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Signs of Invisibility: Nonrecognition of Natural Environments as Persons in International and Domestic Law

Bruce Baer Arnold[1]

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Abstract
Recognition of legal personhood in contemporary international and domestic law is a matter of signs. Those signs identify the existence of the legal person: human animals, corporations and states. They also identify facets of that personhood that situate the signified entities within webs of rights and responsibilities. Entities that are not legal persons lack agency and are thus invisible. They may be acted on but, absent the personhood that is communicated through a range of indicia and shapes both legal and popular understanding of powers and obligations, they lack standing in judicial fora. They are signified as entities that are the subjects of action by legal persons, for example exploitation through rights regarding natural resources or commodification of 'wild', companion and other non-human animals. They are also signified as members of a diverse class of non-persons such as 'nature' and 'the environment'. This article explores the consequences of law's signification of personhood and the natural world before asking whether we both should and could recognise domains such as specific rivers, forests or even Antarctica as a type of legal person. Recognition might acknowledge the salience of nature in the ontologies of colonised First Peoples. It might also underpin a global response to climate change as the existential crisis of the Anthropocene. In understanding law as a matter of signifiers and syntaxes the article cautions that ostensible recognition of some domains as persons has been aspirational rather than substantive, with observers misreading the sign as necessarily transforming power relationships. The article also cautions that personhood for nature or particular domains may be contrary to the self-determination of colonised First Peoples.

Keywords Identity · Personhood · Law · Environment · Nature · Semiotics

✉ Bruce Baer Arnold
bruce.arnold@canberra.edu.au

[1] University of Canberra, Canberra, Australia

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1 Introduction

Law is an empire of signs, indicia of what is/is not permitted or required and signifiers of what is often characterised as personhood or identity. It is a realm in which observers or actors sometimes conflate the signifier with what is signified, for example misreading tokens of legal status and individuation such as passports, badges and identity numbers as being a citizen or an official. It is also a realm in which there is frequent reference to 'identity' and 'personhood', key elements of a legal syntax and of public/private administration but potentially misunderstood by observers who mistake individuation for legal status or by activists who assume that naming—such as a declaration that a specific forest is a legal person—brings into being capability.

This article enhances the rich theoretical literature on legal identity or personhood by considering the legal person as a matter of signifiers. Law's signification privileges some classes of entities, notably the live human animal as the paradigmatic legal person in contemporary Western law, while serving both to erase other entities and disregard the ontologies of First Peoples. Those ontologies are the social and conceptual foundation of what is sometimes characterised as traditional or even primitive law, a coherent body of enforceable rules in which specific geographical domains are important for the belonging of peoples within a cosmology and within which nature requires respect. Recent theoretical literature has often been preoccupied with questions about extending the personhood of corporations by granting them a range of human rights and about the utility of recognising some classes of machines (robots) and disembodied artificial intelligence as being persons, with a consequent legal existence and rights independent of that of owners, users and manufacturers. That exploration has co-existed with calls for recognising some non-human animals, for example apes, as legal persons and for the enshrinement in constitutions or other law of rights for nature. It has also coincided with a small and often misunderstood (or merely commonly misreported) body of statutes and judicial decisions that specific domains are legal persons, so that their deemed needs must be considered in policy making and that through guardians (typically representative of the particular First Peoples intimately associated with the domain) must be able to litigate against harms that injure or threaten the domain. Most recently advocates have relied on that law in unsuccessful litigation regarding climate change, in other words seeking to force governments to address climate change that is global, attributable to human activity and existential because it has geopolitical impacts and large-scale species loss rather than inconvenience to property owners in Manhattan, Sydney, Venice and other coastal locations [13]. Signifiers and recognition of what they signify have consequences.

This article proceeds in eight parts. The following pages initially discuss legal personhood, paradigmatically the live human animal. That discussion notes that personhood is culturally and temporally contingent, arguing that through a lens of legal semiotics all personhood is a matter of legal constructs and thus contestable. The discussion considers personhood as a matter of status and individuation, in other words the functioning of signifiers in contemporary Western and pre-modern legal systems. The article then turns to personhood for nature, in other words invoked

locally yet existing globally, and for specific domains. The discussion draws on work regarding the signification of built environments and on the uneven recognition of First Peoples by settler states in moving towards post-colonial legal systems. Imperialism involves processes of naming and claiming. The discussion seeks to encourage discourse regarding signs and justice by asking whether Antarctica might be usefully regarded as a discrete legal person rather than weakly protected commons, underpinning a global response to climate change. In understanding law as a matter of signifiers and syntaxes the article cautions that ostensible recognition of some domains as persons has been aspirational rather than substantive, with observers misreading the sign as necessarily transforming power relationships. The article also cautions that personhood for nature or particular domains may be contrary to the self-determination of colonised First Peoples.

2 Personhood

US philosopher John Dewey succinctly captured the protean nature of legal personhood in commenting that 'person' "signifies what law makes it signify" [30, p. 665]. Signification involves status, discussed below, and individuation.

Personhood in contemporary international and western law involves a special legal status, involving legally enforceable rights and powers (for example to enter into a contract and gain compensation for an injury) but not necessarily obligations. It is a status that contemporary western law assigns to human animals, corporations and polities such as nations and provinces [71, 80, 103]. Personhood is a building block of domestic and international law [83, 108]. It is determinative in questions of sovereignty and rule-making regarding inhabited or uninhabited territories and unowned global spaces such as oceans outside territorial waters. It is very much a matter of signs, with rules regarding that recognition of status and of individuation [44].

The contemporary western legal system does not recognise 'nature' or 'the environment' as a legal person. It has also not recognised individual domains such as specific rivers and forests as being legal persons and thus having the ability through human representatives to legally restrict a potential harm or gain remediation after a harm such as pollution. That non-recognition of personhood serves to erase the cosmologies that are important to colonised peoples (First Nations) in many jurisdictions and that are being increasingly asserted by those peoples in seeking autonomy or respect for a distinct cultural identity. As Umberto Eco comments.

> Semiotics is concerned with everything that can be taken as a sign. A sign is everything which can be taken as significantly substituting for something else. Thus semiotics is in principle the discipline studying everything which can be used in order to lie. If something cannot be used to tell a lie, conversely it cannot be used to tell the truth: it cannot in fact be used "to tell" at all [33; p. 7].

Contrary to claims by individual 'sovereign citizens' who rely on pseudo-legal arguments regarding signs in claiming to have seceded from national governments and

thus be a state in themselves—resident in that nation's territory but not somehow subject to its law because they have changed signifiers such as their names [6, 73, 87]—personhood is not restricted to human animals [71, 103]. Legal personhood encompasses what are typically described as artificial persons, entities given a status in law that is analogous to humans in terms of rights and responsibilities. One category of those legal persons is the corporation, an entity that may be owned by one human, by many humans or by corporations [38, 52, 77, 96] Another category is the state: polities at the national and provincial level. The personhood of states is typically understood by non-specialists in terms of ongoing government of a discernible location and population, with governments providing legal frameworks that determine what is and is not a person [79, 93, 99]. The significance of such determination is highlighted below. States are signified through indicia such as flags and individuals such as ambassadors and presidents who manifest the state's existence and are recognised by other states as part of adherence to for example the 1933 Montevideo Convention on the Rights and Duties of States and 1961 Vienna Convention on Diplomatic Relations [8].

Personhood can be construed as a matter of proprietarian rights: legal recognition as an entity that can acquire, enjoy and dispose of chattel, intellectual and real property, for example clothing, mobile phones, vehicles, art works, patents, trademarks, land and the homes or other constructions on that land [71, 80]. Those rights are not absolute. Ownership by an individual or by a corporation may for example be overridden through confiscation by the state under a proceeds of crime regime or for national security purposes. It is common for national, provincial or municipal governments to place restrictions on how real property may be used, for example through industrial zoning codes, prohibitions on tree clearing and built heritage codes [68]. Those restrictions might reflect international agreements regarding built and natural environments, for example the Convention Concerning the Protection of the World Cultural and Natural Heritage [106]. Rights regarding intellectual property are similarly not exhaustive, with copyright for example being subject to statutory exceptions such as fair use.

Importantly, Western law relies on different categories of personhood and qualifies the exercise of some rights. Human rights are considered under international law to be inalienable but may be qualified. All human animals (irrespective of gender, ethnicity, age, citizenship and other attributes) are regarded as people but it is acceptable for example to restrict suffrage to competent adult citizens and to override freedom of movement through border restrictions or imprisonment for serious crimes, constraints that signal both the authority of the state and an abhorrence of the crime. Corporations have many but not all of those human rights, a matter of increasing theoretical and judicial contestation [2, 25, 42].

Personhood may also be construed in terms of responsibilities. The salient responsibility, so axiomatic that it is often under-recognised in the literature, is to act within the law of the particular jurisdiction. That is matter of both legitimacy and power, with enforcement of rules being one indicia of statehood [8]. Conversely, the erasure of rules founded on a cosmology that was in place prior to colonisation and that disregards a colonised peoples' understanding of place (in which spirits or other metaphysical entities have agency and there is reciprocity between all living things)

is a key facet of the settler state and of that state's subjection of territories that are home to First Nations [21, 66]. Responsibility more broadly includes accountability for harms attributable to action or inaction by a legal person, for example scope for compensation for injury to a human animal, other animals and facilities caused by a man-made disaster [16, 18, 55]. Hohfeld's influential conceptualisation of rights, deepened by figures such as Honore, understands them as correlates of responsibilities [31, 46–48, 88]. That is challenging if law assigns rights to nature or a domain but tacitly immunises those persons from responsibility. You cannot sue the earth spirit or gain compensation from injury attributed to the river god, although in many pre-colonial legal systems metaphysical entities functioned as legal persons.

Personhood in contemporary western law embodies particular notions of agency and causality. Those notions are secular. Tort, contract and other law may refer to 'Acts of God' but such reference does not imply intervention by a deity or other metaphysical entity. In construing responsibility it therefore does not attribute a road accident or the collapse of a bridge to 'fate', the agency of a *kadaitcha* man, a karmic reward for past transgression or the intervention of an angry spirit rather than a driver's intoxication or the engineer's incompetence. It might acknowledge the importance of pre-modern belief systems to First Nations, whether for the purposes of reconciliation or more broadly as an aspect of a multi-cultural social system. However it has conventionally been reluctant to acknowledge the 'belonging' of First Nations to a domain—as distinct from their ownership or occupation of the real property in that domain—and has not regarded domains, geographical features or other manifestations of nature as being legal persons [12, 69].

That disregard of personhood is potentially disrupted in two ways. Both involve claims of rights. Both raise questions about law regarding personhood beyond the conventional categories. The first involves national recognition of personhood for a specific domain. The second involves recognition of personhood for nature per se or for specific classes of life forms such as primates on the basis that some creatures possess the same core attributes as humans, with those claims being accompanied by arguments that on the basis of principle personhood could at an indefinite stage be extended to embodied (robots) and disembodied artificial intelligence. This article engages with such a disruption of the legal syntax after considering how personhood is signified.

3 Signifying Personhoods

In practice law is more sophisticated than a binary differentiation between humans and others or by Eco's insight about lies and erasure. As foreshadowed above, signs have two functions: individuation and status.

Individuation functions to differentiate entities within a cohort of legal persons. It might be a matter of a name, identity number, token or other attribute that is assigned to an individual or that under law is recognised as serving to allow identification of that entity with some exactitude. The sign might thus be a passport: a document that signifies the bearer's membership of a national community, rights as a member and responsibilities to the particular nation alongside differentiating that

citizen from other citizens with the same nationality. It might be an identity number, used for the administration of welfare or other entitlements and thus ensuring citizen *a* receives income support in old age ahead of citizen *b* who has not reached the requisite age threshold. It might instead be something innate to the person, such as fingerprints, DNA or a biometric facial image that is 'read' by a public or private entity and used in sorting such as verification of a claim to a particular status such as citizenship [7].

Status is a matter of authorisation or incapacitation: law's understanding of the entity as being able to lawfully do *x,* prevented from lawfully doing *y* or successfully invoke rights (alongside responsibilities) as a member of the *x* cohort. Life for most human animals involves a cluster of identities, some of which may be more important at any one time and in particular contexts. It is given for example that all human animals have inalienable human rights, in contrast to nonhuman animals and to the built or natural environment. On a day by day basis one or more derivative identity—a subsidiary status—may be more significant. For example citizenship is typically a pre-requisite for voting and election in a contemporary liberal democratic state. That is one status. Another pre-requisite for membership of the same cohort is the status of reaching the age of majority and the absence of incapacitation in the form of form of disabilities such as insanity, bankruptcy and imprisonment.

Signifiers are popularly misunderstood as the thing that they represent and in some instances are perceived to have magical properties [6]. People for example sometimes assume that the identity paper or card is your identity, whereas it is simply a signifier—a sign—that represents your status and or individuates you from others with the same status. Losing your passport or driver ID or credit card may be administratively inconvenient but does not erase your existence as a citizen or as someone obligated to pay money owing to a financier. Expressing your name in red ink or in upper case, a sort of contemporary abracadabra where incantation has power over unpleasant reality, does not render you free of obligations to the state's law in favour of your own law.

Eco's comment about lies is pertinent, given that signification of status means that there is an incentive, if not imperative, to subvert rules by falsely asserting a specific status (thereby illicitly gaining authority or removing a legal disability), often through the use of entirely bogus or fraudulently altered signifiers such as academic testamurs, naturalisation papers, credit cards and passports. Law as a matter of signs relies on such signs and reflexively seeks to punish entities that use signs to tell lies about personhood, a recursion that reflects Gadamer's hermeneutic circle as a mode of understanding [11, 39].

4 Personhood for Domains?

The following sections of this article initially discuss law's (non)recognition of place. They then consider exceptionalism in New Zealand, where statute law expressly recognises a handful of domains as legal persons, and discuss developments in other jurisdictions such as India and the United States where claims of personhood have been rejected or are merely notional.

Recently legislatures or courts in several countries have recognised particular domains as being legal persons, building on respect for First Nations. In other countries there has been private litigation on behalf of domains, reflecting a national constitution's reference to nature as having rights. A handful of municipalities have 'recognised' domains as persons. Those developments have attracted international attention from the media, environmentalists, First Nations advocates and legal theorists. They have often been misreported and ineffective, on occasion characterised as lofty rhetoric rather than a legal revolution [14]. They offer insights about our understanding of personhood and about the building blocks of law in an era where theorists are asking whether corporations should have human rights [47, 52] and whether artificial intelligence might gain recognition as a legal person [25].

Personhood has conventionally not been granted to specific domains: locations that for First Peoples embody a cosmology given effect through natural law founded on an intimate pervasive relationship between humans and the spirits or deities that manifest in landforms, plants and animals (non-human and human alike) in that domain. More broadly personhood has not been granted to what might be characterised as nature or the living world, whether generally or as a discrete ecosystem identifiable through the interaction of flora, fauna and land/sea in a particular location without any reference to a cosmology. As noted above it has not been granted to non-human animals irrespective of those creatures having attributes such as sociability, intelligence and susceptibility to pain that differentiate humans from the chairs, tables, buildings and other objects that we treat as property rather than people [20].

That denial of personhood, non-recognition of signs and disregard of cosmology is one way of constructing a legal world. It is not however the only way [58] and we should be conscious that personhood is a legal construct, something that reflects values that might be contested and is founded on understandings that are culturally and thus temporally contingent. That is evident in emerging and very unsystematic sui generis recognition of domains as discrete legal persons that have a unique status or might be understood as a matter of geomorphic rights [17]. Recognition, in for example the law of New Zealand, is domain-specific. It is a matter of statute on a domain by domain basis, signifying some places and valorising some relationships but not others. It relates to a defined location such as a specific forest or river rather than to the natural world per se, although recognition of personhood for that domain might be advocated by environmentalists with a broader concern and tied to claims regarding 'rights for nature' [40]. It does not provide protection for all non-human life forms across the jurisdiction, for example indigenous and imported flora and fauna living outside the domain. It also does not provide protection for 'nature' or 'the environment' across a national or provincial jurisdiction, in contrast to constitutionally enshrined rights for nature in Ecuador and similar rights in Bolivia under the *Ley de Derechos de la Madre Tierra* (the Law of Mother Earth). It represents a challenging way of thinking about place, property, about rights and about law. It arises out of unique respect for people whose pre-colonial law was overridden by a settler state originating in Europe, in other words colonialism.

As such, that recognition represents a move to a post-colonial and multicultural legal system at the national level. It offers a new paradigm that is of value in understanding territories and the nature of law, relevant for example in considering calls

to grant personhood to some forms of artificial intelligence or to classes of non-human animals alongside the existing personhood of corporations and states [4, 5, 81, 89, 94, 102]. Recognition also acknowledges the continuity of pre-colonial cosmologies that have not been erased by the settler state and that remain important for the colonised peoples that we increasingly characterise as First Nations or First Peoples [67, 104]. At an international level that recognition may well be referenced in emerging environmental protection agreements that seek to foster stewardship of the natural world towards the end of the Anthropocene, where climate change requires new ways of thinking, and in agreements concerned with traditional knowledge and cultural expression [110, 111].

Sui generis recognition of personhood for specific domains is conceptually problematical and potentially opposed by some First Nations as contrary to their self determination [28, 100]. As discussed below, absent the particular circumstances in a decolonialising jurisdiction such as New Zealand [50], law would more usefully not ascribe rights to domains but instead construe governments, property owners and others as having duties to respect both the natural and built environments on behalf of current and future generations [97].

In thinking about territories how do we understand 'place', particularly in a world where populations are mobile, personal/collective identity often is not based on a cosmology, it is axiomatic that humans have no responsibilities to nature and international law does not recognise nature as having rights?

The hegemonic understanding of place in contemporary western law—and by extension in international law—is secular, positivist, instrumental [29, 72, 92]. It recognises that a specific location might be of particular significance to adherents of one or more religious faiths, evident for example in contestation over the Dome of the Rock, or have aesthetic, historical and other values [34, 60, 61, 90]. However, it does not understand those locations as having agency. They are acted upon rather than acting. They—like non-human animals—are conceptually subordinate to entities that national and international law considers to have personhood, something that in contrast to the locations gives those entities legally recognised rights and obligations, alongside standing in judicial fora [71]. That subordination is a matter of custom and administrative convenience, taken for granted in day by day public administration and legal practice, but as such is not inevitable. It is a manifestation of a particular way of thinking about law and rights, hegemonic rather than universal. We can analyse that thinking by looking at personhood as a construct that involves signs and rights, features legal disabilities on the basis of category and is potentially open to change [24, 29].

5 Rights, Rhetoric and Agency

This article now considers exceptionalism in New Zealand, where statute law expressly recognises a handful of domains as legal persons, and then discusses developments in other jurisdictions.

New Zealand is a decolonialising settler state, a former part of the British Empire in which force was used to override the political independence, traditional law and

cultural integrity of the Maori, ie the First Peoples. It is decolonialising through progressive patriation of its legal system from the United Kingdom (a process that it shares with Australia and Canada) and through increasing recognition of its First Peoples on the basis of human rights principles and use by those Peoples of the 1840 Treaty of Waitangi, a foundational agreement about the relationship between the Māori and the state [70, 78, 109]. There is no corresponding agreement in Australia and in many other settler states in Africa and the Americas.

The traditional law of New Zealand's First Peoples embodies a cosmology in which there is reciprocity between 'living' things, entities that we might construe as having agency and that include humans, nonhuman animals, rivers, lakes, forests, mountains and other landforms. As with many cosmologies, individual landforms or microenvironments such as rivers are perceived as having a discrete character. Those cosmologies have not been comprehensively erased by the processes of colonisation. Place—characterised above as a domain—remains important for the cultural identity of individuals and communities. Those First Peoples have been subject to what in retrospect and at the time was a displacement sometimes understood as a matter of legislative robbery and bad faith on the part of the new state that conceptualised territory in terms of individual ownership rather than a collectivity.

In 2017, after many years of agitation and litigation regarding ownership of the bed of the Whanganui river, the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (NZ) gave formal recognition in New Zealand law of the Whanganui River as a discrete legal person [23, 49]. The government media release regarding the stated that the Whanganui community "today closed the book on over a century-and-a-half of struggle for appropriate recognition for the Whanganui River, and appropriate acknowledgement of their longstanding relationship with it" [37]. A Whanganui spokesperson said that since the mid-1850s the Whanganui people challenged the State's impact on the health and wellbeing of the river and those who lived on it, fighting for recognition of their rights and their relationship with the River. "We have always believed that the Whanganui River is an indivisible and living whole—Te Awa Tupua—which includes all its physical and spiritual elements from the mountains of the central North Island to the sea" [37]. The guardians of the new legal person, in a role analogous to that of guardians for a child or other human with an incapacitation under law, are responsible for upholding the River's interests and protecting its health and wellbeing. They are not responsible for harms caused by the river, for example flooding or death by drowning.

The Te Urewera Act 2014 (NZ) similarly established an 821-square-mile forest, the ancestral homeland and 'living ancestor' of the Tühoe people, as a legal person [28, 54, 85]. The Act states that 'Te Urewera has an identity in and of itself' with 'legal recognition in its own right' as 'a legal entity' with 'all the rights, powers, duties, and liabilities of a legal person'. Te Urewera holds title to itself, with representation by a board—its guardians. The domain was formerly a national park. The Te Kotahitanga o Te Atiawa Trust is the penultimate stage of recognising Mount Taranaki as a discrete legal personality that is a living ancestor of the Te Atiawa people. It encompasses land that over more than a century had been confiscated in alienation of that people, granted to colonists and functioned as a major tourist destination in ways contrary to both traditional and ecological values [101].

From a political perspective the recognition under an enactment of New Zealand's parliament can be understood as a matter of the resilience of specific First Peoples, self-determination and processes of reconciliation [22, 63]. Recognition of personality for a living ancestor is facilitated by the survival of the particular peoples and the specifics of their displacement from areas that have remained predominantly rural. There has not been a successful move to recognise personhood for domains that encompass the country's major metropolitan centres, a function of the erasure of the belonging of a specific First People to each location. Importantly, the personhood is restricted to the particular domain and as noted above thus does not encompass rivers and other landforms in general or nature at a national level, although recognising the domain may have ecological benefits through the domain's guardians governing recreational, extractive or other uses of the place.

There has been no major scholarly literature about the recent grant of personhood to Muteshekau Shipu (the Magpie River) by the Innu Council of Ekuanitshit and the Minganie Regional County Municipality. That recognition, through a resiolution by both bodies, is the first for a Canadian river but importantly has not been made by the national or provincial legislature and has not been tested in court. The resolution affirms the river's "right to live, exist and flow", maintain its integrity, be protected from pollution and—as with the New Zealand model—to take legal action through "river guardians". The resolution does not bring into being obligations on the part of the river.

Place-specific recognition is not present in 'rights for rivers' outside New Zealand, typically misunderstood in the mass media but the subject of an increasingly rich theoretical literature among legal scholars, geographers, human rights and environmental activists, and others with an interest in place [26, 32].

Some nations in South America, in other words settler states, have referred to 'rights of nature'. Ecuador for example expressly referred to rights of nature in articles 71–74 of its 2008 Constitution, with article 71 stating that "all persons, communities, peoples and nations" can "call upon public agencies to enforce the rights of nature" (art 71). In 2010, Bolivia created broad legal rights for nature through the *Ley de Derechos de la Madre Tierra* noted above. Use of the rights has been limited. In 2011 the Vilcabamba River case considered harm to the environment through road construction, decided using the conventional lens of community benefit through infrastructure development [27, 64]. The Colombian Constitutional Court in 2016 addressed a dispute over environmental damage to part of the Atrato River by inferring Colombia's Constitution as providing for 'biocultural rights' [62, 64]. Significantly, the rights are not tied to a specific First Peoples (arguably because activism by and on behalf of those peoples has had a different focus) and has not meaningfully prevented large-scale deforestation and other harms. The rights have not been successfully used for the protection of flora and fauna in general.

In recent litigation in India rivers were again invoked as deserving a special status. In March 2017, the Uttarakhand High Court, a provincial court, declared that "the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person" [53, 86]. The notion of a

river or other domain having duties and liabilities is problematical. The court separately declared the Gangotri and Yamunotri glaciers as legal persons. Judicial characterisation of the rivers as legal persons reflected their status as entities that are sacred, revered and important for the lives of much of India's population. The expectation was that establishing the rivers as persons under guardianship, with officials serving as their human face, would address environmental degradation and thus preserve their unique characteristics [74]. The decisions were however overturned by India's constitutional court [57]. Rivers in Bangladesh and elsewhere have been judicially recognised as 'living entities', a status not identical with personhood [51] and in practice not overriding government decisions or compelling significant care by the state regarding pollution.

In the United States there have been declarations by municipal governments of personhood for domains as part of Community Bills of Rights [84, 100], most prominently the city of Toledo's declaration of personhood for Lake Erie [10, 56, 82]. Those declarations have a rhetorical value akin to the 2021 Declaration of the Rights of the Moon but exceed the particular government's legal authority. They thus have not been embraced by the US Supreme Court. First Nations, which have inconsistent recognition in United States law on the basis of past treaties, have similarly articulated a form of personhood for territories over which they have some control. They include the Yurok Tribe, Ho-Chunk Nation, Ponca Nation and White Earth Nation (Ojibwe). The latter for example announced a Rights of Manoomin law regarding the legal rights of manoomin (wild rice) and the domains on which that rice depends [19, 91]. The announcement has attracted media and scholarly attention but has no traction in international law. As a sign it may build social solidarity across the Ojibwe and supporters but fails to bring into being responsibilities on the part of the United States and other polities.

6 Inscribing White Space

During 2020 and 2021 the COVID pandemic has reminded people across the world of the fragility of supply chains, the incomprehension of many communities regarding vaccination and the apparent inability of national governments to work together to reduce harms through a pandemic treaty or TRIPS Waiver that places human health ahead of the property rights of patent holders. COVID has diverted attention from a more subtle but potentially existential crisis, in other words the impact of climate change in the Anthropocene attributable to treating the natural environment as a commons [36, 76] whose exploitation for corporate/national benefit is without consequences.

Scholars and activists have referred to the Anthropocene in justifying claims of personhood for domains in which there is a long-standing association between the specific place and the people associated with that place. There have been few claims of personhood for the ocean or atmosphere or for Antarctica, a large landmass that appears to contain abundant resources, is significantly affected by climate change—with for example species loss and the disappearance of ice formations that in some

instances are larger than many jurisdictions—and that is claimed in part by several nations but sporadically visited rather than conventionally settled.

Drawing on the preceding paragraphs we might conduct a thought experiment about whether Antarctica could and even should be regarded as a legal person rather than a subject of action by claimants and, at a distance, by other nations that contribute to global warming. It is not a polity and not owned or occupied (now or in the past) by a discrete First Peoples, unlike peoples in Arctic territories of Scandinavia, Russia, the United States and Canada. It is legally a white space, written upon and existing between the words of international law that privilege great power politics.

A model for recognition of Antarctica as a legal person—conceptualised as existing beyond territorial claims and able, through guardians, to take action in judicial fora in its own right—is provided by recognition in the nations noted above of the personhood of domains. Other than through litigation by an international commission, almost certainly opposed by nations such as the Peoples Republic of China and United States that have expressed interest in potential exploitation of resources on/around the Antarctic landmass, it is difficult however to see whether changing the signs and declaring that the domain is a person will result in more than headlines and academic symposia. Individuals or small groups of adherents during the past century have declared that they are sovereign nations but irrespective of creativity in designing flags, awarding themselves titles or issuing passports and other signifiers have not been recognised in domestic or international law and do not function as legal persons. Past pseudostates such as Sealand and the Principality of Hutt River thus remain curiosities rather than juridical realities [43]. Recent environmental activism such as the state of Aramoana, Glacier Republic and nation of Waveland might be dismissed as affirmations of a particular community and fodder for event-driven journalism at the expense of substantive change [3, 45].

7 Against Abracadabra

Theorisation by Stone, Wise and other advocates of legal personhood for nature or for particular species such as apes is valuable for exploring the nature of rights and personhood [1, 15, 59, 94, 95, 107, 112, 113]. That exploration potentially offers a fresh view in considering law regarding domains and nature, particularly as the basis for political change and for 'sacredness' as a tool for eco activism [98]. It is relevant for questions about assigning human rights to corporations, about justice and potentially about assigning liabilities and rights to advanced forms of artificial intelligence [9, 25, 41]. However, as Naffine notes, overall the theorisation has gained more scholarly attention than practical application and substantive outcomes in international and domestic law [72, 105].

One response might be that a strengthening of law for the protection of the natural environment will serve to minimise harms that affect individual communities and broader ecosystems. From that perspective it is not necessary to endow a specific location or nature generally with a new form of personhood, whether exercised by a government trustee or by a civil society group that seeks standing

in a national/provincial court on the basis that the rights of mother nature or the particular territory have been infringed [95].

A pragmatic response might be that what this article characterised as the New Zealand model is sui generis, not predominant in much of that nation and not readily exportable to jurisdictions in Africa, the Americas and elsewhere without New Zealand's constitutional framework. Australia for example has given some recognition of the belonging of indigenous peoples to 'country', in other words what might be construed as a domain, but has not moved to recognise place as a matter of personhood and instead has relied on mechanisms such as environmental protection predicated on the nation's signature of international environment protection agreements [65].

Pragmatism might also question the efficacy of constitutional recognition of mother earth in jurisdictions where constitutional change is frequent, government practice fosters harms to disadvantaged First Peoples in an ongoing process of colonisation that regards territory as a matter for exploitation and construes environmental harms as regrettable but inevitable costs of social advancement.

There is one particularly challenging response to assumptions that personhood for domains is necessarily beneficial and welcomed by First Peoples or more broadly by disadvantaged residents of domains without a First Nations identity. Tănăsescu asked whether personhood was a potential straitjacket for Indigenous emancipatory politics [100]. Coombes noted issues regarding paternalism and objectification of First Peoples as a matter of Indigenous ecological nobility, commenting.

> Recognition and rights-based models for claims settlement discursively control, hegemonize and silence decades of activism that sought Indigenous autonomy and repatriation of resources. Recognition of an Indigenous homeland as a legal person may be problematic for those who desire to reclaim ownership. Although often predicated on slavery, settler societies long ago criminalized ownership of persons, signifying one of many discursive restraints of personhood that discipline Indigenous claims to ownership. Rights-making involves the social construction of group identities as worthy beneficiaries, and the need for Indigenous peoples to demonstrate ecocentrism to secure rights is an archetypal imposition of … repressive authenticity [28, p. 3].

In practice much depends on the specifics of the personhood and the extent to which that personhood is acknowledged by courts, officials and other entities. One scholar noted.

> the disturbing trend of recognising rivers as legal persons and/or living entities whilst also denying rivers the right to flow. Rather than empowering rivers in law to resist existential threats, the new legal status of rivers may thus make it even more difficult to manage rivers to prevent their degradation and loss. This paper highlights an 'extinction problem' for rivers that environmental law has exacerbated, by recognising new non-human living beings whilst simultaneously denying them some of the specific legal rights they need to remain in existence [75, p. 643].

Virginia Marshall more perceptively comments.

> The legal concept of the creation of a legal entity is not trailblazing territory of itself, although introducing and advocating for the legal personality of a river may be. However, advocating for the rights of nature on grounds that all humans over-exploit, abuse and contaminate the environment is as misleading as it is untrue. The Indigenous peoples of Australia have a primary, unique and inherent obligation to 'Care for Country' according to the Indigenous rule of law; exercising the protection and management of the Aboriginal and Torres Strait Islander environment. The Indigenous rule of law and the obligation to 'Care for Country' stretches back many millennia yet Australian domestic laws and policies fail to properly support the exercise of such obligations by Indigenous Australians. In this article I argue, rather than embracing a 'rights of nature' property paradigm in Australia, we should instead empower First Nations people to take a pivotal, even primary, role in caring for Country [65, p. 233].

8 Conclusion

Personhood for discrete places is conceptually exciting but likely to remain only a gesture in most countries. Rewriting the syntax of international law so that nations recognise Antarctica, the Great Barrier Reef, the Himalayas or other domains as a legal person—in particular as a capable legal person able to override the law of Australia, India, Bhutan and China—is a utopian project.

Much law reform has however been a matter of what was dismissed as utopian or merely nonsensical, at times because there was a consensus that the indicia of women properly equated to cognitive deficiency or that skin colour was an indelible sign of inferiority. Recognition on a domain by domain basis has the potential to reshape legal syntax in ways that provoke more nuanced understandings of nature as a global commons, inducing both changed institutional behaviour regarding climate change or pollution and a deeper awareness among individuals about law as a code that is mutable rather than transcendent. That awareness may offset the democratic deficit in which people disengage from responsibility for the development of public policy because they perceive that they are legal subjects without the agency needed to effect legal change.

Spitz and Penalver comment.

> The idea of conferring personhood status on nature – or on discrete natural resources – is a heady and seemingly radical notion. But there may be less to it than meets the eye. Unless such recognition would ultimately yield better legal outcomes or encourage more thoughtful analysis of decisions about those resources, it is difficult to understand why it is a step worth taking. Contrary to the views of many advocates of the personhood approach, existing legal tools rooted in the law of property may offer a more certain pathway to achieving many of the same goals [91, p. 96].

One conclusion is that thinking about domains is useful because it provokes thought about both personhood and about law as a manifestation of power that is founded on a particular understanding. Preceding paragraphs have indicated that ascribing personhood to domains is arbitrary. Theorisation of personhood for other entities is culturally and thus temporally contingent. What Western law has taken for granted, on the basis of convenience and particular values that are at odds with the cosmologies of some colonised peoples, is not inevitable [3, 6]. We can discern personhood for corporations, human animals and other entities as legal constructs, all fictions and all so prevalent as to be unremarkable. Recognition of domains serves to remind us that there are rationales, albeit contested, for extending personhood to other entities such as non-human animals and advanced artificial intelligence alongside robust question of moves in the European Union and United States to erode the disabilities imposed on corporations, in other words giving them more rights while freeing them from restrictions [35].

Another conclusion is that recognition of domains in New Zealand and elsewhere is essentially a matter of respect for the colonised people who adhere to a specific cosmology and who through their own agency along with support in the broader community have persuaded the settler state to give a special status to what this article has characterised as a domain. Recognition does not in fact give personhood to metaphysical entities that are manifest in a specific domain, given that contemporary Western law pragmatically sidesteps questions about the existence of spirits and gods. Adherents of a cosmology that is fundamental to the self-identity of colonised peoples might persuasively argue that recognition is ultimately a matter of form rather than substance.

A final conclusion is broader than thinking about domains as a nascent polity. The conclusion is that we are asking the wrong questions in terms of law about personhood. We do not need to ascribe personhood to domains, non-human animals, forms of artificial intelligence that may never eventuate or nature per se. Rather than conceptualising those entities, specific or general, as legal persons with standing in litigation and rights enforceable on their behalf yet without obligations, it is both more practical and challenging to understand them as entities to which we have duties. We can practice an ethic of care for nonhuman animals, for nature and for the built environment on the basis of respect for past and future generations without assigning rights. Such a way of thinking means that states, corporations and individuals have responsibilities but there is no need for responsibility on the part of rivers, trees, wildlife, ancestors and mother earth.

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