S]; *Population*, UNITED NATIONS, https://www.un.org/en/sections/issues-depth/population/ [perma.cc/9FJA-3KNF].

46. B. Miller, M. E. Soulé & J. Terborgh, Letter to the Editor, *'New Conservation' or Surrender to Development?*, ANIMAL CONSERVATION 2 (2014), http://www.esf.edu/efb/parry/Invert_Cons_14_Readings/Miller_etal_2014.pdf [https://perma.cc/QW8X-SFRH].

47. IUCN RED LIST OF THREATENED SPECIES, https://www.iucnredlist.org (last visited Jan. 25, 2021) [https://perma.cc/AB47-GWU8].

48. Maria Niera, *Our Lives Depend on a Healthy Planet*, WORLD HEALTH ORG. (June 3, 2015), https://www.who.int/mediacentre/commentaries/healthy-planet/en/ [https://perma.cc/KJK7-QJV7].

49. Thomas Berry, *Forward* to CORMAC CULLINAN, WILD LAW: A MANIFESTO FOR EARTH JUSTICE 21 (2d ed. 2017).

50. Cameron La Follette, *Rights of Nature: The New Paradigm*, AM. ASS'N GEOGRAPHERS (Mar. 6, 2019), http://news.aag.org/2019/03/rights-of-nature-the-new-paradigm/ [perma.cc/TXC9-SAUT].

practiced for millennia by indigenous peoples around the globe.[51] As the UN Secretary General's report puts it:

> The Earth-centred paradigm guided by the oldest jurisprudential traditions of humankind is inherently pluralistic. Harmony with Nature depends on respecting, protecting and nurturing diversity–of ecosystems, land and seascapes, cultures and traditions. Harmony with Nature calls for a deep appreciation of the many ways of being that life–not just human life, but all life–has imagined.[52]

It *is* new, though, that these ideas are now being implemented in Western law, their values informing the kinds of mindful, compassionate governance that reflect the core values of the communities entrusted with implementing these ideas *in situ*.[53] And the foundational ideas—that we are fundamentally interconnected with the nonhuman world (so even to write a sentence like that positing two separate entities is inaccurate)—are backed by ecological science showing the depth of these interconnections and human dependence on nonhuman species and ecosystem processes that undergird human existence.[54]

While some developing world scholars and activists have criticized the entire international human rights legal system as reflecting and reifying Western ideas and power structures,[55] here the movement for rights for nonhuman entities is often driven by, and affords legal power to, marginalized indigenous or rural communities.[56] Note that the movement to give rights to rivers differs from legal mechanisms that afford individuals the right to a healthy environment or to some specific environmental amenity, such as the right to clean, safe drinking water. While these legal advancements recognize and root in the law our interdependence with the natural world, those legal provisions still conceive of nature as existing to satisfy our needs.[57] Posing legal obligations in terms of "rights" connotes ethical obligations (some more inviolable than others) that exert normative and legal power over our behaviors and can be a complement or a corrective to utilitarian, market-based solutions.[58] As a recent *Science* paper notes, "When people and corporations have rights and nature does not, nature frequently loses, as evidenced by the continuing deterioration of the environment. Rights of nature may help to prevent this one-sided outcome."[59]

51. U.N. Secretary-General, *supra* note 40, ¶ 10.

52. *Id.* ¶ 133.

53. *Id.* ¶ 134.

54. *Id.* ¶ 133.

55. Samuel Moyn argues that the system deliberately overlooks gross economic inequalities that are the underlying causes of diminished human rights. *E.g., How the Human Rights Movement Failed,* N.Y. TIMES (Apr. 23, 2018), https://www.nytimes.com/2018/04/23/opinion/human-rights-movement-failed.html [https://perma.cc/E6NH-RWPF]. David Kennedy makes similar claims, adding that human rights law is "a vehicle for empire, rather than an antidote to empire," prioritizing the preoccupations of the North and not those of the most marginalized. David Kennedy, *Reassessing International Humanitarianism: The Dark Sides, in* INTERNATIONAL LAW AND ITS OTHERS 131, 133 (Anne Orford ed., 2006).

56. U.N. Secretary-General, *supra* note 40, ¶ 22.

57. For a thorough review, see David Takacs, *South Africa and the Human Right to Water: Equity, Ecology, and the Public Trust Doctrine*, 34 BERKELEY J. INT'L L. 55, 56 (2016).

58. Chapron et al., *supra* note 6, at 1392.

59. *Id.* at 1393.

Government support for environmental protection may ebb and flow, but it is more difficult to revoke protections for entities who are seen as having an inherent moral right to thrive, particularly when that view is memorialized in law.[60]

Ships and corporations may have legal rights; nature usually does not.[61] Activists are also seeking to grant nonhuman animals the same legal rights as humans.[62] For example, the Nonhuman Rights Project "is the only civil rights organization in the United States dedicated solely to securing rights for nonhuman animals,"[63] especially megavertebrates like great apes[64] and elephants.[65] These efforts are nonetheless about respecting individual animals whose qualities (sentience, emotional complexity, intelligence) mirror our own.[66] Worthy in their own right, these efforts are not directly about respecting our relationship to the broader ecological world and writing that into the law, nor empowering those communities who are most intimately connected to that world to have a say in how that law gets implemented.[67]

This is what I seek to document here. The experiments I portray are intriguing starting points for what it would mean to restructure law and governance to reflect the needs of a nonhuman entity, and to recognize the human communities' inextricable dependence upon and interrelationship with that nonhuman entity.

A. Christopher Stone and Legal Standing for Nonhuman Entities

Professor Christopher D. Stone's 1972 essay, *Should Trees Have Standing?–Toward Legal Rights for Natural Objects*, set a template in Western legal circles for why, and with what implications, nonhuman entities might themselves acquire legal rights.[68] Noting that "[t]hroughout legal history, each successive extension of rights to some new entity has been, theretofore a bit unthinkable,"[69] Stone opines that a:

60. *Id.* at 1392.

61. *Id.*

62. Oliver Milman, *Lawyers Argue Happy the Elephant Should Have Right to Freedom,* GUARDIAN (Oct. 22, 2019, 12:23 PM), http://www.theguardian.com/us-news/2019/oct/22/lawyers-argue-happy-the-elephant-should-have-the-same-rights-as-humans [perma.cc/9KZE-TG8L].

63. NONHUMAN RIGHTS PROJECT, https://www.nonhumanrights.org (last visited Jan. 25, 2021) [perma.cc/5C75-8TKS].

64. Guardian Staff and Agencies, *Orangutan Sandra Granted Personhood Settles Into New Florida Home*, GUARDIAN (Nov. 7, 2019, 1:42 PM), http://www.theguardian.com/world/2019/nov/07/sandra-orangutan-florida-argentina-buenos-aires [perma.cc/7YVY-PQY8].

65. *Litigation: Confronting the Core Issue of Nonhuman Animals' Legal Thinghood,* NONHUMAN RIGHTS PROJECT, https://www.nonhumanrights.org/litigation/ (last visited Jan. 25, 2021) [https://perma.cc/T8S9-NAPU]. About a dozen Constitutions recognize the rights of animals. *See* Jessica Eisen, *Animals in the Constitutional State,* 15 INT'L J. CON. L. 909, 911 (2017).

66. *Litigation: Confronting the Core Issue of Nonhuman Animals' Legal Thinghood*, *supra* note 65.

67. *Id.*

68. Stone, *supra* note 21, at 456.

69. *Id.* at 453.

[R]adical new conception of man's relationship to the rest of nature would not only be a step towards solving the material planetary problems…. If we only stop for a moment and look at the underlying human qualities that our present attitudes toward property and nature draw upon and reinforce, we have to be struck by how stultifying of our own personal growth and satisfaction they can become. . . ."[70]

For a nonhuman entity to have legal rights, someone can institute legal actions on its behalf; injury *to* it must be considered; and relief from injuries must flow to its benefit.[71] Stone decries that under our present, shortsighted legal system, if a polluter is held liable for polluting a waterway, "no money goes to benefit of the stream itself to repair *its* damages."[72] Natural objects have been mere "objects for man to conquer and master and use."[73] Instead, Stone argues, we must see that we are in relationship to, and dependent on, the rest of nature:[74] "I do not think it too remote that we may come to regard the Earth, as some have suggested, as one organism, of which Mankind is a functional part–the mind, perhaps: different from the rest of nature, but different as a man's brain is from his lungs."[75]

As Stone was clearly aware, "[t]o shift from such a lofty fancy as the planetarization of consciousness to the operation of our municipal legal system is to come down to earth hard."[76] He presaged an incipient hearing of *Sierra Club v. Morton,* where the Supreme Court "may find itself in a position to award 'rights' in a way that will contribute to a change in popular consciousness. It would be a modest move, to be sure, but one in furtherance of a large goal: the future of the planet as we know it."[77]

And, indeed, in a now well-known dissent in *Sierra Club v. Morton*, U.S. Supreme Court Justice Douglas cites Stone's work.[78] Noting that "Permitting a court to appoint a representative of an inanimate object would not be significantly different from customary judicial appointments of guardians *ad litem*, executors, conservators, receivers, or council for indigents,"[79] Justice Douglas suggests that the suit should "be more properly labeled as Mineral King v. Morton."[80] Justice Douglas opines:

> The river, for example, is the living symbol of all the life it sustains or nourishes—fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy

70. *Id.* at 495.
71. *Id.* at 458.
72. *Id.* at 462.
73. *Id.* at 463.
74. *Id.* at 498.
75. *Id.* at 499.
76. *Id.* at 500.
77. *Id.* at 500–01. In *Sierra Club v. Morton*, the Sierra Club challenged U.S. Forest Service's grant to Disney Corporation a permit to build a ski resort in the remote, biodiverse Mineral King valley. 405 U.S. 727, 730 (1972).
78. *Morton*, 405 U.S. at 742 (Douglas, J., dissenting).
79. *Id.* at 750 n.8.
80. *Id.* at 742.

> it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water—whether it be a fisherman, a canoeist, a zoologist, or a logger—must be able to speak for the values which the river represents and which are threatened with destruction.[81]

Describing a philosophy that we will see mirrored in current arguments on granting rights to nonhuman entities, Justice Douglas concludes:

> Ecology reflects the land ethic; and Aldo Leopold wrote in A Sand County Almanac . . . 'The land ethic simply enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively: the land.' That, as I see it, is the issue of 'standing' in the present case and controversy.[82]

Justice Douglas' expansive notion of legal "community" did not win, at least not that day.

B. Thomas Berry, Cormac Cullinan, and Earth Jurisprudence

At a 2001conference, philosopher Thomas Berry presented a set of principles that have formed a gospel to guide thinking about rights for nonhuman nature.[83] These notions inform some of the modern efforts analyzed in this Article. For example, one Principle states that "Every component of the Earth community, both living and non-living has three rights: the right to be, the right to a habitat or place to be, and the right to fulfill its role in the ever-renewing process of the Earth Community."[84] Another Principle states:

> These rights as presented here are based on the intrinsic relations that the various components on Earth have to each other. Planet Earth is a single community bound together with interdependent relationships. No living being nourishes itself. Each component of the Earth community is immediately or mediately dependent of every other member of the community for the nourishment and assistance it needs for its own survival . . . .[85]

For Thomas Berry, human-made law does not "grant" rights to nature; rather, we recognize the existing rights created when the Earth formed, and its evolutionary processes unfurled.[86]

In his book *Wild Law: A Manifesto for Earth Justice*, Cormac Cullinan molded Berry's preachings into "Earth Jurisprudence."[87] He writes:

> If we are to halt and reverse the process of degrading Earth we must completely revise how we govern ourselves. Thomas Berry and others are correct when they draw attention to the fact that this will require us to move

81. *Id.* at 743.

82. *Id.* at 752.

83. THOMAS BERRY, THE ORIGIN, DIFFERENTIATION AND ROLE OF RIGHTS (2001), http://www.ties-edu.org/wp-content/uploads/2018/09/Thomas-Berry-rights.pdf [https://perma.cc/G437-GT87].

84. *Id.*

85. *Id.*

86. *Id.*

87. *See generally* CORMAC CULLINAN, *supra* note 49.

> away from some of the fundamental beliefs and the mythologies so dear to the cultures that currently dominate world society.[88]

The most fundamental misconception is our failure to:

> [R]ecognise that every aspect of our well-being is derived from Earth. The conscious reintegration of human societies into the Earth Community will not be possible until we can conceive of an Earth jurisprudence that allows us once more to assume our rightful place as an integral part of the larger community of beings.[89]

Cullinan advocates that our legal systems must overcome the "obsessively anthropocentric"[90] "core falsehood . . . that we humans are separate from our environment and that we can flourish even as the health of the Earth deteriorates."[91] By remaking, from the roots up, human legal systems to put the Earth community at the core, we turn away from our "catastrophically destructive" current path and guarantee human health and survival of our species.[92] Cullinan acknowledges such a radical paradigm shift is fraught with difficulty, but "[s]ince human beings have no future on Earth unless we are able to do so, being deterred by the difficulties is tantamount to acquiescing to extinction."[93]

Cullinan advocates for indigenous communities seeking legal autonomy: "Their plea is for the dominant culture (represented by the national government) to cease trying to impose its idea of an appropriate human role on their relationships with one another and with the Earth Community as a whole."[94] This will be among his many ideas that find legal expression in the innovations below.

C. People's Tribunals on Rights of Nature

In 2010, about 30,000 people from over 100 nations attended the "World People's Congress on Climate Change and the Rights of Mother Earth" in Cochabamba, Bolivia.[95] Cochabamba had been the site of community unrest and successful reversal of plans to give the city's water supply to a private corporation.[96] Attendees drafted a Universal Declaration of the Rights of Mother Earth, which forms the legal basis for the International Tribunal for the Rights of

88. *Id.* at 170.
89. *Id.*
90. *Id.* at 53.
91. *Id.* at 44.
92. *Id.* at 7, 51.
93. *Id.* at 7.
94. *Id.* at 102.
95. Michelle Maloney, *Building an Alternative Jurisprudence for the Earth: The International Rights of Nature Tribunal.* 41 VT. L. REV. 129, 130–31 (2016).
96. *See, e.g.*, William Finnegan, *Leasing the Rain,* NEW YORKER (Apr. 1, 2002), https://www.newyorker.com/magazine/2002/04/08/leasing-the-rain [https://perma.cc/AK85-9VBB]; *Leasing the Rain: The Story,* FRONTLINE WORLD (June 2002), https://www.pbs.org/frontlineworld/stories/bolivia/thestory.html [https://perma.cc/9SS2-EHYP] (discussing the PBS documentary 'Leasing the Rain'). The story also inspired an excellent fictional adaptation, "Tambien la Lluvia," starring Gael Garcia Bernal. *Tambien la Lluvia,* IMDB, https://www.imdb.com/title/tt1422032/ (last visited Jan. 25, 2021) [https://perma.cc/3KNK-DAXP].

Nature and Mother Earth.[97] The goal of the Tribunals, which have met five times, is to provide "a vehicle for reframing and adjudicating prominent environmental and social justice cases within the context of a Rights of Nature based earth jurisprudence."[98] And so, for example, at the Bonn 2017 conference (which featured nine judges, including Cormac Cullinan), fifty-three people from nineteen countries gave presentations, and attendees heard cases on water deprivation in Spain, mining in a protected forest in Germany, and false commodification of nature in REDD+ schemes.[99]

Local tribunals have also been held in the U.S. and Australia.[100] The Australian Peoples' Tribunal for Community and Nature's Rights was created with a charter that refers to the Universal Declaration, but also recognizes the ancient "First Laws" of the First Nations Peoples of Australia.[101] The main goals of these tribunals, according to Dr. Michelle Maloney, National Convenor of the Australian Earth Laws Alliance, is to "give a voice to the voiceless: to allow people to speak for nature and challenge the destructive practices that industrial society normalized throughout the 20th century," and to collectively offer an alternative vision of what non-anthropocentric law could look like.[102] Rights for nonhuman entities forms part of the legal corpus for that alternative vision.[103]

The U.S.-based Earth Law Center promotes "the idea that ecosystems should have the right to exist, thrive, and evolve–and that nature should be able to defend its rights in courts, just like people can."[104] Their team of lawyers specializes in amicus briefs in courts around the world explaining legal rights for natural entities.[105] They are working with local activists to accrue rights for Bosnia's Doljanka River, Pakistan's Indus River, and Nigeria's River Ethiope, and for natural forests in El Salvador and ecosystems in Serbia.[106]

These global alliances explicitly fuse modern and traditional norms to set out an alternative, Earth-based legal framework that replaces hierarchy with relationship, and emphasizes interdependence with Earth systems rather than dominance over them.[107] While commentators sometimes frame the legal

97. World People's Conference on Climate Change & the Rights of Mother Earth, *Universal Declaration of Rights of Mother Earth*, GLOB. ALL. FOR THE RTS. OF NATURE (Apr. 22, 2010), https://therightsofnature.org/universal-declaration/ [https://perma.cc/P7P3-NCZP].

98. *About*, GLOB. ALL. FOR THE RTS. OF NATURE: INT'L RTS OF NATURE TRIBUNAL, https://www.rightsofnaturetribunal.com/about (last visited Jan. 25, 2021) [https://perma.cc/2XPD-97M9].

99. *4th International Rights of Nature Tribunal*, INT'L RTS. OF NATURE TRIBUNAL, https://www.rightsofnaturetribunal.com/tribunal-bonn-17 (last visited Jan. 25, 2021) [https://perma.cc/G49M-HEWS].

100. Maloney, *supra* note 95, at 137.

101. *Id.* at 138.

102. *Id.* at 141.

103. *Id.* at 137.

104. EARTH L. CTR., https://www.earthlawcenter.org [https://perma.cc/5TBS-XSEG].

105. *Amicus Briefs,* EARTH L. CTR., https://www.earthlawcenter.org/amicus-briefs (last visited Jan. 25, 2021) [https://perma.cc/3DCD-A5V6].

106. *See id.*

107. *See* Maloney, *supra* note 95, at 130.

developments I analyze in this Article as a turn towards ecocentrism,[108] in reality, they blur the bounds between anthropocentric and ecocentric worldviews.[109] While the nonhuman entity is the focus of the new legal forms, stories told to buttress local claims to speak for the nonhuman are still grounded in relationships between the human and nonhuman communities, including what the nonhuman entity provides to the local community.[110]

"Rights for Rivers" is really–at least in some incarnations–biocultural rights, *i.e.* rights for communities that have traditionally relied upon and revered the nonhuman world that cradles them.[111] But they need not be the traditional communities. Even urban, modernized Western communities are recognizing that existing laws are inadequate to protect nonhuman communities (and thus protect themselves), and a new set of ethics recognizing this interdependence is becoming rooted in the law.[112]

III. RIGHTS FOR RIVERS AROUND THE WORLD

In this section, I chronicle the cross-fertilizing legal moves to grant nonhuman entities legal rights in disparate nations. All recognize the fundamental interconnectedness between indigenous and/or rural communities and the nonhuman ecosystems upon which they depend, and most empower these communities to speak for what the river or mountain might need.

I proceed nonchronologically, starting with New Zealand, where the national government has enacted the globe's most progressive statutes that grant nonhuman entities legal personhood, provide road maps for how those grants should be implemented, and empower local indigenous communities to govern and speak for the legal persons. The section features extensive insights from my interviews with some of the prime Māori and government leaders responsible for the legal revolution. I move to Colombia, where the Constitutional Court's declaration of legal personhood for the Río Atrato provides the most sweeping analysis yet of the need for a new, ecocentric legal form; this section is enlivened by my interview with the author of the opinion, Chief Justice Jorge Iván Palacio. I move to Australia, where the Victorian government has granted a legal voice to the Yarra River with a governing body who will speak for the River's interests. I include interviews with Anne Poelina, a traditional Aboriginal elder who is advocating for rights for the rivers that sustain her community in northwestern Australia, and for rights for the traditional owners to speak for what the land needs. I also describe decisions in Bangladesh, India, and Ecuador, where courts have attempted to remedy environmental destruction through the mechanism of

108. *E.g.*, Erin O'Donnell & Elizabeth Macpherson, *Voice, Power and Legitimacy: The Role of the Legal Person in River Management in New Zealand, Chile, and Australia*, 23 AUSTRALASIAN J. WATER RES. 35, 35 (2019).

109. Elizabeth Macpherson & Felipe Clavijo Ospina, *The Pluralism of River Rights in Aotearoa, New Zealand and Colombia.* 25 WATER L. 283, 285 (2018).

110. *See, e.g.*, Boyd, *supra* note 11, at 13.

111. *See, e.g.*, *Whananui River Legally Recognized as Living Entity, New Zealand*, *supra* note 5.

112. *See, e.g.*, Henry, *supra* note 13.

granting rights to rivers, and I conclude with recent developments in the United States.

A. New Zealand

1. Overview

New Zealand has granted legal personhood to a mountain ecosystem, Te Urewera, and to the Whanganui River.[113] These designations have received widespread press. For example, *National Geographic* begins their coverage dramatically: "Cloud-shrouded Ngauruhoe—mythical Mount Doom in Peter Jackson's The Lord of the Rings—is one of the sacred mountains of New Zealand's central North Island, birthplace of the Whanganui River."[114]

New Zealand granted both entities legal personhood not by judicial order, but by statute.[115] A potent blend of ingredients combined to result in legal forms that reflect the Māori worldview in hitherto unformulated ways. The New Zealand government acknowledges they have violated treaty obligations, and seeks to make amends;[116] the Māori demonstrate longstanding, well-documented cultural traditions that render their claims inarguably authentic;[117] ecological science buttresses Māori understandings of their interconnectedness with the natural world;[118] all parties seem able to hold disparate worldviews in parallel, and to respect those worldviews;[119] and, fortuitously, key justice-seeking players emerged and acted at the right time.[120] Even though the novel legal forms that have resulted are endemic to the particulars of New Zealand law and history, they now influence human/nonhuman relationships and the law that governs those relationships elsewhere on the globe.[121]

New Zealand, surprisingly, does not join the majority of the world's nations in recognizing a human right to a healthy environment, or to safe, clean water.[122] Such proclamations, and laws implementing them, have been steps forward to recognizing that human wellbeing depends upon functioning, healthy ecosystems.[123] But these rights are still anthropocentric and individualistic: *I*

113. *See* Te Urewera Act 2014, s 11 (N.Z.); Te Awa Tupua (Whanganui Rover Claims Settlement) Act 2017, s 14 (N.Z.).

114. Kennedy Warne, *A Voice for Nature*, NAT'L GEOGRAPHIC, https://www.nationalgeographic.com/culture/2019/04/maori-river-in-new-zealand-is-a-legal-person/ (last visited Jan. 25, 2021) [https://perma.cc/VFN2-NR5S].

115. *See* sources cited *supra* note 113.

116. Warne, *supra* note 114.

117. *Id.*

118. *See* Macpherson & Ospina, *supra* note 109, at 288.

119. *See* O'Donnell & Macpherson *supra* note 108 at 1.

120. *See* sources cited *supra* note 113.

121. *See infra* Section III.B, III.D.

122. Catherine Iorns Magallanes, *Human Rights, Responsibility and Legal Personality for the Environment in Aotearoa, New Zealand*, *in* HUMAN RIGHTS AND THE ENVIRONMENT: LEGALITY, INDIVISIBILTY, DIGNITY AND GEOGRAPHY 551 (James R. May & Erin Daly eds., 2019).

123. *Id.* at 552.

have a right to a resource that must be stewarded for *my* wellbeing.[124] The new legal forms in New Zealand move from an anthropocentric notion of rights (what can nature provide *me*?) to an anthro-ecocentric notion: the law is still first and foremost a reflection of human beliefs and human needs, but the law situates those needs in a web of interrelatedness where the nonhuman world looks after us as we look after it, with those connections so entwined that there is no "us" and "it"–we are the River, and the River is us.

2. Treaty of Waitangi

To understand current legal innovations in New Zealand, one must understand a bit about the Treaty of Waitangi and its interpretations. The Treaty's cultural (mis)understandings, and explicit and acknowledged Crown violations provide the historical, legal milieu for understanding how rivers and mountains have gained legal personhood in New Zealand.

Many, but not all, Māori Chiefs signed the 1840 Treaty of Waitangi with British Crown representatives.[125] Some British colonizers did have humanitarian concerns, but first and foremost, they desired to gain control–sovereignty–over Māori lands.[126] From the beginnings of negotiations between Crown and Māori, differences in worldview failed to find precise meaning in legal terms; as historian Claudia Orange expresses this, with considerable understatement: "As for Māori understanding of the Treaty, it left much to be desired."[127]

Central to ongoing disagreements was the notion of "sovereignty." Even today, Western lawyers don't agree on what, precisely, the word "sovereignty" does mean, or should mean in an era when—be it greenhouse gas pollution or any other damages—environmental harm transcends cartographic boundaries.[128] It is clear that in 1840, the various Treaty of Waitangi signatories shared no common understanding of what sovereignty over land meant or what rights they were accruing or conceding.[129] For the 19th century colonizers, "sovereignty" conveyed dominion and control in a familiar, Western sense.[130] The Māori shared no such worldview, and have long held that they signed onto the translation into Māori "kāwanatanga" that was fundamentally different from how the colonizers saw their relationship to the land;[131] had the translation been more accurate, the chiefs would not have signed.[132] Subsequent new translations of the

124. For a thorough examination of what it means to make a human right to water justiciable, see Takacs, *supra* note 57, at 55.

125. CLAUDIA ORANGE, THE TREATY OF WAITANGI 1 (1987) (ebook). The Whanganui Iwi did; the Te Urewera Iwi did not.

126. *Id.* at 2.

127. *Id.* at 66; *see also* Catherine Iorns Magallanes, *Māori Cultural Rights in Aotearoa New Zealand: Protecting the Cosmology That Protects the Environment*, 21 WIDENER L. REV. 273, 286–87 (2015).

128. David Takacs, *Forest Carbon (REDD+), Repairing International Trust, and Reciprocal Contractual Sovereignty*, 37 VT. L. REV. 653, 656 (2013).

129. *See* ORANGE, *supra* note 125, at 38.

130. *Id.* at 40; *see also* Magallanes, *supra* note 127, at 285–86 n. 56.

131. *See* ORANGE, *supra* note 125, at 40.

132. *See id.* at 1.

Treaty have conveyed different meanings of key terms that controlled peoples' relationships with their surroundings; those translations have guided settlement agreements, even if they don't represent the original understandings the parties held in 1840.[133] Through Waitangi Tribunal proceedings, the government has admitted it has repeatedly breached both Māori and English versions of the text with respect to Māori control over environmental resources.[134]

The Treaty represented and continues to represent contested meanings of relationships to the nonhuman world, and of communities' rights to define those relationships as they wish.[135] We cannot separate government attempts to subjugate Māori from desires for the "resources" with which the Māori had relations for centuries.[136] For the Māori, self-determination meant ability to define their relationship with rivers and mountains as a vehicle for controlling the resources on which they have always depended.[137] Of course, the Māori definition of "self" was more expansive than the colonizers (and their descendants, until recently) could visualize.[138]

Only now has the Crown acceded to a "law" of relationships between human and nonhuman that honors the Māori worldview.[139]

3. Background/Waitangi Tribunal and Court Decisions

'Te Awa Tupua—the Whanganui River Claims Settlement Act of 2017—establishes legal personhood for the Whanganui River and honors the local Māori communities' close and longstanding relationship to the River.[140]

Previous New Zealand statutes included precursors to the hybrid legal forms that emerged in the 2010s. For example, Section 6 of the 1991 Resource Management Act requires that all persons acting under the Act "shall recognise and provide for . . . the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu [sacred places[141]], and other taonga [prized possessions[142]]. . . ."[143] Section 7(a) requires that all must pay "particular regard to—kaitiakitanga," or traditional Māori stewardship.[144] Court decisions

133. *Id.* at 191.

134. Magallanes, *supra* note 127, at 289.

135. *Id.* at 293–95.

136. *Id.* at 313.

137. *Id.* at 279.

138. Valmaine Toki, *Māori Seeking Self-Determination or Tino Rangatiratanga?*, 5 J. MAORI & INDIGENOUS ISSUES 134, 142–43 (2017) https://researchcommons.waikato.ac.nz/bitstream/handle/10289/11519/Toki%20Maori%20Seeking%20self-determination.pdf [https://perma.cc/9ZWW-V6TY].

139. Roy, *supra* note 5.

140. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, pt 2, s 14 (N.Z.), http://www.legislation.govt.nz/act/public/2017/0007/17.0/DLM6830851.html [https://perma.cc/FW5W-EP8A].

141. *Wāhi tapu*, MĀORI DICTIONARY, https://Maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=wahi+tapu (last visited Jan. 25, 2021) [https://perma.cc/95MG-BR2E].

142. *Taonga*, MĀORI DICTIONARY, https://Maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=taonga (last visited Jan. 25, 2021) [https://perma.cc/NWC6-ZNHS].

143. Resource Management Act 1991, s 6, http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM231910.html [https://perma.cc/U2MC-FUYA].

144. *Id.* s. 7. For other particular cases or settlements where Māori cultural precepts have been heeded, see Magallanes, *supra* note 122, at 553.

also required that water managers must consider Māori spiritual relationships with the waters in question; courts have ruled that development projects need be modified or scuttled due to inadequate consideration of Māori cultural or spiritual precepts.[145] For example, in one case, a court advises that:

> One needs to understand the culture of the Whanganui River iwi [tribe][146] to realise how deeply ingrained the saying *ko au te awa, ko te awa, ko au* [I am the River, the River is me] is to those who have connections to the river. Their spirituality is their 'connectedness' to the river. To take away part of the river . . . is to take away part of the iwi. To desecrate the water is to desecrate the iwi. To pollute the water is to pollute the people.[147]

During the 1960s and 1970s, the Māori increasingly protested colonial depredations.[148] The 1975 Treaty of Waitangi Act set up the Waitangi Tribunal to consider Māori claims, many over environmental resources, against the Crown.[149] Hundreds of claims have been adjudicated, with remedies including property transfers, cash payouts, and formal apologies.[150]

Tribunal investigations into resource claims include evidence of ancestral connections to the resources in question.[151] Even so, the Waitangi Tribunal set debates and outcomes on the Crown's rhetorical terms.[152] While the government was amenable to giving Māori greater shares of or control over essential resources, it was loath to relinquish fee simple ownership of those resources–so Western notions of property rights would linger as a backdrop of subsequent negotiations.[153] For example, a 1992 deed settlement on offshore fishing rights gave Māori a greater percentage of the annual quota, but extinguished any claims based on cultural or spiritual relationships with the sea.[154] Whanganui community leader Gerrard Albert, who was lead negotiator for the Whanganui River agreements, explained that in these formal government proceedings, the Māori lacked the opportunity to "emote," *i.e.*, to express their spiritual connection to the land (and the violence that had been done to that connection) in a public forum.[155]

145. Magallanes, *supra* note 127, at 296, 299–300.

146. "Iwi" can be translated as "tribe." *Iwi*, MĀORI DICTIONARY, https://Maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=iwi (last visited Jan. 25, 2021) [https://perma.cc/F6WG-2HHJ].

147. Ngati Rangi Trust v. Manawatu-Wanganui Reg'l Council EC A067/2004, 18 May 2004, at [318] (N.Z.).

148. Basil Keane, Ngā Rōpū Tutohetohe – Māori Protest Movements, TE ARA ENCYC. N.Z. (June 20, 2012), https://teara.govt.nz/en/nga-ropu-tautohetohe-maori-protest-movements/page-2 [https://perma.cc/ZS42-MW7K].

149. *See* Magallanes, *supra* note 127, at 291; Treaty of Waitangi Amendment Act 1985, s 3, subs 1 (N.Z.); ORANGE, *supra* note 125, at 253.

150. *Past, Present & Future of the Waitangi Tribunal: History of the Waitangi Tribunal*, WAITANGI TRIBUNAL (June 16, 2017), https://waitangitribunal.govt.nz/about-waitangi-tribunal/past-present-future-of-waitangi-tribunal/ (June 16, 2017) [https://perma.cc/U5WX-QWN8].

151. Magallanes, *supra* note 127, at 292.

152. *Id.*

153. *See* ORANGE, *supra* note 125, at 253.

154. *Id.*

155. Interview with Gerrard Albert in Whanganui, N.Z. (July 9, 2019).

A 1999 finding by the Waitangi Tribunal set the stage for a creative resolution to the local Māori iwi's claims over the Whanganui River.[156] The Tribunal cites a long string of court cases over the River from 1938 to 1962, in "one of longest running items of litigation in New Zealand history."[157] The Tribunal goes into extensive detail on the ties between Māori and the River, which lend legitimacy to Māori demands that their relationship to the River be reflected in any remedies the Tribunal suggests.[158] The Tribunal found that the "case is unique for the close physical and spiritual association of the people to the River and the history of their assertion of River ownership."[159] The Tribunal notes that the:

> [E]motive bond cannot be described solely in terms of a sentimental regard for the landforms of one's country. Even the centrality of the River to the people's lives is insufficient to explain how they think of it. It is tied as well to the Polynesian comprehension of the environment, where a River can be described as a tupuna or matua as with a caring parent. This points beyond personification to fundamental beliefs.[160]

The Tribunal notes that:

> [F]or nearly a millennium the Atihaunui hapu[161] have held the Whanganui River. They were known as the River people . . . The River was central to Atihaunui lives, their source of food, their single highway, their spiritual mentor. It was the aortic artery of Atihaunui heart, shrouded in history and tradition, the River remains symbolic of Atihaunui identity. It is the focal point for the Atihaunui people, whether there or away.[162]

This cultural, spiritual connection to the River was central to legitimating the Māori's legal claims to speak for the River.[163]

Even without this longstanding and current bond between community and River, the Tribunal found that local Māori owned the River when the British colonized, and that the 1903 law that vested the riverbed in the Crown was done without their consent.[164] Noting that the Māori's:

> [P]articular concern today is that they are obliged to appear as supplicants before a number of authorities that control the river's use, when, in terms of the Treaty, they own the river and the authorities should be making supplications to them. It is something that adds considerable salt to the wound of wrongful deprivation, and it is something to be brought into account in any plan for remedial action.[165]

156. WAITANGI TRIBUNAL, WAI 167, WHANGANUI RIVER REPORT xiii (1999).

157. *Id.* at xviii.

158. *Id.* at 38.

159. *Id.* at xxi.

160. *Id.* at 38.

161. "Hapu" are extended family groups within a tribe. *Hapu*, MĀORI DICTIONARY, https://Maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=hapu (last visited Jan. 25, 2021) [https:perma.cc/S6PG-KK7S].

162. WAITANGI TRIBUNAL, *supra* note 156, at xiii

163. *Id.* at 31.

164. *Id.* at xiii.

165. *Id.* at xviii.

While the Māori negotiators would later abjure the notion that the River may be common "property" at all, the Tribunal clearly contemplates and validates a non-Western notion of property, as "we are dealing not with the private property of individuals but with the common property of a people."[166] The Tribunal does not dictate a final legal resolution; it concludes that "resolution of a river treaty between Atihaunui and the Crown will require more particular guidelines. Negotiating these guidelines will make the highest calls of statesmanship on both sides."[167]

And so, it eventually would.[168]

4. Negotiation Background and the Te Awa Tupua Act

According to Gerrard Albert, while the Tribunal results were favorable to Māori claims, the formal proceedings were nonetheless "dressing us up in the same clothes we're trying to break down."[169] Mr. Albert notes that the Māori eventually decided they "can't work within the hegemony that has been recreated."[170] He said that they knew they had to be "strategic," "technical," and "fastidious," and they sought from the River what the strategy should be.[171] They decided to root their negotiation strategy with the government in the traditional Māori relationship with the River, "and lead them to our house."[172]

In 2010, the government concluded an agreement with the Tainui iwi over the Waikato River on the North Island.[173] The agreement acknowledges (in English and Māori languages[174]) the tribe's spiritual connection to the River,[175] acknowledges grave historical wrongdoings, including ecological degradation by the Crown,[176] and sets up a government/Māori co-management Waikato River Authority.[177] In other words, the agreement has most of the ingredients we will come to see below, except it does not provide legal personality for the Waikato River.[178]

Christopher Finlayson, who was Attorney General, Minister for Treaty of Waitangi Negotiations for both Te Urewera and the Whanganui River, stressed that in neither negotiation did he view either side as "compromising"—rather,

166. *Id.* at xx.
167. *Id.* at xxi.
168. *See infra* Part IV.
169. Interview with Gerrard Albert, *supra* note 155.
170. *Id.*
171. *Id.*
172. *Id.*
173. Waikato-Tainui Claims (Waikato River) Settlement Act 2010 (N.Z.).
174. *See, e.g.*, Waikato River Act, s 8, subss 2 & 3 (Statement of Significance of Waikato River to Waikato-Tainui).
175. *Id.* at pmbl. ¶ 1 ("To Waikato-Tainui, the Waikato River is a tupuna (ancestor) which has mana (prestige) and in turn represents the mana and mauri (life force) of the tribe. Respect for te mana o te awa (the spiritual authority, protective power and prestige of the Waikato River) is at the heart of the relationship between the tribe and their ancestral River . . . ."); *see also id.* at pmbl. ¶ 17.
176. *Id.* at pmbl. ¶ 17(a)–(c), (l).
177. *Id.* at s 22.
178. *Id.* at s 8.

they negotiated cordially, with a resulting mutually agreeable legal outcome.[179] For the Whanganui River negotiations, conviviality played a role: the local iwi invited the newly elected Conservative Party Prime Minister John Key along with Mr. Finlayson to social events where both sides got to know and trust each other.[180] When Mr. Finlayson was appointed Crown negotiator, he asked Gerrard Albert for an "outline" of what the iwi wanted; that served as the basis for the negotiations.[181] For Mr. Finlayson, the negotiations were guided not by what the words in the original Treaty of Waitangi did or did not mean, or even what Māori cosmology connoted (although he respects the cosmology).[182] It was simply about social justice: given how the Māori had been treated, they deserved a fair resolution, and they deserved it on their own terms.[183] He also had the full support of the Prime Minister and Finance Minister to conduct these negotiations; they also supported the final, novel legal forms that emerged.[184] The Whanganui negotiations were also guided by Te Urewera's positive results and innovative legal outcomes.[185] According to Mr. Finlayson, neither side wanted a "co-governance" model, and it made no sense to either side to grant the Māori property rights to the riverbed while keeping the air above the River in Crown hands.[186]

So the stage was set: the government opposed Māori (or anyone's) ownership of freshwater (while somehow believing that rights to use the water may be bought and sold).[187] And while the Māori don't believe in private property ownership of Rivers or land, they had been forced into the position that they do believe in such, *i.e.*, if anyone is going to "own" these resources, it should be them based upon ancestral claims (they *were* here first, after all), and treaty obligations.[188] Anne Salmond has posited that the Māori must thus posit "simultaneous relevance of alternative realities," speaking modern legalese interwoven with Māori language and cosmology.[189] Previous Māori agreements resulting in transfer of property rights amounted to what she has called "ontological submission:"[190] the local iwi may gain the rights to control and use and/or own the resource, but at the expense of violating the deep-rooted understanding of their relationship with the world around them, and undermining their own claims founded in a non-Western paradigm of non-property.[191] Salmond cites one Māori claimant at a Waitangi Tribunal hearing on freshwater saying that while his people did not believe anyone could own water, and "they had been comfortable with the Crown managing their rivers for the good of the nation, they did not

179. Interview with Chris Finlayson in Wellington, N.Z. (July 8, 2019).
180. Interview with Gerrard Albert, *supra* note 155; Interview with Chris Finlayson, *supra* note 179.
181. Interview with Gerrard Albert, *supra* note 155; Interview with Chris Finlayson, *supra* note 179.
182. Interview with Chris Finlayson, *supra* note 179.
183. *Id.*
184. *Id.*
185. *See infra* Section III.A.4.
186. Interview with Chris Finlayson, *supra* note 179.
187. Anne Salmond, *Tears of Rangi*, 4 HAU J. ETHNOGRAPHIC THEORY 285, 297 (2014).
188. *Id.*
189. *Id.* at 290.
190. *Id.* at 302.
191. *Id.* at 290.

agree that these waterways should be handed over to partially privatized power companies."[192] Thus, they had little choice: "Blame the Government for us claiming ownership."[193]

For the Whanganui negotiations, Gerrard Albert said the iwi "[d]idn't want to change the dance—we wanted to change the music so people would dance a different way: what instrument can we play to change the music?"[194] As a way forward, the community's attorneys suggested the idea of "legal personhood" for the River with some kind of Māori board to speak for how to fulfill the goals of the River on an ongoing basis.[195]

5. Te Awa Tupua

The result is Te Awa Tupua (meaning literally "River with Ancestral Power"),[196] *i.e.*, the Whanganui River Claims Settlement Act of 2017.[197] It is beyond the scope of this Article to analyze detailed, specific elements of Māori cosmology that underlie and legitimate the resulting agreement. The Whanganui River has, for centuries, flowed at the center of the iwi's existence; it provided quotidian needs (water, food), and lies at the heart of their cosmology.[198] Māori have traditionally believed that environmental features have life forces imbued in spirits; humans are protected by these spirits, and, in turn, must revere and maintain the ecological resources associated with these spirits.[199] For example, Anne Salmond describes "*hau*," as a "wind of life" that emerged at the beginning of time and animates those who share all gifts.[200] When the Māori say, "I am the River, and the River is me," that is because Māori do and always have shared *hau* with the River, which they view as a living being that offers gifts of sustenance, which in turn are received and returned through caring stewardship of the River.[201]

Whatever it ends up meaning for actual impact on the mountain or the River, these new legal frameworks are revolutionary in establishing in law the biocultural rights of the people who have long lived in close interrelation with the nonhuman world.[202]

192. *Id.* at 301.

193. *Id.* (quoting Maanu Wihapi as quoted in WAITANGI TRIB., THE STATE 1 REPORT ON THE NATIONAL FRESHWATER AND GEOTHERMAL RESOURCES CLAIM, 16 (2012)).

194. Interview with Gerrard Albert, *supra* note 155.

195. *Id.*

196. Salmond, *supra* note 187, at 286.

197. For video of the key players and Māori reaction to signing of the statute, see Te Karere TVNZ, *Whanganui River Recognised as Independent, Indivisible Entity*, YouTube (Mar. 14, 2017), https://www.youtube.com/watch?time_continue=214&v=DOgwpn3O_SI [https://perma.cc/ZQC4-38UD].

198. *Id.*

199. Magallenes, *supra* note 122, at 552; Interview with Gerrard Albert, *supra* note 155.

200. Salmond, *supra* note 187, at 292.

201. *Id.* at 293; *see also* Magallanes, *supra* note 127, at 315.

202. Elizabeth Macpherson, Erin O'Donnell & Felipe Clavijo Ospina, *Meet the River People: Who Speaks for the Rivers?*, STUFF (Apr. 2, 2018, 5:00 AM), https://www.stuff.co.nz/environment/102741097/meet-the-River-people-who-speaks-for-the-Rivers [https://perma.cc/A2JD-KDBG].

O'Donnell & MacPherson write: "Finding the right balance between legal rights that increase the power of the river to protect itself, and maintaining community support for management of a public resource is difficult."[203] Difficult or not, it is precisely the potential beauty of the new arrangement. The legal form comes *from* the community and devolves power *to* the community. By design, the legal agreements the Māori sought in Te Urewera and Whanganui not only mirror cultural precepts, but reinforce those precepts. At the core of the Māori position in both negotiations was that they did not want anyone to "own" the national park lands or the River, as this would violate their "tikanga," or customary law.[204] The Mountain and River and their ecosystems own themselves. The Māori wanted recognition of that core legal fact, and they wanted to be in control of how humans treated the Mountain and the River.[205] That is to say, they wanted to be the ones to translate what the Mountain and River—and thus the interwoven human communities—need and want.[206]

Gerrard Albert points out that they explicitly set out to devise a different legal form that more accurately reflects and frames the worldview they hold, one that replaces hierarchy with relationship, dominance with interdependence, and property rights with interconnected management responsibilities.[207] Mr. Albert thus sought a legal agreement that would reinforce the fundamental interrelatedness and help fulfill his iwi's connection and commitment to the nonhuman ancestors.[208] Thus, in 2008, after negotiations with the Crown had broken down over the legal status of the Whanganui and the associated iwi, Mr. Albert and his peers realized they had a chance to seek what they truly wanted.[209] The iwi saw three different ancestors as controlling, or guiding, the three parts of the Whanganui.[210] As long as the primacy of these ancestors, and the iwi's relationships with them, were recognized, the iwi did not require or desire fee simple ownership of the River.[211] As noted above, such ownership violated their worldview, anyway: they could not "own" that to which they fundamentally belonged.[212]

As Mr. Albert put it, to pursue and accept formal legal ownership is to "fall into a trap" because "ownership does not provide for the totality of the relationship."[213] Mr. Albert said they recognized that "when we argue within their constructs we keep getting narrowed so we don't recognize the results."[214]

203. O'Donnell & Macpherson, *supra* note 108, at 36.
204. *Id.* at 37.
205. Macpherson et al., *supra* note 202.
206. Both Gerrard Albert and Chris Finlayson stressed this. Interview with Gerrard Albert, *supra* note 155; Interview with Chris Finlayson, *supra* note 179.
207. Interview with Gerrard Albert, *supra* note 155.
208. *Id.*
209. *Id.*
210. *Id.*
211. *Id.*
212. O'Donnell & Macpherson, *supra* note 108, at 37.
213. Interview with Gerrard Albert, *supra* note 155.
214. *Id.*

6. The Statutory Governance Agreement

Te Awa Tupua–the Whanganui River Claims Settlement Act of 2017–codifies legal personhood for the Whanganui River and honors in the law their relationship to the River.[215] The deed of settlement starts by formalizing a Government apology to the Māori.[216] The Act establishes that the River "is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements."[217] The Act recognizes "Tupua te Kawa," or the "intrinsic values that represent the essence of Te Awa Tupua," including that the River is a "spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and well-being of the iwi, hapū, and other communities of the River," and that "[t]he iwi and hapū of the Whanganui River have an inalienable connection with, and responsibility to, Te Awa Tupua and its health and well-being."[218]

In the most widely cited section, the Act declares "Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person."[219] The Act creates "Te Pou Tupua," *i.e.*, "the human face of Te Awa Tupua"[220] whose duties are "to act and speak for and on behalf of Te Awa Tupua" and "to promote and protect the health and well-being of Te Awa Tupua."[221]

The new legal form does not sweep away existing property law or power structures in one blow. The Act stipulates that nothing in the Act "creates, limits, transfers, extinguishes, or otherwise affects any rights to, or interests in," water nor extinguishes existing private property rights.[222] Thus, even though the River is a legal person, it does not own itself. Furthermore, the Act does not extinguish "existing rights of State-owned enterprises," which will give Te Awa Tupua problems when speaking for the River while negotiating with utilities and other related entities.[223]

To fulfill its duties, Te Pou Tupua "must act in the interests of Te Awa Tupua and consistently with Tupua te Kawa,"[224] *i.e.*, with "the intrinsic values that represent the essence of Te Awa Tupua . . . ."[225] Te Pou Tupua is authorized to report publicly on behalf of the River, "may engage with any relevant agency, other body, or decision maker to assist it to understand, apply, and implement the Te Awa Tupua status and the Tupua te Kawa," and "may participate in any

215. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, pt 2, s 15, http://www.legislation.govt.nz/act/public/2017/0007/17.0/DLM6830851.html [https://perma.cc/FW5W-EP8A].

216. *Id.* at pt 1, s 3.

217. *Id.* at pt 2, s 12.

218. *Id.* at pt 1, s 13, subss a–d.

219. *Id.* at pt 2, s 14, subs 1.

220. *Id.* at pt 2, s 18, subss 1–2.

221. *Id.* at pt 2, s 19, subs 1.

222. *Id.* at pt 2, ss 16, 46.

223. *Id.* at pt 2, s 46, subs 2.

224. *Id.* at pt 2, s 27, subs 2.

225. *Id.* at pt 2, s 13.

statutory process affecting Te Awa Tupua in which Te Pou Tupua would be entitled to participate under any legislation."[226]

The Crown and Māori agreed that there would be two political appointees, one selected by the Government, and the other "by the iwi with interests in the Whanganui River."[227] As Gerrard Albert stressed to me, they are not "guardians" of the River, as the deal is sometimes portrayed.[228] Not only does the word "guardian" not appear in the statute, but according to Mr. Albert, it would turn reality on its head to suggest that humans are "guardians" of the River; if anything, the reverse would be true.[229] Instead, they are political appointees on which both Government and Iwi agree.[230] Both initial appointees are Māori; the first Crown representative is not only Māori, but was former head of the Māori political party and a Minister in the Conservative government that developed the settlement, appointed, by the government, according to Mr. Finlayson, for her "strength and wisdom."[231] This further speaks to the government's commitment to respecting the new arrangement.

7. What Lies Ahead?

The legislation also sets up three additional entities, advisory and strategy groups comprised of various River stakeholders.[232] The structure is a bit convoluted: how the four governance entities will interact and carve up the administrative territory remains to be seen.

It is also too early to see what will happen when development potentially affects the Whanganui. But Gerrard Albert told me it's important to be clear that this legislation means what it says, *i.e.*, the River now has a human voice, and that voice must be consulted and respected when authorizing any development that might impact the River.[233] Mr. Albert told me the Te Awa Tupua representatives are now figuring out the structure for how they will fulfill their commitments: "We have an obligation to this River for what it is."[234] As such, Te Awa Tupua has started defining what the values of the River are that will be expressed when the governing board inserts itself in decisions about the Whanganui: "We are part of the picture and it's our job to take care of it and have it provide us what we need."[235] They are socializing all members of the community for what they should expect and how they can participate;[236] of those who would take

226. *Id.* at pt 2, s 19, subs 2.

227. *Id.* at pt 2, s 20, subs 2.

228. Interview with Gerrard Albert, *supra* note 155.

229. *Id.*

230. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, pt 2, s 20, subs 7 (N.Z.).

231. Interview with Chris Finlayson, *supra* note 179; Press Release, New Zealand Government, First Te Pou Tupua Appointed, SCOOP INDEP. NEWS (Sept. 12, 2017), http://www.scoop.co.nz/stories/PA1709/S00132/first-te-pou-tupua-appointed-4917.htm [https://perma.cc/25HE-J4SP].

232. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, pt 2, ss 27, 29, 35.

233. Interview with Gerrard Albert, *supra* note 155.

234. *Id.*

235. *Id.*

236. *Id.*

actions that might harm the River (and thus harm the iwi) for what the Te Awa Tupua agreements mean legally;[237] and of the government for what the iwi expect of them to uphold their commitments.[238]

The first, small tests of Te Awa Tupua are occurring as of this writing, on removals of power lines and construction of a cycling bridge.[239] In negotiating over these, Te Awa Tupua is "reconditioning a community and nation to speak as we speak."[240] They wish to confront any problems through negotiation, keeping Te Awa Tupua out of the courts both as a preferred means of conflict resolution, but also until judges can be properly socialized on what it means, legally, for Te Awa Tupua to speak for the River.[241]

As both Gerrard Albert and Chris Finlayson hinted to me, these early interventions are muscle flexing to show seriousness and strength.[242] Looming over ongoing work is the Tongariro Power Scheme, which diverts 80% of the Whanganui River.[243] This has been described as an "act of aquatic decapitation" of the headwaters of the River.[244] A *National Geographic* article quotes a Māori River guide: "'I have seen grown men cry over this sight.'"[245] In twenty years' time, the Scheme will be up for relicensing: the legal power of Te Awa Tupua as the voice of the Whanganui will be powerfully tested, and Mr. Albert says the intervening years will be about building the capacity–of the community, of the government, of the ecosystem – to meet that challenge.[246]

8. Te Urewera

Te Urewera, in the east of New Zealand's North Island, comprises 820 square miles of mountain, rivers, lakes, and forests composed of prehistoric tree ferns and other endemic species.[247] When it was still a National Park, I backpacked one of New Zealand's "Great Walks" around Lake Waikaremoana, in the heart of Te Urewera; I can attest it is a land of spectacular natural beauty.

For the negotiations that would result in legal personhood for Te Urewera, it helped the Tūhoe (the local iwi) cause that the National Park was "pepperpotted" with official Māori land holdings, *i.e.*, Mãori owned land in a traditional Western sense, which they had not ceded to the Crown.[248] Through the process, the Tūhoe vetted their proposal with key interest groups, and, according to Mr.

237. *Id.*

238. *Id.*

239. *Whanganui River Work Triggers Te Awa Tupua Legislation*, NZ HERALD (Mar. 15, 2019, 4:08 AM), https://www.nzherald.co.nz/whanganui-chronicle/news/whanganui-river-given-legal-status-of-a-person-under-unique-treaty-of-waitangi-settlement/JL3QKSWVZPA7XW6EN33GKU4JJ4/ [https://perma.cc/G6JD-7JXF].

240. Interview with Gerrard Albert, *supra* note 155.

241. *Id.*

242. *Id.*; Interview with Chris Finlayson, *supra* note 179.

243. ERIN O'DONNELL, LEGAL RIGHTS FOR RIVERS: COMPETITION, COLLABORATION, AND WATER GOVERNANCE 178 (2019).

244. Warne, *supra* note 114.

245. *Id.*

246. Interview with Gerrard Albert, *supra* note 155.

247. Warne, *supra* note 114.

248. Interview with Chris Finlayson, *supra* note 179.

Finlayson, were "consummate negotiators" in achieving the legal outcome they sought.[249] The government was not willing to turn over ownership of the National Park to the Tūhoe, and rejected a proposal to formally and symbolically recognize the National Park land as the Tūhoe ancestor.[250] The Tūhoe deemed formal, continued Crown ownership as unacceptable, and to accept ownership would undermine the Māori concept of what can and cannot be owned in the first place.[251] This negotiation stalemate created space for a happy compromise: legal personality for the former park—it owns itself—with public access maintained and governance according to a set of principles that reflect Tūhoe cosmology.[252]

The Te Urewera Act begins by noting that "Te Urewera is ancient and enduring, a fortress of nature, alive with history . . . a place of spiritual value, with its own mana [status, prestige] and mauri [life force] . . . has an identity in and of itself, inspiring people to commit to its care."[253] The Act declares that "Te Urewera is a legal entity, and has all the rights, powers, duties, and liabilities of a legal person."[254] The Act transfers the National Park (formerly the largest on the North Island) to the Te Urewera Board who will speak for the land, comprised of both Tūhoe and government appointees, with the balance gradually shifting over time to prioritize Māori members.[255] The Board's first duty is to derive a management plan.[256] The Act specifies that the Board will manage according to traditional Tūhoe principles such as "mana me mauri," *i.e.*, "the sensitive perception of a living and spiritual force in a place," and "tapu," *i.e.*, "a state or condition that requires certain respectful human conduct, including raising awareness or knowledge of the spiritual qualities requiring respect."[257]

9. Governance Document for Te Urewera

Te Urewera's Governing Board, which will speak for the mountain and its ecosystem, has presented its vision, "Te Kawa."[258] The Chairman of the Board, Tāmati Kruger (who was also the chief negotiator for the Tūhoe Māori) writes that Te Kawa is aimed to "disrupt the norm," as it is "about the management of people for the benefit of the land–it is not about land management."[259] The nuts and bolts of how the vision will be implemented are not found in Te Kawa, as "[n]ew standards and expectations will take time to grow" and "will involve a process of unlearning, rediscovery, and relearning to seize the truth expressed by

249. *Id.*

250. Catherine J. Iorns Magallanes, *Nature as an Ancestor: Two Examples of Legal Personality for Nature in New Zealand*, VERTIGO (2015), https://journals.openedition.org/vertigo/16199?lang=en#bodyftn3 [https://perma.cc/LD5K-47NJ].

251. *Id.*

252. *Id.*

253. Te Urewera Act 2014, pt 1, s 3, subss 1–3 (N.Z.).

254. *Id.* at pt 1, s 11, subs 1.

255. *Id.* at pts 1–2, ss 12, 16, 18.

256. *Id.* at pt 2, s 44.

257. *Id.* at pt 2, s 18, subs 3.

258. *Te Kawa O Te Urewera–English*, TŪHOE, https://www.ngaituhoe.iwi.nz/te-kawa-o-te-urewera [https://perma.cc/KF5S-YT62].

259. TE UREWERA BOARD, TE KAWA O TE UREWERA 7 (2017).

our beliefs."[260] That is to say, no one has ever had to use a Western legal system to manage a former National Park that now has acquired legal personhood and requires a culturally appropriate mouthpiece to speak for its desires.[261]

Analogous to a framework convention in international law, Te Kawa clearly expresses the values that will drive Te Urewera governance, "to start the journey of understanding and articulating the Te Urewera identity."[262] The specific protocols will follow in due course. All the New Zealanders with whom I spoke, Māori and Pākehā,[263] stressed that these core principles would be recognizable to all Māori, and not just the Tūhoe iwi.[264] The document asserts: "If Te Kawa has a true purpose it is one that hopes to draw people closer to Te Urewera; to respecting the role that people play in achieving nature's balance if we have a wish for a secure future; and to encourage progress that inspires sustainable and disciplined prosperity."[265] Seven principles will bring "moral integrity" and thus guide management: for example, "Papatūānuku" or "landscape," *i.e.*, "nature itself operates on the basis of diversity. A human view of devastation can be for Te Urewera a process of recycling and regeneration.[266] Nothing in nature is wasted, everything happens for a reason.[267] Te Urewera has a scale beyond our perception in which to balance and order life."[268] The document lays out non-specific "responsibilities" for the Board to follow, with non-specific "priorities" that will help fulfill the responsibilities.[269] For example, for Papatūānuku, a responsibility is "rebuilding traditional and innovative knowledge systems which restores our instinct for responsible living."[270]

In a section entitled "The Legal Personality Applied," the Board explains that the Te Urewera Act recognizes that "Te Urewera has its own identity, in and of itself, inspiring people to commit to its care."[271] This identity existed before any statute proclaimed it;[272] the statute merely "liberates it from human speculation in order that nature and the natural world return to its primal role, revered and served by those of her children she has given life to."[273] The Board gives its view on the kind of property rights that normally adjudicate human/nature relations: property rights have rendered nature's "parts as natural resources now capable of competing with other household choices" and fail to "give life nor do

260. *Id.* at 9.
261. *See id.* at 24.
262. *Id.*
263. *Pākehā,* DICTIONARY.COM, https://www.dictionary.com/browse/pakeha [https://perma.cc/WQB9-E8HF]. "Pākehā" In Māori, Pākehā" refers to Kiwis of European descent.
264. Interview with Albert, *supra* note 155; Interview with Finlayson, *supra* note 179; Interview with Ian Hicks, Negot. & Settlement Manager, Off. of Māori-Crown Rels., in Wellington, N.Z. (July 9, 2019); Interview with Erin O'Donnell, water law expert, in Melbourne, N.Z. (Sept. 9, 2019).
265. TE UREWERA BOARD, *supra* note 259, at 12.
266. *Id.* at 22.
267. *Id.*
268. *Id.*
269. *Id.* at 33–40.
270. *Id.* at 38.
271. *Id.* at 24.
272. *Id.*
273. *Id.*

they encourage the connectedness of all living things . . . ."[274] While the former National Park "was sympathetic to the voice of Te Urewera," the legal form was nonetheless guilty of "ignoring the presence and personality of Te Urewera, treating her as lands for the enjoyment of others . . . ."[275] The document invites a continued relationship with "Friends"—*i.e.* the government agencies with whom they will need to continue to collaborate.[276]

It's still early to see how legal personhood for Te Urewera will translate into tangible management decisions, or how the Board will put their values into practice. Humans could potentially exploit the area more, not less, than when the lands were protected under National Park law; hunting, for example, could be allowed, where it was prohibited before.[277] Te Kawa invites new business opportunities or leases—"friendship agreements"—which must, in their application, "demonstrate loyal affection to Te Urewera values and her need to continue her complex balancing act among living system[s]."[278]

The 2019–2020 Annual Plan portends a "daunting yet thrilling year."[279] The Board hints quite broadly that it is going to work at its own pace, not the pace the external world might wish to see: "The priority is ensuring our enduring principles are applied to the journey of revitalization—not compromising them in order to achieve one-dimensional outcomes as quickly as possible."[280] The named plans combine the spiritual with the pragmatic, *e.g.* "[e]xperiences with the moods, mystery[,] and serenity of Te Urewera are gathered to inform the redesign of the Waikaremoana Great Walk."[281] Or, more pragmatically and ominously for future negotiations over hydroelectric power, "[s]ettle an improved relationship with Genesis Energy to deliver improved responsibility at Lake Waikaremoana."[282]

As a forerunner of possible management activities (and potential conflicts) to come, the 2019-2020 plan continues stage two of "Nature's Road [T]rial."[283] To reseal a road that runs through Te Urewera, the Tūhoe are rejecting oil-based asphalt in favor of an ecologically sustainable surface composed of tree resin.[284] Regional development officials are complaining that foot-dragging means losing

274. *Id.*

275. *Id.*

276. *Id.* at 31.

277. *See Permission for Hunting*, TUHOE, https://www.ngaituhoe.iwi.nz/permission_for_hunting (last visited Jan. 25, 2021) [https://perma.cc/V3B2-8627] (regulating hunting at the park. If regulation stops, then unfettered access would allow an incentive for hunters to hunt at previously prohibited areas).

278. TE KAWA O TE UREWARA, *supra* note 259, at 53.

279. TE UREWERA BOARD, ANNUAL PLAN: TŪHOE–TE URU TAUMATUA: BRINGING THE BLUEPRINT TO LIFE 2 (2019-2020), https://www.ngaituhoe.iwi.nz/annual-plan-bringing-the-blueprint-to-life [https://perma.cc/727M-EKWP].

280. *Id.* at 3.

281. The "Great Walks" are New Zealand's designated spectacular hiking routes. *Id.* at 5.

282. *Id.*

283. *Id.* at 7.

284. *The Road to Nature*, TUHOE (June 16, 2019), https://www.ngaituhoe.iwi.nz/The-Road-to-Nature [https://perma.cc/M76Q-XT9F]; John Boynton, *Te Urewera Roading Trial Taking Natural Route*, RNZ (Feb. 4, 2018, 6:30 PM), https://www.rnz.co.nz/news/te-manu-korihi/349631/te-urewera-roading-trial-taking-natural-route [https://perma.cc/RBW9-34YL].

the funding to seal the road, and grumble that the environmentally friendly option is, nonetheless, "hillbilly thinking."[285] The Tūhoe counter that they reject the "rape and pillage mentality . . . of unchecked tourism," and plan to proceed with road construction that reflects the values expressed in Te Kawa.[286] Also in Te Urewera, a storm damaged footbridge around Lake Waikeremoana that forms part of one of the "Great Walks" has been out of commission for months due to delays from the Te Urewera Tūhoe governing body: according to Chairman Kruger, "[w]e are wanting engineers to come in because the issue could very well be that the bridge is in the wrong place."[287] Thus in these early skirmishes, the Tūhoe representatives are indicating that they plan to use their new legal powers to govern Te Urewera according to traditional precepts, but merging traditional values with Western law in a new biocultural governance paradigm will take slow and deliberate implementation.[288]

10. Implications of Legal Personhood in New Zealand

Cormac Cullinan writes that:

> [E]ven if the law were to acknowledge that, say, a River had the capacity to hold rights, extending the language of rights and duties to relations with nonhuman subjects is potentially confusing. Terms such as 'rights' and 'duties' are infused with our experience of existing legal systems and burdened with the connotations of conflicts.[289]

In both Te Urewera and Whanganui, newly legally empowered Māori groups are deciding what it means for nonhuman entities to have legal rights, and the government is cooperating with their efforts. Ian Hicks, Negotiation and Settlement Manager for the Office of Māori-Crown relations, told me that in 2018, his office adopted this new name of "Te Arawhiti," which translates to "The Bridge."[290] The officers are actively figuring out what this means: what do they want to be and say in 2040, when the Tongariro Power Scheme is being negotiated? As Mr. Hicks puts it, "Māori have been coming across the bridge to come into the Pākehā world . . . [n]ow we are crossing back to work into the Māori world."[291] In New Zealand, this partnership between government and Māori is attempting to lighten the burden of preexisting expectations—of sociolegal and socioecological sys-

285. Andre Chumko, *Fears Tūhoe Trial Will Expire Funding for Road to Lake Waikaremoana*, STUFF (JULY 4, 2019, 16:39), https://www.stuff.co.nz/environment/113940377/fears-thoe-trial-will-expire-funding-for-road-to-lake-waikaremoana [https://perma.cc/N82V-7BBB].

286. *Id.*

287. Marty Sharpe, *Large Section of One of New Zealand's Great Walks 'Temporarily Closed' by Footbridge*, STUFF (Feb. 12, 2019, 3:15 PM), https://www.stuff.co.nz/environment/110431160/large-section-of-one-of-new-zealands-great-walks-temporarily-closed-by-swingbridge [https://perma.cc/7YAH-AECB].

288. *Id.*

289. CULLINAN, *supra* note 49, at 98.

290. Interview with Ian Hicks, Negotiation and Settlement Manager, Office of Māori-Crown Relations, in Wellington, N.Z. (July 9, 2019) (on file with author).

291. *Id.*

tems—by bending the existing, entrenched legal system to forge a new jurisprudence based upon an ontological view of the world that the entrenched legal system does not traditionally recognize, reflect, or revere.[292]

Hundreds of other settlements have resulted from the Waitangi Tribunal negotiations, and legally cannot be reopened to attempt to incorporate new, hybrid legal constructions.[293] Mt. Taranaki, on the North Island, has also been granted legal personhood, with details on governance still to be settled.[294] That agreement, too, starts with a recitation (in both Māori and English) of the cultural and ecological connections between iwi and mountain: "The maunga [mountains] are pou [fixed elements] that form a connection between the physical and the social elements of our lived experience . . . . Their presence pervades our scenery, projecting mystery, adventure and beauty, capturing our attention and our imagination in how humanity can be closely bound to a landscape."[295] The agreement includes a formal apology from the government,[296] and, while the area will remain a national park, the parties pledge to formally change the name from Mt. Egmont to an appropriate Māori appellation.[297]

Broader questions may remain to be discussed in Māori-government negotiations. The most pressing is who controls water—in riverbeds, in the foreshore—and under what legal forms.[298] Not all Kiwis approve of the ongoing devolution of property, and ideas about property, to the Māori.[299] In an editorial in New Zealand's main newspaper entitled *Tribunal Enraptured by Myths and Legends*, far-right politician and former MP Rodney Hide[300] comments on the Waitangi Tribunal's finding that the Māori actually possess the nation's waterways.[301] He writes: "Who would have believed it? Singing a song can make a river yours. Plus give you a chunk of a power company and a say over how that company[] [is] run . . . . It's not quite enough to just sing a song. You should also know the river's taniwha[302] and use the river to wash away spells and curses. But the clincher is to recognise the river's life force. Then it's yours."[303] To put things

292. *Id.* Roy, *supra* note 5.

293. *See* Margaret Mutu, *The Treaty Claims Settlement Process in New Zealand and Its Impact on Māori*, 8 LAND 7 (Oct. 15, 2019).

294. Te Anga Pūtakerongo mō Ngā Maunga o Taranaki, Pouākai me Kaitake, Record of Understanding for Mount Taranaki, Pouākai and the Kaitake Ranges, § 5.2 (Dec. 20, 2017) [hereinafter Record of Understanding]; Roy, *supra* note 5.

295. Record of Understanding, *supra* note 294, § 1.7.

296. *Id.* § 4.1.

297. *Id.* § 5.7.

298. *See* Rodney Hide, *Tribunal Enraptured by Myths and Folk Legends*, NZ HERALD (Sept. 2, 2012, 5:30AM), https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10831075 [https://perma.cc/567D-DHK9].

299. *Id.*

300. *See* Rodney Hide, NBR, https://www.nbr.co.nz/author/rodney-hide (last visited Jan. 25, 2021) [https://perma.cc/F4Z8-JKHN]; ACT Party, POLICY, https://policy.nz/parties/ACT-Party (last visited Jan. 25, 2021) [https://perma.cc/U3T2-847J].

301. Hide, *supra* note 298.

302. Taniwha="[s]upernatural creatures . . . in Māori tradition . . . depicted as serpents and dragons." Basil Keane, *Story: Taniwha,* TE ARA ENCYCLOPEDIA OF NEW ZEALAND (Sept. 24, 2007), https://teara.govt.nz/en/taniwha [https://perma.cc/D8BQ-B42Q].

303. Hide, *supra* note 298.

with less snark, no party to the agreement locks the Māori into an ancient, unchanging worldview.[304] Their communities, too, will have to balance respecting what the river needs, and what their communities need in terms of economic development. Rivers may not receive quite the comprehensive protections that some environmentalists desire.[305]

But the laws granting the Whanganui and Te Urewera legal personhood, negotiated by a Conservative government, passed nearly unanimously, and all the key players with whom I spoke assert that these agreements have broad support of most Kiwis across political affiliations.[306] Whether that consensus remains when Māori start employing their new legal powers remains to be seen. These agreements lend themselves to a broader understanding of how all New Zealanders relate to, and thus manage the nonhuman world around them. The new legal models create a new vision for how law can reflect ecological reality, which the law usually ignores, at our own peril.

How these elisions between old and new are understood and negotiated in this century will matter in deciding who has what rights to determine relationships between a local people and the river, or the mountain, or any other nonhuman entity. By negotiating legal personhood for Te Urewera, Whanganui River, or Mt. Taranaki, government and community have come to a consensus that may be revolutionary. In part, this is due to the new approach to rights for the nonhuman world, but more importantly as a way for the colonizers to atone for past and even present injustice through reformulating the colonizer's tools—Western law—to reflect and honor the cosmology of the colonized.[307] The approach to protecting nature means not keeping it apart from people, but recognizing the interconnected web of relationships between human and nonhuman.[308] People may still use resources from the mountain or river, provided they do so gratefully and sustainably;[309] these agreements name our responsibility to sustain nature, which, in turn, will sustain us. The paradigm has shifted from our right to use a dissociated nature to responsibility to steward a nature of which we are a part.

While the New Zealand agreements here are sometimes portrayed as "rights for nature," that is not precisely correct.[310] Clearly the Māori and the agreements they have fomented reify that nature has intrinsic value.[311] But what is written into these agreements is the primacy of the relationship between human and nonhuman communities, a legal recognition of the value of this complex relationship, and recognition that the health of both human and nonhuman improving in

304. *See id.*

305. *See id.*

306. *See Māori Resistance Results in Te Urewera Gaining Legal Personality, New Zealand*, ENV'T JUST. ATLAS, https://ejatlas.org/conflict/rights-of-nature-maori-resistance-results-in-te-urewera-former-national-park-gaining-legal-personality (June 25, 2017) [https://perma.cc/72QT-UC6U].

307. Magallanes, *supra* note 250, ¶ 2.

308. *Id.* ¶ 5.

309. *See id.* ¶ 40.

310. Addison Luck, *The Rights of Nature Movement: A Closer Look at New Zealand*, VT. J. ENV'T L. (Nov. 30, 2018), http://vjel.vermontlaw.edu/rights-nature-movement-closer-look-new-zealand/ [https://perma.cc/FH6B-L2TW].

311. *Id.*

synergistic, symbiotic interconnection.[312] What is happening in New Zealand is a discussion over representation and relationship: relationships between Pākeha and Māori, between Te Ao Māori and Te Ao Pākeha (the Māori and Western worldviews), between colonizer and colonized, between people and the nonhuman world, between citizens and mountains and rivers.[313] Ownership *qua* ownership may be less powerful than results of negotiations for who gets to speak for the River, and thus whose paradigm of human/nonhuman relations is deemed legitimate—culturally, legally—and thus controlling. Legal personhood for the Whanganui or Te Urewera is simply the latest, perhaps most important chapter in the Māori quest for self-determination, here the ability of a people to determine their relationships to the nonhuman world around them.[314]

It remains to be seen how these new legal forms do or do not transform the nonhuman entities, the human communities that share the planet with them, and the relationships between human and nonhuman communities. Much will ride on the institutions and people in charge of those institutions that emerge to speak for the needs of the river, the mountain, and the communities that are the river and the mountain.

In some ways, the grants of legal personhood to Te Urewera and the Whanganui River result from a fortunate, *sui generis* combination of factors: a formal treaty whose inaccurate translations and government violations have been acknowledged by all sides;[315] a clearly documented history of cultural relationships to the nonhuman world that dovetail with modern understandings of ecological interdependence;[316] a government's decades-old commitment to compensate for past wrongs, including novel remedies that go beyond mere financial compensation or exchanges of property rights;[317] a savvy succession of indigenous negotiators who know what they want and know how to get it.[318] It would be easy to isolate the resulting legal innovations as incapable of repetition elsewhere. And, of course, no situation is going to replicate the current and present logistics of New Zealand.[319]

But these legal outcomes are replicable, *mutatis mutandis*, anywhere citizens are looking to legalize a complicated, ecologically grounded recognition

312. *See generally* Sibyl Diver, Mehana Vaughan, Merrill Baker & Heather Lukacs, *Recognizing "Reciprocal Relations" to Restore Community Access to Land and Water*, COMMONS J., https://www.thecommonsjournal.org/articles/10.18352/ijc.881/print/ (last visited Jan. 25, 2021) [https://perma.cc/ZD2H-PLBZ].

313. *See generally* Magallanes, *supra* note 250.

314. *See id.* ¶ 2.

315. *See* Bridget Williams, *Reconceptualizing Entrenched Notions of Common Law Property Regimes: Maori Self-Determination and Environmental Protection Through Legal Personality for Natural Objects*, 26 BUFF. ENV'T L.J. 157, 165–66 (2019).

316. Roy, *supra* note 5.

317. *See* Ashish Kothari, Mari Margil & Shrishtee Bajpai, *Now Rivers Have the Same Legal Status as People, We Must Uphold Their Rights*, GUARDIAN (Apr. 21, 2017, 5:33 AM), https://www.theguardian.com/global-development-professionals-network/2017/apr/21/rivers-legal-human-rights-ganges-whanganui [https://perma.cc/9C2X-NGKR].

318. *See* Roy, *supra* note 5.

319. *See* Tom Kay, *By Failing to Protect Our Water We Have Failed Everything New Zealanders Value*, GUARDIAN (Apr. 16, 2020, 8:13 PM), https://www.theguardian.com/environment/commentisfree/2020/apr/17/by-failing-to-protect-our-water-we-have-failed-everything-new-zealanders-value [https://perma.cc/8GjE-29B4].

that we are fundamentally interconnected with the natural world—that we are the natural world and it is us.[320] The underlying beliefs may have deep historical roots, as in Māori New Zealand, or they may be thoroughly modern inventions prompted by the cataclysms portended by ecological scientists or by ecological degradation we view through our own eyes in our own neighborhoods.[321] Seeing ourselves as part of, not apart from nonhuman nature means we see that we injure ourselves with each species loss or chemical catastrophe.[322] By reorienting how we understand our interrelationship with the natural world, and writing that reorientation into law, we ward against injuring the natural world, and thus ourselves.[323]

B. Colombia

In November 2016, in a case brought by a Colombian NGO[324] on behalf of isolated, minority communities, a three-judge panel of the Colombian Constitutional Court declared that the Río Atrato's "basin and tributaries are recognized as an entity subject to rights of protection, conservation, maintenance and restoration by the State and ethnic communities."[325]

The Court reached this remedy through a sweeping analysis of the "biocultural" connection between rural, minority communities, and the River upon which they depend culturally, and, more importantly for this decision, ecologically.[326] The decision then presents one of the most extensive analyses a court has ever undertaken of the essential links between nature and culture, or the interdependence between human communities and the nonhuman entities and processes that sustain them.[327] The decision then pivots to analyze an "ecocentric" shift in philosophy, and roots the legal innovation of granting the Río legal rights in that philosophical turn.[328]

The Río Atrato, the largest River in Colombia, runs through the Chocó, described by the Court as:

> [O]ne of the most biodiverse regions of the planet. . . . [I]t must be remembered that Colombia has been recognized by the international community

320. *See* Kothari et al., *supra* note 317.

321. *See* Magallanes, *supra* note 250, ¶ 49.

322. *See* Christie Kochis & Amina Smajlovic, *When Care Takes the Driver's Seat*, CTR. HUM. & NATURE (May 29, 2017), https://www.humansandnature.org/what-happens-when-we-see-ourselves-as-separate-from-or-as-a-part-of-nature-when-care-takes-the-driver-s-seat [https://perma.cc/398D-5CY4].

323. *Id.*

324. *See generally* TIERRA DIGNA, www.tierradigna.org/nosotros (last visited Jan. 25, 2021) [https://perma.cc/E7TU-2JZV#secondPage].

325. Corte Constitucional [C.C.] [Constitutional Court], noviembre 10, 2016, Sentencia T-622/16, Relatoría de la Corte Constitucional [R.C.C.] (Colom.), *translated in* DIGNITY RTS. PROJECT, DEL. L. SCH., JUDGMENT T-622/16 (The Atrato River Case) 5 (2019), https://delawarelaw.widener.edu/files/resources/riveratratodecisionenglishdrpdellaw.pdf [https://perma.cc/S5KU-74VE]. In the original Spanish, the Court wrote, "*entidad sujeto de derechos*." C.C., T-622/16.

326. C.C., T-622/16, § III.5.11, at 35.

327. *See id.*

328. *Id.* § III.5.58, at 53.

> as a 'mega-biodiverse' country, as it constitutes a source of invaluable natural wealth on the planet; which merits special protection under universal co-responsibility.[329]

In addition to "this historical situation of poverty, marginalization, institutional isolation and the accumulation of a large number of unsatisfied basic needs—in a region of the country that has been historically affected by violence, displacement and internal armed conflict," the Court documents in detail that logging and, especially, gold and platinum mining (legal and illegal) are poisoning (mercury, cyanide) the River's human neighbors and threatening their traditional means of subsistence.[330] The Court describes deaths and illnesses (*e.g.* dengue, diarrhea) from contaminated water, which also damages "the fish and the development of agriculture that are indispensable and essential elements of food in the region, which is the place where the communities have built their territory, and their culture."[331] The Court "denounce[s] the complete abandonment of the region by the Colombian State, in terms of basic infrastructure, which does not include an aqueduct, sewerage or final waste disposal systems."[332]

Given the disastrous state of the environment and the degraded state of the ethnic populations whose lives and livelihoods depend on that environment, the Court reaches for a more sweeping solution than hitherto ineffective laws, government (in)actions, and prior Court decisions have yielded.[333] The Court is aware of these impacts not merely from documented submissions, but because the judges visited the impacted sites and saw the damages themselves.[334] From their inspections, they conclude that the "impact of illegal mining on the river is so strong that today it is practically impossible to determine the original channel that river once had, its arms and its tributaries."[335] Linked to the ecological degradation, "the impact of illegal mining is so strong that, as the Plaintiffs have pointed out, it has managed to separate families, increase violence and encourage the loss of the ancestral beliefs and traditions of the black communities that inhabit the Atrato River Basin in Chocó."[336]

Parallel to the core rationale behind the New Zealand grants of legal personhood to nonhuman entities, the Court here draws extensive connections between the health of human communities and the health of the river.[337] The Court does take special solicitude of the indigenous and Afro-Colombian communities

329. *Id.* §§ I.1, III.5.3, at 6, 32.

330. *Id.* §§ III.2.3–2.10, 9.5, at 9–10, 81.

331. *Id.* §§ I.2.4, III.9.14–9.17 at 9, 83–90.

332. *Id.* § I.2.7, at 9. The degree of Government neglect is more extensively elaborated in §§ 9.42–9.51. *Id.* §§ III.9.42–9.51, at 105–09. Judge Palacio reiterated to me in our interview that "es una gente demasiado abandonada por las instituciones gubernamentales" ("this population is extremely abandoned by government institutions"). Interview with Jorge Iván Palacio, Chief Justice, Corte Constitucional [C.C.] [Constitutional Court], in Bogotá, Colom. (Sept. 26, 2019).

333. *See* C.C., T-622/16, § III.5.51, at 50.

334. The Judge confirmed to me they visited several times, and the plight of the communities and the River shaped how he viewed the case. Interview with Jorge Iván Palacio, *supra* note 332; C.C., T-622/16, §§ III.7.24, 9.14–9.24, at 70, 86–96.

335. C.C., T-622/16, § III.9.21, at 95.

336. *Id.* § III.9.36, at 102.

337. *See id.* § I.2.4, at 8–9.

that live along the Río Atrato's banks, nearly half of whom live in "extreme poverty."[338] The Court describes the communities' longstanding ties to and dependence on the River, which they've relied upon for "a total supply of their food needs . . . . The communities have made the Atrato River Basin not only their territory, but the space to reproduce life and recreate culture."[339] The River is not merely their source of sustenance; the Court describes a deeply rooted connection of community "since ancestral times"[340] to the River:

> The settlements make the river a central space in all the economic, domestic and socio-cultural activities of the local inhabitants. . . . The origin of each person is indicated by the river from which one lives. More than referring to a town or village, what is mentioned is the river. In effect, there is a close and intimate relationship between the individual and the river, which is observed in expressions such as 'he does not like to leave his river' or 'when I return to my river.' In this configuration the river represents a notion of home, a strong feeling of belonging full of symbolic, territorial and cultural values.[341]

The Court notes that these groups have a notion of the River-as-community that diverges from the Western model of River-as-property: "for the ethnic communities, the territory does not fall on a single individual—as it is understood in the classical conception of private law—but above all the human group that inhabits it, so that it acquires an eminently collective character."[342]

In our interview, Chief Justice Palacio emphasized the need to protect fundamental rights abridged by unregulated mining and logging: "There, what is being protected are these fundamental rights: the right to life, the right to health, the right to potable water, the right to a healthy environment, the right to culture, and the right to territory. It has died, died."[343] The decision (and our interview) emphasized the Colombian concept of a "Social Rule of Law," [SRL] which requires ecological health as a primary component.[344] The 1991 revisions to Colombia's Constitution have also produced an "Ecological Constitution," where "protection of rivers, forests, food sources, the environment and biodiversity, as they are part of the nation's natural and cultural wealth, make full sense."[345] The Ecological Constitution includes about 30 provisions (with judicial decisions expansively interpreting those provisions) emphasizing the core role of a healthy environment for a healthy human populace: by allowing citizens "to live and interact within a healthy environment unthreatened by the extractive activity of the state, which allows him to develop his existence in decent conditions . . . . In

338. *Id.* § III.7.18, at 68.
339. *Id.* § I.1, at 6–7.
340. *Id.* § III.5.40, at 45.
341. *Id.* § III.6.2, at 54.
342. *Id.* § III.6.3, at 54.
343. "Ahí lo que se esta protegiendo fundamentalmente son estos derechos: el derecho a la vida, el derecho a la salud, el derecho al agua potable, el derecho al medio ambiente sano, el derecho a la cultura, y el derecho al territorio. Ha muerto, muerto." Interview with Jorge Iván Palacio, *supra* note 332.
344. *See* C.C., T-622/16, § III.9.27, at 98.
345. *Id.* § III.5.2, at 31.

simpler words: the defense of the environment is . . . a primary objective within the structure of our SRL . . . ."[346]

The Court provides an extensive, erudite analysis of the interdependence between cultural diversity and biological diversity.[347] The decision describes "biocultural rights," *i.e.*:

> [T]he rights that ethnic communities have to administer and exercise autonomous guardianship over their territories—according to their own laws and customs—and the natural resources that make up their habitat, where their culture, their traditions and their way of life are developed based on the special relationship they have with the environment and biodiversity.[348]

The Court stresses "the deep and intrinsic connection that exists between nature, its resources, and the culture of the ethnic and indigenous communities that inhabit them, which are interdependent with each other and cannot be understood in isolation."[349] Without delving extensively into *these* communities' specific cosmologies, the Court emphasizes the general "spiritual and cultural meanings that indigenous peoples and local communities give to nature are an integral part of biocultural diversity," and thus "the conservation of cultural diversity leads to the conservation of biological diversity, so that the design of policy, legislation and jurisprudence must be focused on the conservation of bioculturalism."[350]

As in the New Zealand agreements, the Colombian Court is concerned about the natural world because preservation of local, indigenous cultures depends upon it.[351] Unlike the New Zealand legal developments, however, the judges of the Colombian Constitutional Court seem particularly influenced by ecocentric philosophy and thus are also concerned with preservation of biodiversity for its own sake, urging that law focus "on the preservation of conditions needed for biodiversity to continue deploying its evolutionary potential in a stable and indefinite manner . . . ."[352] The Court thus protects:

> [O]ther living organisms with whom the planet is shared, which are understood to be worthy of protection in themselves. It is about being aware of the interdependence that connects us to all living beings on earth; that is, recognizing ourselves as integral parts of the global ecosystem—the biosphere, rather than from normative categories of domination, simple exploitation, or utility.[353]

Chief Justice Palacio explained to me that his readings in ecocentrism particularly influenced him: "[i]t says that the human species is just another species on planet earth like our brothers the trees, like our brother the lion, like our sisters the beautiful flowers . . . ."[354]

346. *Id.* § III.5.1, 5.3, at 30, 31.
347. *Id.* § III.3.3, at 19.
348. *Id.* § III.5.11, at 35.
349. *Id.; see also id.* § III.5.13, at 35.
350. *Id.* § III.5.17, at 37.
351. *Id.* § III.5.31, at 42.
352. *Id.* § III.5.18, at 37.
353. *Id.* § III.5.10, at 34–35.
354. "Que dice, la especia humana, es una especie mas en el planeta tierra como los hermanos arboles, como el hermano león, como las hermanas flores . . . ." Interview with Jorge Iván Palacio, *supra* note 332.

This philosophical turn to ecocentrism, combined with appreciation and concern for local populations who, by this Court's reckoning, have traditionally shared this philosophical bent, buttresses the Court's turn to granting rights to the River itself and to the governance form that places control and authority in the hands of local people:

> [T]he ecocentric approach starts from a basic premise according to which the land does not belong to man and, on the contrary, assumes that man is part of the earth, like any other species. According to this interpretation, the human species is just one more event in a long evolutionary chain that has lasted for billions of years and therefore is not in any way the owner of other species, biodiversity, or resources, or the fate of the planet.[355]

And the most logical voices to speak for the nonhuman are those who know it best and depend upon it most: "[c]onsequently, this theory conceives nature as a real subject of rights that must be recognized by the States and exercised under the protection of its legal representatives, such as, for example, [namely] by the communities that inhabit nature or that have a special relationship with it."[356]

Seeing nature "as a real subject of rights" also highlights the Court's view that our normal, legal notions of nature are myopically utilitarian.[357] The Court decries the view that nature is worth something only if it's worth something to *us*:

> [T]he greatest challenge of contemporary constitutionalism in environmental matters is to achieve the safeguarding and effective protection of nature, the cultures and life forms associated with it, and biodiversity not by the simple material, genetic or productive utility that these may represent for the human being, but because being a living entity composed of other multiple forms of life and cultural representations, they are subjects of rights . . . .[358]

Because of this, "only from an attitude of deep respect and humility with nature, its members and their culture, is it possible to enter into relationships with them in fair and equitable terms, leaving aside any concept that is limited to the simply utilitarian, economic or efficiency."[359]

The Court's jurisprudence is not without precedent, as the Justices detail.[360] Previous landmark decisions, both in Colombian courts and the InterAmerican Court of Human Rights, stress the interdependence of cultural and ecological diversity, including advocacy for protection of ecosystems on which minority populations depend.[361] Colombian cases have seen that "nature is not only conceived as the environment that surrounds human beings, but also as a subject

355. C.C., T-622/16, § III.5.9, at 33–34.

356. *Id.* § III.5.9, at 34.

357. *Id.*

358. *Id.* § III.5.10, at 34.

359. *Id.*; *see also id.* § III.9.31, at 100 ("The prevailing vision is an economic one, where biodiversity, genetic material and associated traditional knowledge are seen as susceptible to appropriation, industrial use and source of economic gains. In this way, policies and legislation have emphasized access for economic use and exploitation to the detriment of the protection of the rights of the environment and of the communities.").

360. C.C., T-622/16, § III.5.41, at 45.

361. *Id.* §§ III.5.22–5.37, 5.53–5.58, at 40–43, 51–53.

with its own rights. . . . This is a position that has mainly found justification in the ancestral knowledge according to the principle of ethnic and cultural diversity of the Nation."[362] In addition,

> instruments of international law that have been ratified by Colombia, as well as other non-binding additional instruments on the rights of the ethnic communities outlined here, have consolidated the development of a comprehensive approach that has helped to protect both the biological diversity and the cultural diversity of the nation, recognizing the deep interrelations of indigenous peoples, black and local communities with the territory and natural resources.[363]

All of this leads the Court to conclude that "the importance of the biological and cultural diversity of the nation for the next generations and the survival of the planet, imposes on the States the need to adopt comprehensive public policies on conservation, preservation and compensation that reflect the interdependence between biological and cultural diversity."[364]

But even with all of the ground the Court prepared, the Justices did not need to jump to legal personhood for the Río Atrato.[365] The Court orders various "emergency measures" for the (ir)responsible parties to clean up the River;[366] it could have stopped there. Just because a Court recognizes biocultural relationships and human/nonhuman interdependence does not mean it needs to grant rights *to* nature. Nonetheless, the Court clearly believes traditional remedies will not suffice: "[s]ince it is a structural problem, it requires the adoption of complex measures and an inter-institutional articulation that exceeds the normative and practical scope of the action in question . . . ."[367]

The Court clearly sees itself as a staunch defender of the planet and the hapless humans destroying our own life support systems: "[n]ow is the time to begin taking the first steps to effectively protect the planet and its resources before it is too late, or the damage is irreversible, not only for future generations but for the human species."[368] It is time for humans (and our courts) to start "recognizing their role within the circle of life and evolution from an *ecocentric* perspective. . . . it is a matter of establishing a legal instrument that offers greater justice to nature and its relations with human beings . . . ."[369] As such, the Court notes "at the international level . . . a new legal approach called biocultural rights is being developed, whose central premise is the relationship of profound unity

362. *Id.* § III.5.9, at 34 (citing Corte Constitucional [C.C.] [Constitutional Court], 2011, Sentencia C-632/11 (Colom.), (2011), https://elaw.org/system/files/C-632-11.pdf?_ga=2.187105640.1586105315.1565662178-1591035044.1565662178) [https://perma.cc/U5YS-R5U7].

363. C.C., T-622/16, § III.5.37, at 43.

364. *Id.* § III.5.58, at 53.

365. *See id.* § III.9.51, at 109.

366. *Id.* § III.9.26, at 97.

367. *Id.* § III.3.3, at 20.

368. *Id.* § III.9.29, at 99.

369. *Id.* § III.9.30, at 99.

and interdependence between nature and human species, and that has as a consequence a new socio-legal understanding in which nature should be taken seriously and with full rights. That is, as a subject of rights."[370]

The need for a radical, new ethic of human/nonhuman relations leads the Court to a radical, new legal form:

> [J]ustice for nature must be applied beyond the human scenario and must allow nature to be subject to rights. Under this understanding, the Chamber considers it necessary to take a step forward in the jurisprudence towards the constitutional protection of one of our most important sources of biodiversity: the Atrato River. This interpretation finds full justification in the best interests of the environment that has been widely developed by constitutional jurisprudence and that is made up of numerous constitutional clauses that constitute what has been called the 'Ecological Constitution' or 'Green Constitution.' This set of provisions makes it possible to affirm the transcendence of the healthy environment and the interdependent link with human beings and the State.[371]

The Court promotes a new orientation of human appreciation towards the natural world, and wants it written into law. The Court is careful to ground this legal leap in the plight of a poverty-stricken minority population, abandoned by the government, impaired by illegal activities, and suffering environmental health problems they are powerless to stop on their own.[372] Rather than simple orders demanding cleanup of a River—difficult to do, given the scope of legal and illegal mining and logging, and unlikely, given the Government's preoccupation with only utilitarian values of nature[373]—the Court opts for a new legal form to transform Colombians' relationships with nature.[374]

Thus, finally, the Court declares: "The Atrato River, its basin and tributaries will be recognized as an entity subject to rights of protection, conservation, maintenance and restoration by the State and ethnic communities. . . . Consequently, the Court will order the national government to exercise legal guardianship and representation of the rights of the river . . . ."[375] Legal guardians will be drawn from government appointees, a committee representative of the affected populations, and ecological experts.[376] As a result of the ruling, the Government designated the Ministry of Environment and Sustainable Development to represent it, and each of seven River communities appointed one male and one female guardian to develop a plan to implement the Court's ruling.[377]

370. *Id.* § III.9.28, at 98.

371. *Id.* § III.9.31, at 99.

372. *Id.* § III.9.31, at 100.

373. *Id.* ("The prevailing vision is an economic one, where biodiversity, genetic material and associated traditional knowledge are seen as susceptible to appropriation, industrial use and source of economic gains. In this way, policies and legislation have emphasized access for economic use and exploitation to the detriment of the protection of the rights of the environment and of the communities.").

374. *Id.* § III.10.2.1, at 110.

375. *Id.*

376. *Id.*

377. *Id.*; Macpherson & Ospina, *supra* note 109, at 292.

The Court sees itself as protecting all human members of the affected communities, not merely the plaintiffs in the instant case.[378] The Río Atrato does not gain new property rights–it does not own itself, nor do local communities come to own it—but it becomes an entity whose well-being the law now must consider, *i.e.* it is a subject of legal rights and obligations.[379] It remains to be seen how the new governance model devised to account for the River's (and associated communities') health does, in fact, improve the interrelated, ecological community functions.

When I asked him where he derived the idea of legal personhood for the Río Atrato, Justice Palacio said, "Let me tell you . . . that I did not take this from Aladdin's Lamp."[380] The Justice noted that while granting a river legal personhood was a new concept for Colombia, it was not elsewhere in the world.[381] He was struck by an Indian judge's opinion referring to "our brothers the trees and our sisters the flowers."[382] The judge singles out the influence of ecocentric philosophy, "where human beings are one more species of the planet, just like fauna, flora, and other species."[383] The Justice and his colleagues noticed that "if the progressive logging of trees and environmental damage continues, in fifty years that zone, which is perhaps the second most biodiverse on planet earth, will be a desert" and "this is, in broad strokes, the message, the philosophy of the judgment."[384]

The Justice pointed out to me that the Atrato is far from the only river suffering from environmental contamination, and this decision could be extended to those rivers and to other ecosystem entities.[385] With this decision, the Justice's "interest is to send the message: to preserve life. Not just the life of human beings, rather all of life on planet earth."[386] Justice Palacio said that progress is being made (albeit slowly, due to lack of resources) to fulfill the goals of his judgment, monitored by the Constitutional Court.[387] As Justice Palacio desired, four separate courts in Colombia have followed the Constitutional Court's lead and declared that particular rivers have rights, with concrete remedies ranging from injunctions against pollution, orders to the government to protect the eco-

378. C.C., T-622/16, § III.9.41, at 105.

379. *Id.* §§ III.5.10, 10.2.1, at 34, 110.

380. Interview with Jorge Iván Palacio, *supra* note 332 ("Le cuento David que yo no saque esto de la lámpara de Aladino.").

381. *Id.*; Jorge Iván Palacio, *El Fallo Medioambiental Del Año*, EL ESPECTADOR (Dec. 3, 2017, 8:00 AM), https://www.elespectador.com/noticias/judicial/jorge-ivan-palacio-el-centinela-del-rio-atrato-articulo-726304 [https://perma.cc/U6EV-Z7NP]

382. Palacio, *supra* note 381 ("[N]uestros hermanos los árboles y nuestras hermanas las flores . . . .").

383. *Id.* ("[D]onde el ser humano es una especie más del planeta, como lo son la fauna, la flora y las demás especies . . . .").

384. Interview with Jorge Iván Palacio, *supra* note 332 ("[S]i sigue la progresiva tala de árboles y daño ambiental, en 50 años esa zona, que es tal vez la segunda mas biodiversa del planeta tierra, va a ser un desierto . . . 'eso es a grandes rasgos el mensaje, la filosofía de la sentencia.'").

385. Interview with Jorge Iván Palacio, *supra* note 332.

386. *Id.* ("[E]se es mi interés y el interés es enviar el mensaje: que se preserve la vida. No solamente la vida de los seres humanos si no de todo el planeta tierra.").

387. *Id.*

logical resources, and establishment of local commissions of guardians to oversee protections of the rivers.[388] The Colombian Supreme Court has recently declared that the entire Colombian Amazon is "an entity, *subject of rights,* and beneficiary of the protection, conservation, maintenance, and restoration" that the Constitution obliges the government to provide.[389] The Court ordered the formulation of an "Intergenerational Pact for the Life of the Colombian Amazon" as part of its remedies to realize the Amazon's (and the young people who brought the case) rights.[390] Justice Palacio informed me that a reform to the Constitution has been introduced that would establish nature's rights directly.[391]

And so, the Colombian Justices confronted–including in person–the deplorable poverty of the minority communities, in part caused by the deplorable state of the Río.[392] And that deplorable condition is due in part to the government's abandonment of these communities over environmental ravages wrought by illegal (and legal) logging and mining.[393] Justice Palacio emphasized to me that the Court was particularly appalled at this nation's blind eye towards these conditions, as "this does not occur in Germany, this does not occur in France, this does not occur because over there are governments that preserve their territory, they preserve nature."[394] The Court's detailed awareness that these communities especially depend on the natural world for their sustenance takes legal root in the Colombian Constitution's commitment to SRL, which is partly grounded on an extensive "Ecological Constitution" supporting dignified lives, with ample domestic and international precedent to support the right to a healthy environment.

All of this need not have necessarily resulted in a remedy that establishes legal rights for Rivers. But the Court is clearly struck by the turn towards ecocentrism in philosophy, is aware of emerging jurisprudence on rights for nonhuman entities in other jurisdictions, clearly believes that the world needs to develop an attitude of deep respect and humility for the nonhuman world, and clearly is disgusted by humans' (and the Colombian government's) appreciation of nature only for the anthropocentric or egocentric utility it provides to us.[395] Finally, in my interview with him, the Chief Justice seems aware that in making the Río Atrato a subject (and not merely an object) of legal protections, he is drawing from and contributing to a growing legal movement to grant rights to

388. U.N. Secretary-General, *supra* note 40, ¶¶ 26–29.

389. Corte Suprema de Justicia [C.S.J.], Sala de Casación Civ. abril 5, 2018, M.P: Luis Armando Tolosa Villabona, Radicación 2018-00319-01, (§14 p. 45) (Colom.), http://www.cortesuprema.gov.co/corte/wp-content/uploads/2018/04/STC4360-2018-2018-00319-011.pdf [https://perma.cc/L3U9-6BZG] ("[S]e reconoce a la Amazonía Colombiana como entidad, "*sujeto de derechos"*, titular de la protección, de la conservación, mantenimiento y restauración a cargo del Estado y las entidades territoriales que la integran.").

390. *Id.* at 49 (Un "pacto intergeneracional por la vida del amazonas colombiano . . . .").

391. Interview with Jorge Iván Palacio, *supra* note 332.

392. *Id.*; *see generally*, C.C., T-622/16.

393. Interview with Jorge Iván Palacio, *supra* note 332.

394. *Id.* ("[E]sto no sucede en Alemania, esto no sucede en Francia, esto no sucede porque allá hay unos gobiernos que preservan su territorio, perseveran la naturaleza.").

395. *Id.*; C.C., T-622/16, § 5.3, at 31.

nonhuman entities, thus helping build a movement to root a deeper respect for the nature that supports us in firm legal ground.[396]

C. Australia

Australia, unlike New Zealand, has not entered into any treaties with any of its First Nations Peoples.[397] This, however, has not stopped indigenous and non-indigenous communities advocating for legal rights for ecosystems and nature, and for creating new laws that respect the connection First Nations Peoples have with their traditional lands.[398]

1. Yarra River/Victoria

The State of Victoria's Yarra River Protection (Wilip-gin Birrarung murron) Act 2017 recognizes the Yarra as "one living, natural entity."[399] The Act's Aboriginal title means "keep the Birrarung alive."[400] It is Australia's first piece of English/Aboriginal language legislation, and puts the relationship of Aboriginals to the River at the center of the Act, comparable to the Whanganui settlement.[401] The Act begins with Wujundjeri text, part of which reads, in translation: "The Birrarung is alive, has a heart, a spirit and is part of our Dreaming. We have lived with and known the Birrarung since the beginning. We will always know the Birrarung. . . . Since our beginning it has been known that we have an obligation to keep the Birrarung alive and healthy—for all generations to come."[402]

The Act lays out a set of environmental and social principles to guide development of the Yarra River corridor.[403] The Act recognizes the "role of the traditional owners as custodians of the Yarra River land" as well as the "cultural diversity and heritage of post-European settlement communities."[404] That is, while the Act acknowledges the traditional owners, those communities will share responsibilities with the descendants of more recent arrivals.[405]

Unlike the New Zealand statutes, the legislation neither grants the River legal personhood nor appoints a specific legal guardian.[406] The Act does create

396. Interview with Jorge Iván Palacio, *supra* note 332.

397. *See* Treaty of Waitangi Amendment Act 1985, *supra* note 149; *see also The Treaty of Waitangi*, N.Z. IMMIGR., https://www.newzealandnow.govt.nz/living-in-nz/history-government/the-treaty-of-waitangi (Sept. 14, 2020) [https://perma.cc/6HJQ-FSQ7]; Orange, *supra* note 125.

398. *See Yarra River Action Plan*, VICT. STATE. GOV., https://www.water.vic.gov.au/waterways-and-catchments/protecting-the-yarra/action-plan (last updated Jan. 1, 2020) [https://perma.cc/Y4U4-VGE4]; *see, e.g.*, *Yarra River Protection Act*, *supra* note 9.

399. *Yarra River Protection (Wilip-gin Birrarung murron) Act*, *2017* pt 1 s 1(a) (Austl.).

400. *Id.*, pmbl. at 1.

401. O'DONNELL, *supra* note 243, at 182.

402. *Yarra River Protection (Wilip-gin Birrarung murron) Act*, *2017* Preamble, at 1 (Austl.).

403. *Id.* pt 1 s 1.

404. *Id.* pt 2 s 12(2)–(3), at 13.

405. *See id.*

406. *Compare id.*, *with* Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, No. 7, subs 14(1)–(2) (N.Z.).

an independent Birrarung Council,[407] "the Voice of the River" appointed by the Environment Minister.[408] To maintain autonomy, the Council has no government representatives.[409] It includes at least two Aboriginal traditional custodians, in addition to representatives from environmental groups, agricultural interests, and at least two "skill-based" representatives (e.g. environmental planners)[410] to speak for the River.[411] The Council's mandate is "to provide independent advice" to the Minister for Water, Planning, and Environment "on significant activities, issues and plans concerning the Yarra River and its lands . . . ."[412] Thus, unlike the New Zealand agreements granting legal personhood to Te Urewera and the Whanganui River, the role of the Yarra River's spokescouncil is only advisory: the needs of the River itself will still be competing with the needs of the humans who also prize it as a resource.[413]

While the Council does not speak directly *as* the River, it is envisioned to play a strong advisory and advocacy role.[414] An extensive community engagement project is underway to advise the draft Strategic Plan the Act requires.[415] But the Council is not the body that is writing the 10-year strategic plan and fifty-year community vision – the lead agency is Melbourne Water.[416] Their initial preliminary reports on their strategic plan shows widespread community input, but also a complicated administrative structure serving multiple constituencies, including fifteen government agencies, Aboriginal Traditional Owners, and the statutorily constituted Birrarung Council, which the plan says is "colloquially known as 'the Voice of the River.'"[417]

Dr. Erin O'Donnell, a water law expert who currently serves as one of the eleven appointees, told me the Council is meeting regularly, and is still delineating how, specifically, they will speak on behalf of the Yarra River.[418] Thus, it remains to be seen how the body who speaks for the River's needs will express that voice. Nonetheless, O'Donnell stresses that "If through the Birrarung council First Nations and all Yarra river stakeholders can come together, this could be a powerful model for the rest of Australia. . . . It can be used as a genuine move towards reconciliation. It's a pathway to legitimacy for holistic views of the river and acknowledgment of First Nations."[419]

407. *Yarra River Protection (Wilip-gin Birrarung murron) Act*, *2017* pt 1 s1(c), pt 5 (Austl.).

408. *See id.* pt 5 s 48(1), at 36.

409. *Id.* pt 5 s 49(1)-(3), at 38 (describing qualifications for council members).

410. *Id.* pt 5 s 49(1), at 37.

411. *Id.* pt 5 s 48(1)(b), at 36.

412. MELBOURNE WATER & VICT. STATE GOV., PROGRESS REPORT FOR THE YARRA STRATEGIC PLAN 28 (2018), https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.mw-yoursay.files/9915/4035/6260/Progress_Report_for_the_Yarra_Strategic_Plan.pdf [https://perma.cc/5JSX-XHTW].

413. O'DONNELL, *supra* note 243, at 182.

414. *Yarra River Protection (Wilip-gin Birrarung murron) Act*, *2017* pt 5 s 48(1) (Austl.).

415. *Id.* pt 4, at 18.

416. *Developing the Yarra Strategic Plan*, MELBOURNE WATER & VICT. STATE GOV., https://www.melbournewater.com.au/about/strategies-and-reports/developing-yarra-strategic-plan (last visited Jan. 25, 2021) [https://perma.cc/DS5Y-8BLX].

417. *See id.*; MELBOURNE WATER, *supra* note 412.

418. Interview with Erin O'Donnell, Birrarung Couns. Member, in Melbourne, Vict. (Sept. 9, 2019).

419. Gleeson-White, *supra* note 10; Interview with Erin O'Donnell, *supra* note 418.

2. Fitzroy-Mardoowaara

Australia has a long way to go to effect that reconciliation. Australia does not yet have any legislation or court cases that change the legal status of nature from being human property.[420] Some scholars and activists see rights for rivers, and rights for traditional custodians to speak for rivers, as a potentially useful approach for securing greater protection for the environment and increased recognition and affirmation of Aboriginal laws.[421]

In *Dark Emu*, a 2014 best-selling book that has created a paradigm shift in the way many Australians think about Aboriginal societies, Bruce Pascoe describes the deep Aboriginal connections to the land that the colonizers destroyed.[422] Pascoe documents "a much more complicated Aboriginal economy than the primitive hunter-gatherer lifestyle we had been told was the simple lot of Australia's First People."[423] Rather than "hapless opportunism" in their relations with the environment,[424] Aborigines in Australia had developed careful, sophisticated, ecologically sensible agriculture, aquaculture and hunting.[425] The colonists did not recognize clear evidence of an advanced civilization "that was neither pristine nor wild":[426] it was neither convenient nor psychologically prudent for them to do so, as "few were in Australia to marvel at a new civilization; they were here to replace it."[427]

Pascoe documents extensively that:

> [O]ne of the most fundamental differences between Aboriginal and non-Aboriginal people is the understanding of the relationship between people and the land. Earth is the mother. Aboriginal people are born of the earth, and individuals within the clan had responsibilities for particular streams, grasslands, trees, crops, animals, and even seasons. The life of the clan was devoted to continuance.[428]

Pascoe advises that "[i]f we could reform our view of how Aboriginal people were managing the national economy prior to colonization, it might lead us to reform the ways we currently use resources and care for the land."[429] Legal reforms that recognize Aboriginal cultural understandings of their relationship with the Earth are one step in this process. As Pascoe points out, it may be a step as important for the colonizers as it is for the colonized: "It's not the difference between capitalism and communism; it's the difference between capitalism and Aboriginalism" that threatens our future.[430]

420. *See* Australian Ctr. for Rts. Nature, *What Are Rights of Nature?*, https://rightsofnature.org.au/what-are-rights-of-nature/ (last visited Jan. 25, 2021) [https://perma.cc/BED9-6WRY]; Gleeson–White, *supra* note 10.
421. Gleeson-White, *supra* note 10.
422. PASCOE, *supra* note 1, at 2.
423. *Id.*
424. *Id.*
425. *Id.*
426. *Id.* at 171.
427. *Id.* at 5.
428. *Id.* at 209.
429. *Id.* at 210.
430. *Id.* at 227.

Australia has not made the same efforts as New Zealand to atone for the colonizers' damages; they have not gone as far in the movement of legal rights for rivers.[431] But some Australian groups see this international legal movement as holding promise for their own efforts to reclaim sovereignty over their relationships with the land.[432] In addition to what's been achieved on the Yarra River, other indigenous Australians are striving to have rights declared for rivers, and for their ability to speak for those rivers.[433] For example, the concept of recognizing the rights of a river to exist, thrive and evolve is being explored for the Margaret River, in South Western Australia.[434]

In Australia's northwest, the Nyikina and other Aboriginal groups are advocating for recognition of legal rights for the Fitzroy River ("Mardoowarra" in the local language).[435] In the "Fitzroy River Declaration," traditional owners declare that "[t]he Fitzroy River is a living ancestral being and has a right to life."[436] The groups speak of "First Laws," *i.e.* the laws of the Aboriginal people that long preceded the Western laws that have devastated both Aboriginal culture and the land they stewarded for millennia.[437] Like the Māori, they see the river as a "living ancestral being" and "that the river gives life and has the right to life."[438] Establishing legal rights for the Mardoowarra is just one element of their broader desire to "fulfill their birthright and duty to collectively and holistically manage river country as an integrated whole."[439] They have established the Marturwarra[440] Fitzroy River Council, which they wish to see recognized as the group that will speak for the River, *i.e.* to oversee and help regulate inappropriate development along the Fitzroy.[441] Most recently, the Council has met with cattle industry representatives to try to find common ground on plans to establish large-scale irrigation for cattle ranchers, which most of the local Aboriginal groups oppose.[442]

Dr. Anne Poelina is a Nyikina scholar and leader who lauds "the Yarra river's right to life as a legal precedent for new laws to protect our Australian rivers which are the arteries of our nation. As my elders constantly remind me:

431. Gleeson-White, *supra* note 10.

432. *Id.*

433. *Id.*

434. *Id.*

435. *Id.*

436. Fitzroy River Declaration, *supra* note 10.

437. Michelle Lim, Anne Poelina & Donna Bagnall, *Can the Fitzroy River Declaration Ensure the Realisation of the First Laws of the River and Secure Sustainable and Equitable Futures for the West Kimberly?* 32 AUSTL. ENV'T REV. 18, 18 (2017).

438. *Id.*

439. *Id.* at 19.

440. The precise spelling varies.

441. News Release, Kimberly Land Council, *Kimberly Traditional Owners Establish Martuwarra Fitzroy River Council* (June 19, 2018), https://www.klc.org.au/kimberley-traditional-owners-establish-martuwarra-fitzroy-river-council [https://perma.cc/86ML-8Z6H].

442. Claire Moodle, *Claims of 'Aggression' and 'Intimidation' at Fitzroy River Talks, FOI Documents Reveal*, ABC NEWS (Sept. 21, 2019, 6:11 PM), https://www.abc.net.au/news/2019-09-21/fitzroy-river-water-negotiations/11390948 [https://perma.cc/YP7D-SL92].

no river, no people, no life!"[443] Dr. Poelina refers to New Zealand's legal rights for the Whanganui as a model that Australia should be following.[444] On behalf of her people, she brought the case of *Mardoowara v. the State of Western Australia* before the Australian People's Tribunal for Community and Nature's Rights "to ask the citizens of this court to recognize me as a living entity with a right to life, like my sister, the Whanganui River in New Zealand."[445] She is leading her community on behalf of the Mardoowara "to be protected as a sacred river with the right to life for generations to come."[446] A film she produced about the effort proclaims that the:

> Whanganui River has stood strong and with the help of her indigenous guardians and the strength and wisdom of their legal and cultural governance, she now has set international legal precedence across Mother Earth. Her rights in nature gives me hope in human beings, who hold the lives of other nonhuman beings, the birds, the trees, the rocks, the insects and the balance of life in their hands.[447]

Dr. Poelina speaks of ancient Aboriginal lore as law.[448] Through generations of interactions with the country, her people have crafted stories of what the River and the land needs and wants.[449] These stories, this lore, describes and prescribes acceptable interactions with the land through lore.[450] Dr. Poelina explained to me that seeking legal rights for the Mardoowarra is just one strategy in the communities' attempts to have their relationship with the river sanctified in the law.[451] They are seeking self-determination, where part of "self" is their connectedness with the nonhuman world around them, with the concomitant ability to speak on behalf of that relationship in a region that is undergoing rapid, unsustainable development.[452] Using the River as leverage is not disingenuous, given the role of the River in the groups' deeply rooted cultural and ecological history on the continent.[453] Advocating for recognition of nature's rights to exist and thrive, and aligning with the international rights of nature movement, is just

443. Gleeson-White, *supra* note 10; Dr. Poelina reiterated this to me during our interview. Interview with Anne Poelina, in Sydney, Austl. (July 11, 2019).

444. E-mail from Martuwarra RiverOfLife, Anne Poelina, Michael Davis, Kat Taylor & Quentin Grafton to Nat'l Water Reform Productivity Comm'n (Aug. 20, 2020), https://www.pc.gov.au/__data/assets/pdf_file/0004/256432/sub080-water-reform-2020.pdf [https://perma.cc/U72K-8C49].

445. Madjulla Inc., Broome, *Mardoowarra's Right to Life*, VIMEO, at 2:40 (Mar. 22, 2017) [hereinafter *Mardoowarra's Right to Life*], https://vimeo.com/205996720 [https://perma.cc/44GK-L5LP] (Password: Kimberley).

446. *Id.* at 3:25.

447. *Id*. at 2:58.

448. Interview with Dr. Anne Poelina, *supra* note 443; Fergal Byrne, *Episode 100: Interview with Dr. Anne Poelina, Indigenous Australian and Nyikina Traditional Custodian*, SUSTAINABILITY AGENDA, (Aug. 17, 2020), https://share.transistor.fm/s/70989ee3 [https://perma.cc/J597-DSDD].

449. *Mardoowarra's Right to Life*, *supra* note 445 at 1:08.

450. Interview with Dr. Anne Poelina, *supra* note 443.

451. *Id.*

452. *Id.*

453. *See* JOHN WATSON ET AL., NYIKINA AND MANGALA MARDOORWARRA WILA BOOROO: NATURAL AND CULTURAL HERITAGE PLAN (Nyikina–Mangala Aboriginal Corporation & WWF–Austl. 2011), https://www.wwf.org.au/ArticleDocuments/360/pub-nyikina-and-mangala-mardoowarra-wila-booroo-heritage-plan-1dec11.pdf [https:perma.cc/33XH-DRH9].

one of many strategies some Aboriginal groups are employing to translate their ancient law into a language that can be understood by Western law.[454]

3. Great Barrier Reef

Among the many efforts to protect the imperiled Great Barrier Reef, lawyers from the Australian Earth Laws Alliance ("AELA") drafted model laws to demonstrate how the rights of the Great Barrier Reef could be recognized in Australian law.[455] AELA drafted a model law for the State of Queensland, which states it is "[a]n Act to recognize the legal rights of the Great Barrier Reef."[456] They also drafted a model amendment with parallel requirements for the Commonwealth Constitution, and an innovative model Local Law.[457] The models were inspired by both the global movement to recognize the rights of rivers and other ecosystems, and also the approach pioneered by the Community Environmental Legal Defense Fund ("CELDF"), in the United States, which helps communities assert both the legal rights of nature and the legal rights of local communities to protect nature.[458] Like the New Zealand agreements, which clearly inspire this legislation,[459] the Act seeks to recognize "that the Great Barrier Reef is an indivisible living being with legal rights" and to secure "the inherent rights of the Great Barrier Reef to naturally exist, flourish, regenerate, and evolve, and its right to restoration and recovery."[460]
More than any extant statute protecting the Reef, this proposed law delineates what it would mean to achieve these rights. The Act stresses that the Reef has the right to:

> (a) naturally exist, flourish, regenerate, and evolve, and to restoration and recovery; (b) a healthy, stable climate system free from human-caused climate change pollution and emissions. This includes the right to be free from human activities that contribute to climate change, including fossil fuel extraction and development; (c) a healthy environment, including the right to clean air and clean water, free from human-caused pollution including sediments, nutrients, and pesticides; and (d) a vibrant and biodiverse community of life that is not depleted by unsustainable fishing.[461]

And like the New Zealand statutes, the model law would deed some of the rights to care for the Reef to the traditional custodians with historical stewardship ties.[462] The Act recognizes and respects "that First Nations Peoples, who have

454. *See id.*

455. *Recognising the Rights of the Reef*, AUSTL. CTR. FOR RTS. NATURE, https://rightsofnature.org.au/gbr-campaign/draft-laws-for-the-gbr/ (last visited Jan. 25, 2021) [https://perma.cc/2EJ9-8N42].

456. Legal Rights of the Great Barrier Reef Bill 2018 (Queensl.) 3 (Austl.), https://rightsofnature.org.au/wp-content/uploads/2018/08/Draft-State-Law_Rights-of-the-GBR.pdf [https://perma.cc/RJ89-VADN].

457. Constitution Alteration (Legal Rights of the Great Barrier Reef) Bill 2018, (Cth) sch 1 (Austl.), https://rightsofnature.org.au/wp-content/uploads/2018/08/Draft-Amendment-to-Australian-Constitution_Rights-of-the-GBR.pdf [https://perma.cc/RD3T-DCRF].

458. Interview with Michelle Maloney, in Brisbane, Austl. (July 24, 2019).

459. *Id.*

460. Legal Rights of the Great Barrier Reef Bill 2018*, supra* note 456, at pt. 1, cl. 3(2)(a)-(b).

461. *Id.* at pt. 2, cl. 6(2)(a)–(d).

462. *Id.* at pt. 2, cl. 7(1).

cared for land and sea country of the Great Barrier Reef for millennia, have the right to speak for country and defend their ancestral lands from unwanted developments and environmental harm."[463] The model law and Constitutional amendments have pragmatic procedural corollaries: allowing representatives to initiate legislation on the Reef's behalf, and reversing the burden of proof so that development proponents would have to affirmatively show that their actions would not harm the Reef.[464]

Australia is at an inflection point both in how to make amends for the colonizers' (and present day) appalling mistreatments of Aboriginal people, and how to manage their degrading resource base.[465] Australians have lagged behind their neighbor New Zealand in both endeavors.[466] Activists suggest that following their neighbor's model in granting legal personhood to nonhuman entities, with traditional custodians taking the lead in speaking for what the nonhuman entity (and thus the human community) wants, is a way to synergistically achieve both ends.[467]

D. Ecuador

Ecuador's 2008 Constitution elaborates the notion of "El buen vivir," which requires "persons, communities, peoples and nationalities to effectively exercise their rights and fulfill their responsibilities within the framework of interculturalism, respect for their diversity, and harmonious coexistence with nature."[468] The president of the Constitutional Assembly charged with drafting the new constitution collaborated with the U.S.-based Community Environmental Legal Defense Fund, environmental NGOs, and indigenous groups to draft rights of nature provisions into the Constitution.[469] They found that the idea of providing for the legal recognition of rights of nature was consistent with the worldview of Ecuador's indigenous peoples.[470]

Chapter 7 of the Constitution describes these fundamental rights: "Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, and maintain and regenerate its vital cycles, structure, functions and its evolutionary processes."[471] As part of "buen vivir," the State must guarantee the rights

463. *Id.* at pt. 1 cl. 3(2)(a–d).

464. *See Recognising the Rights of the Reef*, *supra* note 455.

465. *See, e.g.*, PASCOE, *supra* note 1, at 11 (describing the destruction of Aboriginal Australia beginning in the colonial period); *Recognising the Rights of the Reef*, *supra* note 455 (discussing the need to protect Australia's Great Barrier Reef in the face of unsustainable resource extraction).

466. *See, e.g.*, *Whanganui River Legally Recognized as Living Entity, New Zealand*, *supra* note 5 (describing New Zealand's efforts to mitigate adverse impacts on the river ecosystem and indigenous peoples that inhabit it); Julie H. Tsatsaros, Jennifer L. Wellman, Iris C. Bohnet, Jon E. Brodie & Peter Valentine, *Indigenous Water Governance in Australia: Comparisons with the United States and Canada*, 10 RESOURCES 1639 (2018.)

467. *See* Tsatsaros et al., *supra* note 466.

468. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, art. 275.

469. CULLINAN, *supra* note 49, at 185.

470. *Id.*

471. *Id.*; CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, art. 72.

of nature.[472] The Constitution requires a duty of all Ecuadorian citizens to "respect the rights of nature, preserve a healthy environment and use natural resources rationally, sustainably and durably."[473] The Constitution mandates the State to actively promote buen vivir, including guaranteeing the rights of nature,[474] and must support "forms of production that assure the good way of living of the population and shall discourage those that violate their rights or those of nature . . . ."[475]

The first successful[476] rights of nature court case arose from this Constitutional provision.[477] The Provincial Court in Loja ruled construction waste had been impermissibly bulldozed into the Vilcabamba River. The court held that "[i]t is the duty of constitutional judges to immediately guard and to give effect to the constitutional rights of nature," and ordered the defendants to remediate their mess and go through proper channels to obtain permits for their work.[478]

More recently, the Ministry of the Environment noted the rights of nature provisions of the Constitution when denying a request to build a dolphinarium.[479] But that is a rare success in Ecuador. According to Erin O'Donnell, the Vilcabamba decision created "new legal rights, but no new outcomes."[480] No one enforced the order and "the new legal rights for nature did not create any new solutions to the existing problems facing environmental protection in law."[481] In the Vilcabamba River case, when the construction company continued to violate the order, the NGO could not afford to sue them a second time, and the government failed to intervene.[482]

I have been to Ecuador since the Constitutional reforms and have seen some of the most horrific hellscapes on Earth as the nation drills for oil in some of the

472. CULLINAN, *supra* note 49, at 185; CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, art. 277.

473. CULLINAN, *supra* note 49, at 185; CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, art. 83, § 6.

474. CULLINAN, *supra* note 49, at 185; CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, art. 277.

475. CULLINAN, *supra* note 49, at 185; CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR Oct. 20, 2008, art. 319.

476. *First Successful Case Enforcing Rights of Nature in Ecuador*, PACHAMA ALLIANCE (Jul. 29, 2011), https://news.pachamama.org/news/first-successful-case-enforcing-rights-of-nature-in-ecuador [https://perma.cc/58E9-LLN8].

477. *See* Wheeler v. Loja, juicio No. 11121-2011-0010 (Corte Provincial de Justicia de Loja 30 Mar. 2011); Craig Kauffman & Pam Martin, Testing Ecuador's Rights of Nature: Why Some Lawsuits Succeed and Others Fail, Presentation at the International Studies Association Annual Convention (Mar. 18, 2016), http://files.harmonywithnatureun.org/uploads/upload471.pdf [https://perma.cc/TZ9J-ABBY].

478. ALBERTA CIV. LIBERTIES RES. CTR., *Rights of Nature*, http://www.aclrc.com/rights-of-nature (last visited Jan. 25, 2021) [https://perma.cc/JVK9-6DBD]; *see also* CULLINAN, *supra* note 49, at 160–64.

479. U.N. Secretary-General, *supra* note 40, at 5.

480. O'DONNELL, *supra* note 243, at 159.

481. *Id.* at 159–60.

482. Ashley Westerman, *Should Rivers Have Same Legal Rights as Humans? A Growing Number of Voices Say Yes*, NPR (Aug. 3, 2019, 8:02 AM), https://www.npr.org/2019/08/03/740604142/should-rivers-have-same-legal-rights-as-humans-a-growing-number-of-voices-say-ye [https://perma.cc/XP32-56FH].

planet's most biodiverse regions.[483] Rights for nature is no legal panacea: obviously, creating any legal rights, never mind novel rights for non-human entities, requires capacity to enforce compliance with those rights.[484]

E. India

In two cases in 2017, the High Court of Uttarakhand developed the rights of nature doctrine in the State.[485] The Court declared that:

> [T]he Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these Rivers are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve River Ganga and Yamuna.[486]

As precedent, the judge reviews cases where Indian courts held that idols or deities are juristic persons that can hold property.[487] As we've seen elsewhere, the Court is compelled to link both spiritual and ecological dependence of human communities to the Rivers:

> All Hindus have deep Astha [faith] in Rivers Ganga and Yamuna and they collectively connect with these Rivers. Rivers Ganga and Yamuna are central to the existence of half of Indian population and their health and well being. The Rivers have provided both physical and spiritual sustenance to all of us from time immemorial.[488]

Rather than create new bodies to act as the human face of the Rivers, the Court instructs various government officials to act "*in loco parentis* as the human face to protect, conserve, and preserve" the Rivers.[489] That would be a potential shortcoming of the ruling, had it gone into effect: the same government bodies are currently failing to protect these rivers.[490]

More remarkably, in a different case, the same court attempts to extend the bounds of legal personhood even further.[491] After surveying the alarming status of shrinking glaciers, park encroachment, and deforestation, noting the particular threats that climate change poses to the people and ecosystems of India, the Court rehearses a variety of poetic prose from Indian and foreign authors (including Kenyan Nobel Peace Prize winner Wangari Maathai), scientific descriptions of affected ecosystems, and international legal instruments (*e.g.* the 1992 Earth Summit, the Convention on International Trade of Endangered Species).[492] The

483. *See* Jason G. Goldman, *Breaking Precious Ground*, BIOGRAPHIC (Jan. 10, 2017), https://www.biographic.com/breaking-precious-ground/ [https://perma.cc/4JXN-7GT6].

484. *See supra* text accompanying notes 474–76.

485. *See generally* Mohd Salim v. State of Uttarakhand, 126 of 2014, decided on Mar. 20, 2017 (Uttarakhand HC) (India).

486. *Id.* ¶ 19.

487. *Id.* ¶ 15.

488. *Id.* ¶ 17.

489. *Id.* ¶ 19.

490. *See* Westerman, *supra* note 482.

491. *See generally* Lalit Miglani v. State of Uttarakhand, 140 of 2015, decided on Mar. 30, 2017 (Uttarakhand HC) (India), 66.

492. *See id.* at 4–5, 24, 28, 45.

Court cites favorably the New Zealand statute granting Te Urewera legal personhood.[493] Invoking the doctrine of *parens patriae, i.e.* the ability of the state to act to protect a person needing such protection, the Court concludes by declaring:

> [T]he Glaciers . . . rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls [are a] legal person/juristic person/juridicial person/moral person/artificial person having the status of a legal person, with all corresponding rights duties and liabilities of a living person, in order to preserve and conserve them.[494]

The State government of Uttarakhand appealed the rulings, fearing that people would actually sue the rivers when they caused damage, and noting that the law would be difficult to enforce because the Rivers flowed beyond the State's borders.[495] The Indian Supreme Court agreed, and overruled the designation.[496]

F. Bangladesh

In July 2019, the Supreme Court of Bangladesh made its nation the first to grant full legal personhood to all of its rivers.[497] The Court noted that "[w]ater is likely to be the most pressing environmental concern of the next century," and called for rivers to be protected "at all costs."[498] Decrying the polluted status of the nation's rivers upon which citizens intimately depend, the Court cites the Colombian Río Atrato case, Ecuador's Constitution, and the Te Urewera and Whanganui cases from New Zealand.[499] As in the Indian rivers case above, various government officials are named *in loco parentis* to protect the newly human entities.[500]

The Court ordered the government-appointed National River Conservation Commission to act as guardian of the rivers, including being able to take polluters to court to defend a river's right to life.[501] Activists in Bangladesh note that, unlike in New Zealand (or Colombia or Australia), the Court did not appoint local citizens as representatives or stakeholders of the Rivers; this makes local, poor, riverine citizens vulnerable to eviction of they are polluting rivers—as

493. *Id.* at 45.

494. *Id.* at 66.

495. O'DONNELL, *supra* note 243, at 7; Westerman, *supra* note 482.

496. *India's Ganges and Yamuna Rivers are 'Not Living Entities*,' *supra* note 12.

497. Westerman, *supra* note 482.

498. Chandran, *supra* note 12.

499. Human Rights and Peace for Bangladesh v. Bangladesh & Others (2019) W.P. No. 13989 of 2016, at 157, 274–75 (HCD) (Bangl.). The decision is written in Bengali and has not been translated. All the English language documents it cites are in English, however, *i.e.,* the court cases and statutes from other nations that the court cites are cut and paste verbatim.

500. *Id.* at 278.

501. *See* Sigal Samuel, *This Country Gave All Its Rivers Their Own Legal Rights*, VOX (Aug. 18, 2019, 8:30 AM), https://www.vox.com/future-perfect/2019/8/18/20803956/bangladesh-rivers-legal-personhood-rights-nature [https://perma.cc/E2GP-W5XK]; Imtiaz Ahmed Sajal, *Strengthening the National River Conservation Commission of Bangladesh*, DAILY STAR: L. WATCH (Oct. 15, 2019, 12:00 AM), https://www.thedailystar.net/law-our-rights/law-watch/news/strengthening-the-national-river-conservation-commission-bangladesh-1813927 [https://perma.cc/9MXZ-YTKF]; Westerman, *supra* note 482; Chandran, *supra* note 12. *See generally* Human Rights and Peace for Bangladesh v. Bangladesh & Others (2019) W.P. No. 13989 of 2016, at 157, 278 (HCD) (Bangl.).

many of them inevitably are.[502] The National Rivers Commission Chairman avers, "[p]rotecting the rivers also means protecting the entire eco-system, which includes fishermen and farmers who live on the banks. Their rights will also be protected."[503] Also, of course, a problem with rivers is that they choose to transcend boundaries: no one in Bangladesh can sanction India if it fouls transboundary waterways.[504] It remains to be seen how these new legal protections will play out in a nation with a rapidly growing population, facing some of the world's gravest land loss from rising sea levels.[505]

G. United States

The CELDF has spearheaded most of the several dozen local level Rights of Nature ordinances in the United States.[506] So, for example, recognizing that "[l]ike all other communities, Santa Monica's welfare is inextricably bound to the welfare of the natural environment," the City's 2013 Resolution declares both that citizens have rights to a healthy environment, but also that "[n]atural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City of Santa Monica" and that "residents of the City may bring actions to protect groundwater aquifers, atmospheric systems, marine waters, and native species within the boundaries of the City."[507] The City continues to rely on and reiterate this Resolution in its new Sustainable Rights Ordinance, and in its recent prohibitions on private water wells.[508]

Following episodes where Toledo, Ohio was forced to enact a drinking water ban due to unsafe levels of toxins in Lake Erie on February 2019, 61.39% of the voters who showed up at the polls voted yes on the "Lake Erie Bill of Rights,"[509] which would be the first U.S. law to grant rights to an ecosystem.[510] Explaining the rationale behind the initiative, an activist explained, "We've been using the same laws for decades to try and protect Lake Erie. They're clearly not working."[511] The initiative specified the:

502. *See* Chandran, *supra* note 12.

503. *Id.*

504. *See* Westerman, *supra* note 482.

505. *See* Peter Kim Streatfield & Zunaid Ahsan Karar, *Population Challenges for Bangladesh in the Coming Decades*, 26 J. HEALTH, POPULATION & NUTRITION 261, 261 (2008); William Park, *The Country Disappearing Under Rising Tides*, BBC: ENVIRONMENT (Sept. 2, 2019), https://www.bbc.com/future/article/20190829-bangladesh-the-country-disappearing-under-rising-tides [https://perma.cc/N626-3GXD].

506. CMTY. ENV'T LEGAL DEF. FUND, *U.S. Communities*, https://celdf.org/join-the-movement/where-we-work/u-s-communities/ (Nov. 19, 2015) [https://perma.cc/LT9E-KRQM].

507. Santa Monica, Cal. Code §§ 4.75.020(b), 4.75.040(b)(c) (Apr. 9, 2013), https://www.smgov.net/departments/council/agendas/2013/20130409/s20130409_07A1.htm [https://perma.cc/ZX9Q-JNA2].

508. U.N. Secretary-General, *supra* note 40, ¶ 37.

509. BALLOTPEDIA, *Toledo, Ohio, Question 2, "Lake Erie Bill of Rights" Initiative (February 2019)*, https://ballotpedia.org/Toledo,_Ohio,_Question_2,_%22Lake_Erie_Bill_of_Rights%22_Initiative_(February_2019) [https://perma.cc/2DZG-XZ56].

510. CMTY. ENV'T LEGAL DEF. FUND, *Breaking News: Toledo Voters Enact Lake Erie Bill of Rights (*Feb. 26, 2019), https://celdf.org/2019/02/breaking-news-toledo-voters-enact-lake-erie-bill-of-rights/ [https://perma.cc/8LQH-EEMK].

511. *Id.*

> Rights of Lake Erie Ecosystem. Lake Erie, and the Lake Erie watershed, possess the right to exist, flourish, and naturally evolve. The Lake Erie Ecosystem shall include all natural water features, communities of organisms, soil as well as terrestrial and aquatic sub ecosystems that are part of Lake Erie and its watershed.[512]

As one writer expresses it, when the voters approve of legal rights for Lake Erie, they assert that the Lake "is a living being not a bundle of ecosystem services" and thus "it displaces Erie from its instrumentalised roles as sump and source."[513]

Alleging that the initiative was "unconstitutional and unlawful," a farmers' group quickly filed an injunction, alleging that the initiative "exposes Drewes Farms to massive liability if Drewes Farms continues to fertilize its fields because it can never guarantee that all runoff will be prevented from entering the Lake Erie Watershed."[514] While the case was in process, the Ohio legislature passed a law stating: "Nature or any ecosystem does not have standing to participate in or bring an action in any court of common pleas. No person, on behalf of or representing nature or an ecosystem, shall bring an action in any court of common pleas."[515] One news source cites a community activist saying "it doesn't matter what happens in the courts in Toledo with this case, because the genie has been let out of the bottle. And as hard as they want to try to put it back in, the people shouldn't let them . . . I mean, we have to change our environmental protection in this country and across the world, because obviously what we're doing isn't working."[516] In fact, a federal judge did invalidate the Lake Erie Bill of Rights, noting that while supporters of the initiative "used the democratic process to pursue a well-intentioned goal: the protection of Lake Erie," the ordinance was "unconstitutionally vague and exceed[ed] the power of municipal government in Ohio."[517]

The genie may remain stopped up in the U.S., at least in the near future. In 2017, the Colorado River Ecosystem (a group of "next friends," the Deep Green Resistance, filing on its behalf)—"best understood as a complex collection of relationships"—sued the State of Colorado.[518] Alleging that "Environmental Law has failed to protect the natural environment because it accepts the status of nature and ecosystems as property, while merely regulating the rate at which the natural environment is degraded," the "Plaintiffs are asking this court to recognize that the Colorado River is capable of possessing rights similar to a 'person,' and . . . that the Colorado River has certain rights to exist, flourish, regenerate,

512. BALLOTPEDIA, *supra* note 509.

513. Robert Macfalane, *Should This Tree Have the Same Rights as You*?, GUARDIAN (Nov. 2, 2019, 7:00 AM) https://www.theguardian.com/books/2019/nov/02/trees-have-rights-too-robert-macfarlane-on-the-new-laws-of-nature [https://perma.cc/7DGF-87B4].

514. Drewes Farms Partnership v. City of Toledo, 441 F. Supp. 3d 551 (N.D. Ohio 2020).

515. BALLOTPEDIA, *supra* note 509.

516. Westerman, *supra* note 482.

517. *Drewes Farms*, 441 F. Supp. 3d at 557–58.

518. Complaint at 3–4, Colorado River Ecosystem v. State of Colorado, 1:17-cv-02316 (D. Colo. Sept. 25, 2017).

and evolve."[519] The complaint asserts that "[f]or the vast majority of human history, humans lived in humble relationships with natural communities," now "the planet is on the verge of total collapse."[520] To avert this collapse, and citing Justice Douglas' Supreme Court Dissent in *Sierra Club. v. Morton*, "[i]f American courts do not recognize the inherent worth of natural communities, the dominant culture will not change, and collapse will only intensify."[521] The plaintiffs cite the Colombian, Ecuadorian, Indian, and New Zealand cases analyzed in this Article as precedent for their request.[522]

The Colorado Attorney General was not impressed, and forced the lawyer representing the Colorado River Ecosystem to withdraw the Complaint under threat of sanctions or disbarment.[523] While she did "not doubt the personal convictions of those groups and individual who claimed to speak on behalf of the ecosystem," the case nonetheless "unacceptably impugned the State's sovereign authority to administer natural resources for public use, and was well beyond the jurisdiction of the judicial branch of government."[524] The plaintiffs were forced to file their own Motion to Dismiss, noting that theirs was a:

> [G]ood faith attempt to introduce the Rights of Nature doctrine into our jurisprudence . . . the expansion of rights is a difficult and legally complex matter. When engaged in an effort of first impression, the undersigned have an ethical duty to continuously ensure that conditions are appropriate for our judicial institution to best consider the merits of a new canon[525]

Native Americans are also following the lead of successful rights of nature cases empowering indigenous groups elsewhere on the globe.[526] The White Earth Band of Ojibwe in Minnesota passed a law granting wild rice its own legal rights.[527] The Yurok Tribal Council of Western California voted unanimously for a resolution that granted rights to the Klamath River.[528] The Resolution documents the Yurok's deeply rooted connection to the River:

> The Yurok Tribe and its members have had a strong relationship with "Weroy" also known as the Klamath River, since time immemorial and Yurok culture, ceremonies, religion, fisheries, subsistence, economics, residence,

519. *Id.* at 2–3.

520. *Id.* at 12.

521. *Id.*

522. *Id.* at 14–16.

523. Chris Walker, *Attorney to Withdraw Colorado River Lawsuit under Threat of Sanctions*, WESTWORD (Dec. 4, 2017, 12:17 PM), https://www.westword.com/news/colorado-river-lawsuit-to-be-withdrawn-due-to-potential-sanctions-9746311 [https://perma.cc/MWE9-YDNM].

524. *Id.*

525. Unopposed Motion to Dismiss Amended Complaint with Prejudice at 2–3, Colorado River Ecosystem v. State of Colorado, No. 1:17-cv-02316-NYW (D. Colo. Dec. 3, 2019).

526. Winona LaDuke, *The White Earth Band of Ojibwe Legally Recognized the Rights of Wild Rice. Here's Why*, PORTSIDE (Apr. 8, 2019), https://portside.org/2019-04-08/white-earth-band-ojibwe-legally-recognized-rights-wild-rice-heres-why [https://perma.cc/UP6F-LLUX].

527. *Id.*; Timothy Williams, *Legal Rights for Lake Erie? Voters in Ohio City Will Decide*, N.Y. TIMES (Feb. 17, 2019), https://www.nytimes.com/2019/02/17/us/lake-erie-legal-rights.html [https://perma.cc/V5B3-6L4P].

528. Yurok Tribe, Res. 19-40, Resolution Establishing Rights of the Klamath River (2019), http://files.harmonywithnatureun.org/uploads/upload833.pdf [https://perma.cc/NK5H-83ZX].

> and all other lifeways are intertwined with the health of the River, its ecosystem, and the multiple species reliant on a thriving Klamath River Ecosystem.[529]

The Resolution details threats to the Klamath, and "establishes the Rights of the Klamath River to exist, flourish, and naturally evolve; to have a clean and healthy environment free from pollutants; to have a stable climate free from human-caused climate change impacts; and to be free from contamination by genetically engineered organisms."[530] The Resolution concludes with a "written notice" to governments and anyone else who endanger the River "that it has become necessary to provide a legal basis to protect the Klamath River, its ecosystem, and species for the continuation of the Yurok people and Tribe for future generations," and promises a follow-up ordinance codifying the Resolution.[531]

These resolutions remain, for the moment, as symbolic statements: they express an ontology that the tribes wish to see translated into law.[532] Rights of nature resolutions, Constitutional amendments, or statutes have been passed in Bolivia (the first Constitutional proclamation of nature's rights, it has done little meaningful legal work);[533] Crestone, Colorado;[534] Paudalho, Brazil;[535] Colima, Mexico;[536] Murcia, Spain,[537] and Frome, UK,[538] with similar actions in process in Lennik, Belgium, Civita Castellana, Italy (seeking to declare itself the world's first "Nature's Rights Zone"), São Paulo & Brumadinho, Brazil (for the Capabaribe River), the Laguna El Espino in El Salvador, and Ethiopia's River Ethiope.[539] Uganda's 2019 National Environment Act declares that "nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution", and that "a person has a right to bring an action before a competent court for any infringement of rights of Nature under this Act."[540] These actions often cross reference each other, aspirationally spinning a web of ecological interrelationship between legal systems.[541] It remains to be seen how many of these instances are symbolic, and how many lead to genuine legal, ecological, and cultural changes.

529. *Id.*

530. *Id.*

531. *Id.*

532. *Id.*

533. John Vidal, *Bolivia Enshrines Natural World's Rights with Equal Status for Mother Earth*, GUARDIAN (Apr. 10, 2011), https://www.theguardian.com/environment/2011/apr/10/bolivia-enshrines-natural-worlds-rights [https://perma.cc/6JRB-MA43].

534. EcoCentric Communities, EARTH L. CTR., https://www.earthlawcenter.org/towns-cities (Dec. 3, 2020) [https://perma.cc/J9P4-LUKU].

535. *Advancing Legal Rights of Nature: Timeline*, COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND, https://celdf.org/advancing-community-rights/rights-of-nature/rights-nature-timeline/ (last visited Jan. 25, 2021) [https://perma.cc/M8XR-8EFN].

536. EcoCentric Communities, *supra* note 534.

537. Ricardo Perez-Solero, *Can Spain Fix its Worst Ecological Crisis by Making a Lagoon a Legal Person?*, GUARDIAN (Nov. 18, 2020, 3:30 PM), https://www.theguardian.com/environment/2020/nov/18/can-spain-fix-its-worst-ecological-disaster-by-making-a-lagoon-a-legal-person [https://perma.cc/L43Z-VBZA].

538. *United Nations Secretary-General*, *supra* note 40.

539. *Id.* ¶¶ 47–49, 52, 56, 59.

540. *Id.* ¶ 33.

541. *Id.* ¶ 129.

IV. WHAT DOES IT ALL MEAN?

So: are we the River?

This is a study of how we view our relationship to the nonhuman world around us. What we value and how we value the natural world will dictate how we do or do not care for the natural world, which will shape the natural world itself, which, in turn, shapes our values. Our values become rooted in our laws, which themselves shape our obligations (or lack thereof) towards the natural world. The circles may be virtuous or vicious, depending on the parameters of the law and the evolving values that inform it and flow from it.

Environmental laws are thus informed by and further reinforce how members of a society view their relationship with the nonhuman world.[542] Even our foremost protective environmental laws that have cleaned air and water, protected species, etc. usually convey dominion or separation: the environment remains a set of resources for us to manipulate at will or fence off when we want to protect.[543] These laws seldom suppose a web of relationships for us to participate in, or a series of interrelated systems for us to sustain for their own sake.[544] Rights for rivers may, possibly, reconceive those relationships and thus reconceive our laws.

Speaking for the river or mountain means speaking for ecosystem health, for abundant life with a diversity of species, for ecosystem resilience in the face of multiple, synergistic human pressures. When reconceived, nonhuman nature is no longer simply human property, but has rights of its own, we simply must consider its needs when we act. We *could* achieve ecosystem resilience without granting legal personhood to a given nonhuman entity: we just haven't, hardly ever, hardly anywhere.[545]

Advocates portrayed here recognize this failure and want us to think bigger, and escape the myopic lens where to the extent we think about nature, even in environmental laws, we think of how to conserve it for our own use.[546] They want us to think of ourselves as fundamentally interconnected with the planet's life systems and to legislate as if ecosystem health (and therefore our own health) matters.[547] The Deep Ecology movement that gained prominence in the 1970s and 1980s urged a similar movement "to reawaken our understanding of Earth wisdom," "to accept the invitation to the dance–the dance of unity of humans, plants, animals, the Earth."[548]

542. *See supra* Part II.

543. *See supra* Part II; Despite its rhetoric, even our Endangered Species Act is differentially enforced or budgeted depending on how we feel about a given listed species or how much political or legal pressure overtaxed environmental groups exert. And when I go to court to defend the nonhuman species, I must show that MY interests are harmed by threats to the imperiled species.

544. *See supra* Part II.

545. *See supra* Part II.

546. *See supra* Part II.

547. *See supra* Part II.

548. BILL DEVALL & GEORGE SESSIONS, DEEP ECOLOGY ix (1985).

But the Deep Ecologists were also profoundly anti-human.[549] The advocates I describe here are architects of a new regime that constructs in the law a new version of the human/planet relationship.[550] Unlike the Deep Ecologists or some other environmentalists who promote biodiversity conservation no matter what the cost to humans, many of these initiatives give precedence to local and/or indigenous communities to speak for the nonhuman entities' rights and to regain some control over the natural ecosystems that sustain their communities.[551] Some of these pioneering legal innovations draw from and simultaneously honor indigenous understandings of the human/nature bond. Even typing "human/nature" supposes that these things are extricable. And, at least currently in New Zealand, and aspirationally in Colombia, Australia, and elsewhere, this recognition is paired with real legal power to manage the landscape according to cultural precepts: Indigenous ideas about nature are written into law and will, in turn shape nature going forward, which will, in turn, shape our views of nature in complex dialectic.

Many of these initiatives empower indigenous groups, or other communities with long histories as stewards and "traditional ecological knowledge"[552] of newly empowered nonhuman entities. As far as I can discern, the models thus far escape the fallacy of the "ecological noble savage," *i.e.* the myth that all pre-Industrial communities lived in blissful, sustainable harmony with the natural world around them.[553] Certainly, some Indigenous communities have been granted control of their own resource base, with denuded, ecologically dead forests resulting.[554] But the initiatives here that grant cultural and thus management primacy to indigenous and/or local communities make compelling cases that these communities' worldviews and histories (as marginalized, as stewards) earn them the authority to speak for and thus manage the rivers and mountains that sustain them. It is thought they will manage nature as if their lives depended on it, because their lives depend on it.[555]

The model, however, is transferrable even where these communities do not thrive or survive. I'm not original in suggesting this: Christopher Stone was there decades ago when he proposed that trees and other nonhuman entities should

549. At a conference I attended at UC Santa Cruz in 1999, Devall and Sessions revealed themselves to be explicitly misogynistic, anti-Semitic, and generally anti-human. There are many critiques of Deep Ecology. *See, e.g.*, Ramachandra Guha, *Radical American Environmentalism and Wilderness Preservation: A Third World Critique*, 11 ENV. ETHICS71 (1989).

550. *See supra* Part II.

551. *See supra* Part II.

552. Víctor Toledo, *Indigenous Peoples and Biodiversity*, ENCYCLOPEDIA OF BIODIVERSITY 269 (2d ed. 1999); Joan McGregor, *Towards a Philosophical Understanding of TEK and Ecofeminism*, *in* TRADITIONAL ECOLOGICAL KNOWLEDGE 109, 109–28 (Melissa K. Nelson and Dan Shilling eds., 2018).

553. For a comprehensive critique of this view, see Shepard Krech III, The Ecological Indian: Myth and History (1999). For a review of the literature on this, see Raymond Hames, *The Ecologically Noble Savage Debate*, 36 ANN. REV. ANTHROPOL. 177 (2007).

554. Kent H. Redford, *The Ecologically Noble Savage*, CULTURAL SURVIVAL (Mar. 1991), https://www.culturalsurvival.org/publications/cultural-survival-quarterly/ecologically-noble-savage [https://perma.cc/E6YK-2NLR].

555. *See supra* Part III.

have legal standing with guardians to represent their interests in court.[556] But perhaps it's time to devolve guardianship or spokespersonship to teams of allies/advocates who will speak for the natural world due to their intimate connection and knowledge thereof. Sportspersons, hikers, scientists, birders, local nature enthusiasts could–and should–be fiduciaries, empowered to act as trustees for rivers and mountains and ecosystems. Of course, it is possible that some of the communities described here will mismanage resources, or future initiatives will assign inapposite guardians. We will have to stay tuned.

To label these legal innovations as "ecocentric"[557] or "anthropocentric" misses the point. We may believe that healthy nonhuman ecosystems have an inherent right to flourish, or we may believe that sustaining ecosystem health makes it more likely that human communities will survive and even thrive in the Anthropocene.[558] If we are the river and the river is us, then the environmental philosophies underlying these legal reforms are an eco-anthropocentric hybrid. The river still serves human needs, but the humans who depend on the river also serve the river's needs.

Our current legal systems usually start by asking "what do *we* need?" and then slots in some provisions for the planet when not too inconvenient or expensive.[559] The initiatives portrayed here reach for a system of law where we ask, first and foremost: what does the planet need–and, therefore, ineluctably, what do we need?

These legal innovations comprise fundamental elements of an Earth jurisprudence. They are Earth-centric, where humans are but one cog in the Earth system. They recognize–indeed, require–that we root our laws in the fundamental interdependence between human and nonhuman communities. When the Whanganui or Yarra or Atrato or Ganges Rivers gain "legal personhood," this simply means that their interests matter, rather than only our interests in them mattering. Even the most ardent anthropocentrist (or egocentrist) cannot pursue their own interests if the river, or mountain, or lake, or reef do not have their interests considered, because these entities are the matrices that sustain human lives. The schemes here simply put the nonhuman interests first, or on the same footing as our own interests. These initiatives are about *relationship* between the human and nonhuman, recognizing first that the relationship exists, and then recognizing that we are fundamentally dependent on the continued health and flourishing of the nonhuman world. Law just is catching up to this inexorable fact.

V. CONCLUSION

Can rivers tell us what they want? I believe they do, if we are heeding. In his book, *Wild Law: A Manifesto for Earth Justice*, Cormac Cullinan writes:

556. Steve Pavlik, *Should Trees Have Legal Standing in Indian Country*?, 30 WICAZO SA REV. 7, 8–9 (2015).

557. O'Donnell & Macpherson, *supra* note 108, at 37.

558. For a discussion of who *should* be empowered to speak for biodiversity in an environmental democracy, see David Takacs, *Whose Voices Count in Biodiversity Conservation?*, *supra* note 25.

559. *See supra* Part II.

> Fortunately rivers communicate rather a lot about their essential natures. We know that they need to flow, tend to rush over rocks in a highly oxygenated, high-energy flurry in their upper reaches, and have a distinct inclination to meander languidly in their lower reaches. They create microclimate and Riverine ecosystems along their banks and they flood from time to time, compensating for what they destroy with rich silt and demarcating a flood plain as their territory. In other words, a flooding River is almost certainly acting in accordance with its nature.[560]

What rivers want should be what we want, if we want to sustain the nonhuman world that sustains us.

For New Zealand's Māori or Australia's Aborigines, or the Afro-Caribbean communities in Colombia's Chacó, there may be some cognitive or ontological dissonance trying to mesh two distinct worldviews into a legal regime that respects cultural cosmology and at the same time remains recognizable to Western legal traditions. It is difficult to turn the autochthonous lore of the land into the modern law of the land. But for them and for the rest of us, the resulting hybrid provides a way forward, no matter what our spiritual or cultural understanding. We see only the inklings of how these new legal initiatives will (or won't) transform human and nonhuman communities, so stay tuned. But I believe that seeing ourselves as an interconnected part of the ecological world can only lead us to see that taking care of the world around us is taking care of ourselves. We *are* the river, and the river is us. When we realize this, and derive ways to root this epiphany in law, we will find sustainable ways forward for human civilization.

560. CULLINAN, *supra* note 49, at 107.