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Rights, Water, and Guardians:
How Rights of Nature Movements are Reshaping our Current Environmental
Ethics and What These Policies Need to be Successful

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In partial fulfillment of a Bachelor of Arts Degree in
Environmental Analysis

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Claremont, CA

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Abstract

Giving legal rights to nature is no longer a fringe idea in international environmental law. Rights of Nature movements have gained traction in countries around the world, including Ecuador, Australia, India, Aotearoa New Zealand, and the United States. The act of organizing to recognize legal rights and legal personhood for nature represents a philosophical, moral, and political shift from previous anthropocentric values. Through two case studies in Aotearoa New Zealand and the United States, this thesis examines the policy language and the context and history that led to their creation. The Te Awa Tupua (Whanganui River Claims Settlement) Act and the Lake Erie Bill of Rights are two examples of movements and policies that created legal rights for a natural entity, a river, and a lake, respectively. My analysis of these two unique case studies illustrates some of the elements necessary for such policies to be implemented and enforced effectively: careful consideration of the local community and existing systems, a collaboration between marginalized groups and legislatures, and chosen leaders to oversee implementation and guardianship of the entity. Using the text of the legislation, court cases, press releases, and images, I analyze the impacts, both philosophical and practical, of these salient political and environmental movements.

Keywords: rights of nature, environmental personhood, environmental ethics, Lake Erie, Lake Erie Bill of Rights, Whanganui River, Te Awa Tupua Act, Indigenous rights

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Abbreviations and Terms

Aotearoa	Māori name for New Zealand, literally The Land of the Long White Cloud
CELDF	Community Environmental Legal Defense Fund
hapū	Māori subtribe
iwi	Māori tribe
kaitiakitanga	guardianship, a respectful way of interacting with the environment and maintaining a balance (Tipa, 2009)
LEBOR	The Lake Erie Bill of Rights
Ngā Tāngata Tiaki o Whanganui	Post-settlement governance body for the Whanganui iwi
Pākehā	New Zealanders primarily of European descent
Te Awa Tupua	The Whanganui river as an indivisible whole (including all its physical and metaphysical aspects), now being a legal person
Te Karewao	The advisory group to Te Pou Tupua
Te Kōpuka	The strategy group which will develop a strategy document to guarantee the river's health and wellbeing
Te Pou Tupua	The 'human faces' of (rather than guardians, as the river is believed to be a guardian over the people as well)
The Crown	British Commonwealth
TSW	Toledoans for Safe Water, a Toledo grassroots organization
Tupua Te Kawa	The four intrinsic values forming the baseline of Te Awa Tupua's legislation.

Introduction

Rights of Nature

In a neighborhood in Athens, Georgia, there is a large white oak known as “The Tree that Owns Itself.” The legend of this tree is that William H. Jackson enjoyed playing in the tree as a child and wanted to protect it, so he deeded the tree and all the land within an 8 foot radius to itself in 1820. The tree eventually fell after being hit by a windstorm in 1942, but in an effort to preserve Jackson’s wishes, residents of Athens planted a seedling of the original tree in the same spot as the first. Under current U.S. law, the tree is not technically able to accept this ownership of itself, and the deed would likely not stand up in court. Yet residents of Athens, Georgia generally accept the tree with pride as a property holder and a unique part of their community (Mueller et al., 2011). The story of the tree is ingrained in Athens’ history, but it raises broader questions about the other trees in Athens and indeed throughout the world. Should they too own themselves? What about other plants, rivers, and mountains? At the individual and constitutional level, these questions are beginning to be explored both philosophically and practically. Today, the “Tree That Owns Itself” is an anomaly. A growing movement around the world is arguing that this tree, as well as other trees, lakes, and rivers, should be able to claim legally what the tree has claimed only in principle for centuries.

Rights of Nature movements are currently unfolding in diverse contexts throughout the world. These movements center around recognizing and honoring that nature - including rivers, mountains, trees, and animals - has the same fundamental rights as humans (Global Alliance for the Rights of Nature [GARN], 2019). Earth Jurisprudence or environmental personhood, both terms used to describe legal personhood for nature, is a method of implementing the Rights of Nature framework into a legal context by extending personhood to natural entities or ecosystems.

Another effort to expand environmental protection is through rights-for-nature ordinances and charter amendments that do not include personhood but instead enumerate legally enforceable rights that nature is thought to hold. Both approaches fall under the broader Rights of Nature paradigm and represent a shift in Western legal structures that view nature primarily as property. They also present a shift for some contemporary understandings of nature and culture that consider the two as separate, opposing entities.

As humans, every person holds legal personhood and has certain rights and duties that are determined by the law (Cano, 2018). To exercise those rights and duties, a few criteria must be met. First, a person must be deemed capable of exercising those rights on their own. For example, children cannot exercise their full rights until they become adults. Second, to have standing and participate in litigation, a person must be able to demonstrate that the action or law in question affects them directly or has a reasonable connection to their situation (Pecharroman, 2018). How nature might fit into these definitions of legal personhood is currently being debated in courts, legislatures, and international organizations worldwide. Rights of Nature movements provide rich material for analysis as they get at the foundation of our understanding of nature and our place within it. Given the reality of environmental degradation and climate change worldwide, these movements also address the kind of world we want to live in going forward and possibilities for profound change.

The basis and primary influence for many Rights of Nature policies, especially in the United States, stems from U.S. legal scholar and law professor Christopher Stone (Athens, 2018). Stone was one of the first scholars to write in favor of extending legal personhood to nature. In his seminal article, “Should trees have standing – toward legal rights for natural objects” (1972), Stone argued that corporations, municipalities, and other non-human entities

have legal standing, so why not nature. The article was published in 1972, but it found minimal traction within the legal and political realm outside of a single U.S. Supreme Court case, *Sierra Club v. Morton* heard during that same year. The case centered around the Sierra Club's aspiration to protect Mineral King Valley, part of the Sequoia National Forest, from the development of a large ski resort. Justice William O. Douglas argued in his dissenting opinion that environmental organizations such as the Sierra Club should be able to sue on behalf of the land and that "those who have that intimate relation with the inanimate object about to be injured, polluted, or otherwise despoiled are its legitimate spokesmen" (*Sierra Club v. Morton*, 1972). In a separate dissenting opinion, Justice Harry A. Blackmun raised the question, "Must our law be so rigid and our procedural concepts so inflexible that we render ourselves helpless when the existing methods and the traditional concepts do not quite fit and do not prove to be entirely adequate for new issues?" (*Sierra Club v. Morton*, 1972). Stone's legal argument was picked up by Justice Douglas, who cited him in his dissent, but the momentum did not extend past that single case (Stone, 2010). Decades later, Justice Blackmun's question has begun to be answered through Rights of Nature movements taking place today in various states, cities, and countries across the globe.

The first locality to recognize nature's legal rights was Tamaqua Borough in Pennsylvania in 2006 (Pecharroman, 2018). The county passed an ordinance banning companies from dumping toxic sewage sludge in their community. The ordinance asserted that "ecosystems shall be considered to be 'persons' for the purposes of the enforcement [of the ordinance]" (Tamaqua Borough Sewage Sludge Ordinance, 2006). This development in a United States county was expanded upon two years later when Ecuador became the first country to make the rights of nature a Constitutional right (GARN, 2019). In 2008, Ecuador adopted a new chapter

titled ‘Rights for Nature’ into its Constitution in which earth or Pachamama “has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution” (Ecuador Const. Art. 84, 2008). In theory, Ecuador’s Constitution now formally recognizes the rights of Indigenous peoples and the rights of nature.

Following Ecuador’s lead, Bolivia approved the Law of the Rights of Mother Earth in 2010. The law draws deeply on Indigenous Bolivian concepts that view nature as a sacred home on which we intimately depend (Buxton, n.d.). Since these early actions, many other cities, counties, and countries have acted to adopt Rights of Nature policies. Some states such as Ecuador and Bolivia adopted this approach into their Constitution, whereas other countries like New Zealand, India, and Australia have applied it to specific rivers (O’Donnell and Talbot-Jones, 2018). Creating broad constitutional amendments is a fascinating branch of the Rights of Nature movement with Ecuador as a well-known example, however, it is not the primary focus of this thesis. Instead, I focus on two examples of Rights of Nature policies that protect a specific natural entity, one lake, and one river and the (his)stories that each has to tell. I use these two case studies to explore the environmental ethical frameworks behind the policies, the movements themselves, and their outcomes which have created policies with varying levels of success.

Methodology

My analysis focuses on two current case studies: The Lake Erie Bill of Rights (LEBOR) Charter Amendment that passed in Toledo, Ohio in 2019, and the Te Awa Tupua (Whanganui River Claims Settlement) Act that passed in New Zealand in 2017. I chose these specific case studies for several reasons. The first is that both are policies that protect a particular natural entity such as a lake or a river instead of broader constitutional adoption of Rights of Nature

frameworks. This specificity creates consistency between the two case studies. It also provides the opportunity to look critically at the text of those specific policies in relation to the environmental and regulatory history of that lake or river. Additionally, both the Lake Erie Bill of Rights and the Te Awa Tupua Act are recent and salient case studies as the processes of implementation are still being negotiated.

These two case studies contain notable differences that provide a unique opportunity for comparison. The Lake Erie Bill of Rights was drafted by a local non-profit organization and public interest law firm and fought for primarily at the community level. Additionally, the majority of the fight to implement LEBOR played out through the courts instead of through the legislature. The Te Awa Tupua Act, by contrast, was drafted by the New Zealand Parliament in collaboration with local Māori leaders and passed by the legislature. The varying success of these two case studies illustrates both the potential and the limitations of Rights of Nature policies to create tangible benefits for natural entities and the communities who care for and depend on them. The Lake Erie Bill of Rights is a particularly current case study as it just passed in 2019. For this reason, there is limited scholarly research linking LEBOR to other Rights of Nature movements or analyzing its role in shaping the movement in the United States. Finally, the Whanganui River in New Zealand is the highest-profile and successful case of environmental personhood and, therefore, a strong case study against which to compare and contrast Lake Erie.

To carry out my analysis, I focused on the language that composes the policies, charter amendments, and court cases that tell the story of each movement. I analyzed these documents and photographs through various ethical frameworks, Indigenous cosmologies, and public policy frameworks. I selected different analytical frameworks for each case study primarily because the two are so different from one another. Aside from implementing a policy that includes rights for

nature language, the two case studies span different legal and political contexts, histories, values, cultures. The different frameworks highlight the most significant aspects of the language and substance of the two policies. To determine the relative success of these two movements, I review the processes of implementation and the outcomes of those processes, namely whether or not the policy was adopted and whether it is currently legally enforceable.

The Need for A New Framework

The earth is currently at a tipping point in several significant areas, including climate change, species extinction, and anthropogenic interference with nitrogen cycles (Millennium Ecosystem Assessment, 2005). Our current legal systems play a significant role in the rapidly unfolding environmental disasters and to shift this trajectory, a new legal framework must be imagined and created. In 2010, delegates at the World People's Conference on Climate Change and the Rights of Mother Earth in Bolivia wrote the Universal Declaration of the Rights of Mother Earth (UDRME). The declaration includes sections on the "Inherent Rights of Mother Earth" and the "Obligations of human beings to Mother Earth." In the preamble, Mother Earth is considered to be an "indivisible, living community of interrelated and interdependent beings with a common destiny" (UDRME, 2010). This understanding of the world's ecosystems as interconnected and interdependent is not currently reflected in Western systems of law and governance. Most law and policy are structured so that at their substantive center, they reflect human needs, rights, concerns, interests, and appetites without balancing those of the earth (Koons, 2012). This narrow anthropocentric focus is unsustainable, a reality recognized by the drafters of the UDRME and Rights of Nature activists throughout the world. The vision put forward by this movement is for an Earth Jurisprudence that acknowledges the purpose of the

law as supporting “a mutually beneficial relationship between humanity and the community of life on Earth” (Koons, 2012, p. 368). While no framework is perfect, Earth Jurisprudence translates the concepts of Rights of Nature into concrete laws and policies aimed at creating respect and harmony between all members of the earth community. The Rights of Nature framework can be seen as a valuable alternative to current extractive and human-centered structures of law and policy.

Chapter Outlines

The first case study delves into the Lake Erie Bill of Rights passed by citizens in Toledo, Ohio. The progression of this Charter Amendment highlights a rights-for-nature policy that played out through the courts and the challenges it faced, both legal and political. LEBOR is a powerful example of community organizing and consciousness-raising, but ultimately it was not successful in the courts and is therefore unenforceable. This chapter is an exploration of both the text and movement behind the Lake Erie Bill of Rights through a variety of ethical and policy frameworks, including ecocentrism, Gaia theory, and juridification. The second case study explores the Te Awa Tupua Settlement Act in Aotearoa New Zealand. The Act culminates centuries of negotiations between Māori and the Crown over the protection and management of the Whanganui River. The Act uses personhood for the river to recognize and protect Māori worldviews and relationships with the river. This section of the paper explores the relationship between environmental personhood and environmental justice and Indigenous rights. Ultimately, policies like The Lake Erie Bill of Rights and the Te Awa Tupua Act illustrate a movement towards capturing a more nuanced, ecocentric, and Indigenous conceptualization of peoples’ relationship to the environment in formal statutes. The vast differences between the two

case studies illustrate how flexible and adaptable rights for nature policies can be, ranging from organizers in Toledo, Ohio, to the Māori of Aotearoa New Zealand. For such policies to be successful, they must include collaboration between local groups, particularly impacted and marginalized groups, and members of the state or federal legislature. Additionally, successful policies must create opportunities for stakeholders to implement new management practices and some form of a guardianship-model to ensure the policy acts as more than just a values statement.

Literature Review

My analysis of environmental personhood movements and policies draws from existing literature on environmental ethics, legal studies, and political studies. Activists within the Rights of Nature movement often use the term “rights” ambiguously, referring to either moral or legal definitions of rights (Nash, 1989). This ambiguity requires an examination of the ontological and ethical rights that nature is thought to hold. Scholarly frameworks for analyzing the topic include environmental ethics, nature’s legal rights, and the growing concept of Earth Jurisprudence (Nash, 1989; Stone 1973; Cullinan 2011).

Environmental ethics is a field of philosophy that studies the moral relationship between humans and the natural world (Nash, 1989; Taylor, 1986). Humans have had an evolving relationship with nature over time, and the literature on environmental ethics seeks to define those changes. Over the past few decades, the relationship between humans and nature in Western frameworks has shifted once again to a pre-Enlightenment recognition of the intrinsic value of non-human entities, including animals, plants, rocks, and even nature and the environment as a whole (Nash, 1989; Taylor 1986). Scholars make a distinction between two

different types of environmental ethics: human-centered (or anthropocentric) and life-centered (biocentric). In biocentric philosophy, living things are accorded an ethical status at least equal to that of humans (Nash, 1989). This idea incorporates both positive and normative aspects, the idea that humans *can* treat animals and plants rightly and wrongly, and the idea that we *should* treat them rightly (Taylor, 1986). Ecocentrism is another environmental philosophy that goes beyond biocentrism to include ecological systems as a whole, including both their living and non-living elements (Washington, 2017). This environmental philosophy broadens the realm of what is thought to hold value and acknowledges the interconnectedness and interdependence of living things (Washington, 2017). The philosophy of anthropocentrism is the direct opposite of biocentrism and ecocentrism, a worldview in which humans are at the center and are the primary measure of value. Often, proponents for the rights of nature critique anthropocentrism as a narrow and disingenuous way of viewing environmental protection measures and call for a shift towards an earth-centered or ecocentric worldview (Stone, 1973; Nash, 1989; Taylor, 1986).

An inherent part of Euro-Western ethical frameworks like biocentrism and ecocentrism is a dualist rift between nature and culture. Indigenous cultures and societies have their own worldviews encompassing knowledge systems, relationships, and metaphysical beliefs (Berkes, 1999; Watts, 2013; Hart, 2010). In many Indigenous worldviews, nature is seen as imbued with sacredness, and humanity is an inseparable part of nature, in which religious ethics and ecology inevitably intersect. Many Indigenous cosmologies center around creation stories that inform ways of knowing, worldviews, and relationships to geography. In contrast to Euro-Western ethical frameworks such as ecocentrism that exist only in the abstract, Indigenous cosmologies are a “literal and animate extension” of creation stories where land is living and full of thought,

desire, and agency (Watts, 2013). Many Indigenous cosmologies contain historical accounts of the intersections between humans, animals, the spirit world, the mineral world, and the plant world (Watts, 2013; Hart, 2010). There is meaning and agency in the interactions between all these different worlds. Because of this, most Indigenous societies and cultures do not see land as something that can be owned. In a colonized interpretation of place and thought, “land is simply dirt and thought is only possessed by humans” (Watts, 2013, p. 32). The laws and policies that come out of this worldview are often in opposition to many Indigenous beliefs and values. The Rights of Nature framework is not Indigenous, but Indigenous worldviews and Indigenous rights have played an essential role in several pieces of environmental personhood legislation passed around the world, including in Aotearoa New Zealand.

The movement toward legal rights for nature has evolved in connection with these concepts of ethical and moral rights. A central figure that sparked the discussion regarding personhood for nature was Christopher Stone, an American environmental legal scholar. In his widely read article, *Should Trees Have Standing?* Stone lays out the sound basis of current non-human rights-holders such as corporations, trusts, and nation-states. For Stone, extending rights to natural entities such as trees or rivers has precedent and is a necessary next step for environmental protection (Stone, 1973). Stone lays out how U.S. law has extended legal rights to marginalized groups over time, such as women, African Americans, and prisoners. He identifies legal rights for nature as the logical next step in this progression, writing, “Throughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable” (Stone, 1972, p. 453). Stone proposes giving legal rights to forests, oceans, rivers, and other ‘natural objects’, even including the natural environment as a whole. To those who protest that this means we could never cut down a tree again, he writes “that is not to say that

[the environment] should have every right we can imagine, or even the same body of rights as human beings have” (Stone, 1972, p. 457). Stone argues that natural entities should have legal standing so that litigation can be brought on their behalf, in their name. Damages should be calculated based on the damage done to that entity, and awards should be given for its future protection and restoration.

Stone’s biocentric argument was further advanced well over twenty years later, by the emergence of ecocentric legal arguments in the writings of eco-theologian Thomas Berry, and then by South African anti-apartheid activist and environmental lawyer Cormac Cullinan (Clark et al., 2019). Cullinan authored *Wild Law* in 2002 in which he introduces his idea of “Earth Jurisprudence,” which he later described as:

A philosophy of law and human governance that is based on the idea that humans are only one part of a wider community of beings and that the welfare of each member of that community is dependent on the welfare of the Earth as a whole (Burdon, 2011).

The legal world responded to Cullinan’s ideas with enthusiasm. The invitation to include nature within the realm of legal subjects was quickly picked up by several organizations and spread rapidly.

The inevitable progression of rights to new groups, including nature, is an idea that is challenged by other scholars who see the Rights of Nature movement as a new global form of environmentalism that continues human control over nature and naturalizes the concept of “rights” as a universal truth (Arsel, 2012; Youatt, 2017; Rawson & Mansfield, 2018). These scholars argue that using rights-based language legitimizes rights as existing outside of western history and naturalizes the colonial history of legal personhood. They argue instead that the Rights of Nature movement is a narrow knowledge-based community. Rights of Nature is conceptualized as a Transnational Policy Network (TPN) with connections that can be traced

back to specific ideas, individuals, and institutions over time (Rawson & Mansfield, 2018).

Rawson and Mansfield (2018) write that the Rights of Nature movement positions itself as being outside of “the west” and claims to be a solution that is both holistic and Indigenous. They argue that this is far from the truth. Instead, Rights of Nature attempts to overcome Western human-nature dualism and its coexisting anthropocentrism by using Western ideas of rights and personhood as the solution. As John Livingston, in conversation with Jensen (2004, 62), remarks from a radical environmental standpoint: “I don’t think I want a redwood grove to have rights. Rights are political instruments—legal tools. We hear a lot of talk about ‘extending’ rights to nature. How bloody patronizing! How patriarchal for that matter. How imperialistic. To extend or bestow or recognize rights to nature would be, in effect, to domesticate all of nature—to subsume it into the human political apparatus.” The critical perspective offered in this quote is an integral part of the conversation about Rights of Nature. These scholars do not argue that the content of the movement is wrong in valuing and protecting nature. But rather, the form the movement takes in extending legal rights to nature is colonial and oppressive.

That is not to say that environmental personhood as a concept is without use or value to many scholars and activists. On the other side of the debate, scholars argue that giving legal personhood to rivers or other natural entities is a way that the law could provide a lasting commitment to acknowledging Indigenous peoples’ relationship with nature and implement beneficial co-management practices (Morris & Ruru, 2010; Collins & Esterling, 2019; Hutchison, 2014). The practice of co-management has grown and evolved in recent decades as state managers and local resource users fight to address conflicts, and the crisis surrounding common resources. There is not yet a substantial body of literature linking co-management with environmental personhood. Yet, it is a potential outcome for rights of nature policies that create

new forms of management and have the opportunity to center Indigenous and local communities as resource managers (Morris & Ruru, 2010). The debate over the validity and efficacy of rights-based language is ongoing in the literature. It will undoubtedly continue to become more nuanced as the Rights of Nature movement grows.

For this thesis, I use the global Rights of Nature movement, not as a universal, natural truth, as some movement leaders suggest (Cullinan, 2002; Stone, 1972). I instead recognize the movement as a useful background for my case studies with the understanding that the framework contains flawed assumptions and that no one movement can capture the histories, intentions, and negotiations behind these specific policies. Environmental personhood statutes are relatively new, and therefore there is limited scholarly analysis on the processes, methods, and outcomes of organizing to implement them. To focus on those less developed areas, my case studies explore the ethical and cosmological roots of these policies as well as the varying methods of implementation. Through this analysis, I illustrate how environmental personhood movements can and must bring forward impacted communities and Indigenous voices while creating new frameworks for scientists, communities, and governments to protect and co-manage invaluable natural entities.

Chapter 1: Rights of Nature in the Courts

Introduction

To understand why the Lake Erie Bill of Rights came to be, it is important to start with the history of Lake Erie. A backward eye reveals an ongoing lack of effective environmental regulation and mounting threats to the ecosystem's survival. Lake Erie's history illustrates the need for a new framework and demonstrates how a Rights of Nature approach successfully captures the values and practices on which Toledo residents want to base their relationship with the lake. This chapter provides an in-depth analysis of the text of LEBOR and uses ethical frameworks including ecocentrism and Gaia theory to delve into its significance. These lenses emphasize how LEBOR shifts away from anthropocentric values and captures a new environmental ethic that is based on the rights of nature and community. Next, I turn to a discussion of the process of implementing LEBOR through the courts and the future implications its many legal battles might have for the movement. LEBOR gained historic national attention and yet it remains unsuccessful as an environmental policy since it cannot be enforced. This chapter attempts to place LEBOR and the movement behind it into a broader context of the past and future management of Lake Erie and the possibilities it holds for the Rights of Nature movement in the United States.

Lake Erie: A History of Pollution

Residents of the communities surrounding the Lake Erie watershed have long known that the lake is suffering. As one of the Great Lakes in the United States, Lake Erie forms an integral part of the midwestern landscape. The ecosystem is fundamental to the health and biodiversity of the region as well as the well-being of the twelve million residents who live within its watershed

(Environmental Protection Agency [EPA], 2020). Lake Erie is the smallest by volume and the shallowest of the Great Lakes and lies between Ohio and Canada.



Image 1. Lake Erie's location bordering the U.S. and Canada.

The lake is naturally divided into three distinct basins: the western basin is the shallowest and most turbid section of the lake, the central basin is deeper and more uniform in-depth, and the eastern basin is the deepest of the three basins (EPA, 2020). The relative shallowness of all three basins allows the lake to warm quickly in the spring and summer and cool quickly in the fall. Shallow waters and warmer temperatures make Lake Erie the most biologically productive and diverse of the Great Lakes (EPA, 2020). Lake Erie is an irreplaceable, complex ecosystem and yet it is exposed to the greatest stress from urbanization, industrialization, and agriculture of any of the Great Lakes. Over the last decade, residents have experienced annually the destructive

impacts of pollution including algal blooms and warnings to refrain from swimming, fishing, or drinking the water.

Lake Erie has a long history of pollution. Complicating this history is the fact that twelve million people live within its watershed and the lake provides drinking water for about eleven million of those residents (EPA, 2020). Historically, residents and government agencies came together to protect Lake Erie and mitigate the effects of industrialization and agriculture. During the 1960s, concern over pollution levels stemming from heavy industry in Cleveland rose. The need for reform became unavoidable as the health of Lake Erie visibly declined. Surrounded by several large cities and expansive farmlands, Lake Erie watersheds are highly susceptible to agricultural and chemical pollution from runoff. By the late 1960s, concern for the lake had mounted into a crisis and the phrase “Lake Erie is dead” started appearing in national publications (Parker, 2017). The fact that Lake Erie could be pronounced dead illustrates the underlying assumption that the lake ecosystem was once alive. The image below depicts the public outrage over the amount of solid waste dumped at the lake. It also illustrates how the media portrayed Lake Erie as a site of environmental disaster, referring to the lake as a “dumping ground” and pronouncing the ecosystem as “dead”.



Image 2. An image of trash littering the shore of Lake Erie.

Environmental pollution during this era was not relegated only to Lake Erie. The Cuyahoga River that flows into Lake Erie was historically one of the most polluted rivers in the United States. The river caught on fire a recorded number of thirteen different times starting in 1868 (“Cuyahoga River Fire”). In 1969, the Cuyahoga River caught on fire once again, burning for nearly 30 minutes and drawing national attention and outrage when *Time Magazine* published dramatic photos of the river in flames. The photos *Time* published were from an earlier river fire that occurred in 1952 and brought national attention to something locals had come to know as a recurring phenomenon (Latson, 2015). As one article wrote about the significance of the 1969 Cuyahoga River fire, “The 1969 fire was not the first time an industrial river in the United States had caught on fire, but the last” (Adler, 2019). The visual evidence of the state of industrial pollution and waste management in the U.S., a river that was on fire, caused a national outcry for environmental reform and forced policymakers to take action.

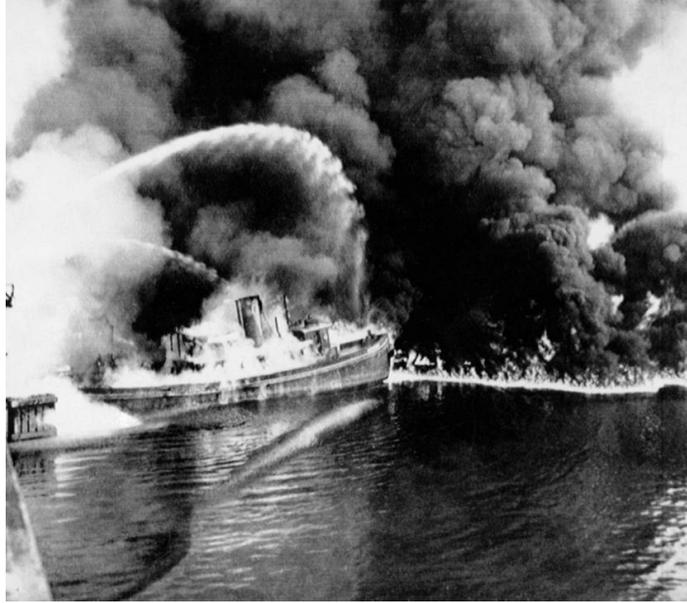


Image 3. The image of the 1952 Cuyahoga River fire that Time Magazine published in its article in 1969.

Shortly after the river fire in 1969, Congress passed the National Environmental Policy Act which helped to establish the Environmental Protection Agency (EPA, 2020). A substantial change in water pollution regulation occurred with the passage of the Clean Water Act (CWA) in 1972. These two laws along with improvements in wastewater treatment systems helped to remedy the problem. Lake Erie appeared to begin recovering, aided by new sewage treatment facilities and a reduction in phosphorus levels (Pearson, 2014). Another critical initiative that helped Lake Erie recover was The Great Lakes Water Quality Agreement (GLWQA). The agreement was first signed in 1972 by both Canada and the United States. The purpose of the agreement was to coordinate binational consensus and action between the two countries to “restore and maintain the chemical, physical, and biological integrity of the Waters of the Great Lakes” (GLWQA, 1972). The GLWQA was a foundational environmental agreement that has sustains continued remediation efforts by the two countries for the past four decades. It was recently renewed in 2012 as a continuing effort to improve the health and stability of Lake Erie’s

ecosystem. The combination of these different initiatives helped improve water quality in Lake Erie. However, the past decade shows that these improvements in Lake Erie's health were short-lived.

Algal blooms returned to Lake Erie in the mid-1990s, but the lake also faces an array of new ecological challenges. Researchers at the Graham Sustainability Institute at the University of Michigan have identified three main factors for worsening algal blooms over the last few years. Warmer average temperatures in the lake due to climate change mean longer growing seasons for algae, resulting in larger, more persistent blooms. Climate change has also increased the intensity of regional storms, and heavier rains wash more phosphorus from the fields into the lake. Finally, invasive species such as Zebra and quagga mussels native to Eastern Europe found their way into Lake Erie via ballast water from cargo boats (Jaggard, 2014). These mussels feed on beneficial phytoplankton, but they reject the toxic algae *Microcystis* and excrete nutrients that fuel the growth of the toxic algae. Combined, these factors have created an ecosystem where the toxic algae can thrive at higher concentrations and persist for longer periods. The impacts of climate change and invasive species may continue to grow in severity in the coming decades, making the protection of the lake from runoff a more pressing priority than ever.

The nutrients that fuel the algae blooms primarily come from the phosphorus in agricultural runoff. There is no shortage of agriculture in Ohio, and the runoff from those farms makes its way into streams and rivers, eventually flowing into larger bodies of water like Lake Erie. Other nutrient contributors come from point sources such as runoff from individual lawns, septic systems, and golf courses (Williams, 2019). Point sources contribute to the problem, but agricultural runoff remains the leading source of nutrients flowing into the Lake Erie watershed.

As evidenced by this section on Lake Erie, agriculture and farming organizations play a large role in the presence and substance, or lack thereof, of water quality regulations in Ohio.

As in the 1960s, there is growing concern over the visible toxic algae that affect residents' access to the lake for uses such as recreation, tourism, fishing, and drinking water. The recent algal blooms that turn the waters a bright blue-green are made up of different genera of cyanobacteria that can lead to Harmful Algal Blooms (HABs). HABs occur when the blooming organisms contain toxins or pathogens that are dangerous to people and animals (NOAA, 2016). HABs return with regularity each year, including some of the worst HABs on record occurring over the past decade (Berardo, 2019). The algal blooms cause "dead zones" - oxygen depleted areas of the lake created when the algae die and decompose. In recent years there have been record-setting algal blooms and resulting dead zones leading to severe impacts for the region's \$12.9 billion tourism and fishing industries (EPA, 2020). In 2014, an especially disastrous algal bloom resulted in the loss of drinking water for nearly half a million residents. The water was so contaminated the city of Toledo gave orders to residents not to drink the water, brush their teeth with it, prepare food with it, or give it to their pets (Fitzsimmons, 2014). The water remained undrinkable for three days. While tap water was subsequently returned to residents, local and state responses were insufficient to address the underlying causes of the algal blooms. Residents acutely felt the impacts of having their drinking and household water completely shut off, illustrating the fragility of their water supply. In response, Toledo residents mobilized to form various grassroots groups such as Toledoans for Safe Water whose mission it was to protect the health of the Lake Erie ecosystem.



Image 4. Harmful Algal Bloom in the Western Basin of Lake Erie in 2019.

Algal blooms in Lake Erie impact all Toledo residents, but they can also present an issue of environmental injustice. Low-income residents may be less able to afford bottled water in times of crisis and may lack the resources to seek out clean water. Local activists such as Keith Jordan, development director of the Ohio nonprofit LJL Vision Outreach, identified HABs as a broader issue of environmental justice for the city's low income and nonwhite communities (Johansen, 2020). Activists are demanding action to protect Lake Erie from further pollution that might place undue risk on these communities. The burden of high pollutant exposures on low-income and minority communities is not a new or unique occurrence, environmental injustice is present throughout the U.S. (Bullard, 2008). Clean drinking water is an essential resource that all humans rely on, and one that vulnerable communities may find difficult to access in the event of future HABs. Given the severity and complexity of Lake Erie's water quality problems and the lack of effective policy-change in recent years, it is not surprising that residents and environmental groups looked to solutions outside the realm of political norms.

The Lake Erie Bill of Rights

One such solution that Toledo residents arrived at was to create the Lake Erie Bill of Rights, a radical declaration of community values and legal rights for Lake Erie. On February 26th of 2019, voters in Toledo faced the historic question of whether or not to grant Lake Erie legal rights normally associated with those granted to a person. A ballot measure to adopt the Lake Erie Bill of Rights (LEBOR) into the Toledo City Charter passed with a 61 percent majority. The charter amendment holds liable any public or private entity that violates Lake Erie's rights as well as giving the lake the legal right to "exist, flourish, and naturally evolve" (LEBOR, 2019). In theory, if those rights were violated by any individual, government, or corporation, the lake represented by a human could enter the legal system as a plaintiff and sue its polluters. LEBOR was the first rights-based law to be passed in the U.S. that specifically focused on a distinct ecosystem (CELDF, 2019). The creation and passage of LEBOR is an important case study within the larger Rights of Nature movement, particularly as it is a vast ecosystem that straddles the U.S. and Canada and supports millions of residents drinking water and livelihoods.

The passage of the proposal took several years of organizing, action, and educational campaigns to achieve. Driven by a desire for concrete action, a group of citizens in Toledo formed a grassroots movement to establish a Bill of Rights to protect Lake Erie and the communities that depend on its health. The organization they formed, Toledoans for Safe Water (TSW), partnered with a non-profit public interest law firm, the Community Environmental Legal Defense Fund (CELDF) beginning in 2016 to create legislation to recognize the rights of Lake Erie. CELDF is a critical organization in the modern Rights of Nature movement (Magallanes, 2018). After forming in the 1990s, CELDF focused their work on enabling

communities to exercise more democratic control over local environmental decision-making. To address problems of pollution and the power of large corporations, they began by drafting ordinances to empower communities to ban particular harmful activities in their municipality. Next, they focused on creating ordinances to eliminate corporate rights at the municipal level. Their third and most recent campaign is the creation of ordinances that include rights-for-nature clauses to enable citizens to act on behalf of natural entities in their community. This method of protection is very much in line with Christopher Stone's ideas of creating legal standing for humans to step in on behalf of a river or other body of nature and sue polluters for its protection. TSW began partnering with CELDF during this third phase, focusing on the rights of nature and ways to empower local communities to protect those rights.

TSW along with the support of CELDF, started their campaign in 2017 to officially put LEBOR on the ballot as a charter amendment. The entire process took close to two years since the initiative had to wind its way through a complex maze of local and state legal and political systems. Organizers began by collecting signatures from Toledo residents to get LEBOR onto the ballot. The initiative was approved with nearly 11,000 resident signatures (Toledoans for Safe Water [TSW], 2018). Despite receiving more than the required number of signatures to qualify the measure, the amendment was blocked from the November ballot by a vote of the Lucas County Board of Elections. This decision was met with protest from organizers and LEBOR supporters. In a press statement from CELDF, TSW organizer Markie Miller stated, "For three decades Lake Erie communities have looked to our representatives to protect the lake and safeguard our water – to no avail. We are done waiting. Across the state, when we begin to take our health, safety, and welfare into our own hands, we are blocked by the very government that we once thought would protect us." (CELDf, 2018). Miller's statement speaks to the

question of what happens when the government fails to protect vital community resources. TSW saw this failure and stepped in to fill the gap between the values the Toledo community held, and the realities of local environmental policy that they saw.

TSW filed a lawsuit in the Ohio Supreme Court stating that the Board of Elections members had exceeded their authority by blocking a citizen-approved initiative from the ballot. While they ultimately lost the court case, the Board of Elections held another vote to determine whether or not the measure could be placed on the February 2019 special elections ballot. The board voted unanimously to move LEBOR forward to the special election, upholding the people's right to vote on the amendment. With its passage, LEBOR, the first of its kind, was added to the city charter. TSW exemplifies the energy and passion required to create a grassroots movement and push for change at any level of governance. The Rights of Nature movement is a values-based movement that is dependent on community action and organizing to create concrete policy change.

Legal Rights and Implications of LEBOR

The Lake Erie Bill of Rights is the first rights-based legislation passed in the U.S. aimed at protecting an entire interconnected ecosystem (CELDf, 2019). The protections are worded so as to include the lake, its tributaries, and the many species that the lake supports, acknowledging that the lake is more than just a body of water. Since it is the first law of its kind, both the structure and content of the document provide rich material for analysis as LEBOR may form the basis for similar proposals or legislation in the future. The three-page document begins with a series of six declarative value statements, followed by seven substantive sections outlining the ecosystem's enumerated rights and the enforcement mechanisms for those rights. Each of the

values statements on the first page begins “*We the people of the City of Toledo,*” drawing from the structure and language of the preamble of the United States Constitution. Evoking the language of the Constitution is a distinct linguistic decision. It elevates LEBOR to the status of a declarative political document, at the same time emphasizing its community-driven nature and Toledoan roots. In the first paragraph, the document lays out the historical precedent for demanding greater protections for Lake Erie.

We further declare that this ecosystem, which has suffered more than a century under continuous assault and ruin due to industrialization, is in imminent danger of irreversible devastation due to continued abuse by people and corporations enabled by reckless government policies, permitting and licensing of activities that unremittingly create cumulative harm, and lack of protective intervention (LEBOR, 2019).

This section speaks to the history of pollution that Lake Erie has experienced over more than a century of inadequate regulations. It states that relying on status quo systems for protection that predominantly place value in human uses of the lake is not sufficient to prevent ‘irreversible devastation.’ One of the ‘reckless government policies’ LEBOR refers to in this section likely describes the exemption in the 1972 Clean Water Act for most agricultural pollutants and farming activities (EPA, 2018). Practices that are considered “normal farming” are exempt from Section 404 of the CWA even though they lead to the discharge of pollutants into U.S. waters. While the federal government is not able to regulate agriculture through the CWA, states can do so by imposing taxes, requiring permits, or implementing other regulations. Ohio, however, has struggled to pass protective measures that would create an avenue for tighter regulations. In a recent example from 2018, former Ohio Gov. John Kasich signed an executive order intended to offer policymakers new tools to reduce fertilizer and manure runoff from thousands of farms. The executive order classified eight watersheds in northwest Ohio as “distressed,” giving those areas greater protections (Proffitt, 2018). The Ohio Soil and Water

Conservation Commission voted to delay its implementation to bring forward the voices of concerned farmers. The politicized back and forth and ultimate failure of the order illustrated the lack of action from state government systems to address the Lake Erie crisis. This section of LEBOR contextualizes Toledo residents' frustration and describes an urgent need to reconceptualize the enforceable rights of the lake and the people and communities it supports.

LEBOR as a legal document goes further than simply laying out grievances and community values. The legal implications of LEBOR are stated explicitly in Sections 2 through 4 of the document. The Charter Amendment states that it is unlawful for any government or corporation (defined as any business entity) to violate the rights explicitly defined in LEBOR. Additionally, it prevents corporations or governments from circumventing these restrictions by preventing permits or licenses that violate LEBOR from being issued. As it relates to Christopher Stone's initial criteria for a river having "its own" rights, LEBOR fulfills each of the three criteria he lays out: "(1) a suit in the object's own name (not some human's); (2) damages calculated by loss to a nonhuman entity (not limited to economic loss to humans); and (3) judgment applied for the benefit of the nonhuman entity." (Stone, 2010, p. 4). Each of these criteria are critical to fundamentally shifting how humans as a society view ecosystems and other natural entities. The United States as a litigious and rights-bearing society, often does not recognize the value of something until it receives its own rights (Stone, 2010). LEBOR meets the criteria for making Lake Erie a rights-bearing entity, elevating the lake from a thing to be used by humans, the rights holders, to something to be protected, shared, and restored. In Section 3(d) of LEBOR it states:

Such court action shall be brought in the name of the Lake Erie Ecosystem as the real party in interest. Damages shall be measured by the cost of restoring the Lake Erie Ecosystem and its constituent parts at least to their status immediately before the commencement of the acts resulting in injury and shall be paid to the City of

Toledo to be used exclusively for the full and complete restoration of the Lake Erie Ecosystem and its constituent parts to that status (LEBOR, 2019).

The three criteria Stone lays out for a natural objects' rights are present: an action brought in Lake Erie's name, damages calculated by the cost of restoring the lake, and those funds to be used exclusively for Lake Erie restoration efforts. The mechanism for enforcement of the law is also quite broad, stating that "The City of Toledo, or any resident of the City, may enforce the rights and prohibitions of this law" (LEBOR, 2019). This model of enforcement differs from the framework Christopher Stone lays out in his essay *Should Trees Have Standing?*. Stone advocates for a guardianship model so that a friend of a natural entity who perceived it to be endangered could apply to the court to become its guardian. The 'friends' of the environment that he mentions are environmental organizations such as The Environmental Defense Fund, the Sierra Club, or the Natural Resources Defense Council. Once granted guardianship, it would be the guardian's task to inspect and determine the level of damage, monitor the ongoing environmental conditions, and represent those entities at legislative and administrative meetings (Stone, 2010). In terms of representation for Lake Erie and enforcement of the provisions of the Lake Erie Bill of Rights, guardianship is not mentioned in the document. Instead of creating a mechanism for guardianship, the ability to enforce Lake Erie's rights is given to the City of Toledo or any Toledo City resident.

Community Rights - Empowered Local Stewardship

Local authority and community rights are fundamental elements for the framers of the Lake Erie Bill of Rights. A system of guardianship creates the possibility for national organizations such as the Environmental Defense Fund to gain authority over the management of Lake Erie. TSW and CELDF are focused on community rights as a means to empower the local

community, in this case the City of Toledo and its residents, to enforce LEBOR and protect the lake from further degradation. In their mission statement, TSW states that “As citizens of a chartered municipality, we recognize our right to legislate and pass laws that protect our community and our resources” (TSW, 2019). The language and emphasis of LEBOR as a legal document focuses on the rights of the Lake Erie ecosystem but also the rights of the community of Toledo to access and protect that resource.

LEBOR offers a different model for empowering local residents to stake a claim in the health of their local ecosystems. It does not completely align with the framework of co-management, which can be defined as “A political claim [by users or community] to share management power and responsibility with the state” (McCay & Acheson, 1987, p. 32). In this model, resource users or community members are actively engaged with the specific details and processes of resource management. LEBOR does not emphasize direct engagement of local fisheries, water agencies, or other stakeholders to participate in the co-management of Lake Erie alongside the Ohio EPA. Instead, LEBOR takes a rights-based approach by enumerating specific rights in a legal context and legal framework that community members are empowered to monitor and enforce.

Nor does LEBOR fully align with the concept of environmental stewardship which is defined as “the responsibility for environmental quality shared by all those whose actions affect the environment” (EPA, 2005). The legal right to a ‘clean and healthy environment’ as well as the right of ‘local community self-government’ are not encapsulated by a framework of voluntary participation that is the basis of environmental stewardship. LEBOR presents a combination of these different frameworks, made legally binding through its litigious structure. I have come to see LEBOR as a model of empowered local stewardship, one that takes a rights-

based approach over collective responsibility or voluntary action. At the same time, LEBOR empowers local community members and resource users to engage with, monitor, and protect the Lake Erie ecosystem. TSW and CELDF's creation of this unique framework presents new opportunities and possibilities for different iterations of LEBOR in other contexts throughout the U.S.

Ethical Frameworks

Ecocentrism

There are several ethical frameworks through which to view LEBOR including ecocentrism and Gaia theory. These frameworks illustrate the moral and philosophical shifts embedded in the document. The first section of LEBOR, entitled 'Statements of Law - A Community Bill of Rights', enumerates four critical rights the document aims to protect: rights of the Lake Erie ecosystem, the right to a clean and healthy environment, the right of local community self-government, and rights as self-executing (LEBOR, 2019). The first of these four, 'rights of Lake Erie ecosystem,' illustrates the underlying ecocentric framework of LEBOR. The document states that "Lake Erie, and the Lake Erie watershed, possess the right to exist, flourish, and naturally evolve" (LEBOR, 2019). In this statement, the authors acknowledge Lake Erie as a living ecosystem with the intrinsic right to exist and evolve. Independent of human interests and the benefits Lake Erie provides to humans, the lake itself has the right to exist, flourish and evolve. This is a foundational concept of ecocentrism which sees intrinsic value in environmental systems as a whole and acknowledges that life is interdependent and connected (Washington, 2017). Ecosystems are more than just their individual living and non-living components. As activist Farhad Emrahimi described, "an ecosystem isn't just a list of living things (squirrel,

tree, bee, flower); it's the set of relationships *between* those living things (the squirrel lives *in* the tree, the bee *pollinates* the flower)" (Brown, 2017, p. 96). LEBOR explicitly includes both the living and non-living parts of the Lake Erie ecosystem as well as the interactions, processes, and relationships that occur between those living things.

The centering of an ecocentric framework in LEBOR is significant as it represents a shift in focus from previous anthropocentric-focused frameworks. Historically, international recognition of the intrinsic value of nature has been mixed, with a Euro-Western anthropocentric approach dominating the landscape. The Stockholm Declaration of 1972 noted that 'natural resources' must be guarded for future *human* generations (UN General Assembly, 1972). The Rio Declaration from the Earth Summit of 1992 similarly stated in its First Principle that "Human beings are at the center of concerns for a sustainable environment" (UN Conference on Environment and Development, 1992). While LEBOR is not the first document to express an ecocentric worldview, it certainly represents a growing shift in that direction and a movement away from past anthropocentric values in Euro-Western political and legal documents. LEBOR emphasizes compassion for humans, communities, *and* natural ecosystems and urges protection and justice for each.

Gaia Theory

Gaia theory or the Gaia hypothesis is another framework that can be applied to LEBOR that addresses the inherent separation between nature and culture present in ecocentrism. James Lovelock, a British scientist and inventor who worked with NASA, first developed Gaia theory in the 1960s. Lynn Margulis, a microbiologist later co-developed the theory. Lovelock put forward his hypothesis to the world in his book, *Gaia: A New Look at Life on Earth* where he

defines Gaia as “a complex entity involving the Earth's biosphere, atmosphere, oceans, and soil; the totality constituting a feedback or cybernetic system which seeks an optimal physical and chemical environment for life on this planet” (Lovelock, 1989, p. 10). More simply, the theory states that earth is a self-regulating, self-sustaining entity that is continually adjusting its environment to support life. The scientific community deeply criticized the hypothesis when it was first proposed. Over time however, the Gaia hypothesis was studied and clarified by Lovelock and other scientists and has come to be known as Gaia theory. Today, Gaia theory continues to be researched, mainly in the multidisciplinary fields of Earth system science and biogeochemistry and is being increasingly applied to studies of climate change (Crunk, 2000). French philosopher, anthropologist, and sociologist Bruno Latour is one of the most prominent scholars of Gaia theory today. In an essay exploring what he had come to understand Gaia theory to mean he wrote, “living things do not reside in an environment, they fashion it. What we call the environment is the result of living things’ extensions; their successful inventions and apprenticeships” (Latour, 2018). This theory of life gives agency to living organisms and sees the role each plays in sustaining and creating the equilibrium status of its environment. While perhaps not explicit, elements of Gaia theory can be found in the language of LEBOR. Section 1(a) states that “The Lake Erie Ecosystem shall include all natural water features, communities of organisms, soil as well as terrestrial and aquatic sub ecosystems that are a part of Lake Erie and its watershed” (LEBOR, 2019). By extending legal protections to each element that composes the living whole of Lake Erie, LEBOR validates the importance of each organism, bird, fish, mammal and invertebrate that composes the Lake Erie ecosystem and their contribution to the self-sustaining whole.

Unlike ecocentrism which perpetuates the divide by nature and culture, Gaia theory scholars like Bruno Latour reject that dualism. Latour writes extensively about the nature/culture divide writing that it “presupposes two sorts of domains, that of nature and that of culture, domains that are at once distinct and impossible to separate completely...we are not dealing with domains but rather with one and the same concept divided into two parts, which turn out to be bound together” (Latour, 2017, p. 24). The concept of legal rights is tied up inextricably in the nature/culture divide. ‘Rights’ are merely legal fictions centered in our conceptualization of culture, society, and humanity. Through extending legal rights to an ecosystem, LEBOR bridges two perceived domains: The City of Toledo and the Lake Erie ecosystem. The reality is one cannot talk about the City of Toledo without talking about the nature that created it, the nature living within it, and the nature surrounding it. Legal rights are a way in which culture and humanity are separated from the natural world. LEBOR crosses this divide by enumerating historically human rights for all the elements of the Lake Erie ecosystem.

LEBOR also takes a step towards recognizing the inadequacy of the nature/culture divide through its value statements and language. The document critiques the unequal protections that separate entities associated with culture such as businesses and government from those associated with nature like air, land, and water. One of the principal value statements in LEBOR declares, “*We the people of the City of Toledo* find that laws ostensibly enacted to protect us, and to foster our health, prosperity and fundamental rights do neither; and that the very air, land and water - on which our lives and happiness depend - are threatened” (LEBOR, 2019). This section makes clear the intimate connection between air, land and water, and the people of Toledo.

Where Does LEBOR Stand Today?

Given that lawsuits preceded the LEBOR charter amendment's placement on the 2019 ballot, it is not surprising that it has faced legal action since being adopted. In February 2019, the day after LEBOR was passed, Drewes Farm Partnership filed a complaint and initiated a lawsuit against the City of Toledo in federal court challenging the constitutionality of LEBOR (*Drewes Farm Partnership v. City of Toledo*, 2019). Drewes Farm describes itself as “a multigenerational family farm located in Northwest Ohio” (“Drewes Farms”). The farm grows corn, soybeans, wheat and alfalfa and considers itself to be “a leader in agriculture and its surrounding community” (“Drewes Farms”). Drewes Farms argues in its case against the City of Toledo that the City has put the Drewes Farms’ 5th-generation family farm at risk and is exposing the business to “massive liability” if LEBOR were to take full effect (*Drewes Farm Partnership v. City of Toledo*, 2019). Drewes Farms appears to have extensive, monoculture fields as shown in the photo below. It is one of hundreds of other farms in Northwest Ohio growing similar crops that might be affected by the adoption of enforceable legal rights for Lake Erie.



Image 5. Drewes Farm facilities taken from Drewes Farms Website.

After the complaint from Drewes Farms was filed, lawyers affiliated with CELDF filed a motion asking the court to allow TSW and the Lake Erie Ecosystem to “intervene” in the case as defendants as they had significant legal interests in the case. The judge denied the request leaving the City of Toledo as the only defendant. In their complaint against the City, Drewes Farms alleged violations of their rights under the First Amendment, the Equal Protection Clause, and Due Process Clauses of both the Fifth and Fourteenth Amendments (*Drewes Farm Partnership v. City of Toledo*, 2019). The Partnership also argued that LEBOR exceeds the City of Toledo’s authority by preempting state and federal powers. Drewes Farms requested that the court grant an immediate injunction to prevent LEBOR from taking effect and to permanently invalidate LEBOR. The injunction was granted, which prevented LEBOR from being enforceable until a final decision on the case was handed down by the court.

The first oral arguments for the case were heard on January 28, 2020 in a downtown Toledo courtroom filled to capacity. Lawyers for the City of Toledo argued that protecting Lake Erie is a legitimate interest and that people “do not have a constitutional right to fertilize, [or] a constitutional right to pollute”. Lawyers for Drewes Farm argued that LEBOR “allows for arbitrary enforcement”, overreaches the power of the City of Toledo, and that the words “exist, flourish, and evolve” were too malleable and could easily be twisted to make someone liable who should not be (*Drewes Farm Partnership v. City of Toledo*, 2020). The community interest in the case and the aggressive legal arguments made by Drewes Farm reveal the political salience of LEBOR and the consequences it might have for environmental law going forward.

Another attempt to nullify the LEBOR charter amendment came in the form of a Budget Bill from the Ohio State Legislature in June 2019. Tucked away on page 482 of the house budget, Sec.2305.011.(A) contains language that appears to be aimed directly at invalidating

environmental personhood in the state of Ohio. The section on the rights of nature stands alone and is followed by unrelated amendments on healthcare. Legislators wary of the LEBOR charter amendment sought to invalidate it completely in the veiled setting of a 2,600-page budget bill.

(B) Nature or any ecosystem does not have standing to participate in or bring an action in any court of common pleas. (C)(1) No person, on behalf of or representing nature or an ecosystem, shall bring an action in any court of common pleas (H.B. 166, 2019).

The backlash in the form of litigation and state legislation raises the question of whether or not the LEBOR charter amendment is the best avenue for Lake Erie activists. Some scholars argue that the Rights of Nature movement “naturalizes the colonial history of legal personhood” and positions rights as “natural” (Rawson & Mansfield, 2018). The Lake Erie Bill of Rights certainly reflects many of these assumptions and builds upon the idea of the U.S. as a “rights-bearing” nation. Another argument against the LEBOR charter amendment is that cities simply do not have the authority to create broad-reaching rights of nature policies. Given the U.S. Constitution’s Supremacy Clause which states that state law cannot supersede federal law and the geography of Lake Erie which borders several cities, states, and Canada, the charter amendment had significant roadblocks to overcome in order to be upheld.

The courts as an avenue for social reform have a long history and the potential to be extremely effective (Gash, 2015; Silverstein, 2009). While it is tempting for groups to aim for change with the greatest possible magnitude, there are certain constraints on the courts which at times, makes reform ineffective and even harmful for a movement. As Gordon Silverstein illustrates in his book *Law’s Allure: How Law Shapes, Constrains, Saves, and Kills Politics* (2009), policy entrepreneurs often fail to factor in the risks of juridification – using the courts as a means to implement or change policy. For example, precedent in law matters and it is

extremely sticky; once a path of legal reasoning is chosen it is difficult to deviate from that path. Similarly, once a path is blocked off it is difficult to ever unblock it (Silverstein, 2009). The legal arguments employed in the Lake Erie case and the ruling that was handed down could potentially affect other U.S. environmental personhood court cases for decades to come. Additionally, by choosing such a public avenue for reform, there is always the possibility for backlash as Alison Gash describes in her book *Below the Radar: How Silence Can Save Civil Rights* (2015). Legal and political backlash from farmers and conservative lawmakers meant that LEBOR was never able to be enforced due to the legal injunction and the language in the state budget.

On February 27th, 2020 Judge Zouhary issued his decision on the case. The judge struck down the Lake Erie Bill of Rights writing, “This is not a close call. LEBOR is unconstitutionally vague and exceeds the power of municipal government in Ohio” (*Drewes Farm Partnership v. City of Toledo*, 2020). The vague nature of LEBOR is the primary reason Judge Zouhary cites in his decision for striking LEBOR down. The inability to clearly decipher what actions or activities would infringe upon Lake Erie’s right to “exist, flourish, and naturally evolve” is of great concern in his decision. Judge Zouhary poses this question directly asking if it would be illegal to engage in activities such as fishing, dredging, the removal of invasive species, or irrigating a field (*Drewes Farm Partnership v. City of Toledo*, 2020). The lack of a clear standard or baseline as to what qualifies as “clean and healthy” is also detrimental in his opinion to the success of LEBOR. Citing these reasons, the environmental rights of LEBOR were pronounced void. Similarly, Toledoans right to “self-government of their local community” is pronounced impermissibly vague and was struck down as well.

Zouhary’s decision points to the inseparable relationship between Rights of Nature and environmental management policy. Ultimately whatever rights are given to Lake Erie and the

people of Toledo, they address human-environment interactions that will play out through the management of agricultural practices, development, balancing conservation and recreational use, and limiting extractive industry practices. Judge Zouhary signaled that the court is not receptive to sweeping Rights of Nature policies, particularly since one judge cannot change the law dramatically without precedent (Silverstein, 2009). He did signal however, that there may be room for more concrete and specific legislation to reduce water pollution, potentially in a similar rights-based form. TSW could partner with other organizations to develop a scientifically informed baseline for what qualifies as “clean and healthy” and determine what specific activities or practices should be prohibited. This level of specificity and coordination between citizens, scientists, and government is what is lacking in LEBOR. Future groups looking to Rights of Nature policy solutions, especially those that might be challenged in court, should take into account Zouhary’s decision when crafting new policies or amendments.

National Impacts and Media Coverage

Although it was ultimately struck down, LEBOR did succeed in naming an ongoing frustration with current environmental policy and the desire for significant reform. Building off of a small but powerful global movement, TSW and CELDF organized a collective movement in Toledo that called into question peoples' very understanding of nature and their collective environmental ethics. The LEBOR charter amendment also brought the City of Toledo together by standing up for Lake Erie, a beloved and depended upon part of the community. TSW gathered local support and built a grassroots movement through hosting workshops, panel discussions, and organizing protests and demonstrations in support of LEBOR and Lake Erie’s protection. At a courthouse protest, posters for community rights over the rights of corporations,

the rights of Lake Erie, the right to clean water, and the importance of protecting water were present. This level of community action and engagement is notable. The invalidation of LEBOR in the courts does not capture the energy, passion, and organization demonstrated by the community.



Image 6. Image from Toledoans for Safe Water Facebook page of an organized demonstration outside of the U.S. District Court in Ohio during the January 28th, 2019 oral arguments.

Support from outside groups and organizations also rose over the past year along with attention from local and national media. TSW circulated an online letter of support for LEBOR that was signed by more than 500 individuals and organizations, both locally and in countries such as Canada, Australia, Sweden, Italy, France and England (Henry, 2020). Among the groups who signed their support are First Nations, environmentalists, the Vermont National Lawyers Guild, Great Lake Commons, and various other stakeholders such as biologists, business owners,

politicians, Rights of Nature activists, and others (Henry, 2020). The passage of LEBOR found its way into major news outlets including the *New York Times* (Williams, 2019). It was also the subject of a 2019 comedy sketch on *The Daily Show with Trevor Noah* which told the story of LEBOR through a series of comedic interviews. Generating this level of national conversation and attention places LEBOR at the center of the discussion about Rights of Nature in the U.S. and makes it a model for future groups.

Conclusion

While the unsuccessful outcome of the case is disheartening, the fact that TSW along with CELDF effectively mobilized the Toledo community to stand up for Lake Erie and brought national attention to the issue are both notable outcomes. The courts may not prove to be a receptive avenue for this social movement right now, but LEBOR has shifted the conversation about Rights of Nature into the public eye in the United States. Lake Erie, as one of the Great Lakes, is a formidable battle ground for Rights of Nature activism and organizing. This movement carries the potential to shift how we as a society view nature, not as an inanimate resource to be used, but as a living being with its own set of legally enforceable rights. TSW and CELDF are not giving up on LEBOR but will instead pursue a multi-faceted approach outside of the courts because, as TSW leader Markie Miller stated, “As long as there is a Lake to protect, we won’t be going anywhere” (CELDf, 2020).

Chapter 2: Te Awa Tupua

Introduction

The second chapter will explore the Te Awa Tupua (River Claims Settlement) Act of 2017 passed in Aotearoa New Zealand. The Act culminates a long history of negotiations between the Māori and the Crown over the protection and management of the Whanganui River. It creates legal personhood for the river, but I argue that the true nature of the Act is to acknowledge and uplift fundamental Māori beliefs and values and embed them into legal statute. Using a historical perspective, this chapter explores the foundational negotiations, the text, and the process of implementation to evaluate the relative success of the Act. I use environmental justice and Indigenous rights frameworks to explore how the Act uplifts and protects Māori worldviews and relationships with the river. Finally, I explore the implementation and management processes happening on the ground since the Act passed, and whether or not they uphold the goals of the statute.

Historical Context: Colonization of the Whanganui River

The Whanganui River in Aotearoa New Zealand traverses 180 miles, flowing from Mt Tongariro across volcanic plains, forested river valleys and farmland to reach the Tasman Sea (Beaglehole, 2012). Evidence suggests that the First Peoples settled in Aotearoa New Zealand in the thirteenth century (Irwin & Walrond, 2005). The region of Whanganui is the ancestral home of several different Māori tribes who formed intimate connections to the land and waters of the region. Indigenous creation stories typically tell of how people today descended from and remain genealogically tied to a particular place. For example, the traditional Māori view is:

All the elements of the natural world, the sky father and earth mother and their offspring; the seas, sky, forests and birds, food crops, winds, rain and storms, volcanic activity, as well as people and wars are descended from a common ancestor, the supreme god. ... In Māori cultural terms, all natural, and physical elements of the world are related to each other, and each is controlled and directed by the numerous spiritual assistants of the gods (Department of Conservation, 1994).

Since the colonization of Aotearoa New Zealand in 1840, the Māori of the Whanganui River have been fighting to assert their rights and reclaim their sacred relation with their river.

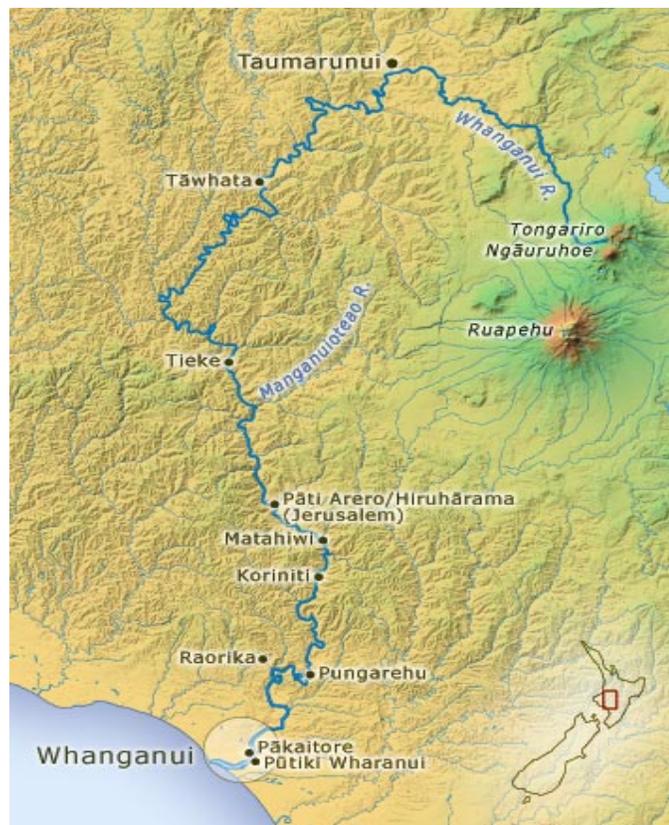


Image 7. The full length of the Whanganui River from Mt. Tongariro to the Tasman Sea.

In 1840, Māori chiefs signed a treaty with the British Crown. The Treaty of Waitangi was written through the British legal system and adopted British law. It was translated into Māori, but

during that process it was mistranslated, perhaps deliberately (Charpleix, 2017). Two distinct treaties were thus signed, a British version in English which vested all rights and powers of sovereignty in the Crown, and a Māori version in which the Māori retained complete sovereignty over their taonga (treasures) (Morris & Ruru, 2010). Even in the English version, Māori maintained exclusive possession of their lands, forests, and other properties. Despite the inherent differences in Māori and British law and the possession clause in both versions, the Crown assumed total ownership and control over the natural resources in Aotearoa New Zealand, including the Whanganui River. Since then, a fraught history has unfolded between the Māori and the Crown in which the Māori have sought an honoring of the Treaty that they signed. The iwi (Māori tribes) fought their grievances over the river using every recourse they possessed, including petitioning Parliament, calling for reports by the Royal Commission and by the Waitangi Tribunal, and numerous court cases beginning in 1938 through 2010 (Magallanes, 2015).

In 1975, the Crown created the Waitangi Tribunal in order to inquire into the Crown's breaches of the Treaty of Waitangi and to resolve the long history of disputes over the Whanganui River. The tribunal was composed of several members, at least four of which had Māori ancestry (Charpleix, 2017). In 1990, Te Atihaunui-a-Paparangi, a member of the Whanganui tribe, brought a claim to the tribunal to assert the iwi's rights to the "ownership, management, and control" of the Whanganui River (Waitangi Tribunal, 1999, p. 357). In the tribunal's findings, they recognized Māori ownership of the river through this claim known as Wai 167. The right of ownership is described in Wai 167 as an essential way to exercise "the right of management and the duty of stewardship," which the iwi view as more important than ownership (Waitangi Tribunal, 1999, p. 312). Through this settlement, Parliament began a

process to legally recognize the essential relationship between the Māori and the river, leading eventually to the declaration of the river as a legal person.

Te Awa Tupua: Personhood for the Whanganui River

The Whanganui River Deed of Settlement - Ruruku Whakatupua- was signed in August of 2014. The deed represented the culmination of more than a century of effort by the Whanganui iwi to protect and provide for their relationship with the Whanganui River despite ongoing conflicts with the Crown. The Treaty settlement was founded upon two fundamental principles negotiated by the Whanganui iwi and the Crown:

an integrated, indivisible view of Te Awa Tupua comprising the Whanganui River and all its elements in both biophysical and metaphysical terms from the mountains to the sea; and the health and wellbeing of the Whanganui River is intrinsically interconnected with the health and wellbeing of the people (Ruruku Whakatupua, 2014).

These two elements were then reflected in two different documents of the Settlement, Te Mana o Te Awa Tupua and Te Mana o Te Iwi o Whanganui. The first document established a new legal framework that could recognize the Whanganui River as a legal entity. The second document was a recognition of the iwi's relation to the river and redress for their losses over the years (Ruruku Whakatupua, 2014). The Deed of Settlement was transformed into the Te Awa Tupua (River Claims Settlement) Act, which passed in Parliament in March of 2017 (the Act). The Act declared the Whanganui River a legal person, transforming the river from property into an entity, Te Awa Tupua, with its own historic rights and protections.

The Act includes five sections and many more subsections, so a brief summary will not capture the wealth of material it contains. Three critical themes emerged from the text that express the most compelling elements of the Act. The first is a full acknowledgment of the

unique cultural and spiritual connections the Whanganui iwi have with the river and a recognition of the river as an “indivisible and living whole” (Te Awa Tupua, 2017). Through the text of this Act, the Crown uplifts the importance of the Whanganui Iwi’s relationship to their river and commits to protecting that relationship. The Act achieves this through its expansive definition of the river including its physical and spiritual elements, recognition of the river as a legal person, and an offering of a formal apology for past grievances relating to the Whanganui River.

The second substantive theme of the text is the future management of the river, including a commitment to empowering the iwi as guardians of the river. There are several sections devoted to the establishment and election of two official guardians whose role it is to speak on behalf of the river. In addition, the Act establishes an advisory group, a strategy group, and a collaborative group to further protect the health and wellness of the Whanganui River and provide opportunities for individuals and groups with special interests in the river to become involved. The Act outlines in detail the purpose, function, powers, and appointment processes for each of these groups. To “support the health and wellbeing” of the river, the Act establishes a fund with a Crown grant of 30 million dollars to successfully implement the initiatives of the Act (Te Awa Tupua, 2017).

Finally, there are several sections devoted to the legal personhood status of the river, and the vesting of the current ownership of the riverbed from the Crown to the river itself, Te Awa Tupua. However, the river is not vested with complete ownership. Under the Act, existing property rights to certain parts of the riverbed remain in private ownership including legal roads, railway infrastructure, and any areas of the riverbed held under the Public Works Act 1981 (NZ) or located in the marine or coastal area (Te Awa Tupua, 2017, s 41(2)). A further limitation on

the powers of the Act is that it does not include the water that is inextricably part of the river (Te Awa Tupua, 2017, ss 16, 46). Under common law, water is incapable of being owned and therefore the legal self-ownership of Te Awa Tupua extends only to certain parts of the riverbed, leaving the water as a separate entity (Collins & Esterling, 2019). Furthermore, the provisions of the Te Awa Tupua Act are written to defer to other legislation unless otherwise stated, which also reduces its effectiveness (Te Awa Tupua, 2017, s 16). The statute does not contain sweeping legal powers that will radically transform all aspects of its management. The Te Awa Tupua Act is intended to record the settlement with the Whanganui iwi, acknowledge their connection to the river, and provide a legal mechanism to ensure Māori have the ability to co-govern and co-manage the river thereby protecting it for the future of their people.

Environmental Justice

The Te Awa Tupua Act can be analyzed through a framework of environmental justice as a metric for its effectiveness as a just settlement. The Act means heal the river as well as a history of oppression of the Māori people. The specific demands of an environmental justice-based approach can help readers to understand the strengths and shortfalls of the Act as it relates to environmental justice. Delegates at the First National People of Color Environmental Leadership Summit held in 1991 first drafted the Principles of Environmental Justice. These 17 principles serve as a guiding structure for environmental justice movements all over the world. Some of the principles present in the Te Awa Tupua Act include:

- 1) **Environmental Justice** affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction. 2) **Environmental Justice** demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias. 7) **Environmental Justice** demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and

evaluation. 11) **Environmental Justice** must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination. (Principles of Environmental Justice, 1996).

The language of the Act addresses these four principles, framing the sacredness of the river and the rights of the Whanganui iwi as the primary backdrop for the policies within it. One of the intrinsic values stated in the Act is the recognition of Te Awa Tupua as a “spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and well-being of the iwi, hapū, and other communities of the River” (Te Awa Tupua, subpart 2, 13). This statement affirms the first principle of environmental justice by recognizing the sacredness and interdependence of the river ecosystem and the iwi. The Act also addresses the second and seventh principles of environmental justice that demand public policy be free from bias and include vulnerable groups at every level of policymaking. The Te Awa Tupua Act places at its center the voices, rights, and identities of the iwi. It mandates their participation and inclusion as guardians and as members of the advisory and strategy groups who will oversee the river’s health and management. Establishing the participation of Māori leaders and community members in these groups will ensure Māori concerns are heard in decision-making processes going forward. The eleventh principle, while written to apply to the U.S., is also a foundational element of the Act. The goal of the Act is to acknowledge and provide redress for the Crown’s failure to honor its treaty with the Māori. In full, the Act integrates several fundamental environmental justice principles into its language and content. The Te Awa Tupua Act illustrates the critical relationship between environmental personhood and environmental justice.

Legal Personality as a Means to Recognize Māori Worldviews

The language and substantive sections of the Te Awa Tupua Act recognize Māori worldviews and cosmologies in a way that few pieces of legislation have done before. Māori relation to the river is not and has never been encapsulated by English common law. For the Māori, neither the river nor its people are territory to be owned (Waitangi Tribunal, 1999). The push by English law to break up the river into separate, privatized pieces was resisted by the Māori who see the river as “part of an indivisible whole, a resource comprised of the water, the bed, the tributaries, the banks, the flats, and, indeed, the whole catchment area, over which their authority had been traditionally maintained” (Waitangi Tribunal, 1999, p. 197). The settlement reached through Wai 167 still did not fully align with Māori cosmology. Affording legal personality to the river is one way for the law to recognize Māori worldviews and provide a lasting commitment to reconciling with the Māori.

Māori worldviews, including their legal systems, are based primarily on values and not rules (Morris & Ruru, 2010). This worldview and corresponding way of life depends on the relationships between all things, including people, gods, and everything in the surrounding world. The Māori regard many natural landmarks such as rivers, lakes and mountains as tapuna (ancestors), so a person’s identity is intimately tied to the land/water where they are from (Morris & Ruru, 2010). The Māori view the Whanganui River as a living being. “Te Awa Tupua”, the name for the river, encompasses all the elements of the river which can be defined as “an indivisible whole incorporating its tributaries and all its physical and metaphysical elements from the mountains to the sea” (OTS, 2012, p. 3). Because the Māori see many of Aotearoa New Zealand’s rivers as ancestors, there is a deep sense of responsibility to protect and nourish those rivers (Morris & Ruru, 2010).

The inherent conflict between Māori and non-Māori worldviews is present in each negotiation over the Whanganui River. The creation of legal personhood for the Whanganui River is a compelling way to recognize Māori cosmology and their relationship to nature. Pita Sharples, a noted Māori academic and cabinet minister, describes these competing views in the following way: “Holding a title to property, whether Crown or private, establishes a regime of rights—to capture, to exclude, to develop, to keep. *Rangatiratanga* (Māori sovereignty or absolute chieftainship) is asserted through the collective exercise of responsibilities—to protect, to conserve, to augment, and to enhance over time for the security of future generations. Both seek to increase value, but the question is, how do you value the resource? [By] the profit you can make? Or the *taonga* (treasure’s) contribution to the survival of the group?” (Kennedy, 2012). Sharples illustrates that for the iwi, the river is seen as a treasure that contributes to the survival and well-being of the entire group. The tension Sharples describes between rights and responsibility underlays all negotiations over the river and continues to exist. Even though it is the iwi’s worldview that forms the justificatory basis of the Te Awa Tupua Act, the Act is written in the juridical language of New Zealand’s common law. However, the Act goes further towards accepting a Māori understanding of the river as a treasure and an entity that cannot be owned by any group or person than any previous settlement. Tupua te Kawa is a section of the Act dedicated solely to capturing the “intrinsic values that represent the essence of Te Awa Tupua” (Te Awa Tupua, 2017, s 13). Examples of these intrinsic values include the statement - “I am the River, and the River is me,” a special saying that describes the inalienable relationship between the iwi and the river. Another value captured in Tupua te Kawa is the acknowledgement that the Whanganui is “the source of spiritual and physical sustenance” (Te Awa Tupua, 2017, s

13). This section illustrates how Māori understandings of the river shape how it is conceptualized and defined in the Act.

The use of Māori words and sayings throughout the body of the English-language statute further prioritizes Māori concepts that do not have a direct English translation. The use of Indigenous languages in legislation worldwide is minimal (Magallanes, 2015). Philosophical and spiritual ideas are kept in their original Māori form throughout the Act, preserving the integrity of their full meaning. The inclusion of Māori words also makes the concepts they contain more powerful and prevents them from being subject to legal misinterpretation.

An essential part of the legislative process before statutes may officially become law in Aotearoa New Zealand is the reading of the statute before Parliament. During each of the three readings of the Act, Māori and Whanganui iwi, who had traveled several hours to attend, filled the gallery. The readings of the Act involved speeches made by different party leaders and members of parliament. Some members included singing and chants into their speeches. At the end of the first reading, after all the addresses concluded, the Whanganui iwi sang *Te Wai o Whanganui*, a song composed in 1939 by Te Ope Whanarere of Kaiwhaiki. The song commemorates the importance of the Whanganui River to the iwi (Stowell, 2016). The inclusion of song and chant in Māori during the legislative process further illustrates the centrality of the Māori in the creation and passage of the Te Awa Tupua Act. It opens new possibilities for the recognition and inclusion of Indigenous peoples in legislative processes that they have historically been excluded from. Not only were the Whanganui iwi included in the Act's readings, but they were at the center of them. The iwi claimed the space to celebrate the protection of the river through song and dance, practices that are not typically a part of Western legislative processes.



Image 8. A screenshot from a recording of the third reading of the Te Awa Tupua Act in which Whanganui iwi sing a song of the river in Parliament's gallery.

In 2008, the United Nations published a Declaration on the Rights of Indigenous Peoples (UNDRIP). The Declaration includes 46 non-binding articles defining the specific economic, political, social, cultural, and spiritual rights and considerations that should be afforded to all Indigenous peoples. Using these principles as guidance, the Te Awa Tupua Act both promotes and protects the rights of the Whanganui iwi while avoiding certain substantive areas of UNDRIP. Particularly relevant to the Act are *Articles 25-29*, which state that Indigenous peoples have the right to use, develop, and protect the lands, territories, and waters that they have traditionally owned or used. Additionally, they have the right to participate fully in processes of decision-making as well as a right to redress for past injustices regarding their lands. Certain elements of these articles are included in the Act, such as a formal apology from the Crown, recognition of Māori cosmology and their relationship with the river, and the inclusion of iwi at all levels of decision-making and management processes. Interestingly, however, UNDRIP is not referenced anywhere in the Act, demonstrating the Crown's reluctance to tie the two documents

together. Of the various states present at UNDRIP's creation in 2008, 143 states voted in favor, 11 abstained and four voted against it, including Australia, Canada, Aotearoa New Zealand and the United States (Collins & Esterling, 2019). The Act is certainly a step in the right direction for Indigenous rights, but it might have gone further to broadly recognize Indigenous rights as human rights and link the legislation explicitly to UNDRIP.

Management Through the Te Awa Tupua Act

The language and commitments made in the Act are essential as they set a standard for what a meaningful and just settlement process can be. Equally important as the statements made by the Act are the systems created to implement the Te Awa Tupua Act and ensure it sets a meaningful standard in practice. The Act implements management programs that are in alignment with Māori belief systems by incorporating into them Māori understandings of guardianship and protection. The Māori emphasize their responsibility of guardianship (rangatiratanga) for the natural entity - river, mountain - to which their iwi is genealogically tied (Kauffman & Martin, 2017). Given this emphasis on guardianship, the Act establishes a guardian body, Te Pou Tupua, who is authorized to speak on behalf of the river and is charged with protecting its interests. The guardians are the “human face” of the river and must “promote and protect the health and well-being of Te Awa Tupua” (Te Awa Tupua, 2017, subpart 3). Te Pou Tupua is composed of two individuals, one nominated by the iwi and one nominated on behalf of the Crown. Guardians will participate in all relevant statutory processes and hold property or funds in the name of Te Awa Tupua. This model is based on a co-governance arrangement, with both Māori and non-Māori members. The ultimate goal of Te Pou Tupua is to uplift humans' responsibility to and respect for the river, falling more in line with Māori cosmology. The human

face is not to take away from the agency of the river itself, but rather to provide an entity capable of dealing with the pragmatic world of state agencies and private law. In addition to Te Pou Tupua, the Act also creates Te Kōpuka, a strategy group for the river that is composed of iwi, relevant local authorities, departments of State, commercial and recreational users, and environmental groups (Te Awa Tupua, 2017, subpart 4). The goal of the strategy group is to establish what the health and wellbeing of the river encompasses and how it is guaranteed by creating a long-term management plan.

The systems of guardianship and river management created in the Act will ideally empower the iwi to care for and protect the river as they have done for generations. The Act was passed in 2017, providing a short time frame over which to measure the successes or failures of the implementation process. Ngā Tāngata Tiaki o Whanganui, the agency charged with the implementation of the settlement, is currently taking its first steps in implementing the Act. Outreach to the iwi is a large part of the process, and these conversations and negotiations are the focus of much of the first stages (Gade, 2019). Logistical issues concerning the co-management of certain areas of the river remain to be worked out. Co-management is a complex process, and the iwi in partnership with the Department of Conservation (DOC) are negotiating expectations around maintenance and liability. Another priority is to contract and complete the required environmental impact studies and scientific evaluation necessary to understand the current health of the river and the impact future projects will have on the ecosystem (Gade, 2019).

Lastly, concerns around ancestral and cultural sites must be negotiated and implemented with great care. Māori residents along the river are anticipating the possibility of eel fishing and restoring traditional platforms along the riverbank to do so (Gade, 2019). The question of how to protect these platforms as well as other sacred spiritual sites along the river without drawing

more attention to them and thus making them vulnerable to exploitation is a complex task. The engagement of the iwi taking place through Ngā Tāngata Tiaki and the protection of traditional fishing platforms are both signs that the Crown is taking seriously the goals and ideals set forth by the Te Awa Tupua Act. Overall, collaboration is seen by river representatives as a core element of the representation and implementation processes (Blankestijn & Martin, 2018). Ultimately, the power of the Act revolves around its implementation, which includes coordinating with many different stakeholders while ensuring that the Māori remain the ultimate stakeholder going forward.

Conclusion

In essence, Te Awa Tupua resolves the Treaty of Waitangi claims and provides a framework to listen to the voice of the river, the voice of the Māori, and the voice of the Crown simultaneously. The Act uses legal personhood thoughtfully to recognize the iwi's cosmology and connection to the river. While there are limitations on the Act's power, it is nevertheless a movement towards environmental justice and a formal recognition and commitment to Indigenous rights. During one of the final readings of the Te Awa Tupua Act, Green Member of Parliament, David Clendon observed:

I think it is true to say that any person who sits alongside a river or sits quietly in a forest will hear the voice of that river, will hear the voice of that forest... When we are making decisions—I shall call them the mundane but critically important decisions—about resource allocation, about land use, and about policy, the river will have a very powerful voice directly in those negotiations, in those discussions, and in that decision making. It will be a Māori voice and a Pākehā voice, and that is as it should be.

Conclusion: Lessons and Comparisons

There are many valuable lessons to take away from these two case studies. It is possible to both critique these policies for what they lack while appreciating the steps they take in the right direction. Both case studies provide valuable guidelines from which to learn in the future. The Te Awa Tupua Act and LEBOR are completely different policies as they came out of different social, political, and cultural contexts, histories, geographies. It is important to remember these differences when comparing them against one another or to other current environmental personhood policies. As David Nelken writes, “a legal transplant cannot be expected to engineer a determined solution but will [instead] take on a life of its own” (Nelken & Feest, 2001). A similar environmental personhood framework will look different in every locality in which it is implemented. Despite their differences, comparing these two case studies provides useful insight into the strengths and weaknesses of both.

At the heart of both of these case studies and every narrative involving rivers or lakes and personhood lies two questions: *who* is the river/lake, and *who* speaks on its behalf? (Clark et al., 2019). The structure and scope of these two policies differ greatly; LEBOR is a three-page City Charter Amendment while the Te Awa Tupua Act contains 126 different sections and applies to the entire country of Aotearoa New Zealand. Yet both are attempts to answer these two questions. Simplified greatly, the answer to the first question is that the Whanganui River and Lake Erie are both living, evolving, ecosystems that are intimately interconnected with the lives, culture, and health of the people who depend on them.

Drafters took two different approaches to answering the second question. In his original article, Stone (1972) suggested that “friends” could be the ones to act in a natural feature’s best interest in a court of law. These friends should be drawn from groups that have “manifested

unflagging dedication to the environment” who could also marshal the requisite technical experts and lawyers. The Te Awa Tupua Act creates its own version of this idea, Te Pou Tupua who are the appointed ‘Guardians’ of the Whanganui River. In contrast, LEBOR follows a model of community rights that empowers all Toledo residents to potentially bring suits on behalf of Lake Erie. Even if LEBOR had been upheld by the courts, it is unclear whether this form of enforcement would have been an effective model. In their 2018 study, Talbot-Jones and O'Donnell show that the onus of enforcement will fall on whoever is deemed the guardian of the natural entity, in this case the citizens of Toledo, Ohio or the City. Yet as O'Donnell described in an interview, without an appointed guardian body with the necessary resources "It becomes everybody's responsibility and then, possibly, nobody's responsibility... So, the question of enforcement then becomes who actually has the funding to run a lawsuit” (Westerman, 2019). The specificity of the Te Awa Tupua Act which delves deeply into the Whanganui River's history, the relationship between the river and the Māori, and the mechanisms needed to co-manage and speak on behalf of the river can be an inspiration for groups looking to create a more cohesive and enforceable Rights of Nature claim.

Both New Zealand and Ohio achieved a significant level of awareness-raising and norms shifting around the idea of an Earth Jurisprudence. The shift of rivers and lakes from *objects* to *subjects* in law, policy, and public discourse is an important achievement for both case studies. While LEBOR ultimately lost in court, it challenged U.S. law to reckon with this new approach and attracted national media headlines and stirred interest in organizations and communities across the U.S. The Te Awa Tupua Act similarly generated interest and engagement around the world. It successfully altered the ownership arrangements of the bed of the Whanganui River through legislation, without causing too much disruption to existing management structures. The

Act simultaneously settled the Whanganui iwi's long-standing treaty claims and river disputes with the Crown (Talbot-Jones, 2017). Both movements are contributing to a normative shift towards an Earth Jurisprudence and a deeper connection between communities and their local ecological landscape.

Another takeaway from this analysis that is reflected in other case study comparisons (O'Donnell & Talbot-Jones, 2018) is that it is possible to create legal rights through both judicial and legislative channels. Achieving change through legislative channels can be slow and depends entirely on a receptiveness and a willingness to collaborate from legislators. When these circumstances align however, it can be a powerful avenue for change as it is less easily undermined than a court decision. Legislative channels also provide opportunities to create strong mechanisms for implementation and enforcement such as the guardian body Te Pou Tupua, the advisory and strategy groups, and funding from the Crown. By contrast, a judicial process is more volatile, it can be rapidly undermined by just one ruling as in the case of LEBOR. Additionally, while using the courts as a "method of policy implementation" has become an increasingly popular avenue of social reform, the courts are considerably constrained by precedents set in past cases (Kagan, 2001; Silverstein, 2009). No one lower court judge is likely to reshape the law and create personhood for natural entities or provide expansive new rights to local communities. Sweeping changes such as these made by lower court judges are seen as delegitimizing the courts as it appears judges are basing their ruling solely on their own opinion (Silverstein, 2009). These constraints on policy-change through the courts point towards legislation as the more reliable and effective method to implement legal rights for nature.

So, what is there to take away from these two case studies and the movement as it currently stands? First, the knowledge that Rights of Nature and similar categories of

environmental personhood policies are likely to continue growing in numbers and relevance in the coming years. In 2019 alone, legal rights were recognized for the Plata River in Colombia, by the High Court in Bangladesh for its rivers, by the residents of Exeter and Nottingham, New Hampshire, by the government of Uganda in its National Environmental Act, and by the Yurok tribe in the U.S. for the Klamath River (“Rights of Nature Timeline”, 2016). Second, these movements must include Indigenous peoples and vulnerable communities in the process to ensure these laws do not add to the history of erasure and environmental injustice perpetrated against these groups. Personhood laws will be more just and effective if these groups are actively included in the process at every stage. Lastly, the more detailed and specific these policies are and the more they create specific mechanisms for stakeholders to collaboratively manage and protect the natural entity, the more likely personhood policies are to be effective. An essential part of this mechanism is funding, an element the Te Awa Tupua Act included that LEBOR was not able to. Advocates looking to environmental personhood to create stronger rights and protections for ecosystems and vulnerable communities should consider the successes and flaws of these two case studies. Both can provide inspiration and guidance for groups that come after.

When William H. Jackson deeded ownership of his beloved childhood tree to itself in 1820, it is unlikely he imagined entire forests and rivers someday holding those same rights. Today, more so than ever, it is possible to imagine a world in which every community, like Athens, Georgia has a tree, a forest, a lake or river, a mountain that owns itself. That ecosystem is valued in and for itself and its health is seen as tied to the health and well-being of the community. The forest or river is valued and protected, not as property, but as a living, evolving being. There are already voices and knowledge systems that understand this interdependence,

and it is time to recognize and uplift those voices, especially a voice that has long been excluded from Western legal and policy traditions - the voice of nature.

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Images

Image 1: Lake Erie (2012). *Encyclopedia Britannica, Inc.*

Image 2: Chicago Tribune (1963-Current file); Aug 25, 1967; ProQuest Historical Newspapers:
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Image 3: Latson, J. (2015, June 22). Environmentalism History: The Importance of Cleveland's
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Image 4: Haslick, Z (n.d.). *Aerial Associates Photography, Inc.* for NOAA.

Image 5: Retrieved from <https://www.drewesfarms.com/>

Image 6: Toledoans for Safe Water Facebook (2020).

Image 7: Young, D. (2005). Whanganui tribes - Ancestors, *Te Ara - the Encyclopedia of
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Image 8: Screenshot taken from <https://www.youtube.com/watch?v=BX0IFd-4Kpo>