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STANDING FOR RIVERS, MOUNTAINS—AND TREES—IN THE ANTHROPOCENE

DAVID TAKACS*

ABSTRACT

In his well-known article, Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, Professor Christopher Stone proposed that courts grant nonhuman entities standing as plaintiffs so their interests may directly represented in court. In this Article, I review Stone's ideas about standing and our relationship with the natural environment and describe the current, burgeoning, widespread trend toward granting not just standing, but legal rights and legal personhood to rivers, mountains, and other natural entities. I analyze the ways in which courts and legislatures in New Zealand, Australia, Colombia, and elsewhere are addressing concerns similar to Stone's with expansive, even radical results. I draw from multiple sources, including interviews I conducted with actors advocating for or implementing these legal initiatives. Stone eloquently describes how to rationalize and implement standing and other kinds of moral consideration for nonhuman entities, but he did not envision the diverse, expansive, paradigm-shifting, justice-altering ways such rights are being granted in diverse locales around the world. Various human communities have adapted lifeways that ensure their behaviors continue to sustain their environments so that their environments continue to sustain them; often they have been dispossessed*

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from the legal right to manage their natural environment. When jurisdictions grant rights for rivers, they simultaneously honor the cosmologies and practices of those who are staking moral, historical, ecological, and now legal, claims to speak for nonhuman entities. The very notion—espoused by Stone and now inscribed in law around the world—that law should be rooted in ecological interrelationship is itself a paradigm shift that shapes our mindsets and thus our behaviors toward the natural world that is us.

TABLE OF CONTENTS

INTRODUCTION....1471
I. THE THEMES THAT ANIMATE CHRISTOPHER STONE'S WORK....1474
A. Standing....1474
B. Who Is to Say What the Natural Entity Wants?....1476
C. Property....1477
D. Nature as Relationship....1479
E. Ideas as Forces of Nature....1480
II. AUSTRALIA....1481
A. Introduction....1481
B. Who Is to Say What the Natural Entity Wants?....1481
C. Standing....1484
D. Property....1484
E. Ideas as Forces of Nature....1485
III. COLOMBIA....1486
A. Introduction....1486
B. Who Is to Say What the Natural Entity Wants?....1486
C. Standing....1489
D. Property....1489
E. Ideas as Forces of Nature....1490
IV. NEW ZEALAND....1491
A. Introduction....1491
B. Who Is to Say What the Natural Entity Wants?....1491
C. Standing....1493
D. Relationship....1495
E. Property....1495
F. Ideas as Forces of Nature....1497
CONCLUSION....1498

INTRODUCTION

> For one, the fact that we can bring a suit on behalf of loggerheads and leatherbacks is an affirmation of who we are, or may become, as a people. . . . But these happenings, together with the collapsing glaciers and vanishing frogs, are offered to us the way a sly God scatters omens—black cats and thunderclaps—to test whether a people is really worth saving, offering them a final chance, if they will only make the right interpretation, to mend their ways. It should not take an oracle to read the signs.[1]

In his famous[2] law review article, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, Professor Christopher Stone proposed that courts grant nonhuman entities standing as plaintiffs to have their interests directly represented in court.[3] In this Article, I revisit *Trees* and other writings from Stone through the lens of the current global movement to grant legal rights to rivers, mountains, and other nonhuman ecosystems.

For Stone, "standing" stood for more than whose interests count in the law. Writing (presumably) as a dutiful law professor who wanted to get published, Stone framed his original article around constitutional standing requirements, that is what would and should get an entity a hearing in court. But more profoundly, Stone was reaching for a new understanding of humans' place on the planet. Standing was a vehicle for a disquisition on matters that were, as he wrote, "a bit unthinkable"[4]—a holistic, radical (as in, from the roots) paradigm shift on humans' place in the natural world, and our hubris in not seeing where our proper place should be. Stone later wrote that his "concern is not with moral and legal philosophy for their own sake. Rather, the animating concern is worldly: What sort of planet will this be?"[5]

In this Article, I describe the current, burgeoning, widespread[6] trend toward granting not just standing, but legal rights and legal personhood to

1. CHRISTOPHER D. STONE, *Does the Climate Have Standing?*, *in* SHOULD TREES HAVE STANDING?: LAW, MORALITY, AND THE ENVIRONMENT 33, 76–77 (Oxford University Press, 3rd ed. 2010) (1974).

2. In this rare case, not an oxymoron.

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

4. *Id.* at 453.

5. CHRISTOPHER D. STONE, EARTH AND OTHER ETHICS: THE CASE FOR MORAL PLURALISM 15 (1987).

6. Described by the United Nations ("U.N.") Secretary General as "the fastest growing legal movement of the twenty-first century." U.N. Secretary-General, *Harmony with Nature,* ¶ 129, U.N. Doc. A/74/236 (July 26, 2019).

rivers, mountains, and other natural entities.[7] These legal moves leap beyond standing in ways Stone could not have anticipated fifty years ago and reimagine our relationship to the nonhuman world, as inscribed in the law.

In Victoria, Australia, the Yarra River Protection Act (*Wilip-gin Birrarung murron*) names the Yarra as "one living . . . natural entity."[8] The law creates the eleven-person Birrarung Council, including at least two Aboriginal traditional custodians, as well as representatives from environmental groups, and scientific, planning, and agricultural interests. They are *the Voice of the River* and now speak for the interests of the Yarra as the government charts a fifty-year plan to manage the river. Colombia's highest court has drawn upon ecocentric philosophy to give rights to the polluted Río Atrato, while ordering the government to assemble a committee of local residents and government officials to determine what legal personhood means for the river.[9] Following this lead, Colombian courts have declared that the Amazon,[10] several other rivers,[11] a high-altitude ecosystem,[12] and the spectacled bear[13] are legal persons. In New Zealand, the legislature has passed laws granting personhood—with "all the rights powers, duties, and liabilities of a legal person"—to the Whanganui River and to the Te Urewera mountain ecosystem on the North Island.[14] In both cases, the legislation grants local Māori communities the rights to speak for the natural features; they have started by laying out the traditional

7. I describe this movement and its various iterations in painstaking detail in David Takacs, *We Are the River,* 2021 U. ILL. L. REV. 545 (2021).

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

9. 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* ERIN DALY, HUGO ECHEVERRIA & THOMAS SWAN, DIGNITY RTS. PROJECT, CENTER FOR SOCIAL JUSTICE STUDIES V. PRESIDENCY OF THE REPUBLIC JUDGMENT T-622/16 CONSTITUTIONAL COURT OF COLOMBIA (NOVEMBER 10, 2016) THE ATRATO RIVER CASE 110 (2019), https://delawarelaw.widener.edu/files/resources/riveratratodecisionenglishdrpdellaw.pdf [https://perma.cc/2RCL-TCLC] [hereinafter *The Atrato River Case*].

10. Corte Suprema de Justicia [C.S.J.] [Supreme Court], abril 5, 2018, Andrea Lozano Barragán, Victoria Alexandra Arenas Sánchez, Jose Daniel y Felix Jeffry Rodríguez peña y otros v. Presidente de la República y otros, Radicacion n. 11011-22-03-000-2018-00319-01 (Colom.).

11. Rio La Plata, Juzgado Único Civil Municipal la Plata—Huila [Juz. Mun.] [Municipal Civil Court], marzo 19, 2019, J: Juan Carlos Clavijo González, 41-396-40-03-001-2019-00114-00 (Colom.); Rios Coello, Combeima, and Cocora, Tribunal Administrativo del Tolima [T. Admtivos] [Administrative Superior Court], Sala. Civil. mayo 30, 2019, M.P: José Andrés Rojas Villa, Sentencia 73001-23-00-000-2011-00611-00 (p. 149) (Colom.).

12. Pisha Highlands, Tribunal Administrativo del Boyocá [T. Admtivos] [Administrative Superior Court], Sala. de Decisión agosto 9, 2018, M.P: Clara Elisa Cifuentes Ortiz, Expediente 15238-3333-002-2018-00016-01 (p. 67–68) (Colom.).

13. Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. de Casación Civil julio 26, 2017, M.P: Luis Armando Tolosa Villabona, AHC4806-2017 (No. 17001-22-13-000-2017-00468-02, p. 34–35) (Colom.).

14. Te Urewera Act 2014, pt 1, s 7 (N.Z.); Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, pt 2, s 12 (N.Z.) [hereinafter "Te Awa Tupua Act 2017"].

community values that define their interrelationship with the natural entities for whom they will speak.[15]

When, as the Māori express it, "*Ko au te awa, ko te awa, ko au*" ("I am the River and the River is me"),[16] the river's interests must be taken into account, based on a worldview that the river's interests are our interests. In numerous locales, citizens, governments, legislatures, and courts are moving toward Stone's idea of a "radically different law-driven consciousness,"[17] and in so doing, this posture both reflects and evolves communities' views of themselves. When the law turns from "we own the river" to "we are the river," we redefine how the law understands "property." At the same time, we create new legal paradigms that conceive of the human-nature relationship in novel ways and that empower different voices who speak for what that relationship should comprise, and why. In these nations, legislatures and courts are redefining who "we" actually are. These shifts in worldview also hack traditional power hierarchies, as those who have been disenfranchised from managing environmental resources gain legal control to say what the river or mountain (and therefore their own human communities) really need. These changes build upon and reflect Stone's ideas, but they also transcend them in ways he might never have envisioned.

Ideas can act as forces of nature. Our evolving views of who we are and what nature needs shape our ethical precepts about these relationships; these ethical evolutions (re)shape the law. The law, in turn, shapes the natural world through what it permits and proscribes, and that remade nature, in turn, shapes our views and ethics. When a particular worldview prevails and ecosystems gain formal rights, the evolution has not been in the original views of those who have proposed such conceptions, now inscribed in law: the Māori, for example, have long believed in an indivisible relationship with the natural world around them. Instead, the ethics of the hegemonic cultures in some nations are evolving. When governments or courts grant rivers legal rights, they reflect and propel changing views both of human relationships with the natural world, and of dominant groups' relationships with indigenous peoples or other disenfranchised subpopulations from whom the right to manage the natural world had been taken.

In this Article, I review Stone's ideas about standing and our

15. *See, e.g.*, TE UREWERA BOARD, TE KAWA O TE UREWERA 7 (2017), https://www.ngaituhoe.iwi.nz/te-kawa-o-te-urewera [https://perma.cc/KF5S-YT62] (describing the values that will drive management of the Te Urewera mountain ecosystem).

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

17. CHRISTOPHER D. STONE, *Introduction: Trees at Thirty-Five*, *in* SHOULD TREES HAVE STANDING?: LAW, MORALITY, AND THE ENVIRONMENT xi, xi (Oxford University Press, 3rd ed. 2010) (1974).

relationship with the natural environment and analyze the ways in which courts and legislatures in Australia, Colombia, New Zealand, and elsewhere have addressed similar questions with expansive, even radical results. I draw from multiple sources, including interviews I conducted with actors advocating for or implementing these legal initiatives. Stone eloquently describes how to rationalize and implement standing and other kinds of moral consideration for nonhuman entities. But he did not envision the diverse, expansive, paradigm-shifting, justice-altering ways such rights are being granted in diverse locales around the world. When jurisdictions grant rights for rivers, they honor the cosmologies and practices of those who are staking moral, historical, ecological, and now legal, claims to speak for nonhuman entities. Various human communities have adapted certain lifeways that ensure their behaviors continue to sustain their environments so that their environments continue to sustain them; often they have been dispossessed from the legal right to manage their natural environment. The very notion—espoused by Stone and now inscribed in law around the world—that law should be rooted in ecological interrelationship is itself a paradigm shift that shapes our mindsets and thus our behaviors toward the natural world that is us.

I. THE THEMES THAT ANIMATE CHRISTOPHER STONE'S WORK

By advocating for legal standing for rivers, mountains, and, famously, trees, Stone was really standing for an evolved view of humans' relationships with the natural world to be inscribed in the law.

A. STANDING

Constitutional standing was the legitimated, law-professor-proper way to write about more radical ideas. Criticizing U.S. standing doctrine is a favorite pastime of some law professors.[18] But Stone goes beyond the normal complaints. Standing, as he notes, "does nothing but get you through the courthouse door; it does not mean the case on behalf of the environment is won, or can even be argued intelligibly."[19] He decries that in environmental cases, nature—whales, trees, rivers, whatever—are the real objects of concern, even though the law does not treat them as such. Stone advocated that nonhumans should have direct legal rights, where an appropriate

18. For one recent view of the somewhat incoherent state of U.S. Constitutional Standing, see Michael Burger, Jessica Wentz & Radley Horton, *The Law and Science of Climate Change Attribution*, 45 COLUM. J. ENV'T L. 57, 154 (2020); Robin Kundis Craig, *Standing and Environmental Law: An Overview* (Fla. State Univ. Coll. of L. Pub. L., Research Paper No. 425, 2009).

19. STONE, *supra* note 5, at 10.

custodian could institute legal actions on the entity's behalf.

When the law recognizes this, injury *to* the entity itself must be the focus of legal attention, and relief from injuries must flow to the entity's benefit.[20] For example, in the 1970s debate over Disney Corporation's planned development in the Mineral King Valley of the Sierras, Stone advocated:

> [W]hy not designate Mineral King, the wilderness area, as the plaintiff 'adversely affected,' let the Sierra Club be characterized as the attorney or guardian for the area, and get on with the merits? Indeed, that seemed a more straightforward way to get at the real issue, which was not what all the gouging of roadbeds would do to the club or its members, but what it would do to the valley. Why not come right out and say—and try to deal with—that?[21]

In the resulting case, *Sierra v. Morton*, U.S. Supreme Court Justice Douglas cites Stone's work (albeit in dissent): "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."[22] Justice Douglas suggests that the suit should "be more properly labeled as *Mineral King v. Morton*."[23] But with the current state of the law, to get through the courtroom gates, an appellant had to argue that it is *their* human interests that matter. Stone pithily sums up his opinion on this state of affairs: "How grotesque."[24]

It is not that standing did not matter to Stone—it is just that the current state of standing is a symbolic surrogate for the misdirected ways we apply our environmental laws. For Stone, then, standing was a professorially suitable stand-in for much more. As he wrote, "My concern is not with moral and legal philosophy for their own sake. Rather, the animating concern is worldly: What sort of planet will this be?"[25] But despite the expansive views Stone promoted, even in his later writings, I cannot see that he could have envisioned the bends and oxbows the flow of developments has taken in the current movement to give rights to nonhuman entities.

20. Stone, *supra* note 3, at 458.
21. STONE, *supra* note 17, at xiii.
22. Sierra Club v. Morton, 405 U.S. 727, 750 n.8 (1972) (Douglas, J., dissenting) (emphasis added).
23. *Id.* at 742.
24. STONE, *supra* note 1, at 65.
25. STONE, *supra* note 19, at 15.

B. WHO IS TO SAY WHAT THE NATURAL ENTITY WANTS?

Stone proposes, soundly, that apt "guardians" or "conservators" exist who have earned a place to speak for the needs of the nonhuman world.[26] Writing as late as 2010, he does not envision the place-specific, justice-promoting answers of who will speak for nature that different rights-granting governments now envision, which I will detail below. Even if fitting guardians could be identified, Stone visualizes problems in what they would say about what the nonhuman world would actually want. He wrote extensively about how difficult it is to assess the needs and wants of nonpersons.[27] He asks, "On what basis, and in what manner, might a nonhuman, a *thing*, be accorded legal or moral standing or considerateness?"[28] While he dislikes that "[o]rthodox legal and moral theories provide nonhumans only a limited accounting, one that generally makes the claim on behalf of the thing directly dependent upon human interests," he nonetheless continues that this "is particularly so when we turn to things like rivers that (unlike whales) have no interests or preferences of their own."[29] And thus, because the "lake itself being utterly indifferent to whether it is clear and full of fish or muddy and lifeless, when the guardian for the river gets up to speak, *what is he or she supposed to say?*"[30]

Because "[n]onpersons . . . have no preferences[,] . . . [w]hat, then, could comprise a working solution" to those who would be granted standing to speak for those alleged preferences?[31] As he goes on about how difficult it is to assess the needs and wants of nonpersons, Stone's imagination fails him.[32] When jurisdictions grant legal rights to nonhuman entities, they impute that the river is *not* indifferent, and neither are the communities that depend upon and speak for the river. The communities know and depend upon the river, and the law could thus allow the communities to speak for the lake and community symbiosis. Ecosystem entities may, indeed, tell us what they want. In his book, *Wild Law: A Manifesto for Earth Jurisprudence*, Cormac Cullinan writes:

> 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

26. Stone, *supra* note 3, at 464, 466, 471; CHRISTOPHER D. STONE, *Should We Establish a Guardian for Future Generations*, *in* SHOULD TREES HAVE STANDING?: LAW, MORALITY, AND THE ENVIRONMENT 104, 125 (Oxford University Press, 3rd ed. 2010) (1974).

27. STONE, *supra* note 5, at 57.

28. *Id.* at 12.

29. *Id.*

30. *Id.* at 47–48.

31. *Id.* at 58.

32. *Id.* at 57.

> 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.[33]

We will see that in granting rights to rivers and mountains, modern legal actors are coming to recognize that these entities might tell us what they need, and apt spokespersons exist for conveying these messages. At the same time, nature is becoming a fulcrum to leverage power for disparate actors who have been previously disenfranchised from speaking for nature or for managing the resources upon which they depend. In his writings, Stone does suggest scientists could be the guardians because of their "authoritative" opinions and could thus speak with "practical wisdom and humility."[34] Stone does not contemplate indigenous people who have been guardians (even if they would choose a different translated term) for natural objects.

C. PROPERTY

Stone was also using standing as a disquisition on the nature of "property."[35] It is interesting that the star-making idea of his career—in his retelling, at least—came from an off-the-cuff series of thoughts at the end of a property class: "I sensed that the students had already started to pack away their enthusiasm for the next venue. (I like to believe that every lecturer knows this feeling.)"[36] In class, he used "property" to illustrate that

> [t]hroughout history, there have been shifts in a cluster of related property variables, such as: what things, at various times were recognized as ownable . . . who was deemed capable of ownership . . . the powers and privileges ownership conveyed . . . and so on. It was easy to see how each change shifted the locus and quality of power. . . . "So," I wondered aloud, reading their glazing skepticisms, "what would a radically different law-driven consciousness look like? . . . One in which Nature had rights[.]" I supplied my own answer: "Yes, rivers, lakes, . . ." (warming to the idea) "trees . . . animals . . ." (I may have ventured "rocks"; I am not certain.) "How would such a posture *in law* affect a community's view of *itself*?"[37]

Around the world, governments, legislatures, and courts are moving toward this "radically different law-driven consciousness" and in so doing, this posture is both affecting and reflecting communities' views of themselves

33. CORMAC CULLINAN, WILD LAW: A MANIFESTO FOR EARTH JUSTICE 107 (2d ed. 2017).
34. STONE, *supra* note 26, at 107.
35. For more on the future of private property in the Anthropocene, see David Takacs, *The Public Trust Doctrine, and the Future of Private Property*, 16 N.Y.U. ENV'T L. REV. 712 (2008).
36. STONE, *supra* note 17, at xi.
37. *Id.*

and of what constitutes "property." When we move from "we own the river" to "we are the river," we enter into a new paradigm of what "property" is and who "we" actually are. But Stone does not quite go where some of the cultures and governments I portray here will travel.

Stone was reaching for a paradigm shift, a break with a worldview, reflected nearly universally in property (but also other forms of) law, that humans are apart from and not a part of the natural world. Even by the time he was writing, the Public Trust Doctrine had made its peripatetic way around the world for more than a millennium (connoting that certain natural features are so essential to human survival that the sovereign could not arrogate them to private interests).[38] States and nations were beginning to pass environmental human rights resolutions, declaring that the right to a healthy environment (or some elements thereof) is essential to human well-being and dignity.[39] That did not mean, however, that those who would vindicate those rights could find their way into court, or if they did, that the natural world upon which the appellant depended would benefit from a favorable ruling; nor did it change the nature of human ownership over the natural world.

Stone was reaching for not only a new worldview on what "private property" is and could be, although in a more limited way than the legal maneuvers I describe below will lead:

> Wherever it carves out "property" rights, the legal system is engaged in the process of *creating* monetary worth. . . . I am proposing we do the same with eagles and wilderness areas as we do with copyrighted works, patented inventions, and privacy: *make* the violation of rights in them to be a cost by declaring the 'pirating' of them to be the invasion of a property interest.[40]

The interest is held by the nonhuman entity itself and defendable by suitable guardians who will insure against unjust infringements on the property right.[41] And so, for example, when the Endangered Species Act protects "critical habitat," it is giving the listed species a kind of defendable property right.[42]

Stone's vision was both expansive (nature belongs to all of us and none

38. Takacs, *supra* note 35, at 713.

39. *Id.* at 725. For a recent review of global environmental rights provisions, see James R. May, *Making Sense of Environmental Human Rights and Global Environmental Constitutionalism, in* THE ROUTLEDGE HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 6 (Erika Techera, Jade Lindley, Karen N. Scott & Anastasia Telesetsky eds., 2020).

40. Stone, *supra* note 3, at 476,

41. *Id.* at 482.

42. CHRISTOPHER D. STONE, *Epilogue*, *in* SHOULD TREES HAVE STANDING?: LAW, MORALITY, AND THE ENVIRONMENT 169 (Oxford University Press, 3rd ed. 2010) (1974).

of us for our stewarded, essential, interconnected uses) and circumscribed (expanding who might own a property right, but still the nature of property remained rooted in Western notions of ownership).

D. NATURE AS RELATIONSHIP

Even as he finds it difficult to discern how a "guardian"[43] would speak for the desires of nonhuman entities, Stone still roots his views in our need to reconfigure our laws, so we recognize the fundamental interconnection between human and nonhuman. Ecological science should shape how we view our relationships with the nonhuman world, and thus how we shape our laws:

> This learning to look at the world from the other thing's distinctive standpoint is a major step toward respecting its moral worth . . . the growing recognition that we are all, even amidst so much conflict and competition, part of one fragile global community encourages rearranging the legal-moral framework so as to make more room not only for the infirm, insane, and infants, but for animals, plants—indeed, for the entire planet as an organic whole.[44]

Specifically, he wished that we took these relationships more seriously, to treat those relationships as if our lives depended on it—because, of course, they do.

Perhaps the most remarkable aspect of the movement to grant legal rights to nature is the recognition in the law of the essential, interwoven relationship between humans and nonhumans, and that modern, Western law is simply catching up to what indigenous peoples and other communities dependent upon the natural world (but aren't we all?) have long known. Stone notes:

> Mankind is part of this organic planetary whole; and there can be no truly new global society, and perhaps in the present state of affairs no society at all, as long as man will not recognize, accept and enjoy the fact that mankind has a definite function to perform within this planetary organism of which it is an active part.[45]

His underlying concern is that

> [t]he problems we have to confront are increasingly the world-wide crises of a global organism: not pollution of a stream, but pollution of the atmosphere and of the ocean. Increasingly, the death that occupies each

43. Stone, *supra* note 3, at 466–67.
44. STONE, *supra* note 5, at 35.
45. Stone, *supra* note 3, at 499.

> human's imagination is not his own, but that of the entire life cycle of the planet earth, to which each of us is as but a cell to a body.[46]

Similarly, "[b]ecause the health and well-being of mankind depend upon the health of the environment, these goals will often be so mutually supportive that one can avoid deciding whether our rationale is to advance 'us' or a new 'us' that includes the environment."[47] Below, we will see how courts and legislatures are redefining who "we" might be.

Clearly, Stone had a lot more on his mind than constitutional standing. He is trying to figure out how to fit the round peg of ecological science and ecological consciousness into the square hole of myopic legal doctrine. In standing, and in figuring out who would be appropriate guardians and what they should say when asked about nature's needs, Stone states that "while the habitat may include higher animals, we may find ourselves wishing to speak for some value not reducible to the sum of the values of the habitat's parts, the various things that the habitat sustains in relation."[48] Writing about Ecuador's constitutional change that granted legal rights to nature, he notes this "may reflect a shift, in Ecuador at least, from an exclusively homocentric view of the environment to one in which some consideration of Nature itself constrains permissible levels of 'resource' exploitation."[49]

The legal rights that I describe below have disparate answers to how to name and prize and legalize these synergistic values.

E. IDEAS AS FORCES OF NATURE

As, I believe, Stone was aware, ideas act as forces of nature. He notes that "*[h]ow* we arrange our affairs so that the future we choose is the future that becomes the reality: that is the question of social institutions, of *law*."[50] Our ethical systems should be informed by our scientific understanding of how we are interconnected with the natural world. And our laws need to reform to reflect this evolved understanding. In so doing, the law would mold the natural world through permitted and proscribed human behaviors. Remade nature then molds our worldviews and our ethics and, eventually, our laws.

In the United States, our current limited standing doctrine represents a pronounced anthropomorphic (or even egocentric) view of our place in the natural world: it is *my* needs that count. And this limits the possibility for

46. *Id.* at 500.
47. *Id.* at 489.
48. STONE, *supra* note 5, at 47.
49. STONE, *supra* note 26, at 164.
50. STONE, *supra* note 5, at 15–16.

sustaining the natural world: when the benefits of a successful environmental legal battle fail to flow to protect and restore the harmed natural entity, nature continues to degrade. If we achieved what Stone was seeking—recognition that healthy human communities require healthy ecological communities—we would continue to restore and protect the natural world, whose contours would continue to shape our experiences of it. Below I describe what has happened when nations evolve their laws to reflect an evolved conception of the value of the human and nonhuman relationship.

II. AUSTRALIA

A. INTRODUCTION

The Yarra River flows 150 miles through the heart of the Australian State of Victoria, weaving through farms, vineyards, ranches, Aboriginal lands, national, state, and local parks, and, eventually, meandering through the heart of Melbourne and its sprawling suburbs. The Yarra is the state's most vital resource, and everyone wants a part of it. The 2017 Yarra River Protection Act (*Wilip-gin Birrarung murron*, which translates to "Keep the Birrarung Alive" in Wujundjeri[51]) describes the Yarra as "one living and integrated natural entity."[52] The Yarra River Protection Act is the first Australian law containing both English and an Aboriginal language. "*Birrarung*" translates to "river of mists and shadows."[53] Part of the Act's Wujundjeri text 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.[54]

B. WHO IS TO SAY WHAT THE NATURAL ENTITY WANTS?

The Act provides one solution to Stone's challenge to find appropriate spokespersons for what a nonhuman ecosystem wants or needs.[55] The Birrarung Council, which the Act names as "the Voice of the River," is an eleven-person body who will speak for what the river might require.

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51. *Yarra River Protection (Wilip-gin Birrarung murron) Act 2017* (Cth) Preamble (Austl.).
52. *Id.* at ss 1, 3, 14.
53. VICTORIA STATE GOVERNMENT, BURNDAP BIRRARUNG BURNDAP UMARKOO, YARRA STRATEGIC PLAN: A 10-YEAR PLAN FOR THE YARRA RIVER CORRIDOR—2022 TO 2032, at 1 (2022), https://www.water.vic.gov.au/waterways-and-catchments/protecting-the-yarra/yarra-strategic-plan [https://perma.cc/VHQ7-SSRX].
54. *Yarra River Protection (Wilip-gin Birrarung murron) Act 2017* (Cth) Preamble (Austl.).
55. *E.g.*, STONE, *supra* note 26, at 104.

Appointed by the Environment Minister, the council acts as an independent (meaning without government representatives) advisory body.[56] Currently, the group comprises three Aboriginal elders (the Act requires at least two), an infrastructure expert, two members from a Yarra Riverkeeper NGO, a landscape architect, a farmer or rancher, and an environmental lawyer and legal scholar.[57] This disparate group seeks to be independent, transparent, accountable, consultative, expert, and considered.[58]

The council is not the Yarra's official legal "guardian"; it serves as "the independent voice of the river" and reports to the Minister for Water, Planning, and Environment.[59] The council is currently tasked with speaking for the river during a ten-year strategic plan and fifty-year community vision processes hosted by the state's municipal water agency.[60]

COVID-19 has delayed much of the council's preparatory work during the past two years, but its first two annual reports have been about relationship building with key stakeholders and, especially, with local governments along the Yarra River. It has played a major role in getting the Yarra Strategic Vision completed, and it looks forward to playing a major role in holding responsible public entities accountable as they implement the plan.[61]

As in several other grants of rights for nonhuman entities (see below), the answer to Stone's investigation of who should be empowered to speak for the nonhuman world includes indigenous or local, ecosystem-dependent populations. Here, in addition to the Act requiring that Aboriginal elders serve, the Birrarung Council has framed its mission "[a]s a bi-cultural, independent and authentic voice of the Yarra, the Birrarung Council champions the interests of the river as one living and integrated natural entity, guided by the voice and knowledge of Traditional Owners as the custodians of the river and its lands."[62] The council describes that some of the initial work they are doing has included building "a collective Council understanding of Wurundjeri Woi-wurrung appreciation of the River and its corridor," and notes that such "learning cannot occur just by sitting at the conference table but requires the

56. *Yarra River Protection (Wilip-gin Birrarung murron) Act 2017* (Cth) s 47 (Austl.).

57. BIRRARUNG COUNCIL, BIRRARUNG COUNCIL: THE VOICE OF THE YARRA: 2020 SECOND YEAR REPORT 4–5 (2020), https://www.birrarungcouncil.vic.gov.au/__data/assets/pdf_file/0022/541642/Birrarung-Council-Second-Annual-Report-2021.pdf [https://perma.cc/J98V-HCPQ].

58. *Id.* at 5.

59. VICTORIA STATE GOVERNMENT, *supra* note 53, at 159.

60. *Id.* at 9; BIRRARUNG COUNCIL, *supra* note 57, at 9.

61. E-mail from Erin O'Donnell, Early Career Acad. Fellow, Senior Fellow, Melbourne L. Masters, to author (Feb. 18, 2022, 04:22 PM PST) (on file with author).

62. *Our Mission*, BIRRARUNG COUNCIL, https://www.water.vic.gov.au/birrarung-council/about-us/about-the-council [https://perma.cc/786E-DZVY].

council to physically engage with the River."[63]

The Wurundjeri Forward to the 2022 Yarra Strategic Plan acknowledges that the Act gives the people "a legislative mechanism and a formal process through which to engage with responsible public entities to work collaboratively and oversee the governance of the Birrarung and its lands as one living entity" and that "[o]ur inclusion in the Act was highly significant for the first time a legislative mechanism included a placed-based approach to the management of a waterway—pairing right Country with the right people—our people."[64] The Forward from the Bunurong people stresses the 35,000 year history (over 2,000 generations) of their ancestors as lending credibility to their right and wisdom to help speak for what the river might need; for them, "[a]ll of [their] Country is highly significant, every square inch, every rock, every leaf, every dune and every artefact."[65]

The ideas that Stone championed, decades ago and far away, now provide a fulcrum to leverage power for those who have been disempowered from stewarding their own resource base. And those people are using these ideas to advance their own rights to manage their own resource base according to their own traditional and modern concepts of what is right for the human and nonhuman community bond. For example, in the Kimberly of northwest Australia, Anne Poelina, a Nykina Aboriginal elder, is spearheading a movement to have the Fitzroy River (*Martuwarra* in local language) recognized as a living being with legal rights, with the local Aboriginal groups acting as the voice of the river. She wishes to translate Nykina lore into Australian law.[66] Their Fitzroy River Declaration declares that "[t]he Fitzroy River is a living ancestral being and has a right to life."[67] Dr. Poelina and other scholars have published in *Transnational Environmental Law*, *Recognizing the Martuwarra's First Law Right to Life as a Living Being*. The "*Martuwarra RiverOfLife*" itself is listed as the first author.[68] The article draws upon other grants of legal rights to rivers as a basis for its own assertion that this River in the Kimberly deserves similar recognition, with the local Martuwarra Nations accorded the rights to speak for what the river and culture nexus requires.

The article decries the farming, ranching, mining, and fracking that is

63. BIRRARUNG COUNCIL, *supra* note 57, at 8.

64. VICTORIA STATE GOVERNMENT, *supra* note 53, at 5.

65. *Id.* at 6.

66. Interview with Anne Poelina, Prof., U. of Notre Dame Austl., in Sydney, Austl. (July 11, 2019).

67. Traditional Owners from the Fitzroy River, *Fitzroy River Declaration* (Nov. 3, 2016), https://static1.squarespace.com/static/59fecece017db2ab70aa1874/t/5b286f2bf950b776fe5ead56/1529376561505/Fitzroy+River+Declaration._2016.pdf [https://perma.cc/55E5-ZG7Z].

68. Martuwarra RiverOfLife, Anne Poelina, Donna Bagnall & Michelle Lim, *Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being*, 9 TRANSNAT'L ENV'T L. 541 (2020).

destroying the river (and the ancient cultures that depend upon it and have long depended upon it). They assert the right to speak for the river as "Traditional Owners" who "view Country as alive, vibrant, all encompassing, and fully connected in a vast web of dynamic, interdependent relationships; relationships that are strong and resilient when they are kept intact and healthy by a philosophy of ethics, empathy and equity."[69] Dr. Poelina and others (see below) are using our desire to find appropriate spokespersons for the human and nonhuman relationship, to sustain our natural environment, and to atone for past wrongs committed against indigenous people. Initiatives that include or devolve cultural and thus management authority to indigenous or local communities make compelling cases that these communities' histories, worldviews, and ecological knowledge grant them the authority to speak for and thus regulate the ecosystems that sustain them. They assert that they will manage nature as if their lives depended on it, because their lives depend on it.

C. STANDING

It is not clear that the Birrarung Council would ever have formal legal standing to represent the Yarra River's interests in a court proceeding. The Act grants the river its spokes-council, but it does not look like the Yarra has legal rights of its own that the council would be empowered to defend.[70] That is to say, the Act recognizes that many, many entities have interests in the Yarra, and simply names a suitable entity to advocate for the river's own needs when its waters are being allocated.

D. PROPERTY

As a result of this Act, the river does not own itself, or own any rights to its own water. As Birraung Council member Erin O'Donnell has noted disapprovingly of all newly established legal rights for rivers, "None of the river persons has a legally recognised right to flow."[71] So while the Birrarung Act recognizes the vital force of the river in the life of Victorians, and provides voices to protect that force, it does not radically change the idea of who can own what ecosystem resource or what counts as "property" under the law.

69. *Id.* at 543–44.

70. Erin O'Donnell, *Rights as Living Beings: Rights in Law, But No Rights to Water?*, 29 GRIFFITH L. REV. 643, 654 (2020).

71. *Id.*

E. IDEAS AS FORCES OF NATURE

The Birrarung Council has stated its vision grounded in relationship and respect: "For the Yarra River [Birrarung] and its lands to be forever protected as a living entity and kept alive and healthy for the benefit of future generations."[72] One of the council's early ideas promotes the concept of "the Great Birrarung Parkland." It aims to "champion the extension and greater recognition of this unique asset" to preserve more of the river and its riparian corridor for future generations.[73] Furthermore, the council sees its role "to challenge conventional thinking about the nature of a 'park' as a parcel of land which exists for a public purpose."[74] Specifically, it advocates that Victoria take the "one living and integrated natural entity" language seriously, which should include the way we conceive of parklands not as disconnected parcels, but a continuous entity:

> The narrative about the Parkland should convey that its significance is about more than just gazetted land, and relates to a combined landscape of all land parcels that form the river corridor landscape. Such an understanding would allow the public to more fully and respectfully experience the River, understand its cultural significance for all Australians and improve connection to the River.[75]

The brand new Yarra Strategic Plan's Aboriginal name—*Burndap Birrarung burndap umarkoo*—means "[w]hat is good for the Yarra is good for all."[76] The Yarra Strategic Plan proposes that "[c]ollaborative management of the river will rightly see Traditional Owners and authorities working together to manage Yarra River land."[77] Informed by the Birrarung Council, the vision is of a multicultural panel that represents various interests in sustaining the river. The Victoria government has empowered the council to speak for what the river needs because of both traditional and modern forms of wisdom. It sees the river as a vital entity that links ecology and culture, past and present in a seamless, flowing whole.

According to the Birrarung Council, recognition of the Yarra and other rivers as living beings "has been explicitly grounded in the relationship between the river and the people(s) who live along and near it."[78] The legally appointed "Voice of the River," composed of diverse individuals with

72. *About the Council*, BIRRARUNG COUNCIL, https://www.water.vic.gov.au/birrarung-council/about-us/about-the-council [https://perma.cc/786E-DZVY].

73. BIRRARUNG COUNCIL, *supra* note 57, at i.

74. *Id* at 9.

75. *Id.*

76. VICTORIA STATE GOVERNMENT, *supra* note 53, at 10.

77. *Id.* at 23.

78. BIRRARUNG COUNCIL, BIRRARUNG COUNCIL: THE VOICE OF THE YARRA RIVER: 2019 FIRST YEAR REPORT 4 (2019), https://yarrariver.org.au/wp-content/uploads/2020/08/47-BC-First-Year-Report-Final-8April2020.pdf [https://perma.cc/2P2P-59QG].

different access to different expertise, will speak for that relationship going forward. If the goals of the statute are realized, the river and its interrelated communities will be healthier in the future. We should continue to watch how the legally appointed "Voice of the River" uses its voice to speak for how the relationship should be sustained.

III. COLOMBIA

A. INTRODUCTION

While in Australia, answers to some of Stone's challenges came through statute, in Colombia, those answers come from court decisions. In a 2016 case brought by Afro-Caribbean communities in the Chocó, "one of the most bio-diverse regions of the planet"[79] and part of "mega-biodiverse" country of Colombia,[80] the Constitutional Court declared that the Rio Atrato's "basin and tributaries are recognized as an entity subject to rights [(which translates to '*entidad sujeto de derechos*')] of protection, conservation, maintenance and restoration by the State and ethnic communities."[81] Following this decision, Colombian courts have declared that the Amazon,[82] several other rivers,[83] a high-altitude ecosystem,[84] and the spectacled bear[85] are legal persons. What is going on here, and what might Stone have made of all this?

B. WHO IS TO SAY WHAT THE NATURAL ENTITY WANTS?

Unlike in Australia or New Zealand, where communities stake their claims to manage their environment in part due to cultural identities as indigenous peoples whose arrival and environmental stewardship long predated the colonizers, here the affected communities are marginalized—Afro-Caribbean residents whose ancestors migrated to this region a couple of centuries ago and who are dependent on and connected to the affected river.

To represent the river, the court orders the national government to "exercise legal guardianship and representation of the rights of the river," designating one government minister to join a community-appointed guardian.[86] These "legal representatives," in turn, are tasked with designating

79. *The Atrato River Case, supra* note 9, at 6.
80. *Id.* at 32.
81. *Id.* at 5.
82. Corte Suprema de Justicia, *supra* note 10.
83. Rio La Plata, *supra* note 11; Rios Coello, Combeima & Cocora, *supra* note 11.
84. Pisha Highlands, *supra* note 12.
85. Corte Suprema de Justicia, *supra* note 13.
86. *The Atrato River Case*, *supra* note 9, at 110.

a "commission of guardians of the Atrato River" guided by two NGOs who "have the necessary experience to guide the actions to take. This advisory team can be formed and receive support from all public and private entities, universities[,] . . . research centers on natural resources and environmental organizations (national and international), community and civil society wishing to join the protection project."[87] Each of seven river communities appointed one male and one female guardian to develop a plan to implement the court's ruling.[88] The members of the Collegiate Corps of Community Guardians are responsible comanagers for seeing that the order of the court is fulfilled as part of the Commission of Guardians of the Rio Atrato, consisting, as the court ordered, of representatives of government and affected communities.[89]

Chief Justice Palacio informed me that it is not working as quickly as we all would like, but enormous efforts have been made to comply with it, especially by the Colombian Attorney General's Office.[90] The work has not been easy, with COVID-19 making a new model of environmental management even more difficult than it would otherwise be, as the most recent report of the committee acknowledges.[91] The scope of work that the committee has taken on is impressive—that is, the judicial decision does seem to have prompted the remedial actions the government is now taking. Throughout the report, the rights of the river are addressed as the co-managers develop their expertise to say what the river might need.

The court proclaims that "the protection of a healthy environment of the black communities acquires special relevance from the constitutional point of view, since it is a necessary condition to guarantee the validity of their lifestyle and their ancestral traditions."[92] According to the court, "[t]he communities have made the Atrato River Basin not only their territory, but the space to reproduce life and recreate culture."[93] Chief Justice Palacio reiterated to me that these isolated, ethnic minority communities had been

87. *Id.*

88. Elizabeth Macpherson & Felipe Clavijo Ospina, *The Pluralism of River Rights in Aotearoa, New Zealand and Colombia*, 25 J. WATER L. 283, 292 (2018).

89. "*[E]l Cuerpo Colegiado de Guardianes Comunitarios*" *son* "*cogestores responsables*." COMITÉ DE SEGUIMIENTO, VIII INFORME DE SEGUIMIENTO SENTENCIA T-622 DE 2016, SOBRE LA GESTION CUMPLIDA EN EL PRIMER SEMESTER DE 2021, BOGOTÁ NOVIEMBRE 2021, at Introducción, §§ 1.1, 1.1.1 (2021).

90. "*[N]o marcha con la prontitud que todos quisiéramos, pero sí se han hecho ingentes trabajos para su cumplimiento, especialmente por la Procuraduría General de la Nación de Colombia*." E-mail from Jorge Ivan Palacio, C.J., Corte Constitucional [C.C.] [Constitutional Court], to author (Feb. 21, 2022, 5:57 PST) (on file with author).

91. COMITÉ DE SEGUIMIENTO, *supra* note 89, at Introducción, § 1.1.1.

92. *The Atrato River Case*, supra note 9, at 19.

93. *Id.* at 7.

abandoned by the government as their environment was being destroyed and thus required special judicial intervention.[94] The local Afro-Caribbean inhabitants require a healthy river, and they wish to help the river return to health through managing "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."[95]

As in Australia and New Zealand, the law is highlighting a certain kind of relationship that gives those who would speak for nature legal authority to sustain that relationship. Although the communities are not indigenous per se, "since ancestral times,"[96]

> 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.[97]

To answer Stone's challenge for who ought to be empowered to speak for what an ecosystem might want, the decision contains a lengthy, learned analysis of "biocultural rights" founded on the interdependence of biological and cultural diversity.[98] It is this connection that gives these communities the right to speak for what the river needs, because it is what the communities' livelihoods and cultures need:[99]

> [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.[100]

Inherent in the ecocentric philosophy articulated by the court is the idea that the ecosystem and its constituent parts have moral worth and legally recognized needs, and thus legal rights to meet those needs. The court does not say exactly what the river requires, but it names the associated, culturally

94. In our interview, Chief Justice Palacio explained to me that "*es una gente demasiado abandonada por las instituciones gubernamentales*" (which translates to "this population is extremely abandoned by government institutions"). Interview with Jorge Iván Palacio, C.J., Corte Constitucional [C.C.] [Constitutional Court], in Bogotá, Colom. (Sept. 26, 2019).

95. *The Atrato River Case*, supra note 9, at 35.

96. *Id.* at 45.

97. *Id.* at 54.

98. *Id.* at 99.

99. *Id.* at 18–19.

100. *Id.* at 35.

and environmentally connected communities as the logical mouthpieces for what the river might need.[101] The now-ongoing resulting work is aimed at cleaning up the Atrato and halting the illegal, damaging mining and logging that despoils the river.[102]

C. Standing

The Constitutional Court addresses the standing requirement:

> In this case, the representative of the ethnic communities is claiming that the *acción de tutela* [(a writ for protection of constitutionally guaranteed rights in Colombia)] is necessary to restrain the intensive and large-scale use of various methods of mining and illegal logging. These methods include heavy machinery, such as dredgers and backhoes, and highly toxic substances, such as mercury, in the Atrato River (Chocó), its basins, swamps, wetlands and tributaries. The methods have been intensifying for several years and are having harmful and irreversible consequences on the environment, thereby affecting the fundamental rights of ethnic communities and the natural balance of the territories they inhabit.[103]

The NGO (Tierra Digna) has standing to represent the special rights of the Afro-Caribbean communities who have special solicitude as indigenous and pluri-ethnic communities to have their rights protected.[104]

As in the other cases I describe herein, it is not yet clear how the river or any of the other ecosystem elements now given legal rights will have their own rights represented in court. That is to say, Stone's starting point—formal legal standing in court—remains to be explicated should the river's ongoing injuries find their way to court.

D. Property

The court notes that these communities have a notion of the river-as-community that diverges from the Western model of river-as-property: "[F]or 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."[105] However, in the resulting decision, while the river becomes the object of legal obligations, the community does not come to own the river, and the river does not own itself or the waters it contains.

101. *Id.* at 99.
102. Comité de Seguimiento, *supra* note 89.
103. *The Atrato River Case*, *supra* note 9, at 8.
104. *Id.* at 18.
105. *Id.* at. 54.

But more so than in the other developments I portray, the court is influenced by, and seeks to promote, ecocentric philosophy. The river may not own itself, but its own needs matter in the law, even apart from the connected needs of the communities that depend on it. Chief Justice Palacio confirmed that his decision was influenced by his deep readings in ecocentric philosophy.[106] The decision respects

> other 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.[107]
>
> [The] ecocentric approach starts from a basic premise according to which the land does not belong to man . . . . 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.[108]

E. IDEAS AS FORCES OF NATURE

Nonetheless, the court had no viable way to change the very nature of property in the Colombian legal system. Instead, the court notes that "the relationship between the Constitution and the environment [is] dynamic and in constant evolution."[109] Like Stone, the court here is looking for a new appreciation of the human interrelationship with the natural world, wishes that law would reflect this interrelationship, and takes steps toward this desired evolution. Beyond what Stone envisioned, the court finds that a new legal form is necessary to effect that evolution, one that grants direct rights to nature, with a reasonable answer for who should speak for those rights, meaning those communities most dependent on and knowledgeable about the river, in association with the government bodies best poised to stop the pollution destroying that river. Chief Justice Palacio told me that the decision was mean to "send the message: to preserve life. Not just the life of human beings, rather all of life on Planet Earth."[110] Ecocentric philosophy becomes instantiated in legal rights for an ecosystem; ecologically dependent,

106. "*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 94.

107. *The Atrato River Case*, *supra* note 9, at 34–35.

108. *Id.* at 33–34.

109. *Id.* at 33.

110. Interview with Jorge Iván Palacio, *supra* note 94 ("*[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*.").

culturally rooted populations gain legal rights to speak for the river's rights. Chief Justice Palacio hopes that if the court's decision is implemented correctly, it would create a feedback loop remaking and revitalizing the river and the human communities that depend on it.

IV. NEW ZEALAND

A. INTRODUCTION

New Zealand is providing the most far-reaching, innovative answers to some of the challenges Stone posed. The government has passed statutes that grant the North Island's Whanganui River and Te Urewera mountain ecosystem (formerly a national park) legal personhood, with Māori communities granted the right to speak for what the river or mountain will require going forward.[111] A third ecosystem, Mount Taranaki, has also been granted legal personhood, with prepared arrangements for conservatorship shared between eight local Māori in the works.[112] I believe the dimensions of these legal revolutions go beyond what Stone could have envisioned.

B. WHO IS TO SAY WHAT THE NATURAL ENTITY WANTS?

Stone wrote extensively about who nature's "guardian" could and should be, and what they might do once appointed.[113] In Australia and Colombia, legislatures and courts have named appropriate guardians based upon ecological connection and expertise, and historical or cultural claims to have authority in resource management. In New Zealand, the Crown's desire to remedy past colonial wrongs, and spiritual, cultural, and ecological connections to the ecosystem legitimated the Māori claims to say what the river or mountain wants.[114]

111. Te Urewera Act 2014, *supra* note 14, at s 11; Te Awa Tupua Act 2017, *supra* note 14, at s 14.

112. TE ANGA PŪTAKERONGO MŌ NGĀ MAUNGA O TARANAKI, POUĀKAI ME KAITAKE, RECORD OF UNDERSTANDING FOR MOUNT TARANAKI, POUĀKAI AND THE KAITAKE RANGES § 5.2 (2017) [hereinafter RECORD OF UNDERSTANDING], https://www.govt.nz/assets/Documents/OTS/Taranaki-Maunga/Taranaki-Maunga-Te-Anga-Putakerongo-Record-of-Understanding-20-December-2017.pdf [https://perma.cc/E9W7-44EL]; Eleanor Ainge Roy, *New Zealand Gives Mount Taranaki Same Legal Rights as a Person*, GUARDIAN (Dec. 22, 2017, 12:18 A.M.), https://www.theguardian.com/world/2017/dec/22/new-zealand-gives-mount-taranaki-same-legal-rights-as-a-person [https://perma.cc/Z75F-YYQE].

113. Stone, *supra* note 3, at 466.

114. *See, e.g.*, WAITANGI TRIBUNAL, THE WHANGANUI RIVER REPORT xiii, 31 (1999), https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68450539/Whanganui%20River%20Report%201999.pdf [https://perma.cc/B296-ZZS8] ("For nearly a millennium, the Atihaunui hapu [clan] 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.").

Statutes grant that various Mãori communities now serve as guardians of the environment. Except, the communities themselves would not use the term "guardians." Gerrard Albert, chief negotiator for the Whanganui Māori, reminded me that the term "guardian" (or anything similar) does not appear in the statute; more importantly, if anything, the Whanganui guards over the community.[115] I think Stone himself would recognize that in some ways it turns reality on its head to say we are guardians for natural objects, as opposed (as Albert believes) that nature, in fact, guards us. We might need to assert a certain fiction in court, but the worldview underlying so much of environmental law is that functioning ecosystems make life possible.

The 2017 Whanganui River Claims Act, or "*Te Awa Tupua*" ("River With Ancestral Power") grants legal personhood to the Whanganui River and deeds legal stewardship over the river to the local Māori, based on their longstanding relationship with the river.[116] Under the Act, 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."[117] The Act acknowledges "*Tupua te Kawa*," as 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,[118] and other communities of the River."[119] "*Te Pou Tupua*" is a newly enshrined governance entity;[120] as newly named conservators of the river, "[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."[121]

The Te Urewera Act turns a former national park (which had been the largest on the North Island)—a magnificent land of mountains, lakes, and rivers—into "a legal entity, and has all the rights, powers, duties, and liabilities of a legal person" with the local Māori given the duties to govern.[122] The Act notes 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."[123]

115. Interview with Gerrard Albert in Whanganui, N.Z. (July 9, 2019).
116. Te Awa Tupua Act 2017, *supra* note 14, at pt 2, s 12.
117. *Id.* at pt 2, s 12.
118. "*Iwi*" can be translated as tribe; "*hapu*" are extended family clans within a tribe.
119. Te Awa Tupua Act 2017, *supra* note 14, at pt 2, s 13.
120. *Id.* at pt 2, s 18 subss 1–2.
121. *Id.* at pt 2, s 13(c).
122. Te Urewera Act 2014, *supra* note 14, pt 1, s 11, subs 1.
123. *Id.* at pt 1, s 3, subss 1–3.

Stone had qualms that anyone could know what a nonhuman biophysical entity wants: "Even if moral obligations to a mountain are conceded to exist in principle, the question of how they can be discharged remains: How does one 'do right by' a mountain?"[124] Operating "as the voice of the living personality of Te Urewera," the Tühoe Māori have presented its guiding values "that inspirit wise and beneficial decision making" in a preliminary document, "Te Kawa."[125] They will know what the mountain wants because "[w]atching Te Urewera over many seasons and centuries reveals her moral conduct acted out in her interrelationships with all life that she has created."[126] So for example, "*Papatūānuku*" or "landscape," means that "[w]e revere nature, we respect her ability in connecting us to all living things."[127] "*Mauri*," or "her life" means "the living relationship between the forest the land and everything living within that relationship."[128] This means that "prioritized action" will include that "[w]e treasure our indigenous ecological systems and biodiversity through significantly reducing key existing pressures, enabling Te Urewera to a natural state of balance," which means "we customise smart respectable ways to reduce known and potential pressures."[129] So, for example, Te Kawa notes that "[g]uards are effective against new or external pressures looking for a home within [Te Urewera]."[130] A few initial controversies suggest how these values will enlighten knowledge about the mountain's desires, as described below.

C. STANDING

It is not yet clear how or whether the empowered Māori communities will have formal legal standing to represent their associated ecosystems in court. For example, for the Whanganui, Te Awa Tupua "may participate in any statutory process affecting Te Awa Tupua in which Te Pou Tupua would be entitled to participate under any legislation";[131] it is not clear if that means formal legal standing. Albert told me that the Whanganui Māori prefer to stay out of court for the present time, choosing instead to build capacity within their communities around what the new laws mean and to build relationships with other neighbors of the Whanganui. He described an occasion shortly after Te Awa Tupua's passage where the government began

124. CHRISTOPHER D. STONE, THE GNAT IS OLDER THAN MAN: GLOBAL ENVIRONMENT AND THE HUMAN AGENDA 276 (1993).

125. TE UREWERA BOARD, *supra* note 15, at 9, 21.

126. *Id.* at 21.

127. *Id.* at 38.

128. *Id*.

129. *Id.*

130. *Id*.

131. Te Awa Tupua Act 2017, *supra* note 14, at pt 2, s 19, subs 2(e).

construction of a bike bridge over the river without discussing this with the Māori; rather than appeal to a court, Te Awa Tupua sought dialogue with the government agency to explain the new legal authority.[132]

In Te Urewera, the Tūhoe rejected an oil-based asphalt sealant for a neighboring road, even though the delay could result in loss of funding. While the local government accused the Tūhoe of "hillbilly thinking," the Tūhoe reject the "rape and pillage mentality . . . of unchecked tourism," and plan, instead, to proceed with road construction that reflects Te Kawa's environment-friendly values.[133] Also in Te Urewera, the Tūhoe governing body delayed fixing a flood-damaged footbridge around Lake Waikeremoana that forms part of one of New Zealand's tourist-friendly "Great Walks." According to Tūhoe Chairman Tāmati Kruger, "[the Tūhoe] are wanting engineers to come in because the issue could very well be that the bridge is in the wrong place," and perhaps Te Urewera did not want the footbridge there to start with.[134] So we do not know how standing would play out should these skirmishes arrive in court; but we do see that newly empowered Māori communities wish to use their new legal powers to govern their ecosystems according to traditional precepts, merging traditional values with Western law.

132. Albert, *supra* note 115; *Whanganui River Work Triggers Te Awa Tupua Legislation*, NZ HERALD (Mar. 14, 2019, 8:08 AM), https://www.nzherald.co.nz/whanganui-chronicle/news/whanganui-river-work-triggers-te-awa-tupua-legislation/VOU5EVLN457XJ77VQD7R7EEHTU [https://perma.cc/G6JD-7JXF].

133. Andre Chumko, *Fears Tūhoe Trial Will Expire Funding for Road to Lake Waikaremoana*, STUFF (July 4, 2019, 4:39 PM), https://www.stuff.co.nz/environment/113940377/fears-thoe-trial-will-expire-funding-for-road-to-lake-waikaremoana [https://perma.cc/N82V-7BBB]; 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-naturalroute [https://perma.cc/RBW9-34YL]; *The Road to Nature*, TŪHOE (June 16, 2019), https://www.ngaituhoe.iwi.nz/The-Road-to-Nature [https://perma.cc/M76Q-XT9F].

134. 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].

D. RELATIONSHIP

When explaining that "Suits on Behalf of Nature Are Better Suited to Moral Development," Christopher Stone wrote, "As I argue in the original *Trees*, the law has not merely an educative, but a spiritualizing role in our society."[135] I do not know what, exactly, he means by "spiritualizing," but I do think I know what he means by moral development. And this is one place where the New Zealand experiment pushes us forward: it asks that the morality of how we treat the Earth embrace a relationship that has always existed and must exist, but which Western ethical systems, and the law that flows from those systems, tend to ignore. These grants of rights for nature and rights to protect that nature are sanctifying a certain kind of relationship, a web of mutually protective being. Te Awa Tupua and the Te Urewera Act grant the Māori the right to have their conception of relationship with rivers and mountains sanctified in the law, which simultaneously allows them to speak for the ecosystems on which they have always depended. These steps toward self-determination honor the saying "I am the River and the River is me," reflecting a more capacious vision of "self" than the dominant cultures normally understand.[136] As a New Zealand court has explained,

> One needs to understand the culture of the Whanganui River iwi [tribe] 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.[137]

I believe Stone was advocating for moral systems rooted in deep connection to the environment, even if he did not envision the particular arrangement advancing in New Zealand.

E. PROPERTY

According to both Christopher Finlayson, then-Minister for Treaty of Waitangi Negotiations, and Albert, chief negotiator for the local Māori, the two sides negotiated cordially, and the government agreed to grant what the Māori wanted on their own terms that reflected their cosmology.[138] Scholar

135. STONE, *supra* note 1, at 66.

136. 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?sequence=15&isAllowed=y [https://perma.cc/K6Q3-T72T].

137. *Ngati Rangi Trust*, *supra* note 16.

138. Albert, *supra* note 115; Interview with Chris Finlayson in Wellington, N.Z. (July 8, 2019).

Anne Salmond has called previous New Zealand arrangements that granted formal property rights to the Māori "ontological submission": although they gained the right to control their relationship with the ecosystem around them, by accepting a Western version of legal property ownership, they had to violate their own cosmology that defined their relationship with the world around them.[139]

As in the other nations discussed here, neither the river nor mountain own itself in New Zealand. The Māori themselves did not wish to own the ecosystem elements in any traditional, Western legal sense.[140] The Māori traditional notions of "property" differ from the Crown's conceptions, as you could not "own" that to which you belong,[141] and the new statutes respect this notion of environment-as-relationship. The government did not wish to cede formal ownership of the Whanganui,[142] and, as Albert explained to me, "ownership does not provide for the totality of the relationship."[143] In the negotiations, Albert said, his community "[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?"[144] In Te Kawa, the initial governing guide for Te Urewera, the Tūhoe Māori explain that the

> use of property rights by the western legal system has hidden from view the concept of nature; rendered her parts as natural resources now capable of rival priorities competing with other household choices. These human granted rights have displaced our devotion for Papatūānuku [landscape] with ownership now serving individual advantage . . . property rights do not give life nor do they encourage the connectedness of all living things for life . . . our fracturing of nature has sponsored our own fragmentation.[145]

At the end of the day, the Crown still "owns" the entities. Still, for the Māori, the exact nature of "property" matters less than having their cosmology recognized in the law, their historical injustices mitigated, and their relationship with their environments back under their control.

It remains to be seen whether any new conception of "property"—in the formal ownership way Western law understands it—emerges. Absent formal ownership of the ecosystems, how far the Māori are able to take their new

139. Anne Salmond, *Tears of Rangi*, 4 HAU J. ETHNOGRAPHIC THEORY 285, 302 (2014).

140. Interview with Albert, *supra* note 115.

141. 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).

142. Salmond, *supra* note 139, at 297; Interview with Finlayson, *supra* note 138.

143. Interview with Albert, *supra* note 115.

144. *Id.*

145. TE UREWERA BOARD, *supra* note 15, at 23.

powers remains to be seen. The ultimate prize will be the 2040 relicensing of the Tongariro Power Scheme, which diverts eighty percent of the Whanganui's water; Albert told me that the years leading up to 2040 will be about building his community's and the government's capacity to truly understand and respect the new vision of human and nonhuman relations, and the Tongariro Power Scheme will be the test.[146]

F. IDEAS AS FORCES OF NATURE

In *Should Trees Have Standing?*, Stone mused on why we would use "rights" language to refer to nonhuman entities in the first place, given the ambiguities of what such rights might comprise:

> In the case of such vague rules . . . . [t]hese terms work a subtle shift into the rhetoric of explanation available to judges; with them, new ways of thinking and new insights come to be explored and developed. In such fashion, judges who could unabashedly refer to the "legal rights of the environment" would be encouraged to develop a viable body of law—in part simply through the availability and force of the expression.[147]

Rights exert moral suasion on all actors. In the New Zealand examples, the nation is moving way beyond the "right to a healthy environment" or similar grants that the majority of nations bequeath their citizens.[148] These laws and constitutional provisions are still anthropocentric: *I* have the right to breathe healthy air or drink clean water. Through granting rights directly to rivers or mountains, New Zealand is designing a new idea of our relationship with the natural world, with new stewards of that relationship, inscribed in law.

Like Stone, Cormac Cullinan had some qualms about rights for nonhuman entities; he noted:

> [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.[149]

New Zealand imposes an entirely new conception of what it means to have rights, one the nation now must make more justiciable. If we are the river

146. ERIN O'DONNELL, LEGAL RIGHTS FOR RIVERS: COMPETITION, COLLABORATION, AND WATER GOVERNANCE 178 (2019); Interview with Albert, *supra* note 115; Finlayson, *supra* note 138.

147. Stone, *supra* note 3, at 488–89.

148. New Zealand is in the minority of nations that provide no statutory or constitutional right to a healthy environment to citizens. Catherine Iorns Magallanes, *Human Rights, Responsibility and Legal Personality for the Environment in Aotearoa, New Zealand*, *in* HUMAN RIGHTS AND THE ENVIRONMENT: LEGALITY, INDIVISIBILITY, DIGNITY AND GEOGRAPHY 550 (James R. May & Erin Daly eds., 2019).

149. CULLINAN, *supra* note 33, at 95.

and the river is us, then the new ideas supporting these legal reforms are an eco-anthropocentric hybrid. The ecosystems still support human communities, but the humans who depend on the ecosystems also serve the ecosystems' needs. Which is why, for example, in Te Urewera, the Māori community has started by naming what the values are that the mountain ecosystem holds. Anticipating judicial decisions, they have made contractual obligations contingent on attestations that those profiting from Te Urewera will first and foremost respect those values that flow from the right.

These agreements lend themselves to a broader understanding of how all New Zealanders (and those of us far from that enclave) relate to, and thus manage the ecological world around us. The New Zealand Office of Māori-Crown relationships has adopted a new name, "*Te Arawhiti*," which means "The Bridge."[150] These reforms present a new vision for how law can reflect ecological reality and can change that reality. If the Māori succeed in cleaning up the Whanganui, changing the management regime of Te Urewera, and, eventually, shutting down the Tongariro Power Scheme, then a new hierarchy of whose ideas about nature count will have been remade into law, which will have remade nature.

CONCLUSION

When, as the Māori express it, "I am the River and the River is me," we must take into account the river's interests, based on a worldview that the river's interests are our interests. Around the world, governments, legislatures, and courts are moving toward Stone's idea of a "radically different law-driven consciousness"[151] and in so doing, this posture both reflects and evolves communities' views of themselves. When we move from "we own the river" to "we are the river," we enter into a new paradigm of what "property" is, and who we actually are.

Stone opined:

> The time may be on hand when these sentiments, and the early stirrings of the law, can be coalesced into a radical new theory or myth—felt as well as intellectualized—of man's relationships to the rest of nature. I do not mean "myth" in a demeaning sense of the term, but in the sense in which, at different times in history, our social "facts" and relationships have been comprehended and integrated by reference to the "myths" that we are co-signers of a social contract, that the Pope is God's agent, and that all men

150. Interview with Ian Hicks, Negot. & Settlement Manager, Off. of Māori-Crown Rels., in Wellington, N.Z. (July 9, 2019).

151. STONE, *supra* note 17, at xi.

are created equal. . . . What is needed is a myth that can fit our growing body of knowledge of geophysics, biology and the cosmos.[152]

In the scenarios I have portrayed here, that growing knowledge dovetails with, informs, and is informed by the lifeways of people who have long created and lived by "myths" that guide how they treat the world around them. Myth is not pejorative: where cultures have survived pre- and post-colonial invasion, they have survived because their myths kept them from undercutting the ecosystems that sustained them. When Western cultures grant nonhuman entities formal rights, the evolution in worldview has not been in the original views of those who have proposed such conceptions, now inscribed in law: Australia's Aborigines[153] or New Zealand's Māori, for example, have long believed in an indivisible relationship with the natural world around them. Instead, the ethics of the hegemonic cultures in some Western nations are evolving toward the direction that nature-connected communities have long understood and implemented in their own lore, that is their own law. Stone muses that "[o]ne is certain to wonder how, in selecting the critical boundary variables or supplying content to the key 'ideal' (riverhood, habitathood), we can avoid being, on the one hand, totally arbitrary or, on the other, guilty of smuggling in whatever standard advances our own most 'raw' homocentric interests."[154] Thus who "we" are is going to matter a lot. In the models I have described here, governments have designated appropriate spokespersons for nature, who, it is hoped, will not simply smuggle in their own "raw" homocentric interests. When governments or courts in these nations grant ecosystems legal rights, they reflect and propel changing views both of human relationships with the natural world. In the examples I describe here, they also reflect and propel evolving views of dominant groups' relationships with indigenous peoples or other disenfranchised subpopulations from whom the right to manage the natural world had been taken.

The legal evolutions I have described here go beyond what Stone imagined. Despite his foresight, in his writings, he is here, and the river is *there*: he is not the river. This makes sense. Stone's worldview was rooted in the U.S. tradition; he was writing for U.S. audiences and was concerned with the intricacies of U.S. constitutional and statutory law. Stone dedicated much of one of his books to the idea of moral and legal pluralism;[155] meaning, he espoused that no one size fits all as we seek to remake our

152. Stone, *supra* note 3, at 498.

153. A recent best-seller in Australia has revolutionized how non-Aboriginal Australians understand Aborigines' relationship with the land. BRUCE PASCOE, DARK EMU: ABORIGINAL AUSTRALIA AND THE BIRTH OF AGRICULTURE (2018).

154. STONE, *supra* note 5, at 60.

155. *E.g.*, *id.* at ch. 12.

cultural and thus legal relationships with the natural world. He advocated "a whole network of mutually supportive principles, theories and attitudes toward consequences."[156] The ideas he espoused find pluralistic fruition in the disparate ecological, historical, and cultural milieux I have described here, where previously subordinated groups have hacked the legal hierarchy to allow their views of human and nonhuman relationships to take legal precedence.

I am not a moral philosopher, and this is not a journal of moral philosophy. Laws, however, reflect our moral inclinations. And our moral inclinations—in Western philosophy and law—derive from how we see ourselves in relationship to the "other," including the relative worth of the others in relation to other entities and in relation to ourselves. When a society gives rights to rivers or mountains, law is acknowledging that one way of knowing one's place on the Earth is to see oneself as the Earth. It is the value of the indivisible *relationship* that gives rise to legal pathways that honor that relationship, with one entity in that relationship given priority to speak for and protect that relationship.

Ideas are forces of nature, acting with greater force when they are translated into law. Law—especially environmental laws—should be adaptive in the evolutionary sense; that is, they should evolve to fit the changing ecological matrix, and should evolve to protect and sustain that matrix, if communities and our species is to survive and thrive. As described here, law in some locales is acknowledging that one way of knowing one's place on the Earth is to see oneself in a relationship with the Earth, or to see oneself simply *as* the Earth. We do not know whether or how any of these instantiations of Christopher Stone's ideas will work to protect the ecological matrix that sustains the relationship between ecosystems and the communities who are being given new rights to speak for those ecosystems. We do not know whether or how nature will be remade, but newly empowered stewards for these experiments in "standing" and more may well improve on the way we have been managing the ecosphere up until now.

156. *Id.* at 242.