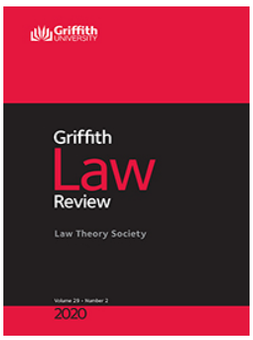

Griffith Law Review

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/rlaw20

Yoongoorrookoo

The emergence of ancestral personhood

Martuwarra RiverOfLife, Alessandro Pelizzon, Anne Poelina, Afshin Akhtar-Khavari, Cristy Clark, Sarah Laborde, Elizabeth Macpherson, Katie O'Bryan, Erin O'Donnell & John Page

To cite this article: Martuwarra RiverOfLife, Alessandro Pelizzon, Anne Poelina, Afshin Akhtar-Khavari, Cristy Clark, Sarah Laborde, Elizabeth Macpherson, Katie O'Bryan, Erin O'Donnell & John Page (2021): Yoongoorrookoo, Griffith Law Review, DOI: 10.1080/10383441.2021.1996882

To link to this article: https://doi.org/10.1080/10383441.2021.1996882

Published online: 08 Nov 2021.

GRIFFITH LAW REVIEW
https://doi.org/10.1080/10383441.2021.1996882

Yoongoorrookoo
The emergence of ancestral personhood

Martuwarra RiverOfLife, Alessandro Pelizzon [a], Anne Poelina[b], Afshin Akhtar-Khavari[c], Cristy Clark[d], Sarah Laborde[e], Elizabeth Macpherson [f], Katie O'Bryan [g], Erin O'Donnell[h] and John Page [a]

[a]Faculty of Business, Law and Arts, Southern Cross University, Lismore, Australia; [b]Nulungu Research Institute, Notre Dame University, Broome, Australia; [c]Faculty of Law, Queensland University of Technology – Gardens Point Campus, Brisbane, Australia; [d]School of Law, University of Canberra, Canberra, Australia; [e]Australian River Institute, Griffith University, Gold Coast, Australia; [f]School of Law, University of Canterbury, Christchurch, New Zealand; [g]Faculty of Law, Monash University, Melbourne, Australia; [h]Faculty of Law, University of Melbourne, Melbourne, Australia

ABSTRACT

Since the momentous release of the Montecristi Constitution of Ecuador in 2008, which recognised Nature, or Pacha Mama, as a subject of rights, the rights of Nature movement across the world has gained exponential momentum, with numerous jurisdictions worldwide now recognising some form of legal subjectivity vested upon Nature. In particular, since 2017, river personhood has dominated news headlines around the world as one of the most recognisable forms of Nature's novel subjectivity. The emergence of legal personhood for nature, however, has been far from uncontroversial, and numerous critiques have been advanced against the use of such a legal category – traditionally applied to humans and their abstract creations (such as States and corporations) – to the natural world, resulting in numerous calls for an alternative category of legal personhood (one that some rights of Nature advocates have termed an 'environmental person'). Against the backdrop of this emerging debate, this paper acknowledges the work undertaken by the Martuwarra Fitzroy River Council (Martuwarra Council), which was established in 2018 in the Kimberley region of Western Australia by six independent Indigenous nations to preserve, promote and protect their ancestral River from ongoing destructive 'development'. The Council believes it is time to recognise the pre-existing and continuing legal authority of Indigenous law, or 'First Law', in relation to the River, in order to preserve its integrity through a process of legal decolonisation. First Law differs markedly from its colonial counterpart, as its principles are not articulated in terms of rules, policies and procedures, but rather through stories. This paper, therefore, begins with a dialogical translation of one First Law story relating to Yoongoorrookoo,[1] the

KEYWORDS

Ecological jurisprudence; environmental personhood; rights of nature; Martuwarra; first law; ancestral personhood

CONTACT Alessandro Pelizzon Alessandro.Pelizzon@scu.edu.au

This article has been corrected with minor changes. These changes do not impact the academic content of the article.

[1]Nyikina elders Rosie Mulligan, Madeline Yanamarra, and Jeannie Warbie, as well as emerging Nyikina leaders, over the past three years have used multiple mediums to translate the stories of Senior Nyikina elder, Joe Nangan: Edwards &

ancestral serpent being,[2] to create a semantic bridge between two apparently distant legal worldviews. A dialogical comparative analysis is then followed to posit and explore the concept of an 'ancestral person' as a novel comparative tool that may be able not only to capture the idea of Nature as a legal subject, but also complex Indigenous worldviews that see Nature – in this case instantiated in the Martuwarra – as an ancestral being enmeshed in a relationship of interdependence and guardianship between the human and the nonhuman world. To instantiate and embody such relationships, the paper directly, and somewhat provocatively, acknowledges the River itself, the Martuwarra RiverOfLife, as the primary participant in such dialogue, an embodied non-human co-author who began a conversation then left to human writers to continue.

1. Yoongoorookoo – creator of the law

For tens of thousands of years, Indigenous peoples have lived in harmony, balance and peace alongside the banks of Martuwarra (also known as the Fitzroy River), in what is now the State of Western Australia, connected as one society by the Martuwarra through Warloongarriy Law and Wunan Law.[3] Joe Nangan was a Nyikina Elder. As Joe grew old, he became anxious that his knowledge of First Law[4] should not die with him. Nyikina people have translated this story into modern Nyikina in partnership with younger leaders[5]:

> In the Bookarrarra stories of Nyikina people, Yoongoorrookoo, the powerful and sacred Rainbow Snake, the giver of rain and life, weaves its way through story after story. Yoongoorrookoo is a lawmaker and a strong punisher of those who break the law. He has the power to die and come to life again, to live in water or underground, to bring floods and cyclones or bolts of lightning with a click of his forked tongue.
>
> There are many stories of Yoongoorrookoo. One of them concerns the Warmala people, also known as the 'Black Smoke people', a desert tribe who came in and out of the red desert dust to a place on Nyikina country called Marooloo for a Karamadi ceremony. Yoongoorrookoo became angry because this was not their ancestral country and they were trespassing. Enraged, Yoongoorrookoo enclosed them all in a huge circle with his body and constricting again and again, drowned them in his water hole.
>
> But when he thought about it later, he remembered the Warmala had come for the ceremony, and it was tradition that the tribes move freely at such time with the permission of their

Nangan (1976). Furthermore, Anne Poelina, Nyikina leader and Chair of the Martuwarra Council, is working directly with Traditional Owners to privilege the voice and standing of Martuwarra.

[2]Yoongoorrookoo is the Nyikina name of the Serpent, which is known by other names by other language groups of the Martuwarra/Fitzroy River catchment as described in the National Heritage listing assessment of the Martuwarra: 'Martuwarra encompasses four contiguous and distinctive freshwater-based Aboriginal cultural domains, focused upon the tradition of the Rainbow Serpent, as exemplified by the religious traditions of Galaroo, Woonyoomboo-Yoongoorroonkoo, Wanjina- Wunggurr, and the jila-kalpurtu cultural systems. A song line known as Warloongarriy (Walungarri) serves to unite Aboriginal people and their Rainbow Serpent traditions along the Fitzroy River as part of one regional ritual complex, called Warloongarriy Law or "River Law"' (Australian Government (date unknown), p 168).

[3]Poelina (2019).

[4]Watson (2017).

[5]Dr Anne Poelina has produced this modern translation of the First Law story 'Ingaruko, the Rainbow Snake' (originally found in Nangan and Edwards (1976), pp 56–57), creating a video animation destined for a larger audience: Madjulla Incorporated 'Yoongoorrookoo Creator of the Law', https://vimeo.com/515059556/bbf11d42ed, 21 February 2021.

> neighbours. Yoongoorrookoo began to feel bad about killing so many people. "I must die myself," Yoongoorrookoo said, "So all the people can see that the Spirit of the Law is just".
>
> Yoongoorrookoo allowed two Maban, medicine men of the Warmala to kill him. All the people watched and cheered at the sacrifice, but the medicine men went too far. They cut Yoongoorrookoo open and this was more than Yoongoorrookoo had intended or would accept from strangers in the land. As the knives split his shining rainbow skin, hot water spewed out, killing everyone watching, except the two terrified Maban.
>
> Yoongoorrookoo came back to life and was so angry that he threw Wilan or thunderbolt clouds all around the sky like boomerangs while the two Maban shook with fear, like the leaves on the trees. Then after a lot of lightning and some heavy rain, Yoongoorrookoo settled back, grumbling into his water hole. Since then, he has had a whipped tail and has been very bad tempered and unpredictable.
>
> Yoongoorrookoo can be very kind, bringing gentle rains and filling the water holes for the Nyikina and his chosen people. But when he is angry, he is capable of causing whirlwinds, floods, or even cyclones. Aboriginal people are always very careful near waterholes for fear that they should offend Yoongoorrookoo, the sacred and powerful rainbow snake, especially when they are traveling in a strange country.

We would like to begin our paper by paying respect to and acknowledging the many Countries that all of us, readers and authors alike, currently inhabit, wherever we are. While 'the practice of recognising Country [may] appear to be a contemporary political event', it is 'one that is rooted in references to traditional concepts and to a *weltanschauung* that extends, symbolically unchanged, to times preceding the arrival of British colonisers in 1788'.[6] The Australian Aboriginal concept of Country far exceeds any purely geopolitical conceptual boundaries, and is rather intrinsically interconnected to knowledge, identity and belonging: '[f]or Aboriginal peoples knowledge is grounded in space – which in English we call Country. Country is the Land, Earth, Sky, Universe and all the relationships of the world moving and interacting with one another'.[7] Deborah Bird Rose explains that 'the organising matrix of identity, knowledge and action is [known as C]ountry'.[8]

It is thus with such acknowledgment in mind that we pay respect to all the Countries that surround us, in the full awareness of an ontological positioning that challenges a fundamentally materialistic and deterministic philosophical tradition. It is with the same awareness that we acknowledge this paper as inscribed in a worldview that not only advocates, but also explicitly embraces the theoretical propositions it advances;[9] it is thus with such an awareness that we acknowledge the Martuwarra RiverOfLife as an active participant in our scholarly argumentation to whom we wish to pay respect by bestowing primacy of authorship upon her. We also want to acknowledge that our approach is not novel, but rather owes its genesis to a number of previously published articles that paved the way for our choice of attributed authorship.[10]

Finally, we want to acknowledge that this article is the result of an ongoing and continuing professional and thematic relationship between its authors.[11] Furthermore, while

[6]Pelizzon and Kennedy (2013), p 60.
[7]Kwaymullina (2012).
[8]Rose (1992).
[9]See, eg, Anker (2014).
[10]See Martuwarra RiverOfLife et al (2020) and Martuwarra RiverOfLife et al (in Press).

the work between the (human) authors of this articles emerges from over two years of intellectual exchanges, we also acknowledge the fundamental need to engage with Country, and in particular with the very focus of our reflections: the Martuwarra herself. Due to the numerous restrictions imposed as a result of the Covid19 pandemic since the beginning of 2020, the possibility for most of the authors to quietly sit and listen to the voice and wisdom of the River is yet to eventuate. However, we all firmly believe, this possibility, for now, has simply been postponed.

2. River personhood – the emergence of legal personhood for rivers

Like many rivers across the globe, the Martuwarra-Fitzroy River is under increasing threat due to the acceleration of invasive colonial 'development', which has beset the region for over 150 years. The currently dominant unsustainable extractive approach reflects a colonial framework that sidelines both Traditional Owners and the depth of Aboriginal legal and normative traditions.[12] In doing so, this extractive approach also sidelines and disrespects both the Martuwarra itself, and the Yoongoorookoo story. Established in 2018 by six independent Indigenous nations, the Martuwarra Fitzroy River Council (Martuwarra Council) believes it is now imperative to recognise the pre-existing and continuing legal authority of Indigenous law, or 'First Law', in relation to the River, in order to preserve its integrity through a process of legal decolonisation. River personhood is understood as one pathway towards this outcome.

The depredation and degradation of nature over the course of the last few decades has given rise to a number of initiatives that aim to transcend the traditional boundaries within which classical environmental law has been construed. This trend, which includes, as some of its most prominent examples, the emergence of an Earth Jurisprudence[13] or Wild Law,[14] many constitutional, legislative and judicial decisions attributing right to nature (the 'rights of Nature'[15] movement),[16] the proposed crime of Ecocide, and the emergence of an ecological constitutionalism, has been described as the emergence of an *ecological jurisprudence*;[17] that is, the emergence of a novel approach to legal theory that challenges pre-existing anthropocentric conceptions of humanity's relationship with the cosmos. One of the most visible articulation of this emerging ecological jurisprudence has been the recognition (or attribution) of legal personhood to a number of rivers, such as the Whanganui river in New Zealand, the Atrato river in Colombia or the entirety of Bangladeshi rivers.

However, the rights of Nature movement in general, and the specific attribution of personhood to rivers, is coming under increasing criticism. Some authors see rights of Nature and personhood as merely symbolic, and incapable of supporting any real change,[18] while others raise concerns about their coverage, scope and consistency given the *ad hoc* way in which they are developing, and the uncertainty surrounding

[11] In addition to a series of seminars and workshops held over the past two years in a number of locations, many of the authors have already begun to establish a record of joint publications. See, eg, O'Donnell et al (2020).
[12] Martuwarra RiverOfLife et al (2020), pp 556–557.
[13] See, eg, Berry (1999).
[14] See, eg, Cullinan (2002).
[15] In the course of the paper, we use the capitalized version of the term Nature in line with the general rights of Nature movement and scholarship.
[16] See, eg, Global Alliance for the Rights of Nature, https://therightsofnature.org.
[17] Pelizzon (2014), pp 176–189.
[18] See, eg, Barcan (2020), p 823; Richardson and McNeish (2021).

their (mis)match with the geographical boundaries of natural ecosystems.[19] Kathleen Birrell and Julia Dehm warn of the risks inherent in adopting the liberal idea of the 'white, European, male property-owner, which reaches its "apotheosis" in the corporation as juridical person', as part of a 'juridical reconstruction and reanimation of the non-human within a modernist rights frame' given the limitations of rights discourse as applied to humans.[20] Others raise the concern that legal personhood for, or rights of Nature may detract attention or energy from other transformative social and political agendas,[21] including the struggle for Indigenous sovereignty, control over and ownership of natural resources, and related political authority.[22] Indigenous scholars and communities are rightfully wary of the 'rights revolution' for Nature,[23] given their historical experience with western liberal legal constructs. Moreover, much of the rights of Nature scholarship appears to assume that recognising rights of Nature automatically and unquestioningly aligns with a general and generic Indigenous worldview,[24] even though the rights of Nature movement does not necessarily originate from (nor necessarily accord with) Indigenous custom,[25] and often ignores or obscures Indigenous agency and difference.[26]

A common criticism of existing legal personhood models, like those in Aotearoa New Zealand, is that the settler state determines the extent and manner in which legal pluralism and 'First Law' are recognised.[27] Indigenous scholars, such as Carwyn Jones, have pointed out that while the Urewera and Awa Tupua settlements establish a framework that reflects a Māori perspective on human relationships with the natural environment, this does not amount to the kind of recognition of Māori legal traditions that is necessary to establish a just relationship between Māori and the Crown.[28] Legal personality is thus perceived, to an extent, as an imposed colonial legal construct, distinct from the Māori worldview that sees natural features possessing their own *mauri* (or life force).[29]

Conversely, however, some authors point out that concerns with existing cases where resources have been recognised as legal persons turn on the design and conditions of the surrounding legal and institutional frameworks,[30] and that the conceptualisation of natural resources as living, dynamic and ecosystems in these often 'relational'[31] models is broadly reflective of locally relevant Indigenous belief systems.[32] As a result, the recognition of legal personhood for Nature in general and rivers in particular does not need to *necessarily* be at the expense of other transformative social and political agendas that may be pursued in parallel, such as, for example, distributive Indigenous claims with respect to natural resources.[33]

[19]See Ducarme and Couvet (2021), p 824.
[20]Birrell and Dehm (2021), p 18.
[21]Tănăsescu (2020) pp 431–434; Coombes (2020) para 33.
[22]Marshall (2020), p 10; Jones (2016), p 176.
[23]Boyd (2017).
[24]See, eg, Boyd (2017); Guzmán (2019).
[25]Macpherson (2019).
[26]O'Donnell et al (2020), pp 412–413.
[27]Macpherson (2021).
[28]Jones (2016), p 98.
[29]Jones (2016), p 98. See also, in the Australian context, Barcan (2020), p 824.
[30]See O'Donnell and Macpherson (2018), p 35.
[31]See Milgin et al (2020); Macpherson (2019); Tănăsescu (2020).
[32]Martuwarra RiverOfLife et al (2020); Te Aho (2009); Morris and Ruru (2010); Watts (2013); Milgin et al (2020), p 1211; Salmond (2017), p 299. See also James (2020), p 2.
[33]See Clark (2017). Clark addresses the concern that the water justice movement has been 'deradicalised' by subscribing to rights talk, drawing on a comparative study to argue that more radical agendas may be pursued in parallel to making

A final, more theoretical, critique advanced against the recognition of legal personhood for Nature revolves around the classical distinction between *natural* and *artificial* persons in law, which, albeit both historically situated legal creations, still dominates the contemporary legal landscape.[34] Neither of these two categories, however, is satisfyingly capturing the plurality of discourses currently surrounding the extents and limits of personhood at law, with challenges emerging from animal rights, environmentalism, artificial intelligence and a renewed interest in corporate personhood.[35] The limits of a traditional conception of legal personhood are made particularly bare in relation to Nature, and thus Mari Margil proposed, in 2018, to constitute an entirely novel category of personhood, one that she provisionally and experimentally termed '*nature personhood*'. However, given the linguistic proximity with the term '*natural*' (person) traditionally attributed to humans alone, another tentative and alternative term has been proposed to capture the shift toward a novel category of personhood for natural elements, that of an *environmental* (or *ecological*) *person*.

3. The rise of *environmental* persons (the roman *persona*, and the common law tradition)

Within the rights of Nature discourse, the idea of Nature (or some of its specific features, such as a river or a forest) as a 'legal person' emerged around 2014 and came to the fore around 2017, when a number of rivers became 'legal persons'. However, the idea of a river (or, indeed, of Nature as a whole) as a 'person' needs to be placed within its historical legal context, for the concept to be fully articulated.

The idea of a 'person' at law is rather distinct in the civil and common law tradition: in the former, it is often rather intuitive to understand 'persons' as abstract, primarily codified, entities. Roberto Esposito writes that in Roman law, where the concept is to be originally located, 'no human being was a person by nature … since human beings arrived into life from the world of things, [and] they could always be thrust back into it'.[36] As a result, 'the concept of *persona* … is necessary in law in order to separate the identity of a real living being from that of a purely artificial, fabricated role that is reserved and instituted at the level of juridical existence'.[37] Therefore, the original concept of the person, often articulated around the metaphor of the mask (what Hannah Arendt identifies as the πρόσωπον – or *prosopon* – the mask ancient actors used to wear in a theatrical play),[38] is one whereby 'the human being is not a person before the law because he [*sic*] is a human being, but because the law calls him or her "person".'[39] The emergence of corporate personality as an extended category of legal personhood, which began with the institution of the *universitas* in the eleventh century CE and 'accelerated with the growth of commerce throughout Europe, as kings and emperors granted charters [(as a result of which, f]rom then on, corporations other than church

pragmatic use of what avenues currently exist. See also Macpherson (2019) for an exploration of the potential complementarity of legal strategies for Indigenous jurisdiction and distribution rights in water.

[34]Kurki and Pietrzykowski (2017).

[35]See Kurki (2019).

[36]Esposito (2012), p 3.

[37]Mussawir and Parley (2017), p 47.

[38]Arendt (1963).

[39]Gaecker (2016), p 295.

institutions could also hold property, enter into contracts in their own name, govern themselves by boards, and, if necessary, sue and be sued)',[40] gave rise to the current dichotomy that currently exhausts the possibilities of personhood accepted by the Western legal tradition: the *natural* person (i.e. any human) and the *artificial* person.[41]

Unlike the civilian tradition, with its juridical and theological underpinnings, at common law, the concept of legal personhood evolved far more pragmatically,[42] as an instrumentalist response to emerging problems of insecure estates. Despite the proclivity of the common law to privilege security of title (seen in its original feudal structure, or devices such as the fee tail estate or joint tenancy) a number of practical flaws necessitated (and presaged) the arrival of the common law's legal person, and its policy objective of perpetual succession in certain contexts. Michael Welters argues that the legal person first appeared in the common law in the fifteenth century, with Henry VI's charter to the Corporation of Southampton in 1445.[43] Welters identifies two key characteristics of the common law legal person: firstly that it requires *state sanction* to exist (originally via royal charter, now legislation),[44] and, secondly, that its attribute of *perpetual succession* was (and remains) its core rationale. The ability of a legal person to manage its own affairs, and critically 'hold *property* without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyances'[45] lies at the pragmatic heart of the common law's imaginings of the legal person.[46]

In the international arena, the crucial notion of the 'subject' differentiates between a Nation-State and all other entities, with subjectivity and international personhood being inherently ancillary to the sovereign authority of the State. The United Nations, for instance, was declared by the International Court of Justice as a legal person, but only by virtue of its Charter that States had drafted and enacted as international law.[47] The concept of personhood at international law has thus more limited scope, albeit international instruments have been inventive in using the idea of person.[48]

Given the historical *milieu* within which the current concept of the 'legal person' emerged, the manifold critiques to its application to Nature are not surprising.

[40]Gaecker (2016), p 295.

[41]Though it is important to note that artificial does not mean fictitious. An artificial person is not imaginary, but certainly real. Such distinction, more clearly present within the Civil Law family than in the Common Law, was nonetheless aptly captured by Thomas Hobbes in the *Leviathan*: 'A Person is he whose words or actions are considered, either as his own or as representing the words or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction. When they are considered as his own, then is he called a Naturall Person: And, when they are considered as representing the words and actions of an other, then is he a Feigned or Artificial person': Hobbes (1651/1987), p 83.

[42]Cf Mussawir and Parsley argue that the legal person at Roman law was not devised as 'primarily an answer to an existential puzzle'; but rather tied to a 'distinctly juridical outline that served a pragmatic transactional purpose' Mussawir and Parsley (2017), pp 47–48.

[43]Welters (2013), p 421. An early reported case on legal persons is *Case of Sutton's Hospital* (1612) 77 Eng Rep 960 (KB); 10 Co Rep 23 a, cited in Welters (2013), p 422.

[44]A contemporary example is the Body Corporate of strata schemes, brought into life by statute upon the registration of strata plans.

[45]US Supreme Court Chief Justice Marshall in *Trustees of Dartmouth College v Woodward* 17 US 518 (1819) (emphasis added), cited in Welters (2013), p 423.

[46]Famously articulated in *Salomon v A Salomon & Co Ltd* [1897] AC 22. See, eg, Lipton (2018).

[47]*Reparation for Injuries Suffered in the Service of the United Nations* (1949) ICJ Reports 174.

[48]For instance, the 1971 *Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat* required States to designate and protect important wetlands within their territories for the benefit of the international community. This in effect created a legal person by placing certain obligations on the State as custodians of the wetlands: *Convention on wetlands of international importance especially as waterfowl habitat*, opened for signature 2 February 1971, 996 UNTS 245 (entered into force 21 December 1975).

Furthermore, the very term 'person' is twofold: on the one hand, it refers to the common idea of a 'person' as a living being (generally a human); on the other hand, any right-bearing entity, at law, is a 'legal' person. Within the latter category, all human beings are *legal* persons,[49] more specifically defined as *natural* persons, while 'artificial' persons are all entities that are considered worthy of legal subjectivity. The civil law tradition is more comfortable with an artificial person being simply identified by codification, whereas in common law a 'bundle' of identifiers is often required. What has emerged as a result of the attribution of legal personhood to a number of natural features (primarily rivers) over the past four years is, therefore, a sense of discomfort with either category: natural persons are only humans, whereas artificial persons are purely abstract entities. The proposed suggestion of a novel category of an *environmental* or *ecological* person, therefore, can be readily seen as a necessary response to the currently perceived uncertainty.

4. Rivers' poetry and legal language

While the emergence of a novel category of personhood in the form of an *environmental* person is still purely speculative or aspirational, a trend in this direction is nonetheless clearly visible within the language and arguments currently advanced in relation to legal personhood having been attributed (in whichever form) to rivers around the world.

The first case to successfully invoke the rights of Nature, from which legal personhood later arose, occurred in Ecuador in March 2011.[50] The plaintiffs sued the district government for damage, erosion and flooding of the Vilcabamba River, as well as destruction of properties adjoining the river caused by road widening. Rather than rely on their status as affected landowners, the plaintiffs asserted a breach of the rights of Nature provisions in Ecuador's Constitution.[51] Although their claim, which was upheld by the Provincial Court,[52] was not directly voiced in terms of legal personhood for either the river itself or Nature as a whole, the legal subjectivity trusted upon the river as a result of the action certainly paved the way for what followed. Moreover, the case affirmed the reliance upon the Andean concept of *sumak kawsay* (or *buen vivir*), departing from the more traditional Western legal language Ecuadorian courts had employed until then. In fact, some authors suggest that the court articulated a 'biocentric vision that prioritizes Nature in contrast to the classic anthropocentric conception in which the human being is the center and measure of all things, and where Nature was considered a mere provider of resources'.[53]

The Whanganui River case represents the first case of legal personhood explicitly vested upon a river, and, possibly even more importantly, is a leading example of law's ability to transcend traditional ideas of natural resource rights and governance via the incorporation of concepts arising from Indigenous law. The river, known as 'Te Awa Tupua' by the various *iwi* (tribes) connected to it, was recognised as a legal person in 2017 as part of a Treaty of Waitangi settlement between the Crown and the river

[49]However, the authors acknowledge that in many instances the law continues to deny full legal personhood to human persons in multiple ways. See, e.g. Naffine (2017), pp 15–28; Lindroos-Hovinheimo (2017), pp 29–46.
[50]*Wheeler c. Director de la Procuraduria General Del Estado de Loja*, Juicio No 11121-2011-0010.
[51]Burdon and Williams (2016).
[52]The court then ordered the district government to undertake remedial action to repair the damage done to the river, and to establish a committee of government officials to oversee the implementation of the orders.
[53]Kauffman and Martin (2016), p 16.

iwi.[54] The grievances included Crown obstruction of *iwi* access to the river for food gathering, navigation and ceremonial uses, and the impact of settler navigation, resource extraction and hydroelectric development in the catchment.[55] The *iwi* took their claims in relation to the river to the Waitangi Tribunal in the 1990s, which the Tribunal reported on in 1999.[56] In its findings, the Tribunal framed the interests of the Whanganui *iwi* in the river in terms of 'ownership' of a 'single and indivisible entity comprised of water, banks, and bed',[57] and recommended the return of river ownership to the Whanganui *iwi*. During the long negotiations that followed, the Crown maintained that the river must remain vested in the Crown on behalf of the New Zealand public.[58] As a compromise, the settlement between the Crown and Whanganui *iwi* provided that the river would be given its own legal personhood, with ownership rights vesting in the river itself.[59]

The *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (NZ) recognises the Whanganui River and its tributaries as 'an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and meta-physical elements',[60] and then 'declares' that Te Awa Tupua is a 'legal person', which has 'all the rights, powers, duties, and liabilities of a legal person',[61] which are exercised by the 'human face of the river', another entity called 'Te Pou Tupua', charged with acting in the river's interests.[62] The Te Awa Tupua Act recognises the conceptualisation of the river in *Tikanga Māori* (Māori customary law), which provides for reciprocal obligations between interdependent people and living natural resources based on cultural values of *whanaungatanga* (kinship)[63] and *whakapapa* (genealogies),[64] as distinct from utilitarian colonial laws for resource use. The legislation also reflects the spiritual beliefs of the *iwi*, by recognising the river's 'metaphysical' as well as physical elements. This approach, drawing on *Tikanga Māori,* recognises that the river has *mauri* (an intangible life-essence),[65] and that superhuman, 'revered water creatures of extraordinary powers', called *taniwha,* live in the river and are themselves considered to be ancestors.[66] The Waitangi Tribunal explains the connections between these spiritual forces and legal rights, as, for example, the presence of *taniwha* is connected to the territorial authority and validity of those *iwi* of the river.[67] One definition provided for the word '*Tupua*' in *Te Reo Māori* (the Māori language) is 'supernatural', alluding to the living state of the river.[68] The Waitangi Tribunal described the 'Māori comprehension of rivers' in

[54]Whanganui Iwi and The Crown (2014).
[55]Waitangi Tribunal (1999), pp 55–56.
[56]Waitangi Tribunal (1999).
[57]Waitangi Tribunal (1999), p 337.
[58]This has been provided for in New Zealand law: *Water and Soil Conservation Act 1967* (NZ) s 21; *Coal Mines Amendment Act 1903* (NZ) s 14; *Water Power Act 1903* (NZ) ss 2, 5; *Resource Management Act 1991* (NZ) s 354. See Macpherson (2019), ch 5.
[59]Whanganui Iwi and The Crown (2014).
[60]*Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (NZ) s 12.
[61]*Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (NZ) s 14.
[62]*Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (NZ) ss 18, 19. One representative on Te Pou Tupua is to be nominated by the Crown and the other by the Whanganui Iwi, who are required to make decisions by consensus.
[63]Williams (2013), p 3.
[64]Tomas (2011), p 228. This account is not exhaustive and does not claim to be representative of all Māori, as there is local variegation. For a discussion of Māori cosmologies see Marsden (2003), pp 16–20; Salmond (2014).
[65]Waitangi Tribunal (1999), p 39.
[66]Waitangi Tribunal (1999), p 42.
[67]Waitangi Tribunal (1999), pp 43–44.
[68]See definition of 'Tupua' (depending on context): Māori Dictionary, 'Tupua' https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=tupua.

its report on the Whanganui River claims in language that reflects the living, sacred and ancestral elements as well as the idea of 'voice':[69]

> The relationship between the people and the river might therefore be described as god given, at least in their eyes, calling for respect between people and the natural world as Maori saw it, and in which the river is a living being or tupuna [*ancestor*] with its own mauri [*life force*] and spiritual integrity. People speak and listen to it, for the water is so much their blood as to produce a state of communication.

The Indian cases of *Mohd. Salim v State of Uttarakhand*[70] and *Lalit Miglani v State of Uttarakhand*,[71] which recognised the Ganges and Yamuna Rivers and their tributaries, as well as their glaciers and surrounding environmental features, as juridical persons, are uncertain in terms of legal standing[72] but significant in their normative impact. The judges in these cases drew creatively on both New Zealand's rights of nature legislation and British colonial precedent that had anthropomorphised Hindu deities and religious idols by treating them as juristic persons in order to simplify property disputes. Kelly Alley argues by blending rights of Nature and colonial deity's rights frameworks, and grounding them in Hindu notions of sacred ecology, the Indian constitutional right to life and the related environmental stewardship obligations of the Directive Principles into the Fundamental Rights, the judges created something entirely new for the strategic purpose of enforcing river and broader resource conservation.[73]

The concept of a river as a living entity in its own right also made its first appearance in the Australian state of Victoria in 2017, when the Victorian Parliament enacted the *Yarra River Protection (Wilip-gin Birrarung murron) Act 2017*.[74] Although limited to the Act's title and preamble, this was the first time that Indigenous language had been included in Victorian legislation.[75] *Wilip-gin Birrarung murron* translates as 'keep the Birrarung alive' in Woi-wurrung language, the language of the Wurundjeri, the traditional owners of much of the Yarra River. For the Wurundjeri people, the Birrarung is 'a river of mists and shadows',[76] and the Act's preamble, as translated, emphasises their connection with the Birrarung as a living entity:

> We the Woi-wurrung, the First People, and the Birrarung, belong to this Country. This Country and the Birrarung are a part of us. 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.

This sense of deep, ancestral connection is further reflected in the Act itself, which provides 'for the declaration of the Yarra River … for the purpose of protecting it as one

[69]Waitangi Tribunal (1999), p 45.
[70]*Mohd Salim v State of Uttarakhand & others* (2017) WPPIL 126/2014 (High Court of Uttarakhand).
[71]*Lalit Miglani v State of Uttarakhand & Others* (2017) WPPIL 140/2015 (High Court of Uttarakhand).
[72]See O'Donnell (2018).
[73]Alley (2019), pp 502, 507–508.
[74]This idea of a living natural entity has since been recognised in the *Great Ocean Road and Environs Protection Act 2020* (Vic) s 1(a).
[75]Aboriginal language has since been used in the preamble, but not the title, to the *Great Ocean Road and Environs Protection Act 2020* (Vic). This is likely because the area is in the traditional country of two traditional owner groups, the Eastern Maar and the Wadawurrong. The preamble, however, is written in both languages.
[76]Wurundjeri Council (2018). The policy itself is undated, however it was launched at the same time as the Community Vision on 31 May 2018: Lisa Neville, 'Community Vision to Shape the Future of Yarra River, http://www.lilydambrosio.com.au/media-releases/community-vision-to-shape-the-future-of-yarra-river/.

living and integrated natural entity'.[77] Furthermore, the protection principles set out in the Act require that 'Aboriginal cultural values, heritage and knowledge of the Yarra should be acknowledged, reflected, protected and promoted'.[78]

The 2016 *Atrato* case[79] in Colombia (as well as the scores of similar cases that followed since) represents one of the clearest articulations of the conceptual shift toward a novel conceptualisation of personhood. Its emphasis on history as a whole is 'a clear testimony to the relevance that history plays in the civil legal tradition, which is much more focused on grand narratives than the common law'.[80] Moreover, in inscribing the judgment within a Colombian jurisprudential tradition that, over two decades, had articulated an 'Ecological Constitution', the court asserted that

> the protection and conservation of biodiversity is necessarily connected to the preservation and protection of the ways of life and cultures that interact with such biodiversity … the protection and preservation of cultural diversity is [thus] an essential premise for the conservation and sustainable usage of biological diversity, and vice versa.[81]

This assertion, focused on the relationship of profound unity between Nature and the human contained in the pursuit of biocultural rights, led the court to embrace the cultural biodiversity of Indigenous and afro-Colombian ethnic communities, 'whose ontologies articulate a sense of interconnectedness to place [as well as] the special position occupied by Indigenous and ethnic communities in relation to the environment',[82] as central to the effective protection of the river and its manifold communities. Indeed, the people of Chocó who live alongside the Atrato River depend on the river for their physical and spiritual sustenance,[83] and have distinct relationships with the river not just as their ancestral territory, but as a 'space to reproduce life and recreate culture'.[84] The shift from a materialist ontology toward a pluralist, ecological and integrated worldview is felt throughout the entirety of the judgment:

> only an attitude of profound respect for and humility toward nature, its component elements, and its integrated cultures allow[s] … engage[ment] with them in just and equal terms, abandoning all concepts limited to the utilitarian, the economic or the efficient.[85]

In 2019, the High Court Division of the Bangladesh Supreme Court ruled that all the rivers in Bangladesh had the status legal persons and living entities.[86] His Honour Justice

[77] *Yarra River Protection (Wilip-gin Birrarung murron) Act 2017* (Vic) s 1(a).
[78] *Yarra River Protection (Wilip-gin Birrarung murron) Act 2017* (Vic) s 12(1). 'Reflected' is an odd word to use here, one suspects it may have been intended to be 'respected'. The obligation on the Woi-wurrung to 'keep the Birrarung alive and healthy' is facilitated [in part] by having Indigenous voices on the Birrarung Council, established under the Act to advise the Minister on the operation of the Act, and 'to advocate for the protection and preservation of the Yarra River'.
[79] *Center for Social Justice Studies et al v Presidency of the Republic et al* (2016) Judgment T-622/16, Constitutional Court of Colombia.
[80] Clark et al (2019), p 805.
[81] *Center for Social Justice Studies et al v Presidency of the Republic et al* (2016) Judgment T-622/16, Constitutional Court of Colombia at 43–44.
[82] Clark et al (2019), p 805.
[83] Hernandez (1995), p 12.
[84] *Center for Social Justice Studies et al v. Presidency of the Republic et al* (2016) Judgment T-622/16, Constitutional Court of Colombia at 165.
[85] *Center for Social Justice Studies et al v. Presidency of the Republic et al* (2016) Judgment T-622/16, Constitutional Court of Colombia at 43.
[86] *Human Rights and Peace for Bangladesh v Government of Bangladesh and others* [2016] HCD (WP No. 13989/2016); translations from Bangla as per Islam and O'Donnell (2020).

Ashraful Kamal has since spoken of the urgency of his ruling and declared that it 'breaks my heart to see the deterioration of the condition of the rivers with which I had such fond memories'.[87] Moreover, the court explicitly linked life and water, and implied that rivers are capable of being killed:

> Killing a river is tantamount to our collective suicide; killing a river is killing both the present and the future generations. River polluters and river encroachers are the enemy of the country, they are the enemy of the freedom and they are the enemy of the humanity. River polluters and river grabbers are the murderer of the entire humanity, and they are the killer of civilisation.[88]

Towards the end of the case, after holding that the river grabbing and pollution of the Turag River has reached such a level that compelled the court to declare it, and all the rivers of Bangladesh to be a legal person and a living entity, the court concluded by recognising that the very existence of Bangladesh is dependent on the existence of the rivers. The court wished

> for the rivers to flow uninterruptedly, for the rivers to see their varied pictures with recurring ebb and flow tides; for the boatmen to sing Bhatiyali song [traditional navigational song] in the rivers with their hearts' content; for the busting boys of Bangla to go on the rampage in the rivers with their hearts' content; for the fishermen burst into laughing … for the boatmen to sleep carelessly with the murmuring sound of the rivers; and for the Bangla people to explore the silver beauty of Bangla by roaming in the rivers with a sailing boat.[89]

The engagement with the legislative and judicial encounters with legal personhood attributed to Nature and natural features (rivers in particular) unequivocally shows that the personhood all these cases speak of does not fall neatly within the classical Western dichotomy of legal personhood described in the previous section. The emergence of an *environmental* person seems to be bursting from the language adopted in many disparate jurisdictions. Moreover, whilst these courts and legislators use words to explain the significance of the rivers under their consideration, they also help readers rise above syllables and sounds and explain something more, and deeper, than just their physical and material emanations. In their use of language, these courts recognise the deep and intrinsic value, the spirit of the rivers, and the continuities through time and space that they also represent. The respect for these river shines through in these judgments and statutes, not just in terms of their physical grandeur and beauty, but also and more so in terms of them being alive, full of potential that is yet to be appreciated and realised, and creative in their interaction with the communities that rely on them. As a result, the often-aspirational conceptualisation of personhood these cases present seems to be gesturing toward an even more distinct category of personhood, one in which the plurality of worldview often demonstrated by the many Indigenous peoples involved is reconciled in novel terms.

[87]The Daily Star, 'Protecting Rights of Rivers: Turning intention into action. The Daily Star' https://www.thedailystar.net/law-our-rights/news/protecting-rights-rivers-turning-intention-action-1998201, 20 November 2020.
[88]*Human Rights and Peace for Bangladesh v Government of Bangladesh and others* [2016] HCD (WP No. 13989/2016); translations from Bangla as per Islam and O'Donnell (2020), p 277.
[89]*Human Rights and Peace for Bangladesh v Government of Bangladesh and others* [2016] HCD (WP No. 13989/2016); translations from Bangla as per Islam and O'Donnell (2020), pp 282–283.

Tom Goldtooth writes that '[w]ater is inexpressibly sacred. Water has spirit and water has life – water is life – water has rights that are recognized by Indigenous peoples'.[90] The oldest living cultures in the world continue to recognise rivers as sacred, and as living beings, in multiple ways. Vanessa Watts describes this mode of understanding the world as 'Place-Thought', which unites theory and praxis and determines agency (and reciprocal obligations) in creation.[91] In Australia, for example, First Nations peoples of the Martuwarra Fitzroy River recognise that the river is already a living being with a right to life and flow, and as such is honoured as a sacred ancestor. In looking beyond merely the human as having merit, there is capacity (and obligation) to have a relationship with totemic entities (or *jarriny*). This concept of sacred waters is also reflected in the claims by the Lakota Sioux of the Standing Rock reservation in North Dakota, whose campaign included the slogans, 'water is sacred' and *mni wiconi* – water is life. Zenner explains that '[m]ni wiconi summons the idea of the sacredness of waters that sustain human beings, communities, and more-than-human ecosystems'.[92] The agency of the totem, and the recognition that it can teach us, is also echoed in Watt's description of First Woman and Sky Woman for the Haudenosee and Anishinaabe. Pointedly, Watts adds that Euro-Western interpretation of Indigenous thought can collapse the agency of non-humans: '[i]n this relationship with dirt, humans are responsible to land the way an owner might be responsible for a pet. This type of dirt is not First Woman; it is a plaything asking for attention'.[93]

This growing, and inherently pluralist, awareness must surely cast a new and wider net across the globe in terms of what constitutes 'Nature' in general, and a river in particular. The law is being used creatively to train human beings to listen, pay attention to, and learn from the river. Significantly, at the same time, this new net also deeply connects with stories that have always connected Indigenous peoples to their land, rivers, trees, and totems. These stories recognise that time is not just a linear emanation, but at any point 'in time' a river can also connect us to its past. The bridge between the past and present is ever more apparent in the idea of allowing ancestors to cast themselves upon us and our consciousness. Whilst a river holds meaning for itself with or without us, a novel idea, that of an 'ancestral person' potentially connects the river's life with the peoples whose lives also embody the river and its existence.

All the cases briefly introduced in this section led the authors of this paper not only to note the clear emergence of a novel category of personhood that aims to transcend the existing Western dichotomic of *natural* and *artificial* personhood, but also to imagine a category of personhood capable of existing at the pluralist intersection of colonial and pre-colonial legal orders, that of an *ancestral* person.

5. The person and the first law tradition: the emergence of the *ancestral* person

The idea of an *ancestral* person is thus proposed as a novel and intersectional category of legal personhood located at the encounter between colonial legal systems and First Law.

[90]Goldtooth (2015), p 15.
[91]Watts (2013), p 22.
[92]Zenner (2020), pp 42, 46.
[93]Watts (2013), p 29.

It is important to note that this conceptual category is *neither* a creature of the colonial Western legal tradition *nor* of First Law, but rather is a conceptual tool to be negotiated as a bridge between the two. In order to establish the parameters of such negotiation, we want to begin by offering a few preliminary reflections.

Indigenous rights to natural resources are often described as being 'ancestral' in nature, based on a deep spiritual connection between people and resources handed down across generations, placing an obligation on people to govern and care for the resources for present and future generations.[94] The term 'ancestral' is typically defined as meaning 'relating to, or inherited from an ancestor',[95] and has underpinned conceptions of Indigenous rights in International treaties (such as the International Labour Organisation's Convention 169 on the Rights of Indigenous and Tribal Peoples),[96] as well as the Indigenous land rights jurisprudence arising from it.[97] However, recognising pre-existing, 'ancestral' rights raises inevitable tensions around continuity, because of the period of time that has elapsed since colonisation.[98] At times, this framing of Indigenous interests as 'ancestral' has been used by States to exclude Indigenous territorial claims that cannot be positively proven through continuous lines of succession since pre-colonial times, which has led to the 'freezing' of Indigenous territorial interests.[99] An example of this is found in Chile, where Indigenous rights to water are framed as 'ancestral rights', and must be proved to have existed since 'time immemorial'.[100] The same problem occurs in the case of Australian native title rights to water,[101] which must be proven pursuant to the maintenance and observance of traditional laws and customs that have been substantially maintained since the colonial claim to sovereignty.[102] This restriction of 'ancestral' rights has led to the ongoing dispossession of Indigenous lands.[103]

In the Australian context, concerns have also been raised that a turn to rights of Nature discourse will result in the separation of land and waters from Indigenous people rather than respecting their sovereignty and empowering them to carry out their obligations to Country.[104] Other scholars have more broadly argued that the deployment

[94]See, eg, Tobin (2014), p 141.
[95]Merriam-Webster, 'Definition of ancestral' https://www.merriam-webster.com/dictionary/ancestral.
[96]*Convention (No 169) concerning indigenous and tribal people in independent countries*, opened for signature 27 June 1989, 1650 UNTS 383 (entered into force 5 September 1991).
[97]See, eg, *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua*, Inter-Am. Ct. H.R. (Ser. C) No. 79 (Judgment on merits and reparations of 31 August 2001) [127]–[128]; *Case of the Saramaka People v Suriname,* Inter-Am Ct HR (Ser C) No 18 (17 September 2003) [96]: '[t]he foundation of territorial property lies in the historical use and occupation which gave rise to customary land tenure systems'.
[98]See Macpherson (2019), ch 4.
[99]See generally Young (2008), pp 45, 85–90.
[100]See Macpherson (2019), ch 7.
[101]See Macpherson (2019), ch 7.
[102]See generally *Mabo and Others v The State of Queensland [No 2]* (1992) 175 CLR 1 ('*Mabo*')at 114–115, 189 (Toohey J). The approach taken in the United States jurisprudence is that the source of 'indian title' is the Indigenous group's exclusive use and occupation of land over a long period of time. See, eg, *United States v. Santa Fe Pacific Railroad Co.,* 314 US 339 (1941). The Canadian Aboriginal title cases also emphasise occupation of land prior to the acquisition of sovereignty as the source of a *sui generis* title*: Calder v Attorney-General of British* Colombia [I9731] SCR 313; 34 DLR (3rd) 145 at 187–190; *Delgamuukw v British Colombia* 3 SCR 1010, 1083, 153 DLR (4th) 193 at 241–253; *Tsilhqot'in Nation v British Colombia* [2014] SCC 44 [14].
[103]But see *Tsilhqot'in Nation v British Colombia* [2014] SCC 44 [24], [45]. In that case the Supreme Court of Canada held that in terms of Canadian Aboriginal title continuity is only a requirement where current occupation is used to establish an inference of pre-sovereignty occupation. The Supreme Court explains at [45], 'Continuity simply means that for evidence of present occupation to establish an inference of pre-sovereignty occupation, the present occupation must be rooted in pre-sovereignty times. This is a question for the trier of fact in each case'.
[104]Marshall (2020).

of legal *personhood* for Nature has led to the law conceiving of Nature in distinctly human terms – and, relatedly, to conceiving rights in distinctively liberal terms.[105] Tănăsescu emphasises that 'the way in which we think of the entities that populate the law matters a great deal … [and] potentially stifles the politically radical act of extending the circle of entities recognized by the law'.[106] He then questions whether Indigenous ontologies, including a relational approach to Nature and selective 'anthropomorphism can be aptly accommodated within the liberal concept of legal person'.

Despite these critiques, many scholars ultimately adopt a nuanced approach to the strategic use of rights discourse. Here the question of whether to risk engaging with the system 'partly comes down to an assessment of whether they have the power to effect genuine change through this kind of engagement', which in turn depends on whether one adopts a centralist or pluralist approach to law.[107] A pluralist approach, whereby legal norms are constructed by a multiplicity of actors,[108] opens up the possibility of radical change, even when faced with the risk of deradicalization. Balakrishnan Rajagopal, for example, recognises the plurality of influences in the ongoing creation of legal norms in his argument for the production of an 'international law from below'.[109] Ultimately, Tănăsescu adopts a similarly nuanced approach by highlighting the New Zealand example of the *Te Urewera Act of 2014*, which establishes Te Urewera as a legal *entity* rather than *person.* He argues that this is one path of avoiding the pitfalls of allowing Indigenous law and ontology to become too entangled with liberal notions of personhood and rights.[110] In this example, the Act is a vehicle through which the local Māori Iwi have been able to create space not only for a more relational ontological approach to Nature, but also to claim power through the governance structures and processes that have emerged from the Act.

In Australia, one might ask whether the *Native Title Act*, for those Indigenous peoples who can meet the high threshold for proving connection to their ancestral lands noted earlier, can recognise a form of ancestral personhood, given that it provides for the recognition of traditional laws and custom in relation to land and waters. However, it is readily apparent that the *Native Title Act* (at least in its current form) does not deal well with legal pluralism; it is structurally and philosophically ill-equipped to give legal recognition to the concept of the ancestral person. Not only is the Act ultimately anthropocentric in its orientation, but also it is premised on a separation between land and waters, a premise which is antithetical to Indigenous world views.[111] Rights and interests under traditional laws and customs can only be recognised by the Act insofar as they do not 'fracture a skeletal element of our legal system',[112] and thus, accordingly, the Act inevitably reflects a colonial conceptualisation of the environment.[113] Determinations

[105]See, eg, Mussawir and Parsley (2017), p 46; Tănăsescu (2020), pp 438–439.
[106]Tănăsescu (2020), p 438.
[107]Clark (2017), p 246.
[108]Griffiths (1986), p 3.
[109]Rajagopal (2003).
[110]Tănăsescu (2020), pp 443–446.
[111]It is worth noting that the NTA was a legislative response to the landmark 1992 High Court decision in *Mabo [No 2]* in which the concept of 'terra nullius' (land belonging to no-one) was finally put to rest. *Mabo v Queensland [No 2]* (1992) 175 CLR 1 was a major step forward for Indigenous Australians as it recognised rights and interests held in relation to land and waters under pre-existing traditional laws and customs. It was handed down following decades of agitation for land rights which had resulted in numerous but piecemeal state and territory laws.
[112]*Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 43 (Brennan J).
[113]*Native Title Act 1993* (Cth) s 223(1)(c).

of native title typically limit the recognition of water rights to a 'non-exclusive right to take, use and enjoy that water'[114] or to take and use water 'for personal, domestic and non-commercial communal purposes'[115] (or variations thereof). Moving away from these formulaic and anthropocentric descriptions of native title rights to water to encompass a more holistic conception of Country appears unlikely.[116] In this sense, existing native title regime may be helpful in giving a voice to native title holders or claimants,[117] but despite recent judicial attempts to ameliorate some of its limitations,[118] is insufficient to capture the complexity of the normative and legal worldviews underpinning such regimes.

The proposed concept of an *ancestral* person, therefore, is offered as a dialogical interface between distinct legal orders. To aptly reconcile the distinctive worldviews represented by this pluralist intersection, any conceptualisation of ancestral personhood cannot be derivative, but rather must necessarily be dialogical and co-creative. The aspirational desire of such a novel category is to reach a point of complementary harmony and collective wisdom, while maintaining ongoing awareness of the fact that the idea of the ancestral person as a comparative tool to establish a meaningful dialogue between ontologically distinct legal orders always operates within an asymmetry of power. The concept of an *ancestral* person as a novel legal category, undoubtedly presents colonial audiences – particularly colonial *legal* audiences – with a challenge. As an intersectional concept, it is more than a simple *tertium genus* of personhood. Rather it is a concept that can only emerge from the intersection among, and dialogue with, distinct legal traditions. Its complexities, however, are far more challenging for colonial legal systems than they are for Indigenous people. As a result, the burden is placed upon colonial legal scholars to develop the conceptual tools to fully approach the very idea of an 'ancestral' person as a legal concept.

Traditional Western legal theory, in all its permutations, primarily sees law as an exclusively human affair, and one that is bounded and somewhat separate from the 'non-legal'. Not all matters fall within the category of 'the legal', to a Western legal scholar. In contrast, First Law is inseparable from the rest of existence, it cannot be severed from all other components of human life, it suffuses and permeates the entirety of a person's lived experience. This radical dichotomy is particularly apparent in the instruments and artefacts to both imagine and comprehend 'the law'. The challenge to the very narrow and limited view of what the law is constituted of, therefore, constitutes the main challenge *for colonial legal scholars*. To assist in this task, however, the tradition of comparative law can assist: Rodolfo Sacco, in the 1980s, developed the idea of the 'legal formants',[119] to identify all those elements that define the law while being situated

[114]See, eg, *Untiri Pulka v Western Australia* [2020] FCA 1051, Attachment A, O 7(b).
[115]See, eg, *Gkuthaarn and Kukatj People v Queensland* [2020] FCA 1310, Attachment A, O 5(e).
[116]In *Western Australia v Ward* (2002) 213 CLR 1 at 152 [263] the High Court held that the vesting of water in the Crown under the *Rights in Water and Irrigation Act 1914* (WA) destroyed any exclusivity. Similar vesting provisions are found in most other states and territories.
[117]Or as leverage to achieve outcomes more reflective of the ancestral person: see Martuwarra RiverOfLife et al (2020), p 566.
[118]See, eg, *Akiba v Commonwealth* (2013) 150 CLR 209 in which the High Court held that resources could be taken for any purpose. See also *Fortescue Metals v Warrie* [2019] FCAFC 177 in which the Full Federal Court made some important observations about the content and nature of native title rights, stating eg. 'The very foundation of traditional Aboriginal law and customs, or "customary law" … is in the spiritual, and the intermingling of the spiritual with the physical, with people and with land. That is how Aboriginal law works'. For a fulsome analysis of this case, see Bangnall (2020).
[119]Sacco (1991), pp 21–34.

outside its traditional boundaries. Van Hoecke invites legal scholars to what he calls 'deep legal comparison',[120] the investigation of all those elements that transcend the mere appearance of 'the law', while Kaarlo Tuori's presents a model of law as a pyramid or an iceberg.[121] According this pyramid model, the law sits at the top, and underneath it exist a host of deep and not immediately apparent principles – political, ethical and metaphysical. This implies that shifting any of those principles radically shifts the perception and the understanding of 'the legal'. All these 'formants' are necessary to begin to understand, as colonial legal practitioner, the story of Yoongoorrookoo that opened this paper is not just as a story but as a collection of legal principles that determine moral, permissible, and punishable behaviour.

6. Conclusion: the ancestral person and the living waters of the Martuwarra

The concept of the *ancestral* person presented in the previous section is an invitation to challenge the hegemonic and deeply held legal orthodoxy, while at the same time articulating First Law in terms that are recognisable within the colonial context. Once embraced in these comparative terms, law is no longer something that only humans engage with. Rather, law emerges from the endless interplay between humans and non-human 'actants',[122] whereby rivers cease to be mere abstract legal persons, and instead become active participants in the very process of legal *creation*. The description of non-human beings as alive, sacred, emotional and vibrant, which has suffused this paper thus far, differs from current posthumanist, vitalist, materialist, or object-oriented scholarship that depart from traditional cartesian dualism,[123] at least by gesturing toward an even less anthropocentric and more relational orientation.[124] Rather, ancestral stories and First Law inform and shape the theoretical positioning of this paper, in explicitly maintaining the deep relational structures that these theories call upon.

A practical instance of the application of the *ancestral* person to capture the plurality of worldviews that surround Nature is, we argue, the present story of the Martuwarra (or Fitzroy River) in the north-western Kimberly region of Australia. Against the normative message of the Yoongoorrookoo story, Anne Poelina and her colleagues describe more than 150 years of invasive colonial 'development' in the region.[125] Indeed, the interest from the agro-pastoral sector in exploiting the waters of the Martuwarra-Fitzroy River has grown over the last decade, in particular since the publication of the Australian Government's White Paper on developing Northern Australia.[126] At present (in 2021), the government of Western Australia is preparing a water allocation plan for the Martuwarra-Fitzroy catchment as a basis for responding to water licensing requests. The express governmental aim of water allocation process is to maximise the water available

[120]Van Hoecke (2004).
[121]Tuori (2002).
[122]Latour (2005).
[123]A significant body of literature exists that focuses on these various threads of posthuman, and relational philosophies. This is the not the place to list them but for a couple of examples see: Braidotti (2016).
[124]The work of Alfred North Whitehead sees everything as connected together through God: see Mesle (2008) for an introduction to Whitehead.
[125]Poelina et al (2021).
[126]Commonwealth of Australia (2015).

for abstraction while maintaining the long-term integrity of the water resource.[127] The ongoing water allocation planning process in the Martuwarra-Fitzroy catchment is, however, highly contentious, especially as Traditional Owners are only considered stakeholders while decision-making power about the future of the Martuwarra-Fitzroy River rests only with Government.[128] The Yoongoorookoo story, the Martuwarra, and the depth of Aboriginal legal and normative traditions are all silenced within this modern water governance framework, despite a commitment from the State government to protect Indigenous cultural values.

The Martuwarra and her peoples are thus left wondering when will the 'colonial war' end? In the words of late senior Elder, Butcher Wise, 'you came, you took the land, you made us slaves and now you are back for the water; what is going to be left for Blackfellas [Aboriginal people]?' The Martuwarra Fitzroy River Council (Martuwarra Council) was established in 2018 by six independent Indigenous nations to preserve, promote and protect their ancestral River from such ongoing destructive 'development'. The Council believes it is now imperative to recognise the pre-existing and continuing legal authority of Indigenous law, or 'First Law', in relation to the River, in order to preserve its integrity through a process of legal decolonisation. First Law differs markedly from its colonial counterpart, as its principles are not articulated in terms of rules, policies and procedures, but rather through stories. The story with which this paper begins thus represents an opening into the normative and legal world of the Nyikina people, gesturing toward a host of legal and normative principles that can only be explored by applying an open and dialogical comparative legal methodology.[129]

Fundamental to First Law in the Martuwarra-Fitzroy Catchment is the role of the ancestors who create and populate the Country such as the Serpents (called Yoongoorrookoo in Nyikina language).[130] These Serpents are guardians of the Country, strongly associated with water places.[131] The First Law Story of Yoongoorrookoo illustrates how the physical manifestations of the sacred ancestral being, Yoongoorrookoo, is entwined with ethics, values, custom, law, language, and inter-generational obligation, as water moves above ground, down rivers and permeates though groundwater systems.

Walalakoo Aboriginal Corporation (WAC) Elders suggest that water has meaning beyond filling the need to drink and sustain life. Water is connected to identity, culture, livelihoods, and economies. *Water is Life*, or, as many Aboriginal people call it, it is Living Waters.[132] Therefore, a central objective of the Martuwarra Council is to look after Living Waters, care for Living Waters as deeply enmeshed with human health and well-being. Living Waters are connected physically and spiritually throughout *Booroo* ('Country' in Nykina), including connections that run through the earth and aquifers. Thus, the management of rivers, billabongs, springs, soaks, flood plains and aquifers are all physically and spiritually interconnected, and based on reciprocal relationships. The Mardoowarra/Martuwarra, as well as all related values, are all strongly associated

[127]Government of Western Australia (2011).
[128]Martuwarra RiverOfLife et al (2020), pp 558–559.
[129]See Milgin et al (2020).
[130]The Nyikina creation story involving Yoongoorrookoo was told and sung by Darby Nangkiriny: see Toussaint et al (2005), and now it is held and shared by his daughters Annie Milgin, Linda Nardea, Hilda Grey and their family.
[131]Milgin et al (2020), p 1216; see also Toussaint et al (2005), p 63.
[132]Martuwarra RiverOfLife et al (in press). See also Wooltorton et al (2018); Laborde and Jackson (in review).

with water rights and responsibilities that are at once ecological, cultural and spiritual in nature.[133]

Today, the First Law of the Martuwarra, as well as culture and languages, remain fragile. New emerging storytellers are using modern technology to revive *Bookarrarra* Stories using multi-media, to reproduce stories in three-dimensional experience of sight, sound and 'feeling', or *liyan*. The concept of *liyan* incorporates at once a person's spirit, moral compass and a conscious feeling that positions someone within the cultural landscape and grounds their intuition for 'reading circumstances', 'reading people' and 'reading the Country'.[134] First Law stories, such as Yoongoorrookoo Creator of the Law, create the opportunity to adapt them in order to keep them alive an in the hearts, minds and *liyan* of Martuwarra people as well as sharing with all people a complex set of values, ethics and the Law. These First Law stories, reimagined in a digital form, create a pathway for 'freedom, ethics and civic courage', an invitation to collective wisdom, cooperation, unity, information sharing and informed consent, the 'cultural synthesis' framed by Paulo Freire.[135]

The gift of the Yoongoorrookoo story, therefore, offers as an invitation to a legal dialogue among distinct legal orders, in the spirit of an emerging 'Coalition of Hope',[136] whereby the renewed focus on First Law can provide a complimentary worldview encompassing an ethical framework that is able to ground justice and equity in a Law of relationships between human and non-human beings.[137] This invitation is paramount to the possibility of imagining, discussing and conceptualising an '*ancestral* person', whose ontological orientation is best exemplified by the Yoongoorrookoo story in relation to the Martuwarra. Far from leading to any pre-determined outcome, the negotiation of a novel category of personhood offers a creative space to counter the colonial risks of an unquestioned extension of legal personhood to Nature that Virginia Marshall aptly cautions against.[138]

The co-creation of an *ancestral* person as a novel legal category able to capture the nuances of First Law while speaking to the need of identifying a specific legal 'subject' that can be readily understood within the colonial framework inherited by the Western legal tradition is, in the present instance, instantiated in the Martuwarra. Importantly, the ideas discussed in this article were formally presented to the Martuwarra Council at the 'Council of Wisdom' workshop the Council held (partly remotely, due to the extant Covid19 restrictions) in June 2021. At the workshop, all present members of the Council endorsed the idea of an *ancestral* person as an instance of legal intersection worth pursuing and co-creating further.

The Martuwarra Council's understandings is that the Law is in the Land because it is from the stars and the earth that laws are grounded. It is therefore the Martuwarra's peoples deep and continuing relationship with nature to witness and understand why these laws were created. No one is above the Law, according to First Law in the Martuwarra, everyone is equal under the Law, and stories show Yoongoorrookoo a living entity,

[133]Milgin et al (2020).
[134]McDuffie and Poelina (2019) p 229.
[135]Freire (1998).
[136]Poelina (2020).
[137]Lim et al (2017).
[138]Marshall (2020).

a sacred ancestral being which continues to hold the Law from the Beginning of Time, *Bookarrarra*. The invitation to consider an *ancestral* person as a novel legal category, thus, may be read as a response to the pluralist opening to First Law as advocated by Yoongoorrookoo, '*So all the people can see that the Spirit of the Law is just*'.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Notes on contributors

Dr Alessandro Pelizzon is an academic in the School of Law and Justice at Southern Cross University, where he has also served in a number of management roles. Alessandro completed his LLB/LLM at the University of Turin in Italy, specialising in comparative law and legal anthropology with a field research project conducted in the Andes. His Doctoral research, conducted at the University of Wollongong, focused on native title and legal pluralism in the Illawarra region. Alessandro has been exploring the emerging discourse on rights of nature, Wild Law and Earth Jurisprudence since its inception, with a particular focus on the intersection between this emerging discourse and different legal ontologies. In addition to having published extensively in the area, he has organised numerous events in Australia on Wild Law and Earth Jurisprudence, he is one of the founding members of the Global Alliance for the Rights of Nature and of the Australian Earth Laws Alliance, and he has been a moderator at the UN General Assembly Dialogue on the Harmony with Nature. Alessandro is currently an Executive Committee Member of the Global Alliance for the Rights of Nature and an expert member of the UN Harmony with Nature program. Alessandro's main areas of research are legal anthropology, legal theory, comparative law, ecological jurisprudence, sovereignty, and Indigenous rights.

Dr Anne Poelina is a Nyikina Warrwa Traditional Custodian from the Mardoowarra, lower Fitzroy River, in Western Australia. An adjunct Professor and Senior Research Fellow at the Nulungu Research Institute at the University of Notre Dame, Poelina has worked on issues of environmental and cultural protection in the Kimberley of Western Australia.

Professor Afshin Akhtar-Khavari is a professor at the QUT Law School and Director of Research. He reads law and environmental humanities, to understand how science and creativity can contribute to developments in international law. Afshin is working on a range of projects, including writing about law and restorative inputs particularly for wetlands, as well as understanding the social life of the river red gum in the context of legal developments in Australia.

Dr Cristy Clark is a senior lecturer with the University of Canberra Law School, Australia. Her research focuses on legal geography, the commons, and the intersection of human rights, neoliberalism, activism and the environment.

Dr Sarah Laborde is a Research Fellow at the Australian Rivers Institute at Griffith University.

Dr Elizabeth Macpherson is an Associate Professor in Environmental and Natural Resources Law at the University of Canterbury. Her research interests are in comparative environmental and natural resources law, human rights and Indigenous rights in Australasia and Latin America. She has published widely on these topics including the book *Indigenous Water Rights in Law and Regulation: Lessons from Comparative Experience* (2019, Cambridge University Press). She currently co-leads two major externally-funded research projects: the Sustainable Seas National Science Challenge project funded by the New Zealand Government on *Law and Policy for Ecosystem-Based Marine Management*; and Norwegian Research Council funded project *Riverine Rights: Exploring the Currents and Consequences of Legal Rights for Rivers*.

Dr Katie O'Bryan is a lecturer in the Law Faculty at Monash University and a member of the Faculty's Castan Centre for Human Rights Law. Prior to entering academia, she worked for

over a decade as a lawyer acting for native title claim groups in both Western Australia and Victoria. She holds a Master of Laws in Environmental Law from Macquarie University and a PhD from Monash University focussing on the legal recognition of Indigenous water rights.

Dr Erin O'Donnell is a water law and policy specialist, focusing on water markets, environmental flows, and water governance. She has worked in water management since 2002 in both the private and public sectors. Erin is recognised internationally for her research into the groundbreaking new field of legal rights for rivers, and the challenges and opportunities these new rights create for protecting the multiple social, cultural and natural values of rivers. In 2018, Erin was appointed to the inaugural Birrarung Council, the voice of the Yarra River.

Professor John Page is a Professor of Law at Southern Cross University, and a scholar of critical property theory.

ORCID

Alessandro Pelizzon http://orcid.org/0000-0002-5741-3071
Elizabeth Macpherson http://orcid.org/0000-0003-1021-9930
Katie O'Bryan http://orcid.org/0000-0003-3203-7839
John Page http://orcid.org/0000-0001-7929-5208

References

Primary Legal Sources

Legislation

Coal Mines Amendment Act 1903 (NZ).
Great Ocean Road and Environs Protection Act 2020 (Vic).
Native Title Act 1993 (Cth).
Resource Management Act 1991 (NZ).
Rights in Water and Irrigation Act 1914 (WA).
Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (NZ).
Water Power Act 1903 (NZ).
Water and Soil Conservation Act 1967 (NZ).
Yarra River Protection (Wilip-gin Birrarung murron) Act 2017 (Vic).

International Agreements

Convention (No 169) concerning indigenous and tribal people in independent countries, opened for signature 27 June 1989, 1650 UNTS 383 (entered into force 5 September 1991).
Convention on wetlands of international importance especially as waterfowl habitat, opened for signature 2 February 1971, 996 UNTS 245 (entered into force 21 December 1975).

Cases

Akiba v Commonwealth (2013) 150 CLR 209.
Calder v Attorney-General of British Colombia [I9731] SCR 313; 34 DLR (3rd) 145.
Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua, Inter-Am Ct HR (Ser C) No 79 (Judgment on merits and reparations of 31 August 2001).
Case of the Saramaka People v Suriname, Inter-Am Ct HR (Ser C) No 18 (17 September 2003).
Center for Social Justice Studies v Presidency of the Republic (2016) Judgment T-622/16, Constitutional Court of Colombia.
Case of Sutton's Hospital (1612) 77 Eng Rep 960 (KB); 10 Co Rep 23 a.

Delgamuukw v British Colombia 3 SCR 1010, 1083, 153 DLR (4th) 193.
Fortescue Metals v Warrie [2019] FCAFC 177.
Gkuthaarn and Kukatj People v Queensland [2020] FCA 1310.
Human Rights and Peace for Bangladesh v Government of Bangladesh and others [2016] HCD (WP No 13989/2016).
Lalit Miglani v State of Uttarakhand & Others (2017) WPPIL 140/2015 (High Court of Uttarakhand).
Mabo and Others v The State of Queensland [No 2] (1992) 175 CLR 1.
Mohd Salim v State of Uttarakhand & others (2017) WPPIL 126/2014 (High Court of Uttarakhand).
Reparation for Injuries Suffered in the Service of the United Nations (1949) ICJ Reports 174.
Salomon v A Salomon & Co Ltd [1897] AC 22.
Trustees of Dartmouth College v Woodward 17 US 518 (1819).
Tsilhqot'in Nation v British Colombia [2014] SCC 44.
United States v Santa Fe Pacific Railroad Co., 314 US 339 (1941).
Untiri Pulka v Western Australia [2020] FCA 1051.
Western Australia v Ward (2002) 213 CLR 1.

Secondary Sources

Kelly Alley (2019) 'River Goddesses, Personhood and Rights of Nature: Implications for Spiritual Ecology' 10 *Religions* 502.
Kirsten Anker (2014) *Declarations of Interdependence: A Legal Pluralist Approach to Indigenous Rights*, Routledge.
Hannah Arendt (1963) *On Revolution*, Penguin Books.
Australian Government (date unkown) West Kimberley Place Report, Department of Agriculture, Water and the Environment.
Donna Bangnall (2020) 'Fortescue Metals Group v Warrie on Behalf of the Yindjibarndi People' 34 *Australian Environment Review* 226.
Ruth Barcan (2020) 'The Campaign for Legal Personhood for the Great Barrier Reef: Finding Political and Pedagogical Value in a Spectacular Failure of Care' 3 *Environment and Planning E: Nature and Space* 810.
Thomas Berry (1999) The Great Work: Our Way into the Future, Bell Tower.
Kathleen Birrell and Julia Dehm (2021) 'International Law & the Humanities in the "Anthropocene"' in Shane Chalmers and Sundhya Pahuja (eds), *Routledge Handbook of International Law and the Humanities*, Routledge.
David R Boyd (2017) *The Rights of Nature: A Legal Revolution That Could Save the World*, ECW Press.
Rosi Braidotti (2016) *Posthuman Knowledge*, Polity Press.
Peter Burdon and Claire Williams (2016) 'Rights of Nature: A Constructive Analysis' in Douglas Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law*, Edward Elgar.
Cristy Clark (2017) 'Of What Use is a Deradicalized Human Right to Water?' 17 *Human Rights Law Review* 231.
Cristy Clark et al (2019) 'Can You Hear the Rivers Sing? Legal Personhood, Ontology and the Nitty Gritty of Governance' 45 *Ecology Law quarterly* 787.
Commonwealth of Australia (2015) *Our North, our Future: White paper on Developing Northern Australia*, Australian Government.
Brad Coombes (2020) 'Nature's Rights as Indigenous Rights? Mis/Recognition through Personhood for Te Urewera' 2020 *Espace populations sociétés* https://journals.openedition.org/eps/9857.
Cormac Cullinan (2002) Wild Law: A Manifesto for Earth Justice, Siber Ink.
Frédéric Ducarme and Denis Couvet (2021) 'What Does "Nature" Mean?' 6 *Palgrave Communications* 14.

Roberto Esposito (2012) *The Third Person*, Polity.
Paulo Freire (1998) *Pedagogy of Freedom: Ethics, Democracy, and Civic Courage*, Rowman & Littlefield Publishers.
Jeanne Gaecker (2016) '"Sua cuique persona?" A Note on the Fiction of Legal Personhood and a Reflection on Interdisciplinary Consequences' 28 *Law & Literature* 287.
Tom B.K. Goldtooth (2015) 'Indigenous Peoples Cosmovision, Conflicts of Conquest and Need for Humanity to Come Back to Mother Earth' in Shannon Biggs et al (eds) *Rights of Nature & Mother Earth: Rights-based Law for Systemic Change*, Movement Rights, Women's Earth & Climate Action Network, Indigenous Environmental Network.
Government of Western Australia (2011) Water Allocation Planning in Western Australia: A Guide to our Process, Department of Water and Environmental Regulation.
John Griffiths (1986) 'What is Legal Pluralism?' 24 *Journal of Legal Pluralism* 1.
Juan José Guzmán (2019) 'Decolonizing Law and Expanding Human Rights: Indigenous Conceptions and the Rights of Nature in Ecuador' 4 *Deusto journal of human rights* 59.
Camilo Antonio Hernandez (1995) Ideas y Practicas Ambientales Del Pueblo Embera Del Choco, Cerec.
Thomas Hobbes (1651/1987) *Leviathan*, J.M. Dent.
Mohammad Sohidul Islam and Erin O'Donnell (2020) 'Legal Rights for the Turag: Rivers as Living Entities in Bangladesh' 23 *Asia Pacific Journal of Environmental Law* 160.
Simon P. James (202) 'Legal Rights and Nature's Contributions to People: Is There a Connection?' 241 *Biological Conservation* 108325.
Jones Carwyn Jones (2016) *New Treaty, New Tradition: Reconciling New Zealand and Maori Law*, UBC Press.
Craig M Kauffman and Pamela L Martin, (2016) 'Testing Ecuador's Rights of Nature: Why Lawsuits Succeed and Others Fail', paper presented at the International Studies Association Annual Convention, Atlanta, 18 March.
Visa A J Kurki (2019) *A theory of Legal Personhood*, Oxford University Press.
Visa AJ Kurki and Tomasz Pietrzykowski (eds) (2017) *Legal Personhood: Animals, Artificial Intelligence and the Unborn*, Springer.
Blaze Kwaymullina (2012) 'Concepts of Indigenous Holism, Logic and Evidence?', Speech Delivered at the Forum for Indigenous Research Excellence and the Institute for Social Transformation Research, University of Wollongong, 13 September.
Sarah Laborde and Sue Jackson (in review) 'Water Resource or Living Waters? Ontological Differences and the Governance of Waters and Rivers', *Local Environment: The International Journal of Justice and Sustainability*.
Bruno Latour (2005) *Reassembling the Social*, Oxford University Press.
Michelle Lim et al (2017) 'Can the Fitzroy River Declaration Ensure the Realisation of the First Laws of the River and Secure Sustainable and Equitable Futures for the West Kimberley?' 32 *Australian Environment Review* 18.
Susanna Lindroos-Hovinheimo (2017) 'Private Selves – An Analysis of Legal Individualism' in Visa AJ Kurki and Tomasz Pietrzykowski (eds), *Legal Personhood: Animals, Artificial Intelligence and the Unborn*, Springer.
Philip Lipton (2018) 'The Mythology of Salomon's Case and the Law Dealing with the Tort Liabilities of Corporate Groups: An Historical Perspective' 40 *Monash Uni Law Review* 452.
Elizabeth Macpherson (2019) *Indigenous Rights to Water in Law and Regulation: Lessons from Comparative Experience*, Cambridge University Press.
Elizabeth Macpherson (2021) 'Ecosystem Rights and the Anthropocene in Australia and Aotearoa New Zealand' in Domenico Amirante and Silvia Bagni (eds) *Environmental Constitutionalism in the Anthropocene: Values, Principles, Actions*, Routledge (forthcoming).
Māori Marsden (2003) The Woven Universe: Selected Writings of Rev Māori Marsden, Estate of Rev Māori Marsden.
Virginia Marshall (2020) 'Removing the Veil from the "Rights of Nature": The Dichotomy between First Nations Customary Rights and Environmental Legal Personhood' *Australian Feminist Law Journal* 1. doi:10.1080/13200968.2019.1802154.

Martuwarra RiverOfLife et al (2020) 'Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being' 9 *Transnational Environmental Law* 541.
Martuwarra RiverOfLife et al (in Press) 'Living Waters, Law First: Nyikina and Mangala water governance in the Kimberley, Western Australia' 25 *Australasian Journal of Water Resources* 541–568.
Magali McDuffie and Anne Poelina (2019) 'Nyikina Collaborative Filmmaking in the Kimberley: "Learning to Listen with Your Eyes, and See with Your Ears"' in Philip Morrissey and Chris Healy (eds) *Reading the Country*, University of Technology Sydney ePress.
C Robert Mesle (2008) *Process-Relational Philosophy: An Introduction to Alfred North Whitehead*, Templeton Foundation Press.
Annie Milgin et al (2020) 'Sustainability Crises Are Crises of Relationship: Learning from Nyikina Ecology and Ethics' 2 *People and Nature* 1210.
James Morris and Jacinta Ruru (2010) 'Giving Voice to Rivers: Legal Personality as a Vehicle for Recognising Indigenous Peoples' Relationships to Water' 14 *Australian Indigenous Law Review* 49.
Edward Mussawir and Connall Parley (2017) 'The Law of Persons Today: At the Margins of Jurisprudence' 11 *Law and Humanities* 44.
Ngaire Naffine (2017) 'Legal Persons as Abstractions: The Extrapolation of Persons from the Male Case' in Visa AJ Kurki and Tomasz Pietrzykowski (eds) *Legal Personhood: Animals, Artificial Intelligence and the Unborn*, Springer.
Joe Nangan and Hugh Edwards (1976) Joe Nangan's Dreaming: Aboriginal legends of the North-West.
Erin O'Donnell (2018) 'At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India' 30 *Journal of Environmental Law* 135.
Erin O'Donnell and Elizabeth Macpherson (2018) 'Voice, Power and Legitimacy: The Role of the Legal Person in River Management in New Zealand, Chile and Australia' 23 *Australasian Journal of Water Resources* 35.
Erin O'Donnell et al (2020) 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature' (2020) 9 *Transnational Environmental Law* 403.
Alessandro Pelizzon (2014) 'Earth Laws, Rights of Nature and Legal Pluralism' in Michelle Maloney and Peter Burdon (eds) *Wild Law – In Practice*, Routledge.
Alessandro Pelizzon and Jade Kennedy (2013) 'Welcome to Country: Legal Meanings and Cultural Implications' 16 *Australian Indigenous Law Review* 58.
Anne Poelina (2019) 'Country' in Ashish Kothari et al (eds) *Pluriverse: A Post Development Dictionary*, Tulika Books.
Anne Poelina (2020) 'A Coalition of Hope! A Regional Governance Approach to Indigenous Australian Cultural Wellbeing' in Angela Campbell et al (eds), *Located Research: Regional places, transitions and challenges*, Springer Singapore.
Anne Poelina et al (2021) 'For the Greater Good? Questioning the Social Licence of Extractive-Led Development in Western Australia's Martuwarra Fitzroy River Catchment' 7 *The Extractive Industries and Society* 1–12.
Balakrishnan Rajagopal (2003) *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge University Press.
Whitney Richardson and John-Andrew McNeish (2021) 'Granting Rights to Rivers in Colombia: Significance for ExtrACTIVISM and Governance' in Judith Shapiro and John-Andrew McNeish (eds) *Our Extractive Age Expressions of Violence and Resistance*, Routledge.
Deborah Bird Rose (1992) *Dingo Makes Us Human: Life and Land in Australian Culture*, Cambridge University Press.
Rodolfo Sacco (1991) 'Legal Formants: A Dynamic Approach to Comparative Law', 39 *The American Journal of Comparative Law* 1.
Anne Salmond (2014) 'Tears of Rangi: Water, Power, and People in New Zealand' 4 *HAU: Journal of Ethnographic Theory* 285.
Anne Salmond (2017) *Tears of Rangi: Experiments Across Worlds*, Auckland University Press.

Mihnea Tănăsescu (2020) 'Rights of Nature, Legal Personality, and Indigenous Philosophies' 9 *Transnational Environmental Law* 429.
Linda Te Aho (2009) 'Indigenous Challenges to Enhance Freshwater Governance and Management in Aotearoa New Zealand – The Waikato River Settlement' 20 *Journal of Water Law* 285.
Brendan Tobin (2014) *Indigenous Peoples, Customary Law and Human Rights: Why Living Law Matters*, Routledge.
Nin Tomas (2011) 'Maori Concepts of Rangatiratanga, Kaitiakitanga, The Environment, and Property Rights' in David Grinlinton and Prue Taylor (eds), *Property Rights and Sustainability*, Brill-Nijhoff Publishers.
Sandy Toussaint et al (2005) 'Water ways in Aboriginal Australia: An Interconnected Analysis' 15 *In Anthropological Forum* 61.
Kaarlo Tuori (2002) *Critical Legal Positivism*, Ashgate.
Waitangi Tribunal (1999) *The Whanganui River Report*, GP Publications.
Mark Van Hoecke (2004) 'Deep Level Comparative Law' in Mark Van Hoecke (ed), *Epistemology and Methodology of Comparative Law*, Hart Publishing.
Irene Watson (2017) 'What is the Mainstream? The Laws of First Nations Peoples' in Ron Levy et al (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform*, ANU Press.
Vanessa Watts (2013) 'Indigenous Place-Thought & Agency amongst Humans and Non-Humans (First Woman and Sky Woman Go on a European World Tour!)' 2 *Decolonization: Indigeneity, Education & Society* 20.
Michael Welters (2013) 'Towards a Singular Concept of Legal Personality' 92 *The Canadian Bar Review* 417.
Whanganui Iwi and The Crown (2014) 'Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui' https://www.govt.nz/assets/Documents/OTS/Whanganui-Iwi/Whanganui-River-Deed-of-Settlement-Ruruku-Whakatupua-Te-Mana-o-Te-Iwi-o-Whanganui-5-Aug-2014.pdf.
Joseph Williams (2013) 'Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law' 21 *Waikato Law Review* 1.
Sandra Wooltorton et al (2018) 'Living water: Groundwater and wetlands in Gnangara, Noongar boodjar' 14 *PAN: Philosophy Activism Nature* 5.
Wurundjeri Council (2018) 'Nhanbu narrun ba ngargunin twarn Birrarung: Ancient Spirit and Lore of the Yarra' https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.mw-yoursay.files/2315/8984/4614/Wurundjeri_Woi_Wurrung_Birrarung_Water_Policy.pdf.
Simon Young (2008) *The Trouble with Tradition: Native Title and Cultural Change*, Federation Press
Christiana Zenner (2020) 'Turning to Traditions: Three Cultural-Religious Articulations of Fresh Waters' Value(s) in Contemporary Governance Frameworks', in Farhana Sultana and Alex Loftus (eds), *Water Politics: Governance, Justice and the Right to Water*, Routledge.