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Alyson Smith April 13, 2021

A Reevaluation of Environmental Personhood:

Rights and Representation for Nature in Law

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Abstract

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This thesis challenges the theoretical foundation and practical application of legal personhood for nature by examining the roles of interest, speech, and representation in the conferral of rights on natural objects. I begin by questioning Christopher Stone's original argument in favor of environmental personhood on the basis of nature's clearly discernable interests and our ability to represent these interests in deliberative discourse. Then, drawing on the work of Mihnea Tănăsescu and Steven Vogel, I argue that nature's inability to engage in communicative discourse necessarily prevents the ethical representation of natural objects in law. From this argument, I further contend that any attempt to represent nature's perceived interests through legal personality distorts or misrepresents the human interests that are always at play in environmental disputes.

In the second chapter of this thesis, I explore the role of human interest in the global trend towards rights for nature and apply my critique of environmental personhood from chapter one to a case study: legal personality for Te Urewera in New Zealand. This discussion demonstrates the popular application of environmental personhood as a tool for ensuring government accountability, resource dispute resolution, and Indigenous cultural recognition rather than environmental conservation. Building on previous scholarship by Glen Coulthard and Mihnea Tănăsescu, I argue that environmental personality for Te Urewera constitutes a flawed method of Indigenous cultural recognition, as it misrepresents customary norms and conceals an entrenched colonial power dynamic beneath the guise of nature's interests. With this discussion, I conclude

that natural entities cannot be ethically represented through legal personhood, as nature's perceived "interests" are inextricable from the complex sociopolitical interests of human communities. Therefore, the actual interests of human communities in land management and conservation efforts are misrepresented and diminished in the conferral of legal rights and representation on natural entities.

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Chapter One:

The Role of Interest and Representation in Environmental Personhood

1. Introduction

In recent decades, the concept of legal personality for nature has been cast as an innovative solution to the myriad of environmental problems facing contemporary society. This legal tactic, once purely theoretical, has gained traction in courtrooms and legislative bodies around the world. However, few critics have explored the role of representation as it applies to juristic personhood for non-human natural entities. In this thesis, I explore the role of representation in environmental personhood and question whether this practice is the most appropriate means of achieving justice for polluted lands and those that depend on them. This discussion is likewise directed towards addressing contemporary implementation of legal personality in New Zealand as a means of litigating on behalf of cultural heritage sites and natural resources, which will be addressed in Chapter Two.

Beginning with an explication of Christopher Stone's original argument, which advocates for the guardianship model as a means of representing the 'legal interests' of nature, I will then challenge the central premises that support this claim: 1) it is possible to represent non-communicative, non-human objects and 2) nature has discernable, objective interests. Namely, I will counter these premises by reinforcing the distinctions among speaking subjects, organizations or groups of speaking subjects, and non-speaking objects on the basis of discernable interest and reciprocal communication. I will then address the problems associated with the representation of a non-speaking and non-human subject. Referring to Steven Vogel's environmental political theory, I will argue that the representation of non-human natural entities, and more specifically environmental personhood, grants disproportionate power to

representatives, who are doubly responsible for the interpretation of nature's 'interests' and for positioning them in a broader ethical discourse. Central to this argument is the reality that nature is a speechless entity without discernable interests that cannot be responsibly represented in discursive practices. In order to defend this claim, I will provide a more detailed critique of arguments that advocate for environmental representation in law and politics, paying special attention to the work of Alison Athens and Robyn Eckersley. I will argue, contra to Eckersley and Athens, that the ability to engage in discourse, at least in principle, is a necessary condition for representation. While acknowledging the benefits of Stone's representational model and the unfolding environmental crisis it hopes to address, it is necessary to highlight the ethical issues surrounding this method, which manifest through issues of speech and discernable interests, and to discuss alternative strategies that would deliver gains for non-human and human communities alike.

2. Christopher Stone and Environmental Personhood

Although Christopher Stone's foundational work, "Should Trees Have Standing? -- Toward Legal Rights for Natural Objects," was published nearly five decades ago, it still serves as a focal point for the contemporary debate surrounding environmental personality. Through an exposition of Stone's original argument, I will introduce the conceptual relationship between speech, interest, and representation at play in contemporary implementation of environmental personality.

In "Should Trees Have Standing?" Stone challenges the lack of political and legal rights for nature at common law and proposes a sweeping revision of requirements that currently deny legal standing or representation to natural entities in the United States. Stone's proposed revision

would "give legal rights to forests, oceans, rivers, and other so-called 'natural objects' in the environment – indeed, to the natural environment as a whole" (Stone 3). The granting of legal rights to any entity, according to Stone, involves two primary considerations: "the legal-operational aspects" and the "psychic" or "socio-psychic aspects" (Stone 4). The latter category concerns the social and ideological implications of legal rights, and it is in this section that Stone most explicitly argues that extending certain political and legal rights to nature is part of a broader process of acknowledging that nature "is like us" in the sense that it is a form of life with distinct interests and intrinsic value (Stone 29). The legal-operational aspects, however, concern specific qualifications that designate an entity as "*a holder of legal rights*" (Stone 4). While Stone's exploration of the socio-psychic aspects of personhood does touch on the role of interest, it is the legal-operational aspects of personhood that reveal its connection to representation, speech and the practical mechanisms of law; and it is this aspect of Stone's argument which I will challenge. As a result, it is important to briefly outline Stone's definition of the legal operational aspects of juristic personhood, as these criteria illustrate the pivotal role of discernable interests and the representation of those interests in Stone's conception of a rights-bearing legal person. Consequently, the legal operational aspects of personhood explain Stone's emphasis on the importance of establishing a guardianship model, under which an appointed individual or committee would be charged with deciphering the interests of nature and representing those interests in court.

For Stone, the necessary condition that any entity must satisfy in order to be considered *"a holder of legal rights"* is the willingness of some "public authoritative body… to give some amount of review" to any violation of said entity's "right" (Stone 4). Once this basic condition is satisfied, the entity must meet three additional criteria: the thing in question must be able "to

institute legal actions *at its behest*; second, that in determining the granting of legal relief, the court must take *injury to it* into account; and third, that relief must run to the *benefit of it*" (Stone 4). These legal operational aspects of personhood hinge on some degree of agency, as the entity in question must be able to pursue legal action on its own behalf. Equally important to these criteria are the interests and experiences of the agent, which inform the Court's evaluation of injury and its corresponding legal relief. The environment, Stone observes, lacks these legal privileges and is, therefore, considered an object before the law.

The way in which these aspects exclude non-human environmental parties is somewhat obvious: because natural objects cannot pursue legal action at their own behest, and courts, at least in the United States, do not recognize the standing of concerned parties without property rights over natural objects, the environment cannot be considered a holder of legal rights. In effect, Stone explains, if polluted or otherwise degraded ecosystems are to achieve any legal remedy, their cases must involve a property owner who has personally incurred damages as a result of a specific instance of pollution and, therefore, has standing (Stone 6). The individual seeking redress, if they are compelled to institute legal actions at all, must provide evidence that any harm done to the environment – a stream that borders their property, to borrow Stone's example -- is, in fact, a violation of their rights. If the individual with downstream property rights achieves some legal remedy, it may or may not have any tangible effect on the physical damages incurred, as a case may be resolved by a settlement. And, in many cases, a property owner may be opposed to pursuing legal remedy entirely due to the financial burdens or economic implications of litigation. Regardless of a case's outcome, Stone posits, the environment is not a concern to the courts, because it is not a holder of legal rights. As a result, any ameliorative effects on a polluted landscape would be implemented with the intention of safeguarding the

interests of the property owner rather than the landscape itself (Stone 4). The "rightlessness" of natural entities, therefore, makes litigation an unfruitful avenue for those seeking justice for polluted lands and those that value them in their own right (Stone 5).

In order to address these shortcomings, Stone argues that legislative bodies or courts must establish the legal rights of natural entities, so courts may directly consider the injuries incurred by natural entities and provide effective remedies. However, once rights for nature have been secured, the courts must devise a means of representing the interests of nature. While Stone discusses several means by which courts could accomplish this, he ultimately advocates for the adoption of a guardianship model. Legal guardianship, as Stone describes it, entails the appointment of a representative with special concern for the welfare of an individual or entity that is "de jure incompetent" (Stone 8). This mechanism allows a group of individuals to determine and represent the best interests of the entity under their charge, institute legal actions on its behalf, and advocate for specific remedies. According to Stone, the guardianship model "would secure an effective voice for the environment" (Stone 10). Therefore, the previous summary has outlined the way in which the criteria designating an entity as a holder of legal rights, which Stone treats as the basis of personhood, and the guardianship model acknowledge the importance of speech, interest, and representation. In addition, Stone's argument holds that the environment, although lacking agency and the capacity to speak, should be given legal rights and representation in the form of legal guardianship.

Given this incongruity, one may rightly question the validity of assigning legal personality to a non-speaking, natural object. Stone, anticipating this objection, argues that this prospect may seem inconceivable only "because until the rightless thing receives its rights, we cannot see it as anything but a *thing* for the use of 'us'" (Stone 3). This initial reluctance to

accept the status of newly minted legal persons, he argues, is a historical reality apparent in all cases of rights expansion. However, Stone's belief in the applicability of the guardianship model in cases concerning natural entities stems from its success in what he believes to be practically analogous cases: non-speaking subjects and corporations. As Stone points out, courts have established guardianship for a variety of human and non-human subjects, including "estates, infants, incompetents," fetuses, and bankrupt corporations (Stone 8). In each of these cases, an individual or entity that is incapable of speech or the management of their own affairs relies on a representative or guardian to advocate for their interests, whether they be assumed or explicitly stated. Stone argues, "by parity of reasoning," these analogous cases warrant the extension of personhood to natural entities (Stone 8). Just as corporations and human children benefit from personhood and legal guardianship, the continuous involvement of the guardian would, likewise, allow courts to gain a "deeper understanding" of relevant environmental, social and economic concerns that fall beyond the scope a specific case and grant greater power to environmental advocates (Stone 11). While this argument is appealing due to its simplicity, Stone provides little justification for these comparisons. Rather than accepting this claim, one must wonder if it is reasonable to cite the categorical expansion of personhood, which subsumed corporations and human subjects, as justification for the extension of rights to natural objects. In an effort to resolve this question, the following section will explore Stone's argument for environmental personhood, analyzing its basis on the proliferation of human rights and corporate personhood in turn.

To begin, Stone's argument for the legal representation of nature's 'interests' based on the historical progression of human rights implies that discernable interest does not distinguish human rights-bearing subjects from natural objects in any meaningful way. According to Stone,

the applicability of the guardianship model and, more generally, the extension of legal rights to nature, is the next step in the gradual liberalization of legal personage. Such a change, according to Stone, occurred as a result of an evolving culture that, over time, has recognized the intrinsic value in humanity regardless of gender, orientation, race or ability. He states, "we have been making persons of children … and we have done the same, albeit imperfectly some would say, with prisoners, aliens, women (especially of the married variety), the insane," African Americans, fetuses, and Indigenous Americans (Stone 1). Not only does this evolution illustrate the capacity for the legal system to adapt to social progress, he states, it suggests that the current exclusion of non-human natural entities from legal personhood and the guardianship model is the result of an arbitrary social construction. Legal protections and representation should, therefore, include natural, non-human objects.

At the heart of this claim is Stone's insistence that the interests of nature are readily apparent, and therefore, nature's inability to speak is no more valid a reason to reject its rights than it would be to deprive non-speaking human subjects of their rights. The analogy between human rights struggles and rights for the environment is, therefore, intertwined with the existence of nature's interests to form the primary foundation for Stone's conception of environmental personhood. Given the importance Stone and other proponents of environmental personhood place on these premises, this analysis will address them in turn. However, it is necessary to first discuss the analogy between the expansion of human rights and the fight for environmental personhood, as this exploration will raise some important distinctions between human subjects and natural objects that will form the basis for a discussion of speech, interest and representation.

3. Legal Standing and The Proliferation of Rights

While Stone does not delve into deeper explanations on his belief that the extension of rights to nature logically follows from the cultural acceptance of the personhood of all human beings and corporations, other proponents of environmental representation in law have discussed this concept at length. In "An Indivisible and Living Whole: Do We Value Nature Enough to Grant it Personhood?" Allison Katherine Athens underscores a case Stone cites in passing as evidence of the cultural contingency of personhood status. This case concerns Lavinia Goodell, who, in 1875, "petitioned the Supreme Court of Wisconsin for admittance to the bar," a privilege which was exclusive to men at the time (Athens 188). However, the court denied her petition on the basis of the "natural" limitations of her sex. In his opinion, Chief Justice Ryan declared that women, above all, belong to the realm of domesticity, and "all life-long callings of women, inconsistent with these radical and sacred duties of their sex, as is the profession of law, are departures from the order of nature; and when voluntary, treason against it" (Wisconsin Supreme Court 245). As Athens points out, this argument hinges on biological essentialism, a concept historically used to justify the objectification and oppression of many marginalized groups by appeal to 'natural law.' Athens, like Stone, argues that this case reflects the way in which women were generally viewed as objects whose invisibility served the socioeconomic interests of the actual rights holders in society. Implicit in the verdict that rejected Goodell's appeal is the belief that it would be no more inconceivable to make a legal person of nature than it would be to allow a woman to practice law. To Athens, this case underscores the way in which women, like the environment, were once considered to be categorically rightless by their nature. Therefore, like Stone, Athens suggests that the boundary delineating the rights-holding class from the rightless class is socially contingent and subject to change.

Likewise, neither Athens nor Stone consider the capacity for speech to be a legitimate basis for categorical distinction in law. Rather, Athens argues that the historical rightlessness of women and the contemporary rightlessness of nature have been artificially enforced through linguistic and cultural practices for centuries. This reality, she claims, underscores the applicability of Stone's appeal to analogy in his argument for the rights of nature, as it illustrates the way in which cultural practices arbitrarily establish categorical boundaries, which are codified in law. Specifically, Athens posits, the "naturalization of femininity" and the "feminization of nature" have occurred in tandem through language and have historically played an instrumental role in undermining women's efforts to obtain legal rights (Athens 197). Citing multiple examples of texts, Athens claims that language, colored by the synthesis of misogyny and consumption, contributed to the objectification and exploitation of both women and natural landscapes; in these texts, the male authors' descriptions of the land conjure a feminized nature that is "open to exploitation, is available and ready for men to make something of her" (Athens 198). Athens, therefore, is more concerned with the capacity of language to construct arbitrary categorical distinctions between men and a natural order, which historically subsumed the feminine. In this sense, language that inscribes one's capacity to be possessed and dominated has a tangible impact on the status of both human and non-human entities in law. While a cultural shift that is evidenced by a changing vernacular has allowed women to obtain the status of rights-holder, the same has not occurred for nature. The evolution of women's rights, argues Athens, serves as a reminder that the objectification of human beings and natural entities in language creates continuity in the struggle for value recognition among disenfranchised groups and justifies the extension of legal rights to the environment.

Indeed, Athens' focus on the case of Lavinia Goodell and the naturalization of femininity in language certainly illustrates the way in which common conceptions of personhood evolve over time and, in turn, shape the legal status of individuals that fall within those boundaries. However, the argument that this phenomenon naturally leads to the conferral or rights on nature ignores the profound implications of speech and discernable interest. While Athens acknowledges the role of speech in upholding social norms and systems of oppression, she fails to acknowledge the importance of speech and discourse in the deconstruction of those norms. And, above all, she fails to distinguish between human agents and environmental objects on the basis of clear and discernable interests, the basis of rights claims. Specifically, the struggle for women's suffrage, the abolition of slavery, and Indigenous rights were, one could argue, fought and won with speech. Therefore, to argue that the conferral of personhood status on women, or any historically marginalized group, should serve as justification for the conferral of rights on nature, as Athens explicitly does, is to 1) deny the reality that women and natural objects are epistemologically distinct and 2) ignore the role speech has played in deconstructing categorical boundaries. The distinction between human beings and natural entities based on interest, therefore, remains a major weakness for Stone's and Athens' argument by analogy.

More plausible, however, is Stone's and Athens' point that the status of corporations and other abstract entities as rights holders provides legal precedent and an ethical mandate for establishing the juristic personhood of natural entities. Stone points out that non-human entities, such as "trusts, corporations, joint ventures, municipalities, Subchapter R partnerships, and nation-states" also benefit from the three legal operational aspects of personhood (Stone 1-2). It is fair to wonder why the extension of legal rights to nature did not immediately follow the landmark court case that extended legal rights to corporations under the fourteenth amendment,

Santa Clara County v. Southern Pacific Railroad Co. (1886). This precedent-setting decision stated simply that railroad corporations are "legalistic persons with constitutional prerogatives," granting them claim to a litany of civil liberties amounting to a "Corporate Bill of Rights" (Paliewicz 195). However, while Stone and others may describe corporations as non-speaking, non-human entities, there remains the reality that corporations, although somewhat abstract, are composed of human beings that are capable of rhetoric which may be, and usually is, used to further the interests of the collective. In "How Trains Became People: Sothern Pacific Railroad Co.'s Networked Rhetorical Culture and the Dawn of Corporate Personhood," Nicholas Paliewicz claims the precedent set by *Santa Clara County* was made possible by the Southern Pacific Railroad Company's campaign to create a "rhetorical culture that expanded the boundaries of the Fourteenth Amendment" through alliances with various social and political interest groups (Paliewicz 195). Just as Stone and Athens rely on an analogy between the disparate struggles of disenfranchised groups for equal protection and the struggle of environmental theorists to establish the rights-holding status of the natural world, the Southern Pacific Railroad Company relied on a similar analogy implicit in their demonstrations of "subjective agency" within networks of influence (Paliewicz 200). This process effectively reshaped established notions of personhood by demonstrating "that legal subjectivity itself is less about singular, essentialist personhood than the multiplicity of networks" (Paliewicz 196).

While corporations and other abstract, non-speaking entities have successfully blurred social boundaries and gained the status of legal persons as a result, this reality alone is not enough to justify granting nature personhood status. Above all, there remains the reality that corporations, unlike natural, non-human entities, are capable of speech and have apparent economic, social and political interests. Specifically, Stone's appeal to corporate personhood

ignores what a chorus of critics have cited as the dangers of granting corporations constitutional protections, the most common controversy being the corporate right to freedom of speech. Famously, in *Citizens United v. Federal Election Commission,* the Supreme Court affirmed the first amendment rights of corporations by overruling existing campaign finance laws that limited their ability to engage in political speech or electioneering using general treasury funds. Although this case occurred decades after Stone authored *Should Trees Have Standing,* it offers an important warning to those seeking to expand the category of personhood. The dissenting opinion, authored by Justice Stevens, warns against "the distinctive corrupting potential of corporate electioneering" enabled by this verdict, and condemns the Court's decision to elevate "established economic interests" over "societal interests in avoiding corruption" (Epstein and Walker 699). In effect, the primary contention in the debate over the protected speech of corporations is not whether they have readily discernible interests or whether those interests should be represented in some sense, as some have questioned with the environment; the primary concern in this context is whether the representation of corporate interests, upheld in litigation and legislation, should be able to drown out or distort other societal interests.

While the risks associated with overpowering societal interests in consumer protections and fair elections do not apply in the case of environmental personhood, the controversy surrounding corporate personhood does suggest that the representation of abstract conglomerates, including the environment, has the potential to distort discourse. Specifically, this same dissent states that "the distinction between corporate and human speakers is significant," and the equal representation of competing interests between corporate actors and individual citizens has broad implications for democratic institutions (Epstein and Walker 699). Thus, while this case does not invalidate the idea of environmental representation in law or

politics, it does raise questions regarding the ethics of representing the 'interests' of abstract entities in discursive practices and suggests the need to proceed down this avenue with caution. To conclude, it does not follow that the historical expansion of human rights and the creation of corporate personhood should lead us to accept the legitimacy of environmental personhood, on these grounds alone. Now, I will address Stone's argument for establishing the guardianship model of environmental personhood on the grounds that nature has readily discernable interests. In order to better understand the complexities of representation and speech at play in this argument, I will explore different theoretical perspectives on the role of speech and interest in deliberative democracy and the representation of non-speaking subjects.

4. Speech, Interest, and Representation

To recap, it does not follow that the historical trend toward the expansion of human rights and the establishment of corporations' entitlements to civil liberties should necessarily lead us to accept the validity of Stone's representational model of environmental personhood. These claims ignore the importance of discernable interest and speech in establishing rights claims, and as a result, fail to make an important distinction between human subjects and natural objects. In addition, while there is a body of precedent that affirms corporations' rights to juristic personhood, the societal ills produced by the constitutional protections of corporate interests attest to the need for more careful consideration of this category and the degree to which the rights of the environment, if established, should be weighed against complex and competing societal interests. Furthermore, these concerns bring forth recurring questions regarding nature's claim to any legal interest. In this section I will delve into the subject of interest, explaining its relationship to legal representation and relevance to the guardianship model in more depth.

While many theorists, including Andrew Dobson[1] and Robyn Eckersley,[2] have attempted to redefine standard modes of representation in order to include and prioritize the interests of nature, I will critically examine the nature of environmental representation and environmental guardianship in light of what Mihnea Tănăsescu defines as the standard mode of representation in law and electoral systems: "a kind of correlation (or correspondence) between the interests of one party and the actions of another" ("Rethinking Representation" 41). This definition is useful, as it clarifies the concept of representation and highlights the centrality of interest in its execution. Likewise, Tănăsescu describes the relational aspects of representation, which alludes to the competition between interests that characterizes representation in deliberative processes; he states, a representative "[summons] a thing into being in virtue of select aspects deemed useful for further relations with similarly summoned beings" ("Rethinking Representation" 46). This summary functions as a reliable definition of representation, which focuses on both the unique role of interest as that which informs discourse and functions in relation to other represented groups. Based on this definition, I will proceed to demonstrate that nature cannot be classified as an 'interest-bearing' subject, and as a result, cannot be ethically represented in law or governance.

Furthermore, it is the capacity for reciprocal discourse, which is unique to human beings, that makes interests clear, discernable and actionable for representatives. And, I have previously suggested that there is a categorical distinction between human beings and natural objects based on the presence of speech and discernable interest that weakens Stone's argument for the guardianship model of environmental personhood. However, Stone anticipates this objection to the guardianship model, stating that some may reject legal representation for nature on the basis

[1] See Dobson's "Democracy and Nature: Speaking and Listening."
[2] See Eckersley's "Representing Nature."

that “a committee or guardian could not judge the needs of the river or forest in its charge” and “the very concept of ‘needs’… could be used in only the most metaphorical way” (Stone 11). Contrary to this legitimate argument, Stone patently rejects the importance of speech by claiming that natural objects have needs and interests which they clearly demonstrate. He states, for example, “I am sure I can judge with more certainty and meaningfulness whether and when my lawn wants (needs) water, than the Attorney General can judge whether and when the United States wants (needs) to take an appeal from an adverse judgement by a lower court” (Stone 11). The argument that a decorative lawn’s dependency on water illustrates the clear existence of nature’s interests is admittedly appealing in its simplicity. For Stone, then, the presence of speech has little to do with the ability of representatives to “[summon] a thing into being,” as Mihnea Tănăsescu understands it (“Rethinking Representation” 46).

However, it is just as easy to think of counterexamples in which well-intentioned human beings have acted on behalf of what they perceived to be the ‘interests of nature,’ only to cause lasting damage -- the introduction of invasive species and the suppression of forest fires, for example. This, at least, challenges the idea that the interests of nature are always readily apparent. However, Stone sidesteps concerns of misrepresenting nature’s ‘interests’ by underlining a practical reality: in order to conduct business, care for other individuals, and manage natural spaces, actors must “make decisions on behalf of, and in the purported interest of, others every day” (Stone 11). While this observation does not resolve ethical questions surrounding the representation of non-humans, it does point to the unavoidable need to utilize deliberative discourse to resolve environmental problems and defend vulnerable groups; but, as I have previously suggested and will continue to demonstrate, there is a significant categorical distinction to be made between humans and non-humans based on their capacity for discourse

and communication. For Stone, however, nature's 'interests' are discernable, and their corresponding goals are best achieved through the legal representation of environmental persons, far outweighing any concern for the possible distortion of nature's "interests" under the guardianship model.

Other theorists that advocate for the representation of environmental interests in law and politics have made this case in more sophisticated terms. For example, Robyn Eckersley's "The Discourse Ethic and the Problem of Representing Nature" grapples with the complexities of speaking on behalf of a non-human, non-speaking entity in political discourse, but affirms the moral need to do so. While Eckersley is primarily concerned with models of representation in legislative and political forums, this discussion is applicable to the debate concerning legal guardianship of natural objects, since nature can neither elect its own representatives in a legislative body nor select a legal guardian to manage its affairs. In both cases, a representative must be appointed. As a result, Eckersley's argument applies equally to both legal and legislative representation. Likewise, her analysis complements Stone's argument for extending legal representation to natural entities through the guardianship model, in that she acknowledges the limitations of representing a non-speaking object and does not argue that non-human objects have readily discernible interests. However, Eckersley does leave open the possibility that nature's interests are merely inaccessible to human beings. For Eckersley, the representation of non-human entities in law and politics is an appropriate, albeit flawed, response to the present environmental crisis.

Rather than centering linguistic competency as the condition for moral considerability, Eckersley proposes that agency and self-direction, which are evident in human and non-human life-forms, be the characteristics that designate an entity as a moral subject. If this proposition is

to be accepted, Eckersley argues, then there is just reason to change the procedures of the discourse ethic, as it is described by Habermas. This procedural change would allow the inclusion of non-human objects in discursive forums and "guard against the domination of affected 'non-human others', precisely because they are in an especially vulnerable position" ("The Discourse Ethic and the Problem of Representing Nature" 45). While Eckersley acknowledges that "no-one (whether scientists, amateur naturalists, Indigenous peoples, eco-activists) has perfect knowledge of nature's interests," she nevertheless argues that this reality should not deter human beings from representing non-human, natural subjects in a political-moral discourse by which they are profoundly affected. Relying on the importance Habermas places on the equal consideration of disparate views, a requirement of free communication, and [Hannah] Arendt's argument for ''representative thinking," Eckersley argues that perceived environmental interests may be represented in discursive democracy through systematic reforms and a diverse array of representatives that are attuned to the various "concerns… of the affected community" (Eckersley 33).

In effect, Eckersley's critique challenges Jürgen Habermas's position that the representation of non-speaking subjects cannot inform discourse due to its potential to hinder or distort otherwise free moral-political communication. Instead, Eckersley acknowledges the limitations of representing a speechless object but argues that the "epistemological barriers" between human and non-human subjects do not supersede "questions of morality" regarding environmental advocacy in representational democracy (Eckersley 26). For Eckersley, this moral concern justifies an amendment to the discourse ethic that would include non-speaking, non-human entities in discursive practices. This would entail a "greening" of the rules for responsible deliberative discourse, which originally insist "that no a priori moral claims may be made about

morality or ethics prior to intersubjective discussion by communicatively competent subjects, save those which directly relate to the formal procedures of free communication" (Eckersley 44). Eckersley endorses the representation of nature's interests in discursive practices with practical concerns in mind and emphasizes the need for placing limitations on who can represent the interests of non-speaking, non-human interests. However, Eckersley, in the interest of creating a practical model for representation, sidesteps a more thorough discussion of the potential dangers of representing a non-speaking object. While Stone and Eckersley acknowledge that guardians or representatives for natural objects must be carefully selected and limited by procedural rules, it is worth considering the potential distortions of interest that may occur under this model in more depth. Indeed, the notion that nature has discernable interests in any capacity is a dubious claim, and I will attempt dispel this notion in the remainder of this chapter. This will necessarily raise questions regarding the efficacy of the guardianship model relative to other means of establishing legal protections for natural objects, such as the expansion of human rights to a healthy environment which would allow aggrieved parties to gain standing based on this right alone.

Mihnea Tănăsescu's "Rethinking Representation: The Challenge of Non-Humans" constitutes an important voice in this debate. Tănăsescu ultimately contends that the standard model of representation is too narrow to adequately include non-human forms or address the global impact of environmental issues. Nevertheless, as previously stated, this foundational model of representation is applicable in the context of legal personhood and widespread in local and national contexts. However, in arguing against the standard model of representation, which aims "to realize the interests and wishes of a constituency," Tănăsescu provides a compelling argument against the notion that representatives can responsibly claim to know the interests of

the environment. Specifically, Tănăsescu draws attention to the way in which the proclaimed "objective interests" of the environment are actually a product of social values and human interests. Such an observation immediately challenges the idea that environmental advocates can act as impartial representatives for nature, as this proposition undermines even the seemingly unquestionable claim that it is in the best interest of a natural entity to survives:

> To say that a creature has an interest in being alive, though unproblematic in a colloquial sense, has to be politically interpreted not as a statement of fact about that creature (or species) as such, but rather as a statement about the kinds of creatures that we are tempted to assign interests to, which signal the kinds of creatures that we are willing to enter into certain relations with (as well as the kinds of creatures we take ourselves to be) ("Rethinking Representation" 49).

While Tănăsescu does not offer this claim as evidence that one cannot reasonably represent nature in discursive practices – rather, Tănăsescu posits that the importance of objective interests among constituencies is misplaced – this observation does point to the difficulty in representing natural entities in law. Likewise, this critique of 'objective interest' as it relates to non-human, non-speaking entities raises additional questions: If the perceived interests of non-speaking, natural entities are a reflection of cultural value production, does this suggest that the debate surrounding these issues should be reframed? Are the perceived interests of environment inseparable from the actual interests of human beings? Based on the previous discussion, it would seem that that the answers to these questions are in the affirmative, but the remainder of the section will explore these concerns in more depth.

Stephen Vogel's *Thinking Like a Mall* attempts to resolve these questions and refute the notion that the representation of nature's 'interests' has a moral or ethical mandate. Unlike

Eckersley, Vogel charts the ethical concerns related to the representation of non-speaking, non-human subjects, seriously challenging the idea that one may responsibly represent nature. Specifically, in the chapter titled "The Silence of Nature," Vogel counters the claim put forth by many theorists, including Eckersley, that non-speaking objects can be morally considerable, and as a result, should be included in political discourse. For Vogel, speech acts are "essentially bound up not only with normativity, but *intersubjectivity*, because questioning, criticism, and justification are above all acts that one performs with and for one another" (Vogel 180). It is the reciprocal, dialogic component of speech that reveals the ethical component of language, Vogel argues; and it is the fact that non-human, non-speaking objects are incapable of engaging in reciprocal speech, and therefore incapable of participating in any discourse that decides questions of normativity, that necessarily excludes them from moral consideration. Vogel rejects the argument that nature speaks as a "category mistake," because even if one accepts that natural objects "speak" in their own way, they obviously cannot engage in the kind of reciprocal claim-making in which "ethical claims find justification" (Vogel 186). In effect, Vogel underscores the importance of reciprocal speech as a condition of moral considerability and rejects the claim that natural objects can participate in ethical claim-making.

Furthermore, Vogel illustrates the dangers that may arise when one represents what is professed to be the "speech" or interests of non-human, natural entities in discursive practices. While Vogel argues that one should be suspicious of claims made on behalf of non-speaking, non-human objects, it is important to note that he does make an important distinction between the representation of non-speaking, differently abled individuals and that of non-speaking, natural objects. Specifically, "translators," as opposed to "ventriloquists," may speak on behalf of a subject that can, in principle, display interests and attest to the accuracy of the translator's

claims (Vogel 192). According to Vogel's account, individuals that are excluded from speech by language barriers or cognitive disabilities are always "real speakers," and no matter how remote the possibility of first-person speech may be, this possibility qualifies them as speaking subjects that may be ethically represented by a translator (Vogel 193). Nature cannot, even in principle, affirm or deny the claims made on its behalf; therefore, Vogel argues, any attempt to represent nature is an act of ventriloquism.

In order to illustrate this point, Vogel discusses David Abram's book, *The Spell of the Sensuous,* which claims that nature *does* speak, as is evidenced by certain traditional practices of Indigenous peoples around the world. In one example, Vogel critiques Abram's account of the "normative and linguistic role" that landscapes play in storytelling practices for both the Apache people and Australian aboriginal peoples (Vogel 187). In particular, Vogel is concerned with the tendency of these traditional practices to produce "ventriloquists," or speakers that falsely claim to represent the speech of a non-speaker, "thereby removing from the real speaker the responsibility to be able to justify the normative claims he or she is making" (Vogel 189). In these specific cases of storytelling, for example, Vogel claims that ventriloquists project their own speech onto the land when they claim to speak on behalf of natural objects. Such practices mask "the questionable claims of a fallible human being within a particular social order" as the indisputable voice of nature (Vogel 189). This practice has the potential to give representatives of nature disproportionate power over other members of society.

For Vogel, a similar critique may be leveled at the representation of natural entities in scientific inquiry. Specifically, Vogel attacks Bruno Latour's understanding of the natural sciences and their practitioners, which claims that scientific discovery "can make the mute world speak, tell the truth without being challenged, put an end to the interminable arguments through

an incontestable authority that would stem through things themselves" (*Politics of Nature* 14). Vogel's primary concern with this view of the sciences – an indisputable translation of the nature of things – is that it ignores the unique role of discourse as a fallible mode of knowledge production and confers undue power to these individuals as a result. This concern is especially relevant for the issue at hand, as Stone and other proponents of environmental personhood justify the guardianship model through this very concept, the "incontestable authority" of natural science (*Politics of Nature* 14). This is not to question the undeniable value of the sciences in crafting policy and constructing knowledge (Vogel 197). The issue at hand, and the proposition that Vogel rejects, is whether scientific consensus should serve as the unquestionable basis for a representational model, in which scientific fact is understood as intelligible proof of nature's interests. As Vogel previously states, even this mode of environmental representation may result in distortion, as it hides human interest in what some believe to be the voice of nature.

These sentiments are echoed in what may be a more pragmatic view of representation in "A Sociology of Environmental Representation" by Magnus Boström and Ylva Uggla. While Boström and Uggla emphasize the dilemmas of representation -- including the tendency of inappropriate actors to claim the role of nature's representative at the expense of marginalized stakeholders – they nonetheless argue that some form of environmental representation is unavoidable in matters of discourse and policy. Representation, according to their analysis, may manifest in a variety of forms, including data charts, images or guardians; but, regardless, it is a necessary feature of any discourse that concerns environmental issues "because nature is unable to speak for itself" (Boström and Uggla 362). Importantly, however, Boström and Uggla note that "any full, undistorted, perfect or balanced representation is impossible," and any critique must be grounded in this recognition (Boström and Uggla 362). This argument, combined with

the theoretical critiques I have previously outlined, suggest that some compromise must be struck between the ethically flawed attempts to represent what some believe to be the environment's 'objective interests' through environmental personhood and the unavoidable, undeniable need to defend, maintain, and understand an increasingly delicate environment through discursive practices.

Given the conflicts that emerge from the representation of nature's perceived interests, which Vogel demonstrates, the guardianship model of environmental personhood does not constitute an ethical means of legal advocacy. Due to nature's inability to speak, any attempt to represent nature through legal personhood may result in the disproportionate power of the representative, and imbalance of interests, or the misrepresentation of nature's needs. Likewise, environmental personhood and the guardianship model may silence the legitimate interests of marginalized communities without access to legal aid. And, as I will demonstrate in the following chapter, the concerns I outline have already threatened the efficacy of environmental personhood in practice.

However, other legal strategies may adequately address environmental concerns while better representing human rights and stakeholder claims which are inextricable from this debate. Specifically, the expansion of human rights to a healthy environment, which will be discussed in greater depth throughout Chapter Two, may offer an equally reliable means of achieving environmental justice. Above all, it is critical that any attempt to afford greater deference to environmental conservation in law, an inherently discursive field of deliberation, must acknowledge that one cannot claim to speak for the 'interests' of nature. This is not to say, in any capacity, that human beings should not collectively pursue environmental protection through litigation, representational democracy, or activism. Rather, I argue that the mode of

representation that currently defines guardianship and legal advocacy demands that the clear, discernable interests of the political community serve as its basis.

Many in environmental philosophy would understandably decry such an assertion as blatant anthropocentrism. However, if one is prepared to accept Tănăsescu' and Vogel's assertions that the representation of a non-human, non-speaking object always involves the projection of human interests onto that object, it becomes clear that anthropocentrism, to some extent, is inherent and unavoidable in the act of representation. However, in light of shifting cultural norms and growing recognition that the health of human communities are contingent on environmental preservation, human beings may come to practice more effective stewardship and incorporate ecocentric principles in legal and political representation. In effect, environmental personality is not the only means of empowering those that seek to protect natural spaces; instead, legal systems may liberalize standing requirements, expand human rights, and improve access to justice, allowing humanity's material, moral and spiritual interests in a healthy environment to find a voice.

5. Conclusion

In this chapter, I principally reject Christopher Stone's original argument in favor of the guardianship model of environmental personhood. Beginning with a discussion of Stone's argument, I argue that the historical expansion of human rights and corporate personhood does not justify the expansion of legal personality and rights to nature. This conclusion is rooted in the idea that human entities and non-human natural objects are categorically distinct based on their different capacities for reciprocal speech, which is necessary for the expression of clear, discernable interests. Next, drawing on Vogel's analysis, which asserts that non-speaking objects

do not have readily discernable interests, I explore the ethical tensions inherent in the representation of non-speaking objects and reject Eckersley's moral argument for the representation of nature in deliberative discourse. Applying this conclusion to the representational aspects of legal personality as they are described by Stone, I conclude that rights for nature and legal guardianship do not constitute ideal forms of environmental advocacy. However, acknowledging the imperfect nature of representation in any capacity, I recognize the need for a practical means of protecting vulnerable resources and communities. Rather than centering nature as a subject in law and politics, I argue that this debate should focus on the legitimate and widespread interests of the human community in preserving the health of ecosystems.

Chapter Two:

The Representational Aspects of Environmental Personhood in Practice

1. Introduction

To recap, in the previous chapter I outlined the theoretical arguments surrounding the representation of non-human natural entities and concluded that proponents of environmental personhood wrongly assume that nature has readily discernable interests. Consequently, the representation of non-speaking, non-human objects confers undue power on their representatives, misrecognizes the material conditions of natural objects and conceals or silences other interests in the human community.

In this chapter, I will illustrate the claims previously put forth by demonstrating how the perceived 'interests' of non-speaking, natural entities function as a reflection of cultural values and human interests through examples of environmental personhood in practice. I will begin by discussing the expansion of rights for nature in the Americas and South Asia, then I will delve into the specifics of New Zealand's implementation of environmental personhood. These examples showcase the dominant role of human interest in shaping the implementation of rights for nature and reveal the significant focus on utilizing this policy as a means to further certain aims of the political community as a whole. Specifically, the following sections will demonstrate how environmental personhood often manifests as a means to protect public health, preserve finite resources, and incentivize government accountability. Likewise, I will focus on the overtly political nature of environmental personhood in practice, drawing on a notable international trend among the few examples that exist to date: recently, rights for nature and legal guardianship have become tools for cultural recognition and dispute resolution between Indigenous peoples and colonial governments.

In order to better understand this development, I will explore the historical and theoretical background of a specific case study that is representative of this trend: New Zealand's Te Urewera Act of 2014, which granted the forests of Te Urewera self-ownership and legal personality. Building on the work of Mihnea Tănăsescu and Glen Coulthard, I will then argue that environmental personhood is an insufficient means of dispute resolution, as it conceals and replicates an entrenched colonial power dynamic under the guise of protecting nature's 'interests.' In conclusion, the difficulties of directly representing nature in law suggest that the need to protect and manage vulnerable resources would be better achieved through the expansion of human rights to a healthy environment and increased access to justice for marginalized groups. However, in order to provide sufficient background for this case and my concluding argument, I will first review international trends towards rights for nature and discuss arguments in favor of environmental personhood as a political tool.

2. Rights for Nature and Legal Personhood in Practice

An increasing number of governments around the world have established the rights of human beings to a healthy environment, but very few have conferred rights directly on non-human natural entities or extended legal guardianship to the environment. However, environmental personhood, or rights for nature, have been deployed in a small number of nations in recent years, causing an international trend that is sure to make this strategy a prominent mode of resource management and protection in the coming decades (Eckstein et al. 806). The differences in reach and efficacy between these approaches are important, as the resulting policies have profound implications for affected communities and the international development of environmental law.

Specifically, while the establishment of rights for nature through personhood provides a legal avenue for concerned parties by liberalizing standing requirements, it does not necessarily produce tangible benefits for the environment. According to Catherine Magallanes in "From Rights to Responsibilities using Legal Personhood and Guardianship for Rivers," many critics claim that the efficacy of this approach is often limited, as it is "predicated on the assumption that people will want to exercise [the right of standing]" but does not address the sizable costs of litigation or the ability of governments to enforce court orders that uphold these rights (Magallanes 3). Therefore, establishing rights for nature does not necessarily ensure that any actionable claim will be heard by a judge. As the following discussion will point out, the efficacy of rights for nature as a tool for environmental protection depends on the strength of the existing legal system and the willingness of governments to defend these rights claims. The following examples illustrate the limitations of this approach and will provide context for a later discussion on international trends in environmental guardianship as a tool for elevating certain human interests.

To begin, several South American countries have adopted a unique approach to rights for nature at the federal level that draws heavily on Indigenous conceptions of environmental management. In "Rights for Nature, Legal Personality, and Indigenous Philosophies," Mihnea Tănăsescu describes how the Ecuadorian movement towards rights for nature functioned as a means of recognizing Indigenous autonomy and cultural values in the constitution. An Ecuadorian law, for example, established constitutional rights for nature according to the Indigenous concept of "Sumak Kasway," which views nature as an integral part of the social world (Magallanes 4). This case should also be understood, in part, as a product of the international movement towards rights for nature that traces its roots back to Stone's "Should

Trees Have Standing?" Specifically, the rationale for environmental personhood in Ecuador borrows from legal thought in the United States, including Stone's foundational argument based on the historical expansion of rights. According to Tănăsescu, "the policy network that was arguably instrumental in the inclusion of rights for nature in the Ecuadorian Constitution shared a view of these rights as reflecting a logical historical progression from human-centeredness to the inclusion of more and more potential subjects" ("Rights of Nature" 435). In effect, rights for nature in Ecuador should be understood both as a product of the international dialogue surrounding the 'interests' of nature and the unique role of Indigenous cultural recognition in liberal constitutional reform.

Furthermore, the international impact of Ecuador's constitutional protections for nature was profound. Tănăsescu describes Ecuador as a "pioneer" in a "transnational movement," in which Bolivia, Colombia and some municipalities in the United States shortly joined ("Rights of Nature" 430). Specifically, after Ecuador established constitutional rights for nature, Bolivia passed sprawling legislation, known as "the Rights of Mother Earth, which gives legal standing to nature by recognizing it as a legal person of public interest… and establishes an ombudsman for the protection of its rights" (Eckstein et al. 305). In addition, some local governments in the United States have passed legislation that outlines the rights of nature without establishing measures that would ensure access to justice for concerned parties. In these localities, "rights are conferred on 'natural communities and ecosystems', including the right to water, and residents are established as legal representatives to enforce nature's rights" (Eckstein et al. 805). Although, rather than mandating that municipalities protect natural resources in the community, this policy merely enables concerned parties to pursue legal action on behalf of the rights of nature if they are inclined or possess the means to do so. In effect, these examples illustrate the impact of

international efforts to grant rights to nature, which range from municipal action to constitutional reform, and point to the prominent roles of Indigenous philosophy and environmental advocacy in the movement to establish legal personality for nature. Importantly, these provisions attempt to incorporate biocentric principles, meaning an understanding of nature as intrinsically valuable in legal practice, but do so in the interest of safeguarding certain human interests such as resource preservation and cultural recognition.

Although, the previous examples allow only limited power to the environment's representatives, examples in India, Pakistan, Colombia and New Zealand confer greater authority on nature's representatives through the guardianship model or formal mandates. In contrast to the general "rights-for-nature" approach, the guardianship model of environmental personhood establishes a trustee or custodian who is obligated to pursue litigation on behalf of a specific natural entity (Athens 205). As the following examples will demonstrate, the idea of legal personhood and guardianship for non-human nature, which was popularized by Christopher Stone's landmark publication "Should Trees Have Standing?" in 1972, has gained some footing in the international community. Although many instances of environmental personhood draw directly from Stone's treatise, they often diverge in form and intent depending on the unique circumstances of each case. However, these examples of environmental personhood are united in their efforts to protect a variety of political and moral interests, from "separately recognized rights such as Indigenous justice and reparations… to newer rights to a healthy environment," by establishing a guardian or trustee (Magallanes 18). As the following examples demonstrate, legal personhood for natural entities is not always intended to mitigate environmental damage or responsibly manage resources; it is often overtly political concerns that serve as the impetus for establishing formal political and legal representation of non-human nature. As a result, these

cases often assign a difficult role to courts, which must weigh the professed "interests" of nature against the plethora of competing socioeconomic interests within resource-dependent human communities. This reality and the difficulties of environmental personhood are especially pronounced in post-colonial governments.

To begin, New Zealand's use of environmental personhood constitutes the most notable group of examples due to its direct reference to the country's colonial history and the way in which these cases have served as precedent for other governments. Among the most influential and complex examples of environmental personhood to date may be found in New Zealand's Te Urewera Act of 2014, which classified Te Urewera, a large forest reserve containing freshwater ecosystems, as a legal entity with ownership over itself in order to resolve an ongoing land dispute between the Indigenous Tūhoe people and the New Zealand Crown government ("Ngāi Tūhoe Deed of Settlement Summary"). Similarly, New Zealand later became the first nation to grant legal personhood and guardianship to a specific body of water, the Whanganui River, through legislation in order to settle a similar resource dispute between Indigenous Whanganui *iwi* and the Crown government (Magallanes 7). In both cases, members from the affected Indigenous communities and officials from the Crown government were appointed as guardians, which serve as representatives and councilors to the natural entities' legal, spiritual, and ecological interests ("Ngāi Tūhoe Deed of Settlement Summary"). To gain a better sense of the international impact of New Zealand's use of environmental personhood, it is necessary to first explore the examples of rights for nature and guardianship in India and Colombia that followed these landmark cases, some of which directly credit or reference the Te Urewera Act of 2014 as international precedent.

In response to New Zealand's implementation of legal personality, for example, a court in the Indian state of Uttarakhand -- specifically citing the New Zealand Te Urewera Act of 2014 -- granted legal personhood to the Ganges and Yamuna Rivers and, just ten days later, "declared related glaciers and other natural features to be legal persons, in need of protection" (Magallanes 9). In addition, India's use of environmental personhood spurred regional action: a 2019 court ruling in Bangladesh that established personhood for all rivers flowing through the country directly borrows from India's conception of environmental personhood and rights for nature (Westerman). These cases explicitly define the waterways in question as "having the status of a legal person with all corresponding rights, duties and liabilities of a living person" (qtd. in Magallanes 11). And, while India's attempt at environmental personhood was later overruled by the Indian Supreme Court in 2017 due to a lack of any legal basis for nature's "rights to life," the rationale of the original decision is still an important demonstration of New Zealand's role in the international trend towards environmental personhood and the diverse legal contexts in which this tool may be applied ("India's Ganges and Yamuna Rivers Are 'Not Living Entities'").

Although implementation of legal personality in India was inspired by the legislation that established the legal status of Te Urewera in New Zealand, their approaches respond to drastically different circumstances. And together, these examples demonstrate the role of human interests in shaping the implementation of environmental personhood. Generally speaking, instances of environmental personhood in South Asia reflect societal interests in incentivizing local governments to prevent pollution. As a result, India established human rights for the rivers as *minors*, meaning the state served as legal guardian in this case, prompting an array of concerns regarding the state's potential liability for the rivers' "actions" such as flooding (*Legal Rights for Rivers* 177). In this sense, the original intention of environmental personhood in India is far more

simplistic than the complex political aim of New Zealand's implementation of environmental personhood. Specifically, representative committees tasked with managing the Whanganui River and the forests of Te Urewera are concerned, above all, with balancing the various economic, social, and political interests invested in the extraction or preservation of these resources. For example, these competing interests are overtly represented in the committee responsible for guiding the Whanganui River, a legal entity with the power to sue and be sued:

> The strategy group will consist of up to 17 key stakeholder representatives, including iwi with interests in the Whanganui River, local and central government representatives, tourism, conservation, recreation, and wild game interest and Genesis Energy Limited, the operator of the Tongariro Power Scheme, which currently diverts 82% of the headwaters of the Whanganui River for hydropower. (O'Donnell and Talbot-Jones 4)

In addition, environmental personhood in New Zealand functions as "a means of settling Indigenous grievances" rooted in a long history of colonial abuses by providing a system of shared social and ecological management (Magallanes 12). The overtly political nature of New Zealand's use of environmental personhood, therefore, contrasts with rights for nature in India, which primarily sought to preserve the severely polluted Ganges and Yamuna Rivers through government liability.

In some respects, examples of legal guardianship and environmental personhood in Colombia bear more resemblance to the complex political aim of legal personality in New Zealand. Specifically, a series of decisions from the Colombian Supreme Court established environmental personhood for the Atrato River Valley and the Colombian Amazon based on "constitutional human rights protections;" notably, claimants in these cases "argued that by failing to control the increase in deforestation in the Colombian Amazon" and pollution in the

Atrato River Valley "the Colombian government had violated various fundamental rights" (Macpherson, et al. 534). Likewise, the specifics of these cases demonstrate the role of Indigenous cultural recognition in the implementation of these orders. Specifically, pollution in the Atrato River Valley disproportionately affected the surrounding population of Indigenous and Afro-descendant communities. As a result, the Constitutional Court of Colombia named the Atrato River a legal subject "with its own rights of protection, conservation, maintenance, and restoration by the state and ethnic communities" and "borrowed from the model for the Whanganui River" in New Zealand by appointing representatives from the government and the affected communities to serve as legal guardians and resource managers (Macpherson, et al. 531). Likewise, in its decision, the Court sought to establish a new theory of rights that would encapsulate the "distinctive relationships with nature" and "ecocentric philosophical approaches" that characterize traditional methods of land management in the Atrato River Valley (Macpherson, et al. 521). In effect, Colombia's use of environmental personhood, like New Zealand's, was informed by interests in cultural recognition and environmental preservation.

Conversely, the other example from the Colombian context demonstrates the way in which the implementation of environmental personhood can disregard the interests of affected communities, even as it purports to protect human rights to environmental health. Specifically, the Colombian Supreme Court's implementation of legal personality for the Colombian Amazon "failed to mention Indigenous land tenure, despite the fact that Indigenous territories (resguardos) cover 54.18% of the Colombian Amazon extension; nor did it refer to the idea of biocultural rights or appoint guardians" (Macpherson, et al 536). And, unlike the implementation of legal personality in the Atrato River Valley, the Colombian Supreme Court did not "acknowledge biocultural rights" of vulnerable Indigenous communities or "the role of local

communities in providing environmental stewardship in accordance with their culture" (Macpherson et al. 540). As a result, this case is a significant reversal in Colombian jurisprudence. Likewise, this oversight is especially concerning given the Colombian government's history of utilizing "discourses of conservation and the common good as justification to evict Indigenous peoples from their territories or resources" (Macpherson et al. 527). In effect, the Colombian experience offers important lessons: these opposing outcomes suggest that the implementation of environmental personhood does not necessarily result in the best land management practices or greater involvement of historically marginalized groups. In addition, these cases highlight the potential for human rights to act as legal protections for vulnerable lands and resources.

These considerations and insights from the Colombian context, furthermore, directly apply to the unique political circumstances of legal personality for Te Urewera. Although New Zealand, unlike Colombia, has not constitutionally protected the rights of Indigenous peoples to territorial management, the government has attempted to confer greater responsibilities on Indigenous groups through the guardianship model of environmental personhood. Specifically, New Zealand's Te Urewera Act of 2014, which named the culturally and ecologically vital forests of Te Urewera as a legal entity with ownership over itself, may be seen as a restrained effort to acknowledge past violations of Indigenous claims to traditional lands, which I will explore in greater depth throughout subsequent sections. This example of legal personality relies on a co-management model loosely based on the Western conception of legal guardianship. Under this system, a board of representatives, which is currently composed of six Tūhoe members and three Crown nominees, represents the legal "interests" of Te Urewera and approves land management plans by consensus; but, on occasions that involve especially important

decisions, the board may only approve management plans by *unanimous* vote ("Ngāi Tūhoe Deed of Settlement Summary"). New Zealand's Te Urewera Act of 2014 also draws heavily on the unique relationship between the Tūhoe people and Te Urewera, which is informed by *kaitiakitanga* or "a socio-environmental ethic" that relies on the responsible exercise of "traditional status, rights and responsibilities" for management of land and the communities that exist within it (Saunders 212). In effect, legal personality for Te Urewera is uniquely focused on the management of complex human interests in this resource and the recognition of Indigenous relationships with the land.

In sum, these examples raise important questions: In what context and for what purpose is environmental personhood appropriate? If governments are to acknowledge the rights and purported interests of nature, how are courts to weigh them against human rights? In the following analysis, I will attempt to directly answer these questions by exploring the historical background and philosophical import of a specific case study: Te Urewera Act of 2014. This study will draw on ethnographic research as well as political studies of Te Urewera to critique the ethics of environmental personhood as a means of resolving natural resource disputes between Indigenous peoples and colonial governments. Building upon recent scholarship by Saunders and Tănăsescu, I will demonstrate the complexity of the representational and political aspects of legal personality for Te Urewera and argue that an expansion of human rights, including Indigenous rights to resources within traditional lands, would constitute a better response to the unique interests at play in these disputes.

3. The Colonial History of Te Urewera

To fully understand the implications of New Zealand's decision to confer legal personhood on Te Urewera, it is necessary to briefly discuss the colonial history of this land and its Indigenous inhabitants, the Tūhoe. This history may reasonably begin with the Treaty of Waitangi of 1840, an agreement in which Indigenous leaders negotiated their political relationship to the British Crown. However, the content and procedure that surrounds this agreement is controversial for multiple reasons; as Tănăsescu points out, the Tūhoe people, unlike other Indigenous groups in New Zealand, "have never signed" the treaty, "though this does not mean that they, and their land, were not affected" ("Rights of Nature" 440). In addition to the fact that not all of the affected tribes were given the opportunity to sign this document, the negotiations that constituted this agreement have long been criticized due to the significant discrepancies in meaning between the English and Maori translations of the treaty.

According to the Second Article of the English translation, for example, the Crown "guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess" ("The Treaty of Waitangi/ Te Tiriti o Waitangi"). However, the Second Article also states that the Chiefs of the United Tribes and the individual Chiefs" must "yield to Her Majesty the exclusive right of Preemption over such lands" ("The Treaty of Waitangi/ Te Tiriti o Waitangi"). This same Article, translated from the Maori text, produces a substantially different meaning: "The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures" ("The Treaty of Waitangi/ Te Tiriti o Waitangi"). Tănăsescu, discussing these discrepancies in

detail, states that the general consensus among historians affirms that "the chiefs did not cede their sovereign ability to direct the life of the community or ownership of their lands" ("Rights of Nature" 440-441). The English version of the text, however, demands exactly that. And, despite its poor translation, the English version of this document served as justification for the dispossession of Maori lands, regardless of whether tribal leaders participated in treaty negotiations or signed the document. The radically different meanings offered by these translations also explains the political conflict and abuses that followed the ratification of the treaty, perpetuated by a colonial government that was desperate to stomp out Maori resistance to British subjugation.

As a result of the Treaty of Waitangi and the land management policy that followed, Maori groups lost political sovereignty, and large portions of territory were confiscated to accommodate the arrival of an increasing number of British settlers. According to Judith Binney in *Encircled Lands: Te Urewera 1820-1921*, shortly after British officials established contact with the Tūhoe people in 1861, an eastern section of Te Urewera known as The Bay of Plenty "was confiscated under the 1863 New Zealand Settlement Act" for British settlement, igniting conflict in the region (Binney 101). This act of dispossession was followed by "military penetration" of the Tūhoe nation and further confiscation of arable land, which escalated into total war against the Tūhoe (Binney 31). These attacks must be understood in the context of a broader plot, as the government sought to "[break] the backbone of Tūhoe autonomy" in Te Urewera through widespread land purchasing, most of which was "invalid and had to be retrospectively validated by legislation in 1916" (Binney 7). Specifically, by confiscating large portions of Te Urewera, British colonial forces simultaneously "undercut tribal… social cohesion" and made "Maori-owned land… available for settlement" (Binney 100-101). Although

"peace" was restored in 1871, the colonial government continued to confiscate and purchase large portions of remaining Tūhoe territory with the aim of conserving lands for settlers' recreational hunting, fishing and boating (Binney 598). After decades of violence, land acquisition and famine, the colonial government all but extinguished the traditional Tūhoe way of life. With most communities displaced from Te Urewera, the New Zealand government established the Te Urewera National Park in 1954, which subsumed most of the Tūhoe's traditional lands ("Ngāi Tūhoe Deed of Settlement Summary").

In sum, these are the major abuses at issue in the Ngāi Tūhoe Deed of Settlement, which attempts to address claims of wrongful dispossession and demands for the return of Te Urewera to the Tūhoe. This settlement served as the impetus for the Te Urewera Act of 2014 and the resulting modification of Te Urewera's legal status, which sought to address "breaches by the Crown of its obligations under the Treaty of Waitangi" which guaranteed "the unqualified exercise of their chieftainship, over their lands, villages, and all their treasures" (Saunders 208). According to Tănăsescu in "Rights of Nature, Legal Personality, and Indigenous Philosophies," this history is vital for understanding the decision, which constitutes a compromise between the Tūhoe's demands for ownership over the land and the government's interest in retaining political authority over the Tūhoe and Te Urewera ("Rights for Nature"). Specifically, he argues, the establishment of Te Urewera as a separate legal entity with a joint committee of representatives from both camps "avoids vesting full political authority in either party" ("Rights of Nature" 444). Therefore, Te Urewera's colonial history and the Treaty of Waitangi reveal the tension between colonial and tribal interests at work in New Zealand's decision to confer legal personality on Te Urewera. Given the emphasis placed on reconciliation and recognition of

colonial abuses in the Te Urewera Act of 2014, this history remains an important consideration in any discussion concerning the ethics of legal personality and representation for Te Urewera.

4. Critical Perspectives on Rights for Nature and the Politics of Recognition

The tragic history of Te Urewera points to a reality that is consistent across examples of environmental personhood: human interests and power relations are inextricable from questions of land management, and the professed 'interests' of nature merely conceal these relations. However, the legal personality and guardianship of Te Urewera constitutes an extreme example of this general rule, as the altered legal status of Te Urewera was designed as a "a compromise between the state and an Indigenous descent group, each of which claim political authority in that space" (Saunders 209). To recap, this compromise takes the form of legal personality for Te Urewera and attempts to reconcile past abuses, including the violent dispossession of lands, by granting the river ownership over itself. This act also establishes a committee of Tūhoe and Crown government representatives to jointly manage the land and represent its 'interests.'

As I have previously stated, the language of the act attempts to recognize traditional Tūhoe "customary systems of values and law," which are more relational than Western conceptions of ownership (Saunders 231). However, Saunders contends that Tūhoe customs and legal traditions are somewhat incompatible with Western concepts, such as property rights, as Maori conceptual frameworks understand "rivers and land" not as "objects of human control but part of an interrelated whole" (Saunders 213). Nevertheless, co-management of Te Urewera as an independent legal entity, guided by the Tūhoe's traditional relationship with the land, was intended to address this contentious history and resolve the ongoing political dispute it produced. In effect, legal personality in Te Urewera is overtly political. Going forward, I will argue that

this case demonstrates the way in which the legal representation of nature can disingenuously distort or empower the interests of one group at the expense of another, as I established in Chapter One. I will expand on this argument in more depth; but first, I must address the arguments in favor of environmental personality as a means of recognizing Indigenous culture.

Proponents of environmental personhood in New Zealand and abroad argue that this legal tactic successfully acts as a means of recognizing Indigenous culture in law while providing protection for scarce resources. Specifically, in "Indigenous Peoples, the International Trend Toward Legal Personhood for Nature, and the United States" Hannah White draws on the aforementioned examples of environmental personhood for waterways and argues that legal personality would expand Indigenous peoples' access to potable water and preserve sacred, ecologically significant spaces. For White, the conferral of personhood status on natural entities in New Zealand and Ecuador should be lauded for their shared representation of Indigenous interests through land management policies "inspired by traditionally Indigenous views on nature" (White 139). The success of these policies internationally, White argues, warrant their implementation in the United States to address the effects of fresh-water scarcity and environmental degradation in lands that border Indigenous territories. Therefore, some proponents view environmental personhood both as a means of legally recognizing Indigenous culture and codifying the intrinsic value of nature through an ecocentric legal ethic.

However, critics have leveled arguments at both claims. To begin, it is unclear whether environmental personality provides any substantial benefits to vulnerable resources; in fact, after studying India's implementation of environmental personhood, O'Donnell found that "increased legal powers for the rivers led to a fear of being sued, which then resulted in the loss of those legal powers" (*Legal Rights for Rivers* 177). While this phenomenon may be attributed to India's

unique usage of environmental personhood, which categorized the rivers as legal minors with rights to life, it does underscore the fact that environmental personhood may have unintended consequences, a concern that is reflected in other contexts. Regarding New Zealand's conferral of juristic personhood on the Whanganui River, O'Donnell likewise argues that the establishment of personhood status and rights for nature does not eliminate competing use of resources, and as a result, it is possible that environmental groups could sue a natural entity's representatives for mismanaging competing interests (*Legal Rights for Rivers* 178). In effect, establishing legal standing or rights for natural objects does not necessitate that legal action on the basis of these rights will always have positive effects for the environment. Similarly, Tănăsescu argues that rights for nature, "once granted, are not the exclusive prerogative of nature's self-proclaimed advocates," as "anybody, with whatever agenda, can blend them to their own interests" ("The Rights of Nature" 160). This latter point echoes the fundamental concerns raised by Vogel regarding the representation of non-speaking, non-human subjects, whose interests are necessarily unintelligible to human advocates. These points would suggest that legal personhood for nature does not necessarily guarantee greater environmental protection, as the success of these reforms depends on the willingness of institutional actors to affirm and protect the rights of nature in a manner that is consistent with the aims of environmental representatives.

By the same logic, the use of environmental personhood as a means of resolving territorial disputes between Indigenous peoples and colonial governments does not automatically guarantee greater authority for Indigenous peoples over scarce resources. Arguments addressing the implications of environmental personhood for Indigenous peoples are far more complex owing, in part, to the multiplicity of Indigenous identities and experiences around the world. In an effort to avoid generalizing Indigeneity, this analysis will focus specifically on arguments that directly

concern the personhood status of traditional Maori territory and feature critiques that generally refer to the politics of recognition at play in legal representation. In order to counter the argument that rights for nature or environmental personhood is generally consistent with Maori ontology and traditional land management practices, I will summarize Tănăsescu's analysis of this case and offer comment on the incompatibility of Indigenous customs and Western property rights. Furthermore, through Coulthard's critique of the politics of recognition, this analysis will argue that mere recognition of Indigenous philosophy in the implementation of environmental personhood leaves open the possibility for misrepresentation of Indigenous interests. These objections will be addressed in turn. I will then conclude that the guardianship model of environmental personhood does constitute an ethical means of dispute resolution in this context.

To begin, the argument that the recognition of ecocentric principles in environmental personhood universally benefits Indigenous peoples has been thoroughly contested in multiple contexts. Generally speaking, Tănăsescu is critical of this practice, arguing that environmental personality has the potential to misrepresent Indigenous philosophy and undermine "emancipatory struggles," meaning movements for territorial sovereignty and self-determination ("Rights of Nature" 429). While Tănăsescu acknowledges that the language of the Te Urewera Act of 2014 reflects, to some extent, the unique ontological hierarchy conceptualized by the Tūhoe, he argues that this relational understanding of nature and its role in Maori custom is largely incompatible with the construct of personhood in Western law. And, unlike other examples of environmental personality which rely on the portrayal of natural entities as human legal subjects, the Te Urewera Act attempts to reconcile Tūhoe conceptions of nature with the representational aspect of legal personality, somewhat distorting the idea in the process ("Rights of Nature" 453). Tănăsescu claims that this reconciliation consists in the incorporation of

kaitiakitanga or "the ethic of care" in the language of the policy; this concept informs the representational aspect of the Te Urewera Act of 2014 and is uniquely focused on the management of human beings as well as the land ("Rights of Nature" 446). While Tănăsescu argues that this case constitutes the most novel and successful compromise between radically different customs and conceptions of nature, he holds that this case may be criticized on multiple grounds. Specifically, the Te Urewera Act of 2014 and the management plan that followed "might imply a transformation in Indigenous relations to land away from customary ways" ("Rights of Nature" 449). In sum, Tănăsescu's critique of legal personality for Te Urewera reorients this discussion by highlighting the way in which Indigenous struggles for cultural autonomy are balanced with the political interests of the Crown government.

While Tănăsescu remains open to the possibility that Indigenous peoples could benefit from environmental personhood and rights for nature, other theorists remain skeptical of the representational aspects of environmental personhood on a foundational level. In *Red Skin, White Masks,* Glen Coulthard argues that the politics of recognition, which "'reconcile' Indigenous assertions of nationhood with settler-state sovereignty via the accommodation of Indigenous identity claims in some form of renewed legal and political relationship," may inadvertently reproduce repressive colonial power dynamics (Coulthard 3). Coulthard argues that the politics of recognition allow colonial governments, which historically operated through "an unconcealed structure of domination," to shift towards "a medium of state recognition and accommodation;" the state, however, "remains structurally oriented around achieving the same power effect," which Coulthard argues is the "the dispossession of Indigenous peoples of their lands and self-determining authority" (Coulthard 25). And, drawing on the work of Frantz Fanon, Coulthard argues that in situations "where colonial rule does not depend solely on the exercise of state

violence, its reproduction instead rests on the ability to entice Indigenous peoples to *identify…*with the profoundly *asymmetrical* and *nonreciprocal* forms of recognition either imposed or granted to them by the settler state and society" (Coulthard 25). Given the historical background I outlined in previous sections, this general critique, although rooted in the Canadian colonial context, applies to the Crown government's conferral of legal personhood on Te Urewera. This begs the question, does the conferral of legal personality on Te Urewera constitute an asymmetrical form of recognition?

The answer, for Coulthard, would be yes. In *Red Skin, White Masks,* Coulthard argues that the passive acceptance of recognition from a colonial power does not establish a reciprocal, equal relationship between the colonizer and the colonized, as there is no "mutual dependency in terms of a need or desire for recognition" (Coulthard 40). Likewise, Coulthard argues that Colonial governments appear unwilling to recognize Indigenous groups in law and policy if doing so would unsettle the "background legal, political, and economic framework of the colonial relationship itself" (Coulthard 41). Recognition of Indigenous groups, in effect, rarely constitutes a radical redistribution of power or resources. Given "the government's refusal to transfer ownership of the land" and its limited attempts to recognize Indigenous ontology in the implementation of environmental personhood, it would seem that this case represents a classically asymmetrical power dynamic (Saunders 211). Likewise, Coulthard's critique of recognition and the rights discourse suggests that environmental personhood as a means of resolving territorial disputes may be antithetical to struggles for self-determination.

These texts challenge the assumptions that environmental personhood is either generally consistent with Indigenous conceptions of nature or a universally beneficial means of environmental advocacy in law. In fact, Coulthard's argument suggests that the purported

interests of nature, as they are represented through environmental personality, may be used against Indigenous interests in self-determination and political autonomy in certain contexts. Given the increasing popularity of environmental personality as a means of advocacy among post-colonial powers, these concerns remain relevant. In effect, one should not automatically accept the efficacy of environmental personhood or rule out other modes of resource management, including the expansion of human rights.

5. Conclusion

In sum, an analysis of the international trend towards rights for nature illustrates the way in which environmental personhood may be appropriated for a variety of ends. While all of the aforementioned examples are fundamentally political and shaped by human interests, no case illustrates the complex role of human interests in the implementation of environmental personhood better than the Te Urewera Act of 2014. Based on this literature review, it is apparent that New Zealand's conferral of legal personhood effectively transforms the management of Te Urewera into a microcosm of colonial power relations. Although some may regard this outcome as a necessary political compromise, this example effectively demonstrates my conclusion from Chapter One: nature does not have readily discernable 'interests,' and attempts to represent nature through environmental personhood merely distort or amplify certain human interests in the political community.

In addition, I conclude that environmental personhood and rights for nature do not necessarily constitute the most effective means of advocacy. As O'Donnell and Tănăsescu have demonstrated, the success of these tactics largely depends on institutional willingness and the power dynamics that serve as the backdrop for these policies. As a result, environmental

personhood, as it stands, does not constitute a catch-all solution for resource scarcity in theory or in practice. In order to better address the mechanistic and theoretical shortcomings of the guardianship model of environmental personhood, this construct must be studied in more depth. Likewise, environmental advocates should not abandon traditional legal avenues, such as an expansion of human rights, as a means of ensuring both greater protection for resources and responsible representation of human interests in resource management.

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