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SYMPOSIUM ARTICLE

Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature[†]

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Abstract

The rapid emergence of rights of Nature over the past decade across multiple contexts has fostered increasing awareness, recognition, and, ultimately, acceptance of rights of Nature by the global community. Yet, too often, both scholarly publications and news articles bury the lede – namely, that the most transformative cases of rights of Nature have been consistently influenced and often actually led by Indigenous peoples. In this article we explore the ontologies of rights of Nature and earth jurisprudence, and the intersections of these movements with the leadership of Indigenous peoples in claiming and giving effect to their own rights (while acknowledging that not all Indigenous peoples support rights of Nature). Based on early observations, we discern an emerging trend of increased efficacy, longevity, and transformative potential being linked to a strongly pluralist approach of lawmaking and

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We acknowledge the contributions of all authors to this article, which has been written as part of a highly collaborative process and to which all authors were essential contributors. This article is the product of building relationships and trust between Indigenous and non-Indigenous authors, which required time and patience. In the quiet spaces of reflection and shared understanding, we can begin to hear silenced voices, and the song of Country. We also acknowledge that the system of hierarchical ordering of authorship is very 'western' and leaves insufficient room for the essential contribution each author makes in a truly collaborative process. While we acknowledge the role of the 'lead' author in bringing us together, de-colonization of academia needs to include a reframing of authorship that truly values and reflects the shared knowledge and learnings between all authors. Lastly, we would like to thank the anonymous reviewers and Donna Bagnall for their helpful comments and feedback.

environmental management. A truly transformative and pluralist ecological jurisprudence can be achieved only by enabling, and empowering, Indigenous leadership.

Keywords: Ecological jurisprudence, Indigenous, Rights, Nature, Rivers, Pluralism

1. INTRODUCTION

Since 2008, rights of Nature have progressed rapidly from an engaging but largely theoretical legal concept into actual legal outcomes. In 2008 and 2010, respectively, Ecuador and Bolivia recognized all of Nature as having legal rights and, in 2011, the first legal case to test these rights in Ecuador confirmed that the rights of the Río Vilcabamba (Vilcabamba River) had been infringed by the construction of a new road.[1] Over the same period, the non-government organization (NGO) Community Environmental Legal Defense Fund (CELDF) has been assisting local communities throughout the United States (US) to develop local ordinances to recognize the rights of Nature.

These trailblazing examples initially had only limited on-the-ground outcomes for environmental protection. In Ecuador, enforcement of the original ruling in favour of the rights of the river was minimal, in part because of the costs of returning to court to seek an enforcement ruling.[2] In the US, the new local laws were deemed incompatible with state and federal laws responsible for approving development applications, and have been consistently struck down by the courts.[3]

In March 2017, the situation changed rather dramatically as Aotearoa New Zealand, followed by India and Colombia, recognized rivers as legal persons with a range of legal rights.[4] By focusing on specific natural entities (typically, and significantly, rivers and their catchments), these new instances of rights of Nature were also accompanied by new institutional arrangements, such as the appointment of guardians to act on behalf of the rivers (including, in some cases, additional funding for these new bodies).[5] These examples have stimulated renewed global interest in the implementation of rights of Nature[6] and, in a number of cases, in the creation of rights for specific

1 E. Daly, 'The Ecuadorian Exemplar: The First Ever Vindication of Constitutional Rights of Nature' (2012) 21(1) *Review of European Community and International Environmental Law*, pp. 63–6, at 63.

2 Daly, ibid.; see also discussion in M.E. Whittemore, 'The Problem of Enforcing Nature's Rights under Ecuador's Constitution: Why the 2008 Environmental Amendments Have No Bite' (2011) 20(3) *Pacific Rim Law and Policy Journal*, pp. 659–91, at 670.

3 P. Burdon, 'The Rights of Nature: Reconsidered' (2010) 49 *Australian Humanities Review*, pp. 69–89, at 74.

4 L. Te Aho, 'Legislation: Te Awa Tupua (Whanganui River Claims Settlement) Bill: The Endless Quest for Justice' (2016) *Māori Law Review* online articles, Aug. 2016, available at: http://maorilawreview.co.nz; E. Macpherson & F. Clavijo Ospina, 'The Pluralism of River Rights in Aotearoa New Zealand and Colombia' (2018) 25 *Journal of Water Law*, pp. 283–93, at 283; E. O'Donnell & J. Talbot-Jones, 'Legal Rights for Rivers: What Does This Actually Mean?' (2017) 32(6) *Australian Environment Review*, pp. 159–62, at 159; C. Clark et al., 'Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance' (2019) 45(4) *Ecology Law Quarterly*, pp. 787–844, at 787.

5 E. O'Donnell & J. Talbot-Jones, 'Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India' (2018) 23(1) *Ecology and Society*, article 7, pp. 1–10, at 6.

6 As demonstrated by the exponential participation of scholars and NGOs at the anniversary gathering of the Global Alliance for the Rights of Nature held in Ecuador in 2018: see Global Alliance for the

natural entities rather than generic rights for Nature as a whole.[7] This shift away from Nature as a single entity, and as separate from human culture, constitutes an important reframing, which helps to move away from the western construct of nature and creates space for a more pluralist legal paradigm that re-centres Indigenous worldviews.[8] As an example of the way in which this shift connects with Indigenous cosmologies, we draw on the work of Stephen Muecke, who writes that 'many, perhaps most, [I]ndigenous societies did not, and do not, operate with a nature-culture opposition. There is typically no word for nature as a whole'.[9]

Rights of Nature are increasingly migrating into mainstream environmental law, especially over the past three years. Furthermore, each new natural entity to receive legal personhood attracts newspaper headlines around the globe, as well as increasing collective awareness, recognition, and, ultimately, acceptance of rights of Nature by the global community. Yet, scholarly publications and news articles often bury the lede: the most transformative cases of rights of Nature have been consistently influenced, and often actually led, by Indigenous peoples. Although Indigeneity remains a contested concept, in this article we draw on Kathleen Birrell's articulation of Indigenous peoples as:

> a multifarious yet globally cohesive marker of unity, defined in accordance with a cultural distinctiveness resistant to colonial imposition, spiritual and ancestral connections to land and waters, marginalisation and dispossession, and political agitation against neocolonial expansion.[10]

Although the lack of recognized sovereign power on the part of many Indigenous communities often means that they may not be responsible for the formal enactment of these new rights, we argue that rights of Nature either simply would not have happened, or would have been much less effective in delivering tangible environmental outcomes, without the leadership of certain Indigenous peoples. In making this argument, we first explore in Section 2 the relationship between rights of Nature and the theory of earth jurisprudence, as well as the intersection of rights of Nature claims with Indigenous law. We highlight the risks that rights of Nature advocates may obscure

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Rights of Nature, 'Rights of Nature Anniversary Symposium', 27–29 Sept. 2018, Quito (Ecuador), available at: https://therightsofnature.org/event/international-rights-of-nature-symposium-10-year-anniversary-of-rights-of-nature-in-ecuadors-constitution; see also the list compiled by the United Nations (UN): UN Harmony with Nature, 'Rights of Nature Law, Policy and Education', available at: http://www.harmonywithnatureun.org/rightsOfNature.

7 This has not been an absolute shift, as evidenced by the recent recognition of rights of nature for the entire state (*departamento*) of Nariño in Colombia, and a line of decisions by various state High Courts in India granting legal/living person status to all of nature: see E. O'Donnell, 'At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India' (2018) 30(1) *Journal of Environmental Law*, pp. 135–44, at 136.

8 We explicitly acknowledge that rights of nature are not universally supported by Indigenous peoples, and that using 'rights of nature' language is often an attempt by Indigenous peoples to avail themselves of western legal mechanisms.

9 S. Muecke, 'After Nature: Totemism Revisited', in T. van Dooren & M. Churlew (eds), *Kin: Thinking with Deborah Bird Rose* (Cambridge University Press, forthcoming 2020), in which Muecke also cites E. Vivieros de Castro, *Cannibal Metaphysics* (ed. and trans. P. Skafish) (Univocal, 2013).

10 K. Birrell, *Indigeneity: Before and Beyond the Law* (Routledge, 2016), p. 9.

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the role of some Indigenous people in driving legal reform, as well as romanticize Indigenous interests in and responsibility for environmental management.

In Section 3 we examine specifically the creation and implementation of rights of Nature by identifying how Indigenous peoples in multiple countries have actively co-opted the concept of rights of Nature not only to further environmental protection, but also to progress a separate set of political rights and interests. We then make the case for the emergence of an *ecological jurisprudence* generally, and a rights of Nature doctrine specifically, which is more explicitly grounded in profound legal pluralism, based on an inter-normative dialogue between settler states and the law and values of Indigenous peoples. If ecological jurisprudence aims to be both effective and pluralist, it should seek recognition and validity *within* Indigenous law, as well as expanding dominant settler legal frameworks (the laws and legal systems of the settler colonial state) to *include* Indigenous law.

In Section 4 we examine five recent examples that focused on legal personhood, paying particular attention to how, and to what extent, these interpretations of rights of Nature have been influenced by Indigenous participation in their creation and implementation. We then map, in Section 5, this wider experience onto the specific example of the Mardoowarra/Fitzroy River in Western Australia, to show that a more meaningful form of pluralism can be achieved through a pluralist legal dialogue articulated around a shared and negotiated understanding of rights of Nature.[11]

Throughout the article, in referring to the rights of Nature movement, we have adopted the capitalized version of the term 'Nature' to indicate an ontological entity upon which subjectivity has been vested, in accordance with the reasoning of the Ecuadorian Constitution of 2008, the Universal Declaration of the Rights of Mother Earth,[12] the United Nations (UN) 'Harmony with Nature' programme,[13] and the Global Alliance for the Rights of Nature. In all of these emblematic instances the capitalization of the term 'Nature' is used explicitly to convey a meaning of subjectivity separate and distinct from the idea of nature as a mere collection of objects, resources, or even ecosystem services. Similarly, throughout the article we adopt the capitalized version of the term 'Indigenous', in accordance with the UN Declaration on the Rights of Indigenous Peoples.[14]

[11] A. Poelina, one of the authors of this article, is a Nyikina woman and a Traditional Custodian of the Mardoowarra/Fitzroy catchment, as well as being a member of the Martuwarra Fitzroy River Council.

[12] Global Alliance for the Rights of Nature, World People's Conference on Climate Change and the Rights of Mother Earth, Cochabamba (Bolivia), 22 Apr. 2010, available at: https://therightsofnature.org/universal-declaration.

[13] Available at: http://harmonywithnatureun.org/#:~:text=In%202009%2C%20the%20United%20Nations%20General%20Assembly%20proclaimed,and%20environmental%20needs%20of%20present%20and%20future%20generations.

[14] UN General Assembly, 'United Nations Declaration on the Rights of Indigenous Peoples' (13 Sept. 2007), UN Doc. A/RES/61/295.

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2. RIGHTS OF NATURE, WILD LAW AND ECOLOGICAL JURISPRUDENCE

2.1. *Rights of Nature Rising*

> The universe is a communion of subjects, not a collection of objects.[15]

Earth jurisprudence is a relatively recent legal movement, at least within contemporary western legal tradition.[16] The paradigm is also referred to as 'wild law' (from the homonymous text by Cormac Cullinan)[17] or, more recently, 'earth law(s)'; it places humans within an interconnected web of other species and landscapes, decentring human interests,[18] and, consequently, seeking to adapt law to planetary boundaries and ecosystem functions, including multi-species justice.[19]

There are multiple ontological origins for this emerging legal paradigm. Following the transcendental tradition initiated by John Muir and Henry David Thoreau,[20] the writings first of Aldo Leopold and then of Thomas Berry focused on philosophical shifts required to alter the understanding of the place of humanity within the world. These writings sought explicitly to weaken traditional narratives of human dominance.[21] Other authors, such as Christopher Stone, strove to alter the law more directly, by conceiving of Nature as a legal subject capable of bearing rights, and thus directly able to challenge human actions that infringed those rights.[22] Cormac Cullinan captured this emerging paradigm by describing it as:

> a philosophy of law and human governance … based on the idea that humans are only one part of a wider community of beings and that the welfare of each member of that community is dependent on the welfare of the Earth as a whole. From this perspective, human societies will only be viable and flourish if they regulate themselves as part of this wider Earth community and do so in a way that is consistent with the fundamental laws or principles that govern how the Universe functions[.][23]

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15 T. Berry, *Evening Thoughts: Reflections on Earth as Sacred Community* (Sierra Club Books, 2006), p. 96.

16 We refer here to the 'western legal tradition' as defined by classical legal systemology: see, e.g., R. David & J.E.C. Brierley, *Major Legal Systems in the World Today*, 3rd edn (Stevens & Sons, 1985); K. Zweigert & H. Kotz, *An Introduction to Comparative Law*, 3rd edn (Oxford University Press, 1998); and H.P. Glenn, *Legal Traditions of the World*, 5th edn (Oxford University Press, 2014).

17 C. Cullinan, *Wild Law: A Manifesto for Earth Justice*, 2nd edn (Green Books, 2011).

18 A. Schillmoller & A Pelizzon, 'Mapping the Terrain of Earth Jurisprudence: Landscape, Thresholds, and Horizons' (2013) 3(1) *Environmental and Earth Law Journal* online articles, article 1, pp. 1–32, at 4, available at: https://lawpublications.barry.edu/ejejj/vol3/iss1/1.

19 A. Pelizzon, 'Earth Laws, Rights of Nature and Legal Pluralism', in M. Maloney & P. Burdon (eds), *Wild Law: In Practice* (Routledge, 2014), pp. 176–89.

20 See R. Nash, *The Rights of Nature* (University of Wisconsin Press, 1989).

21 T. Berry, *The Great Work: Our Way into the Future* (Harmony/Bell Tower, 1999); A. Leopold, *A Sand County Almanac and Sketches Here and There* (Oxford University Press, 1949).

22 C.D. Stone, 'Should Trees Have Standing? Towards Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review*, pp. 450–501, at 458.

23 C. Cullinan, 'A History of Wild Law', in P. Burdon (ed.), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, 2011), pp. 12–23, at 12–3.

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The pursuit of rights of Nature is just one element of this emerging legal paradigm, as it is arguably the most straightforward way in which to use the law to begin to give immediate effect to the broader concepts of an earth jurisprudence. However, straightforward is not the same as easy or quick: Stone was decades ahead of his time, and it took 30 years before his ideas were taken up seriously in the western legal world.[24] In 2002, the work of Cormac Cullinan more firmly established rights of Nature as a much-needed legal reform to better acknowledge human dependence on the health of the Earth as a whole.[25] Since then, there has been movement on many fronts to incorporate rights of Nature from municipal ordinances to legislation and constitutional reform.[26] As these legal changes have spread and accelerated, there has been a growing acceptance, including within case law, of Stone's once 'unthinkable' proposal: to acknowledge natural beings and features as living entities with legal rights.[27]

The experiences of multiple jurisdictions in recognizing and implementing rights of Nature have also helped to mature and diversify the concept. Rights of Nature can now be considered in two rather distinct forms. Firstly, there has been the creation (or recognition) of broad 'existence rights' for Nature, such as the right for species to exist, or the right for ecosystems to function.[28] While these 'rights' most directly reflect the broader project of an earth jurisprudence, their implementation has been challenging, as it is not always clear when (or if) they give rise to a cause of action in law, or what kind of remedies they afford. In the case of the Río Vilcabamba in Ecuador, the rights of the river ultimately were balanced against the rights of humans to economic development, and the remedy ordered by the court was for the human road developers to fund restoration of the river, but not to halt the construction of the road.[29]

Secondly, rights have crystallized around recognition of natural entities as legal persons.[30] Legal personality is articulated as the capacity to bear rights and duties in law.[31] Legal personhood typically confers three specific rights:

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[24] It should be noted that eco-theologian, Thomas Berry, further advanced Stone's philosophical arguments in the late 1980s and 1990s: see, e.g., T. Berry, *The Dream of the Earth* (Sierra Club, 1988), and Berry, n. 21 above.

[25] C. Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books, 2002).

[26] See, e.g., Ley de Derechos de la Madre Tierra 2010 [Law of Mother Earth], Ley No. 71 [Statute No. 71] (Bolivia); and Ley Marco de la Madre Tierra y Desarrollo Integral Para Vivir Bien [Law of the Framework of Mother Earth and Integral Development for Living Well], Ley No. 300 [Statute No. 300] (Bolivia); Te Urewera Act 2014 (New Zealand), and Te Awa Tupua (Whanganui Claims Settlement) Act 2017 (New Zealand); Constitution of Ecuador 2008, preamble, Arts 71–74; Constitution of Bolivia 2008, Arts 33 and 34. For a list of local ordinances in the United States (US), see Community Environmental Legal Defense Fund, available at: https://celdf.org/advancing-community-rights/rights-of-nature.

[27] Stone, n. 22 above, p. 453.

[28] Cullinan, n. 23 above; see also Burdon, n. 3 above.

[29] L. Cano Pecharroman, 'Rights of Nature: Rivers that Can Stand in Court' (2018) 7(1) *Resources*, pp. 1–14, at 7, doi:10.3390/resources7010013, available at: https://www.mdpi.com/2079-9276/7/1/13.

[30] Most countries include legislation to create corporations, for example, although legal personality for natural entities may require legislative reform.

[31] This articulation of personality stems from N. Naffine, 'Who Are Law's Persons? From Cheshire Cats to Responsible Subjects' (2003) 66(3) *The Modern Law Review*, pp. 346–67, at 350. However, it is worth noting recent challenges to this construction that endeavour to re-articulate personhood with a greater emphasis on competence to undertake specific actions: see V.A.J. Kurki, *A Theory of Legal Personhood* (Oxford University Press, 2019).

- the right to enter into and enforce contracts;
- the right to own and deal with property; and
- the right to sue and be sued in court (known as legal standing).[32]

Although it can be challenging to relate legal personality to the western concept of nature as a whole, it can be more easily applied to specific and clearly defined natural entities, such as rivers.[33] Furthermore, while the conferral of legal personhood is indeed a profound statement about who matters to the law, it does not necessarily confer any moral worth.[34]

The two forms of legal rights of Nature – 'existence rights' and the conferral of legal personality – are still inherently anthropocentric: Nature has no need of these particular rights unless it is participating within human legal systems. Legal personhood constitutes a powerful transformation of Nature from object to subject in the eyes of the law, but in this process the very personification of Nature can also help to frame it as a competitor with humans.[35] Equally, Nature's rights can be seen to come at the expense of the rights of humans. Far from enabling a new, more 'fraternal' relationship between humans and Nature,[36] legal personhood can end up entrenching pre-existing narratives of human dominance.[37]

At a deeper ontological level, however, a corollary to the growing acceptance of the need for rights of Nature has been an increasing acceptance of the fact that humans are fundamentally dependent on the overall health and wellbeing of the planet. This has led to a deeper understanding of interdependence between humans and Nature, which has previously been ignored within most of the recent western philosophical tradition.[38] Such a conceptual shift can be seen in the recent 'greening' of international human rights law, particularly in the increasing recognition of the human right to a healthy environment[39] and, most recently, the recognition of the rights of the environment itself.[40]

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32 O'Donnell & Talbot-Jones, n. 5 above, p. 1.

33 In doing so, this also aligns more closely with some Indigenous ontologies of the nature–human relationship, as discussed above.

34 N. Naffine, *Law's Meaning of Life: Philosophy, Religion, Darwin and the Legal Person* (Hart, 2009).

35 E. O'Donnell, 'Competition or Collaboration? Using Legal Persons to Manage Water for the Environment in Australia and the United States' (2017) 34(6) *Environmental and Planning Law Journal*, pp. 503–21, at 519.

36 L.H. Tribe, 'Ways Not to Think about Plastic Trees: New Foundations for Environmental Law' (1974) 83 *Yale Law Journal*, pp. 1315–46, at 1346.

37 E. O'Donnell, *Legal Rights for Rivers: Competition, Collaboration and Water Governance* (Routledge, 2018).

38 See, e.g., A. Gare, *The Philosophical Foundations of Ecological Civilization* (Routledge, 2016).

39 See, e.g., J.H. Knox & R. Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press, 2018); R. Bratspies, 'Do We Need a Human Right to a Healthy Environment?' (2015) 13(1) *Santa Clara Journal of International Law*, pp. 31–69, at 42.

40 *Advisory Opinion on Environment and Human Right OC-23/17*, Inter-American Court of Human Rights (Ser. A, No. 23), 15 Nov. 2017, para. 62, cited by M.A. Delgado Galárraga, 'Exploring the Connection between Indigenous Peoples' Human Rights and International Environmental Law' (2018) 9(2) *Revista Chilena de derecho y ciencia política*, pp. 88–150, at 105.

The emergence of rights of Nature and legal personhood for Nature within the western legal tradition over the past few decades can thus also be seen as part of a deeper transformative trend within western jurisprudence towards what some authors have termed an 'ecological jurisprudence', as distinct from earth jurisprudence, and which more explicitly acknowledges Indigenous laws.[41] This important relationship is discussed in more detail in the following section. Examples of this movement, which aims to transcend anthropocentric boundaries, include the emergence of ecological constitutionalism and advocacy for the inclusion of a crime of ecocide.[42] While a deeper analysis of an ecological jurisprudence is beyond the scope of this article, this trend offers an intriguing ontological window into the normative worlds of many non-western legal traditions, particularly those that Edward Goldsmith defines as 'chthonic', as living in close harmony with the ecosystems within which they exist.[43]

2.2. *Ecological Jurisprudence and Indigenous Laws*

> This story is not simply about introducing an alternative view of the environment into a legal framework. The case [of Ecuador] represents an instance in which indigenous politics influenced nonindigenous systems of state authority.[44]

Over the past decade, many rights of Nature initiatives have explicitly introduced Indigenous and non-western principles into both international law and the broader discourse of ecological jurisprudence. Within the context of international law, the introduction of rights of Nature has often been facilitated by the right of Indigenous peoples to self-determination, which incorporates a right to sovereignty over natural resources.[45] In turn, this has enabled some Indigenous peoples to influence the development of environmental law to encompass First Law (also known as Traditional Law, Customary Law, or Aboriginal Law). Deborah Bird Rose's construction of totemism as an 'ecological management system' for distributing rights and responsibilities links humans with non-humans in specific ways.[46] This is a profound ontological shift for western environmental law, enhancing its capacity to recognize and respect the relationship between Indigenous (and, eventually, non-Indigenous) people and Nature.[47]

However, environmental legal scholars and advocates frequently frame the shifts towards ecological jurisprudence and the accompanying changes to environmental law as specific adaptations to the current crisis. David Takacs, for example, asserts

41 Pelizzon, n. 19 above.

42 K. Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*, 2nd edn (Routledge, 2016).

43 E. Goldsmith, *The Way: An Ecological World-View* (Rider, 1992).

44 M. Akchurin, 'Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador' (2015) 40(4) *Law & Social Inquiry*, pp. 937–68, at 939.

45 UN Declaration on the Rights of Indigenous Peoples, n. 14 above.

46 D. Bird Rose, 'Common Property Regimes in Aboriginal Australia: Totemism Revisited', in P. Larmour (ed.), *The Governance of Common Property in the Pacific Region* (Australian National University Press, 2013), pp. 127–43.

47 Delgado Galárraga, n. 40 above, p. 97.

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that '[w]e have no choice but to manage the planet intensively *in the Anthropocene*, which means careful planning for the needs of interrelated human and nonhuman communities'.[48] The underlying assumption that this intensive management represents a radically *new* way of engaging with the environment obscures the contributions made through the specific laws of Indigenous people, who have managed 'Country'[49] in this way for millennia.[50] In so doing, environmental movements continue to exclude the contributions of non-western peoples, particularly Indigenous peoples.[51] As Elizabeth Macpherson has argued, 'the rights of nature movement has grown out of, and is still driven principally by, a non-Indigenous perspective as a "western legal construct"'.[52]

Furthermore, a number of authors alert us to the risk that the discourse of 'climate crisis', and specifically the declaration of a 'climate emergency', open the door for a state of environmental exception, with the ensuing suspension of democratic protocols and hostility towards the active and participatory role of all humans in finding a collective way out of this crisis.[53] This risk is particularly acute when it comes to Indigenous peoples, and is already apparent when proponents of rights of Nature seek to manage humans out of Nature in order to protect its wilderness values,[54] thus running the risk of environmental colonialism.[55] Environmental colonialism is here characterized as the imposition of a culturally specific construction of 'nature', as well as a set of related normative and ethical assumptions, by those in a position of dominance upon those who

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48 D. Takacs, 'Are Koalas Fungible: Biodiversity Offsetting and the Law' (2017) 26(2) *NYU Environmental Law Journal*, pp. 161–226, at 217 (emphasis added).

49 'Country' is the culturally specific term adopted by Australian Aboriginal peoples to refer to the 'nexus of being', the matrix of interconnectedness, identity and belonging within which they are inscribed: see D. Bird Rose, *Dingo Makes Us Human: Life and Land in Australian Culture* (Cambridge University Press, 1992).

50 See, e.g., the Māori decision-making framework for sustainable development: T.K.K.B. Morgan & L. Te Aho, 'Waikato Taniwharau: Prioritising Competing Needs in the Management of the Waikato River', in J. Daniels (ed.), *Advances in Environmental Research* (Nova Science Publishers, 2013), pp. 85–105; see also V. Kahui & A.C. Richards, 'Lessons from Resource Management by Indigenous Māori in New Zealand: Governing the Ecosystems as a Commons' (2014) 102 *Ecological Economics*, pp. 1–7, at 5–6; B. Pascoe, *Dark Emu* (Magabala Books, 2014).

51 I. Scott et al., 'Environmental Law. Disrupted' (2019) 49(1) *Environmental Law Reporter*, pp. 10038–62, at 10039.

52 E.J. Macpherson, *Indigenous Water Rights in Law and Regulation: Lessons from Comparative Experience* (Cambridge University Press, 2019), p. 41 (citing K. O'Bryan, *Indigenous Rights and Water Resource Management: Not Just Another Stakeholder* (Routledge, 2019), p. 208).

53 J. Sparrow, '"Climate Emergency" Endangers Democracy' (2019) 29(12) *Eureka Street*, available at: https://www.eurekastreet.com.au/article/-climate-emergency–endangers-democracy#.

54 J. Carter, 'Displacing Indigenous Cultural Landscapes: The Naturalistic Gaze at Fraser Island World Heritage Area' (2010) 48(4) *Geographical Research*, pp. 398–410, at 398; L. Godden, 'Preserving Natural Heritage: Nature as Other' (1998) 22(3) *Melbourne University Law Review*, pp. 719–42, at 724, 738.

55 R.H. Nelson, 'Environmental Colonialism: "Saving" Africa from Africans' (2003) 8(1) *Independent Review*, pp. 65–86; W. Scholtz, 'Custodial Sovereignty: Reconciling Sovereignty and Global Environmental Challenges Amongst the Vestiges of Colonialism' (2008) 55(3) *Netherlands International Law Review*, pp. 323–41; S. Suchet, '"Totally Wild"? Colonising Discourses, Indigenous Knowledges and Managing Wildlife (2002) 33(2) *Australian Geographer*, pp. 141–57; M. Langton, 'The "Wild", the Market and the Native: Indigenous People Face New Forms of Global Colonization', in W.M.M. Adams & M. Mulligan (eds), *Decolonizing Nature: Strategies for Conservation in a Post-Colonial Era* (Earthscan, 2003), pp. 79–100, at 79.

are in a subordinate power relationship. In Foucauldian terms, Michael Cepek defines such an operation of disciplinary power as 'environmentality'.[56]

Finally, the uneven distribution of sovereign power between internationally recognized nation states and Indigenous peoples whose ancestral territories are located within the boundaries of those colonial nation states exerts subtle, yet constant, pressure towards a reductive appraisal of the ontological plurality of non-colonial traditional worldviews.[57] The result is a plethora of often unquestioned ontological and epistemological assumptions about the very concept of 'nature' on the part of all interlocutors (sometimes including Indigenous peoples who lack the necessary sovereign power to counter such assumptions), with the ontologically violent result of reducing Indigenous ideas about nature and human interactions with the non-human world to a globally familiar, yet extremely reductive, dominant paradigm.[58] As Nopera Dennis-McCarthy argues, '[t]here is an inherent tension between western and Indigenous legal traditions. This tension arises from the divergent worldviews propounded by either normative system, which are often difficult to reconcile'.[59]

It is also important to note that the concept of *Indigeneity* is complex and not necessarily the appropriate lens through which to identify peoples and law and custom in all cases. For example, in former colonial countries such as India and Bangladesh, Indigeneity may be a less relevant criterion for ecological jurisprudence than the interests of local people who continue to embed a responsibility requirement into land and water management. The critical issue is one of interdependence, and an ethic of land management centred on responsibility and stewardship or guardianship.[60]

Therefore, we argue that the emergence of an ecological jurisprudence currently faces four challenges: firstly, acknowledging the role of *Indigenous peoples as leaders* in the movement to create rights of Nature (while also acknowledging that not all Indigenous peoples support or accept rights of Nature); secondly, acknowledging the role of *Indigenous laws* in shaping a truly universal – and thus inherently intercultural – ecological jurisprudence, and explicitly reflecting this role within rights of Nature; thirdly, moving beyond traditional concepts of weak legal pluralism[61] by *seeking recognition* of rights of Nature reforms in Indigenous law by Indigenous peoples as a measure of validity for ecological jurisprudence; and, fourthly, relatedly and potentially

56 M. Cepek, 'Foucault in the Forest: Questioning Environmentality in Amazonia' (2011) 38(3) *American Ethnologist*, pp. 301–515.

57 See, e.g., W. Davis, *The Wayfinders* (Anansi, 2009).

58 Pelizzon, n. 19 above; Muecke, n. 9 above.

59 N. Dennis-McCarthy, 'Incorporating Indigenous Worldviews on the Environment into Non-Indigenous Legal Systems: Has the Te Awa Tupua Act Led to Reconciliation and Self-Determination?' (2019) (Feb.) *Māori Law Review* online articles, available at: http://maorilawreview.co.nz/2019/02/incorporating-indigenous-worldviews-on-the-environment-into-non-indigenous-legal-systems-has-the-te-awa-tupua-act-led-to-reconciliation-and-self-determination.

60 See, e.g., the 'ecosystem people' in M. Gadgil, 'Sacred Groves' (2018) 319(6) *Scientific American*, pp. 48–57, at 48.

61 J. Griffiths, 'What Is Legal Pluralism' (1986) 18(24) *Journal of Legal Pluralism and Unofficial Law*, pp. 1–55.

the most challenging, reconceptualizing law's nature in order to overturn a 'key feature of western thought since the Enlightenment, the disjunction between nature and culture'.[62] In Section 3 we examine how rights of Nature laws have been addressing these four challenges to date.

3. RIGHTS OF NATURE AND INDIGENOUS PEOPLES

Notwithstanding the political difficulties discussed in the previous section, Indigenous worldviews have enabled, shaped and defined the recent transnational emergence of an ecological jurisprudence in recent years. In this section we focus on legal developments during the period from 2008 to 2019, dating from when Ecuador amended its Constitution to when Bangladesh recognized all rivers as living entities. We look at how some Indigenous peoples have chosen to use 'rights of Nature' to achieve discrete political goals. In so doing, we acknowledge the long history of Indigenous laws that recognize Nature as a living being, towards which humanity has obligations and responsibilities.[63] These examples highlight the ways in which some Indigenous peoples have made strategic use of settler legal frameworks and concepts of the legal person to establish independent rights and interests, and to attempt to fundamentally reframe natural resource management law in settler contexts to include an Indigenous world view. Our discussion also acknowledges that attempts to map Indigenous legal and philosophical concepts into settler legal frameworks are imperfect, and that the concept of rights of Nature is far from universally supported by Indigenous scholars and communities.[64]

The amendment of the Montecristi Constitution of Ecuador in 2008 marked the first example of rights of Nature being enshrined within a national legal document. Indigenous presence was very much at the centre of that process. The amendment of the Constitution of Ecuador, with its primarily theoretical articulation of an ecological jurisprudence within contemporary legal institutions, arguably represents the point of origin for a cascade of constitutional, legislative, and judicial initiatives which has unfolded in a number of jurisdictions over the past 11 years.

In Ecuador, the Movimiento Unidad Plurinacional Pachakutik (MUPP) [Pachakutik Movement for Plurinational Unity], created in 1995, aimed to 'form a new political movement in which Indigenous peoples and other sectors of Ecuador's popular movements organized together as equals in a joint project to achieve common goals of a new and better world'.[65] After the 2006 election, the MUPP, together with a great number

[62] Bird Rose, n. 46 above, p. 132.

[63] J.D.K. Morris & J. Ruru, 'Giving Voice to Rivers: Legal Personality as a Vehicle for Recognising Indigenous Peoples' Relationships to Water?' (2010) 14(2) *Australian Indigenous Law Review*, pp. 49–62; I. Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, 2015).

[64] G. Eckstein et al., 'Conferring Legal Personality on the World's Rivers: A Brief Intellectual Assessment' (2019) 44(6–7) *Water International*, pp. 804–29, doi: 10.1080/02508060.2019.1631558 (see specifically the essay by V. Marshall), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3431344.

[65] M. Becker, *Pachakutik: Indigenous Movements and Electoral Politics in Ecuador* (Rowman and Littlefield, 2010), p. xi.

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of Indigenous groups and activists, became central to the drafting of the momentous Chapter Seven of the Constitution.[66] Its four articles (Articles 71 to 74) are dedicated entirely to the rights of Nature, and begin by stating that 'Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes'.[67] While the language adopted by the Constitution is still reflective of a colonial and somewhat materialistic worldview in relation to the articulation of 'Nature', the influence of Indigenous voices not only was palpable throughout the drafting process and its momentous outcome, but also can be evinced in the equation of Nature with the more complex Andean concept of Pacha Mama.

The concept of Pacha Mama has been further articulated in Bolivia, in amendments to its Constitution as well as in two legislative documents.[68] Of particular significance in this case is the focus on the Andean concept of *sumaq kawsay* [living well]. This concept underscores the 'socio-communitarian productive education model' that enshrines, within legal institutions recognizable as colonial in their apparent structure, a worldview that is profoundly steeped in pre-colonial Andean traditions.[69] These Andean worldviews were equally central to the drafting of the Universal Declaration on the Rights of Mother Earth, which was the outcome of the World Peoples' Conference on Climate Change and the Rights of Nature convened by Bolivian President Evo Morales, an Aymara man himself, in Cochabamba (Bolivia) in 2010.[70] In the case of Bolivia, the departure from colonial assumptions – if not necessarily from colonially derived political and legal institutions – is more apparent than in the case of the Ecuadorian Constitution, although implementation of these new laws has remained challenging.

In Aotearoa New Zealand, the legal personification of both Te Urewera (a national park) and the Whanganui River were achieved through an ongoing negotiating process between Māori *iwi* and the colonial government.[71] In 2017, in legislation arising from a negotiated agreement to settle a dispute under the Treaty of Waitangi, the Whanganui River was recognized as a person, including all of its physical and metaphysical elements, in explicit acknowledgement of the Māori understanding of the river as a living being.[72] Linda Te Aho has argued that the 'personification of the natural world is a fundamental feature of Māori tradition'.[73] In particular, Māori recognize rivers as having

66 The role of NGOs was also important here, and it is worth acknowledging the influence of CELDF and its work on the articulation of rights of Nature within local ordinances in the US.

67 Constitution of Ecuador 2008, Art. 71.

68 Law of Mother Earth, n. 26 above.

69 I. Zambrana, 'Mother Earth and Education', Ninth Interactive Dialogue of the General Assembly on Harmony with Nature, UN General Assembly, 22 Apr. 2019, available at: https://undocs.org/pdf?symbol=en/A/74/236.

70 N. 12 above.

71 J. Ruru, 'Tūhoe-Crown Settlement: Te Urewera Act 2014' (2014) (Oct.) *Māori Law Review* online articles, available at: https://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-te-urewera-act-2014.

72 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, n. 26 above, ss. 12, 14(1).

73 L. Te Aho, 'Indigenous Challenges to Enhance Freshwater Governance and Management in Aotearoa New Zealand: The Waikato River Settlement' (2009) 20(5–6) *Journal of Water Law*, pp. 285–92, at 285.

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their own 'mauri (life force) and spiritual integrity',[74] and 'all tribes have these geographical identity markers linked to water'.[75] In insisting that the settler law incorporate this concept, Māori negotiators not only forced settler laws to acknowledge the river as a legal person, but also ensured that their own values and language would guide the future management of the river,[76] and future reform of water law.[77]

The Aotearoa example of Te Urewera, as well as the ongoing negotiations on the Whanganui, inspired the recognition of the Río Atrato in Colombia as a legal person,[78] whose representation is vested in 15 'river guardians' deemed to voice the concerns of Indigenous and Afrodescendent communities. In addition, the experiences of Aotearoa New Zealand inspired a series of state High Court decisions in India, beginning with the decisions of the High Court of Uttarakhand in relation to the Ganga and Yamuna Rivers,[79] in which the Court explicitly recognized the rivers as legal/living persons based on Hindu beliefs, for which the rivers are the embodiment of the gods.[80] In all cases there has been a push to embed local and Indigenous values and worldviews into settler legal frameworks by existing legal institutions. This approach seeks to recognize (and thereby confer validity upon) some parts of Indigenous laws, and to transform 'settler law and legal theory, so that they include and draw on Indigenous values and traditions'.[81] While such attempts are representative of the increased *auctoritas* granted to Indigenous legal traditions, the partial incorporation by public authorities of discrete elements of Indigenous law in Aotearoa New Zealand, Colombia, and to a lesser extent India, runs the significant risk of co-opting, appropriating and ultimately reductively simplifying far more complex Indigenous legal structures.

The initial inclusion of Indigenous worldviews within colonial structures in South America probably occurred as a result of the unique socio-political history of the Andes. While both South America and Aotearoa New Zealand present a set of clearly strategic choices on the part of Indigenous actors in general, in the case of the Whanganui River such a strategic approach is more explicitly articulated than in the case of the Río Atrato (where the impetus for the case rested more strongly on the human right to a healthy environment). More recent initiatives in the US further suggest that

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74 Te Aho, ibid.

75 J. Ruru, 'Listening to Papatūānuku: A Call to Reform Water Law' (2018) 48(2–3) *Journal of the Royal Society of New Zealand*, pp. 215–24, at 216.

76 See G. Albert (quoted in E. Ainge Roy, 'New Zealand River Granted Same Legal Rights as Human Being', *The Guardian*, 16 Mar. 2017, available at: https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being).

77 Ruru, n. 75 above.

78 *Centro de Estudios para la Justicia Social 'Tierra Digna' & Ors* v. *President of the Republic & Ors* [2016] Corte Constituciónal [Constitutional Court], Sala Sexta de Revision [Sixth Chamber] (Colombia), No. T-622 of 2016 (10 Nov. 2016); see specific discussion of how the Court drew on the Aotearoa example in Macpherson & Clavijo Ospina, n. 4 above, pp. 290, 291.

79 *Mohd. Salim* v. *State of Uttarakhand & Ors*, WPPIL 126/2014, High Court of Uttarakhand (2017) (India).

80 P. Srivastav, 'Legal Personality of Ganga and Ecocentrism: A Critical Review' (2019) 4 *Cambridge Law Review*, pp. 151–68, at 162.

81 K. Gover, 'Legal Pluralism and Indigenous Legal Traditions', in P.S. Berman (ed.), *The Oxford Handbook of Global Legal Pluralism* (Oxford University Press, forthcoming 2020).

Indigenous peoples are strategically using 'rights of Nature' laws to enable specific legal actions in respect of land held by Indigenous people. In 2017, the Ponca Nation of Oklahoma agreed to create a statute to enact rights of Nature within their Tribal Lands, enabling a plaintiff to approach a tribal, rather than a state or federal, court to seek redress for alleged violations of rights of Nature.[82] In 2018, the White Earth band of Ojibwe enacted legislation to recognize formally the rights of *manoomin* [wild rice],[83] and the General Council of the Ho-Chunk Tribe voted to amend the Tribal Constitution to enshrine rights of Nature.[84] Most recently, in May 2019, the Yurok Council voted for a resolution to recognize the Klamath River as a legal person.[85]

The recent emergence of rights of Nature initiatives in the US is significant, as it represents a profound shift within the public discourse on rights of Nature in the US. While the numerous local ordinances on rights of Nature have been struck down consistently by state and federal courts,[86] it now appears that the unique structure of tribal sovereignty within the US empowers tribal authorities to be simultaneously the custodians and current torchbearers of an ecological jurisprudence, and the promoters of a more pluralistic and ontologically diverse interpretation of ecological jurisprudence.

It appears, thus, that the emergence of an ecological jurisprudence that is beginning to address the four challenges we identified in Section 2 (notwithstanding the ever-present risks of cultural and normative appropriations and exclusion) has indeed created a pluralist space, one that has been shaped, deeply transformed, and profoundly led by pre-colonial worldviews capable of articulating the ecocultural transformation desired by earth jurisprudence advocates within the current global discourse. Within such space, some Indigenous peoples have demonstrated a nuanced strategic approach to using 'rights of Nature' as a way to support a collective approach to environmentally sustainable and culturally appropriate development by raising the profile of both natural entities *and* Indigenous peoples.

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82 See S. Biggs, 'Ponca Nation of Oklahoma to Recognize the Rights of Nature to Ban Fracking', *Movement Rights Blog*, 1 Nov. 2017, available at: https://www.movementrights.org/ponca-nation-of-oklahoma-to-recognize-the-rights-of-nature-to-ban-fracking.

83 F. Bibeau, 'Rights of Manoomin', Ninth Interactive Dialogue of the General Assembly on Harmony with Nature, UN General Assembly, 22 Apr. 2019, video link available at: https://www.youtube.com/watch?v=pP65rIhocqQ.

84 See CELDF, 'Press Release: Ho-Chunk Nation General Council Approves Rights of Nature Constitutional Amendment', 17 Sept. 2018, available at: https://celdf.org/2018/09/press-release-ho-chunk-nation-general-council-approves-rights-of-nature-constitutional-amendment.

85 See J.A. Schertow, 'The Yurok Nation Just Established the Rights of the Klamath River', *Cultural Survival*, 21 May 2019, available at: https://www.culturalsurvival.org/news/yurok-nation-just-established-rights-klamath-river.

86 Burdon, n. 3 above, p. 74; see also the withdrawal of the case to recognize the legal personhood of the Colorado River, which was withdrawn by the proponent on 3 Dec. 2017; copy of filing available at: https://www.documentcloud.org/documents/4321089-DGR-Motion-to-Dismiss-Own-Case.html#document/p1/a391422.

4. RIGHTS FOR RIVERS AND LAKES

We now turn to consider five recent cases in which rivers and lakes have received legal rights across multiple jurisdictions. This section uses these five cases to examine whether the new rights of Nature for rivers and lakes are delivering ecological jurisprudence (which addresses the four challenges we identified), and the response that these new rights have received so far. The attribution of legal personhood to rivers and lakes has occurred in the past three years, so we acknowledge that it is still too early for a comprehensive analysis of cause and effect. However, by exploring a range of examples across multiple jurisdictions, colonial histories and legal systems, it is possible to identify some emerging trends (Table 1).[87]

The five recent examples of the creation and implementation of rights of Nature have been selected to include all jurisdictions which have recognized specific natural entities as having legal rights (and, in most cases, personhood), and to reflect a wide range of roles for Indigenous peoples in the creation/recognition of these rights (including the complexity of 'Indigeneity' itself).[88]

Since 2017, water management has been the locus for the creation and implementation of leading international examples of rights of Nature.[89] Water management globally has shifted dramatically since the 1992 Dublin Statement,[90] which formally embedded a cost-recovery and water-pricing principle, leading to the marketization of water management.[91] One of the impacts of water markets has been a 'double dispossession' of water rights from Indigenous peoples;[92] this correspondingly has seen the embrace of market mechanisms to recover water for Indigenous peoples,[93] as well as Indigenous peoples seeking to use rights of Nature to establish and entrench their claim to water rights.[94] The proliferation of examples in which rivers and lakes have been recognized as legal persons or living entities with legal rights led Elizabeth Macpherson and Felipe Clavijo Ospina to argue that there is an 'emerging transnational idea that a river can be a person'.[95] The five examples in Table 1 have been

87 We note that these examples do not seek to cover the field in relation to all of the various permutations of rights of Nature, as this would be beyond the scope of this article.

88 Indigeneity is a complex and fraught space in the Indian and Bangladeshi contexts, and is often difficult to define: see B.G. Karlsson & T.B. Subba (eds), *Indigeneity in India* (Kegan Paul, 2006); P. Parmar, *Indigeneity and Legal Pluralism in India: Claims, Histories, Meanings* (Cambridge University Press, 2015).

89 O'Donnell, n. 37 above, pp. 1–2

90 UN Conference on Environment and Development, 'The Dublin Statement on Water and Sustainable Development', 31 Jan. 1992, available at: http://www.wmo.int/pages/prog/hwrp/documents/english/icwedece.html.

91 K. Bakker, 'Neoliberalizing Nature? Market Environmentalism in Water Supply in England and Wales', in N. Heynen et al. (eds), *Neoliberal Environments: False Promises and Unnatural Consequences* (Routledge, 2007), pp. 101–13.

92 O'Bryan, n. 52 above, p. 39.

93 E. Macpherson, 'Beyond Recognition: Lessons from Chile for Allocating Indigenous Water Rights in Australia' (2017) 40(3) *University of New South Wales Law Journal*, pp. 1130–69, at 1161–8.

94 T. van Meijl, 'The Waikato River: Changing Properties of a Living Māori Ancestor' (2015) 85(2) *Oceania* pp. 219–37, at 227.

95 Macpherson & Clavijo Ospina, n. 4 above, p. 293.

Table 1 Legal Rights for Rivers and Lakes: Five Recent Examples

Legal and Institutional Attributes	**Colombia (2016)** *Río Atrato*[a]	**Aotearoa New Zealand (2017)** *Whanganui River*[b]	**India (Uttarakhand) (2017)** *Ganga and Yamuna Rivers*[c]	**Bangladesh (2019)** *Turag River and all other rivers*[d]	**US (City of Toledo, Ohio) (2019)** *Lake Erie*[e]
Legal rights	River recognized as a legal subject with rights (but not property rights).	River recognized as legal person (but does not hold rights to water in the river).	Rivers were given rights and duties of a legal/living person, but rivers were constituted as legal minors.	Rivers recognized as legal/living/juristic persons, but rivers were constituted as legal minors.	Lake has 'right to exist, flourish, and naturally evolve'.[f]
Method of creation/ recognition	Ruling of Constitutional Court of Colombia.	Legislation in response to Treaty of Waitangi Settlement.	Ruling of state High Court (currently pending appeal to Supreme Court).	Ruling of High Court Division of Supreme Court.	Local ballot (community initiative).
Aim of creation/ recognition	To protect (among others) the human right to a healthy environment of Indigenous and Afrodescendent people, and in recognition that current laws failed to address the problems of illegal mining in the river catchment, leading to the court's articulation of 'biocultural rights'.[g]	To reach agreement on dispute settlement by vesting ownership of the river in the river itself, and to acknowledge Māori relationship with the river.[h]	To address extreme environmental degradation and failure of previous protection measures.[i]	To address extreme environmental degradation and failure of previous protection measures.[j]	To address pollution and blue-green algal blooms and failure of previous laws to address these problems.[k]
Legal representative	River guardian, comprising 14 people from seven local communities and one representative for the President, which was chosen to be the Ministerio de Ambiente y Desarollo Sostenible [Ministry for Environment and Sustainable Development].[l]	Te Pou Tupua, the guardian of the river.[m]	Guardians as declared by the court (including director of NAMAMI Gange and other state government representatives).[n]	National River Protection Commission appointed as guardian (subject to new legal powers being conferred on this organization).	City of Toledo or any resident of the city.[o]

Role of Indigenous peoples	Tierra Digna, an NGO, filed petition on behalf of seven communities to enforce their rights under the Constitution of Colombia, explicitly including Indigenous people of the river as well as other local communities.[p]	Māori rights and interests under the Treaty of Waitangi were central to this legislation, which embeds co-management, and Māori cosmology as intrinsic values (Tupua te Kawa).[q]	Not specified. Environmental advocates filed original petition.	Not specified. Human Rights and Peace for Bangladesh, an NGO, filed the petition on environmental protection grounds.	Not specified. Local NGO drafted ballot initiative.

Notes

[a] *Centro de Estudios para la Justicia Social 'Tierra Digna' & Ors* v. *President of the Republic & Ors*, n. 78 above (translations per Macpherson & Clavijo Ospina, n. 4 above).
[b] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, n. 26 above; see also E. O'Donnell & E. Macpherson, 'Voice, Power and Legitimacy: The Role of the Legal Person in River Management in New Zealand, Chile and Australia' (2019) 23(1) *Australasian Journal of Water Resources*, pp. 35–44.
[c] *Mohd. Salim* v. *State of Uttarakhand & Ors*, n. 79 above; see also O'Donnell, n. 7 above.
[d] *Human Rights and Peace for Bangladesh* v. *Government of Bangladesh & Ors*, n. 97 below (trans. from Bangla by M.S. Islam).
[e] Toledo Municipal Code, n. 98 below.
[f] Toledo Municipal Code, ibid., Ch. XVII, § 254.
[g] *Centro de Estudios para la Justicia Social 'Tierra Digna' & Ors* v. *President of the Republic & Ors*, n. 78 above (per Macpherson & Clavijo Ospina, n. 4 above, p. 291.
[h] J. Talbot-Jones, *The Institutional Economics of Granting a River Legal Standing* (Dissertation, Crawford School of Public Policy, Australian National University, 2017), p. 178.
[i] *Mohd. Salim* v. *State of Uttarakhand & Ors*, n. 79 above, para. 10.
[j] *Human Rights and Peace for Bangladesh* v. *Government of Bangladesh & Ors*, n. 97 below.
[k] Toledo Municipal Code, n. 98 below, Ch. XVII, § 253.
[l] Macpherson & Clavijo Ospina, n. 4 above, p. 290.
[m] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, n. 26 above, ss. 18–20.
[n] *Mohd. Salim* v. *State of Uttarakhand & Ors*, n. 79 below, para. 19.
[o] Toledo Municipal Code, n. 98 below, Ch. XVII, § 256(b).
[p] Macpherson & Clavijo Ospina, n. 4 above, p. 290.
[q] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, n. 26 above, s. 13.

selected in order to engage with this emerging idea, across multiple legal contexts in both the global north and south.

The specific legal status created for the water bodies (rivers and a lake) include a legal person without property or water rights (as in Colombia and Aotearoa New Zealand); a hybrid legal/living person (India and Bangladesh); and an entity with existence and ecosystem rights only, without explicit personhood (the US). This variety correlates with a differentiation in motivation behind the creation of these rights of Nature (see notes to Table 1 for details). As noted above, the examples in Aotearoa New Zealand and Colombia acknowledged the human rights of Indigenous peoples (and other local peoples in Colombia), as well as the belief systems of these peoples, as central to the decision to define the rivers as legal people (Table 1).[96] In both India and Bangladesh, the clear intent is environmental protection, and the recognition of legal personhood is a last resort, after earlier attempts failed to protect the health of the rivers, but with an emphasis on the role of the state-appointed guardians to deliver this protection (Table 1).[97] Similarly, in the US, environmental protection was the major driver for creating legal rights for Lake Erie, with the intent to rely on these rights to support future legal action by third parties on water pollution (Table 1).[98]

The five cases highlight a range of legal and policy responses to the problem of creating a guardian to speak for the river or lake. In Colombia and Aotearoa New Zealand, the role of the guardians has been embedded within a new co-management framework, and the guardians themselves have been appointed in an open and responsive manner, demonstrating dialogue between Indigenous (and other local) communities and the national government (although, as Dennis-McCarthy argues, Te Awa Tupua is only a partial progression to reconciliation and sovereignty).[99] By comparison, the appointment of guardians in India, Bangladesh and the US has been less successful: court-appointed guardians in India did not accept their responsibilities, and appealed against the decision,[100] whereas the court-appointed guardian in Bangladesh requires further legal reform before it has the legal powers required to effectively undertake its duties on behalf of the rivers.[101] Lastly, in the US, all citizens and the city of Toledo are empowered to enforce the rights of Lake Erie – but no one is specifically responsible for doing so.[102]

Examining these five cases together demonstrates the varied response to the four key challenges of ecological jurisprudence that rights of Nature laws must meet. As Table 1

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96 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, n. 26 above, s. 13; see also Macpherson & Clavijo Ospina, n. 4 above, p. 293.

97 *Mohd. Salim* v. *State of Uttarakhand & Ors*, n. 79 above, paras 9, 10; *Human Rights and Peace for Bangladesh* v. *Government of Bangladesh & Ors* [2016] High Court Division, Writ Petition No. 13989 of 2016, Judgment of 3 Feb. 2019, p. 272 (trans. from Bangla by M.S. Islam).

98 Toledo Municipal Code, Charter of the City of Toledo, Ohio, Ch. XVII, 'Lake Erie Bill of Rights', § 253.

99 Dennis-McCarthy, n. 59 above.

100 *State of Uttarakhand & Ors* v. *Mohd Salim & Ors*, Petition for Special Leave to Appeal 016879/2017, Supreme Court of India (7 July 2017).

101 *Human Rights and Peace for Bangladesh* v. *Government of Bangladesh & Ors*, n. 97 above, Directive 4.

102 Toledo Municipal Code, n. 98 above; see also Eckstein et al., n. 64 above (specifically essay by E. O'Donnell).

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illustrates, we can observe a spectrum of Indigenous peoples' involvement in the recognition of rivers and lakes as legal people. At one end are the Indigenous-led legal reforms of Colombia and Aotearoa New Zealand, where Indigenous worldviews have been explicitly embedded in the law, and where the legal and institutional frameworks have sought some forms of validity in Indigenous laws, as well as including ongoing co-management arrangements. In India and Bangladesh, environmental advocacy and local values have been embraced by the courts as a reason for strengthening legal rights and protection of rivers, particularly in the acknowledgement of the sacred status of the rivers. However, in India, particularly, this was grounded in Hindu religious beliefs, and elevated the relationship of Hindu practitioners with the river above those of non-Hindus, thus excluding all other religious ontologies of the river. Lake Erie in the US appeared to be centred on environmental advocacy only, with no evidence of engagement with Indigenous people.[103] Recognizing the rights of a river or lake will not necessarily produce an intercultural ecological jurisprudence that centres Indigenous laws and reconnects humans and Nature.

Granting legal personhood and legal rights to rivers and lakes has captured the public imagination. When rivers become 'people', this can transform settler-colonial relationships with rivers in ways that can help to centre the interests of the river in water management (such as the Whanganui in Aotearoa New Zealand), but can also frame the river as a potential adversary. One of the most common responses that we have observed to a river gaining rights is to question whether this enables human beings affected by the actions of the river (such as flooding) to sue the river and its guardians for compensation. In Uttarakhand (India), the court-appointed guardians in the state government cited the fear of being sued when the Ganga and Yamuna Rivers flood as one reason for immediately appealing against the decision to appoint them.[104] Thus, the conferral of legal rights of Nature has the capacity for both great improvement in river protection, as well as the power to undermine the recognition of the interdependence of humans and rivers.[105] Although it is still too soon for definitive evidence, Table 1 indicates that when Indigenous leadership drives reform in settler legal frameworks to embed Indigenous values (creating an ecological jurisprudence described in Sections 2 and 3), it works to create a less competitive approach to recognizing Nature's rights and a more sustainable legal personhood for rivers (Table 1). This sustainability is reinforced in those cases where Indigenous leadership has led to the creation of institutional arrangements that enable guardians to empower and protect rivers.

We now turn to recent developments in Australia. The Wurundjeri people of Naarm (Melbourne) have influenced the development of a new legal framework to govern the Birrarung/Yarra River: the Yarra River Protection (Wilip-gin Birrarung Murron) Act

[103] The preamble, in particular, makes no reference to Indigenous peoples or their enduring relationship with the lake: see Toledo Municipal Code, n. 98 above.

[104] O'Donnell, n. 7 above, p. 142.

[105] O'Donnell, n. 37 above, p. 195.

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2017 (Victoria).[106] Although falling short of granting legal rights to the Birrarung/Yarra River, this legislation has centred the worldview and values of Traditional Owners, created a new framework for sustainable development, and created a voice for the river.[107] In the north-west of Australia, the Mardoowarra/Martuwarra/Fitzroy River[108] is an example in which Indigenous people are strategically adopting a range of legal and policy tools to showcase their leadership in environmental management, as well as raising the profile of their worldview on the obligations that humanity owes to Country. Significantly, in this case, the concept of personhood is further tested by moving beyond the existing boundaries of artificial – and even environmental – personhood, and rather proposing the category of 'ancestral' personhood to refer to the spiritual, ontological, and relational connotations of what is otherwise still cast as a 'natural' feature. Although this example is still in the formative stages, the active role of multiple Traditional Owners coming together to develop new governance arrangements, and engage with the opportunities of rights of Nature, makes this a compelling case for detailed analysis.[109]

5. MARDOOWARRA/MARTUWARRA/FITZROY RIVER

> Everyone who has an association with the river, whether Indigenous or not, talks about how important it is. It is the River of Life.[110]

The Mardoowarra is a free-flowing river over 733 kilometres long, with a catchment of almost 100,000 square kilometres.[111] The Kimberley region in north-west Western Australia is recognized for its outstanding natural and cultural heritage values, but debate is now under way about the future of the region, what sustainable development will involve, and how the rights and interests of Indigenous people will be protected.[112] For Indigenous, First Nations and Australia's original peoples of the Mardoowarra, the river was formed at the beginning of time by the Nyikina ancestor, Woonyoomboo.

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106 For more on the role of the Wurundjeri Woi Wurrung people and how they shaped this legislation, see State Government of Victoria, *Yarra River Action Plan: Wilip-gin Birrarung Murron* (State of Victoria Department of Environment, Land, Water & Planning, 2017), pp. iv, 12.

107 One of the authors, E. O'Donnell, is a member of the Birrarung Council, the voice for the Birrarung/Yarra River, which includes mandatory representation of at least two Elders of the Wurundjeri Woi-Wurrung people. See also K. O'Bryan, 'Giving a Voice to the River and the Role of Indigenous People: The Whanganui River Settlement and River Management in Victoria' (2017) 20 *Australian Indigenous Law Review*, pp. 48–77.

108 For simplicity, we refer to the river by the Nyikina name of Mardoowarra, but we acknowledge all Traditional Owners of the Martuwarra/Mardoowarra, including the members of the Martuwarra Fitzroy River Council: the Wilinggin, Kija, Bunuba, Walmajarri, Nyikina Mangala and Warrwa peoples.

109 See short definition of Country, n. 49 above.

110 A. Poelina, 'Protecting the River of Life', in K. Aigner (ed.), *Australia: The Vatican Museum's Indigenous Collection* (Aboriginal Studies Press, 2017), p. 217.

111 J. Connor, C. Regan & T. Nicol, *Environmental, Cultural and Social Capital as a Core Asset for the Martuwarra (Fitzroy River) and Its People* (University of South Australia, 2019), p. 5.

112 A. Poelina, K.S. Taylor & I. Perdrisat, 'Martuwarra Fitzroy River Council: An Indigenous Cultural Approach to Collaborative Water Governance' (2019) 26(3) *Australasian Journal of Environmental Management*, pp. 236–54, at 237.

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Woonyoomboo is the human face of the Mardoowarra and in partnership with Yoongoorrookoo, the sacred ancestral spiritual living being, together formed the valley tracts.[113] Woonyoomboo was a mapmaker and scientist who named the places, animals, birds, fish, plants, and living water systems. These names validate a property right inheritance which continues in the contemporary lives of Aboriginal people, according to Senior Nyikina Elder, Annie Milgin.[114] Michelle Lim, Anne Poelina and Donna Bagnall state:

> The First Laws that govern the river include Warloongarriy law and Wunan law (the Law or Regional Governance). Since Bookarrakarra (the beginning of time) these First Laws have ensured the health of the living system of the Mardoowarra and facilitated relationships between Mardoowarra nations and peoples … regarding the river as a living ancestral living being (Rainbow Serpent) from source to sea, with its own 'life-force'.[115]

Traditional Owners of the Mardoowarra are actively exploring opportunities created by the global movement to extend legal rights to rivers, and the specific opportunities to protect the lifeways and values of Indigenous and First Nations people.[116] Traditional title for Traditional Owners in Australia is grounded in the Native Title Act 1993 (Commonwealth), which 'recognizes' that prior to colonization Traditional Owners had, and still continue to have, their own laws and customs.[117] With regard to the Mardoowarra, multiple Traditional Owners have native title for the whole of the river.[118] Where native title is held on trust, a prescribed body corporate (PBC) will be established to hold the title formally on behalf of each of the Traditional Owners, and manage the traditional lands, waters, and natural resources.[119]

In 2016, Traditional Owners expressed a collective vision for the Mardoowarra in the Fitzroy River Declaration and, in 2018, established the Martuwarra Fitzroy River Council (MFRC) as a 'collective governance model to maintain the spiritual,

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113 A. Milgin, 'Woonyoomboo', in L. Thompson (ed.), *Woonyoomboo: A Story from Jarlmadangah Community Selected Work* (Pearson Rigby, 2008), pp. 6–15; C. Hattersley (ed.), *Nyikina Stories: Woonyoomboo and Jandamarra* (Madjulla Inc., 2009).

114 See, specifically, Martuwarra Fitzroy River Council & M. Jones (producer & director), *The Serpent's Tale* (online video – password protected at request of Elders) (Gaia Media, 2020). See also the Sharing Stories video of A. Milgin, *IY2019: Knowledge of Woonyoomboo Lives On*, Department of Infrastructure, Transport, Regional Development, Communications, available at: https://www.arts.gov.au/departmental-news/iy2019-knowledge-woonyoomboo-lives.

115 M. Lim, A. Poelina & D. Bagnall, 'Can the Fitzroy River Realisation of the First Declaration Ensure the Laws of the River and Secure Sustainable and Equitable Futures for the West Kimberley?' (2017) 32(1) *Australian Environment Review*, pp. 18–24, at 18.

116 See, generally, Clark et al., n. 4 above; Macpherson, n. 52 above; O'Donnell, n. 37 above.

117 Native title is complex, and in many ways has simply operated to preserve the status quo in a process that is entirely regulated and controlled by the Australian state: see D. Short, 'The Social Construction of Indigenous "Native Title" Land Rights in Australia' (2007) 55(6) *Current Sociology*, pp. 857–76. Further, native title is also extremely limited when it comes to water management: see Macpherson, n. 93 above.

118 Commonwealth of Australia, National Native Title Tribunal, Geospatial Services, 'Kimberley Native Title Claimant Applications and Determination Areas as per the Federal Court', 2019, available at: http://www.nntt.gov.au/Maps/WA_Kimberley_NTDA_schedule.pdf.

119 Native Title Act 1993 (Australia), ss. 56, 57.

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cultural and environmental health of the catchment'.[120] The MFRC members, who include the majority of native title holders in the Mardoowarra catchment, assert that each PBC owes a fiduciary duty to the individual Traditional Owners to protect Country,[121] and to act as guardian for Country.[122] As a result, the MFRC considers the river to be communal property that is held beneficially for present and future generations of Traditional Owners. Yet, in First Law the river is also recognized as a living being. The place of the Mardoowarra in the heart, lives and family of the Traditional Owners is akin to both an Elder and a beloved *jarriny* [totem], and the guardianship responsibilities of both the PBCs and the MFRC extend to the care of the river as a living entity. As guardians of the Mardoowarra, the PBCs and the MFRC cannot break First Law, and must therefore protect the river's right to life.

Traditional Owners of the Mardoowarra believe that First Law stories are the 'statutes' or 'the rules', as the Elders say, for teaching ethics and values as the codes of conduct for maintaining civil society and the balance of all life, human and non-human.[123] These ancient First Laws promote holistic natural laws for managing the balance of life. First Law is eternal and intrinsically linked to the land and living waters. The laws of the land are ancient and as old as the continent itself,[124] and continue to be practised in the Kimberley region of Western Australia.[125] By drawing on rights of Nature, Traditional Owners are seeking ways to centre these teachings within legal frameworks and further strengthen the legal rights recognized in native title.

By embedding First Laws within settler legal frameworks, Traditional Owners are also working to shape the future of sustainable development for all people who live in the river catchment.[126] Current development proposals in the Mardoowarra have the capacity to cause severe environmental degradation, as well as to continue to deprive the river and the people who depend on it of sustainable livelihoods.[127] Traditional Owners are of the view that commercial and economic rights are consistent with the guardianship duties in relation to the living river.[128] Having the right to live in harmony with the Yoongoorrookoo, the sacred ancestral spiritual living being, in a sustainable manner is critical, and there is also a duty of care above all to protect the life and wellbeing of the river and all the species that depend on it.

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120 Poelina, Taylor & Perdrisat, n. 112 above, p. 237.

121 R. Blowes, 'Governments: Can You Trust Them with Your Traditional Title: *Mabo* and Fiduciary Obligations of Governments' (1993) 15(2) *Sydney Law Review*, pp. 254–67, at 254.

122 A. Poelina, member MFRC (personal communication).

123 A. Poelina, *Yoongoorrookoo Creator of the Law (*Madjulla Association and Nyikina Inc., 2017), available at: https://drive.google.com/file/d/0B8UdARAhmECtcG5rck5SdmdxYlU/view.

124 I. Watson, 'What Is the Mainstream? The Laws of First Nations Peoples', in R. Levy et al. (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (Australian National University Press, 2017), pp. 213–20, at 215.

125 Kimberley Aboriginal Law and Culture Centre (KALaCC), *Cultural Solutions: Shared Pathways for Engagement in the Kimberley* (KALaCC, 2017).

126 This is similar to the work of Māori in Aotearoa New Zealand: see Ruru, n. 75 above.

127 Connor, Regan & Nicol, n. 111 above.

128 A. Poelina & J. Fisher, *Martuwarra Fitzroy River Council Strategic Communications Brief* (Martuwarra Fitzroy River Council, 2020), available at: https://doi.org/10.6084/m9.figshare.12362921.v1.

However, the concept of legal personhood is also challenging on multiple levels. Firstly, Australia has not formally recognized any natural entity as having legal rights of its own, which means that the concept of rights of Nature may not be powerful enough to move the needle in this jurisdiction.[129] Secondly, there is ambivalence among Traditional Owners about the usefulness of this concept. There are questions about how Indigenous people can assert their rights when Nature itself is recognized as a rights holder.[130] There is also a question regarding the role of law: from an ontological perspective, the river does not *need* to be incorporated as an entity; the river is a tangible, real, whole, integrated, complex, spectacular, special, precious living thing.[131] It already is an entity, and should not have to depend on the specific actions of settler law to achieve this status. Among Traditional Owners there is also unease in referring to Yoongoorrookoo, their sacred spiritual ancestor, creator of the Mardoowarra, as having 'personhood', a distinctly western legal concept. In the end, the question of whether the Mardoowarra will eventually be recognized in settler law as an ancestral legal person will be a question of practicality for the MFRC, as it explores all options from legal personhood through to a deed of agreement between the multiple PBCs to reflect and formalize the existing relationship of shared ownership and guardianship. How this is then reflected in state law will determine whether the case of the Mardoowarra becomes an example of Indigenous-led ecological jurisprudence which addresses the four challenges identified in Section 2.

6. THE WAY FORWARD

> [R]egulatory models that protect the rights of rivers have been largely driven, not by environmentalists, but by Indigenous and tribal communities, who claim distinct relationships with water based on their cosmovision of guardianship, symbiosis and respect.[132]

In settler states, there is a clear justice imperative to empower Indigenous peoples on the basis of their right to self-determination and respect for their law. Enshrined in the UN Declaration of the Rights of Indigenous Peoples,[133] the empowerment and increased self-determination of Indigenous peoples should be a goal in its own right.[134] In addition to this primary goal, however, multiple outcomes can be achieved concurrently by requiring settler legal frameworks to engage more actively with Indigenous laws, including better environmental protection. Firstly, settler states can begin to decolonize environmental law by engaging with Indigenous law. In doing so, they can begin to

[129] The Birrarung/Yarra is recognized as a living, but not a legal, entity; although environmental water management includes legal persons which can act indirectly on behalf of rivers, this is not formally acknowledged in legislation: see O'Donnell, n. 35 above.

[130] Eckstein et al., n. 64 above (see specifically the essay by V. Marshall).

[131] Lim, Poelina & Bagnall, n. 115 above, pp. 18–9.

[132] Macpherson, n. 52 above, p. 41.

[133] N. 14 above.

[134] M. Davis, 'To Bind or Not To Bind: The United Nations Declaration on the Rights of Indigenous Peoples Five Years On' (2012) 19 *Australian International Law Journal*, pp. 17–48.

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address one of the most fundamental challenges facing environmental law: the transcendence of a historically situated divide between 'nature' and 'culture',[135] and the consequent reconnection of people and nature, which requires a redefinition of both Nature and humanity's relationship with it. Recent work by Muecke, for example, revives the concept of *totemism* as an 'expert Indigenous scientific construction pertaining to the crucial importance of the continuity of "nature" and "culture"'.[136] This way of thinking includes the river as a part of the political collective formerly reserved for (some) humans. As a result, the river's extant legal rights are conceived of as central to a river's needs and interests, rather than adapting the notion of the river to fit the western concept of personhood. Dennis-McCarthy also underscores the importance of this difference between Indigenous and western framings of Nature, when he states that '[t]he Indigenous perspective recognizes nature as a living entity, which gives rise to obligations that are centred around nature, rather than humans'.[137] Of the five examples of rivers as legal persons explored in Section 4, only Aotearoa New Zealand has so far produced something that most resembles a trajectory towards an ecological jurisprudence, and goes furthest in addressing the challenges set out in Section 2 (although it still has far to go, most specifically in relation to the rights to water in the river, which was not included in the treaty dispute settlement).

The colonial process, which in its wake dispossesses not only Indigenous lands but also entire Indigenous ontologies, is thus both laid bare and radically challenged by the emergence of an ecological jurisprudence. While western ontologies underpinning a dominant articulation of rights of Nature and earth jurisprudence have often obscured both Indigenous rights as well as Indigenous ontologies, the leading role of some Indigenous peoples in engendering transformative environmental protection of rights and personhood for Nature is undeniable. Importantly, in obscuring the leadership role played by Indigenous peoples, the deeply transformative potential of rights of Nature is also diminished, as settler-colonial legal frameworks often lack the nuance with which both to raise the profile of Nature in the law, while at the same time strengthening the interdependence of human relationships with, and within, Nature. It is essential, therefore, to acknowledge the ever-present risk of environmental colonialism, which can occur in two distinct ways. This is, firstly, by erasing people, particularly Indigenous peoples, from the concept of 'nature.' This has been a consistent problem with regard to settler-colonial environmental laws.[138] Secondly, and more insidiously, settler-colonial laws may seek to embed Indigenous values within existing colonial legal frameworks, in the attempt to attain some form of weak legal pluralism in which the Indigenous legal 'other' is reinscribed and ultimately assimilated within the

[135] See P. Descola, *Beyond Nature and Culture* (University of Chicago Press, 2013).

[136] Muecke, n. 9 above.

[137] Dennis-McCarthy, n. 59 above.

[138] Scott et al., n. 51 above; Pelizzon, n. 19 above. For a specific example, see Queensland's now repealed Wild Rivers Act 2005, which attempted to limit all human activity, including that of Indigenous people, within designated river catchments: see T. Neal, 'Overturn, Axe and Bury: The LNP and Queensland's Wild Rivers Act', *The Conversation*, 2 Aug. 2012, available at: https://theconversation.com/overturn-axe-and-bury-the-lnp-and-queenslands-wild-rivers-act-8576.

colonial project. This could occur in the most well-intentioned cases, such as the attempt to acknowledge an Indigenous conception of a river as an ancestral being by incorporating it as a legal person, without also testing the validity of the framework itself within the laws of the relevant Indigenous people.

Harnessing the power of law to address the extreme perils of climate change, biodiversity loss and water insecurity, therefore, requires an *ecological* jurisprudence that not only enables humanity to recognize the interdependence of 'Nature' and 'culture', but also displays a strongly pluralist approach. Without such an approach, the recognition of the agentic property of Nature may lead to the expectation that the environment, once cast as a legal subject, ought to look after its own interests, with the result of further fracturing the human relationship with Nature and paradoxically causing us to fully abdicate our responsibility for environmental protection.[139] Ultimately, as Takacs notes, we should not be framing environmental protection as a choice 'between civilization or wild places: we are enhancing or (paradoxically) creating the latter as the only way of providing for the former's survival and health'.[140] In our view, a truly global ecological jurisprudence that addresses the four challenges we identified in Section 2 can be attained only by recognizing, and empowering, Indigenous leadership as part of an ongoing co-design and co-management approach, one that includes a genuine interaction with Indigenous cultures, languages, and ontologies. Only thus can we begin to observe the emergence of a pluralist, truly transformative ecological jurisprudence.

[139] O'Donnell, n. 37 above, pp. 188, 195.
[140] Takacs, n. 48 above, pp. 217–8.

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